

2021 Regular Session

HOUSE BILL NO. 409

BY REPRESENTATIVES FREEMAN, ADAMS, AMEDEE, BROWN, BUTLER, CARPENTER, GARY CARTER, ROBBY CARTER, WILFORD CARTER, CORMIER, COX, DAVIS, DUPLESSIS, EDMONSTON, FREIBERG, GAROFALO, GLOVER, GREEN, HILFERTY, HODGES, HORTON, HUGHES, JEFFERSON, JENKINS, LACOMBE, LANDRY, LARVADAIN, MACK, MARCELLE, MIGUEZ, MOORE, NEWELL, CHARLES OWEN, PHELPS, PIERRE, RISER, ST. BLANC, STAGNI, THOMPSON, VILLIO, WHEAT, WHITE, WILLARD, AND WRIGHT AND SENATORS BARROW, JACKSON, MIZELL, AND PETERSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HIGHER EDUCATION: Provides relative to campus safety and accountability

1 AN ACT

2 To amend and reenact R.S. 17:3399.13, 3399.14(A), (B), and (C)(3) and (4),
3 3399.15(introductory paragraph), (2)(b) and (f), (3), (5), and (6), and 3399.17 and
4 to enact R.S. 17:3399.12, relative to public postsecondary education; to provide
5 requirements relative to reporting power-based abuse; to require termination of
6 employees who fail to comply with reporting requirements; to provide relative to
7 memoranda of understanding between institutions and law enforcement; to require
8 online reporting systems; to provide relative to training; to provide relative to the
9 development and administration of campus climate surveys; to provide relative to the
10 sharing of survey results; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 17:3399.13, 3399.14(A), (B), and (C)(3) and (4),
13 3399.15(introductory paragraph), (2)(b) and (f), (3), (5), and (6), and 3399.17 are hereby
14 amended and reenacted and R.S. 17:3399.12 is hereby enacted to read as follows:

15 ~~§3399.13.~~ §3399.12. Definitions

16 For the purposes of this Part, the following terms shall have the following
17 meanings unless the context clearly indicates otherwise:

1 (1) "Institution" means a public postsecondary education institution.

2 (2) ~~"President"~~ "Chancellor" means the ~~president of the system person~~
3 servicing as the administrative head of the campus of the respective institution.

4 (3) "Confidential advisor" means a person designated by the institution who
5 has been trained to aid a student involved in a power-based abuse complaint in the
6 resolution process as a confidential resource.

7 (4) "Power-based abuse" means any form of interpersonal abuse intended to
8 control or intimidate another person through the assertion of power over the person.
9 Power-based abuse includes the following:

10 (a) Domestic abuse, which occurs when committed by one family member,
11 current or former household member, or dating partner against another and at least
12 one of the following is present:

13 (i) Physical or sexual abuse and any offense against the person, physical or
14 non-physical, as defined in the Louisiana Criminal Code, or the threat thereof, except
15 negligent injury and defamation, regardless of whether the perpetrator was
16 prosecuted.

17 (ii) Any act or threat to act that is intended to coerce, control, punish,
18 intimidate, or exact revenge on the other party, for the purpose of preventing the
19 victim from reporting to law enforcement or requesting medical assistance or
20 emergency victim services, or for the purpose of depriving the victim of the means
21 or ability to resist the abuse or escape the relationship.

22 (b) Sexual assault, which means any nonconsensual sexual contact including
23 but not limited to any act provided in R.S. 15:541(24), voyeurism as provided in R.S.
24 14:283.1, or obscenity as provided in R.S. 14:106.

25 (c) Sexual harassment, which means unwelcome verbal or physical behavior
26 of a sexual nature or unwanted sexual advances, requests for sexual favors, or other
27 acts of a sexual nature where submission is made a term or condition of an
28 opportunity.

1 (d) Stalking, which means engaging in a course of conduct directed at a
2 specific person that would cause a reasonable person to fear for the person's safety
3 or the safety of others or to suffer substantial emotional distress. For purposes of this
4 definition:

5 (i) Course of conduct means two or more acts, including but not limited to
6 acts in which the stalker directly, indirectly, through electronic communication,
7 through electronic mail, through social media, or through third parties, by any action,
8 method, device, or means, follows, monitors, observes, surveils, threatens, or
9 communicates to or about a person, threatens a person's pet, or interferes with a
10 person's property.

11 (ii) Reasonable person means a reasonable person under similar
12 circumstances and with similar identities to the victim.

13 (iii) Substantial emotional distress means significant mental suffering or
14 anguish that may but does not necessarily require medical or other professional
15 treatment or counseling.

16 (4) "Responsible employee" means any employee of an institution who
17 receives a direct statement regarding or witnesses an incident of power-based abuse.
18 Responsible employees do not include confidential advisors or employees who have
19 privileged communications with students as provided by law.

