

January 31, 2014

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to performance evaluations, layoffs, and dismissals of public school teachers (A.G. File No. 13-0062).

BACKGROUND

Under current law, school districts must follow certain rules when evaluating teachers, conducting teacher layoffs, and dismissing teachers who are accused of serious offenses, as described below.

Teacher Evaluations

Regular Performance Evaluations Required for All Teachers. Current law requires school districts to evaluate teachers on a regular basis. Probationary teachers must be evaluated at least once a year. Districts must evaluate permanent teachers at least once every other year. (Teachers typically become permanent after completing two years as a probationary teacher.) Permanent teachers who have been employed at least ten years in a district and who have met or exceeded standards on their most recent performance reviews can be evaluated once every five years.

Evaluations Must Include Certain Elements. State law requires each evaluation to assess teacher performance in the following areas: (1) student progress on grade-level standards and state assessments, (2) instructional techniques and strategies, (3) adherence to curricular objectives, and (4) learning environment. Current law is not specific regarding how performance in these four areas is to be measured. Typically, details such as how many observations must be conducted for each evaluation or how student progress will be measured are collectively bargained between individual districts and teachers unions.

State Law Requires Written Notice, Extra Support for Teachers Rated Unsatisfactory. Each evaluation must include recommendations, if necessary, for improvement. Districts must advise teachers who receive an unsatisfactory rating how they can improve and must evaluate

them on an annual basis until they receive a positive review. Districts also may require these teachers to participate in a professional development program. Teachers who receive satisfactory ratings typically also participate in professional development activities, but state law does not require districts to provide these opportunities for these teachers in response to the evaluation process.

Teacher Layoffs

School Districts Must Lay Off Most Recent Hires First. Current law describes three conditions under which school districts can lay off teachers. These are: (1) if student enrollment declines, (2) if a particular program or service is eliminated (which usually is connected with budget reductions), or (3) if the state changes requirements for what must be taught. (A layoff due to these reasons is different from a dismissal for unsatisfactory performance or misconduct.) State law requires districts to lay off teachers in order of reverse seniority. That is, probationary teachers must be laid off before permanent teachers, and permanent teachers who were most recently hired must be laid off before more senior teachers.

Non-Seniority Criteria Can Be Used in Two Specified Cases. In two cases, school districts can use criteria other than seniority to determine which teachers are laid off. First, districts can sidestep seniority order if they can demonstrate that a junior teacher who would otherwise be laid off meets a high-priority need for the district (for example, teaching students with special needs or English learners). Second, districts can deviate from seniority order “for purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.”

Seniority Typically Determines Order in Which Laid Off Teachers Are Rehired. As with layoffs, districts also must follow seniority order when determining the order in which teachers are rehired. For example, if a district decides to increase its teacher workforce or if a program that was eliminated is restored, laid off teachers who were originally hired first have priority for being rehired over those with later hire dates, and laid off permanent teachers must be rehired before probationary teachers. As with layoffs, districts can deviate from seniority order only in certain circumstances, such as if a teacher with a later original hire date meets a higher priority need for the district.

Teacher Dismissal

School Districts Must Grant Teachers Convicted of Serious Offenses an Administrative Hearing, if Requested. Current law requires that districts place teachers on immediate leave if they are charged with the following offenses:

- Sex crimes including rape, prostitution, child molestation, and child pornography.
- Drug crimes that involve the provision of certain drugs to minors.

If a teacher is convicted of one of these crimes, the Commission on Teacher Credentialing (CTC) revokes his or her credential (as described below) and the school district initiates the dismissal process. Whenever a district initiates dismissal proceedings, it must provide written notice to the teacher and grant an associated administrative hearing if one is requested by the teacher.

CTC Must Revoke Credentials for Certain Offenses. In addition to requiring districts to place teachers on immediate leave for certain serious offenses, state law also requires CTC to revoke a teacher's credentials if the charges are substantiated. (The CTC is required to revoke credentials for the sex and drug crimes listed above as well as certain serious felonies, such as murder.) Teachers can apply for reinstatement of their credentials one year after revocation if they can demonstrate that they have been rehabilitated from the conduct that led to the revocation.

