

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1844 (Medina) – As Amended March 3, 2022

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

SUBJECT: Higher Education Student and Faculty Protection Act

SUMMARY: Provides a mechanism by which public postsecondary institutions are required to inquire whether an applicant for employment, as defined, is the subject of a sexual misconduct investigation and to disclose to future employers whether an employee was the subject of a sexual misconduct investigation while they were employed. Requires campuses to establish positions on campus to provide survivor and respondent supports, as defined. Specifically, **this bill:**

1) Defines the following:

- a) “Applicant” as a person who is applying for any position at a public postsecondary educational institution, the California Community Colleges (CCC), the California State University (CSU), and the University of California (UC), where the person will likely have direct ongoing contact with students or staff in a supervisory role or position of authority. Clarifies an “applicant” does not include an enrolled student applying for temporary employment, unless the student is a graduate student applying for a position where the student will have a supervisory role, position of authority over other students, or teaching responsibilities. Further clarifies an “applicant” does not include medical staff or an employee with an affiliated organization or entity unless the applicant will have a supervisory role or position of authority over students;
- b) “Employee” as a person who is receiving or has received wages as an employee from the CCC, CSU, or UC and includes current and former employees, whether the person is classified as an employee, or independent contractor, and whose position included or at one time included direct ongoing contact with staff, students, or faculty as a supervisor. Clarifies an “employee” does not include an enrolled student applying for temporary employment, unless the student is a graduate student applying for a position where the student will have a supervisory role, position of authority over other students, or teaching responsibilities. Further clarifies an “employee” does not include medical staff or an employee with an affiliated organization or entity unless the applicant will have a supervisory role or position of authority over students, or teaching responsibilities. Further clarifies, a person is still considered an employee even if they are enrolled in classes at the CCC, CSU, or UC where they are an employee;
- c) “Employer” as postsecondary education institutions in this state or any other state;
- d) “Public postsecondary education institution” means the CCC, the CSU, and the UC, as defined in Section 66010;

- e) “Sexual harassment” has the same definition as Section 212.5 and includes sexual battery, sexual violence, and sexual exploitation as defined in Section 66262.5;
 - f) “Student” as a person enrolled at the CCC, CSU, and UC; and,
 - g) “Title IX” refers to Title IX of the Education Amendments of 1972 (20.U.S.C. Sec. 1681 et.seq.) and Section 66281.8.
- 2) Prohibits a settlement agreement entered into after January 1, 2023 between the CCC, CSU, or UC and an employee from containing a provision prohibiting the employee, institution, survivor of sexual harassment, or any other person from disclosing that the employee has been the subject of a criminal or Title IX investigation for sexual harassment. The inclusion of such a provision would render the settlement agreement as against public policy, void, and unenforceable.
 - 3) Permits the settlement agreement in (2) to contain provisions regarding the nondisclosure of personal identifying information of persons filing complaints or making allegations, and of any witnesses asked to participate in an investigation of the allegations.
 - 4) Clarifies personal identifying information in a settlement agreement in (2) that reveals the identity of a person filing complaints or making allegations and of any witnesses asked to participate in an investigation of the allegations is exempt from public disclosure.
 - 5) Requires the CCC, CSU, and UC to complete an investigation of a complaint or allegation of sexual harassment committed by an employee against a student or employee of the institution even if the respondent (accused) has voluntarily or involuntarily left the employment of the institution prior to the completion of the investigation. Exempts the CCC, CSU, and UC from completing the investigations if the complainant of the alleged harassment requests otherwise. Requires the institution once the investigation is concluded to provide written findings detailing the outcome of the investigation.
 - 6) Authorizes the CCC, CSU, and UC to include in an employee’s personnel file or employment records any finding of sexual harassment committed by the employee and the outcome of any investigation that the employee was the subject of while the employee was employed by the CCC, CSU, and UC. Clarifies when providing the records to a third party, the CCC, CSU, and UC will keep the personal identifying information of the complainant and any witnesses confidential, unless the disclosure is agreed upon by the complainant or witnesses or required by law. Exempts from public disclosure the personal identifying information of the complainant and any witnesses contained within an employee’s file or employment record.
 - 7) Requires the CCC, CSU, and the UC, beginning on June 1, 2023, prior to extending an offer of employment, to request the applicant to sign a statement that:
 - a) Declares whether the applicant is the subject of any finding of sexual harassment in any current or former employment, is currently under investigation, or has left a position during an investigation into a violation of any sexual harassment policy at the applicant’s current or past employment, and if so, provides an explanation of the situation;
 - b) Authorizes current and past employers of the applicant to disclose to the hiring institution any sexual harassment committed by the applicant and to make available to the hiring

institutions copies of all document in the previous employer's personnel, investigative, or other files; and releases an applicant's current and past employers who provide information from liability for releasing information.

