

CLIENT NEWS BRIEF

AB 215 Modifies the Process for Suspending or Dismissing a Certificated Employee Under the Education Code

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For several decades, California law has provided teachers with significant due process protections that, as a practical matter, have insulated them from suspension or dismissal except in rare cases. Many now contend that the current teacher dismissal process is cumbersome, expensive, and makes it difficult to dismiss teachers that should not be in the classroom. Assembly Bill (AB) 215 was recently passed and signed into law in an attempt to reform the teacher dismissal process. The results of this "reform" remain to be seen but, in many ways, AB 215 does not strengthen a school employer's ability to suspend or dismiss a teacher for misconduct or poor performance.

The impetus for AB 215 was also, in part, generated in 2012 by news media focus on the fact that school districts often choose to pay to settle dismissal cases against teachers who have clearly engaged in lewd acts against young children. For those districts, it is more cost effective to settle with the teachers than to pursue the dismissal process provided by law. AB 215 addresses such cases by adding "egregious misconduct" as a new cause for discipline. AB 215 also makes other significant modifications to the Education Code procedures for bringing and pursuing disciplinary charges.

AB 215 was signed into law by Governor Brown on June 25, 2014 and takes effect January 1, 2015. It does not impact cases that are commenced prior to January 1, 2015. The following provides a summary of the significant aspects of AB 215.

Egregious Misconduct

The most notable aspect of AB 215 is its addition of "egregious misconduct" as a basis to dismiss or suspend a teacher. "Egregious misconduct" consists of certain sex offenses, drug offenses, and child neglect, endangerment, and abuse. Under AB 215, an expedited process is established for due process hearings when an employee is charged *solely* with egregious misconduct. Once a district files charges solely for egregious misconduct, the expedited process will be the exclusive means of pursuing a dismissal or suspension for the acts or events upon which the charge is based. Under the expedited process, the hearing must commence within 60 days of a teacher's request for a hearing.

Other Procedural Changes

Under AB 215, the following changes will be made to existing law:

- Immediate Suspensions. Existing law allows a school district to immediately suspend a teacher charged with immoral conduct or other specified grounds pending a final decision on the charges. Under AB 215, a teacher who is immediately suspended in this manner will be able to challenge that suspension before an administrative law judge (ALJ) through an expedited pre-hearing motion process. The ALJ's decision on whether a suspension should be lifted will not have any bearing on the ultimate decision issued by a Commission on



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Professional Competence (CPC) on the underlying charges. A teacher charged solely with egregious misconduct will not be able to use this expedited process to challenge an immediate suspension.

- Notice of Charges. AB 215 will eliminate the prohibition against serving a notice of suspension or dismissal (otherwise known as charges) between May 15th and September 15th. Under AB 215, a school district will be able to serve a teacher with charges (except for charges of unsatisfactory performance) at any time during the instructional year, and charges could also be served outside of the instructional year so long as they are personally served on the teacher. However, charges that are based solely on unsatisfactory performance could only be served during the instructional year at the school site where the teacher is physically employed.
- Amending Charges. Under AB 215, a district will not be allowed to amend charges within 90 days of a hearing unless it makes a showing that there is good cause.
- Hearing Date. AB 215 will extend the time limit to commence a hearing on charges (except for those solely alleging egregious misconduct) from 60 days to six months from the date a teacher requests a hearing.
- Statute of Limitations for Evidence of Sexual Crimes and Child Abuse or Neglect. Evidence of sexual crimes and/or child abuse or neglect can be admitted at a due process hearing even if the alleged acts occurred more than four years before the filing of charges against a teacher.
- Optional Waiver of CPC. Under AB 215 the parties may agree to have a hearing on charges before an ALJ instead of before a CPC.
- Relaxed Standard for Appointees to a CPC. With the new law, a CPC appointee will be required to have at least three years of experience in the teacher's discipline within the past 10 years, not five years, as currently provided.
- Disclosure of Evidence. AB 215 will eliminate standard written discovery and instead require the early disclosure of evidence prior to a due process hearing when a teacher is not charged solely with egregious misconduct. The initial disclosures are now due 45 days from the teacher's request for a hearing. A party's failure to make timely disclosures may result in exclusion of the evidence at the hearing.
- Hearing Expenses. If a CPC determines that a teacher should be dismissed or suspended, AB 215 provides that the district and the state share equally in the expenses of the hearing, including the costs of the ALJ. However, the teacher and district each pay their own attorney's fees.

Reporting of Complaints/Charges

AB 215 will also prohibit a school district from entering an agreement not to report egregious misconduct to the Commission on Teacher Credentialing (CTC). It will require a district to disclose that the teacher's egregious misconduct has been reported to the CTC when the district receives a reference inquiry from a school district, county office of education, or charter school considering the teacher for a position. Additionally, AB 215 will place limitations on agreements to destroy documents related to a credible complaint, substantiated investigation, or discipline involving egregious misconduct. Finally, school employees who knowingly make a false allegation that another employee has engaged in egregious misconduct will be subject to having their credential revoked under this new section.

Conclusion

The statutory changes made by AB 215 will not necessarily improve the process for suspension or dismissal of a certificated employee. AB 215 will impose additional procedures and restrictive timelines on a process that is already expensive and time-consuming. School districts should be prudent in documenting misconduct and developing the case for suspension or dismissal, and should seek legal guidance prior to initiating a statutory suspension or dismissal.

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