

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2925 (Friedman)
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Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Postsecondary education: Equity in Higher Education Act: prohibition on
discrimination: training

DIGEST

This bill modifies certain findings and declarations relating to the intent of the Equity in Higher Education Act (the Act); modifies the definition of “nationality” to match the definition as interpreted at the federal level; and requires the California Community Colleges (CCC), California State University (CSU), independent institutions of higher education that receive state financial assistance, and private postsecondary educational institutions that receive state financial assistance, and requests the University of California (UC), to include subject matter in specific trainings to address discrimination against the five most targeted groups in the state, as defined.

EXECUTIVE SUMMARY

The Equity in Higher Education Act (the Act) requires postsecondary educational institutions to protect their students from discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or immigration status. Existing federal law requires that no person at an educational institution that receives federal funds, including colleges and universities, may be discriminated against on the basis of race, color, or national origin; these terms have been interpreted to include shared ancestry or ethnic characteristics, or citizenship or residency in a country with a dominant religion or distinct religious identity.

In response to an increase in hate-motivated incidents on college campuses, this bill is intended to strengthen existing protections for students on California’s public and private postsecondary educational institutions. Specifically, this bill modifies certain findings and declarations relating to the intent of the Act (the Act); modifies the definition of “nationality” to match the definition as interpreted at the federal level; and

requires the CCCs, CSU, and independent institutions of higher education and private postsecondary educational institutions that receive state financial assistance, and requests the UC, to include subject matter in specific trainings to address discrimination against the five most-targeted groups in the state, as determined by the California Department of Justice's (DOJ) annual hate crimes report. The author recently amended the bill to respond to concerns from the UC.

This bill is sponsored by the Jewish Public Affairs Committee of California and is supported by 40 organizations. This bill is opposed by the Council on American-Islamic Relations – California. The Senate Education Committee passed this bill with a vote of 6-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Act, which provides that it is the policy of the State of California to afford all persons, regardless of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other basis that is contained within the prohibition of hate crimes, as defined, including immigration status, equal rights and opportunities in the postsecondary educational institutions of the state, and that it is the purpose of the Act to prohibit acts that are contrary to that policy and provide remedies for the commission of those prohibited acts. (Ed. Code, tit. 3, div. 5, pt. 40, ch. 4.5, §§ 66250 et seq.)
- 2) Makes legislative findings and statements of intent within the Act relating to the right of students to participate fully in the educational process, free from discrimination, and California's postsecondary educational institutions' affirmative obligation to combat racism, sexism, and other forms of bias. (Ed. Code, § 66252.)
- 3) Defines the following relevant terms within the Act:
 - a) "Nationality" includes citizenship, country of origin, and national origin. (Ed. Code, § 66261.3.)
 - b) "Postsecondary educational institution" means a public or private institution of vocational, professional, or postsecondary education; the governing board of a community college district; the Regents of the University of California; or the Trustees of the California State University. (Ed. Code, § 66261.5.)
 - c) "Religion" includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism. (Ed. Code, § 66262.)
- 4) Provides that no person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any characteristic listed or defined in the Fair Employment and Housing Act or within the prohibition on hate crimes, as defined,

including immigration status, in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid. (Ed. Code, § 66270.)

- 5) Provides that the Act does not apply to an educational institution that is controlled by a religious organization if the application would not be consistent with the religious tenants of that organization. (Ed. Code, § 66271.)
- 6) Provides that a person who alleges an act of prohibited discrimination under the Act must first file a discrimination complaint with the local educational agency, unless the person seeks only injunctive relief; after at least 90 days have elapsed from the filing of the discrimination complaint, the person may file a civil action to enforce the Act. (Ed. Code, §§ 66292.3, 66292.4.)

