THE SENATE THIRTIETH LEGISLATURE, 2020 STATE OF HAWAII

S.C.R. NO. 6

JAN 2 1 2020

SENATE CONCURRENT 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.

1	WURDERC mitle IV of the followed Education Amendments of
1	WHEREAS, Title IX of the federal Education Amendments of
2	1972, renamed in 2002 as the Patsy T. Mink Equal Opportunity in
3	Education Act in honor of its principal author, former Hawaii
4	Congresswoman Patsy Takemoto Mink, states that "[n]o person in
5	the United States shall, on the basis of sex, be excluded from
6	participation in, be denied the benefits of, or be subjected to
7	discrimination under any education program or activity receiving
8	Federal financial assistance"; and
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10	WHEREAS, the Office for Civil Rights (OCR) within the
11	United States Department of Education (USDOE) enforces Title IX
12	by, among other things, investigating complaints and issuing
13	informal guidance to educational programs; and
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15	WHEREAS, in 2011, OCR issued a nineteen-page "Dear
16	Colleague" letter clarifying that Title IX prohibits sexual
17	harassment as well as sexual violence and setting out in detail
18	the key requirements that must be followed by educational
19	programs in response to complaints of sexual harassment and
20	sexual violence; and
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22	WHEREAS, in 2014, as a follow-up to the 2011 "Dear
23	Colleague" letter, OCR issued a Question and Answer document
24	further clarifying a school's obligation to respond to sexual
25	violence under Title IX procedural requirements; and
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27	WHEREAS, both the 2011 "Dear Colleague" letter and the 2014
28	Question and Answer document were disseminated in response to
29	growing awareness of the issue of campus sexual assault and the



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intentional failure of institutions of higher education to 1 2 respond; and 3 WHEREAS, in January 2017, a new president took office, and 4 the following month, the federal government withdrew guidance 5 6 documents that had extended Title IX protections to transgender students. In September 2017, USDOE also withdrew the 2011 "Dear 7 Colleague" letter and 2014 Question and Answer document issued 8 9 by OCR under the prior federal administration. At the same time, USDOE announced its intent to engage in new rulemaking on 10 Title IX; and 11 12 WHEREAS, on November 29, 2018, USDOE issued a notice of 13 14 proposed rulemaking that would significantly amend existing Title IX regulations and create new regulations. Among other 15 things, the proposed regulations would reduce the number of 16 17 complaints involving sexual harassment and other forms of sexual 18 misconduct that currently fall within the purview of Title IX. The proposed regulations would also limit the scope of 19 20 educational institutions' liability for complaints of sexual harassment; and 21 22 23 WHEREAS, the proposed regulations have been publicly criticized by victim advocates as "devastating" for survivors of 24 25 sexual harassment and sexual assault. More specifically, 26 commenters anticipate that the proposed regulations would have the effect of discouraging the reporting of sexual harassment 27 28 and sexual assault. Further, the proposed rules have been characterized as protecting schools above all, and not 29 30 protecting students, accused or otherwise; and 31 WHEREAS, since January 2019, USDOE has been reviewing more 32 33 than one hundred thousand comments on the proposed regulations, in preparation for finalizing the Title IX regulations, which 34 35 are expected to be announced in early 2020; and 36 37 WHEREAS, in response to the intended policy changes announced by USDOE on the scope of Title IX's application, the 38 39 Hawaii Legislature passed House Bill No. 1489, House Draft 1, Senate Draft 2, Conference Draft 1, which ultimately became Act 40 110, Session Laws of Hawaii 2018 (Act 110). Act 110 established 41 a state law corollary to Title IX that prohibits sex-based 42



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discrimination in state-administered or state-funded educational 1 2 programs or activities, including discrimination based on sexual orientation, gender identity, and gender expression; and 3 4 WHEREAS, Act 110 also requested the Legislative Reference 5 6 Bureau to study and report on the status of Title IX enforcement nationally and in other jurisdictions, and to make 7 8 recommendations relevant to implementation of the state law 9 corollary; now, therefore, 10 11 BE IT RESOLVED by the Senate of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2020, the House of 12 Representatives concurring, that an Act 110 Implementation Task 13 14 Force be convened to address implementation of Hawaii's state law corollary to Title IX, in light of anticipated changes to 15 16 federal Title IX regulations; and 17 18 BE IT FURTHER RESOLVED that the Act 110 Implementation Task 19 Force is requested to recommend amendments to Hawaii's state law 20 corollary for the purpose of addressing potential conflicts between Hawaii's law and the federal government's anticipated 21 changes to the Title IX regulations, and to recommend a 22 meaningful enforcement framework for Hawaii's state law 23 24 corollary to Title IX; and 25 26 BE IT FURTHER RESOLVED that the membership of the Act 110 Implementation Task Force consist of one representative from 27 28 each of the following entities, and that upon convening, the 29 members elect a chairperson from among themselves: 30 (1)The Office of Institutional Equity of the University 31 32 of Hawaii System; 33 (2) The Hawaii Civil Rights Commission; 34 35 36 (3) The Civil Rights Compliance Branch of the Department 37 of Education; 38 39 (4) The Department of the Attorney General; 40 (5) The Hawaii State Commission on the Status of Women; 41 42 and



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

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

8 BE IT FURTHER RESOLVED that the Act 110 Implementation Task 9 Force is requested to submit a report of its findings and 10 recommendations, including any proposed legislation, no later 11 than twenty days prior to the convening of the Regular Session 12 of 2021; and

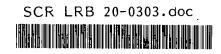
BE IT FURTHER RESOLVED that certified copies of this
Concurrent Resolution be transmitted to the Governor; Attorney
General; Executive Director of the Hawaii Civil Rights
Commission; President of the University of Hawaii System;
Superintendent of Education; Executive Director of the Hawaii
State Commission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

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OFFERED BY:





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