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AMENDMENTS TO ASSEMBLY BILL NO. 375

Amendment 1

In the title, in line 1, strike out "Section 44932" and insert:

Sections 44932, 44934, 44936, 44939, 44940, 44941, and 44944

Amendment 2

In the title, in line 1, after "of" insert:

, and to add Section 44944.2 to,

Amendment 3

On page 1, before line 1, insert:

SECTION 1. The Legislature finds and declares the following:

(a) Pupils, educators, administrators, school boards, school district employees, and judges need a teacher dismissal process that is both fair and efficient.

(b) This act is intended to revise existing statutes in a manner that will continue current practices, but reduce the time necessary to complete the teacher dismissal process.

Amendment 4

On page 1, in line 1, strike out "SECTION 1." and insert:

SEC. 2.

Amendment 5

On page 2, strike out lines 24 and 25, in line 27, strike out "(12)" and insert:

(11)

Amendment 6

On page 2, below line 38, insert:

SEC. 3. Section 44934 of the Education Code is amended to read:

44934. (a) Upon the filing of written charges, duly signed and verified by the person filing them, with the governing board of the school district, or upon a written statement of charges formulated by the governing board, charging that there exists cause, as specified in Section 44932 or 44933, for the dismissal or suspension of a permanent employee of the district, the governing board may, upon majority vote,



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except as provided in this article if it deems the action necessary, give notice to the permanent employee of its intention to dismiss or suspend him or her at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article. Suspension proceedings may be initiated pursuant to this section only if the governing board has not adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

~~Any~~

(b) Any written statement of charges of unprofessional conduct or unsatisfactory performance shall specify instances of behavior and the acts or omissions constituting the charge so that the teacher will be able to prepare his or her defense. It shall, where applicable, state the statutes and rules ~~which~~ that the teacher is alleged to have violated, but it shall also set forth the facts relevant to each occasion of alleged unprofessional conduct or unsatisfactory performance.

(c) If the governing board has given notice to a permanent employee of its intention to dismiss or suspend him or her, based upon written charges filed or formulated pursuant to this section, the charges may be amended only upon motion before an administrative law judge of the Office of Administrative Hearings. The amendment of charges shall be substantially related to the original charge and shall not result in any prejudice to the responding party. A motion to amend shall be granted at least 90 days before the hearing on the charges.

(d) A governing board's notice to an employee of its intention to dismiss or suspend him or her, together with written charges filed or formulated pursuant to this section, shall be sufficient to initiate a hearing under Section 11503 of the Government Code, and the governing board shall not be required to file or serve a separate accusation.

~~This~~

(e) This section shall also apply to the suspension of probationary employees in a school district with an average daily attendance of less than 250 pupils ~~which~~ that has not adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3542.2 of the Government Code.

SEC. 4. Section 44936 of the Education Code is amended to read:

44936. (a) The notice of dismissal or suspension in a proceeding initiated pursuant to Section 44934 shall not be given between May 15th and September 15th in any year. It only be given during either of the following:

(1) The instructional year of the schoolsite where the employee is physically employed.

(2) The summer session, if the employee is employed for that purpose.

(b) The notice of dismissal or suspension shall be in writing and be served upon the employee personally or by United States registered mail addressed to him or her at his or her last known address. A copy of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of the provisions of this article, shall be attached to the notice.

SEC. 5. Section 44939 of the Education Code is amended to read:

44939. (a) Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board, charging a permanent employee of the district with immoral conduct, conviction of a felony or of any crime involving

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moral turpitude, with incompetency due to mental disability, or with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, with violation of Section 51530, with knowing membership by the employee in the Communist Party or with violation of any provision in Sections 7001 to 7007, inclusive; the governing board may, if it deems such that action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice, he or she will be dismissed, unless he or she demands a hearing.

