

- 2) Requires the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions to adopt policies concerning campus sexual violence, domestic violence, dating violence, and stalking that includes an affirmative consent standard, detailed and victim-centered policies and protocols, and the standard used in determining whether the elements of the complaint against the accused have been demonstrated is the preponderance of the evidence. (EC § 67386)
- 3) Requires schools to post information on their Web sites relative to the designated Title IX coordinator, rights of students and responsibilities of schools, and a description of how to file a complaint. (EC § 221.61)

ANALYSIS

This bill requires the governing board or body of any elementary or secondary school and each public or private postsecondary educational institution that receives state financial assistance or state funds for student financial assistance to implement federal guidance regarding protections from sexual harassment and sexual violence under Title IX. Specifically, this bill:

- 1) Requires the governing board or body of each school, as defined, to implement all of the following requirements at the school by January 1, 2019.
 - a) Disseminate a notice of non-discrimination to each school employee, including any individual employed by contract to perform any service at the school, each student, and the parents or legal guardians of each student if the student is under 18 years of age.
 - b) Designate at least one school employee to act as a sex equity coordinator to coordinate its efforts to comply with and carry out its responsibilities pursuant to this bill. The sex equity coordinator may be the same individual as the school's federal Title IX coordinator, if one exists.
 - c) Adopt and publish grievance procedures providing for prompt and equitable resolution of sexual harassment complaints filed by a student, or by his or her parents or legal guardians, against an employee, another student, or a third party. The grievance procedures must contain all of the following elements:
 - i) Provide notice of the grievance procedures, including where complaints may be filed, to each school employee, including any individual employed by contract to perform any service at the school, each student, and the parents or legal guardians of each student if the student is under 18 years of age.
 - ii) Apply the grievance procedures to each complaint alleging sexual harassment perpetrated by a school employee, another student, or a third party.

- iii) Ensure adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence.
 - iv) Designate reasonably prompt timeframes for the major stages of the complaint process.
 - v) Provide notice to parties of the outcome of the complaint.
 - vi) Provide an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.
 - vii) Specify the timeframes for all of the major stages of the grievance procedures, including but not limited to, the process for extending timelines. The grievance procedures must provide both parties of a complaint periodic status updates and specify the timeframe within which all of the following will occur:
 - 1) The school conducts a full investigation of the complaint.
 - 2) Both parties receive a response regarding the outcome of the complaint.
 - 3) The parties may file an appeal.
 - viii) Publish the grievance procedures to provide for the prompt and equitable resolution of sexual harassment complaints.
- 2) Requires the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards or bodies of each independent institution of higher education and each private postsecondary educational institution to comply with the requirements of this section to prevent and address sexual harassment, involving a student, both on and off campus.
- 3) Provides that this bill does not require a school to provide separate grievance procedures for student sexual harassment complaints. This bill authorizes schools to use student disciplinary procedures or other separate procedures to resolve sexual harassment complaints. This bill requires any procedures used to adjudicate complaints of sexual harassment, including disciplinary procedures, to afford a complainant a prompt and equitable resolution. This bill requires the sex equity coordinator, if the school relies on disciplinary procedures for compliance, to review the school's disciplinary procedures to ensure that the procedures comply with the requirements of this bill.
- 4) Requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal. This bill authorizes a school to provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. This bill states that it does not require the school to notify the

