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“It’s a Big Deal:” The Impact of Texas’ Senate Bill 212 on Student Safety and Wellbeing on Texas’ College Campuses

Zachary W. Taylor, Joshua Childs, Pat Somers

Over the past few years, there has been a heightened sense of security and activism on college campuses regarding sexual harassment and sexual violence. On college campuses across the country, there have been a litany of lawsuits alleging that young adults—many of them college students—have either been assaulted on campus and institutions have not done their due diligence through Title IX reporting, or that students have been falsely accused and punished by a university that has overreached its legal authority.¹

The issue had become so contentious that the U.S. Department of Education under former Secretary Betsy DeVos introduced legislation that would relax reporting requirements on college campuses, which was met with an uproar from educational researchers and practitioners working on college campuses with marginalized and at-risk student populations.² Under President Biden and new Secretary of Education Miguel Cardona, the U.S. Department of Education recently reaffirmed the importance of Title IX, stating that Title IX is “the strongest tool we have to protect every student’s right to equal access to educational opportunities free from sex discrimination.”³ Cardona

¹ See Jack Stripling, *Behold, the Decade of Monsters and Men*, THE CHRON. OF HIGHER EDUC. (Dec. 19, 2019), <https://www.chronicle.com/article/behold-the-decade-of-monsters-and-men/>.

² See Andrew Kreighbaum, *College Groups Blast DeVos Title IX Proposal*, INSIDE HIGHER ED (Jan. 31, 2019), <https://www.insidehighered.com/news/2019/01/31/higher-ed-groups-call-major-changes-devos-title-ix-rule>.

³ *Secretary Cardona: Title IX the ‘Strongest Tool’ in Protecting Educational Opportunities Free from Sex Discrimination*, U.S. DEP’T. OF EDUC. (June 23, 2021), <https://www.ed.gov/news/press-releases/secretary-cardona-title-ix-strongest-tool-protecting-educational-opportunities-free-sex-discrimination>.

also stated that, “I am committed to ensuring Title IX works for all students and provides equal access to opportunities that will enrich students' educational experiences and their futures.”⁴

However, Cardona—officially substituting for former Secretary DeVos—fell short in overturning DeVos' 2020 Title IX regulations. In *Victim Rights Law Center v. Cardona*,⁵ one federal judge in Massachusetts upheld nearly all of DeVos' provisions, except for what is normally referred to as the exclusionary rule.⁶ The exclusionary rule prohibited any statements made by complainants, respondents, or witnesses if the person making the statement was not subjected to cross-examination at a live hearing. This meant that private victim statements to law enforcement or authorities, by rule, were not admissible in Title IX hearings, considerably limiting the investigatory power of any administrative body and placing a considerable burden on victims to face their accusers in a live setting. In all, since their introduction in 2020, a wide majority of former Secretary DeVos' Title IX regulations remain in place without successful legal challenge.

Meanwhile in Texas, the sexual assault and violence scandals at Baylor University, Texas State University, the University of Texas at Austin (UT-Austin), and Texas A&M University have catalyzed the Texas Legislature to take matters into their own hands.⁷ Subsequently, the Texas Legislature introduced Senate Bill 212 (SB 212) in January 2019 and partially enacted the bill on September 1, 2019, with the full bill enacted on January 1, 2020.⁸ The Texas Legislature gave colleges and universities a compliance window from September 1, 2019, to January 1, 2020, during which institutions could train campus stakeholders and spread awareness before penalties are levied.⁹ SB 212 redefines mandatory reporting requirements on college campuses, as “postsecondary employees” will be subject to immediate termination and be charged with a Class A or Class B misdemeanor for a “failure to report or false report.”¹⁰ However, SB 212 was unclear in several ways, primarily in how an “employee of a postsecondary educational institution” is defined, when these employees are and are not

⁴ *Id.*

⁵ *Victim Rights Law Ctr. v. Cardona*, 2021 MA D. 2011104U.

⁶ *Id.*

⁷ Amy Rock, *New Texas Law Requires All College Employees Report Sexual Abuse*, CAMPUS SAFETY, (Jan. 01, 2020), <https://www.campussafetymagazine.com/university/texas-law-sexual-abuse-college-employees/>.

⁸ *See id.*; see S. B. 212, 87th Leg., (Tex. 2019).

⁹ *See* S.B. 212.

