

**Introduced by Senator Wright**February 22, 2013

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An act to amend Section 44949 of the Education Code, and to amend Sections 11500, 11503, 11505, 11506, 11507, 11507.3, 11509, 11516, and 11520 of the Government Code, relating to education employment.

## LEGISLATIVE COUNSEL'S DIGEST

SB 546, as introduced, Wright. Education employment: termination: hearing.

Existing law requires that, when a reduction in the number of certificated employees employed by a school district is authorized, the layoffs occur in order of employee seniority. Under existing law, when an employee is terminated due to a reduction in force pursuant to these provisions, the employee has the option to request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. Existing law requires that this hearing be conducted in accordance with specified provisions of law. With respect to this hearing, existing law defines the "respondent" as any person against whom an accusation is filed pursuant to specified provisions of law. Additionally, existing law provides for a "notice of defense," which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under specified provisions of law.

This bill would change the phrase "accusation" to "District Statement of Reduction in Force," and "notice of defense" to "notice of participation" for purposes of the provisions relating to the termination of a certificated employee due to a reduction in force and would make conforming changes.

This bill would also make technical, nonsubstantive changes.

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

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

1 SECTION 1. Section 44949 of the Education Code is amended  
2 to read:  
3 44949. (a) (1) No later than March 15 and before an employee  
4 is given notice by the governing board that his or her services will  
5 not be required for the ensuing year for the reasons specified in  
6 Section 44955, the governing board and the employee shall be  
7 given written notice by the superintendent of the district or his or  
8 her designee, or in the case of a *school* district ~~which~~ *that* has no  
9 superintendent by the clerk or secretary of the governing board,  
10 that it has been recommended that the notice be given to the  
11 employee, and stating the reasons therefor.  
12 ~~Until~~  
13 (2) *Until* the employee has requested a hearing as provided in  
14 subdivision (b) or has waived his or her right to a hearing, the  
15 notice and the reasons therefor shall be confidential and shall not  
16 be divulged by any person, except as may be necessary in the  
17 performance of duties. However, the violation of this requirement  
18 of confidentiality, in and of itself, shall not in any manner be  
19 construed as affecting the validity of any hearing conducted  
20 pursuant to this section.  
21 (b) The employee may request a hearing to determine if there  
22 is cause for not reemploying him or her for the ensuing year. A  
23 request for a hearing shall be in writing and shall be delivered to  
24 the person who sent the notice pursuant to subdivision (a), on or  
25 before a date specified in that subdivision, which shall not be less  
26 than seven days after the date on which the notice is served upon  
27 the employee. If an employee fails to request a hearing on or before  
28 the date specified, his or her failure to do so shall constitute his or  
29 her waiver of his or her right to a hearing. The notice provided for  
30 in subdivision (a) shall advise the employee of the provisions of  
31 this subdivision.  
32 (c) ~~In the event~~ *If* a hearing is requested by the employee, the  
33 proceeding shall be conducted and a decision made in accordance  
34 with Chapter 5 (commencing with Section 11500) of Part 1 of  
35 Division 3 of Title 2 of the Government Code and the governing

1 board shall have all the power granted to an agency ~~therein~~ *in that*  
2 *chapter*, except that all of the following shall apply:

3 (1) The respondent shall file his or her ~~notice of defense~~ *notice*  
4 *of participation*, if any, within five days after service upon him or  
5 her of the ~~accusation~~ *District Statement of Reduction in Force* and  
6 he or she shall be notified of this five-day period for filing in the  
7 ~~accusation~~ *District Statement of Reduction in Force*.

8 (2) The discovery authorized by Section 11507.6 of the  
9 Government Code shall be available only if request is made  
10 therefor within 15 days after service of the ~~accusation~~ *District*  
11 *Statement of Reduction in Force*, and the notice required by Section  
12 11505 of the Government Code shall so indicate.

