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AB-1138 Postsecondary education: sexual assault and sexual violence prevention: medical examinations transportation services. (2023-2024)

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Date Published: 10/10/2023 09:00 PM

Assembly Bill No. 1138

CHAPTER 564

An act to amend Section 67386 of the Education Code, relating to postsecondary education.

[Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1138, Weber. Postsecondary education: sexual assault and sexual violence prevention: medical examinations transportation services.

Existing law 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 boards of independent postsecondary institutions, in order to receive state funds for student financial assistance, to enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, to the extent feasible, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, and including resources for the accused.

As a condition of receiving state funds for student financial assistance, this bill would require the trustees and the regents to ensure, to the extent feasible, that a student who seeks support after experiencing sexual violence receives information about the student's options and rights to obtain a sexual assault forensic medical examination, as specified, and commencing with the 2025–26 school year, to the extent practicable and necessary, to provide to their students without charge and in a manner that protects student confidentiality, transportation to and from a local Sexual Assault Forensic Examination (SAFE) or Sexual Abuse Response Team (SART) exam center for a qualified health care provider to administer the sexual assault forensic medical evidence kit, as provided. The bill would require, on or before June 30, 2026, and biennially thereafter, as a condition of receiving state financial assistance funds, the trustees and the regents to submit a report to the Legislature on whether their respective institutions have provided transportation for students to and from a local SAFE or SART exam center for a qualified health care provider to administer the sexual assault forensic medical evidence kit and the manner in which students received the transportation.

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

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

SECTION 1. Section 67386 of the Education Code is amended to read:

67386. (a) In order to receive state funds for student financial assistance, 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 boards of

independent postsecondary institutions shall adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking, as defined in the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1092(f)), involving a student, both on and off campus. The policy shall include all of the following:

(1) An affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. "Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

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

(A) The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.

(B) The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

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

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

(A) The complainant was asleep or unconscious.

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

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

(b) In order to receive state funds for student financial assistance, 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 boards of independent postsecondary institutions shall adopt detailed and victim-centered policies and protocols regarding sexual assault, domestic violence, dating violence, and stalking involving a student that comport with best practices and current professional standards. At a minimum, the policies and protocols shall cover all of the following:

(1) A policy statement on how the institution will provide appropriate protections for the privacy of individuals involved, including confidentiality.

(2) Initial response by the institution's personnel to a report of an incident, including requirements specific to assisting the victim, providing information in writing about the importance of preserving evidence, and the identification and location of witnesses.

(3) Response to stranger and nonstranger sexual assault.

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

(5) Contacting and interviewing the accused.

(6) Seeking the identification and location of witnesses.

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

(8) Participation of victim advocates and other supporting people.

(9) Investigating allegations that alcohol or drugs were involved in the incident.

(10) Providing that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student

conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

(11) The role of the institutional staff supervision.

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

(13) Procedures for confidential reporting by victims and third parties.

(c) (1) In order to receive state funds for student financial assistance, 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 boards of independent postsecondary institutions shall, to the extent feasible, enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, including rape crisis centers and domestic violence centers, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, and including resources for the accused.

(2) In order to receive state funds for student financial assistance, the Trustees of the California State University and the Regents of the University of California shall, to the extent feasible, ensure that when a student who experiences sexual violence seeks support services from a campus advocate or community-based organization pursuant to a memorandum of understanding, agreement, or collaborative partnership described in paragraph (1), all of the following occurs:

(A) The student receives information about the student's options and rights to obtain a sexual assault forensic medical examination.

(B) If the student is eligible to obtain a sexual assault forensic medical examination, the student receives information about the student's right to be accompanied to the examination by a certified sexual assault counselor or support person of the student's choosing, or both a certified sexual assault counselor and a support person of the student's choosing.

(C) If the student is eligible to obtain a sexual assault forensic medical examination, the student receives information about how to access transportation to an examination site, including transportation options that can be provided by or arranged by the campus.

(3) (A) Commencing with the 2025–26 school year, the Trustees of the California State University and the Regents of the University of California shall, to the extent practicable and necessary, provide to students who request and are eligible to obtain a sexual assault forensic medical examination, transportation to and from a SAFE or SART exam center for a qualified health care provider to administer a sexual assault forensic medical evidence kit. All of the following shall apply to the provision of transportation services, to the extent practicable:

(i) Transportation shall be provided without charge and in a manner that protects student safety and confidentiality.

(ii) Transportation may include, but is not limited to, transportation by any of the following, if the student agrees to the transportation:

(I) A staff member of a SAFE exam center, SART exam center, rape crisis center, or community-based organization that is under a contract, memorandum of understanding, agreement, or collaborative partnership described in paragraph (1).

(II) The campus.

(III) Ride share services. If offering ride share services, campuses shall prioritize the use of ride share platforms that support the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

(IV) Law enforcement. This subclause does not require a student to accept transportation by law enforcement. Campuses shall establish at least one option for transportation that is not in a law enforcement vehicle.

(B) In order to receive state funds for student financial assistance, on or before June 30, 2026, and biennially thereafter, the Trustees of the California State University and the Regents of the University of California shall submit a report to the Legislature, pursuant to Section 9795 of the Government Code, on whether their respective institutions have provided transportation to students pursuant to subparagraph (A) and the manner in which students received the transportation to a local SAFE or SART exam center for a qualified health care provider to administer the sexual assault forensic medical evidence kit.

(C) For purposes of this subdivision, the following definitions apply:

(i) "SAFE" means a Sexual Assault Forensic Examination.

(ii) "SART" means a Sexual Abuse Response Team.

(d) In order to receive state funds for student financial assistance, 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 boards of independent postsecondary institutions shall implement comprehensive prevention and outreach programs addressing sexual violence, domestic violence, dating violence, and stalking. A comprehensive prevention program shall include a range of prevention strategies, including, but not limited to, empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction. Outreach programs shall be provided to make students aware of the institution's policy on sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach program shall include a process for contacting and informing the student body, campus organizations, athletic programs, and student groups about the institution's overall sexual assault policy, the practical implications of an affirmative consent standard, and the rights and responsibilities of students under the policy.

(e) Outreach programming shall be included as part of every incoming student's orientation.

(1) For purposes of this section, "outreach programming" includes, but is not necessarily limited to, informing students about all of the following:

(A) The warning signs of intimate partner and dating violence.

(B) Campus policies and resources relating to intimate partner and dating violence.

(C) Off-campus resources and centers relating to intimate partner and dating violence.

(D) A focus on prevention and bystander intervention training as it relates to intimate partner and dating violence.

(2) For purposes of this subdivision, informing students about "intimate partner and dating violence" includes, but is not necessarily limited to, providing information about violence that occurs between individuals with a current or previous intimate or dating relationship.

(3) For purposes of this subdivision, "incoming students" includes, but is not necessarily limited to, graduate, transfer, and international students, with a special consideration of their different needs, interactions, and engagements with their campuses.