- alleged perpetrator of the outcome before it notifies the complainant.
- 5) Requires a school to ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the protections for the complainant.
 - 6) Requires a school to take proactive measures to prevent sexual harassment and sexual violence, and correct its discriminatory effects on the complainant and others.
 - 7) Requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. This bill requires the school to undertake these steps promptly once it has notice of a sexual harassment allegation. This bill requires the school to notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations, as appropriate.
 - 8) Requires, if a school determines that sexual harassment has created a hostile environment, to take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. This bill provides that, in addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant and changes to the school's overall services or policies.
 - 9) Requires schools to implement the requirements of this bill by January 1, 2019, or by another date determined by the California Department of Education or the California Student Aid Commission (CSAC).
 - 10) Requires an appropriate state enforcement agency, when it finds that a K-12 school has not taken prompt and effective steps to respond to sexual harassment, to seek appropriate remedies for both the complainant and the broader student population. This bill requires the state enforcement agency, when conducting enforcement activities, to seek to obtain voluntary compliance from the school. This bill authorizes the state enforcement agency, when a school does not come into compliance voluntarily, to initiate proceedings with the California Department of Education to withdraw state financial assistance from the school or refer the case to the Department of Justice.
 - 11) Provides that an appropriate state enforcement agency, when it finds that a postsecondary educational institution has not taken prompt and effective steps to respond to sexual harassment or violence, *should* seek appropriate remedies for both the complainant and the broader student population. This bill provides that the state enforcement agency, when conducting enforcement activities, *should* seek to obtain voluntary compliance from the school. This bill authorizes the state enforcement agency, when a school does not come into compliance voluntarily, to initiate proceedings with the CSAC to withdraw state funding for student financial assistance from the institution.
 - 12) Authorizes the appropriate governing board or bodies for each school to examine the policies and procedures on sexual harassment in place at the school to

determine whether those policies comply with the requirements of this bill and implement changes as necessary to ensure compliance with this bill.

- 13) Requires the California Department of Education, and the appropriate governing board or body of each postsecondary educational institution, by July 1, 2018, to adopt regulations to ensure that implementation of this bill at each school is, to the greatest extent possible, consistent with the federal regulations issued by the United States Department of Education's Office of Civil Rights on April 4, 2011. This bill requires the regulations to include, to the greatest extent possible, all provisions of the federal regulations not covered in this bill.
- 14) Authorizes the written policy on sexual harassment that each educational institution in California is currently required to have to include examples of the types of conduct prohibited.
- 15) Expands the defining of "sexual harassment" to include sexual violence.
- 16) Defines "sexual violence" to mean all of the following:
 - a) Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.
 - b) Rape as defined by the Penal Code.
 - c) Sexual assault or sexual battery as defined in the Penal Code.
 - d) Sexual coercion.
- 17) Defines "school" as any elementary or secondary school that receives state financial assistance, and a campus of the University of California, the California State University, or the California Community Colleges, a private postsecondary educational institution, or an independent institution of higher education, that receives state funds for student financial assistance.
- 18) States legislative intent that each elementary and secondary school that receives state financial assistance, and each higher education institution that receives state funds for student financial assistance, and their respective governing boards or bodies, comply with the requirements of this bill as a condition of receiving financial assistance.
- 19) States legislative intent that the requirements of this bill be interpreted, to the greatest extent possible, consistent with the federal regulations issued by the United States Department of Education on April 4, 2011.
- 20) States legislative findings and declarations relative to Title IX prohibitions against discrimination on the basis of sex in educational programs or activities, covering sexual harassment which includes acts of sexual violence.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Title IX protections apply to all schools, public and private, that receive federal funding. This federal civil rights law and its implementing regulations are enforced by the Office for Civil Rights (OCR) within the United States Department of Education. In 2011, OCR issued a detailed guidance document in the form of a “Dear Colleague” letter updating the interpretation of Title IX and explaining that sexual harassment covers all physical sexual acts perpetuated against a person’s will or where a person is incapable of giving consent, including forms of sexual violence such as rape, sexual assault, sexual battery, and sexual coercion. The guidance document reminds schools of their responsibilities to take affirmative steps to respond to sexual violence in accordance with Title IX. Sexual harassment and sexual violence impedes a student’s right to pursue and receive an education in a safe, non-discriminatory environment. The civil rights and protections enshrined in Title IX and its implementing regulations have been an important tool for student victims, survivors, and advocates, helping to make California’s campuses a safe space for students. Changes in federal enforcement priorities may degrade Title IX standards and undermine the protections students have found essential to pursuing an education. The standards codified in federal statute and regulations, or upheld in case law, are in some instances stronger than California’s standards. SB 169 is intended to codify the standards articulated in the 2011 OCR Dear Colleague letter, and to ensure strong state-level enforcement – in the case of federal enforcement priorities or standards changing under the new administration.”

