

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1467 (Cervantes) – As Amended March 25, 2021

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

SUBJECT: Student safety: sexual assault procedures and protocols: sexual assault counselors

SUMMARY: Requires procedures ensuring that each victim of sexual assault who requests assistance from a sexual assault counselor or through specified entities or processes is provided with alternative housing assignments, academic assistance alternatives, and other services as specified, declares that these sexual assault counselors are independent from the Title IX office, and authorizes the Trustees and the Chancellor of the California State University (CSU), when reviewing and updating any executive orders relating to discrimination, and harassment, do so in collaboration with specified officers and employees of the CSU. Specifically, **this bill:**

- 1) Requires procedures ensuring that each victim of sexual assault who requests assistance from a sexual assault counselor, or through the reporting, counseling, administrative, medical and health, academic accommodation, or legal processes of the university, the university police, or local law enforcement, be provided with alternative housing assignments and academic assistance alternatives.
- 2) Specifies that the sexual assault counselor shall be independent from the Title IX office, and shall be appointed based on experience and a demonstrated ability to effectively provide sexual violence victim services and response.
- 3) Specifies that, in order to maintain confidentiality, preserve any applicable privileges, and protect the privacy of students requesting assistance, the sexual assault counselor will not be required to report the identity of a student who requests assistance in order to receive the accommodations as specified, and other accommodations, which may include, but are not limited to, academic support, adjustments to course schedules, changes to university-based housing arrangements and work schedules, or stay-away orders issued to a respondent.
- 4) Specifies that, regardless of whether victims wish their identity to remain confidential, a sexual assault counselor will not notify the university or any other authority, including law enforcement, of the identity of the victim or any witness or of the alleged circumstances surrounding the reported sexual misconduct unless otherwise required by applicable state or federal laws.
- 5) Specifies that the Trustees and the Chancellor of the CSU, when reviewing and updating any executive orders relating to discrimination, harassment, and retaliation for the purpose of enforcing or implementing the requirements, as specified, may do so in collaboration, as they deem appropriate, with any of the following:
 - a) The Vice President of Administration and Finance;

- b) The Executive Vice Chancellor of Academic and Student Affairs and other executive vice chancellors and vice chancellors;
 - c) The General Counsel and administrators with responsibilities relating to discrimination, harassment, and retaliation;
 - d) The Vice Chancellor of Human Resources and other human resources officers;
 - e) Title IX coordinators;
 - f) Presidents and provosts of the various campuses of the university;
 - g) Sexual assault counselors, confidential sexual assault victims advocates, and domestic violence counselors; and,
 - h) Representatives of the student bodies at each campus of the university.
- 6) Specifies that the Chancellor will only issue an executive orders, as specified, after it is reviewed and adopted by the trustees, with the concurrence of the president of each affected campus of the university.
- 7) Requires the Chancellor of the CSU to submit the text of all executive orders issued pursuant to 6) above in an annual report to the respective chairs of the Assembly Committee on Higher Education and the Senate Committee on Education.
- 8) Specifies that, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs will be made as specified.

EXISTING LAW:

- 1) Federal law, known as Title IX, prohibits a person, on the basis of sex, from being excluded from participation in, being denied the benefits of, or being subject to discrimination, which includes sexual harassment, under any education program or activity receiving federal financial assistance. (34 Code of Federal Regulations (C.F.R.) Part 106, et seq.)
- 2) A portion of the Donahoe Higher Education Act, known as the Equity in Higher Education Act, declares, among other things, that it is the policy of the State of California that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. (Education Code (EDC) Section 66250, et seq.)
- 3) Requires the governing board of a community college district (CCD), the Trustees of the California State University (CSU), the Board of Directors of the Hastings College of the Law, and the Regents of the University of California (UC) to adopt and implement a written procedure or protocols relating to sexual assault, as provided. This requirement applies to the University of California only if the regents, by appropriate resolution, make it applicable, and requires these public postsecondary governing bodies, including the

regents if they make it applicable by appropriate resolution, to annually review, and update as necessary, in collaboration with sexual assault counselors and student, faculty, and staff representatives, the written procedure or protocols related to sexual assault. (EDC Section 67385)

FISCAL EFFECT: Unknown.

COMMENTS: *Purpose.* According to the author, “With increased attention to the alarming issue of sexual assault in institutions of higher education and protections related to Title IX, there is a need for sexual assault counselors to provide a safe space to explore options and provide student survivors with trauma informed assistance that meets a student’s needs. Survivors of sexual assault that seek help or intervention from their college or university should encounter a system that provides trauma-informed, coordinated, confidential support that addresses their needs. Being a survivor of sexual assault can negatively impact a student’s mental, physical health, overall wellness, and academic outcomes, such as academic failure, depression or anxiety.”

“To fully support a student in a survivor centered practice, it is imperative that campus-based sexual assault counselors and advocates uphold the needs of the survivor above the needs of the University. Having a confidential place to go to can mean the difference between getting help and staying silent for many survivors of violence. One size does not fit all, and this bill will ensure that campus-based sexual assault counselors have the ability to provide students with proper access to trauma-informed support services and the dignity and attention they deserve. AB 1467 will strengthen and further develop a standard of practice that is trauma-informed and survivor focused. Campus-based sexual assault counselors and advocates should have clear protections in place in order to have an ability to act independent from the University, in the best interest of the survivor without threat or fear of retaliation from the University.”

The Jeanne Cleary Disclosure Act (Cleary Act). The Cleary Act addresses campus safety by requiring institutions of higher education to disclose campus crime statistics and security policies. The U.S. Department of Education, Federal Student Aid office conducts reviews to evaluate an institution’s compliance with the Cleary Act requirements. A review may be initiated when a complaint is received, a media event raises certain concerns, the school’s independent audit identifies serious non-compliance, or through a review selection process that may also coincide with state reviews performed by the FBI’s Criminal Justice Information Service (CJIS) Audit Unit.

