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

LEGISLATIVE COUNSEL’S DIGEST

SB 493, as amended, 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.

This bill would require an institution of higher education a postsecondary institution that receives state funds, including funds for student 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 act as a gender equity officer, coordinate its efforts to comply with its responsibilities specified in this act, (3) adopt rules and procedures for the prevention of sexual harassment, (4) create reasonable procedures for the investigation of policy violations, (5) 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 gender equity officer 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, and (7) include annual training for resident residential life student and nonstudent staff for the trauma-informed handling of reports regarding incidents of sexual harassment or assault violence at an institution with on-campus housing, (9) notify employees of the obligation to report sexual harassment to appropriate school officials, and (10) provide training to all employees on the identification of sexual harassment. This bill would authorize the Attorney General and a person whose right to equitable access to an educational institution, program, or activity was infringed through any student or former student who alleges to have suffered injury in fact caused by a violation of these provisions to bring an action in a court to enjoin, or recover specified damages for, a violation of its provisions, as specified. The bill would authorize a court to assess a civil penalty not to exceed $2,500 per day of violation and $50,000 total per violation, against a postsecondary institution found to have violated this act in an action brought by the Attorney General. 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.


_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 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 sexual harassment, including sexual violence, in a school’s educational programs, activities, and facilities. Each institute 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 employees, faculty and staff, including on-campus housing employees, such as residential advisors.

(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 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 charged with committing sexual violence as well as the significant harm to individual victims 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 funds for student 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 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. 1981, 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.
SEC. 2. Section 66262.5 of the Education Code is amended to read:

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

(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. An individual may be unable to give affirmative consent due to an intellectual or other disability. Physical sexual acts include all of the following:

(A) Rape as defined in Chapter 1 (commencing with Section 261) of Title 9 of Part 1 of the Penal Code.

(B) The intentional touching of another person’s intimate parts or other intentional sexual contact with another person.

(C) The use of duress or force, or the attempt to use duress or force, to touch another person’s intimate parts.

(2) “Sexual battery” has the same meaning as defined in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code: the acts described in Section 1708.5 of the Civil Code.

(3) “Sexual exploitation” means a person taking sexual advantage of another person for the benefit of anyone other than that other person without that other person’s consent, regardless of that other person’s affiliation with the higher education institution; including any of the following acts:

(A) The prostituting of another person.

(B) The trafficking of another person, as defined in Section 236.1 of the Penal Code, without that person’s consent. 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, intimate body parts, or nakedness, without that person’s consent.
(C) The distribution of images, including video or photograph, or audio of another person’s sexual activity, intimate body parts, or nakedness, 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.

(D) The viewing of another person’s sexual activity, intimate body parts, or nakedness, 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, “higher education 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 funds, including state funds for student financial assistance.

(2) “Responsible employee” means any employee who has the authority to take action to redress harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.

(b) In order to receive state funds for student financial assistance, the appropriate governing board or body of each “higher education 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 each:

(A) Employee of the “higher education postsecondary institution.
(B) Volunteer who will regularly interact with students more than 10 hours in a calendar year. students.
(C) Individual or entity under contract with the higher education 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 act as a gender equity officer to coordinate its efforts to comply with and carry out its responsibilities under this section. The gender equity officer employee may be the same individual as the institution's federal Title IX coordinator. The gender equity officer 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. The use of alcohol, or drugs, or both shall not constitute grounds for determining that a complainant is at fault for sexual harassment or sexual violence. All 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 ensure that students are protected respond to sex discrimination in connection with all academic, educational, extracurricular, athletic, and other programs of the institution, whether those programs take place in the institution’s facilities, during travel, at a class or training program sponsored by the institution at another location, or elsewhere.

(C) If a student files a complaint with the institution regarding an incident that took place on campus, the institution shall process the complaint in accordance with this section. If a student files a complaint regarding an incident that took place off-campus, the institution shall evaluate the complaint to determine if there is a nexus between the off-campus incident and the institution such that the incident could contribute to a hostile environment on campus. If such a nexus exists, the institution shall
process the complaint in accordance with this section. In the absence of evidence to the contrary, a nexus to the campus exists whenever the incident complained of is so grievous and the likelihood of continuing to encounter the perpetrator on campus is so credible that inaction would deprive the complainant of the benefits of any education program. The requirements of this subparagraph modify any other provisions in this chapter that are inconsistent with these requirements to the extent that the modification is permissible under state and federal law.

(D) If the institution knows, or reasonably should know, about possible sexual harassment that could create a hostile or offensive educational environment on campus, the institution shall promptly investigate. If the institution investigates and determines that sexual harassment creating a hostile environment on campus has more likely than not occurred, whether the harassment occurred on or off campus, it shall take immediate action to eliminate the hostile environment, prevent its recurrence, and address its affects, regardless of whether or not a complaint has been filed under the institution’s grievance procedures. A postsecondary institution shall be deemed to have notice of sexual harassment if a responsible employee knew or, in the exercise of reasonable care, should have known about the harassment.

