

Date of Hearing: June 18, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

SB 1491 (Eggman) – As Amended May 16, 2024

**[Note: This bill is double referred to the Assembly Judiciary Committee and will be heard by that Committee as it related to issues under its jurisdiction.]**

**SENATE VOTE:** 31-8

**SUBJECT:** Postsecondary education: Equity in Higher Education Act

**SUMMARY:** Amends the Equity in Higher Education Act to do the following: update definitions regarding sexual orientation, require California Community Colleges (CCC) and the California State University (CSU) to designate an employee to meet the needs of LGBTQ+ members on campus, and provides additional notification requirements to inform students of their rights to report discriminatory incidents to the U.S. Department of Education. Specifically, **this bill:**

- 1) Amends the definition of “sexual orientation” in the Equity in Higher Education Act to read as follows: sexual orientation means a person’s physical, emotional, romantic attraction to other people and includes, but is not limited to heterosexuality, homosexuality, asexuality, and pansexuality.
- 2) Requires the Trustees of the CSU and the governing board of each community college, and continues to request the University of California (UC) to designate an employee at each campus as a point of contact to assist the needs of lesbian, gay, bisexual, asexual, pansexual, transgender, gender-nonconforming, intersex, and two-spirited students, faculty, and staff. The contact of the “designated employee” will be published on the campus website and will be included in campus directories, as defined.
- 3) Clarifies that the designated employee is exempt from mandatory reporting requirements of acts of sexual harassment, sexual violence, or discrimination that are reported to them. The designated employee is only permitted to disclose acts of sexual harassment, sexual violence, or discrimination if the employee has received written permission from the person who disclosed the information to the employee.
- 4) Stipulates the services rendered by the designated employee and any notice provided to a designated employee of acts of acts of sexual harassment, sexual violence, or discrimination are not considered notice of the acts to the public higher education institution, as defined by Title IX. This exemption of notice to the public higher education institution will only be used in a manner consistent with Title IX of the Education Amendments of 1972 (Title IX).
- 5) Authorizes the California Student Aid Commission (CSAC), beginning in the 2025-2027 academic year, to provide a written notice to students who attend postsecondary education institutions who receive state financial aid and have an exemption from either Title IX or from the Sex Equity in Higher Education Act. The written notice will inform students of the exemption status of the institution and of the student’s right to report discrimination (in all

forms) to the United States Department of Education's Office for Civil Rights (OCR) and will have the contact information for the OCR.

- 6) Requires the Trustees of the CSU and the governing board of each CCC to adopt and publish policies on harassment, intimidation, and bullying. The policies will be included in the rules and regulations governing student behavior (student codes of conduct). Requests the UC to comply with the section, if the Regents of the UC adopt a resolution to adopt the provision.
- 7) Makes technical and conforming changes to various statutes with the Equity in Higher Education Act.

**EXISTING LAW:** *Federal law.*

- 1) 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 (Title IX)).
- 2) Requires a postsecondary education institution, that receives federal funding, to respond promptly to address sexual harassment in an education program or activity, once the institution has actual knowledge of the harassment. Actual knowledge means the notice of sexual harassment or allegation to the Title IX coordinator or any official who has the authority to institute corrective measures (as of June 2024, Federal Code of Regulations Title 34, Subtitle B, Chapter 1, Subpart D, Section 106.44 (a) and 160.30 (a)).

*State law.*

- 1) Defines sexual orientation for the Equity in Higher Education Act as "sexual orientation means heterosexuality, homosexuality, or bisexuality." (Education Code (EDC) Section 66262.7).
- 2) Requests the Trustees of the CSU, the Regents of the UC, and each governing board of the community colleges to designate an employee at each campus to be the point of contact for lesbian, gay, bisexual, and transgender faculty, staff, and students at the respective campuses. It is further requested that the contact information for the designated employee be included on the campus website and in the campus directories (EDC Section 66271.2).
- 3) Requires postsecondary education institutions who receive state financial aid and who are excepted from either (or both) Title IX or from the Equity in Higher Education Act due to religious conflicts, to submit all materials regarding the exemption to the CSAC. CSAC will then compile the information from the institutions and maintain a list on CSAC's website of the institutions that have claimed the exemption along with the institution's reasoning for claiming or having the exemption from either the state or federal laws (EDC Section 66290.2).
- 4) Requests the Trustees of the CSU, the Regents of the UC, and each governing board of the community colleges to adopt and publish policies on harassment, intimidation, and bullying and for those policies to be included in the segment's students code of conduct. States, it is the intent of the Legislature that rules and regulations of the student code of conduct should

be published at a minimum on each campus' website and in any materials printed covering the rules and regulations of the segment (EDC Section 66302).