13 (3) The hearing shall be conducted by an administrative law  
14 judge who shall prepare a proposed decision, containing findings  
15 of fact and a determination as to whether the charges sustained by  
16 the evidence are related to the welfare of the schools and the pupils  
17 ~~thereof~~ *of the schools*. The proposed decision shall be prepared  
18 for the governing board and shall contain a determination as to the  
19 sufficiency of the cause and a recommendation as to disposition.  
20 However, the governing board shall make the final determination  
21 as to the sufficiency of the cause and disposition. None of the  
22 findings, recommendations, or determinations contained in the  
23 proposed decision prepared by the administrative law judge shall  
24 be binding on the governing board. Nonsubstantive procedural  
25 errors committed by the school district or governing board of the  
26 school district shall not constitute cause for dismissing the charges  
27 unless the errors are prejudicial errors. Copies of the proposed  
28 decision shall be submitted to the governing board and to the  
29 employee on or before May 7 of the year in which the proceeding  
30 is commenced. All expenses of the hearing, including the cost of  
31 the administrative law judge, shall be paid by the governing board  
32 from the district funds.

33 ~~The board may adopt from time to time such rules and procedures~~  
34 ~~not inconsistent with provisions of this section as may be necessary~~  
35 ~~to effectuate this section.~~

36 (d) Any notice or request shall be deemed sufficient when it is  
37 delivered in person to the employee to whom it is directed, or when  
38 it is deposited in the United States registered mail, postage prepaid  
39 and addressed to the last known address of the employee.

1 (e) If after *a* request for hearing pursuant to subdivision (b)-~~any~~  
 2 *a* continuance is granted pursuant to Section 11524 of the  
 3 Government Code, the dates prescribed in subdivision (c)-~~which~~  
 4 *that* occur on or after the date of granting the continuance and the  
 5 date prescribed in subdivision (c) of Section 44955-~~which~~ *that*  
 6 occurs after the date of granting the continuance shall be extended  
 7 for a period of time equal to the continuance.

8 (f) *The governing board may adopt from time to time rules and*  
 9 *procedures not inconsistent with this section as may be necessary*  
 10 *to effectuate this section.*

11 SEC. 2. Section 11500 of the Government Code is amended  
 12 to read:

13 11500. In this chapter unless the context or subject matter  
 14 otherwise requires:

15 (a) “Agency” includes the state boards, commissions, and  
 16 officers to which this chapter is made applicable by law, except  
 17 that wherever the word “agency” alone is used the power to act  
 18 may be delegated by the agency, and wherever the words “agency  
 19 itself” are used the power to act shall not be delegated unless the  
 20 statutes relating to the particular agency authorize the delegation  
 21 of the agency’s power to hear and decide.

22 (b) “Party” includes the agency, the respondent, and any person,  
 23 other than an officer or an employee of the agency in his or her  
 24 official capacity, who has been allowed to appear or participate in  
 25 the proceeding.

26 (c) “Respondent” means any person against whom an accusation  
 27 *or District Statement of Reduction in Force* is filed pursuant to  
 28 Section 11503 or against whom a statement of issues is filed  
 29 pursuant to Section 11504.

30 (d) “Administrative law judge” means an individual qualified  
 31 under Section 11502.

32 (e) “Agency member” means any person who is a member of  
 33 any agency to which this chapter is applicable and includes any  
 34 person who himself or herself constitutes an agency.

35 SEC. 3. Section 11503 of the Government Code is amended  
 36 to read:

37 11503. (a) A hearing to determine whether a right, authority,  
 38 license, or privilege should be revoked, suspended, limited, or  
 39 conditioned shall be initiated by filing an accusation *or District*  
 40 *Statement of Reduction in Force*. The accusation *or District*

1 *Statement of Reduction in Force* shall be a written statement of  
2 charges ~~which that~~ shall set forth in ordinary and concise language  
3 the acts or omissions with which the respondent is charged, to the  
4 end that the respondent will be able to prepare his *or her* defense.  
5 It shall specify the statutes and rules ~~which that~~ the respondent is  
6 alleged to have violated, but shall not consist merely of charges  
7 phrased in the language of ~~such those~~ statutes and rules. The  
8 accusation *or District Statement of Reduction in Force* shall be  
9 verified unless made by a public officer acting in his *or her* official  
10 capacity or by an employee of the agency before which the  
11 proceeding is to be held. The verification may be on information  
12 and belief.