If the permanent employee is suspended upon charges of knowing membership by the employee in the Communist Party or for any violation of Section 7001, 7002, 7003, 7006, 7007, or 51530, he may within 10 days after service upon him of notice of such suspension file with the governing board a verified denial, in writing, of the charges. In such event the permanent employee who demands a hearing within the 30-day period shall continue to be paid his regular salary during the period of suspension and until the entry of the decision of the Commission on Professional Competence, if and during such time as he furnishes to the school district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the school district the amount of salary so paid to him during the period of suspension in case the decision of the Commission on Professional Competence is that he shall be dismissed. If it is determined that the employee may not be dismissed, the school board shall reimburse the employee for the cost of the bond.

(b) (1) An employee who has been placed on suspension pursuant to this section may serve and file with the Office of Administrative Hearings a motion for immediate reversal of suspension. Review of a motion filed pursuant to this section shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section. The motion shall include a memorandum of points and authorities setting forth law and argument supporting the employee's contention that the statement of charges does not set forth a sufficient basis for immediate suspension.

(2) The motion shall be served upon the governing board and filed within 30 days after service upon the employee of the initial pleading in the matter. The governing board shall have the right to serve and file a written response to the motion before or at the time of hearing.

(3) The hearing on the motion for immediate reversal of suspension shall be held no later than 30 days after the motion is filed with the Office of Administrative Hearings.

(4) The administrative law judge shall, no later than 15 days after the hearing, issue an order denying or granting the motion. The order shall be in writing, and a copy of the order shall be served by the Office of Administrative Hearings upon the parties. The grant or denial of the motion shall be without prejudice to consideration by the Commission on Professional Competence, based upon the full evidentiary record before it, of the validity of the grounds for dismissal.

(5) An order granting a motion for immediate reversal of suspension shall become effective within five days of service of the order. The school district shall make the employee whole for any lost wages, benefits, and compensation within 14 days of service of an order granting the motion.

(6) A motion made pursuant to this section shall be the exclusive means of obtaining interlocutory review of suspension pending dismissal. The grant or denial

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of the motion shall be without prejudice to consideration by the Commission on Professional Competence, based upon the full evidentiary record before it, of the validity of the grounds for suspension or dismissal.

SEC. 6. Section 44940 of the Education Code is amended to read:

44940. (a) For purposes of this section, "charged with a mandatory leave of absence offense" is defined to mean charged by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any sex offense as defined in Section 44010, with a violation or attempted violation of Section 187 of the Penal Code, or with the commission of any offense involving aiding or abetting the unlawful sale, use, or exchange to minors of controlled substances listed in Schedule I, II, or III, as contained in ~~Section~~ Sections 11054, 11055, and 11056 of the Health and Safety Code, ~~with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols.~~

(b) For purposes of this section, "charged with an optional leave of absence offense" is defined to mean a charge by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any controlled substance offense as defined in Section 44011 or 87011, ~~or a violation or attempted violation of Section 187 of the Penal Code, or Sections 11357 to 11361, inclusive, or Section 11363, 11364, or 11370.1 of the Health and Safety Code, insofar as these sections relate to any controlled substances except marijuana, mescaline, peyote, or tetrahydrocannabinols.~~

(c) For purposes of this section and Section 44940.5, the term "school district" includes county offices of education.

(d) (1) ~~Whenever any~~ If a certificated employee of a school district is charged with a mandatory leave of absence offense, as defined in subdivision (a), upon being informed that a charge has been filed, the governing board of the school district shall immediately place the employee on compulsory leave of absence. The duration of the leave of absence shall be until a time not more than 10 days after the date of entry of the judgment in the proceedings. No later than 10 days after receipt of the complaint, information, or indictment described by subdivision (a), the school district shall forward a copy to the Commission on Teacher Credentialing.

(2) Upon receiving a copy of a complaint, information, or indictment described in subdivision (a) and forwarded by a school district, the Commission on Teacher Credentialing shall automatically suspend the employee's teaching or service credential. The duration of the suspension shall be until a time not more than 10 days after the date of entry of the judgment in the proceedings.