¹⁰ *Id.*

acting in their official capacity, and, specifically, what conduct must be reported.¹¹

Given these uncertainties and questions, UT-Austin's Title IX office held a SB 212-focused training session in December 2019, just before the January 1, 2020, enactment of SB 212's penalties. This brief summarizes the institutional Title IX office guidance from that training session, as institutions and their Title IX offices will both process reports and assess failures to report and false reports, per SB 212 guidelines. As a result, this brief will address implications for young adult development, college student and campus safety, graduate student employee responsibilities, and future sexual violence legislation, especially as legal scholars have asserted that SB 212 likely contradicts the U.S. Department of Education's 2020 Title IX regulations.¹²

I. METHODS

The following sections will briefly outline how the research team collected and analyzed data. In addition, the research team will address limitations, given the timeliness of this brief. Finally, the researchers will address their own positionality as employees of the institution being examined.

A. Data Collection and Analysis

UT Austin's "Title IX Basics Workshop" was held on December 11, 2019, in the George I. Sanchez Building on the UT-Austin campus.¹³ The Title IX office advertised the workshop as a non-mandatory, open forum for interested parties, including full-time, part-time, and student employees.¹⁴ The workshop was facilitated by UT-Austin's Title IX Deputy and Education Coordinator. A member of the research team (also an institutional employee) attended the session and recorded the audio of the workshop. The research team then transcribed the

¹¹ *Id.*

¹² See Kathryn J. Holland et al., "A Victim/Survivor Needs Agency;" *Sexual Assault Survivors' Perceptions of University Mandatory Reporting Policies*, 21 *Analyses of Soc. Issues and Pub. Pol'y*, 488 (2020); See Paige Duggins-Clay & Scott Schneider, *Texas Legislature Passes Comprehensive Sexual Assault Legislation*, JDSUPRA, (June 20, 2019), <https://www.jdsupra.com/legalnews/texas-legislature-passes-comprehensive-21214/>.

¹³ See generally, Title IX Basics Workshop Lecture, Univ. of Tex. at Austin (Dec. 11, 2019) (on file with author).

¹⁴ *Id.*

audio from the workshop and uploaded this transcription into a shared online folder for collaboration and analysis.

The Title IX workshop directly addressed SB 212 and provided guidance regarding SB 212's mandatory reporting, definitions of responsible employees, Title IX reporting criteria and requirements, and penalties for failing to report and falsifying a report. As a result, the research team decided to code the Title IX workshop transcription by the "five categories of people considered university affiliates: faculty and staff, students, contractors, applicants, and campus visitors."¹⁵ After a first round of analysis, the research team merged these categories into implications for three main campus constituencies, given the Title IX workshop's primary focus: faculty and staff, students, and other campus stakeholders. Finally, we added one additional category of analysis—implications for future sexual violence legislation—as SB 212 elaborates upon current Title IX definitions of sexual harassment, sexual assault, and stalking, while also contradicting U.S. Department of Education regulation changes proposed by former Secretary DeVos.¹⁶

B. Limitations and Researcher Positionalities

As with any study, this study has several important limitations. First, this brief only articulates institutional Title IX guidance from one institution in Texas. However, SB 212 asserts that Title IX reports and assessments of failures to report and falsified reports will be at the sole discretion of each institution. In this regard, each postsecondary institution in Texas will likely handle Title IX reporting and SB 212 guidelines in slightly nuanced, campus-specific ways. However, given the timeliness of this brief and its immediate implications for campus safety and employee responsibilities, these limitations are relatively minor.

Second, this brief only reports on the guidance provided at a single, optional workshop, and does not report any other form of Title IX training, such as online modules, virtual sessions, or additional face-to-face workshops. As of the data gathering for this study in late 2020, UT-Austin had not scheduled any other Title IX training or information sessions addressing the impact of SB 212 beginning on January 1, 2020. However, since the study's inception, UT-Austin has

¹⁵ *Id.*

¹⁶ See Holland et. al., *supra* note 12; see Duggins-Clay & Schneider, *supra* note 12.

published an entire website dedicated to Title IX and SB 212 training,¹⁷ as well as a comprehensive discussion section focused solely on understanding SB 212.¹⁸ Illustrating the need for clarity of updated Title IX regulations and new SB 212 policies, many other institutions in Texas have echoed UT-Austin's approach to providing educational resources for students, faculty, and staff, including Texas Tech University,¹⁹ the University of Houston,²⁰ Concordia University,²¹ Texas Woman's University²², and many others. However, this brief and its implications for campus safety is the only analysis of information and guidance provided by an institutional Title IX office for addressing SB 212 related issues. As institutional Title IX offices are responsible for assessing and levying penalties that could end one's employment or result in trauma for students, employees, and other campus constituencies, it is critical to understand how these offices are training campus stakeholders to carry out SB 212.

