

AMENDED IN SENATE JUNE 6, 2013
AMENDED IN ASSEMBLY APRIL 25, 2013
AMENDED IN ASSEMBLY MARCH 19, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 449

Introduced by Assembly Member Muratsuchi

February 19, 2013

An act to amend Section 44242.5 of, and to ~~repeal and~~ add Section ~~44030 of, 44030.5 to,~~ the Education Code, relating to elementary and secondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 449, as amended, Muratsuchi. Elementary and secondary education: certificated school employees: allegation of misconduct: reports to Commission on Teacher Credentialing.

~~Existing law provides that any principal, teacher, employee, or school officer of any elementary or secondary school who refuses or willfully neglects to make such reports as are required by law is guilty of a misdemeanor and is punishable by a fine of not more than \$100.~~

~~This bill would delete that provision.~~

~~Existing law provides for the employment of certificated school employees by school districts. Existing law provides for the credentialing of certificated employees of a school district by *establishes* the Commission on Teacher Credentialing to, among other things, issue teaching and services credentials. Existing law requires the commission to appoint a Committee of Credentials and requires allegations of acts or omissions for which adverse action may be taken against applicants or holders of teaching or services credentials to be reported to the~~

committee. Under existing law, the committee is authorized to commence an initial or formal review upon receipt of, among other things, a statement from an employer notifying the commission that an employee's employment status has changed in one of specified ways as a result of, or during the pendency of, an allegation of misconduct. Existing law makes it a misdemeanor, punishable by a fine of not more than \$100, for a principal, teacher, employee, or school officer of an elementary or secondary school to refuse or willfully neglect to make a report required by law.

*This bill would specify that a change in employment status due solely to unsatisfactory performance or a reduction in force is not a result of an allegation of misconduct for purposes of those provisions. The bill would require the superintendent of a school district or county office of education, or the administrator of a charter school, ~~with certificated employees~~ to report to the commission any change in the employment status of a ~~credentialholder~~, *credentialholder working in a position requiring a credential* not later than 30 days after the ~~change in credentialholder's~~ employment status, ~~if the credentialholder, while working in a position requiring a credential, and changes in one of specified ways~~ as a result of an allegation of misconduct or while an allegation of misconduct is pending, ~~is dismissed, is nonreelected, resigns, is suspended or placed on unpaid administrative leave for more than 10 days as a final adverse action, retires, or is otherwise terminated by a decision not to employ or reemploy.~~ The bill would make the failure to make the report unprofessional conduct and, would authorize *subject* the superintendent of the school district or county office of education, or the administrator of a charter school, to ~~be subject to~~ adverse action by the commission, and would make the refusal or willful neglect to make the report a misdemeanor. By *imposing additional duties on local agencies and by* creating a new crime, this bill would impose a state-mandated local program.*

~~Under existing law, each allegation of an act or omission by an applicant for, or holder of, a credential, for which he or she may be subject to an adverse action, is required to be presented to the Committee of Credentials. Existing law provides that the committee has jurisdiction to commence an initial review and a formal review upon receipt of, among other things, a statement from an employer notifying the commission that, as a result of, or while an allegation of misconduct is pending, a credentialholder has been dismissed, nonreelected, suspended for more than 10 days, or placed pursuant to a final adverse employment~~

~~action on unpaid administrative leave for more than 10 days, or has resigned or otherwise left employment.~~

~~This bill would provide that for purposes of the statement received from an employer, as described above, a change in status due solely to unsatisfactory performance or a reduction in force, as specified, is not an allegation of misconduct.~~

~~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 no reimbursement is required by this act for a specified reason.~~

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

- 1 ~~SECTION 1. Section 44030 of the Education Code is repealed.~~
- 2 ~~SEC. 2. Section 44030 is added to the Education Code, to read:~~
- 3 ~~44030. (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.~~

1 ~~(b) For purposes of subdivision (a), a change of employment~~
 2 ~~status due solely to unsatisfactory performance pursuant to~~
 3 ~~paragraph (4) of subdivision (a) of Section 44932 or a reduction~~
 4 ~~in force pursuant to Sections 44955 to 44958, inclusive, is not an~~
 5 ~~allegation of misconduct.~~

