Concerns Regarding Massachusetts' Bill S.2081 (An Act Relative to Sexual Violence on Higher Education Campuses)

Written By:
Jake Goldberg (President, Board of Directors)
Lori B. Tucker, Esq. (Board of Directors)

The following is list of concerns that Students Advocating for Students (SAS) has identified in the current version of the Massachusetts's State Legislator's Bill S.2081.

1) In a recent Lowell Sun article, Senator Michael Moore, a sponsor of Bill S.2081, stated that "We don't know what could happen with regulations as far as Title IX goes and by passing this we would be able to codify protections students currently have and enhance them." However, according to lines 89-94 of this bill, "all policies adopted by an institution of higher education under this section shall comply with Title IX … and related regulations and guidance." Since not all guidance documents issued by the Department of Education are legally binding (such as the 2011 Dear Colleague Letter), this provision of the bill potentially allows a non-binding action from the Executive Branch, which does not have the authority of a law or regulation, to take priority over state legislation.

2) Lines 134-138 of the bill state that schools "shall make publicly available on its website … the total number of allegations of sexual misconduct." While the disclosure of this information via school websites is important for maintaining transparency and awareness among the public, a statistic revealing the number of allegations is not as informative as the series of statistics that the proposed legislation obligates schools to provide to public officials. Lines 324-338 require that "an institution of higher education … prepare and submit to the department of higher education, the department of public health, the clerks of the senate and house of representatives, and the senate and house chairs of the joint committee on higher education a report that includes … (i) the total number of allegations of dating violence, domestic violence, sexual assault and stalking reported to the institution's Title IX coordinator by a responsible employee, student or employee of the institution against another student or employee of the institution; (ii) the number of cases made by a student or employee of the institution against another student or employee of the institution investigated by local or state law enforcement, if known; (iii) the number of students found responsible for violating an institution's policies prohibiting sexual assault; (iv) the number of students found not responsible for violating an institution's policies prohibiting sexual assault; and (v) the number of students separated from the institution as a result of a finding of responsibility for violating an institution's policies prohibiting sexual assault. The report shall provide information in a de-identified manner that complies with state and federal privacy laws." SAS recommends that the language in lines 134-138 be amended to obligate schools to make publicly available on their websites the same information, as listed in lines 324-338, that they are obligated to provide to public officials.

3) Large sections of this bill are dedicated to explaining the role of a school's "confidential resource advisor." These sections make it quite clear that this advisor is to both be trained in and serve in a manner that can fulfill the various needs that may arise for complainant in a sexual misconduct proceeding. While this role is extremely important, SAS would advise the MA state legislators to include provisions requiring that comparable advisors be trained in and serve in a manner that can fulfill the various needs that may arise for a respondent in a sexual misconduct proceeding. As it currently stands, this bill primarily accounts only for the needs of one party involved in these types of proceeding, which, if left unaltered, would create a problematic statutory inequity.

4) Lines 212-215 of the bill state that "the confidential resource advisor shall receive training in the awareness and prevention of dating violence, domestic violence, sexual assault and stalking and trauma-informed response and coordinate with on-campus and off-campus sexual assault crisis services …" Additionally, lines 279-294 discuss the training requirements for "an individual who participates in the implementation of an institution of higher education's disciplinary process." This section states that the training shall include "(i) information on working with and interviewing persons subjected to dating violence, domestic violence, sexual assault and stalking; (ii) information on particular types of conduct that constitute dating violence, domestic violence, sexual assault and stalking including same-sex dating violence, domestic violence, sexual assault and stalking; (iii) information on consent and the role drugs and alcohol can play in the ability to consent; (iv) the effects of trauma including neurobiological impact on a person; (v) cultural awareness training regarding how dating violence, domestic violence, sexual assault and stalking may impact students differently depending on a student's cultural background; and (vi) ways to communicate sensitively and compassionately with a reporting party of dating violence, domestic violence, sexual assault or stalking including, but not limited to, an awareness of responding to a reporting party with consideration of that party's cultural background and providing services to or assisting in locating services for students." Neither lines 212-215 nor lines 279-294 require that the aforementioned officials receive training on how to appropriately work with complainants or respondent who have invisible disabilities.[1] The failure to address the unique needs of this population of students is unacceptable. For reasons more fully address in the White Paper accompanying this letter, SAS strongly recommends that the proposed bill be amended to incorporate the requirement that all individuals involved in the administration of Title IX proceedings either receive training on working with students with invisible disabilities, or, in the alternative, bring in administrators with appropriate training when one of the parties has an invisible disability.[2]

---

[1] According to Christy Oslund's *Supporting College and University Students with Invisible Disabilities*, the phrase "invisible" disability is a colloquial term in the disability field and is distinguishable from a "visible' disability in the following manner. Students with visible disabilities can be immediately identified because they may, for example, use a wheelchair or cane, communicate with sign language or wear a hearing aid. Students with an invisible disability are not immediately identifiable because their disability stems from an intellectual or mental health issue.

[2] The Office for Civil Rights of the Department of Education wrote the following statements in its 2011 Dear Colleague Letter: "the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population. The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities." It is with respect to this reality that SAS implores the MA State Legislator to account for students with disabilities in their sexual misconduct requirements for institutions of higher education.

5) Lines 253-263 of the bill discuss requirements for institutions of higher education's "primary prevention and awareness programming for newly enrolled students …" However, this section does not require that this programming include a materials discussing how students with invisible disabilities may conduct themselves differently than other students. By not requiring that schools include materials relating to students with disabilities, this bill perpetuates disabilities as a taboo subject on college campuses, and thereby inadequately promotes appropriate awareness for these students.