To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín and Councilmembers Sophie Hahn, Cheryl Davila, and Ben Bartlett

Subject: Support SB 169: Strengthening Enforcement of Sex Equity in Schools Receiving State Financial Assistance

RECOMMENDATION
That the Berkeley City Council send a letter of support for SB 169 to Assemblymember Tony Thurmond, State Senator Nancy Skinner, and Governor Jerry Brown.

BACKGROUND
Title IX of the Education Amendments Act is a federal civil rights law that bans sex discrimination in all educational institutions receiving federal funds. Currently, this statute and implementation guidance requires schools to respond immediately to sexual violence and address the hostile learning environment it creates. Among other mandates, institutions must distribute notices of nondiscrimination, fund a sex equity coordinator position, inform students and families of grievance procedures, ensure equity in grievance proceedings, and protect complainants from retaliation. This landmark legislation is fundamental to the promotion of equity in education, given that sexual harassment and assault overwhelmingly impacts women, particularly women of color, and LGBTQ+ people.

However, the federal administrators responsible for implementing Title IX have demonstrated a lack of commitment to enforcing the act’s requirements. Secretary of Education Betsy DeVos has already withdrawn certain Title IX guidance, and has failed to support the 2011 Dear Colleague Letter (DCL) from the Department of Education that outlined schools’ responsibilities to address campus sexual assault and proactively prevent sexual harm.

Given that federal agencies cannot be relied upon to combat sex discrimination, it is essential that new measures be taken to protect students’ rights. SB 169, introduced by Senators Jackson and De León, will codify Title IX and supported sex equity policies on the state level so that enforcement can continue in California regardless of federal priorities. The bill requires educational institutions receiving state funding to follow Title IX and the DCL guidance by including sexual violence in the definition of sexual harassment, adopting and publicizing fair and effective grievance procedures, creating or maintaining at least one sex equity coordinator position, and otherwise encouraging accountability to existing federal regulations. Students need the continued enforcement
of their civil rights in order to access the equal educational opportunities promised to them by the State of California.

On June 28, 2017, SB 169 passed the Senate Committee on Judiciary Hearing and now heads to the Committee on Higher Education.

FINANCIAL IMPLICATIONS
None.

ENVIRONMENTAL SUSTAINABILITY
No adverse effects to the environment.

CONTACT PERSON
Mayor Jesse Arreguín  510-981-7100

Attachments:
1: Letter of Support
2: Text of SB 169
The Honorable Tony Thurmond  
California State Assembly  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0015  

Dear Assemblymember Thurmond,  

The Berkeley City Council requests your support of Senate Bill 169 introduced by Senators Jackson and De León. SB 169 codifies the federal sex equity regulations of Title IX at the state level in the absence of adequate federal enforcement. We are proponents of state legislation that proactively combats discrimination and promotes equal and unimpeded educational opportunities for all students per the mission of the California Department of Education.  

Given that the federal government has failed to act on Title IX regulations, we must move forward with a state mandate to move forward on these much needed regulations. As home to the University of California Berkeley (which in the past has come under criticism for its handling of sexual harassment cases), our City takes an especially strong stance on this issue.  

Respectfully  
The Berkeley City Council  

CC:  
The Honorable Nancy Skinner, State Senator  
The Honorable Jerry Brown, Governor
An act to amend Sections 212.5 and 231.5 of, and to add Sections 212.7, 212.81, and 66281.8 to, the Education Code, relating to education.

SB 169, as amended, Jackson. Education: sex equity.

Existing federal law, known as Title IX, prohibits a person, on the basis of sex, from being excluded from participation in, being denied the benefits of, or being subject to discrimination, which includes sexual harassment, under any education program or activity receiving federal financial assistance. Existing federal regulations issued by the United States Department of Education’s Office of Civil Rights on April 4, 2011, explain that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence. A portion of the Donahoe Higher Education Act, known as the Equity in Higher Education Act, and the Sex Equity in Education Act establish, among other things, that it is the policy of the State of California that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. Specified provisions of law relating to educational equity in schools, including the Equity in Education Act...
and the Equity in Higher Education Act, define, in the same way, “sexual harassment” for the purposes of their respective provisions.

