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SB-493 Education: sex equity. (2019-2020)

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Senate Bill No. 493

CHAPTER 303

An act to amend Section 66262.5 of, and to add Section 66281.8 to, the Education Code, relating to education.

[Approved by Governor September 29, 2020. Filed with Secretary of State September 29, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 493, Jackson. Education: sex equity.

Existing federal law, known as Title IX, prohibits a person, on the basis of sex, from being excluded from participation in, being denied the benefits of, or being subject to discrimination, which includes sexual harassment, under any education program or activity receiving federal financial assistance. A portion of the Donahoe Higher Education Act, known as the Equity in Higher Education Act, declares, among other things, that it is 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. Existing law provides that a party to a written complaint of prohibited discrimination at certain public postsecondary educational institutions may appeal the action to specified bodies. Existing law also requires that persons who have filed a complaint of prohibited discrimination be advised by the educational institution that civil law remedies may also be available to the complainant.

This bill would require, no later than January 1, 2022, except as specified, a postsecondary institution that receives state financial assistance to comply with requirements relating to the protection of students from, and providing students with procedural protections relating to complaints of, sexual harassment. In particular, the bill would require the governing board or body of each of these institutions to (1) disseminate a notice of nondiscrimination to each employee, volunteer, and individual or entity contracted with the institution, (2) designate at least one employee of the institution to coordinate its efforts to comply with its responsibilities specified in this act, (3) adopt rules and procedures for the prevention of sexual harassment, (4) adopt and publish on its internet website grievance procedures providing for the prompt and equitable resolution of sexual harassment complaints, (5) publish on the institution's internet website the name, title, and contact information for the Title IX coordinator or other employee designated to coordinate the institution's efforts to comply with and carry out the responsibilities specified in this act and any individual official with the authority to investigate complaints or to institute corrective measures, as specified, (6) include specified training to each employee engaged in the grievance procedure, (7) include annual training for residential life student and nonstudent staff for the trauma-informed handling of reports regarding incidents of sexual harassment or violence at an institution with on-campus housing, (8) notify employees of the obligation to report sexual harassment to appropriate school officials, and (9) provide training to all employees on the identification of sexual harassment. The bill would authorize enforcement of these provisions through a civil action brought pursuant to existing law, as specified. By imposing new duties on community college districts, this 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 the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

- (a) Education has long been recognized as the great equalizer in the United States.
- (b) Protecting students' civil rights, including the right to an educational environment free from discrimination, is of paramount importance. Sexual harassment, including sexual violence, has a devastating impact on students' lives and prevents equal access to education as required under California law.
- (c) The Legislature recognizes that sex discrimination, including sexual harassment and violence, harms all students, undermines students' physical safety, impedes students' ability to learn, and can reinforce social inequality throughout a student's lifetime.
- (d) Sexual harassment and violence in higher education is pervasive. According to research published by the American Association of University Women, during college, 62 percent of women and 61 percent of men experience sexual harassment. The Association of American Universities (AAU) survey of students shows that more than 1 in 5 women and nearly 1 in 18 men are sexually assaulted in college.
- (e) Historically marginalized and underrepresented groups are more likely to experience sexual harassment than their peers. Research from GLSEN and the Centers for Disease Control and Prevention show that more than one-half of LGBTQ students 13 to 21 years of age, inclusive, are sexually harassed at school. An AAU survey indicates that nearly one in four transgender and gender-nonconforming students are sexually assaulted during college. According to a National Women's Law Center (NWLC) report, students with disabilities are 2.9 times more likely than their peers to be sexually assaulted.
- (f) Existing law prohibits institutions of higher education that receive state funding from discriminating on the basis of sex.
- (g) Existing law requires all higher educational institutions that receive state funding to adopt trauma-informed policies concerning sexual assault, domestic violence, dating violence, and stalking involving a student, both on and off campus.
- (h) Existing law requires the application of an affirmative consent standard and prohibits consideration of past sexual relations as probative by themselves of ongoing or repeated affirmative consent between parties.
- (i) Sexual harassment occurs both on campus and in off-campus spaces associated with school. Nationwide, nearly 9 in 10 college students live off campus and 41 percent of college sexual assaults involve off-campus parties. Research by the Rape, Abuse & Incest National Network indicates that only 8 percent of all sexual assaults occur on school property.
- (j) Survivors generally underreport instances of sexual harassment and assault. The NWLC reports that only 12 percent of college survivors report sexual assault to their schools or the police.
- (k) Every student has a right to be protected from sex discrimination, including sexual harassment, in a school's educational programs, activities, and facilities. Each institution of higher education has a responsibility to make reasonable efforts to respond effectively when sexual harassment is reported to, or observed by, college and university faculty and staff, including on-campus housing employees, such as residential advisers.
- (l) The Legislature affirms that institutions of higher education should conduct prompt and equitable investigations into allegations of sexual harassment, including sexual violence, and that interim accommodations and remedial measures may be necessary during the pendency of an investigation to ensure students' safety and equal access to education. When institutions fail to effectively respond to allegations of sexual harassment and violence, the impact on students can be devastating. Research published in the Journal of College Student Retention: Research, Theory & Practice demonstrates that 34 percent of sexual harassment and violence survivors drop out of college.
- (m) Sexual harassment of students, including certain defined acts of sexual violence, is a form of sex discrimination prohibited by Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.), and its implementing regulations in Part 106 of Chapter 1 of Subtitle B of Title 34 of the Code of Federal Regulations.
- (n) The Legislature notes the legal distinction between the processes necessary to protect students' civil rights to equal access to education and those required to ensure due process in a criminal proceeding. In enacting this bill, it is the intent of the Legislature to account for the significant individual civil consequences faced by respondents alleged to have committed sexual violence as well as the significant harm to individual complainants and to education equity more generally if sexual violence goes unaddressed.

