

## California SB 493 Requirements Compared with Title IX and VAWA § 304 Requirements

✓ = Yes

X = No

+ = Additive

≠ = Conflict

? = Unclear/More Info Needed

N/A = Not Applicable

SB 493 Requirement	TIX Overlap	TIX Conflict or Additive	VAWA Overlap	VAWA Conflict or Additive	Comments
<p>This bill would require, no later than January 1, 2022, except as specified, a postsecondary institution that receives state financial assistance to comply with requirements relating to the protection of <b>students</b> from and providing students with procedural protections relating to complaints of, sexual harassment. (emphasis added)</p>	✓	X	✓	X	<p>Title IX applies to students and employees, and VAWA does not comment on institutional affiliation. SB 493 specifically applies to incidents involving students.</p>
<p><b>66262.5</b> (a)(1) "Sexual harassment" has the same meaning as defined in Section 212.5 and includes <a href="#">sexual battery</a>, sexual violence, and <a href="#">sexual exploitation</a>.</p> <p><b>California Education Code Section 212.5</b>  <b>Sexual Harassment</b>, defined as:</p> <ol style="list-style-type: none"> <li>a. <a href="#">unwelcome sexual advances, or</a></li> <li>b. <a href="#">requests for sexual favors, or</a></li> <li>c. <a href="#">other verbal, visual, or physical conduct of a sexual nature,</a></li> <li>d. <a href="#">made by someone from in the work or educational setting,</a></li> <li>e. <a href="#">under any of the following conditions:</a> <ul style="list-style-type: none"> <li>o <a href="#">submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, or</a></li> <li>o <a href="#">submission to, or reject of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or</a></li> <li>o <a href="#">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, or</a></li> <li>o <a href="#">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.</a></li> </ul> </li> </ol>	X	+	✓	X	<p>Some of the SB 493-covered offenses also overlap with VAWA offenses, but not all, and the definitions vary slightly. The California Education Code definition of sexual harassment adds to the Title IX definition, and essentially expands what is protected in CA.</p>

SB 493 Requirement	TIX Overlap	TIX Conflict or Additive	VAWA Overlap	VAWA Conflict or Additive	Comments
<b>66262.5</b> (a)(2) Sexual harassment of students is a form of sex discrimination prohibited by Section 66270.	✓	X	X	X	N/A
<b>66262.5</b> (b)(1) “Sexual violence” means physical sexual acts perpetrated against a person without <a href="#">the person’s affirmative consent</a> , as defined in paragraph (1) of subdivision (a) of Section 67386. Physical sexual acts include both of the following:	✓	+	✓	X	SB 493 specifically uses the term “affirmative consent” which was added to the California Education Code in 2014 as a result of SB 697, whereas the federal regulations permit institutions to use their own definition of consent.
<b>66262.5</b> (b)(1)(A) Rape, defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim.	✓	X	✓	X	N/A
<b>66262.5</b> (b)(1)(B)(2) “Sexual battery” means the <a href="#">intentional touching of another person’s intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person’s own intimate part to intentionally touch another person’s body without consent.</a>	✓	+	✓	+	This offense is covered by both SB 493 and Title IX, but the SB 493 language is broader and uses different terminology. The intent requirement is also different in the SB 493 formulation.

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<p><b>66262.5 (b)(1)(B)(3)</b> “Sexual exploitation” means a person taking sexual advantage of another person for the benefit of anyone other than that person without that person’s consent, including, but not limited to, any of the following acts:</p> <p>(A) The prostituting of another person.</p> <p>(B) The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion.</p> <p>(C) The recording of images, including video or photograph, or audio of another person’s sexual activity or intimate parts, without that person’s consent.</p> <p>(D) The distribution of images, including video or photograph, or audio of another person’s sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure.</p> <p>(E) The viewing of another person’s sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person’s consent, for the purpose of arousing or gratifying sexual desire.</p>	<b>X</b>	<b>+</b>	<b>X</b>	<b>X</b>	<b>N/A</b>
<p><b>66281.8 (a)(1)</b> “Postsecondary institution” 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 financial assistance.</p>	<b>X</b>	<b>N/A</b>	<b>X</b>	<b>N/A</b>	<b>N/A</b>
<p><b>66281.8 (a)(2)(A)</b> “Responsible employee” means an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority.</p>	<b>✓</b>	<b>+</b>	<b>N/A</b>	<b>N/A</b>	The SB 493 approach combines the mandated reporting and “Official with Authority” concepts from the Title IX regulations, so it both overlaps with Title IX and adds to it.

