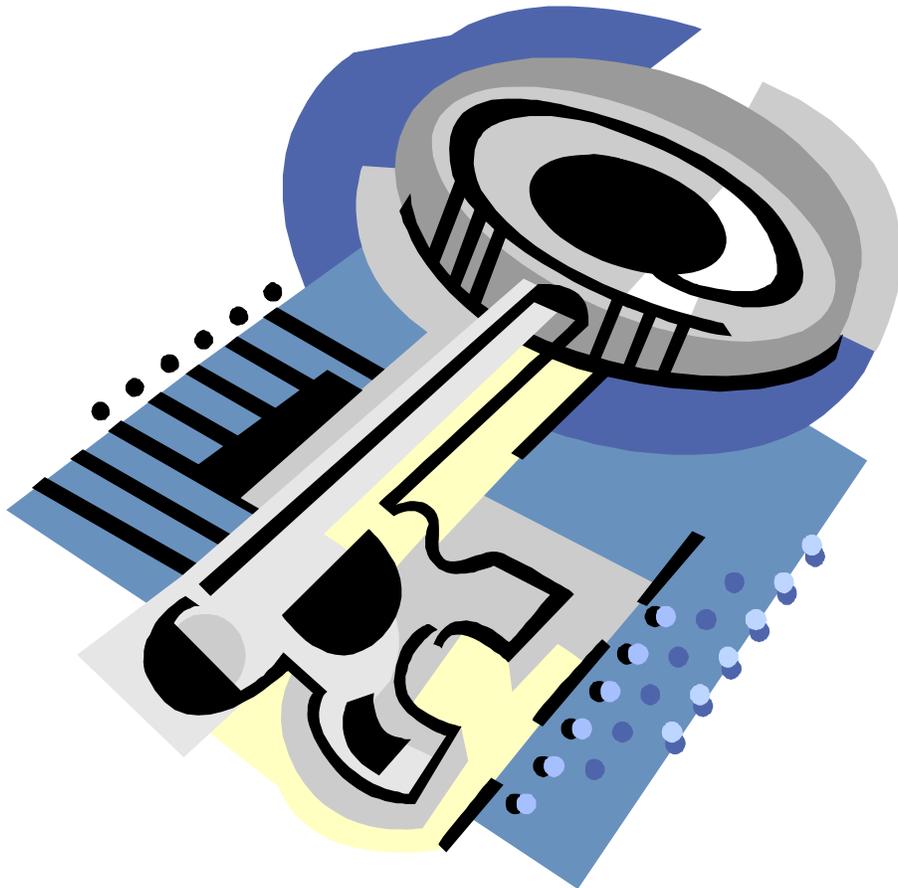


EVALUATION

Key to Excellence



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CALIFORNIA TEACHERS ASSOCIATION

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TABLE OF CONTENTS

Definitions	1
The Need For Due Process (Tenure) Laws	2
Myths About Due Process (Tenure)	4
History of Tenure in California	6
Statutory Evaluation Standards (K-12)	12
Evaluation of Community College Instructors	16
CTA Evaluation and Due Process (Tenure) Policy	18
The Permanent Teacher Dismissal Law (K-12)	23
Process Flow Chart For Permanent Teachers (K-12)	35
The Probationary Teacher Dismissal Law (K-12)	37
The Temporary Teacher Dismissal Law (K-12)	41
The Substitute Teacher Dismissal Law (K-12)	41
Dismissal Procedures Affecting Community College Instructors	42
Evaluation and Collective Bargaining Contract	53
Appendices	
<u>A</u> Collective Bargaining Checklist	68
<u>B</u> California Standards for the Teaching Profession	71
<u>C</u> Peer Assistance and Peer Review Contract Language	72
<u>D</u> CTA Group Legal Services Program	82

EVALUATION: Key To Excellence

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Recognition is given to members of the Evaluation Subcommittee of the California Teachers Association Committee on Teacher Evaluation and Academic Freedom for preparation of this publication.

We also wish to acknowledge indebtedness to former members and the staff consultant who prepared the original 1971 publication, the 1984 revision, and the 1995 revision *EVALUATION—KEY TO TENURE*, as well as W Ronald Brown former member of the Committee on Teacher Evaluation and Academic Freedom for his dedicated service in the development of the policies and materials on which this publication is based.

In addition, the committee acknowledges the subcommittee that reviewed the document.

It is the purpose of this publication to outline the principles of evaluation and due process as stated in law and CTA policy; to inform the membership of these principles; and to provide a “source” document which sets forth rationale for public support of the concepts of evaluation and due process (tenure) for California teachers.



Sandi Nelson (subcommittee chairperson), Jim Rogers (committee chairperson), Jim Himelhoch, Mary Castner, Marty Meeden, Lyn-Del Province, Sharon Foote, Kathy Yen, Pixie Hayward Schickele (CTA Board Liaison), Caryn Coss (staff consultant), Margaret Wallace (staff consultant)

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DEFINITIONS

Throughout the following text, the terms “tenure,” “due process,” and “permanent status” are frequently utilized. For purposes of this document, these terms are defined as follows:

tenure (1) the act or right of holding property, an office, a position, etc.; (2) the statutory right of public school teachers and other civil servants to retain their positions on a continuing basis, subject to the fulfillment of specified requirements and subject to removal for adequate cause or economic necessity; (3) the constitutional right to due process of law in any dismissal action.

due process (1) the course of legal proceedings established by the legal system of a nation or state to protect individual rights and liberties; (2) the guarantee of notice and a fair hearing prior to deprivation of property, established by the fifth and fourteenth amendments of the United States Constitution which provide that no individual may be deprived of property or liberty without “due process of law.” Under California law this is what applies to K-14 teachers.

permanent status (1) every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two 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; (2) that status achieved by successfully completing a probationary period.



THE NEED FOR DUE PROCESS LAWS

Due process for K-14 public school teachers developed and exists fundamentally as a protection for pupils and schools to ensure their rights to a continuing program of quality education. Pupils deserve the best instruction available, in schools staffed by qualified professionals hired and retained on the basis of professional criteria. Such instruction is possible only if the employment practices of the schools are free from discrimination or economic bias. Because of the critical importance to pupils and teachers of the schools of guarantees of academic freedom, protection from arbitrary dismissal actions, and defense against external pressures that would restrict the student's right to learn, it is vital that procedures providing for these matters be based in law.

The denial of teachers' rights to due process protection in dismissal actions would create havoc in the orderly operation of the schools and place the pupils of California in a vulnerable position subject to the political and social biases and pressures of school boards, special-interest groups and ambitious itinerant school administrators. The concept of due process as a basic protection for pupils and their educational program is too important not to be secured firmly in statutory provisions.

Process of Due Process

Due process exists primarily to maintain and improve the educational opportunities of pupils by protecting their right to learn from the interference of political, social or economic pressure groups that would restrict or distort the educational program in conformity to their special purposes. To this end, due process operates (1) to set up definite, orderly procedures by which incompetent, unsatisfactory teachers may be dismissed; (2) to protect competent, satisfactory teachers from unjust dismissal; (3) to protect teachers in the exercise of their rights and duties as American citizens; (4) to encourage boards of education to place the welfare of children above the selfish interests of those political or economic groups which may seek to dominate the schools.

Due process, then, is a process relating to the dismissal of teachers, based on evaluation of instruction, and related directly to the quality of instruction in the schools. California Teachers Association policy emphasizes that teachers must be held to the highest standards of professional preparation and satisfactory performance. It insists only that those standards relate to the quality of education, and, when charges of substandard teaching are made, that the reasons for the charges are substantial and that they do, indeed exist.



It is the hope of the California Teachers Association that California will never return to the days before it had due process law, when the characteristic hiring and firing practices of that era were rooted in paternalism, nepotism, favoritism, caprice, whimsy, political patronage, and the personal preferences of individual administrators and board members. A return to that era would once again leave the state's educational programs at the mercy of any political or vested interest groups sufficiently motivated and equipped to wage campaigns of pressure to achieve their special ends.

Employment Abuses

The experience of teachers in five classifications is available to give evidence of the conditions that apply when guarantees of fair dismissal practices are not present. These classifications are (1) teachers dismissed before due process legislation was first enacted in California; (2) teachers in districts with fewer than 250 ADA, in which due process provisions are merely permissive under the law; (3) probationary teachers for whom separate dismissal procedures are provided under the law; (4) temporary teachers who may be dismissed at any time merely at "the discretion of the governing board"; and (5) substitute teachers who often are not asked to substitute again without any reason.

In each of these classifications, experience has demonstrated abuses of due process, an absence of sound evaluation practices, and violation of fundamental procedures of fairness and reasonableness in employment practices. Cases in the files of the California Teachers Association indicate that when full protection of due process and impartial decision-making authority is absent, as in the five classifications above, dismissals in many cases have been characterized by:

(a) **Nepotism and political patronage:** (dismissing teachers to open jobs for relatives and friends or to repay political debts stemming from election to the office of school board member.)

(b) **Political and social bias:** (dismissing teachers because they hold political views unpopular with the employing board or come from social or ethnic backgrounds against which influential board or community members are prejudiced)

(c) **Favoritism, bossism, or bureaucratic despotism:** (dismissing teachers because of the personal preferences of administrators or because of teacher activity in professional associations, etc.)

- (d) **Economic pressures:** (dismissing experienced teachers on higher levels of salary schedules in order to replace them with less prepared or less experienced and therefore less expensive employees.)
- (e) **Trivia:** (dismissing teachers for unsubstantiated, inconsequential, irrelevant, or trivial reasons unrelated to any reasonable connection with the quality of instruction provided for pupils.)

It must be emphasized that, for these five classifications of employees, these practices were possible only because the procedures under which they could be dismissed failed to provide guarantees of due process, and allowed the accusing agency (the school district) to judge the merits of its own accusations. In the case of probationary teachers, for example, many cases show that boards have dismissed teachers even when the charges have been found to be inadequate by hearing officers following administrative hearings.

MYTHS ABOUT DUE PROCESS

Current misconceptions regarding the law have created several myths about tenure, popularly held, but all false. Paramount among these are:

MYTH #1: “There is a tenure law in California for K-14.”

The truth is, California dismissal law doesn’t refer to tenure. The concept of tenure as it developed in the medieval university has no connection with current practice, which provides only dismissal procedures guaranteeing due process rights and pertinent reasons for dismissal actions. Tenure has become a popular term used as a scapegoat for the real problems, which are ineffective evaluation of instruction, poor administrative practices, and inadequate investment by the public schools in experimentation, research and development, and in-service education.

MYTH #2: “Tenure is a lifetime guarantee of employment.”

The truth is that teachers have permanent status, not tenure. Within permanent status there is a procedure for dismissing teachers which guarantees due process and impartial consideration of the facts when disagreement about the facts exists.

MYTH #3: “You can’t fire a tenured teacher in California.”

The truth is that teachers are fired every year under the dismissal laws in California. In addition, when difficulties in dismissing teachers arise under the law, it is inadequate application of the law by administrators, and not the law itself, that is at fault.

MYTH #4: “Tenure is designed to protect teachers.”

The truth is that due process was developed and exists primarily to protect pupils and schools from political, social and economic interference with pupils’ right to a continuing program of quality education. The major function of due process is to insist that decisions about the quality of instruction in the schools be based on educational reasons, rather than on prejudicial or inappropriate selfish reasons.

MYTH #5: “Tenure protects the incompetent teacher.”

The truth is that California Teachers Association policy for many years has insisted that “Evaluation Is the Key to Excellence.” Where sound evaluation practices exist, it is the teacher whose inadequacies are identified and who is most affected by the need to improve, or in the absence of improvement, will be dismissed under due process provisions. Therefore, due process is a mechanism for evaluation of instruction which exposes rather than protects incompetence.

MYTH #6: “A good teacher doesn’t need tenure.”

The truth is that teachers who perform satisfactorily need the protection of due process and it is the competent teacher who is most needed to maintain and improve the quality of education for pupils. Every educational employee is entitled to due process. The broad spectrum of instructional practices require that differing methodologies require equal protection guaranteed under California laws. The competent teacher needs the due process laws!



HISTORY OF "TENURE" IN CALIFORNIA

Before enactment of the first "tenure" laws in California, teachers customarily were hired for one year at a time and could be dismissed for any reason, just or unjust, at the end of the year. There was little continuity of service and re-employment decisions often were based on political patronage, special interests, nepotism, or personal bias.

First "Tenure" Process

John Swett, founder of the California Teachers Association, persuaded the San Francisco School Board in 1869 to improve this situation by electing teachers "during good behavior" rather than on an annual basis. While improving the situation by giving teachers some reasonable security in their positions as long as their services were satisfactory, the provisions applied only to teachers in San Francisco, and provided no adequate procedure for guarding against abuses. The San Francisco board adopted a two-year probationary period, after which teachers were to be classified as "permanent." This provision was tested and upheld in the courts in 1887.

Statewide "Tenure" Provisions

The first California "tenure" legislation which applied outside of San Francisco was passed in 1911. These statutes provided that a teacher in any public school was automatically re-elected for the following school year, unless notified in a prescribed manner on or before the 10th of June that his or her services would not be required.

The second step in statewide "tenure" came in 1921. The law which became operative that year made permanent tenure possible for all teachers in districts employing eight teachers or more. Permanent status was achieved after two years of satisfactory service. Probationary teachers could be dismissed at the end of the school year by written notice on or before June 10. A procedure for the dismissal of permanent teachers was outlined in the law. The Supreme Court in 1927 held that the 1921 tenure law was constitutional and a proper exercise of legislative power.

The legislature in 1927 conferred the protection of tenure upon teachers in all districts after the completion of three consecutive years of service and election for a fourth year. Because of controversy over this law, especially from smaller districts, the Education Committee of the Assembly requested that a study be made and that recommendations be submitted at the 1931 session for correcting the alleged deficiencies. Accordingly, new bills were introduced in 1931. The major change, included the provision that in schools with an average daily attendance of fewer than 850, permanent tenure could, but need not be granted by the board upon electing the teacher for the fourth year of employment.

Landmark Legislation in 1935

Early in 1933, the California Teachers Association resumed the study of tenure in the hope that acceptable amendments could be suggested to all groups concerned. Modifications were proposed which led to legislation in 1935 prescribing the procedure for dismissing permanent teachers. Instead of a trial before the board, the matter would be tried in court. Verified charges, specifying one or more of the causes for dismissal set forth in the law, would be filed with the board, and the board could then give written notice to the teacher that it intended to dismiss him or her unless a demand a hearing was made within 30 days. The notice had to be accompanied by a copy of the charges. If the teacher did not demand a hearing, the board could dismiss him or her. If the teacher did demand a hearing, the charges would be submitted directly to court.

Probationary Dismissal Provisions

Procedures for dismissing probationary teachers are established separately from those of permanent teachers under the law. Before 1953, probationary teachers in all districts in California could be dismissed, in effect, for any cause, just or unjust, at the discretion of the governing board of the district. In 1953, the legislature provided for probationary dismissal hearings conducted by a hearing officer under the provisions of the Government Code in districts having an ADA of 60,000 or more. In 1955, the ADA was changed to 85,000. In 1961, legislation was passed providing that the employment of probationary teachers could be terminated at the end of the school year “for cause only,” but that the cause must relate “solely to the welfare of the schools and to the pupils thereof.” The probationary teacher was given the right to a hearing, either before a hearing officer sitting with the board or, at the board’s election, by the hearing officer alone. In either event, the governing board made the final decision.

In 1965, the law was amended to provide that probationary dismissal hearings would be conducted by a hearing officer alone, who would recommend a proposed decision to the board. The final decision to accept or reject the recommendation of the hearing officer was left to the board.

The Stull Act

Since 1935, various provisions relating to employment classification, resignations, and leaves of absence have been amended and expanded. The basic procedures established in the 1935 legislation, however, remain as the framework for existing law. In 1961, tenure was extended to cover districts having 250 ADA or more.

EVALUATION: Key To Excellence

In 1972, Assembly Member John Stull initiated legislation that was enacted to provide a comprehensive evaluation system for California teachers. This legislation also modified the dismissal procedure for tenured teachers. Instead of a superior court hearing, the matter would come before a three person Commission on Professional Competence composed of an Administrative Law Judge, and two teacher members, one appointed by the district and one appointed by the accused teacher. The decision of the commission is binding on the parties but is subject to substantive and procedural review by a superior court. Thus, peer review and judgment became a part of permanent teacher dismissal proceedings.

Reform Legislation in 1983

In 1983, the Hughes-Hart educational funding and reform legislation was enacted. This comprehensive legislation authorized the “intermediate sanction” of suspension for all California teachers. It further reduced the probationary period from three years to two years but enabled districts to avoid many of the procedural and substantive due process standards previously afforded probationary teachers.

