CALIFORNIA CODES
EDUCATION CODE
ARTICLE 6. Merit System [45240 - 45320] (Article 6 enacted by Stats. 1976, Ch. 1010.)

45240. A school district that adopts the provisions of this article in accordance with Section 45222 or 45224.5 shall appoint a personnel commission in the manner prescribed in Sections 45245, 45246 and 45247. The personnel commission shall appoint a director in the manner provided in Section 45264 after appointment of at least two members.

(Amended by Stats. 2005, Ch. 547, Sec. 1. Effective January 1, 2006.)

45241. In any district in which the procedure set forth in this article has been incorporated the governing board shall employ, pay, and otherwise control the services of persons in positions not requiring certification qualifications only in accordance with the provisions of this article.
No governing board shall remove a position from the classified service by title assignment or otherwise which would then require an incumbent to be credentialed if such position is not required by this code to be designated as certificated.

(Enacted by Stats. 1976, Ch. 1010.)

45243. In any district that has adopted this article there shall be appointed a personnel commission composed of three members. If two or more districts are under the jurisdiction of governing boards of identical personnel, only one commission shall be appointed. In those cases this article shall apply alike to all of the districts, and the expenses of the commission shall be paid out of the general funds of all of the districts in proportion to the benefits derived therefrom as determined by the governing board.

(Amended by Stats. 2000, Ch. 1, Sec. 3. Effective February 22, 2000.)

45243.5. Notwithstanding Section 45243, in the case of a unified district and a community college district which are under the jurisdiction of governing boards of identical personnel and which had a majority of their population within an incorporated city which had a population between 70,000 and 75,000 as of the 1950 census, the governing board may, by affirmative vote of the majority of its members, elect to make the provisions of this article applicable to each of the districts individually and separately. In such cases, the expenses of the commission shall be paid out of general funds of the districts in proportion to the benefits derived therefrom as determined by the governing board.

In the case of action by the governing board to make the provisions of this article applicable to each of the districts individually and separately, and notwithstanding any other provision of law, the rights of persons employed in positions not requiring certification qualifications shall continue in the same manner as if such separation had not occurred, except that such rights shall be limited to the district in which the person is employed on the day such action is taken by the governing board. For purposes of determining seniority, employment shall be deemed to have commenced as of the date of original employment in either the unified district or the community college district.

(Added by Stats. 1980, Ch. 101, Sec. 1. Effective May 16, 1980.)

45244. (a) To be eligible for appointment or reappointment to the commission a person shall meet both of the following requirements:
(1) Be a registered voter and resident within the territorial jurisdiction of the school district.

(2) Be a known adherent to the principle of the merit system. No member of the governing board of any school district or a county board of education shall be eligible for appointment, reappointment, or continuance as a member of the commission. During his or her term of service, a member of the commission shall not be an employee of the school district.

(b) As used in this section, residence is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one residence.

(c) As used in this section, "known adherent to the principle of the merit system," with respect to a new appointee, means a person who by the nature of his or her prior public or private service has given evidence that he or she supports the concept of employment, continuance in employment, in-service promotional opportunities, and other related matters on the basis of merit and fitness. As used in this section, "known adherent to the principle of the merit system," with respect to a candidate for reappointment, means a commissioner who has clearly demonstrated through meeting attendance and actions that he or she does, in fact, support the merit system and its operation.

(Amended by Stats. 2000, Ch. 1, Sec. 4. Effective February 22, 2000.)

45245. One member of the personnel commission shall be appointed by the governing board of the district and one member, nominated by the classified employees of the district, shall be appointed by the governing board of the district. Those two members shall, in turn, appoint the third member.

As used in this section, "classified employees" shall mean an exclusive representative which represents the largest number of noncertificated employees in a unit or units within the district. If there is no exclusive representative within the district, the governing board shall, by written rule, prescribe the method by which the recommendation is to be made by its classified employees.
(Amended by Stats. 2000, Ch. 1, Sec. 5. Effective February 22, 2000.)

45246. (a) Within 30 days after adoption of the system, the governing board shall publicly announce its intended appointee or appointees, as appropriate, and the appointee or appointees, as appropriate, nominated by its classified employees. As soon after their appointment as practicable but within 30 days, the appointed members shall announce their intended appointee for the third member. They may consider the recommendations of the governing board, the classified employees, or other concerned citizens. If these members do not announce their intended appointee within the 30-day period, the Superintendent of Public Instruction shall make the appointment.

"Adoption of the system" means, in the case of Section 45221, the day on which a successful election is certified to the governing board or, in the case of Section 45224, the day the governing board approves a motion, order, or resolution to adopt the system regardless of the date specified for operational commencement of the system.

(b) Where a system is already in existence and a vacancy will exist on December 1, by not later than September 30:

(1) The governing board shall publicly announce the name of the person it intends to appoint or reappoint, if the vacancy is its appointee.

(2) The appointee of the governing board and the appointee or appointees of the classified employees shall publicly announce the name of the person they intend to appoint, if the vacancy is their appointee.

If the governing board and the classified employees of the district are unable to agree upon a nomination by September 30, the Superintendent of Public Instruction shall make the appointment within 30 days.

(c) Where a system is already in existence and a vacancy in a position nominated by the classified employees will occur, the classified employees shall submit the name of its nominee to the governing board at least 30 days before the date on which the vacancy will occur and the governing board shall appoint that nominee to be effective on the date on which the vacancy would occur.

(d) At a board meeting to be held after 30 and within 45 days of the dates specified in subdivision (a) and paragraph (1) of subdivision (b), as the case may be, the governing board in open hearing shall provide the public and employees and employee organizations the opportunity to express their views on the qualifications of those persons recommended by the governing board for appointment.

The board at the time may make its appointment or may make a substitute appointment or recommendation without further notification or public hearing.

In the case of the nominees of the classified employees, the board shall appoint the nominee, unless the classified employees voluntarily withdraw the name of the nominee and submit the name of a new nominee. In the latter case, the board then shall appoint the new nominee.

(e) If a vacancy exists because of a failure of the classified employees to agree on a nominee, the board may make an emergency appointment as authorized in subdivision (b) of Section 45248. If there is no personnel director, the board nevertheless may make an emergency interim appointment under this subdivision.

(f) At the next regularly scheduled personnel commission meeting to be held after 30 days from adoption of the system, as specified in subdivision (a), or at the next regularly scheduled personnel commission meeting to be held after 30 days from the day the intended appointee is announced, as specified in paragraph (2) of subdivision (b), as the case may be, the appointee of the governing board and the appointee nominated by the classified employees shall, in an open hearing, provide the public and employees and employee organizations the opportunity to express their views on the qualifications of each candidate recommended for the vacancy. Each candidate shall be invited to this meeting.

The appointee of the governing board and the appointee nominated by the classified employees may make their appointment or may make a substitute appointment or recommendation without further notification or public hearing.

(g) A commissioner whose term has expired may continue to discharge the duties of the office until a successor is appointed, but for no more than 90 calendar days.

(Amended by Stats. 2000, Ch. 1, Sec. 6. Effective February 22, 2000.)

45247. Appointees to a commission in a district which has newly adopted the system shall take office upon receipt of notification of appointment but the term of office shall run from noon of the first day of December next succeeding.

In school districts with a three-member personnel commission, the initial appointee of the governing board shall serve a three-year term, and the term of the appointee recommended by classified employees, and the third member selected by the two other members shall be for two years and one year respectively.

In school districts which have elected to establish a five-member personnel commission, one of the initial appointees of the governing board, and one of the initial appointees nominated by the classified employees shall serve three-year terms. The term of the other initial appointee of the governing board, and the other initial appointee nominated by the classified employees of the district, shall be for two years, and the term of the appointee selected by the other members of the commission shall be for one year.

Subsequent terms shall be for three years commencing at noon the first day of December.

A three-member commission may perform any act authorized or required by law when two members have been appointed.

A five-member commission may perform any act authorized or required by law when three members have been appointed.

(Amended by Stats. 1985, Ch. 723, Sec. 5.)

