

Introduced by Senator HuffFebruary 21, 2013

An act to amend Sections 14501, 44662, 44955, and 44956 of, to amend and repeal Section 44660 of, and to add Sections 44660.5, 44955.1, and 44955.2 to, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 453, as introduced, Huff. School employees: teachers: evaluation: termination.

(1) Existing law expresses the intent of the Legislature that governing boards of school districts establish a uniform system of evaluation and assessment of the performance of all certificated personnel of a school district, including schools conducted or maintained by county superintendents of education. Existing law prohibits the evaluation and assessment of certificated employee performance from including the use of publishers' norms established by standardized tests.

This bill would instead require the governing board of a school district to establish an evaluation and assessment system for certificated employees that uses a multiple-measures evaluation system with multiple research-validated approaches to measuring effectiveness, as specified. The governing board would be required to establish the system by the 2015–16 school year, and to fully implement the system by the 2016–17 school year, and would require the Superintendent of Public Instruction to institute fiscal penalties for noncompliance. The bill would delete the provisions prohibiting the use of publishers' norms established by standardized tests in evaluating and assessing certificated employees. The bill would require a compliance audit to include the verification of the development and implementation of the evaluation system. Because

the bill would increase the duties of school districts, it would impose a state-mandated local program.

(2) Existing law provides that, when employees are terminated pursuant to a reduction in workforce, a school district is required to terminate the employees in order of seniority. Existing law further provides those employees with preferred right to reappointment and opportunity for substitute service in order of seniority. Existing law authorizes a school district to deviate from the order of seniority for those purposes for specified reasons, including compliance with constitutional requirements related to equal protection of the laws.

This bill would provide additional reasons for which a school district may deviate from terminating employees in order of seniority, including authorizing school districts to terminate employees on the basis of performance evaluations and on the basis that the employee is assigned to a schoolsite that has been selected by the governing board for exemption from certificated reductions in force, based upon the needs of the educational program. The bill would provide an exception to this authorization for an employee who has 18 months or less from his or her date of retirement, or is on medical leave. The bill would specify that the equal protection exception to the general requirement that terminations and reappointments occur in order of seniority applies to equal protection as it relates to pupils.

(3) Existing law generally requires school districts to adhere to certain requirements with respect to teacher and administrator employment, and requires charter school petitions to contain certain information relating to employment.

This bill would authorize school districts, county offices of education, and charter schools to assign, reassign, and transfer teachers and administrators based on effectiveness and subject matter needs, without regard to years of service.

(4) This bill would make various nonsubstantive and clarifying changes.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14501 of the Education Code is amended
2 to read:

3 14501. (a) As used in this chapter, “financial and compliance
4 audit” shall be consistent with the definition provided in the
5 “Standards for Audits of Governmental Organizations, Programs,
6 Activities, and Functions” promulgated by the Comptroller General
7 of the United States. Financial and compliance audits conducted
8 under this chapter shall fulfill federal single audit requirements.

9 (b) As used in this chapter, “compliance audit” means an audit
10 that ascertains and verifies whether or not funds provided through
11 apportionment, contract, or grant, either federal or state, have been
12 properly disbursed and expended as required by law or regulation
13 or both and includes the verification of each of the following:

14 (1) The reporting requirements for the sufficiency of textbooks
15 or instructional materials, or both, as defined in Section 60119.

16 (2) Teacher misassignments pursuant to Section 44258.9.

17 (3) The accuracy of information reported on the School
18 Accountability Report Card required by Section 33126. The
19 requirements set forth in paragraphs (1) and (2) and this paragraph
20 shall be added to the audit guide requirements pursuant to
21 subdivision (b) of Section 14502.1.

22 (4) *The development and implementation of the teacher and*
23 *principal evaluation system required pursuant to Section 44660.5.*

24 SEC. 2. Section 44660 of the Education Code is amended to
25 read:

26 44660. (a) It is the intent of the Legislature that governing
27 boards establish a uniform system of evaluation and assessment
28 of the performance of all certificated personnel within each school
29 district of the state, including schools conducted or maintained by
30 county superintendents of education. The system shall involve the
31 development and adoption by each school district of objective
32 evaluation and assessment guidelines which may, at the discretion
33 of the governing board, be uniform throughout the district or, for
34 compelling reasons, be individually developed for territories or
35 schools within the district, provided that all certificated personnel

1 of the district shall be subject to a system of evaluation and
2 assessment adopted pursuant to this article.

