

Date of Hearing: April 2, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1000 (Cervantes) – As Introduced February 21, 2019

SUBJECT: Student safety

SUMMARY: Requires the California Community Colleges (CCC), California State University (CSU), and the Board of Directors of Hastings College of Law, and requests that the University of California (UC), review and update their written procedure or protocols procedure relating to sexual assault each academic year in collaboration with sexual assault counselors and student, faculty, and staff representatives. Specifically, **this bill:**

- 1) Requires that the written procedure or protocols adopted pursuant to Education Code (EDC) Section 67385 be reviewed and updated each academic year in collaboration with sexual assault counselors and student, faculty, and staff representatives.
- 2) Establishes 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 shall be made pursuant the Government Code.
- 3) Makes technical and conforming changes.

EXISTING LAW:

- 1) Provides, under Title IX of the federal Education Amendments of 1972, that no person 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 or activity receiving federal financial assistance. (20 U.S.C. Section 1681 et seq.)
- 2) Requires all colleges and universities participating in federal student aid programs to publish an annual security report that accurately discloses campus crime statistics and security information. The institution must make this report available to the campus community including current and prospective students, faculty and staff. (20 U.S.C. Section 1092(f) et seq.)
- 3) Sets forth the missions and functions of the public institutions of higher education in the state, which includes the CCC, the California State University (CSU), and the University of California (UC). (EDC Section 66000, et seq.).
- 4) A portion of the Donahoe Higher Education Act, known as the Equity in Higher Education Act, and the Sex Equity in Education Act establish, 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. (EDC Sections 66250 and EDC 66271.5, et seq.)
- 5) Requires the governing board 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 each adopt, and implement at each of their respective campuses or other facilities, a written

procedure or protocols to ensure, to the fullest extent possible, that students, faculty, and staff who are victims of sexual assault committed at or upon the grounds of, or upon off-campus grounds or facilities maintained by the institution, or upon grounds or facilities maintained by affiliated student organizations, shall receive treatment and information. If appropriate on-campus treatment facilities are unavailable, the written procedure or protocols may provide for referrals to local community treatment centers. Requires that the written procedure or protocols referenced include:

- a) The college policy regarding sexual assault on campus;
- b) Personnel on campus who should be notified, and procedures for notification, with the consent of the victim;
- c) Legal reporting requirements, and procedures for fulfilling them;
- d) Services available to victims, and personnel responsible for providing these services, such as the person assigned to transport the victim to the hospital, to refer the victim to a counseling center, and to notify the police, with the victim's concurrence;
- e) A description of campus resources available to victims, as well as appropriate off-campus services;
- f) Procedures for ongoing case management, including procedures for keeping the victim informed of the status of any student disciplinary proceedings in connection with the sexual assault, and the results of any disciplinary action or appeal, and helping the victim deal with academic difficulties that may arise because of the victimization and its impact;
- g) Procedures for guaranteeing confidentiality and appropriately handling requests for information from the press, concerned students, and parents; and,
- h) Each victim of sexual assault should receive information about the existence of at least the following options: criminal prosecutions, civil prosecutions, the disciplinary process through the college, the availability of mediation, alternative housing assignments, and academic assistance alternatives. (EDC Section 67385)

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the bill.* According to the author, "According to the Rape, Abuse & Incest National Network, 11.2 percent of college students in the United States experience rape or other forms of sexual assault. University students who experience sexual assault or violence suffer harm to their emotional and physical well-being. Being a victim of sexual assault can negatively impact a student's mental and physical health, overall wellness, and academic outcomes, such as academic failure, depression or anxiety."

"It is important that our higher education institutions include much needed perspectives and fundamentally shift their approach to sexual assault procedures and protocols. Allowing sexual assault counselors, students, faculty, and staff to contribute to the policy review process can further improve sexual assault policies in its ongoing prevention and response efforts."

“AB 1000, if enacted, will require that sexual assault policies be updated on an annual basis. Assembly Bill 1000 will serve as an important first step toward having these vital voices heard and effectively responding to sexual assault on college campuses through trauma-informed lens.”

Background. Two federal laws address sexual violence at postsecondary institutions. The Jeanne Clery Disclosure 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 Clery 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.

The second federal law that addresses campus sexual assault is 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.

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.

2014 Audit. The California State Auditor (CSA) published a report in June of 2014 titled *Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents*. The audit, conducted at the request of the Joint Legislative Audit Committee, audit focused on four universities: UC Berkeley; UC Los Angeles; CSU Chico, and San Diego State University.

Each university reviewed was found to have an adequate overall process for responding to incidents of sexual harassment and sexual violence. However, the CSA's review of 80 case files at the four universities revealed that the universities needed to improve these processes in some key areas. Specifically, the universities were recommended to do more to demonstrate that a student who may have experienced sexual harassment or sexual violence is informed of their reporting options and what to expect regarding the university's subsequent actions. The universities then needed to better inform students who file a complaint of the status of the investigation and to notify them of the eventual outcome.

Current Policies. The CSU has four Executive Orders (EO) that pertain to Title IX issues: EO 1095 (updated June 23, 2015), EO 1096 (updated October 6, 2016), EO 1097 (updated October 5, 2016), and EO 1098 (updated June 23, 2015). Committee staff understands that updates to each EO are imminently forthcoming, with the potential for additional updates later in 2019.

UC's policy on sexual violence and sexual harassment, titled Policy SVSH, was last reviewed August 14, 2018. In January, 2018, UC formed a Student Advisory Board to provide input on sexual violence prevention and response. The 19-student board consists of one undergraduate and one graduate student from each campus, except for UC San Francisco which does not offer undergraduate programs and will be represented by one graduate student.

Amendments. The committee recommends amendments that would clarify that the procedure or protocols in this bill shall be reviewed annually and updated as necessary, in collaboration with sexual assault counselors and student, faculty, and staff representatives.

Prior legislation. Over the span of the last several years, the Legislature has introduced multiple bills to address Title IX concerns and provide protections to victims of sexual harassment and assault, including, but not limited to:

SB 169 (Jackson) of 2017, required K-12 schools to use a "preponderance of evidence" standard to decide whether an incident of sexual harassment or violence occurred; required higher education 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 and investigation procedures to resolve complaints of sexual harassment. SB 169 was vetoed by the Governor.

SB 1375 (Jackson), Chapter 655, Statutes of 2016 required all schools receiving federal funding to 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.

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.

SB 967 (DeLeón, Chapter 748, Statutes of 2014) required the governing boards of California community college districts, the Trustees of the CSU system, and the Regents of the UC, 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.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file.

Opposition

None on file.

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