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<p><b>66281.8 (a)(2)(B)</b> “Responsible employee” includes, but is not limited to, those individuals with any of the following positions or substantially similar positions or job duties, regardless of the specific title the institution may attach to the position:</p> <ul style="list-style-type: none"> <li>(i) Title IX coordinator or other coordinator designated to comply with and carry out the institution’s responsibilities under this section.</li> <li>(ii) Residential advisors, while performing the duties of employment by the institution.</li> <li>(iii) Housing directors, coordinators, or deans.</li> <li>(iv) Student life directors, coordinators, or deans.</li> <li>(v) Athletic directors, coordinators, or deans.</li> <li>(vi) Coaches of any student athletic or academic team or activity.</li> <li>(vii) Faculty and associate faculty, teachers, instructors, or lecturers.</li> <li>(viii) Graduate student instructors, while performing the duties of employment by the institution.</li> <li>(ix) Laboratory directors, coordinators, or principal investigators.</li> <li>(x) Internship or externship directors or coordinators.</li> <li>(xi) Study abroad program directors or coordinators.</li> </ul>	✓	+	N/A	N/A	The SB 493 approach requires certain positions to be Responsible Employees, while the federal regulations leave that designation up to institutional discretion.
<p><b>66281.8 (a)(2)(C)(i)</b> Notwithstanding subparagraphs (A) and (B), “responsible employee” does not include those individuals described in subparagraphs (A) and (B) who are also any of the following:</p> <ul style="list-style-type: none"> <li>(I) A therapist or other professional described in Sections 990, 1010, 1030, 1035, and 1037 of the Evidence Code, including a University of California Center for Advocacy, Resources, and Education (CARE) director, advocate, or employee.</li> <li>(II) A University of California Center for Advocacy, Resources, and Education (CARE) director, advocate, or employee.</li> <li>(III) A California State University victim advocate or other position with similar responsibilities.</li> <li>(IV) An individual acting in a professional capacity for which confidentiality is mandated by law.</li> </ul>	X	+	N/A	N/A	The federal regulations don’t specifically exempt any employees, so this section is entirely additive.

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<p><b>66281.8 (a)(2)(C)(ii)</b> An individual described in clause (i) shall inform each student who provides the individual with information regarding sexual harassment of the student’s ability to report to a responsible employee and direct the student to those specific reporting resources.</p>	X	+	✓	+	This would accomplish the same communication as the VAWA Brochure, in part, so that aspect is overlapping, though this is certainly a more active SB 493 obligation and one that must be trained upon.
<p><b>66281.8 (b)</b> Notwithstanding Section 67400, in order to receive state financial assistance, as defined in Section 213, the appropriate governing board or body of each postsecondary institution shall implement, and at all times comply with, all of the following requirements at the institution:  (1) It shall disseminate, by electronic or other means, a notice of nondiscrimination, including, but not limited to, all information required to be included in the notice provided pursuant to Section 66281.5, to all of the following:  (A) Each employee of the postsecondary institution.  (B) Each volunteer who will regularly interact with students.  (C) Each individual or entity under contract with the postsecondary institution to perform any service involving regular interaction with students at the institution.</p>	✓	+	N/A	N/A	While the federal regulations require this notice, SB 493 expands the audiences to which it must be delivered.
<p><b>66281.8 (b)(2)</b> It shall designate at least one employee of the institution to coordinate its efforts to comply with and carry out its responsibilities under this section. The employee may be the same individual as the institution’s federal Title IX coordinator. The employee shall have adequate training on what constitutes sexual harassment and on trauma-informed investigatory and hearing practices, and shall understand how the institution’s grievance procedures operate.</p>	✓	+	N/A	N/A	The “trauma-informed” training piece is additive.

