

JAN 21 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 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



1 intentional failure of institutions of higher education to
2 respond; and

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

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

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

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

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37 WHEREAS, in response to the intended policy changes
38 announced by USDOE on the scope of Title IX's application, the
39 Hawaii Legislature passed House Bill No. 1489, House Draft 1,
40 Senate Draft 2, Conference Draft 1, which ultimately became Act
41 110, Session Laws of Hawaii 2018 (Act 110). Act 110 established
42 a state law corollary to Title IX that prohibits sex-based



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1 discrimination in state-administered or state-funded educational
2 programs or activities, including discrimination based on sexual
3 orientation, gender identity, and gender expression; and

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

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

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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
21 between Hawaii's law and the federal government's anticipated
22 changes to the Title IX regulations, and to recommend a
23 meaningful enforcement framework for Hawaii's state law
24 corollary to Title IX; and

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

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31 (1) The Office of Institutional Equity of the University
32 of Hawaii System;
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34 (2) The Hawaii Civil Rights Commission;
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36 (3) The Civil Rights Compliance Branch of the Department
37 of Education;
- 38
39 (4) The Department of the Attorney General;
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41 (5) The Hawaii State Commission on the Status of Women;
- 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


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 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.

OFFERED BY:



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Kal Nbrud

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JOL

Pa & PD

for drawing

Don't let it go

SP/lineo

