

**Introduced by Senator Liu**February 20, 2014

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An act to amend Sections 44932, 44936, 44939, 44940, and 44944 of the Education Code, relating to school employees.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1164, as introduced, Liu. School employees: discipline: dismissal and suspension.

(1) Existing law prohibits a permanent school employee from being dismissed except for one or more specified reasons, including, among others, knowing membership in the Communist Party.

This bill would delete knowing membership in the Communist Party as a reason for which a permanent employee may be dismissed.

(2) Existing law authorizes a governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend him or her for specified causes at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing. Existing law prohibits that notice from being given between May 15 and September 15 in any year.

This bill would instead authorize the governing board of a school district to give the notice at any time of year, except for a notice in a proceeding involving only charges of unsatisfactory performance, which the bill would require to be given during the instructional year of the schoolsite at which the employee is physically employed.

(3) Existing law prescribes various procedures for the hearing, including, among others, a prohibition against the giving of testimony or the introduction of evidence relating to matters occurring more than 4 years prior to the filing of a notice. Existing law further prohibits any decision relating to the dismissal or suspension of any employee from

being made based on charges or evidence of any nature relating to matters occurring more than 4 years prior to the filing of a notice.

This bill would exempt charges of unprofessional conduct involving specified sex offenses, substance abuse offenses, and child endangerment offenses from these prohibitions.

(4) Existing law provides that a certificated employee may be charged with a mandatory leave of absence offense for certain specified sex offenses or controlled substance offenses with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols. Existing law requires the governing board of a school district to immediately place a certificated employee on compulsory leave of absence if the employee is charged with a mandatory leave of absence offense.

This bill would additionally authorize a certificated employee to be charged with a mandatory leave of absence offense for murder and attempted murder. Because this would increase the number of employees subject to immediate placement on compulsory leave of absence, thereby increasing the duties of school districts, the bill would impose a state-mandated local program.

(5) This bill would also make conforming and nonsubstantive changes.

(6) 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 44932 of the Education Code is amended
- 2 to read:
- 3 44932. (a) ~~No~~A permanent employee shall *not* be dismissed
- 4 except for one or more of the following causes:
- 5 (1) Immoral or unprofessional conduct.
- 6 (2) Commission, aiding, or advocating the commission of acts
- 7 of criminal syndicalism, as prohibited by Chapter 188 of the
- 8 Statutes of 1919, or in any amendment ~~thereof~~. *to that chapter.*

1 (3) Dishonesty.

2 (4) Unsatisfactory performance.

3 (5) Evident unfitness for service.

4 (6) Physical or mental condition unfitting him or her to instruct  
5 or associate with children.

6 (7) Persistent violation of or refusal to obey the school laws of  
7 the state or reasonable regulations prescribed for the government  
8 of the public schools by the ~~State Board of Education~~ *state board*  
9 or by the governing board of the school district employing him or  
10 her.

11 (8) Conviction of a felony or of ~~any~~ *a* crime involving moral  
12 turpitude.

13 (9) Violation of Section 51530 or conduct specified in Section  
14 1028 of the Government Code, added by Chapter 1418 of the  
15 Statutes of 1947.

16 ~~(10) Knowing membership by the employee in the Communist~~  
17 ~~Party.~~

18 ~~(11)~~

19 ~~(10)~~ Alcoholism or other drug abuse ~~which~~ *that* makes the  
20 employee unfit to instruct or associate with children.

21 (b) The governing board of a school district may suspend  
22 without pay for a specific period of time on grounds of  
23 unprofessional conduct a permanent certificated employee or, in  
24 a school district with an average daily attendance of less than 250  
25 pupils, a probationary employee, pursuant to the procedures  
26 specified in Sections 44933, 44934, 44935, 44936, 44937, 44943,  
27 and 44944. This authorization shall not apply to ~~any~~ *a* school  
28 district ~~which~~ *that* has adopted a collective bargaining agreement  
29 pursuant to subdivision (b) of Section 3543.2 of the Government  
30 Code.

