

SENATOR RICARDO LARA

LEGISLATIVE FACT SHEET

Higher Education Discrimination Senate Bill 1146

Summary:

SB 1146 would close a loophole that allows private universities to discriminate against students and staff based on their gender identity, gender expression, or sexual orientation.

Background:

At the federal level, Title IX prohibits discrimination based on gender identity and gender nonconformity in education programs and activities that receive any federal funding. However, there is a little known loophole that private universities use to avoid complying with Title IX. If a university believes compliance with Title IX would conflict with their values they may submit an exemption request to the U.S. Department of Education. The Department has very little discretion and most requests are granted. California has its own set of non-discrimination protections for students, known as the Equity in Higher Education Act. Religiously affiliated universities are broadly exempt from complying with its provisions and do not disclose to students or any state entity that they are claiming the exemption. As a result, universities that receive an exemption from Title IX and the state laws essentially have a license to discriminate and students have no recourse.

Over the last three years there has been a significant uptick in the number of universities who apply and receive an exemption to Title IX. Only one school was granted an exemption in 2013. Today there are at least 43 schools that have received an exemption nationally. There are at least six schools in California that currently have an exemption.

Problem:

Troublingly, the universities that receive Title IX and Equity in Higher Education exemptions in California do not have to disclose their status students or staff. Many are completely unaware of the exemption and what the potential consequences would be in the event their sexual orientation or gender identity did not align with the universities' "values". Students and staff across the country have reported finding out

about the exemption, only after being expelled from school or fired from their job. Recently at a university in southern California, a student took a leave of absence and during his time away came out as gay on social media. When it was time to return to school, the university did not want to readmit him. Transgender students have also reported being denied access to gender appropriate housing and some have been expelled as a result of their revealing their gender identity. Currently these students and staff have no recourse. Higher education is a major investment. Students who are expelled or are forced to leave because of harassment simply because of the sexual or gender identity stand to lost thousands of dollars they have spent on their education.

Universities that are claiming exemptions under Title IX and the Equity in Higher Education Act do not have to provide the same level of protections for their students as those attending other universities, even though they accept state funds. Classrooms are supposed to be places where students feel safe and can learn without fear of discrimination or harassment. California has established strong protections for the LGBTQ community and private universities should not be able to use faith as an excuse to discriminate and avoid complying with state laws.

Solution:

SB 1146 would narrow the exemptions available under the Equity in Higher Education Act to only exempt universities and programs training students in a vocation of the religion and prohibit discrimination in programs that offer general education. The bill would allow an individual that has encountered discrimination at a school claiming a Title IX exemption to pursue a remedy through a civil action. Additionally, bill would require universities who are granted a Title IX exemption to disclose that information to the California Student Aid Commission and disseminate it to students and staff.

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