

Date of Hearing: June 23, 2015

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 186 (Jackson) – As Amended April 16, 2015

**SENATE VOTE:** 35-0

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

**SUMMARY:** Authorizes a California Community College District (CCD) to remove, suspend, or expel a student for sexual assault, as specified. Specifically, **this bill:**

- 1) Authorizes a CCD to remove, suspend or expel a student for specified sexual assault conduct that is unrelated to college activity or attendance.
- 2) Provides that the statutes prohibiting a student from being removed, suspended, or expelled unless the conduct for which the student is being disciplined is related to college activity or college attendance are not intended to limit the ability of a CCD to take appropriate action in compliance with federal law.
- 3) Expands the definition of "good cause" for which a CCD may suspend or expel a student to include both of the following:
  - a) Sexual assault, defined as actual or attempted sexual contact with another person without that person's consent, regardless of the victim's affiliation with the CCD, including, but not limited to, any of the following:
    - i) Intentional touching of another person's intimate parts without that person's consent or other intentional sexual contact with another person without that person's consent.
    - ii) Coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's consent.
    - iii) Rape, which includes penetration, no matter how slight, without the person's consent, of either of the following:
      - (1) The vagina or anus of a person by any body part of another person or by an object.
      - (2) The mouth of a person by a sex organ of another person.
  - b) Sexual exploitation, defined as a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, regardless of the victim's affiliation with the CCD, including, but not limited to, any of the following:
    - i) Prostituting another person.
    - ii) Recording images, including video or photograph, or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent.

- iii) Distributing images, including video or photograph, or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure and objected to the disclosure.
- iv) Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire.

**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, as defined; 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.

**FISCAL EFFECT:** Unknown. This bill is keyed non-fiscal by Legislative Counsel.

**COMMENTS:** *Background.* On November 12, 2014, the author participated in a roundtable at UC Santa Barbara (UCSB), hosted by the Assembly Higher Education Committee, to review UCSB'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.

*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.

*Purpose of this bill.* According to the author, this bill would align CCC authority with that of UC and CSU by allowing CCCs to hold students accountable for sexual assaults or sexual exploitation whether on or off campus, and regardless of the victim's affiliation with the college.

*Related legislation.* AB 969 (Williams), pending in the Senate, would authorize a CCD to take specified action to remove, suspend, expel, or deny access to a student found responsible for specified activities. Should SB 186 and AB 969 both move forward to the Governor, conflicts between the two bills would need to be addressed. Committee staff understands conversations between the authors regarding the different approaches taken in these bills are ongoing.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Coalition Against Sexual Assault  
California Federation of Teachers  
Los Angeles Community College District

### **Opposition**

None on File

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