

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Mike Fong, Chair
AB 2328 (Mike Fong) – As Introduced February 12, 2024

SUBJECT: Classified employees: school and community college districts: merit system: disciplinary action

SUMMARY: Prohibits a K-12 and community college district with a merit system from taking disciplinary action against a permanent employee under specified conditions. Specifically, **this bill:**

- 1) Prohibits a K-12 district with a merit system from taking disciplinary action for any cause if any of the following occurred:
 - a) The cause transpired before the employee became a member of the permanent classified service; or,
 - b) The cause occurred two years before the date of the filing of the notice of cause unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing school district.
- 2) Prohibits a community college district with a merit system from taking disciplinary action for any cause if any of the following occurred:
 - a) The cause transpired before the employee became a member of the permanent classified service; or,
 - b) The cause occurred two years before the date of the filing of the notice of cause unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing community college district.
- 3) Defines “disciplinary action” to mean any action where an employee is deprived of any classification or any incident of any classification in which the employee has permanence including dismissal, suspension, demotion, or any reassignment without his voluntary consent, except layoff or lack of work or lack of funds.

EXISTING LAW: *State law pertaining to community college districts.*

- 1) Establishes the California Community Colleges (CCC) under the administration of the Board of Governors of the CCC, as one of the segments of public postsecondary education in this state. The CCC shall be comprised of community college districts (Education Code (EDC) Section 70900).
- 2) Establishes that CCC districts are under the control of a board of trustees, known as the governing board, who has the authority to establish, maintain, operate, and govern one or more community colleges, within its district as specified (EDC Section 70902).

- 3) *For non-merit districts:* Establishes the procedures and disciplinary proceedings for classified staff in non-merit community college districts. Disciplinary action may not be taken for cause if the cause arose two years prior to the date of the filing notice unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the cause should have been disclosed. Specifies, the governing board of a community college district will adopt procedures for disciplinary proceedings that contain a provision for informing the employee by written notice of the specific charges, the employee's right to a hearing, and the timeframe an employee has to request a hearing (must be at a minimum five days after the notice is received by the employee of the disciplinary action). Permits the governing board of a community college district to delegate authority as to whether there is sufficient cause for disciplinary action to an impartial third-party hearing officer (pursuant to the classified employee's collective bargaining agreement), but the governing board will retain authority to review the determination under specific circumstances, as defined. Prohibits the suspension, demotion, or dismissal of an employee, who has requested a hearing, unless the governing board of the community college district or the third-party impartial hearing officer have determined the employee engaged in either criminal misconduct, misconduct that presents a risk of harm to pupils, staff, or property, or committed habitual violations of the district's policies or regulations. Stipulates if a hearing is conducted by a third-party hearing officer the district will stop paying the employee after 30 calendar days from the date the hearing is requested. Clarifies the above appeal procedures only apply to non-merit community college districts (EDC Section 88013).
- 4) *For merit-system districts:* A permanent classified employee in a merit system CCC district will not be demoted or removed except for reasonable cause as determined by the personnel commission of the CCC district as detrimental to the efficiency of the service. The section will not be construed to prevent layoffs for the lack of work or lack of funds (EDC Section 88121).

State law pertaining to K-12 districts.

- 5) *For non-merit districts:* Establishes the procedures by which a non-merit K-12 school district may provide a disciplinary action for a classified employee. Disciplinary action may only be taken for any cause that arose after the employee became permanent. Disciplinary action may not be taken for cause if the cause arose two years prior to the date of the filing notice unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the cause should have been disclosed. Specifically stipulates, a school district must adopt rules and procedures for disciplinary proceedings that include providing the employee a written notification of the specific charges against the employee, information on the employee's right to a hearing, and how the employee can request a hearing including a requirement that the district must be notified at least five days after the service of notice to the employee. The burden of proof will remain with the governing board of the school district. Authorizes the governing board of the school district or a third-party impartial hearing officer to determine whether there is sufficient cause for the disciplinary action. If the school district elects to use an impartial hearing officer, the governing board of the school district will retain the ability to review the determination, as defined. Prohibits the suspension, demotion, or dismissal of an employee, who has requested a hearing, unless the governing board of the K-12 district or the third-party impartial hearing officer have determined the employee engaged in either criminal misconduct, misconduct that presents a risk of harm to pupils, staff, or property, or committed habitual violations of the district's

policies or regulations. For specific disciplinary actions involving allegations of egregious misconduct and conduct involving a minor, the governing board of a district will delegate its authority to a judge and the judge's rule in the disciplinary matter will be binding for all parties. Clarifies the above appeal procedures only apply to non-merit K-12 districts. (EDC Section 45113).

