



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Education
and

Senate Committee on Higher Education
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by

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SCR 9 / SR 8 – 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

Chairs Kidani and Kim and members of the Committees:

Thank you for the opportunity to present testimony on SCR 9 / SR 8 – 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 (“Regulations”). The University of Hawai'i (“University”) supports the intent of this bill and appreciates the opportunity to participate in the proposed task force. Given the rigorous mandates of the Regulations, educational institutions across the country are grappling with implementation issues whilst anticipating further rule-making under the new federal administration that may rescind some of recently-enacted substantive and procedural requirements. President Biden signed an Executive Order on March 8, 2021 that orders the Secretary of Education to review the rule, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 85 Fed. Reg. 20026 (May 19, 2020), “and any other agency actions taken pursuant to that rule, for consistency with governing law, including Title IX.” The Executive Order states that,

It is the policy of my Administration that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity. For students attending schools and other educational institutions that receive Federal financial assistance, this guarantee is codified, in part, in Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.

Thus, it may be prudent for the task force to begin its task after the Secretary of Education concludes his review. As the Legislative Reference Bureau noted in its 2019 Report that, “[g]iven this uncertainty, it may be prudent to wait until changes to the federal Title IX

regulations are finalized before establishing and implementing a detailed enforcement infrastructure for Hawaii's Title IX corollary.” See *The Complexities of Enforcing Title IX and Related Laws: Past History, Current Status, and Future Directions*, p. 200. In order to effectuate a workable enforcement mechanism for our State’s corollary to Title IX, potential conflicts between existing state law and the Regulations must be identified. Equally important, a broader discussion amongst relevant stakeholders, such as those identified in this resolution, may provide preliminary recommendations to navigating the complicated terrain of the ever-evolving structure and framework of Title IX.

Thank you for the opportunity to testify on SCR 9 / SR 8.