

ASSEMBLY BILL

No. 1078

Introduced by Assembly Member Olsen

(Coauthors: Assembly Members Achadjian, Travis Allen, Bigelow, Chang, Chávez, Dahle, Beth Gaines, Gallagher, Grove, Harper, Jones, Lackey, Linder, Mayes, Melendez, Wagner, Waldron, and Wilk)

February 27, 2015

An act to amend Sections 33039, 33050, 44662, and 44664 of the Education Code, relating to teachers.

LEGISLATIVE COUNSEL’S DIGEST

AB 1078, as introduced, Olsen. Teachers: evaluations.

(1) Existing law requires the State Board of Education to develop guidelines that school districts may use in the development of teacher evaluation procedures, and distribute such guidelines to every school district.

This bill would require the state board to revise, update, and adopt guidelines that school districts may use in the development of teacher evaluation procedures by July 1, 2016. The bill would also require that the updated guidelines include a determination of a teacher’s overall performance, as specified.

(2) Existing law authorizes the governing board of a school district or a county board of education, as specified, after a public hearing on the matter, to request the state board to waive all or part of any section of the Education Code or any regulation adopted by the state board that implements a provision of the Education Code that may be waived, except for specified provisions.

This bill would prohibit the state board from granting any waiver request by a governing board of a school district if the state board finds that the governing board of the school district is out of compliance with specified requirements relating to teacher evaluation.

(3) Existing law states 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 within each school district of the state. Existing law requires the governing board of each school district to establish standards of expected pupil achievement at each grade level in each area of study and to evaluate and assess certificated employee performance on a continuing basis as it reasonably relates to the progress of pupils toward the established standards and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments, the instructional techniques and strategies used by the employee, the employee's adherence to curricular objectives, and the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities. Existing law authorizes school district governing boards to develop and adopt additional evaluation and assessment guidelines or criteria.

This bill would encourage the governing board of a school district to use peer observation and surveys of parents and pupils as part of the evaluation and assessment guidelines and criteria.

(4) Existing law requires that an evaluation and assessment of the performance of a certificated employee be made on a continuing basis, as provided.

This bill would instead require an annual evaluation and assessment of the performance of a certificated employee. The bill would require the evaluation and assessment to include a determination of the teacher's performance, as specified. By requiring school districts to perform additional duties, this bill would impose a state-mandated local program. The bill would provide that, to the extent these provisions conflict with any provision of a collective bargaining agreement entered into before January 1, 2016, by a public school employer and an exclusive bargaining representative, the provisions shall not apply to the school district until the expiration or renewal of that collective bargaining agreement.

(5) This bill would update cross-references and would make other 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 33039 of the Education Code is amended
2 to read:

3 33039. ~~The State Board of Education~~ *By July 1, 2016, the state*
4 *board shall develop, revise, update, and adopt guidelines which*
5 *that school districts may use in the development of teacher*
6 *evaluation procedures pursuant to Article 11 (commencing with*
7 *Section 44660) of Chapter 1 of Part 25 of Division 3 of this title,*
8 *3, and shall distribute such those guidelines to every school district.*
9 *The updated guidelines shall include, but not necessarily be limited*
10 *to, a determination that a teacher's overall performance is highly*
11 *effective, effective, minimally effective, or ineffective.*

12 SEC. 2. Section 33050 of the Education Code is amended to
13 read:

14 33050. (a) The governing board of a school district or a county
15 board of education, on a districtwide or countywide basis or on
16 behalf of one or more of its schools or programs, after a public
17 hearing on the matter, may request the ~~State Board of Education~~
18 *state board* to waive all or part of any section of this code or any
19 regulation adopted by the ~~State Board of Education~~ *state board*
20 that implements a provision of this code that may be waived,
21 except:

22 (1) Article 1 (commencing with Section 15700) and Article 2
23 (commencing with Section 15780) of Chapter 4 of Part ~~10~~ *10 of*
24 *Division 1 of Title 1.*

25 (2) Chapter 6 (commencing with Section 16000) of Part ~~10~~ *10*
26 *of Division 1 of Title 1.*

27 (3) Chapter 12 (commencing with Section 17000), Chapter 12.5
28 (commencing with Section 17070.10), and Chapter 14