Clarification of Temporary Employee Re-employment Rights

Since 1983, the fundamental provisions for employee evaluation, retention and dismissal have remained fairly static. Amendments to most statutory provisions have been technical and not substantive changes. The major exception occurred during the 1991-1992 legislative session when Senator Al Alquist introduced a measure to limit the re-employment rights of temporary employees. This proposal, and subsequent enactment, was in response to an appellate court decision that appeared to convey more rights to temporary employees than to probationary employees. This issue is more thoroughly discussed elsewhere in this document.

California Peer Assistance and Review Program For Teachers

In January 1999, legislation was enacted creating the California Peer Assistance and Review Program for Teachers (PAR). This replaces the California Mentor Teacher Program and became fully operational on July 1, 2001.

Up to Five Year Evaluation Period for Permanent

In January 2004, legislation was enacted authorizing the evaluation and assessment of permanent teachers at least every 5 years who have been employed at least 10 years with the school district, are highly qualified, as defined, and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree to this term.

Classification of Employees

Certificated, non-administrative personnel are classified into four (4) major categories; each category containing full-time, part-time, and/or hourly sub-categories. These four (4) classifications are:

Substitute employees — except as provided in Sections 44888¹ and 44920, governing boards of school districts shall classify as substitute employees those employed in positions requiring qualifications, to fill positions of regularly employed persons absent from service.

After September 1 of any school year, the governing board of any school district may employ for the remainder of the school year, in substitute status any otherwise qualified person who consents to be so employed in a position for which no regular employee is available, including persons retired for service under the State Teacher's Retirement System. Inability to acquire the services of a qualified regular employee shall be demonstrated to the satisfaction of the Commission for Teacher Preparation and Licensing.

Any person employed for one complete school year as a temporary employee shall, if re-employed for the following school year in a position requiring certification qualifications, be classified by the governing board as a probationary employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status. (Education Code Section 44917)

Temporary employees — (a) Governing boards of school districts shall classify as temporary employees those persons, other than substitute employees, who are employed to serve from day to day during the first three school months of any school term to teach temporary classes not to exist after the first three months of any school term or to perform any other duties which do not last longer than the first three school months of any school term, or to teach in special day and evening classes for adults or in schools of migratory population for not more than four school months of any school term. If the classes or duties continue beyond the first three school months for special day and evening classes for adults, or schools for migratory population, the certificated employee, unless a permanent employee, shall be classified as a probationary employee. The school year may be divided not more than two school terms for the purposes of this section.

(b) Governing boards shall classify as temporary employees persons, other than substitute employees, who are employed to serve in a limited assignment supervising athletic activities of pupils; provided, such assignment shall first be made available to teachers presently employed by the district. Service pursuant to this subdivision shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district.

(c) In any district, the governing board may, to prevent the stoppage of school district business when an actual emergency arises and persons are not immediately available for probationary classification, make an appointment to a position on a temporary basis for a

EVALUATION: Key To Excellence

period not to exceed 20 working days. The person so appointed shall be deemed to be a temporary employee who is employed to serve from day to day. Service by a person in such an appointment on a temporary basis shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district. (Education Code Section 44919)

Notwithstanding the provisions of Sections 44917 and 44919, the governing board of a school district may employ as a teacher, for a complete school year, but not less than one semester during a school year unless the date of rendering first paid service begins during the second semester and prior to March 15th, any person holding appropriate certification documents, and may classify such person as a temporary employee. The employment of such persons shall be based upon the need for additional certificated employees during a particular semester or year because a certificated employee has been granted leave for a semester or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

Any person employed for one complete school year as a temporary employee shall, if re-employed for the following school year in a vacant position requiring certification qualifications, be classified by the governing board as a probationary employee and the previous year's employment as a temporary employee shall be deemed one year's enrollment as a probationary employee for purposes of acquiring permanent status.

For purposes of this section "vacant position" means a position in which the employee is qualified to serve and that is not filled by a permanent or probationary employee. It shall not include a position that would be filled by a permanent or probationary employee except for the fact that such employee is on leave. (Education Code Section 44920)

Notwithstanding the provisions of Section 44919, the governing board of a unified or high school district may employ persons requiring certification qualifications for the first semester only, and classify such persons as temporary employees, whenever the district expects a reduction in student enrollment during the second semester due to students completing graduation requirements at midyear. The number of persons so employed shall be limited to requirements based on the anticipated reduced enrollment as determined by the governing board. Persons so employed who are continued in employment beyond the first semester shall be deemed probationary employees for the entire school year.

Any such employee shall be reemployed for the following semester or school year to fill any vacant positions in the school district for which the employee is certified. Preference for available positions shall be determined by the governing board using the method prescribed in Sections 44845 and 44846.

For purposes of this section "vacant position" means a position in which the employee is qualified to serve and that is not filled by a permanent or probationary employee. It shall not include a position that would be filled by a permanent employee or probationary employee except for the fact that such employee is on leave. (Education Code Section 44921)

Probationary employees — Governing boards of school districts shall classify as probationary employees those persons employed in positions requiring certification qualifications for the school year who have not been classified as permanent employees or as substitute employees. (Education Code Section 44915)

Permanent employees — (a) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two 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.

The governing board shall notify the employee, on March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, 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 does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter. (Education Code Section 44929.21)

(b) Notwithstanding subdivision (a), Section 44929.21 shall apply to certificated employees employed by a school district, if the governing board elects to dismiss probationary employees pursuant to Section 44948.2. If that election is made by the governing board of the school district thereafter² shall classify as a permanent employee of the district any probationary employee, who, after being employed for two 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 as required by Section 44929.21. Any probationary employee who has been employed by the district for two or more consecutive years on the date of that election in a position or positions requiring certification qualifications shall be classified as a permanent employee of the district.

(c) If the classification is not made pursuant to subdivision (a) or (b) the employee shall not attain permanent status and may be reelected from year-to-year thereafter without becoming a permanent employee until the classification is made. (Education Code Section 44929.23)

The governing board of a school district that employs in a position requiring certification qualifications any person who has become a permanent certificated employee in any school district may employ that person as a permanent certificated employee. (Education Code Section 44929.28)

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STATUTORY EVALUATION STANDARDS

Today's complex and demanding society is becoming more and more critical of tax supported programs. "Accountability and reform" is the public cry and public agencies throughout the country are being asked to demonstrate it's effectiveness. Nowhere is this more evident than in the nation's public schools. Legislatures throughout the 50 states have enacted "reform" proposals that demand an accounting and upgrading of the effectiveness of instructional programs. Nearly all of these proposals focus on the evaluation of certificated staffs of schools. In 1971, the California Legislature enacted into law an accountability measure — the Stull Act. The Stull Act directs its attention to pupil performance instead of teacher behavior — a somewhat unique and new concept in evaluation. The evaluation provisions of the act, as subsequently amended, are as follows:

ARTICLE II

Evaluation and Assessment of Performance of Certificated Employees (K-12)

44660. Legislative intent; establishment of uniform system

It is the intent of the Legislature that governing boards establish a uniform system of evaluation and assessment of the performance of all certificated personnel within each school district of the state including schools conducted or maintained by county superintendents of education. The system shall involve the development and adoption by each school district of objective evaluation and assessment guidelines which may, at the discretion of the governing board, be uniform throughout the district or, for compelling reasons, be individually developed for territories or schools within the district, provided that all certificated personnel of the district shall be subject to a system of evaluation and assessment adopted pursuant to this article.

This article does not apply to certificated personnel who are employed on an hourly basis in adult education classes.

44661. Advice of certificated instructional personnel

In the development and adoption of guidelines and procedures pursuant to this article, the governing board shall avail itself of the advice of the certificated instructional personnel in the district's organization of certificated personnel; provided, however, that the development and adoption of guidelines pursuant to this article shall also be subject to the provisions of Article 1 (commencing with Section 7100) of Chapter 2 of Part 5 of Division 1 of Title 1.³

³ These provisions were in reference to the old statutes requiring "a meet and confer" process. This was replaced by the Educational Employment Relations Act which set forth the provisions for collective bargaining.

44661.5 Objective evaluation and assessment guidelines; agreement to include objective standards from National Board for Professional Teaching Standards or California Standards for the Teaching Profession

When developing and adopting objective evaluation and assessment guidelines pursuant to Section 44660, a school 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 if the standards to be included are consistent with this article. If the certificated employees of the school district do not have an exclusive representative, the school district may adopt objective evaluation and assessment guidelines consistent with this section. (Added by Stats. 1999, c.279 (A.B.292, 2.)

44662. Evaluation and assessment guidelines

(a) The governing board of each school district shall establish standards of expected pupil achievement at each grade level in each area of study.

(b) The governing board of each school district shall evaluate and assess certificated employee performance as it reasonably relates to:

- (1) The progress of pupils toward the standards established pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments.
- (2) The instructional techniques and strategies used by the employee.
- (3) The employee's adherence to curricular objectives.
- (4) The establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

(c) The governing board of each school district shall establish and define job responsibilities for those certificated non-instructional personnel, including, but not limited to, supervisory and administrative personnel, whose responsibilities cannot be evaluated appropriately under the provisions of subdivision (b), and shall evaluate and assess the performance of such non-instructional certificated employees as it reasonably relates to the fulfillment of those responsibilities.

(d) Results of an employee's participation in the Peer Assistance and Review Program for Teachers established by article 4.5 (commencing with Section 44500) shall be made available as part of the evaluation conducted pursuant to this section.

(e) The evaluation and assessment of certificated employee performance pursuant to this section shall not include the use of publisher's norms established by standardized tests.

EVALUATION: Key To Excellence

(f) Nothing in this section shall be construed as in any way limiting the authority of school district governing boards to develop and adopt additional evaluation and assessment guidelines or criteria.

32767. Written evaluation and assessment of certificated employees and certificated noninstructional employees; copy to employee; written reaction; discussion of evaluation and assessment

(a) Evaluation and assessment made pursuant to this article shall be reduced to writing and a copy thereof shall be transmitted to the certificated employee not later than 30 days before the last schoolday scheduled on the school calendar adopted by the governing board for the school year in which the evaluation takes place. The certificated employee shall have the right to initiate a written reaction or response to evaluation. This response shall become a permanent attachment to the employee's personnel file. Before the last schoolday scheduled on the school calendar adopted by the governing board for the school year, a meeting shall be held between the certificated personnel and the evaluator to discuss the evaluation.

(b) In the case of a certificated noninstructional employee, who is employed on a 12-month basis, the evaluation and assessment made pursuant to this article shall be reduced to writing. A copy thereof shall be transmitted to the certificated employee no later than June 30 of the year in which the evaluation is made. A certificated noninstructional employee, who is employed on a 12-month basis shall have the right to initiate a written reaction or response to the evaluation. This response shall become a permanent attachment to the employee's personnel file. Before July 30 of the year in which the evaluation and assessment takes place, a meeting shall be held between the certificated employee and the evaluator to discuss the evaluation and assessment.

44664. Frequency; areas of employment; unsatisfactory performance; exclusion

(a) Evaluation and assessment of the performance of each certificated employee shall be made on a continuing basis as follows:

- (1) At least once each school year for probationary personnel.
- (2) At least every other year for personnel with permanent status.
- (3) 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, as defined in 20 U.S.C. Sec. 7801, and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree. The certificated employee or the evaluator may withdraw consent at any time.

(b) The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If an employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the employing authority shall notify the employee in writing of that fact and describe the unsatisfactory performance. The employing authority shall thereafter confer with the employee making specific recommendations as to areas of improvement in the employee's performance and endeavor to assist the employee in his or her performance. If any permanent certificated employee has received an unsatisfactory evaluation, the employing authority shall annually evaluate the employee until the employee achieves a positive evaluation or is separated from the district.⁴

(c) Any evaluation performed pursuant to this article which contains an unsatisfactory rating of an employee's performance in the area of teaching methods or instruction may include the requirement that the certificated employee shall, as determined necessary by the employing authority, participate in a program designed to improve appropriate areas of the employee's performance and to further pupil achievement and the instructional objectives of the employing authority. If a district participates in the Peer Assistance and Review Program for Teachers established pursuant to Article 4.5 (commencing with Section 44500), any certificated employee who receives an unsatisfactory rating on an evaluation performed pursuant to this section shall participate in the Peer Assistance and Review Program for Teachers.

(d) Hourly and temporary hourly certificated employees, other than those employed in adult education classes who are excluded by the provisions of Section 44660, and substitute teachers may be excluded from the provisions of this section at the discretion of the governing board.

44665. "Employing authority"

For purposes of this article, "employing authority" means the superintendent of the school district in which the employee is employed, or his designee, or in the case of a district which has no superintendent, a school principal or other person designed by the governing board.

⁴ Termination of employment

Under this section and Section 44932, "tenure" is not a guaranteed lifetime job but consists only of employee's right not to be deprived of his/her job until he/she has been afforded such procedural due process safeguards as evidentiary hearing at which his/her employee must establish cause for termination of his/her employment. *LaBelle v. San Francisco Unified School dist.* (1983) 189 Cal.Rptr. 530, 140 C.A.3d 292.

Statutes that established a uniform system of evaluation and assessment of performance of certificated personnel within school district and required periodic evaluation reports to the certificated employee did not establish such reports as a jurisdictional requirement to termination. *Anaclerio v. Skinner* (1976) 134 Cal.Rptr. 303, 64 C.A.3d 194.

Failure of school district to evaluate probationary teacher during 1972-73 school year did not deprive district of jurisdiction to terminate teacher's employment for 1973-74 school year. *Vick v. Board of Ed. of Los Angeles Unified School Dist.* (App.1976) 132 Cal.Rptr.506.

EVALUATION OF COMMUNITY COLLEGE INSTRUCTORS

87660. Extent of provisions

The provisions of this article govern the evaluation of, the dismissal of, and the imposition of penalties on, community college faculty. Other provisions of this code which govern the evaluation of, dismissal of, and the imposition of penalties on community college faculty shall be applied to persons employed by a community college district in a manner consistent with the provisions of this article. (Amended by Stats. 1990, c. 1302 (S.B. 2298) Section 111, eff. Sept. 25, 1990)

87661. Definitions

For the purposes of this article:

(a) “Contract employee” or “probationary employee” means an employee of a district who is employed on the basis of a contract in accordance with Section 87605 subdivision (b) of Section 87608 or subdivision (b) of Section 87608.5.

(b) “District” means a community college district.

(c) “Regular employee” or “tenured employee” means an employee of a district who is employed in accordance with subdivision (c) of Section 87608, subdivision (c) of Section 87608.5, or Section 87609.

(d) “Academic year” means that period between the first day of fall semester or quarter and the last day of the following spring semester or quarter. (Amended by Stats. 1990, c. 1302 (S.B. 2298) Section 112, eff. Sept. 25, 1990)

87662. Exemptions

Except as provided in Section 72411 and subdivision (I) of Section 87663, the provisions of this article do not apply to administrators employed pursuant to Section 72411. (Amended by Stats. 1990, c. 1302 (S.B. 2298) Section 113, eff. Sept. 25, 1990)

87663. Frequency; standards and procedures

(a) Contract employees shall be evaluated at least once in each academic year. Regular employees shall be evaluated at least once in every three academic years. Temporary employees shall be evaluated within the first year of employment. Thereafter, evaluation shall be at least once every six regular semesters, or once every nine regular quarters, as applicable.

(b) Whenever an evaluation is required of a faculty member by a community college district, the evaluation shall be conducted in accordance with the standards and procedures established by the rules and regulations of the governing board of the employing district.

(c) Evaluations shall include, but not be limited to, a peer review process.

(d) The peer review process shall be on a departmental or divisional basis, and shall address the forthcoming demographics of California, and the principles of affirmative action. The process shall require that the peers reviewing are both representative of the diversity of California and sensitive to affirmative action concerns, all without compromising quality and excellence in teaching.

(e) The Legislature recognizes that faculty evaluation procedures may be negotiated as part of the collective bargaining process.

(f) In those districts where faculty evaluation procedures are collectively bargained, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining regarding those procedures.

(g) It is the intent of the Legislature that faculty evaluation include, to the extent practicable, student evaluation.

(h) A probationary faculty member shall be accorded the right to be evaluated under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative. Those procedures shall ensure good-faith treatment of the probationary faculty member without according him or her de facto tenure rights.

(i) Governing boards shall establish and disseminate written evaluation procedures for administrators. It is the intent of the Legislature that evaluation of administrators include, to the extent possible, faculty evaluation. (Amended by Stats. 1990, c. 1302 (S.B. 2298), Section 114, eff. Sept. 25, 1990)

87664. Adoption of rules and regulations

The governing board of each district, in consultation with the faculty, shall adopt rules and regulations establishing the specific procedures for the evaluation of its contract and regular employees on an individual basis and setting forth reasonable but specific standards which it expects its faculty to meet in the performance of their duties. Such procedures and standards shall be uniform for all contract employees of the district with similar general duties and responsibilities shall be uniform for all regular employees of the district with similar general duties and responsibilities. (Amended by Stats. 1990, c. 1302 (S.B. 2298), Section 115, eff. Sept. 25, 1990)



CTA EVALUATION AND DUE PROCESS (TENURE) POLICY

The following policies, adopted by the California Teachers Association State Council of Education, comprise official CTA policy on evaluation and due process. These policies emphasize that evaluation is the key to excellence and that evaluation is an instrument for the improvement of instruction through the linkage it provides between employment practices and determination of the quality of instruction. By this linkage, evaluation serves as a fundamental protection for pupils and their right to learn through a continuing program of quality education.

