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**AB-2234 School districts: employees: dismissal or suspension administrative proceedings: testimony of minor witnesses: pupil contact information. (2017-2018)**

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**Assembly Bill No. 2234**

**CHAPTER 996**

An act to amend Sections 45113, 45312, and 49077 of, and to add Article 3.3 (commencing with Section 44990) to Chapter 4 of Part 25 of Division 3 of Title 2 of, the Education Code, relating to school districts.

[ Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2234, Jones-Sawyer. School districts: employees: dismissal or suspension administrative proceedings: testimony of minor witnesses: pupil contact information.

(1) Existing law establishes a system of public elementary and secondary education in this state. Under this system, school districts throughout the state provide instruction in kindergarten and grades 1 to 12, inclusive, at schoolsites. Existing law establishes school districts throughout the state, and authorizes them to employ certificated personnel to provide instruction and classified personnel to provide other services. Existing law establishes procedures to be followed in the event that a school proposes to dismiss or suspend a certificated employee. Existing law also authorizes hearings and investigations of the conduct of classified personnel to be conducted by personnel commissions in school districts that have adopted a merit system.

This bill would enact a comprehensive set of requirements for the presentation of testimony by minor witnesses at certain dismissal or suspension administrative proceedings relating to certificated employees and in hearings relating to classified employees conducted by school district governing boards in school districts that have not adopted a merit system or by personnel commissions in school districts that have adopted a merit system.

To the extent that this bill would create new duties for school districts, it would constitute a state-mandated local program.

(2) Existing law requires that information concerning a pupil be furnished in compliance with a court order or lawfully issued subpoena, and further requires a school district to make a reasonable effort to notify the pupil and his or her parent or legal guardian in advance of compliance with a lawfully issued subpoena.

This bill would require that, once a court order or lawfully issued subpoena is issued to obtain a pupil's contact information, a school district make every reasonable effort to enter into an agreement with the entity that obtained the court order or subpoena to keep the pupil contact information confidential. The bill would further require that, notwithstanding the content or existence of any agreement with a school district, a party that obtains pupil contact information pursuant to this provision would be prohibited from using or disseminating that information for any purpose except as authorized by the court order or subpoena.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Article 3.3 (commencing with Section 44990) is added to Chapter 4 of Part 25 of Division 3 of Title 2 of the Education Code, to read:

### **Article 3.3. Testimony of Minor Witnesses at Dismissal or Suspension Hearings**

**44990.** (a) It is the intent of the Legislature in enacting this article to provide an administrative law judge with discretion to employ alternative hearing procedures to protect the rights of a minor witness, the rights of the respondent, and the integrity of the judicial process. In exercising its discretion, the administrative law judge necessarily shall be required to balance the rights of the respondent against the need to protect a minor witness and to preserve the integrity of the truth-finding function. This discretion is intended to be used selectively when the facts and circumstances in an individual case present compelling evidence of the need to use these alternative procedures.

(b) As used in this article, the following definitions apply:

- (1) "Judge" means the administrative law judge presiding over the dismissal or suspension hearing.
- (2) "Minor" means any person under 18 years of age.
- (3) "Representative of the respondent" means either counsel for, or an exclusive labor representative of, the respondent.
- (4) "Respondent" means the party against whom a petition has been filed.
- (5) "Support person" means an adult attendant, victim advocate, or other witness who is able, because of education, experience, or familiarity with the minor, to ensure that the minor's mental health, welfare, and well-being are protected.

(c) In accordance with Section 44994, this article shall apply only to proceedings brought pursuant to Section 44934.1.

**44991.** (a) (1) In an administrative proceeding held pursuant to Section 44934.1 involving an alleged offense involving a minor that meets the definition of egregious misconduct under paragraph (1) of subdivision (a) of Section 44932, counsel for a school district may apply for an order that the minor's testimony be taken in a room outside the hearing room and be televised by two-way closed-circuit television and bears the burden of proving that such an order is justified. The person seeking such an order shall apply for the order at least seven days before the hearing date, unless the judge finds on the record that the need for such an order was not reasonably foreseeable.

