

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

SB 808 (Dodd)
Version: March 30, 2023
Hearing Date: April 25, 2023
Fiscal: Yes
Urgency: No
ME

SUBJECT

California State University: terms of employment: settlements and retreat rights

DIGEST

This bill requires the California State University (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 in the investigative process and requires the posting of specified information on the CSU's website. The bill also places retreat right prohibitions for specified campus employees who have engaged in sexual harassment or violated CSU's Title IX sexual harassment policy.

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 escape consequences by moving from one college to the next.

There have been revelations of mishandling of sexual harassment complaints in the CSU system.¹ In response, The Joint Legislative Audit Committee (JLAC) 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."² The audit is expected to be released this summer.

¹ 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].

² 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].

This bill is in response to a continued history of sexual harassers escaping accountability at CSU campuses. A recent EdSource article provides shows how professors who had been found to have violated sexual harassment policies at one CSU campus ended up employed at other CSU campuses.³

This bill mandates 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, the investigative process, and requires the posting of specified information on the CSU's internet website. The bill also places retreat right prohibitions for specified campus employees who have engaged in sexual harassment or violated CSU's Title IX sexual harassment policy.

SB 808 is sponsored by the California Faculty Association and the CSU Employees Union. The bill is supported by other organizations that represent CSU employees and students. This bill passed the Senate Education Committee with a vote of 6 to 0.

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 Education Code Section 212.5 and specifies that sexual harassment includes sexual battery, sexual violence, and sexual exploitation. (Ed Code § 66262.5.)

³ *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](#) [as of April 9, 2023].

- 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.)
- 6) Requires each educational institution in California (K-12 and postsecondary education) to have a written policy on sexual harassment, and requires schools to display the policy in a prominent location in the main administrative building or other area of the campus or schoolsite, be provided as part of any orientation program for new students, provided to each faculty member, administrative staff and support staff, and appear in any publication of the school that sets forth the rules, regulations, procedures and standards of conduct. (Educ. Code § 231.5 and § 66281.5.)
- 7) Requires the Trustees of the CSU to provide for, by rule, for the government of their appointees and employees, including but not limited to: appointment; classification; terms; duties; pay and overtime pay; uniform and equipment allowances; travel expenses and allowances; rates for housing and lodging; moving expenses; leave of absence; tenure; vacation; holidays; layoff; dismissal; demotion; suspension; sick leave; reinstatement; and employer's contribution to employees', annuitants', and survivors' health benefits plans. (Educ. Code § 89500.)
- 8) The federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act requires all higher education institutions that participate in federal student aid programs to prepare, publish, and distribute annual security reports disclosing specified campus crime statistics and campus security policies. Reportable crimes include homicides, sex offenses, robberies, aggravated assaults, domestic violence, dating violence, sexual assault, and stalking. (Title XX of U.S.C. § 1092.)
- 9) Requires the State Auditor to conduct an audit of a sample of at least six institutions of postsecondary education in California that receive federal student aid to do both of the following:
 - a) Evaluate the accuracy of the institutions' statistics and the procedures used by the institutions to identify, gather, and track data for publishing, disseminating, and reporting accurate crime statistics in compliance with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics; and,
 - b) Evaluate the institutions' compliance with state law governing crime reporting and the development and implementation of related policies and procedures. (Educ. Code § 67382.)

This bill:

- 1) Makes legislative findings and declarations regarding Title IX of the federal Education Amendments of 1972 (20 U.S.C Sec. 1681 et seq.); the importance of protecting university students from sexual harassment and violence; the inadequacy of CSU in handling complaints; and the consequences to survivors of sexual harassment and sexual violence.
- 2) Requires that rules adopted by CSU trustees require each campus president and either a vice president or vice chancellor to approve all sexual harassment settlements.
- 3) Requires that rules adopted by CSU trustees require a report to the Chancellor's office and the Legislature on the number of sexual harassment complaints filed, the length of time taken to complete the investigative process, and the disposition of those cases, disaggregated by complaints filed with each individual campus and complaints filed with the chancellor's office. Requires this report to be posted on the CSU's internet website.
- 4) Requires that rules adopted by CSU trustees prohibit retreat rights for specified employees who have committed sexual harassment or violated the CSU Title IX policy on sexual harassment.
- 5) Prohibits the CSU from entering into a contract for retreat rights for specified employees who have committed sexual harassment or violated the CSU Title IX policy on sexual harassment.
- 6) Specifies Title IX to mean Title IX of the federal Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.).
- 7) Makes technical and conforming changes.

