

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 1905 (Addis) – As Amended April 04, 2024

[Note: This bill is double referred to the Public Employment and Retirement Committee and will be heard by that Committee as it related to issues under its jurisdiction.]

SUBJECT: Public postsecondary education: employment: settlements, informal resolutions, and retreat rights

SUMMARY: Places conditions upon the use of settlements, informal resolutions, retreat rights, and letters of recommendations for public postsecondary education institutions of the state for employees who are the respondent in a sexual harassment complaint, as defined. Specifically, **this bill:**

- 1) Stipulates it is the policy of California, as specified, for all people regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary education institutions in the State.
- 2) Removes the eligibility for an employee of a public postsecondary education to receive retreat rights or a letter of recommendation if the employee is the respondent in a sexual harassment complaint that was filed with the institution and either of the following has occurred:
 - a) The employee is determined in a final administrative decision to have committed sexual harassment;
 - b) The employee resigns from their current position, before a final administrative decision is made; or,
 - c) The employee reaches a settlement with the public higher education institution.
- 3) Permits public postsecondary education institutions the ability to adopt more expansive policies on when retreat rights and letters of recommendations privileges can be revoked for employees, but requires the policy to include the provision (2) as enumerated above.
- 4) Requires, as a condition to receive state financial assistance, the appropriate governing board or body of each public postsecondary education institution to adopt a written policy on settlements and information resolutions for complaints of sexual harassment where the respondent is an employee of the institution. The written policy is to contain the following provisions:
 - a) A prohibition on the use of information resolutions if the either of the following occur:
 - i) The complainant who filed the sexual harassment complaint against the employee is a student; or,
 - ii) An employee respondent is accused of committing sexual assault, sexual violence, or sexual battery.

- b) A prohibition on the use of settlements if any of the following apply:
 - i) The complainant who filed the sexual harassment complaint against the employee is a student;
 - ii) An employee respondent is accused of committing sexual assault, sexual violence, or sexual battery; or,
 - iii) The settlement includes a nondisclosure agreement.
 - c) A requirement for the chief executive officer to approve all offers of sexual harassment settlements and informal resolutions. Prohibits the chief executive officer from delegating this responsibility to a designee.
 - d) A requirement for the governing board of California Community College (CCC) district, Trustees of the California State University (CSU), the Regents of the University of California (UC), or the Board of Directors of the College of Law, San Francisco, as applicable, to approve any offer to settle an accusation of sexual harassment after the campus chief executive officer has approved the offer.
- 5) Defines the following:
- a) “Chief executive officer” means the president of a CCC or CSU campus, the chancellor of a UC campus, or the dean of the College of Law, San Francisco;
 - b) “Final administrative decision” means the written determination of whether or not sexual harassment occurred as determined by the decisionmaker following an investigative report and if applicable, the subsequent hearing;
 - c) “Public postsecondary educational institution” means any campus of the CCC, CSU, UC, or the College of Law, San Francisco;
 - d) “Respondent” means the person accused of engaging in prohibited conduct under Title IX of the federal Education Amendments of 1972 or under a public postsecondary educational institution’s policy on sexual harassment;
 - e) “Retreat rights” means the ability of an administrator who was required to relinquish tenure as a faculty member to become an administrator to return to a faculty position if their administrative role come to an end;
 - f) “Informal resolution” means an agreement between the institution and the respondent and the complainant for the purpose of resolving a complaint of sexual harassment before a final administrative decision is made;
 - g) “Settlement” means an agreement between an institution and a respondent of terms to settle an accusation of sexual harassment after a final administrative decision is made. For purposes of this section, a settlement does not include a settlement reached in a civil action brought by the respondent against the public higher education institution.
- 6) Establishes, if the Commission on State Mandates determines that this bill contains costs mandated by the state, the state shall reimburse the applicable entities.

