

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 1790 (Connolly) – As Introduced January 4, 2024

SUBJECT: California State University: sexual harassment: implementing California State Auditor recommendations

SUMMARY: Requires the California State University (CSU) to implement the recommendations provided by the California State Auditor Report 2022-109 and requires the CSU to provide two reports to the Legislature on the CSU's progress in implementing the State Auditor's recommendations, as specified. Specifically, **this bill:**

- 1) Requires the CSU, by January 1, 2026, to implement the recommendations provided in the California State Auditor Report 2022-109. The recommendations that are to be implemented will include, but are not limited to the following:
 - a) Develop a standardized guideline for all formal investigations into allegations of sexual harassment by each CSU campus and the Chancellor's Office, including how to perform and structure the analysis to establish whether the sexual harassment occurred;
 - b) Develop a policy for each CSU campus and the chancellor's office that ensures they are able to maintain a process for tracking key dates related to the timelines of all sexual harassment cases and conducting investigation in a timely manner;
 - c) Establish a systemwide requirement for each CSU campus and the chancellor's office to address unprofessional conduct;
 - d) Develop a policy to ensure current and former employees found to have engaged in sexual harassment, including those who have received any disciplinary action that is less than termination is not given an official positive reference for employment;
 - e) Require that each CSU campus and the Chancellor's Office use the same case management system and track data consistently in their files for each sexual harassment case;
 - f) Issue a comprehensive best practice, including how campuses should survey their communities and increase awareness of options for reporting sexual harassment for each CSU campus; and,
 - g) Require the Chancellor's Office to conduct regular compliance reviews of each CSU campus to determine whether they are in compliance with the law, the CSU policy, and best practices in regards to sexual harassment policy.
- 2) Requires the CSU to submit an initial report by July 1, 2025, and a final report by December 2, 2026, to the Legislature on CSU's status in implementing the California State Auditor's (CSA) recommendations. The initial report will include a summary of the campus compliance reviews as required by (1) (g) of this analysis and will identify any systemic issues the CSU needs to address in its progress towards corrective action. The final report

may be included in the annual report of the handling of sexual harassment complaints pursuant to Education Code Section 66282.

- 3) Defines the following:
 - a) Chancellor's office as the Chancellor of the California State University; and,
 - b) "Sexual harassment" to have the same definition as sexual harassment in Education Code Section 66262.5.

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; and
 - 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 CSU system, made of 23 campuses, and bestows upon the CSU Trustees, through the Board of Trustees, the powers, duties, and functions with respect to the management, administration, and control of the CSU system (Education Code (EDC) Section 66606 and 89030, et seq).
- 2) Establishes the policy for the State of California that all persons should enjoy their postsecondary education free from discrimination regardless of their sex. Requires each postsecondary education institution in the state to provide a written policy on sexual harassment (policy), including information on the complaint process, on the institutions website. The policy is to include information on the specific rules and procedures for

reporting charges of sexual harassment and the available remedies and resources available to survivors both on and off campus. A copy of the policies shall be:

- a) Displayed in a prominent location, as defined, in the main administrative building or in another area on the campus or school site;
 - b) Provided to students during any orientation program for new students at the beginning of each quarter, semester, or summer session;
 - c) Provided to each faculty member, administrative staff, and all member of the support staff at the beginning of each school year or at the time the employee is hired;
 - d) Included in any publication of the institution that includes the comprehensive rules, regulations, procedure, and standards of conduct for the institution (EDC Section 66281.5).
- 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) Defines sexual harassment and sexual violence as the following:
- a) “Sexual harassment” as sexual battery, sexual violence, sexual exploitation, and unwelcomed sexual advances request 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 in which specific conditions are met. Clarifies sexual harassment of students is a form of sex discrimination prohibited by the Equity in Higher Education Act; and,
 - b) “Sexual violence” as a physical sexual act perpetrated against a person without the affirmed consent of the survivor, as defined. Physical sexual acts include rape, sexual batter, sexual exploitation, prostituting another person, trafficking another person, recording images of the person during the act without consent, distributions of said images without consent, or viewing a person’s intimate moments in which privacy is expected without consent, as defined (EDC Section 66262.5).

