

AMENDED IN ASSEMBLY APRIL 25, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 449**

---

---

**Introduced by Assembly Member Muratsuchi**

February 19, 2013

---

---

An act to amend Section 44242.5 of, and to repeal and add Section 44030 of, the Education Code, relating to elementary and secondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 449, as amended, Muratsuchi. Elementary and secondary education: certificated school employees: ~~school district superintendent:~~ *allegation of misconduct:* reports to Commission on Teacher Credentialing.

Existing law provides that any principal, teacher, employee, or school officer of any elementary or secondary school who refuses or willfully neglects to make such reports as are required by law is guilty of a misdemeanor and is punishable by a fine of not more than \$100.

This bill would delete that provision.

Existing law provides for the employment of certificated school employees by school districts. Existing law provides for the credentialing of certificated employees of a school district by the Commission on Teacher Credentialing.

This bill would require the superintendent of a school district *or county office of education, or the administrator of a charter school,* with certificated employees to report to the commission any change in the employment status of a credentialholder, not later than 30 days after

the change in employment status, if the credentialholder, while working in a position requiring a credential, and as a result of an allegation of misconduct or while an allegation of misconduct is pending, is dismissed, is nonreelected, resigns, is suspended or placed on unpaid administrative leave for more than 10 days as a final adverse action, retires, or is otherwise terminated by a decision not to employ or reemploy. The bill would make *the* failure to make the report unprofessional conduct and ~~subject~~ *would authorize* the superintendent of the school district *or county office of education, or the administrator of a charter school, to be subject* to adverse action by the commission, and would make the refusal or willful neglect to make the report a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

Under existing law, each allegation of an act or omission by an applicant for, or holder of, a credential, for which he or she may be subject to an adverse action, is required to be presented to the Committee of Credentials. Existing law provides that the committee has jurisdiction to commence an initial review and a formal review upon receipt ~~of any of specified records, declarations, statements, notices, or responses of,~~ *among other things, a statement from an employer notifying the commission that, as a result of, or while an allegation of misconduct is pending, a credentialholder has been dismissed, nonreelected, suspended for more than 10 days, or placed pursuant to a final adverse employment action on unpaid administrative leave for more than 10 days, or has resigned or otherwise left employment.*

This bill would provide that ~~the committee has jurisdiction to commence an initial review also upon receipt of a writing, as defined, notifying the Commission on Teacher Credentialing that a superintendent of a school district employing a person with a credential has failed to make the report described above regarding the change in employment status of a credentialholder. The bill would provide that the committee has jurisdiction to commence a formal review also upon receipt of official records of a school district or of the commission that confirm that the report described above was not made by a superintendent of a school district for purposes of the statement received from an employer, as described above, a change in status due solely to unsatisfactory performance or a reduction in force, as specified, is not an allegation of misconduct.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 44030 of the Education Code is repealed.  
2 SEC. 2. Section 44030 is added to the Education Code, to read:  
3 44030. (a) The superintendent of a school district *or county*  
4 *office of education, or the administrator of a charter school,*  
5 employing a person with a credential shall report any change in  
6 the employment status of the credentialholder to the commission  
7 not later than 30 days after the change in employment status, if  
8 the credentialholder, while working in a position requiring a  
9 credential, and as a result of an allegation of misconduct or while  
10 an allegation of misconduct is pending, is dismissed, is  
11 nonreelected, resigns, is suspended or placed on unpaid  
12 administrative leave for more than 10 days as a final adverse action,  
13 retires, or is otherwise terminated by a decision not to employ or  
14 reemploy.  
15 (b) For purposes of subdivision (a), a change of employment  
16 status due solely to unsatisfactory performance pursuant to  
17 paragraph (4) of subdivision (a) of Section 44932 or a reduction  
18 in force pursuant to Sections 44955 to 44958, inclusive, is not an  
19 allegation of misconduct.  
20 (c) The failure to make the report required by subdivision (a)  
21 is unprofessional conduct and ~~shall~~ *may* subject the superintendent  
22 of the school district *or county office of education, or the*  
23 *administrator of a charter school,* to adverse action by the  
24 commission.  
25 (d) (1) The refusal or willful neglect to make the report required  
26 by subdivision (a) is a misdemeanor, punishable ~~as follows:~~ *by a*  
27 *fine of not less than five hundred dollars (\$500) or more than one*  
28 *thousand dollars (\$1,000).*  
29 ~~(A) Upon a first conviction, by a fine of not less than five~~  
30 ~~hundred dollars (\$500) or more than one thousand dollars (\$1,000).~~