(2) The judge may order that the testimony of the minor be taken by closed-circuit television as provided in paragraph (1) if the judge finds that the minor is unable to testify in the hearing room in the presence of the respondent for any of the following reasons:

- (A) The minor is unable to testify because of emotional distress, established by a written statement of the minor, the minor's parent or guardian, the minor's support person, or a mental health professional who has evaluated the minor.
- (B) There is a substantial likelihood, established by expert testimony, that the minor would suffer emotional distress from testifying.
- (C) According to expert testimony, the minor suffers from a medical condition, mental condition, or other infirmity.
- (D) The judge finds that conduct of the respondent or his or her representative causes the minor to be unable to continue testifying.

(3) The judge shall rule on the application, and support a ruling on the minor's inability to testify with findings on the record. In determining whether the impact on an individual minor of one or more of the factors described in paragraph (2) is so substantial as to justify an order under paragraph (1), the judge may question the minor in his or her office, or at some comfortable place other than the hearing room, on the record for a reasonable period of time in the presence of the minor's parent or guardian, the minor's support person, counsel for the school district, and a representative of the respondent.

(4) If the judge orders the taking of testimony by television, counsel for the school district and a representative of the respondent, not including a respondent represented pro se, shall be present in a room outside the hearing room with the minor,

and the minor shall be subjected to direct and cross-examination. The following are the only other persons who may be permitted in the room with the minor during the minor's testimony:

(A) Any persons necessary to operate the closed-circuit television equipment.

(B) The parent or guardian of the minor.

(C) Any other persons whose presence is determined by the judge to be necessary to the welfare and well-being of the minor, including, but not necessarily limited to, a judicial officer or support person.

(5) In making the determination required by this subdivision, the judge shall consider the age, maturity, and cognitive ability of the minor, compared with other minors of the same age, the relationship between the minor and the respondent, any handicap or disability of the minor, and the nature of the acts alleged to have been committed by the respondent. The minor's testimony shall be under oath and transmitted by closed-circuit television into the hearing room for viewing and hearing by the respondent, the judge, and any members of the public in attendance. The respondent shall be provided with the means of private, contemporaneous communication with his or her representative during the testimony. The closed-circuit television transmission shall relay into the room in which the minor is testifying the respondent's image, and the voice of the judge.

(b) (1) In an administrative proceeding held pursuant to Section 44934.1 involving an alleged offense involving a minor that meets the definition of egregious misconduct under paragraph (1) of subdivision (a) of Section 44932, counsel for the school district may apply for an order that a deposition be taken of the minor's testimony and that the deposition be recorded and preserved on videotape based upon the same criteria that would allow a minor's testimony to be taken in a room outside the hearing room and be televised by two-way closed-circuit television, as set forth in paragraph (2) of subdivision (a) of this section. Counsel for the school district shall bear the burden of proving that an order applied for under this paragraph is justified in order to be consistent with subdivision (a) of this section.

(2) Upon timely receipt of an application described in paragraph (1), the judge shall make a preliminary finding regarding whether the minor is likely to be unable to testify in the hearing room in the physical presence of the respondent, the judge, and the public for any of the reasons set forth in paragraph (2) of subdivision (a).

(3) If the judge finds that the minor is likely to be unable to testify in open hearing for any of the reasons set forth in paragraph (2) of subdivision (a), the judge shall order that the minor's deposition be taken and preserved by videotape.

(4) The judge shall preside at the videotaped deposition of a minor, and shall rule on all questions as if at the hearing. The following are the only other persons who shall be permitted to be present at the videotaped deposition:

(A) Counsel for the school district.

(B) Representative of the respondent.

(C) Any persons necessary to operate the videotape equipment.

(D) The respondent, unless the judge excludes the respondent from the hearing room pursuant to paragraph (6).

(E) The parent or guardian of the minor.

(F) Any support person appointed pursuant to Section 44993 to protect the mental health, welfare, and well-being of the minor.

(5) The respondent shall be afforded the rights applicable to respondents during trials, including the right to be confronted with the witness against the respondent and the right to cross-examine the minor.