Finally, to address the positionality of the research team, all research team members are employees of the institution, rendering the content of the Title IX training session extremely timely and relevant for our employment and official job responsibilities. Although SB 212 and its effects may not be generalizable across the country at this time, we believe that amplifying the Title IX guidance and legal advice provided by a SB 212-compliant institution (UT-Austin) could be extremely beneficial for other institutions within Texas and beyond, as both state and national Title IX regulations continue to exist in a state of flux,²³ with constant legal challenges on the horizon.²⁴

II. FINDINGS

The following sections address the impact that SB 212 will have

¹⁷ See *Title IX Basics Workshop Lecture*, *supra* note 13.

¹⁸ See *Senate Bill 212 Frequently Asked Question*, TEX., <https://titleix.utexas.edu/faqs> (last visited Mar. 27, 2022).

¹⁹ See *Senate Bill 212*, TEX. TECH, <https://www.depts.ttu.edu/titleix/employee-resources/SB212.php> (last visited Mar. 27, 2022).

²⁰ See *SB 212*, UNIV. OF HOUS., <https://www.uh.edu/equal-opportunity/title-ix-sexual-misconduct/faqs/> (last visited Mar. 27, 2022).

²¹ See *SB 212*, CONCORDIA UNIV. TEX., <https://www.concordia.edu/resources/SB-212.html> (last visited Mar. 27, 2022).

²² See *Sexual Violence Education/Title IX*, TEX. WOMEN'S UNIV., <https://twu.edu/civility/sexual-violence-education-title-ix/> (last visited Mar. 27, 2022).

²³ See Kreighbaum, *supra* note 2, see Duggins-Clay & Schneider, *supra* note 12.

²⁴ See Holland et. al., *supra* note 12.

on the following three campus constituencies: faculty and staff, students, and other campus stakeholders. In addition, we will address implications for future sexual violence legislation. We will close this section with a brief section focused on directions for future research.

A. Implications for Faculty and Staff

First, SB 212 only states that postsecondary employees “shall promptly report the incident” to the institution’s Title IX coordinator or deputy Title IX coordinator.²⁵ During the Title IX workshop, there was no definition or elaboration on what “promptly” means, and the workshop facilitator asserted that the Title IX office will “strongly encourage people to make their reports over our online form” as “we [the Title IX office] do not have the capacity to take a lot of reports over the phone, in person, or even in email.”²⁶ As a result, an employee without an Internet connection may struggle to “promptly” report an incident, even though their employment may depend on the report. In addition, SB 212 and the Title IX workshop made no mention of an appeals process for any party accused of an untimely report. Since the adoption of SB 212, the Texas Higher Education Coordinating Board has not addressed definitions of “promptly” or due process for the accused.

The Title IX workshop also attempted to dispel confusion over what is reportable and where, as SB 212 includes a vague definition of “stalking,”²⁷ and no definition of “dating violence,”²⁸ even though dating violence is listed underneath SB 212’s reporting required for certain incidents. Moreover, SB 212 requires that employees make reports when they “receive information” without any guidance as to where that information is received and to where the information pertains.²⁹ In these regards, the Title IX workshop facilitator reasoned that “hearsay is reportable,” and if an employee has “some indication that it was an incident of a sexual or romantic nature” that employee must make a prompt report.³⁰ As a result, terms like “hearsay” and an employee having “some indication” of an incident must trigger a

²⁵ S.B. 212.

²⁶ See Title IX Basics Workshop Lecture., *supra* note 13.

²⁷ S.B. 212.

²⁸ *Id.*

²⁹ For example, specific location of campus, an online class, a location across town or in another country. *Id.*

³⁰ See Title IX Basics Workshop Lecture s, *supra* note 13.

prompt Title IX report, possibly rendering it difficult for employees to discern what is reportable and what is not.

Additionally, all employees must report incidents separately, even if one employee has already made a report of which others are aware.³¹ Here, if five employees are aware of a single incident involving one student, all five employees must make separate reports, resulting in “lots of duplicates, basically.” Moreover, the employee can “receive information” from a student or fellow employee at any time and any place, and that information can be “decades and decades old.”³² This means that an employee must make a prompt report no matter when or where they received the information and no matter how far in the past an incident occurred. Since the adoption of SB 212, the Texas Higher Education Coordinating Board has not addressed problems of duplicitous and potentially conflicting reports, as well as any statute of limitations on reporting.

