

Introduced by Senator Correa

January 7, 2014

An act to amend ~~Section 1008~~ of Sections 44030.5, 44242.5, 44930, 44932, 44934, 44936, 44937, 44938, 44939, 44940, 44943, 44944, 44945, and 44947 of, to repeal Section 44941 of, and to add Sections 44930.5, 44932.5, and 44944.5 to, the Education Code, relating to ~~county educational agencies: school employees.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 843, as amended, Correa. ~~County boards of education: vacancies. School employees: discipline: dismissal and suspension.~~

(1) Existing law prohibits a permanent school employee from being dismissed except for one or more specified reasons. Existing law authorizes a governing board of a school district to suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee, or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, as provided. Existing law additionally authorizes the governing board of a school district to immediately suspend a permanent employee for specified reasons, as provided.

This bill would, among other things, add serious and egregious conduct, as defined, to the list of specified reasons for which a permanent employee may be dismissed. The bill would instead authorize the governing board of a school district to suspend without pay for more than 30 workdays those employees for any of the listed reasons authorizing dismissal or suspension and pursuant to certain procedures. The bill would also authorize the suspension of those employees for up

to 30 workdays pursuant to separate procedures, as specified. The bill would also authorize the governing board of a school district to immediately suspend a permanent employee for specified charges.

(2) Existing law establishes a Commission on Professional Competence for each dismissal or suspension hearing requested by an employee, consisting of one member selected by the governing board, one member selected by the employee, and an administrative law judge as the 3rd member. Existing law requires the selected members to, among other things, have 5 years' experience within the past 10 years in the discipline of the employee.

This bill would instead require each hearing to be heard by a hearing panel, consisting of, for specified charges, only an administrative law judge, and for other specified charges, consisting of a Commission on Professional Competence. The bill would instead require the selected members of the commission to have only 3 years' experience in the elementary or secondary grade level discipline of the employee, as defined.

(3) Existing law requires in a dismissal or suspension proceeding against a permanent employee, if a hearing is requested by the employee, that the hearing be commenced within 60 days from the date of the employee's demand for a hearing. Existing law prescribes various procedures for the hearing, including, among others, a prohibition against discovery occurring later than 30 calendar days after the employee is served with a copy of the accusation, and a prohibition against the use of evidence of any nature relating to matters occurring more than 4 years prior to the filing of a notice in a decision relating to the termination or suspension of any employee.

This bill would instead require that any hearing be submitted for decision within 12 months from the date of the employee's demand for a hearing, as provided. The bill would revise various procedures for the conduct of those hearings. The bill would, among other things, require the administrative law judge on the hearing panel to hold a final status conference at least 7 calendar days before the hearing is to commence, as provided. The bill would also delete the prohibitions identified above relating to discovery and instead require discovery to be completed at least 7 calendar days before the final status conference, and would authorize the use of evidence relating to matters that occurred more than 4 years ago in the resolution of a charge of serious and egregious conduct, or with respect to any charge, for purposes of rebuttal, impeachment, or showing that notice was given. The bill would

require the employee to pay the expenses of the hearing, except as provided, if the hearing panel determines that the employee's decision to demand a hearing was a frivolous tactic that wasted public resources.

(4) Existing law declares any contract or agreement, express or implied, made by an employee to waive certain benefits is null and void, except or provided.

This bill would, notwithstanding that provision, authorize an employee to waive certain due process rights as part of a contract or agreement between the school district, the employee, and if applicable, the employee's exclusive representative.

(5) 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. The bill would also require the governing board of a school district to provide a copy of the notice to the collective bargaining unit representing the employee within one week of serving notice to the employee. The bill would require that a notice of the governing board of the school district to an employee of its intention to dismiss or suspend the employee, together with written charges filed or formulated pursuant to those procedures, be sufficient to initiate a hearing, as prescribed, and would prohibit the governing board of the school district from being required to file or serve a separate accusation. The bill would authorize the governing board of a school district to amend written charges, as provided, and rescind the notice at any time before the matter is submitted for decision.

(6) Existing law prohibits the governing board of a school district from acting upon any charges of unprofessional conduct or unsatisfactory performance, unless at least 45 or 90 calendar days, respectively, prior to the date of the filing of the charges the governing board of the school district, or its authorized representative, has given the employee written notice, as specified.

This bill would delete those provisions and instead prohibit the governing board from acting upon certain charges unless at least 30 workdays before the date of the filing of the charges the governing board, or its authorized representative, has given the employee written notice.

(7) Existing law prohibits information of a derogatory nature to be entered into an employee's personnel records unless the employee is given an opportunity to review and comment on that information.

This bill would, notwithstanding that provision, prohibit, among other things, the governing board of a school district or its authorized representative from amending, renewing, or entering into an agreement that requires the removal from a school employees' records any evidence of credible complaints, substantiated investigations, or discipline relating to the school employee's commission, or alleged commission, of serious and egregious conduct. The bill would specify that provisions in the bill authorizing an employee's waiver of his or her due process employment rights, as provided, does not supersede these provisions.

(8) Existing law provides that a certificated employee may be charged with a mandatory leave of absence offense for certain 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 the commission of a violent or serious felony, as specified. 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.

(9) This bill would also make conforming changes and numerous nonsubstantive changes, and would delete obsolete references.

(10) 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.

~~Existing law prescribes requirements for the appointment of members to a county board of education. Existing law specifies that when any vacancy exists on the county board of education of any county on or after December 1, 1978, the vacancy shall be filled in a prescribed manner.~~

~~This bill would delete the obsolete reference to the date in the above provision prescribing requirements for the filling of vacancies on a county board of education.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 44030.5 of the Education Code is amended
2 to read:

3 44030.5. (a) The superintendent of a school district or county
4 office of education, or the administrator of a charter school,
5 employing a person with a credential shall report any change in
6 the employment status of the credentialholder to the commission
7 not later than 30 days after the change in employment status, if
8 the credentialholder, while working in a position requiring a
9 credential, and as a result of an allegation of misconduct or while
10 an allegation of misconduct is pending, is dismissed, is
11 nonreelected, resigns, is suspended or placed on unpaid
12 administrative leave for more than 10 days as a final adverse action,
13 retires, or is otherwise terminated by a decision not to employ or
14 reemploy.