- 8) Requires the CCC, CSU, and UC, beginning on June 1, 2023, prior to extending an offer of employment to an applicant, to do the following:
 - a) Request in writing that the applicant's current and past postsecondary educational institution employers disclose records of any findings of sexual harassment committed by the employee and the outcome of any investigation that the employee was the subject of while employed with the postsecondary educational institution. Included in the request will be a copy of the applicant's signed statement as described in (7).
 - b) Ask the applicant if they are the subject of any finding of sexual harassment, or are currently being investigated for, or have left a position during an investigation into, a violation of any sexual harassment policy at the applicant's current or past employers, and if so, ask the applicant to provide an explanation of the situation.
- 9) Authorizes a campus of the CCC, CSU, and UC who receives a request as identified in (8) to provide the requested information and to make available to the requesting institution copies of documents in the applicant's personnel file or employment records.
- 10) Requires the CCC, CSU, and UC to disclose any information about any findings of sexual harassment by a current or former employee that are contained in the personnel files or employment records to any employer conducting a reference or background check of any current or former employees for the purposes of potential employment, even if the employer conducting the reference or background check does not specifically ask for the information, unless prohibited by law.
- 11) Requires a postsecondary education institution to establish procedures for disclosing information as requested by this bill by January 1, 2023; and requires the institution to implement the disclosure requirements by June 1, 2023.
- 12) Clarifies an employee of the CCC, the CSU, and the UC or the institutions themselves who disclose the information as authorized in (9), is presumed to be acting in good faith and is immune from civil and criminal liability.
- 13) Clarifies the CCC, CSU, and UC are not liable for any cause of action from nondisclosure of information by an employee without access to official personnel records who is asked to respond to a reference check.
- 14) Clarifies the duty of disclosing information as authorized in (8) is the responsibility of the CCC, the CSU, and the UC when a formal request for personnel records relating to a current or prior employee when requested by another employer is made.
- 15) Requires the CCC, the CSU, and the UC when disclosing information to keep the personal identifying information of the complainant and any witnesses confidential unless they agree to disclose their information. Clarifies that personal identifying information that reveals the identity of the complainant and any witnesses is exempt from public disclosure.

- 16) Prohibits the CCC, the CSU, and the UC, beginning June 1, 2023, from hiring an applicant who does not sign the statement as described in (7).
- 17) Clarifies any information received by the CCC, the CSU, and the UC due to the provisions of the act, will only be used for the purpose of evaluating an applicant's qualifications for employment in the position for which the person has applied.
- 18) Requires by June 1, 2023; for the CCC, the CSU, and the UC to share best practices with all faculty and staff who are likely to receive reference check requests as to how to inform and advise requesters to contact the appropriate official personnel office of the respective institution.
- 19) Requires each campus of the CCC and each campus of the CSU, and requests each campus of the UC to do the following:
 - a) Establish a role and designate a person by September 1, 2023, to serve as a student advocate who will work with student survivors of sexual harassment and provide confidential emotional support and assistance. The student advocate will be an exempt and confidential employee who is familiar with Title IX, Section 66281.8, campus policies on sexual harassment and student misconduct, and the proper procedures for filing complaints of sexual harassment or student misconduct on campus. The student advocate will inform students of their rights and options including:
 - i) Where the student may access campus resources such as psychological counseling, medical care, emergency housing, transportation, and academic support if required;
 - ii) The various reporting options available, including the option to not report, how to report to law enforcement, and the option to report to a campus Title IX coordinator;
 - (1) Should the student elect to report, regardless of the method of choice, the student advocate will help the student navigate the reporting process, including by assisting with coordinating services on the student's behalf with other agencies, campus and community services, and law enforcement.
 - iii) How the Title IX investigations and adjunctions are processed; and,
 - iv) Any campus policies regarding retaliation or reporting incidents of sexual harassment.
 - b) Establish a role and designate a person by September 1, 2023, to serve as a staff and faculty advocate who will work with staff and faculty survivors of sexual violence, sexual assault, domestic and dating violence, stalking, harassment, and sexual harassment to provide confidential emotional support and assistance. The staff and faculty advocate will be an exempt and confidential employee who is familiar with Title IX, Section 66281.8, campus collective bargaining agreement, and the proper procedures for filing complaints of sexual violence, sexual assault, domestic and dating violence, stalking, harassment, and sexual harassment. The staff and faculty advocate will inform staff and faculty of their rights and options including:

