

Date of Hearing: January 9, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 1575 (Irwin) – As Amended January 3, 2024

SUBJECT: Public postsecondary education: sexual harassment, sexual violence, and discrimination: disciplinary actions: confidential advocates and advisors

SUMMARY: Authorizes students, who receive a disciplinary notification, the right to have an advisor of their choosing and requires postsecondary education institutions to employ at least two confidential advocates per campus, as defined. Specifically, **this bill:**

- 1) Conditions the receipt of state financial aid to California Community Colleges (CCC), the California State University (CSU), and the University of California (UC) upon the institution adopting a policy of permitting a student to be represented by an advisor if the student receives a notification of a disciplinary action, as defined. The advisor may be a confidential advocate as established by the measure. The policy will include the following:
 - a) The advisor is selected by the student and will be provided training by the public postsecondary, as defined, on its procedures for the disciplinary action; and,
 - b) The advisor may receive written permission from the student to receive updates, along with the student, during the process and can participate in the process as an advocate for the student or in the role of adviser as authored in the California Sex Equity Act and Federal Title IX regulations.
- 2) Requires public postsecondary education institutions, in order to provide equal rights and opportunities in the postsecondary educational institutions, to employ at a minimum two confidential advocates to assist in the institution's response to acts of discrimination.
- 3) Permits a public postsecondary education institution an exception from (2) above, if the institution has a memorandum of understanding with a local victim advocacy organization to provide advocates on campus and the memorandum includes that the confidential advocate will keep campus office hours and students, faculty, and staff will not be charged for the services of the confidential advocate. Prohibits the increase of campus fees to pay for the services of the confidential advocate.
- 4) Authorizes confidential advocates to be independent from the Title IX office on campus and requires them to meet the minimum qualifications of a sexual assault counselor and a domestic violence counselor, as defined. Requires a confidential advocate to be trained in trauma-informed responses, Title IX procedures, and the institution's policies relating to sexual harassment and sexual violence.
- 5) Clarifies all confidential advocates will do all of the following while in the service of an institution:
 - a) Notify all students, staff, and faculty of their rights and responsibilities as delineated in the policies and procedures for student safety, student code of conduct, sexual harassment and sexual violence;

- b) Provide confidential services for students, staff, and faculty, regardless of whether the individual is the victim or the accused of an alleged act of sexual harassment, sexual violence or discrimination. Services will be provided regardless of whether or not the individual decides to report the incident to the Title IX office or law enforcement;
 - c) Provide written notice to all staff and faculty who are involved in providing and enforcing supportive measures or accommodations of their duties;
 - d) Assist in helping connect the student, staff, or faculty member with campus police or local law enforcement to make a report, but only if directed by the individual;
 - e) Notify students, staff, and faculty of their rights and responsibilities regarding protection orders, no-contact orders, and any other lawful order issues by either the institution or a court of law; and,
 - f) Coordinate with campus resources and any community-based organizations to help connect students, faculty, or staff to the resources that respond to sexual harassment and sexual violence incidents.
- 6) Permits a confidential advocate to act as an advisor for a student, staff, or faculty advisor during any administrative or institutional based adjudication proceeding, if requested by the student, staff, or faculty.
- 7) Prohibits a confidential advisor from disclosing confidential information, as defined, unless written consent was provided by the person who provided the information to the advocate prior to the disclosure of the information. Specific permission must be obtained from the victim of an alleged act of sexual harassment, sexual violence, or discrimination before disclosing their identity to the public postsecondary education institution or any other authority including law enforcement, unless otherwise required by state or federal law. Clarifies this subdivision is intended to maintain confidentiality, preserve any applicable privileges including those described in Article 8.5 and Article 8.7 of the Evidence Code and to protect the privacy of students, staff, and faculty requiring the assistance of confidential advocates.
- 8) Prohibits the same confidential advocates to provide services to both the victim and the accused of the same alleged act of sexual harassment, sexual violence, or discrimination.
- 9) Clarifies that a confidential advocate is not required to report an alleged act of sexual harassment, sexual violence, or discrimination to the public postsecondary education institution nor to law enforcement unless otherwise required by applicable state or federal laws.
- 10) Clarifies that the confidential advocate may be cross-examined in a court of law or civil court if the confidential advocate testifies after written consent from the victim or the accused has been provided.
- 11) Clarifies that the notification of an alleged act of sexual harassment, sexual violence, or discrimination to a confidential advocate, or the rendering of services by a confidential advocate, is not considered an actual notice or constructive notice to the public higher education institution of the alleged act.