15 (b) For purposes of subdivision (a), a change of employment
16 status due solely to unsatisfactory performance pursuant to
17 paragraph~~(4)~~(6) of subdivision (a) of Section 44932 or a reduction
18 in force pursuant to Sections 44955 to 44958, inclusive, is not a
19 result of an allegation of misconduct.

20 (c) The failure to make the report required by subdivision (a)
21 is unprofessional conduct and may subject the superintendent of
22 the school district or county office of education, or the
23 administrator of a charter school, to adverse action by the
24 commission.

25 (d) (1) Notwithstanding Section 44030, refusing or willfully
26 neglecting to make the report required by subdivision (a) is a
27 misdemeanor, punishable by a fine of not less than five hundred
28 dollars (\$500) or more than one thousand dollars (\$1,000).

29 (2) All fines imposed pursuant to this subdivision are the
30 personal responsibility of the superintendent of the school district
31 or county office of education, or the administrator of a charter
32 school, and may not be paid or reimbursed with public funds.

1 *SEC. 2. Section 44242.5 of the Education Code is amended to*
2 *read:*

3 44242.5. (a) Each allegation of an act or omission by an
4 applicant for, or holder of, a credential for which he or she may
5 be subject to an adverse action shall be presented to the Committee
6 of Credentials.

7 (b) The committee has jurisdiction to commence an initial
8 review upon receipt of any of the following:

9 (1) (A) Official records of the Department of Justice, of a law
10 enforcement agency, of a state or federal court, and of any other
11 agency of this state or another state.

12 (B) For purposes of subparagraph (A), “agency of this state”
13 has the same meaning as that of “state agency” as set forth in
14 Section 11000 of the Government Code.

15 (2) An affidavit or declaration signed by a person or persons
16 with personal knowledge of the acts alleged to constitute
17 misconduct.

18 (3) (A) A statement from an employer notifying the commission
19 that, as a result of an allegation of misconduct, or while an
20 allegation of misconduct is pending, a credentialholder has been
21 dismissed, nonreelected, suspended for more than 10 days, or
22 placed pursuant to a final adverse employment action on unpaid
23 administrative leave for more than 10 days, or has resigned or
24 otherwise left employment.

25 (B) The employer shall provide the notice described in
26 subparagraph (A) to the commission not later than 30 days after
27 the dismissal, nonreelection, suspension, placement on unpaid
28 administrative leave, resignation, or departure from employment
29 of the employee.

30 (C) For purposes of subparagraphs (A) and (B), a change in
31 status due solely to unsatisfactory performance pursuant to
32 paragraph~~(4)~~(6) of subdivision (a) of Section 44932 or a reduction
33 in force pursuant to Sections 44955 to 44958, inclusive, is not a
34 result of an allegation of misconduct.

35 (4) A notice from an employer that a complaint was filed with
36 the school district alleging sexual misconduct by a credentialholder.
37 Results of an investigation by the committee based on this
38 paragraph shall not be considered for action by the committee
39 unless there is evidence presented to the committee in the form of
40 a written or oral declaration under penalty of perjury that confirms

1 the personal knowledge of the declarant regarding the acts alleged
2 to constitute misconduct.

3 (5) A notice from a school district, employer, public agency, or
4 testing administrator of a violation of Section 44420, 44421.1,
5 44421.5, or 44439.

6 (6) (A) An affirmative response on an application submitted
7 to the commission as to any conviction, adverse action on, or denial
8 of, a license, or pending investigation into a criminal allegation or
9 pending investigation of a noncriminal allegation of misconduct
10 by a governmental licensing entity.

11 (B) Failure to disclose any matter set forth in subparagraph (A).

12 (c) An initial review commences on the date that the written
13 notice is mailed to the applicant or credentialholder that his or her
14 fitness to hold a credential is under review. Upon commencement
15 of a formal review pursuant to Section 44244, the committee shall
16 investigate all alleged misconduct and the circumstances in
17 mitigation and aggravation. The investigation shall include, but
18 not be limited to, all of the following:

19 (1) Investigation of the fitness and competence of the applicant
20 or credentialholder to perform the duties authorized by the
21 credential for which he or she has applied or that he or she presently
22 holds.

23 (2) Preparation of a summary of the applicable law, a summary
24 of the facts, contested and uncontested, and a summary of any
25 circumstances in aggravation or mitigation of the allegation.

26 (3) Determination of probable cause for an adverse action on
27 the credential. If the allegation is for unprofessional or immoral
28 conduct, the committee, in any formal review conducted pursuant
29 to Section 44244 to determine probable cause, shall permit the
30 employer of the credentialholder to be present while testimony is
31 taken. If the allegation of unprofessional or immoral conduct
32 involves sexual abuse, the employer shall be examined in the
33 meeting for any relevant evidence relating to the sexual abuse.

34 (A) If the committee determines that probable cause for an
35 adverse action does not exist, the committee shall terminate the
36 investigation.

37 (B) If the committee determines that probable cause for an
38 adverse action on the credential exists, upon receipt of a request
39 from an applicant or a credentialholder pursuant to Section
40 44244.1, the commission shall initiate an adjudicatory hearing, as

1 prescribed by Chapter 5 (commencing with Section 11500) of Part
2 1 of Division 3 of Title 2 of the Government Code, by filing an
3 accusation or statement of issues.

4 (d) The committee has jurisdiction to commence a formal review
5 pursuant to Section 44244 upon receipt of any of the following:

6 (1) (A) Official records of a state or federal court that reflect a
7 conviction or plea, including a plea of nolo contendere, to a
8 criminal offense or official records of a state court that adjudge a
9 juvenile to be a dependent of the court pursuant to Section 300 of
10 the Welfare and Institutions Code due to allegations of sexual
11 misconduct or physical abuse by a credentialholder or applicant.