- 5) Establishes requirements for how higher education institutions in California are to adjudicate sexual harassment complaints. The provision stipulate most academic or student life employees on campus are considered mandatory reporters with very few exemptions including but not limited to therapits, UC CARE employees, CSU victim advocates, or person's whose confidentiality is mandated by law (EDC Section 66281.8).

**FISCAL EFFECT:** According to the Senate Committee on Appropriations:

- 1) The Chancellor's Office estimates one-time Proposition 98 General Fund costs of approximately \$1.1 million to adopt and publish policies on harassment, intimidation, and bullying. This estimate assumes a cost of \$14,000 for each community college district. The Chancellor's Office also indicates that the bill's requirement to designate an employee at each campus as a point of contact for the needs of lesbian, gay, bisexual, and transgender faculty, staff, and students could result in additional, unknown costs for community college districts. The costs could be minor to the extent that colleges already have a point of contact in place. These activities could be deemed to be reimbursable by the state.
- 2) The CSU and UC both indicate that any costs resulting from this bill would be minor and absorbable within existing resources.
- 3) Any costs to the CSAC to provide the written notices to students each year are likely to be minor and absorbable within existing resources.

**COMMENTS:** *Need for the measure.* Currently As articulated by the author, "this bill makes important changes to the education code, making it more inclusive and closer to the spirit of the law. Institutions of Higher Education need to be able to provide and better protect the rights of LGBTQ+ students and faculty. This bill also compels the transparency of private colleges by written notice and gives public colleges a more active role in providing resources to LGBTQ+ students."

The author further illustrates how the bill will help provide additional protections to students on campus:

"Through the written exemption requirement by CSAC, students who receive Cal Grant funds, this bill promotes transparency between private postsecondary institutions and LGBTQ+ students. This bill will ensure that LGBTQ+ students in these institutions will be able to make informed decisions regarding potential infringements upon their rights and protect them against discriminatory practices which might be justified under the guise of religious freedom.

By expanding the scope of how the state defines sexual orientation, this bill ensures that a broader range of LGBTQ+-identifying students can be formally protected by the provisions of the Education Code. This bill also helps increase visibility and fosters a more inclusive environment for LGBTQ+ students.

The provision of confidential employees as LGBTQ+ liaisons builds trust between LGBTQ+ students and the resources they are afforded by California institutions of higher education. This bill is important in this it makes sure more students can use the resources available with them without fear of their privacy being compromised. This also helps build a more inclusive campus culture and establishes a direct line of communication between LGBTQ+ students and the administration.”

*“A Call to Action” report and recommendations.* To understand how higher education institutions are preventing and addressing sex discrimination on campuses, staff from the Assembly Committee on Higher Education hosted fact-finding briefings with representatives from the CCC, the CSU, the UC, and various California Independent Colleges and Universities. The “A Call to Action” report is a synopsis of the information gleaned from the briefings and over 400 hours of research.<sup>1</sup> The report provided 18 recommendations to provide a pathway forward for the Legislature to partner with higher education institutions to assist in the fulfillment of the promise to provide educational programs free from sex discrimination for students and employees. One of the recommendations is encapsulated in SB 1491 (Eggman):

“Statewide Recommendation 3 – Due to an article on a Federal Title IX exemption received by Baylor University, concerns were raised regarding the ability of religious institutions to exempt themselves from compliance with both Federal Title IX and the California Sex Equity in Education Act. To ensure all students are aware of their rights regardless of their chosen postsecondary education institution, the California State Aid Commission should be required to annually inform students, who receive financial aid, if their postsecondary education institution has an exemption on file with the Commission.”

*Religious exemptions to Title IX.* Contained within the Federal Regulations is a clause exempting faith-based postsecondary education institutions from implementing any section of the law that are contrary to the institution’s religious tenets. Any postsecondary education institution that believes implementing a section of Title IX interferes with its religious values is not expected to uphold the requirements of the law. For example, Jesuit Universities could elect to not admit women to the campus because it is against their religious tenets for women to enter the clergy. This would not be considered sex discrimination.

