

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 2492 (Irwin) – As Amended March 11, 2024

SUBJECT: Public postsecondary education: sex discrimination complaints: advocates and coordinators

SUMMARY: Establishes the role of confidential advocates and confidential respondents on campuses of the California Community Colleges (CCC), the California State University (CSU), and the University of California (UC). Specifically, **this bill:**

- 1) Requires each campus of the CCC, each campus of the CSU, and each campus of the UC to do the following:
 - a) Establish a role and designate a person by July 1, 2026, to serve as a confidential student advocate who will help student survivors of sexual harassment or sex discrimination on campus. The confidential student advocate will do the following:
 - i) Receive training on the campus nondiscrimination policy, campus policies on student misconduct and the proper procedures for filing compliant so sex discrimination or student misconduct on campus;
 - ii) After receiving permission from the student, provide confidential emotional support and assistance to the student;
 - iii) After receiving permission from the student, inform the student of their rights and options including the following:
 - (1) Where the student can access campus resources such as psychological counseling, medical care, emergency housing, transportation, and academic support, as necessary;
 - (2) The various reporting options available to the student, including how to report an incident to law enforcement, the campus or district Title IX office, and the option to not report;
 - (3) How complaints are processed according to the campus adjudication process for complaints of discrimination; and,
 - (4) The campus policies prohibiting retaliation against a person who chooses to report an incident of sex discrimination;
 - iv) Assist the Title IX coordinator in providing supportive measure to students; and,
 - v) Assist a student who chooses to file a formal report with either law enforcement, the Title IX office, or both with the reporting process.
 - b) Establish a role and designate a person by July 1, 2026, to serve as a confidential staff and faculty advocate to help employees who have experienced sexual harassment or sex

discrimination on campus. The confidential staff and faculty advocate will do the following:

- i) Receive training on the campus nondiscrimination policy, campus collective bargaining agreements, and the proper procedures for filing compliant so sex discrimination or student misconduct on campus;
 - ii) After receiving permission from the staff or faculty, provide confidential emotional support and assistance to the staff or faculty;
 - iii) After receiving permission from the staff or faculty, inform them of their rights and options including the following:
 - (1) Provide confidential emotional support and assistance to the staff or faculty member;
 - (2) Inform the staff or faculty of the following:
 - (a) Where the staff or faculty can access campus resources such as psychological counseling, medical care, emergency housing, and transportation, as necessary;
 - (b) Campus policies on sexual harassment and the various reporting options available to the campus faculty; and,
 - (c) Campus policies prohibiting retaliation against a person who chooses to report an incident of sex discrimination;
 - (3) How complaints are processed according to the campus adjudication process for complaints of discrimination; and,
 - iv) Assist the staff or faculty who chooses to file a formal report with either law enforcement, the Title IX office, or both with the reporting process.
- c) Establish a role and designate a person by July 1, 2026, to serve as the confidential respondent services coordinator to work with students, staff, and faculty, who have been accused of sex discrimination, to provide confidential emotional support and assistance. The confidential respondent services coordinator will be familiar with the campus nondiscrimination policy, any rules or policies adopted by the public postsecondary education institution on the expectations or standards for behavior of students, faculty, or staff, and the proper procedures for filing a complaint of sex discrimination. The confidential respondent services coordinator will do the following:
- i) With permission from the respondent, provide emotional support and assistance to the respondent;
 - ii) With permission from the respondent, inform the respondent of the following:
 - (1) Rights provided to the respondent in the campus nondiscrimination policy;
 - (2) What transpires during the investigation and adjudication process;

