
SENATE RESOLUTION

CONVENING A TASK FORCE TO ADDRESS IMPLEMENTATION OF HAWAII'S
STATE LAW COROLLARY TO TITLE IX TO STRENGTHEN HAWAII'S
EFFORTS TO END CAMPUS-BASED SEXUAL VIOLENCE AND GENDER
DISCRIMINATION.

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
9

10 WHEREAS, the Office for Civil Rights (OCR) within the
11 United States Department of Education (USDOE) enforces Title IX
12 by, among other methods, 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
21

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
26

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
32



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

9
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

19
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

28
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

38
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

3
4 WHEREAS, the Bureau's report was published in October 2019;
5 and

6
7 WHEREAS, after receiving more than one hundred twenty-four
8 thousand public comments on the proposed Title IX regulations,
9 USDOE formally published the final Title IX regulations (also
10 known as the "Final Rule") in the *Federal Register* on May 19,
11 2020; and

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

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

23
24 WHEREAS, according to the Rape, Abuse, and Incest National
25 Network, one in ten students across the United States will
26 experience sexual violence while attending an institution of
27 higher education; and

28
29 WHEREAS, according to the United States Department of
30 Justice, an estimated ninety percent of survivors of campus-
31 based sexual violence do not report such violence through
32 official institutional or legal protocols; and

33
34 WHEREAS, according to the University of Hawaii systemwide
35 campus climate survey of 2019, 12.7 percent of students have
36 reported experiencing sexual harassment, 10.6 percent have
37 experienced stalking, 21.3 percent have experienced dating
38 violence, and 7.2 percent have experienced nonconsensual sexual
39 contact, all of which represent significant increases from the
40 University of Hawaii's campus climate survey results of the
41 2017; now, therefore,

42



1 BE IT RESOLVED by the Senate of the Thirty-first
2 Legislature of the State of Hawaii, Regular Session of 2021,
3 that an Act 110 Implementation Task Force be convened to address
4 implementation of Hawaii's state law corollary to Title IX to
5 strengthen Hawaii's efforts to end campus-based sexual violence
6 and gender discrimination; and
7

8 BE IT FURTHER RESOLVED that the Act 110 Implementation Task
9 Force is requested to recommend amendments to Hawaii's state law
10 corollary for the purpose of addressing potential conflicts
11 between Hawaii's law and the federal government's recent changes
12 to the Title IX regulations, while considering the possible
13 impacts of any restoration by the new federal administration of
14 prior Title IX protections, and to recommend a meaningful
15 enforcement framework for Hawaii's state law corollary to Title
16 IX; and
17

18 BE IT FURTHER RESOLVED that the membership of the Act 110
19 Implementation Task Force consist of one representative from
20 each of the following entities, and that upon convening, the
21 members elect a chairperson from among themselves:
22

- 23 (1) The Office of Institutional Equity of the University
24 of Hawaii System;
- 25
- 26 (2) The Hawaii Civil Rights Commission;
- 27
- 28 (3) The Civil Rights Compliance Branch of the Department
29 of Education;
- 30
- 31 (4) The Department of the Attorney General;
- 32
- 33 (5) The Hawaii State Commission on the Status of Women;
34 and
- 35
- 36 (6) The Prevention, Awareness, and Understanding Violence
37 Program of the University of Hawaii; and
38

39 BE IT FURTHER RESOLVED that one representative of each of
40 the following entities be invited to participate in the task
41 force:
42



- 1 (1) The American Association of University Women of
- 2 Hawaii;
- 3
- 4 (2) The Hawaii Coalition to End Domestic Violence;
- 5
- 6 (3) The Sex Abuse Treatment Center; and
- 7
- 8 (4) The Every Voice Coalition; and
- 9

10 BE IT FURTHER RESOLVED that the Act 110 Implementation Task
11 Force is requested to consider in its deliberations the:

- 12
- 13 (1) Availability of resources for survivors of campus-
- 14 based sexual violence;
- 15
- 16 (2) Adequacy of evidence-based and trauma-informed
- 17 training regarding sexual violence for faculty, staff,
- 18 and students;
- 19
- 20 (3) Sufficiency of information provided to students about
- 21 gender violence;
- 22
- 23 (4) Legislation enacted in other states to strengthening
- 24 protections for survivors of campus-based sexual
- 25 violence;
- 26
- 27 (5) Recommendations contained in "The Complexities of
- 28 Enforcing Title IX and Related Laws: Past History,
- 29 Current Status, and Future Directions", which was
- 30 published by the Legislative Reference Bureau in 2019;
- 31 and
- 32
- 33 (6) Strategies for improving protections for transgender
- 34 students in Hawaii's public schools; and
- 35

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

38

39 BE IT FURTHER RESOLVED that the Act 110 Implementation Task
40 Force is requested to work with student organizations to obtain
41 feedback from survivors of campus-based sexual violence in the
42 course of its deliberations; and



1
2 BE IT FURTHER RESOLVED that the Act 110 Implementation Task
3 Force is requested to submit a report of its findings and
4 recommendations, including any proposed legislation, to the
5 Legislature no later than forty days prior to the convening of
6 the Regular Sessions of 2022 and 2023; and
7

8 BE IT FURTHER RESOLVED that certified copies of this
9 Resolution be transmitted to the Governor; Attorney General;
10 Executive Director of the Hawaii Civil Rights Commission;
11 President of the University of Hawaii System; System Coordinator
12 for the Prevention, Awareness, and Understanding Violence
13 Program of the University of Hawaii; Superintendent of
14 Education; Executive Director of the Hawaii State Commission on
15 the Status of Women; Board President of the American Association
16 of University Women of Hawaii; Executive Director of the Hawaii
17 Coalition to End Domestic Violence; Executive Director of the
18 Sex Abuse Treatment Center; and Co-Executive Directors of the
19 Every Voice Coalition.

