

AMENDED IN ASSEMBLY APRIL 25, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 230**

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**Introduced by Assembly Member Goldberg**

February 13, 2001

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An act to amend Sections 45113, ~~54312~~, ~~45312~~, 88013, and 88131 of the Education Code, relating to classified school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 230, as amended, Goldberg. Classified employees.

(1) Existing law requires the governing board of any school district or community college district that has not adopted the merit system for its classified employees to prescribe rules and regulations governing the personnel management of the classified service.

Existing law requires that any employee designated as a permanent employee be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board and provides that the governing board's determination of the sufficiency of the cause for disciplinary action is conclusive. A state court has concluded that this provision precludes a governing board from subjecting the board's disciplinary conclusions regarding these employees to binding arbitration.

This bill, instead, would provide that the governing board's determination of the sufficiency of the cause for disciplinary action is final. The bill would provide that nothing in these provisions is to be construed to prohibit the governing board, pursuant to the terms of an agreement with an employee organization reached pursuant to specified provisions of current law governing school employer-employee

relations, from delegating its authority to determine whether there is sufficient cause for disciplinary action against classified employees to binding or nonbinding arbitration.

(2) Existing law authorizes the personnel commission in a school district or community college district that has adopted the merit system to authorize a hearing officer or other representative to conduct any hearing or investigation that the commission itself is authorized to conduct. Existing law authorizes the personnel commission to accept, reject, or amend any of the findings or recommendations of the authorized representative and requires a rejection or amendment of findings or recommendations to be based either on a review of the transcript of the hearing or investigation or upon the results of a supplementary hearing or investigation that the commission may order.

This bill would provide that nothing in these provisions precludes the parties to a negotiated agreement reached pursuant to specified provisions of current law governing school employer-employee relations, from negotiating a provision that makes the findings and decision of a hearing officer or other authorized representative binding upon the commission, the district, the employee, and the employee organization.

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 45113 of the Education Code is  
2 amended to read:

3 45113. The governing board of a school district shall  
4 prescribe written rules and regulations, governing the personnel  
5 management of the classified service, which shall be printed and  
6 made available to employees in the classified service, the public,  
7 and those concerned with the administration of this section,  
8 whereby those employees are designated as permanent employees  
9 of the district after serving a prescribed period of probation which  
10 shall not exceed one year.

11 Any employee designated as a permanent employee shall be  
12 subject to disciplinary action only for cause as prescribed by rule  
13 or regulation of the governing board, but the governing board's  
14 determination of the sufficiency of the cause for disciplinary  
15 action shall be final.



1 Nothing in this section shall be construed to prohibit the  
2 governing board, pursuant to the terms of an agreement with an  
3 employee organization under Chapter 10.7 (commencing with  
4 Section 3540) of Division 4 of Title 1 of the Government Code,  
5 from delegating its authority to determine whether sufficient cause  
6 exists for disciplinary action against classified employees to  
7 binding or nonbinding arbitration.

8 The governing board shall adopt rules of procedure for  
9 disciplinary proceedings which shall contain a provision for  
10 informing the employee by written notice of the specific charges  
11 against him or her, a statement of his or her right to a hearing on  
12 the charges, and the time within which the hearing may be  
13 requested which shall be not less than five days after service of the  
14 notice to the employee, and a card or paper, the signing and filing  
15 of which shall constitute a demand for hearing, and a denial of all  
16 charges. The burden of proof shall remain with the governing  
17 board, and any rule or regulation to the contrary shall be void.

18 No disciplinary action shall be taken for any cause that arose  
19 prior to the employee's becoming permanent, nor for any cause  
20 that arose more than two years preceding the date of the filing of  
21 the notice of cause unless that cause was concealed or not disclosed  
22 by the employee when it could be reasonably assumed that the  
23 employee should have disclosed the facts to the employing district.

24 This section shall apply only to districts not incorporating the  
25 merit system as outlined in Article 6 (commencing with Section  
26 45240).

27 ~~SEC. 2.—Section 45312 of the Education Code is amended to~~  
28 ~~read:~~

29 ~~45312.—(a) The commission may authorize a hearing officer~~  
30 ~~or other representative to conduct any hearing or investigation~~  
31 ~~which the commission itself is authorized by this article to~~  
32 ~~conduct. Any authorized person conducting a hearing or~~  
33 ~~investigation may administer oaths, subpoena and require the~~  
34 ~~attendance of witnesses and the production of books or papers, and~~  
35 ~~cause the depositions of witnesses to be taken in the manner~~  
36 ~~prescribed by law for like depositions in civil cases in the superior~~  
37 ~~court of this state under Article 3 (commencing with Section 2016)~~  
38 ~~of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The~~  
39 ~~commission may instruct an authorized representative to present~~  
40 ~~findings or recommendations. The commission may accept, reject~~