Advocates for LGBTQ+ rights have consistently argued that Congress intended for the religious exemption to be used narrowly and only for faith-based postsecondary institutions that could demonstrate how the law was misaligned with their religious values. Further research into the history of the religious exemption, demonstrates Congress had no intention to place such guardrails on how religious exemptions were used by faith-based institutions.

The original 1977 regulations provided three criteria for an educational institution to assert its religious autonomy: 1) the educational institution is controlled by a religious organization, 2) the educational institution requires faculty, staff, and/or students to belong to or espouse to the beliefs of a particular religious community, or 3) the educational institution has a governing

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<sup>1</sup> <https://ahed.assembly.ca.gov/media/3122>

board whose members are appointed by a religious organization which also provides significant financial support.<sup>2</sup>

Scholarly research tells us that the religious exemption was developed as an ad-hoc process in which the U.S. Department of Education would inherently approve any and all statements of exemption provided to them by religious colleges and universities regardless of whether the law conflicted with the institution's religious beliefs.<sup>3</sup> Testimony before the United States Congress to remove the ad-hoc process and provide outright exemptions was provided by the President of Brigham Young University, which centered on the constitutional right to religious freedom and the fact the government is not permitted to monitor religious activities.<sup>2</sup> The testimony was so powerful, that the Acting Director for the Office of Civil Rights acquiesced to the demands of the President of Brigham Young University and determined the following:

- 1) Religious higher education institutions are inherently exempted from Title IX; and,
- 2) The U.S. Department of Education's power to review the exemptions is minimal and non-existent.

Based on this understanding, faith-based colleges and universities do not need to apply for an exemption, since they are already exempt from Title IX as long as they are identified as a "faith-based" college or university per the definitions contained within the Federal Regulations.

Concerns have been raised about how religious exemptions will impact LGBTQ+ students on faith-based campuses and whether the protections enumerated in Title IX may not apply to them.

A July 2023 exemption letter to Baylor University from the U.S. Department of Education has reinforced the precept that LGBTQ+ students at faith-based postsecondary education institutions are not protected by Title IX.<sup>4</sup> The letter reinforced for the first time that faith-based postsecondary education institutions are exempt from the sections about sexual harassment specifically the creation of a hostile environment. The exemption provided since Baylor University has the religious tenets of affirming sexuality as a gift from God, defining sexuality in a binary sense of male and female, and prohibiting same-sex relationships. The scope of the exemptions were so broad and concerning, that Congressional members issued a letter in September 2023 requesting the U.S. Department of Education to clarify the exemption and to narrow the scope.<sup>5</sup>

If the U.S. Department of Education fails to narrow the scope of religious exemptions, the only recourse available for LGBTQ+ students will be to sue and have the courts define the scope of religious exemptions. Thus far the federal court system have upheld religious freedom and extended this freedom to faith-based colleges and universities in their implementation of Title IX.

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<sup>2</sup> <https://www.yalejreg.com/nc/expanding-religious-exemption-to-title-ix-beyond-statutory-recognition-by-kif-augustine-adams/>

<sup>3</sup> <http://dx.doi.org/10.2139/ssrn.2735173>

<sup>4</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/baylor-university-response-07252023.pdf>

<sup>5</sup> <https://schiff.house.gov/download/letter-to-department-of-education-regarding-title-ix-exemption-for-baylor-university>

In 2021, the Religious Exemption Accountability Project filed a class action lawsuit against the U.S. Department of Education on behalf of 40 plaintiffs from more than 25 Evangelical and Latter-day Saint Colleges located in 18 states. Many of the plaintiffs in the case asserted they were discriminated against by the colleges because they were expelled or met with hostility due to their sexual orientation. Each plaintiff accused the U.S. Department of Education of not upholding Title IX. The case was filed in the United States District Court of Oregon, Eugene Division, and was dismissed on January 12, 2023. The U.S. District Judge assigned to the case explained the case was dismissed to avoid interfering with the convictions of the faith-based colleges and universities which is aligned with the Federal Government's objective of protecting religion.<sup>6</sup> The Title IX regulations issued in May 2024 add another layer of protection for LGBTQ+ students which could lead to additional lawsuits by LGBTQ+ students and perhaps a narrowing of when and where a religious exemption may be applied.