- (3) Where the respondent can access campus and community resources for psychological counseling, legal services, alternative housing, academic changes, and any other needs; and,
 - iii) Act as the student advisor provided by the public postsecondary education institution, as defined.
- 2) Clarifies the positions established in (1) of this analysis, are exempt from the requirements of a responsible employee, as enumerated in Education Code Section 66381.8; are independent from the Title IX office, as defined; and, are subject to supervision from the chief executive officer of the campus.
- 3) Permits a postsecondary education institution to do any of the following:
 - a) Have the same person to fulfill the positions of a confidential student advocate and a confidential staff and faculty advocate; and,
 - b) Have sexual assault and domestic violence counselors, described in Education Code Section 67385, to fulfill the position of confidential student advocate or the position of confidential staff and faculty advocate, or both.
- 4) Requires any of the confidential positions created by (1) of this analysis to require permission from either the student, staff, or faculty that they are assisting before disclosing the person's identity or any information that could reasonably be expected to reveal their identity to either the postsecondary education institution or any other authority unless otherwise required by state or federal law.
 - a) The above (4) of this analysis, is intended to maintain confidentiality, preserve any applicable privileges, as defined, and protect privacy of students, staff, or faculty alleging sex discrimination, and respondents accused of sex discrimination that receive assistance from the confidential positions enumerated in (1) above.
- 5) Clarifies, nothing will limit either party's right of cross-examination of the confidential positions in (1) of this analysis in a criminal or civil proceeding if the confidential position of (1) testifies after written consent has been given by the individual they were assisting.
- 6) Defines for purposes of the measure:
 - a) "Chief executive officer" to mean the president of a community college campus, or a CSU campus, or the chancellor of a UC campus;
 - b) "Public postsecondary education institution" mean any campus of the CCC, CSU, or UC; and,
 - c) "Supportive measures" means nondisciplinary, nonpunitive individualized measures offered by a public postsecondary educational institution to sex discrimination complainants or respondents without fee or charge to restore or preserve a party's access to education programs or activities and providing support during the grievance procedures as established by the campus nondiscrimination policy.

- 7) Establishes, if the Commission on State Mandates determines that this bill contains cost mandated by the state, the state shall reimburse the applicable entities.

EXISTING LAW: *Federal law.*

- 1) Stipulates that 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).
- 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. Permits complainants and respondents to have advisors throughout 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) 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 (EDC Section 66262.5 and 212.5).
- 2) Requires the governing board of a community college district, the Trustees of the CSU, the Board of Directors of San Francisco Law School, and the Regents of the UC to adopt and implement a written procedure or protocols related to sexual assault or domestic violence, as provided. The protocol shall be reviewed and updated annually in collaboration with sexual assault and domestic violence counselors, and student, faculty, and staff representatives. Authorizes that sexual assault and domestic violence counselors at public colleges and universities be independent from the Title IX office and prohibits sexual assault and domestic violence counselors from releasing the identity of the victim without first obtaining specific permission (EDC Section 67385).

FISCAL EFFECT: Unknown.

COMMENTS: *Author's intent.* As simplified by the author, “California’s colleges and universities are filled with extremely bright and dedicated students who come from around the world to study, conduct research, participate in athletics, and better their lives. At times their higher education experience presents them with challenges related to sexual harassment and sex discrimination. Many students and staff are not prepared to navigate these proceedings on their own. AB 2492 would provide students, faculty, and staff involved in Title IX adjudication processes a confidential advocate or respondent coordinator. These positions provide support to those navigating a Title IX hearing on both the complainant and the respondent side. California’s institutions of higher education must be equipped with resources that appropriately support their students, faculty, and staff during Title IX proceedings.”

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.¹

The “A Call to Action” report has a section entitled “should colleges and universities have confidential advocates and respondent coordinator?” Below is an excerpt from the report:

“Confidential advocates provide a continuum of care for survivors and play an integral role in restoring educational equity after a discriminatory event. Confidential advocates are the key architect in building a blueprint for a survivor’s recovery as they are responsible for connecting the survivor with on- and off-campus resources to help facilitate healing after the alleged incident.