(o) It is the intent of the Legislature to define "sexual harassment" to include "sexual violence," as defined in Section 66262.5 of the Education Code, for the purposes of Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 and the Equity in Higher Education Act established in Chapter 4.5 (commencing with Section 66250) of Part 40 of Division 5 of Title 3 of the Education Code.

(p) It is the intent of the Legislature that each higher education institution that receives state financial assistance, and their respective governing boards or bodies, comply with the requirements of this act as a condition of receiving that financial assistance.

(q) It is the intent of the Legislature to provide additional civil rights protections to students in California institutions of higher education and that this chapter be interpreted consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 2000d, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400, et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Sections 51 to 53, inclusive, of the Civil Code), and the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), except where this chapter may grant more protections or impose additional obligations, and the remedies provided herein not be the exclusive remedies, but may be combined with any remedies provided by the above-cited statutes.

(r) This bill is intended to clarify the process for adjudicating complaints of sexual or gender-based violence, including dating or domestic violence, at postsecondary educational institutions in the State of California.

SEC. 2. Section 66262.5 of the Education Code is amended to read:

66262.5. (a) (1) "Sexual harassment" has the same meaning as defined in Section 212.5 and includes sexual battery, sexual violence, and sexual exploitation.

(2) Sexual harassment of students is a form of sex discrimination prohibited by Section 66270.

(b) For purposes of this chapter, the following terms have the following meanings:

(1) "Sexual violence" means physical sexual acts perpetrated against a person without the person's affirmative consent, as defined in paragraph (1) of subdivision (a) of Section 67386. Physical sexual acts include both of the following:

(A) Rape, defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim.

(B) Sexual battery, as defined in paragraph (2).

(2) "Sexual battery" means the intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent.

(3) "Sexual exploitation" means a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, any of the following acts:

(A) The prostituting of another person.

(B) The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion.

(C) The recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent.

(D) The distribution of images, including video or photograph, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure.

(E) The viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.

SEC. 3. Section 66281.8 is added to the Education Code, to read:

66281.8. (a) For the purposes of this section, the following terms have the following meanings:

(1) "Postsecondary institution" means a campus of the University of California, the California State University, or the California Community Colleges, a private postsecondary educational institution, or an independent institution of higher education that receives state financial assistance.

(2) (A) "Responsible employee" means an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority.

(B) "Responsible employee" includes, but is not limited to, those individuals with any of the following positions or substantially similar positions or job duties, regardless of the specific title the institution may attach to the position:

(i) Title IX coordinator or other coordinator designated to comply with and carry out the institution's responsibilities under this section.

(ii) Residential advisors, while performing the duties of employment by the institution.

(iii) Housing directors, coordinators, or deans.

(iv) Student life directors, coordinators, or deans.

(v) Athletic directors, coordinators, or deans.

(vi) Coaches of any student athletic or academic team or activity.

(vii) Faculty and associate faculty, teachers, instructors, or lecturers.

(viii) Graduate student instructors, while performing the duties of employment by the institution.

(ix) Laboratory directors, coordinators, or principal investigators.

(x) Internship or externship directors or coordinators.

(xi) Study abroad program directors or coordinators.

(C) (i) Notwithstanding subparagraphs (A) and (B), "responsible employee" does not include those individuals described in subparagraphs (A) and (B) who are also any of the following:

(I) A therapist or other professional described in Sections 990, 1010, 1030, 1035, and 1037 of the Evidence Code, including a University of California Center for Advocacy, Resources, and Education (CARE) director, advocate, or employee.

