
UNFINISHED BUSINESS

Bill No: SB 493
Author: Jackson (D), et al.
Amended: 8/24/20
Vote: 21

SENATE EDUCATION COMMITTEE: 6-0, 4/3/19
AYES: Leyva, Wilk, Chang, Durazo, McGuire, Pan
NO VOTE RECORDED: Glazer

SENATE JUDICIARY COMMITTEE: 7-0, 4/23/19
AYES: Jackson, Allen, Caballero, Monning, Stern, Umberg, Wieckowski
NO VOTE RECORDED: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: 4-2, 5/16/19
AYES: Portantino, Bradford, Hill, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 30-8, 5/28/19
AYES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Chang, Dodd,
Durazo, Galgiani, Glazer, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva,
McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Stern,
Umberg, Wieckowski, Wiener, Wilk
NOES: Bates, Borgeas, Grove, Jones, Moorlach, Morrell, Nielsen, Stone

ASSEMBLY FLOOR: 60-12, 8/30/20 - See last page for vote

SUBJECT: Education: sex equity

SOURCE: Equal Rights Advocates
Women's Foundation of California/Women's Policy Institute

DIGEST: This bill 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.

Assembly Amendments (1) delete the authority for a person to bring a private right of action in court for a violation of this bill; (2) delete the requirement that grievance procedures provide student parties the opportunity to cross-examine one another and any adverse witnesses, and instead require grievance procedures to include reasonable and equitable evidentiary guidelines, places boundaries on what a hearing officer may consider, and require hearings to be subject to specified rules (including for cross-examination); (3) remove the requirement that specific rights be afforded if both the complainant and respondent are students at the institution (some remain as components of grievance procedures); and (4) make numerous less significant changes.

ANALYSIS:

Existing federal law:

- 1) 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.
- 2) Requires each schooldistrict 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. (Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act)

Existing state law:

- 1) 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)

- 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)

This bill:

- 1) Requires, as a condition of receiving state financial assistance, the governing board or body of a campus of the University of California (UC), California State University (CSU), or California Community College (CCC), a private postsecondary educational institution, or an independent institution of higher education that receives state funds to comply with all of the following requirements at the institution:
 - a) Disseminate, by electronic or other means, a notice of non-discrimination to each employee of the institution, volunteer who will regularly interact with students, and individual or entity under contract with the institution to perform any service involving regular interaction with students at the institution.
 - b) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities. This bill authorizes the employee to be the same individual as the institution's federal Title IX coordinator. This bill requires the employee 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.

Sexual harassment policy

- c) Adopt rules and procedures within the policies required by Title IX and existing state law for the prevention of sexual harassment that also provide for specified elements, including, but not limited to:
 - i) The institution shall take reasonable steps to respond to each incident of sexual harassment, as specified.

- ii) Regardless of whether or not a complaint has been filed under the institution's grievance procedures, if the institution knows, or reasonably should know, about possible sexual harassment involving individuals subject to the institution's policies at the time, the institution shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the institution determines that an investigation is not required. This bill presumes an institution knows of sexual harassment under specified circumstances, and allows institutions to rebut this presumption of knowledge.

Grievance procedures

- d) Adopt and publish on its Web site grievance procedures that provide for prompt and equitable resolution of sexual harassment complaints filed by a student against an employee or another student. This bill requires the grievance procedures to satisfy specified requirements, including, *but not limited to*:
 - i) Ensure that the persons or entities responsible for conducting investigations, finding facts, and making disciplinary decisions are neutral.
 - ii) Ensure trauma-informed and impartial investigation of complaints. Student parties shall be given an opportunity to identify witnesses and other evidence to assist the institution in determining whether a policy violation has occurred, and shall be informed that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing.
 - iii) Include reasonable and equitable evidentiary guidelines.
 - iv) Include specified boundaries on what a hearing officer may consider.
 - v) Provide an explanation of the meaning of the preponderance of the evidence standard, and affirm that it shall apply to adjudications under this section. The preponderance of the evidence standard is met if the institution determines that it is more likely than not that the alleged misconduct occurred, based on the facts available at the time of the decision.
 - vi) Provide for written notice to parties of the outcome of the complaint, including whether a policy violation was found to have occurred, the basis for that determination, including factual findings, and any discipline imposed.
 - vii) Allow either party to appeal the outcome of the grievance proceeding if the institution has such an appeals process.

- viii) Contain a requirement that the Title IX coordinator or other designated employee assess each report of sexual harassment and provide outreach, as appropriate and as specified.

Hearing rules

- e) Require any hearing to be subject to specified rules, including, *but not limited to* the following:
 - i) Any cross-examination of either party or any witness shall not be conducted directly by a party or a party's advisor.
 - ii) Either party or any witness may request to answer the questions by video from a remote location.

