

RESOLUTION AGREEMENT
Hawaii Department of Education
OCR Docket No. 10-11-5003

To resolve the above-referenced compliance review conducted by the U.S. Department of Education, Office for Civil Rights (OCR), the Hawaii Department of Education (HDOE) agrees to the terms of this Agreement (Agreement). OCR conducted the compliance review under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. (Title VI), and its implementing regulation at 34 C.F.R. Part 100; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (Title IX), and its implementing regulation at 34 C.F.R. Part 106; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended (Section 504), and its implementing regulation at 34 C.F.R. Part 104; and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. (Title II), and its implementing regulation at 28 C.F.R. Part 35.

I. COMPLIANCE COORDINATOR(S)

- A. HDOE agrees that the responsibilities of its Title IX and its Section 504/Title II coordinator(s) are essential to its commitment to compliance with Title IX, Section 504 and Title II. HDOE will designate one or more individuals to coordinate its efforts to comply with and carry out its responsibilities under the regulations enforced by OCR; including the prompt and equitable resolution of complaints of discrimination and harassment filed by students, parents, employees, and other third parties. HDOE will require its Title IX and Section 504/Title II coordinator(s) to have the following responsibilities and mandatory training requirements:
1. The coordinator(s) will have expert knowledge of HDOE's Title IX and Section 504/Title II grievance procedures and will oversee the handling of all complaints of race, color, national origin discrimination,¹ sex discrimination, including sexual harassment, and disability discrimination within all of HDOE's programs and activities. The coordinator(s) will be responsible for coordinating HDOE's efforts to comply with and carry out its Title IX and Section 504/Title II responsibilities. Those responsibilities include but are not limited to ensuring that HDOE does the following:
 - a. responds promptly, effectively and equitably to all reported incidents of harassment about which it knows or reasonably should have known;
 - b. takes immediate and appropriate steps to investigate or otherwise determine what occurred;
 - c. considers whether interim measures are appropriate in order to individually address the needs of the reporting party, the responding party, or any other party with respect to the reported incident of harassment;
 - d. takes effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created and prevent it from recurring again;

¹ Hereinafter, references only to "race" or "racial harassment" include discrimination or harassment based on color and national origin.

- e. considers whether a hostile environment, if created, has affected others beyond the parties to the underlying incident and determine whether a broader response is required to effectively respond;
 - f. remedies the discriminatory effects on students, employees and others, as appropriate; and
 - g. takes measures to ensure that the steps taken to end the harassment, prevent its recurrence and eliminate a hostile environment are in fact effective as implemented, and, if the steps are not meeting the stated goals, then evaluates whether additional steps are needed.
2. The coordinator(s) will take such actions as are necessary to ensure that HDOE is promptly and equitably responding to all complaints of race, sex, and disability discrimination, including harassment, by taking measures such as holding meetings and/or trainings (by video or in person) as necessary with all individuals assigned to respond to and investigate complaints of race, sex, and disability discrimination at the statewide, complex area, and school levels.
 3. The coordinator(s) will retain oversight and responsibility for any deputy coordinators designated to assist him or her. For any deputy coordinators designated to assist the coordinator(s), the coordinator(s) will ensure that the deputy coordinators are properly performing their designated functions with respect to Title IX, and Section 504/Title II, by taking measures such as developing position descriptions describing the roles and responsibilities of each deputy coordinator that delineate the scope of each deputy coordinator's duties, and overseeing the job performance of any deputy coordinators with respect to the requirements of Title IX and Section 504/Title II.
 4. The coordinator(s) will oversee the provision of initial and ongoing training of any deputy coordinators. The coordinator(s) will also have sufficient experience or training in Title VI, Title IX, Section 504 and Title II. The training content will include the substantive requirements of Title VI, Title IX and Section 504/Title II and how to identify reports that allege race, sex, or disability discrimination, including harassment, how to conduct and document adequate, prompt, reliable, and impartial investigations (including conducting interviews in a fair, non-biased, and objective manner), and intervention and prevention strategies.
 5. The coordinator(s) will retain oversight and responsibility for providing information to students and employees regarding their Title VI, Title IX, and Section 504/Title II rights and responsibilities, including but not limited to the following: the resources available to victims of race, sex, and disability discrimination, formal and informal resolution processes, and the availability of interim measures.
 6. The coordinator(s) will not have other job responsibilities that create a conflict of interest with regard to their duties and responsibilities under Title IX and Section 504/Title II.

REPORTING REQUIREMENT: By April 1, 2018, HDOE will provide a report to OCR containing documentation of its compliance with section I.A, including, but not limited to the following: 1) the identity and qualifications of the individual(s) designated to coordinate its

efforts to comply with and carry out its responsibilities under the regulations enforced by OCR; 2) the identify and qualifications of any deputy coordinators; 3) the specific responsibilities of the coordinator(s) and any deputy coordinator(s), including the issue areas and geographical areas for which the coordinator(s) and deputy coordinators will be responsible; and 4) if HDOE identifies more than one coordinator or deputy coordinator, the report will specifically detail which coordinators or deputy coordinators are responsible for coordinating HDOE’s responses to complaints and incidents of harassment, both against students and employees, based on race, sex, and disability.