12) Deletes previous mentions of sexual assault or domestic violence counselors from the Education Code and replaces the references of sexual assault or domestic violence counselors with confidential advocates. The sections of code which are deleted from Education Code (EDC) Section 67385 are added to new section of code referencing confidential advocates.

13) Defines as follows:

- a) “Public postsecondary educational institution” means a community college, a campus of the California State University, or a campus of the University of California;
- b) “Sexual Harassment” and “Sexual Violence” has the same meaning as the term in Education Code Section 66262.5; and,
- c) “Specific Permission” has the same meaning as the following:
 - i) The permission is limited to disclosure to particular people, for a particular circumstance, or for a particular purpose for which the permission was given;
 - ii) The permission is limited to confidential advocate to whom it was given; and,
 - iii) The permission may be withdrawn.
 - iv) Clarifies unlimited or general permission for disclosure is not specific permission.

14) Makes clarifying and conforming changes.

EXISTING LAW: *Federal law.*

- 1) Stipulates that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance except for specified circumstances including membership of fraternities and sororities (United States Code Title 20, Chapter 38, Section 1681).
- 2) Outlines the required response pursuant to Title IX, of a postsecondary higher education institution when the institution is made aware of an alleged sexual harassment incident on campus. The regulations include a requirement for a formal complaint, a grievance procedure for an investigation into whether the incident based on a standard of evidence occurred, and a method of appealing the outcome of the grievance process. Permits complainants and respondents to have advisors throughout the grievance process (Federal Code of Regulations Title 34, Subtitle B, Chapter 1, Subpart D, Section 106.45).
- 3) Defines sexual harassment as conduct on the basis of sex that satisfies at least one of the following:
 - a) An employee of the postsecondary education institution conditions aid, benefit, or services to a recipient on the individual’s participation in unwelcome sexual conduct;
 - b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; and,

- c) Sexual assault, dating violence, domestic violence, and stalking, as defined in the United States Code (Federal Code of Regulations, Title 34, Subpart D, Section 106.30).

State law.

- 1) 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 under the following conditions: quid pro quo, as defined, and hostile workplace, as defined. Further defines “Sexual Harassment” as sexual violence, sexual battery, and sexual exploitation, as defined (EDC Section 66262.5 and 212.5).
- 2) Requires the governing board of a community college district, the Trustees of the CSU, the Board of Directors of San Francisco Law School, and the Regents of the University of California to adopt and implement a written procedure or protocols related to sexual assault or domestic violence, as provided. The protocol shall be reviewed and updated annually in collaboration with sexual assault and domestic violence counselors, and student, faculty, and staff representatives. Authorizes that sexual assault and domestic violence counselors at public colleges and universities be independent from the Title IX office and prohibits sexual assault and domestic violence counselors from releasing the identity of the victim without first obtaining specific permission (EDC Section 67385).

FISCAL EFFECT: Unknown

COMMENTS: *Impetus of the bill.* The collegiate soccer world was shaken when a promising female athlete took her own life in March 2022. Days after her death, it was uncovered, the student had received a disciplinary notification stemming from an incident involving a football player and spilled coffee. Catalyzed by the loss, the soccer player’s parents started “Katie Saves” a nationwide initiative to ensure students on college campuses have a trusted advisor to help them advocate and navigate the complicated disciplinary procedures on college campuses that may arise after an alleged student conduct violation. “Kate Saves” provide agency to students during a disciplinary proceeding by providing students with the option to select their own advisor regardless of whether the disciplinary proceeding was due to a Title IX complaint, an academic sanction, or a violation of the student code of conduct.