Addressing Gender-Based Violence on Campuses: Guide to a Comprehensive Model, establishes confidential advocates as the first line of action when it comes to helping survivors determine the next steps. In addition to connecting survivors to comprehensive care services, confidential advocates assist survivors in navigating the difficult choices of reporting in a manner that leaves the survivor empowered to choose what is best to meet their individual needs (Campus Technical Assistance and Resource Project). Confidential advocates provide trauma-informed, inclusive, emotional support by helping survivors connect with services such as access to health care and counseling.

Not Alone, the first report by the White House Task Force to Protect Students from Sexual Assault, determined a key best practice in responding effectively when a student is sexually assaulted, is for every campus to have a confidential victim advocate who can provide emergency and ongoing support to the survivor (The White House, 2014). The state of Texas goes a step further by not only requiring higher education institutions to have confidential advocates, but Texas also requires higher education institutions to employ students as confidential advocates to encourage reporting (Texas Higher Education Coordinating Board, 2023).

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

A task force created by the Massachusetts Board of Higher Education published a report with best practices for campus safety and violence prevention, which included a recommendation to provide support services to both survivors of sexual violence and those who are accused (Massachusetts Commissioner of Higher Education, 2016). Both parties will need help through the grievance process, and both may need access to support services such as counseling and academic support. The report also suggests the institutions examine the impact of the sex discrimination incident and offer confidential advocates to those impacted by the discriminatory incident; such as roommates, teammates, classmates, fraternity brothers or sorority sisters, friends, professors, coaches, and others who may have been impacted by having witnessed or learned of the incident (Massachusetts Commissioner of Higher Education, 2016).”

After highlighting the need for confidential advocates and resource coordinator, the report contained the following recommendation:

Campus Recommendation 3 – Require each campus of the CCC, CSU, and UC to hire at least one confidential advocate and one confidential respondent coordinator. The advocates and respondents shall be housed in an independent office and shall be confidential by every standard under the law. Campuses are encouraged to hire students, in addition to the required advocates as listed above, who shall be confidential advocates for their peer students and shall be trained and certified as confidential advocates to provide the campus community with peer-confidential resources.

AB 2492 (Irwin) seeks to implement of the above recommendation and to provide clarity on the roles and confidentiality exclusions each position is to have on campus.

Confidential advocates on CCC, CSU, and UC campus. The CCC does not have a systemwide policy on whether community colleges must have confidential advocates; therefore, each district is left to determine whether confidential advocates are necessary to respond to sex discrimination on campus. Research conducted by the Assembly Higher Education Committee found very few community colleges employ full-time confidential advocates.

According to the 2023 *Title IX and Discrimination Harassment and Retaliation Assessment Systemwide Report* by the law firm, Cozen O’Connor, every CSU campus except Cal Poly San Luis Obispo has at least one confidential advocates. The role of the confidential advocate on a CSU campus is to assist the complainant in understanding their rights, the grievance process, and connect the survivor to support services. The Cozen O’Connor report included whether a campus had a respondent coordinator and, at the time of publication of the Cozen O’Connor audit, very few had respondent services; however, the CSU Chancellor’s Office has confirmed campuses have begun to hire or designate individuals to assist respondents.

Each UC campus has a “Center for Advocacy, Resources, & Education” (CARE). Each center employs confidential advocates to provide emotional support to students and employees who have experienced sexual violence or harassment. The advocates employ trauma-informed practices to help provide support through access to services, mental health counseling, and advice regardless of whether the survivor wishes to report the incident or simply receive supportive services. In addition to advocates for survivors of sexual violence and sexual harassment, each UC campus has respondent service coordinators. The role of the respondent coordinator is to help subjects of a Title IX complaint understand their rights and the adjudication process. The respondent service coordinators are trained to help the respondent

access campus and community resources, understand their rights, and navigate the grievance process. Unlike the confidential advocates, the respondent service coordinators are not confidential.