(e) (1) ~~Whenever any~~ If a certificated employee of a school district is charged with an optional leave of absence offense as defined in subdivision (b), the governing board of the school district may immediately place the employee upon compulsory leave in accordance with the procedure in this section and Section 44940.5. If any certificated employee is charged with an offense deemed to fall into both the mandatory and the optional leave of absence categories, as defined in subdivisions (a) and (b), that offense shall be treated as a mandatory leave of absence offense for purposes of this section. No later than 10 days after receipt of the complaint, information, or indictment described by subdivision (a), the school district shall forward a copy to the Commission on Teacher Credentialing.

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(2) Upon receiving a copy of a complaint, information, or indictment described in subdivision (a) and forwarded by a school district, the Commission on Teacher Credentialing shall automatically suspend the employee's teaching or service credential. The duration of the suspension shall be until a time not more than 10 days after the date of entry of the judgment in the proceedings.

SEC. 7. Section 44941 of the Education Code is amended to read:

44941. (a) The notice of suspension and intention to dismiss, shall be in writing and be served upon the employee personally or by United States registered mail addressed to the employee at his or her last known address. A copy of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of the provisions of this article, shall be attached to the notice. If the employee does not demand a hearing within the 30-day period, he or she may be dismissed upon the expiration of 30 days after service of the notice.

(b) An employee who has demanded a hearing pursuant to this section shall be deemed to have fulfilled the conditions for requesting a hearing under this article and under Sections 11505 and 11506 of the Government Code, and shall not have waived any right for failure to file any other or subsequent notice of defense or request for hearing.

SEC. 8. Section 44944 of the Education Code is amended to read:

44944. (a) (1) In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced ~~within 60 days~~ six months from the date of the employee's demand for a hearing, and the hearing shall be completed within seven months from the date of the employee's demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, the The hearing date shall be established after consultation with the employee and the governing board, or their representatives, ~~and the Commission on Professional Competence shall have all of the power granted to an agency in that chapter, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to the continuance. However, the extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section. The hearing date may be continued in accordance with Sections 11505 and 11524 of the Government Code, except that no continuance shall extend the date for completion of the hearing more than seven months from the date of the employees request for a hearing, except for good cause, as determined by the Office of Administrative Hearings. The hearing shall be initiated and conducted, and a decision made, in accordance with Chapter 5 (commencing with~~

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Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the Commission of Professional Competence shall have all of the power granted to an agency pursuant to that chapter, except as described in this article.

(2) ~~If the right of discovery granted under paragraph (1) is denied by either the employee or the governing board, all of the remedies in Chapter 7 (commencing with Section 2023.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his or her motion, shall be the superior court of the county in which the hearing will be held.~~

~~(3) The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.~~

~~(4) The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.~~

~~(5)~~

(2) (A) No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to before the date of the filing of the notice, except as provided in subparagraph (B). Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to before the filing of the notice, except as provided in subparagraph (B).

(B) Testimony and evidence relating to matters that occurred more than four years before the date of the filing of the notice pursuant to Section 44934 may not be considered, received as evidence, or relied upon, except as deemed relevant by the Office of Administrative Hearings to charges that involve any act as described in Section 44010 of this code, and Sections 11165.2 to 11165.6, inclusive, of the Penal Code.

(b) (1) The hearing provided for in this section shall be conducted by a Commission on Professional Competence, unless the parties submit a statement in writing to the Office of Administrative Hearings, indicating that both parties waive the right to convene a Commission on Professional Competence and stipulate to having the hearing conducted by a single Administrative Law Judge. One member

(2) If the parties elect not to waive a hearing before a Commission on Professional Competence, one member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to select a commission member at least seven calendar days prior to the date of the hearing, the failure

(3) The governing board and the employee shall select commission members no later than 45 days before the date set for hearing, and shall serve notice of their selection upon all other parties and upon the Office of Administrative Hearings. Failure to meet this deadline shall constitute a waiver of the right to selection, and the county board

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of education or its specific designee shall immediately make the selection. If the county board of education is also the governing board of the school district or has by statute been granted the powers of a governing board, the selection shall be made by the Superintendent, who shall be reimbursed by the school district for all costs incident to the selection.

