

AMENDED IN ASSEMBLY APRIL 19, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2219

Introduced by Assembly Member Fuentes

February 18, 2010

An act to amend ~~Section~~ *Sections 44943 and 44944* of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2219, as amended, Fuentes. School employees.

Existing law provides a certificated employee of a school district who is subject to a dismissal or suspension proceeding with the right to demand a hearing conducted by a Commission on Professional Competence and specifies the procedural requirements for conducting the hearing.

This bill would make clarifying changes to those provisions.

~~Existing law establishes notice and hearing requirements for the dismissal or suspension of a permanent employee of a school district on specified grounds, and requires the Commission on Professional Competence to conduct a hearing upon the employee's request. Under existing law, if the commission determines that the employee should be dismissed or suspended, the governing board and the employee are required to share equally the expenses of the hearing.~~

~~This bill would instead require either the governing board of the school district or the state to pay those expenses.~~

~~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~~-no.
State-mandated local program: ~~yes~~-no.

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

1 SECTION 1. Section 44943 of the Education Code is amended
2 to read:

3 44943. When any employee who has been served with notice
4 pursuant to Section 44934 of the governing board’s intention to
5 dismiss or suspend him or her demands a hearing, the governing
6 board shall have the option either (a) to rescind its action, or (b)
7 schedule a hearing on the matter *within the timelines specified in*
8 *Section 44944.*

9 SECTION 1.

10 SEC. 2. Section 44944 of the Education Code is amended to
11 read:

12 44944. (a) (1) In a dismissal or suspension proceeding initiated
13 pursuant to Section 44934, if a hearing is requested by the
14 employee, the hearing shall be commenced within 60 *calendar*
15 days from the date of the employee’s demand for a hearing. The
16 hearing shall be initiated, conducted, and a decision made in
17 accordance with Chapter 5 (commencing with Section 11500) of
18 Part 1 of Division 3 of Title 2 of the Government Code. However,
19 the hearing date shall be established after consultation with the
20 employee and the governing board, or their representatives, and
21 the Commission on Professional Competence shall have all of the
22 power granted to an agency in that chapter, except that the right
23 of discovery of the parties shall not be limited to those matters set
24 forth in Section 11507.6 of the Government Code but shall include
25 the rights and duties of any party in a civil action brought in a
26 superior court under Title 4 (commencing with Section 2016.010)
27 of Part 4 of the Code of Civil Procedure. Notwithstanding any
28 provision to the contrary, and except for the taking of oral

1 depositions, no discovery shall occur later than 30 calendar days
2 after the employee is served with a copy of the accusation pursuant
3 to Section 11505 of the Government Code. In all cases, discovery
4 shall be completed prior to seven calendar days before the date
5 upon which the hearing commences. If any continuance is granted
6 pursuant to Section 11524 of the Government Code, the time
7 limitation for commencement of the hearing as provided in this
8 subdivision shall be extended for a period of time equal to the
9 continuance. However, the extension shall not include that period
10 of time attributable to an unlawful refusal by either party to allow
11 the discovery provided for in this section.

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

19 (3) The time periods in this section and of Chapter 5
20 (commencing with Section 11500) of Part 1 of Division 3 of Title
21 2 of the Government Code and of Title 4 (commencing with
22 Section 2016.010) of Part 4 of the Code of Civil Procedure shall
23 not be applied so as to deny discovery in a hearing conducted
24 pursuant to this section.

25 (4) The superior court of the county in which the hearing will
26 be held may, upon motion of the party seeking discovery, suspend
27 the hearing so as to comply with the requirement of the preceding
28 paragraph.

29 (5) No witness shall be permitted to testify at the hearing except
30 upon oath or affirmation. No testimony shall be given or evidence
31 introduced relating to matters that occurred more than four years
32 prior to the date of the filing of the notice. Evidence of records
33 regularly kept by the governing board concerning the employee
34 may be introduced, but no decision relating to the dismissal or
35 suspension of any employee shall be made based on charges or
36 evidence of any nature relating to matters occurring more than
37 four years prior to the filing of the notice.

38 (b) (1) The hearing provided for in this section shall be
39 conducted by a Commission on Professional Competence. One
40 member of the commission shall be selected by the employee, one

1 member shall be selected by the governing board, and one member
2 shall be an administrative law judge of the Office of Administrative
3 Hearings who shall be chairperson and a voting member of the
4 commission and shall be responsible for assuring that the legal
5 rights of the parties are protected at the hearing. If either the
6 governing board or the employee for any reason fails to select a
7 commission member at least seven calendar days prior to the date
8 of the hearing, the failure shall constitute a waiver of the right to
9 selection, and the county board of education or its specific designee
10 shall immediately make the selection. If the county board of
11 education is also the governing board of the school district or has
12 by statute been granted the powers of a governing board, the
13 selection shall be made by the Superintendent, who shall be
14 reimbursed by the school district for all costs incident to the
15 selection.