- i) Where the staff and faculty may access campus resources such as psychological counseling, medical care, emergency housing, transportation, and academic support if required;
 - ii) Campus policies regarding sexual harassment and the avenues available to staff and faculty who wish to provide a formal complaint about an incident of sexual harassment or staff and faculty misconduct;
 - iii) Any campus policies regarding retaliation or reporting incidents of sexual harassment; and,
 - iv) Should a staff or faculty member elects to file a formal complaint either to law enforcement or with the campus, the staff and faculty advocate shall help the staff or faculty member navigate the reporting process, as defined.
- c) Establish a role and designate a person by September 1, 2023, to serve as the campus respondent services coordinator (coordinator) to work with students, staff, and faculty, who have been accused of sexual harassment to provide confidential emotional support and assistance. The coordinator will inform students, staff, and faculty of their rights and options including the following:
- i) Helping the accused understand their rights under Title IX;
 - ii) Explaining the investigation and adjudication process; and,
 - iii) Referring the accused to campus and community services including psychological counseling, legal services, alternative housing, academic changes, and other needs as the campus deems necessary.
- 20) Establishes, if the Commission on State Mandates determines that this bill contains cost mandated by the state, the state shall reimburse the applicable entities.

EXISTING LAW: *Federal law.*

- 1) Provides that, in part, "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program of activity receiving Federal financial assistance." Enforcement of compliance is initiated upon the filing of a complaint alleging a violation of Title IX.
- 2) Requires each school district and county office of education, or a local public or private agency that receives funding from the state or federal government, to designate a person to serve as the Title IX compliance coordinator to enforce compliance at the local level, including coordinating any complaints of non-compliance. (Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act)

State 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) Stipulates no provision of the Donahue Higher Education Act shall apply to the UC unless the UC Regents adopts the provision (Education Code (EDC) Section 67400).
- 3) 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.).
- 4) 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).
- 5) Establishes the policy for the State of California that all persons should enjoy their postsecondary education free from discrimination regardless of their sex. Requires each postsecondary education institution in the state to provide a written policy on sexual harassment (policy), including information on the complaint process, on the institutions website. The policy is to include information on the specific rules and procedures for reporting charges of sexual harassment and the available remedies and resources available to survivors both on and off campus. A copy of the policies shall be:
 - a) Displayed in a prominent location, as defined, in the main administrative building or in another area on the campus or school site;
 - b) Provided to students during any orientation program for new students at the beginning of each quarter, semester, or summer session;
 - c) Provided to each faculty member, administrative staff, and all member of the support staff at the beginning of each school year or at the time the employee is hired;
 - d) Included in any publication of the institution that includes the comprehensive rules, regulations, procedure, and standards of conduct for the institution (EDC Section 66281.5).
- 6) Requires the governing board or body of each postsecondary institution in the state, as a condition of receiving state funding, to comply with an array of conditions pertaining to protecting students from sexual harassment protections and to provide students with procedural protections relating to claims of sexual harassment (EDC Section 66281.8).
- 7) Defines “pubic higher education” as each campus and branch of the CCC, the CSU, and the UC (EDC Section 66010 (a)).
- 8) Defines sexual harassment and sexual violence as the following:
 - a) “Sexual harassment” as sexual battery, sexual violence, sexual exploitation, and unwelcomed sexual advances request 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 in which specific conditions are met. Clarifies sexual harassment of students is a form of sex discrimination prohibited by the Equity in Higher Education Act; and,

- b) “Sexual violence” as a physical sexual act perpetrated against a person without the affirmed consent of the survivor, as defined. Physical sexual acts include rape, sexual batter, sexual exploitation, prostituting another person, trafficking another person, recording images of the person during the act without consent, distributions of said images without consent, or viewing a person’s intimate moments in which privacy is expected without consent, as defined (EDC Section 66262.5).