Evaluation Policy

CTA believes that evaluation is the key to excellence. Well-planned evaluation programs based on policies cooperatively developed by staff, administration, and board assure that evaluation will serve its primary purpose of benefiting the teachers, students and the community.

These principles apply to all teachers, whether full-time or part-time, regardless of age of their students. Their implementation should be bargained by the appropriate bargaining unit and should apply uniformly within the employing unit (88-01; 86-01; 83-04; 69-11)

1. Evaluation/Due Process protects:
 - a. children and society against incompetent or unfit professional staff members.
 - b. teachers against disciplinary or dismissal proceedings without reasonable cause related to the quality of instruction.
 - c. teachers against disciplinary or dismissal proceedings for arbitrary, capricious, unsubstantial or unsubstantiated reasons.
 - d. academic freedom.
2. Due Process provides:
 - a. for a procedure by which a teacher subject to dismissal may obtain a fair and full hearing before a group of his/her professional peers;
 - b. for judicial recourses or appeal if a school board or a teacher feels aggrieved at dismissal or disciplinary actions.
3. The California Teachers Association recognizes:
 - a. that teachers are professionally competent and can be counted upon to initiate self-discipline within their own ranks;
 - b. that an adequate probationary period is necessary and that no dismissal action should be initiated unless the teacher has been informed of his/her alleged deficiencies and given time and assistance for correction.

Evaluation of instruction refers to those procedures in a school district that assess the effectiveness of the school in meeting the goals and expectations it has agreed upon. This includes, but is not limited to, evaluation of the performance of individual certificated personnel. Effective evaluation of instruction requires that procedures be designed to focus on the improvement of educational services to pupils. CTA believes that preparation and dissemination of observations, or any data concerning unit members shall be confidential. Once a hard copy of the information has been generated and disseminated, the computer memory of the information shall be erased.

Basic Principles

Evaluation of instruction is the key to a successful educational program. It provides:

1. For the improvement of instruction through interaction among all concerned parties;
2. For a planned program to keep certificated personnel informed of respective strengths and weaknesses and for appropriate professional growth activities to meet identified needs;
3. For the continued services of certificated personnel who strive to demonstrate professional competence;
4. That only capable, qualified personnel achieve and retain permanent status.

These principles are dependent upon the following guidelines:

1. Teachers shall participate with their evaluators in the development of criteria for competence. These criteria shall be mutually agreed upon by both teachers and evaluators and shall be subject to periodic review.
2. The criteria, procedures, and form relating to evaluation shall be fully publicized and available to all concerned.
3. Procedures for collecting, processing, and interpreting data shall be objective and uniform.
4. Evaluation shall include a conference between the evaluatee and the evaluator(s) at which time information relating to the individual's strengths and weaknesses should be discussed openly and frankly with the individual being evaluated.
5. The availability of needed resources and other factors unique to the individual assignment that might affect the program of instruction shall be identified and considered in evaluation conferences.
6. Help and assistance to certificated personnel in areas indicated as not meeting district standards shall be provided, and a record of such assistance shall be maintained for review in subsequent evaluation conferences.

EVALUATION: Key To Excellence

7. Evaluations shall be recorded and signed by both evaluatee and evaluator(s), a copy provided to the evaluatee and a copy retained in the district files to provide a continuous record of the individual's service.
8. Provision for appeal on items of disagreement shall be available.
9. Provision for appeal on items of self-evaluation or other action programs for the benefit of all certificated personnel to upgrade their professional competence.
10. Provision shall be made to remedy deficiencies in the conditions under which teachers perform their services.
11. No standardized test norms shall be used to assess teacher competence.
12. Teacher assessment based on non-instructional duties shall be minimal. These duties shall be specified in advance of any utilization of evaluation purposes.
13. Teachers shall evaluate administrative and support personnel and shall have the option of evaluation by their professional peers.
14. No student assessment shall be used in the evaluation of certificated employees.
15. A beginning teacher shall be evaluated as is every other member of the faculty. Work with a mentor teacher shall not be within the realm of evaluation.
16. The findings of any practice evaluation shall not be made accessible to anyone outside the administrative training program.
17. Teachers shall be evaluated based on their individual performance. Teaching strategies such as team teaching, core groups, and others shall not be the basis for the evaluation of an individual teacher's performance.

CTA believes that mutual respect and support among educational professionals can contribute significantly to the quality of education within a school district.

CTA believes the decision to embark on a program of peer assistance and review (PAR) is a decision that should take into consideration the unique characteristics of the chapter and the district it serves.

Chapters instituting a program of PAR need to negotiate elements of the program. Fair treatment of all participants is critical to the success of the peer assistance and peer assistance and review programs with special emphasis on due process rights, full funding and ample training of all parties. Included in a negotiated agreement should be procedures to begin the program, details of which employees are covered by the program, processes for the selection of the consulting teachers, processes the program will use for administration of

the program, and procedures for termination of the program. This list is not exhaustive of all elements that must be in an agreement, and local chapters are encouraged to consult the CTA Contract Reference Manual for suggested language. (00-06)

Burden of Proof in Teaching Dismissals

CTA believes that completing a prescribed course of study, achieving a degree from an accredited institution, being awarded an appropriate credential from the State of California, and being selected for a position after district screening are sufficient proof that an individual has prepared adequately for a position in education.

The burden of proof should rest with the employer who alleges that his professional preparation has not produced a satisfactory educator. Underlying the burden of proof is a burden of responsibility on the part of the employer to provide the optimum environment for success, both in resources and assistance.

As an essential of due process of law, any party making charges against a teacher must be required to prove the substance of charges by a preponderance of the evidence before any disciplinary action against the teacher, including dismissal, can be taken. (86-06)

Dismissal Procedures

CTA believes that an adequate probationary period is necessary and no dismissal action should be initiated unless the teacher has been informed of alleged deficiencies and given time and assistance for their correction.

Whatever the specifics of the format for due process (tenure) protection, the following criteria must be present to guarantee fair procedures. As such, these criteria will form a base for consideration of alternative formats, and for the evaluation of proposals from all sources regarding revision of existing due process (tenure) laws in dismissal actions:

1. Teachers must have access to a hearing of charges, evidence, and presentation of defense before an impartial, objective, “third-party” source.
2. The conclusions and recommendations for such hearings, with right of appeal, must be binding on all parties in the proceedings.
3. Rules of evidence in administrative proceedings must be the same as those utilized in civil actions.
4. The proceedings and resulting conclusions and recommendations must reflect the participation of professional peers in the process.

EVALUATION: Key To Excellence

5. Dismissal proceedings must be based upon sound evaluation procedures, which would include:
 - a. Clear definition of standards of performance and of criteria upon which those standards will be judged.
 - b. Early notification to the teacher of alleged deficiencies.
 - c. Opportunity, including time and assistance from district sources, to correct alleged deficiencies before dismissal action is taken.
6. It is the responsibility of the professional organization to protect the due process rights of its members.
 - a. CTA members who are selected to serve on Professional Competency Commissions should be willing and able to insure that the legitimate rights of the certified employee defendant are adequately protected and promoted.
 - b. CTA shall establish criteria to guide certificated employees in the selection of their representative on Professional Competency Commissions.

When it may be necessary for a district to protect itself and issue layoff notices, the notices must be stated in terms to minimize their negative impact on moral. Since this is a process fraught with great emotional impact for certificated employees, any district that finds it necessary to contemplate reduction in staff should make as accurate a projection as possible and limit such notices to this projection. In determining which certificated personnel to reduce, the district shall include administrators in the layoff process. Indiscriminate distribution of such layoff notices, as a practice, constitutes unprofessional conduct and results in intimidation of personnel and destruction of their moral. (92-10; 84-06; 79-01)



The Dismissal Laws

The following represents the statutory provisions for dismissal of California teachers. (Note: The statutory provisions for payoff are not included; they are found separately in the Education Code.) Since the concept of due process is constantly under legislative attack, readers are encouraged to review the provisions periodically for legislated amendments. (All numbers refer to Sections of the Education Code.)

PERMANENT TEACHER DISMISSAL LAW (K-12)

A. Causes for Dismissal

44932. Grounds for dismissal of permanent employees; suspension of employees

(a) No permanent employee shall be dismissed except for one or more of the following causes:

- (1) Immoral or unprofessional conduct.
- (2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof.
- (3) Dishonesty.
- (4) Unsatisfactory performance.
- (5) Evident unfitness for service.
- (6) Physical or mental condition unfitting him/her to instruct or associate with children.
- (7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him/her.
- (8) Conviction of a felony or of any crime involving moral turpitude.
- (9) Violation of Section 51530 of this code or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947. (Teaching or advocacy communism with intent of indoctrinating or inculcating a preference for communism)
- (10) Knowing membership by the employee in the Communist Party.
- (11) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

(b) The governing board of the school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. The authorization shall not apply to any school district which has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

44933. Other grounds for dismissal or suspension; additional application of section

A permanent employee may be dismissed or suspended on grounds of unprofessional conduct consisting of acts or omissions other than those specified in Section 44932, by any such charge shall specify instances of behavior deemed to constitute unprofessional conduct. This section shall also apply to the suspension of probationary employees in a school district with an average daily attendance of less than 250 pupils.

B. Procedures for Dismissal

44934. Charges and notice of intention to dismiss or suspend; additional application of section

Upon the filing of written charges, duly signed and verified by the person filing them, with the governing board of the school district, or upon written statement of charges formulated by the governing board, charging that there exists cause, as specified in Section 44932 or 44933, for the dismissal or suspension of a permanent employee of the district, the governing board may, upon majority vote, except as provided in this article if it deems the action necessary, give notice to the permanent employee of its intention to dismiss or suspend him or her at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article. Suspension proceedings may be initiated pursuant to this section only if the governing board has not adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

Any written statement of charges of unprofessional conduct or unsatisfactory performance shall specify instances of behavior and the acts or omissions constituting the charge so that the teacher will be able to prepare his/her defense. It shall, where applicable, state the statutes and rules which the teacher is alleged to have violated, but it shall also set forth the facts relevant to each occasion of alleged unprofessional conduct or unsatisfactory performance.

This section shall also apply to the suspension of probationary employees in a school district with an average daily attendance of less than 250 pupils which has not adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3542.2 of the Government Code.

44935. Fitness report use by governing board in dismissal or suspension proceedings

No report on the fitness of a teacher in a dismissal or suspension proceeding initiated pursuant to Section 44934 shall be received from a statewide professional organization by a governing board unless the teacher shall have been given, prior to the preparation of the report in its final form, the opportunity to submit in writing his or her comments on the report and unless a copy of the report in final form is given to the teacher investigated at least 10 days prior to its submission to the board.

Such a report shall not be distributed other than to the governing board and those persons participating in its preparation, unless the teacher does not demand a hearing as provided by Section 44937.

449.36 Service of notice and attachments

This notice of dismissal or suspension in a proceeding initiated pursuant to Section 44934 shall not be given between May 15th and September 15th in any year. It shall be in writing and be served upon the employee personally or by United States registered mail addressed to him/her at his/her last known address. A copy of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of the provisions of this article, shall be attached to the notice.

44937. Waiver of hearing

In a dismissal or suspension proceeding initiated pursuant to Section 44934, if the employee does not demand a hearing by filing a written request for hearing with the governing board, he or she may be dismissed or suspended without pay for a specific period of time at the expiration of the 30-day period.

44938. Unprofessional conduct or unsatisfactory performance; notice of charges

(a) The governing board of any school district shall not act upon any charges of unprofessional conduct unless at least 45 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include evaluation made pursuant to Article 11 (commencing with Section 44660 of Chapter 3 of this part, if applicable to the employee).

(b) The governing board of any school district shall not act upon any charges of unsatisfactory performance unless it acts in accordance with the provisions of paragraph (1) or (2):

(1) At least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

(2) The governing board may act during the time period composed of the last one-fourth of the school days it has scheduled for purposes of computing apportionments in any fiscal year if, prior to the beginning of that time period,

EVALUATION: Key To Excellence

the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

(c) “Unsatisfactory performance” as used in this section means, and refers to, the unsatisfactory performance particularly specified as a cause for dismissal in Section 44932 and does not include any other cause for dismissal specified in Section 44932.

“Unprofessional conduct” as used in this section means, and refers to, the unprofessional conduct particularly specified as a cause for dismissal or suspension in Sections 44932 and 44933 and does not include any other cause for dismissal specified in Section 44932.

44939. Immediate suspension;

Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board, charging a permanent employee of the district with immoral conduct, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, with violation of Section 51530, with knowing membership by the employee in the Communist Party or with violation of any provision in Sections 7001 to 7007, inclusive, the governing board may, if it deems such action necessary, immediately suspend the employee from his/her duties and give notice to him/her of his/her suspension, and that 30 days after service of the notice, he/she will be dismissed, unless he/she demands a hearing.

If the permanent employee is suspended upon charges of knowing membership by the employee in the Communist Party or for any violation of Section 7001, 7002, 7003, 7006, 7007, or 51530, he/she may within 10 days after service upon him/her of notice of such suspension file with the governing board a verified denial, in writing, of the charges. In such event the permanent employee who demands a hearing within the 30-day period shall continue to be paid his/her regular salary during the period of suspension and until the entry of the decision of the Commission on Professional Competence, if and during such time as he/she furnishes to the school district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the school district the amount of salary so paid to him/her during the period of suspension in case the decision of the Commission on Professional Competence is that he/she shall be dismissed. If it is determined that the employee may not be dismissed, the school board shall reimburse the employee for the cost of the bond.

44940. Leave of absence; certificated employee charged with mandatory or optional leave of absence offense; suspension of credentials; definitions

(a) For purposes of this section, “charged with a mandatory leave of absence offense” is defined to mean charged by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any sex offense as defined in Section 44010, or with the commission of any offense involving aiding or abetting the unlawful sale, use or exchange to minors of controlled substances listed in Schedule I, II, or III, as contained in Section 11054, 11055, and 11056 of the Health and Safety Code, with exception of marijuana, mescaline, peyote, or tetrahydrocannabinols.

(b) For purposes of this section, “charged with an optional leave of absence offense” is defined to mean a charge by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any controlled substance offense as defined in Section 44011 or 87011 or a violation or attempted violation of Section 187 of the Penal Code, or Sections 11357 to 11361, inclusive, Section 11363, 11364, or 11370.1 of the Health and Safety Code, insofar as these section relate to any controlled substances except marijuana, mescaline, peyote, or tetrahydrocannabinols.

(c) For purposes of this section and Section 44940.5, the term “school district” includes county offices of education.

(d) Whenever any certificated employee of a school district is charged with a mandatory leave of absence offense, as defined in subdivision (a), the governing board of the school district shall immediately place the employee upon compulsory leave of absence for a period of time extending for not more than 10 days after the date of entry of the judgment in the proceedings. The employee’s teaching or service credential shall be automatically suspended for the same period of time.

(e) Whenever any certificated employee of a school district is charged with an optional leave of absence offense as defined in subdivision (b), the governing board of the school district may immediately place the employee upon compulsory leave in accordance with the procedure in this section and Section 44940.5. If any certificated employee is charged with an offense deemed to fall into both the mandatory and the optional leave of absence categories, as defined in subdivisions (a) and (b), that offense shall be treated as a mandatory leave of absence offense for purposes of this section. (*Added by Stats. 1989, c. 807, § 4. Amended by Stats. 1994, c. 83 (A.B.2710), § 1.*)

44941. Notice of suspension and intention to dismiss; service

The notice of suspension and intention to dismiss, shall be in writing and be served upon the employee personally or by United States registered mail addressed to the employee at his/her last known address. A copy of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of provisions of this article, shall be attached to the notice. If the employee does not demand a hearing within the 30-day period, he/she may be dismissed upon the expiration of 30 days after the service of the notice.

44942. Suspension or transfer of certificated employee on ground of mental illness; examination; mandatory sick leave

(a) Any certificated employee may be suspended or transferred to other duties by the governing board if the board has reasonable cause to believe that the employee is suffering from mental illness of such a degree as to render him incompetent to perform his duties.

(b) The governing board shall forthwith, upon any suspension or transfer hereunder, give to the employee a written statement of the facts giving rise to the board's belief, and an opportunity to appear before the board within 10 days to explain or refute the charges.

(c) If, after the employee's appearance before the board, the board decides to continue the suspension or transfer, or if the employee chooses not to appear before the board, the employee shall then be offered, in writing, the opportunity of being examined by a panel of three psychiatrists to be provided by the board. To assist panel in making its determination, the governing board shall supply to the panel, prior to the date scheduled for the psychiatric examination, a list of the duties of the position from which the employee was suspended or transferred. The employee shall continue to receive his regular salary and all other benefits of employment during the period dating from his/her suspension to the filing of the report of the panel with the governing board.