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<p><b>66281.8 (b)(3)</b> It shall adopt rules and procedures within the policies required by Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and Section 67386 for the <a href="#">prevention of sexual harassment</a> that also provide for all of the following elements:</p> <p>(A) The institution’s primary concern shall be student safety. Any disciplinary measures imposed by the institution for violations of the institution’s student conduct policy at or near the time of the incident being investigated shall be consistent with paragraph (10) of subdivision (b) of Section 67386.</p> <p><b>California Education Code Section 67386(b)(10)</b>  Providing that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution’s student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.</p>	X	+	N/A	N/A	Add a provision on safety as the primary concern. This provision does not require that the violations at or near the time of the incident be directly related to the alleged sexual harassment.
<p><b>66281.8 (b)(3)(B)</b> The institution shall take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the institution’s policies that occur in connection with any educational activity or other program of the institution, <a href="#">as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student’s access to education.</a></p>	✓	+	N/A	N/A	While the core objective of this section may exist within the federal regulations, SB 493 goes about it in a way that is unique to CA, and which expands jurisdictional obligations well beyond those of Title IX.

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<p><b>66281.8 (b)(3)(C)(i)</b> Regardless of whether or not a complaint has been filed under the institution’s grievance procedures, if the institution knows, or reasonably should know, about possible sexual harassment involving individuals subject to the institution’s policies at the time, the institution shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the institution determines that an investigation is not required. If the institution determines that the alleged conduct more likely than not occurred, it shall immediately take reasonable steps to end the harassment, address the hostile environment, if one has been created, prevent its recurrence, and address its effects. A postsecondary institution shall be presumed to know of sexual harassment if a responsible employee knew, or, in the exercise of reasonable care, should have known, about the sexual harassment. The institution may rebut this presumption of knowledge if it shows all of the following:</p> <p>(I) The institution provides training and requires all nonconfidential responsible employees to report sexual harassment.</p> <p>(II) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question was provided training and direction to report sexual harassment.</p> <p>(III) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question failed to report it.</p> <p>(ii) The institution shall consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student’s access to education where both individuals are, at the time of the request, subject to the institution’s policies.</p>	✓	+	N/A	N/A	<p>SB-493 incorporates both actual and constructive notice into its requirements for institutional response, which combines the current Title IX regulations and the previous administration’s guidance. Additionally, there are many new requirements to add to policies and procedures.</p>

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<p><b>66281.8 (b)(3)(D)(i)</b> If a complainant requests confidentiality, which could preclude a meaningful investigation or potential discipline of the potential respondent, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the institution shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the complainant. <i>The institution shall generally grant the request. In determining whether to disclose a complainant’s identity or proceed to an investigation over the objection of the complainant, the institution may consider whether any of the following apply:</i></p> <p>(I) <i>There are multiple or prior reports of sexual misconduct against the respondent.</i></p> <p>(II) <i>The respondent reportedly used a weapon, physical restraints, or engaged in battery.</i></p> <p>(III) <i>The respondent is a faculty or staff member with oversight of students.</i></p> <p>(IV) <i>There is a power imbalance between the complainant and respondent.</i></p> <p>(V) <i>The complainant believes that the complainant will be less safe if the complainant’s name is disclosed or an investigation is conducted.</i></p> <p>(VI) <i>The institution is able to conduct a thorough investigation and obtain relevant evidence in the absence of the complainant’s cooperation.</i></p>	✓	+	N/A	N/A	Conceptually similar to the federal regulations, but the SB 493 specifics are much more detailed.



