



To: Virginia A. Riegel, School & College Legal Services of California

Fr: Thuy Thi Nguyen, Interim General Counsel 

Date: February 4, 2016

Re: Education Code Section 67380 (Campus Safety Plan)
Legal Opinion 16-01

Background

Education Code, Section 67380¹ imposes obligations on California community colleges to track and compile reports on certain crimes and noncriminal acts of hate violence, as well the preparation of a campus safety plan in the event of an emergency. However, Section 67380 (f), indicates that this section is only applicable to community colleges if the Legislature makes funds available.

Questions presented

1. Has the Legislature made funding available to community colleges for purposes of Section 67380?

No, currently, the Legislature has not made funding available to community colleges for purposes of Section 67380.

2. Do any of the requirements of Section 67380 currently apply to community colleges? If so, on what basis?

The requirements of Section 67380, including its recent amendments, do not currently apply to community colleges because of the lack of legislative funding.

3. Is there recent legislation regarding campus safety that does apply to community colleges?

¹ All statutory references are to California Education Code unless otherwise noted.

There is recent legislation regarding campus safety that does apply to community colleges. Assembly Bill 913 sets forth certain campus safety requirements that apply to community colleges without a funding trigger.

Analysis

1. No, currently, the Legislature has not made funding available to community colleges for purposes of Section 67380.

Section 67380(f) clearly indicates that the requirements in this section only apply to community colleges if the Legislature makes funds available for purposes of this section. Section 67380(f) reads:

Notwithstanding any other provision of this section, this section shall not apply to the California Community Colleges unless and until the Legislature makes funds available to the California Community Colleges for the purposes of this section.

The Legislature has not made any funds available at this time for Section 67380. Even assuming the Legislature provided funding in the past, there are no funds currently set aside to the community colleges for this particular purpose. More importantly, the Legislature has recently amended Section 67380 multiple times, but chose not to remove the funding requirement in subsection (f).

2. The requirements of Section 67380, including its recent amendments, do not currently apply to community colleges because of the lack of legislative funding.

Education Code, Section 67380

Section 67380(a) imposes a duty to governing boards of California community college districts to compile records of occurrences reported to campus police or safety, including: arrests, crimes committed on campus and records of any noncriminal hate violence. Information concerning these crimes should be made available upon requests by any student, employee or prospective applicant unless there is a specific exemption under Government Code, Section 6254(f) and other applicable Penal Codes². In addition, campus officials must report the compiled information to the Legislative Analyst's Office before January 1 of each year and make the report available to the general public on the institution's website.

Section 67380 also requires a written record of noncriminal acts of hate violence and should include a description of the act and characteristics of the victim and offender, if known. Lastly,

² See Education Code, Section 67380(3)(A) for entire list of exemptions.

campus officials should prepare and post a campus safety plan that meets all the requirements set forth in subsection (a)(4).

Recent legislation amended Section 67380 to impose certain duties on institutions awarding Cal Grants and to encourage college campuses to be vigilant in the face of an armed or dangerous assailant. Despite these amendments, the requirement of legislative funding to trigger the application to community colleges under subsection (f) remains. Although amended, the provisions of Section 67380 still do not apply to community colleges until funding is made available.

Assembly Bill 1433

AB 1433 conditions the participation in the Cal Grant Program upon adoption and implementation of the written policies and procedures in Section 67380. In addition, any reports of a violent crime, sexual assault or hate crime shall be reported to the appropriate law enforcement agency without identifying the victim for privacy purposes.

In amending Section 67380 to add the Cal Grant condition, AB 1433 did not remove the requirement in subpart (f) that the Legislature must make funds available for the section to be applicable. Moreover, subsection (f) clearly states that “notwithstanding any other provision of this section” including this new Cal Grant provision added by AB 1433, Section 67380 still does not apply to California community colleges in the absence of specific funding from the Legislature.

Assembly Bill 636

Existing law prevented colleges from disclosing the identity of an assailant in the event an alleged victim of sexual assault, violent crime or hate crime did not give consent to be identified. AB 636 provided an exception by amending Section 67380 and authorizing colleges to release the identity of an alleged assailant if the institution determines that the assailant represents a serious threat to the students or employees of the institution, regardless if the victim consents to the disclosure. Local law enforcement agencies must be immediately informed of the assailant’s identity and the alleged victim must be informed of such disclosure.

In amending Section 67380, the Legislature could have addressed the funding issue directly or remove the requirement in subsection (f) altogether. Assembly Bills 1433 and 636 amended Section 67380, but once again failed to change or remove subsection (f) and the requirement of legislative funding. Thus, the aforementioned changes do not currently apply to community colleges.

Although the recent amendments under Section 63780 do not currently apply to community colleges due to a lack of funds, community colleges must be aware that Section 63780 will be effective once legislative funding is provided for this particular section.

3. There is recent legislation regarding campus safety that does apply to community colleges. Assembly Bill 913 sets forth certain campus safety requirements that apply to community colleges without a funding trigger.

It is important to note that there has been additional legislation that speaks to the core of campus safety and imposes additional requirements that do not require legislative funding. The following amendments to the Education Code do not require any specific funding to be triggered and lays out specific requirements to the community colleges.

AB 913

AB 913 amended Section 67381 and added Section 67381.1 which applies directly to California community colleges.

Section 67381, also known as the Kristin Smart Campus Safety Act of 1998, requires community college districts along with other higher education institutions to adopt rules and policies requiring each of their respective campuses to enter into a written agreement with local law enforcement agencies within the campuses' jurisdiction in regards to certain violent crimes. These written agreements are required to designate the law enforcement agency that will have operational responsibility for investigation of these crimes once they have occurred.

Existing law merely required that these agreements to be entered in and placed for public viewing by July 1, 1999. As a result, the agreements with local law enforcement were not subject to periodic review. Section 67381 was amended to require these written agreements to be reviewed and updated, if necessary, and made available to the public by July 1, 2016 and reviewed every five years thereafter.

In addition, AB 913 added Section 67381.1 to the Education Code which encourages the governing board of each community college district to adopt rules to require each of its respective campuses to update the local law enforcement agreements mentioned above. Under subsection (k), in the event a community college district does adopt such a rule, the district would then be subject to the requirements imposed on other postsecondary institutions as set forth in Section 67381. This section is not conditioned on legislative funding.

Conclusion

The Legislature has not made funding available to community colleges for purposes of Section 67380. As such, Section 67380 currently does not apply to community colleges.

Although Section 67380 does not specifically apply to California community colleges, the colleges and districts are encouraged to be vigilant in the wake of recent attacks and hate crimes around the nation.

TTN/pvk