COMMENTS

1. Stated Need for the bill

According to 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 egregious and systemic sexual harassment and abuse allegations and settlements across the CSU system, SB 808 would increase transparency and accountability requirements by providing additional oversight and approval of sexual harassment settlements, limiting "retreat rights" for senior administrators who have violated Title IX policies,

and requiring detailed public reporting of sexual harassment complaints lodged at each campus. The pervasive mishandling of harassment and abuse by senior administrators has eroded public trust and caused students to suffer, depriving them of equal and free access to an education. In order to rebuild trust and confidence in the safety of our campus communities, additional transparency, oversight, and accountability is sorely needed.

Co-sponsor of the bill, California Faculty Association, explains that this bill “is needed because there is systemic abuse and harassment happening at campuses across the CSU system.” “Unfortunately,” they continue, “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.”

As explained by The California State University Employees Union, a co-sponsor of the bill:

[I]t has become clear that allegations of sexual assault and harassment at the CSU have been systematically mishandled or ignored across the CSU system, and recent reporting by USA Today and other media outlets has only underscored the dire need for Title IX procedural reform at CSU.

2. Investigative Report by USA Today revealed mishandling of sexual harassment complaints by a CSU leader⁴

A USA Today investigation detailed a history of ignored and covered up allegations of sexual harassment by a high ranking CSU employee. Among other things, the report details allegations of retaliation against employees who complained about sexual harassment. The report states that their investigation revealed “a university president who not only took little meaningful action in response to years of sexual harassment complaints, but who publicly praised the perpetrator even after he was found at fault.”

A summary of information provided by CSU officials detailed how professors who had been found to have committed violations of sexual harassment policies at one CSU campus ended up employed at other CSU campuses.⁵ As explained by the California State University Employees, “in the ensuing backlash from the publication of these reports, then-Chancellor Castro benefitted from ‘retreat rights’ that allowed him to accept a tenured faculty position at a CSU campus as well as other monetary benefits.”

⁴ 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/cal-state-chancellor-joseph-castro-mishandled-sexual-harassment-claims/1000000001/) (as of 4/1/23.).

⁵ *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://edsources.org/new-batch-of-csu-records-shows-professors-disciplined-for-sexual-harassment/) [as of April 9, 2023].

As these articles show, the current process at the CSU is not working to hold sexual harassers accountable. The Cal State Student Association notes that this bill will “increase transparency and accountability at CSU campuses by providing additional oversight and approval of sexual harassment settlements, limiting ‘retreat rights’ for senior administrators who have violated Title IX policies, and requiring detailed public reporting of sexual harassment complaints lodged at each campus.”

3. Tackling the issue of sexual harassers at CSU moving to other positions at CSU

The bill, with the amendment described below, requires CSU trustees to adopt rules prohibiting the specified executive management employees from having an opportunity to retreat if they have committed sexual harassment or violated the CSU Title IX policy on sexual harassment. The bill, as proposed to be amended, also prohibits the CSU from entering into a contract for retreat rights for specified executive management employees who have committed sexual harassment or violated the CSU Title IX policy on sexual harassment.

Cal Matters explains that retreat right are common in higher education and “are a clause in some administrators’ contracts that allows them to leave their post and return to a faculty position[.]”⁶ The CSU defines “retreat” to mean “an Administrator's ability to be reassigned to a faculty position with or without tenure at a designated rank and within a designated department at the end of an administrative assignment.”⁷ The CSU Board of Trustees retreat policy “applies to all Administrator appointments made at any CSU campus or at the Chancellor's Office that include the option to Retreat to a faculty position.”

The author has agreed to accept the following amendment to define retreat rights and clarify that the retreat right prohibition applies to specified executive management employees who have committed sexual harassment or violated the CSU Title IX policy on sexual harassment.

Amendment:

Amend section 89500 (c)(3) as follows:

...

(3)(A) Prohibit the opportunity to retreat rights for any campus ~~president, provost, or other senior administrator~~ employee who is classified as executive management pursuant to the Executive Management Classification Plan (M98) or is classified as management personnel pursuant to the Management

⁶ “Cal State sexual harassment scandal: Your questions answered” by Michaella Huck, Zaeem Shaikh, Julia Woock, and Felicia Mello, Cal Matters, April 11, 2022.

⁷ (CSU Employment Policy Governing Administrator Employees’ Option to Retreat, PolicyStat ID 12715152, effective July 13, 2022, adopted by CSU Board of Trustees on November 16, 2022 by Resolution, Resolution No. RUFP 11-22-18, available at: <https://calstate.policystat.com/policy/12715152/latest> [as of April 9, 2023].)

