

Date of Hearing: March 15, 2022

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1712 (Medina) – As Introduced January 26, 2022

SUBJECT: Public postsecondary education: campus climate: sexual misconduct: workgroup: survey

SUMMARY: Establishes a workgroup for the purpose of developing and deploying campus climate and sexual misconduct student surveys on campuses of the California Community College, California State University, and the University of California every three years. Specifically, **this bill:**

- 1) Requires the Chancellor of the California Community Colleges (CCC), the Chancellor of the California State University (CSU), and the President of the University of California (UC) to assemble a campus climate and sexual misconduct workgroup and appoint specified members of the workgroup by June 1, 2023 and every three years thereafter. The workgroup will be comprised of the following members:
 - a) A representative from the CCC Chancellor's office;
 - b) A representative from the CSU Chancellor's office;
 - c) A representative from the Office of the President of the UC;
 - d) One president from a campus of the CSU;
 - e) One president or chief executive officer from a campus of the CCC;
 - f) One chancellor from a campus of the UC;
 - g) One student representative from the CCC, the CSU, and the UC;
 - h) One Title IX coordinator from the CCC, the CSU, and the UC; and,
 - i) One mental health counselor from the CCC, the CSU, and the UC.
- 2) Authorizes the taskforce established in (1) to accomplish the following by January 1, 2024 and every three years thereafter:
 - a) Develop a campus climate and sexual misconduct survey in consultation with experts which is consistent with best practices. When consulting with experts, include experts in trauma counseling to develop trauma-informed language. Once finalized, campus climate and misconduct survey will be provided to the CCC, the CSU, and the UC.
 - b) Research and select the best method of administering the campus climate and sexual misconduct survey; and,
 - c) Determine the population size of the student survey results required for the results to be produced for each campus of the CCC, the CSU, and the UC.

- 3) Requires the CCC and the CSU and requests the UC, upon receiving the final campus climate and sexual misconduct survey from the workgroup, to administer the anonymous campus climate and sexual misconduct survey to students every three years beginning on March 1, 2024 and report the findings of the survey to the governing boards of the segments respective governing boards during the final board meeting of the year the survey is administered.
- 4) Requires each campus of the CCC, the CSU, and the UC as permitted by the Regents of the UC, to post the results of the survey on the website of each campus.
- 5) Clarifies students will not be required to nor coerced into participating in the campus climate and sexual misconduct survey and does not permit retribution or negative consequences to occur if a student refuses to participate.
- 6) Defines for purposes of the section the following:
 - a) “Campus climate” means a measure of an individual’s experience within a learning environment, specifically focusing on attitudes, practices, and behaviors of campus life which may impact the success and retention of members of the campus community.
 - b) “Sexual misconduct” includes sexual harassment, sexual battery, sexual violence, rape, sexual exploitation, stealthing, dating violence, gender-based violence, violence based on sexual orientation or gender identity, and harassment, as defined.
- 7) Clarifies if the Commission on State Mandates determines this bill contains costs and mandates by the state, reimbursements to local agencies and school districts will be made available to cover the costs.

EXISTING LAW:

- 1) Establishes the UC as a public trust to be administered by the Regents and grants the Regents full powers of organization and governance subject only to legislative control as necessary to ensure the security of funds, compliance with terms of its endowments, and the statutory requirements around competitive bidding and contracts, sales of property, and the purchase of materials, goods, and services (Article IX, Section (9) (a) of the California Constitution).
- 2) Establishes the Donahoe Higher Education Act and assigns the missions of the CCC, the CSU, and the UC (Education Code (EDC) Section 66010 et. seq.).
- 3) Stipulates no provision of the Donahoe Higher Education Act shall apply to the UC unless the UC Regents adopts the provision (EDC) Section 67400).
- 4) Establishes the CSU system, made of 23 campuses, and bestows upon the CSU Trustees, through the Board of Trustees, the power, duties, and functions with respect to the management, administration, and control of the CSU system (EDC Section 66606 and 89030 et. seq.).
- 5) Establishes the CCC under the administration of the Board of Governors of the CCC, as one of the segments of public postsecondary education in this state. The CCC shall be comprised of community college districts (EDC Section 70900).

- 6) Enacts the Equity in Higher Education Act which clarifies it is the policy of California that all persons, regardless of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other basis that is contained in the prohibition of hate crimes as defined in subdivision (a) of Section 422.6 of the penal code, have equal rights and opportunities to participate fully in the postsecondary educational process free from discrimination and harassment (EDC Section 66250 et.seq.).