FISCAL EFFECT: Unknown

COMMENTS: *Need for the measure.* According to the author, “AB 1844 is a timely bill that strengthens the investigation of sexual misconduct under Title IX, ensuring appropriate oversight of existing and potential employees at colleges and universities. Specifically, this bill ensures a public higher education institution is aware of any pending or completed investigations of misconduct of potential employees and requires institutions to share records of previous employees who have been investigated for sexual misconduct. Moreover, it establishes positions on campuses to advise and support individuals who have experienced sexual harassment and misconduct on campus. AB 1844 thus fulfills the intent of Title IX, making survivors feel safe to report incidents of sexual misconduct and fostering a safer campus for all people”.

Prevalence of sexual harassment and sexual violence on postsecondary education campuses. In 2014 to combat campus rape and sexual assault and at the directive of then President Obama, the Justice Department’s Bureau of Justice Statistics (BJS) released a report “Campus Climate Survey Validation Survey”. The report included the results of nine higher education institutions who conducted student surveys in the 2014-2015 academic year on the prevalence of sexual assault, rape, and sexual battery on campus. Across the nine campuses, the rate of sexual assault occurring among undergraduate who identified as female was 17% and the rate of rape across the nine campuses was 12.5%. In 2020, the Association of American Universities published the results of two surveys conducted in 2015 and in 2019 which examined the prevalence of sexual assault and misconduct at colleges and universities throughout the United States. The surveys found the following:

- The rate of nonconsensual sexual contact by physical force or inability to consent for undergraduate women ranged from 14 to 32%;
- The rate of nonconsensual sexual contact by physical force or inability to consent increased from 2015 to 2019 by 3 percentage points for undergraduate women and 2.4 percentage points for undergraduate men; and,
- Among all students 41.8% reported experiencing at least one sexual harassing behavior since enrolling in college.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) requires campuses to disclose crime statistics to the U.S. Department of Education. The annual report includes incidents of domestic violence, dating violence, and stalking. In the aggregated data for postsecondary education institutions in California, contained within the U.S. Department’s Campus and Security database, domestic violence, dating violence, and stalking incidents rose from 788 incidents in 2014 to 1,524 incidents in 2019. Even in a year where

COVID -19 prevented students from being present on many campuses throughout California, there were still 804 incidents of domestic violence, dating violence, and stalking reported on campus. These statistics do not include Title IX incidents unless the survivor elected to report the Title IX violation to the police.

In 2021, The Journal of Public Affairs Education published a peer-reviewed article titled: “Erased: Why Faculty misconduct is prevalent and how we could prevent it”. The article found at least 13% of women in academia will experience sexual harassment from a faculty member and a meta-analysis on sexual harassment across work environments found academic was second only to the military. The Journal of the American Medical Association published a peer-reviewed study in 2020, “Characteristics of Faculty Accused of Academic Sexual Misconduct in the Biomedical and Health Sciences”, which identified 125 faculty accused by 1,668 different complainants between 1982 and 2019. These faculty were from a variety of disciplines and institution types and were at different levels in their careers. Recurring inappropriate behaviors were exhibited by 87.2% of the faculty identified and of the 125 accused: 49.2% resigned or retired, 20.8% were terminated, and 8.8% were sanctioned. 50 of the accused remained in academia of whom 40% held positions in academia at different teaching positions.

An overview of Title IX. Established in 1972, Title IX Education Amendments of 1972 (Title IX) protects students who elect to participate in education programs from experiencing discrimination based on their sex. The U.S. Department of Education confirmed in June 2021, that Title IX protections extend to protect students from discrimination based on sexual orientation and discrimination against gender identity.

On September 22, 1980, the United States Court of Appeals for the Second Circuit, heard *Alexander v. Yale* (1980), 631 F.2nd 178 (2nd Cir.). The court ruled sexual harassment of female students was considered sex discrimination and, therefore, under Title IX was rendered illegal. The case found that a group of female students who had attended Yale College had been sexually harassed by their flute teacher and hockey coach, yet Yale had provided no mechanism for these students to have their complaints against the teacher addressed. This case became the impetus for the reporting requirements found in Title IX.

