

Teacher Layoff and Dismissals in California State Law



State law requires school districts and their unions to meet and negotiate a contract at least once every three years. The result of this negotiating determines the wages, specified benefits, evaluation, hours of employment, calendar, discipline and suspension, and most aspects of teachers' working conditions. However, some items are "non-negotiable" because they are preempted by the Education Code. The crucial examples here are the due process for dismissing permanent (tenured) teachers and seniority rights for layoffs. Details are in the Education and Government Codes, and they are not subject to bargaining.ⁱ

In general, the Education Code differentiates between dismissals and layoffs:

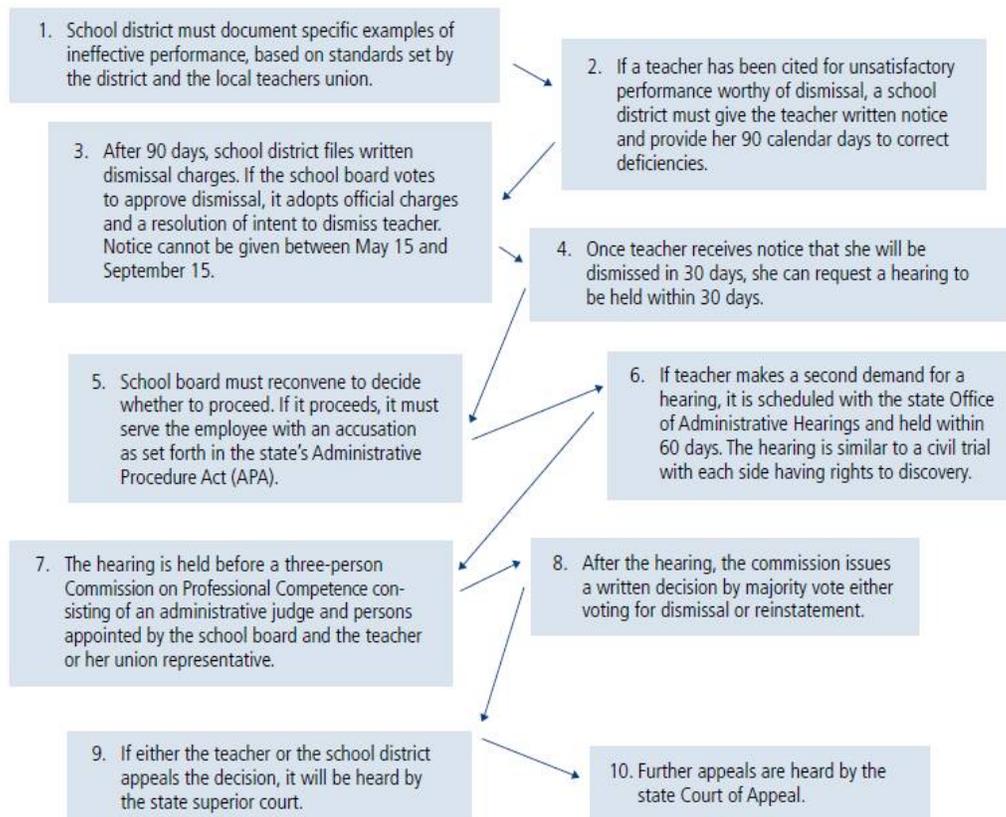
- **Dismissal** decisions are based upon an individual employee's behavior, performance, fitness for service.
- **Layoff** decisions are financially-driven and based upon an employee's seniority, and are NOT based upon an individual employee's behavior, performance, fitness for service.

The Education Code also sets forth different processes a district's governing board must take to terminate teachers based on whether it is a financially-driven termination or not. The due process afforded to individuals dismissed on the basis of their fitness for service is considerably more drawn out than the dismissals of individuals due to layoff.

Dismissals process is lengthy, based on a specific cause

Education Code section 44932 states that the dismissal of a permanent or probationary teacher may only occur for one or more specific cause, including immoral or unprofessional conduct, unsatisfactory performance, evident unfitness for service, and others. The following figure documents the 10-step process that must be taken before a dismissal is finalized, as articulated in the California Education and Government Code.