Based on the federal regulations, this bill would define “sexual harassment” to include “sexual violence,” as defined, for the purposes of those state laws. The bill would, among other things, require the appropriate governing board or body of each elementary and secondary school that receives state financial assistance, and the appropriate governing board or body of each higher education institution that receives state funds for student financial assistance, to, as a condition of receiving that financial assistance, comply with certain requirements, based on the federal regulations, including adopting and publishing on its Internet Web site grievance procedures for prompt and equitable resolution of student sexual harassment complaints at the school and designating at least one employee of the school to act as a sex equity coordinator. The bill would require each local educational agency and the appropriate governing board or body of each higher education institution that receives state funds for student financial assistance to designate at least one employee to act as a sex equity coordinator. The bill would require, on or before July 1, 2018, the State Department of Education to adopt regulations to, among other things, ensure that implementation of the applicable provisions of the bill at each elementary and secondary school that receives state financial assistance is, to the greatest extent possible, consistent with the federal regulations. The bill would require, on or before July 1, 2018, the appropriate governing board or body of each higher education institution that receives state funds for student financial assistance to, as a condition of receiving that financial assistance, adopt regulations to, among other things, ensure that implementation of the applicable provisions of the bill at the institution is, to the greatest extent possible, consistent with the federal regulations. By imposing new duties on school districts, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Education has long been recognized as the great equalizer in America.

(b) The United States Department of Education and its Office for Civil Rights believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with the right of students to receive an education free from discrimination and, in the case of sexual violence, is a crime.

(c) When a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the school’s program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. A single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe.

(d) Every student has a right to be protected from sexual harassment, including sexual violence, in a school’s educational programs and activities, including all of the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in the school’s facilities, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere, both on and off campus.

(e) Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.), and its implementing regulations, Part 106 of Chapter 1 of Subtitle B of Title 34 of the Code of Federal Regulations, prohibit discrimination on the basis of sex in educational programs or activities operated by recipients of federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX.

(f) On April 4, 2011, in order to assist recipient schools of federal financial assistance, which include school districts, colleges, and universities in meeting Title IX obligations, the United States
Department of Education’s Office of Civil Rights issued federal regulations explaining that the requirements of Title IX pertaining to sexual harassment also cover sexual violence. These federal regulations lay out the specific Title IX requirements applicable to sexual violence. Sexual violence, as that term is used in the regulations, refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape.

(g) It is critical for California to implement the federal regulations issued by the United States Department of Education’s Office of Civil Rights on April 4, 2011, to ensure that protections are in place to properly prevent and resolve instances of sexual harassment, including sexual violence, at California’s elementary or secondary schools and higher education institutions.

(h) It is the intent of the Legislature, based on the federal regulations described in subdivision (f), to define “sexual harassment” to include “sexual violence,” as defined in Section 212.7 of the Education Code, for the purposes of Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code and the Equity in Higher Education Act established in Chapter 4.5 (commencing with Section 66250) of Part 40 of Division 5 of Title 3 of the Education Code.

(i) It is the intent of the Legislature that each elementary and secondary school that receives state financial assistance, and each higher education institution that receives state funds for student financial assistance, and their respective governing boards or bodies, comply with the requirements of this section as a condition of receiving that financial assistance.

SEC. 2. Section 212.5 of the Education Code is amended to read:

212.5. (a) “Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:
Submission to the conduct is explicitly or implicitly made a term or a condition of an individual’s employment, academic status, or progress.

Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

The conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

“Sexual harassment” also means sexual violence.

SEC. 3. Section 212.7 is added to the Education Code, to read:

212.7. “Sexual violence” means all of the following:

(a) Physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.

(b) Rape as defined in Chapter 1 (commencing with Section 261) of Title 9 of Part 1 of the Penal Code.

(c) Sexual assault or sexual battery as defined in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code.

(d) Sexual coercion.

SEC. 4. Section 212.81 is added to the Education Code, to read:

212.81. (a) For the purposes of this section, a “school” is any elementary or secondary school that receives state financial assistance.

(b) When an appropriate state enforcement agency finds that a school has not taken prompt and effective steps to respond to sexual harassment pursuant to the requirements of this section, the state enforcement agency shall seek appropriate remedies for both the complainant and the broader pupil population. When conducting enforcement activities, the state enforcement agency shall seek to obtain voluntary compliance from the school. When a school does not come into compliance voluntarily, the state enforcement agency
may initiate proceedings with the department to withdraw state
financial assistance from the school or refer the case to the
Department of Justice.
(c) (1) The appropriate governing board or body of each school
local educational agency shall implement all of the following
requirements at the school: do both of the following:
(1)
(A) Disseminate a notice of nondiscrimination to each school
employee, including any individual employed by contract to
perform any service at the school, local educational agency
employee, each pupil, and the parents or legal guardians of each
pupil.
(2)
(B) Designate at least one school local educational agency
employee to act as a sex equity coordinator to coordinate its efforts
to comply with and carry out its responsibilities under this section.
The sex equity coordinator may be the same individual as the
school’s federal Title IX coordinator, if one exists.
(2) For the purposes of this section, “local educational agency”
means a school district, county office of education, or charter
school that receives state financial assistance.
(3) Adopt—The appropriate governing board or body of each
school shall adopt and publish on its Internet Web site grievance
procedures providing for prompt and equitable resolution of sexual
harassment complaints filed by a pupil, or by his or her parents or
legal guardians, against an employee, another pupil, or a third
party. The grievance procedures shall contain all of the following
elements:
(A) Provide notice to each individual described in paragraph
school employee, including any individual employed by contract
to perform any service at the school, of the grievance procedures,
including where complaints may be filed.
(B) Apply the grievance procedures to each complaint alleging
sexual harassment perpetrated by a school employee described in
paragraph (1), subparagraph (A), another pupil, or a third party.
(C) Ensure adequate, reliable, and impartial investigation of
complaints, including the opportunity for both parties to present
witnesses and other evidence.
(D) Designate reasonably prompt timeframes for the major
stages of the complaint process.
(E) Provide notice to parties of the outcome of the complaint.

