

JAN 25 2021

SENATE RESOLUTION

CONVENING A TASK FORCE TO ADDRESS IMPLEMENTATION OF HAWAII'S
STATE LAW COROLLARY TO TITLE IX IN LIGHT OF RECENT 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

14
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



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 were publicly criticized
21 by victim advocates as "devastating" for survivors of sexual
22 harassment and sexual assault. More specifically, commenters
23 anticipated that the proposed regulations would have the effect
24 of discouraging the reporting of sexual harassment and sexual
25 assault. Further, the proposed rules were characterized as
26 protecting schools above all, and not protecting students,
27 accused or otherwise; and
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29 WHEREAS, in response to the intended policy changes
30 announced by USDOE on the scope of Title IX's application, the
31 Hawaii Legislature passed House Bill No. 1489, House Draft 1,
32 Senate Draft 2, Conference Draft 1, which ultimately became Act
33 110, Session Laws of Hawaii 2018 (Act 110). Act 110 established
34 a state law corollary to Title IX that prohibits sex-based
35 discrimination in state-administered or state-funded educational
36 programs or activities, including discrimination based on sexual
37 orientation, gender identity, and gender expression; and
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39 WHEREAS, Act 110 also requested the Legislative Reference
40 Bureau to study and report on the status of Title IX enforcement
41 nationally and in other jurisdictions, and to make



1 recommendations relevant to implementation of the state law
2 corollary; and

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4 WHEREAS, the Bureau's report was published in October 2019;
5 and

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7 WHEREAS, after receiving more than 124,000 public comments
8 on the proposed Title IX regulations, USDOE formally published
9 the final Title IX regulations (also known as the "Final Rule")
10 in the *Federal Register* on May 19, 2020; and

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12 WHEREAS, the Final Rule, which took effect on August 14,
13 2020, is similar in many respects to the proposed Title IX
14 regulations but also reflects further changes made by USDOE in
15 response to issues raised during the public comment process; and

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17 WHEREAS, On November 25, 2020, the International Day for
18 the Elimination of Violence against Women, President-elect Joe
19 Biden released a statement in which he pledged to "restore Title
20 IX protections for student survivors of sexual assault,
21 stalking, and dating violence"; now, therefore,

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23 BE IT RESOLVED by the Senate of the Thirty-first
24 Legislature of the State of Hawaii, Regular Session of 2021,
25 that an Act 110 Implementation Task Force be convened to address
26 implementation of Hawaii's state law corollary to Title IX, in
27 light of recent changes to federal Title IX regulations; and

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29 BE IT FURTHER RESOLVED that the Act 110 Implementation Task
30 Force is requested to recommend amendments to Hawaii's state law
31 corollary for the purpose of addressing potential conflicts
32 between Hawaii's law and the federal government's recent changes
33 to the Title IX regulations, while considering the possible
34 impacts of any restoration by the new federal administration of
35 prior Title IX protections, and to recommend a meaningful
36 enforcement framework for Hawaii's state law corollary to Title
37 IX; and

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



- 1 (1) The Office of Institutional Equity of the University
2 of Hawaii System;
- 3
- 4 (2) The Hawaii Civil Rights Commission;
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- 6 (3) The Civil Rights Compliance Branch of the Department
7 of Education;
- 8
- 9 (4) The Department of the Attorney General;
- 10
- 11 (5) The Hawaii State Commission on the Status of Women;
12 and
- 13
- 14 (6) The American Association of University Women of
15 Hawaii, which shall be invited to participate.
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17 BE IT FURTHER RESOLVED that the members of the Act 110
18 Implementation Task Force serve without compensation; and
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20 BE IT FURTHER RESOLVED that the Act 110 Implementation Task
21 Force is requested to submit a report of its findings and
22 recommendations, including any proposed legislation, no later
23 than twenty days prior to the convening of the Regular Session
24 of 2022; and
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26 BE IT FURTHER RESOLVED that certified copies of this
27 Resolution be transmitted to the Governor; Attorney General;
28 Executive Director of the Hawaii Civil Rights Commission;
29 President of the University of Hawaii System; Superintendent of
30 Education; Executive Director of the Hawaii State Commission on
31 the Status of Women; and the Board President of the American
32 Association of University Women of Hawaii.
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OFFERED BY: Rosalyn H. Baker

