

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 791 (McGuire)  
Version: March 22, 2023  
Hearing Date: April 18, 2023  
Fiscal: Yes  
Urgency: No  
ME

**SUBJECT**

Postsecondary education: academic and administrative employees: disclosure of sexual harassment

**DIGEST**

This bill requires the governing board of a community college district and the trustees of the CSU to require, as part of the hiring process, for an appointment to an academic or administrative position, that the applicant disclose any final administrative decision or final judicial decision determining that the applicant committed sexual harassment, as specified. The bill requests the UC Regents to require as part of the hiring process, for an appointment to an academic or administrative position, that the applicant disclose any final administrative decision or final judicial decision determining that the applicant committed sexual harassment.

**EXECUTIVE SUMMARY**

This Committee has noted in several analyses that sexual harassment and abuse are systemic issues across our higher education system. Recent reports again show how despite Title IX and other sexual harassment protections and requirements in the law, perpetrators who have been found guilty of abuse escape consequences by moving from one college to the next.

In 2016, the California State Senate passed a bill nearly identical to this one with a 38 to 1 vote. (SB 1439 (Block, 2016)) Indeed, the author of SB 1439 (Block, 2016) introduced the bill because of reports of sexual harassment at public universities. Professors and instructors could “avoid the consequences of their actions by moving from one university to the next since their history does not follow them.” The author argued that “the information as to their misconduct should be considered when hiring decisions are being made.” SB 1439 was vetoed by Governor Brown, who stressed in his veto message that “governing boards—who are the fiduciaries of these institutions—should be responsible for setting hiring standards, including the disclosure of prior bad conduct.” The problems SB 1439 attempted to address still exist today. The author introduced this bill in response to more reports of sexual harassment occurring at public colleges and

universities and the revelations that professors who had been found to have perpetrated sexual harassment at one California State University (CSU) campus were subsequently employed at other CSU campuses. This bill requires the governing board of a community college district and the trustees of the CSU to require, as part of the hiring process for an appointment to an academic or administrative position, that the applicant disclose any final administrative decision or final judicial decision determining that the applicant committed sexual harassment. The bill also requests the UC Regents to require, as part of the hiring process for an appointment to an academic or administrative position with the University of California, that the applicant disclose any final administrative decision or final judicial decision determining that the applicant committed sexual harassment.

This bill is author sponsored and supported by the University of California, Davis Associated Students. The bill passed the Senate Education Committee with a 7 to 0 vote.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) States that no person in the U.S. shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. (Title IX of the Education Amendments of 1972 to the Civil Rights Act of 1964; 20 U.S.C. § 1681 *et seq.*)
- 2) Specifies that it is the policy of the State of California, pursuant to education code section 66251 that all persons regardless of their sex should enjoy freedom from discrimination of any kind in the postsecondary educational institution of the state. (Educ. Code § 66281.5.)
- 3) Provides that is the policy of the State of California to afford all persons, regardless of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, including immigration status, equal rights and opportunities in the postsecondary educational institutions of the state. (Educ. Code § 66251.)
- 4) Defines sexual harassment as having the same meaning as defined in Section code section 212.5 and specifies that sexual harassment includes sexual battery, sexual violence, and sexual exploitation. (Ed Code § 66262.5.)
- 5) 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, as specified. (Educ. Code § 212.5.)

This bill:

- 1) Requires the governing board of a community college district to require as part of the hiring process for an appointment to an academic or administrative position with that district that the applicant disclose any final administrative decision or final judicial decision determining that the applicant committed sexual harassment.
- 2) Prohibits a community college district from asking an applicant to disclose, orally or in writing, information concerning any final administrative decision or final judicial decision described in (1) above, including any inquiry about an applicable decision on any employment application, until the community college district has determined that the applicant meets the minimum employment qualifications stated in the notice issued for the position.
- 3) Requires the trustees of CSU, as part of the hiring process for an appointment to an academic or administrative position with the CSU, to require that the applicant disclose any final administrative decision or final judicial decision determining that the applicant committed sexual harassment.
- 4) Prohibits the CSU from asking an applicant to disclose, orally or in writing, information concerning any final administrative decision or final judicial decision described in (3) above, including any inquiry about an applicable decision on any employment application, until the CSU has determined that the applicant meets the minimum employment qualifications stated in the notice issued for the position.
- 5) Requests the UC Regents to require as part of the hiring process for an appointment to an academic or administrative position with the University of California that the applicant disclose any final administrative decision or final judicial decision determining that the applicant committed sexual harassment.
- 6) Requests the UC to not ask an applicant to disclose, orally or in writing, information concerning any final administrative decision or final judicial decision described in (5) above, including any inquiry about an applicable decision on any employment application, until the UC has determined that the applicant meets the minimum employment qualifications stated in the notice issued for the position.
- 7) Defines "final administrative decision" as a final determination based on the investigative findings of a Title IX compliance coordinator, or other designated investigator, at a college or university on a complaint of sexual harassment.
- 8) Defines "final judicial decision" as a final determination of a matter submitted to a court that is recorded in a judgment or order of that court.

- 9) Provides that if the Commission on State Mandates determines that the above provisions contain costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made, as specified.

### COMMENTS

1. The continued practice of moving sexual harassers from one college campus to another

There have been recent media revelations about the mishandling of sexual harassment complaints in the CSU system.<sup>1</sup> The Joint Legislative Audit Committee directed the California State Auditor to engage in an audit to “provide independently developed and verified information related to the California State University (CSU) system’s handling of sexual harassment complaints involving executives, faculty, and staff at the Chancellor’s Office, Fresno State, San Jose State, and Sonoma State.”<sup>2</sup> The scope of the audit will include a determination of whether CSU has adequate systemwide policies and procedures on sexual harassment, a review of CSU’s process for investigating alleged sexual harassment, a review of systemwide policies on return rights, assessment of policies related to letters of recommendation, and identification of the total number of sexual harassment complaints against employees of the CSU system during the past five years. The audit is expected to be released this summer.

As detailed in an EdSource article, a summary of information by California State University officials detailed how professors who had been found to have committed violations of sexual harassment policies at California State University campuses ended up employed at other CSU campuses.<sup>3</sup>

CSU policy<sup>4</sup> specifies that the “CSU will not provide any official positive letters of recommendation or reference, either verbally or in writing, for a current or former CSU employee who: (i) is subject to a finding that the CSU employee has engaged in misconduct that resulted in the employee being non-retained, terminated, or is separated through mutually agreed upon settlement terms; (ii) is currently under investigation for misconduct or violation of university policy (in abeyance until the

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<sup>1</sup> See: “Fresno State president mishandled sexual harassment complaints. Now he leads all 23 Cal State colleges” by Kenny Jacoby, USA Today, Published Feb. 3, 2022 and updated Jan. 25, 2023. Available at [Cal State chancellor Joseph Castro mishandled sexual harassment claims \(usatoday.com\)](https://www.usatoday.com/story/news/nation/2022/02/03/fresno-state-president-mishandled-sexual-harassment-complaints/1000000001/) [as of 4/1/23].

<sup>2</sup> For information about the scope of this audit’s scope and objectives see 2022-109 Audit Scope and Objectives, available at: [California State Auditor - 2022-109 Audit Scope and Objectives](https://www.csaudit.com/2022-109-Audit-Scope-and-Objectives) [as of 4/1/23].

<sup>3</sup> *New batch of CSU records shows professors disciplined for sexual harassment: Records show students suffered sexual advances from professors*; EdSource (August 2, 2022) by Thomas Peele, Ashley A. Smith, and Daniel J. Willis; available at: [New batch of CSU records shows professors disciplined for sexual harassment | EdSource](https://edsource.org/new-batch-of-csu-records-shows-professors-disciplined-for-sexual-harassment/) [as of April 9, 2023].

