

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 2326 (Alvarez) – As Amended March 21, 2024

SUBJECT: Equity in Higher Education Act: discrimination: compliance, regulations, and reports

SUMMARY: 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. Specifically, **this bill:**

- 1) Delineates the dual responsibility for ensuring the programs and activities offered by a community college district as free from discrimination, including, but not limited to sexual harassment, to the governing board of the community college district and the chief executive officer of each community college within the community college district.
- 2) Endows the California Community Colleges (CCC) Chancellor's Office with the responsibility of monitoring each community college district's is in compliance with (1) of this analysis.
- 3) Requires the CCC Chancellor's Office to annually submit and present a report to the Board of Governors on the state of the CCC system in ensuring the community college district programs and activities are free from discrimination, as defined. The report will include an overview of the Chancellor's Office's efforts to monitor and ensure the compliance of each district with providing programs and activities that are free from discrimination. The report will include how each district is complying with Title IX of the Education Amendments of 1972 (Title IX) and Education Code Sections 66281.5, 66281.8, 67385, 67385.7, and 67386.
- 4) Authorizes the Board of Governors of the CCC to annually review the CCC system's regulations on nondiscrimination and to revise them as necessary to ensure all community college districts are offering programs and activities that are free from discrimination.
- 5) Requires the President of the Board of Governors and the Chancellor of the CCC to provide an annual presentation during a public hearing of the Senate Budget Subcommittee on Education and the Assembly Budget Subcommittee on Education. The presentation will include the report provided in (3) of this analysis.
- 6) Bestows the responsibility for ensuring the programs and activities offered by each California State University (CSU) is free from discrimination, as defined to the president of each CSU campus.
- 7) Endows the Chancellor's Office of the CSU with the responsibility of monitoring that each CSU campus is in compliance with (6) of this analysis.
- 8) Requires the Chancellor's Office of the CSU to annually submit and present a report to the CSU Board of Trustees on the state of the CSU system in ensuring that each CSU campus is

providing programs and activities free from discrimination, as defined. The report will include an overview of the Chancellor's Office's efforts to monitor and ensure the compliance of each campus in providing programs and activities that are free from discrimination. The report will include how each district is complying with Title IX and Education Code Sections 66281.5, 66281.8, 67385, 67385.7, and 67386.

- 9) Authorizes the CSU Board of Trustees to annually review the CSU systemwide policies on nondiscrimination and to revise them as necessary to ensure all CSU campuses are offering programs and activities that are free from discrimination.
- 10) Requires the Chair of the Board of Trustees and the Chancellor of the CSU to provide an annual presentation during a public hearing of the Senate Budget Subcommittee on Education and the Assembly Budget Subcommittee on Education. The presentation will include the report provided in (8) of this analysis.
- 11) Bestows the responsibility for ensuring the programs and activities offered by each University of California (UC) is free from discrimination, as defined to the chancellor of each UC campus.
- 12) Endows the Office of the President of the UC with have the responsibility of monitoring that each UC campus is in compliance with (11) of this analysis.
- 13) Requires the Office of the President of the UC to annually submit and present a report to the UC Board of Regents on the state of the UC system in ensuring that each UC campus is providing programs and activities free from discrimination, as defined. The report will include an overview of the Office of the President's efforts to monitor and ensure the compliance of each campus in providing programs and activities that are free from discrimination. The report will include how each district is complying with Title IX and Education Code Sections 66281.5, 66281.8, 67385, 67385.7, and 67386.
- 14) Authorizes the UC Board of Regents to annually review the UC systemwide policies on nondiscrimination and to revise them as necessary to ensure all UC campuses are offering programs and activities that are free from discrimination.
- 15) Requires the Chair of the Board of Regents and the President of the UC to provide an annual presentation during a public hearing of the Senate Budget Subcommittee on Education and the Assembly Budget Subcommittee on Education. The presentation will include the report provided in (13) of this analysis.
- 16) Stipulates it is the intent of the Legislature that the CCC, CSU, and UC all certify the system is addressing and preventing discrimination, as defined, before the system receives state student financial aid.
- 17) Authorizes that the UC exclusion from the Donahoe Higher Education Act does not apply to the provisions above.
- 18) 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, pursuant to Part 8 of Division 4 of Title 2 of the Government Code.