This bill:

- 1) Amends the findings and declarations within the Act to reiterate and clarify the need to prevent and respond to acts of discrimination and add a statement that it is the intent of the Legislature that each postsecondary educational institution undertake supportive measures who have encountered harassing or discriminatory incidents, regardless of the location of the harassing or discriminatory incident, to ensure students' access to equal educational opportunities.
- 2) Modifies the Act's definition of "nationality" to include "national origin" and define both terms as including a person's actual or perceived ancestry or ethnic characteristics, citizenship, or residency in a country with a dominant religious or distinct religious identity; discrimination against Jewish, Muslim, Sikh, Hindu, Christian, or Buddhist students, or students of another religious group, when the discrimination involves racial, ethnic, or ancestral slurs or stereotypes, constitutes discrimination on the basis of nationality or national identity.
- 3) Provides "discrimination on the basis of religion" under the Act includes, but is not limited to, anti-Semitism and Islamophobia.
- 4) Provides that it is the policy of the State of California, pursuant to the Act, that all persons, regardless of their race, color, or national origin, should enjoy freedom from discrimination of any kind, including harassment based on a person's actual or perceived shared ancestry or ethnic characteristics, or citizenship in a country with a dominant religion, as described in Title VI of the federal Civil Rights Act of 1964, in the postsecondary educational institutions of the state.
- 5) Provides that the CCCs, the CSU, independent institutions of higher education that receive state financial assistance, and private postsecondary educational institutions

that receive state financial assistance from the state shall, and the UC is requested to, include training to address discrimination against the five most-targeted groups in the state, as determined pursuant to 6), as part of any existing antidiscrimination training or diversity, equity, and inclusion training that is offered by the institution, excluding any trainings targeted solely to address discrimination based on specific groups, including, but not limited to, age, disability, or sexual orientation.

- 6) Provides that, to determine the five most-targeted groups in the state, a postsecondary educational institution shall refer to the “number of events” provided in Table 1 of the annual “Hate Crime in California” publication by the Attorney General, which reports hate crime data required to be submitted to the Attorney General by law enforcement agencies pursuant to Penal Code section 13023.
- 7) Provides that the training required pursuant to 5) shall not be incorporated into the sexual violence and sexual harassment prevention training required under the Act.
- 8) States that it is the intent of the Legislature that all general discrimination trainings and diversity, equity, and inclusion trainings address the complex and cumulative way in which the effects of multiple forms of discrimination combine, overlap, or intersect, especially in the experiences of marginalized individuals or groups.

COMMENTS

1. Author’s comment

According to the author:

It is critical that we equip our college campus communities with the proper tools and training to counter the rising acts of antisemitic harassment and violence. Antisemitic incidents from 2023 were already at record highs and have since increased significantly after the October 7th Hamas terror attack and subsequent war. We owe it to both our students and faculty to ensure an educational experience free from harassment or intimidation as guaranteed by the federal and state constitutions.

2. The pernicious rise in hate crimes in California and concerns about college campuses

Hate crimes have increased in California over the past decade. The California Department of Justice’s most recent annual hate crimes report shows that the number of reported hate crimes in the state increased by 145.7 percent over the last 10 years.¹ The

¹ California Department of Justice, Hate Crime in California 2022, p. 1, available at <https://data-openjustice.doj.ca.gov/sites/default/files/2023-06/Hate%20Crime%20In%20CA%202022f.pdf>. All links in this analysis are current as of June 20, 2024.

report shows that hate crimes rose across protected categories, including race, religion, and sexual orientation.²

On November 7, Catherine Lhamon, the Assistant Secretary for Civil Rights at the Office of Civil Rights at the Department of Education (OCR), wrote a “Dear Colleague” letter addressing the rise of hate crimes and harassment on campuses and reminding colleges and universities of their obligations under federal law:

As we witness a nationwide rise in reports of hate crimes and harassment, including an alarming rise in disturbing antisemitic incidents and threats to Jewish, Israeli, Muslim, Arab, and Palestinian students on college campuses and in P-12 schools, the fulfillment of school communities’ federal legal obligations to ensure nondiscriminatory environments have renewed urgency. As the President promised, the federal government is “...working with community partners to identify, prevent, and disrupt any threats that could harm the Jewish, Muslim, Arab American, Palestinian American, or any other communities.” Hate-based discrimination, including based on antisemitism and Islamophobia among other bases, have no place in our nation’s schools.