PROPOSAL

The measure makes certain changes to state law in the areas of teacher evaluations, layoffs, and dismissals.

Teacher Evaluations

Requires Annual Performance Evaluations, Except for High-Performing Teachers. The measure would require each district to develop a new evaluation system for rating teachers that incorporates multiple elements (described below) and includes at least four performance levels. In general, districts would be required to evaluate and rate all teachers annually. With state approval, districts would be able to conduct a more limited evaluation (one assessing fewer performance elements) for high-performing teachers. Even these more limited evaluations, however, would have to include an assessment of student achievement growth. With state approval, districts also could evaluate a teacher less than annually if he or she received one of the top two ratings on the three most recent performance evaluations. At a minimum, teachers would have to be evaluated once every three years.

Evaluations Would Have to Include Certain Elements. Evaluations would incorporate an assessment of teacher performance on several standards, including: pupil progress, curriculum and planning, and family and community engagement. Districts would have to measure these standards using the following:

- ***Student Achievement Growth.*** This would be measured by change in individual students' performance on state assessments between two or more points in time. If student achievement in a particular grade or subject is not measured by a state standardized assessment, the district would have to use other state-approved measures of student learning. At least one-third of the teacher's performance rating would have to be based on student achievement growth.
- ***Classroom Performance.*** Employers would have to conduct multiple classroom observations of teachers, including announced and unannounced visits. Multiple individuals, which could include principals, peers, or other qualified staff, would have to observe the teacher in the classroom.
- ***Parent and Student Feedback.*** Parent feedback would be used to evaluate teachers for all grades. Student feedback also would be used for grades 9 through 12.

Professional Growth Plans and Support Required for All Teachers. The measure would add a new requirement related to teacher professional development. All teachers—regardless of

their performance ratings—would have to develop professional growth plans in consultation with their supervisors that outlined goals and strategies to improve their performance and better address student needs. Districts would have to provide mentoring, support, and professional development specific to the needs of every teacher.

Teacher Layoffs

Establishes Performance as Primary Basis for Teacher Layoffs. The measure changes the criteria districts use to determine which teachers to lay off. Except in specified circumstances, school districts would be required to base teacher layoff decisions solely on teacher performance ratings—using the new system described above—rather than seniority. Generally, an average performance rating for the past three years would be used. (The rating of newer teachers would be based on one or two years, as applicable.) If a district determined that two teachers had received the same performance rating, the employer would have to consider the district's specific needs when determining layoff order. If two teachers could not be distinguished by either performance or district needs, the district would then turn to seniority, laying off the most recently hired teacher first. These provisions would take precedence over all collective bargaining agreements entered into after the measure takes effect.

Rehiring of Laid Off Teachers Also Would Be Determined by Performance. Following teacher layoffs, if a school district decided to rehire teachers, the district also would have to use teacher performance ratings to determine the order in which teachers would be rehired. As with layoffs, an average of recent performance ratings would be used. If two teachers received the same performance rating, the district would have to consider the district's specific needs when determining rehiring order. If two teachers could not be distinguished by performance ratings or district needs, the district would have to use seniority, rehiring the teacher who originally was hired first.

Teacher Dismissals

No Hearing Would Be Required to Dismiss Teachers Convicted of Serious Offenses. Unlike current law, school districts no longer would have to provide an opportunity for a hearing before dismissing teachers who are convicted of serious crimes. Crimes triggering automatic dismissal would include the sex and drug crimes that currently require an immediate leave of absence, as well as certain other serious felonies.

Teachers Convicted of Certain Crimes Would Be Barred From Ever Teaching in the State. In addition to automatic dismissal from the district, a teacher convicted of one of these serious crimes would have their California teaching credential permanently revoked and would be permanently barred from teaching in any K-12 or postsecondary school in the state. The measure therefore would eliminate any option for reinstatement, even if a teacher with a conviction later obtained a certificate of rehabilitation or pardon.

FISCAL EFFECTS

The measure likely would lead to notable additional costs at the school district level. Presumably, districts would pay for these costs using state and local funds they otherwise would receive. The state also would incur minor additional costs, as described below.