3 ~~This~~

4 (b) *This* article does not apply to certificated personnel who are
5 employed on an hourly basis in adult education classes.

6 (c) *This section shall become inoperative on July 1, 2015, and,*
7 *as of January 1, 2016, is repealed, unless a later enacted statute,*
8 *that becomes operative on or before January 1, 2016, deletes or*
9 *extends the dates on which it becomes inoperative and is repealed.*

10 SEC. 3. Section 44660.5 is added to the Education Code, to
11 read:

12 44660.5. (a) (1) By the 2015–16 school year, the governing
13 board of a school district shall establish a uniform system of
14 evaluation and assessment of the performance of all certificated
15 employees within the school district, and shall fully implement
16 the system by the 2016–17 school year. The system shall clearly
17 define a rigorous, transparent, and fair multiple-measures
18 evaluation system for both teachers and principals and shall involve
19 the development and adoption by the governing board of objective
20 evaluation and assessment guidelines. All certificated employees
21 of the school district shall be subject to a system of evaluation and
22 assessment adopted pursuant to this article, except that this article
23 does not apply to certificated employees who are employed on an
24 hourly basis in adult education classes.

25 (2) This article applies to the county superintendent of schools
26 and the employees of schools conducted or maintained by the
27 county superintendent of schools.

28 (b) For purposes of this section, a “multiple-measures evaluation
29 system” is a teacher and principal evaluation system that uses
30 multiple research-validated approaches to measuring effectiveness,
31 including the measures specified in Section 44662. A school district
32 evaluation system also shall include a quantitative pupil academic
33 achievement growth component that shall constitute at least 30
34 percent of the overall teacher and principal effectiveness measure.

35 (c) (1) The requirement to develop and implement the
36 evaluation system shall be subject to the annual audits, conducted
37 pursuant to Section 14501, commencing with the 2015–16 fiscal
38 year.

39 (2) The Superintendent shall institute fiscal penalties for
40 noncompliance with this section. Fiscal penalties shall include,

1 but not be limited to, withholding 10 percent of the school district
2 or county office of education apportionments. This withholding
3 shall be returned to the school district or county office of education
4 once the evaluation system required by this section is implemented.

5 SEC. 4. Section 44662 of the Education Code is amended to
6 read:

7 44662. (a) The governing board of each school district shall
8 establish standards of expected pupil achievement at each grade
9 level in each area of study.

10 (b) The governing board of each school district shall evaluate
11 and assess certificated employee performance as it reasonably
12 relates to:

13 (1) The progress of pupils toward the standards established
14 pursuant to subdivision (a) and, if applicable, the state adopted
15 academic content standards as measured by state adopted criterion
16 referenced assessments.

17 (2) The instructional techniques and strategies used by the
18 employee.

19 (3) The employee's adherence to curricular objectives.

20 (4) The establishment and maintenance of a suitable learning
21 environment, within the scope of the employee's responsibilities.

22 (c) The governing board of each school district shall establish
23 and define job responsibilities for certificated noninstructional
24 personnel, including, but not limited to, supervisory and
25 administrative personnel, whose responsibilities cannot be
26 evaluated appropriately under the provisions of subdivision (b)
27 and shall evaluate and assess the performance of those
28 noninstructional certificated employees as it reasonably relates to
29 the fulfillment of those responsibilities.

30 (d) Results of an employee's participation in the Peer Assistance
31 and Review Program for Teachers established by Article 4.5
32 (commencing with Section 44500) shall be made available as part
33 of the evaluation conducted pursuant to this section.

34 ~~(e) The evaluation and assessment of certificated employee~~
35 ~~performance pursuant to this section shall not include the use of~~
36 ~~publishers' norms established by standardized tests.~~

37 ~~(f) Nothing in this section shall be construed as in any way~~
38 ~~limiting~~

1 (e) *This section does not limit the authority of the governing*
 2 *board of a school district-governing boards to develop and adopt*
 3 *additional evaluation and assessment guidelines or criteria.*

4 SEC. 5. Section 44955 of the Education Code is amended to
 5 read:

6 44955. (a) ~~No~~A permanent employee shall *not* be deprived
 7 of his or her position for causes other than those specified in
 8 Sections 44907 and 44923, and Sections 44932 to 44947, inclusive,
 9 and ~~no~~ a probationary employee shall *not* be deprived of his or
 10 her position for cause other than as specified in Sections 44948 to
 11 44949, inclusive.

