

118TH CONGRESS  
1ST SESSION

# S. 1017

To amend title IX of the Education Amendments of 1972 to ensure due process in grievance proceedings.

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IN THE SENATE OF THE UNITED STATES

MARCH 28, 2023

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend title IX of the Education Amendments of 1972 to ensure due process in grievance proceedings.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ensuring Fairness for  
5 Students Act”.

6 **SEC. 2. ENSURING DUE PROCESS IN TITLE IX CLAIMS.**

7 Section 901 of the Education Amendments of 1972  
8 (20 U.S.C. 1681) is amended by adding at the end the  
9 following:

10 “(d) ENSURING DUE PROCESS.—

1           “(1) SEXUAL HARASSMENT.—In this section,  
2           the term ‘sexual harassment’ has the meaning given  
3           the term in section 106.30 of title 34, Code of Fed-  
4           eral Regulations, or any successor regulation.

5           “(2) IMPLEMENTATION REQUIREMENT.—Not  
6           later than 12 months after the date of enactment of  
7           the Ensuring Fairness for Students Act, each edu-  
8           cational institution to which this section applies shall  
9           implement a grievance process to investigate and ad-  
10          judicate formal complaints of sexual harassment  
11          that incorporates due process principles, treats all  
12          parties fairly, and reaches reliable responsibility de-  
13          terminations.

14          “(3) GRIEVANCE PROCESS.—Each grievance  
15          process implemented under paragraph (2) shall com-  
16          ply with each of the following:

17                  “(A) Give both parties—

18                          “(i) written notice of the allegation;

19                          “(ii) an equal opportunity to select an  
20                          advisor of the party’s choice (who may be,  
21                          but does not need to be, an attorney); and

22                          “(iii) an equal opportunity to submit  
23                          and review evidence throughout the inves-  
24                          tigation of the allegation.

1           “(B) Use personnel who are trained in  
2 compliance with requirements under this title to  
3 objectively evaluate all relevant evidence without  
4 prejudice of the facts at issue and free from  
5 conflicts of interest or bias for or against either  
6 party.

7           “(C) Protect both parties’ privacy by re-  
8 quiring a party’s written consent before using  
9 the party’s medical, psychological, or similar  
10 treatment records during the grievance process.

11           “(D) Obtain both parties’ voluntary, writ-  
12 ten consent before using any kind of informal  
13 resolution process, such as mediation or restor-  
14 ative justice.

15           “(E) Not use an informal resolution proc-  
16 ess, as described in subparagraph (D), in cases  
17 where an employee of the educational institu-  
18 tion is alleged to have sexually harassed a stu-  
19 dent.

20           “(F) Apply a presumption that the re-  
21 spondent is not responsible during the grievance  
22 process, so that the educational institution  
23 bears the burden of proof and the standard of  
24 evidence is applied correctly.

1           “(G) Ensure the decision-maker is not the  
2 same person as the investigator or the Title IX  
3 Coordinator (who is the individual designated  
4 as a responsible employee in section 106.8(a) of  
5 title 34, Code of Federal Regulations, as such  
6 section is in effect on the date of enactment of  
7 the Ensuring Fairness for Students Act).

8           “(H) For educational institutions that  
9 are—

10                   “(i) postsecondary institutions, hold a  
11 live hearing and—

12                           “(I) allow cross-examination by  
13 the advisors of the parties; and

14                           “(II) not permit cross-examina-  
15 tion by the parties personally; and

16                   “(ii) elementary schools or secondary  
17 schools, provide an opportunity for each  
18 party to submit written questions for the  
19 other party and any witness to answer.

20           “(I) Offer both parties an equal oppor-  
21 tunity to appeal.

22           “(J) Protect any individual, including com-  
23 plainants, respondents, and witnesses, from re-  
24 taliation for reporting sexual harassment or

1 participating (or refusing to participate) in the  
2 grievance process.

3 “(K) Document and keep records of all  
4 sexual harassment reports and investigations.”.

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