This discussion of reporting guidelines segued into definitions of an employee’s “official capacity.” The Title IX workshop facilitator asserted that postsecondary employees are in their “official capacity regardless of time or location” if the employee is “otherwise representing the university.”³³ This meant that employees are in their official capacity when teaching online classes, attending conferences as an institutional representative, or studying abroad. Here, the impacts of SB 212 are wide ranging, as employees must promptly report incidents to their Title IX office whenever they “receive information” rendering it difficult to discern when an employee is a private citizen, or a postsecondary employee as defined by SB 212.³⁴

B. Implications for Students and Student Employees

Unlike full and part-time faculty and staff, SB 212 and the Title IX workshop facilitator made clear that “TAs, GAs, and any student employee in a role that supervises or advises other students” are required to promptly report but are “exempt from SB 212 penalties.”³⁵ Moreover, student employees do not report Title IX incidents to their supervisors but must make prompt reports to the Title IX office using

³¹ See *id.*

³² See *id.*

³³ See *id.*

³⁴ See *id.*

³⁵ See *id.*

the online form. Akin to reporting hurdles facing faculty and staff, student employees may also struggle to make prompt reports if they temporarily lack an Internet connection or access to a smartphone or computer.

Regarding SB 212's reporting threshold and specifically "dating violence,"³⁶ the Title IX facilitator reasoned that employees must report "relationship problems," even if the employee lacks details of the situation.³⁷ In addition, employee reporting is not confidential, meaning that who makes Title IX reports is public record. Therefore, a student employee may need to make a report regarding a fellow student, with the consequence that the student will have access to the identity of the student employee who made the report. This situation may be problematic or difficult for student employees working in areas of frequent and/or intimate student-facing campus employment, as student employees may simultaneously struggle to understand what is reportable and whether they want a fellow student to know they made a Title IX report.

Since the implementation of SB 212, institutions have reported SB 212-related inquiries, responses, and (if necessary) outcomes on their institutional websites.³⁸ These reports are known as CEO reports, as the institution must compile the report yearly and must be published publicly by the institution's CEO (often the president) to maintain compliance. These reports contain the number of reports received, number of investigations conducted, investigations that resulted in disciplinary action, and number of reports of an employee failing to report with subsequent disciplinary action.³⁹ For instance, The University of Texas-El Paso's 2021 CEO report included all of these statistics but did not include any names of students, faculty, or staff; or any identifiable information for any individual stakeholder, protecting the identities of all individuals involved.⁴⁰

Moreover, the Title IX workshop facilitator emphasized that under SB 212, with any student complainant, the "onus is on the complainant to decide whether or not they actually want to pursue legal

³⁶ S.B. 212.

³⁷ For example, names, locations, dates, times. See Title IX Basics Workshop Lecture, *supra* note 13.

³⁸ Frequently Asked Questions- THECB Title IX Training, HIGHER ED (Apr. 13, 2020), <http://reportcenter.highered.texas.gov/Training-materials/FAQ-title-ix-mandatory-reporting/>.

³⁹ See *id.*

⁴⁰ Letter from U.T. System Board of Regents, The Univ. of Texas at El Paso, to Dr. Heather Wilson, UTEP President and CEO, (Oct. 4, 2021).

recourse,” and the institution has no legal obligation to engage with the legal system.⁴¹ Given an anticipated spike in Title IX reports in the wake of SB 212, the Title IX workshop facilitator articulated that students are eligible for both academic and personal accommodations if they are the victim of gender-based discrimination under Title IX and/or sexual violence under SB 212.

At UT-Austin, the Title IX workshop facilitator outlined several categories of resources: “confidential,” “non confidential,” “private,” and “community.”⁴² Under SB 212, sexual harassment must be “severe, persistent, or pervasive” enough to “interfere with a student’s ability to participate in or benefit from educational programs or activities.”⁴³ However, the Title IX workshop facilitator strongly urged all employees to make students aware of these accommodations, although they were not fully available online or in an accessible campus location at the time of the session. However, as previously mentioned, UT-Austin has since published a comprehensive Title IX website, complete with accommodations information for students, faculty, and staff.⁴⁴

C. Implications for Other Campus Constituencies

Although information for other campus constituencies was sparse during the Title IX workshop, the facilitator made it clear that “pretty much anyone with a reason to be on campus” falls under the protection of Title IX, but only employees and students are subject to SB 212.⁴⁵ When asked about “applicants” to the institution and whether “applicants” are students, the Title IX workshop facilitator reasoned that only when students enroll in classes and pay their tuition bill are they considered students.⁴⁶ As a result, applicants fall under the purview of Title IX but not SB 212. The same discussion was had over campus visitors and SB 212 reporting requirements, as UT-Austin enrolls over 50,000 total students and hosts thousands of campus visitors for a variety of reasons every year. Here, the Title IX workshop facilitator explained that if an employee receives reportable information, the employee should make the report, regardless of

⁴¹ See Title IX Basics Workshop Lecture, *supra* note 13.