Existing law at both the state and federal level acknowledge advisors should be made available to students regardless of whether they are the complainant (victim) and respondent (accused) of a federal Title IX complaint or a complaint of sex discrimination as described in the California Sex Equity Act (EDC Section 66281.8). However, these advisors are only made available after a complaint is filed and are not available to advise students, faculty, and staff of the various reporting options (legal, institutional, or criminal) nor can the advisor assist in connecting the student, faculty, and staff with on-and off-campus resources.

The Education Code acknowledges the existence of sexual assault and domestic violence counselors in Section 67385 by requiring them to be separate from the Title IX office. The Section also enables the counselors to provide services to alleged victims of assault regardless of whether they elect to report the incident to the campus or not. However, not every campus has sexual assault and domestic violence counselors nor is it clear whether their services can be provided to students, faculty, and staff who face disciplinary sanctions.

AB 1575 (Irwin) seeks to codify elements of the “Katie Saves” initiative to ensure that (1) advisors are available to students who face any type of disciplinary procedure on campus and (2) to require confidential advocates to be present on campus to assist faculty, staff, and students in understanding their rights under the law and to assist in connecting both alleged victims and the accused with support services.

Need for the measure. As delineated by the author, “California’s colleges and universities are filled with extremely bright and dedicated students who come from around the world to study, participate in athletics, conduct research, and better their lives. At times their higher education experience presents them with challenges related to violations of academic codes, student codes of conduct, or even with harassment and discrimination. These challenges threaten lasting real-world consequences that many students are not prepared to handle on their own. Our colleges and universities must provide their students facing these institutional proceedings with support and resources, including access to confidential advocates, through a holistic approach that prioritizes their well-being.”

Confidential advocates. Confidential advocates provide a continuum of care for survivors and play an integral role in restoring educational equity after a discriminatory event. Confidential advocates act as the following:

- 1) Educational Resource – informing students, faculty, and staff of their rights to report a discriminatory event and the potential outcomes of reporting.
- 2) Intermediary – connecting students, faculty, and staff with support services such as mental health counseling, medical services, and academic support.
- 3) Counselor – providing emotional support during the adjudication process or disciplinary procedure should the individual decide to provide a formal report to the higher education institution or law enforcement.

On some campuses confidential advocates are synonymous with domestic violence and sexual assault counselors. Confidential advocates are the key architect in building a blueprint for a survivor’s recovery as they are responsible for connecting the survivor with supportive resources and helping the survivor understand the various pathways for reporting (whether it be to the police or the institution) and the potential outcomes of reporting an incident.

A report published by *Center for Changing Our Campus Culture*, specifies that confidential advocates as the first line of action when it comes to helping survivors determine next steps after a discriminatory incident. In addition to connecting survivors to comprehensive care service, confidential advocates assist survivors in navigating the difficult choices of reporting and help victims feel empowered to choose what is best for them. Furthermore, confidential advocates provide trauma-informed, inclusive, emotional support by helping survivors connect with services such as mental health counseling, medical care, academic supports, and basic needs assistance. Ideally, confidential advocates would act as an intermediary assisting both the accused and victims access to the comprehensive care they need for everyone to receive restorative justice after a discriminatory event.

The 2014 White House Taskforce to Protect Student’s from Sexual Assault report, *Not Alone*, determined every college and university campus should have confidential advocates who can provide emergency and ongoing support to a survivor of a sexual assault. Building upon the taskforce report, Texas and Oregon have both passed state legislation requiring their higher

education institutions to employ confidential advocates. AB 1575 (Irwin) seeks to build upon the work of Texas and Oregon and codify a requirement for all public higher education institutions in California to have confidential advocates as part of the institutions response to incidents of discrimination.

Confidential advocates and public postsecondary education institutions. Unlike other states as previously mentioned, California does not have a requirement for campuses to employ confidential advocates and therefore, each public higher education system is endowed with the authority to employ a confidential advocate as part of the institution's response to discriminatory events.

