
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 493 (Jackson) - Education: sex equity

Version: April 30, 2019

Urgency: No

Hearing Date: May 13, 2019

Policy Vote: ED. 6 - 0, JUD. 7 - 0

Mandate: Yes

Consultant: Lenin Del Castillo

Bill Summary:

This bill requires higher education institutions adopt rules and procedures for the prevention of sexual harassment, as specified, and adopt and post on their websites the grievance and investigation procedures to resolve complaints of sexual harassment.

Fiscal Impact:

- The University of California (UC) and the California State University (CSU) estimate that the bill's provision creating a private cause of action will result in significant costs associated with litigation to the segments. CSU estimates that the total cost of defense over a two-year period will be between \$4.4 million and \$5.5 million, while the UC estimates the liability to be at least \$4 million to \$5 million each year. (General Fund)
- CSU estimates an additional \$1.8 million associated with the bill's provisions allowing a suing party to recover compensatory damages and reasonable attorney's fees. CSU also estimates additional costs of about \$3.7 million for each campus to hire a new gender equity officer for each of its 15 campuses. This estimate assumes that the existing Title IX coordinators would not be able to assume the additional workload resulting from this measure.
- The Department of Justice estimates ongoing General Fund costs of approximately \$895,000 to fund four positions as a result of this measure.

Background: Existing 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." Enforcement of compliance is initiated upon the filing of a complaint alleging a violation of Title IX. Federal law also 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.

Existing state law requires each educational institution in California (K-12 and postsecondary education) to have a written policy on sexual harassment, and requires schools to display the policy in a prominent location in the main administrative building or other area of the campus or schoolsite, be provided as part of any orientation program for new students, provided to each faculty member, administrative staff and

support staff, and appear in any publication of the school that sets forth the rules, regulations, procedures and standards of conduct. (Education Code § 231.5 and § 66281.5)

Existing state law 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.

Proposed Law: This bill requires higher education institutions to, among other things, adopt rules and procedures for the prevention of sexual harassment, and adopt and post on their websites the grievance and investigation procedures to resolve complaints of sexual harassment. The bill's provisions include:

- Disseminate a notice of nondiscrimination, as specified, to each employee of higher education, volunteer who will interact with students more than 10 hours in a year, and individuals under contract to perform any service at the institution.
- Designate at least one employee to act as a gender equity officer to coordinate its efforts to comply with and carry out its responsibilities. This bill authorizes the gender equity officer to be the same individual as the institution's federal Title IX coordinator. This bill requires the gender equity officer to have adequate training on what constitutes sexual harassment and on trauma-informed investigatory and hearing practices, and understand how the institution's grievance procedures operate.
- Adopt and publish on its website grievance procedures that provide for prompt and equitable resolution of student sexual harassment complaints filed by a student against an employee, another student, or a third party, as specified.
- Publish in a prominent place on its website, with accompanying text clearly associating them with the sexual harassment and sexual assault grievance processes, the name, title, and contact information.
- Provide mandatory training to each employee engaged in the grievance procedures related to sex discrimination, including sexual violence, as specified.
- Requires an institution, if it has on-campus housing, to ensure that residence life student and non-student staff, or their equivalent, annually receive trauma-informed training for handling reports made to them regarding incidents of sexual harassment or assault, or incidents of sexual harassment or assault of which they have actual or constructive knowledge in student residential facilities.
- Adopt and publish on its website procedures for an investigation providing for prompt and equitable resolution of student sexual harassment complaints filed by a student, or initiated by the higher education institution itself, against an institution employee, another student, or a third party.
- Authorizes either of the following people to bring an action in a court of competent jurisdiction to enjoin a violation of this bill or to recover compensatory damages, court costs, and reasonable attorney's fees, or all of these: the Attorney General or a person whose right to equitable access to a higher education institution, program, or activity through a higher education institution that is a recipient of state funds was infringed through violation of this bill.

Requires that a person bring an action no later than the statute of limitations applicable to a personal injury claim in California at the time the cause of action accrues.

Related Legislation: SB 169 (Jackson, 2017) was similar to this bill and was vetoed by Governor Brown.

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