

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2413 (Carrillo) – As Amended April 18, 2022

SUBJECT: Classified school and community college employees: disciplinary hearings: compensation

SUMMARY: Establishes a method by which classified employees at K-12 district and California Community College (CCC) districts may continue to receive pay while waiting for the outcome of hearing on a disciplinary action. Specifically, **this bill:**

- 1) Prohibits a permanent employee of a K-12 district or a classified employee of a CCC district, who requested a hearing on charges against them, from being suspended without pay, suspended with a reduction in pay, demoted with a reduction in pay, or dismissed before a decision is rendered at the hearing.
- 2) Establishes an exemption to (1) in this analysis, if the governing board or an impartial third party hearing officer, as defined, finds the employer had clear and convincing evidence of criminal misconduct at the time discipline was imposed at the conclusion of the review process as specified in *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194.
- 3) Permits the K-12 school district or the CCC district, if the hearing on charges against the employee is conducted by an impartial third party, to stop paying the employee if a decision is not determined after thirty days.
- 4) Clarifies if the provisions established conflict with provisions of a collective bargaining agreement entered into by a public school employer or a CCC district and an exclusive bargaining representative before January 1, 2023, as defined, then (1) and (2) of this analysis will not apply to either the school district or the CCC district until the expiration or renewal of the collective bargaining agreement.

EXISTING LAW: *For a review of existing state law on public employment, please review the analysis completed by the Assembly Public Employment and Retirement Committee.*

- 1) Requires a governing board of a K-12 school district to do all of the following in relation to the management of classified staff for districts who do not have a merit system:
 - a) Establish written rules and regulation governing the personnel management of classified staff;
 - b) Provide the written rules and regulations to permanent employees, as defined, and the public;

Permits a permanent employee to be subject to a disciplinary action for cause as described by a rule or regulation of the governing board and requires the governing board's determination of whether there is adequate cause for disciplinary action to be conclusive.

Prohibits disciplinary action for any cause that arose during the employee's probation period or that arose two years preceding the filing of the notice for cause unless the cause for the

disciplinary action was concealed by the employee when it was reasonably assumed the employee should have informed the employing school district.

Permits a governing board of a school district, if agreed to in an agreement with an employee organization, to delegate its authority to determine whether sufficient cause exists for disciplinary action against classified employees, as defined. However the governing board will retain the authority to review the determination as determined by the Code of Civil Procedure Section 1286.2.

Permits a governing board to delegate its authority to a judge, as defined, to determine whether sufficient cause exists for a disciplinary procedure against the classified employee involved in allegations of egregious misconduct, as defined, and involving a minor, as defined. The judge's ruling is binding to all parties. Establishes the procedures by which the judge may conduct the hearing, as defined (Education Code (EDC) Section 45113).

- 2) Requires a governing board of a CCC district to do all of the following in relation to the management of classified staff for districts who do not have a merit system:
 - a) Establish written rules and regulation governing the personnel management of classified staff;
 - b) Provide the written rules and regulations to permanent employees, as defined, and the public;

Permits a permanent employee to be subject to a disciplinary action for cause as described by a rule or regulation of the governing board and requires the governing board's determination of whether there is adequate cause for disciplinary action to be conclusive.

Prohibits disciplinary action for any cause that arose during the employee's probation period or that arose two years preceding the filing of the notice for cause unless the cause for the disciplinary action was concealed by the employee when it was reasonably assumed the employee should have informed the employing school district.

Permits a governing board of a CCC district, if agreed to in an agreement with an employee organization, to delegate its authority to determine whether sufficient cause exists for disciplinary action against classified employees, as defined. However the governing board will retain the authority to review the determination as determined by the Code of Civil Procedure Section 1286.2 (EDC Section 88013).

- 3) Authorizes a governing board of a CCC district to employ a person in positions that are not academic in nature and permits the governing board to classify the employees and their positions. Exempts from the definition of classified service substitute employees, short – term employees, as defined, apprentices, professional experts, and student employees, as defined. Exempts from this provision community college district who have a merit system (EDC Section 88003).
- 4) Establishes the 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).

- 5) 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).

FISCAL EFFECT: None. This bill is keyed nonfiscal by Legislative Counsel.

COMMENTS: *Double referral.* This bill passed out of the Assembly Public Employment and Retirement Committee on March 30, 2022 with a vote count of 5-1. The Committee heard the measure as it pertained to matters that were germane to its jurisdiction.