EXISTING LAW:

- 1) Provides the primary responsibility for ensuring that community college district programs and activities are free from discrimination based on age and the characteristics listed in Section 66270 to the governing board of each community college district. Places the responsibility for monitoring the compliance of each district with any and all regulations adopted with the Chancellor's Office of the CCC (Education Code Section 66292).
- 2) Places the responsibility of ensuring campus programs and activities are free from discrimination based on age and the characteristics listed in Section 66270 with the Chancellor of the CSU and the president of each CSU campus (EDC Section 66292.1).
- 3) Places the responsibility of ensuring campus programs and activities are free from discrimination based on age and the characteristics listed in Section 66270 with the President of the UC and the chancellor of each UC campus (EDC Section 66292.2).
- 4) No person participating in any program or activity conducted by any postsecondary education institution, that receives state financial assistance or enrolls students who receive state financial aid, is to be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any characteristic listed or defined in Section 11135 of the Government Code or any other characteristic that is contained in the prohibition of hate crimes defined in Section 422.6 subdivision (a) of the Penal Code, including immigration status (EDC Section 66270).
- 5) No person participating in any program or activity, that is conducted, operated, or administered by the state or state agency that is funded directly by the state or receives any financial assistance from the state, will not be subjected to discrimination nor denied full or equal access to benefits, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation. Clarifies this section applies to the CSU (Government Code Section 11135).
- 6) No person, whether or not acting in the official bounds or limitation of their lawful authority, will force or make a threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise of enjoyment of any right or privilege secured to the person by the constitution or laws of the State of California or by the U.S. Constitution in whole or part because of one or more of the actual or perceived characteristics of the victim including: disability, gender, nationality, race or ethnicity, religion, sexual orientation, and/or association with a person or group with one or more of these actual or perceived characteristics (Penal Code Sections 422.6, subdivision (a) and 422.5 subdivision (a)).

FISCAL EFFECT: Unknown

COMMENTS: *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, “who is responsible for addressing and preventing discrimination on campus and providing education programs free from all forms of discrimination,” with the following:

“The EDC Section 66030 states it is the intention of the Legislature for all students to be provided an educational environment that allows all Californians to fully develop for their potential. The responsibility of providing this equitable environment, an environment free from all forms of discrimination and harassment, is delegated to the systemwide governing boards of the public higher education institutions.

Other sections of the EDC, 66292, 66292.1, and 66292.2, assign the primary responsibility of ensuring educational programs are free from discrimination resides with the local governing boards of community college districts, CSU campus presidents, and the UC campus chancellors (EDC § 66292, 66292.1, and 66292.2). Therefore based on the Education Code, every level of leadership from campus executive officers to the systemwide governing boards, are responsible for providing educational experiences for students that are free from discrimination.”

The report further contends,

“In January of 2017, then-Vice President Joe Biden wrote an op-ed for Medium where he challenged every college and university President, Chancellor, and Senior administrator to create an environment, ‘where all students are treated with dignity and respect; where men and women feel empowered to step up and speak out against sexual violence; and where survivors of sexual assault no longer feel ashamed to come forward and ask for the help they desperately want and deserve.’ He called the leaders to act because, ‘as presidents, chancellors, deans, and administrators, you have an obligation to stand up, to speak out, and to foster the safest and most inclusive environment possible for every student that walks onto your campuses’ (Biden). According to then-Vice President Biden, the obligation to provide a campus climate of equity and inclusion resides with the leaders of the campus.”

The following recommendations were made by the report to help delineate the chain of authority in addressing and eradicating discrimination on campus:

Statewide Recommendation 4 – Have an annual compliance report presented by the Leader of each public higher education institution and the Chair of each institution’s governing board. The report will be presented to the Budget Subcommittees on Education Finance in both the California State Senate and the California State Assembly. The compliance report will provide a state of the system address detailing to the Legislature how the public higher education institutions are complying with state and federal law to prevent sex discrimination on campus.

