

Date of Hearing: March 24, 2021

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 388 (Medina) – As Amended March 16, 2021

**SUBJECT:** Certificated school employees: probationary employees

**SUMMARY:** Makes changes regarding which credentialed employees can attain permanent employee status, and deletes sections that differentiate employment practices for school districts with less than 250 average daily attendance (ADA) and employees who were in their probationary period prior to the 1983-84 fiscal year. Specifically, **this bill:**

- 1) Deletes the prohibition on counting service as an instructor, conducted at regional occupational centers or programs (ROC/Ps), toward the service required to attain permanent employee status.
- 2) States that the provisions pertaining to certificated employees who provide services as part of a categorical funding project do not apply to adult education teachers.
- 3) Requires an employee of a school district of any type or class, with an ADA of 250 or less, who is reelected to a third year of employment in a position requiring certification, to be classified as a permanent employee of the school district, and makes conforming changes.
- 4) Requires a county office of education (COE) with an ADA of 250 or less, to award permanent status to employees *in a teaching position* requiring certification if they are re-elected for a third year of employment.
- 5) Requires that probationary employees employed in an assignment that is less than full time and who, in any one school year, have served for at least 75% of the number of days required of the assignment in which the employees are employed, be deemed to have served a complete school year. Specifies, in the case of adult education programs that are part of a school district maintaining kindergarten or any grades 1 to 12, inclusive, 75% of the number of hours constituting a full-time equivalent position for adult education programs in the school constitute a complete school year.
- 6) Deletes employment sections that apply only to employees in their probationary year prior to the 1983-84 fiscal year, including:
  - a) The requirement that school districts dismiss probationary employees during the school year for cause only.
  - b) The authorization for a school district to suspend a probationary employee for a specified period of time without pay as an alternative to dismissal.
- 7) Deletes the dismissal process for probationary employees of a school district with an ADA of less than 250 students which includes the following provisions, among others:

- a) The requirement that a dismissal hearing be conducted by an administrative law judge (ALJ).
- b) The requirement that an ALJ make a recommendation to the school board and the final dismissal decision shall be made by the school board.

**FISCAL EFFECT:** This bill is keyed non-fiscal.

**EXISTING LAW:**

- 1) Specifies that if the ADA of the schools and classes maintained by a county superintendent of schools is 250 or more, each person who, after being employed for two complete consecutive school years by the superintendent in a teaching position in those schools or classes requiring certification and whose salary is paid from the county school service fund, is re-elected for the next succeeding school year, shall be classified as a permanent employee. (Education Code (EC) 1296)
- 2) Requires a probationary employee who, in any one school year, has served for at least 75% of the number of days the regular schools of the district in which he is employed are maintained to be deemed to have served a complete school year. In case of evening schools, 75% of the number of days the evening schools of the district are in session shall be deemed a complete school year. (EC 44908)
- 3) Authorizes the governing board of any school district to employ persons possessing an appropriate credential as certificated employees in programs and projects to perform services conducted under contract with public or private agencies, or categorically funded projects which are not required by federal or state statutes. The terms and conditions under which such persons are employed must be mutually agreed upon by the employee and the governing board and such agreement must be reduced to writing. Service pursuant to this section may not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee unless such person has served pursuant to this section for at least 75% of the number of days the regular schools of the district by which he is employed are maintained and such person is subsequently employed as a probationary employee in a position requiring certification qualifications. (EC 44909)
- 4) Specifies that service by a person as an instructor in classes conducted at ROC/Ps may not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district. (EC 44910)
- 5) Specifies that every employee of a school district of any type or class having an ADA of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district. (EC 44929.21)
- 6) Specifies that the governing board of a school district of any type or class having an ADA of less than 250 pupils may classify as a permanent employee of the district any employee who, after having been employed by the school district for three complete consecutive school

years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications. (EC 44929.23)