45248. (a) Appointment to vacancies occurring subsequent to the initial appointment shall be made by the original appointing authority either for a new full term or to fill an unexpired term. The procedures required in Sections 45245 and 45246 shall be followed in the appointment and recommendation for appointment to fill vacancies occurring subsequent to the initial appointments.

(b) Notwithstanding subsection (a) the governing board at the request of the personnel director shall declare that an emergency exists and shall make an interim appointment to fill a vacancy or vacancies to insure the continuance of the functions of the personnel commission. An interim appointment shall terminate on the date the notification of permanent appointment is received by the appointee.

(c) An interim appointee must meet the requirements of Section 45244 and be free of the restrictions contained therein.

(d) An interim appointment in no event shall be valid for more than 60 days.

(Enacted by Stats. 1976, Ch. 1010.)

45249. (a) (1) After January 1, 2001, the classified employees of any school district that has already adopted this article on September 17, 1965, may, in accordance with this article, petition the governing board to request that the process to determine how personnel commission members are appointed be determined by a majority vote of the classified employees entitled to vote. That petition shall read substantially as follows:

"We, the undersigned classified employees of the _____ (name of school district), constituting 15 percent or more of the classified personnel entitled to vote, request the governing board to submit to an election the question of how personnel commission members shall be appointed.

NAME ____ POSITION CLASSIFICATION _____"

(2) “Classified employee,” as used in this section, shall be construed to include all personnel who are a part of the classified service as defined in Section 45103.

(b) (1) Within 90 days after receipt of a petition pursuant to subdivision (a), the governing board shall conduct an election by secret ballot of its classified personnel to determine the following question and the ballot shall read:

“Shall personnel commission members in the _____ (name of school district) be appointed as follows:

(A) One member appointed by the governing board of the district.

(B) One member appointed by the classified employees of the district.

(C) Those two members shall, in turn, appoint the third member.

____ Yes

____ No”

(2) Although the ballot conducted pursuant to paragraph (1) shall not require the employees’ signatures or other personal identifying requirements, the governing board shall devise an identification system to ensure against fraud in the balloting process.

(3) The governing board shall appoint a three- to five-person tabulating committee. At least one member of the committee shall be a member of the governing board, to canvass the ballots and present the results to the governing board and one member shall be a classified employee nominated by the exclusive representative of the classified employees of the district. If a simple majority votes in favor of the process for appointing personnel commission members, that process shall become applicable in the district as follows:

(A) The first vacancy on the commission shall be filled by a person nominated by the classified employees of the district.

(B) The second vacancy on the commission shall be filled by a person appointed by the governing board of the district.

(C) The third vacancy of the commission shall be appointed by the first two members.

(4) If the ballot conducted pursuant to paragraph (2) fails to pass, personnel commission members shall be appointed in accordance with the procedure described in subdivision (c), and a petition by the classified employees for another election shall not occur sooner than two years after an election.

(c) (1) Subject to subdivisions (a) and (b), in a school district that has already adopted this article on September 17, 1965, members of the personnel commission shall be appointed by the Superintendent of Public Instruction who shall consider the recommendation of the governing board and other interested parties. Subsequent appointments shall be made in accordance with this section.

(2) No later than 90 days before making the appointment, the Superintendent of Public Instruction shall notify the classified employees and the governing board, in writing, of the vacancy on the personnel commission and provide them with guidelines and procedures for making a recommendation and challenging a nomination. If a vacancy occurs during the term of a member

of the personnel commission, the superintendent may appoint a new member after providing the foregoing notice no later than 30 days before making the appointment.

A commissioner whose term has expired may continue to discharge the duties of the office until a successor is appointed but for no more than 90 calendar days.

(d) As used in this section, "classified employees" means an organization of classified employees that represents the greatest number of classified employees of the district as determined by the board. If no organization exists within the district, the governing board, by written rule, shall prescribe the method by which the recommendation is to be made by its classified employees.

(Amended by Stats. 2000, Ch. 488, Sec. 1. Effective January 1, 2001.)

45250. The governing board may authorize payment to members of the commission an amount not to exceed fifty dollars ($50) per meeting and not to exceed two hundred fifty dollars ($250) per month.

(Amended by Stats. 1985, Ch. 723, Sec. 7.)

45251. In a unified school district with an average daily attendance in excess of 400,000, the governing board may authorize payment to members of the commission an amount not to exceed one hundred dollars ($100) per meeting, and not to exceed five hundred dollars ($500) per month.

(Amended by Stats. 1985, Ch. 723, Sec. 8.)

45252. The governing board shall provide the commission with suitable office accommodations.

(Enacted by Stats. 1976, Ch. 1010.)

45253. (a) The commission shall prepare an annual budget for its own office which, upon the approval of the county superintendent of schools, shall be included by the governing board in the regular budget of the school district. The annual budget of the commission may include amounts for the purposes of Section 45255.

(b) The budget shall be prepared for a public hearing by the commission to be held not later than May 30 of each year, or at a date agreed upon between the governing board and the personnel commission to coincide with the process of adoption of the school district budget. The commission shall forward a copy of its proposed budget to the governing board indicating the time, date and place for the public hearing of the budget and shall invite board and district administration representatives to attend and present their views. The commission shall fully consider the views of the governing board prior to adoption of its proposed budget. The commission shall then forward its proposed budget to the county superintendent of schools for action.

(c) If the county superintendent of schools proposes to reject the budget as submitted by the commission of a school district, he or she shall, within 30 days after the commission's submission of the budget, hold a public hearing on the proposed rejection within the affected district. He or she shall have informed both the commission and the governing board of the date, time and place of the hearing. He or she may after the public hearing either reject, or, with the concurrence of the commission, amend the proposed budget. In the absence of agreement between the personnel commission and the county superintendent, the budget of the preceding year shall determine the amount of the new budget, and the items of expenditure shall be determined by the commission.

(d) If the county superintendent of schools proposes to reject the budget as submitted by the personnel commission of a county office of education, the county superintendent shall contract with the Office of Administrative Hearings of the State of California for an administrative law judge to conduct a public hearing on the proposed rejection. The administrative law judge shall render findings and any proposed amendments, if any, to the proposed budget. The personnel commission may accept or reject the findings and proposed amendments. If the personnel commission rejects the findings and proposed amendments, if any, of the administrative law judge, the budget of the preceding year shall determine the amount of the new budget, and the items of expenditure shall be determined by the commission.

(e) The procedures of subdivision (d) apply if an individual serves as both the county superintendent of schools and the superintendent of a school district within the county.

(Amended by Stats. 1995, Ch. 652, Sec. 3. Effective January 1, 1996.)

45254. The budget for the first year of the personnel commission of the school district shall be determined by the personnel commission, in conjunction with the governing board of the school district. In the absence of an agreement between the personnel commission and the governing board, the commission shall forward its proposed budget to the county superintendent of schools, who shall determine the budget based upon the average of personnel commission budgets of the same type of school districts that have comparable enrollment within the county. In the absence of comparable school districts within the county, comparable statewide averages shall be used. The governing board shall provide funds to support the work of the personnel commission.

(Amended by Stats. 1993, Ch. 368, Sec. 1. Effective January 1, 1994.)

45255. The commission may, with respect to the staff of the commission, expend funds for their orientation, training, retraining, and development and for any purpose prescribed by Article 9 (commencing with Section 45380) of this chapter.

(Enacted by Stats. 1976, Ch. 1010.)

45256. (a) The commission shall classify all employees and positions within the jurisdiction of the governing board of the school district or of the commission, except those that are exempt from the classified service, as specified in subdivision (b). The employees and positions shall be known as the classified service. “To classify” shall include, but not be limited to, allocating positions to appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.

(b) All of the following are exempt from the classified service:

(1) Positions that require certification qualifications.

(2) Full-time students employed part time.

(3) Part-time students employed part time in a college work-study program, or in a work experience education program conducted by a community college district pursuant to Article 7 (commencing with Section 51760) of Chapter 5 of Part 28 of Division 4 and that is financed by state or federal funds.

