

RESOLUTION 11-01-08

DIGEST

Civil Rights: Creation of Office of Equity within Department of Education

Adds section 33309.1 to the Education Code requiring the Department of Education to create an Office of Equity.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution adds Education Code section 33309.1 requiring the Department of Education to create an Office of Equity. This resolution should be disapproved because the governing boards of educational institutions in the state already have the responsibility to enforce the Sex Equity in Education Act.

The California Education Code prohibits discrimination, harassment, and hate violence based on gender. The Sex Equity in Education Act has its origin in 1974 legislation declaring that “It is the policy of the state that elementary and secondary school and community college classes and courses...be conducted, without regard to the sex of the pupils enrolled in such classes and courses.” The statutory scheme that has developed over the years is now called “Educational Equity” with regard to grade schools and “Sex Equity in Education Act” with regard to postsecondary educational institutions.

The Legislature has enabled governing boards of educational institutions to enforce these statutes by implementation of regulations and handling complaints of prohibited discrimination, and by allowing complainants to file either a civil action or an administrative complaint if the laws are violated. The creation of an “Office of Equity” to enforce the Sex Equity in Education Act would be duplicative of what the governing boards of educational institutions are empowered to do. The expense of such duplication cannot be justified. Moreover, there is no evidence of a great number of complaints brought under these statutes requiring such a narrow and specialized public agency. It is also not clear what would be the parameters of the Office of Equity jurisdiction or the affect its decisions would have on existing complaint procedures.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Association recommends that legislation be sponsored to add section 33309.1 of the Education Code to read as follows:

- 1 §33309.1
- 2 The Department of Education shall create a division known as the Office of Equity to
- 3 enforce the Sex Equity in Education Act.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Women Lawyers of Sacramento, California Women Lawyers, Orange County Women Lawyers Association and Sacramento County Bar Association.

STATEMENT OF REASONS:

Existing Law: The Sex Equity in Education Act (Education Code sections 221.5 et. seq. and sections 66250 et. seq.) is California’s version of Title IX. It provides that no elementary, secondary, or post-secondary schools (including community colleges and the California State University) can discriminate against students on the basis of sex by way of enrollment in school classes, counseling, or participating in a physical education activity or sport. Further, no public funds can be used in connection with any athletic program which does not provide for equal opportunity to both sexes for participation and use of facilities.

Compliance with the Sex Equity in Education Act is left to the individual school districts. If a complaining party is not satisfied with the school district’s actions, the party can file a complaint with the California Department of Education (“Department”). The Department must investigate complaints and issue a determination.

This Resolution: This resolution would create a division within the Department, the Office of Equity. The Office of Equity’s sole purpose would be to oversee and enforce the Sex Equity in Education Act.

The Problem: Although the Act and Title IX have strong public policy purposes of eliminating discrimination in schools on the basis of sex, enforcement at both the federal and state levels need substantial improvement. Federal enforcement is charged to the Office of Civil Rights (“OCR”) within the U.S. Department Education. Although enforcement within OCR is flawed, OCR provides schools receiving federal funds with technical assistance and compliance guidance. Here, the Department is charged with enforcing the Act, but there is no state component similar to that of the Office of Civil Rights. Currently, local school districts are charged with monitoring compliance of the Act. This resolution would create a division within the Department that is dedicated to oversight and enforcement of the Act. The Office of Equity’s oversight would include elementary, secondary and post-secondary schools. The Office of Equity could dedicate resources to assist schools with compliance by way of providing technical assistance and guidelines on how to meet the participation requirements of the Act and Title IX. The Office of Equity would have responsibility for monitoring schools, requiring schools to report on compliance or lack of compliance, investigating complaints and recommending restriction of public funds to the Department when necessary.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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RESPONSIBLE FLOOR DELEGATE: Megan A. Lewis.

COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

This Resolution calls for the creation of a new, specialized government bureaucracy of indefinite lifespan and size to impose new requirements on schools for the purpose of enforcing a law the California Department of Education is already charged with enforcing, and to address a problem that is not readily apparent. Moreover, civil enforcement, e.g., enforcement of the Act by private civil action, is already available when necessary. The Resolution calls for an unfunded mandate to the California Department of Education, and does so at a time in which lower State revenues and increasing demands for limited State funds present significant challenges to all State departments.