
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

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Consultant: Lenin Del Castillo
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Subject: Certificated school employees: reduction in workforce: deviation from order of seniority: career pathway programs

SUMMARY

This bill allows school districts to exempt teachers in career technical education or career pathways programs, and also for purposes of maintaining or achieving compliance with the school district's local control and accountability plan, from the seniority-based staffing provisions in current law.

BACKGROUND

Existing law requires school districts to provide preliminary notification to a permanent employee that his or her services will not be required for the ensuing year no later than March 15th and provide final notification of termination of his or her services by May 15th. Permanent employees that receive a preliminary layoff notice are allowed to request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. The hearing is to be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and students. Copies of the proposed decision, which is not binding on the governing board, shall be submitted to the governing board and to the employee on or before May 7th. (Education Code § 44949)

Existing law requires districts to terminate employees in the inverse of the order in which they were employed. School districts may deviate from the order of seniority if:

1. The school district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by certain specialized services credentials and the retained individual has the specific experience or training required to meet that need or to provide those services, which others with more seniority do not possess.
2. For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws. (EC § 44955)

These seniority-based provisions also apply to the preferred rights to reappointment for permanent and probationary employees whose services have been terminated as outlined in EC § 44956 and EC § 44957.

Existing law defines linked learning programs as multi-year, comprehensive high school programs of integrated academic and technical study that are organized around a broad theme, interest area, or industry sector, and provide curriculum choices that prepare participating pupils for a range of postsecondary options, including two and four-year colleges, apprenticeships, and formal employment training. Current law specifies that linked learning programs are comprised, among other things, of an integrated core curriculum that meets the eligibility requirements for admission to the University of California and the California State University and is delivered through project-based learning and other engaging instructional strategies. (Education Code § 52372.5)

ANALYSIS

This bill:

1. Specifies that career technical education or a career pathways program is included as a specific course or course of study for which a school district may deviate from terminating a permanent certificated employee or reappointing a permanent certificated or probationary employee in order of seniority.
2. Provides that a school district may deviate from terminating a certificated employee in order of seniority for purposes of maintaining or achieving compliance with the school district's local control and accountability plan.

STAFF COMMENTS

1. ***Need for the bill.*** According to the author's office, the side effects of seniority on career pathways programs can cause problems for teachers and students. These programs typically require a more stable teaching staff because not only must the teacher be proficient in teaching the subject matter, but he or she must also be knowledgeable about the specific career pathway central to his or her school. Learning the elements of a particular theme takes time, and consistency among staff is critical. The author's office indicates that seniority rules undermine this because teachers may get "bumped" based on the date of hire rather than school academic priorities, making it difficult to maintain a stable faculty that can deliver the unique educational experience provided in career pathway programs. Further, there may be unnecessary cost pressures on school districts with career pathway schools to retrain new teachers every year due to seniority bumping.
2. ***Priority.*** Career technical education (CTE) and career pathways programs may provide valuable benefits of combining academics, technical training, and workplace experiences potentially leading to higher graduation rates. However, do teachers in career pathways programs or those that teach CTE courses deserve more protection in staffing decisions than other teachers? It is unclear whether the impacts of teacher layoffs for these courses are more severe than instructors for high school graduation course requirements such as English, math, and science that are not affiliated with CTE or career pathways programs. Additionally, opponents of the bill argue that seniority is a way to objectively release employees and to preserve the most experienced teaching professionals.

The bill also allows school districts to deviate from seniority with layoffs for purposes of maintaining or achieving compliance with a school district's local control and accountability plan (LCAP). The LCAP is a comprehensive planning document that reflects a school district's annual goals (and actions to achieve those goals) in each of the eight state priorities which are intended to encompass the key features of high-quality educational programs. School districts are required to include associated data in their LCAPs and as well as both district-wide goals and goals for each numerically significant student subgroup in the district. Further, school district LCAPs can include annual goals in self-selected areas of local priority in addition to the specified state priorities. While school districts are required to use a template developed by the State Board of Education to create consistency across the state, each school district has discretion in the development of its LCAP and can tailor it to meet the specific needs of its local community. As such, it appears that the bill would allow school districts significant flexibility in determining how to terminate employees.

