

HCS HB 573 -- DUE PROCESS IN HIGHER EDUCATION

SPONSOR: Dohrman

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 11 to 6. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 5 to 1.

This bill provides, students in higher education, due process protections and allows students to request that Federal Title IX procedural hearings be heard before the Administrative Hearing Commission (Section 173.1898 RSMo).

This bill allows any students in an institution of higher education who have received a disciplinary action in a Title IX case to appeal to the Administrative Hearing Commission (Section 173.1905).

The Administrative Hearing Commission shall compile relevant statistics on the cases it hears (Section 173.1907).

This bill provides institutions of higher education guidance for Title IX formal complaints. This guidance includes interim measures that avoid depriving any student of an education during investigation and resolution of the formal complaint.

Notice of the right to request a hearing before the Administrative Hearing Commission must be provided.

This bill sets forth hearing procedures for Title IX formal complaints.

To reach a determination of responsibility, the decisionmaker or decisionmakers shall apply either the preponderance of the evidence standard or the clear and convincing evidence standard. However, the preponderance of the evidence standard may only be used if it is also used in all other discriminatory harassment complaints involving faculty (Section 173.1910).

The bill specifies that failure to provide due process for a Title IX proceeding will entitle students to a civil cause of action. It will be considered a breach of contract for the institution of higher education and be considered an illegal act by the Attorney General for purposes of investigation (Section 173.1915).

This bill authorizes the Attorney General to investigate alleged or suspected violations and outlines information that should be collected regarding procedures and policies for formal complaints (Section 173.1925).

The bill defines "exempt record" and "personally identifiable information," and provides that any record related to a Title IX formal complaint or investigation would be considered an exempt record (Section 173.1930).

The bill contains an emergency clause.

PROPOSERS: Supporters say that, under current Title IX laws, principles of "justice for all" are lost. The system currently denies accused parties of certain rights, like being able to face their accuser or being represented by counsel. If they are represented by counsel, counsel is not permitted to speak at the hearings. The school hearings do not always occur in person; rather, sometimes they occur only in writing. Additionally, decisions can be reached very quickly, whereas, for regular trials, there is more time to prepare. It is arguably more comfortable for an accuser to go through an institution's disciplinary process rather than proceed in court because they are not open to cross-examinations. The legislation does not address whether the hearings are confidential, but they should be. There are some institutions that are better than others at allowing the parties as much time as they need to prepare.

Testifying for the bill were Representative Dohrman; Chris Slusher; and Michael J Colona.

OPPOSERS: Those who oppose the bill say that courts are not as overreaching as they are in a courtroom, which is part of the reason people prefer not to go through the criminal process. Part of the reason school hearings do not go as far as actual criminal trials is because they do not always need an investigation and a hearing. Complainants just want to feel safe where they are; sometimes the resolution is as simple as changing classroom or dorm room. There are proposed federal changes they are waiting on, and they will know better how to proceed with hearings going forward. They also say this is incorrect to add private institutions because the hearing commission is designed to hear appeals from state agency action, and some of the institutions are not state agencies. There are many conflicts between this legislation and federal law, so some of the institutions feel like they will have to choose between the two.

Testifying against the bill were Council on Public Higher Education; Chris Bowser, State Technical College of Missouri; Missouri Coalition Against Domestic and Sexual Violence; Planned Parenthood Advocates in Missouri; The Associated Students of The University of Missouri; J P Hasman, St Louis University; Kate Nash; Andrea Hayes, University Of Missouri; Lyman Mitten III, Southeast

Missouri State University; Kelli Wilson; Kayla Everett, Mizzou  
College Democrats; and Mark Falkowski, Columbia College.