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|  | Committee on Women and Gender Equity  Brenda McKinney, *Counsel*  Jayasri Ganapathy, *Counsel*  Chloë Rivera, *Senior Policy Analyst*  Monica Pepple, *Financial Analyst* |
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**The Council of the City of New York**

**Committee Report of the Human Services Division**

Jeffrey Baker, *Legislative Director*

Andrea Vazquez, *Deputy Director*

Committee on Women and Gender Equity

Hon. Helen K. Rosenthal, *Chair*

**February 25, 2020**

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| **Proposed Int. No. 1536-A** | By Council Members Rosenthal, Kallos, Treyger, Richards, Levin, Chin, Levine, Gibson, Cornegy, Barron, Lander, Ampry-Samuel, Adams, Rose, Cumbo, Louis, Ayala, Koslowitz and Rivera |
| **Title:**  **Administrative code:**  **Charter:** | Local Law to amend the administrative code of the city of New York, in relation to reporting on efforts to prevent and address sex- and gender-based discrimination and harassment  Adds section 21-981.2  Amends section 20-b |

**I. Introduction**

On February 25, 2020, the Committee on Women and Gender Equity, chaired by Council Member Helen K. Rosenthal, will hold a hearing to consider Proposed Introduction No. 1536-A, sponsored by Council Member Rosenthal, which would require the New York City (NYC) Commission on Gender Equity (“CGE” or “Commission”) to expand reporting on sex- and gender-based discrimination and harassment. This legislation was originally heard at a hearing of this Committee on April 30, 2019, at which the Committee received testimony from representatives of the CGE, the NYC Department of Education (DOE), the City University of New York, advocacy groups, and organizations focused on students and gender equity, and other interested stakeholders.

**II. Background**

Title IX of the Education Amendments of 1972 (“Title IX”) prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance.[[1]](#footnote-1) Under Title IX, “[n]o person in the United States [(U.S.)] shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination” under any entity covered by the law.[[2]](#footnote-2) That is, if any part of a school district or institution of higher education receives any federal funds for any purpose, including assistance through the federal student loan and grant programs, all of the operations of the entity are covered by Title IX.[[3]](#footnote-3)

Guidance from the U.S. Department of Education (U.S. DOE) Office for Civil Rights asserts that Title IX “protects students, employees, applicants for admission and employment and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.”[[4]](#footnote-4) Accordingly, all individuals—regardless of sex, sexual orientation, gender identity, disability, race, national origin, or part- or full-time status—at covered entity are protected by Title IX in all spaces of the institution’s educational programs and activities.[[5]](#footnote-5) Additionally, under Title IX, covered entities are obligated to designate at least one employee, who is generally referred to as the Title IX coordinator, to coordinate efforts to comply with and carry out their responsibilities under Title IX.[[6]](#footnote-6) Such employee’s contact information must be provided to all students and employees of that institution.[[7]](#footnote-7)

U.S. Supreme Court decisions and guidance from the Office for Civil Rights have interpreted Title IX’s prohibition to include “sex-based harassment,” which refers to sexual harassment, sexual violence and gender-based violence “by peers, employees or third parties that is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the recipient’s education programs and activities.”[[8]](#footnote-8) Sexual harassment refers to unwelcome conduct of a sexual nature, which can include unwelcome sexual advances; requests for sexual favors; as well as other verbal, nonverbal, or physical conduct of a sexual nature.[[9]](#footnote-9) Sexual violence refers to a form of sexual harassment, more specifically, physical sexual acts perpetrated against an individual’s will or where an individual is incapable of consent, such as due to an individual’s age, being under the influence of drugs or alcohol, or because an intellectual or other disability prevents an individual from having the capacity to consent.[[10]](#footnote-10) Gender-based harassment refers to unwelcome conduct based on an individual’s actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes.[[11]](#footnote-11)