(4) Apprentice positions.

(5) Positions established for the employment of professional experts on a temporary basis for a specific project by the governing board of the school district or by the commission when so designated by the commission.

(c) (1) Employment of either full-time or part-time students in a college work-study program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

(2) Nothing in this section shall prevent an employee, who has attained regular status in a full-time position, from taking a voluntary reduction in time and retaining his or her regular status under the provisions of this law.

(d) A person whose contribution consists solely in the rendition of individual personal services and whose employment does not come within the scope of the exceptions listed above shall not be employed outside the classified service.

(e) A part-time position is one for which the assigned time, when computed on an hourly, daily, weekly, or monthly basis, is less than 871/2 percent of the normally assigned time of the majority of employees in the classified service.

(f) An employee employed by a school district in a part-time playground position as of the effective date of the laws placing part-time playground positions into the classified service shall be deemed a permanent employee of the school district without placement on an eligibility list under Section 45272 or examination under Section 45273.

(Amended by Stats. 2018, Ch. 488, Sec. 1. (AB 2160) Effective January 1, 2019.)

45256.5. (a) The governing board of a school district may adopt a resolution designating certain positions as senior management of the classified service. Notwithstanding the provisions of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the decision of the governing board shall not be deemed a matter subject to negotiation, but shall be subject to review by the Public Employment Relations Board.

(b) Employees whose positions are designated as senior management of the classified service shall be a part of the classified service and shall be afforded all rights, benefits, and burdens of other classified employees, except that they shall be exempt from all provisions relating to obtaining permanent status in a senior management position.

(c) Positions in the senior management of the classified service shall be filled from an unranked list of eligible persons who have demonstrated managerial ability who have been found qualified for the positions as specified by the district superintendent and determined by the personnel commission.

(d) Notice of reassignment or dismissal from a position in the senior management of the classified service shall be provided in accordance with the provisions of Section 35031.

(Amended by Stats. 1983, Ch. 1302, Sec. 16.5. Effective September 30, 1983.)

45258. Positions established for the employment of community representatives in advisory or consulting capacities shall be considered part of the classified service.

(Repealed and added by Stats. 2018, Ch. 297, Sec. 2. (AB 2261) Effective January 1, 2019.)

45259. If the governing board of any school district establishes positions and restricts initial appointment of new employees to mentally, physically, or developmentally disabled persons, then such positions shall, in addition to the regular class title, be classified as "restricted." The positions shall be part of the classified service and persons so employed shall be classified employees for all purposes except they shall not be subject to the provisions of Section 45272 or 45273, and that they shall not acquire permanent status or seniority credit and shall not be eligible for promotion into the regular classified service until they have complied with the provisions of subdivision (c) of Section 45105.

(Amended by Stats. 1981, Ch. 151, Sec. 1.)

45260. (a) The commission shall prescribe, amend, and interpret, subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. The rules shall not apply to bargaining unit members if the subject matter is within the scope of representation, as defined in Section 3543.2 of the Government Code, and is included in a negotiated agreement between the governing board and that unit. The rules shall be binding upon the governing board, but shall not restrict the authority of the governing board provided pursuant to other sections of this code.

(b) No rule or amendment which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the public school employer of the classified employees who would be affected have been given reasonable notice of the proposal.

(Amended (as amended by Stats. 1982, Ch. 1514, Sec. 1) by Stats. 1984, Ch. 521, Sec. 6.)

45261. (a) The rules shall provide for the procedures to be followed by the governing board as they pertain to the classified service regarding applications, examinations, eligibility, appointments, promotions, demotions, transfers, dismissals, resignations, layoffs, reemployment, vacations, leaves of absence, compensation within classification, job analyses and specifications, performance evaluations, public advertisement of examinations, rejection of unfit applicants without competition, and any other matters necessary to carry out the provisions and purposes of this article.

(b) With respect to those matters set forth in subdivision (a) which are a subject of negotiation under the provisions of Section 3543.2 of the Government Code, such rules as apply to each bargaining unit shall be in accordance with the negotiated agreement, if any, between the exclusive representative for that unit and the public school employer.

(Amended by Stats. 1977, Ch. 1014.)

45262. (a) The rules of the commission and copies of this article shall be printed and made available or electronically transmitted to each school, office, and permanent worksite where employees report, and shall be distributed to school libraries for loan to employees.

(b) Within one year of the adoption of the merit system, the commission shall adopt rules pursuant to Section 45260 and shall give to each new regular employee a handbook that summarizes the basic rules and working conditions for classified employees and provides information regarding access to copies of the complete rules and the merit system.

(Amended by Stats. 2005, Ch. 547, Sec. 2. Effective January 1, 2006.)

45263. The commission may classify as apprentice positions certain positions where the principal requirement is that of learning to perform efficiently, by study and practice, specific duties concerning which a definite plan of systematic instruction and special supervision has been approved by the California Apprenticeship Council for a designated trade in the building and construction trades and for firefighters or by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations for other designated trades.

The apprenticeship training plan adopted by the governing board of the school district must be approved by the California Apprenticeship Council for building and construction trades and for firefighters or by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations for other trades.

No assignment to any position classified as an apprentice position shall be allowed to continue beyond the predetermined apprenticeship period approved by the California Apprenticeship Council for the designated trade, except that the school district's joint apprenticeship committee may approve retention of an employee as an apprentice up to six months beyond the predetermined apprentice period.

Selection of eligibles shall be made in accordance with their position on employment lists established by competitive or qualifying examinations.

The provisions of Section 45134 shall be applicable to apprentice positions, provided that relative age may be considered as a factor in the ranking of candidates for apprentice positions.

Credit for prior training in a regularly indentured apprenticeship program shall be given to qualified candidates.

In all cases of apprenticeship probationary periods, the standards of duration and qualifications shall be fixed by the commission insofar as they do not exceed the maximum standards set up by the California Apprenticeship Council for building and construction trades and for firefighters or by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations for other trades. Termination for cause may be prescribed for any apprentice who fails to attain the predetermined standards of apprenticeship or for causes as prescribed by the rules of the commission.

The commission shall recommend to the governing board a graduated scale of compensation rates for the various levels of apprentices, taking into consideration the percentage relationship to the districts' journeyman wage of the trade as provided in the statement of policies of the California Apprenticeship Council for building and construction trades and for firefighters or by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations for other trades.

The commission may determine that promotional examinations shall be held for entrance into various levels of apprentice positions and entrance into journeyman positions in a skilled trade.

(Amended by Stats. 2018, Ch. 704, Sec. 2. (AB 235) Effective September 22, 2018.)

45264. The commission shall appoint a personnel director within 90 days after the adoption of a merit system from an eligibility list established from a competitive examination given under the auspices of the commission. The commission shall appoint all employees paid from funds budgeted for the support of the commission and shall supervise the activities of those employees that are performed as part of the functions of the commission. Such employees shall be appointed from eligibility lists established pursuant to the provisions of this article, be classified employees of the

school district and be accorded all the rights, benefits, and burdens of any other classified employee serving in the regular service of the district, including representation by the appropriate exclusive representative, if any.

(Amended (as amended by Stats. 1981, Ch. 784, Sec. 5) by Stats. 1984, Ch. 521, Sec. 8.)

45265. Notwithstanding the provisions of Section 45264, the personnel commission, in a school district or a county superintendent of schools office employing 100 or fewer classified employees, may, with the consent of a majority of the classified employees, contract for the services of a qualified personnel director with another school district having the merit (civil service) system, or a city or a county governmental agency if the city or county has a civil service system for the management of its employee personnel.

Such a contract shall be for not more than two years and may be extended, with the approval of a majority of the classified employees, for additional periods not to exceed two years at one time.

If at the end of any contract period the district or county superintendent's office is employing more than 100 classified employees, the personnel commission shall then comply with the provisions of Section 45264.

A contract approved under the provisions of this section shall become null and void in the event of district reorganization when the provisions of the contract, if continued in force would supersede or be in conflict with the provisions of Sections 45119 or 45120.

