

September 10, 2013

The Honorable Kevin de Leon
Chair, Senate Appropriations Committee
California State Senate
State Capitol, Room 5108
Sacramento, CA 95814

AB 375 (Buchanan): OPPOSE
Senate Appropriations Committee
Hearing Date: September 11, 2013

Dear Senator de Leon:

On behalf of the California School Boards Association (CSBA), which represents nearly 1,000 school districts and county boards of education statewide, we must respectfully oppose AB 375 (Buchanan). This measure will likely be heard by the Senate Appropriations Committee on September 11, 2013.

Despite amendments in the closing days of the legislative session, CSBA remains opposed to AB 375 due to the following concerns.

Disclosure requirements and introduction of evidence – AB 375 would create a new process for disclosure of evidence and identification of witnesses. A party's failure to make initial disclosures within 45 days of the date of the employee's demand for a hearing would preclude the party from introducing additional witnesses or evidence unless the party shows good cause. Supplemental disclosures could be made but no later than 60 days before the start of the hearing. Parties are also required to disclose expert witnesses at least 60 days before the hearing and the names of witnesses and identification of exhibits at least 30 days before the hearing. These constraints would make it harder for local education agencies (LEAs) to gather and use all available evidence.

Limitations on amendment of charges – AB 375 would allow an LEA to amend charges against an employee only upon motion before an administrative law judge (ALJ). The amendment cannot be granted less than 90 days before the hearing if it would extend the close of the record beyond the 7-month time limit. These restrictions would make it harder for LEAs to dismiss a teacher as charges may now be amended at any time with the consent of the ALJ.

Challenge of suspension – AB 375 would enable a certificated employee to challenge a suspension while he or she awaits the dismissal hearing. This new procedure would add time and costs to the hearing process administered by the ALJ, and make it more difficult to meet the 7-month deadline for completion.

Challenge of qualifications of panel members – AB 375 would allow any party to object to the qualifications of members of the Commission on Professional Competence (CPC). Permitting the parties to object to the qualifications of a panel member at the time of selection adds cost and delay to the process without a benefit. At the time of selection, neither party is familiar with the qualifications of the panel members. Filing motions will simply result in delays that will make it harder to meet the 7-month time limit for completion of the hearing.

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Deadline for appointment of panel members – Existing law allows the employee and the employer to select members of the CPC, and requires selection at least seven calendar days before the hearing. AB 375 would require selection of the panel members no later than 45 days before the hearing. Failure to meet the deadline would constitute a waiver of the right to select a member of the panel. Since employees are more likely to know current teachers with 5 years of experience, or three years as proposed by AB 375, the time limit would favor the employee over management.

Time limit – Existing law requires suspension and dismissal hearings to begin within 60 days. AB 375 would extend the requirement for beginning the hearing to 6 months and require the hearing to be completed by a closing of the record within 7 months from the date of the employee's demand for a hearing. The deadline for commencement of the hearing could be extended for extraordinary circumstances.

CSBA continues to believe the 7-month deadline for completion of the hearing will be difficult to meet with existing capacity of the Office of Administrative Hearings. It is also unclear whether discovery must be completed before the hearing can be "commenced" to meet the 6-month deadline for commencement. In cases involving immoral conduct, it could be difficult to complete discovery within 6 months. AB 375 is silent with regard to what happens to the case if it is not commenced within 6 months and the administrative law judge finds no extraordinary circumstances warranting a continuance.

We fear the result will be the case will be dismissed and districts will be forced to re-file charges. This could require asking children to re-live abuse in testimony.

For all of these reasons, we must oppose AB 375 (Buchanan) and ask for your "NO" vote when it comes before you in the Senate Appropriations Committee on September 11, 2013.

Sincerely,

A handwritten signature in black ink that reads "Brian M. Rivas". The signature is fluid and cursive, with the first name "Brian" being the most prominent.

Brian M. Rivas
Legislative Advocate
Office of Governmental Relations

cc: Assembly Member Joan Buchanan
Members, Senate Appropriations Committee
Jacqueline Wong-Hernandez, Consultant, Senate Appropriations Committee
Roger Mackensen, Lead Consultant, Senate Republican Caucus
Cheryl Black, Consultant, Senate Republican Caucus