20 (5) "System president" means the president of the system of the respective
21 institution.

22 §3399.13. Reporting

23 A.(1) Except as provided in Paragraph (2) of this Subsection, a responsible
24 employee who receives a direct statement regarding or witnesses an incident of
25 power-based abuse committed by or against a student shall promptly report the
26 incident to the campus Title IX Coordinator.

27 (2) Responsible employees are not required to make a report if information
28 is received under any of following circumstances:

1 (a) During a public forum or awareness event in which individuals disclose
2 incidents of power-based abuse as part of educating others.

3 (b) In the course of reviewing an academic work product consistent with the
4 assignment.

5 (c) In the course of overhearing a conversation.

6 (3) A report made in accordance with this Subsection shall include the
7 identity of the reporter and the following information if known:

8 (a) The identity of the victim.

9 (b) The identity of the perpetrator.

10 (c) The type of power-based abuse alleged to have been committed.

11 (d) Any other information about witnesses, the location, and date and time
12 the incident occurred.

13 B.(1) Not later than October first, January first, April first, and July first each
14 year, each campus's Title IX Coordinator shall submit to the chancellor a written
15 report on the reports received under Subsection A of this Section, including
16 information regarding:

17 (a) The investigation of those reports.

18 (b) The disposition, if any, of any disciplinary processes arising from those
19 reports.

20 (c) The reports for which the institution determined not to initiate a
21 disciplinary process, if any.

22 (2) Each Title IX coordinator shall immediately report to the chancellor an
23 incident reported to the coordinator if the coordinator has cause to believe that any
24 person is in imminent danger as a result of the incident.

25 C. Not later than fourteen days after receiving a report from the Title IX
26 coordinator pursuant to Subsection B of this Section, each chancellor shall submit
27 a copy of the report to the system president.

28 D. Not later than fourteen days after receiving a report from a chancellor, the
29 system president shall submit a report to the management board summarizing reports

1 he has received from each chancellor pursuant to Subsection C of this Section. This
2 report shall not contain any personally identifiable information as defined in R.S.
3 17:3914 and shall include:

4 (a) The number of reports received.

5 (b) The number of investigations conducted as a result of those reports.

6 (c) The disposition, if any, of any disciplinary processes arising from those
7 reports.

8 (d) The number of those reports for which the institution determined not to
9 initiate a disciplinary process, if any.

10 (e) Any disciplinary actions taken in accordance with Subsection F of this
11 Section or any other policy or law.

12 E. Each management board shall send a report to the Board of Regents by
13 December thirty-first annually that summarizes reports received pursuant to
14 Subsection D of this Section.

15 F. Any employee, including but not limited to any Title IX Coordinator,
16 chancellor, or system president, shall be terminated in accordance with the
17 institution's disciplinary procedures:

18 (1) If he is required to make a report pursuant to this Section and fails to
19 promptly make the report without good cause.

20 (2) If he, with the intent to harm or deceive, knowingly makes a report that
21 is false.

22 G. A victim shall have the right to obtain a copy of any report made pursuant
23 to this Section that pertains to any incident involving the victim.

24 §3399.14. Coordination with local law enforcement

25 A. ~~Each~~ (1) Not later than January 1, 2022, each institution and law
26 enforcement and criminal justice agency located within the parish of the campus of
27 the institution ~~shall enter into a memorandum of,~~ including the campus police
28 department, if any, the local district attorney's office, and any law enforcement
29 agency with criminal jurisdiction over the campus, shall enter into a written

1 memorandum of understanding to clearly delineate responsibilities and share
2 information in accordance with applicable federal and state confidentiality laws,
3 including but not limited to trends about ~~sexually-oriented criminal offenses~~
4 occurring incidents of power-based abuse committed by or against students of the
5 institution.

6 (2) Each memorandum of understanding shall be signed by all parties to the
7 memorandum.

8 B. The Board of Regents' Uniform Policy on ~~Sexual Assault~~ Power-Based
9 Abuse shall require that ~~the~~ each memorandum of understanding, as described in
10 Subsection A of this Section, be updated ~~every two years~~ at least on an annual basis.

11 C. Each memorandum of understanding entered into pursuant to this Part
12 shall include:

13 * * *

14 (3) Agreed-upon training and requirements for the parties to the
15 memorandum of understanding on issues related to ~~sexually-oriented criminal~~
16 ~~offenses~~ power-based abuse for the purpose of sharing information and coordinating
17 training to the extent possible.

18 (4) A method of sharing general information about ~~sexually-oriented~~
19 ~~criminal offenses~~ power-based abuse occurring within the jurisdiction of the parties
20 to the memorandum of understanding in order to improve campus safety.