(II) A University of California Center for Advocacy, Resources, and Education (CARE) director, advocate, or employee.

(III) A California State University victim advocate or other position with similar responsibilities.

(IV) An individual acting in a professional capacity for which confidentiality is mandated by law.

(ii) An individual described in clause (i) shall inform each student who provides the individual with information regarding sexual harassment of the student's ability to report to a responsible employee and direct the student to those specific reporting resources.

(b) Notwithstanding Section 67400, in order to receive state financial assistance, as defined in Section 213, the appropriate governing board or body of each postsecondary institution shall implement, and at all times comply with, all of the following requirements at the institution:

(1) It shall disseminate, by electronic or other means, a notice of nondiscrimination, including, but not limited to, all information required to be included in the notice provided pursuant to Section 66281.5, to all of the following:

(A) Each employee of the postsecondary institution.

(B) Each volunteer who will regularly interact with students.

(C) Each individual or entity under contract with the postsecondary institution to perform any service involving regular interaction with students at the institution.

(2) It shall designate at least one employee of the institution to coordinate its efforts to comply with and carry out its responsibilities under this section. The employee may be the same individual as the institution's federal Title IX coordinator. The employee shall have adequate training on what constitutes sexual harassment and on trauma-informed investigatory and hearing practices, and shall understand how the institution's grievance procedures operate.

(3) It shall adopt rules and procedures within the policies required by Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and Section 67386 for the prevention of sexual harassment that also provide for all of the following elements:

(A) The institution's primary concern shall be student safety. Any disciplinary measures imposed by the institution for violations of the institution's student conduct policy at or near the time of the incident being investigated shall be consistent with paragraph (10) of subdivision (b) of Section 67386.

(B) The institution shall take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the institution's policies that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.

(C) (i) 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. If the institution determines that the alleged conduct more likely than not occurred, it shall immediately take reasonable steps to end the harassment, address the hostile environment, if one has been created, prevent its recurrence, and address its effects. A postsecondary institution shall be presumed to know of sexual harassment if a responsible employee knew, or, in the exercise of reasonable care, should have known, about the sexual harassment. The institution may rebut this presumption of knowledge if it shows all of the following:

(I) The institution provides training and requires all nonconfidential responsible employees to report sexual harassment.

(II) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question was provided training and direction to report sexual harassment.

(III) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question failed to report it.

(ii) The institution shall consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the institution's policies.

(D) (i) If a complainant requests confidentiality, which could preclude a meaningful investigation or potential discipline of the potential respondent, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the institution shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the complainant. The institution shall generally grant the request. In determining whether to disclose a complainant's identity or proceed to an investigation over the objection of the complainant, the institution may consider whether any of the following apply:

(I) There are multiple or prior reports of sexual misconduct against the respondent.

(II) The respondent reportedly used a weapon, physical restraints, or engaged in battery.

(III) The respondent is a faculty or staff member with oversight of students.

(IV) There is a power imbalance between the complainant and respondent.

(V) The complainant believes that the complainant will be less safe if the complainant's name is disclosed or an investigation is conducted.

(VI) The institution is able to conduct a thorough investigation and obtain relevant evidence in the absence of the complainant's cooperation.

(ii) If the institution determines that it can honor the student's request for confidentiality, it shall still take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the complainant. These steps may include increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred; providing additional training and education materials for students and employees; or conducting climate surveys regarding sexual violence. The institution shall also take immediate steps to provide for the safety of the complainant while keeping the complainant's identity confidential as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests. The complainant shall be notified that the steps the institution will take to respond to the complaint will be limited by the request for confidentiality.

(iii) If the institution determines that it must disclose the complainant's identity to the respondent or proceed with an investigation, it shall inform the complainant prior to making this disclosure or initiating the investigation. The institution shall also take immediate steps to provide for the safety of the complainant where appropriate. In the event the complainant requests that the institution inform the respondent that the student asked the institution not to investigate or seek discipline, the institution shall honor this request.

(4) (A) It shall adopt and publish on its internet website grievance procedures that provide for prompt and equitable resolution of sexual harassment complaints filed by a student against an employee or another student. The grievance procedures shall satisfy all of the following requirements:

(i) They shall state that the investigation and adjudication of alleged misconduct under this section is not an adversarial process between the complainant, the respondent, and the witnesses, but rather a process for postsecondary institutions to comply with their obligations under existing law. The complainant does not have the burden to prove, nor does the respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

(ii) They shall require notice be provided to all students of the grievance procedures, including where and how complaints may be filed.