Statewide Recommendation 11 – Amend EDC Sections 66292, 66292.1, and 66292.2 to include the Board of Governors of the CCC, the CSU Board of Trustees, and the UC Board of Regents as one of the responsible parties for providing educational programs free from discrimination.

AB 2326 (Alvarez) would codify statewide recommendations 4 and 11 from the “A Call to Action” report to moralize in code the responsibility of ensuring educational program are free from discrimination and creates a system by which the Legislature can monitor compliance.

Author's intent. As stated by the author, “This bill, making history, will hold identified entities responsible by having the Chair of the Systemwide Governing Board and the Systemwide Leader present to the legislature annually on how the state of the systems are preventing discrimination on campus. The CA Legislative Education Finance subcommittees must hear the compliance of CA higher education systems on sex discrimination for students to have a safe and welcoming campus.”

What the measure will accomplish? The basic tenets of AB 2326 (Alvarez) are as follows:

- 1) Bestows responsibility for who is responsible for ensuring programs and activities are free from all forms of discrimination and the entity who monitors those who are responsible;
- 2) Requires the Chancellor’s Office (CCC or CSU) and the Office of the President (UC) to present to a state of the system on preventing discrimination report to systemwide governing board (the CCC Board of Governors, CSU Board of Trustees, UC Board of Regents);
- 3) Requires the systemwide governing board to annually examine the policies or regulations pertaining to the nondiscrimination policies of the system; and,
- 4) Requires the Chancellor of the CCC or CSU, the President of the UC and the Leaders of the three boards to present to the Senate Budget Subcommittee on Education and the Assembly Budget Subcommittee on Education, the same report as enumerated above in (2).

EDC Section 66290 – 66293 provides the scope of the State’s ability to hold institutions accountable for implementing the Sex Equity in Higher Education Act. The main tool of accountability employed by the State is to restrict the provision of state financial assistance or state-funded financial aid until the institution is seen as compliant. Based on this knowledge, one would assume that each campus of the CCC, the CSU, and the UC would be required to submit an annual report to the California Student Aid Commission detailing their compliance with the state law. However, the EDC Section 66290 states, “a single assurance, not more than one page in length and signed by an appropriate responsible official of the postsecondary education institution” is all that is required to prove the campus is in compliance with the Sex Equity in Higher Education Act. This section of code has not been amended since 1999.

To the knowledge of Committee Staff, the tool of denying financial aid for noncompliance has never been used by the California Student Aid Commission. The issue of the legality and use of this tool in withholding state financial assistance was raised in the Committee’s analysis of SB 967 (De Leon), Chapter 748, Statute of 2014. The bill in question would have withheld state financial aid if postsecondary education institutions did not adopt policies concerning sexual assault, domestic violence, dating violence, and stalking. Committee Staff raised concerns in their analysis of how the state would hold institutions accountable:

“Committee Staff notes that there is no clear enforcement mechanism contained in this bill. The bill provides that institutions must comply with the provisions of this bill to receive state funds for financial assistance; however, the bill does not authorize any specific government entity to take action if an institution is found non-compliant. In talking with Legislative Counsel, Committee Staff understands that the provisions of this bill do not cover financial aid to students through the Student Aid Commission (which provides funds to students), but instead to funding provided directly from the state to an institution (campus base allocations that result in student aid)”.

AB 2326 (Alvarez) is the first of its kind, in it would establish an enforcement mechanism by requiring the institutions to testify in a public forum before the Legislature regarding their efforts in monitoring and complying with the EDC code regarding the prevention of all forms of discrimination on campus.

Arguments in support. The California Faculty Association (CFA), which represents over 29,000 faculty of the CSU states, “AB 2326 seeks to update and reinforce the responsibilities of key leadership positions within the University of California (UC), California State University (CSU), and California Community Colleges systems, ensuring that these institutions remain safe, welcoming, and equitable for all students, faculty, and staff. By mandating the annual submission and presentation of reports on the state of anti-discrimination efforts, this bill introduces a much-needed layer of accountability and transparency in our educational institutions.”

