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## AB-1905 Public postsecondary education: employment: settlements, informal resolutions, and retreat rights. (2023-2024)

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### Assembly Bill No. 1905

#### CHAPTER 813

An act to add Section 66284 to the Education Code, relating to public postsecondary education.

[ Approved by Governor September 28, 2024. Filed with Secretary of State September 28, 2024. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1905, Addis. Public postsecondary education: employment: settlements, informal resolutions, and retreat rights.

Existing law establishes the California Community Colleges, under the administration of the Board of Governors of the California Community Colleges, the California State University, under the administration of the Trustees of the California State University, and the University of California, under the administration of the Regents of the University of California as the 3 segments of public postsecondary education in the state. Existing law establishes the College of the Law, San Francisco, under the governance of the Board of Directors of the College of the Law, San Francisco, within the University of California.

This bill would require public postsecondary educational institutions, as defined, as a condition of receiving state financial assistance, to adopt a written policy containing certain provisions, including, among other provisions, a provision prohibiting a supervisor or administrator from providing an official letter of recommendation if the employee is the respondent in a sexual harassment complaint and the employee (1) is determined in a final administrative decision, as defined, to have committed sexual harassment, (2) resigns from their current position before a final administrative decision is made, or (3) enters into a settlement with the public postsecondary educational institution, as specified. The bill would require public postsecondary educational institutions, as a condition of receiving state financial assistance, to adopt a written policy on settlements and informal resolutions of complaints of sexual harassment in cases where the respondent is an employee of the public postsecondary educational institution and would require the written policy to include, among other things, a provision that requires specified approvals for sexual harassment settlement pffers and informal resolutions. By imposing new duties on community college districts, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 66284 is added to the Education Code, to read:

**66284.** (a) It is the policy of the State of California, pursuant to Section 66251, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary educational institutions of the state.

(b) (1) Notwithstanding Section 67400, in order to receive state financial assistance, as defined in Section 213, the appropriate governing board or body of each public postsecondary educational institution shall adopt a written policy that, at a minimum, includes, but is not limited to, all of the following provisions:

(A) If an administrator is required to relinquish tenure as a faculty member to become an administrator, then there shall be a provision prohibiting retreat rights if any of following have occurred:

(i) The employee is the respondent in a sexual harassment complaint filed with the public postsecondary educational institution and the employee is determined in a final administrative decision to have committed sexual harassment.

(ii) The employee is the respondent in a sexual harassment complaint filed with the public postsecondary educational institution and, before a final administrative decision is made, the employee resigns from their current position.

(iii) The employee is the respondent in a sexual harassment complaint filed with the public postsecondary educational institution and the employee has entered into a settlement with the public postsecondary educational institution.

(B) A provision requiring any administrator or supervisor who elects to provide an official letter of recommendation to an employee of the public postsecondary educational institution to consult with the appropriate entities to determine if the employee is a respondent in a sexual harassment complaint filed with the public postsecondary educational institution.

(C) A provision prohibiting the supervisor or administrator from providing an official letter of recommendation, if it is determined the employee is a respondent in a sexual harassment complaint, and any of the following has occurred:

(i) The employee is determined in a final administrative decision to have committed sexual harassment.

(ii) Before a final administrative decision is made, and while an investigation is pending, the employee resigns from their current position.

(iii) The employee enters into a settlement with the public postsecondary educational institution based on the allegations arising from the sexual harassment complaint.

(2) Paragraph (1) does not prohibit a public postsecondary educational institution from adopting a policy on employees' ineligibility for retreat rights that is more expansive than the provisions described in paragraph (1), provided that the provisions described in paragraph (1) are incorporated into the policy.

(c) Notwithstanding Section 67400, in order to receive state financial assistance, as defined in Section 213, the appropriate governing board or body of each public postsecondary educational institution shall adopt a written policy on settlements and informal resolutions of complaints of sexual harassment in cases where the respondent is an employee of the public postsecondary educational institution. The written policy, at a minimum, shall include all of the following provisions:

(1) A provision that prohibits a settlement, an informal resolution, or both, from being offered or entered into if any of following apply:

(A) A complainant of the sexual harassment complaint filed against an employee respondent is a student.

(B) An employee respondent is accused of committing sexual assault, sexual violence, or sexual battery.

(C) The settlement or informal resolution includes a nondisclosure agreement.

(2) A provision that requires the campus chief executive officer to approve informal resolutions. The campus chief executive officer shall not delegate that responsibility to a designee.

(3) A provision that requires the campus chief executive officer to preliminarily approve all offers of sexual harassment settlements. The campus chief executive officer shall not delegate that responsibility to a designee.

(4) A provision that requires the governing board of a community college district, the Trustees of the California State University, the Regents of the University of California, or the Board of Directors of the College of the Law, San Francisco, as applicable, to approve offers of sexual harassment settlements that have been preliminarily approved by the campus chief executive officer pursuant to paragraph (3).

(d) For purposes of this section, the following definitions apply:

(1) "Chief executive officer" means the president of a community college campus or a California State University campus, the chancellor of a University of California campus, or the dean of the College of the Law, San Francisco.

(2) "Complainant" means an individual who is alleged to have been subjected to conduct that could constitute sexual or sex-based harassment.

(3) "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 a hearing, if a hearing is either required pursuant to Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) or federal regulations implementing those provisions, or is required by the public postsecondary educational institution's written policy on sex discrimination, including sexual harassment, and related grievance processes. If a party has filed a timely grievance or appeal, "final administrative decision" means after the grievance or appeal decision has been issued.

(4) "Informal resolution" means an agreement between a public postsecondary educational institution and a respondent and complainant for the purpose of resolving a complaint of sexual harassment before a final administrative decision is made.

(5) "Public postsecondary educational institution" means any campus of the California Community Colleges, the California State University, the University of California, or the College of the Law, San Francisco.

(6) "Respondent" means the person alleged to have engaged in prohibited conduct under Title IX of the federal Education Amendments of 1972 (20 U.S.C. Sec. 1681(a)(3)) or under a public postsecondary educational institution's written policy on sex discrimination, including sexual or sex-based harassment.

(7) "Retreat rights" means the ability of an administrator who was required to relinquish tenure as a faculty member to become an administrator to return to a faculty position if their administrative role comes to an end.

(8) "Settlement" means an agreement between a public postsecondary educational institution and a respondent for the purpose of resolving a complaint of sexual harassment. "Settlement" does not include a settlement reached in a civil action brought by the respondent against the public postsecondary educational institution.

(9) "Student" means a person who has gained admission and is matriculated at the public postsecondary educational institution.

**SEC. 2.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.