(d) The examination shall be conducted at school district expense within 15 days of any suspension or transfer ordered under this section. The employee shall submit to the examination, but shall be entitled to be represented by a psychiatrist, psychologist licensed under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, or physician of his or her own choice, and any report of the psychiatrist, psychologist, or physician selected by him or her shall be filed with the panel at the request of the employee.

A written report of the panel on the examination of the suspended or transferred employee shall be submitted to the governing board no later than 10 days after completion of the examination. A copy shall be supplied to the employee upon request. The report shall contain a finding on whether the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties.

(e) If a majority of the panel conclude that the employee should be permitted to return to his/her duties, no written record of the suspension or of the determination of the panel shall be retained, and in all respects any written record concerning the employee shall appear as it did before the suspension was made.

(f) If a majority of the panel find in the report that the employee is suffering from mental illness of such a degree as to render him/her incompetent to perform his/her duties, the governing board may, upon receipt of the report, place the employee on mandatory sick

leave of absence. Any mandatory sick leave of absence imposed under this section shall not exceed two years, during which period the employee shall be entitled to sick leave, hospital and medical benefits which he/she accrued during his/her employment by the governing board but only to the extent of such accrual.

(g) Any employee placed on mandatory sick leave of absence pursuant to this section may in writing immediately demand a hearing. Thereupon the governing board shall file a complaint in the superior court of the county in which the school district or the major part thereof is located, setting forth the charges against the employee and asking that the court inquire into the charges and determine whether or not the charges are true, and if true, whether they constitute sufficient grounds for placing the employee on mandatory sick leave of absence, and for a judgment pursuant to its findings.

(h) If the court finds that the employee was not at the time of the suspension incompetent to perform his/her assigned duties and should not have been placed on mandatory sick leave of absence, the employee shall be immediately reinstated to the same or a substantially similar position with full back salary, and any written record of the suspension or transfer any report of the panel shall be destroyed.

(i) If the court confirms the placing of the employee on mandatory sick leave, or in the employee does not seek a hearing, then upon written request of the employee made not earlier than six months nor later than two years after the date he/she was placed on mandatory sick leave of absence, a new panel of three psychiatrists shall be convened by, and at the expense of, the governing board to review its original conclusion. If the original conclusion is not changed by the new panel as a result of such review. The employee shall be continued on the mandatory sick leave of absence except that when the employee's total period of absence exceeds two years, the governing board shall either rescind its action and reinstate the employee to the same or a substantially similar position, or shall serve the employee with a notice of intention to dismiss him/her, and proceed according to Section 44943.

(j) If a majority of the new panel concludes in its report or any subsequent review thereof, that the suspended employee or employee on mandatory sick leave of absence should be permitted to return to his/her duties, or if the court so concludes, the governing board shall take immediate action to restore the employee to the position from which he/she was suspended or transferred or to a substantially similar position.

(k) Every hearing and action by or before the governing board pursuant to this section shall be in executive session, and no decision, action, or occurrence therein shall be made public, unless the employee so requests in writing.

(l) Nothing in this section shall be construed to supersede Section 44949.

44943. Action of governing board after demand for hearing

When any employee who has been served with notice pursuant to Section 44934 of the governing board's intention to dismiss or suspend him or her demands a hearing, the governing board shall have the option either (a) to rescind its action, or (b) schedule a hearing on the matter.

44944. Conduct of hearing; decision; expenses and costs

(a) In a dismissal or suspension proceedings initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, the hearing date shall be established after consultation with the employee and the governing board, or their representatives, and the Commission of Professional Competence shall have all the power granted to an agency in that chapter, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to such continuance. However, the extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

If the right of discovery granted under the preceding paragraph is denied by either the employee or the governing board, all the remedies in Section 2034 of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his/her motion, shall be the superior court of the county in which the hearing will be held.

The time periods in this section and of chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall not be supplied so as to deny discovery in a hearing conducted pursuant to this section.

The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of preceding paragraph.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

(b) The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to select a commission member at least seven days prior to the date of the hearing, the failure shall constitute a waiver of the right to selection, and the county board of education or its specific designee shall immediately make the selection. When the county board of education is also the governing board of the school district or has by statute been granted the powers of a governing board, the selection shall be made by the Superintendent of Public Instruction, who shall be reimbursed by school district for all costs incident to the selection.

The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and shall hold a currently valid credential and have at least five years' experience within the past 10 years in the discipline of the employee.

(c) The decision of the Commission on Professional Competence shall be made by majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition which shall be solely:

- (1) That the employee should be dismissed.
- (2) That the employee should be suspended for a specific period of time without pay.
- (3) That the employee should not be dismissed or suspended.

The decision of the Commission on Professional Competence that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors.

The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to paragraph (2) shall be available only in a suspension proceeding authorization pursuant to subdivision (b) of Section 44932 or Section 44933.

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The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

The governing board and the employee shall have the right to be represented by counsel.

(d) (1) If the member selected by the governing board or the member selected by the employee is employed by any school district in this state, the member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is employed, but shall receive no additional compensation or honorariums for service on the commission.

(2) If service on a Commission on Professional Competence occurs during the summer recess or vacation periods, the member shall receive compensation proportionate to that received during the current or immediately preceding contract period from the member's employing district, whichever amount is greater.

(e) If the Commission on Professional Competence determines that the employee should be dismissed or suspended, the governing board and the employee shall share equally the expenses of the hearing, including the cost of the administrative law judge. The state shall pay any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee including, but not limited to, payments or obligations incurred for travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The Controller shall pay all claims submitted pursuant to this paragraph from the General Fund and may prescribe reasonable rules, regulations, and forms for the submission of the claims. The employee and the governing board shall pay their own attorney fees.

If the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including the cost of the administrative law judge, any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to, payments or obligations incurred for travel, meals, and lodging, the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee, and reasonable attorney fees incurred by the employee.

As used in this section, "reasonable expenses" shall not be deemed "compensation" within the meaning of subdivision (d).

If either the governing board or the employee petitions a court of competent jurisdiction for review of the decision of the commission, the payment of expenses to members of the commission required by this subdivision shall not be stayed.

In the event that the decision of the commission is finally reversed or vacated by a court of competent jurisdiction, then either the state, having paid the commission members' expenses, shall be entitled to reimbursement from the governing board for those expenses, or the governing board, having paid the expenses, shall be entitled to reimbursement from the state.

Additionally, either the employee, having paid a portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the governing board for the expenses, to the governing board, having paid its portion and the employee's portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the employee for that portion of the expenses.

(f) The hearing provided for in this section shall be conducted in a place selected by agreement among the members of the commission. In the absence of agreement, the place shall be selected by the administrative law judge.

44945. Court's review of decision

The decision of the Commission on Professional Competence may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision made by a hearing officer under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on review, shall exercise its independent judgment on the evidence. The proceeding shall be set for hearing at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence is given by law.

44946. Reinstatement

If the employee has been suspended pending the hearing, he/she shall be reinstated within five days after the governing board's decision in his/her favor, and shall be paid full salary by the governing board for the period of his/her suspension.

It should be noted that SB 813—Statutes of 1983 added the provision for suspension of permanent teachers, provided, however, that suspension may only be imposed if the District has not negotiated [provisions for employee discipline into the collective bargaining agreement pursuant to Government Code Section 3543.2 (b). Said section states as follows:

3543.2 (b) Notwithstanding Section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44944 of the Education Code shall apply.

Permanent Teacher Dismissal Laws (K-12) in County Offices of Education

1296. Classification as permanent employee; application of section; notice; teaching position defined

(a) If the average daily attendance of the schools and classes maintained by a county superintendent of schools is 250 or more, each person who, after being employed for three complete consecutive school years by the superintendent in a teaching position in those schools or classes requiring certification qualifications and whose salary is paid from the county school service fund, is reelected for the net succeeding school year to such a position in those schools or classes, shall be classified as and become a permanent employee of the county superintendent of schools.

Such an employee shall apply only to probationary employees whose probationary period commenced prior to the 1983-84 fiscal year.

(b) If the average daily attendance of the schools and classes maintained by a county superintendent of schools is 250 or more, each person who, after being employed for two complete consecutive school years by the superintendent in a teaching position in those schools or classes requiring certification qualifications and whose salary is paid from the county school service fund, is reelected for the next succeeding school year to such a position in those schools or classes, shall be classified as and become a permanent employee of the county superintendent of schools.

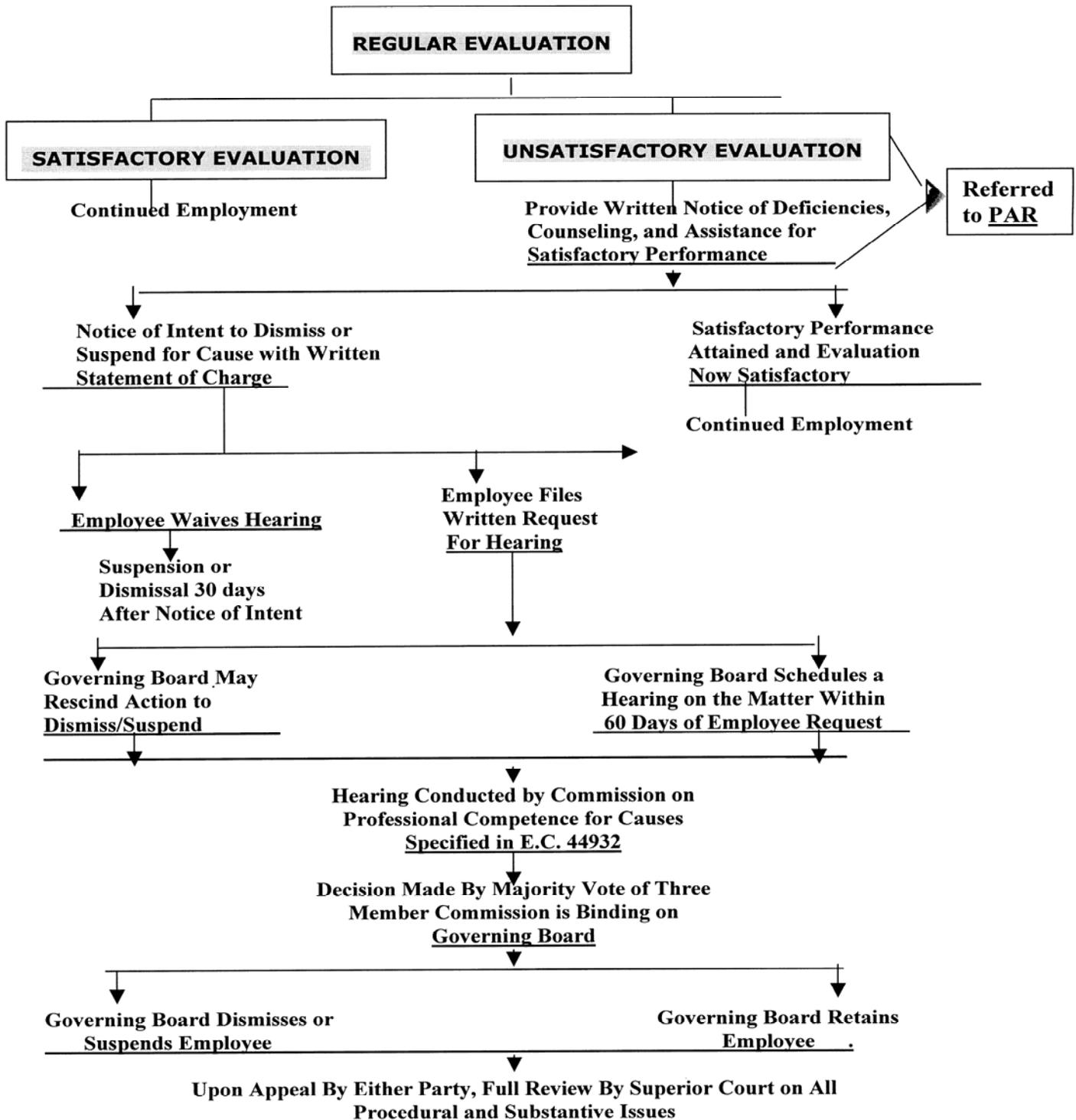
The county superintendent of schools shall notify the employee, on or before March 15 of the employee's second complete consecutive year of employment by the superintendent in a teaching position in schools or classes maintained by the superintendent requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to such a position in those schools. In the event that the county superintendent does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

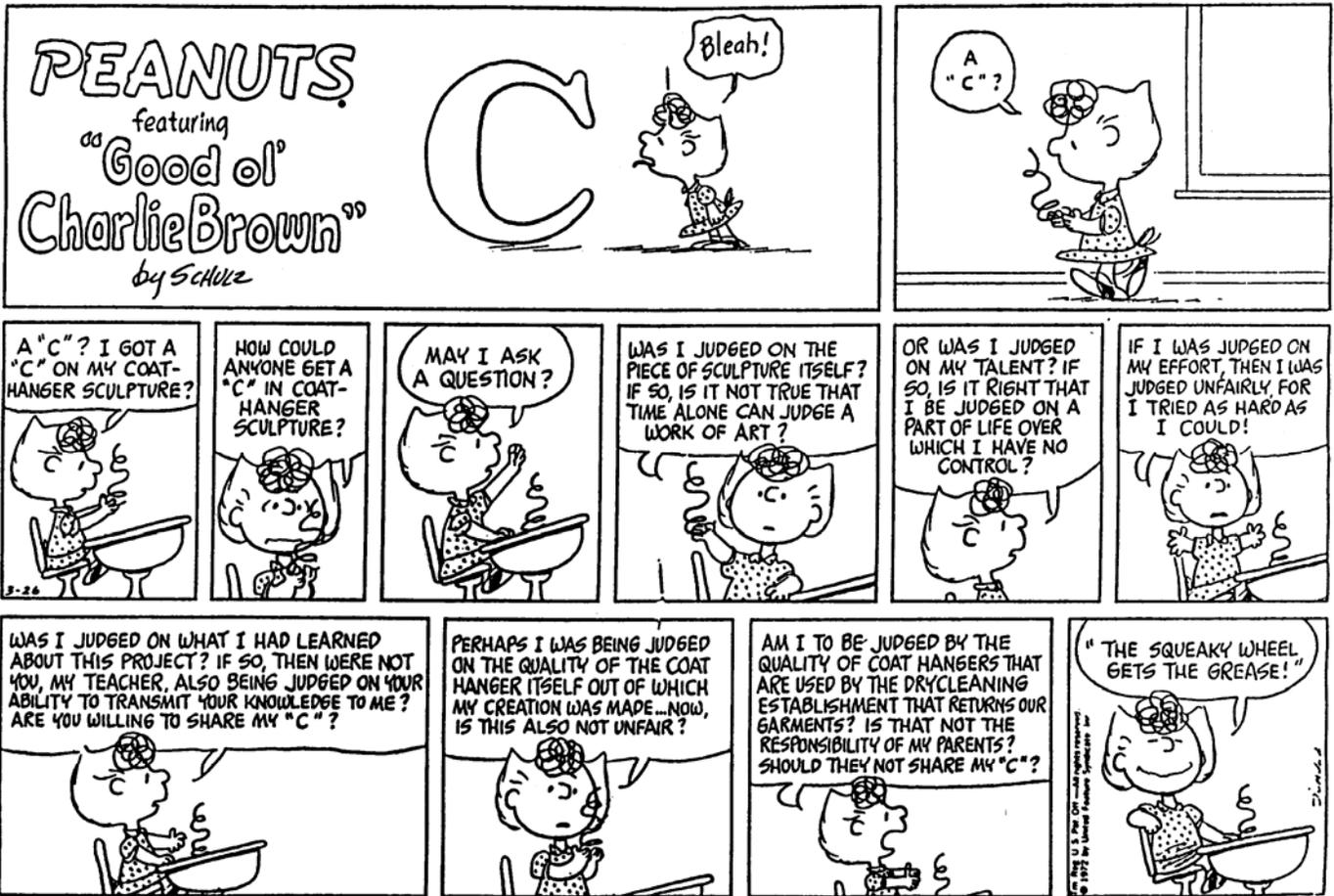
Such an employee shall have the same rights and duties as employees of school districts to which Section 44882 applies. Sections 44841, 44842, 44882, 44948.3, and 44948.5 are applicable to these employees.

This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter.

