
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: SB 1146
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Urgency: No
Consultant: Kathleen Chavira
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Fiscal: Yes

NOTE: This bill has been referred to the Senate Committees on Education and Judiciary. A “do pass” motion should include referral to the Senate Judiciary Committee.

Subject: Postsecondary education: nondiscrimination

SUMMARY

This bill narrows the exemption from the Equity in Higher Education Act for postsecondary educational institutions controlled by a religious organization (consistent with federal Title IX regulations), requires that any claim for exemption under federal or state law be accompanied by specified disclosures, requires related materials to be submitted to, and posted by, the California Student Aid Commission (CSAC) on its website, as specified, and authorizes any individual denied equal rights or opportunities by an institution claiming such exemption to pursue remedy through a civil action.

BACKGROUND

Existing federal law establishes Federal Title IX of the Education Amendments of 1972 (Title IX) to prohibit discrimination, on the basis of sex, in educational programs or activities receiving Federal financial assistance. Existing law provides for various exemptions from these provisions, including for fraternities and sororities, military institutions, traditional male or female institutions, and institutions controlled by religious organizations. (Title 20 United States Code, Title 20 § 1681-1688)

Existing law provides that an institution will be considered to be controlled by a religious organization for purposes of a Title IX religious exemption if one or more of the following conditions is true:

- a) It is a school or department of divinity, defined as an institution or a department or branch of an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.
- b) It requires its faculty, students or employees to be members of, or otherwise espouse a personal belief in, the religion of the organization by which it claims to be controlled.
- c) Its charter and catalog, or other official publication, contains explicit statement that it is controlled by a religious organization or an organ thereof or is committed

to the doctrines of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.

(Code of Federal Regulations, Title 34 § 106.12)

Existing state law establishes the Equity in Higher Education Act (Act) to prohibit a person from being subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the statutory definition of hate crimes, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid. (Education Code § 66270)

Existing state law provides an exemption from the provisions of the Act for an educational institution that is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization. (Education Code § 66271)

Existing law also declares the Legislature's intent that the Act be interpreted as consistent with other specified federal and state laws, including Title IX, except where the Act grants more protections or imposes additional obligations. (Education Code § 66252)

ANALYSIS

This bill:

- 1) Narrows the exemption from the Equity in Higher Education Act currently extended to a postsecondary educational institution controlled by a religious organization to be applicable only to education programs or activities offered by the institution that prepare students to do any of the following:
 - a) Become ministers of the religion.
 - b) Enter upon some other religious vocation.
 - c) Teach theological subjects pertaining to the religion.
- 2) Requires that institutions claiming a religious exemption under Title IX or the Equity in Higher Education Act comply with disclosure requirements. Specifically it:
 - a) Requires disclosure to current and prospective students, faculty, and employees, of the basis for claiming such exemption.
 - b) Requires display of such disclosure in a prominent campus or school site location.

- c) Requires inclusion of such disclosure in written materials sent to prospective students seeking admission.
 - d) Requires that disclosure be provided as part of orientation programs for new students, as specified.
 - e) Requires that disclosure be provided to faculty members, administrative staff, and support staff annually, as specified, and to new employees upon hiring.
 - f) Requires that disclosure be included in any institutional publication that sets forth rules, regulations, procedures and standards of conduct for the institution.
- 3) Requires that materials and information related to the request and granting of an exemption from Title IX or the Equity in Higher Education Act requirements be submitted to the California Student Aid Commission (CSAC) and posted on its website and requires CSAC to post and maintain a list of institutions claiming exemption and their respective bases for the claim.
- 4) Authorizes the pursuit of appropriate remedies through a civil action for individuals denied equal rights or opportunities on the basis of gender identity, gender expression, or sexual orientation by a postsecondary educational institution claiming religious exemption from Title IX requirements.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, private universities are using federally authorized exemptions from Title IX as a means to discriminate. The author is concerned that there is no requirement that these institutions disclose their exemption status, and students and staff across the country report learning of the exemption only after being expelled from school or fired from their jobs. Transgender students have reported being denied gender appropriate housing and some have been expelled as a result of revealing their gender identify. Under current law, these students and staff have no recourse. This bill would narrow the religious exemption afforded to these institutions, require disclosure of such exemption, and provide for a private right of action for individuals who claim such discrimination.
- 2) ***Comparison to federal regulations.*** This bill statutorily establishes one of three conditions which must be met by an institution per Title IX regulations in order to be granted an exemption under the state Equity in Higher Education Act. Consistent with federal Title IX regulations, it authorizes an exemption for educational programs or activities that prepare students to become ministers of the religion, to enter upon some other vocation of the religion, or to teach theological subjects pertaining to the religion. This provision would be applicable to any postsecondary educational institution that receives or benefits from state financial assistance or enrolls students who receive state financial aid.