EXISTING LAW: *Federal law.*

- 1) No person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance except for specified circumstances including membership of fraternities and sororities (United States Code Title 20, Chapter 38, Section 1681... colloquially known as Title IX).
- 2) Outlines the required response pursuant to Title IX, of a postsecondary higher education institution when the institution is made aware of an alleged sexual harassment incident on campus. The regulations include a requirement for a formal complaint, a grievance procedure for an investigation into whether the incident based on a standard of evidence occurred, and a method of appealing the outcome of the grievance process (Federal Code of Regulations Title 34, Subtitle B, Chapter 1, Subpart D, Section 106.45).
- 3) Defines sexual harassment as conduct on the basis of sex that satisfies at least one of the following:
 - a) An employee of the postsecondary education institution conditions aid, benefit, or services to a recipient on the individual's participation in unwelcome sexual conduct;
 - b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; an
 - c) Sexual assault, dating violence, domestic violence, and stalking, as defined in the United States Code (Federal Code of Regulations, Title 34, Subpart D, Section 106.30).

State law.

- 1) Establishes the UC as a public trust to be administered by the Regents and grants the Regents full powers of organization and governance subject only to legislative control as necessary to ensure the security of funds, compliance with terms of its endowments, and the statutory requirements around competitive bidding and contracts, sales of property, and the purchase of materials, goods, and services (Article IX, Section (9) (a) of the California Constitution).
- 2) Defines "Sexual Harassment" as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting under the following conditions: quid pro quo, as defined, and hostile workplace, as defined. Further defines "Sexual Harassment" as sexual violence, sexual battery, and sexual exploitation, as defined (Education Code (EDC) Section 66262.5 and 212.5).
- 3) Requires the governing board or body of each postsecondary institution in the state, as a condition of receiving state funding, to comply with an array of conditions pertaining to protecting students from sexual harassment protections and to provide students with procedural protections relating to claims of sexual harassment (EDC Section 66281.8).
- 4) Stipulates no provision of the Donahue Higher Education Act shall apply to the UC unless the UC Regents adopts the provision (EDC Section 67400).

FISCAL EFFECT: Unknown

COMMENTS: *Quiet Resolutions.* Due to the investigative journalism of *EdSource*, *USA Today*, and *The Los Angeles Times*, the public is now aware of a tool used by public higher education institutions to resolve complaints of sexual harassment that provide benefits to the respondent. Settlements have been used to resolve complaints of sexual harassment on public higher education campuses when the respondent is an employee. Without guardrails on the content of these settlements, the respondent and the institution negotiate for a mutually beneficial outcome. In some cases the institution successful removes the harasser from the campus, but at what cost? In order to persuade, the employee into agreeing to the institution's conditions, the employee can ask for monetary compensation, nondisclosure agreements, retreat rights, and letters of recommendation.

In March 2022, *USA Today*, published an article about a settlement entered into by then-Chancellor Castro of the CSU when he was President of Fresno State University. The article alleged then-Chancellor Castro had failed to address 12 complaints against Mr. Llamas, until 2020 when a formal sexual harassment complaint lead to the University settling with Mr. Llamas. In exchange for resigning and agreeing to never being hired at another CSU campus, Mr. Llamas received \$260,000, full retirement benefits, and a letter of recommendation. In the Summary Investigation Report of Fresno State published by the Law Office of Mary Lee Wegner and authorized by the CSU Board of Trustees, found that even in 2020 when the sexual harassment allegations were upheld, as President of the campus, Mr. Castro asked for Mr. Llamas to be able to exercise retreat rights and return to the classroom.

The investigative report concluded that in his role as President of Fresno State University, then-Chancellor Castro failed to uphold his duty to provide an educational environment free from discrimination, as “the absences of complaints is not necessarily an implicit endorsement that all is well”. However, the investigative report found that despite the large monetary payout and positive recommendation by the President of the campus for a violator of the sexual harassment policy, “the settlement did not violate CSU policies.”