(Enacted by Stats. 1976, Ch. 1010.)

45266. (a) The personnel director shall be responsible to the commission for carrying out all procedures in the administration of the classified personnel in conformity with this article and the rules of the commission, and shall be free of prejudgment or bias in order to ensure the impartiality of the commission. He or she shall also act as secretary of the commission and shall prepare, or cause to be prepared, an annual report which shall be sent by the commission to the governing board.

(b) A personnel director shall not advise or make recommendations to the commission regarding any disciplinary action appealed to the commission under Section 45305, if the personnel director is the party who brought the action against the employee.

(Amended by Stats. 1985, Ch. 730, Sec. 1.)

45267. The provisions of Sections 45123, 45124, 45160, 45198, 45199, 45201, and 45202 are applicable to the employees of school districts which have adopted a merit system pursuant to the procedure set forth in this article.

This section is declaratory of existing law. The sections here enumerated are to be construed and applied in the same manner and with the same effect as when they were applicable to the employees of such school districts prior to the enactment of Section 45100 by Chapter 1267 of the Statutes of 1959, and in accordance with the applicable provisions of this article and the rules of the Personnel Commission.

(Enacted by Stats. 1976, Ch. 1010.)

45268. The commission shall recommend to the governing board salary schedules for the classified service. The governing board may approve, amend, or reject these recommendations. No amendment shall be adopted until the commission is first given a reasonable opportunity to make a written statement of the effect the amendments will have upon the principle of like pay for like service. No changes shall operate to disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the commission.

(Enacted by Stats. 1976, Ch. 1010.)

45269. Any person who has been continuously employed in a position defined as a position in the classified service for a period of six months immediately preceding the date on which the procedure set forth in this article is adopted shall be deemed to be in the permanent classified service. No layoff or suspension of service during the time when the schools of the district are not in session shall count as an interruption of continuous service.

(Enacted by Stats. 1976, Ch. 1010.)

45270. All persons who have been continuously employed by a school district for less than six months immediately preceding the date on which the procedure set forth in this article is adopted shall be deemed to hold their positions under probationary classification.

(Enacted by Stats. 1976, Ch. 1010.)

45271. Any employee serving in a certificated position whose position is by virtue of change of law or based upon an evaluation made pursuant to subdivision (a) of Section 44065 of the duties of the employee and subject to Section 45285 shall be deemed to be in the classified service shall without examination become a member of the classified service in accordance with the terms of Sections 45269 and 45270. Full seniority rights shall be retained, except that no seniority credit shall be allowed by virtue of previous certificated service in case of layoff for lack of funds or lack of work.

Any employee serving in a classified position whose position is by virtue of change of law deemed to be in the certificated service shall without examination become an employee of the certificated service and shall be deemed to have the necessary certification qualifications for that position. Full seniority rights will be retained, except that no seniority credit will be allowed by virtue of previous classified service in case of layoff for lack of funds or lack of work. Any such person who has been continuously employed in a regular position in the classified service for the length of time necessary to acquire permanency as a certificated employee shall be deemed to be a permanent certificated employee of the district. Any such person serving in a regular position in the classified service for an amount of time less than that deemed to be necessary to acquire permanency as a certificated employee shall be a certificated probationary employee of the district. That regular classified service shall be considered as probationary service toward the attainment of permanency by a certificated employee of the district.

(Amended by Stats. 1995, Ch. 652, Sec. 5. Effective January 1, 1996.)

45272. (a) All vacancies in the classified service shall be filled pursuant to this article and the rules of the commission, from applicants on eligibility lists which, wherever practicable, as determined by the commission, shall be made up from promotional examinations, or appointments may be made by means of transfer, demotion, reinstatement, and reemployment in accordance with the rules of the commission. All applicants for promotional examinations shall have the required amount of service in classes designated by the commission or meet the minimum qualifications of

education, training, experience, and length of service, which shall be determined by the commission to be appropriate for the class for which they have applied. Any promotional applicant who has served the required amount of time in a designated class or who meets the minimum qualifications for admission to a promotional examination shall be admitted to the examination. The commission shall place applicants on the eligibility lists in the order of their relative merit as determined by competitive examinations. The final scores of candidates shall be rounded to the nearest whole percent for all eligibles. All eligibles with the same percentage score will be considered as having the same rank. Appointments shall be made from the eligibles having the first three ranks on the list who are ready and willing to accept the position.

(b) Upon the request of a majority of the members of the governing board of a district, the commission may exempt one or more executive secretarial positions from the requirements of this section. Exemptions authorized under this subdivision shall be limited to executive secretarial positions reporting directly to members of the governing board, the district superintendent, or not more than four principal deputies of the district superintendent, or all of these positions.

Any person employed in an exempt executive secretarial position shall continue to be afforded all of the rights, benefits, and burdens of any other classified employee serving in the regular service of the district, except he or she shall not attain permanent status in an executive secretarial position. Positions of executive secretary shall be filled from an unranked list of eligible employees who have been found to be qualified for the positions as specified by the district superintendent and determined by the personnel commission. Any person whose services in an executive secretarial position are discontinued for a cause other than a cause for disciplinary action specified in this code or in a rule of the commission shall have the right to return to a position in a classification he or she previously occupied or, if that classification no longer exists, in a similar classification, as determined by the commission.

Nothing contained in this section shall authorize the selection of eligible candidates in circumvention of the affirmative action programs of any school district.

(Amended by Stats. 1995, Ch. 652, Sec. 6. Effective January 1, 1996.)

45273. Examinations shall be administered objectively, and shall consist of test parts that relate to job performance.

For classes of positions deemed by the commission to require an oral examination, the oral examination board shall include at least two members. Where a structured objective examination is to be administered to the entire field of candidates, a single member oral examination board may be utilized. A "structured objective examination" means, for this purpose, an examination for which the examiner exercises no discretion in the selection of the questions or in the evaluation of the answers.

Unless specifically directed to evaluate candidates' technical knowledge and skills, the oral examination board shall confine itself to evaluating general fitness for employment in the class. When the oral examination board is directed to evaluate technical knowledge and skills, at least two members of the board shall be technically qualified in the specified occupational area. Members of the governing board or personnel commission shall not serve on an oral examination board. A district employee may serve on an oral examination board if he or she is not at the first or second level of supervision over a vacant position in the class for which the examination is held.

The personnel commission shall provide for the proceedings of all oral examinations to be electronically recorded. In no case will an oral examination board be provided with confidential

references on employees of the district who are competing in promotional examinations. Scores achieved by the candidate on other parts of the examination shall not be made available to the oral examination board.

(Amended by Stats. 1995, Ch. 652, Sec. 7. Effective January 1, 1996.)

45274. Examination records, including any recordings and the rating sheet of each member of the oral board for each candidate, shall be retained by the personnel commission for a period of not less than 90 days after promulgation of an eligibility list. The commission shall prescribe procedures whereby candidates may review and protest any part of an examination. In promotional examinations for classes for which continuous examination procedures have not been authorized, the review and protest period shall be held prior to regular appointment from the eligibility list. Examination records shall not be available to the public or to any person for any purpose not directly connected with the examination and shall be considered confidential but shall, within reasonable time limits, be made available to a candidate or his or her representative.

(Amended by Stats. 1995, Ch. 652, Sec. 8. Effective January 1, 1996.)

45276. The governing board shall fix the duties of all positions a part of the classified service as required by Section 45109. The board may recommend the minimum educational and work experience requirements for classified positions to the personnel commission. Minimum qualification requirements shall be subject to approval of the commission.

In approving minimum educational and work experience requirements for classified positions, the commission shall insure that such requirements reasonably relate to the duties of the position, as established by the governing board, and that they will admit an adequate field of competition. No requirements may be approved which unduly or unreasonably restrict the field of competition.

The position duties shall be prescribed by the board and qualification requirements for the position class shall be prepared and approved by the commission, required by this section, prior to issuance of an announcement calling for a competitive examination to fill position vacancies.

(Enacted by Stats. 1976, Ch. 1010.)