1 ~~(B) Upon a second or subsequent conviction, by a fine of not~~  
2 ~~less than one thousand dollars (\$1,000) or more than five thousand~~  
3 ~~dollars (\$5,000).~~

4 (2) All fines imposed pursuant to this subdivision are the  
5 personal responsibility of the superintendent of the school district  
6 *or county office of education, or the administrator of a charter*  
7 *school*, and may not be paid or reimbursed ~~by any other person,~~  
8 ~~source, or entity with public funds.~~

9 SEC. 3. Section 44242.5 of the Education Code is amended to  
10 read:

11 44242.5. (a) Each allegation of an act or omission by an  
12 applicant for, or holder of, a credential for which he or she may  
13 be subject to an adverse action shall be presented to the Committee  
14 of Credentials.

15 (b) The committee has jurisdiction to commence an initial  
16 review upon receipt of any of the following:

17 (1) (A) Official records of the Department of Justice, of a law  
18 enforcement agency, of a state or federal court, and of any other  
19 agency of this state or another state.

20 (B) For purposes of subparagraph (A), “agency of this state”  
21 has the same meaning as that of “state agency” as set forth in  
22 Section 11000 of the Government Code.

23 (2) An affidavit or declaration signed by *a* person or persons  
24 with personal knowledge of the acts alleged to constitute  
25 misconduct.

26 (3) (A) A statement from an employer notifying the commission  
27 that, as a result of, or while an allegation of misconduct is pending,  
28 ~~a credential holder~~ *credentialholder* has been dismissed,  
29 nonreelected, suspended for more than 10 days, or placed pursuant  
30 to a final adverse employment action on unpaid administrative  
31 leave for more than 10 days, or has resigned or otherwise left  
32 employment.

33 (B) The employer shall provide the notice described in  
34 subparagraph (A) to the commission not later than 30 days after  
35 the dismissal, nonreelection, suspension, placement on unpaid  
36 administrative leave, resignation, or departure from employment  
37 of the employee.

38 (C) For purposes of subparagraphs (A) and (B), a change in  
39 status due solely to unsatisfactory performance pursuant to  
40 paragraph (4) of subdivision (a) of Section 44932 or a reduction

1 in force pursuant to Sections 44955 to 44958, inclusive, is not an  
2 allegation of misconduct.

3 ~~(4) A writing, as defined by Section 250 of the Evidence Code,~~  
4 ~~notifying the commission that a superintendent of a school district~~  
5 ~~employing a person with a credential has failed to make the report~~  
6 ~~required by subdivision (a) of Section 44030.~~

7 ~~(5)~~

8 (4) A notice from an employer that a complaint was filed with  
9 the school district alleging sexual misconduct by a ~~credential holder~~  
10 *credentialholder*. Results of an investigation by the committee  
11 based on this paragraph shall not be considered for action by the  
12 committee unless there is evidence presented to the committee in  
13 the form of a written or oral declaration under penalty of perjury  
14 that confirms the personal knowledge of the declarant regarding  
15 the acts alleged to constitute misconduct.

16 ~~(6)~~

17 (5) A notice from a school district, employer, public agency, or  
18 testing administrator of a violation of Section 44420, 44421.1,  
19 44421.5, or 44439.

20 ~~(7)~~

21 (6) (A) An affirmative response on an application submitted  
22 to the commission as to any conviction, adverse action on, or denial  
23 of, a license, or pending investigation into a criminal allegation or  
24 pending investigation of a noncriminal allegation of misconduct  
25 by a governmental licensing entity.

26 (B) Failure to disclose any matter set forth in subparagraph (A).

27 (c) An initial review commences on the date that the written  
28 notice is mailed to the applicant or ~~credential holder~~  
29 *credentialholder* that his or her fitness to hold a credential is under  
30 review. Upon commencement of a formal review pursuant to  
31 Section 44244, the committee shall investigate all alleged  
32 misconduct and the circumstances in mitigation and aggravation.  
33 The investigation shall include, but not be limited to, all of the  
34 following:

35 (1) Investigation of the fitness and competence of the applicant  
36 or ~~credential holder~~ *credentialholder* to perform the duties  
37 authorized by the credential for which he or she has applied or that  
38 he or she presently holds.

1 (2) Preparation of a summary of the applicable law, a summary  
 2 of the facts, contested and uncontested, and a summary of any  
 3 circumstances in aggravation or mitigation of the allegation.

4 (3) Determination of probable cause for an adverse action on  
 5 the credential. If the allegation is for unprofessional or immoral  
 6 conduct, the committee, in any formal review conducted pursuant  
 7 to Section 44244 to determine probable cause, shall permit the  
 8 employer of the ~~credential holder~~ *credentialholder* to be present  
 9 while testimony is taken. If the allegation of unprofessional or  
 10 immoral conduct involves sexual abuse, the employer shall be  
 11 examined in the meeting for any relevant evidence relating to the  
 12 sexual abuse.

