



The Legislature has established additional notice requirements that school districts must follow when seeking to suspend or dismiss an employee for unprofessional conduct or unsatisfactory performance. Before a governing board can take action to issue a 30-day notice for either of these causes, the following must occur:

- 1) Unprofessional Conduct: The employee must be given advance notice of at least 45 days. A Notice of Unprofessional Conduct must specify the nature of the cause, list specific instances of behavior and furnish the employee an opportunity to correct the faults and overcome the grounds of the charge. The notice must also include a copy of the employee's evaluation. (Education Code § 44938)
- 2) Unsatisfactory Performance: The employee must be given advance notice of at least 90 days. A Notice of Unsatisfactory Performance must specify the nature of the performance issues, with specific instances of behavior with "such particularity" as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The notice must also include a copy of the employee's evaluation. (Education Code § 44938)

Current law authorizes the immediate suspension of a permanent employee for specified conduct including: immoral conduct, conviction of a felony or any crime involving moral turpitude, incompetency due to mental disability, willful refusal to perform regular assignments without reasonable cause, advocating or teaching communism, or knowing membership in the Communist Party. (Education Code § 44939)

Existing law requires that a dismissal or suspension hearing requested by an employee must begin within 60 days of an employee's request and further:

- 1) Requires that the hearing be conducted by a Commission on Professional Competence (CPC) made up of three members:
  - a) One member selected by the employee;
  - b) One member selected by the governing board; and,
  - c) An administrative law judge (ALJ) who serves as the chair.
- 2) Provides that the decision made by the CPC is made by majority vote and deems the decision of the CPC to be the final decision of the governing board.
- 3) Specifies that members of the CPC may not be employees of the district and must have at least five years of experience (within the last ten) in the discipline of the employee.
- 4) Prohibits testimony or evidence relating to matters that occurred more than four years prior to the date of the filing of the notice, and prohibits a decision relating to the dismissal or suspension of any employee from

being made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice. Specifies that evidence of records regularly kept by the governing board may be introduced, but no decision relating to the dismissal or suspension of any employee can be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

- 5) Specifies that members of a Commission on Professional Competence (CPC) receive their regular salary, fringe benefits, accumulated sick leave and other leaves and benefits but shall receive no additional compensation.
- 6) Specifies that in the event the employee is dismissed or suspended, the employee will share equally the expenses of the hearing including the cost of the administrative law judge (ALJ).
- 7) Specifies that in the event that the employee will not be dismissed or suspended, the governing board will pay the expenses of the hearing, including the cost of the ALJ, the cost of the educators serving on the CPC, and reasonable attorney's fees incurred by the employee. (Education Code § 44944)

## **ANALYSIS**

### This bill:

- 1) Makes findings and declarations of the Legislature that:
  - a) Pupils, educators, administrators, school boards, and school district employees, need a teacher dismissal process that is both fair and efficient.
  - b) This act is intended to revise existing statutes in a manner that will update and streamline the procedures for teacher discipline and dismissal, making it more cost effective and reducing the time necessary to complete the teacher dismissal process.
- 2) Removes "knowing membership of the Communist Party" from the list of reasons a permanent school employee can be dismissed or suspended.
- 3) Provides that if the governing board of the school district has given notice to a permanent employee of its intention to dismiss or suspend him or her, based upon written charges filed or formulated, the charges may be amended only upon a motion before an ALJ of the Office of Administrative Hearings, specifies that the amendment of charges shall not result in any prejudice to the responding party; and requires that no motion shall be granted less than 90 days before the hearing on the charges if it would extend the close of the record beyond the seven-month deadline.

- 4) Provides that a notice of the governing board to dismiss or suspend an employee, together with written charges filed or formulated, shall be sufficient to initiate a hearing, as specified, and the governing board shall not be required to file or serve a separate accusation.
- 5) Deletes the prohibition against sending a 30-day notice between May 15 and September 15 and allows it to be given at any time of the year except for a notice in a proceeding involving charges of unsatisfactory performance, which shall be given during the instructional year at the school site where the employee is physically employed.
- 6) Provides that a 30-day notice given outside of the instructional year of the school site where the employee is physically employed shall be in writing and shall be served upon the employee personally with a copy of the charges filed, as specified, attached to the notice.
- 7) Provides that an employee who has been placed on suspension may serve and file with the Office of Administrative Hearings a motion for immediate reversal of suspension.
  - a) Requires that review of the motion shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension.
  - b) Requires the motion to include a memorandum of points and authorities setting forth law and argument supporting the employee's contention that the statement of charges does not set forth a sufficient basis for immediate suspension.
  - c) Requires the motion to be served upon the governing board of the school district and filed within 30 days after service upon the employee of the initial pleading in the matter; requires the hearing on the motion for immediate reversal of suspension to be held no later than 30 days after the motion is filed with the Office of Administrative Hearings.
  - d) Requires the administrative law judge (ALJ) to issue an order denying or granting the motion no later than 15 days after the hearing; requires an order granting a motion for immediate reversal of suspension to become effective within five days of service of the order and the school district to make the employee whole for any lost wages, benefits, and compensation within 14 days of service of an order granting the motion.
  - e) Provides that a motion shall be the exclusive means of obtaining interlocutory review of suspension pending dismissal and that the

grant or denial of the motion shall not be subject to interlocutory judicial review.

