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**HOUSE BILL 2866**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Pellicciotti, Senn, Appleton, Valdez, Bergquist, Jinkins, Slatter, Pollet, and Santos

AN ACT Relating to ensuring that the rights and protections provided to students as of January 19, 2017, under Title IX of the federal Education Amendments of 1972 are preserved; amending RCW 28A.640.010, 28A.195.010, 28B.50.455, and 28B.110.030; adding a new section to chapter 28B.110 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1)(a) The legislature recognizes that on June 23, 1972, President Richard Nixon signed into law Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act. This legislation provides that: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance...."

(b) Further ensuring equality in the state of Washington, the legislature passed an amendment to the state Constitution, ratified by the voters in November 1972, providing, "Equality of rights and responsibilities under the law shall not be denied or abridged on account of sex." In 1975, Washington continued to be at the forefront of this issue by adopting legislation that established its own statutory version of the federal Title IX law that prohibited "inequality in the educational opportunities afforded women and girls at all levels of the public schools in Washington state."

(c) The legislature also recognizes that there are numerous federal regulations, policies, and guidelines issued to effectuate Title IX. Some of those regulations, policies, and guidelines designed to protect students have been subject to changes based on politics and those changes decrease the rights and protections for students and weaken the policies underlying Title IX. The legislature also recognizes that it is difficult to anticipate what changes might be made that will reduce or weaken the rights and protections previously established for students.

(2) The legislature therefore intends to ensure that the regulations, policies, and guidelines issued as of December 31, 2016, under Title IX are preserved for Washington students.

**Sec.**  RCW 28A.640.010 and 1975 1st ex.s. c 226 s 1 are each amended to read as follows:

(1) Inequality in the educational opportunities afforded women and girls at all levels of the public schools in Washington state is a breach of Article XXXI, section 1, Amendment 61, of the Washington state Constitution, requiring equal treatment of all citizens regardless of sex. This violation of rights has had a deleterious effect on the individuals affected and on society. Recognizing the benefit to our state and nation of equal educational opportunities for all students, discrimination on the basis of sex for any student in grades K‑12 of the Washington public schools is prohibited.

(2)(a) The office of the superintendent of public instruction shall ensure that all the rights and protections provided under Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and any federal rules and guidance in effect as of January 19, 2017, implementing Title IX, are preserved for students in grades K-12 of the Washington public schools.

(b) No later than July 1, 2018, the office of the superintendent of public instruction shall convene a work group to examine the Title IX federal rules and guidance to determine the most efficient and effective method of ensuring that the rights and protections under Title IX in effect as of January 19, 2017, are granted to students, consistent with state law. The work group must focus their evaluation on those federal rules and guidance not already addressed under state law.

(c) No later than August 1, 2019, the office of the superintendent of public instruction shall issue guidelines and adopt rules, where appropriate and consistent with the work group's evaluation, incorporating the applicable rights and protections preserved for students under (a) of this subsection.

**Sec.**  RCW 28A.195.010 and 2009 c 548 s 303 are each amended to read as follows:

The legislature hereby recognizes that private schools should be subject only to those minimum state controls necessary to insure the health and safety of all the students in the state and to insure a sufficient basic education to meet usual graduation requirements. The state, any agency or official thereof, shall not restrict or dictate any specific educational or other programs for private schools except as hereinafter in this section provided.

Principals of private schools or superintendents of private school districts shall file each year with the state superintendent of public instruction a statement certifying that the minimum requirements hereinafter set forth are being met, noting any deviations. After review of the statement, the state superintendent will notify schools or school districts of those deviations which must be corrected. In case of major deviations, the school or school district may request and the state board of education may grant provisional status for one year in order that the school or school district may take action to meet the requirements. The state board of education shall not require private school students to meet the student learning goals, obtain a certificate of academic achievement, or a certificate of individual achievement to graduate from high school, to master the essential academic learning requirements, or to be assessed pursuant to RCW 28A.655.061. However, private schools may choose, on a voluntary basis, to have their students master these essential academic learning requirements, take the assessments, and obtain a certificate of academic achievement or a certificate of individual achievement. Minimum requirements shall be as follows:

(1) The minimum school year for instructional purposes shall consist of no less than one hundred eighty school days or the equivalent in annual minimum instructional hour offerings, with a school-wide annual average total instructional hour offering of one thousand hours for students enrolled in grades one through twelve, and at least four hundred fifty hours for students enrolled in kindergarten.

(2) The school day shall be the same as defined in RCW 28A.150.203.

(3) All classroom teachers shall hold appropriate Washington state certification except as follows:

(a) Teachers for religious courses or courses for which no counterpart exists in public schools shall not be required to obtain a state certificate to teach those courses.

(b) In exceptional cases, people of unusual competence but without certification may teach students so long as a certified person exercises general supervision. Annual written statements shall be submitted to the office of the superintendent of public instruction reporting and explaining such circumstances.

(4) An approved private school may operate an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody. The extension program shall require at a minimum that:

(a) The parent, guardian, or custodian be under the supervision of an employee of the approved private school who is certified under chapter 28A.410 RCW;

(b) The planning by the certified person and the parent, guardian, or person having legal custody include objectives consistent with this subsection and subsections (1), (2), (5), (6), and (7) of this section;

(c) The certified person spend a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the approved private school extension program;

(d) Each student's progress be evaluated by the certified person; and

(e) The certified employee shall not supervise more than thirty students enrolled in the approved private school's extension program.

(5) Appropriate measures shall be taken to safeguard all permanent records against loss or damage.