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<p><b>66281.8 (b)(3)(D)(ii)</b> If the institution determines that it can honor the student’s request for confidentiality, it shall still take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the complainant. <i>These steps may include increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred; providing additional training and education materials for students and employees; or conducting climate surveys regarding sexual violence.</i> The institution shall also take immediate steps to provide for the safety of the complainant while keeping the complainant’s identity confidential as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests. The complainant shall be notified that the steps the institution will take to respond to the complaint will be limited by the request for confidentiality.</p>	✓	+	✓	+	Conceptually similar to the federal regulations, but the SB 493 specifics are much more detailed.
<p><b>66281.8 (b)(3)(D)(iii)</b> <i>If the institution determines that it must disclose the complainant’s identity to the respondent or proceed with an investigation, it shall inform the complainant prior to making this disclosure or initiating the investigation.</i> The institution shall also take immediate steps to provide for the safety of the complainant where appropriate. <i>In the event the complainant requests that the institution inform the respondent that the student asked the institution not to investigate or seek discipline, the institution shall honor this request.</i></p>	X	+	N/A	N/A	This is mostly all new.
<p><b>66281.8 (b)(4)(A)</b> It shall adopt and publish on its internet website grievance procedures that provide for prompt and equitable resolution of sexual harassment complaints filed by a student against an employee or another student. The grievance procedures shall satisfy all of the following requirements:</p>	✓	X	✓	X	N/A

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<b>66281.8</b> (b)(4)(A)(i) They shall state that the investigation and adjudication of alleged misconduct under this section is not an adversarial process between the complainant, the respondent, and the witnesses, but rather a process for postsecondary institutions to comply with their obligations under existing law. The complainant does not have the burden to prove, nor does the respondent have the burden to disprove, the underlying allegation or allegations of misconduct.	✓	+	N/A	N/A	Both new and overlapping content here.
<b>66281.8</b> (b)(4)(A)(ii) They shall require notice be provided to all students of the grievance procedures, including where and how complaints may be filed.	✓	X	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(iii) They shall ensure that the persons or entities responsible for conducting investigations, finding facts, and making disciplinary decisions are neutral.	✓	X	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(iv) They shall ensure <b>trauma-informed</b> and impartial investigation of complaints. Student parties shall be given an opportunity to identify witnesses and other evidence to assist the institution in determining whether a policy violation has occurred, <b>and shall be informed that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing.</b>	✓	+	✓	X	VAWA requires that the parties and decision-maker have equal and timely access to any information used formal or informal disciplinary processes. SB 493 is more specific about the potential for excluding information not provided in the investigation.
<b>66281.8</b> (b)(4)(A)(v) They shall include <b>reasonable</b> and equitable evidentiary guidelines <b>and may include page or word limitations on party submissions.</b>	✓	+ ≠	N/A	N/A	Page and word limitations may conflict with the federal regulations.
<b>66281.8</b> (b)(4)(A)(vi) They shall include all of the following: (I) The investigator or hearing officer shall not consider the past sexual history of a complainant <b>or respondent</b> except in the limited circumstances permitted by this clause.	✓	+	N/A	N/A	N/A
<b>66281.8</b> (b)(4)(A)(vi)(II) The investigator or hearing officer shall not consider prior <b>or subsequent</b> sexual history between the complainant and anyone other than the respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the respondent were inflicted by another individual.	✓	+	N/A	N/A	N/A

