

Date of Hearing: March 15, 2016

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1778 (Quirk) – As Introduced February 3, 2016

SUBJECT: Postsecondary education: sexual assault and sexual violence training

SUMMARY: Requires, in order to receive state funds for student financial assistance, the governing boards of the community colleges, the California State University (CSU) Trustees, the University of California (UC) Regents, and the governing boards of independent postsecondary institutions to conduct annual training of their employees on the employee's obligations in responding to and reporting incidents of sexual assault, domestic violence, dating violence, and stalking involving students.

EXISTING LAW:

- 1) Requires the governing board of public, private, and independent postsecondary educational institution that receives public funds for student financial assistance to compile records of crimes on campus, make crime records available upon request, and to disclose a reported Part 1 violent crime, sexual assault, or hate crime, to the local law enforcement agency where the campus is located. (Education Code Section 67380, 67383)
- 2) Requires, under the Kristen Smart Campus Safety Act, UC Regents, CSU Trustees, CCD governing boards, and independent colleges that meet specified conditions to enter into specific written agreements with local law enforcement agencies regarding the coordination and responsibilities for investigating Part 1 violent crimes which occur on campus. (EDC Section 67381)
- 3) Requires public postsecondary educational institutions to each adopt, and implement at each campus or other facilities, a written procedure or protocols to ensure, to the fullest extent possible, that students, faculty and staff who are victims of sexual assault committed on grounds maintained by the institution or affiliated student organizations, receive treatment and information. The written procedures or protocols must contain specified information. (EDC Section 67385.)
- 4) Requires public postsecondary educational institutions, and requests UC, in collaboration with campus- and community-based victim advocacy organizations, to provide as part of campus orientations, educational and preventive information about sexual violence and to develop policies to encourage students to report any campus crimes involving sexual violence. (EDC Section 67385.7.)
- 5) Requires public and independent postsecondary institutions, as a condition of receipt of student aid funds, to adopt a policy concerning campus sexual violence, domestic violence, dating violence, and stalking that includes specified components and standards, including an "affirmative consent" standard for determining whether consent was given by both parties to sexual activity. Establishes a preponderance of evidence as the evidentiary standard for determining if sexual violence/harassment occurred. (EDC Section 67386)

- 6) Requires, under the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), public and private postsecondary educational institutions that participate in the federal financial aid program to disclose information about crimes on and around campuses. (20 U.S.C. section 1092(f))
- 7) Requires, under federal Title IX (20 U.S.C. sections 1681-1688), public and private postsecondary educational institutions that participate in the federal financial aid program to establish certain rights for victims of sexual assault, including:
 - a) Institutions are responsible for immediately and effectively responding to any sexual harassment or violence that creates a hostile environment. The institution must eliminate the harassment or violence, prevent its recurrence, and address its effects. Regardless of whether a student chooses to file a complaint with the institution, the institution is responsible for investigating and taking appropriate steps to resolve the situation. A criminal investigation does not relieve the school of its duty under Title IX.
 - b) Institutions must have and distribute policies against sex discrimination; the policy must state that inquiries concerning Title IX may be referred to the institution's Title IX coordinator or to the Office of Civil Rights (OCR).
 - c) Institutions must have a designated Title IX coordinator and notify students and employees of the name and contact information for the Title IX coordinator. The coordinator is responsible for overseeing all complaints of sex discrimination, which include harassment and assault, and identifying and addressing patterns or systemic problems.
 - d) Institutions are required to have and make known the procedures for students to file complaints of sex discrimination, and procedures must provide for prompt and equitable resolution of sex discrimination complaints. All complainants must have the right to present his or her case, including the right to a full investigation, to present witnesses and evidence, and to an appeal process (available to both parties).
 - e) Establishes a preponderance of the evidence standard (more likely than not) when determining if sexual harassment or violence occurred.
 - f) Provides complainants the right to be notified of the outcome of the complaint, including the sanction. Complainants cannot be required to abide by a nondisclosure agreement.
 - g) Authorizes grievance procedures to include voluntary informal methods (such as mediation) for resolving some types of sexual harassment complaints. However, mediation is not appropriate in cases involving allegations of sexual assault.

FISCAL EFFECT: Unknown.

COMMENTS: *Purpose of this bill.* According to the author, "when students experience sexual violence they are likely to report the incident to a trusted coach or resident advisor at their campus, unaware that this person may not be adequately trained to appropriately report and support the victim. The unfortunate truth is that although certain staff is trained to respond to and report student incidents of sexual violence to the appropriate officials, not all college

campuses suitably train every staff member who will interact with a student to do this. The lack of all-inclusive, annual training may lead to mismanagement of these incident reports, or worse, may inadvertently discourage students from reporting these incidents."

Background. In June 2014, the California State Auditor's 2013-124 report, entitled, *Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents*, concluded that California's educational institutions were not properly educating students and training faculty and staff sufficiently on response and reporting of incidents on campus as mandated by Title IX and the Clery Act. The auditor made a series of recommendations to include the expansion of staff training, the improvement of access and content for student education, the enhancement of communication with students, and the evaluation of summary data collected in order to better identify trends and inform strategies to address incidents on campus.

California's postsecondary education institutions report that they have taken steps to address the concerns raised in the audit reports and to respond to statutory changes and regulatory guidance by improving processes and outcomes on their campuses. Both the UC and CSU have updated their sexual harassment and assault policies, initiated mandatory prevention and response trainings for all students and employees, and established confidential victim advocate offices on every campus. The CSU and UC have appointed systemwide officers charged with ensuring Title IX compliance. .

UC policy appears consistent with this bill. The UC *Policy on Sexual Violence and Sexual Harassment* issued on January 1, 2016, requires, among other provisions, for each campus to conduct "mandatory annual training and education, about Prohibited Conduct and how conduct can be reported, to all students, faculty, and other academic appointees, and staff in accordance with applicable State and federal law, and University policies."

CSU policy appears consistent with this bill. CSU Executive Order 1096, revised June 23, 2015, requires, among other provisions, mandatory annual training for all employees that includes the rights and responsibilities of each employee relating to the CSU policy and the employee's duty to report.

CCC and independent college policies may differ among campuses. Committee staff was unable to verify whether this bill is consistent with existing community college or independent university policies. The CCC Chancellor's Office convened a Task Force on sexual assault in the spring of 2014, and in May of 2015 the Task Force reported to the Board of Governors (BOG) regarding the findings of a survey of CCC policies and practices. According to the information presented at the CCC BOG meeting, of 46 responses from colleges and districts, 56% reported that they provide ongoing sexual assault prevention and awareness programs for employees.

REGISTERED SUPPORT / OPPOSITION:

Support

None on File

Opposition

None on File

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