

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE MARCH 27, 2014

SENATE BILL

No. 967

Introduced by Senators De León and Jackson

(Principal coauthor: Assembly Member Lowenthal)

(Coauthors: Senators Beall, Cannella, Evans, Galgiani, Monning,

Pavley, Torres, and Wolk, and Yee)

(Coauthors: Assembly Members Ammiano, Fong, Gonzalez,
Quirk-Silva, Skinner, Ting, and Williams)

February 10, 2014

An act to add Section 67386 to the Education Code, relating to student safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 967, as amended, De León. Student safety: sexual assault.

Existing law requires the governing boards 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 and implement written procedures or protocols to ensure that students, faculty, and staff who are victims of sexual assault on the grounds or facilities of their institutions receive treatment and information, including a description of on-campus and off-campus resources.

This bill would require the governing boards 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, in order to receive state funds

for student financial assistance, to adopt policies concerning ~~campus sexual violence~~, *sexual assault*, domestic violence, dating violence, and stalking that include certain elements, including an affirmative consent standard in the determination of whether consent was given by a complainant. The bill would require these governing boards to adopt certain sexual assault policies and protocols, as specified, and would require the governing boards, to the extent feasible, to enter into memoranda of understanding or other agreements or collaborative partnerships with on-campus and community-based organizations to refer students for assistance or make services available to students. The bill would also require the governing boards to implement comprehensive prevention and outreach programs addressing sexual assault, domestic violence, dating violence, and stalking. By requiring community college districts to adopt or modify certain policies and protocols, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 67386 is added to the Education Code,
2 to read:
3 67386. (a) In order to receive state funds for student financial
4 assistance, the governing board of each community college district,
5 the Trustees of the California State University, the Regents of the
6 University of California, and the governing boards of independent
7 postsecondary institutions shall adopt a policy concerning ~~campus~~
8 ~~sexual violence~~, *assault*, domestic violence, dating violence, and
9 ~~stalking that includes~~ *stalking, as defined in the federal Higher*
10 *Education Act of 1965 (20 U.S.C. Sec. 1092(f)) involving a student,*
11 *both on and off campus. The policy shall include all of the*
12 *following:*

1 (1) An affirmative consent standard in the determination of
2 whether consent was given by ~~a complainant~~. *both parties to sexual*
3 *activity*. “Affirmative consent” ~~is an affirmative, unambiguous,~~
4 ~~and conscious decision by each participant to engage in mutually~~
5 ~~agreed-upon sexual activity. Consent is informed, freely given,~~
6 ~~and voluntary. It is the responsibility of the person initiating the~~
7 ~~sexual activity to ensure that he or she has the consent of the other~~
8 ~~person to engage in the sexual activity.~~ *means affirmative,*
9 *conscious, and voluntary agreement to engage in sexual activity.*
10 *It is the responsibility of each person involved in the sexual activity*
11 *to ensure that he or she has the affirmative consent of the other*
12 *or others to engage in the sexual activity.* Lack of protest or
13 resistance does not mean consent, nor does silence mean consent.
14 ~~Consent~~ *Affirmative consent* must be ongoing throughout a sexual
15 ~~encounter~~ *activity* and can be revoked at any time. The existence
16 of a dating relationship between the persons involved, or the fact
17 of past sexual relations between them, should never by itself be
18 assumed to be an indicator of consent.

19 (2) A policy that, in the evaluation of complaints in ~~the any~~
20 disciplinary process, it shall not be a valid excuse *to alleged lack*
21 *of affirmative consent* that the accused believed that the
22 complainant consented to the sexual activity under either of the
23 following circumstances:

24 (A) The accused’s belief in *affirmative* consent arose from the
25 ~~self-induced~~ intoxication or recklessness of the accused.

26 (B) The accused did not take reasonable steps, in the
27 circumstances known to the accused at the time, to ascertain ~~that~~
28 ~~whether the complainant was consenting.~~ *affirmatively consented.*

29 ~~(3) A preponderance of the evidence standard in the~~
30 ~~determination of disciplinary action.~~

31 *(3) A policy that the standard used in determining whether the*
32 *elements of the complaint against the accused have been*
33 *demonstrated is the preponderance of the evidence.*

34 (4) A policy that, in the evaluation of complaints in the
35 disciplinary process, it shall not be a valid excuse that the accused
36 believed that the complainant *affirmatively* consented to the sexual
37 activity if the accused knew or reasonably should have known that
38 the complainant was unable to consent to the sexual activity under
39 any of the following circumstances:

40 (A) The complainant was asleep or unconscious.