The same religious exemptions afforded to private postsecondary education institutions by Title IX are included in the California Education Code. An institution can elect to be exempt from the requirements of the California Equity in Higher Education Act if the institution deems its religious tenets are in conflict with the law.

In recent years, with the rise of LGBTQ+ rights, the Legislature has sought to provide protections to students by including multiple reporting and notification requirements for institutions who elect to be exempt from both Title IX and the California Equity in Higher Education Act. SB 1166 (Lara), Chapter 888, Statutes of 2016, established the following requirements:

- 1) For each postsecondary education institutions to provide CSAC with materials related to religious exemptions received a state or federal agency;
- 2) For CSAC publish the materials on their website; and,
- 3) For each postsecondary education institution that claims to have a religious exemption to disclose this exemption to students and employees.

There are 20 postsecondary education institutions who have religious exemptions on file with CSAC:

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<sup>6</sup> <https://www.reuters.com/legal/government/us-judge-upholds-title-ix-exemption-religious-schools-2023-01-13/>

School Name	EHE	Title IX
Azusa Pacific University	X	
Biola University	X	X
California Baptist University	X	
Concordia University	X	
Fresno Pacific University	X	X
Hope International University	X	
John Paul the Great Catholic University	X	X
La Sierra University	X	
Life Pacific College	X	X
Loma Linda University	X	
Pacific Union College	X	X
Pepperdine University	X	
Providence Christian College	X	
San Diego Christian College	X	
Simpson University	X	X
The Master's University	X	X
Thomas Aquinas College	X	
Vanguard University of Southern California	X	X
Westmont College	X	
William Jessup University	X	X

Committee Staff understands that due to the notifications required by SB 1146 (Lara), parents of LGBTQ+ students and incoming students who identify as LGBTQ+ have made inquiries about the campuses' LGBTQ+ policies and whether Title IX would protect them while on campus.

However students may not be aware of their ability to report claims of discrimination to the U.S. Department of Education Office for Civil Rights. Even if the institution asserts a religious exemption, the OCR is still within its right to investigate and determine whether the student was discriminated against by the institution.

SB 1491 (Eggman) would have CSAC notify students of their rights to file a complaint against their institution, even if the institution has denied the claim due to religious exemptions. The Assistant Secretary for Civil Rights at the U.S. Department of Education has stated that, "in the event that OCR receives a complaint against your institution, we are obliged to determine initially whether the allegation fall within the exemption has recognized."<sup>4</sup>

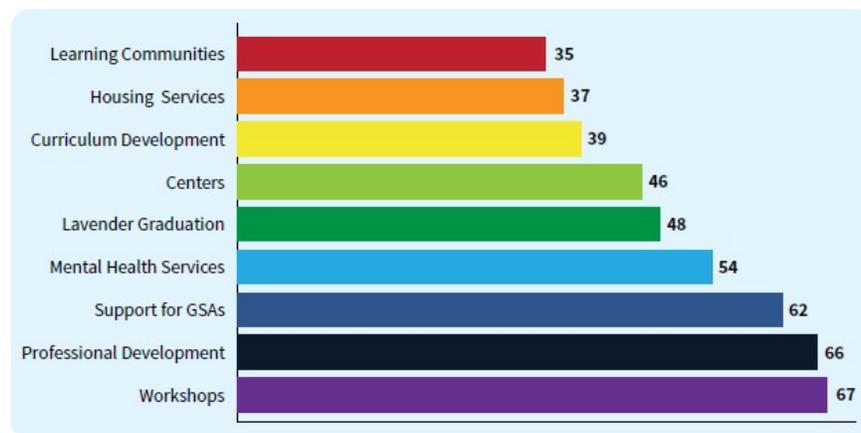
SB 1491 (Eggman) ensures students, who attend a private postsecondary education institutions that has an exemption on file with CSAC, are aware of the exemption and of the student's right to issue a complaint with the U.S. Department of Education regardless of the exempting.

*LGBTQ+ coordinators on campus.* In 2011, then-Assemblymember Marty Block authored AB 620, Chapter 637, Statutes of 2011, which codified the "Sexual Orientation and Gender Identity Equity in Higher Education." One of the provisions of the measure requested each campus of the CCC, CSU, and the UC to designate an employee to act as the point of contact for the needs of LGBTQ+ students, faculty, and employees on campus.