- f) Provides that a motion pursuant to this section shall have no bearing on the authority of a governing board to determine the physical placement and assignment of an employee who is suspended or placed on administrative leave during review of the motion or while dismissal charges are pending.
- 8) Adds murder and attempted murder to the list of mandatory leave of absence offenses.
  - 9) Removes marijuana, mescaline, peyote, and tetrahydrocannabinols as exceptions to the list of controlled substance offenses for which a certificated employee may be charged with a mandatory or optional leave of absence offense.
  - 10) Requires an employee who demands a hearing to file a single document containing his or her request for a hearing and a notice of defense, as specified.
  - 11) Specifies that a dismissal or dismissal hearing shall commence within six months from the date of the employee's request for a hearing; provides that a continuance shall not extend the date for commencement of the hearing more than six months from the date of the employee's request for a hearing, except for extraordinary circumstances, as determined by the administrative law judge (ALJ).
    - a) Provides that if extraordinary circumstances are found that extend the date for commencement, the deadline for concluding the hearing and closing the record shall be extended for a period of time equal to the continuance.
    - b) Requires the hearing date to be established after consultation with the employee and the governing board, except that if the parties are not able to reach agreement on a date, the Office of Administrative Hearings shall unilaterally set a date in compliance with this section.
    - c) Requires the hearing to be completed by a closing of the record within seven months of the date of the employee's demand for a hearing.
    - d) Provides that a continuance shall not extend the date for the close of the record more than seven months from the date of the employee's request for a hearing, except for good cause as determined by the ALJ.

- e) Provides that if substantial progress has been made in completing the previously scheduled days of the hearing within the seven-month period but the hearing cannot be completed, for good cause shown, within the seven-month period, the period for completing the hearing may be extended by the presiding ALJ and he or she shall establish a reasonable timetable for completion of the hearing and closing of the record.
- 12) Deletes the existing discovery process that includes the rights and duties of any party in a civil action brought in a Superior Court under Title 4 of Part 4 of the Code of Civil Procedure; creates a new discovery process where the school district and employee are required to make initial disclosures within 45 days of the date of the employee's demand for a hearing; and specifies that all disclosures must be made no later than 60 days before the start of the hearing, as specified.
  - 13) Authorizes testimony or evidence and decisions to be made relating to matters that occurred more than four years prior to the date of the filing of the notice that involve sexual offences and child abuse offences, as specified.
  - 14) Authorizes a suspension and dismissal hearing to be conducted by a single administrative law judge (ALJ) instead of the full Commission on Professional Competence (CPC) if both parties agree in writing.
  - 15) Reduces the number of years of experience that CPC members are required to have in the discipline of the employee being suspended or dismissed from five to three. For purposes of the required discipline of CPC members:
    - a) For an employee subject to dismissal whose most recent teaching assignment is in any of the grades Kindergarten to grade six, inclusive, "discipline" means a teaching assignment in any of grades Kindergarten to grade six, inclusive.
    - b) For an employee subject to dismissal whose most recent assignment requires an education specialist credential or a services credential "discipline" means an assignment that requires an education specialist credential or a services credential, respectively.
    - c) For an employee subject to dismissal whose most recent teaching assignment is in any of the grades seven to 12, inclusive, "discipline" means a teaching assignment in any of grades seven to 12, inclusive, in the same area of study, as that term is used in Section 51220, as the most recent teaching assignment of the employee subject to dismissal.

- 16) Requires members of the Commission on Professional Competence (CPC) to be selected no later than 45 days before the start of the hearing; and requires the governing board and the employee to serve notice of their selection upon all parties and the Office of Administrative Hearings.
- 17) Specifies that if a party believes that a selected CPC member is not qualified, that party may file an objection with the Office of Administrative Hearings within 10 days of the selection; and within seven days of that objection an administrative law judge (ALJ) shall rule on the objection.
- 18) Requires that if a CPC member is a retired employee, the member shall receive pay at the daily substitute teacher rate in the school district that is a party to the hearing.
- 19) Deletes the requirement that the employee pay the expenses incurred by the school district at the hearing if a court overturns the decision of a CPC; and deletes the requirement that the district pay the expenses incurred by the employee at the hearing if a court overturns the decision of a CPC.