31 SEC. 2. Section 44936 of the Education Code is amended to  
32 read:

33 44936. (a) The notice of dismissal or suspension in a  
34 proceeding initiated pursuant to Section 44934 ~~shall not be given~~  
35 ~~between May 15th and September 15th in any year. It may be given~~  
36 ~~at any time of year.~~

37 (b) *Notwithstanding subdivision (a), in a proceeding initiated*  
38 *pursuant to Section 44934 involving only charges of unsatisfactory*  
39 *performance, the notice of dismissal or suspension shall only be*

1 *given during the instructional year of the schoolsite where the*  
 2 *employee is physically employed.*

3 (c) *The notice of dismissal or suspension shall be in writing and*  
 4 *be served upon the employee personally or by United States*  
 5 *registered mail addressed to him the employee at his or her last*  
 6 *known address. A copy of the charges filed, containing the*  
 7 *information required by Section 11503 of the Government Code,*  
 8 *together with a copy of the provisions of this article, shall be*  
 9 *attached to the notice.*

10 SEC. 3. Section 44939 of the Education Code is amended to  
 11 read:

12 44939. (a) Upon the filing of written charges, duly signed  
 13 and verified by the person filing them with the governing board  
 14 of a school district, or upon a written statement of charges  
 15 formulated by the governing ~~board,~~ *board of a school district,*  
 16 charging a permanent employee of the district with immoral  
 17 conduct, conviction of a felony or of ~~any~~ *a crime involving moral*  
 18 *turpitude, with incompetency due to mental disability, or with*  
 19 *willful refusal to perform regular assignments without reasonable*  
 20 *cause, as prescribed by reasonable rules and regulations of the*  
 21 *employing school district, or with violation of Section 51530, with*  
 22 *knowing membership by the employee in the Communist Party or*  
 23 *with violation of any provision in Sections 7001 to 7007, inclusive,*  
 24 *51530, the governing board of the school district may, if it deems*  
 25 *such action necessary, immediately suspend the employee from*  
 26 *his or her duties and give notice to him the employee of his or her*  
 27 *suspension, and that 30 days after service of the notice, he the*  
 28 *employee will be dismissed, unless he or she demands a hearing.*

29 If  
 30 (b) *If the permanent employee is suspended upon charges of*  
 31 *knowing membership by the employee in the Communist Party or*  
 32 *for any violation of Section 7001, 7002, 7003, 7006, 7007, or*  
 33 *51530, he for a violation of Section 51530, the employee may*  
 34 *within 10 days after service upon him or her of notice of such the*  
 35 *suspension file with the governing board of the school district a*  
 36 *verified denial, in writing, of the charges. In such that event the*  
 37 *permanent employee who demands a hearing within the 30-day*  
 38 *period shall continue to be paid his or her regular salary during*  
 39 *the period of suspension and until the entry of the decision of the*  
 40 *Commission on Professional Competence, if and during such time*

1 ~~as he~~ *the time that the employee* furnishes to the school district a  
2 suitable bond, or other security acceptable to the governing ~~board,~~  
3 *board of the school district*, as a guarantee that the employee will  
4 repay to the school district the amount of salary so paid to him *or*  
5 *her* during the period of suspension in case the decision of the  
6 Commission on Professional Competence is that ~~he~~ *the employee*  
7 shall be dismissed. If it is determined that the employee may not  
8 be dismissed, the ~~school~~ *governing board of the school district*  
9 shall reimburse the employee for the cost of the bond.

10 SEC. 4. Section 44940 of the Education Code is amended to  
11 read:

12 44940. (a) For purposes of this section, “charged with a  
13 mandatory leave of absence offense” is defined to mean charged  
14 by complaint, information, or indictment filed in a court of  
15 competent jurisdiction with the commission of any sex offense as  
16 defined in Section 44010, *with a violation or attempted violation*  
17 *of Section 187 of the Penal Code*, or with the commission of any  
18 offense involving aiding or abetting the unlawful sale, use, or  
19 exchange to minors of controlled substances listed in Schedule I,  
20 II, or III, as contained in ~~Section~~ *Sections* 11054, 11055, and 11056  
21 of the Health and Safety Code, with the exception of marijuana,  
22 mescaline, peyote, or tetrahydrocannabinols.

23 (b) For purposes of this section, “charged with an optional leave  
24 of absence offense” is defined to mean a charge by complaint,  
25 information, or indictment filed in a court of competent jurisdiction  
26 with the commission of any controlled substance offense as defined  
27 in Section 44011 or 87011, ~~or a violation or attempted violation~~  
28 ~~of Section 187 of the Penal Code,~~ *of this code*, or Sections 11357  
29 to 11361, inclusive, Section 11363, 11364, or 11370.1 of the Health  
30 and Safety Code, insofar as these sections relate to any controlled  
31 substances except marijuana, mescaline, peyote, or  
32 tetrahydrocannabinols.