12 (b) (1) Whenever in any school year the average daily
 13 attendance in all of the schools of a district for the first six months
 14 in which school is in session ~~shall have~~ *has* declined below the
 15 corresponding period of either of the previous two school years,
 16 whenever the governing board determines that attendance in a
 17 district will decline in the following year as a result of the
 18 termination of an interdistrict tuition agreement as ~~defined~~
 19 *described* in Section 46304, whenever a particular kind of service
 20 is to be reduced or discontinued not later than the beginning of the
 21 following school year, or whenever the amendment of state law
 22 requires the modification of curriculum, and when in the opinion
 23 of the governing board of the district it ~~shall have~~ *has* become
 24 necessary by reason of any of these conditions to decrease the
 25 number of permanent employees in the district, the governing
 26 board may terminate the services of not more than a corresponding
 27 percentage of the certificated employees of the district, permanent
 28 as well as probationary, at the close of the school year. Except as
 29 otherwise provided by statute, the services of ~~no~~ a permanent
 30 employee ~~may~~ *shall not* be terminated under the provisions of this
 31 section while any probationary employee, or any other employee
 32 with less seniority, is retained to render a service ~~which said that~~
 33 *the* permanent employee is certificated and competent to render.

34 ~~In~~
 35 (2) *In* computing a decline in average daily attendance for
 36 purposes of this section for a newly formed or reorganized school
 37 district, each school of the district shall be deemed to have been
 38 a school of the newly formed or reorganized district for both of
 39 the two previous school years.

40 ~~As~~

1 (3) As between employees who first rendered paid service to
2 the district on the same date, the governing board shall determine
3 the order of termination solely on the basis of needs of the district
4 and the ~~students thereof~~ *pupils, including distinctions based upon*
5 *performance evaluations*. Upon the request of any employee whose
6 order of termination is so determined, the governing board shall
7 furnish in writing no later than five days prior to the
8 commencement of the hearing held in accordance with Section
9 44949, a statement of the specific criteria used in determining the
10 order of termination and the application of the criteria in ranking
11 each employee relative to the other employees in the group. This
12 requirement that the governing board provide, on request, a written
13 statement of reasons for determining the order of termination shall
14 not be interpreted to give affected employees any legal right or
15 interest that would not exist without such a requirement.

16 (c) Notice of ~~such~~ termination of services shall be given before
17 ~~the 15th of~~ May 15 in the manner prescribed in Section 44949,
18 and services of ~~such~~ employees shall be terminated in the inverse
19 of the order in which they were employed, as determined by the
20 board in accordance with ~~the provisions of~~ Sections 44844 and
21 44845. In the event that a permanent or probationary employee is
22 not given the notices and a right to a hearing as provided for in
23 Section 44949, he or she shall be deemed reemployed for the
24 ensuing school year.

25 ~~The governing board shall make assignments and reassignments~~
26 ~~in such a manner that employees shall be retained to render any~~
27 ~~service which their seniority and qualifications entitle them to~~
28 ~~render. However, prior to assigning or reassigning any certificated~~
29 ~~employee to teach a subject which he or she has not previously~~
30 ~~taught, and for which he or she does not have a teaching credential~~
31 ~~or which is not within the employee's major area of postsecondary~~
32 ~~study or the equivalent thereof, the governing board shall require~~
33 ~~the employee to pass a subject matter competency test in the~~
34 ~~appropriate subject.~~

35 (d) Notwithstanding subdivision (b), *and except as specified in*
36 *subdivision (e)*, a school district may deviate from terminating a
37 certificated employee in order of seniority for ~~either~~ *any* of the
38 following reasons:

39 (1) The district demonstrates a specific need for personnel to
40 teach a specific course or course of study, or to provide services

1 authorized by a services credential with a specialization in either
2 pupil personnel services or health for a school nurse, and that the
3 certificated employee has special training and experience necessary
4 to teach that course or course of study or to provide those services,
5 which others with more seniority do not possess.