12 (B) Nothing in subparagraph (A) shall be construed to relieve
13 the commission from the confidentiality provisions, notice, and
14 due process requirements set forth in Section 827 of the Welfare
15 and Institutions Code.

16 (2) An affidavit or declaration signed by a person or persons
17 with personal knowledge of the acts alleged to constitute
18 misconduct.

19 (3) A statement described in paragraph (3) of subdivision (b).

20 (4) Official records of a governmental licensing entity that
21 reflect an administrative proceeding or investigation, otherwise
22 authorized by law or regulation, which has become final.

23 (5) A notice described in paragraph (5) of subdivision (b).

24 (6) A response or failure to disclose, as described in paragraph
25 (6) of subdivision (b).

26 (e) (1) Upon completion of its investigation, the committee
27 shall report its actions and recommendations to the commission,
28 including its findings as to probable cause, and if probable cause
29 exists, its recommendations as to the appropriate adverse action.

30 (2) The findings shall be available, upon its request, to the
31 employing or last known employing school district, or, if adverse
32 action is recommended by the committee and the credentialholder
33 has not filed a timely appeal of the recommendation of the
34 committee pursuant to Section 44244.1, upon a request made within
35 five years of the date of the committee's recommendations to a
36 school district providing verification that the credentialholder has
37 applied for employment in the school district. The findings, for all
38 purposes, shall remain confidential and limited to school district
39 personnel in a direct supervisory capacity in relation to the person
40 investigated. Any person who otherwise releases findings received

1 from the committee or the commission, absent a verified release
2 signed by the person who is the subject of the investigation, shall
3 be guilty of a misdemeanor.

4 (3) The findings shall not contain any information that reveals
5 the identity of persons other than the person who is the subject of
6 the investigation.

7 (f) (1) Except as provided in paragraph (2) and, notwithstanding
8 subdivision (b), for purposes of determining whether jurisdiction
9 exists under subdivision (b), the commission, in accordance with
10 Section 44341, may make inquiries and requests for production
11 of information and records only from the Department of Justice,
12 a law enforcement agency, a state or federal court, and a licensing
13 agency of this state or a licensing agency of another state.

14 (2) For purposes of determining whether jurisdiction exists,
15 paragraph (1) does not apply to release of personnel records.

16 *SEC. 3. Section 44930 of the Education Code is amended to*
17 *read:*

18 ~~44930. (a) Governing boards of school districts~~ *Subject to*
19 *Section 44930.5, the governing board of a school district shall*
20 *accept the resignation of any employee and shall fix the time when*
21 *the resignation takes effect, which, except as provided by*
22 *subdivision (b), shall not be later than the close of the school year*
23 *during which the resignation has been received by the* ~~board.~~
24 *governing board of the school district.*

25 (b) ~~Notwithstanding any other provision of law, but subject to~~
26 *Section 44930.5, an employee and the governing board of a school*
27 *district may agree that a resignation will be accepted at a mutually*
28 *agreed upon date not later than two years beyond the close of the*
29 *school year during which the resignation is received by the* ~~board.~~
30 *governing board of the school district.*

31 *SEC. 4. Section 44930.5 is added to the Education Code, to*
32 *read:*

33 *44930.5. Notwithstanding any other law, on or after January*
34 *1, 2015, the governing board of a school district or its authorized*
35 *representative shall not amend, renew, or enter into an agreement*
36 *that does either of the following:*

37 (a) *Requires the removal from a school employee's records any*
38 *evidence of credible complaints, substantiated investigations, or*
39 *discipline relating to the school employee's commission of, or*
40 *alleged commission of, serious and egregious conduct, as described*

1 in Section 44932. This prohibition does not preclude the removal
 2 of documents containing unfounded, erroneous, or false allegations
 3 from a school employee’s permanent personnel file, as otherwise
 4 required by law.

5 (b) Prevents an employee of the school district from complying
 6 with the requirements of Section 44947 or prevents an employee
 7 of the school district from sending to the Commission on Teacher
 8 Credentialing a report, including, but not limited to, a report
 9 mandated by Section 44030.5, of any change in employment status
 10 of a school district employee alleged to have engaged in serious
 11 and egregious conduct. For purposes of this section, a change in
 12 employment status includes, but is not limited to, dismissal,
 13 nonreelection, resignation, suspension or placement on
 14 administrative leave for more than 10 days as a final adverse
 15 action, retirement, or termination by a decision not to employ or
 16 reemploy.

17 SEC. 5. Section 44932 of the Education Code is amended to
 18 read:

19 44932. (a) ~~No~~A permanent employee shall *not* be dismissed
 20 except for one or more of the following causes:

- 21 (1) ~~Immoral or unprofessional~~ conduct.
- 22 (2) *Unprofessional conduct, including, but not limited to,*
 23 *excessive absences, excessive tardiness, and insubordination.*
- 24 (3) *Serious and egregious conduct as specified in subdivision*
 25 *(b).*
- 26 ~~(2)~~
- 27 (4) *Commission, aiding, or advocating the commission of acts*
 28 *of criminal syndicalism, as prohibited by Chapter 188 of the*
 29 *Statutes of 1919, or in any amendment thereof to that chapter.*
- 30 ~~(3)~~
- 31 (5) *Dishonesty.*
- 32 ~~(4)~~
- 33 (6) *Unsatisfactory performance.*
- 34 ~~(5)~~
- 35 (7) *Evident unfitness for service.*
- 36 ~~(6)~~
- 37 (8) *Physical or mental condition unfitting him or her to instruct*
 38 *or associate with children.*
- 39 ~~(7)~~

1 (9) Persistent violation of or refusal to obey the school laws of
2 the state or reasonable regulations prescribed for the government
3 of the public schools by the ~~State Board of Education~~ *state board*
4 or by the governing board of the school district employing him or
5 her.

