

## HOUSE RESOLUTION

CONVENING A TASK FORCE TO ADDRESS IMPLEMENTATION OF HAWAII'S STATE LAW COROLLARY TO TITLE IX IN LIGHT OF ANTICIPATED CHANGES TO FEDERAL TITLE IX REGULATIONS.

WHEREAS, Title IX of the federal Education Amendments of 1972, renamed in 2002 as the Patsy T. Mink Equal Opportunity in Education Act in honor of its principal author, former Hawaii Congresswoman Patsy Takemoto Mink, states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance"; and

WHEREAS, the Office for Civil Rights (OCR) within the United States Department of Education (USDOE) enforces Title IX by, among other things, investigating complaints and issuing informal guidance to educational programs; and

WHEREAS, in 2011, OCR issued a nineteen-page "Dear Colleague" letter clarifying that Title IX prohibits sexual harassment as well as sexual violence and setting out in detail the key requirements that must be followed by educational programs in response to complaints of sexual harassment and sexual violence; and

WHEREAS, in 2014, as a follow-up to the 2011 "Dear Colleague" letter, OCR issued a Question and Answer document further clarifying a school's obligation to respond to sexual violence under Title IX procedural requirements; and

WHEREAS, both the 2011 "Dear Colleague" letter and the 2014 Question and Answer document were disseminated in response to growing awareness of the issue of campus sexual assault and the intentional failure of institutions of higher education to respond; and

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## H.R. NO. **13**

WHEREAS, in January 2017, a new president took office, and the following month, the federal government withdrew guidance documents that had extended Title IX protections to transgender students. In September 2017, USDOE also withdrew the 2011 "Dear Colleague" letter and 2014 Question and Answer document issued by OCR under the prior federal administration. At the same time, USDOE announced its intent to engage in new rulemaking on Title IX; and

**5** 

WHEREAS, on November 29, 2018, USDOE issued a notice of proposed rulemaking that would significantly amend existing Title IX regulations and create new regulations. Among other things, the proposed regulations would reduce the number of complaints involving sexual harassment and other forms of sexual misconduct that currently fall within the purview of Title IX. The proposed regulations would also limit the scope of educational institutions' liability for complaints of sexual harassment; and

WHEREAS, the proposed regulations have been publicly criticized by victim advocates as "devastating" for survivors of sexual harassment and sexual assault. More specifically, commenters anticipate that the proposed regulations would have the effect of discouraging the reporting of sexual harassment and sexual assault. Further, the proposed rules have been characterized as protecting schools above all, and not protecting students, accused or otherwise; and

 WHEREAS, since January 2019, USDOE has been reviewing more than one hundred thousand comments on the proposed regulations, in preparation for finalizing the Title IX regulations, which are expected to be announced in early 2020; and

WHEREAS, in response to the intended policy changes announced by USDOE on the scope of Title IX's application, the Hawaii Legislature passed House Bill No. 1489, House Draft 1, Senate Draft 2, Conference Draft 1, which ultimately became Act 110, Session Laws of Hawaii 2018 (Act 110). Act 110 established a state law corollary to Title IX that prohibits sex-based discrimination in state-administered or state-funded educational programs or activities, including discrimination based on sexual orientation, gender identity, and gender expression; and

## H.R. NO. 13

**5** 

WHEREAS, Act 110 also requested the Legislative Reference Bureau to study and report on the status of Title IX enforcement nationally and in other jurisdictions, and to make recommendations relevant to implementation of the state law corollary; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2020, that an Act 110 Implementation Task Force be convened to address implementation of Hawaii's state law corollary to Title IX, in light of anticipated changes to federal Title IX regulations; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to recommend amendments to Hawaii's state law corollary for the purpose of addressing potential conflicts between Hawaii's law and the federal government's anticipated changes to the Title IX regulations, and to recommend a meaningful enforcement framework for Hawaii's state law corollary to Title IX; and

BE IT FURTHER RESOLVED that the membership of the Act 110 Implementation Task Force consist of one representative from each of the following entities, and that upon convening, the members elect a chairperson from among themselves:

(1) The Office of Institutional Equity of the University of Hawaii System;

(2) The Hawaii Civil Rights Commission;

(3) The Civil Rights Compliance Branch of the Department of Education;

(4) The Department of the Attorney General;

(5) The Hawaii State Commission on the Status of Women; and

(6) The American Association of University Women of Hawaii, which shall be invited to participate.

## H.R. NO. **13**

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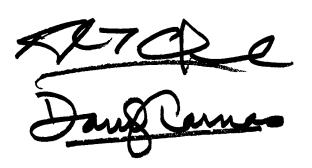
17

BE IT FURTHER RESOLVED that the members of the Act 110 Implementation Task Force serve without compensation; and

BE IT FURTHER RESOLVED that the Act 110 Implementation Task Force is requested to submit a report of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the Regular Session of 2021; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Governor; Attorney General; Executive Director of the Hawaii Civil Rights Commission; President of the University of Hawaii System; Superintendent of Education; Executive Director of the Hawaii State Commission on the Status of Women; and the Board President of the American Association of University Women of Hawaii.

OFFERED BY:



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