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<b>66281.8</b> (b)(4)(A)(vi)(III)(ia) The investigator or hearing officer shall not consider the existence of a <a href="#">dating relationship</a> or prior or <a href="#">subsequent consensual</a> sexual relations between the complainant and the respondent unless the evidence is relevant to how the parties communicated consent in <a href="#">prior or subsequent consensual</a> sexual relations.	✓	+	N/A	N/A	N/A
<b>66281.8</b> (b)(4)(A)(vi)(III)(ib) <a href="#">Where the investigator or hearing officer allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent pursuant to sub-subclause (ia), the mere fact that the complainant and respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.</a>	X	+	N/A	N/A	All new.
<b>66281.8</b> (b)(4)(A)(vi)(IV) <a href="#">Before allowing the consideration of any evidence proffered pursuant to this subdivision, the investigator or hearing officer shall provide a written explanation to the parties as to why consideration of the evidence is consistent with this clause.</a>	X	+	N/A	N/A	All new.
<b>66281.8</b> (b)(4)(A)(vii) They shall prohibit questions of either party or of any witness that are repetitive, irrelevant, or harassing.	✓	X	N/A	N/A	Different terms, same meaning.
<b>66281.8</b> (b)(4)(A)(viii) <a href="#">They shall provide that the institution shall decide whether or not a hearing is necessary to determine whether any sexual violence more likely than not occurred. In making this decision, an institution may consider whether the parties elected to participate in the investigation and whether each party had the opportunity to suggest questions to be asked of the other party or witnesses, or both, during the investigation. Any hearing shall be subject to the following rules:</a>	✓	+?	N/A	N/A	The meaning of this section is unclear. If it is meant to work like the third discretionary dismissal provision in the federal regulations, then it is not new, but if it grants discretion on whether to hold a hearing, that is new and conflicts with the federal regulations.
<b>66281.8</b> (b)(4)(A)(viii)(I) <a href="#">Any cross-examination of either party or any witness shall not be conducted directly by a party or a party's advisor.</a>	X	≠	N/A	N/A	This will only conflict if Title IX applies.

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<b>66281.8</b> (b)(4)(A)(viii)(II) Either party or any witness may request to answer the questions by video from a remote location.	✓	X	N/A	N/A	N/A
<b>66281.8</b> (4)(A)(viii)(III) <i>Student parties</i> shall have the opportunity to submit written questions to the hearing officer in advance of the hearing. <i>At the hearing, the other party shall have an opportunity to note an objection to the questions posed. The institution may limit such objections to written form, and neither the hearing officer nor the institution are obligated to respond, other than to include any objection in the record.</i> The hearing officer shall have the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence.	✓	+ ≠	N/A	N/A	The limited application to student parties here may conflict with federal obligation to accord parts of this section to all parties.
<b>66281.8</b> (b)(4)(A)(viii)(IV) <i>Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.</i>	?	+	✓	X	Why the “?” on Title IX overlap? Because this subject is only addressed by inference in the federal regulations. VAWA requires timely and equal access to information to be used in an informal or formal process.
<b>66281.8</b> (b)(4)(A)(ix) <i>They shall provide an explanation of the meaning of the preponderance of the evidence standard, and affirm that it shall apply to adjudications under this section. The preponderance of the evidence standard is met if the institution determines that it is more likely than not that the alleged misconduct occurred, based on the facts available at the time of the decision.</i>	✓	+	N/A	N/A	ATIXA doesn’t think this provision conflicts with the federal regulations, which permit all institutions to use the preponderance standard. SB 493 requires it. This may present an interesting issue in renegotiating collective bargaining agreements.
<b>66281.8</b> (b)(4)(A)(x) <i>They shall provide a reasonably prompt timeframe for all of the major stages of the complaint process, as well as a process for extending the institution’s timelines for good cause only, and shall provide for the prompt communication of that information to the complainant and respondent. The communicated timeline information shall include, but shall not necessarily be limited to, each of the following:</i>	✓	X	✓	X	N/A