3. ***Is the bill necessary?*** Current law allows a school district to deviate from seniority if it demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by certain specialized services credentials and the retained individual has the specific experience or training required to meet that need or to provide those services, which others with more seniority do not possess. To the extent that a school district can demonstrate that career technical education (CTE) or a career pathways program meets these criteria, school districts may already be able to deviate from seniority for these programs under current law.
4. ***Vergara v. California.*** The *Vergara* case was filed here in California by nine public school children from around the state in May 2012. The case challenges various provisions of the education code related to the way the teacher workforce is managed, including seniority and last in, first statutes. The plaintiffs argue that these laws play out in classrooms and schools in ways that violate students' rights to access equal education under the California constitution. In June 2014, the Los Angeles Superior Court issued a final judgment in favor of the students on all three issues in August 2014. In September 2014, Governor Brown and Attorney General Harris filed an appeal of the decision. The California Teachers Association and the California Federation of Teachers, formal interveners in the case, also filed an appeal of the decision. The appeal is awaiting hearing at the appellate court level and a decision is expected in the Fall of 2015. Depending on the outcome, the *Vergara* case could potentially impact the same seniority provisions of the education code that this bill proposes to amend.
5. ***Linked learning.*** As defined in statute, linked learning programs integrate academic instruction with technical curriculum and work-based learning within the context of industry sectors identified in the model curriculum standards for career technical education adopted by the State Board of Education. These programs connect learning in the classroom with real-world applications outside of school. Whether the linked learning occurs within a program, is employed as a strategy in an individual course, or is utilized as a methodology by one or more high school departments, the underlying premise is to "link" academic constructs with opportunities for project-based "learning."

AB 790 (Furutani, Chapter 616, Statutes of 2011) established the Linked Learning Pilot Program for the purpose of implementing districtwide linked learning programs. In January of 2013, the State Department of Education chose twenty participants that include individual school districts, consortia of districts, and county offices of education to take part in the Linked Learning Pilot Program, based on competitive criteria. The program, contingent upon the availability of funding, is scheduled to become inoperative on July 1, 2017.

6. ***Career Pathways Trust Program.*** AB 86 (Committee on Budget, Chapter 48, Statutes of 2013) created the California Career Pathways Trust and provided \$250 million on a one-time basis to school districts, county superintendents of schools, charter schools, and community college districts in the form of one-time competitive grants. The 2014-15 Budget Act provided an additional \$250 million for a program total of \$500 million. Grants were available for K-14 career pathways programs to build stronger connections between businesses, schools, and community colleges to better prepare students for the 21st century workplace and place a greater emphasis on career-based learning.

Unlike “linked learning”, it does not appear that “career pathways” is defined in statute. There are similarities with the purposes of the Career Pathways Trust and the Linked Learning Pilot programs, but absent a clear definition of “career pathways”, it is unclear if the bill’s provisions apply only to those grant recipients under the Career Pathways Trust Program or whether it applies to the Linked Learning Pilot Program as well. Due to the similarities of the programs, the bill could reasonably be interpreted to apply to both programs. The bill could also be interpreted to apply to any school that is implementing similar educational models in terms of putting teams of faculty together to deliver their specific pathways program and curriculum, but is not funded pursuant to those programs. In the latter case, this bill could have broader implications.

7. ***Related and prior legislation.***

AB 1044 (Baker) proposes to repeal the various seniority-based staffing provisions in current law and instead require school districts to adopt policies regarding the dismissal of employees when reductions in workforce are necessary. This bill is pending before the Assembly Education Committee.

SB 1185 (Huff, 2014), similar to this bill, would have allowed school districts to exempt career pathways program teachers from the seniority-based staffing provisions in current law. SB 1185 failed passage in this Committee.

AB 86 (Committee on Budget), Chapter 48, Statutes of 2013, established the California Career Pathways Trust and appropriated \$250 million in one-time competitive grants for its purposes.

SB 1070 (Steinberg), Chapter 433, Statutes of 2012, modified the Career Technical Education Pathways Program to improve linkages and career technical education pathways between high schools and community colleges.

SB 355 (Huff, 2011) proposed to authorize school districts to evaluate and assess the performance of certificated employees using a multiple-measures evaluation system, make specified employment decisions based on teacher performance, and expand the reasons districts may deviate from the order of seniority in terminating and reappointing teachers. SB 355 failed passage in this Committee.

SB 1285 (Steinberg, 2010) proposed various changes to the procedures school districts are required to follow when hiring, terminating, and reappointing teachers, including criteria to deviate from seniority. This bill was held in the Assembly Rules Committee.

SB 955 (Huff, 2010) would have made various changes to statutes governing staffing notification deadlines, layoff and dismissal procedures, and reemployment preferences pertaining to certificated educators. This bill was heard and passed by this Committee and subsequently held by the Senate Rules Committee.

SUPPORT

California Chamber of Commerce
School Employers Association of California

OPPOSITION

American Federation of State, County and Municipal Employees (AFSCME)
California Federation of Teachers
California School Employees Association
California Teachers Association

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