<sup>4</sup> California State University Active Policy no. 12142918, Last revised Aug. 3, 2022, adopted July 13, 2022 by Resolution of the California State University Board of Trustees RUF 07-22-11; Available at: [Viewing Employment Policy Governing the Provision of Employee References \(policystat.com\)](https://policystat.com/12142918) [as of April 9, 2023]

completion of the investigation and any appeals); or (iii) has had their retirement benefits rescinded under The Public Employees' Pension Reform Act due to criminal misconduct associated with their official duties. In such cases, Human Resources/Faculty Affairs shall inform the third party requesting the reference of CSU's employee reference policy and provide an employment verification only, as set forth below, for the current or former CSU employee."<sup>5</sup>

## 2. Ensuring full information regarding previous sexual harassment decisions when making hiring decisions at public colleges and universities

In 2016 the California State Senate passed SB 1439 (Block) which was nearly identical to the bill currently before this Committee. SB 1439 was introduced after reports shed light on professors and instructors who avoided the consequences of their sexual harassment by moving from one campus to another without needing to disclose their misconduct. The author wanted the information regarding their sexual harassment to be considered when hiring decisions were made. The bill was vetoed by Governor Brown, yet the problem persists. SB 791 attempts to address public college and university's continued practice of moving sexual harassers from one campus to another.

According to the author:

Recent reports and news have exposed serious incidents of sexual harassment and misconduct against students and faculty across our college campuses. While Title IX protections exist to protect our public institutions, bad actors escape the consequences of their egregious actions by moving from one campus to the next. Hiring committees also may not have access to a full scope of complaints at the time of their hiring process. This bill will ensure campuses have access to history of misconduct to ensure they are fully informed when making their hiring decisions to foster an environment of safety and trust across all our state campuses.

Opponents of the bill, Stop Abuse for Everyone, write:

Final decisions based on the investigative findings of a Title IX compliance coordinator, or other designated investigator, at a college or university are fraught with biases driven by ideological beliefs. Rarely are the due process rights of alleged offenders upheld. Adjudications at the college campus level

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<sup>5</sup> A finding includes, but is not limited to, (a) a final internal report, following any appeals, resulting from an investigation conducted by the university; (b) an internal or external audit; (c) an administrative decision by a state body having such jurisdiction, such as the Department of Labor, etc.; (d) a civil or criminal judgment, following any appeals; (e) a finding of improper governmental activity, which is defined by the State of California as any action that violates state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency; or (f) admission of any of the above-referenced misconduct by the employee. (*Id.*)

resulting in *final administrative decisions* should never be conflated with *final judicial decisions* recorded in a judgment or order of a court.

The author explains the following in response to opposition:

Opposition alleges that the required disclosure of final administrative decisions in this bill should be removed because the administrative decision finding process at higher education institutions does not provide due process for the accused, but this is simply not the case.

Title IX coordinators work with campus officials and system wide specialists to guarantee Title IX policy. They are required to conduct a full investigation into any claims of harassment, and give all parties an opportunity to present their sides. Parties also have the right to appeal final determinations.

It is also unrealistic to expect all cases of sexual harassment would go to court as not everyone has the financial means to file a lawsuit, not to mention it is an extremely difficult process for survivors of sexual harassment.

Title IX coordinators at our college campuses are tasked with guaranteeing Title IX policy and protecting students and staff. If after a thorough investigation, they determine someone committed sexual harassment, it is appropriate for that finding to be disclosed in an application or an academic or administrative institutions.

### **SUPPORT**

University of California, Davis Associated Students

### **OPPOSITION**

Stop Abuse for Everyone

### **RELATED LEGISLATION**

#### **Pending Legislation:**

SB 808 (Dodd, 2023) requires the CSU to require each campus president and a vice president or chancellor to approve all sexual harassment settlements. This bill also provides more transparency regarding sexual harassment complaints and the investigative process and requires the posting of specified information on the CSU's website. The bill also places retreat right prohibitions for any campus president,

provost, or other senior administrator who has violated any California State University or campus Title IX policy, as specified. SB 808 is currently pending before this Committee.

Prior Legislation:

SB 1439 (Block, 2016) was nearly identical to this bill and vetoed by Governor Brown. In his veto message, Governor Brown wrote that while he understood “the desire to mitigate risk, governing boards—who are the fiduciaries of these institutions—should be responsible for setting hiring standards, including the disclosure of prior bad conduct.”

**PRIOR VOTES:**

Senate Education Committee (Ayes 7, Noes 0)

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