
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 2128 **Hearing Date:** June 13, 2018
Author: Kiley
Version: May 17, 2018
Urgency: No **Fiscal:** No
Consultant: Ian Johnson

Subject: School employees: dismissal or suspension: hearings: evidence.

NOTE: This bill has been referred to the Committees on Education and Judiciary. A "do pass" motion should include referral to the Committee on Judiciary.

SUMMARY

This bill expands the allegations that (1) a testifying witness at an employment dismissal hearing can share, and (2) decisions relating to the dismissal or suspension of an employee may be based, to include various behaviors or communications of a sexual or abusive nature with a pupil that occurred more than four years before the notice of intent to dismiss was filed.

BACKGROUND

Existing law:

- 1) Prohibits the dismissal of permanent employees except for one or more of the following causes:
 - a) Immoral conduct, including, but not limited to, egregious misconduct;
 - b) Unprofessional conduct;
 - c) Commissioning, aiding or advocating the commission of acts of criminal syndicalism;
 - d) Dishonesty;
 - e) Unsatisfactory performance;
 - f) Evident unfitness for service;
 - g) Physical or mental condition unfitting him or her to instruct or associate with children;
 - h) Persistent violation of or refusal to obey the school laws of the state by the State Board of Education or by the local governing board employing him or her;
 - i) Conviction of a felony or any crime involving moral turpitude;

- j) Advocating for or teaching communism with the intent of indoctrinating the mind of any pupil; or,
 - k) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.
- 2) Prohibits a witness from testifying at an employment dismissal hearing except upon oath or affirmation. Further, testimony may not be given and evidence may not be introduced relating to matters that occurred more than four years before the date of the filing of the notice, except allegations of sexual misconduct and child abuse and neglect offenses.
- 3) Allows, during an employment dismissal hearing, evidence of records regularly kept by the governing board of the school district concerning the employee to be introduced. However, no decision relating to the dismissal or suspension of the employee shall be made based on charges or evidence relating to matters occurring more than four years before the filing of the notice, except allegations of sexual misconduct and child abuse and neglect offenses.

ANALYSIS

This bill expands the allegations that (1) a testifying witness at an employment dismissal hearing can share, and (2) decisions relating to the dismissal or suspension of an employee may be based, to include various behaviors or communications of a sexual or abusive nature with a pupil that occurred more than four years before the notice of intent to dismiss was filed. Specifically, this bill:

- 1) Specifies a witness shall not be permitted to testify at the hearing except upon oath or affirmation. Testimony shall not be given or evidence shall not be introduced relating to matters that occurred more than four years before the date of the filing of the notice, except in one of the following circumstances:
 - a) Testimony or evidence regarding allegations of behavior or communication of a sexual nature with a pupil that is beyond the scope or requirements of the educational program, which may constitute misconduct, or sexual harassment, but not amounting to conduct described in clause (b), may be introduced in a disciplinary proceeding based on similar conduct.
 - b) Testimony or evidence regarding allegations of lewd or lascivious acts with respect to a pupil of any age, communication or contact with a minor in an attempt to commit lewd or lascivious acts as specified, sexual misconduct, child abuse and neglect offenses may be introduced in any disciplinary proceeding.
- 2) Specifies that evidence of records regularly kept by the governing board of the school district concerning the employee may be introduced, but no decision relating to the dismissal or suspension of an employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years before the filing of the notice, except in one of the following circumstances:

- a) Evidence regarding allegations of behavior or communication of a sexual nature with a pupil that is beyond the scope or requirements of the educational program, which may constitute misconduct, or sexual harassment, but not amounting to conduct described in clause (b), may be introduced in a disciplinary proceeding based on similar conduct.
- b) Evidence regarding allegations of lewd or lascivious acts with respect to a pupil of any age, communication or contact with a minor in an attempt to commit lewd or lascivious acts as specified, sexual misconduct, child abuse and neglect offenses may be introduced in any disciplinary proceeding.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "Teacher dismissal policy in California was most recently updated in 2014 with the passage of AB 215 (Buchanan). This bill made a number of changes to teacher dismissal policy, including the following:
 - a) Created an expedited process for removal of teachers who have committed egregious misconduct;
 - b) Revised the process for all other cases so that hearings are required to end within seven months;
 - c) Created more transparency and accountability with regard to disclosing and reporting egregious misconduct and maintaining evidence in a teacher's file.