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the bill.* According to the author’s office, “AB 1712 is the much-needed and long-awaited step for campus climate oversight. In light of the uptick of hate crimes and sexual violence against Muslim, API, women, and LGBTQ, students, California must take action. By building on previous legislation to develop a campus climate survey and workgroup, AB 1712 will therefore promote both awareness and help develop safety protocols for targeted students across California.”

White House Task Force to Protect Students from Sexual Violence. In 2007, *The Campus Sexual Assault Study*, prepared for the U.S. Department of Justice, stated that one in five women are sexually assaulted while in college. In response to this alarming statistic, the Obama Administration undertook several governmental interventions to curb sexual violence on campus including establishing the White House Task Force to Protect Students from Sexual Violence (taskforce) in January 2014. The premise of the task force was to strengthen and address compliance issues and provide institutions with additional tools to respond and address rape and sexual assaults on college campuses nationwide. President Joe Biden was a co – chair of the taskforce and stated at the creation of the taskforce that “Freedom from sexual assault is a basic human right”.

In April 2014, the taskforce issued its first report, *Not Alone*, which highlighted action steps and recommendations on how to more effectively respond to and prevent rape and sexual assault on postsecondary education campuses. To address the issue of underreporting of sexual assaults on campus, the taskforce encouraged the dispersal and implementation of campus climate surveys to help campuses understand the scope and prevalence of sexual victimization experienced by students. The report called for legislative or administrative options to mandate campuses to periodically conduct a climate survey and provided postsecondary institutions with a draft survey. The taskforce believed this mandate would change the national dynamic and would provide a more accurate picture of the climate on campus and whether students are aware of the avenues available to them to report sexual misconduct. Furthermore, the taskforce saw the surveys as a vehicle to capture data necessary to update policies and programs to ensure survivors are receiving services and perpetrators are held accountable.

In the same month, the Office on Violence Against Women of the U.S. Department of Justice funded a *Campus Climate Survey Validation Study*, whose intention was to validate and strengthen the free campus climate survey instrument provided by the taskforce to postsecondary institutions. The technical report published in January 2016, provided campuses with national best practices for developing a survey instrument, procedures for data collection, and how to present findings without bias and with validity. The technical report along with the *Administrator Information Packet*, designed to guide postsecondary campuses through the process of developing and implementing a campus climate survey, remain available to postsecondary institutions in the archives of the U.S. Department of Justice.

States who require campus climate surveys. At the time of the publication of the White House taskforce report, there were only three institutions that were required to administer and publish the results of campus climate surveys: the U.S. Military Academy, the U.S. Naval Academy, and the U.S. Air Force Academy. Taking to heart the words of the former Vice President and current President Joe Biden, who challenged “every college and university, if they are really serious about protecting students, to conduct anonymous surveys”, several states enacted legislation to require higher education institutions to conduct campus climate surveys every two, three, or four years.

According to the National Conference of State Legislatures since 2019, Illinois, Connecticut, Nevada, Massachusetts, New Jersey, and Nebraska have joined with Washington, Louisiana, and New York to require postsecondary education institutions, within their state borders, to conduct campus climate surveys on a routine basis. The majority of states require the state higher education coordinating body or the governing boards of the higher education system to develop and implement the survey. In the absence of a state coordinating body, taskforces were created to develop and implement the required surveys.

Several attempts have been made by Congress since the publication of the White House taskforce report and the subsequent U.S. Department of Justice report on the pilot campus climate survey; however none have yielded a federal mandate for higher education institutions.

In the current legislative year, H.R. 1892 by Representative Elise Stefanik of New York and S. 3623 by Senator Diane Feinstein of California, seeks to reauthorize the Violence against Women Act. Contained within the reauthorization is a mandate for the U.S. Department of Education to develop an online student survey tool to measure domestic violence, dating violence, sexual assault, sexual harassment, and stalking on campus postsecondary institutions. Should these bills pass, postsecondary education institutions, who receive federal assistance, will be required every two years to use the online tool to conduct student surveys and report the results to the U.S. Department of Education.

United States Government Accountability Office (GAO) April 2020. Despite the best intentions of the taskforce and the U.S. Department of Justice, questions remained on the effectiveness of campus surveys to accurately reflect the shared student experience on campus. To alleviate growing concerns of the statistical validity of campus surveys, Congressional members asked the U.S. GAO or the federal equivalent of the California State Auditor, to conduct an audit to examine (1) the weaknesses and strengths of a campus audit, (2) what approaches colleges have used to survey their students, (3) what role federal agencies should play in helping colleges develop and implement campus surveys on sexual violence.