Personnel Plan (M80), as those policies read on January 1, 2023, and who has been determined in a final administrative decision or a final judicial decision to have committed sexual harassment or who has violated any the California State University or campus Title IX policy. sexual harassment policy.

(B) Notwithstanding subdivision (d), a contract for the opportunity to retreat rights for any employee identified in subparagraph (A) who has been determined ~~to have~~ in a final administrative decision or a final judicial decision to have committed sexual harassment or violated any the California State University or campus Title IX sexual harassment policy shall not be entered into on or after January 1, 2024, or upon the expiration of a conflicting memorandum of understanding that was in effect before January 1, 2024, whichever is later.

(C) For purposes of this paragraph, ~~title IX~~ the following definitions apply:

(i) "Final administrative decision" means a final determination based on the investigative findings of a sexual harassment complaint by a Title IX compliance coordinator or other designated investigator at a college or university.

(ii) "Final judicial decision" means a final determination of a matter submitted to a court that is recorded in a judgment or order of that court.

(iii) "Title IX" means Title IX of the federal Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) seq.).

(d)...

SUPPORT

California Faculty Association (sponsor)

California State University Employees Union (sponsor)

Cal State Student Association

Service Employees International Union, California

Solano County Board of Supervisors

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 791 (McGuire, 2023) 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 with the University of California that the applicant disclose any final administrative decision or final judicial decision determining that the applicant committed sexual harassment. SB 791 passed the Senate Judiciary Committee with a 7 to 0 vote and is currently in the Senate Appropriations Committee.

AB 942 (M. Fong, 2023) Provides that it is the intent of the Legislature to align provisions of the Education Code with Title IX and specified impending federal regulation. AB 942 is pending in the Assembly Higher Education Committee.

Prior Legislation:

SB 493 (Jackson, Ch. 303, Stats. 2020) required postsecondary educational institutions to, among other things, adopt rules and procedures for the prevention of sexual harassment, and adopt and post on their Web sites the grievance procedures to resolve complaints of sexual harassment.

SB 1375 (Jackson, Ch. 655, Stats. 2016) required all schools receiving federal funding post the following information on their website: the name and contact information of their Title IX Coordinator; the rights of a pupil and the public, and the responsibilities of the school under Title IX; a description of how to file a complaint under Title IX. SB 1375 also required the State Superintendent of Public Instruction to electronically send an annual letter to all schools notifying them of this responsibility.

SB 1435 (Jackson, Ch. 633, Stats. 2016) requested that the “Health Framework for California Public Schools” include comprehensive information on the development of healthy relationships and be age and developmentally appropriate.

AB 2654 (Bonilla, Ch. 107, Stats. 2016) required postsecondary educational institutions to post their written policy on sexual harassment on their websites. AB 2654 also required the policy to include information on the complaint process and the timeline for the complaint process. The policy must include information on where to obtain the specific rules and procedures for pursuing available remedies and resources, both on and off campus.

SB 186 (Jackson, Ch. 232, Stats. 2015) enabled the governing board of a California community college district to exercise jurisdiction over student conduct that occurs off district property in cases of sexual assault and sexual exploitation, regardless of the victim’s affiliation with the college.

SB 665 (Block, 2015) would have required the Attorney General to establish a statewide Title IX Oversight Office, required postsecondary educational institutions to report specific data to this office and required each student to complete training on rape and sexual assault awareness and prevention annually. SB 665 was held in the Senate Appropriations Committee.

SB 695 (De León, Ch. 424, Stats. 2015) required K-12 school districts that require completion of a course in health education as a condition of high school graduation to include instruction in sexual assault and violence.

SB 967 (DeLeón, Ch. 748, Stats. 2014) required the governing boards of California community college districts, the Trustees of the California State University system, and the Regents of the University of California, as well as the governing boards of independent postsecondary institutions in California to adopt victim-centered sexual assault, domestic violence, dating violence, and stalking policies as a condition of receiving state funds for student financial assistance.

AB 1433 (Gatto, Ch. 798, Stats. 2014) required all California campuses to have policies in place to ensure immediate reporting and disclosure to law enforcement.

AB 3133 (Roos, Ch. 1117, Stats. 1982) enacted the Sex Equity in Education Act, which, similar to its federal Title IX counterpart, prohibits discrimination in California schools on the basis of sex.

PRIOR VOTES:

Senate Education Committee (Ayes 6, Noes 0)