6 (2) For purposes of maintaining or achieving compliance with
7 constitutional requirements related to equal protection of the laws
8 *as it applies to pupils.*

9 (3) *On the basis of performance evaluations, if pursuant to a*
10 *process whereby employees with superior evaluations are retained*
11 *over those with inferior evaluations. The governing board may*
12 *exercise its discretion in developing the process, which shall be*
13 *applied uniformly to the entire class that is subject to the reduction*
14 *in force.*

15 (4) *On the basis that the employee is assigned to a schoolsite*
16 *that has been selected by the governing board for exemption from*
17 *certificated reductions in force, based upon the needs of the*
18 *educational program.*

19 (e) *A school district shall not deviate from terminating a*
20 *certificated employee in order of seniority if the employee has 18*
21 *months or less from his or her date of retirement, or is on medical*
22 *leave.*

23 SEC. 6. Section 44955.1 is added to the Education Code, to
24 read:

25 44955.1. Notwithstanding any other law, a school district,
26 county office of education, or charter school may assign, reassign,
27 and transfer teachers and administrators based on effectiveness
28 and subject matter needs without regard to years of service.

29 SEC. 7. Section 44955.2 is added to the Education Code, to
30 read:

31 44955.2. A school district that deviates from the order of
32 seniority for purposes of terminating a certificated employee under
33 any provision of this chapter shall do so on the basis of one or
34 more of the items specified in subdivision (d) of Section 44955
35 and shall not take into consideration whether an employee has
36 exercised any of the rights guaranteed under Chapter 10.7
37 (commencing with Section 3540) of Division 4 of Title 1 of the
38 Government Code.

39 SEC. 8. Section 44956 of the Education Code is amended to
40 read:

1 44956. ~~(a) Any~~ A permanent employee whose services have
2 been terminated as provided in Section 44955 shall have the
3 following rights:

4 ~~(1)~~

5 (a) For the period of 39 months from the date of ~~such~~ *the*
6 termination, any employee who in the meantime has not attained
7 the age of 65 years shall have the preferred right to reappointment,
8 in the order of original employment as determined by the board
9 in accordance with ~~the provisions of~~ Sections 44831 to 44855,
10 inclusive, if the number of employees is increased or the
11 discontinued service is reestablished, with no requirements that
12 were not imposed upon other employees who continued in service;
13 provided, that no probationary or other employee with less seniority
14 shall be employed to render a service ~~which said~~ *that the* employee
15 is certificated and competent to render. However, prior to
16 reappointing any employee to teach a subject which he or she has
17 not previously taught, and for which he or she does not have a
18 teaching credential or which is not within the employee's major
19 area of postsecondary study or the equivalent thereof, the governing
20 board shall require the employee to pass a subject matter
21 competency test in the appropriate subject.

22 ~~(2)~~

23 (b) The aforesaid right to reappointment may be waived by the
24 employee, without prejudice, for not more than one school year,
25 unless the board extends this right, but ~~such~~ *the* waiver shall not
26 deprive the employee of his *or her* right to subsequent offers of
27 reappointment.

28 ~~(3)~~

29 (c) Notwithstanding ~~paragraph (1)~~ *subdivision (a)*, a school
30 district may deviate from reappointing a certificated employee in
31 order of seniority for either of the following reasons:

32 ~~(A)~~

33 (1) The district demonstrates a specific need for personnel to
34 teach a specific course or course of study, or to provide services
35 authorized by a services credential with a specialization in either
36 pupil personnel services or health for a school nurse, and that the
37 employee has special training and experience necessary to teach
38 that course or course of study, or to provide those services, which
39 others with more seniority do not possess.

40 ~~(B)~~

1 (2) For purposes of maintaining or achieving compliance with
 2 constitutional requirements related to equal protection of the laws
 3 *as it applies to pupils.*

4 ~~(4)~~

5 ~~(d) As to any such~~ *For an* employee who is reappointed, the
 6 period of his *or her* absence shall be treated as a leave of absence
 7 and shall not be considered as a break in the continuity of his *or*
 8 *her* service, he *or she* shall retain the classification and order of
 9 employment he *or she* had when his *or her* services were
 10 terminated, and credit for prior service under any state or district
 11 retirement system shall not be affected by ~~such~~ *the* termination,
 12 but the period of his *or her* absence shall not count as a part of the
 13 service required for retirement.