- 7) Requires governing boards of school districts to dismiss probationary employees during the school year for cause only, as in the case of permanent employees whose probationary period commenced prior to the 1983–84 fiscal year or who are employed in a school district having an ADA of less than 250 pupils. Authorizes the governing board to suspend a probationary employee for a specified period of time without pay as an alternative to dismissal for employees whose probationary period commenced prior to the 1983–84 fiscal year. (EC 44948)
- 8) Specifies the governing board of any school district having an average daily attendance of less than 250 may elect to dismiss probationary employees during the school year pursuant to the provisions of Section 44948.3. (EC 44948.2)
- 9) Authorizes first and second year probationary employees to be dismissed during the school year for unsatisfactory performance or for cause, and specifies that this applies only to probationary employees whose probationary period commenced during the 1983–84 fiscal year or any fiscal year thereafter, and does not apply to probationary employees in a school district having an average daily attendance of less than 250 pupils. (EC 44948.3)
- 10) Specifies a dismissal process for probationary employees of a school district with an ADA of less than 250 students and whose probationary period commenced prior to the 1983-84 fiscal year, which includes the following provisions, among others:
  - a) The dismissal hearing shall be conducted by an ALJ.
  - b) The ALJ shall make a recommendation to the school board and the final dismissal decision shall be made by the school board. (EC 44948.5)
- 11) Specifies that a person employed in an administrative or supervisory position requiring certification qualifications upon completing a probationary period, including any time served as a classroom teacher, in the same district, shall, in a district having an ADA of 250 or more pupils, be classified as and become a permanent employee as a classroom teacher. In a district having an ADA of less than 250 pupils, he or she may be so classified. (EC 44897)
- 12) Specifies each person employed by a county superintendent of schools in a position requiring certification qualifications, except employees included in the civil service system or in any merit system, or any person who holds an office by virtue of an election conducted under the Elections Code or the Education Code, and whose salary is paid from the county school service fund, has the same right with respect to leaves of absence, sick leave, and bereavement leave as a person employed by a school district or a community college district in a position requiring certification qualifications. (EC 1294)
- 13) Authorizes a county superintendent of schools to enter into contracts of employment with persons employed by him in positions requiring certification qualifications for periods of not to exceed the end of the school year in which the term for which the county superintendent of schools was elected or appointed expires and in no event, for more than four years and six months. (EC 1293)

**COMMENTS:**

***Need for the bill.*** According to the author, “California’s students need a stable, experienced, and high quality workforce of educators to help them reach their full potential. Permanent Status, or post-probationary status, is granted to employees upon having successfully completed a period of time working to ensure capability to fulfill the duties of a position. Under the Education Code, permanent employees can be terminated for just-cause or as part of a layoff. There currently are systems in place to appropriately reduce staffing if needed. Current law prohibits employers from securing stability for students and educators. AB 388 will ensure that deserving educators and school employees in all school districts and county offices of education have an opportunity to [sic] permanent employment status.”

***What does this bill do?*** This bill makes four substantive changes regarding which credentialed employees can attain permanent employee status. The bill requires the following groups to attain permanent employee status after completing a probationary period:

- 1) Adult education teachers;
- 2) School district ROC/P instructors;
- 3) Certificated employees at school districts, with an ADA of 250 or less; and
- 4) Certificated employees in a teaching position at COEs, with an ADA of 250.

Further, the bill makes changes to code sections that differentiate employment practices for school districts with less than 250 ADA and employees who were in their probationary period prior to the 1983-84 fiscal year.

***What protections does "permanent employee" status offer to these employees?*** "Permanent employee" status guarantees the specific employees listed in the bill due process rights if they are dismissed. In the case of dismissal, "permanent employee" status allows employees to request a hearing before a Commission on Professional Competence to decide whether their dismissal was appropriate. Further, a "permanent employee" has the right to request a hearing during a reduction in force.

***ROP teachers.*** This bill eliminates the prohibition on service as an ROC/P teacher as counting toward attaining permanent employee status. With the implementation of the Local Control Funding Formula (LCFF), ROC/Ps no longer receive categorical program funding. Instead, funding for ROC/Ps has been rolled into the funding that is allocated via the LCFF. Generally, ROC/P teachers have not been given permanent employee status due to the volatile nature of ROC/P funding and industry changes regarding specific courses offered through those programs.

The 2018-19 state budget provided \$150 million in ongoing funding to the Career Technical Education Incentive Grant (CTEIG) program at the California Department of Education (CDE), and an additional \$150 million for the K-12 component of the Strong Workforce Program through the Chancellor of the Community Colleges. Prior to the adoption of the LCFF funding model, CTE programs were funded at up to \$500 million per year to meet the needs of students.

***County offices and districts with less than 250 ADA.*** There are 27 COEs with less than 250 ADA and approximately 210 school districts with less than 250 ADA. This bill will affect those 210 school districts by requiring that all certificated employees attain permanent employee status

after a probationary period. Additionally, at the 27 COEs with less than 250 ADA, certificated employees in a teaching position will earn permanent status after 2 years, instead of after 3 years.

