

AMENDED IN ASSEMBLY JUNE 19, 2013

SENATE BILL

No. 546

Introduced by Senator Wright

February 22, 2013

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 amended, 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 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 (2) Until the employee has requested a hearing as provided in
13 subdivision (b) or has waived his or her right to a hearing, the
14 notice and the reasons therefor shall be confidential and shall not
15 be divulged by any person, except as may be necessary in the
16 performance of duties. However, the violation of this requirement
17 of confidentiality, in and of itself, shall not in any manner be
18 construed as affecting the validity of any hearing conducted
19 pursuant to this section.

20 (b) The employee may request a hearing to determine if there
21 is cause for not reemploying him or her for the ensuing year. A
22 request for a hearing shall be in writing and shall be delivered to
23 the person who sent the notice pursuant to subdivision (a), on or
24 before a date specified in that subdivision, which shall not be less
25 than seven days after the date on which the notice is served upon
26 the employee. If an employee fails to request a hearing on or before
27 the date specified, his or her failure to do so shall constitute his or
28 her waiver of his or her right to a hearing. The notice provided for
29 in subdivision (a) shall advise the employee of the provisions of
30 this subdivision.

31 (c) If a hearing is requested by the employee, the proceeding
32 shall be conducted and a decision made in accordance with Chapter

1 5 (commencing with Section 11500) of Part 1 of Division 3 of
2 Title 2 of the Government Code and the governing board shall
3 have all the power granted to an agency in that chapter, except that
4 all of the following shall apply:

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

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

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

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

39 (e) If after a request for hearing pursuant to subdivision (b) a
40 continuance is granted pursuant to Section 11524 of the

1 Government Code, the dates prescribed in subdivision (c) that
2 occur on or after the date of granting the continuance and the date
3 prescribed in subdivision (c) of Section 44955 that occurs after
4 the date of granting the continuance shall be extended for a period
5 of time equal to the continuance.

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

9 SEC. 2. Section 11500 of the Government Code is amended
10 to read:

11 11500. In this chapter unless the context or subject matter
12 otherwise requires:

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

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

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

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

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

33 SEC. 3. Section 11503 of the Government Code is amended
34 to read:

35 11503. (a) A hearing to determine whether a right, authority,
36 license, or privilege should be revoked, suspended, limited, or
37 conditioned shall be initiated by filing an accusation or District
38 Statement of Reduction in Force. The accusation or District
39 Statement of Reduction in Force shall be a written statement of
40 charges that shall set forth in ordinary and concise language the

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

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

21 SEC. 4. Section 11505 of the Government Code is amended
22 to read:

23 11505. (a) Upon the filing of the accusation or District
24 Statement of Reduction in Force the agency shall serve a copy
25 thereof on the respondent as provided in subdivision (c). The
26 agency may include with the accusation or District Statement of
27 Reduction in Force any information that it deems appropriate, but
28 it shall include a post card or other form entitled Notice of Defense,
29 or, as applicable, Notice of Participation, that, when signed by or
30 on behalf of the respondent and returned to the agency, will
31 acknowledge service of the accusation or District Statement of
32 Reduction in Force and constitute a notice of defense, or, as
33 applicable, notice of participation, under Section 11506. The copy
34 of the accusation or District Statement of Reduction in Force shall
35 include or be accompanied by (1) a statement that respondent may
36 request a hearing by filing a notice of defense, or, as applicable,
37 notice of participation, as provided in Section 11506 within 15
38 days after service upon the respondent of the accusation or District
39 Statement of Reduction in Force, and that failure to do so will

1 constitute a waiver of the respondent’s right to a hearing, and (2)
2 copies of Sections 11507.5, 11507.6, and 11507.7.

3 (b) The statement to respondent shall be substantially in the
4 following form:

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

19 If you desire the names and addresses of witnesses or an
20 opportunity to inspect and copy the items mentioned in Section
21 11507.6 of the Government Code in the possession, ~~custody~~
22 *custody*, or control of the agency, you may contact: (here insert
23 name and address of appropriate person).