6 ~~(8)~~

7 (10) Conviction of a felony or of any crime involving moral
8 turpitude.

9 ~~(9) Violation of Section 51530 or conduct specified in Section~~
10 ~~1028 of the Government Code, added by Chapter 1418 of the~~
11 ~~Statutes of 1947.~~

12 ~~(10) Knowing membership by the employee in the Communist~~
13 ~~Party.~~

14 (11) Alcoholism or other drug abuse which makes the employee
15 unfit to instruct or associate with children.

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

25 *(b) For purposes of this section, "serious and egregious*
26 *conduct" means any of the following:*

27 *(1) Any offense defined in Section 44010 or 44011.*

28 *(2) Any offense defined in Section 187 or 206 of, or Sections*
29 *11165.1 to 11165.6, inclusive, of, the Penal Code.*

30 *(3) Any offense under state or federal law that is punishable by*
31 *death or life imprisonment without the possibility of parole.*

32 *SEC. 6. Section 44932.5 is added to the Education Code, to*
33 *read:*

34 *44932.5. (a) The governing board of a school district may*
35 *suspend without pay for more than 30 workdays a permanent*
36 *certificated employee, or, in a school district with an average daily*
37 *attendance of less than 250 pupils, a probationary employee,*
38 *pursuant to the procedures specified in Sections 44933, 44934,*
39 *44935, 44936, 44937, 44943, and 44944, and on the grounds listed*
40 *in Section 44932 or 44933. This authorization shall not apply to*

1 any school district that has adopted a collective bargaining
 2 agreement pursuant to subdivision (b) of Section 3543.2 of the
 3 Government Code.

4 (b) The governing board of a school district may suspend
 5 without pay for up to 30 workdays a permanent certificated
 6 employee, or in a school district with an average daily attendance
 7 of less than 250 pupils, a probationary employee, in accordance
 8 with the procedures specified in Chapter 5 (commencing with
 9 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
 10 Code.

11 SEC. 7. Section 44934 of the Education Code is amended to
 12 read:

13 44934. (a) Upon the filing of written charges, duly signed and
 14 verified by the person filing them, with the governing board of ~~the~~
 15 a school district, or upon a written statement of charges formulated
 16 by the governing ~~board,~~ board of a school district, charging that
 17 there exists cause, as specified in Section 44932 or 44933, for the
 18 dismissal or suspension ~~for more than 30 workdays~~ of a permanent
 19 employee of the district, the governing board ~~of the school district~~
 20 may, upon majority vote, except as provided in this article if it
 21 deems the action necessary, give notice to the permanent employee
 22 of its intention to dismiss ~~him or her~~ or suspend him or her ~~for~~
 23 ~~more than 30 workdays~~ at the expiration of 30 days from the date
 24 of service of the notice, unless the employee demands a hearing
 25 as provided in this article. ~~Suspension proceedings~~ *Proceedings*
 26 ~~for suspensions for more than 30 workdays~~ may be initiated
 27 pursuant to this section only if the governing board ~~of the school~~
 28 ~~district~~ has not adopted a collective bargaining agreement pursuant
 29 to subdivision (b) of Section 3543.2 of the Government Code.

30 ~~Any~~

31 (b) ~~Any~~ written statement of charges ~~of unprofessional conduct~~
 32 ~~or unsatisfactory performance~~ shall specify instances of behavior
 33 and the acts or omissions constituting the charge so that the teacher
 34 will be able to prepare his or her defense. It shall, where applicable,
 35 state the statutes and rules ~~which~~ *that* the teacher is alleged to have
 36 ~~violated, but it shall also set forth the facts relevant to each~~
 37 ~~occasion of alleged unprofessional conduct or unsatisfactory~~
 38 ~~performance. violated.~~

39 (c) A notice by the governing board of a school district to an
 40 employee of its intention to dismiss him or her or suspend him or

1 *her for more than 30 workdays, together with written charges filed*
2 *or formulated pursuant to this section, shall be sufficient to initiate*
3 *a hearing pursuant to Section 11503 of the Government Code, and*
4 *the governing board of the school district shall not be required to*
5 *file or serve a separate accusation.*

6 *(d) The governing board of a school district may amend written*
7 *charges pursuant to Sections 11507 and 11516 of the Government*
8 *Code.*

9 **This**

10 *(e) This section shall also apply to the suspension of*
11 *probationary employees for more than 30 workdays in a school*
12 *district with an average daily attendance of less than 250 pupils*
13 *which that has not adopted a collective bargaining agreement*
14 *pursuant to subdivision (b) of Section 3542.2 of the Government*
15 *Code.*

16 *SEC. 8. Section 44936 of the Education Code is amended to*
17 *read:*

18 *44936. (a) The notice of dismissal or suspension for more*
19 *than 30 workdays in a proceeding initiated pursuant to Section*
20 *44934 shall not be given between May 15th and September 15th*
21 *in any may be given at any time of year. It shall be in writing and*
22 *be served upon the employee personally or by United States*
23 *registered mail addressed to him the employee at his or her last*
24 *known address. A copy of the charges filed, containing the*
25 *information required by Section 11503 of the Government Code,*
26 *together with a copy of the provisions of this article, shall be*
27 *attached to the notice. No additional documentation shall be*
28 *required to notice the employee. A copy of the notice shall also be*
29 *sent to the collective bargaining unit that represents the employee*
30 *within one week of serving the employee with the notice of*
31 *dismissal or suspension for more than 30 workdays.*

32 *(b) An employee who demands a hearing within 30 days after*
33 *service of the notice dismissal or suspension for more than 30*
34 *workdays shall file a notice of defense, as described in Sections*
35 *11505 and 11506 of the Government Code.*

36 *SEC. 9. Section 44937 of the Education Code is amended to*
37 *read:*

38 *44937. In a proceeding for a dismissal or suspension*
39 *proceeding for more than 30 workdays initiated pursuant to Section*
40 *44934, if the employee does not demand a hearing by filing a*

1 written request for hearing with the governing board, he or she
2 may be dismissed or *he or she may be* suspended without pay for
3 a specific period of time *for more than 30 workdays* at the
4 expiration of the 30-day period.

