

2016 Regular Session

SENATE CONCURRENT RESOLUTION NO. 140

BY SENATORS RISER AND WALSWORTH

LEGIS POWERS/FUNCTIONS. Proposes response to federal directive on Title IX of the Educational Amendments of 1972 related to gender identity by the state and local school boards.

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A CONCURRENT RESOLUTION

To propose a response to the federal directive on Title IX of the Educational Amendments of 1972 related to gender identity and the state and local school boards.

WHEREAS, on June 23, 1972, the federal government enacted Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq., into law which is the comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or educational activity; and

WHEREAS, May 13, 2016, the U.S. Department of Education and the U.S. Department of Justice released a "joint guidance" directive ordering schools that receive federal funding to "treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations" and further requiring schools to implement policies whereby "gender identity refers to an individual's internal sense of gender....(and) may be different from ...the person's sex assigned at birth"; and

WHEREAS, the May 13, 2016, "joint guidance" directive provides that all schools receiving federal funds "must not treat a transgender student differently from the way it treats other students of the same gender identity" and "(a) school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity"; and

1           WHEREAS, the May 13, 2016, "joint guidance" directive provides the following  
2 specific instructions regarding "sex-segregated activities and facilities":

3           (1) "Restrooms and Locker Rooms. A school may provide separate facilities on the  
4 basis of sex, but must allow transgender students access to facilities consistent with their  
5 gender identity. A school may not require transgender students to use facilities inconsistent  
6 with their gender identity or to use individual-user facilities when other students are not  
7 required to do so."

8           (2) "Athletics. Title IX regulations permit a school to operate or sponsor sex-  
9 segregated athletic teams...A school may not, however, adopt or adhere to requirements that  
10 rely on overly broad generalizations or stereotypes about differences between transgender  
11 students and other students of the same sex (i.e. the same gender identity) or others'  
12 discomfort with transgender students."

13           (3) "Housing and Overnight Accommodations. Title IX allows a school to provide  
14 separate housing on the basis of sex. But a school must allow transgender students to access  
15 housing consistent with their gender identity and may not require transgender students to  
16 stay in single-occupancy Accommodations or to disclose personal information when not  
17 required of other students."; and

18           WHEREAS, federal agencies have no authority to change existing federal statutes  
19 through "guidance" directives without a change in the law enacted by Congress pursuant to  
20 the Constitution of the United States of America; and

21           WHEREAS, federal agencies have no authority to impose new conditions in existing  
22 statutorily created programs without first seeking legislative authority from Congress; and

23           WHEREAS, the U.S. Department of Education has no authority to revoke funds  
24 based upon new interpretations of law that are contrary to the clear language of Title IX; and

25           WHEREAS, there is no indication by the clear and unambiguous language of Title  
26 IX, its legislative history, and its definitions that the term "sex" was ever intended to be  
27 expanded to include "transgender" or "gender identity"; and

28           WHEREAS, "sexual identity" is a biological fact determined by medical  
29 professionals based upon DNA, the human genome, and biological and physical  
30 characteristics; it is not an assignment made at birth or a choice to be made at some later date

1 after birth; and

2 WHEREAS, the word "sex" as contemplated by the laws of this state is either of the  
3 two categories, male and female, into which humans and many other living things are  
4 divided on the basis of their reproductive functions; and

5 WHEREAS, providing protection in state-owned facilities falls squarely within the  
6 police powers of the state protected from federal encroachment by the Tenth Amendment  
7 of the Constitution of the United State of America; and

8 WHEREAS, the actions of the federal government constitute an improper attempt  
9 to commandeer state-owned property in pursuit of a federal purpose without compensation  
10 to the taxpayers of Louisiana who paid for the state-owned property; and

11 WHEREAS, the policy position adopted by the U.S. Department of Education and  
12 the U.S. Department of Justice in the "joint guidance" directive has the clear and present  
13 danger of creating an unsafe environment in which young girls will be unnecessarily  
14 exposed to male sexual predators who are impersonating transgendered women in order to  
15 gain access to women's bathrooms, women's showers, and women's locker rooms; and

16 WHEREAS, if Louisiana's schools and universities are compelled to follow the "joint  
17 guidance" directive and allow anatomical males who self-identify as females to enter the  
18 women's bathrooms, the implementation of the directive is likely to create a hostile work  
19 environment for the school's women employees which will result in otherwise unnecessary  
20 litigation to resolve the competing interest between the anatomical male/transgendered  
21 females and the woman employees of the school or university; and

22 WHEREAS, the actions of "joint guidance" directive violates the expectation of  
23 privacy and safety of Louisiana citizens.

24 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby  
25 resolve that the state of Louisiana, its universities, agencies, departments, and local school  
26 boards shall not take any action to implement the May 13, 2016, U.S. Department of  
27 Education and U.S. Department of Justice "joint guidance" directive ordering schools  
28 receiving federal funding to "treat a student's gender identity as the student's sex for purposes  
29 of Title IX and its implementing regulations" until such time as a court of competent  
30 jurisdiction rules on the merits of the constitutionality of the directive.

1           BE IT FURTHER RESOLVED that the Louisiana Legislature does hereby urge and  
2 request the attorney general of the state of Louisiana to file and proceed with any legal action  
3 necessary to enforce the provisions of this Resolution.

4           BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the  
5 U.S. Department of Education, the U.S. Department of Justice, and the Louisiana Attorney  
6 General Jeff Landry.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Carla S. Roberts.

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Proposes a response to the federal directive on Title IX of the Educational Amendments of 1972 related to gender identity and the state and local school boards.

Requests the attorney general to file and proceed with any necessary legal action.