

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 2407 (Hart) – As Introduced February 12, 2024

SUBJECT: Public postsecondary educational institutions: sexual harassment complaints: state audits

SUMMARY: Authorizes the State Auditor, beginning on January 1, 2026, and every three years thereafter, to conduct an audit of the California Community Colleges (CCC), the California State University (CSU), and the University of California (UC) regarding their handlings and investigations of sexual harassment complaints and to report the findings to the Legislature. Specifically, **this bill:**

- 1) Authorizes the State Auditor, beginning on January 1, 2026, and every three years thereafter, to conduct an audit of the CCC, the CSU, and the UC regarding their handlings and investigations of sexual harassment complaints. The audit will do the following:
 - a) Evaluate compliance with applicable federal and state laws in cases where the respondent of a sexual harassment complaint is a student, faculty member, or staff member;
 - b) Evaluate efforts to coordinate and provide consistency and oversight in the institution's response to sexual harassment complaints and determine if those efforts are in compliance with state and federal laws;
 - c) Review the investigatory process of sexual harassment complaints to determine if the process can be improved;
 - d) Determine if policies and procedures regarding sexual harassment complaints are adequate to prevent, detect, and address sexual harassment;
 - e) Analyze the consistency, reasonableness, and timeliness of discipline administered by the institution; and when possible, whether the discipline administered was proportional to the conduct, fulfilled its intent to deter future harassment, and was aligned with state and federal laws, the system's policies, and best practices.
- 2) Requires the Auditor to report the findings of each audit conducted to the respective chairs of the Assembly Committee on Higher Education, the Senate Committee on Education, and the Joint Legislative Audit Committee.
- 3) Defines the sexual harassment and the terms contained within the definition of sexual harassment for purposes of the audit and the State Auditor.

EXISTING LAW:

- 1) Requires the State Auditor to conduct an audit every three years of a sample of no less than six institutions of postsecondary education in California that receive federal student aid and to evaluate the institutions compliance with the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (20 U. S. C. Sec 102 (f)(1) and (5)). Declares it is the intent of the Legislature for institutions of higher education that are subject to the Jeanne Clery

Disclosure of Campus Security Policy and Crime Statistics Act should adopt a policy that allows victims or witnesses to report crimes to the campus police department or to campus security on a voluntary, confidential, or anonymous basis (Education Code (EDC) Section 67382).

- 2) Establishes the CCC under the administration of the BOG of the CCC, as one of the segments of public postsecondary education in California. The CCC shall be comprised of community college districts (EDC Section 70900).
- 3) Trustees, through the BOT, the power, duties, and functions with respect to the management, administration, and control of the CSU system (Education Code (EDC) Sections 66606 and 89000 et. Seq.).
- 4) 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).

FISCAL EFFECT: Unknown

COMMENTS: *Need for the measure.* As illustrated by the author, “AB 2407 will foster transparency, accountability, and safer learning environments within the State’s colleges and universities. In 2023, an audit of the CSU revealed that they mishandled of sexual harassment allegations, including inadequate disciplinary measures, delays in investigations, and insufficient documentation of cases. Eleven of these cases were deemed unsubstantiated and closed at intake without proper documentation or rationale.”

Furthermore, “AB 2407 will require the State Auditor to conduct audits of discrimination policies at the CSU, UC and CCC every three years. The State Auditor will assess harassment prevention and investigation policies, potential process delays, appropriate disciplinary actions, and proper documentation of the investigations. This bill reinforces the State's commitment to ensuring the safety and well-being of students and staff within California’s higher education institutions.”

A Call to Action. To understand how higher education institutions are preventing and addressing sex discrimination on campuses, staff from the Assembly Committee on Higher Education hosted fact-finding briefings with representatives from the CCC, the CSU, the UC, and various California Independent Colleges and Universities. The “A Call to Action” report is a synopsis of the information gleaned from the briefings and over 400 hours of research as to how the State can partner with higher education institutions to prevent and address sex discrimination in all its forms on campuses throughout California.

The “A Call to Action” report attempted to answer, “what tools are available to the Legislature to hold postsecondary education institutions accountable in fulfilling their obligation to provide campuses that are free from sex discrimination?” The report concluded the following:

“Unlike [the State’s] Federal counterpart the State does not have a regulatory body to provide an additional layer of transparency and protection for students, faculty, and staff who may wish to provide evidence of continual sexual harassment and discrimination.”

“The report further highlighted one of the tools “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.”¹

The State Auditor is not a regulatory agency nor can the State Auditor compel an agency they audit to implement their recommendations, however it is the only independent investigatory agency in California that could provide information as to how the California public postsecondary education institutions are complying with state and federal laws regarding the prevention of sex discrimination on collegiate campuses.

In addition to this measure, there are four bills in the “A Call to Action” bill package that contain a report mechanism from the public higher education institutions; however, AB 2407 (Hart) is uniquely different as it requires an independent agency to review whether the CCC, CSU, and UC are in compliance with state and federal laws pertaining to the prevention of sex discrimination.