21 * * *

22 §3399.15. Campus security policy

23 The Board of Regents shall establish uniform policies and best practices to
24 implement measures to address the reporting of ~~sexually-oriented criminal offenses~~
25 power-based abuse on institution campuses, the prevention of such ~~crimes,~~ abuse,
26 and the medical and mental health care needed for these alleged victims that includes
27 the following:

28 * * *

1 (2) Website. The institution shall list on its website:

2 * * *

3 (b) Reporting options for alleged victims of ~~a sexually-oriented criminal~~
4 ~~offense~~ power-based abuse.

5 * * *

6 (f) The telephone number and website address for a local, state, or national
7 hotline providing information to ~~sexual~~ power-based violence abuse victims, which
8 shall be updated on a ~~timely~~ at least an annual basis.

9 * * *

10 (3) Online reporting. The institution ~~may~~ shall provide an online reporting
11 system to collect anonymous disclosures of ~~crimes~~ power-based abuse and track
12 patterns of ~~crime~~ such abuse on campus. An individual may submit a confidential
13 report about a specific ~~crime~~ incident of power-based abuse to the institution using
14 the online reporting system. ~~If the institution uses an online reporting system, the~~
15 The online system shall also include information regarding how to report a crime an
16 incident of power-based abuse to a responsible employee and law enforcement and
17 how to contact a confidential advisor.

18 * * *

19 (5) Training. Not later than January 1, ~~2016,~~ 2022, the Board of Regents, in
20 coordination with the attorney general and in consultation with state or local victim
21 services organizations, shall develop a program for annual training for the members
22 of the Board of Regents and of each public postsecondary education management
23 board, each individual who is involved in implementing an institution's student
24 grievance procedures, including each individual who is responsible for resolving
25 complaints of reported ~~sex offenses or policy violations~~ incidents of power-based
26 abuse, and each employee of an institution who has responsibility for conducting an
27 interview with an alleged victim of ~~a sexually-oriented criminal offense~~ such an
28 incident. Each institution shall ensure that the individuals and employees receive the

1 training described in this ~~Subsection~~ Paragraph no later than the beginning of the
2 ~~2016-2017~~ 2022-2023 academic year.

3 (6) Inter-campus transfer policy. (a) The Board of Regents' Uniform Policy
4 on ~~Sexual Assault~~ Power-Based Abuse shall require that institutions communicate
5 with each other regarding transfer of ~~students against whom disciplinary action has~~
6 ~~been taken~~ any student against whom a complaint has been reported to the Title IX
7 coordinator as a result of a code of conduct violation relating to ~~sexually-oriented~~
8 ~~criminal offenses~~ power-based abuse ~~abuse~~ and also communicate when the
9 investigation and adjudication is complete.

10 (b) The Board of Regents' Uniform Policy on ~~Sexual Assault~~ Power-Based
11 Abuse shall require that institutions withhold transcripts of ~~students seeking a~~
12 ~~transfer with pending disciplinary action relative to sexually-oriented criminal~~
13 ~~offenses~~ any student seeking a transfer against whom a complaint has been reported
14 to the Title IX coordinator relative to power-based abuse, until such investigation
15 and adjudication is complete.

16 * * *

17 §3399.17. Public postsecondary education institutions; ~~sexual assault~~ power-based
18 abuse climate surveys

19 A.(1) Each public postsecondary education institution shall administer an
20 anonymous ~~sexual assault~~ power-based abuse climate survey to its students once
21 every three years. If an institution administers other surveys with regard to campus
22 safety, the ~~sexual assault~~ power-based abuse climate survey may be included as a
23 separate component of any such survey provided that the ~~sexual assault~~ power-based
24 abuse component is clearly identified as such.

25 (2) Participation in the ~~sexual assault~~ power-based abuse climate survey shall
26 be voluntary; no student shall be required or coerced to participate in the survey nor
27 shall any student face retribution or negative consequence of any kind for declining
28 to participate. Each institution shall make every effort to maximize student
29 participation in the survey.

1 B. The Board of Regents shall:

2 (1) Develop the survey in consultation with the public postsecondary
3 education management boards and in accordance with national best practices and
4 work with the management boards in researching and selecting the best method of
5 developing and administering the survey.

6 (2) ~~Work with the management boards in researching and selecting the best~~
7 ~~method of developing and administering the survey.~~ Consult with victims' advocacy
8 groups and student leaders who represent a variety of student organizations and
9 affiliations, including but not limited to student government associations, academic
10 associations, faith-based groups, cultural groups, and fraternities and sororities, when
11 performing the requirements of Paragraph (1) of this Subsection.

12 (3) Submit a written report on survey results to the House Committee on
13 Education, Senate Committee on Education, and the governor not later than
14 ~~September first following administration of the survey~~ forty-five days prior to the
15 convening of the next Regular Session of the Legislature following the
16 administration of the survey. The report shall summarize results from each public
17 postsecondary education institution and the state as a whole.