FISCAL EFFECT: Unknown

COMMENTS: *Purpose.* In February 2022, *USA Today*, published an investigative report on how Fresno State University’s President had mishandled sexual harassment complaints due to his personal relationship with the respondent¹. The negligence was amplified, as the Fresno State President had been promoted to the Chancellor of the CSU. In the weeks following the exposé, the Chancellor resigned his position, but the trust between the leadership of the system and the campus community was fractured.

Despite the Chancellor’s Office of the CSU launching an independent investigation into Fresno State University’s handlings of the administrator’s conduct, the CSU faculty petitioned the

¹ <https://www.usatoday.com/in-depth/news/investigations/2022/02/03/cal-state-chancellor-joseph-castro-mishandled-sexual-harassment-fresno-state-title-ix-frank-lamas/9109414002/>

California State Legislature to launch a separate and independent investigation into how all 23 campuses handle sexual harassment complaints from students and employees. Faculty saw the incident with then-Chancellor Castro not as an isolated event, but rather as a culmination of a larger systemic issue of excusing away the actions of perpetrators due to their contributions to the overall campus community. San José State University, only months earlier, had been investigated by the U.S. Department of Justice for their mishandling of sexual harassment cases. The investigation compared the perpetrator to Larry Nasser as it was found San José State University had failed for more than a decade to adequately respond to complaints of sexual harassment, including sexual assault, of female student-athletes by an athlete trainer.

In response to the petition and overwhelming public concern, the California State Legislature asked the California State Auditor to conduct an audit of the CSU to determine if the system was appropriately addressing allegations of sexual harassment. The audit investigated the Chancellor's Office, Fresno State University, San José State University, and Sonoma State University. The original letter requesting the audit was signed by multiple members of the Legislature and was seen as a bipartisan effort to hold one of the largest public higher education institutions accountable. The audit was published on July 18, 2023, and on August 31, 2023, the Joint Legislative Audit Committee (JLAC) in a joint hearing with the Assembly Committee on Higher Education and the Senate Committee on Education, heard from the State Auditor on their findings and recommendations to improve how the CSU handles sexual harassment complaints. The hearing also included testimony from the CSU on the corrective actions the system would be taking in response to the audit and from students, faculty, and staff on their reaction to the audit.

During the August 31, 2023 hearing, it became clear despite the Board of Trustees conducting an independent audit of all 23 CSU campuses complete with systemwide and campus-based recommendations for change, promising to implement every recommendation from both audits, and changing internal policies, the trust gap between students, faculty, staff, and the administration has been broken. The sentiments of distrust were encapsulated in the California Faculty Association's testimony during the JLAC hearing:

“Inherently the University administration, from legal counsel to the Vice Presidents, have an obligation to protect the institution. The reality is that there are too many cross interests and power dynamics at play on each campus that lead to inequitable situations & solutions. The fox can no longer guard the chicken coop. The Cozen O'Connor report helpfully identifies the need to improve TRUST and accountability. Focusing on the need for non-campus based, independent oversight is essential. We appreciate that the lack of resources for Title IX offices was identified as a problem, however we are concerned with the potential for more resources to flow into and perpetuate a flawed system.”

AB 1790 (Connolly) seeks to codify the recommendations of the State Auditor, thereby making it a mandate for the CSU to comply with the recommendations, and institutes a public reporting requirement on the progress the CSU is making on implementing the recommendations.

As explained by the author, “by implementing AB 1790, we can make our California State Universities safer for students and faculty by ensuring sexual harassment and assault allegations don't slip through the cracks. The recommendations provided by the State Auditor regarding CSU policies is critical to the livelihood and wellbeing of our local students at Sonoma State University and campuses throughout the state.”

AB 1790 (Connolly) represents a first step in restoring trust between the campus community and the administration of the CSU by providing a layer of transparency by not just mandating the CSU comply with the best practice recommendations of the State Auditor; but, also requiring the CSU conduct the implementation in a transparent manner.