⁴² *Id.*

⁴³ S.B 212.

⁴⁴ See *id.*

⁴⁵ See Frequently Asked Questions– THECB Title IX Training, *supra* note 38.

⁴⁶ *Id.*

whether the subject of the report is an employee, student, student employee, or “anyone with a reason to be on campus.”⁴⁷ As previously mentioned, institutional CEO reports do not include which type of stakeholder is the complainant and defendant, rendering these reports difficult to discern when attempting to provide resources to victims.⁴⁸

D. Implications for Future Sexual Violence Legislation

Complicating matters, SB 212 conflicts with 2020 Title IX regulations proposed by former Secretary DeVos. DeVos asserted that Title IX offices may not need to investigate violations that occur off-campus or violations that did not occur within an institution’s program or activity.⁴⁹ Inversely, SB 212 requires employees to report all Title IX violations no matter where or when they occur, including off-campus settings and potentially years or decades in the past. Given the information from the Title IX workshop, both young adults (i.e., students) and staff members may struggle to understand what exactly is reportable and how to draw the line between their private lives and official capacities as mandatory reporters under both SB 212 and Title IX. To date, the Texas Legislature nor the Texas Higher Education Coordinating Board has clarified this contradiction.

Moreover, SB 212 includes vague or absent definitions of “stalking” and “dating violence,” even though failure to make a prompt report could cost an employee their job and livelihood.⁵⁰ Here, future sexual violence legislation should learn from the impacts and outcomes of SB 212, paying specific attention to how key terms are defined and how institutional Title IX offices mandate reporting. For instance, SB 212 requires that a postsecondary educational institution terminate one’s employment if the employee “fails to promptly make the report without good cause, as determined by the institution.”⁵¹ As a result, both institutions and state-level lawmakers should review Clery Act data⁵² and any SB 212-related terminations to understand

⁴⁷ Id.

⁴⁸ See id.

⁴⁹ See Kreighbaum, *supra* note 2.

⁵⁰ See S.B. 212.

⁵¹ Id.

⁵² See The Jeanna Clery Act, CLERY CTR. <https://clerycenter.org/policy/the-clery-act/> (last visited Mar. 27, 2022).

how institutional Title IX offices handle SB 212 reporting requirements and how to best protect students and campus employees from sexual violence.

III. DIRECTIONS FOR FUTURE RESEARCH

Of SB 212, the Title IX workshop facilitator remarked that, “[t]his is a new bill...and it’s a big deal.”⁵³ Given the persistent tension surrounding former Secretary DeVos’ 2020 Title IX updates in the form of legal challenges,⁵⁴ it is important to understand that professionals in Texas may be facing a doubly confusing situation surrounding Title IX and SB 212. From here, both educational researchers and lawmakers must make a big deal of SB 212 and learn from what SB 212 can teach the educational community about mandatory reporting, Title IX guidelines, and emerging implications for campus safety. Future research could examine Clery Act reports and SB 212-mandated CEO reports issued by Texas’ postsecondary institutions to understand what types of incidents are reported, how promptly the reports were made, and how employees are and are not punished for failing to make reports or falsifying reports. If timeliness and stakeholder information is omitted from these reports, researchers could make public records requests to learn more about how reports are made and, on whose behalf, and how the research community can better support victims of sexual harassment or assault.

Additionally, researchers must continue to engage with students on an everyday basis, to both learn from lived experiences of sexual violence on campus and off and to educate these students on the resources available on campus and off. Although the onus of much legal weight is on a student’s shoulders during an incident of sexual trauma, institutional employees must be aware of institutional resources and accommodations meant to support these young adults—and fellow employees—during their time of grief and need. In no uncertain terms, the ruling in *Victim Rights Law Center v. Cardona*, although not comprehensive, did provide a victory for victims: cross-examination cannot be made mandatory and statements to private parties are admissible during adjudication. However, much more can be done to advocate for victims and clarify both Title IX and SB 212 processes and procedures for all stakeholders involved.

⁵³ See Title IX Basics Workshop Lecture, *supra* note 13.

⁵⁴ See *Victim Rights Law Ctr. v. Cardona*, 2021 MA D. 2011104U.

Ultimately, SB 212 may be a “big deal” in Texas, and such legislation may provoke bigger deals elsewhere. Moreover, legal challenges to DeVos-era Title IX regulations will likely continue, and such advocacy should be commended if it works to protect victims, clarify processes, and adjudicate crimes swiftly and justly. Yet, no new legislation, campus policy or advocacy should supersede student safety and the fostering of a warm and inviting campus climate, a potential future where Title IX and SB 212 reporting are no longer necessary.