
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 1651 **Hearing Date:** June 21, 2017
Author: Reyes
Version: May 26, 2017
Urgency: No **Fiscal:** No
Consultant: Ian Johnson

Subject: Community colleges: academic employees: involuntary administrative leave and investigations

SUMMARY

This bill requires a community college academic employee to be provided with information on all relevant complaints or allegations against them before being placed on administrative leave, with specified exceptions.

BACKGROUND

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.
- 2) Itemizes the various rules and governance that community college districts must adhere to when evaluating and disciplining faculty.

Existing case law (*Skelly v. State Personnel Board* (1975) 15 Cal. 3d 194) entitles public employees to certain procedural safeguards before discipline which is sufficiently severe to constitute a deprivation of a liberty or property right is imposed on them. These due process rights are not required when an employee is placed on involuntary paid administrative leave.

ANALYSIS

This bill:

- 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) above, do not apply in the event of serious risk of physical danger or other documented necessity arising from the specific allegations, and the employee may immediately be placed on involuntary paid administrative leave, whereby the employee shall instead be

- provided the information per 1) above and the evidence and reason for the actions taken against him or her, within five business days after being placed on involuntary administrative leave.
- 3) Requires that a community college academic employee, at least five 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 an employer may withhold providing a complaint to an employee pursuant to 3) if the employer demonstrates, on a case-by-case basis, that revealing the complaint would result in one of the following:
 - a) Danger of relevant evidence being destroyed or relevant testimony being fabricated.
 - b) Reasonable danger of violence.
 - c) Confidentiality has been requested by law enforcement due to a relevant investigation.
 - d) Violation of law.
 - 5) 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 if as much notice as required in this bill is provided.
 - 6) Stipulates that the identity of complainants shall be disclosed unless otherwise prohibited by state or federal law.

STAFF COMMENTS

- 1) ***Need for the bill.*** 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 bill requires that college faculty facing administrative leave be provided two days' prior notice of the allegations against them. This 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.

- 2) **Current community college 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.
- 3) **Arguments in support.** According to the Faculty Association of California Community Colleges, current law allows employers to place an individual on administrative leave without any established rights or a timeline for resolution of grievances. This bill ensures fairness and due process in administrative proceedings by requiring that academic employees who are subject to accusations of misconduct are entitled to a copy or notification of the complaint or allegations made against them at least two business days before they are placed on involuntary administrative leave.
- 4) **Oppose unless amended.** According to the Community College League of California, there is not enough flexibility within the bill for a college to either protect the safety of affected students and staff, or to conduct a fair investigation around the allegations leading to the employee's placement on administrative leave. The League previously indicated that it would drop its opposition if language were added that permitted colleges to withhold information in order to protect the safety of its students and staff, cooperate with local law enforcement, conduct a fair and thorough investigation, and be in full compliance with the Family Educational Rights and Privacy Act.
- 5) **Amendments for the Committee to consider.** While the sponsor of this bill has provided anecdotal examples, it is unclear how prevalent instances of community college faculty being disciplined through paid administrative leave without notification are. Further, this bill as currently drafted could place an employer in the position of having to go through the full due process before being able to gather the evidence needed to take disciplinary action. However, the argument that employees being placed on involuntary administrative leave have a right to know the general nature of the accusations against them also has merit.

If it is the desire of the Committee to pass this measure, **staff recommends** that the bill be amended to:

- a) Specify that, in the event of a serious risk of physical danger or other documented necessity, the employee shall be provided with the "general nature" of the accusations made, rather than copies of each complaint, within five days of being placed on administrative leave and at least five days before an investigatory interview.

- b) Specify that, only in the event of no risk of physical danger or other documented necessity, the employee shall provide a copy of each written complaint related to that investigation or, if there is no written complaint, notification in writing of the details of the allegations.
- c) Clarify that employers refusing to provide copies of each written complaint or the details of the allegation in advance of an investigatory interview be required to document the reason for withholding the information in their internal records, rather than withholding the information because of a blanket rule or generalized concern.
- d) Add “retaliation” to the list of instances for which an employer can refuse to provide copies of each written complaint or the details of the allegation in advance of an investigatory interview.

SUPPORT

California Community College Independents (co-sponsor)
Faculty Association of California Community Colleges (co-sponsor)
California Federation of Teachers
California Teachers Association

OPPOSITION

None received

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