

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Mike Fong, Chair
SB 808 (Dodd) – As Amended June 15, 2023

SENATE VOTE: 40-0

SUBJECT: California State University: annual report: sexual harassment reports: formal sexual harassment complaints

SUMMARY: Requires the California State University (CSU) to annually publish a report on the grievance procedures for sexual harassment reports and formal sexual harassment complaints at CSU campuses and the CSU Chancellor's office. Specifically, **this bill:**

- 1) Requires the CSU to publish and submit a report to the Legislature annually by December 1 of each year. The report will include the following data points disaggregated by campus and by those reported to the CSU Chancellor's office:
 - a) The number of sexual harassment reports;
 - b) The number of formal sexual harassment complaints filed to the Title IX office.; and,
 - c) The number of formal sexual harassment complaints under investigation;
 - d) The length of time taken to begin an official investigation after a formal complaint is filed with the designated Title IX office. The data will be grouped into the following categories of time:
 - i) Less than two weeks;
 - ii) Two weeks to one month;
 - iii) One to three months;
 - iv) Three to six months;
 - v) Six to twelve months;
 - vi) Twelve to 18 months; and
 - vii) More than 18 months.
 - e) The length of time between the beginning of an investigation and the completion of the final investigative report. The data will be grouped into the following categories of time:
 - i) Less than six months;
 - ii) Six to twelve months;
 - iii) Twelve to 18 months; and,

- iv) More than 18 months.
 - f) The number of hearings conducted for formal sexual harassment complaints and the outcomes of those hearings. The outcomes will be grouped into the following categories:
 - i) An informal resolution or settlement agreed to by the complainant and respondent;
 - ii) A hearing was convened and a final administrative decision was made by the decision maker; and,
 - iii) A hearing is scheduled or has concluded, but the decision maker has not made a final administrative decision; and,
 - g) The number of appeals requested by either the complainant or the respondent and the outcomes of the appeals.
- 2) Defines the following:
- a) “Chancellor’s office” means the office of the Chancellor of the California State University;
 - b) “Final administrative decision” means the written determination of whether or not sexual harassment occurred as determined by the decisionmaker following the final investigative report and the subsequent hearing;
 - c) “Final investigative report” means the final report of the summary of relevant evidence provided by the Title IX investigator to the complainant and the respondent; and,
 - d) “Sexual harassment” has the same meaning as sexual harassment in subdivision (a) of Section 66262.5.

EXISTING LAW: *Federal law.*

- 1) No person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance except for specified circumstances including membership of fraternities and sororities (United States Code Title 20, Chapter 38, Section 1681... colloquially known as Title IX).
- 2) Outlines the required response pursuant to Title IX, of a postsecondary higher education institution when the institution is made aware of an alleged sexual harassment incident on campus. The regulations include a requirement for a formal complaint, a grievance procedure for an investigation into whether the incident based on a standard of evidence occurred, and a method of appealing the outcome of the grievance process (Federal Code of Regulations Title 34, Subtitle B, Chapter 1, Subpart D, Section 106.45).

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 (Education Code (EDC) Section 66262.5 and 212.5).

- 2) Outlines in state law the procedures an institution is required to take when it becomes aware of a complaint of sexual harassment on campus including, but not limited to, an investigation and live hearing with advisors for the complainant and respondent (EDC Section 66281.8 subdivision (b) subparagraph 3-4).
- 3) Establishes the CSU system, made of 23 campuses, and bestows upon the CSU Trustees, through the Board of Trustees, the powers, duties, and functions with respect to the management, administration, and control of the CSU system (EDC Section 66606 and 89030, et seq).