(4) Any party who believes that a selected commission member is not qualified may file an objection, including a statement describing the basis for the objection, with the Office of Administrative Hearings, and serve the objection and statement upon all other parties, within 10 days of the date that the notice of selection is filed. Within seven days after the filing of any objection, the Administrative Law Judge assigned to the matter shall rule on the objection, or convene a teleconference with the parties for argument.

(2)

(5) The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and. Each member shall hold a currently valid credential and have at least five three years' experience within the past 10 years in the discipline of the employee.

(c) (1) The decision of the Commission on Professional Competence shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition that shall be, solely, one of the following:

(A) That the employee should be dismissed.

(B) That the employee should be suspended for a specific period of time without pay.

(C) That the employee should not be dismissed or suspended.

(2) The decision of the Commission on Professional Competence that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors.

(3) The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to subparagraph (B) of paragraph (1) shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933.

(4) The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board.

(5) The governing board may adopt from time to time rules and procedures not inconsistent with this section as may be necessary to effectuate this section.

(6) The governing board and the employee shall have the right to be represented by counsel.

(d) (1) If the member selected by the governing board or the member selected by the employee is employed by any school district in this state, the member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is employed, but shall receive no additional compensation or honorariums for service on the commission.

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(2) If service on a Commission on Professional Competence occurs during summer recess or vacation periods, the member shall receive compensation proportionate to that received during the current or immediately preceding contract period from the member's employing district, whichever amount is greater.

(e) (1) If the Commission on Professional Competence determines that the employee should be dismissed or suspended, the governing board and the employee shall share equally the expenses of the hearing, including the cost of the administrative law judge. The state shall pay any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to, payments or obligations incurred for travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The Controller shall pay all claims submitted pursuant to this paragraph from the General Fund, and may prescribe reasonable rules, regulations, and forms for the submission of the claims. The employee and the governing board shall pay their own attorney's fees.

(2) If the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including the cost of the administrative law judge, any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to, payments or obligations incurred for travel, meals, and lodging, the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee, and reasonable attorney's fees incurred by the employee.

(3) As used in this section, "reasonable expenses" shall not be deemed "compensation" within the meaning of subdivision (d).

(4) If either the governing board or the employee petitions a court of competent jurisdiction for review of the decision of the commission, the payment of expenses to members of the commission required by this subdivision shall not be stayed.

(5) (A) If the decision of the commission is finally reversed or vacated by a court of competent jurisdiction, either the state, having paid the commission members' expenses, shall be entitled to reimbursement from the governing board for those expenses, or the governing board, having paid the expenses, shall be entitled to reimbursement from the state.

~~(B) Additionally, either the employee, having paid a portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the governing board for the expenses, or the governing board, having paid its portion and the employee's portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the employee for that portion of the expenses.~~

(f) The hearing provided for in this section shall be conducted in a place selected by agreement among the members of the commission. In the absence of agreement, the place shall be selected by the administrative law judge.

SEC. 9. Section 44944.2 is added to the Education Code, to read:

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44944.2. (a) In a dismissal or suspension proceeding under Section 44944, in lieu of written discovery required pursuant to Section 11507.6 of the Government Code, the parties shall make disclosures as described in this section.

(1) An initial disclosure shall comply with the following requirements:

(A) A party shall, without awaiting a discovery request, provide to the other parties both of the following:

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information, along with the subjects of that information, that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment purposes.

(ii) A copy of all documents, electronically stored information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

(B) The school district shall make its initial disclosures within 30 days of the date of service of the notice of intention to dismiss or suspend. The employee shall make his or her initial disclosures within 30 days of the date of service of the school district's initial disclosures.