Published in April 2020 the GAO audit, *Higher Education Approaches and Strategies Used in College Campus Surveys on Sexual Violence*, found stakeholders, including researchers and college officials, considered campus surveys a useful tool for learning more about incidences of campus sexual violence on campus and for identifying areas for improvement to addressing the incidences. Most campuses rely on the federal reporting requirements of the Jeanne Clery Disclosure Act to determine campus safety and climate; but, this annual report only encapsulates data which has been reported either through the Title IX coordinators or to police on and near the campus. Campus surveys serve as a supplemental information source as they not only inform students of the various reporting methods on campus, but they also provide campus officials with a clearer understanding of unreported cases of sexual violence. The challenges uncovered by the

audit include lack of funding to develop the surveys, low response rates, and the lack of comparable results across colleges due to variations in definitions and variations in time periods between surveys. The audit took a step beyond simply outlying the pros and cons associated with student surveys by providing a list of methods employed by seven colleges who developed and successfully implemented campus surveys.

California State Assembly Select Committee on Campus Climate. Due to a rise in racially related incidents on postsecondary campuses in 2014, then Speaker John Pérez established the select committee on campus climate. The purpose of the select committee was to examine public safety protocols and practices of California's higher education institutions while exploring solutions to encourage campus safety and promote healthier campus climate. The select committee held four hearings in 2014 examining policies and practices of campuses throughout the state. The knowledge gleaned from those hearings culminated in the proposal of AB 340 (Weber) of 2015.

AB 340 (Weber) of 2015 would have required the CCC and the CSU and encouraged the UC to adopt and publish policies on harassment, intimidation and bullying, and to generate a report once every two years on campus efforts to impact campus climate. Despite receiving bipartisan support, AB 340 was vetoed by Governor Brown due to his belief that each of the governing boards of the three systems had taken steps to provide inclusive campus environments and therefore the report was not necessary.

Existing student surveys in California. Currently in California, campus climate surveys are conducted at the discretion of either the governing board of the system or per the campus administration. The UC conducted a voluntary systemwide campus climate survey in 2012 with the final report being published in 2014. The purpose of the survey was to gather data related to institutional climate inclusion and work-life issues to better inform University administrators on the living and working environment of students, faculty, staff, and scholars at the UC. The data collected was used by UC campuses to develop action plans and strategic initiatives to improve the overall campus climate. Individual campuses have conducted surveys in the past including UC Berkeley which concluded a campus climate survey in 2019 with results published in 2021, which found the overall campus climate is positive but marginalized students often feel excluded. Furthermore, every two years the UC conducts an Undergraduate Experience Survey whose data is reported to the UC's information center. This survey includes questions regarding sexual misconduct; however, the data is not readily available to the public.

Just as the UC campuses periodically administer campus climate surveys, so do the campuses of the CSU. Some campuses have elected to participate in the national survey on campus climate conducted by the Higher Education Research Institute (HERI) at UC Los Angeles. The HERI climate surveys capture data on the personal experiences and perspectives of students, faculty, and staff in order to provide a complete understanding of campus climate to improve diversity on campus. The HERI campus climate survey focuses on classroom experiences, learning outcomes, and experiences of discrimination and bias. In addition to individual campus climate surveys, the CSU system participates in the *National College Health Assessment Survey* every other year. The survey is focused on mental health, nutritional health, sexual misconduct, and has a section on domestic, physical, and intimate partner violence. The survey results are presented to the Board of Trustees with the data disaggregated by campus.

According to the California Community College Chancellor's Office, a report was presented to the Board of Governors in 2015 on the status of the use of campus climate surveys by CCC

campuses. The report indicated 27 colleges conducted regular campus climate surveys, with the majority reporting the survey was conducted every two years. The content of the surveys provided by the various campuses was not available as part of the report nor on the participating campus websites. In the wake of the George Floyd murder and the subsequent protests, several CCC campuses reinstated campus climate surveys in an effort to gain a fuller scope of students concerns with regards to campus climate and to allay those concerns. Several colleges utilize the *HEDS Diversity and Equity Campus Climate* survey which is available to campuses for a fee and helps campuses understand the student, faculty, staff, and administrator's perception on campus climate as it relates to diversity, equity, discrimination and harassment.

