
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: SB 1439
Author: Block
Version: March 28, 2016
Urgency: No
Consultant: Lenin Del Castillo
Hearing Date: April 6, 2016
Fiscal: Yes

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

Subject: Postsecondary education: academic and administrative employees: disclosure of allegations of sexual harassment

SUMMARY

This bill provides that the governing board of a community college district and the Trustees of the California State University shall require an application for appointment to an academic or administrative position disclose any substantiated allegation of sexual harassment.

BACKGROUND

Federal statutes addressing sexual assault on or around institutions of higher education include Title IX and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).

The Clery Act requires public and private postsecondary educational institutions that receive federal financial aid to disclose information about crimes on and around campuses as well as establish certain rights for victims of sexual assault. Those rights include notification to victims of the right to file criminal charges, available counseling services, the results of disciplinary proceedings, and the option for victims to change their academic schedule or living arrangements.

The Clery Act also requires postsecondary institutions to offer prevention and awareness programs to new students and employees regarding rape, domestic and dating violence, sexual assault, and stalking. Programs must include a definition of those offenses and consent with reference to sexual offenses. Institutions are also required to compile statistics of incidents of sexual assault, domestic violence, dating violence and stalking.

The United States Department of Education's Office for Civil Rights has also issued guidance regarding compliance with Title IX specific to sexual harassment and sexual violence. This guidance stated, among other things, that:

- 1) 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.

- 2) Institutions are not relieved of their duty under Title IX to resolve complaints promptly and equitably whether or not a criminal investigation is underway.
- 3) Institutions need to ensure their employees are trained to know how to report harassment and how to respond properly.

Current law requires the governing board of each community college district, the Trustees of the California State University (CSU), the Board of Directors of the Hastings College of the Law, and the Regents of the University of California to each adopt, and implement at each campus or other facilities, a written procedure or protocols to ensure, to the fullest extent possible, that students, faculty and staff who are victims of sexual assault committed on grounds maintained by the institution or affiliated student organizations, receive treatment and information. The written procedures or protocols must contain at least the following information:

- 1) The college policy regarding sexual assault on campus.
- 2) Personnel on campus who should be notified, and procedures for notification, with the consent of the victim.
- 3) Legal reporting requirements and procedures for fulfilling them.
- 4) Services available to victims and personnel responsible for providing these services.
- 5) A description of campus resources available to victims, as well as appropriate off-campus services.
- 6) Procedures for ongoing case management, including keeping the victim informed of the status of any student disciplinary proceedings and helping the victim deal with academic difficulties that may arise because of the victimization and its impact.
- 7) Procedures for guaranteeing confidentiality and appropriately handling requests for information from the press, concerned students and parents.
- 8) Each victim of sexual assault should receive information about the existence of at least the following options: criminal prosecutions, civil prosecutions, disciplinary process through the college, availability of mediation, alternative housing assignments, and academic assistance alternatives. (Education Code § 67385)

Current law also requires:

- 1) The governing board of each community college district and the Trustees of the CSU, and requests the Regents of the University of California, in collaboration with campus- and community-based victim advocacy organizations, to provide as part of campus orientations, educational and preventive information about sexual violence.

- 2) Each campus of the California Community Colleges and the California State University (CSU), and requests each campus of the University of California, to post sexual violence prevention and education information on its campus website. The information must include specific components including how to file a complaint, and the availability and contact information for resources for victims.
- 3) Each campus of the California Community Colleges and the CSU, and requests each campus of the University of California, to develop policies to encourage students to report any campus crimes involving sexual violence.
- 4) Each campus of the California Community Colleges and the CSU, and requests each campus of the University of California, to eliminate barriers for victims who come forward to report sexual assaults, and to advise students regarding these policies. (EC § 67385.7)

Current law provides that prior to making a decision relating to the continued employment of a contract employee at a community college district, certain requirements shall be satisfied, including an evaluation of the employee and the governing board's receipt of recommendations of the superintendent or president of the district or community college. (EC § 87607)

ANALYSIS

This bill:

- 1) Provides that the governing board of a community college district require that an application for appointment to an academic or administrative position with that district include a requirement that the applicant disclose any allegations of workplace sexual harassment against him or her that resulted in a final judicial or administrative decision determining that the applicant committed sexual harassment.
- 2) Requires the governing board of a community college district, prior to making a decision relating to the continued employment of a contract employee, to have knowledge of any allegations of workplace sexual harassment against the employee that resulted in a final judicial or administrative decision determining that the employee committed sexual harassment.
- 3) Provides that the Trustees of the CSU require that an application for appointment to an academic or administrative position with the CSU include a requirement that the applicant disclose any allegations of workplace sexual harassment against him or her that resulted in a final judicial or administrative decision determining that the applicant committed sexual harassment.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, "recent news reports have exposed serious incidents of professors who engaged in the sexual harassment of their students. A prominent professor of astronomy at UC Berkeley was alleged and later found by the university to have behaved inappropriately with

students. More recently, the Dean of Boalt Law School at UC Berkeley admitted to “hugging, kissing, and making other inappropriate and unwanted contact with multiple women on staff”. He was punished by the university but later resigned once the matter became public. These egregious cases show a problem of faculty sexual misconduct and the inability of colleges and universities to prevent these incidents. This conduct also has a chilling effect on students that but for their experience, would have pursued a career in the subject area.

In particular, current law does not require colleges and universities to take into account the record of sexual harassment misconduct of a candidate for professorship. The Education Code on state universities’ and community colleges’ hiring policies do not have any provisions that prevent the hiring of professors with a troubling history of sexual misconduct or a requirement that they disclose these histories during the hiring process. A clear example of the problems from this lack of disclosure can be seen at the University of Chicago, where a professor was found to have made multiple unwelcome sexual advances and engaged in sexual activity with a student who was incapacitated from alcohol. The university found that the professor was investigated for sexual harassment at previous universities where he was employed. The full scope of these complaints was not disclosed to the hiring committee at the time.”

The author’s office indicates that professors and instructors can avoid the consequences of their actions by moving from one university to the next since their history does not follow them, and that the information as to their misconduct should be considered when hiring decisions are being made.

- 2) ***How will it work?*** While the bill requires an applicant to disclose any previous allegations of sexual harassment that have been substantiated, it does not specify how this would be accomplished. Would a standardized form be created by the community college districts and the California State University (CSU) or could the existing applications for employment be amended to include a disclosure section? Would this be left to the local district or campus discretion?
- 3) ***Double-referral.*** The extent or level of detail of the allegations that would have to be disclosed on an application is unclear. It is also unclear if this information would be used solely as a background check for hiring purposes or if it could somehow result in the public release of the information. The bill has been double-referred to the Senate Judiciary Committee, which typically covers, among other policy issues, privacy, confidentiality and consumer protection. The author may wish to consider addressing these issues as the bill moves forward.
- 4) ***Policy of California’s public universities.*** The University of California updated policies relative to sexual harassment and violence effective February 25, 2014. These policies include procedures for training and education, a process for reporting incidents, identification of on- and off-campus resources for victims, and providing prompt and effective response to reports of incidents.

The California State University recently updated its policies as well, effective June 3, 2014, to reflect the changes to the federal Campus Sexual Violence

Elimination Act and related guidance from the U.S. Department of Education, Office for Civil Rights.

- 5) ***State Auditor's Report on Sexual Harassment and Sexual Violence.*** The State Auditor released a report in June 2014 regarding the handling of sexual harassment and sexual violence incidents at the state's public postsecondary institutions. As part of this audit, the State Auditor reviewed the sexual assault policies and procedures of the University of California at Berkeley and Los Angeles, the California State University, Chico, and San Diego State University. The report noted that "staff in key roles of the incident-reporting process receive adequate training on responding to and reporting student incidents of sexual harassment and sexual violence, but other employees including resident advisors and athletic coaches, who may be the first point of contact, do not." The report also noted that "none of the universities provides its sexual harassment policy to all employees at the start of each academic year, nor do they post the policies in certain places where a large number of students can see them such as in residence halls or athletic facilities."

As part of the report, the State Auditor included several recommendations, including the recommendation for the universities to review and modify educational programs and provide more training and education to both university employees and incoming students, and the recommendation for the universities to properly distribute and post their policy on sexual harassment.

- 6) ***Previous legislation.***

AB 1433 (Gatto, Chapter 798, Statutes of 2014) requires postsecondary educational institutions to establish policies regarding the reporting of specified crimes to local law enforcement.

SB 967 (De Leon, Chapter 748, Statutes of 2014) 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 board of independent postsecondary institutions to adopt a policy concerning campus sexual violence, domestic violence, dating violence and stalking that includes specified components.

SUPPORT

None received.

OPPOSITION

None received.

-- END --