(c) As used in this section, "teaching position" means any certificated position designated as of January 1, 1983, by the county board of education or the county superintendent of schools as a teaching position for the purpose of granting probationary or permanent status. (*Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1983, c. 498, § 4. eff. July 28, 1983; Stats/1984. c/ 482. § 1.3, eff. July 11, 1984; Stats.1985, c. 1115, § 1.*)

PROCESS "FLOW CHART" FOR PERMANENT TEACHERS





THE PROBATIONARY TEACHER DISMISSAL LAW (K-12)

The California Legislature has traditionally exempted small school districts (i.e. currently those with less than 250 ADA) from the statutes requiring due process for permanent employees. Since teachers in these small districts do not acquire permanent status unless granted by the governing board their dismissal procedures have been the same as for other probationary employees. SB 813, - Statutes of 1983, reduced the probationary period from three (3) to two (2) years for those probationary employees hired during the 1983-84 school year, and thereafter. Probationary employees of small school districts continue to have some of the basis elements of due process in dismissal proceedings, as evidenced by the following Education Code Sections.

Pre-1983-84 and Small School District Probationary Teacher Dismissal Law

44948. Dismissal or suspension of probationary employees during school year; application of section

(a) Governing boards of school districts shall dismiss probationary employees during the school year for cause only, as in the case of permanent employees.

This subdivision shall apply to probationary employees who are employed in a school district having an average daily attendance of less than 250 pupils.

(b) The governing board may suspend a probationary employee for a specified period of time without pay as an alternative to dismissal pursuant to this section.

44948.5 Notice of nonreemployment; hearing; procedure; application of section

(a) This section shall apply to (1) probationary employees of a school district with an average daily attendance of less than 250 pupils, or (2) those persons currently employed as probationary employees whose probationary period commenced prior to the 1983-84 fiscal year.

(b) No later than March 15 and before a probationary employee is given notice by the governing board that his or her services will not be required for the ensuing year for reasons other than those specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or, in the case of a district which has no superintendent, by the clerk or secretary of the governing board, it has been recommended that such notice be given to the employee, and stating the reason therefor.

If the probationary employee has been in the employ of the district for less than 45 days on March 15, the giving of such notice may be deferred until the 45th day of

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employment and all time period and deadline dates herein prescribed shall be coextensively extended.

Until the employee has requested a hearing as provided in subdivision (c) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties; however, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(c) The employee may request a hearing to determine if there is cause for not re-employing him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (b), on or before a date specified therein, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute a waiver of his or her right to a hearing. The notice provided for in subdivision (b) shall advise the employee of the provisions of this subdivision.

(d) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the governing board shall have all the power granted to an agency therein, except that:

- (1) the respondent shall file his or her notice of defense, if any, within 5 days after service upon him or her of the accusation and he or she shall be notified of such five-day period for filing in the accusation;
- (2) the discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of accusation, and the notice required by Section 11505 of the Government Code shall so indicate; and
- (3) the hearing shall be conducted by a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the hearing officer shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the

hearing, including the cost of the hearing officer, shall be paid by the governing board from the district funds.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(e) The governing board's determination not to re-employ a probationary employee for the ensuing school year shall be for cause only. The determination of the governing board as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the schools and the pupils thereof. The decision made after the hearing shall be effective on May 15 of the year proceeding is commenced.

(f) Notice to the probationary employee by the governing board that his or her service will not be required for the ensuing year shall be given no later than May 15.

(g) If a governing board notifies a probationary employee that his or her services will not be required for the ensuing year, the board shall, within 10 days after delivery to it of the employee's written request, provide the employee with a statement of its reasons for not re-employing him or her for the ensuing school year.

(h) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(i) In the event that the governing board does not give notice provided in subdivision (e) of this section on or before May 15, the employee shall be deemed re-employed for the ensuing school year.

(j) If after request for hearing pursuant to subdivision (c) any continuance is granted pursuant to Government Code Section 11524, the dates prescribed in subdivision (d), (e), (f), and (i) which occur on or after the date of granting the continuance shall be extended for a period of time equal to the continuance.

Teacher Dismissal Law During the School Year for Probationary Employees Hired During 1983-84 and Thereafter

44948.3 Probationary employees; dismissal for unsatisfactory performances; procedure; suspension; application of section

(a) First and second year probationary employees may be dismissed during the school year for unsatisfactory performance determined pursuant to Article 11 (commencing with Section 44660) of Chapter 3, or for cause pursuant to Section 44932. Any dismissal pursuant to this section shall be in accordance with all of the following procedures.

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- (1) 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 the second year probationary employees. 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.
- (2) The employee shall have 15 days from receipt of the notice of dismissal to submit to the governing board a written request for a hearing. The governing board may establish procedures for the appointment of a hearing officer to conduct the hearing and to submit a recommended decision to the board. The failure of an employee to request a hearing within 15 days from receipt of a dismissal notice shall constitute a waiver of the right to a hearing.

(b) The governing board may suspend a probationary employee for a specified period of time without pay as an alternative to dismissal pursuant to this section.

(c) This section shall apply only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter and shall not apply to probationary employees in a school district having an average daily attendance of less than 250 pupils.

Permanent Employee Classification and Notice of Reelection in Districts with Daily Attendance of 250 or More

44929.21 Continuing Contracts

(a) Every employee of a school district of any type of class having an average daily attendance 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.

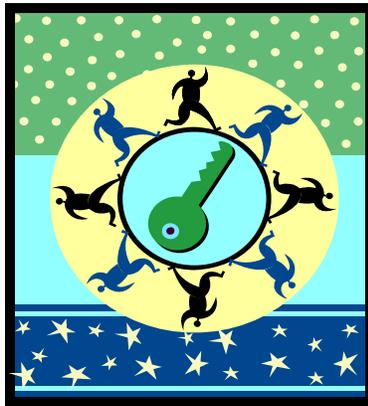
This subdivision shall apply only to probationary employees whose probationary period commenced prior to the 1983-84 fiscal year.

(b) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two 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.

The governing board shall notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, 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 does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter. (*Added by Stats.1987, c. 1452, § 380.*)

Because these procedures provide few, if any, of the basic elements of due process and since they fail to meet the established CTA minimum criteria for teacher dismissal proceedings, the CTA State Council of Education took action in January of 1984 to encourage its local chapters to negotiate into their collective bargaining agreements due process provisions for discipline and dismissal of probationary teachers.



TEMPORARY TEACHER DISMISSAL LAW (K-12)

44954. Release of temporary employees

Governing boards of school districts may release temporary employees requiring certification qualifications under the following circumstances:

(a) At the pleasure of the board prior to serving during one school year at least 75 percent of the number of days the regular schools of the district are maintained.

(b) After serving during one school year the number of days set forth in subdivision (a), if the employee is notified before the end of the school year of the district's decision not to reelect the employee for the next succeeding year. (*Added by Stats. 1992, c.336 (S.B. 1281), Section 3.*)

DISMISSAL PROCEDURES AFFECTING COMMUNITY COLLEGE EMPLOYEES

The Regular and Contract Instructor Dismissal Law

A. Cause for Dismissal

87732. Grounds for dismissal of regular employee

No regular employee or academic employee shall be dismissed except for one or more of the following causes:

- (a) Immoral or unprofessional conduct
- (b) Dishonesty
- (c) Unsatisfactory performance
- (d) Evident unfitness for service
- (e) Physical or mental condition which makes him or her unfit to instruct or associate with students
- (f) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing him or her
- (g) Conviction of a felony or of any crime involving moral turpitude
- (h) Conduct specified in Section 1028 of the Government Code.

B. Procedures for Dismissal and Penalty

87733. Fitness report use by governing board in dismissal proceedings

No report on the fitness of a faculty member in a dismissal proceedings shall be received from a statewide professional organization by a governing board unless the employee shall have been given, prior to the preparation of the report in its final form, the opportunity to submit in writing his or her comments on the report and unless a copy of the report in final form is given to the employee investigating at least 10 days prior to its submission to the board.

The report shall not be distributed other than to the governing board and those persons participating in its preparation unless the employee does not demand a hearing as provided by law.

87734. Unprofessional conduct or unsatisfactory performance; notice of charges

The governing board of any community college district shall not act upon any charges of unprofessional conduct or unsatisfactory performance unless during the preceding term of half school year prior to the date of the filing of the charge, and at least 90 days prior to the date of the filing, the board or its authorized representatives has given the employee

against whom the charge is filed, written notice of the unprofessional conduct or unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his faults and overcome the grounds for such charge. The written notice shall include the evaluation made pursuant to Article 4 (commencing with Section 87660) of this chapter, if applicable to the employee. “Unprofessional conduct” and “incompetency” as used in this section means, and refers only to, the unprofessional conduct and unsatisfactory performance particularly specified as a cause for dismissal in Section 87732 and does not include any other cause for dismissal specified in Section 87732.

87735. Immediate suspension; hearing upon certain charges

Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a community college district, or upon a written statement of charges formulated by the governing board, charging permanent employee of the district with immoral conduct, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, or with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing district, the governing board may, if it deems such action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice, he or she will be dismissed, unless he or she demands a hearing,

87736. Sex offenses and narcotics offenses; compulsory leave of absence

Whenever any academic employee of a community college district is charged with the commission of any sex offense, as defined in Section 87010, by complaint, information, or indictment filed in a court of competent jurisdiction, the governing board of the district may immediately place the employee upon compulsory leave of absence for a period of time extending for not more than 10 days after the date of the entry of the judgment in the proceedings. The governing board of the district may extend the compulsory leave of absence of the employee beyond such period by giving notice to the employee within 10 days after the entry of judgment in the proceedings that the employee will be dismissed at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in Section 87737.

Any employee placed upon compulsory leave of absence pursuant to this section shall continue to be paid his or her regular salary during the period of his or her compulsory leave of absence, if and during such time as the employee furnishes to the community college district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the district the amount of salary so paid to the employee during the period of the compulsory leave of absence in case the employee is convicted of such charges, or fails or refuses to return to service following an acquittal of the offense or dismissal of the charges. If the employee is acquitted of the offense, or the charges against the employee are dismissed, the district shall reimburse the employee for the cost of the bond upon his or her return to service in the district.

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If the employee does not elect to furnish bond, or other security acceptable to the governing board of the district, and if the employee is acquitted of the offense, or the charges against the employee are dismissed, the district shall pay to the employee his or her full compensation for the period of the compulsory leave of absence upon his or her return to service in the district.

Whenever any academic employee of a community college district is charged with the commission of any narcotics offense as defined in Section 87001 of the Education Code, or a violation of Section 261.5 of the Penal Code, Sections 11357 to 11361, inclusive, 11363, 11377 to 11382, inclusive, insofar as such sections relate to any controlled substances in paragraph (4) or (5) of subdivision (b) of Section 11056, or any controlled substances in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), and (17) of such subdivision, of the Health and Safety Code, by complaint, information, or indictment filed in a court of competent jurisdiction, the governing board of the district may immediately place the employee upon compulsory leave in accordance with the procedure in this section.

87737. Notice of suspension and intention to dismiss; service

The notice of suspension and intention to dismiss, shall be in writing and be served upon the employee personally or by United States registered mail addressed to the employee at his or her last known address. A copy of the charges filed, together with a copy of the provisions of Section 87736, shall be attached to the notice. If the employee demands a hearing within 30 days, the matter shall proceed to arbitration or demand a hearing within the 30-day period, his or her dismissal shall be effective upon the expiration of 30 days after service of the notice. If the employee demands a hearing within 30 days, the matter shall proceed to arbitration or hearing, as the case may be, as specified in Article 4. If the employee does not demand a hearing within the 30-day period, his or her dismissal shall be effective upon the expiration of 30 days after service of the notice.

87602. Definitions

For the purposes of other provisions of law:

- (a) A contract employee is a probationary employee.
- (b) A regular employee is a permanent employee.

87604. Academic employees; status

The governing board of a community college district shall employ each academic employee as a contract employee, regular employee, or temporary employee.

87607. Decisions regarding continued employment; requirements

Before making a decision relating to the continued employment of a contract employee, the following requirements shall be satisfied:

(a) The employee has been evaluated in accordance with the evaluation standards and procedures established in accordance with the provisions of Article 4 (commencing with Section 87660) of this chapter, a fact determined solely by the governing board.

(b) The governing board has received statements of the most recent evaluations.

(c) The governing board has received recommendations of the superintendent of the district and, if the employee is employed at a community college, the recommendations of the president of that community college.

(d) The governing board has considered the statement of evaluation and the recommendations in a lawful meeting of the board.

87608. Contract employee; first contract

If a contract employee is working under his/her first contract, the governing board, at its discretion and not subject to judicial review except as expressly provided herein, shall elect one of the following alternatives:

(a) Not enter into a contract for a second academic year.

(b) Enter into a contract for a second academic year.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

87608.5 Contract employee; second contract

If a contract employee is working under his or her second contract, the governing board, at its discretion and not subject to judicial review except as expressly provided in Sections 87610.1 and 87611, shall elect one of the following alternatives:

(a) Not enter into a contract for the following academic year.

(b) Enter into a contract for the following two academic years.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

87609. Contract employee; third contract

If a contract employee is employed under his or her third consecutive contract entered into pursuant to Section 87698.5, the governing board shall elect one of the following alternatives:

(a) Employ the probationary employee as a tenured employee for all subsequent academic years.

(b) Not employ the probationary employee as a tenured employee.

87610. Notice of regarding decisions; requirements

(a) The governing board shall give written notice of its decision under Section 87608 or 87608.5 and the reasons therefor to the employee on or before March 15 of the academic year covered by the existing contract. The notice shall be by registered or certified mail to the most recent address on file with the district personnel office. Failure to give the notice as required to a contract employee under his or her first or second contract shall be deemed an extension of the existing contract without change for the following academic year.

(b) The governing board shall give written notice of its decision under Section 87609 and the reasons therefor to the employee on or before March 15 of the last academic year covered by the existing contract. The notice shall be by registered or certified mail to the most recent address on file with the district personnel office. Failure to give the notice as required to a contract employee under his or her their consecutive contract shall be deemed a decision to employ him or her as a regular employee for all subsequent academic years.

87610.1 Collective bargaining; grievances; arbitration powers of arbitrator; employees and deemed supervisory or managerial

(a) In those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government Code, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining on these procedures.

(b) Allegations that the community college district, in a decision to grant tenure, made a negative decision that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied, any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievance. Allegations that the community college district in a decision to reappoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.

“Arbitration” as used in this section refers to advisory arbitration, as well as final and binding arbitration.

(c) Any grievance brought pursuant to subdivision (b) may be filed by an employee on his or her behalf, or by the exclusive bargaining representative on behalf of an employee or a group of employees in accordance with Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. The exclusive representative shall have no duty of fair representation with respect to taking any of these grievances to arbitration, and the employee shall be entitled to pursue a matter to arbitration with or without the representation by the exclusive representative. However, if a case proceeds to arbitration without representation by the exclusive representative, the resulting decision shall not be considered a precedent for purposes of interpreting tenure procedures and policies, or

the collective bargaining agreement, but instead shall affect only the result in that particular case. When arbitrations are not initiated by the exclusive representative, the district shall require the employee submitting the grievance to file with the arbitrator or another appropriate party designated in the collective bargaining agreement, adequate security to pay the employee's share of the cost of arbitration.

(d) The arbitrator shall be without power to grant tenure, except for failure to give notice on or before March 15 pursuant to subdivision (b) of Section 87610. The arbitrator may issue an appropriate make-whole remedy, which may include, but need not be limited to, back pay and benefits, reemployment in a probationary position, and reconsideration. Procedures for reconsideration of decisions not to grant tenure shall be agreed to by the governing board and the exclusive representative of faculty pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 Title 1 of the Government Code.

(e) Any employees who are primarily engaged in faculty or other bargaining unit duties, who perform "supervisory" or "management" duties incidental to their performance of primary professional duties shall not be deemed supervisory or managerial employees as those terms are defined in Section 3450.1 of the Government Code, because of those duties. These duties include, but are not limited to, serving on hiring, selection, promotion, evaluation, budget development, and affirmative action committees, and making effective recommendations in connection with these activities. These employees whose duties are substantially similar to those of their follow bargaining unit members shall not be considered supervisory or management employees. (Added by Stats. 1988, c. 973, Section 46.)

87611. Judicial review

A final decision reached following a grievance or hearing conducted pursuant to subdivision (b) of Section 87610.1 shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

87740. Notice of intention not to employ; hearing; determination

(a) No later than March 15 and before an employee is given notice by the governing board that his or he services will not be required for the ensuing year, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that such notice be given to the employee, and stating the reasons therefor.

If a contract employee has been in the employ of the district for less than 45 days on March 15, the giving of notice may be deferred until the 45th day of employment and all time periods and deadline dates prescribed in this subdivision shall be coextensively extended.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of

EVALUATION: Key To Excellence

duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, this failure to do so shall constitute waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all the following shall apply:

- (1) the respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing the accusation.
- (2) the discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.
- (3) the hearing shall 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 the evidence are related to the welfare of the colleges and the students thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt from time to time rules and procedures not inconsistent with this section, that may be necessary to effectuate this section.

(d) The governing board's determination not to reemploy a contract employee for the ensuing college year shall be for cause only. The determination of the governing board as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the colleges and the students thereof and provided that cause shall include termination of services for the reasons specified in Section 87743. The decision made after the hearing shall be effective May 17 of the year proceeding is commenced.