1 ~~or amend any of the findings or recommendations of the~~  
2 ~~authorized representative. Any rejection or amendment of~~  
3 ~~findings or recommendations shall be based either on a review of~~  
4 ~~the transcript of the hearing or investigation or upon the results of~~  
5 ~~a supplementary hearing or investigation as the commission may~~  
6 ~~order.~~

7 ~~(b) The commission may employ by contract or as professional~~  
8 ~~experts or otherwise any hearing officers or other representatives~~  
9 ~~and may adopt and amend rules and procedures that may be~~  
10 ~~necessary to effectuate this section.~~

11 ~~(c) Nothing in this section shall preclude the parties to a~~  
12 ~~negotiated agreement reached pursuant to Chapter 10.7~~  
13 ~~(commencing with Section 3540) of Division 4 of Title 1 of the~~  
14 ~~Government Code, from negotiating a provision that makes the~~  
15 ~~findings and decision of a hearing officer or other authorized~~  
16 ~~representative binding upon the commission, the district, the~~  
17 ~~employee, and the employee organization.~~

18 ~~SEC. 3. Section 88013 of the Education Code is amended to~~  
19 ~~read:~~

20 ~~88013. (a) The governing board of a community college~~  
21 ~~district shall prescribe written rules and regulations, governing the~~  
22 ~~personnel management of the classified service, which shall be~~  
23 ~~printed and made available to employees in the classified service,~~  
24 ~~the public, and those concerned with the administration of this~~  
25 ~~section, whereby these employees are, except as provided in~~  
26 ~~Section 72411, designated as permanent employees of the district~~  
27 ~~after serving a prescribed period of probation which shall not~~  
28 ~~exceed one year.~~

29 ~~(b) Any employee designated as a permanent employee shall be~~  
30 ~~subject to disciplinary action only for cause as prescribed by rule~~  
31 ~~or regulation of the governing board, but the governing board's~~  
32 ~~determination of the sufficiency of the cause for disciplinary~~  
33 ~~action shall be final.~~

34 ~~(c) Nothing in this section shall be construed to prohibit the~~  
35 ~~governing board, pursuant to the terms of an agreement with an~~  
36 ~~employee organization under Chapter 10.7 (commencing with~~  
37 ~~Section 3540) of Division 4 of Title 1 of the Government Code,~~  
38 ~~from delegating its authority to determine whether sufficient cause~~  
39 ~~exists for disciplinary action against classified employees to~~  
40 ~~binding or nonbinding arbitration.~~



1 ~~(d) The governing board shall adopt rules of procedure for~~  
2 ~~disciplinary proceedings which shall contain a provision for~~  
3 ~~informing the employee by written notice of the specific charges~~  
4 ~~against him or her, a statement of the employee's right to a hearing~~  
5 ~~on those charges, and the time within which the hearing may be~~  
6 ~~requested which shall be not less than five days after service of the~~  
7 ~~notice to the employee, and a card or paper, the signing and filing~~  
8 ~~of which shall constitute a demand for hearing, and a denial of all~~  
9 ~~charges. The burden of proof shall remain with the governing~~  
10 ~~board, and any rule or regulation to the contrary shall be void.~~

11 ~~(e) No disciplinary action shall be taken for any cause that arose~~  
12 ~~prior to the employee's becoming permanent, or for any cause that~~  
13 ~~arose more than two years preceding the date of the filing of the~~  
14 ~~notice of cause, unless the cause was concealed or not disclosed by~~  
15 ~~the employee when it could be reasonably assumed that the~~  
16 ~~employee should have disclosed the facts to the employing district.~~

17 ~~(f) This section shall apply only to districts not incorporating~~  
18 ~~the merit system as outlined in Article 3 (commencing with~~  
19 ~~Section 88060).~~

20 *SEC. 2. Section 45312 of the Education Code is amended to*  
21 *read:*

22 45312. (a) The commission may authorize a hearing officer  
23 or other representative to conduct any hearing or investigation  
24 which the commission itself is authorized by this article to  
25 conduct. Any ~~such~~ authorized person conducting ~~such a~~ hearing  
26 or investigation may administer oaths, subpoena and require the  
27 attendance of witnesses and the production of books or papers, and  
28 cause the depositions of witnesses to be taken in the manner  
29 prescribed by law for like depositions in civil cases in the superior  
30 court of this state under Article 3 (commencing with Section 2016)  
31 of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The  
32 commission may instruct ~~such an~~ authorized representative to  
33 present findings or recommendations. The commission may  
34 accept, reject or amend any of the findings or recommendations of  
35 the ~~said~~ authorized representative. Any rejection or amendment of  
36 findings or recommendations shall be based either on a review of  
37 the transcript of the hearing or investigation or upon the results of  
38 ~~such a~~ supplementary hearing or investigation as the commission  
39 may order. ~~The~~



1 (b) The commission may employ by contract or as professional  
2 experts or otherwise any ~~such~~ hearing officers or other  
3 representatives and may adopt and amend ~~such~~ rules and  
4 procedures ~~as~~ that may be necessary to effectuate this section.