6 ~~(c) The failure to make the report required by subdivision (a)~~
 7 ~~is unprofessional conduct and may subject the superintendent of~~
 8 ~~the school district or county office of education, or the~~
 9 ~~administrator of a charter school, to adverse action by the~~
 10 ~~commission.~~

11 ~~(d) (1) The refusal or willful neglect to make the report required~~
 12 ~~by subdivision (a) is a misdemeanor, punishable by a fine of not~~
 13 ~~less than five hundred dollars (\$500) or more than one thousand~~
 14 ~~dollars (\$1,000).~~

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

19 *SECTION 1. Section 44030.5 is added to the Education Code,*
 20 *to read:*

21 *44030.5. (a) The superintendent of a school district or county*
 22 *office of education, or the administrator of a charter school,*
 23 *employing a person with a credential shall report any change in*
 24 *the employment status of the credentialholder to the commission*
 25 *not later than 30 days after the change in employment status, if*
 26 *the credentialholder, while working in a position requiring a*
 27 *credential, and as a result of an allegation of misconduct or while*
 28 *an allegation of misconduct is pending, is dismissed, is*
 29 *nonreelected, resigns, is suspended or placed on unpaid*
 30 *administrative leave for more than 10 days as a final adverse*
 31 *action, retires, or is otherwise terminated by a decision not to*
 32 *employ or reemploy.*

33 *(b) For purposes of subdivision (a), a change of employment*
 34 *status due solely to unsatisfactory performance pursuant to*
 35 *paragraph (4) of subdivision (a) of Section 44932 or a reduction*
 36 *in force pursuant to Sections 44955 to 44958, inclusive, is not a*
 37 *result of an allegation of misconduct.*

38 *(c) The failure to make the report required by subdivision (a)*
 39 *is unprofessional conduct and may subject the superintendent of*
 40 *the school district or county office of education, or the*

1 administrator of a charter school, to adverse action by the
2 commission.

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

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

11 ~~SEC. 3.~~

12 SEC. 2. Section 44242.5 of the Education Code is amended to
13 read:

14 44242.5. (a) Each allegation of an act or omission by an
15 applicant for, or holder of, a credential for which he or she may
16 be subject to an adverse action shall be presented to the Committee
17 of Credentials.

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

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

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

26 (2) An affidavit or declaration signed by a person or persons
27 with personal knowledge of the acts alleged to constitute
28 misconduct.

29 (3) (A) A statement from an employer notifying the commission
30 that, as a result of *an allegation of misconduct*, or while an
31 allegation of misconduct is pending, a credentialholder has been
32 dismissed, nonreelected, suspended for more than 10 days, or
33 placed pursuant to a final adverse employment action on unpaid
34 administrative leave for more than 10 days, or has resigned or
35 otherwise left employment.

36 (B) The employer shall provide the notice described in
37 subparagraph (A) to the commission not later than 30 days after
38 the dismissal, nonreelection, suspension, placement on unpaid
39 administrative leave, resignation, or departure from employment
40 of the employee.

1 (C) For purposes of subparagraphs (A) and (B), a change in
2 status due solely to unsatisfactory performance pursuant to
3 paragraph (4) of subdivision (a) of Section 44932 or a reduction
4 in force pursuant to Sections 44955 to 44958, inclusive, is not a
5 *result of* an allegation of misconduct.

6 (4) A notice from an employer that a complaint was filed with
7 the school district alleging sexual misconduct by a credentialholder.
8 Results of an investigation by the committee based on this
9 paragraph shall not be considered for action by the committee
10 unless there is evidence presented to the committee in the form of
11 a written or oral declaration under penalty of perjury that confirms
12 the personal knowledge of the declarant regarding the acts alleged
13 to constitute misconduct.

14 (5) A notice from a school district, employer, public agency, or
15 testing administrator of a violation of Section 44420, 44421.1,
16 44421.5, or 44439.

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

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

23 (c) An initial review commences on the date that the written
24 notice is mailed to the applicant or credentialholder that his or her
25 fitness to hold a credential is under review. Upon commencement
26 of a formal review pursuant to Section 44244, the committee shall
27 investigate all alleged misconduct and the circumstances in
28 mitigation and aggravation. The investigation shall include, but
29 not be limited to, all of the following:

30 (1) Investigation of the fitness and competence of the applicant
31 or credentialholder to perform the duties authorized by the
32 credential for which he or she has applied or that he or she presently
33 holds.

