
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: SB 429
Author: Jackson
Version: February 25, 2015
Urgency: No
Consultant: Lynn Lorber
Hearing Date: April 8, 2015
Fiscal: Yes

Subject: Instructional programs: Title IX instructional videos

SUMMARY

This bill requires the Superintendent of Public Instruction to designate a county office of education to create an instructional video on Title IX compliance and a Title IX students' rights video.

BACKGROUND

Current federal law 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." In order to be in compliance with Federal Title IX, a school must show compliance with one of these three parts. The federal tests are:

1. Athletic participation of women and girls is proportionate to enrollment.
2. The school has a history and continuing practice of program expansion for women or girls.
3. The school is fully meeting female athletes' interests and abilities in its present athletic program. (Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act)

Current state law establishes standards virtually identical to those of Federal Title IX, with one modification: in Test 2, "history" is defined to mean the past two years. (Education Code § 230)

Each school district and county office of education, or a local public or private agency that receives funding from the state or federal government, is required 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; California Code of Regulations, Title 5, Section 4910)

Enforcement of compliance is initiated upon the filing of a complaint alleging a violation of Title IX.

Title IX applies to *all* aspects of educational opportunities, not just athletics.

ANALYSIS

This bill requires the Superintendent of Public Instruction to designate a county office of education to create an instructional video on Title IX compliance and a Title IX students' rights video. Specifically, this bill:

1. Requires the California Department of Education (CDE), to the extent that one-time funding is included in the Budget Act of 2016, to apportion funds to a designated county office of education to be the fiduciary agent for an instructional video to train school administrators on comprehensive compliance with Title IX.
2. Requires the designated county office of education to be "in charge" of the video that will lead to statewide professional development support for comprehensive Title IX compliance.
3. Requires the designated county office of education to also create a Title IX students' rights video for students and parents.
4. Requires both videos to be available on CDE's website and available for download to the websites of individual schoolsites and school districts.
5. Requires the designated county office of education to consider and include, as appropriate, available resources for comprehensive Title IX compliance.
6. Provides that the Superintendent of Public Instruction (SPI) is to choose the county office of education from those that apply for designation.
7. Requires the CDE to analyze the relevant data on the success of the instructional video at the state level, by monitoring the usage of the video and ascertaining the levels of complaints filed.
8. Requires the CDE to establish a set of best practices to be made available to school districts and consortia of districts to enhance understanding of comprehensive Title IX compliance.
9. States legislative findings and declarations relative to the lack of awareness about Title IX, and a lack of training on monitoring and ensuring compliance.

STAFF COMMENTS

1. ***Need for the bill.*** According to the author, "The Senate Judiciary Committee held an informational hearing on January 20, 2015, titled *Attaining Equal Opportunity for Girls In California's Secondary Schools: How our Schools are Complying with Title IX*. According to testimony provided by both the federal Office of Civil Rights and California Department of Education, trainings held to inform schools and school districts about their Title IX requirements and procedures are well attended when made available, however, due to lack of funding and resources few trainings are provided. As demonstrated by testimony provided during the informational hearing, school districts are often unaware that Title IX requires them to appoint a Title IX coordinator at both the districts and

school level, adopt and publish rules and procedures regarding complaints, and notify students, families and staff of their rights under Title IX.”

2. **Compliance with Title IX.** Current law provides that compliance is measured by the three-pronged test:
 - A. Proportionality to enrollment.
 - B. History (past two years) and continuing practice of program expansion for females.
 - C. Fully meeting female athletes' interests and abilities in its present athletic program.

Enforcement of compliance is initiated upon the filing of a complaint alleging a violation of Title IX. Complaints generally begin at the school district level and can proceed to the state level and ultimately to the federal Office of Civil Rights. Current law does not require any reporting of measures of compliance with Title IX by K-12 schools.

3. **Training.** The federal Office of Civil Rights issued a guidance letter in 2011 reminding local educational agencies that the Title IX regulations require, among many other things, schools to ensure that employees designated as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> There are no clear requirements for training on Title IX compliance in California's statutes.
4. **Existing resources.** This bill requires the designated county office of education to consider and include, as appropriate, available resources for comprehensive Title IX compliance. There do not appear to be any resources on the California Department of Education's (CDE) website with specific guidance or training regarding monitoring and ensuring compliance with Title IX. The CDE sent a notification to all school superintendents on September 20, 2013 identifying the State Title IX coordinator, and reminding schools of their obligations under current law to designate a Title IX coordinator, post information about the Title IX coordinator, and post policies regarding non-discrimination. This notification does not provide specific guidance or training resources. <http://www.cde.ca.gov/re/di/eo/titleixnotification.asp> There are several online sources for training on Title IX compliance.
5. **Designated county office of education.** This bill requires the Superintendent of Public Instruction (SPI) to select the designated county office of education from those that apply for such designation. This bill does not establish an application process nor guidance for the selection of the appropriate county office, thereby giving the SPI complete discretion to determine if the county office is capable of meeting the fiduciary responsibilities and other requirements of this bill.

6. **Clarifying amendments.** This bill requires the creation of an instructional video to train school administrators on comprehensive compliance with Title IX. **Staff recommends an amendment** to clarify that the video is to also serve as a training tool for designated Title IX coordinators and other school personnel.

This bill requires the designated county office of education to be “in charge of the video that will lead to statewide professional development support for comprehensive Title IX compliance.” **Staff recommends an amendment** to clarify that the designated county office of education is responsible for the creation of the instructional video and that the video is to be available as a statewide training resource.

This bill requires the California Department of Education (CDE) to analyze the relevant data on the success of the instructional video by monitoring the usage of the video and ascertaining the levels of complaints filed. **Staff recommends an amendment** to clarify that the CDE is required to identify how many times the instructional video was downloaded or viewed, and how many complaints were lodged before the video was available and how many complaints were lodged one year after the video was available.

7. **Related and prior legislation.**

RELATED LEGISLATION

AB 884 (Calderon, 2015) changes the title of the existing article in the Education Code from “Athletes Bill of Rights” to “Gender Equity in Education.” AB 884 is scheduled to be heard by the Assembly Arts, Entertainment, Sports, Tourism, and Internet Media Committee on April 7.

PRIOR LEGISLATION

SB 1349 (Jackson, Ch. 258, 2014) requires public K-12 schools that offer competitive athletics to make public information relative participation by gender in athletics.

AB 1549 (Rendon, 2014) was amended late in the legislative session to require the State Auditor to audit public postsecondary educational institutions for compliance with Title IX every three years. AB 1549 was held in the Senate Rules Committee.

AB 2512 (Bonilla, 2014) would have authorized, beginning January 1, 2018, school districts and county offices of education to include information relative to compliance with Title IX gender equity in the “school climate” category of local control and accountability plans. AB 2512 was vetoed by the Governor, whose message read:

I appreciate the author's concerns but believe that the recently enacted Local Control Funding Formula should not now be subjected to a series of amendments. The law envisions that

***local communities fashion the plans that work best for them.
State intervention in this process is premature.***

AB 2323 (Jackson, 2004) would have required the California Department of Education to develop a Gender Equity Compliance Survey for high schools. AB 2323 was held in the Assembly Appropriations Committee.

SUPPORT

American Civil Liberties Union
Association of California School Administrators
California Women's Law Center
Fair Play for Girls in Sports, Legal Aid Society-Employment Law Center
Junior Leagues of California
Superintendent of Public Instruction, Tom Torlakson

OPPOSITION

None received.

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