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

30 (c) The accusation or District Statement of Reduction in Force
31 and all accompanying information may be sent to the respondent
32 by any means selected by the agency. But no order adversely
33 affecting the rights of the respondent shall be made by the agency
34 in any case unless the respondent shall have been served personally
35 or by registered mail as provided herein, or shall have filed a notice
36 of defense, or, as applicable, notice of participation, or otherwise
37 appeared. Service may be proved in the manner authorized in civil
38 actions. Service by registered mail shall be effective if a statute or
39 agency rule requires the respondent to file the respondent’s address
40 with the agency and to notify the agency of any change, and if a

1 registered letter containing the accusation or District Statement of
2 Reduction in Force and accompanying material is mailed,
3 addressed to the respondent at the latest address on file with the
4 agency.

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

13 SEC. 5. Section 11506 of the Government Code is amended
14 to read:

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

19 (1) Request a hearing.

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

23 (3) Object to the form of the accusation or District Statement
24 of Reduction in Force on the ground that it is so indefinite or
25 uncertain that the respondent cannot identify the transaction or
26 prepare a defense.

27 (4) Admit the accusation or District Statement of Reduction in
28 Force in whole or in part.

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

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

35 (b) Within the time specified the respondent may file one or
36 more notices of defense, or, as applicable, notices of participation,
37 upon any or all of these grounds but all of these notices shall be
38 filed within that period unless the agency in its discretion authorizes
39 the filing of a later notice.

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

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

15 (e) As used in this section, "file," "files," "filed," or "filing"
16 means "delivered or mailed" to the agency as provided in Section
17 11505.

18 SEC. 6. Section 11507 of the Government Code is amended
19 to read:

20 11507. At any time before the matter is submitted for decision,
21 the agency may file or permit the filing of, an amended or
22 supplemental accusation or District Statement of Reduction in
23 Force. All parties shall be notified of the filing. If the amended or
24 supplemental accusation or District Statement of Reduction in
25 Force presents new charges the agency shall afford the respondent
26 a reasonable opportunity to prepare his or *her* defense thereto, but
27 he or she shall not be entitled to file a further pleading unless the
28 agency in its discretion so orders. Any new charges shall be deemed
29 controverted, and any objections to the amended or supplemental
30 accusation or District Statement of Reduction in Force may be
31 made orally and shall be noted in the record.

32 SEC. 7. Section 11507.3 of the Government Code is amended
33 to read:

34 11507.3. (a) When proceedings that involve a common
35 question of law or fact are pending, the administrative law judge
36 on the judge's own motion or on motion of a party may order a
37 joint hearing of any or all the matters at issue in the proceedings.
38 The administrative law judge may order all the proceedings
39 consolidated and may make orders concerning the procedure that
40 may tend to avoid unnecessary costs or delay.

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

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

9 11509. The agency shall deliver or mail a notice of hearing to
10 all parties at least 10 days prior to the hearing. The hearing shall
11 not be prior to the expiration of the time within which the
12 respondent is entitled to file a notice of defense, or, as applicable,
13 notice of participation.

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

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

34 SEC. 9. Section 11516 of the Government Code is amended
35 to read:

36 11516. The agency may order amendment of the accusation
37 or District Statement of Reduction in Force after submission of
38 the case for decision. Each party shall be given notice of the
39 intended amendment and opportunity to show that he or she will
40 be prejudiced thereby unless the case is reopened to permit the

1 introduction of additional evidence on his or her behalf. If such
2 prejudice is shown, the agency shall reopen the case to permit the
3 introduction of additional evidence.

4 SEC. 10. Section 11520 of the Government Code is amended
5 to read:

6 11520. (a) If the respondent either fails to file a notice of
7 defense, or, as applicable, notice of participation, or to appear at
8 the hearing, the agency may take action based upon the
9 respondent's express admissions or upon other evidence and
10 affidavits may be used as evidence without any notice to
11 respondent; and where the burden of proof is on the respondent to
12 establish that the respondent is entitled to the agency action sought,
13 the agency may act without taking evidence.

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

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

31 (1) Failure of the person to receive notice served pursuant to
32 Section 11505.

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