Under Title IX each postsecondary education institution who receives federal funding must have a Title IX coordinator and have a procedure in place for handling complaints of sex-based harassment. According to the Office for Civil Rights at the U.S. Department of Health and Human Services sex-based harassment or gender-based harassment which can be reported under Title IX reporting requirements include:

- Sexual Harassment – unwelcomed conduct of a sexual nature; including, unwelcomed sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature; and,
- Sexual violence – physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent; including, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

Once a violation occurs, and the survivor elects to inform the Title IX coordinator or, in California, an employee of the postsecondary education institution, who is responsible for reporting the incident to the Title IX coordinator, the investigation process will commence.

There are two pathways by which a complaint can be resolved under Title IX. Either through an informal resolution process or a formal process.

The informal resolution process or alternative resolution occurs when the complainant (the survivor), the respondent (the accused), and the Title IX coordinator determine after an initial assessment of the alleged facts, agree to the informal process. The Title IX coordinator will engage in discussions with the complainant and the respondent to provide a resolution or a conclusion to the complaint. According the UC Sexual Violence and Sexual Harassment Interim Policy published on January 1, 2022, informal resolutions are only used when an investigation is not likely to lead to a resolution, both parties prefer an informal process, or a case involves less serious allegations. The policy includes examples of plausible outcomes of an informal resolution process including, but not limited to, separating of the parties, referring the parties to counseling, or the complainant electing to drop the complaint. A simplified overview of the formal process is an investigation and a hearing. The formal process includes an investigation, a hearing, and conclusion or findings as determined by the hearing. The investigation is conducted by the Title IX coordinator or a Title IX investigator. The hearing is conducted by a hearing officer selected by the institution, and the outcome is rendered by the hearing officer after evidence and cross examination of witnesses is conducted by the investigator. Each postsecondary education institution is also required to develop an appeal's process by which either the complainant or the respondent can appeal a decision. The outcomes of a formal process can result in there not being a "preponderance of evidence" to prove the complaint took place or the complaint was substantiated. If a complaint is substantiated, the disciplinary measures provided to a student can include up to being expelled or potentially removed from the campus. Title IX is not a criminal procedure and, therefore, guilt or criminal charges are not determined.

Recent Title IX violations. If a postsecondary education institution does not provide the procedures highlighted above or are found to have implemented the procedures in a manner that is negligent, the U.S. Justice Department Civil Rights Division, will investigate the institution and determine disciplinary outcomes if the institution is found to have violated students' rights under Title IX.

In September 2021, the Justice Department (department) reached a \$1.6 million agreement to remedy Title IX violations at San José State University (SJSU). The department determined SJSU had failed for more than a decade to adequately respond to complaints of sexual harassment, including sexual assault, of female student-athletes by an athlete trainer. The department also found that SJSU retaliated against two SJSU employees who attempted to inform the campus of the trainer's behavior. In addition to providing financial relief to the survivors, SJSU will be required to make systemic changes to the Title IX office on campus. As a result of the settlement and disclosure of the improper activity on campus, the President of SJSU resigned in October of 2021.

On February 3, 2022, USA Today reported that when, then Chancellor Castro was the president of Fresno State University, the campus mishandled sexual harassment complaints against an administrator. The article detailed how over the six years when Chancellor Castro was the president, the Title IX office received 12 complaints against the administrator and the administrator was under investigation when Chancellor Castro applied to become the Chancellor of the CSU. The article was concerning because at the conclusion of the investigation the administrator was paid to leave and was provided a letter of recommendation should he wish to apply for employment at another college. AB 1844 (Medina) seeks to prevent such an occurrence

from transpiring again, as the bill would require an institution to provide information as to whether an employee has been accused of sexual harassment, when asked by a future employer.

Survivor advocates on campus. Under Education Code Section 67385.7, campuses of the CCC and the CSU provide information on their websites about campus and community resources to those who are victims of sexual violence. The UC is currently requested to provide this information. While there is no systemwide requirement for the CCC to employ victims' advocates, some campuses such as Cerritos College elect to do so. On each of the 23 campuses of the CSU, there is a sexual assault victim advocate who is there to provide support to students who are experiencing sex discrimination or sexual violence. The UC system has on each of its campuses the same three positions with the same responsibilities as those in AB 1844 (Medina).