FISCAL EFFECT: *Committee staff notes the bill has been amended since the Senate and could reduce the cost of the bill significantly.*

According to the Senate Committee on Appropriation, the CSU estimates that the bill’s provisions regarding an opportunity to retreat and the reporting requirement should likely entail minor and absorbable costs. However, the CSU indicates that the bill may result in administrative confusion due to incompatibility with CSU terminology and processes. For example, the CSU does not have contracts; it has appointments. Additionally, the CSU’s definition of final administrative and judicial decisions includes the appeals process guaranteed to employees, while the bill does not. To the extent that this bill’s language leads to implementation issues, this could potentially result in additional, unknown General Fund costs for the CSU.

COMMENTS: *Purpose of the measure.* As expressed by the author, “it is clear that despite existing Title IX protections and requirements already in law, there are deficiencies in how our CSU campuses carry out these duties that require immediate attention. In light of ongoing, egregious, and systemic sexual harassment and abuse allegations and settlements across the CSU system, SB 808 would increase transparency and accountability by requiring detailed public reporting of sexual harassment complaints lodged at each campus and to the CSU Chancellor’s office. The pervasive mishandling of harassment and abuse by senior administrators, staff, and faculty has eroded public trust and caused students to suffer, depriving them of equal and free access to education. In order to rebuild trust and confidence in the safety of our campus communities, additional transparency, oversight, and accountability of our campuses is sorely needed.”

Under the current Title IX law and regulations, postsecondary education institutions that receive federal funding, including financial aid for students, are required to track sexual harassment reports/complaints through the process to the outcome of the complaints. This measure would require the “tracked” sexual harassment reports and complaints to become part of the public record through an annual report provided to the Legislature by the CSU.

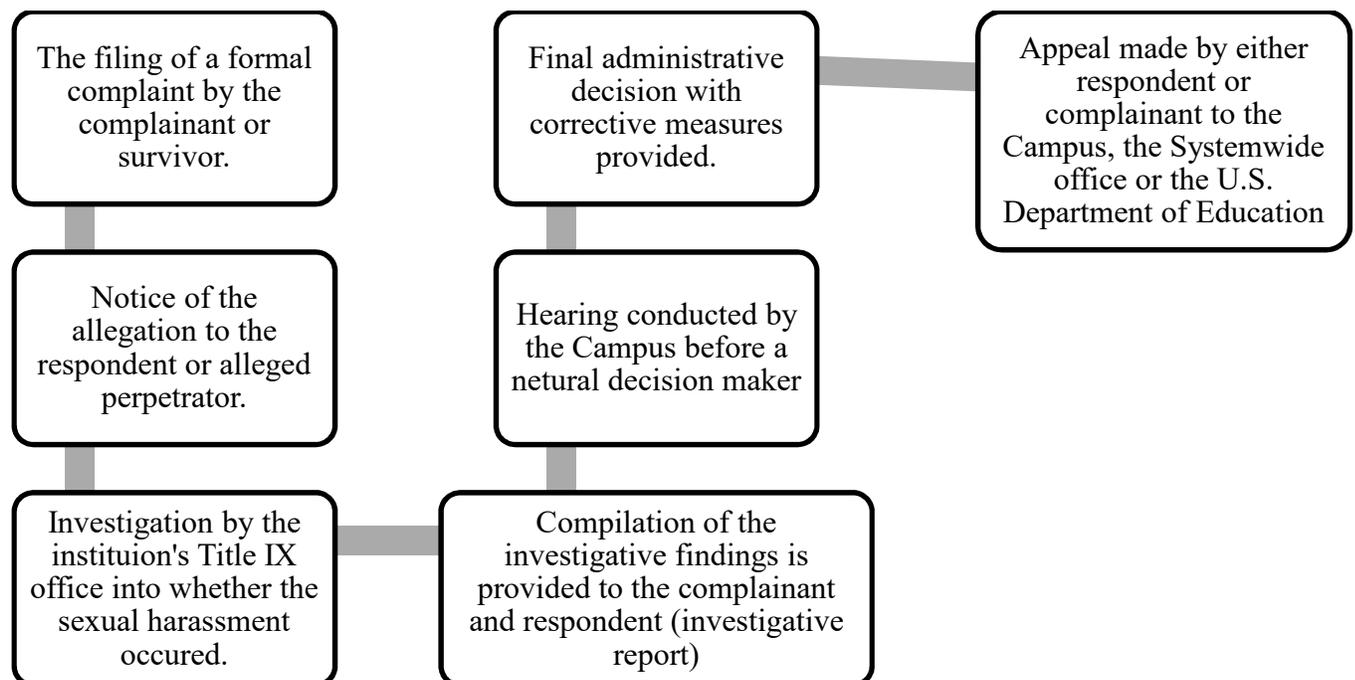
Title IX and sexual harassment grievance procedures. Established in 1972, Title IX Education Amendments of 1972 (Title IX) protects students who elect to participate in education programs from experiencing discrimination based on their sex. The U.S. Department of Education confirmed in June 2021, that Title IX protections extend to protect students from discrimination based on sexual orientation and gender identity.