The below diagram are the number of confidential advocates and respondents per campus based on the CSU Cozen O’Connor report and UC campus-based websites:

CSU Campus	Confidential Advocates	Respondent Coordinators	UC Campus	Confidential Advocates	Respondent Coordinators
Bakersfield	1	0	Berkeley	22	5 designated case managers
Channel Island	1	0	Davis	9	7 designated case managers
Chico	1	Community Legal Clinic	Irvine	10	1 designated staff
Dominguez Hills	1	0	Los Angeles	13	Refers to Legal Services: 4
East Bay	1	0	Merced	7	2
Fresno	2		Riverside	10	3
Fullerton	2		San Diego	8	4
Humboldt	Rotating Team	0	San Francisco	2	2
Long Beach	2	Campus Advisor Program	Santa Barbara	10	Unclear, the campus has a dedicated webpage to respondent services, but no designated employees.
Los Angeles	1	0	Santa Cruz	16	1
Maritime	1	0			
Monterey Bay	1	Care Manager			
Northridge	2	0			
Pomona	1	0			
Sacramento	2	0			
San Bernardino	2	0			
San Diego	1	0			
San Francisco	0	0			
San Jose	1	0			
San Luis Obispo	4	0			

San Marcos	2	0
Sonoma	2	0
Stanislaus	1	0

Source: CSU Cozen O’Connor Report and UC campus websites.

In 2022, California passed AB 1467 (Cervantes), Chapter 556, Statute of 2022, which required; all sexual assault and domestic violence counselors to be independent from the Title IX office, required them to be trained in sexual assault counseling and advocacy, and required them to maintain confidential communications. Concerns have been raised by the California Coalition Against Sexual Assault in their report on “Student Safety, Justice, and Support” as to whether confidential advocates on campus are in fact confidential or hold the same level of confidentiality as counselors from a local rape crisis center. The same sections of California Evidence Code that apply to rape crisis centers now apply to sexual assault and domestic counselors; therefore the same level of confidentiality is afforded to the counselors on campus as is provided to those at a local rape crisis center.

The confidential advocates and confidential respondent positions created by AB 2492 (Irwin) would not have the same confidentiality privileges as those who are domestic violence or sexual assault counselors; but the bill does permit the domestic violence or sexual assault counselors to also be the confidential advocates for students, faculty, or staff.

Arguments in support. The California State Student Association expressed their support, by stating, “this bill aims to ensure that students have the option of having a confidential advocate or a confidential respondent services coordinator to accompany them during Title IX investigation and adjudication processes. We commend the diligent work undertaken by the committee as evidenced in the Call to Action Report. The report highlights significant deficiencies in addressing discrimination and inequitable treatment within the CSU system, issues that deeply trouble us. It is clear that substantial action is necessary to address these shortcomings. AB 2492, aligning with the fourth campus recommendation from the Call to Action Report, represents a crucial step forward in this regard. At present, public colleges and universities lack a systemwide policy to support students and staff during sexual harassment or sex discrimination hearings. AB 2492 seeks to remedy this by establishing a mechanism for individuals filing complaints to access trained, confidential advocates who can provide support, inform them of their rights, and explain reporting options. Similarly, individuals responding to complaints will have the option to engage with a confidential respondent services coordinator. Given the stressful and complex nature of Title IX hearings, AB 2492 ensures that students, staff, and faculty receive the necessary guidance and support.”

As articulated by the UC Student Association, “not all UCs currently have Confidential Staff and Faculty Advocates or Confidential Respondent Services Coordinators. These positions are crucial, for both students and staff and faculty. From testimony directly from UC CARE Office staff, UCSA has learned that when confidential advocates are expected to act as advocates for both students and staff and faculty simultaneously, which often happens with understaffed and overworked offices, they are put in an extremely uncomfortable and potentially illegal position. Often, students and staff and faculty motivations clash, and being expected to act as an advocate for opposing positions is impossible. It is vital that there is a separate position established for a Confidential Staff and Faculty Advocate at every CCC, CSU and UC campus.”