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<b>66281.8</b> (b)(4)(A)(x)(I) The period during which the institution shall conduct any investigation.	✓	X	X	N/A	N/A
<b>66281.8</b> (b)(4)(A)(x)(II) The date by which the parties shall be notified of the outcome of any investigation.	✓	X	X	N/A	N/A
<b>66281.8</b> (b)(4)(A)(x)(III) The deadlines and process for parties to appeal, if the institution’s grievance procedures include an appeals process.	✓	X	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(xi) They shall provide that the institution shall not unreasonably deny a student party’s request for an extension of a deadline related to a complaint during periods of examinations or school closures.	X	+	X	+	Additive to VAWA for sexual assault, dating violence, domestic violence, and stalking allegations.
<b>66281.8</b> (b)(4)(A)(xii) They shall provide for periodic status updates on the investigation consistent with the timelines referenced in clause (x) to the complainant and respondent.	X	+	X	+	Additive to VAWA for sexual assault, dating violence, domestic violence, and stalking allegations.
<b>66281.8</b> (b)(4)(A)(xiii) They shall provide for notice in writing to parties of any extension of a time period granted in the investigation and fact-finding process that would change the prospective timeframes for the major stages of the complaint process, and the reason for that extension.	✓	X	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(xiv) They shall provide for written notice to parties of the outcome of the complaint, including whether a policy violation was found to have occurred, the basis for that determination, including factual findings, and any discipline imposed.	✓	X	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(xv) They shall provide assurance that the institution will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.	✓	X	X	N/A	N/A
<b>66281.8</b> (b)(4)(A)(xvi) They shall require that student parties receive notice if the institution is conducting a formal investigation. The notice shall include the allegations and the alleged institutional policy violations under review. Any new allegations that arise during the course of the investigation that could subject either party to new or additional sanctions shall be subject to the same notice requirements.	✓	X	X	N/A	N/A

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<b>66281.8</b> (b)(4)(A)(xvii) They shall afford both student parties the opportunity to each have a support person or adviser accompany the student party during any stage of the process.	✓	X	✓	X	SB 493 does not account for a party not being a student. VAWA permits advisors for unaffiliated parties.
<b>66281.8</b> (b)(4)(A)(xviii) They shall advise student parties of their right to consult with an attorney, at their own expense, at any stage of the process if they wish to do so. An attorney may serve as a support person or adviser pursuant to clause (xvii).	✓	X	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(xix) They shall require that student parties receive a notice regarding appropriate counseling resources developed and maintained by the institution for student parties in school misconduct matters involving sexual harassment.	✓	X	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(xx) They shall allow either party to appeal the outcome of the grievance proceeding if the institution has such an appeals process. An institution’s grievance procedure may limit the grounds for an appeal, provided that any limitation shall apply equally to all parties and that the nonappealing party shall have an opportunity to respond to the appeal.	✓	X	✓	X	SB 493 makes appeals optional, whereas they are required by the federal regulations.
<b>66281.8</b> (b)(4)(A)(xxi) They shall outline <a href="#">the possible interim measures</a> that may be put in place during the pendency of an investigation, the supportive measures that may be provided in the absence of an investigation, and the disciplinary outcomes, <a href="#">remedial measures, and systemic remedies that may follow a final finding of responsibility</a> , subject to all of the following:	✓	+	X	N/A	One could argue that the federal regulations are not quite this specific, but they functionally address the same ideas as this section of SB 493.
<b>66281.8</b> (b)(4)(A)(xxi)(I) <a href="#">An institution shall not mandate mediation to resolve allegations of sexual harassment, and shall not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence.</a>	X	+	X	N/A	Mediation—which is permitted (but not required) by the federal regulations—is not an option for resolving allegations of sexual violence under SB 493. Mediation of sexual harassment is still permitted.
<b>66281.8</b> (b)(4)(A)(xxi)(II) <a href="#">An institution shall not require that the complainant enter a voluntary resolution agreement or any other form of resolution as a prerequisite to receiving remedial measures from the institution which safeguard the complainant’s access to education.</a>	X	+	N/A	N/A	N/A