- 1 (commencing with Section 17085) of Part ~~10~~: *10 of Division 1 of*
2 *Title 1.*
- 3 (4) Part 13 (commencing with Section 22000), Part 13.5
4 (commencing with Section 25900), and Part 14 (commencing with
5 Section ~~26000~~: 26000) *of Division 1 of Title 1.*
- 6 (5) Section 35735.1.
- 7 (6) Paragraph (8) of subdivision (a) of Section 37220.
- 8 (7) The following provisions of Part 10.5 (commencing with
9 Section ~~17211~~: *17210 of Division 1 of Title 1.*
- 10 (A) Chapter 1 (commencing with Section ~~17211~~: *17210*).
- 11 (B) Article 1 (commencing with Section 17251) to Article 6
12 (commencing with Section 17365), inclusive, of Chapter 3.
- 13 (C) Sections 17416 to 17429, inclusive; Sections 17459 and
14 ~~17462 and 17462~~; subdivision (a) of Section 17464; and Sections
15 17582 to ~~17592~~, *17591*, inclusive.
- 16 (8) The following provisions of Part 24 (commencing with
17 Section ~~41000~~: *41000 of Division 3:*
- 18 (A) Sections 41000 to 41360, inclusive.
- 19 (B) Sections 41420 to 41423, inclusive.
- 20 (C) Sections 41600 to ~~41866~~, *41863*, inclusive.
- 21 (D) Sections ~~41920 to 42911~~, *41930 to 42850*, inclusive.
- 22 (9) Sections 44504 and 44505.
- 23 (10) Article 3 (commencing with Section 44930) of Chapter 4
24 of Part 25 *of Division 3* and regulations in Title 5 of the California
25 Code of Regulations adopted pursuant to Article 3 (commencing
26 with Section 44930) of Chapter 4 of Part ~~25~~: *25 of Division 3.*
- 27 (11) Part 26 (commencing with Section ~~46000~~: *46000 of*
28 *Division 4.*
- 29 (12) Chapter 6 (commencing with Section 48900) and Chapter
30 6.5 (commencing with Section 49060) of Part ~~27~~: *27 of Division*
31 *4.*
- 32 (13) Section 51513.
- 33 ~~(14) Chapter 6.10 (commencing with Section 52120) of Part~~
34 ~~28, relating to class size reduction.~~
- 35 ~~(15)~~
- 36 ~~(14)~~ Section 52163.
- 37 ~~(16)~~
- 38 ~~(15)~~ The identification and assessment criteria relating to any
39 categorical aid program, including Sections 52164.1 and 52164.6.
- 40 ~~(17)~~

1 (16) Sections 52165, 52166, and 52178.

2 ~~(18)~~

3 (17) Article 3 (commencing with Section 52850) of Chapter 12
4 of Part ~~28~~; *28 of Division 4*.

5 ~~(19)~~

6 (18) Section 56364.1, except that this restriction shall not
7 prohibit the ~~State Board of Education~~ *state board* from approving
8 any waiver of Section ~~56364 or 56364.2, as applicable~~; 56364.2,
9 relating to full inclusion.

10 ~~(20)~~

11 (19) Article 4 (commencing with Section 60640) of Chapter 5
12 of Part ~~33~~; *33 of Division 4*, relating to the ~~STAR Program~~,
13 *California Assessment of Student Performance and Progress*
14 *(CAASPP)*, and any other provisions of Chapter 5 (commencing
15 with Section 60600) of Part ~~33~~ *33 of Division 4* that establish
16 requirements for the ~~STAR Program~~; *CAASPP*.

17 (b) Any waiver of provisions related to the programs identified
18 in Section 52851 shall be granted only pursuant to Article 3
19 (commencing with Section 52850) of Chapter 12 of Part ~~28~~; *28 of*
20 *Division 4*.

21 (c) The waiver of an advisory committee required by law shall
22 be granted only pursuant to Article 4 (commencing with Section
23 52870) of Chapter 12 of Part ~~28~~; *28 of Division 4*.

24 (d) ~~Any~~ A request for a waiver submitted by the governing board
25 of a school district or a county board of education pursuant to
26 subdivision (a) shall include a written statement as to both of the
27 following:

28 (1) Whether the exclusive representative of employees, if any,
29 as provided in Chapter 10.7 (commencing with Section 3540) of
30 Division 4 of Title 1 of the Government Code, participated in the
31 development of the waiver.

32 (2) The exclusive representative's position regarding the waiver.

33 (e) ~~Any~~ A request for a waiver submitted pursuant to subdivision
34 (a) relating to a regional occupational center or program established
35 pursuant to Article 1 (commencing with Section 52300) of Chapter
36 9 of Part ~~28~~, ~~that~~ *28 of Division 4*, *which* is operated by a joint
37 powers entity established pursuant to Chapter 5 (commencing with
38 Section 6500) of Division 7 of Title 1 of the Government Code,
39 shall be submitted as a joint waiver request for each participating
40 school district and shall meet both of the following conditions:

1 (1) Each joint waiver request shall comply with all of the
2 requirements of this article.

3 (2) The submission of a joint waiver request shall be approved
4 by a unanimous vote of the governing board of the joint powers
5 agency.

6 (f) The governing board of ~~any~~ a school district requesting a
7 waiver under this section of ~~any~~ a provision of Article 5
8 (commencing with Section 39390) of Chapter 3 of Part ~~23~~ 23 of
9 Division 4 shall provide written notice of ~~any~~ a public hearing it
10 conducted pursuant to subdivision (a), at least 30 days ~~prior to~~
11 ~~before~~ the hearing, to each public agency identified under Section
12 39394.