(F) Provide an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

(G) Specify the timeframes for all of the major stages of the grievance procedures, including, but not necessarily limited to, the process for extending timelines. The grievance procedures shall provide both parties of a complaint periodic status updates and specify the timeframe within which all of the following will occur:

(i) The school conducts a full investigation of the complaint.

(ii) Both parties receive a response regarding the outcome of the complaint.

(iii) The parties may file an appeal.

(H) Publish the grievance procedures to provide for the prompt and equitable resolution of sexual harassment complaints.

(d) This section does not require a school to provide separate grievance procedures for pupil sexual harassment complaints. The school may use pupil disciplinary procedures or other separate procedures to resolve sexual harassment complaints. Any procedures used to adjudicate complaints of sexual harassment, including disciplinary procedures, shall afford a complainant a prompt and equitable resolution. If the school relies on disciplinary procedures for compliance with the requirements of this section, the appropriate sex equity coordinator designated pursuant to paragraph (2) subparagraph (B) of paragraph (1) of subdivision (c) shall review the school’s disciplinary procedures to ensure that the procedures comply with the requirements of this section.

(e) The appropriate governing board or bodies for each school may examine the policies and procedures on sexual harassment in place at the school to determine whether those policies comply with the requirements of this section and implement changes as necessary to ensure compliance with the requirements of this section.

(f) A school shall ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the protections for the complainant.

(g) Both parties shall be notified, in writing, about the outcome of both the complaint and any appeal. A school may provide the written determination of the final outcome to the complainant and
the alleged perpetrator concurrently. This section does not require
the school to notify the alleged perpetrator of the outcome before
it notifies the complainant.
(h) A school shall take proactive measures to prevent sexual
harassment and correct its discriminatory effects on the
complainant and others.
  (i) If a school determines that sexual harassment has created a
hostile environment, it shall take immediate action to eliminate
the hostile environment, prevent its recurrence, and address its
effects. In addition to counseling or taking disciplinary action
against the harasser, effective corrective action may require
remedies for the complainant and changes to the school’s overall
services or policies.
( j) A school shall take steps to protect the complainant as
necessary, including taking interim steps before the final outcome
of the investigation. The school shall undertake these steps
promptly once it has notice of a sexual harassment allegation. The
school shall notify the complainant of his or her options to avoid
contact with the alleged perpetrator and allow pupils to change
academic or living situations, as appropriate.
(k) On or before July 1, 2018, the department shall adopt
regulations to ensure that implementation of this section at each
school is, to the greatest extent possible, consistent with the federal
regulations issued by the United States Department of Education’s
Office of Civil Rights on April 4, 2011. The department’s
regulations shall include, to the greatest extent possible, all
provisions of these federal regulations not covered in this section
(l) The requirements of this section shall be implemented at
each school by no later than January 1, 2019, or by another date
determined by the department.
(m) It is the intent of the Legislature that the requirements of
this section be interpreted, to the greatest extent possible, consistent
with the federal regulations issued by the United States Department
of Education’s Office of Civil Rights on April 4, 2011.
SEC. 5. Section 231.5 of the Education Code is amended to
read:
231.5. (a) It is the policy of the State of California, pursuant
to Section 200, that all persons, regardless of their sex, should
enjoy freedom from discrimination of any kind in the educational
institutions of the state. The purpose of this section is to provide
(b) Each educational institution in the State of California shall have a written policy on sexual harassment. The policy may include examples of the types of conduct prohibited. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The educational institution’s written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the educational institution’s written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. “Prominent location” means that location, or those locations, in the main administrative building or other area where notices regarding the institution’s rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the educational institution’s written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the educational institution’s written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the educational institution’s written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

