

JAN 21 2020

SENATE 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
30 intentional failure of institutions of higher education to
31 respond; and

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S.R. NO. 7

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



S.R. NO. 7

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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 Senate 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.



S.R. NO. 7

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

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

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

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19 OFFERED BY: _____

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S.R. NO. 7

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