The need for an outside agency to regulate compliance was mentioned by the “A Call to Action” report, specifically: “In conversations with faculty, staff, and students from the three public postsecondary institutions, Committee Staff asked if the State should consider establishing an office where complaints could be evaluated by a neutral third party. With the exception of the UC Academic Senate, every group resoundingly agreed on the need for additional oversight and regulation due to the mistrust in the higher education institutions’ ability to address sex discrimination.”

AB 2407 (Hart) works in tandem with other bills in the “A Call to Action” bill package by providing students, faculty, and staff their requested “independent agency” who will review compliance of the system with state and federal laws.

Past State Audits and outcomes. The below figure demonstrates the number of times in the last 10 years the public postsecondary education institutions have been audited on their handling of sexual harassment cases by the California State Auditor:

| California Community Colleges | California State University | University of California |
|-------------------------------|-----------------------------|--------------------------|
| 0 | 2 | 2 |

Source: California State Auditor

¹ <https://ahed.assembly.ca.gov/media/3122>

One of the audits listed above was a joint audit between the CSU and the UC. In addition to the above audits, the Education Code does require the California State Auditor to conduct an audit every three years on whether postsecondary education institutions in California are complying with the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (20 U. S. C. Sec 102 (f)(1) and (5)).

In 2013, Speaker-Emeritus Anthony Rendon requested the first audit after nine women from UC Berkeley filed a complaint with the U.S. Department of Education Office for Civil Rights. The women alleged the University was violating their rights under Title IX. The letter specifically asked the State Auditor to examine key areas such as reporting, training, and adjudication of sexual harassment complaints to determine if the campuses of UC Berkeley, UC Los Angeles, Chico State University, and San Diego State University were fulfilling their obligation to provide educational programs free from discrimination and restore educational equity when sexual harassment was reported. The State Auditor made 73 recommendations for the CSU and UC systems, for the campuses, and to the Legislature. The recommendations made to the CSU and UC were implemented according to the State Auditor.²

In 2017, then Assemblymember Adrin Nazarian asked for an audit of the UC as it had been reported by the *San Francisco Chronicle* that the UC experienced 113 cases of sexual harassment between 2013 and 2016. Of those 113 cases, 57 involved physical contact and only 25 of the perpetrators had been fired. Released in 2018, the audit had 32 recommendations, all of which were implemented, according to the State Auditor³.

In response to the audit in 2017, the Joint Legislative Audit Committee, the Assembly Higher Education Committee, and the Assembly Select Committee on Campus Climate, held multiple hearings throughout the State on how hold the CSU and UC accountable and how to better protect students by doing more to prevent, respond to, and resolve incidents of sexual harassment.

According to former Senator Hannah Beth Jackson, this audit in 2017, was the impetus for her work on providing additional protections for students on postsecondary education institutions. Her recommendation to the California State Legislature, when interviewed by Committee Staff, was to audit the institutions because audits help inform the Legislature of areas where policy can be strengthened.

The final and most recent audit was requested by then Assemblymember Rudy Salas in 2022 and was seen as a bipartisan response to an investigative report from *USA Today*, that then-Chancellor Castro had mishandled sexual harassment cases when he was the president of Fresno State University. The letter asked for an audit to be conducted to determine if the CSU 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 audit made 16 multi-faceted recommendations to the CSU with varying time frames for implementation between July 2024, January 2025, and July 2026.

As of March 2024, the CSU has completed one of the 16 recommendations with rest pending implementation by their due date.

