

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 2987 (Ortega) – As Amended March 19, 2024

SUBJECT: Public postsecondary education: sex discrimination complaints: status updates and notices

SUMMARY: Requires each campus of the California Community Colleges (CCC) and California State University (CSU) and requests each campus of the University of California (UC) to provide status updates on the outcomes of sex discrimination complaints to both parties in a sex discrimination complaint and to provide the disciplinary notification within three school days to the respondent of a sex discrimination complaint. Specifically, **this bill:**

- 1) Requires each campus of the CSU and CCC and requests each campus of the UC to provide, when possible, status updates on the outcomes of sex discrimination complaints, including, but not limited to, complaints of sexual harassment, to both parties in a sex discrimination complaint.
- 2) Clarifies that complaints will not be provided to complainants and respondents who elect not to receive updates.
- 3) Requires each campus of the CSU and CCC and requests each campus of the UC to provide to the respondent the disciplinary action, within the three schooldays following the conclusion the sex discrimination complaint.
- 4) Stipulates if the Commission on State Mandates determines the above provisions contains costs mandated by the state, reimbursement will be made to local agencies and school districts for the cost.

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) Establishes the CCC under the administration of the Board of Governors of the CCC, as one of the segments of public postsecondary education in California. The CCC shall be comprised of community college districts (Education Code (EDC) Section 70900).
 - 3) Establishes the CSU system, comprised of 23 campuses, and bestows upon the CSU Trustees, through the BOT, the power, duties, and functions with respect to the management, administration, and control of the CSU system (EDC Sections 66606 and 89000 et. Seq.).
 - 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).
- 1) 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).
 - 2) 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.* As indicated by the author, “It became clear during the Joint Legislative Audit Committee Oversight Hearing not only that the CSU system has failed its students and employees in following Title IX requirements, but that the problem is deeper and more widespread, affecting all institutions in the California public higher education system. Enacting AB 2987 would increase transparency and accountability that campuses must abide by in order to keep their students and employees safe from sexual abuse and keep perpetrators accountable. By requiring open communication between the investigators and the complainants and respondents about the timeline and process of their open sexual misconduct cases, campuses are held to the higher standard of transparency expected of a California higher education institution. AB 2987 is part of a larger package of bills introduced in 2024 working towards changing campus culture, and shifting the focus to making campus life safe for and welcoming to all.”

*California State University: It did not adequately or consistently address some allegations of sexual harassment (2022-109).*¹ 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 had not provided oversight or regulation over the implementation of the system’s policies.

In terms of notifications or status updates to complainants and respondents, the State Auditor determined:

“Although CSU’s sexual harassment policy requires the notifications we list above, it does not require Title IX coordinators to proactively provide additional status updates to complainants and respondents while the investigation is ongoing; instead, the parties must request them. Despite the lack of a formal requirement, San José State’s interim Title IX coordinator explained that his practice is to ask complainants and respondents at the outset of a case about their preferences for receiving status updates; he then schedules periodic update meetings with each of them, such as every two weeks, if they so desire. Further, Fresno State’s Title IX task force recommended that the campus explore creating a dashboard that would allow complainants and respondents to check the status of their specific cases at any time. The Chancellor’s Office should consider requiring campuses to implement something similar to the dashboard or regular update meetings to provide complainants and respondents information on the status of their cases.”

¹ [Report 2022-109 \(ca.gov\)](https://www.ca.gov/leg/2022/bills_101-200/2022_109_bill_0000109.html)

For disciplinary sanction notifications, the State Auditor, “identified seven cases in which campuses either did not initiate appropriate discipline or corrective action or did not document implementing any discipline or corrective action. In four cases, the campuses’ disciplinary or corrective actions were not taken in a timely manner; in fact, in one instance, the campus waited more than five years before issuing a letter of reprimand.”