18 (4) Publish the survey results on the board's website and in any other location
19 or venue the board deems necessary or appropriate.

20 C. Each public postsecondary institution shall:

21 (1) Administer a survey during the 2022-2023 academic year and every third
22 year thereafter and post the results of each survey in a prominent, easy to access
23 location on its website.

24 (2) Report survey results to the Board of Regents.

25 Section 2. This Act shall become effective upon signature by the governor or, if not
26 signed by the governor, upon expiration of the time for bills to become law without signature
27 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
28 vetoed by the governor and subsequently approved by the legislature, this Act shall become
29 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 409 Reengrossed

2021 Regular Session

Freeman

Abstract: Requires the termination of postsecondary education institution employees for failure to comply with reporting requirements relative to power-based abuse committed by or against students.

Mandatory Reporting

Present law provides relative to the handling of sexually-oriented criminal offenses at public postsecondary education institutions. Proposed law instead uses the term "power-based abuse", which includes domestic abuse, sexual assault, sexual harassment, and stalking, and proposed law provides the following:

- (1) Requires employees to report to the campus Title IX Coordinator upon witnessing or receiving a direct statement regarding of power-based abuse. Provides that reporting is not mandated if information is received during a public forum or awareness event, in the course of reviewing academic work, or in the course of overhearing a conversation.
- (2) Requires the Title IX Coordinator to report to the chancellor.
- (3) Requires the chancellor to report to the system president.
- (4) Requires the system president to report to the management board.
- (5) Requires the management board to report to the Board of Regents.
- (6) Requires the termination of any employee who fails to comply with these requirements.
- (7) Grants victims the right to obtain a copy of any report pertaining to any incident involving them.

Memoranda of Understanding

Present law requires each institution and local criminal justice agency to enter into a memorandum of understanding (MOU) relative to responsibilities, information, investigation protocols, and other aspects of dealing with sexually-oriented criminal offenses. Requires that the MOU be updated every two years. Proposed law requires that each MOU relative to power-based abuse include the campus police department, if any, the local district attorney's office, and any law enforcement agency with criminal jurisdiction over the campus; be updated on at least an annual basis; be written; and be signed by all parties.

Hotline Information

Present law requires institutions to post certain information on their website, including the phone number and website address for a victims' hotline. Requires this information to be updated "timely". Proposed law instead requires it to be updated on at least an annual basis.

Online Reporting System

Present law authorizes institutions to provide an online reporting system to collect anonymous disclosures of crimes and track patterns of crime on campus. Proposed law requires rather than authorizes such online reporting systems.

Training

Present law requires the Bd. of Regents to have developed a training program relative to handling sexually-oriented criminal offenses by Jan. 1, 2016, and for institutions to have provided such training not later than the beginning of the 2016-2017 school year. Proposed law extends such deadlines to Jan. 1, 2022, and the beginning of the 2022-2023 academic year, respectively, and provides for the training to address power-based abuse; adds that training shall also be provided to members of the Bd. of Regents and each public postsecondary education management board.

Student Surveys

Present law requires an institution to administer an anonymous sexual assault climate survey to its students once every three years. Proposed law changes the terminology to refer to a power-based abuse climate survey and requires results to be posted prominently on each institution's website and for each institution to make every effort to maximize student participation in the survey.

Present law requires the Bd. of Regents to develop the survey in consultation with the management boards and work with such boards in researching and selecting the best method for survey development and administration. Proposed law additionally requires the Bd. of Regents to consult with victims' advocacy groups and student leaders who represent a variety of student organizations and affiliations when performing these responsibilities.

Present law requires the Bd. of Regents to submit a written report on survey results to the House and Senate education committees and governor not later than Sept. 1st following administration of the survey. Proposed law changes this deadline to 45 days prior to the convening of the next Regular Session of the Legislature.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 17:3399.13, 3399.14(A), (B), and (C)(3) and (4), 3399.15(intro. para.), (2)(b) and (f), (3), (5), and (6), and 3399.17; Adds R.S. 17:3399.12)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Education to the original bill:

1. Revise terminology to refer to "power-based abuse" instead of "power-based violence" and revise terminology contained within the definition of "power-based abuse".
2. Add requirement for management boards to report annually to the Board of Regents.
3. Specify that each MOU shall be written and signed by all parties.
4. Revise procedures for communication between institutions about student transfers and transcript withholding between institutions relative to students under investigation.

5. Apply training requirement to members of the Bd. of Regents.
6. Reinstate present law relative to frequency of survey administration.

The House Floor Amendments to the engrossed bill:

1. Revise terminology to refer to an employee's receipt of a direct statement regarding an incident of power-based abuse instead of his receipt of notice of such an incident.
2. Specify that mandatory reporting requirement does not apply if information is received in the course of overhearing a conversation.