- 2) ***Guidance.*** The United States Department of Education’s Office for Civil Rights (OCR) issued a “Dear Colleague” letter on April 4, 2011, providing guidance on ensuring compliance with Title IX specific to sexual harassment. The letter details numerous requirements under Title IX related to sexual harassment, explains that sexual harassment includes sexual violence, and provides guidance relative to specific requirements pursuant to Title IX. The OCR states that its “letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations.”

This guidance states, among other things, that:

- a) Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX.
- b) Institutions must publish a notice of non-discrimination, as specified.
- c) Institutions must designate an employee as the Title IX coordinator and notify students and employees of the name and contact information for the Title IX coordinator.
- d) Institutions that know or reasonably should know about harassment that creates a hostile environment must take immediate action to eliminate the

harassment, prevent its recurrence, and address its effects.

- e) Institutions must adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.
- f) Institutions' grievance procedures should specify the timeframe within which the institution will conduct a full investigation, both parties receive a response regarding the outcome, and the parties may file an appeal.
- g) Institutions must use a preponderance of the evidence standard (it is more likely than not that sexual harassment or violence occurred) in order for the grievance procedures to be consistent with Title IX standards.
- h) Institutions are not relieved of their duty under Title IX to resolve complaints promptly and equitably whether or not a criminal investigation is underway.
- i) Institutions must notify both parties, in writing, about the outcome of the complaint and any appeal.
- j) Institutions need to ensure their employees are trained to know how to report harassment and how to respond properly.
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

This bill essentially codifies the guidance provided by the Office of Civil Rights (OCR)'s "Dear Colleague" letter. The OCR letter generally references existing law, yet also details actions schools *should* take to ensure procedures are consistent with Title IX standards. The OCR letter indicates that it looks to whether schools have taken those actions when evaluating complaints. The OCR letter provides, in part, that schools "should" take specified action as follows:

- The grievance procedures *should* provide both parties of a complaint periodic status updates and specify the timeframe within which specified actions will occur. This bill *requires* the grievance procedures to provide a timeframe for those specified actions.
- The sex equity coordinator, if the school relies on disciplinary procedures for compliance, *should* review the school's disciplinary procedures. This bill *requires* the sex equity coordinator, if the school relies on disciplinary procedures for compliance, to review the school's disciplinary procedures to ensure that the procedures comply with the requirements of this bill.
- A school *should* take proactive measures to prevent sexual harassment and sexual violence, and correct its discriminatory effects on the complainant and others. This bill *requires* a school to take proactive measures to prevent sexual harassment and sexual violence, and correct its discriminatory effects on the complainant and others.

- A school *should* notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to changes academic or living situations. This bill *requires* the school to notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to changes academic or living situations, as appropriate.
- 3) ***Preponderance of evidence standard.*** According to the “Dear Colleague” letter from the Office of Civil Rights (OCR), “the Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 ... Like Title IX, Title VII prohibits discrimination on the basis of sex.” The letter also notes that the Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act. The letter states “Thus, in order for a school’s grievance procedures to be consistent with Title IX standards, the school must use a preponderance of evidence standard.”

Existing state law, pursuant to SB 967 (de León, Chapter 748, 2014), requires California’s postsecondary institutions to adopt policies concerning campus sexual violence that includes an affirmative consent standard and the preponderance of evidence standard for determining whether the elements of the complaint against the accused have been demonstrated.

While the OCR letter indicates that the preponderance of evidence standard applies to Title IX grievance procedures at all schools and postsecondary institutions, nothing in state law or regulations explicitly requires K-12 schools to use the preponderance of evidence standard relative to Title IX complaints. This bill provides that specificity.

- 4) ***Prior legislation.*** 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.

SUPPORT

American Academy of Pediatrics, California
 American Association of University Women
 Black Women for Wellness
 California Latinas for Reproductive Justice
 Equal Rights Advocates
 Faculty Association of California’s Community Colleges
 National Association of Social Workers, California Chapter
 Public Advocates

OPPOSITION

None received

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