To help take corrective action, the Auditor provided 16 multi-faceted recommendations to the CSU with varying time frames for implementation between July 2024, January 2025, and July 2026. Two of the recommendations request the CSU to implement similar notification requirements as AB 2987 (Ortega). Specifically,

CSU Audit	AB 2987 (Ortega)
<p>To more effectively communicate the status of cases to the parties involved, the Chancellor's Office should amend CSU's sexual harassment policy by January 2025 to include specific requirements for campuses to provide regular status updates to complainants and respondents unless those parties request not to receive them. These updates should also communicate the outcomes of cases, including any associated disciplinary or corrective actions, to the extent possible under law.</p>	<p>Requires each campus of the CCC and CSU, and requests the UC to provide status updates on outcomes of complaints of sex discrimination to both the complainants and the respondent.</p>
<p>The Chancellor's Office should provide guidance to campuses by July 2024 about best practices for initiating, carrying out, and documenting timely disciplinary or corrective actions after a finding of sexual harassment. Further, it should encourage campuses to communicate these principles to relevant decision makers. This guidance should include providing a prompt notice of pending disciplinary action to a respondent when applicable.</p>	<p>Requires the disciplinary notice to be provided to the respondent within three school days.</p>

Source: The California State Auditor Audit.²

The above recommendations have not been implemented by the CSU.

Notification policies for CCC, CSU, and UC. As referenced in the “A Call to Action” report published by this Committee, the California Sex Equity in Education Act (EDC Section 6627.5 - 66282) contains requirements for the adjudication of sex discrimination and sexual harassment complaints, including a requirement for a timeline for the complaint process and the provision of periodic updates on the investigation to the complainant and respondent.

² [California State Auditor - Report 2022-109 Recommendations](#)

Contained within the California Code of Regulations for CCC are the system's operating procedures for addressing discrimination complaints. The following notices are provided for complaints of sex discrimination processed by the CCC:

- Within 90 days of receiving a complaint the district will complete an investigation and forward a copy and written notice of outcome to the complainant and the respondent. The respondent will also receive the determination, proposed resolution including disciplinary action, and the respondent's right to appeal.

The CSU and UC systems have similar notification requirements, specifically:

- Notification to both parties when complaints are accepted, when investigations begin, and any extension of the investigation timeframes. The complainants and respondents are also provided a copy of the investigative report and a copy of the outcome.

AB 2987 (Ortega) would establish a specified outcome for when the disciplinary sanction notification is required to be provided to the complainant and respondent and asks for status updates on the outcome of complaints, which is aligned with existing Education Code, Title IX, and best practices.

Arguments in support. As described by the California Faculty Association, which represents over 29,999 faculty from all 23 campuses of the CSU, "AB 2987 addresses critical gaps identified in the handling of sexual misconduct cases within California's higher education institutions. The need for this bill is underscored by the findings of a 2023 Oversight Hearing by the Joint Legislative Audit Committee, which published a report on CSU's management of sexual misconduct cases. The audit revealed significant lapses in the universities' investigation processes, including unclear rationales for not pursuing investigations, questionable investigative outcomes, and inconsistent or absent disciplinary actions. Notably, the report found that nearly two-thirds of the 21 detailed investigations reviewed exceeded prescribed timelines, reflecting poor adherence to procedural standards."

"These issues stem from inadequate guidance and oversight from the Chancellor's Office and emphasize the need for clearer policies and more robust system-wide enforcement to ensure proper handling of sexual harassment allegations. AB 2987 directly responds to these concerns by mandating CCCs and CSUs, and requesting UCs, to regularly update complainants and respondents about the process and resolution of their cases, unless the involved parties specifically opt-out. This bill also mandates that campuses communicate disciplinary actions taken against respondents to complainants within three business days."

"The prompt notification provision in AB 2987 is designed to empower complainants, providing them with the necessary information to avoid potentially traumatic encounters on campus and maintain their well-being. By standardizing this notification process, the bill ensures a uniform approach across all campuses, enhancing the transparency and accountability of how these cases are handled. This contributes to creating a safer and more supportive educational environment for all students, faculty, and staff."