- B. HDOE will revise all relevant policies, procedures, regulatory web pages, and publications to include the title, office address, telephone number, and e-mail address of the individual(s) designated to coordinate its efforts to comply with the regulations enforced by OCR, including district-wide, complex area, and school websites and publications. HDOE will ensure that contact information for the coordinator(s) is accurate, consistent, and complete in all such materials, and will establish a process to ensure that, when there are changes to the materials, they are updated within 30 calendar days of any change. For web pages, access to the relevant information should be provided within one click from HDOE’s or a school’s home web page and any other relevant web pages.

REPORTING REQUIREMENT: Within 60 days of providing OCR a report as required by section I.A, HDOE will provide documentation to OCR demonstrating its compliance with section I.B. Inserts may be used pending reprinting of the materials and publications.

II. DISSEMINATION OF NOTICE OF NON-DISCRIMINATION

HDOE will ensure that its Notice of Non-Discrimination is disseminated in each announcement, bulletin, catalog, or application form which it makes available to students, parents, employees, applicants for employment, and any or all unions or professional organizations holding collective bargaining or professional agreements with HDOE. The Notice of Non-Discrimination will also be posted prominently on all HDOE, complex area, and school websites and at various locations throughout the schools; as well as in electronic and printed publications of general distribution that provide information to students, employees, and applicants about the schools’ services and policies.

REPORTING REQUIREMENT: By July 1, 2018, HDOE will provide documentation to OCR demonstrating its compliance with section II, including a copy of revised materials and publications containing the Notice of Non-Discrimination and/or a link to the on-line version of the materials and publications. Inserts may be used pending reprinting of the materials and publications.

III. GRIEVANCE PROCEDURES

- A. HDOE will create grievance procedures (Procedures) to ensure that HDOE provides for the prompt and equitable resolution of complaints of harassment based on race, sex, and disability. As part of and in conjunction with the development of Procedures under this action item, HDOE will review any other policies, procedures, state laws or regulations that may apply to harassment

of students based on race, sex and disability,² to ensure consistency with the Procedures developed under this section, and to ensure that the Procedures include appropriate cross-references and are easily understood.

1. The Procedures will include, at a minimum, the following:
 - a. notice that the Procedures apply to complaints alleging all forms of race, sex, and disability discrimination (including racial, sexual, and disability harassment) carried out by employees, students, or third parties;
 - b. a clear and easily understood explanation of how and where complaints may be filed, including the title, office address, e-mail address, and telephone number of the individual(s) with whom to file a complaint;
 - c. assurance that HDOE will take immediate and appropriate steps to stop any harassment, prevent recurrence and remedy discriminatory effects on the complainant and others, if appropriate;
 - d. provisions for adequate, reliable and impartial investigation of complaints, including the opportunity for the complainant and alleged perpetrator to provide witnesses and evidence;
 - e. reasonably prompt time frames for the major stages of the investigative process, including any sanctions process and appeal, as well as the process for extending timelines, that apply equally to the parties to the complaint;
 - f. a provision requiring concurrent written notification to both/all parties of the outcome of the complaint investigation and any appeals as well as notification to the complainant of all remedies provided and any other actions taken by the HDOE that directly relate to the complainant, and notification to the respondent of any actions taken by the HDOE that directly relate to the respondent;
 - g. appropriate definitions and examples of what types of actions may constitute racial, sexual, and disability harassment;
 - h. provisions clarifying that when there is a complaint of alleged racial, sexual, or disability harassment of a student made against an employee, the investigation will be completed even if the employee resigns before it is finished and will include a determination of any potential remedies for complainant(s) and any other students or employees affected by the alleged harassment;
 - i. provisions clarifying that any informal resolution mechanism set forth in the Procedures will only be used if the parties voluntarily agree to their use; that the parties should not be required to resolve the problem directly with each other; and that the parties must be notified that they have the right to end the informal process at any time and begin the formal stage of the complaint process;
 - j. provisions ensuring that students are notified of the availability of interim measures to protect students during the investigation of possible racial, sexual, or disability harassment (such as enforced no contact orders and changes in class schedules) and how interim measures may be requested; and that the coordinator(s) will be responsible for ensuring that the schools implement appropriate interim measures;

² HDOE's review will include, but not be limited to, the following: Hawaii State Board of Education Policy 305.10; Hawaii Administrative Rules (HAR), Title 8, Chapter 19; HAR Title 8, Chapter 41; Hawaii Revised Statutes, Title 18, Chapter 302A, § 1001; and Hawaii HB 688 (now Act 214).