California State University: It did not adequately or consistently address some allegations of sexual harassment (2022-109). The investigation of the CSU conducted by the California State Auditor, was conducted over three campuses and also examined the role of the Chancellor's Office in monitoring the compliance of campuses with the system's sexual harassment policy. The Auditor reviewed 40 cases of alleged sexual harassment by CSU employees and determined the following:

- Complaints of sexual harassment are not adjudicated in a clear and analogous manner despite each campus being required to follow the same policy for how cases are to be adjudicated;
- Disciplinary sanctions were not always implemented despite conclusive findings of sexual harassment; and,
- The Chancellor's Office has not provided oversight or regulation over the implementation of the system's policies.

Of the 40 sexual harassment cases reviewed by the Auditor, the following was determined:

“We found that campuses lacked clear rationales for closing 11 of the 15 cases at intake, causing us to question whether they should have investigated the allegations. In another seven cases, campuses conducted investigations in which we identified deficiencies that raised concerns about the reasonableness of their determinations that sexual harassment had not occurred. Further, more than half of the 40 case files we reviewed were missing important documentation, and nearly two-thirds of the 21 investigations we reviewed exceeded CSU's established time frames for completion.”

The Auditor also found in seven cases the campuses had not taken the corrective action against the respondent nor that disciplinary sanctions had been levied when required by the adjudication process for findings of sexual harassment.

To help take corrective action, the Auditor provided 16 multi-faceted recommendations to the CSU with varying due dates for implementation. Due to their length and scope, the recommendations can be found on the State Auditor's website, along with the CSU's responses and updates on their implementation of the recommendations.² The CSU provided a 60-day and 6-month response on their work to address the recommendations provided by the State Auditor. The State Auditor also provided response to the CSU's implementation updates as to whether the system is implementing the recommendations with fidelity.

At the time of the publication of this analysis, only one recommendation has been fully implemented. AB 1790 (Connolly) requires the CSU to complete all the recommendations found

² <https://www.auditor.ca.gov/reports/responses/2022-109/all>

in the State Auditor's report by January 1, 2026 which is six months before the final due date as suggested by the State Auditor.

A Call to Action report. In January 2021, and then in March 2021, President Biden issued two executive orders directing the U.S. Department of Education to review the Trump Administration's Title IX regulations to investigate whether the regulations were upholding the intent and spirit of Title IX in protecting all people from being discriminated against on the basis of sex, gender identity, and sexual orientation. To comply with the executive order, the U.S. Department of Education conducted a listening tour where they heard from stakeholders regarding how the regulations had directly impacted students, student-athletes, parents, and practitioners. The intent of the listening tour was to gather information that would inform the decisions to adjust and revise the current Title IX regulations. In response to the efforts of the U.S. Department of Education, the Committee Staff of the Assembly Higher Education Committee began reviewing how the State of California could revise the Education Code to strengthen California's protection of students on campus from all forms of discrimination.

After over 400 hours of research, trainings, and briefings, the Assembly Higher Education Committee published a comprehensive report on how postsecondary education institutions can address sex discrimination and provide educational justice on campus³. The report included an overview of the role the State Auditor plays in providing oversight for postsecondary education institutions:

“The other tool available to the Legislature is to have the California State Auditor conduct an audit to determine whether a higher education institution complies with state laws. In the last 10 years, the State Auditor has audited the California State University (CSU) and the University of California (UC) twice to assess their handling of sex discrimination claims. Many recommendations were made in each of the audits and it was found that CSU has fully implemented most, but not all, of the recommendations made by the State Auditor in audits before 2023. Committee Staff note the CSU is still working on implementing recommendations from the most recent 2023 audit. The UC has fully implemented the recommendations made by the State Auditor. The California State Auditor is not an enforcement agency, but rather an oversight agency. The Auditor conducts audits to answer questions posed by the Legislature, but the Auditor does not have enforcement power to force agencies' to comply with the audit recommendations.”

AB 1790 (Connolly) will rectify the lack of enforcement of past audits, by mandating the CSU comply with all of the recommendations in the California State Audit Report 2022-109 published in July 2023.