45277. Appointments may be made from other than the first three ranks of applicants on the eligibility list when the ability to speak, read, or write a language in addition to English or possession of a valid driver's license is a requirement of the position to be filled. The recruitment bulletin announcing the examination shall indicate the special requirements which may be necessary for filling one or more of the positions in the class. Where such a position is to be filled, using the authority of this section, the appointment shall be made from among the highest three ranks of applicants on the appropriate eligibility list who meet the special requirements and who are ready and willing to accept the position.

If there are insufficient applicants who meet the special requirements, an employee who meets the special requirements may receive provisional appointments which may accumulate to a total of 90 working days. Successive provisional appointments of 90 working days or less each may be made in the absence of an appropriate eligibility list containing applicants who meet the special requirements if the personnel commission finds that the requirements of subdivisions (a) and (b) of Section 45288 have been met. These appointments may continue for the period of the provisional appointment, but may not be additionally extended if certification can later be made from an appropriate eligibility list.

(Amended by Stats. 1984, Ch. 781, Sec. 1.)

45277.5. Notwithstanding Section 45277, in a school district with a pupil population over 400,000, the following shall apply:

(a) An appointment may be made from other than the first three ranks of eligible applicants on the eligibility list if one or more of the following are required for successful job performance of a position to be filled:

(1) The ability to speak, read, or write a language in addition to English.

(2) A valid driver's license.

(3) Specialized licenses, certifications, knowledge, or ability, as determined by the personnel commission of the school district, that cannot reasonably be acquired during the probationary period.

(4) A specific gender, if it is a bona fide occupational qualification.

(b) The recruitment bulletin announcing the examination shall indicate the special requirements that may be necessary for filling one or more of the positions in the classification. If a position is to be filled using the authority of this section, the appointment shall be made from among the highest three ranks of eligible candidates on the appropriate eligibility list who meet the special requirements of the position and who are ready and willing to accept the position.

(c) If there are insufficient applicants who meet the special requirements, an employee who meets the special requirements may receive provisional appointments that may accumulate to a total of 90 working days. Successive provisional appointments of 90 working days or less each may be made in the absence of an appropriate eligibility list containing applicants who meet the special requirements if the personnel commission of the school district finds that the requirements of subdivisions (a) and (b) of Section 45288 have been met. These appointments may continue for the period of the provisional appointment, but shall not be additionally extended if certification can later be made from an appropriate eligibility list.

(d) This section applies only to the following classifications:

(1) Principal financial analyst.

(2) Principal administrative analyst.

(3) Senior administrative analyst.

(4) Senior administrative assistant.

(5) Senior financial analyst.

(6) Information technology electronic communications technician.

(7) Senior human resource specialist.

(8) Any classifications that have been designated as management or confidential.

(e) A school district that makes an appointment pursuant to this section shall study the effectiveness of the selection method, the vacancy rates for each class, and the length of time to hire for each class, and submit a report on its findings to any affected labor union.

(f) This section shall remain in effect only until December 31, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2020, deletes or extends that date.

(Amended by Stats. 2015, Ch. 243, Sec. 1. (AB 1339) Effective January 1, 2016. Repealed as of December 31, 2020, by its own provisions.)

45278. (a) Written notices concerning tests, vacancies, transfer opportunities, and other selections of shifts, positions, assignments, classifications, or locations shall be posted at all work locations of employees who may be affected, not later than 15 working days prior to the closing date of filing appropriate applications, together with the normal use of newspapers and bulletins for public notice for open or promotional vacancies. If the subject of those notices affects a probationary or permanent classified employee who will not be reporting at his or her work location during periods when that employee is not normally required to work, including Christmas, Easter, summer recesses, and other paid or unpaid leaves of absences, including vacations, and who has previously requested notification, those notices shall be mailed to the employee. However, the failure of an employee to receive that notice shall not invalidate any procedure, if in fact the notice was placed in the U.S. mail and postage paid.

(b) (1) Subdivision (a) does not apply to a school district that publishes and distributes to all work locations examination bulletins at least once each month, provided that records of employee requests for transfer and change of location are maintained and that the names of all candidates for transfer and change of location to a vacancy are certified to the appointing authority along with names of appropriate applicants from employment lists.

(2) A school district may publish and distribute pursuant to paragraph (1) by electronic means.

(c) The personnel commission shall establish procedures for the maintenance of employee requests for transfer, change of location, change of shift, and notification of forthcoming examinations.

(Amended by Stats. 2005, Ch. 547, Sec. 5. Effective January 1, 2006.)

45279. A regular employee who is determined by the governing board to be incapable of performing the duties of his class because of illness or injury may, at the discretion of the governing board, be assigned duties which he is capable of performing. The position to which he is assigned shall be subject to classification by the personnel commission, but the employee shall receive no increase in a wage or salary because of his assignment to the position unless he is appointed from an eligibility list resulting from a competitive examination. In the event that the position is classified and allocated to a higher wage or salary than that previously attained by the employee, he may be assigned to the position without competitive examination, but shall continue to receive the wage or salary of his former classification. If the position is classified and allocated to a lower wage or salary than that attained by the employee, he shall be paid the wage or salary appropriate to the position.

(Enacted by Stats. 1976, Ch. 1010.)

45280. The commission shall, by rule, provide for an open competitive examination and a promotional examination to be held at the same time for the position of business manager or for

any other single position class which it declares to be at or above the level of business manager. It shall require that all educational and work experience requirements be developed to fit the needs of the position in such a manner that the position will attract competent and qualified applicants from within the classified service, among certificated personnel, or other persons meeting the minimum requirements established for the position.

Such rule shall provide: (a) that all permanent employees of the district, classified and certificated, who meet the established minimum qualifications, shall be eligible to compete in the examination as promotional candidates; (b) that promotional credits, including seniority credits, if any, shall be equally applicable to both classified and certificated promotional candidates; (c) that eligibility lists resulting from such an open competitive and promotional examination shall be merged according to the order of the examination scores into a single eligibility list, after the scores of each candidate on the promotional list have been adjusted for promotional credits, including seniority credits, if any; and (d) that the examination for any such position shall not be construed to be an entrance level position examination.

(Enacted by Stats. 1976, Ch. 1010.)

45281. The commission may by rule provide for the competition of persons employed by the governing board in positions required to have certification qualifications in promotional examinations for positions in the classified service.

(Enacted by Stats. 1976, Ch. 1010.)

45283. In any school district that has geographical boundaries encompassing more than 200 square miles and that divides the area it serves into smaller areas for assignment of classified personnel, the personnel commission may establish area eligibility lists in those areas where the district eligibility list is exhausted. Appointments to positions within the area shall be made from the first three ranks of persons on the area eligibility list, as determined by the commission, who are ready and willing to accept the position. The life of the new area eligibility list shall be not less than one year. The life of the list may be extended for up to an additional period of two years at the discretion of the commission. Seniority for the purpose specified in Section 45308 shall continue to be districtwide.

(Amended by Stats. 1995, Ch. 652, Sec. 10. Effective January 1, 1996.)

45284. When an open competitive examination and a promotional examination for a particular class are held at the same time, the commission may prior to the examination authorize certification for employment of candidates from the open competitive eligibility list before the promotional eligibility list has been exhausted if the candidate on the open list has a higher score before adjustment for preferential credits than the score of the highest available candidate on the promotional list after seniority credits have been added.

(Amended by Stats. 1977, Ch. 535.)

45285. (a) When all of the positions in a class are reclassified to a higher class, the incumbents of the positions who have been in the class for two or more years may be reclassified with their positions by the personnel commission. When a portion of the positions within a class are reclassified to a higher class, an incumbent who has a continuous employment record of two or more years in one or more of the positions being reclassified may be reclassified with his or her position as provided by personnel commission rule.

(b) The basis for reclassification of the position shall be a gradual accretion of duties and not a sudden change occasioned by a reorganization or the assignment of completely new duties and responsibilities. Determinations as to gradual accretion shall be on the basis of guidelines provided by personnel commission rules.