Argument in support. According to GENup, AB 1712 “raises crucial awareness to the high number of sexual violence and sexual harassment incidents as well as identity-based hate crimes on campus. Through this data, AB 1712 would provide us with the necessary data to understand the current culture on harassment and discrimination, creating a workgroup to determine concrete action steps to combat discrimination and sexual violence on campus.”

Committee comments. AB 1712 seeks to combine the efforts of the White House task force to protect students from sexual violence and the efforts of the California State Assembly Select Committee on Campus Climate by establishing a workgroup every three years of experts, students, and campus representatives to develop and implement student survey on campus climate and sexual misconduct across all three segments of public postsecondary education. While the creation of the workgroup to establish a single survey with consistent definitions across all three segments is consistent with the GAO report suggestions and other States' enacted legislation, California contains the largest postsecondary education systems in the Nation. Without a coordinating body, the taskforce would have to wrangle the three systems to agree not only on the content of the survey, but how the survey would be administered and reported. Each of the three segments raised concerns regarding the validity of a one size fits all approach. The size, diversity, and financial capacity of each segment is different and therefore each segment should be given autonomy over their system's campus climate and sexual misconduct survey. Furthermore, the segments and student organizations of the three segments were concerned students may experience survey fatigue if an additional survey is required every three years.

To preserve the national best practice of having the same definitions for campus climate and sexual misconduct for all the surveys while also addressing the concerns above, the Committee has suggested and the Author has accepted the following amendments:

Deletes Section 66293 subdivision (a) – (e)(1) and adds the following:

(a) The Office of the Chancellor of the California State University and the Office of the Chancellor of the California Community Colleges shall, and the Office of the President of the University of California is requested to, do all of the following to determine student perspectives on campus climate and the handling of sexual misconduct incidents that occur on campus:

(1) Develop an anonymous campus climate and sexual misconduct survey in consultation with experts and consistent with national best practices, including modeling the survey after the federal Bureau of Justice Statistics' "Draft Instrument for Measuring Campus Climate Related to Sexual Assault" (January 2016).

(2) Consult with student organizations and trauma experts, including, but not limited to, nonprofit organizations with expertise in campus climate and sexual misconduct incidents, so that the campus climate and sexual misconduct survey incorporates trauma-informed language.

(3) Research and select the best method of developing and administering the campus climate and sexual misconduct survey.

(4) Determine the population size of student survey results required for results to adequately reflect the perspectives of students within each respective segment of public higher education.

(5) Administer the campus climate and sexual misconduct survey anonymously to students once every three years beginning on or before March 1, 2024.

(6) Report the campus climate and sexual misconduct survey results to the governing board of each institution at the final board meeting of the year in which the survey is conducted.

Changes subdivision (e) subparagraph (2) to subdivision (b)

Changes subdivision (e) subparagraph (3) to subdivision (c)

Adds subdivision (d).

(d). This section does not prevent the Office of the Chancellor of the California State University, the Office of the Chancellor of the California Community Colleges, and the Office of the President of the University of California from incorporating the survey developed pursuant to paragraph (1) of subdivision (a) into an existing student survey administered by the respective segment of public higher education.

Additionally, the previously mentioned Violence Against Women Reauthorization Act has been incorporated into the 2022 federal omnibus spending package or H.R. 2471 by Representative Hakeem Jeffries of New York. Included in the H.R. 2471 is the provision which would require the U.S. Department of Education to create a campus climate survey and the requirement for postsecondary education institutions to conduct the survey every two years. Congress approved H.R. 2471 on Wednesday, March 10, 2021 and in his Thursday morning address to the nation, President Biden confirmed he would be signing H.R. 2471 in short order. Once H.R. 2471 is signed into law by the President of the United States, Committee staff would recommend the author amend AB 1712 to be in compliance with federal law while maintaining the requirement to ascertain the student perspective on campus climate.

Previous legislation.

AB 340 (Weber) of 2015, would have required the CCC, the CSU, and requested the UC to generate a report every two years pertaining to campus climate, as specified. This bill was vetoed by Governor Brown.

AB 1653 (Weber) of 2016, would have required the CCC, the CSU, the governing body of each private postsecondary education institution in the state, and would have encouraged the UC to generate a report every two years pertaining to campus climate, as specified. This bill was vetoed by Governor Brown.

REGISTERED SUPPORT / OPPOSITION:

Support

Faculty Association of California Community Colleges

GENup

Leda Health

Opposition

None on file.

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