SB 493 Requirement	TIX Overlap	TIX Conflict or Additive	VAWA Overlap	VAWA Conflict or Additive	Comments
<p><b>66281.8</b> (b)(4)(A)(xxi)(III)(ia) When requested by a complainant or otherwise determined to be appropriate, an institution shall issue an interim no-contact directive <a href="#">prohibiting the respondent from contacting the complainant during the pendency of the investigation. An institution shall not issue an interim mutual no-contact directive automatically, but instead shall consider the specific circumstances of each case to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. A no-contact directive issued after a decision of responsibility has been made shall be unilateral and only apply against the party found responsible.</a></p>	✓	+	N/A	N/A	While the federal standard prefers mutual NCOs, unilateral orders are permitted. CA reverses this scheme and now unilateral NCOs are preferred by CA, with mutual orders permitted only where circumstances justify a mutual restriction.
<p><b>66281.8</b> (b)(4)(A)(xxi)(III)(ib) <a href="#">Upon the issuance of a mutual no-contact directive, an institution shall provide the parties with a written justification for the directive</a> and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the institution shall provide the parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action.</p>	✓	+	N/A	N/A	This is more explicit than the federal standard and expands it with the written justification provision.
<p><b>66281.8</b> (b)(4)(A)(xxii) They shall describe the obligations of all faculty and staff designated by the institution as required to report concerns of sexual harassment to the Title IX coordinator or other designated employee, consistent with the requirement in paragraph (2). <a href="#">An individual who has a confidential relationship with a student or students by law is exempt from having to report sexual harassment concerns to the Title IX coordinator or other designated employee, unless otherwise required by law.</a></p>	✓	+	N/A	N/A	N/A
<p><b>66281.8</b> (b)(4)(A)(xxiii) They shall contain a requirement that the Title IX coordinator or other designated employee assess each report of sexual harassment and provide outreach, as appropriate, to each identifiable student who is alleged to be the victim of the reported conduct. The outreach shall include all of the following information:</p>	✓	X	N/A	N/A	N/A

SB 493 Requirement	TIX Overlap	TIX Conflict or Additive	VAWA Overlap	VAWA Conflict or Additive	Comments
<b>66281.8</b> (b)(4)(A)(xxiii)(I) <a href="#">The institution has received a report that the student may have been a victim of sexual harassment.</a>	✓	X or +	N/A	N/A	Implied by the federal regulations but not explicitly required.
<b>66281.8</b> (b)(4)(A)(xxiii)(II) <a href="#">A statement that retaliation for filing a complaint or participating in a complaint process, or both, under this section is prohibited.</a>	X	+	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(xxiii)(III) <a href="#">Counseling resources within the institution or in the community.</a>	✓	X	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(xxiii)(IV) <a href="#">Where a crime may have occurred, notice that the student has the right, but not the obligation, to report the matter to law enforcement.</a>	X	+	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(xxiii)(V) <a href="#">The institution’s investigation procedures established pursuant to the requirements of this section.</a>	✓	X	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(xxiii)(VI) <a href="#">Potential interim measures, such as no-contact directives, housing changes, and academic schedule changes, where applicable.</a>	✓	X	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(xxiii)(VII) <a href="#">The importance of preserving evidence.</a>	X	+	✓	X	N/A
<b>66281.8</b> (b)(4)(A)(xxiii)(VIII) <a href="#">A request for the student to meet with the Title IX coordinator or other designated employee to discuss options for responding to the report.</a>	✓	X	N/A	N/A	N/A
<b>66281.8</b> (b)(4)(A)(xxiii)(IX) <a href="#">The manner in which the institution responds to reports of sexual harassment and a description of potential disciplinary consequences.</a>	✓	X	N/A	N/A	VAWA requires this information be included in policy and the Annual Security Report, but not in an outreach letter.
<b>66281.8</b> (b)(4)(B) <a href="#">The grievance procedures shall also provide a process for a student to report sexual harassment by a third party. The institution shall respond to those reports to address or prevent a hostile educational environment or to ensure students’ access to education. Nothing in this section shall establish any duty or obligation owed by a postsecondary institution to nonstudent parties that does not already exist by statute or agreement.</a>	✓	X	N/A	N/A	The meaning of this provision is unclear, but ATIXA’s best guess is that it overlaps with the federal standard, as best its team can tell.