13 (g) *The state board shall not grant any waiver request by a*
14 *governing board of a school district under this section if the state*
15 *board finds the governing board of the school district to be out of*
16 *compliance with subdivision (a) or paragraph (1) of subdivision*
17 *(b) of Section 44662, or out of compliance with the requirement*
18 *to confer with a certificated employee making specific*
19 *recommendations as to areas of improvement in the certificated*
20 *employee's performance and endeavor to assist the certificated*
21 *employee in his or her performance pursuant to subdivision (b) of*
22 *Section 44664.*

23 SEC. 3. Section 44662 of the Education Code is amended to
24 read:

25 44662. (a) The governing board of each school district shall
26 establish standards of expected pupil achievement at each grade
27 level in each area of study.

28 (b) The governing board of each school district shall evaluate
29 and assess certificated employee performance as it reasonably
30 relates to:

31 (1) The progress of pupils toward the standards established
32 pursuant to subdivision (a) and, if applicable, the state adopted
33 academic content standards as measured by state adopted criterion
34 referenced assessments.

35 (2) The instructional techniques and strategies used by the
36 employee.

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

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

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

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

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

(f) *(1) Nothing in this section shall be construed as in any way limiting the authority of school district the governing boards board of a school district to develop and adopt additional evaluation and assessment guidelines or criteria.*

(2) The governing board of a school district is encouraged to use peer observation and surveys of parents and pupils as part of the evaluation and assessment guidelines or criteria.

SEC. 4. Section 44664 of the Education Code is amended to read:

44664. (a) Evaluation and assessment of the performance of each certificated employee shall be made ~~on a continuing basis as follows:~~ *annually, and shall result in a determination of highly effective, effective, minimally effective, or ineffective, in accordance with guidelines adopted by the state board pursuant to Section 33039.*

~~(1) At least once each school year for probationary personnel.~~

~~(2) At least every other year for personnel with permanent status.~~

~~(3) At least every five years for personnel with permanent status who have been employed at least 10 years with the school district, are highly qualified, if those personnel occupy positions that are required to be filled by a highly qualified professional by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301, et seq.), as defined in 20 U.S.C. Sec. 7801, and whose previous evaluation rated the employee as meeting or exceeding standards; if the evaluator and certificated employee being evaluated agree.~~

1 ~~The certificated employee or the evaluator may withdraw consent~~
2 ~~at any time.~~

3 (b) The evaluation shall include recommendations, if necessary,
4 as to areas of improvement in the performance of the *certificated*
5 employee. ~~If an a certificated employee is not performing his or~~
6 ~~her duties in a satisfactory manner according to the standards~~
7 ~~prescribed by the governing board, has received an unsatisfactory~~
8 *evaluation*, the employing authority shall notify the employee in
9 writing of that fact and describe the unsatisfactory performance.
10 The employing authority shall thereafter confer with the *certificated*
11 employee making specific recommendations as to areas of
12 improvement in the employee's performance and endeavor to assist
13 the employee in his or her performance. ~~If any a permanent~~
14 *certificated* employee has received an unsatisfactory evaluation,
15 the employing authority shall annually evaluate the employee until
16 the employee achieves a positive evaluation or is separated from
17 the district.

18 (c) ~~Any~~ *An* evaluation performed pursuant to this article ~~which~~
19 *that* contains an unsatisfactory rating of ~~an a certificated~~
20 employee's performance in the area of teaching methods or
21 instruction may include the requirement that the certificated
22 employee shall, as determined necessary by the employing
23 authority, participate in a program designed to improve appropriate
24 areas of the employee's performance and to further pupil
25 achievement and the instructional objectives of the employing
26 authority. If a district participates in the *California* Peer Assistance
27 and Review Program for Teachers established pursuant to Article
28 4.5 (commencing with Section 44500), ~~any a~~ *a* certificated employee
29 who receives an unsatisfactory rating on an evaluation performed
30 pursuant to this section shall participate in the *California* Peer
31 Assistance and Review Program for Teachers.

32 (d) Hourly and temporary hourly certificated employees, other
33 than those employed in adult education classes who are excluded
34 by the provisions of Section 44660, and substitute teachers may
35 be excluded from the provisions of this section at the discretion
36 of the governing board.

37 (e) *For purposes of this section, "unsatisfactory" means an*
38 *evaluation that results in a determination of ineffective or*
39 *minimally effective, and "satisfactory" means an evaluation that*
40 *results in a determination of effective or highly effective.*

1 (f) *To the extent that this section as amended by Assembly Bill*
2 *_____ of the 2015–16 Regular Session conflicts with a provision*
3 *of a collective bargaining agreement entered into by a public*
4 *school employer and an exclusive bargaining representative before*
5 *January 1, 2016, pursuant to Chapter 10.7 (commencing with*
6 *Section 3540) of Division 4 of Title 1 of the Government Code, the*
7 *changes made to this section by Assembly Bill _____ of the 2015–16*
8 *Regular Session shall not apply to the school district until*
9 *expiration or renewal of that collective bargaining agreement.*

10 SEC. 5. If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.