On September 22, 1980, the United States Court of Appeals for the Second Circuit, heard *Alexander v. Yale* (1980), 631 F.2nd 178 (2nd Cir.). The court ruled sexual harassment of female students was considered sex discrimination and, therefore, under Title IX was rendered illegal. The case found that a group of female students who had attended Yale College had been sexually harassed by their flute teacher and hockey coach, and Yale College had not provided adequate due process under the law for these students to have their complaints addressed. This case became the impetus for the grievance procedures found within subsequent regulations for Title IX.

Under Title IX each postsecondary education institution that receives federal funding must have a Title IX coordinator and have a procedure in place for handling complaints of sex-based harassment. According to the Office for Civil Rights at the U.S. Department of Health and Human Services, sex-based harassment or gender-based harassment which can be reported under Title IX reporting requirements include:

- Sexual Harassment – unwelcomed conduct of a sexual nature; including, unwelcomed sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature; and,
- Sexual Violence – physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent; including, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

Should a campus Title IX coordinator receive a report of sexual harassment, the Title IX regulations dictate the following procedures should occur:



There are two pathways by which a Title IX complaint can be resolved, either the formal process, as enumerated above or through an informal resolution.

The informal resolution process or alternative resolution occurs when the complainant (the survivor), the respondent (the accused), and the Title IX Coordinator agree to an outcome of the complaint without determination of whether or not the sexual harassment occurred. The purpose of an informal resolution is to provide mitigating measures that all parties feel will prevent sexual harassment from continuing and to restore equal access to education programs for all parties. SB 808 (Dodd) is a unique measure as it represents the first time the Legislature has stepped into an oversight role in Title IX compliance by requiring tracking data from a postsecondary education institution. SB 808 (Dodd) will provide important data as the Legislature and advocates access to the current state of compliance with Title IX.

CSU Title IX investigations. In March 2022, as part of their multi-year investigation into Title IX compliance across the United States, USA Today disclosed to the public, the mishandling of a sexual misconduct case by the then-Chancellor of the CSU, Joseph Castro. Over the course of several months, as additional investigations by the Los Angeles Times and Ed Source revealed the pervasive number of Title IX cases across the system, the Board of Trustees of the CSU, in June 2022, hired a law firm, Cozen O'Connor, to conduct a systemwide Title IX assessment. On May 24, 2023, the firm presented an overview of its findings at a public board meeting of the Board of Trustees of the CSU. The findings included the following:

1. No oversight authority for Campus Title IX/Discrimination, Harassment, and Retaliation programs;
2. Limited education for Board of Trustees, Presidents, Senior leaders, and supervisors over Title IX DHR; and,
3. Inadequate data and information to track patterns and trends to inform prevention and remedial efforts.