- 6) *For merit-system districts:* A permanent classified employee in a merit system K-12 district will not be demoted or removed except for reasonable cause as determined by the personnel commission of the K-12 district as detrimental to the efficiency of the service. The section will not be construed to prevent layoffs for the lack of work or lack of funds (EDC Section 45302).

FISCAL EFFECT: Unknown

COMMENTS: *Double referred.* This measure was heard by the Assembly Public Employment and Retirement Committee on April 03, 2024, where it passed with a vote of 5 – 0. A review on the issues germane to the public employment and retirement is addressed in the Committee's analysis.

What the measure will do. According to the author, "AB 2328 will bring parity to classified employees of merit and non-merit K-12 and community college districts in matters of employee discipline. It gives employees in merit districts the same protections that employees in non-merit districts have: protection from discipline due to conduct prior to permanent employment and in the prior two years. While it brings merit employees greater protection, it allows discipline in cases where a prior offense should have reasonably been disclosed. Classified employees deserve equal protections regardless of whether they work in a merit or non-merit district."

Currently, permanent classified staff in non-merit districts have protections against disciplinary notifications or actions by the district for causes that either:

- 1) Occurred prior to the classified staffer becoming a permanent employee; or,
- 2) If the cause or reason occurred two years prior to the filing notice for the disciplinary action.

The only exclusion to the above would be incidents or causes that were concealed or not disclosed by the employee when it could be reasonably assumed the employee would have disclosed the information.

Permanent classified staff in merit districts do not have this protection and can be disciplined if the personnel commission determines the cause (for the discipline) was necessary to maintain the efficiency of service to the community college district.

This measure would provide parity for classified staff in merit and non-merit K-12 and community districts as to the circumstances that must be pre-determined before an employee can be disciplined for cause.

Personnel commission and merit system. A personnel commission is an independent board separate from the governing board and the leadership of a college within a district. The purpose of the personnel commission is to maintain a "merit system" for the classified employees of the district and to oversee the work of the executive director and personnel commission staff. The

personnel commission's main directive is to ensure fair and objective treatment of all applicants and employees.

Established in Education Code Section 88060 through 88139, a personnel commission is comprised of three to five citizens who are appointed into staggering terms to oversee the work of the personnel commission staff. In some K-12 and community college districts the personnel commission staff are the human resources staff of either the district or a campus within the district. However, that is not always the case, and for many the personnel commission staff are independent positions separate from the district. If the classified staff elect to have a merit system, the personnel commission is established to oversee and enforce the merit system.

A merit system is a set of rules and procedures to ensure the selection, promotion, and retention of classified staff is conducted in a manner without favoritism or prejudice.

A personnel commission provides oversight to ensure a community college district is hiring, placing, and retaining classified staff in a fair and equitable manner. As part of its role, the personnel commission is tasked with classifying and reclassifying positions and serve as an appeal body for disciplined classified staff.

According to the California School Personnel Commission Association as of 2024, there are only six community college districts with personnel commissions and merit system: Grossmont-Cuyamaca Community College District, Los Angeles Community College District, State Center Community College District, Ventura Community College District, Compton Community College District, and Long Beach Community College District.