It is in this context that I write to remind colleges, universities, and schools that receive federal financial assistance of their legal responsibility under Title VI of the Civil Rights Act of 1964 and its implementing regulations (Title VI) to provide all students a school environment free from discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics. It is your legal obligation under Title VI to address prohibited discrimination against students and others on your campus—including those who are or are perceived to be Jewish, Israeli, Muslim, Arab, or Palestinian—in the ways described in this letter.³

The letter explained to colleges and universities that the OCR considers unwelcome conduct based on shared ancestry or ethnic characteristics that, based on the totality of the circumstances, is subjectively and objectively offensive and so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity to be the type of harassment that creates a hostile environment.⁴ The letter went on to remind colleges and universities that they must take immediate and effective action to respond to harassment that creates a hostile environment.⁵ The letter closed with a request that schools “[p]lease be vigilant in

² *Id.* at pp. 29-30.

³ United States Department of Education, Office for Civil Rights, November 7, 2023, Dear Colleague letter, p. 1, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>.

⁴ *Id.* at p. 2.

⁵ *Ibid.*

protecting your students' rights under Title VI, understanding that we in OCR are and will be."⁶

3. The Department of Education's interpretation of federal civil rights protections for students in postsecondary educational institutions

At the federal level, Title VI of the Civil Rights Act⁷ prohibits discrimination at institutions that accept federal funds on the basis of race, color, or national origin.⁸ As noted in the OCR's "Dear Colleague" letter, the OCR interprets "race, color, or national origin" to also include shared ancestry or ethnic characteristics, or citizenship or residency in a country with a dominant religion or distinct religious identity.⁹ The acts of other students – e.g., student-on-student discriminatory harassment that rises to the level of having a "systematic effect" on the institution's programs and activities – can give rise to a Title VI violation when the institution is aware of the discrimination and acts with deliberate indifference, i.e., fails to respond reasonably in light of the known circumstances.¹⁰

4. This bill modifies existing provisions within the Equality in Higher Education Act and imposes new requirements for trainings provided by postsecondary educational institutions

This bill is intended to strengthen existing protections for students on California's public and private postsecondary educational institutions.

First, the bill modifies the Act's findings and declarations regarding the Act's intent. Those changes include adding more expansive descriptions of the obligations of postsecondary educational institutions have under the act, as well as cross-references to existing antidiscrimination and harassment laws.

Second, the bill modifies the Act's definition of "nationality" to mirror the OCR's definition of the term, and to clarify that Discrimination against Jewish, Muslim, Sikh, Hindu, Christian, or Buddhist students, or students of another religious group, when

⁶ *Id.* at p. 3.

⁷ 42 U.S.C. §§ 2000d et seq.

⁸ *Id.*, § 2000d.

⁹ See, e.g., U.S. Dept. of Ed., Office of Civil Rights, Fact Sheet: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics (Jan. 2023).

¹⁰ See *Davis v. Monroe County Bd. of Educ.* (1999) 526 U.S. 629, 648-651, 653 (*Davis*) (holding that deliberate indifference standard applies in Title IX suits alleging failure to stop third-party discrimination); see, e.g., *Bryant v. Independent School Dist. No. 1-38* (10th Cir. 2003) 334 F.3d 928, 934 (holding that the *Davis* deliberate indifference standard applies in Title VI suits alleging failure to stop third-party discrimination); *United States v. County of Maricopa* (9th Cir. 1999) 889 F.3d 648, 652 (same).

the discrimination involves racial, ethnic, or ancestral slurs or stereotypes, constitutes discrimination on the basis of nationality or national identity.¹¹

Third, this bill imposes new requirements for general trainings offered by the CCCs, CSUs, and independent institutions of higher education and private postsecondary educational institutions that receive state financial assistance, and requests that the UC adopt the requirements. Specifically, the bill requires (or requests) these institutions to address – as part of any existing general antidiscrimination training or diversity, equity, and inclusion training offered to students, faculty, or staff – discrimination against the five most-targeted groups in the state. The bill incorporates the DOJ’s annual Hate Crime in California report to determine the five-most targeted group; this report is discussed further in Part 5, below. The bill does not require a school to hold new trainings; it merely adds requirements relating to what topics must be covered in existing trainings.