5 *SEC. 10. Section 44938 of the Education Code is amended to*
6 *read:*

7 44938. (a) The governing board of ~~any a~~ school district shall
8 not act upon any charges of ~~unprofessional conduct initiated~~
9 ~~pursuant to paragraph (2), (6), or (9) of subdivision (a) of Section~~
10 ~~44932, or Section 44933~~ unless at least ~~45 calendar days~~ prior to
11 ~~30 workdays~~ before the date of the filing, the governing board of
12 the school district or its authorized representative has given the
13 employee against whom the charge is filed, written notice of the
14 ~~unprofessional conduct, conduct leading to the charges,~~ specifying
15 the nature ~~thereof of the conduct~~ with ~~such~~ specific instances of
16 behavior and with ~~such~~ particularity as to furnish the employee an
17 opportunity to correct his or her faults and overcome the grounds
18 for the charge. The written notice shall include the evaluation made
19 pursuant to Article 11 (commencing with Section 44660) of
20 Chapter 3, if applicable to the employee.

21 ~~(b) The governing board of any school district shall not act upon~~
22 ~~any charges of unsatisfactory performance unless it acts in~~
23 ~~accordance with the provisions of paragraph (1) or (2):~~

24 ~~(1) At least 90 calendar days prior to the date of the filing, the~~
25 ~~board or its authorized representative has given the employee~~
26 ~~against whom the charge is filed, written notice of the~~
27 ~~unsatisfactory performance, specifying the nature thereof with~~
28 ~~such specific instances of behavior and with such particularity as~~
29 ~~to furnish the employee an opportunity to correct his or her faults~~
30 ~~and overcome the grounds for the charge. The written notice shall~~
31 ~~include the evaluation made pursuant to Article 11 (commencing~~
32 ~~with Section 44660) of Chapter 3, if applicable to the employee.~~

33 ~~(2) The governing board may act during the time period~~
34 ~~composed of the last one-fourth of the schooldays it has scheduled~~
35 ~~for purposes of computing apportionments in any fiscal year if,~~
36 ~~prior to the beginning of that time period, the board or its~~
37 ~~authorized representative has given the employee against whom~~
38 ~~the charge is filed, written notice of the unsatisfactory performance,~~
39 ~~specifying the nature thereof with such specific instances of~~
40 ~~behavior and with such particularity as to furnish the employee an~~

1 opportunity to correct his or her faults and overcome the grounds
2 for the charge. The written notice shall include the evaluation made
3 pursuant to Article 11 (commencing with Section 44660) of
4 Chapter 3, if applicable to the employee.

5 (e) “Unsatisfactory performance” as used in this section means,
6 and refers only to, the unsatisfactory performance particularly
7 specified as a cause for dismissal in Section 44932 and does not
8 include any other cause for dismissal specified in Section 44932.

9 “Unprofessional conduct” as used in this section means, and
10 refers to, the unprofessional conduct particularly specified as a
11 cause for dismissal or suspension in Sections 44932 and 44933
12 and does not include any other cause for dismissal specified in
13 Section 44932.

14 (b) For purposes of this section, “workday” means any day
15 that the employee is normally expected to work, regardless of
16 whether he or she actually does work.

17 SEC. 11. Section 44939 of the Education Code is amended to
18 read:

19 44939. Upon the filing of written charges, charges pursuant
20 to paragraph (1), (3), (4), (5), (7), (8), (10), or (11) of subdivision
21 (a) of Section 44932, duly signed and verified by the person filing
22 them with the governing board of a school district, or upon a
23 written statement of charges pursuant to paragraph (1), (3), (4),
24 (5), (7), (8), (10), or (11) of subdivision (a) of Section 44932
25 formulated by the governing board, charging board of a school
26 district, to dismiss a permanent employee of the district with
27 immoral conduct, conviction of a felony or of any crime involving
28 moral turpitude, with incompetency due to mental disability, with
29 willful refusal to perform regular assignments without reasonable
30 cause, as prescribed by reasonable rules and regulations of the
31 employing school district, with violation of Section 51530, with
32 knowing membership by the employee in the Communist Party or
33 with violation of any provision in Sections 7001 to 7007, inclusive,
34 school district, the governing board of the school district may, if
35 it deems such the action necessary, immediately suspend the
36 employee from his or her duties and give notice to him the
37 permanent employee of his or her suspension, and that 30 days
38 after service of the notice, he the permanent employee will be
39 dismissed, unless he or she demands a hearing.

1 ~~If the permanent employee is suspended upon charges of~~
 2 ~~knowing membership by the employee in the Communist Party or~~
 3 ~~for any violation of Section 7001, 7002, 7003, 7006, 7007, or~~
 4 ~~51530, he may within 10 days after service upon him of notice of~~
 5 ~~such suspension file with the governing board a verified denial,~~
 6 ~~in writing, of the charges. In such event the permanent employee~~
 7 ~~who demands a hearing within the 30-day period shall continue~~
 8 ~~to be paid his regular salary during the period of suspension and~~
 9 ~~until the entry of the decision of the Commission on Professional~~
 10 ~~Competence, if and during such time as he furnishes to the school~~
 11 ~~district a suitable bond, or other security acceptable to the~~
 12 ~~governing board, as a guarantee that the employee will repay to~~
 13 ~~the school district the amount of salary so paid to him during the~~
 14 ~~period of suspension in case the decision of the Commission on~~
 15 ~~Professional Competence is that he shall be dismissed. If it is~~
 16 ~~determined that the employee may not be dismissed, the school~~
 17 ~~board shall reimburse the employee for the cost of the bond.~~