How Teachers are Dismissed in Californiaⁱⁱ



Source: Emily Cohen, Kate Walsh and RiShawn Biddle. "Invisible Ink in Collective Bargaining," National Council on Teacher Quality, 2008.

These extensive procedures can take two to three years to complete, and can cost several million dollars. According to the Legislative Analyst’s Office, only 100 dismissal hearings were heard in the *entire state* between 1996 and 2005. One can hardly be surprised that ineffective teachers remain in California’s classrooms, given the burden involved for districts, unions, and the courts to dismiss them.

Seniority-based layoff process is much simpler, objective – but can be harmful for students

Education Code section 44955 reaffirms that permanent employees cannot be dismissed for reasons other than those specified in section 44932. But it sets forth three circumstances under which a school district may “decrease” the number of permanent employees employed by the district: ADA layoffs (a result of declining enrollment), particular kind of service layoffs (art teachers or school psychologists are reduced or discontinued), or budget act/revenue layoffs. These reasons are not tied in any way to an individual’s behavior or performance. State law specifies that newer teachers are laid off before more senior teachers, regardless of how well they do their job. This system is especially damaging to schools serving the highest numbers of low-income students, which are more likely than others to experience layoffs.ⁱⁱⁱ

Steps to Layoff a Permanent Teacher^{iv}

Step One: Governing board generates list of layoffs

- A governing board may decrease the number of permanent employees of the district at the close of the school year due to declining enrollment, program shifts, or decreased budget/revenue.
- No employee may be terminated while any employee with less seniority is retained to do a job for which the employee is certificated and competent to render.
- If necessary, the governing board must reassign a certificated employee to another position for which they are qualified held by a less-senior employee (bumping) instead of terminating the employee.
- Districts may deviate from seniority-based layoffs (skipping) in two instances:
 - If an individual provides a particular kind of service that another individual with more seniority cannot
 - For the purposes of complying with equal protection laws



Step Two: Governing board gives written notice to employee

- Written notice of layoffs, including the reason for them, must be given to employees no later than March 15.



Step Three: Hearing

- Employees receiving layoff notices may request a hearing before an administrative law judge, who will address whether the layoffs are permissible.
- An employee who is laid off is put on a 39-month reemployment list, and is given preferential status for rehiring based on seniority.

Recommendations

As The Education Trust—West illustrated in our recent paper “Victims of the Churn,” the state’s seniority-based layoff process disproportionately impacts our highest poverty schools and students, and it may force effective teachers out of the classroom. It is time for California to repeal this dated bureaucratic and harmful state mandate and replace it with a law that requires the use of other factors—specifically employee performance—when making difficult staffing decisions.

There are meaningful alternatives to “last in, first out” that base layoff decisions, at least in part, on an individual employee’s performance. Florida state law requires such decisions to be based entirely on performance, while Arizona law simply states that seniority may not be a factor in layoff determinations. Colorado meets in the middle, requiring districts to consider teacher effectiveness before seniority when making layoff decisions. Policymakers from these states prove it’s possible.

But each of these options raises issues about implementation at the district level in California. Legislation should specifically address the following two issues in order to preempt cloudiness in the implementation. First, the legislation should explicitly state that using an individual employee’s performance as a factor in layoff decisions will not trigger the lengthy processes that govern dismissals, such as those documented above. Second, the policy should prevent a termination due to layoff from being disputed in the same way as a “for cause” dismissal.

Despite the implementation challenge, now, more than ever, we must at least *allow* districts to protect their best teachers and have the flexibility to determine how and where to spend scarce dollars.

ⁱ “Negotiating Teachers’ Contracts in California,” EdSource, 2003.

ⁱⁱ Education Code Sections 44932-44938 and Sections 44943-44945 govern these processes.

ⁱⁱⁱ “Victims of the Churn,” The Education Trust—West, 2011.

^{iv} Education Code Section 44955.