² <https://www.auditor.ca.gov/reports/recommendations/2013-124>

³ <https://www.auditor.ca.gov/reports/recommendations/2017-125>

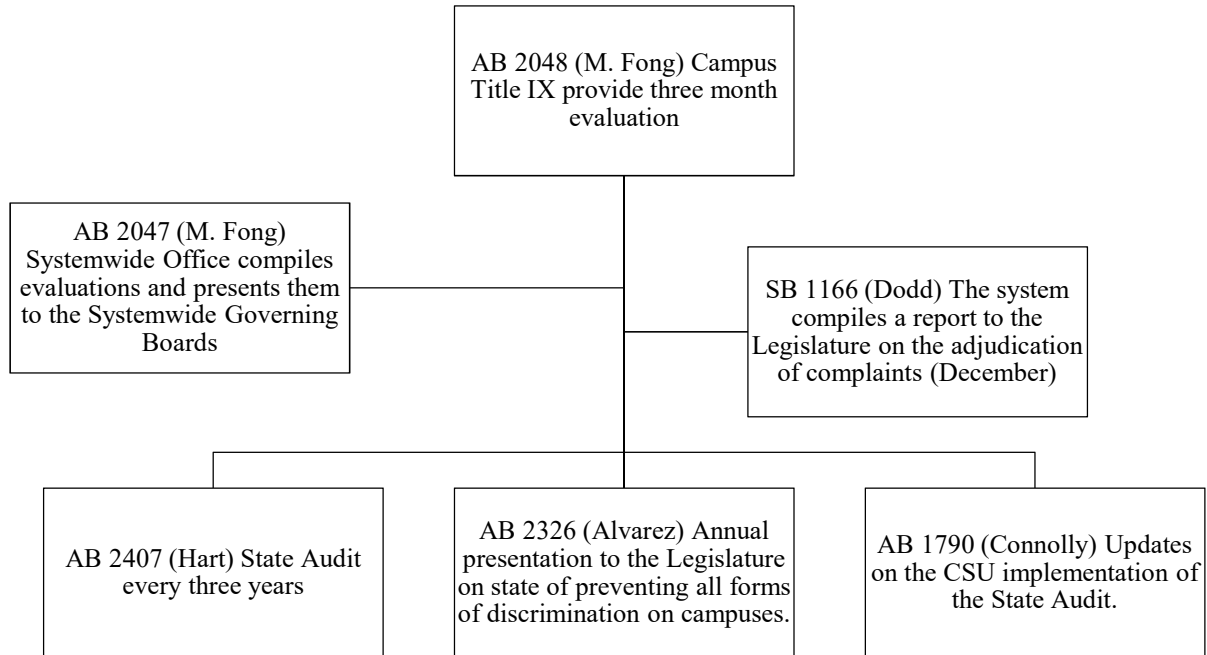
While the “A Call to Action” report was critical of audits, due to the lack of enforcement, each recommendation from the previous audits have been, according to the State Auditor, conclusively implemented. Yet, in the State Auditor’s 2023 audit of the CSU a finding was made that the CSU had implemented a recommendation from the State Auditor from a 2014 audit, but stopped the ongoing compliance measure due to budget constraints and lack of personnel.

AB 2407 (Hart) will provide ongoing audits for the CCC, CSU, and UC systems and provide transparency and if necessary an avenue of accountability by which the Legislature could adopt laws based on the recommendations provided by the State Auditor to help improve the public higher education institution’s response to sexual harassment on campuses.

Arguments in support. The California State Employees Union, representing 36,000 non faculty staff across the 23 State University campuses, dictate the need for AB 2407, as “Despite the existence of these protections, sexual harassment and assault remain disturbingly pervasive across higher education institutions. In 2023, the State Auditor reviewed 40 cases of Title IX violations at CSU campuses. The audit revealed mishandling of sexual harassment allegations, including inadequate disciplinary measures, delays in investigations, and insufficient documentation of cases. Requiring the State Auditor to conduct regular audits of discrimination policies and assess the application and enforcement of these policies will help foster much needed transparency and accountability across our state campuses. Students, faculty, and staff deserve to live, work, and learn in a safe environment and the ongoing audits will serve as a foundation upon which the State and our educational institutions can partner to address the epidemic of sexual harassment and assault across our higher education campuses.”

The Faculty Association of the California Community Colleges, states the need for AB 2407, stating that “the audits will evaluate compliance with laws, policies, and best practices, and the findings will be reported to specified legislative committees. FACCC has provided focused representation for community college professors to promote funding, academic freedom, faculty rights, professional development, student services, retirement benefits, and more since 1953. Our organization strives to create an educational environment that is equitable, accessible, appropriately funded, and led by a diverse and empowered faculty. FACCC strongly supports AB 2407 because it will help ensure that sexual harassment complaints are handled appropriately and consistently across the state's public higher education institutions. By requiring regular audits, this bill will hold colleges and universities accountable for adhering to best practices and complying with state and federal sexual harassment laws. This increased oversight and transparency will make it safer for students, faculty, and staff, which is essential for fostering a positive learning and working environment.”

Committee comments. AB 2407 (Hart) is the final bill of the “A Call to Action” bill package as it provides independent audits to help the Legislature understand where the institutions may need additional assistance in their compliance with state and federal laws pertaining to the prevention of sex discrimination. The below diagram illustrates how AB 2407 (Hart) will work with the other “A Call to Action” bills on reporting:



The Committee and Author's office are engaged in continuing negotiations with CSU, UC, and the California State Auditor to address the scope of the measure to ensure the recommendations as provided are detailed and attainable by the systems.

Related legislation. 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 2407 (Hart), 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 1790 (Connolly), is scheduled to be heard in the Assembly Higher Education Committee on April 16, 2024, and requires the CSU to implement the California State Auditor's findings by January 1, 2026, and to provide two reports to the Legislature on the implementation of the recommendations, as described.

- 5) 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.
- 6) 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.
- 7) 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.
- 8) 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.
- 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 State Student Association
California State University Employees Union (CSUEU)
Faculty Association of California Community Colleges

Safe Campuses Coalition
University of California Student Association

Opposition

None on file.

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