



September 26, 2013

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

**AB 375 (Buchanan)
Request for Veto**

Dear Governor Brown:

The Legal Advisory Committee of the California School Boards Association's Education Legal Alliance respectfully requests that you veto AB 375.

It is our role and responsibility as legal practitioners to advise local education agencies with respect to the teacher dismissal process. Based on our extensive experience in this area, we can confidently state the procedural changes in AB 375 will make it more difficult for districts to present the best possible case for dismissal of a teacher who may present a danger toward students or toward other teachers and staff.

1. The seven-month deadline to conclude the hearing will prevent districts from presenting their best possible case for dismissal: AB 375 requires that a dismissal hearing be completed within seven months. Despite the theoretical possibility of an extension, this deadline puts significant pressure on a district to condense the presentation of its argument and evidence to ensure the timeline is met in order to avoid returning a teacher who may present a danger toward students, other teachers, or staff to the classroom on a technicality. (AB 375 allows for additional pressure by allowing either party to object to a selected Commission on Professional Competence member as not qualified; such objections would easily be used to delay the hearing and force it to be further condensed.) A district gains no advantage by extending a hearing indefinitely. However, there are instances when attorneys – whether they are deputy attorneys general or school district attorneys – do need a longer than normal hearing to present the best case possible. AB 375 would make it significantly harder to do so. (See Section 8 of AB 375, amending Education Code section 44944.)
2. The limits on amending charges will prevent districts from presenting their best possible case for dismissal: AB 375 allows an amendment of charges

against an employee only upon motion before an administrative law judge and not at all if it would extend the close of the record beyond the seven-month deadline. A district does not benefit from filing partial charges and amending them later. However, there are instances when attorneys – whether they are deputy attorneys general or school district attorneys – come across new evidence that justifies amending the charges. AB 375 would make it significantly harder to do so. (See Section 3 of AB 375, amending Education Code section 44934.)

3. The new discovery process will prevent districts from presenting the best possible case for dismissal: AB 375 creates an entirely new and extremely rigid discovery process. If a district misses even a single detail in its disclosures or fails to meet any of the many minute technical requirements, then its case may be thrown out despite sufficient evidence for dismissal. Such obstacles prevent attorneys – in administrative hearings as well as in jury trials – from presenting the best case possible and increase the risk that a teacher who may present a danger toward students, other teachers, or staff will be returned to the classroom. (See Section 9 of AB 375, adding Education Code section 44944.2.)
4. The limits on witness depositions will prevent districts from presenting the best possible case for dismissal: AB 375 permits the district to depose the employee and only four other witnesses. While a district does not gain any advantage by deposing more witnesses than necessary, there are instances when attorneys – whether they are deputy attorneys general or school district attorneys – need to depose more than four additional witnesses to present the best case possible. For instance, if a teacher is up for dismissal due to unsatisfactory performance, a district may need to call the teacher’s current supervisor, the teacher’s past supervisor, parents who volunteer in classroom or have filed complaints, educational experts, and mentor teachers in addition to the accused teacher. AB 375 would prohibit this because it limits the number of depositions regardless of the complexity. (See Section 9 of AB 375, adding Education Code Section 44944.2(b).)

In considering our position, we ask that you recall your experience as California’s chief prosecutor. If the provisions of AB 375 were imposed in civil or criminal trials, prosecutors would find it much more difficult to present their best possible case, to the detriment of public safety and the justice system. The same is true here with respect to attempts by local educational agencies to dismiss a teacher due to serious misconduct toward students or toward other teachers and staff. To protect students and other employees, we respectfully urge you veto AB 375.

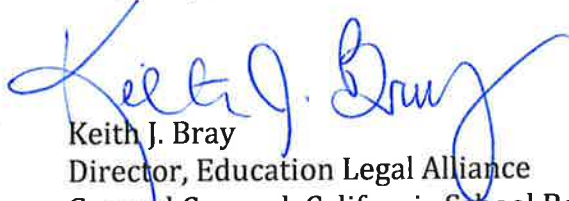
Thank you for your consideration.

Governor Edmund G. Brown, Jr.

September 26, 2013

Page 3

Very truly yours,



Keith J. Bray

Director, Education Legal Alliance

General Counsel, California School Boards Association

Signing on behalf of ELA's Legal Advisory Committee members: Mike Smith, Chair, Lozano Smith; Paul Loya, Atkinson, Andelson, Loya, Ruud & Romo; Sue Ann Salmon Evans, Dannis Woliver Kelly; Peter K. Fagen, Fagen Friedman & Fulfrost; Diana Halpenny, Kronick, Moskovitz, Tiedemann & Girard; Ronald Wenkart, Orange County Office of Education; Spencer Covert, Parker & Covert

Cc: Honorable Joan Buchanan, Chair, Assembly Education Committee
Gareth Elliot, Secretary of Legislative Affairs, Office of the Governor
Karen Stapf Walters, Executive Director, State Board of Education
Judy M. Cias, Chief Counsel, State Board of Education
Cathy McBride, Office of Legislative Affairs, Office of the Governor
Nick Schweizer, Program Budget Manager, Department of Finance
Erin Gabel, Director of Government Affairs, California Department of Education
Cindy Marks, President, CSBA
Vernon Billy, Executive Director, CSBA