



## How state laws and collective bargaining shape the way teachers are evaluated, paid, and dismissed in California

In California, state law plus provisions of collective bargaining agreements function together to define the employment relationship between most teachers and their districts.

The Stull Act, passed in 1971 and periodically amended, balances the state's interest in having quality teachers with employees' rights related to how evaluations are conducted, compensation and tenure decided, and dismissals handled. First and foremost, it requires districts to develop standards for student achievement by grade and subject as one basis for teacher evaluations. The act also applies to all other certificated personnel.

In addition, the state's Educational Employment Relations Act (EERA), enacted in 1975, guarantees teachers the right to collectively bargain and defines the scope of bargaining, including the procedures to be used for the evaluation of employees.

While the law outlines the parameters of the district/union relationship, collective bargaining agreements generally include more specific requirements, such as salary incentives, seniority policies, and how evaluations are done.

This policy guide highlights some of the important laws that currently exist in California related to teacher evaluation issues. The implementation, enforcement, and monitoring of these laws are generally left up to the districts and teacher unions in this state—or to the courts if the two sides disagree on how to interpret them.

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### **EVALUATION FREQUENCY AND CONTENT**

#### *State law specifies minimum frequencies*

Critics of current laws and policies say that teacher quality could be improved if teachers were evaluated more frequently and given constructive feedback. California law requires regular, but relatively few, evaluations.

Under California's Education Code [44660-44665], teacher evaluations must occur on a regular basis. Teachers with probationary status must be evaluated at least once every school year. Permanent employees may be evaluated every other year, or less. Permanent teachers who have been employed at least 10 years in the same district and whose previous evaluation was at least satisfactory may be evaluated once every five years. Any teacher who receives an unsatisfactory evaluation must be evaluated annually until a satisfactory evaluation is achieved or dismissal occurs.

Beyond the minimum requirements, districts and unions are free to negotiate more frequent evaluations and to determine procedures, such as whether teachers are given advance notice before formal observations of their classroom.

#### *State law also specifies the content*

Current debates often focus on whether student assessment data can be used to evaluate teachers, perhaps based in part on a misconception.

Since the enactment of the Stull Act in 1971, California law has required that districts set standards and evaluate teachers on them. In 1999, lawmakers added that teachers be evaluated on state standards as measured by state criterion-referenced tests.

The Education Code [44660-44665] requires local school boards to establish

standards of student achievement at each grade in each subject and to evaluate certificated personnel in the following four areas:

1. the progress of students toward reaching the district's standards and, if applicable, the state content standards "as measured by state-adopted, criterion-referenced assessments";
2. "instructional techniques and strategies";
3. "adherence to curricular objectives"; and
4. "the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities."

The Education Code also requires that evaluations include recommendations for improvement as needed. And the state's Government Code [3543-3543.8] says districts and unions must bargain over procedures to be used to evaluate employees.

### **SALARIES AND PERMANENT STATUS**

#### *Teacher salaries are generally based on training and years of experience*

Districts in a number of states, such as Tennessee and Colorado, have been experimenting with performance-based raises for teachers. In California, training and experience, for the most part, determine salaries.

California's Education Code [45022-45061.5] requires districts to draft a schedule of salaries and make it available to all employees. All teachers must be classified on the schedule on the basis of uniform allowances for years of training and experience.

Further, the Government Code [3543-3543.8] requires districts to bargain with unions over "matters relating to wages" and health and welfare benefits. But districts and local teachers' unions can agree to salary criteria beyond the uniform allowance,

such as compensation incentives for graduate degrees, Special Education teachers, or math and science teachers.

*Permanent status is based on experience*

Currently, education policy stakeholders have differing views about how long it should take for a teacher to achieve permanent status and about the value of this type of employment protection.

California’s Education Code [44929.20-44929.29] establishes that teachers’ first two years on the job are a probationary period when a district may choose not to rehire a teacher without providing a reason as long as the action is legal and does not violate civil rights. Teachers who successfully complete their probationary period are given permanent status at the start of their third year of full-time employment in a district.