13 (b) *In a hearing involving a reduction in force that is conducted*  
14 *pursuant to Section 44949 of the Education Code, the hearing*  
15 *shall be initiated by filing a "District Statement of Reduction in*  
16 *Force." For purposes of this chapter, a "District Statement of*  
17 *Reduction in Force" shall have the same meaning as an*  
18 *"accusation." However, if conflicts exist as a result of the*  
19 *characterization of an "accusation" as an "District Statement of*  
20 *Reduction in Force," all provisions of the Education Code,*  
21 *including, but not limited to, Section 44949, shall prevail over*  
22 *conflicting provisions in this chapter. Respondent's responsive*  
23 *pleading shall be entitled "Notice of Participation in Reduction*  
24 *in Force Hearing."*

25 SEC. 4. Section 11505 of the Government Code is amended  
26 to read:

27 11505. (a) Upon the filing of the accusation *or District*  
28 *Statement of Reduction in Force* the agency shall serve a copy  
29 thereof on the respondent as provided in subdivision (c). The  
30 agency may include with the accusation *or District Statement of*  
31 *Reduction in Force* any information ~~which that~~ it deems  
32 appropriate, but it shall include a post card or other form entitled  
33 Notice of Defense ~~which, or, as applicable, Notice of Participation,~~  
34 *that*, when signed by or on behalf of the respondent and returned  
35 to the agency, will acknowledge service of the accusation *or*  
36 *District Statement of Reduction in Force* and constitute a notice  
37 of defense, *or, as applicable, notice of participation*, under Section  
38 11506. The copy of the accusation *or District Statement of*  
39 *Reduction in Force* shall include or be accompanied by (1) a  
40 statement that respondent may request a hearing by filing a notice

1 of defense, *or, as applicable, notice of participation*, as provided  
2 in Section 11506 within 15 days after service upon the respondent  
3 of the accusation *or District Statement of Reduction in Force*, and  
4 that failure to do so will constitute a waiver of the respondent's  
5 right to a hearing, and (2) copies of Sections 11507.5, 11507.6,  
6 and 11507.7.

7 (b) The statement to respondent shall be substantially in the  
8 following form:

9 Unless a written request for a hearing signed by or on behalf of  
10 the person named as respondent in the accompanying accusation  
11 *or District Statement of Reduction in Force* is delivered or mailed  
12 to the agency within 15 days after the accusation *or District*  
13 *Statement of Reduction in Force* was personally served on you or  
14 mailed to you, (here insert name of agency) may proceed upon the  
15 accusation *or District Statement of Reduction in Force* without a  
16 hearing. The request for a hearing may be made by delivering or  
17 mailing the enclosed form entitled Notice of Defense, *or, as*  
18 *applicable, Notice of Participation*, or by delivering or mailing a  
19 notice of defense, *or, as applicable, notice of participation*, as  
20 provided by Section 11506 of the Government Code to: (here insert  
21 name and address of agency). You may, but need not, be  
22 represented by counsel at any or all stages of these proceedings.

23 If you desire the names and addresses of witnesses or an  
24 opportunity to inspect and copy the items mentioned in Section  
25 11507.6 of the Government Code in the possession, custody or  
26 control of the agency, you may contact: (here insert name and  
27 address of appropriate person).

28 The hearing may be postponed for good cause. If you have good  
29 cause, you are obliged to notify the agency or, if an administrative  
30 law judge has been assigned to the hearing, the Office of  
31 Administrative Hearings, within 10 working days after you  
32 discover the good cause. Failure to give notice within 10 days will  
33 deprive you of a postponement.

34 (c) The accusation *or District Statement of Reduction in Force*  
35 and all accompanying information may be sent to the respondent  
36 by any means selected by the agency. But no order adversely  
37 affecting the rights of the respondent shall be made by the agency  
38 in any case unless the respondent shall have been served personally  
39 or by registered mail as provided herein, or shall have filed a notice  
40 of defense, *or, as applicable, notice of participation*, or otherwise

1 appeared. Service may be proved in the manner authorized in civil  
2 actions. Service by registered mail shall be effective if a statute or  
3 agency rule requires the respondent to file the respondent's address  
4 with the agency and to notify the agency of any change, and if a  
5 registered letter containing the accusation *or District Statement of*  
6 *Reduction in Force* and accompanying material is mailed,  
7 addressed to the respondent at the latest address on file with the  
8 agency.