(6) If the preliminary finding of inability under paragraph (2) is based on evidence that the minor is unable to testify in the physical presence of the respondent, the judge may order that the respondent, including a respondent represented pro se, be excluded from the room in which the deposition is conducted. If the judge orders that the respondent be excluded from the deposition room, the judge shall order that two-way closed-circuit television equipment relay the respondent's image into the room in which the minor is testifying, and the minor's testimony into the room in which the respondent is viewing the proceeding, and that the respondent be provided with a means of private, contemporaneous communication with his or her representative during the deposition.

(7) The complete record of the examination of the minor, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the judge's office, and shall be made available for viewing by counsel for the school district, representative of the respondent, and the respondent during ordinary business hours.

(8) If at the time of the hearing, the judge finds that the minor is unavailable or unable to testify in open hearing for a reason described in paragraph (2) of subdivision (a), the judge may admit into evidence the minor's videotaped deposition in lieu of the minor's testifying at the hearing. The judge shall support any ruling made pursuant to this paragraph with findings on the record.

(9) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during the hearing, the judge, for good cause shown, may order an additional videotaped deposition. The testimony of the minor shall be restricted to the matters specified by the judge as the basis for granting the order.

(10) In connection with the taking of a videotaped deposition under this subdivision, the judge may enter a protective order for the purpose of protecting the privacy of the minor.

**44992.** (a) With a witness under 18 years of age, or a dependent person with a substantial cognitive impairment, the judge shall take special care to protect the witness from undue harassment or embarrassment, and to restrict the unnecessary repetition of questions. The judge shall also take special care to ensure that questions are stated in a form that is appropriate to the age, maturity, or cognitive level of the witness. The judge may, in the interests of justice, on objection by a party, forbid the asking of a question that is in a form that is not reasonably likely to be understood by a person of the age, maturity, or cognitive level of the witness.

(b) When a minor testifies, the judge may order the exclusion from the hearing room of all persons, including members of the press, who do not have a direct interest in the case. This order may be made if the judge determines, on the record, that requiring the minor to testify in the open hearing room would cause substantial psychological harm to the minor or would result in the minor's inability to effectively communicate. Such an order shall be narrowly tailored to serve the specific compelling interest of the school district.

**44993.** (a) (1) A support person selected by the minor witness shall be appointed for the minor witness at the onset of the hearing, unless that person does not have the education, experience, and familiarity with the minor witness to protect the minor's mental health, welfare, and well-being. A parent or guardian of the minor witness shall be presumed to be qualified to serve as the support person for the minor.

(2) If the minor witness does not make a selection, or does not select a person who is able, because of education, experience, or familiarity with the minor, to ensure that the minor's mental health, welfare, and well-being are protected, or the judge determines that the minor's parent or guardian is not qualified to serve as the support person for the minor witness, the judge shall select and appoint a support person for the minor. The support person shall be present during all stages of the hearing to provide support to the minor.

(b) If the respondent wants to contact the minor witness, the respondent shall contact the support person to coordinate any legal contact, including, but not necessarily limited to, an interview, deposition, or other hearing preparation task.

(c) The respondent may not use a private investigator or similar professional to make contact with the minor.

(d) The judge, at his or her discretion, may allow the support person to remain in close physical proximity to or in contact with the minor while the minor testifies. A support person shall not provide the minor with an answer to any question directed to the minor during the course of the minor's testimony or otherwise prompt the minor.

(e) A support person appointed by the judge shall assist the minor to express the minor's views concerning the personal consequences of the minor's victimization, at a level and in a form of communication commensurate with the minor's age, maturity, and cognitive ability.

(f) Notwithstanding subdivision (a), a support person may, but need not, be assigned to a minor witness if that minor witness was not a direct victim of the alleged egregious misconduct.

**44994.** This article shall apply to a hearing conducted by an administrative law judge in any dismissal or suspension hearing held pursuant to Section 44934.1 involving an alleged offense involving a minor that meets the definition of egregious misconduct pursuant to paragraph (1) of subdivision (a) of Section 44932.

**SEC. 2.** Section 45113 of the Education Code is amended to read:

**45113.** (a) The governing board of a school district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are designated as permanent employees of the school district after serving a prescribed period of probation that shall not exceed one year. A permanent

employee who accepts a promotion and fails to complete the probationary period for that promotional position, shall be employed in the classification from which he or she was promoted.

