

2021 Regular Session

HOUSE BILL NO. 409

BY REPRESENTATIVES FREEMAN, AMEDEE, BUTLER, CARPENTER, GARY CARTER, DAVIS, EDMONSTON, FREIBERG, GAROFALO, HILFERTY, JEFFERSON, LANDRY, MOORE, NEWELL, CHARLES OWEN, PHELPS, ST. BLANC, VILLIO, 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. 17:3319.12 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:

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

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

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

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

8 Power-based abuse includes the following:

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

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

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

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

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

28           (d) Stalking, which means engaging in a course of conduct directed at a  
29 specific person that would cause a reasonable person to fear for the person's safety

1 or the safety of others or to suffer substantial emotional distress. For purposes of this  
2 definition:

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

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

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

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

18 (5) "System president" means the president of the system of the respective  
19 institution.

20 §3319.13. Reporting

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

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

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

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

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

5           (a) The identity of the victim.

6           (b) The identity of the perpetrator.

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

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

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

14           (a) The investigation of those reports.

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

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

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

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

25           D. Not later than fourteen days after receiving a report from a chancellor, the  
26           system president shall submit a report to the management board summarizing reports  
27           he has received from each chancellor pursuant to Subsection C of this Section. This  
28           report shall not contain any personally identifiable information as defined in R.S.  
29           17:3914 and shall include:

1           (a) The number of reports received.

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

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

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

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

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

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

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

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

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

21 §3399.14. Coordination with local law enforcement

22           A. ~~Each~~ (1) Not later than January 1, 2022, each institution and law  
23 enforcement and criminal justice agency located within the parish of the campus of  
24 the institution ~~shall enter into a memorandum of, including the campus police~~  
25 department, if any, the local district attorney's office, and any law enforcement  
26 agency with criminal jurisdiction over the campus, shall enter into a written  
27 memorandum of understanding to clearly delineate responsibilities and share  
28 information in accordance with applicable federal and state confidentiality laws,  
29 including but not limited to trends about ~~sexually-oriented criminal offenses~~

1 ~~occurring~~ incidents of power-based abuse committed by or against students of the  
2 institution.

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

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

8 C. Each memorandum of understanding entered into pursuant to this Part  
9 shall include:

10 \* \* \*

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

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

18 \* \* \*

19 §3399.15. Campus security policy

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

25 \* \* \*

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

27 \* \* \*

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

3 \* \* \*

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

7 \* \* \*

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

16 \* \* \*

17 (5) Training. Not later than January 1, ~~2016~~, 2022, the Board of Regents, in  
18 coordination with the attorney general and in consultation with state or local victim  
19 services organizations, shall develop a program for annual training for the members  
20 of the Board of Regents and of each public postsecondary education management  
21 board, each individual who is involved in implementing an institution's student  
22 grievance procedures, including each individual who is responsible for resolving  
23 complaints of reported ~~sex offenses or policy violations~~ incidents of power-based  
24 abuse, and each employee of an institution who has responsibility for conducting an  
25 interview with an alleged victim of a ~~sexually-oriented criminal offense~~ such an  
26 incident. Each institution shall ensure that the individuals and employees receive the  
27 training described in this ~~Subsection~~ Paragraph no later than the beginning of the  
28 ~~2016-2017~~ 2022-2023 academic year.

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

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

14 \* \* \*

15 §3399.17. Public postsecondary education institutions; ~~sexual assault~~ power-based  
16 abuse climate surveys

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

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

28 B. The Board of Regents shall:



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

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

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

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

19           C. Each public postsecondary institution shall:

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

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

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

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**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)]

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HB 409 Engrossed

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 power-based abuse to the campus Title IX Coordinator. Provides exceptions.
- (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.