



STOP ABUSIVE AND VIOLENT ENVIRONMENTS

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April 17, 2017

RE: SB.169 Would Perpetuate the Existing Inadequate System of Campus Rape Tribunals, Shortchanging Victims and Accused Students Alike

Senator Benjamin Allen, Chair
Senator Scott Wilk, Vice Chair
Standing Committee on Education
State Capitol
Room 2083
Sacramento, CA 95814

Dear Chairman Allen, Vice Chair Wilk, and Members of the Standing Committee on Education:

SAVE is a national non-partisan 501(c)(3) organization dedicated to protecting all victims, ensuring due process, and producing reliable outcomes in campus sexual assault cases. To that end, SAVE has worked tirelessly over the last decade with lawmakers, leading scholars, and others to advocate for much needed policy reform.

In 2011 the U.S. Department of Education's Office for Civil Rights (OCR) released its controversial Dear Colleague Letter on sexual violence. Rather than strengthening the role of law enforcement in campus sexual assault cases, it did the exact opposite – requiring that all allegations be handled by ill-equipped campus disciplinary committees, the same groups that also handle plagiarism and cheating cases.

These campus sex tribunals have proven to be woefully inadequate, as revealed by a dramatically increased number of women's complaints to the federal Office for Civil Rights. Prior to the release of federal directive, 300-400 sex-related discrimination complaints were filed with the OCR each year. After 2011, the number of complaints increased rapidly to more than 2,000 in 2014.

If the existing system of campus rape tribunals was working as promised, one would expect to see a *decreasing* number of complaints, compared to the pre-2011 period, as identified victims found their cases were being resolved in an appropriate manner.

In California, 25 higher education institutions have been subjected to an OCR investigation for alleged mishandling of sexual misconduct cases, arising from 37 separate complaints.¹ These four California cases reveal how schools are shortchanging identified victims:

¹ Available at: http://projects.chronicle.com/titleix/investigations/?search_term=&states=California&start=&end=.

1. A female student at the University of California at San Francisco alleged in 2015 that the school's investigation took twice as much time as prescribed, a no-contact order took 70 days to secure, and the dean of the university attempted to access her mental health treatment records. Following the four-month investigation which yielded a finding of responsibility, the university allowed the accused student to complete his semester's classes.²
2. Seven months later, another UCSF student charged that the university failed to "promptly and equitably respond to sexual harassment, including sexual violence, complaints, reports and/or other incidents of which it has notice."³
3. In 2016 the OCR opened an investigation of the University of California at Santa Cruz because the University allegedly "failed to promptly and equitably respond to a sexual violence complaint."⁴
4. On December 1, 2016, OCR notified Westmont College in Santa Barbara that an investigation was being initiated after receiving a complaint regarding allegations that the College (1) provided the respondent with extensions that advantaged him during the investigation process, (2) provided the respondent with documents and evidence prior to questioning that were not presented to the complainant, and (3) refused to investigate multiple incidents of harassment by third parties.⁵

Accused students are also expressing frustrations over the abuses that they claim amount to an inherently biased and inequitable procedures. They are filing federal lawsuits alleging violations of due process. A case originating at UC Davis encapsulated all of these problems when the Judge's Opinion emphatically stated, "Due process has been completely obliterated by the University's failure to get this case adjudicated...if anyone has failed the alleged victim in this case, [it] is the University."⁶

Each of the above cases occurred subsequent to the issuance of the 2011 Dear Colleague Letter (DCL). SB.169, currently before the Committee, merely codifies the DCL. If the current system is failing to appropriately respond to reports of sexual assault, why would we expect the situation to improve by implementing a failed federal policy into state law?

Identified victims and accused students share a common, over-riding interest in assuring the investigative and adjudicatory process is conducted in a respectful, prompt, and fair manner in

² Kingkade, Tyler, UCSF Let a Student Accused of Sexual Assault Finish His Classes Before Punishing Him, Huffington Post, May 4, 2015. Available at http://www.huffingtonpost.com/2015/05/04/ucsf-sexual-assault_n_7205398.html?utm_hp_ref=college.

³ U.S. Department of Education, Notification Letter to Chancellor Hawgood, January 12, 2016. Available at <https://www.documentcloud.org/documents/3031730-Notification-to-UCSF-1-12-2016-D09-16-2090.html>.

⁴ U.S. Department of Education, Notification Letter to Chancellor Blumenthal, June 22, 2016. Available at <https://www.documentcloud.org/documents/2998250-Notification-to-UC-Santa-Cruz-June-22-2016.html>.

⁵ U.S. Department of Education, Notification Letter to President Beebe, December 1, 2016. Available at: <https://www.documentcloud.org/documents/3438491-Westmont-College-09-16-2441.html>.

⁶ Dorian Hargrave, University of California's skewed take on Title IX, San Diego Reader (October 13, 2015), available at <http://www.sandiegoreader.com/news/2015/oct/13/ticker-university-californias-skewed-take-title-ix/>

order to reach reliable outcomes. To this end, SAVE has drafted the Campus Equality, Fairness, and Transparency Act (CEFTA).⁷ CEFTA encourages sworn law enforcement involvement, with the complainant's consent, in felony level allegations to provide the highest standard of investigation, protect the community, and ultimately hold offenders accountable.

It would be a grievous error for the California legislature to codify a highly controversial and much criticized federal directive when it has become apparent that the policies and procedures contained therein are causing institutions to shortchange identified victims and accused students alike, leading to thousands of OCR complaints and hundreds of federal lawsuits.

Please do not make the situation worse by turning ineffective and harmful federal guidance into state law.

Sincerely,

Christopher J. Perry, Esq.
Deputy Executive Director

⁷ Available at: <http://www.saveservices.org/sexual-assault/cefta/>