

Date of Hearing: March 27, 2019

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 543 (Smith) – As Introduced February 13, 2019

[Note: This bill is doubled referred to the Assembly Higher Education Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Education: sexual harassment: written policy: posters

SUMMARY: Requires each educational institution to create a poster that notifies pupils of the institution's written policy on sexual harassment and to prominently and conspicuously display the poster in specified public and private areas on campus. Specifically, **this bill:**

- 1) Requires each educational institution in the state to create a poster that notifies pupils of the educational institution's written policy on sexual harassment.
- 2) Authorizes the educational institution to partner with local, state, or federal agencies, or nonprofit organizations for purposes of the design and content of the poster, and to ensure that the language in the poster is age-appropriate and culturally relevant.
- 3) Requires the poster to be displayed in English, Spanish, and any other language commonly spoken by pupils at the educational institution.
- 4) Requires the poster to be no smaller than 8.5 by 11 inches and 12-point font, and to display, at a minimum, all of the following:
 - a) The rules and procedures for reporting charges of sexual harassment.
 - b) The name, phone number, and email of an appropriate school official to contact to report charges of sexual harassment.
 - c) The rights of the reporting pupil, the victim, the accused, and the responsibilities of the educational institution in accordance with the policy.
- 5) Requires that the poster be prominently and conspicuously displayed in the following places:
 - a) Each bathroom and locker room on campus.
 - b) Public areas on campus that are accessible to, and commonly frequented by, pupils, including, but not limited to, classrooms, classroom hallways, gymnasiums, auditoriums, and cafeterias.
- 6) Requires a copy of the educational institution's written policy on sexual harassment, as it pertains to pupils, to be provided as part of any orientation program conducted for new and continuing pupils at the beginning of each quarter, semester, or summer session.

EXISTING LAW:

- 1) Declares that it is the policy of this state to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic, equal rights and opportunities in the educational institutions of the state. Declares further that all students have the right to participate fully in the educational process, free from discrimination and harassment; that California's public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity; and that harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity. (Education Code (EC) Sections 200-201.)
- 2) Defines "sexual harassment" as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:
 - a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
 - b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
 - c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.
 - d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution. (EC 212.5)
- 3) States the policy of the State of California that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state.
 - a) Requires each educational institution in the State of California to have a written policy on sexual harassment. Specifies the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.
 - b) Requires the educational institution's written policy on sexual harassment to include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.
 - c) Requires that a copy of the educational institution's written policy on sexual harassment be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

- d) Requires that a copy of the educational institution's written policy on sexual harassment, as it pertains to students, be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.
 - e) Requires that a copy of the educational institution's written policy on sexual harassment be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that a new employee is hired.
 - f) Requires that a copy of the educational institution's written policy on sexual harassment appear in any publication of the institution that includes the comprehensive rules, regulations, procedures, and standards of conduct for the institution. (EC 231.5)
- 4) Provides, under Title IX of the federal Education Amendments of 1972, that no person 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 or activity receiving federal financial assistance. (20 U.S.C. Section 1681 et seq.)

FISCAL EFFECT: Unknown

COMMENTS:

This bill requires educational institutions to create a poster detailing certain information relating to the sexual harassment policy and to have it posted in multiple languages, as necessary given the student population, and to provide it to new and continuing students at the beginning of each quarter, semester, or summer session. The bill does not define "educational institution," but the author states that the intent was to apply to schools serving pupils in 9th through 12th grade.

Current law requires certain educational institutions to post their written policy on sexual harassment in a prominent location in the main administrative building or other areas of the campus or schoolsite. Current law also requires that the policy be provided to new students at the beginning of each semester, quarter, or summer session.

Need for the bill. According to the author, "Our students need to feel safe and respected in order to be in the best position to learn and thrive. It is important that students are given the vocabulary to be able to recognize and talk about sexual harassment. AB 543 will ensure that students have access to information and resources, educate students on what is and isn't appropriate, and will destigmatize asking for help. When we talk about addressing the cultural shift needed by the Me Too movement, we need to begin early with our youth."

Prevalence of sexual harassment and assault in school settings. According to a 2018 report published by the American Association of University Women (AAUW), "Schools Are Still Underreporting Sexual Harassment and Assault," women on college campuses and girls in junior high and high school frequently experience sexual harassment, sexual abuse or assault, and other crimes or behavior that constitute sex discrimination under Title IX. The report goes on to say that these experiences hurt their ability to focus on their academic goals and can diminish their equal access to educational opportunities, but educational institutions frequently fail to accurately report the sexual harassment or assault that is occurring on their watch.

AAUW analyzed 2015-16 data from the Civil Rights Data Collection (CRDC) from 96,000 public and public charter preschool through 12th grade educational institutions, including magnet schools, special education schools, alternative schools, and juvenile justice facilities. More than 79 percent of the 48,000 public schools with students in grades 7 through 12 disclosed zero reported allegations of harassment or bullying on the basis of sex. According to the AAUW, numbers do not square with what research shows students experience, as far more students experience sexual harassment than schools report in the CRDC.

AAUW's analysis looked specifically at public schools with students in grades 7–12 to compare data with AAUW's 2011 research report "Crossing the Line: Sexual Harassment at School", which analyzed data from a survey of students in the same age group. Crossing the Line found that 48 percent of students surveyed had experienced some form of sexual harassment in the past school year, with 87 percent of those students saying that the harassment had a negative impact on them. Since then, other research has shown the continued prevalence of these kinds of incidents affecting girls in junior high and high schools.

Recommended amendments. Committee staff recommend that the bill be amended to:

- 1) Define "educational institution," for purposes of this section, as a school, serving pupils in any of 9th through 12th grade, within a school district or county office of education, or a charter school.
- 2) Clarify that the requirement to provide the poster in one or more languages other than English applies when 15 percent or more of the pupils enrolled in the school speak a single primary language other than English, as pursuant to Education Code Section 48985.

Similar and prior legislation. SB 169 (Jackson) of the 2017 Session would have required K-12 schools to use a "preponderance of evidence" standard to decide whether an incident of sexual harassment or violence occurred; requires higher education 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 and investigation procedures to resolve complaints of sexual harassment. This bill was vetoed by Governor Brown.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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