(e) Notice to the contract employee by the governing board that the employee's service will not be required for the ensuing year, shall be given no later than May 15.

(f) If a governing board notified a contract employee that his or her services will not be required for the ensuing year, the board, within 10 days after the delivery of the employee's written request, shall provide him or her with a statement of its reason for not reemploying him or her for the ensuing college year.

(g) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(h) If the governing board does not give notice provided for in subdivision (e) of this section on or before May 15, the employee shall be deemed reemployed for the ensuing school year.

(i) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivisions (c), (d), (e), and (h) that occur on or after the date of granting the continuance shall be extended for a period of time equal to such continuance.

87668. Penalties

A governing board may impose one of the following penalties:

- (a) Suspension for up to one year.
- (b) Suspension for up to one year and a reduction or loss of compensation during the period of suspension.

87669. Determination of penalty

The governing board shall determine whether a contract or regular employee is to be dismissed or penalized. If the employee is to be penalized, the governing board shall determine the nature of those penalties. If the employee is to be dismissed or penalized, the governing board shall determine whether the decision shall be imposed immediately or postponed in accordance with Section 87672.

87670. Inapplicability to immediate suspension

The procedure set forth in this article does not apply to an immediate suspension effected under Section 87736.

87671. Satisfaction of grounds

A contract or regular employee may be dismissed or penalized in one or more of the grounds set forth in Section 87732 are present and the following are satisfied:

(a) The employee has been evaluated in accordance with standards and procedures established in accordance with the provisions of this article.

(b) The district governing board has received all statements of evaluation which considered the events for which dismissal or penalties may be imposed.

(c) The district governing board has received recommendations of the superintendent of the district and, if the employee is working for a community college, the recommendations of the president of that community college.

(d) The district board has considered the statements of evaluation and the recommendations in a lawful meeting of the board.

87672. Statement of decision to dismiss or penalize; postponement

If the governing board decides it intends to dismiss or penalize a contract or regular employee, it shall deliver a written statement, duly signed and verified, to the employee setting forth the complete and precise decision of the governing board and the reasons therefor.

The written statement shall be delivered by serving it personally on the employee or by mailing it by United States registered mail to the employee at his or her address last known to the district.

A governing board may postpone the operative date of a decision to dismiss or impose penalties for a period not to exceed one year, subject to the employee's satisfying his or her legal responsibilities as determined by statute and rules and regulations of the district. At the end of this period of probation, the decision shall be made operative or permanently set aside by the governing board.

87673. Employee's notice of objection to decision

If the employee objects to the decision of the governing board or the reasons therefor on any ground, the employee shall notify in writing the governing board, the superintendent of the district which employs him or her and the president of the college at which the employee serves of his or her objection within 30 days of the date of the service of the notice.

87674. Agreement as to arbitrator; written confirmation

Within 30 days of the receipt by the district governing board of the employee's demand for a hearing, the employee and the governing board shall agree upon an arbitrator to hear the matter. When there is agreement as to the arbitrator, the employee and the governing board shall enter into the records of the governing board written confirmation of the agreement signed by the employee and an authorized representative of the governing board. Upon entry of such confirmation, the arbitrator shall assume complete and sole jurisdiction over the matter.

87675. Arbitration proceedings; scope of discovery; decision; testimony and evidence

The arbitrator shall conduct proceedings in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government code, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. In all cases, discovery shall be completed prior to one week before the date set for hearing. The arbitrator shall determine whether there is cause to dismiss or penalize the employee. If the arbitrator finds cause, the arbitrator shall determine whether the employee shall be dismissed, the precise penalty to be imposed, and whether the decision should be imposed immediately or postponed pursuant to Section 87672.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

87680. Hearing proceedings; administrative law judge's decision

The administrative law judge shall determine whether there is cause to dismiss or penalize the employee. If he or she finds cause, he or she shall determine whether the employee shall be dismissed and determine the precise penalty to be imposed, and shall determine whether his or her decision should be imposed immediately or postponed pursuant to Section 87672.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

87681. Postponement of operation of decision

In the case in which the administrative law judge determines that the operation or his or her decision should be postponed, any question of terminating the postponement shall be brought to the administrative law judge.

87682. Judicial review

The decision of the arbitrator or administrative law judge, as the case may be, may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision made by an administrative law judge under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on review, shall exercise its independent judgment on the evidence. The proceeding shall be set for hearing at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence is given by law.

87683. Payment of costs

The charges levied by the Office of Administrative Hearings shall be paid by the district.

C. Temporary Instructor Dismissal Law

87665. Termination of temporary employee

The governing board may terminate the employment of a temporary employee at its discretion at the end of a day or week, whichever is appropriate. The decision to terminate the employment is not subject to judicial review except as to the time of termination.



EVALUATION AND COLLECTIVE BARGAINING CONTRACT

The following discussion, recommendations and sample contract language are extracted from the CTA Contract Reference Manual.

Article 15

Evaluation

EVALUATION is one of the key Articles in the establishment of due process. It provides procedures to protect unit members from arbitrary and capricious disciplinary actions that could have the effect of an arbitrary transfer, freezing on the salary schedule, entering derogatory or defamatory materials into personnel files, and other types of harassment that are not justified by the actions of the unit member.

TOPIC: Evaluation Procedure

This provision establishes a procedure of systematic appraisal of an employee's work performance on a regular basis. The primary purpose of any employee evaluation is to improve the educational process of the employer and to develop the highest professional competence on the part of each employee.

SAMPLE LANGUAGE

15.1 Evaluation Procedure

EVALUATION: Key To Excellence

- 15.1.1 It is recognized that a system of periodic evaluation is essential to assist teachers in developing satisfactory performance and realizing their potential. It is further recognized that information gathered through such a system will enable Board of Education decisions, for which a unit member's performance is relevant, to be made in a just and equitable manner.
- 15.1.2 Probationary and temporary unit members shall be evaluated each school year. Permanent (tenured) unit members shall be evaluated every other school year. If a unit member is scheduled to be evaluated during a particular school year, but is granted a leave of absence for one (1) semester or longer, such evaluation shall take place during the first year of return to duty.
- 15.1.3 Unit members to be evaluated during a particular year shall be furnished a copy of the evaluation procedures, advised of the criteria upon which the evaluation is to be based, and notified of the identity of their evaluator no later than October 1 of the year in which the evaluation is to take place.
- 15.1.4 The unit member being evaluated and the evaluator shall meet no later than October 15 to discuss:
 - 15.1.4.1 Objectives and standards to be achieved during the evaluation period.
 - 15.1.4.2 A schedule of observations, conferences and final evaluation date. In the event of a disagreement over the objectives, standards and/or evaluation schedule, the unit member and the evaluator shall:
 - 15.1.4.2.1 Make a good faith effort to resolve the differences themselves.
 - 15.1.4.2.2 If the disagreement persists, the parties may invite a third party to assist in resolving the differences.
 - 15.1.4.2.3 If either the unit member or evaluator reject the proposed alternatives, each shall have the opportunity to state his/her position on the matter(s) in dispute, and to have a written statement attached to the evaluation form.
 - 15.1.4.2.4 The unit member shall have the right to identify any constraints which the unit members believes may inhibit his/her ability to meet the objectives and standards established.
 - 15.1.4.2.4 The unit member shall have the right to identify any constraints which the unit member believes may inhibit his/her ability to meet the objectives and standards established.

- 15.1.5 During the course of the evaluation period circumstances may change that require modification of the original objectives and standards. The unit member may initiate a change of these objectives and standards in a manner prescribed in Section 15.1.3 above.
- 15.1.6 The evaluation process shall include the following activities:
- 15.1.6.1 Classroom observations shall last at least thirty (30) minutes, shall be made known to the unit member at least two (2) days prior to their occurrence; shall be followed by a conference with written feedback within three (3) days of the observation; and shall ordinarily be three (3) in number. With agreement of both the unit member and the evaluator, the number of classroom observations may be reduced to two (2) or one (1) in case of obvious satisfactory performance by permanent unit members. A unit member who receives a negative evaluation shall, upon request, be entitled to additional classroom observations, evaluation conferences and written evaluations. Such entitlement includes a pre-observation conference.
- 15.1.6.2 The immediate supervisor shall meet with first-year probationary employees within thirty calendar days of the close of the first semester. At this meeting, the immediate supervisor shall review the teacher's performance in the first semester and inform the teacher whether any problems were noted that could result in the teacher being denied permanent status. If any such problems are identified, the immediate supervisor shall provide the unit member, at this meeting, with a written statement of those problems. In addition, the immediate supervisor shall provide the employee, at this meeting, with a written assistance plan (see 15.1.6.3) designed to allow the unit member to make the improvements necessary to attain permanent status. If any problems are identified following this meeting that could result in the teacher being denied permanent status, the teacher shall be informed of those problems in writing within 10 days and provided with a written assistance plan (see 15.1.6.3) designed to allow the unit member to make the improvements necessary to attain permanent status.

EVALUATION: Key To Excellence

- 15.1.6.3 In the case of negative evaluation(s), or if any problems are noted as per 15.1.6, the evaluator shall take positive action to assist the unit member in correcting any cited deficiencies. The evaluator's role to assist the unit member shall include, but not be limited to, the following:
 - 15.1.6.3.1 Specific recommendations for improvement.
 - 15.1.6.3.2 Direct assistance to implement such recommendations.
 - 15.1.6.3.3 Provision of additional resources, without cost to the unit member, to be utilized to assist with improvements.
 - 15.1.6.3.4 Techniques to measure improvement.
 - 15.1.6.3.5 Time schedule to monitor progress.
- 15.1.6.4 In preparing the final evaluation form for placement in the unit member's personnel file, the evaluator shall rely primarily upon data collected through classroom observations and evaluation conferences. Any deficiencies that may have been brought to the attention of the unit member, and subsequently corrected, shall not be included in the final evaluation form. Unsubstantiated statements shall not be included in the evaluation.
- 15.1.7 A unit member shall not be evaluated on or held accountable for any aspect of the educational program over which the unit member has no authority or ability to correct deficiencies.
- 15.1.8 A final evaluation conference between the unit member and evaluator shall be held no later than sixty (60) days prior to the end of the school year to discuss the content of the final evaluation form. In the event the unit member disputes the content, the unit member may prepare a written statement which shall be attached and incorporated into the final evaluation. The final evaluation form shall contain only ratings of "satisfactory" or "does not meet district standards."
- 15.1.9 Unit members shall not be required to participate in the evaluation(s) and/or observation(s) of other unit members.
- 15.1.10 The evaluation of unit members, pursuant to this Article, shall not include or be based upon the following:
 - 15.1.10.1 Standardized achievement test results.

- 15.1.10.2 Results of any tests utilized for the purpose of a School Improvement Plan.
- 15.1.10.3 Achievement of objectives stated in Individual Educational Programs (IEPs) of special education pupils.
- 15.1.10.4 Utilization of any “clinical supervision” techniques unless specifically agreed to by the unit member being evaluated.
- 15.1.10.5 Correlation of classroom curriculum to state or local curriculum frameworks.
- 15.1.10.6 The success, or lack thereof, of an instructional or clerical aide in the performance of tasks assigned by the unit member.
- 15.1.10.7 The personal life or lifestyle of a unit member, their personal opinions, or the scholarly, literary, or artistic endeavor of a unit member.
- 15.1.10.8 Intercoms and television cameras used for communications and monitoring safety conditions shall not be used for the purposes of evaluation, discipline, or discharge of unit members.

NOTE: Cross reference 15.1.10.8 with 22.1.7 in Article 22, Safety.

- 15.1.11 Association representative(s) may be present at meetings described in this Article.

TOPIC: Authentic Assessment and Portfolios

Authentic assessment is described as a form of pupil evaluation and teacher evaluation based upon a wide variety of sources placed in a real-life framework as much as possible. This article encompasses the two components of Authentic Assessment that relate to teacher involvement in the process. The first is pupil evaluation, including design, training, preparation, evaluation of the pupil and program, and teacher accountability for the outcomes. The second is teacher evaluation, including design, training, preparation, evaluation of the program, teacher evaluation, and teacher remediation if necessary.

Authentic Assessment is a way of measuring performance or progress where the evaluatee is asked to perform specific behavior in a context like that encountered in real life. Authentic Assessment may include the use of portfolios.

EVALUATION: Key To Excellence

Formative Evaluation is an ongoing assessment, the purpose of which is to improve instruction. It is elective, developmental and growth oriented, and intended for the exclusive use of teachers. By its very nature, the information in formative assessment is to be the property of the teacher being assessed.

Summative Evaluations are conducted by administrators for accountability purposes within the guidelines established by state legislation and the collective bargaining agreement.

A **pupil portfolio** is a systematic collection of annotated work, selected by the pupil and/or teacher, reflecting lessons, skills and evidence of educational growth and development. The portfolio process unfolds and extends over time, thus providing a time lapse view of the pupil's progress toward meeting expected learning outcomes.

A **teacher portfolio** is a systematic collection of annotated work, selected by the teacher and evaluator, reflecting teaching lessons, skills and evidence of professional growth and development. The portfolio process unfolds and extends over time, thus providing a time lapse view of the teacher's pedagogical capacities.

These provisions, which should be part of the evaluation article, reflect the use of authentic assessment as it relates to teacher duties and evaluation. It establishes the framework for such duties and evaluations to take place. **Do not propose this language unless it becomes necessary.**

SAMPLE LANGUAGE

15.2 Authentic Assessment and Portfolios

- 15.2.1 It is the intent of the parties to establish a jointly developed authentic assessment evaluation process for pupils and teachers in the district to further the ability of pupils to reach educational goals established by the district and state. The use of authentic assessment is intended to improve learning and pedagogical skills.
- 15.2.2 The district, in conjunction with the Department of Education shall establish expectations for pupils at the various grade levels and courses of study offered in the district. This district process shall require the involvement of the association and teachers as equal partners in decision making authority. It is the intent of the parties that parents, pupils and teachers clearly know what is expected for pupil outcomes. The district shall administer no tests or other evaluative instruments unless they conform to these mutually developed expectations. These expectations may also be known as clearly written objectives for the appropriate class.
- 15.2.3 The parties agree to form a joint District and Association committee to establish a system of authentic assessment for pupils and teachers in the district. The authority of the committee shall be to establish learner expectations and the general framework, philosophy, training

and logistical establishment of such an assessment system. The committee has no authority to amend or operate outside provisions of this agreement.

NOTE: *Section 15.2.3 or 12.6.2 may need additional language to elaborate on the composition and general operating rules of the joint committee.*

15.2.4 The District shall provide release time or hourly rate of pay for unit members to develop training, receive mutually developed training in authentic assessment, receive in-service, manage pupil portfolios, and the establishment of common preparation time for appropriate groups of teachers such as by department or grade level.

15.2.5 Portfolios shall be used in the following ways:

15.2.5.1 Pupil portfolios are to be used with pupils and parents to help improve the learning of the pupil. They are intended to remain with the pupil throughout the pupil's attendance at the school, from grade to grade.

15.2.5.2 Teacher portfolios and other records of performance are to be used to improve pedagogical skills. They are the property of the teacher, and the teacher maintains sole control of the materials contained in the portfolio.

NOTE: *This is the place to expand the use of the portfolio if necessary into the evaluation process. If this is necessary, the following is suggested:*

15.2.6 If the portfolio and similar evidence of performance is to be used for formal written evaluations of a teacher, only materials mutually agreed to by the teacher and immediate supervisor may be placed in the portfolio. The portfolio, in this case, must be kept in a place available only to the teacher and immediate supervisor. No other person may have access to this material without the written consent of the teacher. The District shall provide secure storage space for portfolios.

NOTE: *If the Association cannot bargain the "only materials mutually agreed to" section thereby allowing the immediate supervisor to put things in the portfolio, limits on the types of materials and when they can be placed in the portfolio would be necessary to protect the teacher from undue criticism.*

15.2.7 The District shall provide necessary resources such as, but not limited to, materials, technical assistance, and logistical support for teachers to successfully implement an authentic assessment program.

EVALUATION: Key To Excellence

- 5.2.8 The District guarantees to the teachers and association that it will support and nurture an environment for teachers to experiment with new assessment programs without fear of reprimand or any other disciplinary action, including dismissal.
- 15.2.9 A unit member may terminate participation in an assessment program that is failing to meet expectations or disrupting the learning and/or working environment.
- 15.2.10 The unit member and/or Association have the right to eliminate untrue material from the assessment, including the portfolio. Derogatory material placed in the portfolio must be true and the teacher has the right of rebuttal to such material before it is placed in the portfolio. No derogatory material may be placed in the portfolio or otherwise recorded that is more than two weeks old or related to an event that happened more than two weeks earlier. Derogatory material is defined as any material the teacher feels is derogatory.