Teacher Evaluations

Significant District Costs to Conduct Teacher Evaluations More Frequently. The largest district-level cost associated with the measure would result from hiring additional staff to conduct more frequent and more involved teacher evaluations. Costs would be highest in the initial years, when every teacher would be evaluated annually. Costs likely would decrease substantially several years after the measure is implemented, when a significant number of veteran teachers likely would be evaluated only once every three years.

- ***Initial Years.*** In the first three years, every teacher would have to be evaluated annually, which is approximately three- to four-times more frequently than current practice. Each evaluation also would be more involved and therefore take longer compared to current practice. Under the measure, districts would need to: use multiple evaluators for classroom visits, apply student achievement data more uniformly, develop and implement a professional growth plan for each teacher, and collect student and parent feedback. Depending on the frequency and intensity of existing evaluation practices at the local level, the statewide cost to districts of implementing the new system in the initial years could range from several hundreds of millions of dollars to over \$1 billion annually.
- ***Subsequent Years.*** After the first three years, districts likely would seek permission from the state to evaluate high-performing teachers with less-intensive evaluations and less frequently. To the extent this occurred, the annual statewide cost to districts of implementing the new evaluation system would drop to between one-third and one-half of costs during the initial period.

Moderate District Costs to Develop and Manage New Teacher Evaluation System. Creating and managing the teacher evaluation system also would result in some one-time and ongoing costs for districts, as described below.

- ***One-Time Costs.*** Districts likely would need to hire additional administrators to develop the new teacher evaluation system. Initial activities would include: developing an evaluation rating scale, creating assessments for subjects not tested by the state, creating valid models to measure student achievement growth, and engaging in collective bargaining over the design of particular evaluation systems. One-time statewide costs for these activities likely would be in the tens of millions of dollars to in excess of \$100 million.

- **Ongoing Costs.** Even after their new evaluation systems were established, districts likely would need to retain some additional administrative staff to manage the systems. Ongoing activities would include: refining assessments and other elements of the evaluation system, submitting waivers to the California Department of Education (CDE) requesting permission to evaluate high-performing teachers with less intensive evaluations and less frequently, and responding to a higher volume of grievances filed by teachers related to the new evaluation system. Statewide costs for these activities would be tens of millions of dollars annually.

Small State Costs to Oversee Teacher Evaluation System. The measure requires CDE to perform related activities that would lead to some additional costs at the state level. Specifically, CDE would have to annually review new district assessments for subjects not tested by the state, review district waivers to conduct less intensive and less frequent evaluations for certain teachers, and undertake associated legal work. The costs of employing additional staff to conduct these activities likely would be between \$1 million and \$2 million annually.

Teacher Layoffs

Small Costs for More Involved Layoff Hearings, Potentially Offset by Salary Savings. If the new teacher evaluation system results in more challenges to teacher layoff decisions or more involved layoff hearings, districts could incur additional legal costs in certain years. Notable costs likely would materialize only in the rare years that districts lay off large numbers of teachers, typically during economic downturns when the state makes significant reductions to school funding. In years with significant numbers of layoffs, additional district costs could total several million dollars statewide. This could be offset, however, by savings from districts' ability to lay off lower performing (and higher paid) senior teachers while maintaining higher performing (and lower paid) less-senior teachers.

Teacher Dismissals

Negligible District Savings From Avoiding Dismissal Hearings for Serious Offenses. Although districts no longer would have to undertake the formal dismissal process for teachers convicted of serious offenses, the savings associated with this provision of the measure likely would be negligible. Only a few hundred teachers in the state are dismissed for serious crimes each year. Of these, very few challenge their dismissal after being convicted of a serious felony. If such a hearing is requested and does take place, it very likely is perfunctory and inexpensive.

Summary of Fiscal Effects

The measure would have the following major fiscal effects:

- Costs ranging from several hundreds of millions of dollars to over \$1 billion annually in the initial three years for school districts to conduct more frequent and intensive teacher evaluations, with annual costs dropping to between one-third and one-half in subsequent years.

- One-time costs in the tens of millions of dollars to in excess of \$100 million for school districts to create new teacher evaluation systems, with ongoing annual costs to manage the new systems of tens of millions of dollars.

Sincerely,

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Legislative Analyst

Michael Cohen
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