SEC. 6. Section 66281.8 is added to the Education Code, to read:

66281.8. (a) For the purposes of this section, “school” means a campus of the University of California, the California State University, or the California Community Colleges, a private postsecondary educational institution, or an independent institution
of higher education, that receives state funds for student financial
assistance.
(b) The governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards or bodies of each independent institution of higher education and each private postsecondary educational institution, in addition to the provisions set forth in Section 67386, shall comply with the requirements of this section to prevent and address sexual harassment, involving a student, both on and off campus.
(c) The appropriate governing board or body of each school shall implement all of the following requirements at the school:
(1) Disseminate a notice of nondiscrimination to each school employee, including any individual employed by contract to perform any service at the school, each student, and the parents or legal guardians of each student if he or she is under 18 years of age.
(2) Designate at least one school employee to act as a sex equity coordinator to coordinate its efforts to comply with and carry out its responsibilities under this section. The sex equity coordinator may be the same individual as the school’s federal Title IX coordinator, if one exists.
(3) Adopt and publish on its Internet Web site grievance procedures providing for prompt and equitable resolution of student sexual harassment complaints filed by a student against a school employee, another student, or a third party. The grievance procedures shall contain all of the following elements:
(A) Provide notice to each individual described in paragraph (1) of the grievance procedures, including where complaints may be filed.
(B) Apply the grievance procedures to each complaint alleging sexual harassment perpetrated by a school employee described in paragraph (1), another student, or a third party.
(C) Ensure adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence.
(D) Designate reasonably prompt timeframes for the major stages of the complaint process.
(E) Provide notice to parties of the outcome of the complaint.
(F) Provide an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

(G) Specify the timeframes for all of the major stages of the grievance procedures, including, but not necessarily limited to, the process for extending timelines. The grievance procedures shall provide both parties of a complaint periodic status updates and specify the timeframe within which all of the following will occur:

(i) The school conducts a full investigation of the complaint.

(ii) Both parties receive a response regarding the outcome of the complaint.

(iii) The parties may file an appeal.

(H) Publish the grievance procedures to provide for the prompt and equitable resolution of sex discrimination complaints.

(d) This section does not require a school to provide separate grievance procedures for student sexual harassment complaints. The school may use student disciplinary procedures or other separate procedures to resolve sexual harassment complaints. Any procedures used to adjudicate complaints of sexual harassment, including disciplinary procedures, shall afford a complainant a prompt and equitable resolution. If the school relies on disciplinary procedures for compliance with the requirements of this section, the sex equity coordinator designated pursuant to paragraph (2) of subdivision (c) shall review the school’s disciplinary procedures to ensure that the procedures comply with the requirements of this section.

(e) The appropriate governing board or bodies of each school may examine the policies and procedures on sexual harassment and sexual violence in place at the school to determine whether those policies comply with the requirements of this section and implement changes as necessary to ensure compliance with the requirements of this section.

(f) A school shall ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the protections for the complainant.

(g) Both parties shall be notified, in writing, about the outcome of both the complaint and any appeal. A school may provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. This section does not require
the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

(h) A school shall take proactive measures to prevent sexual harassment and violence and correct its discriminatory effects on the complainant and others.

(i) If a school determines that sexual harassment has created a hostile environment, it shall take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant and changes to the school’s overall services or policies.

(j) A school shall take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school shall undertake these steps promptly once it has notice of a sexual harassment allegation. The school shall notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations, as appropriate.

(k) When an appropriate state enforcement agency finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, the state enforcement agency should seek appropriate remedies for both the complainant and the broader student population. When conducting enforcement activities, the state enforcement agency should seek to obtain voluntary compliance from institutions. When an institution does not come into compliance voluntarily, the state enforcement agency may initiate proceedings for the Student Aid Commission to withdraw state funding for student financial assistance from the institution.

(l) On or before July 1, 2018, the appropriate governing board or body of each school shall adopt regulations to ensure that implementation of this section at the school is, to the greatest extent possible, consistent with the federal regulations issued by the United States Department of Education’s Office of Civil Rights on April 4, 2011. The regulations adopted by the appropriate governing board or body of the school shall include, to the greatest extent possible, all provisions of these federal regulations that are not covered in this section.
(m) The requirements of this section shall be implemented at each school by no later than January 1, 2019, or by another date determined by the Student Aid Commission.

(n) It is the intent of the Legislature that the requirements of this section be interpreted, to the greatest extent possible, consistent with the federal regulations issued by the United States Department of Education’s Office of Civil Rights on April 4, 2011.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

REVISIONS:

Heading—Line 3.