“The current lack of this position is telling in how institutions and universities treat their staff and faculty, expose them to situations which are extremely uncomfortable and potentially illegal, and expect them to advocate for themselves. We must note, the CCC and CSU do not have the same level of support in their offices, and likely do not have Confidential Student Advocates at every campus. The absence of these advocates can mean students do not have any resources they feel comfortable accessing after experiencing SVSH, due to the only resources available for them being non-confidential. Many student survivors do not feel comfortable and will never feel comfortable accessing non-confidential resources, as their lived experiences have made them distrustful of police and other reporting mechanisms, for very valid reasons. BIPOC and LGBTQ2+ students are at higher risk of SVSH, and also more likely to be distrustful of non-confidential resources, which means they are less likely to even pursue these resources, and more likely to never get any vital and necessary support.”

Committee comments. AB 2492 (Irwin) creates potentially three new confidential positions on campus. Concerns have been raised regarding the level of confidentiality these individuals will have on campus. The three positions are confidential from the perspective of the adjudication process on campus; but, these individuals would still be required under other mandatory reporting laws to report on sexual assault or other crimes. In 2022, California passed AB 1467 (Cervantes, Chapter 556, Statute of 2022), which required all sexual assault and domestic violence counselors to be independent from the Title IX office, required them to be trained in sexual assault counseling and advocacy, and required them to maintain confidential communications. The same sections of California Evidence Code that apply to rape crisis centers now apply to sexual assault and domestic counselors; therefore sexual assault and domestic counselors are not considered mandatory reporters and therefore can provide completely confidential support services to victims of sexual violence. AB 2492 (Irwin) confidential advocates for the faculty, staff and students could also be a sexual assault and domestic counselor; and therefore, could be fully confidential; however, the respondent coordinator under this law will not be fully confidential and will still be a mandatory reporter.

Committee Staff understand that the Author and the UC are in conversations regarding the definition of confidentiality, the scope of full confidentiality, and whether it should be mandated for all positions established by this measure.

To clarify the distinct role of the confidential advocates and their separation from the Title IX office and to addressing drafting errors, the Committee has suggested, and the author has agreed to the following amendments:

- 1) Amends 66281.10 subdivision (a), paragraph (1), subparagraph (C) to delete the language in clause (iii) to ensure the confidential advocates for students are separate and independent from the Title IX offices:

~~*(iii) Assist the Title IX coordinator in providing supportive measures to the student.*~~

- 2) Amends 66281.10 subdivision (a), paragraph (3), subparagraph (C), clause (iii), to include the appropriate cross reference:

(iii) Act as the student advisor provided by the public postsecondary educational institution pursuant to Section 66283.

- 3) Makes a technical and clarifying amendment to Section 66281.10 subdivision (b), paragraph (2):
 - (2) Independent from a Title IX office, ~~including, being separate and distinct from a Title IX coordinator established pursuant to Sections.~~
- 4) Amends 66281.10 subdivision (f), paragraph (3) to delete the definition of “supportive measures” due to the amendment in (1) above:
 - (3) ~~“Supportive measures” means nondisciplinary, nonpunitive individualized measures offered by a public postsecondary educational institution to sex discrimination complainants or respondents without fee or charge to restore or preserve a party’s access to education programs or activities and providing support during the grievance procedures as established by the campus nondiscrimination policy.~~

Related legislation.

- 1) AB 1575 (Irwin) of 2024, currently, pending a referral from Senate Rules Committee, authorizes students, who receive a disciplinary notification, the right to have an adviser of their choosing and requires postsecondary education institutions to provide trainings for the aforementioned adviser. This measure received a 10 – 0 vote when it was heard in Committee on January 09, 2024.

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 2492 (Irwin), 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) of 2024, 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) of 2024, 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 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.
- 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

Cal State Student Association
California State University Employees Union (CSUEU)

Safe Campuses Coalition
University of California Student Association

Opposition

None on file.

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