The bill excludes, from this new topical requirement, trainings targeted solely to address discrimination against specific groups, including on the specific basis of age, disability, or sexual orientation; the bill also exempts sexual violence and sexual harassment trainings required under existing law. Some of these exemptions were recently clarified to address the UC’s concern that this bill would prevent campus groups from providing single-subject trainings in response to, e.g., specific incidents on campus or groups that exist to address specific issues. Accordingly, this bill permits, but does not require, higher educational institutions to hold trainings relating to discrimination against single groups not included in the top five groups in the DOJ’s report.

5. The Hate Crimes in California report and opposition concerns

As noted above, to determine the five-most targeted groups in the state, this bill relies on Table 1 of the DOJ’s annual Hate Crime in California report, which sets forth the number of hate crimes reported to law enforcement each year, broken down by specific group.¹² Table 1 is an imprecise tool; it does not provide context for the rate of reported incidents motivated by bias against a particular group in terms of the group’s population as a whole, nor does it set forth the number of reported incidents that were actually verified or resulted in a conviction.¹³ Moreover, as the report notes, “[c]ultural practices of individuals and their likeliness to report hate crimes to law enforcement agencies” “may influence the volume of hate crimes reported to the DOJ.”¹⁴ Finally, the

¹¹ The Act already incorporates, as protected categories, the categories listed in the Fair Employment and Housing Act (FEHA). (*See* Ed. Code, § 66270.) FEHA, in turn, includes ancestry, national origin, and ethnic group identification as protected classes. (*See* Gov. Code, § 11135.) It therefore seems unlikely that these provisions constitute a meaningful change in the scope of the Act’s protections.

¹² Hate Crime in California 2022, *supra*, at pp. 3, 8.

¹³ *Ibid.* In 2022, the 2,120 reported hate crimes resulted in 282 hate crime prosecutions, plus 174 prosecutions as non-bias motivated crimes. (*Id.* at p. 2.)

¹⁴ *Id.* at p. 3.

report is limited to reported hate crimes, and does not purport to list campus harassment and other incidents prohibited by law that do not rise to the level of criminal activity.

The Council for American-Islamic Relations – California, writing in opposition, raises similar concerns. They note that reports of hate incidents to law enforcement “reveal only a small fraction of reality, as hate crimes and hateful incidents have historically been underreported by Muslim, Arab and Palestinian communities due to several factors including mistrust of law enforcement as a result of decades and government surveillance and targeting of these communities. They also note that Muslims and Arabs are not listed within the top five categories in the report for 2022.

As originally drafted, this bill would have expressly required postsecondary educational institutions to hold trainings to combat anti-Semitism and Islamophobia. That language was removed prior to the bill’s hearing in the Assembly Judiciary Committee; that committee and the Assembly Education Committee had voiced concerns about requiring trainings relating to two specific groups.¹⁵ Based on discussions with the author’s office and stakeholders, it does not appear that there is a more accurate source on which to base the assessment required by the bill; the author may wish, however, to continue working with opposition to determine if there is another path forward. Additionally, as noted above, nothing in the bill would prevent a higher educational institution from holding trainings focused specifically on combating anti-Semitism or Islamophobia; given the atmosphere reported on college campuses, this may be appropriate.

6. Arguments in support

According to a coalition of the bill’s supporters and the sponsor, the Jewish Public Affairs Committee of California:

Antisemitism is a form of hate and discrimination that is no less dangerous than sex-based discrimination, race-based discrimination, or Islamophobia. California’s postsecondary educational institutions have an affirmative obligation to combat these forms of hate. AB 2925 would add antisemitism to that list, ensuring that it is included as part of antidiscrimination or DEI trainings that are offered by California Community Colleges, the California State Universities, independent institutions of higher education, and private postsecondary educational institutions that receive state financial assistance. The bill would request that the University of California take these measures as well.

Students, regardless of identity, should not feel uncomfortable or afraid of walking on their own campuses. Working off the assumption that combatting

¹⁵ See Assem. Com. on Judiciary, analysis of Assem. Bill. No. 2925 (2023-2024 Reg. Sess.) as amended Apr. 16, 2024, pp. 9-10.

ignorance is the first step towards defeating hate, AB 2925 is the first step towards stopping the “open-season on Jews” that students have described on college campuses in California.