**Adult education teachers.** In general, adult education has been funded in California by "categorical" or restricted state funding. Currently, these funds are from the "California Adult Education Program (CAEP)" (formerly known as the "Adult Education Block Grant"). This funding distinguishes adult education from K-12 funding, which is not restricted for the most part, and which is also considered part of the constitutionally-mandated "regular" education program of a district. Some confusion in the field exists, however, the California Department of Education's August 1, 2017 CAEP Guide does state that CAEP is not a grant, but rather is an ongoing state apportionment that can be used in future years to hire permanent staff, teachers and faculty.

In a July 7, 2020 court ruling on *United Teachers Los Angeles, et al. v. Los Angeles Unified School District, et al.*, the Judge concluded, "The simple facts are that (a) adult education is not part of District's regular K-12 responsibilities and (b) sections 8530 and 66010.3 only require District to be responsible for adult instruction to the extent of state support. Adult education is not District's 'regular' work within the meaning of *Kamin* and *Zalac*. While CAEP's categorical funding may swallow the vast majority of adult education and preclude tenure for an entire field of teachers, this is a policy issue that was addressed in *Zalac*: 'While the increasing use of special educational programs to supplement school district funding may raise questions as to whether the reach of section 44909, and the number of teachers being denied credit towards tenure, is extending farther than desirable, these are questions properly address to the Legislature rather than to the courts. [Los Angeles Unified School District Division of Adult and Career Education] (DACE) is a categorically funded program not required by state statute under section 44909.'" Because of this ruling, Section 44909 can be used to deny permanent status to all teachers of adult education.

Under this bill, adult education teachers who work 60% of a full time assignment or less will remain ineligible for permanent status. Under Section 44929.25, adult education teachers who work 18 hours/week or less of classes (60% of a full time assignment or less) must be classified as temporary and cannot acquire permanent or probationary status.

**Obsolete code sections.** This bill deletes code sections that only apply to employees whose probationary period commenced prior to the 1983-84 fiscal year and code sections that apply to COEs and school districts with more or less than 250 ADA. The author's intent is to eliminate any code sections that apply different rules to COEs and districts with more or less than 250 ADA so that all local education agencies follow the same requirements.

**Arguments in opposition.** According to opponents, "Designated service credentials are assigned by industry sector – within these sectors are 58 pathways. For example, if instructors who work in Adult Education as well as Career and Technical Education programs become permanent, then layoffs are determined by seniority that could result in an instructor being placed in a position very different from their current expertise simply because they hold the same credential as an individual with less seniority. This bill would also limit a district's ability to provide the career technical education classes that would be in the most demand for today's workforce needs. Lastly, expanding the rights of permanent teachers to all certificated employees will be cost prohibitive as school districts would need to put a dismissal process in place, mirrored for permanent teachers. We have concerns about the public policy impacts of beginning a process of granting tenure rights to additional positions...."

**Related legislation.** AB 2682 (Medina) of the 2019-20 Session was substantially similar to this bill and would have extended permanent employee status to all nonsupervisory, non-management employees who work in positions requiring certification in school districts and COEs. This bill was held in the Assembly Education Committee.

AB 753 (Medina) of the 2015-16 Session was substantially similar to this bill and would have extended permanent employee status to all nonsupervisory, non-management employees who work in positions requiring certification in school districts and COEs. This bill was held in the Assembly Appropriations Committee.

AB 1619 (Gonzalez) of the 2013-14 Session was substantially similar to this bill and would have made changes, as of July 1, 2015, regarding which credentialed employees could attain permanent employee status. This bill failed passed in the Senate Education Committee.

AB 165 (Cohn) of the 2001-02 Session would have required COEs serving at least 250 average daily attendance, to grant permanent status to non-supervisory, nonmanagement employees who work in positions requiring certification, if the individual works two consecutive school years and is rehired for the next (third) year. This bill was held in the Assembly Appropriations Committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

None on file

### **Opposition**

Association of California School Administrators  
California Association of School Business Officials (CASBO)  
California Association of Suburban School Districts  
California County Superintendents Educational Services Association (CCSESA)  
California School Boards Association  
Career Technical Education Joint Powers Authority Coalition  
Carocp-the Association of Careers and College Readiness Organizations  
Central Valley Education Coalition  
Edvoice  
Govern for California  
Kern County Superintendent of Schools  
Orange County Department of Education  
Riverside County Superintendent of Schools  
San Bernardino County District Advocates for Better Schools (SANDABS)  
Small School Districts' Association

**Analysis Prepared by:** Chelsea Kelley / ED. / (916) 319-2087