(c) An employee who has been reclassified with his or her position is ineligible for subsequent reclassification with his or her position for a period of at least two years from the initial action.

(Amended by Stats. 2003, Ch. 181, Sec. 1. Effective January 1, 2004.)

45285.5. No position classification or reclassification plan which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the public school employer of the classified employees who would be affected have been given reasonable notice of the proposed classifications or reclassifications.

(Added by Stats. 1982, Ch. 1514, Sec. 4.)

45286. Whenever the appointing power shall require the appointment of a person to a position, the duration of which is not to exceed six months, or, in case of an appointment in lieu of an absent employee, is not to exceed the authorized absence of said employee, the appointing power shall submit a request in which the probable duration of the appointment is stated. Eligibles shall be certified in accordance with their position on the appropriate employment list and their willingness to accept appointment to such position as limited-term employees. Limited-term employees shall be subject to conditions affecting status and tenure during and after employment that the commission may by rule determine. Notwithstanding these limitations on the duration of these positions, the commission may, based on a declaration of an emergency by the President of the United States or the Governor, authorize an extension that may not exceed one year. The duties of the extended position must be related to the emergency.

(Amended by Stats. 2000, Ch. 1, Sec. 8. Effective February 22, 2000.)

45287. When no eligibility list exists for a position in the classified service, an employee may receive provisional appointments which may accumulate to a total of 90 working days. A 90-calendar-day interval shall then elapse during which the person will be ineligible to serve in any full-time provisional capacity. No person shall be employed in provisional capacities under a given governing board for a total of more than 126 working days in any one fiscal year, except that when no one is available on an appropriate eligibility list for a part-time position, as defined in Section 45256, successive 90 working days provisional appointments may be made to the part-time position for a total of more than 126 working days in any one fiscal year.

(Enacted by Stats. 1976, Ch. 1010.)

45288. The personnel commission may authorize the extension of a provisional employee's assignment for a period not to exceed 36 working days provided the following requirements are met:

(a) An examination for the class was completed during the first 90 working days of his provisional assignment.

(b) Evidence satisfactory to the personnel commission is presented indicating:

(1) That an adequate recruitment effort has been and is being made.

(2) That extension of the provisional assignment is necessary to carry on vital functions of the district.

(3) That the position cannot be satisfactorily filled by use of other employment lists or procedures.

(Enacted by Stats. 1976, Ch. 1010.)

45289. Successive provisional appointments of 90 working days or less each may be made in any class in the absence of an appropriate eligibility list; provided, that continuous examination procedures for the class have been authorized by the commission. Such successive provisional appointments may be made and persons employed in temporary capacities under a given governing board for a total of more than six months in any one year. Such appointments may continue for the length of time for which they were made, but may not be extended if a certification can be made from an appropriate eligibility list. While this section is in effect, it shall supersede any other provisions of this article (commencing at Section 45240) which are in conflict with this section, but only to the extent there is a conflict.

(Enacted by Stats. 1976, Ch. 1010.)

45290. The appointing power may, to prevent the stoppage of public business when an actual emergency arises and persons on eligibility lists are not immediately available, make appointments for a period not to exceed 15 working days, in accordance with commission rule.

(Enacted by Stats. 1976, Ch. 1010.)

45291. Combinations of successive eligibility lists may be made during their first year. Eligibles on lists established within the first year of the life of another list may be placed in the order of their relative excellence in the examination on the like list, if lists so merged have been promulgated under conditions and techniques which are sufficiently similar to preserve their competitive character.

(Enacted by Stats. 1976, Ch. 1010.)

45292. The commission may provide for the continuous examination of applicants for both open and promotional examinations.

(Amended by Stats. 1995, Ch. 652, Sec. 11. Effective January 1, 1996.)

45293. No questions relating to political or religious opinions or affiliations, or relating to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, shall be asked of any applicant, or any candidate whose name has been certified for appointment, nor shall any discrimination be exercised therefor, except as otherwise provided in Section 12940 of the Government Code.

(Amended by Stats. 2004, Ch. 788, Sec. 4. Effective January 1, 2005.)

45294. "Veteran" as used in this article means any person who has served in the United States armed forces in time of war, or national emergency declared by the President of the United States

of America, and who has been discharged or released under conditions other than dishonorable, proof of which shall be submitted to the commission at the time of the examination.

"Armed forces" means the United States Air Force, Army, Navy, Marine Corps, or Coast Guard.

(Enacted by Stats. 1976, Ch. 1010.)

45295. "Disabled veteran" as used in this article means any veteran, as defined in Section 45294, who is currently declared by the United States Veterans Administration to be 10 percent or more disabled as a result of service in the armed forces. Proof of disability shall be deemed conclusive if it is of record in the United States Veterans Administration.

(Enacted by Stats. 1976, Ch. 1010.)

45296. In the case of all entrance examinations, veterans with 30 days or more of service who become eligible for appointment by attaining the passing mark established for the examination, shall be allowed an additional credit of five points and disabled veterans shall be allowed an additional credit of 10 points, which shall be added to the percentages attained in the examinations by the veterans. Veterans shall be placed on eligible lists and be eligible for appointment in the order and on the basis of the percentages attained by them in examinations after the credit of five points, or 10 points in the case of disabled veterans, is added.

(Enacted by Stats. 1976, Ch. 1010.)

45297. (a) Whenever, during the absence of an employee of a school district, or student body association operating under Sections 48930 to 48937, inclusive, in the active military service of the United States of America during any period of national emergency declared by the President of the United States of America, or during any war in which the United States of America is engaged, the position held by the employee at the time of his or her entrance into that military service is placed within the classified service of the district and an eligible list is established for the position through competitive examination, the employee shall, at his or her request made within six months after leaving that active military service under honorable conditions, be given forthwith an examination of substantially the same character and scope as the competitive examination through which the original eligibility list was established. The grade secured by the employee in that examination shall be deemed to be the grade he or she would have secured had he or she taken the competitive examination as a veteran, and the employee shall be placed on the original eligibility list accordingly with all the rights and privileges to which he or she would have been entitled had he or she had that place on the original eligibility list at the time of its establishment.

(b) Notwithstanding subdivision (a), any member of the Military Reserve or the National Guard who is called to active duty, either voluntarily or involuntarily, during any period of national emergency declared by the President of the United States of America, or during any war in which the United States of America is engaged, shall be entitled to any rights, in addition to the rights accorded under subdivision (a), that are accorded that member under the federal Veterans' Reemployment Rights Law or any other applicable provision of federal law.

(Amended by Stats. 1992, Ch. 303, Sec. 1. Effective January 1, 1993.)

45298. (a) A person laid off because of lack of work or lack of funds shall be eligible for reemployment for a period of 39 months as follows:

(1) The person's reemployment shall take preference over new applicants.

(2) The person shall have the right to participate in promotional examinations within the district during the period of 39 months.

(3) If the person is reemployed in a new position and fails to complete the probationary period in the new position, he or she shall be returned to the reemployment list for the remainder of the 39-month period. The remaining time period shall be calculated as the time remaining in the 39-month period as of the date of reemployment.

(b) An employee who takes a voluntary demotion or a voluntary reduction in assigned time in lieu of layoff or to remain in his or her present position rather than be reclassified or reassigned, shall be granted the same rights as persons laid off and shall retain eligibility to be considered for reemployment for an additional period of up to 24 months, provided that the same tests of fitness under which the employee qualified for appointment to the class still apply. The personnel commission shall make the determination of the specific period eligibility for reemployment on a class-by-class basis.

(c) An employee who takes a voluntary demotion or a voluntary reduction in assigned time in lieu of layoff shall be, at the option of the employee, returned to a position in his or her former class or to a position with increased assigned time as vacancies become available, and without limitation of time, but if there is a valid reemployment list the employee shall be ranked on that list in accordance with his or her proper seniority.

(Amended by Stats. 2012, Ch. 586, Sec. 1. (AB 2307) Effective January 1, 2013.)