Committee comments. In response to the #MeToo movement, and a desire to ensure postsecondary institutions have the right to protect themselves from hiring employees who have been found to commit sexual misconduct, provisions within AB 1844 (Medina) have been presented to various state legislatures and enacted on individual campuses within California. New York and New Jersey have both presented versions of a bill which would require an applicant to disclose if an employee was the subject of a sexual harassment investigation. Both bills were stalled in the state legislature. In 2020, Washington State enacted a bill almost identical to this bill minus the positions on campus and the bill only required the reporting of substantiated findings of sexual harassment. Furthermore, the UC system already completes investigations regardless of whether the respondent is still an employee of the system and keeps records of a Title IX investigation in the employee's personnel file if the complaint is substantiated.

Concerns have arisen as to whether AB 1844 (Medina) should require colleges and universities to disclose false claims of sexual harassment and whether there should be allowances for rehabilitation for those who have one or two occurrences that were the result of a misunderstanding or lack of awareness. Furthermore, concerns about what should be disclosed and whether the bill would unintentionally harm survivors if information was disclosed.

To address these concerns along with providing clarification as to the intention of the positions required in the bill, the Committee has recommended and the Author has agreed to the following:

Adds the term staff to Sec. 67370 to read: This chapter shall be known, and may be cited, as the Higher Education Student, Staff and Faculty Protection Act.

Deletes the language around criminal investigations of sexual harassment from Sec. 67372 subparagraph (a) to read:

(a) Except as provided in subdivision (b), a provision of a settlement agreement executed after January 1, 2023, between a public postsecondary educational institution and an employee is against public policy and shall be void and unenforceable if the provision prohibits the employee, the institution, a survivor of sexual harassment, or any other person from disclosing that the employee has been the subject of a ~~criminal~~ or Title IX investigation for sexual harassment.

Amends Sec. 67373 (a) to refine the scope of the sexual harassment to Title IX sexual harassment complaints and for written findings to be provided to the complainant and respondent of an investigation:

(a) Unless the victim of the alleged ~~sexual harassment~~ Title IX sexual harassment complaint requests otherwise, when a public postsecondary educational institution investigates a Title IX sexual harassment complaint or allegation of ~~sexual harassment~~ committed by an employee against a student or employee of the institution, the institution shall complete the investigation regardless of whether the employee voluntarily or involuntarily leaves employment with the institution. When the institution completes its investigation, the institution shall make written findings detailing the outcome of the investigation, *and make the written findings available to the complainant and respondent.*

Amends Sec. 67373 (b) (1) to refine the scope of the sexual harassment findings which must be included in a personnel file or employment record to be whether the employee was the subject of any informal resolution of an informal resolution process used to resolve the allegation following a filing of a formal Title IX sexual harassment and any substantiated Title IX sexual harassment complaints. Amends the language to read as follows:

b) (1) A public postsecondary educational institution shall include in an employee's personnel file or employment records ~~any findings of sexual harassment~~ *whether the employee was the subject of any informal resolution of an informal resolution process used to resolve the allegation following a filing of a formal Title IX sexual harassment and any substantiated Title IX sexual harassment complaints committed by the employee and the outcome of any investigation that the employee was the subject of* while the employee was employed with the public postsecondary educational institution.

Adds to Sec. 67373 (b) (2) a clarifying amendment as to what documents should be included in the employee's personnel file or employment records and thereby limits the scope of information to be disclosed to the findings or outcome of an informal resolution or formal investigation that yields a substantiated finding. Adds the following language:

(2) The records contained within the employees' personnel file or employment record pursuant to (1) will contain:

(A) If the employee was the subject of an informal resolution process, the final outcome or agreement and whether the employee followed the outcome or agreement, to the institution's knowledge.

(B) If the employee was the subject of a substantiated Title IX sexual harassment complaint, the nature of the complaint and the outcome of the Title IX hearing.

Adds to Sec. 67373 (c) to include a procedure and decision tree by which an public higher education institution can determine whether the employee who was the subject of an informal hearing process can have their personnel file or employment record expunged of the outcome of the informal hearing process. Adds the following language:

(c) An employee who was the subject of an informal resolution process may request for the records pursuant to (2) contained within employee's personnel file or employment records under this section, to be removed if all of the following has occurred:

(1) A sufficient amount of time of not less than five years, as determined by the public higher education institution has transpired;

(2) The employee has completed the required outcome of the informal resolution;

(3) The head of the campus human resources department and the Title IX coordinator for the campus have determined the content of the employee's personnel file or employment records is no longer meets the standard of overriding community interest may be removed.

