
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 1220 **Hearing Date:** June 27, 2018
Author: Weber
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Urgency: No **Fiscal:** No
Consultant: Ian Johnson

Subject: Certificated school employees: permanent status.

SUMMARY

This bill extends the probationary period up to three years for certificated employees in school districts and teachers in county offices of education with an average daily attendance (ADA) greater than 250 pupils.

BACKGROUND

Existing law:

- 1) Requires that a certificated employee of a school district or a teacher at a county office of education having an ADA of 250 or more who, after having been employed for two complete consecutive school years, is reelected for the next succeeding school year, at the commencement of the succeeding school year be classified as and become a permanent employee.
- 2) Requires the governing board or the county superintendent to notify the employee, on or before March 15, of the employee's second complete consecutive school year of employment, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board or the county superintendent does not give notice on or before March 15, the employee shall be deemed reelected for the next succeeding school year. This applies only to probationary employees whose probationary period commenced during the 1983–84 fiscal year or any fiscal year thereafter.
- 3) Requires every employee of a school district of any type or class having an ADA of 250 or more who, after having been employed by the district for three complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district. Specifies this applies only to probationary employees whose probationary period commenced prior to the 1983–84 fiscal year.
- 4) Establishes the Stull Act, enacted in 1971, which governs certificated employee evaluations and requires school districts to evaluate and assess teacher performance as it reasonably relates to pupil performance on criterion referenced tests, teacher technique and strategies, curricular objectives, and the

maintenance of a suitable learning environment. Specifies that in the development and adoption of evaluation guidelines and procedures, the governing board shall avail itself of the advice of the certificated instructional personnel in the district's organization of certificated personnel pursuant to collective bargaining statutes. Specifies that a school district may, by mutual agreement between the exclusive representative of the certificated employees of the school district and the governing board of the school district, include any objective standards from the National Board for Professional Teaching Standards or any objective standards from the California Standards for the Teaching Profession. Specifies that teacher evaluations shall be made on a continuing basis at least once each school year for probationary personnel; at least every other year for personnel with permanent status; and, at least every five years for personnel with permanent status who have been employed at least 10 years with the school district, are highly qualified, if those personnel occupy positions that are required to be filled by a highly qualified professional, and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree. Specifies that an employee who receives an unsatisfactory rating in the area of teaching methods or instruction may be required to participate in a program designed to improve appropriate areas of the employee's performance; and, requires if a school district participates in the Peer Assistance and Review Program for Teachers (PAR), employees who receive an unsatisfactory rating shall participate in PAR.

- 5) Authorizes a first and second-year probationary employee to be dismissed during the school year for unsatisfactory performance; and, specifies that any dismissal shall be in accordance with all of the following procedures:
- a) The superintendent of the school district or the superintendent's designee shall give 30 days' prior written notice of dismissal, not later than March 15 in the case of a probationary employee in the second complete consecutive school year of probationary employment. The notice shall include a statement of the reasons for the dismissal and notice of the opportunity to appeal. In the event of a dismissal for unsatisfactory performance, a copy of the evaluation conducted pursuant to Section 44664 shall accompany the written notice.
 - b) The probationary employee shall have 15 days from receipt of the notice of dismissal to submit to the governing board of the school district a written request for a hearing. The governing board of the school district may establish procedures for the appointment of an administrative law judge to conduct the hearing and submit a recommended decision to the governing board. The failure of a probationary employee to request a hearing within 15 days from receipt of a dismissal notice shall constitute a waiver of the right to a hearing.

ANALYSIS

This bill:

- 1) Authorizes a county superintendent of schools (CS) with an average daily attendance (ADA) greater than 250 pupils to classify teachers as permanent employees after the teacher's second complete consecutive school year, unless the CS offers that employee a third complete consecutive school year of employment as a probationary employee.
- 2) Requires the CS to notify a teacher on or before March 15 of the teacher's second complete consecutive school year of the decision to reelect or not reelect the teacher for the next school year, or offer a third year of probation.
- 3) Requires the CS to notify a teacher on or before March 15 of the teacher's third complete consecutive school year of the decision to reelect or not reelect the teacher for the next school year.
- 4) Requires, if the CS does not give notice on or before March 15, the teacher shall be deemed reelected for the next succeeding school year and, at the commencement of the succeeding school year, be classified as and become a permanent employee.
- 5) Specifies employees shall have the same rights and duties as employees of school districts to which Education Code (EC) Section 44929.21 applies. EC Sections 44842, 44929.21, 44929.24, 44948.3, and 44948.5 apply to these employees.
- 6) Specifies that if a CS chooses to offer a third year of probationary employment, the CS shall:
 - a) Develop an individualized improvement plan to address the deficiencies identified in the employee's evaluation. The individualized improvement plan shall be developed in partnership with the employee and the evaluator.
 - b) Provide the employee with copies of all prior evaluations, prior to the individualized improvement plan meeting.
 - c) Provide individualized professional development consistent with the plan and prioritize the allocation of existing professional development funding to a probationary employee in his or her third complete consecutive school year of employment.
- 7) Authorizes a school districts with an ADA greater than 250 pupils to classify employees as permanent employees after the employee's second complete consecutive school year, unless the school district offers that employee a third complete consecutive school year of employment as a probationary employee.
- 8) Requires the governing board of a school district (school district) to notify a certificated employee on or before March 15 of the employee's second complete consecutive school year of the decision to reelect or not reelect the employee for the next school year, or offer a third year of probation.

- 9) Requires the school district to notify a teacher on or before March 15 of the teacher's third complete consecutive school year of the decision to reelect or not reelect the employee for the next school year.
- 10) Requires, if the school district does not give notice on or before March 15, the certificated employee shall be deemed reelected for the next succeeding school year and, at the commencement of the succeeding school year, be classified as and become a permanent employee.
- 11) Specifies that if a school district chooses to offer a third year of probationary employment, the school district shall:
 - a) Develop an individualized improvement plan to address the deficiencies identified in the employee's evaluation. The individualized improvement plan shall be developed in partnership with the employee and the evaluator.
 - b) Provide the employee with copies of all prior evaluations, prior to the individualized improvement plan meeting.
 - c) Provide individualized professional development consistent with the plan and prioritize the allocation of existing professional development funding to a probationary employee in his or her third complete consecutive school year of employment.
- 12) Specifies to the extent that this measure conflicts with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2018, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the changes made to this section by the act adding this subdivision shall not apply to the expiration or renewal of that collective bargaining agreement.
- 13) Clarifies that the existing procedures for a probationary employee that is dismissed during the school year for unsatisfactory performance apply to third-year probationary employees.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "California has one of the shortest probationary periods of any state, with the deadline for notification of "reelection" of March 15th of the second year of teaching. If an additional three months are deducted for summer break where most teachers are out of the classroom, the total time a teacher has to develop and demonstrate their classroom effectiveness – and for administrators to evaluate it - is only around fifteen months. Research supports a longer probationary period as teachers on an upward trajectory will show notable growth in years two through five, with associated gains in student outcomes. Decisions coming at the 18-month mark would only capture first year gains, however, making it difficult to determine if a teacher is on an upward trajectory. Longer probationary periods are now the norm nationally. Forty-two states provide teachers three to five years to

demonstrate classroom success and earn permanent status. AB 1220 provides a commonsense fix by giving teachers an extra year to develop and demonstrate – and for administrators to assess - classroom effectiveness."

- 2) ***What do teachers say about tenure and the current system?*** As part of their 2015 publication "Raising the Bar: The Views of California Teachers on Tenure, Layoffs, and Dismissal", Teach Plus noted that "Judges and lawyers are just one set of actors in a large cast of stakeholders who have a significant public voice in how teachers are hired, retained and dismissed. Legislators, school and district administrators, state department of education officials, researchers, parents and assorted policy experts and school reformers have all stepped to the metaphorical microphone to weigh in with an opinion. Yet the voice that has arguably been the least present is that of actual practicing public school teachers."

For this publication, Teach Plus conducted an online survey of over 500 California traditional K-12 public school teachers. The composition of the responding teachers included 15 percent with five or fewer years of teaching experience, 21 percent with six to 10 years of experience, 34 percent with 11 to 19 years of experience and 30 percent with 20 or more years of experience. The key findings from the publication are:

- a) Teachers highly value tenure, but strongly support making tenure a more performance-based, professional benchmark.
- b) Teachers believe that classroom performance should be an important element in any layoff decision.
- c) The current system needs to better support struggling teachers while setting a clear time frame for exiting persistently ineffective teachers from the profession.
- d) Teachers must play a central role in both the development of policy around tenure, layoff, and dismissal systems and in the execution of these policies.