33 (c) For purposes of this section and Section 44940.5, the term  
34 “school district” includes county offices of education.

35 (d) (1) ~~Whenever any~~ *If a* certificated employee of a school  
36 district is charged with a mandatory leave of absence offense, as  
37 defined in subdivision (a), upon being informed that a charge has  
38 been filed, the governing board of the school district shall  
39 immediately place the *certificated* employee on compulsory leave  
40 of absence. The duration of the leave of absence shall be until a

1 time not more than 10 days after the date of entry of the judgment  
2 in the proceedings. No later than 10 days after receipt of the  
3 complaint, information, or indictment described by subdivision  
4 (a), the school district shall forward a copy to the Commission on  
5 Teacher Credentialing.

6 (2) Upon receiving a copy of a complaint, information, or  
7 indictment described in subdivision (a) and forwarded by a school  
8 district, the Commission on Teacher Credentialing shall  
9 automatically suspend the employee's teaching or service  
10 credential. The duration of the suspension shall be until a time not  
11 more than 10 days after the date of entry of the judgment in the  
12 proceedings.

13 (e) (1) ~~Whenever any~~ *If a* certificated employee of a school  
14 district is charged with an optional leave of absence offense as  
15 defined in subdivision (b), the governing board of the school  
16 district may immediately place the *certificated* employee ~~upon~~ *on*  
17 compulsory leave in accordance with the procedure in this section  
18 and Section 44940.5. ~~If any~~ *a* certificated employee is charged  
19 with an offense deemed to fall into both the mandatory and the  
20 optional leave of absence categories, as defined in subdivisions  
21 (a) and (b), that offense shall be treated as a mandatory leave of  
22 absence offense for purposes of this section. No later than 10 days  
23 after receipt of the complaint, information, or indictment described  
24 by subdivision (a), the school district shall forward a copy to the  
25 Commission on Teacher Credentialing.

26 (2) Upon receiving a copy of a complaint, information, or  
27 indictment described in subdivision (a) and forwarded by a school  
28 district, the Commission on Teacher Credentialing shall  
29 automatically suspend the *certificated* employee's teaching or  
30 service credential. The duration of the suspension shall be until a  
31 time not more than 10 days after the date of entry of the judgment  
32 in the proceedings.

33 SEC. 5. Section 44944 of the Education Code is amended to  
34 read:

35 44944. (a) (1) In a dismissal or suspension proceeding initiated  
36 pursuant to Section 44934, if a hearing is requested by the  
37 employee, the hearing shall be commenced within 60 days from  
38 the date of the employee's demand for a hearing. The hearing shall  
39 be initiated, conducted, and a decision made in accordance with  
40 Chapter 5 (commencing with Section 11500) of Part 1 of Division

1 3 of Title 2 of the Government Code. However, the hearing date  
2 shall be established after consultation with the employee and the  
3 governing board, or their representatives, and the Commission on  
4 Professional Competence shall have all of the power granted to  
5 an agency in that chapter, except that the right of discovery of the  
6 parties shall not be limited to those matters set forth in Section  
7 11507.6 of the Government Code but shall include the rights and  
8 duties of any party in a civil action brought in a superior court  
9 under Title 4 (commencing with Section 2016.010) of Part 4 of  
10 the Code of Civil Procedure. Notwithstanding any provision to the  
11 contrary, and except for the taking of oral depositions, no discovery  
12 shall occur later than 30 calendar days after the employee is served  
13 with a copy of the accusation pursuant to Section 11505 of the  
14 Government Code. In all cases, discovery shall be completed prior  
15 to seven calendar days before the date upon which the hearing  
16 commences. If any continuance is granted pursuant to Section  
17 11524 of the Government Code, the time limitation for  
18 commencement of the hearing as provided in this subdivision shall  
19 be extended for a period of time equal to the continuance. However,  
20 the extension shall not include that period of time attributable to  
21 an unlawful refusal by either party to allow the discovery provided  
22 for in this section.