14 ~~(5)~~

15 ~~(e) During the period of his~~ *an employee's* preferred right to
 16 reappointment, ~~any such~~ *the* employee ~~shall~~, in the order of original
 17 employment, *shall* be offered prior opportunity for substitute
 18 service during the absence of any other employee who has been
 19 granted a leave of absence or who is temporarily absent from duty;
 20 provided, that his *or her* services may be terminated upon the
 21 return to duty of ~~said~~ *the* other employee and that ~~said~~ *the* substitute
 22 service shall not affect the retention of his *or her* previous
 23 classification and rights. If, in any school year the employee serves
 24 as a substitute in any position requiring certification for ~~any~~ 21
 25 days or more within a period of 60 schooldays, the compensation
 26 the employee receives for substitute service in that 60-day period,
 27 including his or her first 20 days of substitute service, shall *not* be
 28 ~~not~~ less than the amount the employee would receive if he or she
 29 were being reappointed.

30 ~~(f) Notwithstanding subdivision (e), a school district may deviate~~
 31 ~~from the order of seniority in offering the opportunity for substitute~~
 32 ~~service for either of the following reasons:~~

33 ~~(1) The district demonstrates a specific need for personnel to~~
 34 ~~teach a specific course or course of study, or to provide services~~
 35 ~~authorized by a services credential with a specialization in either~~
 36 ~~pupil personnel services or health for a school nurse, and the~~
 37 ~~employee has special training and experience, and has~~
 38 ~~demonstrated the competency necessary to teach in a specified~~
 39 ~~grade level or course of study, or to provide those services, that~~

1 *others with more seniority do not possess or are not able to*
2 *provide.*

3 (2) *For purposes of maintaining or achieving compliance with*
4 *constitutional requirements related to equal protection of the laws*
5 *as it applies to pupils.*

6 ~~(6)~~

7 (g) (1) *During the period of the employee’s preferred right to*
8 *reappointment, the governing board of the district, if it is also the*
9 *governing board of one or more other districts, may assign ~~him~~*
10 *the employee to service, ~~which that~~ he or she is certificated and*
11 *competent to render, in ~~said one of the other district or districts;~~*
12 *~~provided, that the~~ districts. The compensation ~~he the employee~~*
13 *receives ~~therefor may,~~ in the discretion of the governing board,*
14 *may be the same as ~~he the employee~~ would have received had he*
15 *or she been serving in the district from which ~~his the employee’s~~*
16 *services were ~~terminated, that his terminated.~~ The employee’s*
17 *service in the ~~said other district or districts shall be counted toward~~*
18 *the period required for both state and local retirement, ~~as defined~~*
19 *by ~~Section 22102,~~ as though rendered in the district from which*
20 *~~his the employee’s services were terminated, and that no permanent~~*
21 *terminated. The employee ~~in said shall not displace any other~~*
22 *permanent employee in the other district or districts ~~shall be~~*
23 *displaced by him.*

24 ~~It~~

25 (2) *It is the intent of this ~~subsection subdivision~~ that the*
26 *employees of a school district, the governing board of which is*
27 *also the governing board of one or more other school districts,*
28 *shall not be at a disadvantage as compared with employees of a*
29 *unified school district.*

30 ~~(7)~~

31 (h) *At any time prior to the completion of one year after ~~his the~~*
32 *employee’s return to service, ~~he the employee~~ may continue or*
33 *make up, with interest, his or her own contributions to any state*
34 *or district retirement system; for the period of his or her absence,*
35 *but it shall not be obligatory on the state or district to match ~~such~~*
36 *the contributions.*

37 ~~(8) Should be become~~

38 (i) *If the employee becomes disabled or ~~reach reaches~~ retirement*
39 *age at any time before his or her return to service, ~~he the employee~~*
40 *shall receive, in any state or district retirement system of which*

1 ~~he~~ *the employee* was a member, all benefits to which he *or she*
2 would have been entitled ~~had such event~~ *if the disability or*
3 *retirement* occurred at the time of his *or her* termination of service,
4 plus any benefits ~~he~~ *the employee* may have qualified for thereafter,
5 as though still employed.

6 SEC. 9. If the Commission on State Mandates determines that
7 this act contains costs mandated by the state, reimbursement to
8 local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.