Unlike federal regulations, it does not authorize exemption on the basis that the educational organization demonstrate that it is controlled by a religious organization, or on the basis of requirements that faculty, students or employees of the institution be members of, or espouse belief in, the controlling organization's religion. Institutions controlled by a religious organization would still be eligible for a Title IX exemption based upon the broader conditions outlined in federal regulations.

- 3) **Related report.** According to a recent report of the Human Rights Campaign (HRC), *Hidden Discrimination: Title IX Religious Exemptions Putting LGBT Students at Risk*, the rate of schools seeking a religious exemption from Title IX has increased from one school in 2013 to 43 schools in 2015. Since 2013, 56 schools have requested a religious exemption from Title IX provisions. Thirty-three have received an exemption from the law as it pertains to protecting students on the basis of gender identity and 23 have obtained an exemption based on laws pertaining to protecting students on the basis of sexual orientation. Schools most commonly requested exemptions from provisions of the law relating to housing, access to facilities, and athletics. According to the HRC, exempted institutions are not required to notify students of such exemption and this type of information is currently only available through a Freedom of Information Act request. The HRC report recommends that the USDOE amend its regulations to require schools to post specified exemption related information and a statement that all other Title IX protections are still applicable, and provide exemption related information on the USDOE website, as specified.
- 4) **California institutions?** According to the HRC report noted in staff comment #3, since 2013, six California postsecondary educational institutions have requested an exemption under the provisions for religious organizations under Title IX. These include Biola University, Fresno Pacific University, Simpson University, William Jessup University, John Paul the Great Catholic University, and LABI College. Based upon information available from the California Student Aid Commission (CSAC), the first four of these institutions currently participate in the Cal Grant Program.
- 5) **Federal USDOE guidance/actions.** A federal guidance document issued in 2014 by the Office of Civil Rights (OCR), *Questions and Answers on Title IX and Sexual Violence*, clarified that the Title IX discrimination prohibition extends to discrimination against transgender and gender non-conforming students. A January 2016 letter from the United States Department of Education Office of Civil Rights (OCR) to concerned U.S. Senators confirms that in recent years the Department has received an increasing number of requests for religious exemptions from Title IX. The letter also asserts that the OCR is in the process of preparing a basic search tool on its website so that applicants, students, parents, and others can be better informed about which educational institutions have sought and/or received a religious exemption and expects these documents to be posted in the coming months.
- 6) **Double referral.** This bill contains provisions relative to the pursuit of remedies for the denial of equal rights and protection against discrimination through civil action. Bills relative to these types of issues are generally under the purview of

the Senate Judiciary Committee. This bill has also been referred to the Senate Judiciary Committee for the appropriate consideration of these provisions.

- 7) ***Similar legislation.*** AB 1888 (Low) provides that any institution claiming a religious exemption under Title IX is prohibited from participation in the Cal Grant Program. AB 1888 was heard and passed by the Assembly Higher Education Committee on March 28, 2016, by a vote of 8 to 1 and is currently awaiting action in the Assembly Appropriations Committee.

SUPPORT

None received.

OPPOSITION

None received.

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