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

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7 WHEREAS, the Bureau's report was published in October 2019;
8 and

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10 WHEREAS, after receiving more than one hundred twenty-four
11 thousand public comments on the proposed Title IX regulations,
12 USDOE formally published the final Title IX regulations (also
13 known as the "Final Rule") in the *Federal Register* on May 19,
14 2020; and

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16 WHEREAS, the Final Rule, which took effect on August 14,
17 2020, is similar in many respects to the proposed Title IX
18 regulations but also reflects further changes made by USDOE in
19 response to issues raised during the public comment process; and

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

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

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

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37 WHEREAS, according to the University of Hawaii systemwide
38 campus climate survey of 2019, 12.7 percent of students have
39 reported experiencing sexual harassment, 10.6 percent have
40 experienced stalking, 21.3 percent have experienced dating
41 violence, and 7.2 percent have experienced nonconsensual sexual
42 contact, all of which represent significant increases from the



1 University of Hawaii's campus climate survey results of the
2 2017; now, therefore,

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

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

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

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27 (1) The Office of Institutional Equity of the University
28 of Hawaii System;
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30 (2) The Hawaii Civil Rights Commission;
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32 (3) The Civil Rights Compliance Branch of the Department
33 of Education;
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35 (4) The Department of the Attorney General;
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37 (5) The Hawaii State Commission on the Status of Women;
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39 (6) The American Association of University Women of
40 Hawaii, which should be invited to participate;
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- 1 (7) The Prevention, Awareness, and Understanding Violence
2 Program of the University of Hawaii;
- 3
- 4 (8) The Hawaii Coalition to End Domestic Violence, which
5 should be invited to participate;
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- 7 (9) The Sex Abuse Treatment Center, which should be
8 invited to participate; and
- 9
- 10 (10) The Every Voice Coalition, which should be invited to
11 participate; and
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13 BE IT FURTHER RESOLVED that the Act 110 Implementation Task
14 Force is requested to consider in its deliberations the:

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- 16 (1) Availability of resources for survivors of campus-
17 based sexual violence;
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- 19 (2) Adequacy of evidence-based and trauma-informed
20 training regarding sexual violence for faculty, staff,
21 and students;
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- 23 (3) Sufficiency of information provided to students about
24 gender violence;
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- 26 (4) Legislation enacted in other states to strengthening
27 protections for survivors of campus-based sexual
28 violence;
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- 30 (5) Recommendations contained in "The Complexities of
31 Enforcing Title IX and Related Laws: Past History,
32 Current Status, and Future Directions", which was
33 published by the Legislative Reference Bureau in 2019;
34 and
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- 36 (6) Strategies for improving protections for transgendered
37 students in Hawaii's public schools; and
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39 BE IT FURTHER RESOLVED that the members of the Act 110
40 Implementation Task Force serve without compensation; and

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1 BE IT FURTHER RESOLVED that the Act 110 Implementation Task
2 Force is requested to work with student organizations to
3 obtain feedback from survivors of campus-based sexual violence
4 in the course of its deliberations; and
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6 BE IT FURTHER RESOLVED that the Act 110 Implementation Task
7 Force is requested to submit a report of its findings and
8 recommendations, including any proposed legislation, no later
9 than twenty days prior to the convening of the Regular Session
10 of 2022; and
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12 BE IT FURTHER RESOLVED that certified copies of this
13 Concurrent Resolution be transmitted to the Governor; Attorney
14 General; Executive Director of the Hawaii Civil Rights
15 Commission; President of the University of Hawaii System; System
16 Coordinator for the Prevention, Awareness, and Understanding
17 Violence Program of the University of Hawaii; Superintendent of
18 Education; Executive Director of the Hawaii State Commission on
19 the Status of Women; Board President of the American Association
20 of University Women of Hawaii; Executive Director of the Hawaii
21 Coalition to End Domestic Violence; Executive Director of the
22 Sex Abuse Treatment Center; and Co-Executive Directors of the
23 Every Voice Coalition.