(b) Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board of the school district, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

(c) The governing board of a school district shall adopt rules of procedure for disciplinary proceedings that shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested that shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board of the school district, and any rule or regulation to the contrary shall be void.

(d) No disciplinary action shall be taken for any cause that arose before the employee's becoming permanent, nor for any cause that arose more than two years preceding 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.

(e) Nothing in this section shall be construed to prohibit the governing board of a school district, pursuant to the terms of an agreement with an employee organization under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, from delegating its authority to determine whether sufficient cause exists for disciplinary action against classified employees, excluding peace officers as defined in Section 830.32 of the Penal Code, to an impartial third party hearing officer. However, the governing board of the school district shall retain authority to review the determination under the standards set forth in Section 1286.2 of the Code of Civil Procedure.

(f) (1) A governing board of a school district shall delegate its authority to a judge, as defined in Section 44990, to determine whether sufficient cause exists for disciplinary actions against classified employees involving allegations of egregious misconduct, as defined in Section 44932, and involving a minor, as defined in Section 44990. The judge's ruling shall be binding upon all parties.

(2) A judge authorized under this subdivision to conduct a hearing involving allegations as described in Section 44010 or 44011 of this code, or as described in Sections 11165.2 to 11165.6, inclusive, of the Penal Code, shall conduct that hearing in accordance with Article 3.3 (commencing with Section 44990) of Chapter 4 and Section 49077 of this code.

(3) The term "representative of the respondent," within the meaning of Article 3.3 (commencing with Section 44990) of Chapter 4, shall include, but not necessarily be limited to, an exclusive labor representative.

(g) This section shall apply only to school districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240).

**SEC. 3.** Section 45312 of the Education Code is amended to read:

**45312.** (a) (1) The commission may authorize a hearing officer or other representative to conduct any hearing or investigation that the commission itself is authorized by this article to conduct. Any such authorized person conducting the hearing or investigation may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses to be taken in the manner prescribed by law for similar depositions in civil cases in the superior court of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. The commission may instruct the authorized representative to present findings or recommendations. The commission may accept, reject, or amend any of the findings or recommendations of the authorized representative. Any rejection or amendment of findings or recommendations shall be based either on a review of the transcript of the hearing or investigation or upon the results of the supplementary hearing or investigation as the commission may order.

(2) For disciplinary cases against classified employees involving allegations of egregious misconduct, as defined in Section 44932, and involving a minor, as defined in Section 44990, the commission shall hire a judge, as defined in Section 44990, to conduct any hearing or investigation that the commission itself is authorized by this article to conduct. The judge's ruling shall be binding upon all parties.

(3) A judge authorized under this subdivision to conduct a hearing involving allegations as described in Section 44010 or 44011 of this code, or as described in Sections 11165.2 to 11165.6, inclusive, of the Penal Code, shall conduct that hearing in accordance with Article 3.3 (commencing with Section 44990) of Chapter 4 and Section 49077 of this code.

(4) The term "representative of the respondent," within the meaning of Article 3.3 (commencing with Section 44990) of Chapter 4, shall include, but not necessarily be limited to, an exclusive labor representative.

(b) The commission may employ hearing officers or other representatives by contract, or as professional experts or otherwise, and may adopt and amend rules and procedures as necessary to effectuate this section.

**SEC. 4.** Section 49077 of the Education Code is amended to read:

**49077.** (a) Information concerning a pupil shall be furnished in compliance with a court order or a lawfully issued subpoena. The school district shall make a reasonable effort to notify the pupil's parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

(b) Once a court order or lawfully issued subpoena is issued to obtain pupil contact information, the school district shall make a reasonable effort to enter into an agreement with the entity that obtained the court order or subpoena requiring that the pupil contact information be maintained in a confidential manner.

(c) Notwithstanding the content or existence of any agreement with a school district, a party that obtains pupil contact information pursuant to this section shall not use or disseminate that information for any purpose except as authorized by the court order or subpoena.

**SEC. 5.** 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.