In December 2022, *EdSource*, reported on a CSU Chico State professor, David Stachura, who was alleged to have had an inappropriate sexual affair with a graduate student and a complaint was filed against him. Despite a finding on September 14, 2020, that Professor Stachura had violated CSU policy by engaging in a consensual relationship with a student, “Chico State opted for a light discipline fearing anything harsher could have been overturned in arbitration since the student did not complain and the affair was consensual.”¹

In his first settlement with Chico State, Professor Stachura agreed to withdraw his request for early promotion and a suspension in spring 2021, if the complaint was removed from his personnel file. Professor Stachura went on to be promoted to tenure and received an award as an “Outstanding Professor” the year after the investigation.

After being reinstated further reports were made of how Professor Stachura had allegedly harassed and made threatening comments towards colleagues who originally reported the first complaint. When the threats were investigated, despite finding him a potential threat to campus

¹ Peele, T. (2022, December 08). Chico State Professor Disciplined for Student Affair Allegedly Threatened Colleagues Who Complained. *EdSource*.

safety, the professor was once again re-instated. Female professors in the same department have stated they left Chico State out of fear for their lives.¹ After the *EdSource* article became public, Professor Stachura was placed on leave as further investigations were conducted by the Chico State. On February 14, 2024, the CSU settled with Professor Stachura procuring his resignation and barred him from being re-hired by a CSU campus in exchange for: removing all evidence of all complaints, investigations, and findings from his personnel file, and establishing a nondisclosure agreement where the CSU would not tell of his past actions to future employers.

In California, there are no State laws that govern the contents of settlements as described above.

To the knowledge of Committee Staff, neither the CCC nor the UC have a systemwide policy regarding retreat rights and letters of recommendation and none of the public higher education systems have stipulations for settlements.

Author's intent. As elucidated by the author, “Under Title IX, California’s public colleges and universities are charged with providing an educational environment free from discrimination on the basis of sex. Unfortunately, these institutions have fallen short in protecting their campus communities, allowing employees who have engaged in sexual harassment to retreat to teaching positions and receive generous settlements that include letters of recommendation.”

The author further contends, “as a former educator myself, I know just how important it is that institutions support students, faculty, and staff that come forward to report discrimination and harassment. It is an unacceptable failure that California’s public institutions of higher education are allowing known perpetrators to continue victimizing members of our campus communities.”

In closing, the author states, “AB 1905 will prevent employees of California’s public colleges and universities from being eligible for retreat rights or letters of recommendation if they have committed sexual harassment. This will ensure that California’s public institutions of higher education make a stronger effort to create a safe and inclusive environment for students, faculty, and staff.”

Informal resolution. The UC and CSU each have a systemwide nondiscrimination policy each of their campuses are required to actualize when a complaint is filed. Each of the 73 community college districts (including the online college, CalBright), have policies governing the adjudication of complaints of sexual harassment.

All three systems have the ability for informal resolutions to take place. Informal resolutions are a form of mediation in which both parties of a complaint (the subject of the complaint and the filer) agree to a set of terms thereby dismissing the complaint. Informal resolutions must be concluded before a final determination of a complaint is made and they have to be entered into freely, an institution cannot coerce either party into an informal resolution.

Title IX of the federal Education Amendments of 1972 (Title IX) prohibits an institution from offering an informal resolution when the complainant is a student and a respondent is an employee. In California, due to the desire of the State to provide additional protections to students, it is possible for a complaint of sexual harassment to be adjudicated on campus without the use of Title IX procedures. AB 1905 (Addis) closes a loophole in existing law by prohibiting all complaints of sexual harassment from utilizing an informal resolution when a student is the complainant and the respondent is an employee.

Under Title IX, it is permissible for the contents of an informal resolution to be made public or shared; however, it is not required. In some cases, it is possible for both parties to agree to a nondisclosure agreement (NDA) as part of the conditions for agreeing to an informal resolution. Informal resolutions are permitted when a complaint is between two employees; and therefore, any agreement should be included in the employees personnel file and should be permitted to be shared (verbally or physically) with future employers. AB 1905 (Addis) closes a loophole that otherwise may have permitted an informal resolutions to include an NDA that would prohibit the institution from sharing the content of the informal resolution.

