

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1651 (Reyes) – As Amended April 18, 2017

SUBJECT: Community colleges: academic employees: paid administrative leave

SUMMARY: Prohibits a community college academic employee from being placed on administrative leave without being provided information on the relevant complaints or allegations, with specified exceptions. Specifically, **this bill, as proposed to be amended:**

- 1) Requires that a community college academic employee, at least two days before being placed on involuntary paid administrative leave, be provided a copy of each written complaint related to the proposed involuntary administrative leave or, if there is no written complaint, a notification in writing of the details of the allegation or allegations of misconduct upon which the decision to place the employee on involuntary administrative leave is based.
- 2) Stipulates that the pre-notification requirements in (1) do not apply in the event of serious risk of physical danger or other necessity arising from the allegations, and the employee may immediately be placed on involuntary paid administrative leave, whereby the employee shall instead be provided the information per (1) within five business days after being placed on involuntary administrative leave.
- 3) Requires that a community college academic employee, at least two business days before being subject to an investigatory interview or other interrogation related to an allegation of misconduct, be provided a copy of each written complaint being investigated or, if there is no written complaint, notification in writing of the details of the allegation or allegations upon which the decision to conduct an investigatory interview or other interrogation is based.
- 4) Stipulates that parties to a collective bargaining agreement shall be entitled to negotiate additional policies and procedures relating to investigations or involuntary paid administrative leave of an academic employee as long as not in conflict with all of the above.
- 5) Stipulates that the identity of complainants shall be disclosed only to the extent permitted by a collective bargaining agreement or existing law, including the federal Family Educational Rights and Privacy Act (FERPA).

EXISTING LAW:

- 1) Defines "academic employee" as a person employed by a community college district in an academic position for which minimum qualifications have been established by the California Community Colleges Board of Governors. (Education Code Section 87001.)
- 2) Article 4 Section 87660, et seq., of the EC, itemizes the various rules and governance that community college districts must adhere to when evaluating and disciplining faculty.
- 3) In *Skelly v. State Personnel Board* (1975) 15 Cal. 3d 194, the California Supreme Court ruled that, as part of constitutionally guaranteed due process, public employees are entitled to certain procedural safeguards before discipline which is sufficiently severe to constitute a

deprivation of a liberty or property right is imposed on them. The due process rights of Skelly are not required when an employee is placed on involuntary paid administrative leave, which is the subject of this bill.

FISCAL EFFECT: Potential, but probably minor costs to community college districts to comply with the notification provisions of this bill. As this bill addresses conditions of employment, and does not require a higher level of service to the general public, it does not create a new state mandated local program, thus no state reimbursement of any additional district costs would be required.

COMMENTS:

Purpose. According to the author, "An increasing number of community college professors are being disciplined by placing them on 'paid administrative leave' and are not being notified of the allegations against them. In addition of not being notified of the allegations against them, district administrators are not required to provide evidence or access to this evidence to the faculty who must wait months before receiving any information and the secretive nature of the disciplinary process places them in a state of limbo."

This measure, which is sponsored by the California Community College Independents, requires that college faculty facing administrative leave be provided two days' prior notice of the allegations against them. The bill provides an exception to the advance notice requirement, and allows for placing someone on administrative leave immediately, in situations when this is determined to be necessary due to a risk of physical danger or related risk as determined by district officials.

Prior Legislation. In 2014, AB 2559 (Eggman) proposed that existing statutory procedures and processes in place for a faculty member who is suspended would also apply involuntary leave, whether or not paid. Concern was expressed that this approach could place the employer in a situation of having to go through the full due process before it could gather the evidence that would support or refute the need for disciplining the employee. AB 2559 was never voted on in this committee. Notably, staff of this committee recommended that AB 2559 be amended to instead inform an employee why they are being placed on administrative leave, either at the time or within five days following the start of the leave. AB 1651 is generally consistent with this recommendation.

Opposition, unless Amended. The Community College League of California concurs that, in general, employees should be informed as to why they are being placed on administrative leave. The League argues, however, that the bill, by requiring an employee to be provided with a copy of the written complaint, would be divulging the name of the alleged victim (unless redacted), the exact nature of the complaint, the location in which the incident occurred and other details that could be used to intimidate the victim or destroy evidence prior to the college completing its investigation. The League is also concerned that the information provided could lead to interference with a law enforcement investigation and to unintended violations of FERPA.

The author and sponsor should work with the League to address the above concerns while still meeting the reasonable expectations for prior notification to employees who are subject to involuntary administrative leave or investigation.

Amendments. The proposed amendments are generally clarifying in nature, and seek to simplify the bill's provisions while maintaining the author's intent.

REGISTERED SUPPORT / OPPOSITION:

Support

California Community College Independents (sponsor)
Faculty Association of California Community Colleges

Opposition

Community College League of California (oppose unless amended)

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