45300. Eligibility lists shall be established for a period of not less than one year except that when a list is exhausted for appointments to current vacancies, through use and eligibles being unavailable, the commission may, upon the recommendation of the officer charged with certifying eligibles, and after due notice to eligibles who may have made themselves unavailable for appointment, terminate it before a year has expired.

Eligibility lists may be established for a period of six months upon the approval of the personnel commission as long as the six-months' duration of such a list is noted in the recruitment bulletin announcing the examination. If a list is exhausted for appointments to current vacancies, through use and eligibles being unavailable, the commission may, upon the recommendation of the officer charged with certifying eligibles, and after due notice to eligibles who may have made themselves unavailable for appointment, terminate it before the expiration date.

A list may be extended for an additional period of two years or less at the discretion of the commission.

(Amended by Stats. 1995, Ch. 652, Sec. 12. Effective January 1, 1996.)

45301. A person who has served an initial probationary period in a class not to exceed six months or 130 days of paid service, whichever is longer, as prescribed by the rules of the commission shall be deemed to be in the permanent classified service, except that the commission may establish a probationary period in a class not to exceed one year for classes designated by the commission as executive, administrative, or police classes. No employee shall attain permanent status in the classified service until he has completed a probationary period in a class. In any case the rules of the commission may provide for the exclusion of time while employees are on a leave of absence. The rights of appeal from disciplinary action prior to attainment of permanent status in the classified service shall be in accordance with the provisions of Section 45305.

(Enacted by Stats. 1976, Ch. 1010.)

45302. No person in the permanent classified service shall be demoted or removed except for reasonable cause designated by rule of the commission as detrimental to the efficiency of the service. This section shall not be construed to prevent layoffs for lack of work or lack of funds.

(Enacted by Stats. 1976, Ch. 1010.)

45303. In addition to any causes for suspension or dismissal which are designated by rule of the commission, employees in the classified service shall be suspended and dismissed in the manner provided by law for any one or more of the following causes:

(a) Knowing membership by the employee in the Communist Party.

(b) Conduct specified in Section 1028 of the Government Code.

(Amended by Stats. 1987, Ch. 1452, Sec. 388.5.)

45304. (a) For reasonable causes, an employee may be suspended without pay for not more than 30 days, except as provided in this section, or may be demoted or dismissed. In this case, the school district shall, within 10 days of the suspension, demotion, or dismissal, file written charges with the commission. The personnel director shall give to the employee or deposit in the United States registered mail with postage prepaid, addressed to the employee at his or her last known place of address, a copy of the charges and inform the employee of his or her appeal rights.

(b) Whenever an employee of a school district or county office of education is charged with a mandatory leave of absence offense, as defined in subdivision (a) of Section 44940, the governing board of the school district shall immediately place the employee upon a compulsory leave of absence for a period of time extending for not more than 10 days after the date of entry of the judgment in the proceedings. Once the employee is placed on leave of absence, he or she is subject to the provisions of Section 44940.5.

(c) Whenever an employee of a school district or county office of education is charged with an optional leave of absence offense, as defined in subdivision (b) of Section 44940, the governing board of the school district may immediately place the employee upon a compulsory leave of absence in accordance with the provisions of Section 44940.5.

(Amended by Stats. 2000, Ch. 1, Sec. 9. Effective February 22, 2000.)

45305. Any employee in the permanent classified service who has been suspended, demoted, or dismissed may appeal to the commission within 14 days after receipt of a copy of the written charges by filing a written answer to the charges. Such an appeal is not available to an employee who is not in the permanent classified service except as provided by rules of the commission. An employee in the permanent classified service who has not served the time designated by the commission as probationary for the class may be demoted to the class from which promoted without recourse to an appeal or hearing by the commission, except as otherwise provided by rules of the commission; and provided, that such demotion does not result in the separation of the employee from the permanent classified service. Nothing in this section shall operate to alter the protections guaranteed under Section 45309.

(Enacted by Stats. 1976, Ch. 1010.)

45306. The commission shall investigate the matter on appeal and may require further evidence from either party, and may, and upon request of an accused employee shall, order a hearing. The accused employee shall have the right to appear in person or with counsel and to be heard in his own defense. The decision shall not be subject to review by the governing board.

(Enacted by Stats. 1976, Ch. 1010.)

45307. If the commission sustains the employee, it may order paid all or part of his full compensation from the time of suspension, demotion, or dismissal, and it shall order his reinstatement upon such terms and conditions as it may determine appropriate. The commission may modify the disciplinary action, but may not make the action more stringent than that approved by the board. In addition, the commission may direct such other action as it may find necessary to effect a just settlement of the appeal, including, but not limited to, compensation for all or part of the legitimate expenses incurred in pursuit of the appeal, seniority credit for off-duty time pending reinstatement, transfer or change of location of the employee, and expunction from the employee's personnel record of disciplinary actions, cause, and charges which were not sustained by the commission. Upon receipt of the commission's written decision the board shall forthwith comply with the provisions thereof. When the board has fully complied with the commission's decision it shall so notify the commission in writing.

(Enacted by Stats. 1976, Ch. 1010.)

45308. (a) Classified employees shall be subject to layoff for lack of work or lack of funds. If a classified employee is laid off, the order of layoff within the class shall be determined by length of service. The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first. Reemployment shall be in order of seniority.

(b) For purposes of this section, in school districts with an average daily attendance below 400,000, for service commencing or continuing after July 1, 1971, "length of service" means all hours in paid status, whether during the school year, a holiday, recess, or during any period that a school is in session or closed, but does not include any hours compensated solely on an overtime basis as provided for in Section 45128. Nothing in this section shall preclude the governing board of a school district from entering into an agreement with the exclusive representative of the classified employees that defines "length of service" to mean the hire date. For purposes of this section, in school districts with an average daily attendance of 400,000 or more, for service commencing or continuing after January 1, 1986, "length of service" shall be determined by the date of hire.

If a governing board enters into an agreement with the exclusive representative of classified employees that defines "length of service" to mean the hire date, the governing board may define "length of service" to mean the hire date for a classification of employee not represented by any exclusive bargaining unit.

(c) Nothing contained in this section shall preclude the granting of "length of service" credit for time spent on unpaid illness leave, unpaid maternity leave, unpaid family care leave, or unpaid

industrial accident leave. In addition, for military leave of absence, “length of service” credit shall be granted pursuant to Section 45297. In the event an employee returns to work following any other unpaid leave of absence, no further seniority shall be accrued for the time not worked.

(d) “Hours in paid status” shall not be interpreted to mean any service performed prior to entering into a probationary or permanent status in the classified service of the district except service in restricted positions as provided in this chapter.

(Amended by Stats. 2011, Ch. 116, Sec. 1. (AB 1269) Effective January 1, 2012.)

45309. Any permanent classified employee of a school district who voluntarily resigns from his permanent classified position may be reinstated or reemployed by the governing board of the district, within 39 months after his last day of paid service and without further competitive examination, to a position in his former classification as a permanent or limited-term employee, or as a permanent or limited-term employee in a related lower class or a lower class in which the employee formerly had permanent status.

If the governing board elects to reinstate or reemploy a person as a permanent employee under the provisions of this section, it shall disregard the break in service of the employee and classify him as, and restore to him all of the rights, benefits and burdens of a permanent employee in the class to which he is reinstated or reemployed.

(Enacted by Stats. 1976, Ch. 1010.)

45310. No warrant shall be drawn by or on behalf of the governing board of any district for the payment of any salary or wage to any employee in the classified service unless the assignment bears the certification of the personnel director that the person named in the assignment has been employed and assigned pursuant to this article and the rules of the commission.

Whenever the commission, after a public hearing, finds that any appointment has been made in violation of this article or the rules of the commission as they apply to examination procedures, the commission may order that no salary warrant shall thereafter be drawn to the employee so appointed, for services rendered after the date of said order. Any violation of this article or the rules of the commission as they apply to examination procedures shall constitute grounds for the dismissal of the employee or employees guilty of such violation.

(Enacted by Stats. 1976, Ch. 1010.)