Since the bill went into effect in 2015, a number of concerns have been raised that AB 215 did not allow administrators and local boards enough flexibility to deal with teachers accused of inappropriate sexual misconduct with students. In many cases, teachers could not be dismissed because it was difficult to develop a pattern of behavior, due to the four-year limitation on testimony and evidence for most allegations of misconduct."

- 2) ***Dismissal changes resulting from AB 215.*** Prior to passage of AB 215 (Buchanan, 2014), many contended that the teacher dismissal process was cumbersome, expensive, and made it difficult to dismiss teachers that should not be in the classroom. While AB 215 did not solve all of these issues, the measure did create a separate, expedited proceeding solely for egregious misconduct cases and attempted to overhaul the hearing process for all other dismissal or suspension causes. The most significant changes that took effect as a result of AB 215 were:
 - a) For cases based solely on egregious misconduct, a separate dismissal or suspension proceeding was created. Egregious misconduct is defined as specified sex, drug, and child abuse and neglect offenses. Charges may be filed at any time, rather than a previously prescribed eight-month window. The hearing is conducted by an Administrative Law Judge, rather

than the three-member Commission on Professional Competence. Evidence of egregious misconduct more than four years old may be introduced.

- b) For other causes, including those combined with egregious misconduct, charges may also be filed at any time. Notice must be by personal service on the teacher if served outside of the instructional year. Discovery is limited to defined disclosures and five depositions of witnesses. If disclosures are not made timely, evidence is precluded from introduction at the hearing except where good cause is shown. Evidence older than four years is not allowed except if it involves sex-based offenses, child abuse, neglect or endangerment. Further, the experience required for panel members on the Commission on Professional Competence was reduced from five to three years.
 - c) For charges only based on unsatisfactory performance, notice must be served during the instructional year of the school site where the teacher is physically employed.
 - d) Agreements to expunge from a school employee's personnel file credible complaints of, substantiated investigations into, or discipline for, egregious misconduct are prohibited (not including the removal of documents where the allegations have been found to be false or unsubstantiated).
 - e) Employees accusing other employees of egregious misconduct, knowing the allegation is false, are subject to certificate revocation.
- 3) ***Four-year evidence rule.*** As noted above, AB 215 removed the four-year statute of limitations for testimony or evidence of sexual crimes and child abuse or neglect during a suspension or dismissal hearing. However, current law still does not allow testimony about or evidence relating to many serious acts if they are alleged to have occurred more than four years ago. Further, current law prohibits this information from being the basis of a decision relating to the dismissal or suspension of a certificated employee. This bill authorizes testimony and evidence relating to matters that occurred in the past to be used for a dismissal decision if the testimony and evidence is related to allegations of behavior or communication of a sexual nature with a pupil that is beyond the scope or requirements of the educational program, sexual harassment, lewd or lascivious acts with respect to a pupil of any age, or communication or contact with a minor in an attempt to commit lewd or lascivious acts, as specified.

Given that there have been cases of immoral conduct by teachers where evidence older than four years could have given the school district and the Commission on Professional Competence a clearer picture of ongoing inappropriate behavior, this bill will help illuminate patterns of behavior during a dismissal hearing related to inappropriate physical and verbal contact between a teacher and a student.

Association of California School Administrators
California School Boards Association
Placer County Office of Education
School Employers Association of California
Small School Districts' Association

OPPOSITION

None received

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