



July 8, 2014

TEACHER DISMISSAL BILL (AB 215) SIGNED INTO LAW – IS IT ENOUGH?

Assembly Bill 215 is author Assembly Member Joan Buchanan's third attempt to reform California's complex, and often criticized, teacher dismissal laws. Last year, Buchanan's AB 375 was vetoed by Governor Brown as "an imperfect solution" to streamlining the teacher dismissal process.¹ Backed by the California Teachers Association and Ed Voice, AB 215 now creates a separate, expedited proceeding solely for egregious misconduct cases and otherwise attempts to overhaul the hearing process for all other dismissal or suspension causes.² Some of the most significant changes to occur with AB 215 beginning January 1, 2015 are:

- A separate dismissal or suspension proceeding based *solely* on charges of egregious misconduct. ("Egregious misconduct" is defined as specified sex, drug, and child abuse and neglect offenses.) Charges may be filed at any time (rather than within the current September 15 to May 15 time period) and the hearing is conducted by an administrative law judge (ALJ) rather than the current three (3) member Commission on Professional Competence (CPC). Hearing must commence within 60 days of the teacher's request for hearing, with a maximum extension of 30 days. Evidence of egregious misconduct more than four (4) years old may be introduced. Existing law governing discovery in dismissal proceedings apply to egregious misconduct cases only.
- For all other causes (including if combined with egregious misconduct, and except where a charge is for unsatisfactory performance only, as discussed below), charges may be filed at any time (rather than within the current September 15 to May 15 time period). Notice must be by personal service on the teacher if served outside of the instructional year. Hearings must commence within six (6) months and concluded within seven (7) months from the teacher's request for hearing (though the ALJ may extend these timelines under certain circumstances). Discovery is limited to defined disclosures and five (5) depositions

¹ Governor Brown's October 10, 2013 Veto Message to Members of the California State Assembly.

² The measure was opposed by the Association of California School Administrators and Los Angeles Schools Superintendent John Deasy. Of particular concern is that AB 215 narrowly defines egregious misconduct to the exclusion of other serious crimes (i.e. aggravated assault, armed robbery, etc.) Additionally, not all stakeholders from the education community were involved in this measure.

of witnesses. If disclosures are not timely made, evidence is precluded from introduction at the hearing except where good cause is shown. Evidence older than four (4) years is not allowed except if it involves sex-based offenses, child abuse, neglect or endangerment. A process is provided for the ALJ to hear teacher challenges to suspensions pending dismissal. The experience required for CPC panel members in the discipline of that of the affected employee is reduced from five (5) to three (3) years.

- Where charges are only based on unsatisfactory performance, notice must be served during the instructional year of the school site where the teacher is physically employed.
- Consistent with existing law, school districts, county offices of education and charter schools are prohibited from entering into agreements which prevent the reporting of egregious misconduct to the Commission on Teacher Credentialing (CTC), or any other state or federal agency.
- Agreements to expunge from a school employee's personnel file credible complaints of, substantiated investigations into, or discipline for, egregious misconduct are prohibited. (This does not include the removal of documents where the allegations have been found to be false or unsubstantiated or where discipline was unwarranted.)
- Reports made by school districts, county offices of education and charter schools to CTC involving a teacher's egregious misconduct must be disclosed *upon inquiry* to a school district, county office of education or charter school considering an application for employment from the employee.
- An employee who accuses another school employee of egregious misconduct knowing the allegation is false, shall be subject to certificate revocation.

The charges listed in Education Code §44932 have been renumbered. The charge listed in subdivision (a)(1) is now immoral conduct, inclusive of egregious misconduct (which is defined in this subdivision). Subdivision (a)(2) is now solely unprofessional conduct. The remaining charges in subdivision (a) of §44932 are conformed to these latter changes.

Passage of AB 215 follows closely on the heels of a Los Angeles Superior Court's determination that the same dismissal statutes (Education Code §§44934, 44938(b)(1) and 44944) violate the California Constitution. The court held the dismissal statutes "impose a real and appreciable impact on students' fundamental right to equality of education" and present an "über due process" which is "so complex, time consuming, and expensive as to make an effective, efficient, yet fair dismissal of a grossly ineffective teacher illusory."³ As of this writing, it is unclear what effect this court decision, which has been stayed pending anticipated appellate review, will

³ Tentative Decision, *Vergara v. State of California*, (*Vergara*) Los Angeles Superior Court Case No. BC484642. The term "über" means to an extreme or excessive degree, out of the norm of what one would expect of its kind of class. (Dictionary.com) The Court in *Vergara* queried, "does a school district classified employee have a lesser property interest in his/her continued employment than a teacher, a certificated employee? To ask the question is to answer it. This Court heard no evidence that a classified employee's dismissal process (i.e., a *Skelly* hearing) violated due process. Why, then, the need for the current tortuous process required by the dismissal statutes for teacher dismissals which has been decried by both plaintiff and defense witnesses?" (Tentative Decision, at p. 12.)

subsequently have on AB 215. As always, we will keep you updated on any new developments in this area of the law.

If you have any questions concerning this issue, please do not hesitate to contact our office.

– Kelly A. Lazerson

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