Title IX generally. Title IX, which prohibits discrimination on the basis of sex in federal funding programs or activities in any educational program or activity that receives federal funding. This includes most schools, including private institutions and grades K-12. Title IX addresses sexual harassment, sexual violence, or any gender-based discrimination that may deny a person access to educational benefits and opportunities. Under Title IX, schools must ensure that all students have equal access to education, regardless of gender, sexual orientation, or gender identity. Sexual harassment and sexual violence are forms of gender discrimination that are prohibited by Title IX, including when the incident(s) occur off-campus or involve people who are not students.

When a student has experienced a hostile environment such as sexual assault or severe, pervasive, and objectively offensive sexual harassment, schools must stop the discrimination, prevent its recurrence, and address its effects. This includes retaliation from other students, school administrators, or faculty.

New Title IX regulations were implemented in August of 2020, requiring campuses to update their Title IX policies. The U.S. Department of Education's Office for Civil Rights (OCR) announced on April 6, 2021 that they would be conducting a comprehensive review of the Department's regulations implementing Title IX of the Education Amendments of 1972, as part of implementing President Joseph R. Biden's March 8, 2021 Executive Order on *Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*.

OCR also announced that, in order to assist schools, students, and others in better understanding OCR's expectations with respect to compliance with Title IX and the 2020 amendments, OCR will also issue a new question-and-answer document.

Campus sexual assault statistics. The National Sexual Violence Resource Center compiled statistics on campus sexual assault, noting that:

- 1) 20% - 25% of college women and 15% of college men are victims of forced sex during their time in college.
- 2) A 2002 study revealed that 63.3% of men at one university who self-reported acts qualifying as rape or attempted rape admitted to committing repeat rapes.
- 3) More than 90% of sexual assault victims on college campuses do not report the assault.
- 4) 27% of college women have experienced some form of unwanted sexual contact.
- 5) Nearly two thirds of college students experience sexual harassment.

Committee comments. The author, working with Committee staff and stakeholders, has requested amendments to AB 1467. Due to hearing deadlines, these amendments will be processed in the Assembly Committee on the Judiciary.

The amendments will accomplish the following:

- 1) Completely removes the language in 1) of the detailed summary above.
- 2) Completely removes the language in 3) of the detailed summary above.
- 3) Removes the CSU trustees from the language in 5) of the detailed summary above, and makes technical changes to the specified officers and employees of the CSU.
- 4) Completely removes the language in 6) of the detailed summary above.
- 5) Makes a clarifying change to the language in 7) of the detailed summary above, removing "issued pursuant to paragraph (1)" and adding "to which this section applies."

Prior 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.

AB 1000 (Cervantes), Chapter 125, Statutes of 2019, requires the governing boards of each community college district, the Trustees of the CSU, the Board of Directors of the Hastings College of the Law, and the Regents of the UC to annually review their written procedure or protocols relating to sexual assault, and to update them as necessary in collaboration with sexual assault counselors and student, faculty, and staff representatives.

SB 1375 (Jackson) Chapter 655, Statutes of 2016, required all schools receiving federal funding post the following information on their Web site: the name and contact information of their Title IX Coordinator; the rights of a pupil and the public, and the responsibilities of the school under Title IX; a description of how to file a complaint under Title IX. SB 1375 also required the State Superintendent of Public Instruction to electronically send an annual letter to all schools notifying them of this responsibility.

SB 1435 (Jackson) Chapter 633, Statutes of 2016, requests that the “Health Framework for California Public Schools” includes comprehensive information on the development of healthy relationships and be age and developmentally appropriate.

AB 2654 (Bonilla) Chapter 107, Statutes of 2016, required postsecondary educational institutions to post their written policy on sexual harassment on their Internet Web sites. AB 2654 also required the policy to include information on the complaint process and the timeline for the complaint process. The policy must include information on where to obtain the specific rules and procedures for pursuing available remedies and resources, both on and off campus.

AB 969 (Williams, 2016) would have required annual reporting for sexual assault complaints received by CCC districts, CSU, the UC, and independent postsecondary educational institutions. AB 969 was vetoed by the Governor.

SB 186 (Jackson) Chapter 232, Statutes of 2015, enabled the governing board of a California community college district to exercise jurisdiction over student conduct that occurs off district property in cases of sexual assault and sexual exploitation, regardless of the victim’s affiliation with the college.

SB 665 (Block, 2015) required the Attorney General to establish a statewide Title IX Oversight Office, required postsecondary educational institutions to report specific data to this office, required each student to complete training on rape and sexual assault awareness and prevention annually. SB 665 was held in the Senate Appropriations Committee.

SB 695 (DeLeón) Chapter 424, Statutes of 2015, required school districts that require completion of a course in health education as a condition of high school graduation to include instruction in sexual assault and violence.

SB 967 (DeLeón) Chapter 748, Statutes of 2014, required the governing boards of California community college districts, the Trustees of the California State University system, and the Regents of the University of California, as well as the governing boards of independent

postsecondary institutions in California to adopt victim-centered sexual assault, domestic violence, dating violence, and stalking policies as a condition of receiving state funds for student financial assistance.

AB 1433 (Gatto) Chapter 798, Statutes of 2014, required all California campuses to have policies in place to ensure immediate reporting and disclosure to law enforcement.

AB 3133 (Roos) Chapter 1117, Statutes of 1982, enacted the Sex Equity in Education Act, which, similar to its federal Title IX counterpart, prohibits discrimination in California schools on the basis of sex.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file

Opposition

None on file

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