The CCC does not have a systemwide policy on whether community colleges must have confidential advocates; therefore, each district is left to determine whether confidential advocates are necessary to respond to discrimination on campus. Research conducted by the Assembly Higher Education Committee found very few community colleges employ full-time confidential advocates. In discussing confidential advocates with community college faculty, Committee Staff learned that faculty do not have access to advocates nor advisors during the disciplinary procedures such as the adjudication of sexual harassment complaints. Union representatives are not allowed to assist faculty during a sexual harassment complaint investigations and often faculty are left to hire a lawyer to understand their rights during the process. Committee Staff note advisors are supposed to be provided to students during the grievance process (EDC Section 66281.8); however, the advisors are not confidential advocates and what is disclosed to an advisor can be shared during the investigation process.

According to the 2023 *Title IX and Discrimination Harassment and Retaliation Assessment Systemwide Report* by Cozen O'Connor, every CSU campus except Cal Poly San Luis Obispo has at least one or two confidential advocates (Cal Poly San Luis Obispo has four). The role of the confidential advocate on a CSU campus is to assist the complainant in understanding their rights, the grievance process, and what support services are available to them.

Each UC campus has a "Center for Advocacy, Resources, & Education" (CARE). Each center employs confidential advocates who are there to provide emotional support to students and employees who have experienced sexual violence or harassment. The advocates employ trauma-informed practices to help provide support through access to services, mental health counseling, and advice regardless of whether the survivor wishes to report the incident or simply receive supportive services. In addition to advocates for survivors of sexual violence and sexual harassment, each UC campus has respondent service coordinators. The role of the respondent coordinator is to help subjects of a Title IX complaint to understand their rights and the adjudication process. The respondent service coordinators are trained to help the respondent access campus and community resources, understand their rights, and navigate the grievance process. Unlike the confidential advocates, the respondent service coordinators are not confidential.

AB 1575 (Irwin) would set a state standard for all public higher education institutions by clarifying that confidential advocates are to be available to assist staff, faculty, and students understand their rights, receive supportive services, and to Staff of the Assembly Higher Education Committee was given a directive to examine how the State could best assist postsecondary education institutions in California adhere to state and federal law pertaining to the prevention of sex discrimination on campus. Over the last two years, Assembly Higher

Education Committee in collaboration with the Senate Education Committee spent over 400 hours participating in trainings, researching, reading reports and dissertations, and listening to experts, students, staff, and faculty from the CCC, the CSU, the UC, and the Association of Independent Colleges and Universities (AICCU). At this time of the publication of this analysis, the report as drafted by the two committees has not yet been made public; however, the report will contain recommendations on how the State can best address sexual harassment and sexual violence on college and university campuses.

The author has agreed to amend the bill to align with the recommendations of the report should the report address confidential advocates and advisors in a manner different than AB 1575 (Irwin).

Arguments in support. The California Faculty Association, which represents over 29,000 CSU faculty support AB 1575. “By allowing students to select a designated advocate to receive specific administrative, academic, health, and disciplinary notices, AB 1575 empowers students and promotes transparency in their support networks. This bill aligns with our mission to ensure the comprehensive wellbeing of our students. We understand that mental health issues can greatly impact a student's academic performance and overall life quality. A designated advocate will play a crucial role in providing consistent and tailored support to students, enabling them to navigate challenges more effectively.”

Committee comments. AB 1575 removes language from the EDC pertaining to domestic violence and sexual assault counselors as Committee Staff understand these terms are interchangeable with confidential advocates. The language of EDC Section 67385 is included in the new language of AB 1575 (Irwin) and therefore it is reasonable to conclude the confidential advocates and the domestic violence and sexual assault counselors fulfill the same role.

However, to avoid any confusion and to build upon the work of AB 1467 (Cervantes), Chapter 556, Statutes of 2022, moving forward the author may wish to define the term “confidential advocates” to include limited to domestic violence and sexual assault counselors on campus as defined by EDC Section 67385.

REGISTERED SUPPORT / OPPOSITION:

Support

California Faculty Association

Opposition

None on file.

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