(iii) They shall ensure that the persons or entities responsible for conducting investigations, finding facts, and making disciplinary decisions are neutral.

(iv) They shall 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.

(v) They shall include reasonable and equitable evidentiary guidelines, and may include page or word limitations on party submissions.

(vi) They shall include all of the following:

(I) The investigator or hearing office shall not consider the past sexual history of a complainant or respondent except in the limited circumstances permitted by this clause.

(II) The investigator or hearing officer shall not consider prior or subsequent sexual history between the complainant and anyone other than the respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the respondent were inflicted by another individual.

(III) (ia) The investigator or hearing officer shall not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations.

(ib) Where the investigator or hearing officer allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent pursuant to sub-subclause (ia), the mere fact that the complainant and respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

(IV) Before allowing the consideration of any evidence proffered pursuant to this subdivision, the investigator or hearing officer shall provide a written explanation to the parties as to why consideration of the evidence is consistent with this clause.

(vii) They shall prohibit questions of either party or of any witness that are repetitive, irrelevant, or harassing.

(viii) They shall provide that the institution shall decide whether or not a hearing is necessary to determine whether any sexual violence more likely than not occurred. In making this decision, an institution may consider whether the parties elected to participate in the investigation and whether each party had the opportunity to suggest questions to be asked of the other party or witnesses, or both, during the investigation. Any hearing shall be subject to the following rules:

(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.

(III) Student parties shall have the opportunity to submit written questions to the hearing officer in advance of the hearing. At the hearing, the other party shall have an opportunity to note an objection to the questions posed. The institution may limit such objections to written form, and neither the hearing officer nor the institution are obligated to respond, other than to include any objection in the record. The hearing officer shall have the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence.

(IV) Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

(ix) They shall 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.

(x) They shall provide a reasonably prompt timeframe for all of the major stages of the complaint process, as well as a process for extending the institution's timelines for good cause only, and shall provide for the prompt communication of that information to the complainant and respondent. The communicated timeline information shall include, but shall not necessarily be limited to, each of the following:

(I) The period during which the institution shall conduct any investigation.

(II) The date by which the parties shall be notified of the outcome of any investigation.

(III) The deadlines and process for parties to appeal, if the institution's grievance procedures include an appeals process.

(xi) They shall provide that the institution shall not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

(xii) They shall provide for periodic status updates on the investigation consistent with the timelines referenced in clause (x) to the complainant and respondent.

(xiii) They shall provide for notice in writing to parties of any extension of a time period granted in the investigation and fact-finding process that would change the prospective timeframes for the major stages of the complaint process, and the reason for that extension.

(xiv) They shall 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.

(xv) They shall provide assurance that the institution will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

(xvi) They shall require that student parties receive notice if the institution is conducting a formal investigation. The notice shall include the allegations and the alleged institutional policy violations under review. Any new allegations that arise during the course of the investigation that could subject either party to new or additional sanctions shall be subject to the same notice requirements.

(xvii) They shall afford both student parties the opportunity to each have a support person or adviser accompany the student party during any stage of the process.

(xviii) They shall advise student parties of their right to consult with an attorney, at their own expense, at any stage of the process if they wish to do so. An attorney may serve as a support person or adviser pursuant to clause (xvii).

(xix) They shall require that student parties receive a notice regarding appropriate counseling resources developed and maintained by the institution for student parties in school misconduct matters involving sexual harassment.

(xx) They shall allow either party to appeal the outcome of the grievance proceeding if the institution has such an appeals process. An institution's grievance procedure may limit the grounds for an appeal, provided that any limitation shall apply equally to all parties and that the nonappealing party shall have an opportunity to respond to the appeal.

(xxi) They shall outline the possible interim measures that may be put in place during the pendency of an investigation, the supportive measures that may be provided in the absence of an investigation, and the disciplinary outcomes, remedial measures, and systemic remedies that may follow a final finding of responsibility, subject to all of the following:

(I) An institution shall not mandate mediation to resolve allegations of sexual harassment, and shall not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence.

(II) An institution shall not require that the complainant enter a voluntary resolution agreement or any other form of resolution as a prerequisite to receiving remedial measures from the institution which safeguard the complainant's access to education.

(III) (ia) When requested by a complainant or otherwise determined to be appropriate, an institution shall issue an interim no-contact directive prohibiting the respondent from contacting the complainant during the pendency of the investigation. An institution shall not issue an interim mutual no-contact directive automatically, but instead shall consider the specific circumstances of each case to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. A no-contact directive issued after a decision of responsibility has been made shall be unilateral and only apply against the party found responsible.