9 *(d) For purposes of this chapter, for hearings involving a*  
10 *reduction in force that are conducted pursuant to Section 44949*  
11 *of the Education Code, a "Notice of Participation" shall have the*  
12 *same meaning as a "Notice of Defense." However, if conflicts*  
13 *exist as a result of the characterization of the "Notice of*  
14 *Participation" as a "Notice of Defense," all provisions of the*  
15 *Education Code, including, but not limited to, Section 44949, shall*  
16 *prevail over conflicting provisions in this chapter.*

17 SEC. 5. Section 11506 of the Government Code is amended  
18 to read:

19 11506. (a) Within 15 days after service of the accusation *or*  
20 *District Statement of Reduction in Force* the respondent may file  
21 with the agency a notice of defense, *or, as applicable, notice of*  
22 *participation*, in which the respondent may:

23 (1) Request a hearing.

24 (2) Object to the accusation *or District Statement of Reduction*  
25 *in Force* upon the ground that it does not state acts or omissions  
26 upon which the agency may proceed.

27 (3) Object to the form of the accusation *or District Statement*  
28 *of Reduction in Force* on the ground that it is so indefinite or  
29 uncertain that the respondent cannot identify the transaction or  
30 prepare a defense.

31 (4) Admit the accusation *or District Statement of Reduction in*  
32 *Force* in whole or in part.

33 (5) Present new matter by way of defense.

34 (6) Object to the accusation *or District Statement of Reduction*  
35 *in Force* upon the ground that, under the circumstances, compliance  
36 with the requirements of a regulation would result in a material  
37 violation of another regulation enacted by another department  
38 affecting substantive rights.

39 (b) Within the time specified *the* respondent may file one or  
40 more notices of defense, *or, as applicable, notices of participation,*

1 upon any or all of these grounds but all of these notices shall be  
2 filed within that period unless the agency in its discretion authorizes  
3 the filing of a later notice.

4 (c) The respondent shall be entitled to a hearing on the merits  
5 if the respondent files a notice of defense *or notice of participation*,  
6 and the notice shall be deemed a specific denial of all parts of the  
7 accusation *or District Statement of Reduction in Force* not  
8 expressly admitted. Failure to file a notice of defense *or notice of*  
9 *participation* shall constitute a waiver of respondent's right to a  
10 hearing, but the agency in its discretion may nevertheless grant a  
11 hearing. Unless objection is taken as provided in paragraph (3) of  
12 subdivision (a), all objections to the form of the accusation *or*  
13 *District Statement of Reduction in Force* shall be deemed waived.

14 (d) The notice of defense *or notice of participation* shall be in  
15 writing signed by or on behalf of the respondent and shall state  
16 the respondent's mailing address. It need not be verified or follow  
17 any particular form.

18 (e) As used in this section, "file," "files," "filed," or "filing"  
19 means "delivered or mailed" to the agency as provided in Section  
20 11505.

21 SEC. 6. Section 11507 of the Government Code is amended  
22 to read:

23 11507. At any time before the matter is submitted for decision,  
24 the agency may file or permit the filing of, an amended or  
25 supplemental accusation *or District Statement of Reduction in*  
26 *Force*. All parties shall be notified ~~thereof~~ *of the filing*. If the  
27 amended or supplemental accusation *or District Statement of*  
28 *Reduction in Force* presents new charges the agency shall afford  
29 *the* respondent a reasonable opportunity to prepare his *or* defense  
30 thereto, but he *or she* shall not be entitled to file a further pleading  
31 unless the agency in its discretion so orders. Any new charges shall  
32 be deemed controverted, and any objections to the amended or  
33 supplemental accusation *or District Statement of Reduction in*  
34 *Force* may be made orally and shall be noted in the record.

35 SEC. 7. Section 11507.3 of the Government Code is amended  
36 to read:

37 11507.3. (a) When proceedings that involve a common  
38 question of law or fact are pending, the administrative law judge  
39 on the judge's own motion or on motion of a party may order a  
40 joint hearing of any or all the matters at issue in the proceedings.