Pursuant to Title IX, when a recipient institution—which includes both elementary and secondary schools and institutions of higher education in NYC—is made aware of, or “reasonably should know of,” possible sex-based harassment, it must take immediate and appropriate action to investigate, or otherwise determine what occurred.[[12]](#footnote-12) If an investigation reveals that sex-based harassment has occurred, the school must take immediate and effective steps to end the harassment; put an end to the hostile environment; prevent the harassment from recurring; and, as appropriate, remedy its effects.[[13]](#footnote-13)

**III. Proposed Int. No. 1536-A**

Section one of Proposed Int. No. 1536-A would require that CGE include information about sex- and gender-based discrimination, including conduct prohibited by Title IX, in its annual report. The legislation would also change the due date for CGE’s annual report from December 1st to April 1st each year. Section one would additionally require CGE to post links to publicly reported data from city agencies, including but not limited to DOE, relating to sex- and gender-based discrimination and harassment. Finally, the legislation would also revise the language of CGE’s mission to reflect a broader view of gender and more accurately reflect the scope of CGE’s work.

Section two of Proposed Int. No. 1536-A would require DOE to annually report on resources, support, policies and procedures related to preventing and addressing sex- and gender-based discrimination and harassment, including Title IX. It would also require that DOE report on its internal structure, including contact information and job titles, for central and borough employees whose work relates to sex- and gender-based discrimination and harassment.

This legislation would take effect immediately.

Since introduction, Proposed Int. No. 1536-A was amended to clarify the reporting required by CGE and the due date for that report. The legislation was also amended to broaden the description of gender and better reflect the scope of CGE’s mission. It was also amended to add an annual reporting requirement for DOE with regard to the resources, support, procedures and policies in place to prevent and address sex- and gender-based discrimination and harassment. It was also amended to require that DOE provide information on its organizational structure, including job titles and contact information, for central and borough employees whose work is related to preventing and addressing sex- and gender-based discrimination and harassment.

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Proposed Int. No. 1536-A

By Council Members Rosenthal, Kallos, Treyger, Richards, Levin, Chin, Levine, Gibson, Cornegy, Barron, Lander, Ampry-Samuel, Adams, Rose, Cumbo, Louis, Ayala, Koslowitz and Rivera

..Title

A LOCALLA L A LOCALLA LA LOCAL LAW

To amend the administrative code of the city of New York, in relation to reporting on efforts to prevent and address sex- and gender-based discrimination and harassment

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-b of Chapter 1 of the New York city charter is amended to read as follows:

§ 20-b. Commission on gender equity. a. There shall be a commission on gender equity to study the nature and extent of inequities facing women[ and], girls, transgender, intersex, gender non-conforming and non-binary individuals in the city; to study [their]the impact of such inequities on the economic, civic[,] and social well-being of women[ and], girls, transgender, intersex, gender non-conforming and non-binary individuals; to advise on ways to analyze the function and composition of city agencies through a gender-based lens and ways to develop equitable recruitment strategies; and to make recommendations to the mayor and the council for the reduction of gender-based inequality. Such commission shall consist of 26 members appointed by the mayor; [5]five members appointed by the speaker of the council; and the chair of the commission on human rights, who shall serve as an ex officio member. Members of the commission shall be representative of the [New York city] population of the city of New York and shall have experience in advocating for issues important to women[ and], girls, transgender, intersex, gender non-conforming and non-binary individuals. The mayor shall designate one member to serve as chair of the commission, and may also designate a member to serve as co-chair. Members shall serve at the pleasure of the appointing authority. In the event of the death or resignation of any member, [his or her]a successor shall be appointed by the official who appointed such member. The mayor shall appoint an executive director for the commission.

b. The commission shall have the power and duty to:

1. [hold] Hold at least one meeting every four months, including at least one annual meeting open to the public;

2. [keep] Keep a record of its activities;