5 (c) Nothing in this section shall preclude the parties to a  
6 negotiated agreement reached pursuant to Chapter 10.7  
7 (commencing with Section 3540) of Division 4 of Title 1 of the  
8 Government Code, from negotiating a provision that makes the  
9 findings and decision of a hearing officer or other authorized  
10 representative binding upon the commission, the district, the  
11 employee, and the employee organization.

12 SEC. 3. Section 88013 of the Education Code is amended to  
13 read:

14 88013. (a) The governing board of a community college  
15 district shall prescribe written rules and regulations, governing the  
16 personnel management of the classified service, which shall be  
17 printed and made available to employees in the classified service,  
18 the public, and those concerned with the administration of this  
19 section, whereby these employees are, except as provided in  
20 Section 72411, designated as permanent employees of the district  
21 after serving a prescribed period of probation which shall not  
22 exceed one year.

23 (b) Any employee designated as a permanent employee shall  
24 be subject to disciplinary action only for cause as prescribed by  
25 rule or regulation of the governing board, but the governing  
26 board's determination of the sufficiency of the cause for  
27 disciplinary action shall be ~~conclusive~~ final.

28 ~~The~~

29 (c) Nothing in this section shall be construed to prohibit the  
30 governing board, pursuant to the terms of an agreement with an  
31 employee organization under Chapter 10.7 (commencing with  
32 Section 3540) of Division 4 of Title 1 of the Government Code, from  
33 delegating its authority to determine whether sufficient cause  
34 exists for disciplinary action against classified employees to  
35 binding or nonbinding arbitration.

36 (d) The governing board shall adopt rules of procedure for  
37 disciplinary proceedings which shall contain a provision for  
38 informing the employee by written notice of the specific charges  
39 against him or her, a statement of the employee's right to a hearing  
40 on those charges, and the time within which the hearing may be



1 requested which shall be not less than five days after service of the  
2 notice to the employee, and a card or paper, the signing and filing  
3 of which shall constitute a demand for hearing, and a denial of all  
4 charges. The burden of proof shall remain with the governing  
5 board, and any rule or regulation to the contrary shall be void.

6 ~~No~~

7 (e) No disciplinary action shall be taken for any cause that arose  
8 prior to the employee's becoming permanent, or for any cause that  
9 arose more than two years preceding the date of the filing of the  
10 notice of cause, unless the cause was concealed or not disclosed by  
11 the employee when it could be reasonably assumed that the  
12 employee should have disclosed the facts to the employing district.

13 ~~This~~

14 (f) This section shall apply only to districts not incorporating  
15 the merit system as outlined in Article 3 (commencing with  
16 Section 88060).

17 SEC. 4. Section 88131 of the Education Code is amended to  
18 read:

19 88131. (a) The commission may authorize a hearing officer  
20 or other representative to conduct any hearing or investigation  
21 which the commission itself is authorized by this article to  
22 conduct. Any authorized person conducting a hearing or  
23 investigation may administer oaths, subpoena and require the  
24 attendance of witnesses and the production of books or papers, and  
25 cause the depositions of witnesses to be taken in the manner  
26 prescribed by law for like depositions in civil cases in the superior  
27 court of this state under Article 3 (commencing with Section 2016)  
28 of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The  
29 commission may instruct an authorized representative to present  
30 findings or recommendations. The commission may accept, reject,  
31 or amend any of the findings or recommendations of the  
32 authorized representative. Any rejection or amendment of  
33 findings or recommendations shall be based either on a review of  
34 the transcript of the hearing or investigation or upon the results of  
35 a supplementary hearing or investigation as the commission may  
36 order.

37 (b) The commission may employ by contract or as professional  
38 experts or otherwise any hearing officers or other representatives  
39 and may adopt and amend rules and procedures that may be  
40 necessary to effectuate this section.



1 (c) Nothing in this section shall preclude the parties to a  
2 negotiated agreement reached pursuant to Chapter 10.7  
3 (commencing with Section 3540) of Division 4 of Title 1 of the  
4 Government Code, from negotiating a provision that makes the  
5 findings and decision of a hearing officer or other authorized  
6 representative binding upon the commission, the district, the  
7 employee, and the employee organization.

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