16 (2) The member selected by the governing board and the
17 member selected by the employee shall not be related to the
18 employee and shall not be employees of the district initiating the
19 dismissal or suspension and shall hold a currently valid credential
20 and have at least five years' experience within the past 10 years
21 in the discipline of the employee.

22 (c) (1) The decision of the Commission on Professional
23 Competence shall be made by a majority vote, and the commission
24 shall prepare a written decision containing findings of fact,
25 determinations of issues, and a disposition that shall be, solely,
26 one of the following:

- 27 (A) That the employee should be dismissed.
 - 28 (B) That the employee should be suspended for a specific period
29 of time without pay.
 - 30 (C) That the employee should not be dismissed or suspended.
- 31 (2) The decision of the Commission on Professional Competence
32 that the employee should not be dismissed or suspended shall not
33 be based on nonsubstantive procedural errors committed by the
34 school district or governing board unless the errors are prejudicial
35 errors.

36 (3) The commission shall not have the power to dispose of the
37 charge of dismissal by imposing probation or other alternative
38 sanctions. The imposition of suspension pursuant to subparagraph
39 (B) of paragraph (1) shall be available only in a suspension

1 proceeding authorized pursuant to subdivision (b) of Section 44932
2 or Section 44933.

3 (4) The decision of the Commission on Professional Competence
4 shall be deemed to be the final decision of the governing board.

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

8 (6) The governing board and the employee shall have the right
9 to be represented by counsel.

10 (d) (1) If the member selected by the governing board or the
11 member selected by the employee is employed by any school
12 district in this state, the member shall, during any service on a
13 Commission on Professional Competence, continue to receive
14 salary, fringe benefits, accumulated sick leave, and other leaves
15 and benefits from the district in which the member is employed,
16 but shall receive no additional compensation or honorariums for
17 service on the commission.

18 (2) If service on a Commission on Professional Competence
19 occurs during summer recess or vacation periods, the member shall
20 receive compensation proportionate to that received during the
21 current or immediately preceding contract period from the
22 member's employing district, whichever amount is greater.

23 (e) (1) If the Commission on Professional Competence
24 determines that the employee should be dismissed or suspended,
25 ~~either the state or the governing board shall pay the governing~~
26 ~~board and the employee shall share equally~~ the expenses of the
27 hearing, including the cost of the administrative law judge. The
28 state shall pay any costs incurred under paragraph (2) of
29 subdivision (d), the reasonable expenses, as determined by the
30 administrative law judge, of the member selected by the governing
31 board and the member selected by the employee, including, but
32 not limited to, payments or obligations incurred for travel, meals,
33 and lodging, and the cost of the substitute or substitutes, if any,
34 for the member selected by the governing board and the member
35 selected by the employee. The Controller shall pay all claims
36 submitted pursuant to this paragraph from the General Fund, and
37 may prescribe reasonable rules, regulations, and forms for the
38 submission of the claims. The employee and the governing board
39 shall pay their own attorney's fees.

1 (2) If the Commission on Professional Competence determines
 2 that the employee should not be dismissed or suspended, the
 3 governing board shall pay the expenses of the hearing, including
 4 the cost of the administrative law judge, any costs incurred under
 5 paragraph (2) of subdivision (d), the reasonable expenses, as
 6 determined by the administrative law judge, of the member selected
 7 by the governing board and the member selected by the employee,
 8 including, but not limited to, payments or obligations incurred for
 9 travel, meals, and lodging, the cost of the substitute or substitutes,
 10 if any, for the member selected by the governing board and the
 11 member selected by the employee, and reasonable attorney’s fees
 12 incurred by the employee.

13 (3) As used in this section, “reasonable expenses” shall not be
 14 deemed “compensation” within the meaning of subdivision (d).

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

19 (5) (A) If the decision of the commission is finally reversed or
 20 vacated by a court of competent jurisdiction, either the state, having
 21 paid the commission members’ expenses, shall be entitled to
 22 reimbursement from the governing board for those expenses, or
 23 the governing board, having paid the expenses, shall be entitled
 24 to reimbursement from the state.

25 (B) *Additionally, either the employee, having paid a portion of*
 26 *the expenses of the hearing, including the cost of the administrative*
 27 *law judge, shall be entitled to reimbursement from the governing*
 28 *board for the expenses, or the governing board, having paid its*
 29 *portion and the employee’s portion of the expenses of the hearing,*
 30 *including the cost of the administrative law judge, shall be entitled*
 31 *to reimbursement from the employee for that portion of the*
 32 *expenses.*

33 (f) The hearing provided for in this section shall be conducted
 34 in a place selected by agreement among the members of the
 35 commission. In the absence of agreement, the place shall be
 36 selected by the administrative law judge.

37 ~~SEC. 2.—If the Commission on State Mandates determines that~~
 38 ~~this act contains costs mandated by the state, reimbursement to~~
 39 ~~local agencies and school districts for those costs shall be made~~

1 pursuant to Part 7 (commencing with Section 17500) of Division
2 4 of Title 2 of the Government Code.

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