(4) It shall create reasonable procedures for the process to investigate violations of the policies adopted or amended pursuant to this section, including instituting reasonable and equitable evidentiary guidelines, deadlines, and page or word limitations on student party submissions, in order that parties may be aware of and can follow those procedures. The institution shall include, but is not limited to including pursuant to these procedures, a prohibition on the consideration of past sexual relations by themselves as probative of whether the alleged incident occurred.

(4) It

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

(A)
(i) They shall require notice be provided to each student of the grievance procedures, including where and how complaints may be filed.

(B) They shall apply to each complaint alleging sexual harassment perpetrated by an employee of the institution, another student, or a third party.

(C) They shall ensure that the investigation of the allegation and the adjudication of the matter are not conducted by the same a neutral factfinder is the person responsible for investigating the complaint, finding the facts, and making credibility assessments in order to determine whether a policy violation has occurred, and that person is not the same person or entity responsible for making disciplinary decisions.

(D) They shall provide for a hearing before a neutral adjudicator with the power independently to find facts and make credibility assessments.

(E) They shall ensure adequate, reliable, trauma-informed and impartial investigation of complaints, including the opportunity for both parties to present identify witnesses and other evidence to assist the institution in determining whether a policy violation has occurred.

(F) They shall provide both student parties the opportunity, during the hearing, to cross-examine one another and any witnesses against them adverse witnesses, if the institution determines that a hearing is required in order to determine whether a policy violation has occurred, subject to the following rules:

(I) The cross-examination shall be live, but either party and any witness may request to answer the questions by video from a remote location.

(II) The live cross-examination of either party and any witnesses shall be conducted indirectly, through the submission of written questions to the neutral factfinder in advance and with an opportunity for the other party to object. The neutral factfinder shall have the authority and obligation to discard or rephrase any question that the neutral
adjudicator factfinder deems to be repetitive, irrelevant, or harassing. In making these determinations, the neutral adjudicator factfinder is not bound by, but may take guidance from, the formal rules of evidence. The neutral adjudicator factfinder shall provide a mechanism for both parties to ask, indirectly, through the neutral adjudicator factfinder, and subject to objections, followup questions to be posed to the cross-examinee. The neutral adjudicator shall be empowered to require any witness to answer any question to which, in the view of the neutral adjudicator, the witness has not yet been responsive. In no circumstance shall a cross-examinee be limited to answering “yes” or “no.”

(v) They shall include provide an explanation of the meaning of a preponderance of the evidence standard, which and affirm that it shall apply to all investigations involving complaints of sexual harassment or sexual-assault violence. The preponderance of the evidence standard is met if an allegation the neutral factfinder determines that it is more likely than not to be true that the alleged misconduct occurred, based on the facts available to the neutral factfinder at the time of the decision.

(vi) They shall determine provide a reasonably prompt timeframe for all of the major stages of the grievance procedures, 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 in a complaint. 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 an investigation appropriate to the complaint investigation.

(ii) The time when both date by which the parties shall receive a response regarding be notified of the outcome of the complaint investigation.

(iii) The deadlines and process for parties to file an appeal, if the institution’s grievance procedures include an appeals process.
Institutions shall ensure that any rights of appeal are equally available to complainants and respondents.

1. They shall provide for periodic status updates on the investigation consistent with the timelines referenced in subparagraph (H) clause (vi) to the complainant and respondent.

2. They shall provide for notice in writing to parties of any extension of a time period granted in the investigation and outcome determination process, either by the institution to itself or by the institution to one of the parties, factfinding process which would change the prospective timeframes for the major stages of the complaint process, and the reason for that extension.

3. They shall provide for written notice to parties of the outcome of the complaint in writing. The written outcome shall explain to the parties the reasons for the decision, complaint, including whether a policy violation was found to have occurred, the basis for that determination, and any discipline imposed.

4. 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.

5. If both the complainant and respondent are students at the institution, they shall provide for the communication of information regarding the rights of a complainant and respondent in an allegation of sexual harassment. A student party, both complainant and respondent, shall be afforded, in the same manner and, except under extenuating circumstances, such as the unavailability of a party or if it would impede an investigation, at the same time, all of the following rights:

   i. To receive information on the institution’s investigative process, decision-making procedures, and grievance procedures established pursuant to this section. Each higher education
institution shall create reasonable procedures for the investigation
process, including instituting reasonable and equitable evidentiary
guidelines, deadlines, and page or word limitations on student
party submissions, in order that parties may be aware of and can
follow those procedures. The institution shall include, but is not
limited to including pursuant to these procedures, a prohibition on
the consideration of past sexual relations by themselves as
probative of whether the alleged incident occurred.

