IN THE SENATE OF THE UNITED STATES

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on ________________

A BILL

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

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

SECTION 1. SHORT TITLE.

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

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

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

“(d) ENSURING DUE PROCESS.—
“(1) SEXUAL HARASSMENT.—In this section, the term ‘sexual harassment’ has the meaning given the term in section 106.30 of title 34, Code of Federal Regulations, or any successor regulation.

“(2) IMPLEMENTATION REQUIREMENT.—Not later than 12 months after the date of enactment of the Ensuring Fairness for Students Act, each educational institution to which this section applies shall implement a grievance process to investigate and adjudicate formal complaints of sexual harassment that incorporates due process principles, treats all parties fairly, and reaches reliable responsibility determinations.

“(3) GRIEVANCE PROCESS.—Each grievance process implemented under paragraph (2) shall comply with each of the following:

“(A) Give both parties—

“(i) written notice of the allegation;

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

“(iii) an equal opportunity to submit and review evidence throughout the investigation of the allegation.
“(B) Use personnel who are trained in compliance with requirements under this title to objectively evaluate all relevant evidence without prejudgment of the facts at issue and free from conflicts of interest or bias for or against either party.

“(C) Protect both parties’ privacy by requiring a party’s written consent before using the party’s medical, psychological, or similar treatment records during the grievance process.

“(D) Obtain both parties’ voluntary, written consent before using any kind of informal resolution process, such as mediation or restorative justice.

“(E) Not use an informal resolution process, as described in subparagraph (D), in cases where an employee of the educational institution is alleged to have sexually harassed a student.

“(F) Apply a presumption that the respondent is not responsible during the grievance process, so that the educational institution bears the burden of proof and the standard of evidence is applied correctly.
“(G) Ensure the decision-maker is not the same person as the investigator or the Title IX Coordinator (who is the individual designated as a responsible employee in section 106.8(a) of title 34, Code of Federal Regulations, as such section is in effect on the date of enactment of the Ensuring Fairness for Students Act).

“(H) For educational institutions that are—

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

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

“(II) not permit cross-examination by the parties personally; and

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

“(I) Offer both parties an equal opportunity to appeal.

“(J) Protect any individual, including complainants, respondents, and witnesses, from retaliation for reporting sexual harassment or
participating (or refusing to participate) in the grievance process.

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