Arguments in support. The California State University Employees Union, representing 36,000 non-faulty across 23 State University campuses, support AB 1790 as, “in 2023, the State Auditor's office surveyed 40 cases of alleged cases of sexual harassment and discovered various problems, including cases closed without clear rationale due to unclear guidelines in CSU's sexual harassment policy, complaints dismissed without investigation based on the CSU's definition of sexual harassment, and inconsistencies in both the investigations conducted and corrective actions taken. This measure will require the Chancellor's Office to take a more active role in providing oversight, developing standardized guidelines for all formal investigations, and

³ <https://ahed.assembly.ca.gov/media/3122>

establishing systemwide requirements to address unprofessional conduct, establishing much needed oversight and accountability at our campuses. California has a responsibility to hold the CSU accountable for the pervasive sexual harassment issues across its campuses. Students, faculty, and staff deserve to live, work, and learn in a safe environment.”

The Cal State Student Association, articulates the need for AB 1790 (Connolly) as, “AB 1790 addresses critical shortcomings highlighted by the recent California State Auditor's audit, mandating the implementation of recommendations to improve CSU's handling of sexual harassment cases. This includes active oversight from the Chancellor's Office, standardized investigation guidelines, and systemwide policies to address unprofessional conduct. As students, we emphasize the urgency of enacting AB 1790 to prioritize the safety and well-being of all members of the CSU community. This bill represents a crucial opportunity to ensure transparency and accountability in addressing systemic failures.”

Committee comments. As previously mentioned, the State Auditor has 16 multi-pronged recommendations for the CSU to complete by July 2026. Of the recommendations only one is required by July 2026 and it is the requirement for the CSU to establish a case management system. AB 1790 (Connolly) has the CSU implementing all recommendations by January 1, 2026, seven months before the July 2026 deadline of the case management system.

Committee Staff suggest AB 1790 (Connolly) be amended to have all the recommendations completed by July 1, 2026 in compliance with State Auditor's deadlines.

AB 1790 (Connolly) has the CSU providing the Legislature two reports, which will include a summary of the CSU's progress in implementing the recommendations (which will now be mandates) and a summary of the campus compliance reviews. State Auditor recommendation 14 has the CSU conducting regular compliance reviews of its campus Title IX offices to determine whether they are complying with state and federal law, state law, and CSU policies. The recommendation is due July 2024 and the recommendation further requires the CSU to make public the results of the surveys.

According to the CSU, the State Auditor views this recommendation as complete if the CSU has begun their compliance review process, not completed the compliance review process. The CSU's current plan is to review 4-5 campuses a semester. Therefore every three years the CSU will have conducted a compliance review of every campus.

The State Auditor's recommendation does not provide a timeline for the CSU to conduct the audits and therefore the current plan stated above would be seen as incompliance with the AB 1790 (Connolly). Therefore in the first report, the Legislature should expect to see at least 8 campus reviews in the first report and 16 in the final report.

To correct a conflict in code section, to ensure the reports are provided to the appropriate committees in the Legislature, to ensure the due date for all recommendations is aligned with State Auditor's deadlines, and to clarify the Author's intent, the Committee has suggested and the Author has agreed to the following amendments:

- 1) Amends the Code Section from 66283 to 66294.

~~SECTION 1. Section 66283 is added to the Education Code, to read:~~

~~66283.~~

SECTION 1. Section 66294 is added to the Education Code, to read:

- 2) Changes the due date for the recommendations from January 1, 2026 to July 1, 2026 in order to align with the due dates assigned by the State Auditor:
 - a) On or before ~~January~~ *July 1, 2026*, the California State University shall implement the recommendations provided in the California State Auditor Report 2022-109, dated July 18, 2023, including, but not limited to, by doing all of the following:
- 3) Amends subdivision (b) subparagraph (1) and adds subparagraph (3) to read as follows:
 - (b) (1) The California State University shall submit an initial report on or before July 1, 2025, and a final report on or before December 1, 2026, to the ~~Legislature~~ *Legislature, the Assembly Committee on Higher Education, the Joint Legislative Audit Committee, and the Senate Committee on Education* on the status of implementing the California State Auditor recommendations, ~~including~~ *including, if completed at the time of the report, any* summarized results from the campus compliance reviews conducted pursuant to paragraph (7) of subdivision (a), and identification of any systemic issues the California State University ~~needs to address in its progress towards taking corrective action.~~ *has in meeting the recommendations of the California State Auditor Report 2022-109, dated July 18, 2023.*
 - (2) The final report required pursuant to paragraph (1) may be included as part of the annual report required by Section 66282.
 - (3) *Reports submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.*

