
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: SB 1224
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Consultant: Lenin DelCastillo
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Fiscal: Yes

Subject: Certificated school employees: assignments and reassignments: seniority: reporting

SUMMARY

This bill requires a local educational agency (LEA) that makes an assignment or reassignment of an employee due to seniority provisions in current law to report them to the State Department of Education (SDE), which would then be required to annually aggregate the data and make it publicly available on its Web site.

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)

When a district is undergoing a layoff, existing law requires the governing board to assign and reassign teachers according to their seniority and qualifications. A teacher must pass a subject matter competency test prior to being assigned to teach a subject he or she has not previously taught and for which he or she doesn't have the appropriate background or teaching credential. (Education Code § 44955)

Existing law requires school districts undergoing layoffs to terminate certificated employees in the inverse order in which they were employed. Current law permits districts to deviate from the order of seniority if:

- 1) The district demonstrates a specific need to teach a specific course or course of study, or to provide services authorized by certain services credentials and the retained individual has the specific experience or training required to meet that need, or

- 2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.
(Education Code § 44955)

Existing law specifies that for a period of 39 months from the date of termination, a permanent teacher, who in the meantime has not turned 65, has preferential rights to reappointment and substitute service in order of seniority. Existing law provides probationary employees preferred rights for a period of 24 months.
(Education Code § 44956 and § 44957)

ANALYSIS

This bill:

- 1) Requires a local educational agency that makes an assignment or reassignment of an employee due to seniority provisions specified in current law to report that assignment or reassignment to the State Department of Education (SDE).
- 2) Requires the SDE to annually aggregate the number of assignments and reassignments reported and make that number available to the public on its Web site.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, "seniority rules dictate that more senior teachers have first rights to employment posts over more junior teachers. When classrooms and programs are consolidated during tough budget years, these newer, younger teachers are bumped first. These decisions are often only based on date of hire. This puts new teachers at a disadvantage and results in a discernable degradation in the continuity of teaching, negatively impacting students. Without knowing how many teachers are bumped in any given year, lawmakers are left with an absence of helpful data that could be used to assess how the current economic outlay, laws and regulations that are being produced are affecting student learning and teacher employment."
- 2) ***Assignments and reassignments.*** School district governing boards are required to make assignments and reassignments whereby employees are retained based on their seniority and qualifications. However, prior to assigning or reassigning a teacher to teach a subject that he or she has not previously taught, and for which he or she does not have a teaching credential, the employee is required to pass a subject matter competency test in the appropriate subject. There may be a combination of factors that lead to the assignment or reassignment of staff, and it may not always be based strictly on seniority. Decisions may be based on the need to fill a district's unique staffing needs. For example, if there is additional demand for a particular career technical education course and there are several teachers to choose from, a district may elect to choose the teacher that may have taught the course previously, rather than a new, less senior teacher that has never taught that course. Additionally, staff

may request a new assignment or to be reassigned to teach a different course. Nonetheless, these decisions are made by the local school district administrators.

- 3) ***What purpose would the data serve?*** In requiring school districts to report assignment and reassignment data to the State Department of Education (SDE) and for SDE to make this information available on its Web site, it is unclear what purpose this would serve or what clear benefit it would provide. Decisions to assign or reassign may vary from district to district, and again, those decisions may not be solely based on seniority or date of hire and take into account other factors such as the teachers' credentials, specific training, and previous experience. In matters of assignment and reassignment, the employees are still employed; these are not situations involving layoffs.
- 4) ***Mandated costs.*** The bill's requirements would likely result in a state-reimbursable mandate imposing additional, unknown costs to the state.
- 5) ***Seniority deviation.*** 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.
- 6) ***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 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 just recently reversed the trial court's decision on April 14, 2016. The plaintiffs have already indicated they will be appealing the ruling to the Supreme Court.
- 7) ***Previous legislation.***

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

SB 453 (Huff, 2013) would have authorized the governing board of a school district to evaluate and assess the performance of certificated employees using a multiple-measures evaluation system; to 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. This bill failed passage in this Committee.

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. This bill 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

None received.

OPPOSITION

California Professional Firefighters
California Teachers Association

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