Research conducted by the Author's office indicated the following status of the number of campuses who elected to designate a representative pursuant to AB 620 (Block):

- 1) Of the 116 community college campuses, 70 have a designated employee;
- 2) Of the 23 CSU campuses, 14 have a designated employee; and,
- 3) Of the 10 UC campuses, all 10 have a designated employee.

Additionally, in the 2021-2022 Budget, the Legislature allocated \$10 million to the CCC to support LGBTQ+ students and authorized the funding to be used to create safe and inclusive spaces for LGBTQ+ students. Each community college district received funding and were permitted to use the funding to improve “all aspects of campus culture to strengthen a sense of unconditional belonging while providing targeted supports for LGBTQ + students. As published in the CCC Chancellor’s Office “LGBTQ+ Legislative Report” the below figure shows how the funding was used across the whole system:



SB 1491 (Eggman) expands upon existing efforts by the Legislature by requiring each campus of the CCC and CSU to designate an employee on campus to assist in providing for the needs of the LGBTQ+ community on campus. The bill also rectifies a concern identified by UC students in the “A Call to Action” report regarding the confidentiality of the designated employee. On some UC campuses, the LGBTQ+ designated employee is considered confidential, meaning they are not required to report misconduct told to them by a member of the campus community; however, this confidentiality does not exist for all LGBTQ+ designated employees. In order to build trust and ensure information is shared with the LGBTQ+ employee in a manner that will increase supportive measures for the community on campus, SB 1491 (Eggman) builds upon existing best practices, by mandating that the designated employee should be considered confidential.

*Arguments in support.* As the co-sponsor of the measure, Equity California expands on the need for SB 1491, as “many LGBTQ+ students experience discrimination and harassment in higher education, which can negatively impact their academic success and overall well-being. According to the Williams Institute at the UCLA School of Law, nearly one-third of LGBTQ+ people (32.6%) experienced bullying, harassment, or assault at college, compared to 18.9% of non-LGBTQ+ people.<sup>1</sup> Nearly one in five (19.1%) LGBTQ+ people experienced in-person bullying or harassment, 12.5% experienced online or other indirect bullying or harassment, 17.6% experienced sexual harassment, and 11.8% experienced sexual assault in college.”

“To improve campus climate for members of the LGBTQ+ community, SB 1491 will require public colleges and universities to adopt and publish policies on harassment, intimidation, and bullying and designate an employee at each of their respective campuses to address the needs of

LGBTQ+ students, faculty, and staff. Given that a majority of community and state colleges currently lack designated points of contact for LGBTQ+ students, the bill will help to ensure that every institution has a designated point of contact where students can freely express themselves and seek support without fear of discrimination or retaliation.”

“The bill will also update existing law requiring colleges and universities to openly acknowledge any exemptions under Title IX or California’s Equity in Higher Education Act. Many students continue to be unaware of these exemptions and what the potential consequences might be in the event their sexual orientation, gender identity, or gender expression does not align with the college or university’s discriminatory policies.”

*Related legislation.* In response to the recommendations put forth by the Assembly Higher Education Committee, 12 bills by 11 different authors were introduced. In addition to SB 1491 (Eggman), the bills included in the bill package are as follows:

- 1) AB 810 (Friedman) of 2024, currently pending a hearing in the Senate Judiciary Committee, would require the CCC, the CSU, and requests both the UC and private postsecondary education institutions, to implement a policy of requiring potential employees for academic, athletic, and administrative positions to disclose whether they have been the subject of a finding of sexual harassment and to permit the institution to contact past employers to inquire whether the applicant had any substantiated allegations of misconduct.
- 2) SB 1166 (Dodd) of 2024, scheduled to be heard in the Assembly Higher Education Committee on June 18, 2024, would require the CCC, the CSU, and requests the UC to provide annual reports to the Legislature on the timelines and outcomes of sexual harassment complaints adjudicated by campuses within the system.
- 3) AB 1790 (Connolly) of 2024, is pending a hearing in the Senate Education Committee and requires the CSU to implement the California State Auditor’s findings by January 1, 2026 and to provide two reports to the Legislature on the implementation of the recommendations, as described.
- 4) AB 1905 (Addis) of 2024, is pending a hearing in the Senate Judiciary Committee, places conditions upon the use of settlements, informal resolutions, retreat rights, and letters of recommendations for public postsecondary education institutions of the state for employees who are the respondent in a sexual harassment complaint, as defined.
- 5) AB 2047 (Mike Fong) of 2024, is pending a hearing in the Senate Education Committee, and would require the CSU and the UC to establish a Systemwide Office of Civil Rights for the purpose of assisting campuses within the system in addressing and preventing sex discrimination and requires each campus of the CSU and UC to establish to establish a Title IX office on each campus and establishes the responsibilities of the Title IX office.
- 6) AB 2048 (Mike Fong) of 2024, is pending a hearing in the Senate Education Committee, and would require the Chancellor of the CCC to establish a community college sexual harassment and Title IX working group who will examine the existing structure of the CCC for preventing and addressing sex discrimination and will provide recommendations for improvement to the Legislature by February 1, 2026.

- 7) AB 2326 (Alvarez) of 2024, is pending a hearing in the Senate Judiciary Committee, delineates which entities with the public higher education institutions are responsible for ensuring campus programs are free from discrimination and who has the authority to oversee and monitor compliance with state and federal laws; and, requires the leadership of all three public higher education institutions to present to the Legislature their efforts in addressing and preventing discrimination on campus..
- 8) AB 2407 (Hart) of 2024, is pending a hearing in the Senate Appropriations Committee and requires the State Auditor to conduct an audit every three years of the CCC, CSU, and UC regarding their respective handling and investigation of sexual harassment complaints.
- 9) AB 2492 (Irwin) of 2024, is pending a hearing in the Senate Education Committee and would require each public postsecondary education institution to establish the positions of a confidential student advocate, a confidential staff and faculty advocate, and a confidential respondent services coordinator.
- 10) AB 2608 (Gabriel) of 2024, is pending a hearing in the Senate Appropriations Committee and would expand the requirements for annual training for students on sexual violence and sexual harassment to include information on drug-facilitated sexual assault and information related to confidential support and care resources.
- 11) AB 2987 (Ortega) of 2024, is pending a hearing in the Senate Judiciary Committee. The measure would require each campus of the CSU and CCCs, and requests each campus of the UC, to provide status updates on the outcomes of complaints of sex discrimination to complainants and respondent; and, requires/requests that notice of a disciplinary action to the respondent be provided to the respondent within three schooldays of a decision.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

AAUW California  
 Alianza Translatinx  
 American Association of University Women - California  
 American Atheists  
 Api Equality-la  
 Apla Health  
 Bienestar Human Services  
 California Faculty Association  
 California Federation of Teachers AFL-CIO  
 California Legislative LGBTQ Caucus  
 California LGBTQ Health and Human Services Network  
 California State University Employees Union (CSUEU)  
 California Teachers Association  
 California Transcends  
 Central Valley Gender Health & Wellness  
 Central Valley Pride  
 CFT  
 Courage California

Csu Fresno State  
El/la Para Translatinas  
Equal Rights Advocates  
Equality California  
Faculty Association of California Community Colleges  
Faculty Association of California's Community Colleges  
Gender Justice LA  
Generation Up  
Genup (generation Up)  
Glsen San Diego County  
Gusd Parents for Pubic Schools  
Ignite  
LGBT Community Network  
National Asian Pacific American Families Against Substance Abuse (NAPAFASA)  
Office of Lieutenant Governor Eleni Kounalakis  
Parivar Bay Area  
Pflag National  
Pomona Valley Pride  
Positive Images  
Prc  
Rainbow Pride Youth Alliance  
Riverside Lgbtq+ Pride  
Safe Campuses Coalition  
San Diego Community College District  
Secular Student Alliance  
Somos Familia Valle  
Still Bisexual  
The Center for Sexuality & Gender Diversity  
The Diversity Center of Santa Cruz County  
The Translatin@ Coalition  
The Trevor Project  
Transfamily Support Services  
Transgender Health and Wellness Center  
Transyouth Liberation  
Viet Rainbow of Orange County  
Voices for Progress  
West Hollywood/hernan Molina, Governmental Affairs Liaison  
Youth Power Project

### **Opposition**

None on file.

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