

RESOLUTION 11-02-08

DIGEST

Civil Rights: Duties of the Office of Equity within Department of Education

Adds Education Code section 33309.2 to require the Department of Education to define the duties of the Office of Equity in enforcing the Sex Equity in Education Act.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution adds Education Code section 33309.2 to require the Department of Education to define the duties of the Office of Equity in enforcing the Sex Equity in Education Act. This resolution should be disapproved because such a division within the Department of Education is unnecessary as the governing boards of educational institutions throughout the state have the responsibility to enforce the Sex Equity in Education Act.

The Legislature intended the governing boards of educational institutions to enforce “Educational Equity” (grade schools) and the “Sex Equity in Education Act” (postsecondary schools) by enactment of regulations and “handling complaints of prohibited discrimination.” [Statutes of 1982, Chapter 1117, codified at Ed. Code, sections 221.1, 261, and 66271.1; Cal. Code Regs., tit. 5, sections 4600 et seq., 4900 et seq., 59300 et seq.] Complainants can file either a civil action or an administrative complaint if these laws are violated. (Ed. Code sections 262.3, 262.4, 66292.3, and 66292.4; 262.3 and 66292.2.) There are also related code sections regarding accountability reports that academic institutions receiving state and federal funding must submit to demonstrate their compliance with these laws to obtain continued funding as well as serving as another avenue through which to monitor and ensure that these laws are enforced.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Association recommends that legislation be sponsored to add section 33309.2 of the Education Code to read as follows:

- 1 §33309.2
- 2 The Department of Education shall promulgate rules and regulations establishing the duties
- 3 of the Office of Equity in carrying out its charge to oversee and enforce the Sex Equity in
- 4 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 direct the Department to promulgate regulations to establish the Office of Equity’s duties relating to monitoring compliance and enforcement of 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. With the creation of the Office of Equity, a division within the Department that is dedicated to oversight and enforcement of the Act, this resolution would direct the Department to promulgate rules and regulations to offer the Office of Equity guidance in assisting schools with compliance, 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.