(ib) Upon the issuance of a mutual no-contact directive, an institution shall provide the parties with a written justification for the directive and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the institution shall provide the parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action.

(xxii) They shall describe the obligations of all faculty and staff designated by the institution as required to report concerns of sexual harassment to the Title IX coordinator or other designated employee, consistent with the requirement in paragraph (2). An individual who has a confidential relationship with a student or students by law is exempt from having to report sexual harassment concerns to the Title IX coordinator or other designated employee, unless otherwise required by law.

(xxiii) They shall contain a requirement that the Title IX coordinator or other designated employee assess each report of sexual harassment and provide outreach, as appropriate, to each identifiable student who is alleged to be the victim of the reported conduct. The outreach shall include all of the following information:

(I) The institution has received a report that the student may have been a victim of sexual harassment.

(II) A statement that retaliation for filing a complaint or participating in a complaint process, or both, under this section is prohibited.

(III) Counseling resources within the institution or in the community.

(IV) Where a crime may have occurred, notice that the student has the right, but not the obligation, to report the matter to law enforcement.

(V) The institution's investigation procedures established pursuant to the requirements of this section.

(VI) Potential interim measures, such as no-contact directives, housing changes, and academic schedule changes, where applicable.

(VII) The importance of preserving evidence.

(VIII) A request for the student to meet with the Title IX coordinator or other designated employee to discuss options for responding to the report.

(IX) The manner in which the institution responds to reports of sexual harassment and a description of potential disciplinary consequences.

(B) The grievance procedures shall also provide a process for a student to report sexual harassment by a third party. The institution shall respond to those reports to address or prevent a hostile educational environment or to ensure students' access to education. Nothing in this section shall establish any duty or obligation owed by a postsecondary institution to nonstudent parties that does not already exist by statute or agreement.

(5) It shall publish in a prominent place on its internet website, with accompanying text clearly associating them with the sexual harassment and sexual violence grievance processes, the name, title, and contact information, which shall include the telephone number, office location, and email address, of each of the following individuals:

(A) The Title IX coordinator or other designated employee.

(B) Any individual official within the institution with the authority to investigate complaints made pursuant to this section or to institute corrective measures such as sanctions, accommodations, or other forms of resolution of the complaint.

(6) (A) It shall provide the training described in paragraph (12) of subdivision (b) of Section 67386 to each employee engaged in the grievance procedures related to sex discrimination, including sexual violence, which shall include for these employees training on (i) trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process, (ii) best practices for assessment of a sexual harassment or sexual violence complaint, (iii) best practices for questioning of the complainant, respondent, and witnesses, and (iv) implicit bias and racial inequities, both broadly and in school disciplinary processes.

(B) Materials approved by the institution for this training shall include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity. When possible, citation to such statistics shall be included in the written sexual harassment policies required by Section 66281.5 accompanying the institution's grievance procedures.

(7) If the institution has on-campus housing, it shall ensure that residential life student and nonstudent staff, or their equivalent, annually receive training on how to handle, in a trauma-informed manner, reports made to them of sexual harassment or sexual violence, and situations in which they are aware of sexual harassment or sexual violence, in student residential facilities.

(8) It shall notify employees of the obligation to report harassment to appropriate school officials.

(9) It shall provide training to all employees on the identification of sexual harassment, including the person to whom it should be reported. This paragraph does not require an institution to provide separate training for identification of sexual harassment. The school may include this requirement in existing employee training on sexual harassment.

(c) This section does not require a school to provide separate grievance procedures for student sexual harassment complaints. The school may use student disciplinary procedures or other separate procedures to resolve sexual harassment complaints. Any procedures used to investigate complaints of sexual harassment, including disciplinary procedures, shall afford a complainant and a respondent a prompt and equitable resolution. If the school relies on existing procedures for compliance with the requirements of this section, the Title IX officer or designated employee shall review the school's procedures to ensure that they comply with the requirements of this section.

(d) A violation of this section may constitute discrimination and shall be subject to a civil action brought pursuant to Sections 66292.3 and 66292.4.

(e) The requirements of this section shall be implemented at each postsecondary institution by no later than January 1, 2022.

(f) If on or after the date of implementation, any provision of the act that adds this section conflicts with federal law, that provision shall be rendered inoperative for the duration of the conflict and without affecting the whole.

(g) (1) Any case law interpreting procedural requirements or process that is due to student complainants or respondents when adjudicating complaints of sexual or gender-based violence, including dating or domestic violence, at postsecondary educational institutions in the State of California shall have no retroactive effect.

(2) Any case law that conflicts with the provisions of the act that adds this section shall be superseded as of this statute's effective date.

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