(C) A party shall make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures. A party's failure to make initial disclosures within the deadlines set forth in this section shall preclude the party from introducing witnesses or evidence not disclosed at the hearing, unless the party shows good cause for its failure to timely disclose.

(D) A party has an obligation to promptly supplement its initial disclosures as new information or evidence becomes known or available. Supplemental disclosures shall be made as soon as possible, and no later than 60 days before the date of commencement of the hearing. A party's failure to make supplemental disclosures promptly upon discovery or availability of new information or evidence shall preclude the party from introducing witnesses or evidence not disclosed at the hearing, unless the party shows good cause for its failure to timely disclose.

(2) The disclosure of expert testimony shall comply with the following requirements:

(A) A party shall also disclose to the other parties the identities of any expert witnesses whose testimony it may use at the hearing.

(B) The disclosure specified in subparagraph (A) shall be accompanied by a summary of the witness's expected testimony, including a description of the facts and data considered by the witness; a description of the witness's qualifications, including a list of all publications authored in the previous 10 years; a list of all other cases in which, during the previous four years, the witness testified as an expert at a hearing or by deposition; and a statement of the compensation to be paid to the expert witness.

(C) Expert witness disclosures shall be made no later than 60 days before the date of commencement of hearing. A party's failure to make full and timely expert witness disclosures shall preclude the party's use of the expert witness' testimony or evidence at the hearing.

(3) Prehearing disclosures shall comply with the following requirements:

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(A) In addition to the disclosures required in paragraphs (1) and (2), a party shall provide to the other parties the following information about the evidence that it may present at the hearing:

(i) The name, and if not previously provided, the address and telephone number of each witness, separately identifying those the party expects to present and those it may call if the need arises.

(ii) An identification of each exhibit, separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) Prehearing disclosures shall be made at least 30 days before the hearing.

(i) Within 14 days after prehearing disclosures are made, a party shall file and serve any objections, along with the grounds for each objection, to the admissibility of evidence.

(ii) These objections shall be decided on the first day of hearing, or at a prehearing conference conducted pursuant to Section 11511.5 of the Government Code. Documents and individuals not timely disclosed without good cause shall be precluded from admission at the hearing.

(b) In addition to the disclosures required by subdivision (a), the parties may obtain discovery by oral deposition in California, in accordance with Sections 2025.010 to 2025.620, inclusive, of the Code of Civil Procedure, except as described in this article. The school district may take the depositions of the employee and no more than four other witnesses, and the employee may take depositions of no more than five witnesses. Each witness deposition is limited to seven hours.

(c) If the right to disclosures or oral depositions is denied by either the employee or the governing board, the exclusive right of a party seeking an order compelling production of discovery shall be pursuant to Section 11507.7 of the Government Code. If a party seeks protection from unreasonable or oppressive discovery demands, the exclusive right of a party seeking an order for protection shall be pursuant to Section 11450.30 of the Government Code.

SEC. 10. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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AMENDMENTS TO ASSEMBLY BILL NO. 1338

Amendment 1

In the title, in line 1, strike out "amend Section 49600 of" and insert:
add Section 44692 to

Amendment 2

In the title, in line 2, strike out "educational counseling" and insert:
school employees

Amendment 3

On page 1, before line 1, insert:

SECTION 1. Section 44692 is added to the Education Code, immediately following Section 44691, to read:

44692. (a) The governing body of each school district, charter school, and county office of education shall adopt a policy on the reporting of child abuse and the responsibilities of mandated reporters, as defined in Section 11165.7 of the Penal Code, in accordance with the requirements of the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code).

(b) Each school district, charter school, and county office of education shall review the mandated reporting requirements of school employees with all school personnel within in the first six weeks of each school year.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Amendment 4

On page 1, strike out lines 1 to 11, inclusive, and strike out page 2

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