1 (B) The complainant was incapacitated due to the influence of
2 drugs, alcohol, or medication, so that the complainant could not
3 understand the fact, nature, or extent of the sexual ~~situation~~
4 *activity*.

5 (C) The complainant was unable to communicate due to a mental
6 or physical condition.

7 (b) In order to receive state funds for student financial assistance,
8 the governing board of each community college district, the
9 Trustees of the California State University, the Regents of the
10 University of California, and the governing boards of independent
11 postsecondary institutions shall adopt detailed and victim-centered
12 ~~sexual assault~~ policies and protocols *regarding sexual assault,*
13 *domestic violence, dating violence, and stalking involving a student*
14 that comport with best practices and current professional standards.
15 At a minimum, the policies and protocols shall cover all of the
16 following:

17 (1) A policy statement on how the institution will ~~protect the~~
18 *provide appropriate* confidentiality ~~of~~ *for* individuals involved in
19 ~~the~~ *an* incident.

20 (2) Initial response by the institution’s personnel to a report of
21 ~~sexual assault,~~ *an incident,* including requirements specific to
22 assisting the victim, providing information in writing about the
23 importance of preserving evidence, and the identification and
24 location of witnesses.

25 (3) Response to stranger and nonstranger sexual assault.

26 (4) The preliminary victim interview, including the development
27 of a victim interview protocol, and a comprehensive followup
28 ~~victim interview.~~ *interview, as appropriate.*

29 (5) Contacting and interviewing the accused.

30 (6) *Seeking the identification and location of witnesses.*

31 ~~(6)~~

32 (7) Providing written notification to the victim about the
33 availability of, and contact information for, on- and off-campus
34 resources and services, and coordination with law enforcement,
35 as appropriate.

36 ~~(7)~~

37 (8) Participation of victim ~~advocates.~~ *advocates and other*
38 *supporting people.*

39 ~~(8)~~

1 (9) Investigating allegations that alcohol or drugs were involved
2 in the incident, and providing amnesty from disciplinary action if
3 the victim violated the school's policy when the sexual assault
4 occurred. *incident.*

5 (10) *Providing that those who participate in the investigation*
6 *of sexual assault, domestic violence, dating violence, and stalking,*
7 *either as a complainant or a third-party witness, will not be subject*
8 *to disciplinary sanctions for violations of the institution's student*
9 *conduct policy at or near the time of the incident if the violations*
10 *did not place the health or safety of any other person at risk.*

11 ~~(9)~~

12 (11) The role of the institutional staff supervision.

13 ~~(10)~~

14 (12) A comprehensive, trauma-informed training program for
15 campus officials involved in investigating and adjudicating ~~campus~~
16 ~~sexual violence~~, *sexual assault*, domestic violence, dating violence,
17 and stalking cases.

18 ~~(11)~~

19 (13) Procedures for ~~anonymous confidential~~ reporting of sexual
20 assault. *by victims and third parties.*

21 (c) In order to receive state funds for student financial assistance,
22 the governing board of each community college district, the
23 Trustees of the California State University, the Regents of the
24 University of California, and the governing boards of independent
25 postsecondary institutions shall, to the extent feasible, enter into
26 memoranda of understanding, agreements, or collaborative
27 partnerships with existing on-campus and community-based
28 organizations, including rape crisis centers, to refer students for
29 assistance or make services available to students, including
30 counseling, health, mental health, victim advocacy, student
31 advocacy, and legal assistance.

32 (d) In order to receive state funds for student financial assistance,
33 the governing board of each community college district, the
34 Trustees of the California State University, the Regents of the
35 University of California, and the governing boards of independent
36 postsecondary institutions shall implement comprehensive
37 prevention and outreach programs addressing sexual violence,
38 domestic violence, dating violence, and stalking. A comprehensive
39 prevention program shall include a range of prevention strategies,
40 including, but not limited to, ~~women's~~ empowerment programming,

1 awareness raising campaigns, primary prevention, bystander
2 intervention, and risk reduction. Outreach programs shall be
3 provided to make students aware of the institution's policy on
4 ~~campus sexual violence~~, *sexual assault*, domestic violence, dating
5 violence, and stalking. At a minimum, an outreach program shall
6 include a process for contacting and informing the student body,
7 campus organizations, athletic programs, and student groups about
8 the institution's overall sexual assault policy, the practical
9 implications of an affirmative consent standard, and the rights and
10 responsibilities of students under the policy. Outreach programming
11 shall be included as part of new student orientation.

12 SEC. 2. If the Commission on State Mandates determines that
13 this act contains costs mandated by the state, reimbursement to
14 local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.

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