7. Arguments in opposition:

According to the Council on American-Islamic Relations – California:

While original intent of AB2925, as found in the bill analysis, is to address the rise in both Antisemitism and Islamophobia on college campuses, this bill fails to require anti-discrimination trainings addressing Islamophobia and anti-Muslim discrimination. In order to properly address the stated intent of the bill and the drastic rise in Islamophobia and antisemitism, we have proposed amendments that expand the groups included in anti-discrimination training to include Muslims in a way that remains content neutral.

In its initial substantive form, AB 2925 specifically required anti-discrimination training on antisemitism and Islamophobia. However, recent amendments to the bill have removed this requirement and now instead require university and colleges to provide training to address discrimination of “the five most targeted groups in the state” as found in the Attorney General’s annual “Hate Crime in California” report. However, despite the unprecedented rise of Islamophobia and anti-Muslim hate, Muslims have not been included in the top 5 most targeted groups in any of the most recent AG reports. Therefore, in practice, this bill will not include Islamophobia in University anti-discrimination training, thus failing to meet the stated intent of the bill to address the rise in both antisemitism and Islamophobia since Oct 7.

SUPPORT

Jewish Public Affairs Committee of California (sponsor)

30 Years After

AJC Los Angeles

AJC San Diego

AJC San Francisco

Anti-Defamation League

Democrats for Israel – California

Democrats for Israel – Los Angeles

ETTA

Hadassah

Hillel at UCLA

Hillel of San Diego

Hillel of Silicon Valley

Holocaust Museum LA

JCRC of the Sacramento Region

Jewish Big Brothers Big Sisters of Los Angeles
Jewish Center for Justice
Jewish Community Federation & Endowment Fund
Jewish Community Relations Council, Santa Barbara
Jewish Community Relations Council of the Bay Area
Jewish Democratic Club of Marin
Jewish Democratic Club of Solano County
Jewish Democratic Coalition of the Bay Area
Jewish Democrats of San Diego County
Jewish Family & Children's Services of San Francisco, the Peninsula, Marin & Sonoma Counties
Jewish Family & Community Services East Bay
Jewish Family Service LA
Jewish Family Service of San Diego
Jewish Family Services of Silicon Valley
Jewish Federation Los Angeles
Jewish Federation of Greater Santa Barbara
Jewish Federation of the Greater San Gabriel and Pomona Valleys
Jewish Federation of the Sacramento Region
Jewish Free Loan Association
Jewish Long Beach
Jewish Silicon Valley
JFCS Long Beach and Orange County
JVS SoCal
National Council of Jewish Women CA
Progressive Zionists of California
Raoul Wallenberg Jewish Democratic Club

OPPOSITION

Council on American-Islamic Relations - California

RELATED LEGISLATION

Pending Legislation:

SB 1287 (Glazer, 2024) requires the Trustees of the CSU and the Board of Governors of CCCs, and requests the Board of Regents of the UCs to adopt and enforce policies in institution-based student codes of conduct that prohibit violence, harassment, intimidation, and discrimination, as specified. SB 1287 is pending before the Assembly Judiciary Committee.

AB 2608 (Gabriel, 2024) expands currently required annual trainings for students on sexual violence and sexual harassment to also include topics related to alcohol- and

drug-facilitated sexual assault and confidential support and care resources for situations that arise as a result of an act of sexual violence and/or sexual harassment. AB 2608 is pending before the Senate Appropriations Committee.

AB 2326 (Alvarez, 2024) delineates which entities within the public higher education institutions are responsible for ensuring campus programs are free from discrimination and who has the authority to oversee and monitor compliance with state and federal laws; and requires the leadership of all three public higher education institutions to present to the Legislature their efforts in addressing and preventing discrimination on campus. AB 2326 is pending before the Senate Appropriations Committee.

Prior Legislation:

SB 183 (Lara, Ch. 779, Stats. 2018) added “immigration status” to the list of specified characteristics protected from discrimination under the Equity in Higher Education Act.

SB 691 (Lara, 2017) was substantially similar to SB 183. SB 691 died on the Senate inactive file.

PRIOR VOTES:

Senate Education Committee (Ayes 6, Noes 0)

Assembly Floor (Ayes 73, Noes 0)

Assembly Appropriations Committee (Ayes 11, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)

Assembly Higher Education Committee (Ayes 11, Noes 0)
