



S.F. No. 1035 – Modifying provisions related to campus sexual misconduct (as proposed to be modified by the A-3 amendment)

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This bill requires postsecondary institutions to establish a sexual misconduct grievance process that complies with certain criteria. Current law requires postsecondary institutions to provide a party reporting sexual misconduct with an impartial, timely, and thorough investigation. This bill maintains that requirement and additionally requires the creation of a grievance process.

Section 1 defines “retaliation.”

Section 2, paragraph (a) establishes the grievance process requirement and requires postsecondary institutions to conduct an investigation into any report of sexual misconduct, including if the alleged perpetrator is not a student at the institution. **Paragraph (a)** also provides a list of potential remedial actions that an institution may take if it determines sexual misconduct occurred.

Sec. 2, paragraph (c) requires postsecondary institutions to provide due process protections to a responding party who is a student. **Paragraph (c)** also requires a postsecondary institution to (1) provide the responding party with a sufficiently detailed written description of the alleged misconduct, including, if possible, date, time, and location; (2) provide the responding party with a copy of the campus code of conduct; and (3) if the responding party is an employee, the employee grievance process must be made available if it differs from the student grievance process.

Sec. 2, paragraph (d) requires postsecondary institutions to provide academic and residential support, as needed and on a case-by-case basis, to both parties involved in a grievance process, including exam or assignment extensions, excused absences, or changes to the party’s schedule or campus residence.

Sec. 2, paragraph (e) requires the process to provide an opportunity for reporting and responding parties to present and review evidence, including testimony and any investigation report.

Sec. 2, paragraph (f) lists specific requirements for any hearing or other proceeding held in connection with a grievance process, including:

Clause 1 requires an equal opportunity for both parties to:

(i) present evidence and witnesses;

- (ii) retain and rely upon an advisor, including an attorney;
- (iii) inspect, review, and respond to evidence and testimony; and
- (iv) discuss the investigation and proceeding with advisors, parents, or guardians.

Clause 2 requires a postsecondary institution to:

- (i) provide an opportunity for both parties to question the credibility of the other party and witnesses;
- (ii) appoint a decisionmaker or panel of decisionmakers other than the investigator to assess credibility of the parties and witnesses;
- (iii) allow each party's advisor to assist in formulating questions for the other party about evidence or credibility, if a hearing is held;
- (iv) provide an equal opportunity for each party to provide or review testimony without encountering the other party, if a hearing is held;
- (v) proceed with the campus grievance process concurrently with any criminal investigation, if requested by the reporting party, unless law enforcement requests that the grievance process be temporarily delayed; and
- (vi) deliver the outcome of the grievance process simultaneously to both parties.

Clause 3 prohibits a postsecondary institution from allowing the parties to cross-examine each other, and requires any cross-examination, if permitted, to be performed by a party's advisor or an adjudicator of the campus grievance process.

Clause 4 prohibits consideration of evidence regarding a party's character, including character testimony, questions, or evidence about past sexual behavior or sexual preferences, except:

- (i) information related to sexual behavior of the reporting party may be considered if it substantiates that the misconduct occurred, and is deemed relevant;
- (ii) mental health and medical information of the reporting party may be considered if the reporting party signs a waiver and nonrelevant information is redacted;
- (iii) if a responding party is found responsible, the postsecondary institution may consider medical and mental health information to determine sanctions; and
- (iv) questions and evidence regarding the sexual preferences or past sexual behavior of a reporting party may be considered if offered to prove that someone other than the responding party committed the alleged misconduct, or if the past sexual behavior concerns specific incidents involving the responding party, and is offered to prove consent.

Clause 5 requires the postsecondary institution to, if applicable:

- (i) inform parties no later than 24 hours before a decision is rendered, and provide a timeline for the outcome's release;
- (ii) offer community mental health resources and campus resources equitably to both parties; and
- (iii) not deliver the decision at the end of the day, or during a weekend or holiday.

Clause 6 requires postsecondary institutions to apply a preponderance of the evidence standard in any grievance process involving an allegation of sexual misconduct against a student.

Clause 7 requires postsecondary institutions to maintain a policy regarding potential retaliation against a participant in a sexual misconduct grievance process.



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