
Higher Education Committee

HB 2866

Brief Description: Ensuring student rights under Title IX of the Education Amendments of 1972 are preserved.

Sponsors: Representatives Pellicciotti, Senn, Appleton, Valdez, Bergquist, Jinkins, Slatter, Pollet and Santos.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Requires public and private K-12 schools and institutions of higher education to ensure that students have all the same rights and protections provided to them under Title IX and the rules and guidance that were in effect as of January 19, 2017.

Hearing Date: 1/30/18

Staff: Trudes Tango (786-7384).

Background:

Title IX.

Title IX refers to the federal law enacted in 1972 that provides that no person, on the basis of sex, shall be subject to discrimination in, or excluded from participation in, or be denied benefits of, any educational program or activity receiving federal funding. Federal departments and agencies that extend federal financial assistance are directed to effectuate the provisions of Title IX by issuing rules, regulations, and orders and are empowered to ensure compliance by terminating or refusing to grant financial assistance or by any other means.

Title IX applies to all aspects of education, including course offerings, counseling, financial assistance, student services, housing, athletic programs, and education programs and activities.

Under Title IX, institutions of higher education must adopt grievance procedures providing for the “prompt and equitable” resolution of student and employee sex-discrimination complaints. In September 2017, the Department of Education (DOE) issued new guidance regarding how

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schools address sexual harassment under Title IX. The DOE rescinded policies previously published in 2011 and 2014 involving what standard of proof institutions of higher education must use in Title IX sexual misconduct proceedings. The pre-2017 policy called for a preponderance of the evidence standard. The September 2017 guidance allows schools to use either a preponderance of the evidence standard or a clear and convincing standard. The September 2017 guidance also stated that the DOE will engage in rulemaking.

Washington Laws Prohibiting Discrimination on the Basis of Sex.

Washington has constitutional and statutory provisions prohibiting discrimination on the basis of sex in education and schools, as well as in other places and activities.

The Washington Law Against Discrimination prohibits discrimination in places of public accommodation on the basis of sex (as well as other protected categories). A “place of public accommodation” includes educational institutions and schools of special instruction.

Statutes specific to Washington's K-12 schools and institutions of higher education prohibit discrimination based on sex. The Office of the Superintendent of Public Instruction (OSPI) for the K-12 school system, and the Washington Student Achievement Council (WSAC) for the institutions of higher education, are statutorily mandated to develop regulations and guidelines to eliminate sex discrimination as it applies to public school employment, services to students, recreational and athletic activities for students, access to course offerings, in textbooks and instructional materials used by students, and other areas of education.

Summary of Bill:

Public and private K-12 schools and institutions of higher education are required to ensure that all rights and protections provided under Title IX and any federal rules and guidance that were in effect as of January 19, 2017, are preserved for students. The bill applies to private K-12 schools that are currently required to comply with Title IX and to private institutions of higher education that wish to participate in the state's financial aid programs.

By July 1, 2018, the OSPI must convene a work group to examine the rules and guidance under Title IX to determine the most efficient and effective way of ensuring that the rights and protections under Title IX that were 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 that are not already addressed by state law. By August 1, 2019, the OSPI must issue guidelines and adopt rules, where appropriate and consistent with the work group's evaluation, incorporating the applicable rights and protections preserved for students.

By August 1, 2019, the State Board For Community and Technical Colleges and the WSAC must adopt rules incorporating the rights and protections provided to students under Title IX and rules and guidance that were in effect as of January 19, 2017, that are not already addressed under state law.

Appropriation: None.

Fiscal Note: Requested on January 17, 2018.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.