

Date of Hearing: April 29, 2014

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Das Williams, Chair
AB 2559 (Eggman) – As Introduced: February 21, 2014

SUBJECT: Community college employees: suspension.

SUMMARY: Specifies that for purposes of Article 4 of the Sections 87660, et seq., of the Education Code (EC), "suspension" includes, but is not limited to, involuntary leave with partial or full compensation during the period of leave.

EXISTING LAW: 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; this includes, but is not limited to:

- 1) Specifies that during the school year, all contract and regular employees are subject to dismissal and the imposition of penalties on the grounds and pursuant to the procedures established (EC § 87666).
- 2) Stipulates that a contract or regular employee may be dismissed or penalized for one or more of the grounds established in Section 87732 of the EC (EC § 87667).
- 3) Specifies that a governing board may impose one of the following penalties: a) Suspension for up to one year; and, b) Suspension for up to one year and a reduction or loss of compensation during the period of suspension (EC § 87668).
- 4) Requires that the governing board shall determine whether a contract or regular employee is to be dismissed or penalized. If the employee is to be penalized, the governing board shall determine the nature of those penalties. If the employee is to be dismissed or penalized, the governing board shall determine whether the decision shall be imposed immediately or postponed in accordance with Section 87672 of the EC (EC § 87669).
- 5) Specifies that a contract or regular employee may be dismissed or penalized if one or more of the grounds set forth in Section 87732 are present and the following are satisfied: a) The employee has been evaluated in accordance with standards and procedures established in accordance with the provisions of this article; b) The district governing board has received all statements of evaluation which considered the events for which dismissal or penalties may be imposed; c) The district governing board has received recommendations of the superintendent of the district and, if the employee is working for a community college, the recommendations of the president of that community college; and, d) The district governing board has considered the statements of evaluation and the recommendations in a lawful meeting of the board (EC § 87671).
- 6) Requires that if a governing board decides it intends to dismiss or penalize a contract or regular employee, it shall deliver a written statement, duly signed and verified, to the employee setting forth the complete and precise decision of the governing board and the reasons therefor. The written statement shall be delivered by serving it personally on the employee or by mailing it by United States registered mail to the employee at his or her

address last known to the district. A governing board may postpone the operative date of a decision to dismiss or impose penalties for a period not to exceed one year, subject to the employee's satisfying his or her legal responsibilities as determined by statute and rules and regulations of the district. At the end of this period of probation, the decision shall be made operative or permanently set aside by the governing board (EC § 87672).

- 7) Stipulates that no regular employee or academic employee shall be dismissed except for one or more of the following causes: a) Immoral or unprofessional conduct; b) Dishonesty; c) Unsatisfactory performance; d) Evident unfitness for service; e) Physical or mental condition that makes him or her unfit to instruct or associate with students; f) Persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing him or her; g) Conviction of a felony or of any crime involving moral turpitude; and, h) Conduct as specified in Section 1028 of the Government Code (EC § 87732).

FISCAL EFFECT: Unknown

COMMENTS: Existing practice. Due process rights, as established in law, apply to suspensions of employees resulting from a finding that a penalty is an appropriate course of action. According to the Community College League of California, currently, colleges place employees on administrative leave when credible allegations that their presence on campuses becomes dangerous to the campus community are made. This protects students, staff, and faculty while also giving the campus time to conduct an investigation. According to the League, while the employee is on administrative leave the college is attempting to determine if the allegations are true and what disciplinary steps should be conducted.

This measure would treat paid administrative leave equal to a penalty resulting from an investigation.

Purpose of the bill. According to the author, "The need for the bill arises from anecdotal evidence that suggest some governing boards are placing faculty on 'paid administrative leave.' While paid leave of absence should fall under suspension, regardless of pay in EDC Section 87668, by calling the action something besides a suspension the governing board is able to deny faculty their rights triggered upon suspension, including being told why they are being disciplined and their right to a hearing."

Arguments in support. California Community College Independents (CCCI), sponsors of the measure, state that, "Under existing law, a minimum level of community college faculty due process rights are mandated that do not interfere with the ability of management to provide adequate oversight and accountability." CCCI contends that this measure would not establish a new precedent; statutory due process rights already exist for community college faculty.

Arguments in opposition. Community College League of California argues that by defining involuntary paid leave as a suspension, this bill is essentially reclassifying the tool that colleges use to investigate allegations as the penalty itself. The League contends this measure would "hamper the ability of the colleges to conduct a thorough investigation that protects the rights of the employee along with the safety of the campus environment."

Committee considerations. There does not appear to be a preponderance of evidence showing why the approach taken in this bill is necessary. Is it sound policy to change our state laws based on limited anecdotal evidence?

Additionally, although the bill may have the best intentions of faculty in mind, it would appear that this bill could place the employer in a precarious situation of having to go through the full due process before it could gather the evidence that would support or refute the need for discipline. There are situations in which permitting employees to continue working on a college campus while being investigated for professional misconduct is dangerous to the students, staff and/or both. Colleges need a tool to be able to remove an employee from the campus with full pay immediately in order to protect campus safety and the integrity of the human resources process. Colleges rely on administrative/involuntary leave for this very reason.

As drafted, there is a concern that the measure takes away a community college's option of placing an employee of alleged misconduct on paid administrative/involuntary leave as a useful tool in order to avoid automatically having to penalize the employee prior to a formal investigation; and, while the investigation is taking place allow for protection of the employee to have been removed from the situation and yet not miss out on any pay.

Additionally, there are some situations whereby colleges or districts may have to immediately remove employees and are not in a position to share the reason for the leave because it may jeopardize the integrity of the pending investigation. If the intent of the author is to ensure that employees placed on administrative/involuntary leave are made aware as to why they are being placed on this leave, **staff recommends that the contents of this measure be deleted to instead: mandate that the employer, to the extent that the pending investigation is not hindered and that the safety of the students, faculty and staff is not jeopardized, shall inform the employee of the alleged misconduct as to why he or she is being placed on administrative/involuntary leave in a brief written statement to be given to the employee at the time of being placed on leave or not more than five days later.**

REGISTERED SUPPORT / OPPOSITION:

Support

California Community College Independents (sponsor)

Opposition

Community College League of California

Analysis Prepared by: Jeanice Warden / HIGHER ED. / (916) 319-3960