13 (A) If the committee determines that probable cause for an  
 14 adverse action does not exist, the committee shall terminate the  
 15 investigation.

16 (B) If the committee determines that probable cause for an  
 17 adverse action on the credential exists, upon receipt of a request  
 18 from an applicant or a ~~credential holder~~ *credentialholder* pursuant  
 19 to Section 44244.1, the commission shall initiate an adjudicatory  
 20 hearing, as prescribed by Chapter 5 (commencing with Section  
 21 11500) of *Part 1* of Division 3 of Title 2 of the Government Code,  
 22 by filing an accusation or statement of issues.

23 (d) The committee has jurisdiction to commence a formal review  
 24 pursuant to Section 44244 upon receipt of any of the following:

25 (1) (A) Official records of a state or federal court that reflect a  
 26 conviction or plea, including a plea of nolo contendere, to a  
 27 criminal offense or official records of a state court that adjudge a  
 28 juvenile to be a dependent of the court pursuant to Section 300 of  
 29 the Welfare and Institutions Code due to allegations of sexual  
 30 misconduct or physical abuse by a ~~credential holder~~  
 31 *credentialholder* or applicant.

32 (B) Nothing in subparagraph (A) shall be construed to relieve  
 33 the commission from the confidentiality provisions, notice, and  
 34 due process requirements set forth in Section 827 of the Welfare  
 35 and Institutions Code.

36 (2) An affidavit or declaration signed by a person or persons  
 37 with personal knowledge of the acts alleged to constitute  
 38 misconduct.

39 (3) A statement described in paragraph (3) of subdivision (b).

1 ~~(4) Official records of a school district or of the commission~~  
2 ~~that confirm that the report required by subdivision (a) of Section~~  
3 ~~44030 was not made as required by that section.~~

4 ~~(5)~~

5 (4) Official records of a governmental licensing entity that  
6 reflect an administrative proceeding or investigation, otherwise  
7 authorized by law or regulation, which has become final.

8 ~~(6)~~

9 (5) A notice described in paragraph ~~(6)~~ (5) of subdivision (b).

10 ~~(7)~~

11 (6) A response or failure to disclose, as described in paragraph  
12 ~~(7)~~ (6) of subdivision (b).

13 (e) (1) Upon completion of its investigation, the committee  
14 shall report its actions and recommendations to the commission,  
15 including its findings as to probable cause, and if probable cause  
16 exists, its recommendations as to the appropriate adverse action.

17 (2) The findings shall be available, upon its request, to the  
18 employing or last known employing school district, or, if adverse  
19 action is recommended by the committee and the ~~credential holder~~  
20 *credentialholder* has not filed a timely appeal of the  
21 recommendation of the committee pursuant to Section 44244.1,  
22 upon a request made within five years of the date of the  
23 committee's recommendations to a school district providing  
24 verification that the ~~credential holder~~ *credentialholder* has applied  
25 for employment in the school district. The findings, for all  
26 purposes, shall remain confidential and limited to school district  
27 personnel in a direct supervisory capacity in relation to the person  
28 investigated. Any person who otherwise releases findings received  
29 from the committee or the commission, absent a verified release  
30 signed by the person who is the subject of the investigation, shall  
31 be guilty of a misdemeanor.

32 (3) The findings shall not contain any information that reveals  
33 the identity of persons other than the person who is the subject of  
34 the investigation.

35 (f) (1) Except as provided in paragraph (2) and, notwithstanding  
36 subdivision (b), for purposes of determining whether jurisdiction  
37 exists under subdivision (b), the commission, in accordance with  
38 Section 44341, may make inquiries and requests for production  
39 of information and records only from the Department of Justice,

1 a law enforcement agency, a state or federal court, and a licensing  
2 agency of this state or a licensing agency of another state.

3 (2) For purposes of determining whether jurisdiction exists,  
4 paragraph (1) does not apply to release of personnel records.

5 SEC. 4. No reimbursement is required by this act pursuant to  
6 Section 6 of Article XIII B of the California Constitution because  
7 the only costs that may be incurred by a local agency or school  
8 district will be incurred because this act creates a new crime or  
9 infraction, eliminates a crime or infraction, or changes the penalty  
10 for a crime or infraction, within the meaning of Section 17556 of  
11 the Government Code, or changes the definition of a crime within  
12 the meaning of Section 6 of Article XIII B of the California  
13 Constitution.