34 (2) Preparation of a summary of the applicable law, a summary
35 of the facts, contested and uncontested, and a summary of any
36 circumstances in aggravation or mitigation of the allegation.

37 (3) Determination of probable cause for an adverse action on
38 the credential. If the allegation is for unprofessional or immoral
39 conduct, the committee, in any formal review conducted pursuant
40 to Section 44244 to determine probable cause, shall permit the

1 employer of the credentialholder to be present while testimony is
2 taken. If the allegation of unprofessional or immoral conduct
3 involves sexual abuse, the employer shall be examined in the
4 meeting for any relevant evidence relating to the sexual abuse.

5 (A) If the committee determines that probable cause for an
6 adverse action does not exist, the committee shall terminate the
7 investigation.

8 (B) If the committee determines that probable cause for an
9 adverse action on the credential exists, upon receipt of a request
10 from an applicant or a credentialholder pursuant to Section
11 44244.1, the commission shall initiate an adjudicatory hearing, as
12 prescribed by Chapter 5 (commencing with Section 11500) of Part
13 1 of Division 3 of Title 2 of the Government Code, by filing an
14 accusation or statement of issues.

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

17 (1) (A) Official records of a state or federal court that reflect a
18 conviction or plea, including a plea of nolo contendere, to a
19 criminal offense or official records of a state court that adjudge a
20 juvenile to be a dependent of the court pursuant to Section 300 of
21 the Welfare and Institutions Code due to allegations of sexual
22 misconduct or physical abuse by a credentialholder or applicant.

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

27 (2) An affidavit or declaration signed by a person or persons
28 with personal knowledge of the acts alleged to constitute
29 misconduct.

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

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

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

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

37 (e) (1) Upon completion of its investigation, the committee
38 shall report its actions and recommendations to the commission,
39 including its findings as to probable cause, and if probable cause
40 exists, its recommendations as to the appropriate adverse action.

1 (2) The findings shall be available, upon its request, to the
2 employing or last known employing school district, or, if adverse
3 action is recommended by the committee and the credentialholder
4 has not filed a timely appeal of the recommendation of the
5 committee pursuant to Section 44244.1, upon a request made within
6 five years of the date of the committee's recommendations to a
7 school district providing verification that the credentialholder has
8 applied for employment in the school district. The findings, for all
9 purposes, shall remain confidential and limited to school district
10 personnel in a direct supervisory capacity in relation to the person
11 investigated. Any person who otherwise releases findings received
12 from the committee or the commission, absent a verified release
13 signed by the person who is the subject of the investigation, shall
14 be guilty of a misdemeanor.

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

18 (f) (1) Except as provided in paragraph (2) and, notwithstanding
19 subdivision (b), for purposes of determining whether jurisdiction
20 exists under subdivision (b), the commission, in accordance with
21 Section 44341, may make inquiries and requests for production
22 of information and records only from the Department of Justice,
23 a law enforcement agency, a state or federal court, and a licensing
24 agency of this state or a licensing agency of another state.

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

27 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
28 ~~Section 6 of Article XIII B of the California Constitution because~~
29 ~~the only costs that may be incurred by a local agency or school~~
30 ~~district will be incurred because this act creates a new crime or~~
31 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
32 ~~for a crime or infraction, within the meaning of Section 17556 of~~
33 ~~the Government Code, or changes the definition of a crime within~~
34 ~~the meaning of Section 6 of Article XIII B of the California~~
35 ~~Constitution.~~

36 *SEC. 3. No reimbursement is required by this act pursuant to*
37 *Section 6 of Article XIII B of the California Constitution for certain*
38 *costs that may be incurred by a local agency or school district*
39 *because, in that regard, this act creates a new crime or infraction,*
40 *eliminates a crime or infraction, or changes the penalty for a crime*

1 *or infraction, within the meaning of Section 17556 of the*
2 *Government Code, or changes the definition of a crime within the*
3 *meaning of Section 6 of Article XIII B of the California*
4 *Constitution.*

5 *However, if the Commission on State Mandates determines that*
6 *this act contains other costs mandated by the state, reimbursement*
7 *to local agencies and school districts for those costs shall be made*
8 *pursuant to Part 7 (commencing with Section 17500) of Division*
9 *4 of Title 2 of the Government Code.*

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