

State Legislators React to Proposed Federal Title IX Regulations with State Law Proposals

By Susan D. Friedfel & Monica H. Khetarpal

February 4, 2019

Meet the Authors



Susan D. Friedfel

Principal
914-872-8027
Susan.Friedfel@jacksonlewis.com



Monica H. Khetarpal

Principal
(312) 803-2529
Monica.Khetarpal@jacksonlewis.com

Related Services

Higher Education
Sports

While college, universities and educational professionals await the Department of Education's (DOE) proposed new Title IX regulations, which will dictate a revised process by which allegations of sexual misconduct must be handled, the state legislatures in Missouri and Arizona are currently considering legislation that would adopt many of Secretary DeVos's anticipated regulatory modifications.

The proposed Missouri legislation, contained in Senate Bill 259 offered by Senator Gary Romine and House Bill 573 introduced by Representative Dean Dohrman, would allow students involved in Title IX complaints to appeal findings outside of the university system to the Missouri Administrative Hearing Commission, considered a "neutral and independent hearing officer for the state."

The key elements of the proposed Missouri bill are:

- All state universities would be required to expedite hearings for students if the investigation and resolution of the complaint deprives their education.
- Those accused would be provided with the identities of the parties and known witnesses and would have the opportunity to cross-examine parties and witnesses.
- Denial of appropriate due process in a Title IX complaint would be considered a "breach of contract between the student and the university," potentially resulting in a \$250,000 fine for the institution.
- If someone is found to have made a false complaint, the accused has the right to seek actual and punitive damages.

The House version of the bill would also "ensure that all parties use the terms 'complainant' and 'respondent' and refrain from using the term 'survivor' or any other term that presumes guilt before an actual finding of guilt."

Senator Romine commented on his reason for introducing the proposed legislation by stating, "The problem is that a lot of times the accused does not have a proper recourse through the system, and we want to make sure that if there isn't a proper recourse, that the institution that's supposed to be upholding Title IX is held accountable for it."

Representative Dohrman commented on his reasons for introducing the house bill in a press release, stating "due process is vital in both civil and criminal proceedings and Title IX proceedings are no different. I have filed this bill to... protect all students by making sure both the accuser and the accused are in a just proceeding."

In addition to the proposed legislation in Missouri, Arizona State Representative Anthony Kern has introduced House Bill 2242, the "Campus Individual Rights Act, which is a similar statutory modification to Title IX for students in Arizona. Senator Kern's proposed legislation would amend existing state law and would provide that an Arizona community college district or university may not prohibit the following:

- An accused student and an alleged victim from having a legal representative at disciplinary proceeding
- The legal representative for the accused student and the alleged victim from having full participation in the disciplinary proceeding

In addition, the bill requires the parties to the disciplinary proceeding to make a good faith effort to exchange any evidence which either party intends to use in the proceeding, without authorizing either party the right to participate in formal discovery. In addition, Senator Kern's proposed legislation would prohibit a school employee from acting as an adjudicator, hearing officer or appellate officer if that individual has previously served as:

- An advocate or counselor for an accused student or alleged victim,
- An investigator,
- An administrator presenting arguments and evidence on behalf of the educational institution, or
- An advisor to a person described in 1-4 above.

Jackson Lewis' Collegiate and Professional Sports Practice Group and Higher Education Industry Group are both well-versed in Title IX issues and will continue to monitor the introduction of the anticipated federal guidelines, as well as the status of various state legislative proposals and provide updates on developments in these areas. Please feel free to reach out to any member of either Jackson Lewis group with questions.

©2019 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.