

JAN 25 2021

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# SENATE CONCURRENT 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

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 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

3  
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

12  
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

31  
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



# S.C.R. NO. 9

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 124,000 public comments  
11 on the proposed Title IX regulations, USDOE formally published  
12 the final Title IX regulations (also known as the "Final Rule")  
13 in the *Federal Register* on May 19, 2020; and

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

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

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

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



# S.C.R. NO. 9

1 BE IT FURTHER RESOLVED that the membership of the Act 110  
2 Implementation Task Force consist of one representative from  
3 each of the following entities, and that upon convening, the  
4 members elect a chairperson from among themselves:  
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- 6 (1) The Office of Institutional Equity of the University  
7 of Hawaii System;
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- 9 (2) The Hawaii Civil Rights Commission;
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- 11 (3) The Civil Rights Compliance Branch of the Department  
12 of Education;
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- 14 (4) The Department of the Attorney General;
- 15
- 16 (5) The Hawaii State Commission on the Status of Women;  
17 and
- 18
- 19 (6) The American Association of University Women of  
20 Hawaii, which shall be invited to participate.
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22 BE IT FURTHER RESOLVED that the members of the Act 110  
23 Implementation Task Force serve without compensation; and  
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25 BE IT FURTHER RESOLVED that the Act 110 Implementation Task  
26 Force is requested to submit a report of its findings and  
27 recommendations, including any proposed legislation, no later  
28 than twenty days prior to the convening of the Regular Session  
29 of 2022; and  
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31 BE IT FURTHER RESOLVED that certified copies of this  
32 Concurrent Resolution be transmitted to the Governor; Attorney  
33 General; Executive Director of the Hawaii Civil Rights  
34 Commission; President of the University of Hawaii System;  
35 Superintendent of Education; Executive Director of the Hawaii  
36 State Commission on the Status of Women; and the Board President  
37 of the American Association of University Women of Hawaii.  
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OFFERED BY: *Rosalyn H. Beck*