(iii) To receive information about reasonably prompt timeframes
for the major stages of the complaint process:

(iv) To have the investigation and decision of responsibility
made by a neutral decisionmaker or decisionmaking body.

(v) To have the opportunity to give information, identify
witnesses, and provide documentary information during the course
of the investigation and the opportunity and a reasonable amount
of time to respond to any evidence upon which any findings will
be based.

(vi) To

(xii) They shall afford the opportunity to have a support person
or adviser accompany a student party during key stages of the
investigation and hearing processes, if requested.

(vii) To

(xiii) They shall require that student parties receive a notice
regarding appropriate legal and counseling resources developed
and maintained by the institution for student parties in school
misconduct matters involving sexual violence, subject to all of the
following: violence.

(I) The

The notice shall also advise student parties of their right to seek
the assistance of an attorney at any stage of the process if they
wish to do so.

(II) The notice shall provide student parties with a list of known
complainant and respondent attorneys. For each party, at least two
referrals must be pro bono or nonprofit legal organizations. The
institution shall make a diligent effort to include referrals that are
within 25 miles of the institution’s main campus.

(III) The list shall indicate whether the attorney or legal aid
organization is known by the institution to represent complainants,
respondents, or both. The difference between the number of
attorneys on the attorney referral list known to represent
complainants or respondents exclusively shall not exceed by more
than three the number of attorneys that represent the other side
exclusively.

(IV) The institution shall confirm at least once per calendar year
that all of the listed attorneys and organizations are continuing to
accept clients for Title IX proceedings.

(V) The institution shall not remove anyone from the list in
retaliation for pursuing any legal action or seeking any legal
remedy against the institution.

(viii) To receive a written outcome of the findings, including
disciplinary outcomes:

(ix) If the institution has an appeals process for an investigation
pursuant to this section, for

(xiv) They shall allow either party to appeal the outcome of the
misconduct proceeding or the disciplinary proceeding, grievance
proceeding if the institution has an appeals process for an
investigation pursuant to this section. An institution’s grievance
procedure may limit the grounds for an appeal, provided that any
limitation apply equally to all parties.

(x) To have appropriate

(xv) They shall outline the possible disciplinary outcomes,
remedial measures, and systemic remedies that may be put in place
during the pendency of an investigation and following a final
finding of responsibility. To ensure this right is properly protected,
all of the following shall apply: responsibility, pursuant to all of
the following:

(I) An institution shall not mandate mediation to resolve
allegations of sexual-assault 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) An institution shall not issue a mutual no-contact directive automatically when an allegation of harm has
been made against only one of the parties or when a counter
allegation of harm is facially retaliatory. and shall only issue a
mutual no-contact directive if there is reason to believe that the
complainant has harmed or threatened to harm the respondent,
or has interfered with, or threatened behavior that would interfere
with, the investigation or disciplinary proceedings through contact
with the respondent. A no-contact directive issued after a decision of responsibility has been made by a neutral decisionmaker shall be unilateral and only apply against the party found responsible.

(xi) To have Campus Assault Resources and Education advocates, or similar advocates employed by or located on the campus of an institution of higher education, given adequate resources to carry out their responsibilities and address students’ needs.

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

(xvi) They shall describe the obligations of all staff, faculty and staff designated by the institution as required to report concerns of sexual harassment to the gender equity officer. Title IX officer 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, or other relationship designated by the institution as confidential, is exempt from having to report sexual harassment concerns to the gender equity officer pertaining to the confidential relationship or relationships. Title IX officer or other designated employee.

(xvii) They shall contain a requirement that the gender equity officer, employee designated pursuant to paragraph (2), or that officer’s employee’s designee, 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) The prohibition of retaliation.

(III) Behavioral health services at the institution or in the community.
If there is the possibility of a criminal act, notice that the student has the right, but not the obligation, to report the matter to law enforcement.

The institution’s investigation procedures established pursuant to the requirements of this section.

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

The importance of preserving evidence.

A request for the student to meet with the gender equity officer, employee designated pursuant to paragraph (2), or the officer’s employee’s designee, to discuss options for responding to the report.

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

Nothing in this paragraph shall establish any duty or obligation owed by a postsecondary institution to nonstudent parties that does not already exist by statute or agreement.