Disciplinary process for classified staff. In merit districts, the personnel commission adopt a set of rules regarding the definition of reasonable cause according to Education Code Section 88121 and can provide a notice of disciplinary sanction. A classified employee regardless of whether they are employed by a merit or non-merit district, is still afforded due process rights under *Skelly v. State Personnel Board (1975) 15 Cal.3d 194*. In *Skelly v. State Personnel Board (1975)*, the Supreme Court ruled public employees are afforded certain procedural safeguards before discipline is imposed against them in order to ensure due process. Specifically, a public employer must provide notice of the disciplinary action proposed to be taken, provide a statement detailing the reason for the disciplinary action, provide a copy of the charges and materials that determined the action, and then provide the employee time to respond to the authority imposing the disciplinary action. This procedure created the function of a "Skelly" officer whose role is to provide an objective review of the proposed discipline and the employee's response. The officer will then make a judgement or recommendation as to whether the disciplinary action should be sustained, modified, or rejected. AB 2328 (M. Fong) would place a statute of limitations on when a disciplinary action may or may not occur for classified employees in merit districts.

Effectively, AB 2328 (M. Fong) would introduce two separate statute of limitations for permanent employees in merit districts:

- 1) If the reason for the disciplinary action occurred when the employee was a probationary employee (6 months or 130 days of paid service) prior to their permanent status; or
- 2) If the cause occurred two years prior to the disciplinary notification.

The only exceptions are if the “cause” was concealed or if the employee should have disclosed the information to the district. Therefore, the Skelly Officer in presenting the “charges packet” to the classified employee would only be for any incidents occurring in the past two years. Meaning if the employee had past altercations or offenses with the district, they could not be listed as reasons for the disciplinary action if the “altercations or offenses” were older than two years.

Arguments in support. As depicted by Service Employees International Union of California, “Current law already protects classified employees in non-merit school and community college districts from being disciplined for conduct that occurred while the employee was on probation or conduct that occurred more than two years ago. This is an important protection for classified school employees—an employer with a valid cause of action ought to pursue it in a timely manner to ensure a fair discipline process. By the time a disciplinary charge older than two years is issued, an employee may have lost the evidence necessary to disprove the charge. Further, disciplining an employee for conduct that occurred while the employee was on probation is counter to the very purpose of a probationary period—that is, to evaluate employee performance and conduct during a set timeframe and either retain the employee or release them from probation. SEIU represents classified staff at some of the most populous school districts, including the state’s largest merit district. Merit districts comprise a small percentage of all districts, which means that the majority of school districts already operate under the framework that this bill proposes to apply to merit districts. Classified employees in merit districts deserve parity in these basic disciplinary protections.”

Assembly Committee on Education comments. AB 2328 (M. Fong) includes amendments to provisions contained within the jurisdiction of the Assembly Committee on Education. The bill would provide parity in the disciplinary procedures for classified staff who work for non-merit or merit K-12 districts in the same manner it provides parity for classified staff who work for non-merit or merit community colleges. According to the Assembly Education Committee, this bill expands existing law in a way that is inconsistent with similar laws pertaining to certificated employees. Existing law for certificated employees prohibits the expunging of personnel files containing credible complaints of, substantiated investigations into, or discipline for egregious misconduct. Egregious misconduct includes sexual misconduct as well as misconduct involving drugs and violent acts.

This bill would authorize the expunging of all personnel files for classified employees every two years by stating, “disciplinary action shall not be taken for any cause that arose more than two years preceding the date of the filing of the notice of cause.”

Committee comments. In fall 2023, the California Community Colleges employed 29,168 employees who were classified staff (Chancellor’s Office, DataMart, Staff Demographics). Of the various employee classifications, classified staff were the most diverse. Providing additional protections for all classified staff is an equity issue, and AB 2328 (M. Fong) accomplishes this by providing classified staff with equal protections regardless of whether the community college they work for is merit or non-merit.

Technically, this measure provides a statute of limitations that is beyond the current limitations for the filing of sexual harassment complaints. In 2022, the Board of Governors of the CCC adopted regulations that would require all sexual harassment complaints to be filed within one year of the incident, AB 2328 (M. Fong) would extend the statute of limitations for some sexual harassment cases to two years.

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers, AFL-CIO

California Labor Federation, AFL-CIO

California School Employees Association

California School Employees Association, AFL-CIO

California State Council of Service Employees International Union

California State Council of Service Employees International Union (SEIU California)

Opposition

None on file.

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