### **STAFF COMMENTS**

- 1) Need for the bill: According to the author's office, the current teacher discipline and dismissal process is outdated and cumbersome. The law has not kept pace with today's school calendars or practice. In addition, there is no deadline for completion of the dismissal appeal process and continuances can allow costly litigation to drag on for 12-18 months or longer. According to the author's office, AB 375 updates and streamlines the teacher discipline and dismissal process, saving school districts time and money while at the same time ensuring due process.
- 2) Procedural reforms. This bill makes a number of procedural reforms that the author maintains would establish more efficient suspension and dismissal procedures.
  - a) *Removes the summer moratorium on issuing 30-day notices*. The purpose of the prohibition against issuing a 30-day notice between May 15 and September 15 is to ensure a teacher on summer break does not inadvertently forfeit his or her right to a hearing by not receiving the notice promptly and not having adequate time to prepare a response. However, employers argue that the notice moratorium limits their ability to address misconduct issues in a timely manner. Additionally, the moratorium makes little sense if misconduct occurs between May 15 and September 15, during summer school, or at school operating on a year-round schedule. While an argument could be made that vacation schedules may make it more challenging to schedule hearings during the summer, it appears that lifting the moratorium would remove a burdensome restriction on the notification process for teacher misconduct issues

(the summer moratorium would still apply to unsatisfactory performance).

- b) *Allows the introduction of historical information.* Current law prohibits testimony or evidence relating to matters more than four years old to be introduced at a hearing. This bill would make it easier to include relevant evidence by allowing information that is more than four years old involving sexual offenses and child abuse to be considered during a hearing. This change could enable employers to establish a pattern of behavior that could be relevant to their case by having access to all possible evidence.
  - c) *Commission on Professional Competence (CPC).* Current law requires suspension and dismissal hearings to be conducted by a CPC made up of three members—one member selected by the employee; one member selected by the governing board; and an administrative law judge (ALJ) who serves as the chair. Members of the CPC may not be employees of the district and must have at least five years of experience (within the last ten) in the discipline of the employee. This bill authorizes the hearings to be presided over by an ALJ alone, instead of the full CPC, if both parties agree in writing. The bill also reduces the number of years of experience that members of the CPC shall have from five years to three years in the same discipline of the teacher being suspended or dismissed and for employees subject to dismissal whose most recent teaching assignments are in grades seven to twelve, the bill broadens the definition of “discipline” to mean the same area of study, as specified. These changes could help increase the number of teachers eligible to serve on the CPC and thereby reduce the delays that school districts may otherwise encounter under existing law.
  - d) *Mandatory Leave of Absence Offenses.* This bill adds murder and attempted murder to the list of mandatory leave of absence offenses, therefore school districts would be required to place an employee on leave should he or she be criminally charged with murder or attempted murder. This bill also removes the sale, use, or exchange of marijuana, mescaline, peyote, and tetrahydrocannabinols to minors as exceptions to the list of controlled substance offenses for which a certificated employee may be charged with a mandatory leave of absence offense. These provisions could help increase protections for children in school.
- 3) Streamlining the dismissal process. The stated objective of AB 375 is to streamline the dismissal process and reduce the timeframe associated with suspension and dismissal proceedings in order to save school districts time and money, while at the same time ensuring due

process for certificated employees. Specifically, the bill proposes the following provisions to achieve that objective:

- a) *Commencement of a hearing.* The bill requires the commencement of a dismissal hearing to be within six months from the date of the employee's request for a hearing. However, if the administrative law judge (ALJ) determines that "extraordinary circumstances" exist, he or she may grant a continuance to extend the date for the start of the hearing.
- b) *Timeline to complete a hearing.* The bill requires dismissal and suspension proceedings to conclude no more than seven months from the date an employee demands a hearing. If this deadline cannot be met, the ALJ has the authority to extend the deadline if he or she believes good cause exists and establish a reasonable timetable for completion of the hearing.
- c) *Limited discovery process.* The bill establishes a limited discovery process rather than allowing for full civil discovery. This process includes the requirement that the school district and employee make their initial disclosures within 45 days of the employee's demand for a hearing and for expert witness disclosures to be made no later than 60 days before the commencement of the hearing. The bill also limits the number of depositions for each party to no more than five and limits them to seven hours each.
- d) *Limit on the amendment of charges.* The bill prohibits a motion to amend charges less than 90 days before the hearing if it would extend the close of the record beyond the seven-month deadline.
- e) *Selection of Commission on Professional Competence (CPC) members.* The bill requires the governing board and the employee to select CPC members no later than 45 days before the date set for the hearing. It also creates a mechanism to challenge the selection of CPC members. If a party believes that a selected CPC member is not qualified, that party may file an objection with the Office of Administrative Hearings within 10 days of the selection.

The author may wish to address the following issues worth consideration in assessing whether the bill would achieve its objective to streamline the dismissal process:

- Does the Office of Administrative Hearings have the capacity and resources to conduct and complete the hearings within the prescribed timeline?
- Is the standard of "extraordinary circumstances" for granting a continuance to commence a hearing appropriate or is it too high of a standard to meet?

4) Related and prior legislation.

SB 531 (Knight) would have modified procedures relating to the evaluation, suspension, and dismissal of certificated employees. SB 531 failed passage in this Committee.

SB 453 would have modified procedures relating to the suspension, dismissal and leave of absence of employees. SB 453 failed passage in this Committee.

SB 1530 (Padilla, 2012) modified procedures relating to the suspension, dismissal, and leave of absence of employees. SB 1530 failed passage in the Assembly Education Committee.

**SUPPORT**

None of the current version of the bill.

**OPPOSITION**

None on the current version of the bill.