Ignite National, explains the need of AB 2987 (Ortega) as it, "addresses critical gaps identified in the handling of sexual misconduct cases within California's higher education institutions. The need for this bill is underscored by the findings of a 2023 Oversight Hearing by the Joint Legislative Audit Committee, which published a report on CSU's management of sexual

misconduct cases. The audit revealed significant lapses in the universities' investigation processes, including unclear rationales for not pursuing investigations, questionable investigative outcomes, and inconsistent or absent disciplinary actions. Notably, the report found that nearly two-thirds of the 21 detailed investigations reviewed exceeded prescribed timelines, reflecting poor adherence to procedural standards. These issues stem from inadequate guidance and oversight from the Chancellor's Office and emphasize the need for clearer policies and more robust system-wide enforcement to ensure proper handling of sexual harassment allegations. AB 2987 directly responds to these concerns by mandating CCCs and CSUs, and requesting UCs, to regularly update complainants and respondents about the process and resolution of their cases, unless the involved parties specifically opt-out. This bill also mandates that campuses communicate disciplinary actions taken against respondents to complainants within three business days. The prompt notification provision in AB 2987 is designed to empower complainants, providing them with the necessary information to avoid potentially traumatic encounters on campus and maintain their well-being. By standardizing this notification process, the bill ensures a uniform approach across all campuses, enhancing the transparency and accountability of how these cases are handled. This contributes to creating a safer and more supportive educational environment for all students, faculty, and staff.”

Committee comments. AB 2987 (Ortega) will require disciplinary sanctions notifications to be provided within three business days thereby, not delaying the conclusion of the resolution of the complaint. Notifications of disciplinary sanctions does not imply the sanction will be levied within three school days. Student respondents will still need the ability to appeal to the disciplinary sanction notification and the measure does not prevent such an action from occurring. Nor does the measure interfere with the appeal processes afforded to employees of the system, the Skelly process, which is established by Education Code, collective bargaining agreements, or internal policies of the systems.

The measure only asks for the disciplinary notification to be provided within three days not for the disciplinary sanction to be levied or implemented within three days of the outcome of a complaint. The current policy at the CSU is for a disciplinary notification to occur within 10 days of the outcome of a complaint and the UC is 15 days. Three school days is a rather quick turn around and does not account for the working realities of the people involved in the work of adjudicating cases of sex discrimination.

To ensure the proper procedures and formats are adhered to, in order to prevent the overturn on appeals, the Author should continue to work with the CSU to address timelines that both ensures harassers are removed or disciplined accordingly while also preserving due process rights as delineated in the nondiscrimination policies.

Furthermore, AB 2987 (Ortega) does not provide specifics on the requirement to provide status updates and is almost the exact language currently in EDC Section 66281.8; however, this section of code only pertains to complaints where the complainant is a student. AB 2987 (Ortega) extends the existing best practice for periodic updates on the adjudication of the sex discrimination complaint when the complaint is an employee.

In order to enumerate the intent of the author to have periodic status updates, Committee Staff has suggested and, the Author has agreed to, the following amendments:

1) Amend Section 66281.4 subdivision (a) to read as follows:

(a) Each campus of the California State University and the California Community Colleges shall, and each campus of the University of California is requested to, provide, *upon request*

of the complainant or respondent, and every 30 days until the outcome of a complaint is determined, and only to the extent permissible under state and federal law, status updates on the outcomes of complaints of sex discrimination, including, but not limited to, complaints of sexual harassment, to complainants and respondents.

2) Amend Section 66281.4 subdivision (c) to read as follows:

(c) Each campus of the California State University and the California Community Colleges shall, and each campus of the University of California is requested to, provide, within three schooldays of a decision of disciplinary action being made against a respondent in response to a complaint of sex discrimination, ~~notice~~ *a notification* of the disciplinary action to the ~~respondent~~ *respondent and complainant*.

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 2987 (Ortega), 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 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.
- 11) 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.

REGISTERED SUPPORT / OPPOSITION:

Support

Cal State Student Association
California Faculty Association
California State University Employees Union (CSUEU)
Faculty Association of California Community Colleges
GenUp (Generation Up)
Ignite
Safe Campuses Coalition

Opposition

None on file.

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