18 *SEC. 12. Section 44940 of the Education Code is amended to*
 19 *read:*

20 44940. (a) For purposes of this section, “charged with a
 21 mandatory leave of absence offense” is defined to mean charged
 22 by complaint, information, or indictment filed in a court of
 23 competent jurisdiction with the commission of any sex offense as
 24 defined in Section 44010, ~~or~~ with the commission of any offense
 25 involving aiding or abetting the unlawful sale, use, or exchange
 26 to minors of controlled substances listed in Schedule I, II, or III,
 27 as contained in ~~Section~~ *Sections* 11054, 11055, and 11056 of the
 28 Health and Safety Code, with the exception of marijuana,
 29 mescaline, peyote, or ~~or~~ tetrahydrocannabinols.
 30 *tetrahydrocannabinols, or with the commission of a violent or*
 31 *serious felony, as listed in subdivision (c) of Section 667.5 of, or*
 32 *subdivision (c) of Section 1192.7 of, the Penal Code.*

33 (b) For purposes of this section, “charged with an optional leave
 34 of absence offense” is defined to mean a charge by complaint,
 35 information, or indictment filed in a court of competent jurisdiction
 36 with the commission of any controlled substance offense as defined
 37 in Section 44011 or 87011, or a violation or attempted violation
 38 of Section 187 of the Penal Code, or Sections 11357 to 11361,
 39 inclusive, ~~Section of, or Section~~ 11363, 11364, or 11370.1 of, the
 40 Health and Safety Code, insofar as these sections relate to any

1 controlled substances except marijuana, mescaline, peyote, or
2 tetrahydrocannabinols.

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

5 (d) (1) ~~Whenever any~~ *If a* certificated employee of a school
6 district is charged with a mandatory leave of absence offense, as
7 defined in subdivision (a), upon being informed that a charge has
8 been filed, the governing board of the school district shall
9 immediately place the *certificated* employee on compulsory leave
10 of absence. The duration of the leave of absence shall be until a
11 time not more than 10 days after ~~the date of entry notice~~ of the
12 judgment in the ~~proceedings~~. *proceedings has been received by*
13 *the school district*. No later than 10 days after receipt of the
14 complaint, information, or indictment described by subdivision
15 (a), the school district shall forward a copy to the Commission on
16 Teacher Credentialing.

17 (2) Upon receiving a copy of a complaint, information, or
18 indictment described in subdivision (a) and forwarded by a school
19 district, the Commission on Teacher Credentialing shall
20 automatically suspend the employee’s teaching or service
21 credential. The duration of the suspension shall be until a time not
22 more than 10 days after ~~the date of entry notice~~ of the judgment
23 in the ~~proceedings~~. *proceedings has been received by the*
24 *Commission on Teacher Credentialing*.

25 (e) (1) ~~Whenever any~~ *If a* certificated employee of a school
26 district is charged with an optional leave of absence offense as
27 defined in subdivision (b), the governing board of the school
28 district may immediately place the *certificated* employee upon
29 compulsory leave in accordance with the procedure in this section
30 and Section 44940.5. If any certificated employee is charged with
31 an offense deemed to fall into both the mandatory and the optional
32 leave of absence categories, as defined in subdivisions (a) and (b),
33 that offense shall be treated as a mandatory leave of absence
34 offense for purposes of this section. No later than 10 days after
35 receipt of the complaint, information, or indictment described by
36 subdivision (a), the school district shall forward a copy to the
37 Commission on Teacher Credentialing.

38 (2) Upon receiving a copy of a complaint, information, or
39 indictment described in subdivision (a) and forwarded by a school
40 district, the Commission on Teacher Credentialing shall

1 automatically suspend the employee's teaching or service
 2 credential. The duration of the suspension shall be until a time not
 3 more than 10 days after the ~~date of entry~~ *notice* of the judgment
 4 in the ~~proceedings~~. *proceedings has been received by the school*
 5 *district.*

6 *SEC. 13. Section 44941 of the Education Code is repealed.*

7 ~~44941. The notice of suspension and intention to dismiss, shall~~
 8 ~~be in writing and be served upon the employee personally or by~~
 9 ~~United States registered mail addressed to the employee at his last~~
 10 ~~known address. A copy of the charges filed, containing the~~
 11 ~~information required by Section 11503 of the Government Code,~~
 12 ~~together with a copy of the provisions of this article, shall be~~
 13 ~~attached to the notice. If the employee does not demand a hearing~~
 14 ~~within the 30-day period, he may be dismissed upon the expiration~~
 15 ~~of 30 days after service of the notice.~~

16 *SEC. 14. Section 44943 of the Education Code is amended to*
 17 *read:*

18 ~~44943. When any employee who has been served with~~ *The*
 19 *governing board may, without prejudice, rescind a notice served*
 20 *pursuant to Section 44934 of the governing board's intention to*
 21 *dismiss or suspend him or her demands a hearing, the governing*
 22 *board shall have the option either (a) to rescind its action, or (b)*
 23 *schedule a hearing on the matter. at any time before the matter is*
 24 *submitted for decision.*

25 *SEC. 15. Section 44944 of the Education Code is amended to*
 26 *read:*

27 ~~44944. (a) (1) In a proceeding for dismissal or suspension~~
 28 ~~proceeding for more than 30 workdays initiated pursuant to Section~~
 29 ~~44934, if a hearing is requested by the employee, the hearing matter~~
 30 ~~shall be commenced within 60 days submitted for decision within~~
 31 ~~12 months from the date of the employee's demand for a hearing.~~
 32 ~~The hearing administrative law judge on the hearing panel may~~
 33 ~~grant extensions beyond 12 months for good cause, and shall grant~~
 34 ~~extensions beyond 12 months upon a stipulation by all parties.~~

35 (2) *The hearing shall be initiated, conducted, and a decision*
 36 *made in accordance with Chapter 5 (commencing with Section*
 37 *11500) of Part 1 of Division 3 of Title 2 of the Government Code.*
 38 *However, the hearing date shall be established after consultation*
 39 *with the employee and the governing board, or their*
 40 *representatives, and the Commission on Professional Competence*

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

21 (2)

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

29 (3)

30 (B) The time periods *specified* 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 (C) *Delays incurred pursuant to this paragraph shall not count*
37 *toward the deadline by which the matter must be submitted for*
38 *decision required by paragraph (1).*

39 (4) The superior court of the county in which the hearing will
40 be held may, upon motion of the party seeking discovery, suspend

1 the hearing so as to comply with the requirement of the preceding
2 paragraph.