3. [determine] Determine its own rules of procedure; and

4. [perform] Perform such advisory duties and functions as may be necessary to achieve its purposes as described in subdivision a of this section.

c. The commission may request information from any city agency or office it deems necessary to enable the commission to properly carry out its functions. The commission may also request from any private organization providing services to women[ and], girls, transgender, intersex, gender non-conforming and non-binary individuals in the city pursuant to a contract with a city agency or office, information necessary to enable the commission to properly carry out its functions.

d. No later than December 1, 2017 and annually by [December] April 1 thereafter, the commission shall submit to the mayor and the speaker of the council and post online a report concerning its activities during the previous [twelve]12 months, the goals for the following year[,] and recommendations pursuant to subdivision a of this section. No later than April 1, 2021, and annually thereafter, such report shall also include any recommendations the commission shall have for agencies, including, but not limited to, the department of education, for preventing and improving responses to sex- and gender-based discrimination and harassment, including, but not limited to, discrimination and harassment prohibited by section 1681 of title 20 of the United States code, or title ix of the education amendments of 1972. No later than April 1, 2021, and annually thereafter, the commission shall also post online links to data publicly reported by agencies, including, but not limited to, the department of education, relating to sex- and gender-based discrimination and harassment.

§ 2. Chapter 18 of title 21-A of the administrative code of the city of New York is amended by adding a new section 21-981.2 to read as follows:

§ 21-981.2 Reporting on efforts to prevent and address sex- and gender-based discrimination and harassment. a. Definitions. For the purposes of this section, the term “school” means a school of the city school district of the city of New York serving students in elementary, middle or high school, or any combination thereof.

b. No later than November 30, 2020, and annually by November 30 thereafter, the department shall submit to the mayor, the speaker of the council, the commission on gender equity and post online a report for the preceding school year regarding efforts to prevent or address sex- and gender-based discrimination and harassment, including discrimination and harassment prohibited by section 1681 of title 20 of the United States code, or title ix of the education amendments of 1972. Such report shall include, but need not be limited to, the following information:

1. A description of resources and support provided by the department to schools related to preventing and addressing sex- and gender-based discrimination and harassment, including relevant training;

2. A description of the department’s policies and procedures for preventing and addressing sex- and gender-based discrimination and harassment and for investigating allegations of sex- and gender-based discrimination and harassment; and

3. A description of the department’s organizational structure, including but not limited to, job titles and contact information, for central and borough employees whose work is related to preventing and addressing sex- and gender-based discrimination and harassment, in total and disaggregated by borough.

c. No information that is required to be reported pursuant to this section shall be reported in a manner that would violate any applicable provision of federal, state or local law relating to the privacy of personal information or that would interfere with law enforcement investigations or otherwise conflict with the interests of law enforcement.

§ 3. This local law takes effect immediately.

BM / JG

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1. *See* 20 USC §§ 1681-1688; U.S. Department of Justice, Overview of Title IX of the Education Amendments of 1972, 20 U.S.C. A§ 1681 et. seq. (Aug. 7, 2015), *available at* <https://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq>. [↑](#footnote-ref-1)
2. U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Title IX, Education Amendments of 1972 (n.d.), *available at* <https://www.dol.gov/oasam/regs/statutes/titleix.htm>. [↑](#footnote-ref-2)
3. U.S. Department of Education, Office for Civil Rights, Sex Discrimination: Frequently Asked Questions (Sept. 25, 2018), *available at* <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/sex.html>. [↑](#footnote-ref-3)
4. U.S. Department of Education, Office for Civil Rights, *Title IX Resource Guide* (April 2015), 1, *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. 34 C.F.R. § 106.8(a). *Note:* Though Title IX applies to any recipient that offers education programs or activities, this Committee Report is focused on Title IX compliance by local educational agencies, schools, colleges and universities. [↑](#footnote-ref-6)
7. *Supra* note 4. [↑](#footnote-ref-7)
8. *Supra* note 4 at 15. [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)