23 (2) If the right of discovery granted under paragraph (1) is  
24 denied by either the employee or the governing board, all of the  
25 remedies in Chapter 7 (commencing with Section 2023.010) of  
26 Title 4 of Part 4 of the Code of Civil Procedure shall be available  
27 to the party seeking discovery and the court of proper jurisdiction,  
28 to entertain his or her motion, shall be the superior court of the  
29 county in which the hearing will be held.

30 (3) The time periods in this section and of Chapter 5  
31 (commencing with Section 11500) of Part 1 of Division 3 of Title  
32 2 of the Government Code and of Title 4 (commencing with  
33 Section 2016.010) of Part 4 of the Code of Civil Procedure shall  
34 not be applied so as to deny discovery in a hearing conducted  
35 pursuant to this section.

36 (4) The superior court of the county in which the hearing will  
37 be held may, upon motion of the party seeking discovery, suspend  
38 the hearing so as to comply with the requirement of ~~the preceding~~  
39 ~~paragraph.~~ *paragraph (3).*

40 ~~(5) No witness~~

1 (5) (A) A witness shall *not* be permitted to testify at the hearing  
2 except upon oath or affirmation. ~~No testimony~~

3 (B) *Testimony shall not be given or and evidence shall not be*  
4 *introduced relating to matters that occurred more than four years*  
5 *prior to before the date of the filing of the notice. Evidence notice,*  
6 *except for in a hearing that involves an offense defined or described*  
7 *in Section 44010 or 44011 of this code, or Sections 11165.2 to*  
8 *11165.6, inclusive, of the Penal Code.*

9 (C) *Evidence of records regularly kept by the governing board*  
10 *concerning the employee may be introduced, but no decision*  
11 *relating to the dismissal or suspension of any an employee shall*  
12 *be made based on charges or evidence of any nature relating to*  
13 *matters occurring more than four years prior to before the filing*  
14 *of the notice. notice, except for in a hearing that involves an offense*  
15 *defined or described in Section 44010 or 44011 of this code, or*  
16 *Sections 11165.2 to 11165.6, inclusive, of the Penal Code.*

17 (b) (1) The hearing provided for in this section shall be  
18 conducted by a Commission on Professional Competence. One  
19 member of the commission shall be selected by the employee, one  
20 member shall be selected by the governing board and one member  
21 shall be an administrative law judge of the Office of Administrative  
22 Hearings who shall be chairperson and a voting member of the  
23 commission and shall be responsible for assuring that the legal  
24 rights of the parties are protected at the hearing. If either the  
25 governing board or the employee for any reason fails to select a  
26 commission member at least seven calendar days ~~prior to before~~  
27 the date of the hearing, the failure shall constitute a waiver of the  
28 right to selection, and the county board of education or its specific  
29 designee shall immediately make the selection. If the county board  
30 of education is also the governing board of the school district or  
31 has by statute been granted the powers of a *the* governing board,  
32 the selection shall be made by the Superintendent, who shall be  
33 reimbursed by the school district for all costs incident to the  
34 selection.

35 (2) The member selected by the governing board and the  
36 member selected by the employee shall not be related to the  
37 employee and shall not be employees of the district initiating the  
38 dismissal or suspension and shall hold a currently valid credential  
39 and have at least five years' experience within the past 10 years  
40 in the discipline of the employee.