45311. The commission may conduct hearings, subpoena witnesses, require the production of records or information pertinent to investigation, and may administer oaths. It may, at will, inspect any records of the governing board that may be necessary to satisfy itself that the procedures prescribed by the commission have been complied with. Hearings may be held by the commission on any subject to which its authority may extend as described in this article.

(Enacted by Stats. 1976, Ch. 1010.)

45312. (a) (1) The commission may authorize a hearing officer or other representative to conduct any hearing or investigation that the commission itself is authorized by this article to conduct. Any such authorized person conducting the hearing or investigation may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses to be taken in the manner prescribed by law for similar depositions in civil cases in the superior court of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. The commission may instruct the authorized representative to present findings or recommendations. The commission may accept, reject, or amend any of the findings or recommendations of the authorized representative. Any rejection or amendment of findings or recommendations shall be based either on a review of the transcript of the hearing or investigation or upon the results of the supplementary hearing or investigation as the commission may order.

(2) For disciplinary cases against classified employees involving allegations of egregious misconduct, as defined in Section 44932, and involving a minor, as defined in Section 44990, the commission shall hire a judge, as defined in Section 44990, to conduct any hearing or investigation that the commission itself is authorized by this article to conduct. The judge's ruling shall be binding upon all parties.

(3) A judge authorized under this subdivision to conduct a hearing involving allegations as described in Section 44010 or 44011 of this code, or as described in Sections 11165.2 to 11165.6, inclusive, of the Penal Code, shall conduct that hearing in accordance with Article 3.3 (commencing with Section 44990) of Chapter 4 and Section 49077 of this code.

(4) The term "representative of the respondent," within the meaning of Article 3.3 (commencing with Section 44990) of Chapter 4, shall include, but not necessarily be limited to, an exclusive labor representative.

(b) The commission may employ hearing officers or other representatives by contract, or as professional experts or otherwise, and may adopt and amend rules and procedures as necessary to effectuate this section.

(Amended by Stats. 2018, Ch. 996, Sec. 3. (AB 2234) Effective January 1, 2019.)

45313. The legal counsel of the governing board shall aid and represent the commission in all legal matters. If the legal counsel does not respond to a written request by the commission for aid or representation within 15 working days of receipt of the written request, the counsel is deemed to have refused to aid or represent the commission in that matter.

The legal counsel shall refuse to represent the commission in circumstances in which the counsel knows, or has reason to know, that at the time the request is made a conflict exists between the interests of the commission and the interests of the governing board or the school district.

If the legal counsel refuses to aid or represent the commission in a legal matter, the commission may employ its own attorney, and the reasonable cost thereof shall constitute a legal charge against the general funds of the school district.

(Amended by Stats. 1995, Ch. 900, Sec. 1. Effective January 1, 1996.)

45317. Any person who willfully or through culpable negligence violates any of the provisions of this article is guilty of a misdemeanor. It is also unlawful for any person:

(a) Willfully by himself or in cooperation with another person to defeat, deceive, or obstruct any person with respect to his right of examination, application, or employment under this article or commission rule.

(b) Willfully and falsely to mark, grade, estimate, or report upon the examination or proper standing of any person examined or certified under this article or commission rule, or to aid in so doing, or make any false representation concerning the same or the person examined.

(c) Willfully to furnish to any person any special or secret information regarding contents of an examination for the purpose of either improving or injuring the prospects or chances of any person examined, or to be examined under this article or commission rule.

(Enacted by Stats. 1976, Ch. 1010.)

45318. In every school district coterminous with the boundaries of a city and county, except for those paraprofessionals excluded from the charter provisions by a resolution adopted by the governing board of that district pursuant to Section 45100, employees not employed in positions requiring certification qualifications shall be employed, if the city and county has a charter providing for a merit system of employment, pursuant to the provisions of that charter providing for that system and shall, in all respects, be subject to, and have all rights granted by, those provisions; provided, however, that the governing board of the school district shall have the right to fix the duties of all of its noncertificated employees.

(Amended by Stats. 1991, Ch. 287, Sec. 2.)

45319. A merit (civil service) system within a school district may be terminated by one of the following methods:

(a) If the governing board of a school district, or a county board of education, receives a written petition of qualified electors not less in number than 10 percent of the number voting in the last election for a member of the board calling for the termination of the merit (civil service) system and the system has been in operation for not less than five years or has been imposed pursuant to the terms of Section 45119 or 45120, the board shall order the county superintendent of schools to place the question of termination of the system on the ballot at the next regular governing board member election, or county board of education member election, or the next primary or general election in a general election year, whichever is the earlier after receipt by the county superintendent of schools.

The statement of purpose of the election shall read:

“Shall the merit (civil service) system for school employees not requiring certification qualifications, as provided for in Article 6 (commencing with Section 45240) of Chapter 5 of Part 25 of Division 3 of Title 2 of the Education Code of the State of California, and which has been in operation for at least five years, be terminated by the ____ School District of ____ County (or

counties, where appropriate), or by the County Office of Education of ____ County on ____ (date to be specified by board)?"

The petition calling for the election, to be valid, shall contain the statement of purpose for the election as contained in this section.

(b) If the governing board of a school district, or the county board of education, receives a written petition from 40 percent of the classified employees entitled to vote calling for the termination of the merit (civil service) system and the system has been in operation for not less than five years or has been imposed pursuant to the terms of Section 45119 or 45120, the governing board shall conduct an election by secret ballot of its classified personnel to determine whether or not they desire to have the merit system terminated within the district. The ballot shall read: "Shall the merit (civil service) system for classified employees be terminated in the ____ (name of school district, or county office of education) as of ____ (termination date)?"

As used in this subdivision, "classified employees" means all personnel who are a part of the classified service who are appointed in accordance with Section 45272.

In order to be valid, the petition calling for the termination of the merit (civil service) system shall be submitted to the governing board within 90 days after the date that the notice for the circulation of the petition was filed with the governing board. The election shall be held during the regular school year and shall be held no earlier than 45 days and no later than 180 days after the date that the petition was submitted to the governing board.

If the merit system was adopted pursuant to Section 45224.5, classified employees entitled to vote in an election pursuant to this subdivision shall be limited to those classified employees who reside in the district.

(c) The governing board shall devise an identification system designed to protect against fraud in the balloting process. In addition, the governing board shall appoint a three-member tabulation committee consisting of one member of the governing board, one member of the personnel commission of the district, and one member who shall be a classified employee of the district. It shall be the responsibility of the tabulation committee to canvass the election ballots and to certify the results of the election to the governing board at the next regular meeting of the governing board following the completion of the tabulation of the election ballots by the committee.

(d) Notwithstanding any other provision of law, the governing board shall not be required to provide release time for classified personnel to vote in an election conducted pursuant to subdivision (b). The governing board shall not conduct an election under subdivision (b) more than once in any two-year period.

(e) It shall be unlawful for a public school employer and the exclusive representative of the classified employees of a school district to include the subject of the termination of the merit (classified service) system within the scope of representation.

(f) Members of the classified service shall be provided an adequate and ample opportunity to be informed of the arguments in favor of and in opposition to the termination of the merit (civil service) system prior to the conducting of an election called pursuant to subdivision (b). That opportunity shall include an open forum during which proponents of, and opponents to, the termination of the merit (civil service) system shall be permitted to debate the issue.

(Amended by Stats. 1991, Ch. 146, Sec. 2.)

45320. If the majority of the qualified electors vote to terminate the merit system in a school district, or a county office of education, or if the majority of the classified employees vote to terminate the merit system in a school district, or a county office of education the personnel commission shall cease to function on the date specified in the election and the law pertaining to merit system districts, or county offices of education shall cease to have any force or effect in that district or county office of education.

Simultaneously, with the termination of the merit system, the governing board shall adopt rules and regulations relating to classified school employees as required by Section 45113.

Notwithstanding an action to terminate the merit system in a school district, or county office of education, the provisions of Section 45221, 45223, and 45224 shall be applicable at any time after at least two years have elapsed after the system has ceased to operate.

(Amended by Stats. 1982, Ch. 188, Sec. 2.)