



NEW JERSEY

Association of State Colleges and Universities

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**Senate Higher Education Committee
September 17, 2018
Senate Bill No. 486**

Senate Bill No. 486 would require the Secretary of Higher Education to impose a \$10,000 fine against an institution of higher education that fails to “appropriately respond to and investigate an allegation of sexual assault made by a student enrolled in the institution against another such student, and to impose appropriate disciplinary action against the perpetrator if the allegation is substantiated.”

The state universities support the underlying intent of this legislation, which is to protect students from sexual assaults. The safety of our students is of paramount importance to the state colleges and universities. While we applaud the sponsor for his efforts to protect students, the state colleges and universities have concerns about this bill.

Our foremost concern is that language in the bill will make compliance difficult. For example, who would decide what an “appropriate response” is? If an incident between two students occurred off campus, and was never reported to the institution or came to the attention of the institution, could the institution be fined for a failure to respond? What is the definition of “substantiated?” Is it an internal finding by the institution or a court decision? What constitutes “appropriate” disciplinary action and who decides what is not appropriate?

In addition, institutions of higher education already take many steps to ensure the safety of their students, faculty, staff and visitors. Public university conduct policies are reviewed by the Attorney General’s Office and are therefore in compliance with the law. Some of these safety and conduct requirements are mandated by federal law.

Specifically, Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and the recent guidance issued in September 2017 <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf> set forth what the campus response should be to sexual harassment, which is defined as including all forms of sexual violence. The 2017 guidance identifies what the institutions should do in terms of response, required length of time of response and process, appropriate accommodations and the institution's requirement to investigate. The US Department of Education is set to release new Title IX regulations sometime this month. Once the draft regulations are released, they will undergo a period of public notice and comment before they take effect.

Federal law also dictates that state colleges and universities diligently inform all members of the public about crimes on their campuses. Under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 USC § 1092(f)), the institutions publish an Annual Security Report by October 1 of each year, which documents three calendar years of campus crime statistics. Schools make the report available to all current students and employees, and institutions also notify prospective students and employees about the report and provide a copy upon request.

Sex offenses are among seven major categories of crimes that institutions must report under the Clery Act.

In addition to these federal laws and guidelines, there is also a state law which impacts institutions' responses to sexual assaults. The New Jersey Campus Sexual Assault Victim's Bill of Rights Act (N.J.S.A. 18A:61E-1 *et seq.*) states that victims of sexual assaults that occur on the campus of any institution in New Jersey have the right to be free from pressure from campus personnel to report crimes if the victim does not wish to do so. In such instances, the appropriate response would preclude "investigation of the allegation of sexual assault."

We would respectfully request that the bill be held so that we and other stakeholders can work with the sponsor to improve the bill. We would like a comprehensive approach to protecting students which would include an examination of best practices to implement on campuses, an analysis of current state and federal requirements under Title IX, the Clery Act, and the Family Educational Rights and Privacy Act (FERPA), and a review of the recommendations set forth in the report issued by the NJ Task Force on Campus Sexual Assault, which was issued in June 2017. A copy of the report can be found here:

<https://www.nj.gov/highereducation/documents/pdf/index/sexualassaulttaskforcereport2017.pdf>

Thank you for the opportunity to appear before you today and for your consideration of our comments.