What the measure will do. AB 2413 (Carillo) will establish a method by which classified staff employed at either a K-12 school district or a CCC district, will continue to receive pay as they await the results of a hearing for cause of a disciplinary action.

Need for the measure. As described by the author, “Current law provides all academic and non-academic employees with certain due process rights in matters concerning discipline, including termination of employment, and for appealing a disciplinary decision. Some K-12 and community college districts utilize binding arbitration to settle appeals, while other districts simply hear appeals at the governing board. Presently, classified school and community college employees, such as custodial, clerical, and maintenance staff, are not able to utilize the same due process protections as certificated teachers and faculty when appealing a disciplinary decision.

“Certificated teaching staff and faculty remain in paid status while exercising their full due process rights in order to offer all relevant facts to the board. Classified staff on the other hand, generally do not remain in paid status. By having pay suspended during an investigation, they do not have the same ability to mount a full defense and ensure that an investigation has all of the relevant facts and details needed to arrive at a just conclusion.”

“There is an inequity between classified employees in the classified service and faculty or certificated teachers in having the ability to utilize their due process rights when appealing a disciplinary decision. By allowing them to retain paid status in certain circumstances, classified employees will have the same ability to present all relevant evidence in their appeal. AB 2413 will also provide protections to ensure that no one remains in paid status when there is clear and convincing evidence of misconduct or a crime.”

Parity between faculty and classified staff. All employees are endowed with the right for a hearing when disciplinary measures or a reduction in employment is determined by a governing board regardless of whether the district educates K-12 students or community college students. However, the right to pay diverges when considering the classification of the employee. Unlike faculty at the CCC and certified teachers in the K-12 system, classified employees right to uninterrupted pay is not vested within the confines of the Education Code. Instead classified staff must negotiate at the collective bargaining table to determine whether their pay will continue if a disciplinary action is brought against them for which they wish to appeal. For community college faculty, Education Code Section 87623 provides that an academic employee who is the subject of an accusation of misconduct may be placed on involuntary paid leave and stipulates the hearing on the misconduct must be concluded within 90 days. According to Education Code Section 44932 and the Government Code Section 3543.2, a governing board of a school district

may suspend without pay on grounds of professional conduct a certified employee pursuant to specified procedures, unless there exists a collective bargaining agreement which permits the suspension without pay for up to 15 days. Furthermore, Education Code stipulates if a teacher does not request a hearing they may be dismissed or suspended without pay at the end of a 30 day period. However, standard practice is continue paying certified teachers from the time of notification of a disciplinary action until the hearing renders a resolution. Committee staff examined existing collective bargaining agreements from K-12 districts and a determination was made that K-12 classified staff collectively bargain for how grievance procedures occur unless the procedure is clearly delineated in Education Code.

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 of a reason as to why the disciplinary action is to be taken, a copy of the charges and materials that determined the action, and to provide the employee time to respond either in written or oral form 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. The disciplinary hearing as delineated in Education Code for classified staff and certified teachers or faculty follows the court ruling. AB 2413 (Carillo) furthers the ruling of the California Supreme Court as it ensures that a classified employee’s wages are not interfered with until a verdict is rendered from the hearing as requested by the employee. Essentially nothing is to occur until a hearing as to the cause of the disciplinary action is conducted and either the action is upheld or refuted.

Arguments in support. As stated by the California Federation of Teachers, “This bill will align classified staff with the rest of their education co-workers and respect the right of appeal by keeping classified staff in paid status until the final determination. This determination is often made at the following school board meeting in a closed session where an employee may lay out all of the facts so that the district governing board may reach the best decision. In order to keep costs down and create a reasonable policy, this bill excludes workers from remaining in paid status in the following ways: When a collective bargaining agreement contains a clause to send these disciplinary hearings to a neutral third party, the time it takes for the process to conclude may be as long as a year or more. In this case, the employees have agreed to binding arbitration in order to obtain a neutral decision. Also, if there is clear and convincing evidence of criminal intent committed by the employee, then that employee also would not stay in paid status. AB 2413 strikes the right balance between supporting just outcomes from disciplinary procedures and cost containment or frivolous appeals.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers AFL-CIO
California Labor Federation, AFL-CIO

Opposition

None on file.

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