

Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 897 (McCarty) – As Introduced February 14, 2023

SUBJECT: Certificated school employees: probationary employees: service credit

SUMMARY: Requires adult education teachers to earn permanent status after a two year probationary period; requires certificated employees working at least 60% of a full time position and who have served for at least 75% of the number of days of their assignment to be considered to have served a complete school year for purposes of attaining permanent status; and, requires employees hired using “categorical” or restricted state funding to be notified of the following at the time of hire: the expected end date of employment, the source of funding, and the nature of the categorically funded program or project. Specifically, **this bill:**

- 1) States that the provisions pertaining to certificated employees who provide services as part of a categorical funding project, and who are not eligible for permanent status, do not apply to adult education teachers.
- 2) Requires that 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 school district in which the employee is employed are maintained, be deemed to have served a complete school year. Requires, in the case of a probationary employee employed in an assignment that is less than full time but at least 60% of the number of hours of a full-time assignment, and who, in any one school year, has served for at least 75% of the number of days required of the assignment in which the employee is employed, the employee to be deemed to have served a complete school year.
- 3) Requires, in 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 district, to be deemed a complete school year.
- 4) Requires the governing board of a school district to provide the following information to certificated employees hired for categorically funded projects:
 - a) the expected end date of employment;
 - b) the source of funding; and
 - c) the nature of the categorically funded program or project.

EXISTING LAW:

- 1) 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 the case of evening schools, 75% of the number of days the evening schools of the district are in session is deemed a complete school year. (Education Code (EC) 44908)

- 2) States that notwithstanding any other provision to the contrary, any person who is employed to teach adults for not more than 60% of the hours per week considered a full-time assignment for permanent employees having comparable duties shall be classified as a temporary employee, and shall not become a probationary employee. (EC 44929.25)
- 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. Requires the terms and conditions under which such persons are employed to be mutually agreed upon by the employee and requires such an agreement to be in writing. Prohibits service to be included in computing the service required as a prerequisite to attainment of, or eligibility for, classification as a permanent employee unless such person has served 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)

FISCAL EFFECT: This bill was keyed non-fiscal by the office of Legislative Counsel.

COMMENTS:

Need for the bill. According to the author, “All students deserve to be taught by an experienced, high quality educator with a vested interest in the school community. However, current law denies adult education teachers the opportunity to obtain permanent status. They should be guaranteed the same rights and protections that are given to other teachers. By giving adult education teachers a pathway to permanent status, AB 897 will give qualified educators the job security they deserve and ensure that experienced educators are not dismissed unfairly.”

What does this bill do? This bill requires adult education teachers and all certificated employees working 60% of a full time position and 75% of the school days for the assignment to attain permanent employee status after completing a probationary period. Further, the bill requires employees hired using “categorical” or restricted state funding to be notified of the following at the time of hire: the expected end date of employment, the source of funding, and the nature of the categorically funded program or project.

What protections does "permanent employee" status offer to employees? "Permanent employee" status guarantees certificated school employees 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.

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 court 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 less than 60% of a full time assignment 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.

Part time employees. Existing law requires certificated employees that work 75% of the school days to earn permanent status. This bill requires certificated employees working at least 60% of a full time position and working 75% of the school days for the assignment will earn permanent status after a 2 year probationary period. This lowers the threshold for permanent status from 75% of the school days to 60% of a full time position.

According to the California Teachers Association, credentialed librarians, nurses, or other student support professionals that may be less than full-time should not be treated as temporary employees. Many of them are re-hired year after year, but do not have the same due process protections as other classroom teachers and can be fired for any reason.

Related legislation. AB 2573 (McCarty) of the 2021-22 Session would have made changes regarding which credentialed employees can attain permanent employee status, and deleted 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. This bill was held in the Senate Appropriations Committee.

AB 388 (Medina) of the 2021-22 Session would have made changes regarding which credentialed employees can attain permanent employee status, and deleted 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. This bill was held in the Senate Appropriations Committee.

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

AB 753 (Medina) of the 2015-16 Session 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 would have made changes, as of July 1, 2015, regarding which credentialed employees could attain permanent employee status. This bill was held in the Senate Education Committee.

AB 165 (Cohn) of the 2001-02 Session would have required COEs serving at least 250 average daily attendance (ADA) to grant permanent status to a non-supervisory, nonmanagement employee 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**

American Federation of State, County, and Municipal Employees
California Federation of Teachers AFL-CIO
California Teachers Association

Opposition

None on file

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