“The provisions outlined in AB 2326, including the heightened focus on preventing sexual harassment and other forms of discrimination, resonate deeply with the CFA's long-standing commitment to fostering an inclusive and safe educational environment. We believe that the success of our postsecondary education system depends on its ability to provide a space where all individuals can pursue academic and professional excellence free from the fear of discrimination.”

“Moreover, the requirement for these reports to be presented during public hearings of the Senate and Assembly Budget Subcommittees on Education Finance represents a critical step towards engaging the broader community in these discussions. It ensures that the efforts to combat discrimination are not only transparent but also subject to public oversight and input, thereby strengthening the collective resolve to address these issues. The CFA recognizes AB 2326 as a pivotal piece of legislation that aligns with our mission to advocate for the rights and welfare of our members and the students we serve. By supporting this bill, we can collectively ensure that California’s public postsecondary institutions remain beacons of diversity, equity, and inclusion.”

The Cal State Student Association, writes “AB 2326 specifically seeks to codify the fourth and eleventh statewide recommendations outlined in the Call to Action report, and aims to address these pressing concerns by reallocating the primary responsibility for ensuring freedom from discrimination in campus programs and activities. Under this proposal, this responsibility would extend to the chancellor of each UC campus, the president of each CSU campus, and, jointly, to the governing board of a community college district and the chief executive officer of each community college within the district. Furthermore, the bill mandates that relevant offices submit annual reports to their respective Boards on the state of their higher education institutions, ensuring the absence of discrimination based on specified characteristics. Additionally, it requires the presentation of these reports during public hearings of the Senate Budget Subcommittee on Education and the Assembly Budget Subcommittee on Education Finance.”

Committee comments. AB 2326 (Alvarez) contains two reporting requirements: first a presentation from the CCC Chancellor’s Office, the CSU Chancellor’s Office, and the UC Office of the President to their respective systemwide governing boards and then a second public presentation requirement to the Legislature.

To maintain local and system control, the measure does not have requirements for contents of the report other than for the system to elaborate on how it is adhering to the law of providing

programs and activities free from discrimination. Since the measure mentions policies pertaining to sex discrimination, one could conclude the system could elect to have the presentations contain information gathered in the required public written reports of SB 1166 (Dodd) of 2024 or AB 2047 (M. Fong) of 2024.

However, AB 2326 (Alvarez) requires the system to provide a presentation on how the system is addressing all forms of discrimination, not just sex discrimination.

As previously mentioned by the author, AB 2326 (Alvarez) is precedence making in that it requires the Chancellor (CCC and CSU), President (UC), and the leader of the systemwide governing board to provide a presentation before the Legislature. This public mechanism of compliance has been used in the past by the United States Congress. In December 2023, the Presidents of Harvard, the University of Pennsylvania, the Massachusetts Institute of Technology, testified in a congressional hearing on the topic of antisemitism. Despite having governing boards, Congress wished to hear from those who are directly responsible for the day-to-day operations on campus and therefore would be responsible for addressing incidents of antisemitism.

To align with best practices of Congress and to alleviate a concern from the California State University, Committee Staff has suggested, and the Author has agreed, to the following amendments:

- 1) Amend Section 66292, subdivision (a), to align the responsibility of ensuring the programs and activities offered community college districts are free from discrimination, with the appropriate administrator and to align the compliance of this measure with other measures in the “A Call to Action” bill package:
 - (a) The governing board of a community college district and the chancellor of the community college district ~~chief executive officer of each community college within the community college district~~ shall have joint responsibility for ensuring that programs and activities offered by the community college district are free from discrimination based on the characteristics listed in Section 66270, including, but not limited to, the prevention of sexual harassment as defined in Section 66262.5.
- 2) Amends Section 66292, subdivision (e and f), Section 66292.1, subdivision (e and f), and Section 66292.2, subdivision (e and f) to remove the requirement for the Chair of the systemwide governing board to present to the California State Legislature.

Related Legislation. Related legislation and addressing concerns of duplication. 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 2326 (Alvarez), 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 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**

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

Opposition

None on file.

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