

Date of Hearing: April 21, 2015

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 969 (Williams) – As Introduced February 26, 2015

**SUBJECT:** Community college districts: removal, suspension, or expulsion

**SUMMARY:** Authorizes a California Community College District (CCD) to take specified action to remove, suspend, expel, or deny access to a student found responsible for specified activities. Specifically, **this bill:**

- 1) Allows a CCD to remove, suspend, or expel a student for conduct that threatens the safety of students and the public, whether that conduct occurs on or off campus.
- 2) Expands the circumstances under which the governing board of a CCD can deny or permit conditional admission to an individual to include an individual who has been suspended for sexual assault or sexual battery from another CCD within the preceding five years.
- 3) Authorizes a CCD to require a student seeking admission who has been previously suspended from a CCD in this state for rape, sexual assault, or sexual battery to inform the district of his or her prior suspension. Provides that failure to do so may be considered by the CCD in determining whether to grant admission, and a written record of the fact may be maintained by the CCD with the applicant's file.
- 4) Provides for reimbursement if the Commission on State Mandates determines that this act contains state mandated local costs.

**EXISTING LAW:**

- 1) Requires the public higher education segments to adopt specific rules governing student behavior with applicable penalties for violations of the rules, and procedures by which students are informed of rules. (Education Code Section 66300)
- 2) 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)
- 3) Authorizes a CCC, the president of a CCC, or the president's designee, or an instructor to suspend a student for good cause; authorizes the governing board to expel a student for good cause when other means of correction fail to bring about proper conduct, or when the presence of the student causes a continuing danger to the physical safety of the student or others; requires the suspension or expulsion of a student to be accompanied by a hearing as provided; and, authorizes a CCD to require a student whom the district has a protective order against to apply for reinstatement. (Education Code Section 76030)

- 4) Prohibits the removal suspension or expulsion of a community college student unless the conduct resulting in the disciplinary action is related to college activity or college attendance. (Education Code Section 76034)
- 5) Authorizes a governing board of a CCD to deny enrollment, permit enrollment, or permit conditional enrollment to a student who has been expelled or is being considered for expulsion from another CCD within the preceding five years for specified offenses, following a hearing and appeal process. (Education Code Section 76038)
- 6) 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:** *Background.* On November 12, 2014, the author organized a committee roundtable at UC Santa Barbara (UCSB) to review the university's handling of sexual assault complaints. Roundtable attendees included representatives of UCSB and Santa Barbara Community College (SBCC). According to testimony provided by SBCC representatives, current law (EDC Section 76034) has been interpreted to prohibit a CCD from taking action to suspend or expel a student found to have violated a campus misconduct policy, even in cases of rape, unless the misconduct occurred on the college campus.

*CCC Chancellor's Office opinion.* In 2007, the CCC Chancellor's Office issued Legal Opinion L 07-07 to provide guidance to CCDs regarding the authority to discipline a student. The opinion notes that EDC Section 76034 imposes a significant limitation on the ability of a CCD to impose discipline for conduct even if that conduct is criminal in nature. However, it goes on to state that in 1966 the Attorney General indicated that this language in a predecessor statute "should not be interpreted to mean that school districts could only impose discipline for conduct that actually occurred at school and during school hours. Instead, the Attorney General determined that if a district could identify a link between the conduct and school activities or attendance, then conduct that occurred away from school could be considered for disciplinary purposes." The opinion notes that if a student commits a crime that has nothing to do with a college activity or with college attendance, the college will be hard-pressed to suspend or expel for that conduct.

*Purpose of this bill.* According to the author, about 70% of rape and sexual assault victimizations occur either at the victim's home or the home of another known person, meaning that most sexual assault cases do not occur on campus or during campus related events. This bill makes three important changes to current law: (1) it clarifies current law to ensure that CCDs can take appropriate action to suspend or expel students who pose a threat to the campus community; (2) it would require a transfer student to disclose whether they were dismissed previously from an institution for sexual assault; and, (3) it would direct a local CCD governing board to hold a hearing to determine whether to enroll a student who has been suspended or expelled from another CCD for sexual assault.

*UC and CSU Policies.* There is no similar statutory restriction on the University of California (UC) extension of its jurisdiction over issues of student conduct beyond the campus. The UC reports that its campuses have exercised this discretion in the interpretation and application of student conduct code expectations and discipline when it determines that the conduct endangers the campus community. According to the California State University (CSU), Title V regulations specifically state that conduct that threatens the safety or security of the campus community, or substantially disrupts the functions or operation of the University is within this jurisdiction whether it occurs on or off campus.

*Denying enrollment.* This bill would permit a CCD to deny or permit conditional admission to an individual who has been suspended for sexual assault or sexual battery from another CCD within the preceding five years. The author and Committee may wish to consider amendments to coincide the length of time to the term of the suspension and the terms of the suspension or expulsion to the institution's sexual misconduct policy required under current law:

76038. (a) If the governing board of a community college district receives an application for admission from an individual who has been expelled from another community college district within the preceding five years pursuant to this article or for a violation of the institution's policy adopted pursuant to 67386, or is currently suspended for a violation of the institution's policy adopted pursuant to section 67386 ~~a sexual assault or sexual battery offense~~ from another community college district ~~pursuant to this article within the preceding five years~~, or who is undergoing expulsion procedures in another district, for any of the offenses listed in subdivision (b), before taking action to deny enrollment or permit conditional enrollment as authorized by subdivision (f), the governing board or delegate pursuant to subdivision (g) shall hold a hearing, conducted in accordance with this section and the applicable rules and regulations governing enrollment hearings authorized by this section and adopted in accordance with Section 66300, to determine whether that individual poses a continuing danger to the physical safety of the students and employees of the district.

76038. (e) A community college district may require a student seeking admission who has been previously expelled or is currently suspended from a community college in the state for ~~rape, sexual assault, or sexual battery~~ a violation of the institution's policy adopted pursuant to section 67386 to inform the district of his or her prior expulsion or current suspension. Failure to do so may be considered by the district in determining whether to grant admission, and a written record of the fact may be maintained by the community college district with the applicant's file.

*Related legislation.* SB 186 (Jackson), which is pending in the Senate, expands the definition of “good cause” for purposes of removal, suspension or expulsion from a community college to include sexual assault or sexual battery and, for this conduct exclusively, makes an exception to the prohibition against removal, suspension, or expulsion unless the conduct is related to college activity or attendance.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Coalition Against Sexual Assault

### **Opposition**

None on File

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