Amends Sec. 67374 (a) (1) to refine the scope of what the applicant must declare to the public postsecondary educational institution to whether the applicant was the subject of a concluded informal hearing and a substantiated Title IX sexual harassment complaint.

Amends the language as follows:

(1) A declaration of whether the applicant is the subject of any informal resolution of an informal resolution process used to resolve the allegation following a filing of a formal Title IX sexual harassment and any substantiated Title IX sexual harassment complaints ~~of any findings of sexual harassment~~ in any current or former employment ~~or is currently being investigated for, or has left a position during an investigation into, a violation of any sexual harassment policy at the applicant's current or past employment,~~ and, if so, an explanation of the situation.

Amends Sec. 67374 (a) (2) to limit the scope of disclosure by which the applicant's current and past employers may provide to a public postsecondary educational institution to informal resolutions and substantiated Title IX sexual harassment complaints that the applicant was the subject of and limits the files provided to align with what is required to be included in the personnel files as addressed in Section 67373 (b) (2). Amends the language as follows:

(2) An authorization for the applicant's current and past employers to disclose to the hiring institution ~~any~~ whether the employee was the subject of any informal resolution of an informal resolution process used to resolve the allegation following a filing of a formal Title IX sexual harassment and any substantiated Title IX sexual harassment complaints ~~sexual harassment committed~~ by the applicant and making available to the hiring institution copies of all documents in the previous employer's personnel; ~~investigative, or other~~ files relative to the information pursuant to Section 67373 (b) (2)

Amends Sec. 67375 (a) (2) limits what the postsecondary education institution may ask of an applicant extending an offer of employment, in terms of whether they were the subject of a sexual harassment finding to informal findings and substantiated Title IX sexual harassment complaints. Amends the language as follows:

(2) Ask the applicant if the applicant is the subject ~~of any findings of sexual harassment, or is currently being investigated for, or has left a position during an investigation into, a violation of any sexual harassment policy~~ of any informal resolution of an informal resolution process used to resolve the allegation following a filing of a formal Title IX sexual harassment and any substantiated Title IX sexual harassment complaints at the applicant's current and past employers, and, if so, an explanation of the situation.

Amends Sec. 67375 (a) (2) to limit the information a public postsecondary educational institution must disclose when asked by a future employer of a current or past employee. Amends the language as follows:

(2) If a public postsecondary educational institution has information about *any informal resolutions of an informal resolution process used to resolve the allegation following a filing of a formal Title IX sexual harassment and any substantiated Title IX sexual harassment complaints* by a current or former employee in the employee's personnel file or employment records, unless otherwise prohibited by law, the institution shall disclose that information to any employer conducting reference or background checks on the current or former employee for the purposes of potential employment, even if the employer conducting the reference or background check does not specifically ask for that information.

Adds to Sec. 67376 (d) and (f) to include clarifying language the position required on campuses may not be the Title IX coordinator nor may they be under the supervision of the Title IX coordinator and that the roles of the student advocate and the faculty and staff advocate may be fulfilled by the same person. Adds the following language:

(d) The positions established in (a), (b), and (c) shall be distinct from the Title IX coordinator and shall be subject to supervision from the Title IX coordinator's office.

(e) Nothing in this section shall preclude each campus of the campus of the California Community Colleges, each campus of the California State University, each campus of the University of California from permitting the same employee to fulfill the role of confidential advocate established in (a) staff and faculty advocate established by (b).

Previous Legislation. SB 493 (Jackson), Chapter 303, Statutes of 2020, requires postsecondary educational institutions to, among other things, adopt rules and procedures for the prevention of sexual harassment, and adopt and post on their Web sites the grievance procedures to resolve complaints of sexual harassment.

SB 1439 (Block), of 2016, provides that the UC, the CSU, and the CCC shall require applicants for employment, as specified, to disclose information regarding final administrative findings of sexual harassment. This bill had bipartisan support and was vetoed by Governor Brown who in his veto message stated: "while I understand the desire to mitigate risk, governing boards-who are the fiduciaries of these institutions-should be responsible for setting hiring standards, including the disclosure of prior bad conduct."

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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