Settlements. Unlike informal resolutions which can occur up to an administrative determination of whether the complaint occurred or not, settlements can occur after a determination is made by the institution. Furthermore, as defined by the public higher education institutions, settlements (as defined by this measure) only occur when a respondent is an employee. Settlements are often used if it appears that the employee is hostile towards the institution and is likely to either sue or appeal and require a Skelly hearing that could result in an overturn of the disciplinary sanction.

In the report, “A Call to Action”, published by this Committee, Skelly hearings are described as an additional appeal process afforded only to employees of public higher education institutions. The report further highlights that:

“[o]n a basic level, a Skelly hearing is in place to provide employees due process when a disciplinary sanction is levied against them by their employer. For non-sex discrimination cases, a Skelly hearing is often the first opportunity for an employee to appeal a disciplinary sanction and provides them their first opportunity to examine the evidence being used to warrant the sanction. In the case of sex discrimination complaints, Skelly hearings offer a rehearing of the case before a Skelly hearing officer who then renders a final verdict. For the UC, their policies and procedures also include a version of a Skelly hearing or a secondary hearing process before a Skelly hearing officer. Essentially an employee can have a hearing with a neutral hearing officer on whether the sex discrimination complaint occurred, have a disciplinary sanction levied against them, request a Skelly hearing, and then have their case re-litigated before a Skelly hearing officer.”

Settlements occur when an institution is concerned the employee will not accept the outcome of a sexual harassment complaint and will appeal the disciplinary sanction to the Skelly hearing officer.

The “A Call to Action” report highlights the need for settlements as “[i]n the Joint Legislative Audit Committee hearing on August 31, 2023, concerns were raised by representatives from Cozen O’Connor and the CSU Vice Chancellor for Human Resources that disciplinary sanctions are often overturned by the Skelly hearing process.”

During briefings with the public postsecondary education segments for the “A Call to Action” report, Committee Staff were informed settlements are a tool utilized to remove employees from the campus, when the case is likely to be overturned by the Skelly hearing officer.

AB 1905 (Addis) prohibits the use of settlements for cases where the employee is accused and has been found to have more likely than not committed, sexual assault, sexual violence, or sexual battery. For purposes of this measure, sexual violence and sexual battery are defined as follows: sexual violence is the physical sexual acts perpetrated against a person without the person’s

affirmative consent, including rape; and, sexual battery means the intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent.

Furthermore, 1905 (Addis) prohibits the use of settlements when the complaint is filed by a student. While it is possible for "Skelly hearings" to result in the overturn of a disciplinary sanction and the return to campus of a faculty member, having an avenue by which a perpetrator can be rewarded with monetary settlements, letters of recommendation, or retreat rights is unfair to the campus culture and the restitution of the survivor.

A recommendation was made in "A Call to Action" that would have "limited the overturn of a disciplinary sanction by Skelly hearings for complaints involving a finding of sexual assault, sexual violence, sexual battery, domestic violence, dating violence, or sexual exploitation, to cases where there were procedural irregularity, institutional bias, or insufficient due process affected the outcome."

This recommendation in the "A Call to Action" report would have permitted the campuses to re-adjudicate the complaint, which could then lead to disciplinary sanctions being upheld instead of overturned.

Retreat Rights and Letters of Recommendation. Retreat rights are generally provided to faculty as an incentive for them to take administrative positions within a public higher education institution. The word generally is used because in the CSU Employment Union collective bargaining agreement, there is a section guaranteeing retreat rights to recently laid off classified staff. Retreat rights are contained within the agreement between the institution and the employee who is accepting the administrative position. In the collective bargaining agreements examined by Committee Staff, retreat rights are not always listed nor guaranteed by collective bargaining agreements, except for one position at one CCC district. Retreat rights once agreed to are permitted unless the individual is dismissed or if there are clauses permitting the revoking of the privilege.