- 1 (c) (1) The decision of the Commission on Professional  
2 Competence shall be made by a majority vote, and the commission  
3 shall prepare a written decision containing findings of fact,  
4 determinations of issues, and a disposition that shall be, solely,  
5 one of the following:
- 6 (A) That the employee should be dismissed.
  - 7 (B) That the employee should be suspended for a specific period  
8 of time without pay.
  - 9 (C) That the employee should not be dismissed or suspended.
- 10 (2) The decision of the ~~Commission on Professional Competence~~  
11 *commission* that the employee should not be dismissed or  
12 suspended shall not be based on nonsubstantive procedural errors  
13 committed by the school district or governing board unless the  
14 errors are prejudicial errors.
- 15 (3) The commission shall not have the power to dispose of the  
16 charge of dismissal by imposing probation or other alternative  
17 sanctions. The imposition of suspension pursuant to subparagraph  
18 (B) of paragraph (1) shall be available only in a suspension  
19 proceeding authorized pursuant to subdivision (b) of Section 44932  
20 or Section 44933.
- 21 (4) The decision of the ~~Commission on Professional Competence~~  
22 *commission* shall be deemed to be the final decision of the  
23 governing board.
- 24 (5) The ~~board~~ *governing board* may adopt from time to time  
25 rules and procedures not inconsistent with this section as may be  
26 necessary to effectuate this section.
- 27 (6) The governing board and the employee shall have the right  
28 to be represented by counsel.
- 29 (d) (1) If the member selected by the governing board or the  
30 member selected by the employee is employed by any school  
31 district in this state, the member shall, during any service on a  
32 Commission on Professional Competence, continue to receive  
33 salary, fringe benefits, accumulated sick leave, and other leaves  
34 and benefits from the district in which the member is employed,  
35 but shall receive no additional compensation or honorariums for  
36 service on the commission.
- 37 (2) If service on a ~~Commission on Professional Competence~~  
38 *commission* occurs during summer recess or vacation periods, the  
39 member shall receive compensation proportionate to that received

1 during the current or immediately preceding contract period from  
2 the member's employing district, whichever amount is greater.

3 (e) (1) If the Commission on Professional Competence  
4 determines that the employee should be dismissed or suspended,  
5 the governing board and the employee shall share equally the  
6 expenses of the hearing, including the cost of the administrative  
7 law judge. The state shall pay any costs incurred under paragraph  
8 (2) of subdivision (d), the reasonable expenses, as determined by  
9 the administrative law judge, of the member selected by the  
10 governing board and the member selected by the employee,  
11 including, but not limited to, payments or obligations incurred for  
12 travel, meals, and lodging, and the cost of the substitute or  
13 substitutes, if any, for the member selected by the governing board  
14 and the member selected by the employee. The Controller shall  
15 pay all claims submitted pursuant to this paragraph from the  
16 General Fund, and may prescribe reasonable rules, regulations,  
17 and forms for the submission of the claims. The employee and the  
18 governing board shall pay their own attorney's fees.

19 (2) If the ~~Commission on Professional Competence~~ *commission*  
20 determines that the employee should not be dismissed or  
21 suspended, the governing board shall pay the expenses of the  
22 hearing, including the cost of the administrative law judge, any  
23 costs incurred under paragraph (2) of subdivision (d), the  
24 reasonable expenses, as determined by the administrative law  
25 judge, of the member selected by the governing board and the  
26 member selected by the employee, including, but not limited to,  
27 payments or obligations incurred for travel, meals, and lodging,  
28 the cost of the substitute or substitutes, if any, for the member  
29 selected by the governing board and the member selected by the  
30 employee, and reasonable attorney's fees incurred by the employee.

31 (3) As used in this section, "reasonable expenses" shall not be  
32 deemed "compensation" within the meaning of subdivision (d).

33 (4) If either the governing board or the employee petitions a  
34 court of competent jurisdiction for review of the decision of the  
35 commission, the payment of expenses to members of the  
36 commission required by this subdivision shall not be stayed.

37 (5) (A) If the decision of the commission is finally reversed or  
38 vacated by a court of competent jurisdiction, either the state, having  
39 paid the commission members' expenses, shall be entitled to  
40 reimbursement from the governing board for those expenses, or

1 the governing board, having paid the expenses, shall be entitled  
2 to reimbursement from the state.

3 (B) Additionally, either the employee, having paid a portion of  
4 the expenses of the hearing, including the cost of the administrative  
5 law judge, shall be entitled to reimbursement from the governing  
6 board for the expenses, or the governing board having paid its  
7 portion and the employee's portion of the expenses of the hearing,  
8 including the cost of the administrative law judge, shall be entitled  
9 to reimbursement from the employee for that portion of the  
10 expenses.

11 (f) The hearing provided for in this section shall be conducted  
12 in a place selected by agreement among the members of the  
13 ~~commission~~ *Commission on Professional Competence*. In the  
14 absence of agreement, the place shall be selected by the  
15 administrative law judge.

16 SEC. 6. If the Commission on State Mandates determines that  
17 this act contains costs mandated by the state, reimbursement to  
18 local agencies and school districts for those costs shall be made  
19 pursuant to Part 7 (commencing with Section 17500) of Division  
20 4 of Title 2 of the Government Code.