**DISMISSAL AND LAYOFF**

*Districts must follow specific steps to dismiss*

Some critics complain that it is too difficult to remove inadequate teachers. Under the state’s Education Code, the processes for terminating probationary and permanent teachers are different. (See the box below.)

*Layoffs are generally based on seniority*

Some education stakeholders argue that layoffs of teachers should be based on job performance, not years of experience; those

opposed say this allows too much subjectivity to enter the process. Another concern with seniority-based layoffs is their potential to disrupt schools that have a preponderance of newer teachers.

In California, state law specifies that layoffs must generally be done based on seniority, with the most recently hired employees being the first laid off. In cases where teachers were hired on the same day, evaluations can help determine who is retained. But the state’s Education Code [44930-44988] does allow deviation from seniority-based layoffs if a district has a specific need to maintain specialized services, such as those provided by a school nurse or Special Education teacher; or to maintain or achieve equal protection under the law.

A recent legal decision involving Los Angeles Unified School District may give the latter provision greater salience going forward. Students at three LAUSD middle schools filed a lawsuit in February 2010 arguing that disproportionate layoffs led to turmoil and the overuse of temporary replacements and rotating substitutes, violating the students’ fundamental right to equal educational opportunity under the California Constitution. The court found in favor of the plaintiffs, and LAUSD reached an agreement in fall 2010 to not lay off teachers for budgetary reasons in 45 schools. The teachers’ union, United Teachers of Los Angeles, is appealing.

*Notice must be given of potential layoffs*

Because of the timing of state budget adoptions in California, districts have to create their budgets before they know precisely how much funding they will receive from the state. But state law requires that districts issue preliminary layoff notifications to most teachers and other certificated staff by March 15. In recent years, districts have issued a flurry of pink slips in mid-March and then rescinded them. Some education stakeholders would like to eliminate this early-warning system, saying it harms morale; but others believe teachers should be notified as soon as possible of potential layoffs.

Under the Education Code [44930-44988], first-year teachers can be laid off at the end of the school year, but other certificated employees get more notice. The preliminary notices that must be issued by March 15 are warnings that individuals are on a list of potential layoffs. If teachers do not get preliminary notices, the district cannot lay them off. Districts have until May 15 to issue final layoff notices or rescind preliminary notifications. No new layoffs can occur after May 15, except for a seldom-used provision that allows layoffs through Aug. 15 under specific conditions of financial hardship. [1]

For direct links to the state laws referenced above, see the electronic version of this brief at: [www.edsource.org/pub11-teacher-evaluation-brief.html](http://www.edsource.org/pub11-teacher-evaluation-brief.html)

**Under state law, districts must follow these steps for dismissing a teacher for unsatisfactory performance**

Probationary Teachers*	Permanent Teachers
District provides written notice of intention to dismiss. <ul style="list-style-type: none"> <li>■ Must be given 30 days prior to dismissal.</li> <li>■ For second-year employees, this can come no later than March 15.</li> <li>■ Must include reasons for dismissal and a copy of performance evaluation.</li> </ul>	District provides written notice of intention to dismiss. <ul style="list-style-type: none"> <li>■ Must generally be given at least 90 days in advance of “filing charges” (see next step).</li> <li>■ Must be given between Sept. 15 and May 15.</li> <li>■ Performance evaluation must accompany notice.</li> </ul> District “files charges” based on a majority vote of the school board. District must specify the problems with the teacher’s performance.
Employee has 15 days to request a hearing.	Employee has 30 days to request a hearing. If the employee does not request one, the district can dismiss the teacher.
If parties hold a hearing, it can be conducted according to procedures established by the district, including the involvement of an administrative law judge. <p>* For districts with average daily attendance of less than 250, the requirements are slightly different.</p>	Hearing by a three-member Commission on Professional Competence. <ul style="list-style-type: none"> <li>■ Hearing must begin within 60 days of request.</li> <li>■ The employee selects one member of the commission, and the district selects one. The commissioners must be certificated educators and must not be related to the employee or employed by the district. The third commissioner is an administrative law judge.</li> </ul> Commission decides, by majority vote, for or against dismissal. Either party can appeal the decision in court. This process can last several years.