It shall publish in a prominent place on its internet website, with accompanying text clearly associating them with the sexual harassment and sexual-assault 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:

- The gender equity officer employee designated pursuant to paragraph (2), or the gender equity officer’s employee’s designee.
- 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, accommodation, or other forms of resolution of the complaint.
(7) (A) It shall provide the mandatory training required pursuant to 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 trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process, best practices for assessment of a sexual harassment or sexual assault violence complaint, best practices for questioning of the complainant, respondent, and witnesses, and on implicit bias, the history of institutional racism, 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 of color, LGBTQI, disabled, nonbinary, cisgendered female, and cisgendered male students experience sexual harassment and sexual assault in the educational setting. Setting based on their race, sexual orientation, disability, gender, and gender identity. When possible, citation to such statistics shall be included in the written antidiscrimination policies required by Section 66281.5 accompanying the institution’s grievance procedures.

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

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

(10) 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 adjudicate 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 disciplinary existing procedures for compliance with the requirements of this section, the gender equity officer employee designated pursuant to paragraph (2) of subdivision (b) shall review the school’s disciplinary procedures to ensure that they comply with the requirements of this section.

(d) To the extent that the student rights listed in this article do not otherwise exist by statute or agreement, nothing in this section requires schools to provide nonstudent parties with those rights. (e) (1) Either of the following persons may bring an action in a court of competent jurisdiction to enjoin a violation of this section or to recover compensatory damages, court costs, and reasonable attorney’s fees, or all of these: any combination thereof, as specified:

(A) The Attorney General, consistent with the Attorney General’s existing authority under Section 13 of Article V of the California Constitution and Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code, to investigate, and, as necessary, prosecute any violation of the law. The Attorney General may also conduct an investigation or bring an action under this section.

(B) A person whose right to equitable access to a higher education institution, program, or activity through a higher education institution that is a recipient of state funds was infringed through A postsecondary institution student or former student who alleges to have suffered injury in fact. The violation of this section shall allegedly be the proximate cause of the injury in fact.

(2) A violation of this section is established by the Attorney General or a person described in subparagraph (B) of paragraph (1) by demonstrating in an action brought in a court of competent jurisdiction any of the following:
(A) That a recipient institution has a *institution's written* policy that the institution knows does not conform to the requirements of this section.

(B) That a recipient institution engages in a *nonconforming* process that the institution knows does not reflect does not *substantially and materially* comply with its written policy though its policy does conform to the requirements of this section.

(C) That a recipient institution, by an act or actions of one of its employees, administrators, or any person contracted to perform a service at the institution involving investigation or resolution of a complaint of sexual assault, harassment, or sex-based discrimination, or by the enforcement of an institutional policy, knowingly violated the requirements of this section.

(3) (A) Notwithstanding any other law, prior to filing a civil action, a person alleging injury caused by a violation of this section shall give written notice by certified mail to the postsecondary institution and to the Attorney General, of the specific provisions of this section alleged to have been violated, including the facts and theories to support the alleged violation and injury.

(B) A person alleging injury may commence a civil action seeking damages 90 days after the date of the postsecondary institution’s receipt of the notice.

(C) A person alleging injury caused by a violation of this section may commence a civil action exclusively seeking injunctive relief at any time following written notice pursuant to subparagraph (A).

(4) A court may grant compensatory damages as relief in any action filed pursuant to this section by a person described in subparagraph (B) of paragraph (1) provided all of the following are demonstrated:

(A) The person suffered an injury in fact.

(B) The defendant institution was in violation of this section, as described in paragraph (2), at the time of the alleged injury.

(C) The violation of this section by the defendant institution was a proximate cause of the alleged injury.

(5) In civil actions brought by a person described in subparagraph (B) of paragraph (1), the court, in its discretion, may award to the prevailing party reasonable attorney’s fees and costs, including expert witness fees, except that, notwithstanding Section 998 of the Code of Civil Procedure, a prevailing defendant
(1) A person shall bring an action alleging a violation of this section no later than the statute of limitations applicable to a personal injury claim in California at the time the cause of action accrues.

(B) For purposes of calculating the limitation period imposed by subparagraph (A), each day that a violation of this section persists, and each day that a policy that violates this section remains in effect, constitutes a new violation of this section and is, therefore, a new day on which a cause of action has accrued.

(f) Civil law remedies, including, but not limited to, money damages, injunctions, restraining orders, or other remedies or orders may also be available to complainants.

(7) In addition to compensatory damages, injunctive relief or other remedies appropriate to the circumstances may also be available to injured parties who file a civil action under this section.

(8) If an action brought by the Attorney General establishes a postsecondary institution violated this section pursuant to subdivision (B), the court may assess a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day the postsecondary institution remains in violation, and not to exceed fifty thousand dollars ($50,000) total per violation. In determining the amount of the penalty, the court shall consider all of the following:

(A) The extent and seriousness of the violation.

(B) Any failure to address previously identified violations.

(C) Any demonstrated harm imposed by the violation.

(9) An action for damages pursuant to this subdivision shall not be subject to the claims presentation requirements of the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code).

(e) The requirements of this section shall be implemented at each higher education postsecondary institution by no later than January 1, 2021.
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.