Related Legislation – A Call to Action Bill Package. In response to the recommendations put forth by the Assembly Higher Education Committee, 12 bills by 11 different authors were introduced. In addition to AB 1790 (Connolly), the bills included in the bill package are as follows:

- 1) AB 810 (Friedman) of 2024, currently pending referral in the Senate Rules Committee, would require the CCC, the CSU, and requests both the UC and private postsecondary education institutions, to implement a policy of requiring potential employees for academic, athletic, and administrative positions to disclose whether they have been the subject of a finding of sexual harassment and to permit the institution to contact past employers to inquire whether the applicant had any substantiated allegations of misconduct.
- 2) SB 1166 (Dodd) of 2024, currently pending a hearing in the Senate Committee on Appropriations, would require the CCC, the CSU, and requests the UC to provide annual reports to the Legislature on the timelines and outcomes of sexual harassment complaints adjudicated by campuses within the system.
- 3) SB 1491 (Eggman) of 2024, currently pending a hearing in the Senate Committee on Judiciary, provides an array of additional supports and protections for lesbian, gay, bisexual, asexual, pansexual, transgender, gender-nonconforming, intersex and two-spirit faculty, staff, and students at postsecondary education institutions throughout the State.

- 4) AB 1905 (Addis) of 2024, 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. AB 1905 (Addis) passed out of this Committee with a 11 - 0, and is currently pending a hearing in the Assembly Public Employment and Retirement Committee.
- 5) AB 2047 (Mike Fong) of 2024, is scheduled to be heard in the Assembly Higher Education Committee on April 16, 2024. This measure would the CCC, CSU, and the UC to establish a systemwide Office of Civil Rights and requires the system to hire a systemwide Title IX coordinator.
- 6) AB 2048 (Mike Fong) of 2024, is scheduled to be heard in the Assembly Higher Education Committee on April 16, 2024. The measure would require each campus of the CSU and UC, and each community college district, to establish a Title IX office in a private space for students and employees to disclose complaints of sex discrimination and establishes the responsibilities of the Title IX office in addressing and preventing sex discrimination on college campuses.
- 7) AB 2326 (Alvarez), is scheduled to be heard in the Assembly Higher Education Committee on April 16, 2024, delineates which entities with the public higher education institutions are responsible for ensuring campus programs are free from discrimination and who has the authority to oversee and monitor compliance with state and federal laws; and, requires the leadership of all three public higher education institutions to present to the Legislature their efforts in addressing and preventing discrimination on campus..
- 8) AB 2407 (Hart) of 2024, is scheduled to be heard in the Assembly Higher Education Committee on April 16, 2024, and requires the State Auditor to conduct an audit every three years of the CCC, CSU, and UC regarding their respective handling and investigation of sexual harassment complaints.
- 9) AB 2492 (Irwin) of 2024, is scheduled to be heard in the Assembly Higher Education Committee on April 16, 2024, and would require each public postsecondary education institution to establish the positions of a confidential student advocate, a confidential staff and faculty advocate, and a confidential respondent services coordinator.
- 10) AB 2608 (Gabriel) of 2024, is scheduled to be heard in the Assembly Higher Education Committee on April 16, 2024 and would expand the requirements for annual training for students on sexual violence and sexual harassment to include information on drug-facilitated sexual assault and information related to confidential support and care resources.
- 11) AB 2987 (Ortega) of 2024, is scheduled to be heard in the Assembly Higher Education Committee on April 16, 2024. The measure would require each campus of the CSU and CCCs, and requests each campus of the UC, to provide status updates on the outcomes of complaints of sex discrimination to complainants and respondent; and, requires/requests that notice of a disciplinary action to the respondent be provided to the respondent within three schooldays of a decision.

REGISTERED SUPPORT / OPPOSITION:

Support

California Faculty Association
California State Student Association
California State University Employees Union (CSUEU)
Genup (generation Up)
Safe Campuses Coalition

Opposition

None on file.

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