

CLIENT NEWS BRIEF

Legislature Enhances Minor Witness Protections in Employee Discipline Proceedings

Assembly Bill (AB) 2234, which becomes effective January 1, 2019, provides a comprehensive set of requirements for the presentation of testimony by minor witnesses at administrative disciplinary proceedings initiated under the egregious misconduct hearing process for permanent certificated employees, and for discipline hearings involving allegations of egregious misconduct for permanent classified employees of merit or non-merit system school districts. As a reminder, in 2014 the legislature passed AB 215, which made significant changes to the permanent certificated dismissal and suspension process. Among these changes was to provide an expedited hearing process when a certificated employee is charged exclusively with egregious misconduct, a specific type of immoral conduct defined in the Education Code.

The new bill, AB 2234, authorizes an administrative law judge (ALJ) to allow a minor witness to testify at specified disciplinary proceedings by two-way closed-circuit television instead of being present in the hearing room with the employee. The ALJ must make specific findings set forth in the Education Code to make such an order.

Minors who are witnesses in these disciplinary proceedings must also be assigned a support person to be present with them while they testify. It is presumed that a parent or guardian is qualified to serve as the student's support person. However, an ALJ can select and appoint a support person if the ALJ determines that the minor's parent or guardian is not qualified.

AB 2234 also requires the ALJ to take special care to protect minor witnesses or dependent persons with a substantial cognitive impairment from undue harassment or embarrassment, and to restrict the unnecessary repetition of questions. Further, the bill requires ALJs to take special care to ensure that questions are stated in a form that is appropriate to the age and cognitive level of the witness.

While ALJs already possess the discretion to accommodate testifying minor witnesses in a manner that ensures accurate and complete testimony, AB 2234 makes clear this discretion is available in permanent certificated dismissal cases under the egregious misconduct hearing process and in the permanent classified discipline process where allegations of egregious misconduct are alleged.

AB 2234 also requires school districts to take specified action to ensure the confidentiality of student information upon issuance of a court order or subpoena for pupil contact information of minor witnesses. In this situation, AB 2234 requires the school district to make a reasonable effort to enter into an agreement with the entity that obtained the court order or subpoena, requiring that the pupil's contact information be maintained in a confidential manner. The bill specifies that a party that obtains pupil contact information shall not use or disseminate that information for any purpose except as authorized by the court order or subpoena.

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It is important to note that AB 2234 requires appointment of an ALJ where allegations against a permanent classified employee include egregious misconduct involving a minor. This new law may require school districts to review board policies and collective bargaining agreements to determine whether the discipline hearing process for permanent classified employees requires revision to comply with AB 2234.

For more information about this new law or about the employee discipline process in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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