3 (5) ~~No~~A witness shall *not* be permitted to testify at the hearing
4 except upon oath or affirmation. ~~No testimony shall~~ *Testimony*
5 *shall not* be given or evidence introduced relating to matters that
6 occurred more than four years ~~prior to~~ *before* the date of the filing
7 of the notice. Evidence of records regularly kept by the governing
8 board concerning the employee may be introduced, but no decision
9 relating to the dismissal or suspension of any employee shall be
10 made based on charges or evidence of any nature relating to matters
11 occurring more than four years prior to the filing of the notice.
12 *notice unless it is relevant to the resolution of a charge pursuant*
13 *to paragraph (3) of subdivision (a) of Section 44932 or, with*
14 *respect to any charge, it is relevant for purposes of rebuttal,*
15 *impeachment of a witness, or showing that notice was given.*

16 (b) *The administrative law judge on the hearing panel shall*
17 *hold a final status conference at least seven calendar days before*
18 *the hearing is to commence to rule on procedural matters,*
19 *including, but not limited to, challenges to the qualifications of*
20 *members of the Commission on Professional Competence, as*
21 *specified in paragraph (2) of subdivision (c), if applicable,*
22 *discovery disputes, and other procedural motions. The*
23 *administrative law judge on the hearing panel may require other*
24 *status or case management conferences as necessary.*

25 ~~(b) (1) The hearing provided for in this section shall be~~
26 ~~conducted by~~

27 (c) (1) *If the employee is charged with a charge pursuant to*
28 *paragraph (2), (6), or (9) of subdivision (a) of Section 44932, a*
29 *Commission on Professional—Competence. Competence shall*
30 *conduct the hearing provided for in this section and shall comprise*
31 *the hearing panel. One member of the—commission Commission*
32 *on Professional Competence shall be selected by the employee,*
33 *one member shall be selected by the governing board, and—one the*
34 *third member shall be an administrative law judge of the Office*
35 *of Administrative Hearings who shall be chairperson—and of the*
36 *Commission on Professional Competence, a voting member of the*
37 ~~commission~~ *Commission on Professional Competence, and shall*
38 *be responsible for—assuring performing all duties required of an*
39 *administrative law judge by this article, ruling on procedural*
40 *motions, and ensuring that the legal rights of the parties are*

1 protected at the hearing. If either the governing board or the
2 employee for any reason fails to select a ~~commission~~ *Commission*
3 *on Professional Competence* member at least ~~seven~~ 30 calendar
4 days ~~prior to~~ *before* the date of the hearing, the failure shall
5 constitute a waiver of the right to selection, and the county board
6 of education or its specific designee shall immediately make the
7 selection. If the county board of education is also the governing
8 board of the school district or has by statute been granted the
9 powers of a governing board, the selection shall be made by the
10 Superintendent, who shall be reimbursed by the school district for
11 all costs incident to the selection.

12 (2) (A) The member selected by the governing board and the
13 member selected by the employee shall not be related to the
14 employee and shall not be employees of the district initiating the
15 dismissal or suspension and shall hold a currently valid credential
16 and have at least ~~five~~ *three* years' experience within the past 10
17 years in the *elementary or secondary grade level* discipline of the
18 employee.

19 (B) *For purposes of subparagraph (A), "elementary grade level"*
20 *means kindergarten and grades 1 to 6, inclusive, and "secondary*
21 *grade level" means grades 7 to 12, inclusive.*

22 (3) *If an employee is charged with a charge pursuant to*
23 *paragraph (1), (3), (4), (5), (7), (8), (10), or (11) of subdivision*
24 *(a) of Section 44932, the hearing panel shall be comprised solely*
25 *of an administrative law judge of the Office of Administrative*
26 *Hearings.*

27 ~~(e) (1) The~~

28 (d) (1) *For a charge pursuant to paragraph (2), (6), or (9) of*
29 *subdivision (a) of Section 44932, or Section 44933, the decision*
30 *of the Commission on Professional Competence shall be made by*
31 *a majority vote, and the commission shall vote. For all other*
32 *charges, the decision shall be made solely by the administrative*
33 *law judge.*

34 (2) *The hearing panel shall prepare a written decision containing*
35 *findings of fact, determinations of issues, and a disposition that*
36 *shall be, solely, one of the following:*

37 (A) That the employee should be dismissed.

38 (B) That the employee should be suspended for a specific period
39 of time without pay.

40 (C) That the employee should not be dismissed or suspended.

1 ~~(2)~~
 2 ~~(3)~~ The decision of the ~~Commission on Professional Competence~~
 3 *hearing panel* that the employee should not be dismissed or
 4 suspended shall not be based on nonsubstantive procedural errors
 5 committed by the school district or *the* governing board unless the
 6 errors are prejudicial errors.

7 ~~(3)~~
 8 ~~(4)~~ The ~~commission~~ *hearing panel* shall not have the power to
 9 dispose of the charge of dismissal by imposing probation or other
 10 alternative sanctions. ~~The imposition of suspension pursuant to~~
 11 ~~subparagraph (B) of paragraph (1) shall be available only in a~~
 12 ~~suspension proceeding authorized pursuant to subdivision (b) of~~
 13 ~~Section 44932 or Section 44933.~~

14 ~~(4)~~
 15 ~~(5)~~ The decision of the ~~Commission on Professional Competence~~
 16 *hearing panel* shall be deemed to be the final decision of the
 17 governing board.