SB 493 Requirement	TIX Overlap	TIX Conflict or Additive	VAWA Overlap	VAWA Conflict or Additive	Comments
<p><b>66281.8 (b)(5)</b> It shall publish in a prominent place on its internet website, with accompanying text clearly associating them with the sexual harassment and sexual violence grievance processes, the name, title, and contact information, which shall include the telephone number, office location, and email address, of each of the following individuals:</p> <p>(A) The Title IX coordinator or other designated employee.</p> <p>(B) Any individual official within the institution with the authority to investigate complaints made pursuant to this section or to institute corrective measures such as sanctions, accommodations, or other forms of resolution of the complaint.</p>	✓	X	N/A	N/A	N/A
<p><b>66281.8 (b)(6)(A)</b> It shall provide the training described in paragraph (12) of subdivision (b) of Section 67386 to each employee engaged in the grievance procedures related to sex discrimination, including sexual violence, which shall include for these employees training on (i) <a href="#">trauma-informed investigatory</a> and hearing practices that help ensure an impartial and equitable process, (ii) <a href="#">best practices for assessment</a> of a sexual harassment or sexual violence complaint, (iii) best practices for questioning of the complainant, respondent, and witnesses, and (iv) <a href="#">implicit bias and racial inequities, both broadly and in school disciplinary processes</a>.</p>	✓	+	✓	+	N/A
<p><b>66281.8 (b)(6)(B)</b> <a href="#">Materials approved by the institution for this training shall include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity. When possible, citation to such statistics shall be included in the written sexual harassment policies required by Section 66281.5 accompanying the institution’s grievance procedures.</a></p>	X	+	X	+	N/A

SB 493 Requirement	TIX Overlap	TIX Conflict or Additive	VAWA Overlap	VAWA Conflict or Additive	Comments
<b>66281.8 (b)(7)</b> If the institution has on-campus housing, it shall ensure that residential life student and nonstudent staff, or their equivalent, annually receive training on how to handle, in a trauma-informed manner, reports made to them of sexual harassment or sexual violence, and situations in which they are aware of sexual harassment or sexual violence, in student residential facilities.	X	+	N/A	N/A	N/A
<b>66281.8 (b)(8)</b> It shall notify employees of the obligation to report harassment to appropriate school officials.	✓	X	N/A	N/A	N/A
<b>66281.8 (b)(9)</b> It shall provide training to all employees on the identification of sexual harassment, including the person to whom it should be reported. This paragraph does not require an institution to provide separate training for identification of sexual harassment. The school may include this requirement in existing employee training on sexual harassment.	X	+	✓	X	Because sexual violence falls under the definition of sexual harassment in SB 493, this provision overlaps with training requirements under VAWA for training regarding sexual assault.
<b>66281.8 (c)</b> 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 investigate complaints of sexual harassment, including disciplinary procedures, shall afford a complainant and a respondent a prompt and equitable resolution. If the school relies on existing procedures for compliance with the requirements of this section, the Title IX officer or designated employee shall review the school's procedures to ensure that they comply with the requirements of this section.	✓	X	✓	X	This doesn't completely overlap with VAWA § 304, but it's mostly consistent.
<b>66281.8 (d)</b> A violation of this section may constitute discrimination and shall be subject to a civil action brought pursuant to Sections 66292.3 and 66292.4.	X	+	N/A	N/A	N/A
<b>66281.8 (e)</b> The requirements of this section shall be implemented at each postsecondary institution by no later than January 1, 2022.	X	+	N/A	N/A	N/A

SB 493 Requirement	TIX Overlap	TIX Conflict or Additive	VAWA Overlap	VAWA Conflict or Additive	Comments
<b>66281.8 (f)</b> If on or after the date of implementation, any provision of the act that adds this section conflicts with federal law, that provision shall be rendered inoperative for the duration of the conflict and without affecting the whole.	X	+	X	+	N/A
<b>66281.8 (g)(1)</b> Any case law interpreting procedural requirements or process that is due to student complainants or respondents when adjudicating complaints of sexual or gender-based violence, including dating or domestic violence, at postsecondary educational institutions in the State of California shall have no retroactive effect.	X	+	X	+	N/A
<b>66281.8 (g)(2)</b> Any case law that conflicts with the provisions of the act that adds this section shall be superseded as of this statute's effective date.	X	+	X	+	N/A