(6) The physical facilities of the school or district shall be adequate to meet the program offered by the school or district: PROVIDED, That each school building shall meet reasonable health and fire safety requirements. A residential dwelling of the parent, guardian, or custodian shall be deemed to be an adequate physical facility when a parent, guardian, or person having legal custody is instructing his or her child under subsection (4) of this section.

(7) Private school curriculum shall include instruction of the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music, all in sufficient units for meeting state board of education graduation requirements.

(8) Each school or school district shall be required to maintain up-to-date policy statements related to the administration and operation of the school or school district.

(9) If the school or school district is required to comply with Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) as of the effective date of this section, then the school or school district shall ensure its students have all the same rights and protections provided to them under Title IX and any federal rules and guidance that were in effect as of January 19, 2017, implementing Title IX. Noncompliance with this subsection will be deemed a major deviation from a school or school district's duty to comply with this section.

(10) All decisions of policy, philosophy, selection of books, teaching material, curriculum, except as in subsection (7) of this section provided, school rules and administration, or other matters not specifically referred to in this section, shall be the responsibility of the administration and administrators of the particular private school involved.

**Sec.**  RCW 28B.50.455 and 2015 c 55 s 227 are each amended to read as follows:

(1) Each community and technical college shall comply with relevant federal requirements for implementing section 504 of the rehabilitation act of 1973, and as thereafter amended, Title VI of the civil rights act of 1964, and as thereafter amended, and Title IX of education amendments of 1972, and as thereafter amended.

(2)(a) Students in the state system of community and technical colleges have all the same rights and protections provided to them under Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and any federal rules and guidance that were in effect as of January 19, 2017, implementing Title IX.

(b) No later than August 1, 2019, the office of the college board shall adopt rules incorporating the rights and protections provided to students under Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and any federal rules and guidance in effect as of January 19, 2017, implementing Title IX, that are not already addressed under state law.

NEW SECTION. **Sec.**  A new section is added to chapter 28B.110 RCW to read as follows:

(1) Students of institutions of higher education have all the same rights and protections provided to them under Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and any federal rules and guidance that were in effect as of January 19, 2017, implementing Title IX.

(2) To be an eligible institution for the purposes of state financial aid programs under chapters 28B.92 and 28B.12 RCW, a private postsecondary institution of higher education shall ensure that its students have all the same rights and protections provided to them under Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and any federal rules and guidance that were in effect as of January 19, 2017, implementing Title IX.

**Sec.**  RCW 28B.110.030 and 2015 c 92 s 6 are each amended to read as follows:

In consultation with institutions of higher education, the student achievement council shall develop rules and guidelines to eliminate possible gender discrimination to students, including sexual harassment, at institutions of higher education as defined in RCW 28B.10.016. The rules and guidelines shall include but not be limited to access to academic programs, student employment, counseling and guidance services, financial aid, recreational activities including club sports, and intercollegiate athletics.

No later than August 1, 2019, and in consultation with the institutions of higher education, the student achievement council shall adopt rules incorporating the rights and protections provided to students under Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and any federal rules and guidance in effect as of January 19, 2017, implementing Title IX, that are not already addressed under state law.

(1) With respect to higher education student employment, all institutions shall be required to:

(a) Make no differentiation in pay scales on the basis of gender;

(b) Assign duties without regard to gender except where there is a bona fide occupational qualification as approved by the Washington human rights commission;

(c) Provide the same opportunities for advancement to males and females; and

(d) Make no difference in the conditions of employment on the basis of gender in areas including, but not limited to, hiring practices, leaves of absence, and hours of employment.

(2) With respect to admission standards, admissions to academic programs shall be made without regard to gender.

(3) Counseling and guidance services for students shall be made available to all students without regard to gender. All academic and counseling personnel shall be required to stress access to all career and vocational opportunities to students without regard to gender.

(4) All academic programs shall be available to students without regard to gender.

(5) With respect to recreational activities, recreational activities shall be offered to meet the interests of students. Institutions which provide the following shall do so with no disparities based on gender: Equipment and supplies; medical care; services and insurance; transportation and per diem allowances; opportunities to receive coaching and instruction; laundry services; assignment of game officials; opportunities for competition, publicity, and awards; and scheduling of games and practice times, including use of courts, gyms, and pools. Each institution which provides showers, toilets, lockers, or training room facilities for recreational purposes shall provide comparable facilities for both males and females.

(6) With respect to financial aid, financial aid shall be equitably awarded by type of aid, with no disparities based on gender.

(7) With respect to intercollegiate athletics, institutions that provide the following shall do so with no disparities based on gender:

(a) Benefits and services including, but not limited to, equipment and supplies; medical services; services and insurance; transportation and per diem allowances; opportunities to receive coaching and instruction; scholarships and other forms of financial aid; conditioning programs; laundry services; assignment of game officials; opportunities for competition, publicity, and awards; and scheduling of games and practice times, including use of courts, gyms, and pools. Each institution which provides showers, toilets, lockers, or training room facilities for athletic purposes shall provide comparable facilities for both males and females.

(b) Opportunities to participate in intercollegiate athletics. Institutions shall provide equitable opportunities to male and female students.

(c) Male and female coaches and administrators. Institutions shall attempt to provide some coaches and administrators of each gender to act as role models for male and female athletes.

(8) Each institution shall develop and distribute policies and procedures for handling complaints of sexual harassment and sexual violence. Institutional sexual violence policies should include, but are not limited to, information about the institution's Title IX compliance officer or other individuals at the institution responsible for handling sexual violence violations and potential criminal conduct. Institutions shall annually distribute these policies and procedures in writing or electronically to all students and employees.

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