TOPIC: Personnel File

This provision guarantees employees the right to review the contents of their personnel files, to receive copies of materials contained therein, and to establish a record of who has had access to their files. Employees must have the opportunity to examine personnel files maintained by the employer for materials concerning their work performance. This right protects the employee from unwarranted discipline or discharge based upon materials improperly placed in the file or materials that need to have statements attached to them explaining additional circumstances that documents properly placed in the file do not explain.

SAMPLE LANGUAGE

15.3 Personnel Files

- 15.3.1 There shall be a single personnel file for each unit member. Personnel files shall be kept in the central administrative office of the district. Information of a derogatory nature maintained by the district or district administrators shall be destroyed at the end of each school year and shall not be used in any decision affecting the discipline, employment status or assignment of a unit member unless that information has been entered into the personnel file in accordance with the procedures in section 15.2.3.
- 15.3.2 Materials in the personnel file of a unit member, except as noted below, shall be made available for inspection by the unit member involved.

Unit members shall have the right to inspect and obtain a copy of personnel file materials, upon request. Upon authorization by the unit member, an association representative may review the unit member's file or accompany the unit member in his/her review of the file. Material that may be excluded from inspection shall be limited to ratings, reports or records that:

15.3.2.1 Were obtained prior to the employment of the unit member involved.

15.3.2.2 Were prepared by identifiable examination committee members.

15.3.3 Information of a derogatory nature, except material excluded in accordance with section 15.3.2 above, shall not be entered or filed unless and until the unit member is given notice and an opportunity to review and comment thereon. A unit member shall have the right to enter, and have attached to any such derogatory statement, her/his own comments thereon. Such review, and any preparation of comments in response to the material and/or statement, shall take place during normal business hours, and the unit member shall be released from duty for this purpose without salary reduction. If the unit member alleges that the material is false and/or unsubstantiated, a grievance may be initiated to determine the validity of such material. The material shall not be entered or filed unless and until such grievance sustains the material. In the event the District fails to comply with the provisions of this section, such material shall not be allowed as evidence in any disciplinary or dismissal action against the unit member or used by the district in any grievance filed by the unit member.

15.3.4 All material placed in a unit member's personnel file shall be dated and signed by the person who caused the material to be prepared. Material shall be added in a timely fashion and in no circumstances shall material be added that is over one (1) month old. Documents created within this one (1) month time limitation shall not include references to other documents or events in excess of this one (1) month limitation.

15.3.5 The District is prohibited from basing decisions affecting the assignment, discipline, or status of employment of a unit member upon materials not contained in or events not referenced in the personnel file.

EVALUATION: Key To Excellence

- 15.3.6 Access to a unit member’s personnel file shall be limited to a “need to know” basis. Access authorization must be obtained from either the Superintendent or Superintendent’s designee. The contents of all personnel files shall be kept in strictest confidence. The District shall keep a log indicating the persons who have requested to examine a personnel file, as well as the dates such requests were made. Such log shall be available for examination by the unit member or her/his authorized Association representative.

TOPIC: Public Complaints

This provision guarantees that employees will be notified in writing of all public complaints. This gives the employee a chance to respond to or eliminate the complaint from district records, if it is unjustified, or if improved performance has corrected the situation. Many times complaints received by the administration are used to intimidate and evaluate employees. Employees are entitled to receive written notice of such complaints, have the right to respond in writing and have such complaints eliminated from District records if they are unjustified.

SAMPLE LANGUAGE

15.4 Public Complaints

- 15.4.1 No negative and/or unsatisfactory evaluation, assignment, discipline, dismissal, or other adverse action shall be predicated upon complaints, information or material of a derogatory or critical nature that has been received by the district from pupils, parents, district employees, public agency, and /or the public unless the following procedures have been followed:

15.4.1.1 Any public complaint about a unit member shall be reported to the unit member by the administrator receiving the complaint, within five (5) days of receipt, if the complaint may be placed in the unit member’s file or used against the unit member as described in 15.4.1.

15.4.1.2 Should the involved unit member believe the allegations in the public complaint warrant a meeting, the immediate supervisor shall attempt to schedule a meeting between the member and the complainant. At the request of the unit member, association representative(s) may be present at the meeting. If the complainant refuses to attend the meeting, the complaint shall

neither be placed in the unit member's personnel file nor utilized in any evaluation, assignment, or disciplinary or dismissal action against the unit member.

15.4.1.3 If the matter is not resolved at the meeting to the satisfaction of the complainant, complainant may reduce the complaint to writing and submit the original to the unit member, with a copy to the unit member's immediate supervisor. The unit member shall be given time during the duty day, without salary deduction, to review the complaint and prepare responsive comments. If the unit member believes the complaint is false and/or based on hearsay, a grievance may be initiated to determine the validity of such complaint. If no written complaint is received, the matter shall be dropped.

15.4.2 Complaints that are withdrawn, shown to be false, or are not sustained by the grievant procedure shall neither be placed in the unit member's personnel file nor utilized in any evaluation, assignment, or disciplinary or dismissal action against the unit member.

15.4.3 All information or proceedings regarding any complaint shall be kept confidential by the District.

TOPIC: Personal and Academic Freedom

This provision guarantees to employees full freedom in the exchange of ideas and exempts from the employer's area of control non-teaching, non-job-related private and personal actions and relationships. It protects employees from adverse actions based on disagreement regarding how professional obligations are met. Intimidation is greatly lessened when the employer is prohibited from interfering with or controlling the employee's personal life.

SAMPLE LANGUAGE

15.5 Personal and Academic Freedom

15.5.1 It is the policy of the district that all instruction shall be fair, accurate, objective, and appropriate to the age and maturity of the pupil(s), and sensitive to the community needs and the needs and values of our diverse cultures and heritages. Academic freedom is essential to the fulfillment of this policy and the district acknowledges the fundamental need to protect unit members from any censorship or restraint that might interfere with the unit members' obligation to pursue truth in performance of their teaching functions.

EVALUATION: Key To Excellence

- 15.5.1.1 A unit member shall have reasonable freedom in classroom presentations and discussions and may introduce political, religious or otherwise controversial material, provided that said material is relevant to the course content and within the scope of the law.
- 15.5.1.2 In performing teaching functions, unit members shall have reasonable freedom to express their opinions on all matters relevant to the course content in an objective manner. A unit member, however, shall not utilize his/her position to indoctrinate pupils with his/her own personal, political and/or religious views.
- 15.5.2 Unit members must be employed, promoted, or retained without discrimination or harassment regarding their personal opinions or their scholarly, literary or artistic endeavors.
- 15.5.3 The personal life of a unit member is not an appropriate concern of the district for purposes of evaluation or disciplinary action unless it prevents the unit member from performing his/her duties.
- 15.5.4 A unit member shall be entitled to full rights of citizenship, and no religious, political or personal activities, or lack thereof, of any unit member shall be used for purposes of evaluation, transfer, disciplinary or dismissal action.

TOPIC: Classroom Aides and Student Teachers

This provision protects the unit member from adverse evaluation due to a unit member's work with aides, volunteers, and/or student teachers. The importance of this section will depend upon the number of aides, volunteers, and student teachers working in a district and the problems that arise through a unit member's involvement with them. The basic thrust permits the unit member to be actively involved in all facets of his/her working relationships with student teachers and aides, and provides mechanisms for reassignment should the working relationship prove unsatisfactory.

SAMPLE LANGUAGE

15.6 Classroom Aides and Student Teachers

- 15.6.1 Unit members shall have the right to interview prospective classroom aides prior to assignment. No instructional or clerical classroom aide shall be assigned to a unit member without his/her consent.
- 15.6.2 The work of instructional and clerical aides shall be under the control and direct supervision of the unit member they are assigned to.
- 15.6.3 The unit member shall periodically discuss with the site administrator the performance of the instructional or clerical aide under his/her supervision. When an unsatisfactory working relationship can be demonstrated to exist between the unit member and an aide, the unit member shall initiate a request to the appropriate administrator that the aide be evaluated and if necessary, reassigned or dismissed.
- 15.6.4 No instructional or clerical aide or any other classified personnel of the district shall participate in or provide information for the evaluation of a unit member.
- 15.6.5 The District shall work cooperatively with unit members on the assignment of student teachers from teacher training institutions. No student teacher shall be assigned to work with a unit member without the unit member's approval. Unit members accepting student teachers shall be paid the student teacher fee offered by the educational institution.

TOPIC: Teaching Conditions

The provision guarantees unit members will have the necessary equipment, materials and supplies to perform their duties. This includes access to advanced educational technology for pupils and teachers. Since employees are evaluated on their job performance, it is imperative that the employer provide the necessary materials that enable the unit member to properly perform his/her job. The public and business have long supported the integration of educational technology in classrooms.

SAMPLE LANGUAGE

15.7 Teaching Conditions

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- 15.7.1 A unit member shall not receive a negative evaluation of performance unless the unit member has been provided adequate textbooks, reference books, equipment, supplies, materials, storage space, educational technology, and classroom facilities to properly perform his/her assigned duties.
- 15.7.2 Repairs, setup, and programming of educational technology, equipment, and instructional devices shall be made as soon as possible by qualified personnel. If an item cannot be served within one (1) week, the district shall provide an adequate replacement for use during this period.
- 15.7.3 Except in emergencies, necessary repairs and maintenance of classrooms and district facilities shall be made at a time that will not interfere with the instructional program. Should the health, safety, or welfare of pupils or unit members be endangered, immediate action shall be taken by the District to correct the problem.
- 15.7.4 Unit members shall not be expected to use or purchase supplies or personal equipment for their assignments.
- 15.7.5 The District shall provide liability coverage for any personal materials and/or property of unit members while on district property.

NOTE: 15.7.4 may need elaboration to include specific types of materials and/or property and procedures to ensure liability coverage. Is the language intended to include automobiles?



TOPIC: Voluntary Clinical Supervision

The need for additional contract language in an evaluation article to protect against abuse of any clinical supervision program will vary depending upon the current language in the evaluation article. Clinical supervision is a formative system of evaluation and best fits into a voluntary system of improvement.

SAMPLE LANGUAGE

15.9 Voluntary Clinical Supervision

- 15.9.1 The purpose of clinical supervision is to provide unit members the opportunity to improve pedagogical skills.
- 15.9.2 Participation in clinical supervision shall be on a voluntary basis. No district administrator or other district official may interfere or be involved in the process except as may be requested by the unit member.
- 15.9.3 The Association shall approve all training for unit members participating in clinical supervision. Such training may be provided jointly by the association and district or may be provided by the district.
- 15.9.4 Unit members involved in clinical supervision shall establish parameters for their evaluations that include such things as evaluative techniques to be used, areas to be evaluated, and a timeline for the accomplishment of evaluation. Unit members shall be provided reasonable release time to accomplish clinical supervision.
- 15.9.5 All material generated through the clinical supervision process is the property of the unit member being evaluated. Such evaluations may not be used by the District for the purposes of administrative evaluations, transfers, disciplinary actions or dismissal of unit members.
- 15.9.6 Unit members who participate in clinical supervision may terminate the process at their discretion.

APPENDIX A

Collective Bargaining Agreement Checklist Evaluation Section

The following essential elements and concepts should be contained in the Evaluation Article.

- _____ 1. Dates by which various steps of the process will be completed.
- _____ 2. Process for determining standards (goals and objectives).
- _____ 3. Teachers' right to attach a statement of mitigating circumstances (constraints) to the standards.
- _____ 4. Advance notice, length and frequency of observations.
- _____ 5. Remediation (improvement) plan for possible unsatisfactory evaluation.
 - _____ 5.1. Areas where improvement is needed.
 - _____ 5.2. Specific suggestions for improvements.
 - _____ 5.3. Additional resources to be utilized to assist with improvement.
 - _____ 5.4. Evaluator's role in assisting the teacher.
 - _____ 5.5. Techniques for measurement of improvement.
 - _____ 5.6. Time schedule for monitoring improvement.
- _____ 6. A teacher shall not be evaluated on the results of any test utilized for the purpose of a school improvement plan adopted pursuant to Education Code Sections 51215-51217 and 52010-52179.
- _____ 7. Teachers shall not be evaluated on situations over which they have no effective control.

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- _____ 8. Evaluation Instruments shall be limited to satisfactory or does not meet district standards ratings.
- _____ 9. A Special Education Students IEP shall be considered a guide for the instructional program and objectives stated therein shall not form the basis for evaluation of a teacher.
- _____ 10. Personnel Files
 - _____ 10.1. Rights under Education Code 44031 (Teacher's access to files)
 - _____ 10.2. Upon written permission of a teacher, an Association representative may review the teacher's file, or accompany the teacher in his/her review of the file.
 - _____ 10.3. Material not in the file may not be used against a teacher.
 - _____ 10.4. Hearsay and false material are to be withdrawn from the file.
 - _____ 10.5. All personnel file material shall be contained in the District master file and any local site file shall not include anything not also contained in the District master personnel file.
- _____ 11. Public Charges
 - _____ 11.1. Complaints regarding teachers are to be reported to them.
 - _____ 11.2. Complainant to meet with teacher, if requested by the teacher, regarding complaint or complaint dropped.
 - _____ 11.3. Complaint put in writing or dropped.
 - _____ 11.4. Teacher may respond in writing to the complaint and have such response attached to the complaint.
 - _____ 11.5. Hearsay and false charges are not to be used.
- _____ 12. Personal and Academic Freedom
 - _____ 12.1. Teacher's personal life not utilized in evaluation process.
 - _____ 12.2. Teacher has full rights of academic freedom in performance of his/her job.

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_____ 13. Aides

_____ 13.1. Teachers meaningfully involved in the hiring of any aides, paid or voluntary, assigned to their class.

_____ 13.2. Teachers meaningfully involved in the evaluation of any aides, paid or voluntary, assigned to their class.

_____ 14. Teaching Conditions

_____ 14.1. Teachers will be provided adequate materials to perform their duties.

_____ 14.2. Teachers will be provided adequate equipment to perform their duties.

APPENDIX B

California Standards for the Teaching Profession

STANDARD ONE:

<i>ENGAGING & SUPPORTING ALL STUDENTS IN LEARNING</i>	
1-1	Connecting student's prior knowledge, life experience, and interests with learning goals
1-2	Using a variety of instructional strategies and resources to respond to student's diverse needs
1-3	Facilitating learning experiences that promote autonomy, interaction and choice
1-4	Engaging students in problem solving, critical thinking, and other activities that make subject matter meaningful
1-5	Promoting self-directed, reflective learning for all students

STANDARD TWO:

<i>CREATING & MAINTAINING EFFECTIVE ENVIRONMENTS FOR STUDENT LEARNING</i>	
2-1	Creating a physical environment that engages all students
2-2	Establishing a climate that promotes fairness and respect
2-3	Promoting social development and group responsibility
2-4	Establishing and maintaining standards for student behavior
2-5	Planning and implementing classroom procedures and routines that support student learning
2-6	Using instructional time effectively

STANDARD THREE:

<i>UNDERSTANDING & ORGANIZING SUBJECT MATTER FOR STUDENT LEARNING</i>	
3-1	Demonstrating knowledge of subject matter content and student development
3-2	Organizing curriculum to support student understanding of subject matter
3-3	Interrelating ideas and information within and across subject matter areas
3-4	Developing student understanding through instructional strategies that are appropriate to the subject matter
3-5	Using materials, resources, and technologies to make subject matter accessible to students

STANDARD FOUR:

<i>PLANNING INSTRUCTION & DESIGNING LEARNING EXPERIENCES FOR ALL STUDENTS</i>	
4-1	Drawing on and valuing student's backgrounds, interests and developmental learning needs
4-2	Establishing and articulating goals for student learning of subject matter
4-3	Developing and sequencing instructional activities and materials for student learning
4-4	Designing short-term and long-term plans to foster student learning
4-5	Modifying instructional plans to adjust for student needs

STANDARD FIVE:

<i>ASSESSING STUDENT LEARNING</i>	
5-1	Establishing and communicating learning goals for all students
5-2	Collecting and using multiple sources of information to assess student learning
5-3	Involving and guiding all students in assessing their own learning
5-4	Using the results of assessments to guide instruction
5-5	Communicating with students, families, and other audiences about student progress

STANDARD SIX:

<i>DEVELOPING AS A PROFESSIONAL EDUCATOR</i>	
6-1	Reflecting on teaching practice and planning professional development
6-2	Establishing professional goals and pursuing opportunities to grow professionally
6-3	Working with communities to improve professional practice
6-4	Working with families to improve professional practice
6-5	Working with colleagues to improve professional practice

California Standards for the Teaching Profession

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APPENDIX C

Peer Assistance and Peer Review (PAR) Sample Contract Language

The following sample language is consistent with the recently enacted AB 1X, The California Peer Assistance and Review (PAR) Program for Teachers. This legislation eliminated the former California Mentor Teacher Program, and incorporated its funding in this new PAR Program, using consulting teachers to assist and review the performance of permanent teachers in the school district. This legislation amends Education Code Sections 44662 and 44664, and adds Section 44498. The language implementing this program should be bargained very carefully, and chapters should not be rushed into an agreement. School districts are required to implement the program on July 1, 2000 (for the 2000-01 work year) in order to avoid a financial penalty.