During the August 31, 2023 Joint Legislative Audit Committee Hearing, members of the Legislature expressed ongoing concern with the CSU's policies for letters of recommendation and retreat rights, despite recent edits to the CSU policy. On March 24, 2024, the CSU Board of Trustees, approved an updated retreat rights and letters of recommendation policy. The new retreat right policy prohibits the authorization of retreat rights for anyone who has a finding of sexual harassment against them. The new policy also permits the CSU to evaluate whether a person should receive retreat rights rather than automatically granting them. AB 1905 (Addis), further prohibits the use of retreat rights in settlements and extends the CSU policy of prohibiting the use of retreat rights for those who have a finding of sexual harassment to the CCC and the UC.

Letters of recommendation are positive endorsements of an employee by their current or previous place of employment. In 2023, the California State Auditor found that administrators who violated the CSU's sexual harassment policies could still be eligible for a letter of recommendation. The previous policy at the CSU permitted letters of recommendation to be used even if the employee violated the CSU's sexual harassment policies; unless, the employee was terminated, not retained, or separated from the institution. AB 1905 (Addis) prohibits letters of recommendations for any employee who has any finding of sexual harassment, who elects to

resign from their position before a sexual harassment case is finalized, or enters into a settlement agreement with the institution.

Implications on collective bargaining agreements. A review of the collective bargaining agreements of the CSU faculty, CSU classified staff, four community college districts collective bargaining agreements for their classified staff and faculty, and two collective bargaining agreements for employees of the UC yielded the following results:

- Six collective bargaining agreements explicitly permitted the use of informal resolutions and provided for when in the complaint process the informal resolution could be used;
- Five collective bargaining agreements had language regarding settlements; specifically, stating that settlements could not be precedent making or ;
- Three collective bargaining agreements had language regarding retreat rights; but only one guaranteed it for a position on campus; and,
- Only one had a requirement that letter of recommendations be based on the content of the person's personnel file.

Precedence. Brown University has limitations on all informal resolutions. Brown University only permits one informal resolution per respondent. Prior to the Trump Administration's 2020 final regulations on Title IX, informal resolutions were not permitted for allegations of sexual assault.

The California State Legislature in the past has placed requirements for the adjudication of appeals requested by employees of the CCC and CSU when an institution wishes to levy a disciplinary action against the employee. The procedures are in the Education Code and in some cases do not require a re-negotiation of the collective bargaining agreement. Furthermore, iterations of bills have been heard by this Committee that would change the content of a collective bargaining agreement and have prevailed. However, what is being suggested here today is not subjective to collective bargaining in any of the collective bargaining agreements reviewed by Committee Staff.

Autonomy of the UC. The UC has autonomy from the Donahue Act in the Education Code where AB 1905 (Addis) would reside. Technically this bill "would" apply to all three segments; however, the UC would still have to agree to comply with the measure due to their constitutional autonomy.

Arguments support. The California Faculty Association, which represents over 29,000 faculty at the CSU, simplifies the need for the measure as, "AB 1905's provisions directly align with our values by reinforcing the State of California's policy against sexual discrimination and by introducing measures to ensure that individuals found guilty of sexual harassment are held accountable for their actions. Specifically, we applaud AB 1905's approach to eliminating 'retreat rights' for employees determined, through a final administrative decision, to have committed sexual harassment. Additionally, the prohibition against providing letters of recommendation for such individuals is a necessary measure to prevent the perpetuation of harmful behaviors in educational settings. AB 1905's stringent restrictions on settlements and informal resolutions—especially in cases involving students or accusations of sexual assault, violence, or battery—demonstrate a commendable effort to protect the most vulnerable members

of our community. The requirement for preliminary approval by campus chief executive officers and formal approval by the governing boards of settlements and informal resolutions underscores a commitment to transparency and accountability. The CFA recognizes the complexities of addressing sexual harassment within academic institutions. However, we believe that the guidelines proposed by AB 1905 provide a clear and effective framework for preventing, addressing, and ultimately reducing instances of sexual harassment.”

REGISTERED SUPPORT / OPPOSITION:**Support**

California Faculty Association

California State Student Association

California State University Employees Union (CSUEU)

Opposition

None on file.

Analysis Prepared by: Ellen Cesaretti-Monroy / HIGHER ED. / (916) 319-3960