1 The administrative law judge may order all the proceedings  
2 consolidated and may make orders concerning the procedure that  
3 may tend to avoid unnecessary costs or delay.

4 (b) The administrative law judge on the judge’s own motion or  
5 on motion of a party, in furtherance of convenience or to avoid  
6 prejudice or when separate hearings will be conducive to expedition  
7 and economy, may order a separate hearing of any issue, including  
8 an issue raised in the notice of defense *or notice of participation*,  
9 or of any number of issues.

10 SEC. 8. Section 11509 of the Government Code is amended  
11 to read:

12 11509. The agency shall deliver or mail a notice of hearing to  
13 all parties at least 10 days prior to the hearing. The hearing shall  
14 not be prior to the expiration of the time within which the  
15 respondent is entitled to file a notice of defense, *or, as applicable,*  
16 *notice of participation.*

17 The notice to respondent shall be substantially in the following  
18 form but may include other information:

19 You are hereby notified that a hearing will be held before [here  
20 insert name of agency] at [here insert place of hearing] on the \_\_\_\_  
21 day of \_\_\_\_, 19\_\_, at the hour of \_\_\_\_, upon the charges made in  
22 the accusation *or District Statement of Reduction in Force* served  
23 upon you. If you object to the place of hearing, you must notify  
24 the presiding officer within 10 days after this notice is served on  
25 you. Failure to notify the presiding officer within 10 days will  
26 deprive you of a change in the place of the hearing. You may be  
27 present at the hearing. You have the right to be represented by an  
28 attorney at your own expense. You are not entitled to the  
29 appointment of an attorney to represent you at public expense.  
30 You are entitled to represent yourself without legal counsel. You  
31 may present any relevant evidence, and will be given full  
32 opportunity to cross-examine all witnesses testifying against you.  
33 You are entitled to the issuance of subpoenas to compel the  
34 attendance of witnesses and the production of books, documents  
35 or other things by applying to [here insert appropriate office of  
36 agency].

37 SEC. 9. Section 11516 of the Government Code is amended  
38 to read:

39 11516. The agency may order amendment of the accusation  
40 *or District Statement of Reduction in Force* after submission of

1 the case for decision. Each party shall be given notice of the  
2 intended amendment and opportunity to show that he *or she* will  
3 be prejudiced thereby unless the case is reopened to permit the  
4 introduction of additional evidence ~~in~~ on his *or her* behalf. If such  
5 prejudice is shown, the agency shall reopen the case to permit the  
6 introduction of additional evidence.

7 SEC. 10. Section 11520 of the Government Code is amended  
8 to read:

9 11520. (a) If the respondent either fails to file a notice of  
10 defense, *or, as applicable, notice of participation*, or to appear at  
11 the hearing, the agency may take action based upon the  
12 respondent's express admissions or upon other evidence and  
13 affidavits may be used as evidence without any notice to  
14 respondent; and where the burden of proof is on the respondent to  
15 establish that the respondent is entitled to the agency action sought,  
16 the agency may act without taking evidence.

17 (b) Notwithstanding the default of the respondent, the agency  
18 or the administrative law judge, before a proposed decision is  
19 issued, has discretion to grant a hearing on reasonable notice to  
20 the parties. If the agency and administrative law judge make  
21 conflicting orders under this subdivision, the agency's order takes  
22 precedence. The administrative law judge may order the  
23 respondent, or the respondent's attorney or other authorized  
24 representative, or both, to pay reasonable expenses, including  
25 attorney's fees, incurred by another party as a result of the  
26 respondent's failure to appear at the hearing.

27 (c) Within seven days after service on the respondent of a  
28 decision based on the respondent's default, the respondent may  
29 serve a written motion requesting that the decision be vacated and  
30 stating the grounds relied on. The agency in its discretion may  
31 vacate the decision and grant a hearing on a showing of good cause.  
32 As used in this subdivision, good cause includes, but is not limited  
33 to, any of the following:

34 (1) Failure of the person to receive notice served pursuant to  
35 Section 11505.

36 (2) Mistake, inadvertence, surprise, or excusable neglect.