SAMPLE LANGUAGE

29.1 The Association and the District are continuously striving to provide the highest possible quality of education. In order for students to succeed in learning, teachers must succeed in teaching. Therefore, the parties agree to cooperate in the design and implementation of programs to improve the quality of instruction through expanded and improved professional development and peer assistance. Teachers referred to or who volunteer for the program are viewed as valuable professionals who deserve to have the best resources available provided to them in the interest of improving performance to a successful standard.

***NOTE:** The funding of the state law contemplates that only permanent classroom teachers will participate in the PAR Program in districts with 250 ADA or more, and that non-classroom unit members such as counselors, librarians, nurses and speech and language specialists will be excluded. The law allows districts with fewer than 250 units of ADA to include probationary teachers in the PAR Program. An Association may opt to include non-classroom unit members as well as probationary teachers in the PAR Program, being mindful of the additional cost of doing so.*

29.1.1 Joint Committee (JC)

29.1.1.1 The Joint Committee shall consist of _____ members, the majority of whom shall be certificated classroom teachers who are chosen to serve the Association. The District shall choose the administrators of the Joint Committee.

NOTE: *The Association must discuss and decide several issues in regards to how the teacher members of the Joint Committee are chosen. It is recommended that the Association appoint the teacher members to the Joint Committee. This increases the likelihood of getting strong teacher advocates on the Committee. Another option is to hold an election. If the Association selects this option, it should recommend a slate of candidates to be members of the Joint Committee. If an election is held, it should be conducted by Association Representatives at each site.*

The state law covers classroom teachers. Therefore, another issue the Association must decide is who will be eligible to vote for the Joint Committee members. One option is that only those bargaining unit members who may participate in the PAR Program are eligible to vote. Another option is to allow all bargaining unit members to vote.

It is recommended that the bargaining unit resist district efforts to dilute the advocacy process.

29.1.1.2 The Joint Committee shall establish its own meeting schedule. To meet, two-thirds of the members of the Joint Committee must be present. Such meetings shall take place during the regular teacher workday. Teachers who are members of the Joint Committee shall be released from their regular duties to attend meetings, without loss of pay or benefits. If, in carrying out their responsibilities as members of the Joint Committee, teachers find it necessary to work beyond their regular workday, they shall be compensated at the unit member's pro rata hourly rate of pay.

29.1.1.3 The Joint Committee shall be responsible for the following:

1. Providing annual training for the Joint Committee members.
2. Establishing its own rules of procedure, including the method for the selection of a Chairperson.
3. Selecting the panel of Consulting Teachers.

NOTE: *The broadest representation of all categories of teachers for the panel of Consulting Teachers is optimal. This may require looking at various methods of release time for the Consulting Teacher.*

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4. Selecting trainers and/or training providers.
5. Providing training for Consulting Teachers prior to the Consulting Teacher's participation in the program.

***NOTE:** Training for Consulting Teachers should include, but not be limited to, the PAR Program, peer coaching, due process, adult learning theory and duty of fair representation.*

6. Sending written notification of participation in the PAR Program to the Referred Participating Teacher, the Consulting Teacher and the site principal.
7. Making available the panel of Consulting Teachers for selection by the Participating Teacher.
8. Adopting Rules and Procedures to affect the provisions of this Article. Said Rules and Procedures shall be consistent with the provisions of this Agreement, and to the extent there is an inconsistency, the Agreement shall prevail.

***NOTE:** Examples of specific Rules and Procedures are available from your local CTA staff person.*

9. Distributing, at the beginning of each school year, a copy of the adopted Rules and Procedures to all bargaining unit members and administrators.
10. Establishing a procedure for application as a Consulting Teacher.
11. Determining the number of Consulting Teachers in any school year, based upon participation in the PAR Program, the budget available and other relevant considerations.
12. Reviewing the final report prepared by the Consulting Teacher and making recommendations to the Governing Board regarding the Referred Participating Teacher's progress in the PAR Program.

13. Evaluating annually the impact of the PAR Program in order to improve the program.

29.1.1.4 All proceedings and materials related to evaluations, reports and other personnel matters shall be strictly confidential. Therefore, Joint Committee members and Consulting Teachers may disclose such information only as necessary to administer this Article.

29.1.1.5 The District agrees to indemnify and hold harmless and provide a defense to the Association and any Association-selected member of the Joint Committee against any claims, causes of action, damages, grievances, administrative proceedings or any other litigation arising from the Association's participation in Peer Assistance and Peer Review. The Association retains the right to select its own attorney to represent it in such actions and will maintain complete control of the litigation. The District shall pay legal costs and fees in such actions.

NOTE: *It is important for the Association to retain the right to select its own attorney, since the Association does not want a management attorney representing it, due to possible conflicts of interest and the risk of confidential Association business falling into the hands of the District.*

29.1.2 Participating Teachers (PT)

NOTE: *The funding of the state law contemplates that only permanent classroom teachers will participate in the PAR program in Districts with at least 250 units of ADA. An Association may opt to include first and/or second year probationary teachers, as well as non-classroom unit members, being mindful of the additional cost of doing so.*

29.1.2.1 A Referred Participating Teacher is a teacher with permanent status who receives assistance to improve his or her instructional skills, classroom management, knowledge of subject, and/or related aspects of his or her teaching performance as a result of an unsatisfactory final evaluation.

NOTE: *The Association must bargain what exactly constitutes an unsatisfactory evaluation based on the specific procedures and forms in the Evaluation Article used by the District [refer to Section 29.1 of this Article].*

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- 29.1.2.2 A Volunteer Participating Teacher is a teacher with permanent status who volunteers to participate in the PAR Program. The purpose of participation in the PAR Program for the Volunteer Participating Teacher is for peer assistance only and the Consulting Teacher shall not participate in a performance review of the Volunteer Participating Teacher. The Volunteer PT may terminate his or her participation in the PAR Program at any time.
- 29.1.2.3 A Referred Participating Teacher shall select his or her Consulting Teacher from the panel of Consulting Teachers provided by the Joint Committee. A different Consulting Teacher may be selected to work with the Participating Teacher at any time during the process when requested to do so by the Participating Teacher or the Consulting Teacher.
- 29.1.2.4 All communication between the Consulting Teacher and a Volunteer Participating Teacher shall be confidential, and without the written consent of the Volunteer, shall not be shared with others, including the site principal, the evaluator or the Joint Committee.
- 29.1.2.5 The Participating Teacher has the right to be represented throughout these procedures by the Association representative of his or her choice.
- 29.1.3 Consulting Teachers (CT)
 - 29.1.3.1 A Consulting Teacher is a teacher who provides assistance to a Participating Teacher pursuant to the PAR program. The qualifications for the Consulting Teacher shall be set forth in the Rules and Procedures, provided that the following shall constitute minimum qualifications:
 - 29.1.3.1.1 A credentialed classroom teacher with permanent status.

NOTE: *In a school district with an average daily attendance of less than 250 pupils, without permanent status teachers, the Consulting Teacher can be a credentialed classroom teacher who has completed at least three consecutive school years as an employee of the district in a position requiring certification qualifications.*

29.1.3.1.2 Substantial recent experience in classroom instruction.

NOTE: *An Association can bargain a minimum number of years of recent classroom experience rather than using the language in the law.*

29.1.3.1.3 Shall demonstrate exemplary teaching ability, as indicated by, among other things, effective communication skills, subject matter knowledge, and mastery of a range of teaching strategies necessary to meet the needs of pupils in different contexts.

NOTE: *Local Associations can determine their own criteria as deemed important and/or necessary.*

29.1.3.2 In filling a position of Consulting Teacher, each applicant is required to submit three references from individuals with specific knowledge of his or her expertise, as follows:

29.1.3.2.1 A reference from a building principal or immediate supervisor.

29.1.3.2.2 A reference from an Association representative.

29.1.3.2.3 A reference from another classroom teacher.

29.1.3.3 All applications and references shall be treated with confidentiality.

29.1.3.4 Consulting Teachers shall be selected by a majority vote of the Joint Committee following classroom observations by the Joint Committee.

NOTE: *Observation language should be outlined in the Rules and Procedures.*

29.1.3.5 A Consulting Teacher shall be provided release time as needed. The term of the Consulting Teacher shall be three (3) years, and a teacher may not serve in the position for more than one (1) consecutive term. A

teacher shall not be appointed to an administrative position in the District while serving as a Consulting Teacher or for two (2) full years after concluding service as a Consulting Teacher.

NOTE: *The Association will have to determine the type of release time that is best suited for its local situation. A full time release program releases the Consulting Teacher from other duties, but also ends up taking an excellent teacher out of the classroom. A full-time release CT may also be viewed as not being a peer, since that person is no longer in the classroom. Alternative models could include some full time release and some part-time release CTs and/or job sharing (refer to Contract Reference Manual Article 23, Leaves, and Article 24, Health & Welfare Benefits). The positive aspects of part-time release programs are that it provides a broader cross section of categories of teachers on the CT panel and the CT would not have to give up his or her teaching assignment. In addition, funds may be available to release the PT to observe or attend workshops or other trainings. Drawbacks include increasing a classroom teacher's workload. In such situations, a stipend for additional duties or pro rata hourly pay should be considered.*

- 29.1.3.6 Functions performed by consulting teachers pursuant to this Article by bargaining unit employees shall not constitute either management or supervisory functions. The Consulting Teacher shall continue all rights of bargaining unit members. In addition to the regular salary, a Consulting Teacher shall receive pro rata hourly pay for all work beyond the regular workday and/or work year.
- 29.1.3.7 Upon completion of his or her service as a full-time released Consulting Teacher, a teacher shall be returned to a regular assignment in accordance with Article 13, Transfer Rights, of this Agreement. (Refer to Contract Reference Manual Article 13, Assignment, Transfer & Reassignment.)
- 29.1.3.8 Consulting Teachers shall have the responsibility for no more than _____ Participating Teachers. Each Referred Participating Teacher shall receive no less than _____ hours of assistance per semester from the Consulting Teacher. Consulting Teachers shall assist Participating Teachers by demonstrating, observing, coaching, conferencing, referring, or by other activities, which, in their professional judgment, will assist the Participating Teacher.

NOTE: *The number of Participating Teachers and the number of hours of assistance are dependent upon the amount of release time negotiated for the Consulting Teacher.*

29.1.3.9 The Consulting Teacher shall meet with the Referred Participating Teacher to discuss the PAR Program, to establish mutually agreed upon performance goals, develop the assistance plan and develop a process for determining successful completion of the PAR Program.

29.1.3.10 The Consulting Teacher shall conduct multiple observations of the Participating Teacher during classroom instruction, and shall have both pre-observation and post-observation conferences.

29.1.3.11 The Consulting Teacher shall monitor the progress of the Referred Participating Teacher and shall provide periodic written reports to the Referred Participating Teacher for discussion and review.

29.1.3.12 The Consulting Teacher shall continue to provide assistance to the Referred Participating Teacher until he or she concludes that the teaching performance of the Participating Teacher is satisfactory, or that further assistance will not be productive. A copy of the Consulting Teacher's report shall be submitted to and discussed with the Referred Participating Teacher to receive his or her input and signature before it is submitted to the Joint Committee.

The Participating Teacher's signing of the report does not necessarily mean agreement, but rather that he or she has received a copy of the report. The Consulting Teacher shall submit a final report to the Joint Committee. The Referred Participating Teacher shall have the right to submit a written response, within 20 days, and have it attached to the final report. The Referred Participating Teacher shall also have the right to request a meeting with the Joint Committee, and to be represented at this meeting by the Association representative of his or her choice.

29.1.3.13 The results of the Referred Participating Teacher's participation in the PAR Program shall be made available for placement in his or her personnel file, and may be used in the evaluation of the Referred Participating Teacher.

- 29.1.3.14 The District agrees to indemnify and provide a defense for the Consulting Teacher against any claims, causes of action, damages, grievances, administrative proceedings or any other litigation arising from the Consulting Teacher's participation in Peer Assistance and Peer Review. The Consulting Teacher retains his or her right to select his or her own attorney to represent him or her in such actions. The District will pay legal costs and fees in such actions.

TOPIC: Beginning Teachers Support and Assessment Program (BTSA)

SAMPLE LANGUAGE

- 29.2 With regard to the implementation of the BTSA Program, the Association and District agree as follows:
 - 29.2.1 The majority of the BTSA Steering Committee shall be appointed by the Association.
 - 29.2.2 The Steering Committee shall be responsible for establishing its rules of procedure and the application process for becoming a BTSA Support Provider.
 - 29.2.3 BTSA Steering Committee members shall receive additional compensation consistent with the funding of the BTSA program, so as not to encroach on unrestricted general fund revenues.
 - 29.2.4 BTSA Steering Committee members shall receive release time for meetings or shall be paid the pro rata hourly rate for meetings that take place before or after the contractual workday.
 - 29.2.5 BTSA Steering Committee shall be responsible for conducting an annual evaluation of the program and to make recommendations for improvement.
 - 29.2.6 Teacher participation in the BTSA program shall be voluntary.
 - 29.2.7 BTSA support providers shall not evaluate teacher participants (except as may be provided for in this Article).

LEGAL REFERENCES

A. Education Code Sections Cited

44279.1 - Beginning Teacher Support and Assessment
44500 et seq. - Peer Assistance and Peer Review Program for Teachers
44498 - Mentor Teacher Program repealed as of 1/1/02

B. Government Code Sections Cited

Government Code, Chapter 10.7 - Educational Employment Relations Act

APPENDIX D

CTA Group Legal Services Program General Description

The CTA Group Legal Services (“GLS”) Program provides staff and retained attorney services for members, and chapters covering a range of employment and collective bargaining-related legal matters. Some of these services are provided automatically up to stated dollar amounts; provision of other services is discretionary and contingent upon prior authorization. In addition, the GLS program offers referrals for members on non-employment related matters.

Representation by an attorney is provided in the following categories of cases:

Dismissal For-Cause or Suspensions

A defense is provided members in Commission on Professional Competency proceedings for dismissal or suspension pursuant to Education Code Section 44932 and 44944; in mid-year dismissals-for-cause of probationary teachers held pursuant to Education Code Section 44948.3; in administrative proceedings held pursuant to Education Code Section 87740 (community colleges); and in State Personnel Board proceedings held pursuant to Education Code Section 89539 (California State University and Colleges).

In addition, defense is provided members in for-cause dismissal or suspension cases pursuant to Education Code Section 44932, in school districts of less than 250 average daily attendance where the teacher has served three full consecutive school years in such districts and who, but for the ADA limitation, would have acquired permanent status in such district.

Suspension for Mental Illness

Attorney assistance and representation is provided members who are suspended or transferred, or who are informed in writing by their school district that they may be suspended or transferred, because of a school district’s allegation of mental illness pursuant to Education Code Sections 44941 or 87738.

The representation included informal meetings with school district officials, formal meetings in executive session with a school district governing board, and representation of the member in superior court proceedings held pursuant to Education Code Sections 44942 (g) or 87738(g).

Credential Review

Attorney assistance and representation is provided members who are informed by the Commission on Teacher Credentialing (“Commission”), the Commission’s Committee of Credential Review (“Committee”), or the Board of Governors of the California Community Colleges (“Board”), that an investigation is being conducted looking to the possible suspension or revocation of the member’s credential, pursuant to Education Code sections 44420 et seq. Attorney assistance and representation are also provided members with regard to applications for credentials that are required for retention of present employment.

Such assistance and representation may take place at two different levels: Informal review, involving correspondence and communication with the commission, Committee, or Board, and formal proceedings, involving hearings and preparations for hearings before an administrative law judge, or before the Commission, Committee, or Board.

Advisory Panel on legal Services

The Advisory Panel on Legal Services (“APLS” or “PANEL”), consists of seven CTA members appointed by the Board of Directors. The Panel serves in an advisory capacity to the CTA Board of Directors. In addition to having the duty of continuous review of the entire CTA Legal Services Program and the duty to make recommendations for changes in this Manual, The Advisory Panel makes recommendations to the Board of directors on individual or chapter requests for legal assistance on matters not elsewhere covered in this Manual. The Panel’s recommendations go to the Board of Directors, which makes the final decision on the application for legal assistance. The Board of Directors may grant assistance in partial or full payment of legal fees, or may direct that legal assistance be provided a member by the Department of Legal Services.

NOTE: *Complete rules and regulations establishing the terms for utilization of the Group Legal Services Program are found in the CTA Group Legal Services Manual.*

NEA/CTA Employment Liability Insurance

Each year CTA, in cooperation with the National Education Association (“NEA”), obtains for members a group liability insurance policy covering member liability and/or attorneys’ fees and costs in certain employment-related legal proceedings. Coverage terms may vary from year to year in accordance with the terms and conditions of the current negotiated policy.



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