18 ~~(5)~~
 19 ~~(6)~~ The *governing* board may adopt from time to time rules and
 20 procedures not inconsistent with this section as may be necessary
 21 to effectuate this section.

22 ~~(6)~~
 23 ~~(7)~~ The governing board and the employee shall have the right
 24 to be represented by ~~counsel~~. *counsel before the hearing panel.*

25 ~~(d)~~
 26 ~~(e)~~ (1) If the *Commission on Professional Competence* member
 27 selected by the governing board or the member selected by the
 28 employee is employed by any school district in this state, the
 29 member shall, during any service on a Commission on Professional
 30 Competence, continue to receive salary, fringe benefits,
 31 accumulated sick leave, and other leaves and benefits from the
 32 district in which the member is employed, but shall receive no
 33 additional compensation or honorariums for service on the
 34 ~~commission~~. *Commission on Professional Competence.*

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

40 (e)

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

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

36 (3) *Notwithstanding paragraph (1), the employee shall pay all*
37 *the expenses identified in paragraph (1), except the governing*
38 *board's attorney fees, if the hearing panel determines that the*
39 *employee's decision to demand a hearing was a frivolous tactic*
40 *that wasted public resources.*

1 ~~(3)~~
 2 (4) As used in this section, “reasonable expenses” shall not be
 3 deemed “compensation” within the meaning of subdivision ~~(d)~~
 4 (e).

5 ~~(4)~~
 6 (5) If either the governing board or the employee petitions a
 7 court of competent jurisdiction for review of the decision of the
 8 ~~commission~~, *Commission on Professional Competence*, the
 9 payment of expenses to members of the ~~commission~~ *Commission*
 10 *on Professional Competence* required by this subdivision shall not
 11 be stayed.

12 ~~(5)-(A)~~
 13 (6) If the decision of the ~~commission~~ *Commission on*
 14 *Professional Competence* is finally reversed or vacated by a court
 15 of competent jurisdiction, either the state, having paid the
 16 ~~commission~~ *Commission on Professional Competence* members’
 17 expenses, shall be entitled to reimbursement from the governing
 18 board for those expenses, or the governing board, having paid the
 19 expenses, shall be entitled to reimbursement from the state.

20 ~~(B) Additionally, either the employee, having paid a portion of~~
 21 ~~the expenses of the hearing, including the cost of the administrative~~
 22 ~~law judge, shall be entitled to reimbursement from the governing~~
 23 ~~board for the expenses, or the governing board, having paid its~~
 24 ~~portion and the employee’s portion of the expenses of the hearing,~~
 25 ~~including the cost of the administrative law judge, shall be entitled~~
 26 ~~to reimbursement from the employee for that portion of the~~
 27 ~~expenses.~~

28 ~~(f) The~~
 29 (g) *If the employee is charged with a charge pursuant to*
 30 *paragraph (2), (6), or (9) of subdivision (a) of Section 44932, or*
 31 *Section 44933, the hearing provided for in this section shall be*
 32 *conducted in a place selected by agreement among the members*
 33 *of the ~~commission~~. In the absence of agreement, hearing panel.*
 34 *For all other hearings, the place shall be selected by the*
 35 *administrative law judge on the hearing panel.*

36 SEC. 16. *Section 44944.5 is added to the Education Code, to*
 37 *read:*

38 44944.5. *Notwithstanding Section 44924, an employee may*
 39 *wave his or her due process rights afforded pursuant to this article*
 40 *as part of a contract or agreement between the school district, the*

1 *employee, and if applicable, the employee's exclusive*
2 *representative. Nothing in this section shall supersede the*
3 *requirements of Section 44930.5.*

4 *SEC. 17. Section 44945 of the Education Code is amended to*
5 *read:*

6 44945. The decision of the ~~Commission on Professional~~
7 ~~Competence~~ *hearing panel* may, on petition of either the governing
8 board or the employee, be reviewed by a court of competent
9 jurisdiction in the same manner as a decision made by a hearing
10 officer under Chapter 5 (commencing with Section 11500) of Part
11 1 of Division 3 of Title 2 of the Government Code. The court, on
12 review, shall exercise its independent judgment on the evidence.
13 The proceeding shall be set for hearing at the earliest possible date
14 and shall take precedence over all other cases, except older matters
15 of the same character and matters to which special precedence is
16 given by law.

17 *SEC. 18. Section 44947 of the Education Code is amended to*
18 *read:*

19 44947. If an employee is dismissed ~~for immoral conduct or~~
20 ~~conviction of a felony or crime involving moral turpitude, based~~
21 ~~on a charge pursuant to paragraph (1), (3), (4), (5), (7), (8), (10),~~
22 ~~or (11) of subdivision (a) of Section 44932,~~ the governing board
23 shall transmit to the Commission on Teacher Credentialing and to
24 the county board of education ~~which~~ *that* issued the certificate
25 under which the employee was serving at the time of his dismissal,
26 a copy of the reporter's transcript of the hearing accompanied by
27 a request that any certificate issued by the county board of
28 education to the employee be revoked if the employee is not
29 reinstated upon appeal.

30 *SEC. 19. If the Commission on State Mandates determines that*
31 *this act contains costs mandated by the state, reimbursement to*
32 *local agencies and school districts for those costs shall be made*
33 *pursuant to Part 7 (commencing with Section 17500) of Division*
34 *4 of Title 2 of the Government Code.*

35 ~~SECTION 1. Section 1008 of the Education Code is amended~~
36 ~~to read:~~

37 1008. ~~If a vacancy exists on the county board of education of~~
38 ~~any county, the vacancy shall be filled in the manner prescribed~~
39 ~~in Article 3 (commencing with Section 5090) of Chapter 1 of Part~~
40 ~~4.~~

O