Training

- f) Require institutions to provide training to each employee engaged in the grievance procedures related to sex discrimination, including sexual violence, which shall include training on trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process, best practices for assessment of a sexual harassment or sexual violence complaint and best practices for questioning of the complainant, respondent, and witnesses, and on implicit bias, and racial inequities, both broadly and in school disciplinary processes.
- g) Require an institution, if it has on-campus housing, to ensure that residential life student and non-student staff, or their equivalent, annually receive training on how to handle, in a trauma-informed manner, reports made to them sexual harassment or violence in student residential facilities.
- h) Provide training to all employees on the identification of sexual harassment, including the person to whom it should be reported.

Civil action

- 2) Provides that a violation of this section may constitute discrimination and shall be subject to a civil action brought pursuant to existing law.

Miscellaneous

- 3) Provides that this bill does not require an institution to provide separate grievance procedures for student sexual harassment complaints, and authorizes the institution to use student disciplinary procedures or other separate procedures to resolve sexual harassment complaints.

- 4) Requires each postsecondary institution to implement the provisions of this bill by January 1, 2022.
- 5) Provides numerous definitions.

Comments

Changes to federal Title IX rules. The United States Department of Education rescinded guidance issued by the previous administration that is related to how institutions of higher education are to comply with Title IX, and issued new guidance in September 2017. In November 2018, the U.S. Department of Education released proposed changes to Title IX rules, and final regulations in May 2020 (to become effective on August 14, 2020). Federal regulations change how postsecondary educational institutions implement Title IX; changes that are related to provisions of this bill include:

- a) Authority for institutions to use either the “preponderance of evidence” standard, or the “clear and convincing evidence” standard.
- b) Modification of the standard for when an institution of higher education must respond to allegations of sexual harassment from “know or reasonably should know” to “actual knowledge.”
- c) Authority for the cross-examination of complainants during a live hearing.
- d) Exclusion of some off-campus conduct.

[<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>]

This bill specifically applies the preponderance of evidence standard to all investigations; requires an institution that receives a complaint regarding an incident that took place on campus to process the complaint in accordance with this bill; prohibits any cross-examination from being conducted directly by a party or party’s advisor, and allows either party or any witness to answer questions by remote video; and prohibits an institution from mandating mediation, requiring the complainant enter a voluntary resolution agreement or any other form of resolution, or issuing an interim mutual no-contact directive automatically.

If this bill were to become law, California would have stronger Title IX protections and requirements in postsecondary educational institutions than would be required by federal standards.

NOTE: Please see prior analyses for additional comments.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, this bill would impose one-time Proposition 98 General Fund (GF) cost pressures in the 2021-22 fiscal year, potentially in the low millions of dollars, to CCCs, CSUs, and UCs, respectively, to make changes to recently revised Title IX policy and provide training for responsible employees and hearing officers. Potential ongoing Proposition 98 GF cost pressures of an unknown amount to CCCs, CSUs, and UCs, should litigation related to the bill's provisions arise, and minor costs to provide training to new employees and hearing officers.

SUPPORT: (Verified 8/30/20)

Equal Rights Advocates (co-source)

Women's Foundation of California/Women's Policy Institute (co-source)

Alameda County District Attorney's Office

American Association of University Women-California

Asian Americans Advancing Justice-California

Asian Pacific Policy and Planning Council

Business and Professional Women of Nevada County

California Association for Health, Physical Education, Recreation and Dance

California Commission on the Status of Women and Girls

California Faculty Association

California Partnership to End Domestic Violence

California State Student Association

California Voices for Progress

California Women's Law Center

Child Care Law Center

Children's Defense Fund-California

Citizens for Choice

City and County of San Francisco, Department on the Status of Women

Coalition for Humane Immigrant Rights

Community Overcoming Relationship Abuse

Consumer Attorneys of California

Courage Campaign

Ella Baker Center for Human Rights

Empowering Pacific Islander Communities

End Violence Against Women International

Faculty Association of California Community Colleges

Family Violence Law Center

Feminist Majority Foundation

Girls Inc. of Orange County
Impact Fund
Latino Council
Legal Aid at Work
Los Angeles United Methodist Urban Foundation
National Association of Social Workers, California Chapter
National Survivor Network
National Women's Law Center
Peace Over Violence
Public Counsel
Santa Barbara Women's Political Committee
Service Employees International Union California
Southeast Asia Resource Action Center
United Food and Commercial Workers Western States Council
University of California
University of California Student Association
Work Equity

OPPOSITION: (Verified 8/30/20)

Families Advocating for Campus Equality
Hathaway Parker

ASSEMBLY FLOOR: 60-12, 8/30/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner
Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooley,
Cooper, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson,
Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra,
Kamlager, Lackey, Levine, Limón, Low, Maienschein, McCarty, Medina,
Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva,
Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas,
Santiago, Smith, Mark Stone, Ting, Waldron, Weber, Wood, Rendon
NOES: Bigelow, Brough, Choi, Cunningham, Megan Dahle, Flora, Fong,
Gallagher, Kiley, Mathis, Obernolte, Patterson
NO VOTE RECORDED: Chen, Diep, Eggman, Frazier, Mayes, Voepel, Wicks

Prepared by: Lynn Lorber / ED. /
8/31/20 0:46:51

**** END ****