Another particularly notable finding related to this bill is that teachers strongly support a period of time beyond the current 18 months for an administrator to determine whether or not a teacher should be granted tenure. In fact, 72 percent of teachers believe that 18 months is not enough time for an administrator to make a tenure determination. A separate question found that, on average, teachers believe that five years is the appropriate length of time before an administrator makes a decision about whether or not a teacher should be granted tenure. Only 15 percent of teachers believed that the appropriate amount of time should be two years or less.

- 3) ***Extending the probationary period.*** This bill allows the probationary period for certificated staff and teachers to last for three years, which is an increase of one year over the existing two-year period. For the third year of probation, school districts and county superintendents would be required to develop an

individualized improvement plan in partnership with the employee and the evaluator to address the deficiencies identified in the employee's evaluation and to prioritize the allocation of existing professional development funding to a probationary employee in his or her third complete consecutive school year of employment.

Currently, during the two-year probationary period, the law does not require a school district or county superintendent to demonstrate cause or provide due process for employees that are not reelected within this period. This would remain unchanged for the third year of probation under this measure. While the bill provides additional time for school districts and county superintendents to evaluate whether a new teacher is effective or not and more opportunity for the teacher to improve his or her skills, the Committee may wish to consider whether extending the probationary period is reasonable absent a requirement for school districts to indicate a reason for not electing to keep the teacher and not affording that teacher with due process rights. Further, the Committee should consider whether the individualized improvement plan will provide sufficient support, particularly compared to peer review models that have been shown to be more effective.

- 4) ***Research on the Peer Assistance and Review Program for Teachers.*** The California Peer Assistance and Review (PAR) Program for teachers was established in statute in 1999. The program was developed to assist teachers whose bi-annual personnel reviews were not satisfactory. Assistance and support are provided by exemplary teachers and include subject matter knowledge, teaching strategies, or both. While school districts no longer receive dedicated state funding to administer PAR, they can continue to support the program with discretionary funding under the Local Control Funding Formula.

A 2011 report by SRI International and J. Koppich and Associates titled "Peer Review: Getting Serious About Teacher Support and Evaluation" examined the PAR programs in the Poway and San Juan school districts in California. After evaluating these districts' programs, which are known to be of high quality, the report included two key conclusions:

- a) Peer support and evaluation can and should exist as a more effective approach to improving instructional practice than isolating teachers.
- b) PAR is a rigorous alternative to traditional forms of teacher evaluation and development, with research showing that peer review is far superior to principals' evaluations in terms of rigor and comprehensiveness. Equally important, peer review offers a possible solution to the lack of capacity of the current system to both provide adequate teacher support and conduct thorough performance evaluations.

The report also included the following key recommendations for the state, and districts and their local unions to consider:

- a) The state should eliminate current statutory barriers to comprehensive Peer Assistance and Review programs, including expanding the programs to non-tenured teachers.
 - b) Local districts and unions interested in the PAR model should reexamine their teacher evaluation policies. This reexamination should have an eye toward implementing the kinds of in-depth support and evaluation that are the hallmarks of these exemplary programs in Poway and San Juan.
 - c) Local districts and their unions should use lessons learned from the work of the Poway and San Juan Governance Boards to improve labor-management collaboration. They can work to form cooperative union-management partnerships authorized to make decisions about high-stakes matters.
- 5) ***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 state employment provisions of the education code related to the way the teacher workforce is managed, including seniority and last in, first out statutes, and whether they protect incompetent teachers and disproportionately hurt low-income and minority children. 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. A decision was reached in August 2014 with the plaintiffs prevailing. However, the decision was appealed and the state appeals court reversed the trial court's decision on April 14, 2016. The plaintiffs subsequently filed a petition for review with the Supreme Court, which was denied on August 22, 2016, validating many of the arguments made by educators and civil rights groups that the state statutes affirming educator rights do not harm students.
- 6) ***Related legislation.***
- AB 1164 (Thurmond) extends the probationary period up to three years for certificated employees in school districts and teachers in county offices of education with an average daily attendance greater than 250 pupils, and increases the cap on school district reserves, changes the conditions that must be met for the cap to be triggered, and exempts small and basic aid school districts from the cap.

SUPPORT

California Association of California School Business Officials
 California School Employees Association
 California State PTA
 Children Now
 Education Trust—West
 EdVoice
 Families In Schools
 Kern County Superintendent of Schools Office
 Riverside County Superintendent of Schools

Silicon Valley Leadership Group
Valley Industry and Commerce Association

OPPOSITION

California Federation of Teachers
California Professional Firefighters
California School Employees Association
California Teachers Association
Service Employees International Union

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