While the finalized report from Cozen O'Connor has yet to be finalized and made available to the public, SB 808 (Dodd) is an initial response to some of the concerns expressed during the Board of Trustee presentation. The firm found there was inadequate data and information available at the systemwide level and this measure would rectify this inadequacy by requiring CSU Chancellor's office to report on sexual harassment complaints procedures to the Legislature each year. The report as required by SB 808 (Dodd) will help fill policy gaps in the knowledge base of the Legislature as to what is occurring on campus with regard to Title IX complaints.

Will this measure be impacted by the changes in Title IX regulations at the Federal level? In June 2022, the Biden Administration announced changes to the Title IX regulations which would undo the Betsy DeVos regulations from 2020. Originally the final ruling was scheduled for release in the Spring of 2023; however, an unprecedented number of comments from the public have delayed the release date of the final ruling to October 2023.

Committee Staff have closely monitored the new proposed regulations and at this time, do not see conflicts between the measure and the pending regulations.

Arguments in support. As expressed by the California Faculty Association, "legislation like SB 808 (Dodd) is needed because there is systemic abuse and harassment happening at campuses across the CSU system. Unfortunately, despite existing Title IX requirements and protections, egregious allegations of sexual assault and harassment have been mishandled or swept under the rug by senior administrators at campuses across the CSU system.

Simply put, SB 808 would increase protections for CSU students by increasing transparency and accountability in the California State University system.”

Additional accolades for the need for SB 808 (Dodd) are enumerated by the California State University Employee Union as follows, “SB 808 (Dodd) seeks to add transparency to Title IX procedures across the CSU, the lack of which has significantly contributed to the pervasive abuse of power at the CSU. By requiring the CSU to provide detailed annual reports to the Legislature including the number of reports and official complaints lodged, the amount of time taken to commence and complete the investigatory process, and the disposition of those cases broken down by campus and the Office of the Chancellor, SB 808 (Dodd) will create much-needed accountability in Title IX investigations. SB 808 (Dodd) will begin to shine light on the egregious behaviors that have allowed systemic abuse and harassment to continue unchecked across the CSU for far too long. Students, faculty, and staff deserve to live, work, and learn in a safe environment. When the system put in place to provide that safety fails to investigate and discipline sexual misconduct, change is desperately needed.”

Committee comments. SB 808 (Dodd) represents an intermittent step the Legislature can take to maintain transparency moving forward. Title IX cases occur at all campuses and impact all postsecondary education institutions throughout the state. While CSU deficiencies have been emphasized by the press, the University of California and the California Community College system have had egregious Title IX cases featured in the Los Angeles Times. To remove the ambiguity around Title IX and to fully understand whether institutions in California have upheld their duty to protect students and staff, the Legislature is conducting legislative briefings to ascertain the scope of the problem and to provide legislative solutions. The reporting requirements in SB 808 (Dodd) will provide additional data points to help structure future policies around how to strengthen Title IX compliance.

Committee Staff acknowledges expanding reporting requirements to the CCC and the UC is sound policy; however, without additional knowledge as to the Title IX capacity of these institutions, Committee Staff recommends waiting until the completion of the legislative briefings before expanding the reporting requirement.

SB 808 (Dodd) requires the CSU to provide aggregated data on how long an institution takes to investigate sexual harassment complaints. Neither the federal Title IX regulations nor state law requires Title IX investigations to be concluded within a specific time period. A myriad of factors could influence the length of time a campus takes to investigate a Title IX complaint and many of the contributing factors are beyond the institution’s control. For example, the investigator may have difficulty finding key witnesses or may have to delay the investigation due to law enforcement involvement.

Committee Staff acknowledges there is no statutory requirement for the timeline of an investigation; however, providing timeframes as to how long an investigation is open is necessary for transparency and oversight.

REGISTERED SUPPORT / OPPOSITION:

Support

California Faculty Association

California State Council of Service Employees International Union (SEIU California)

California State Student Association
California State University Employees Union (CSUEU)
California Teachers Association
Solano County Board of Supervisors

Opposition

None on file.

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