- k. notice of potential remedies for parties, including but not limited to adjustment of academic schedules and coursework, and the provision of academic, medical, and psychological support services; and
 - l. a statement that retaliation and retaliatory harassment is prohibited against any individual who files a race, sex, or disability discrimination complaint with HDOE or participates in a complaint investigation in any way, as well as a clear explanation of how retaliation or retaliatory harassment can be reported to HDOE.
2. HDOE will ensure that its Procedures are disseminated in electronic and printed publications of general distribution that provide information about HDOE schools' services and policies to students, employees, applicants for employment, and any or all unions and professional organizations holding collective bargaining or professional agreements with HDOE. The Procedures will also be posted prominently on all HDOE, complex area, and school websites.

REPORTING REQUIREMENTS:

1. By September 1, 2018, HDOE will provide to OCR a draft of the proposed Procedures developed pursuant to section III.A.1. If OCR requires changes to the Procedures, HDOE will re-submit the procedures to OCR for review and approval within 30 days of receiving notice of the revisions required by OCR. OCR and HDOE will follow the same process until OCR approves the Procedures.
 2. Within 30 days of written notification from OCR of its approval of the Procedures, HDOE will provide documentation to OCR demonstrating that HDOE has disseminated the Procedures in accordance with section III.A.2, including written notice to all students and employees regarding the Procedures together with information on how to obtain a copy of the Procedures.
- B. HDOE will provide training to all employees, contractors and volunteers responsible for recognizing and reporting incidents of race, sex, and disability discrimination (including but not limited to, teachers, administrators, counselors, psychologists, athletic coaches, transportation staff and contractors, student resource officers and health personnel). The training will cover, at a minimum, the following: the Procedures; the obligation to report race, sex, and disability discrimination; and how to recognize and identify race, sex, and disability discrimination.

REPORTING REQUIREMENTS:

1. Within 120 days of written notification from OCR of its approval of the Procedures, HDOE will submit for OCR's review proposed training materials consistent with the requirements of section III.B. If OCR requires changes to the proposed training materials, HDOE will re-submit the training materials to OCR for review and approval within 30 days of receiving notice of the revisions required by OCR. OCR and HDOE will follow the same process until OCR approves the proposed training materials.

2. Within 365 days of written notification from OCR of its approval of the training materials, HDOE will provide documentation to OCR demonstrating that HDOE has delivered the training as required by section III.B. The documentation will include, at a minimum, the dates of the training, the names and titles of the trainer(s), a copy of any materials used or distributed during the training, and a sign-in sheet with the names and titles of the individuals who attended the training.
- C. HDOE will ensure students are aware, on an age-appropriate basis, of the Procedures, including how, where, and to whom to report a complaint of harassment regarding their race, sex, or disability, and of their rights and responsibilities with respect to making a report or filing a grievance with respect to allegations of racial, sexual, or disability harassment.

REPORTING REQUIREMENTS:

1. Within 120 days of written notification from OCR of its approval of the Procedures, HDOE will submit its plan to make students aware of the Procedures consistent with section III.C. If OCR requires changes to the plan, HDOE will re-submit the plan to OCR for review and approval within 30 days of receiving notice of the revisions required by OCR. OCR and HDOE will follow the same process until OCR approves the plan.
2. Within 180 days of receiving OCR’s approval of the plan to make students aware of the Procedures, HDOE will provide OCR with a report documenting that it completed implementation of the plan.

IV. ONGOING COMPLIANCE

- A. HDOE will develop a plan for monitoring future compliance with Title VI, Title IX, Section 504 and Title II to ensure that the policies, procedures, and practices developed pursuant to this Agreement are being consistently and effectively implemented in all HDOE schools. The plan should include measures such as the following:
1. Seeking community input regarding the effectiveness of HDOE’s responses to incidents of racial, sexual, and disability harassment in HDOE schools. For example, HDOE could seek input from the community by providing an effective method for public comment or by establishing a task force with community members having a stake in the effectiveness of HDOE’s responses to incidents of racial, sexual, and disability harassment in HDOE schools.
 2. Creating a method to assess the effectiveness of HDOE’s responses to incidents of racial, sexual, and disability harassment. For example, HDOE could assess this information by reviewing school records demonstrating a school’s response to harassment incidents; by collecting information from students and staff through school climate surveys that assess the effectiveness of HDOE’s responses; and creating or revising a record-keeping system that allows HDOE to effectively monitor school responses to harassment incidents.

REPORTING REQUIREMENT: By July 1, 2018, HDOE will provide to OCR a proposed plan to OCR pursuant to section IV.A. The plan will include proposed timelines for its

implementation, with final implementation not to exceed one calendar year. If OCR requires changes to the proposed plan, HDOE will re-submit the plan to OCR for review and approval within 30 days of receiving notice of the revisions required by OCR. OCR and HDOE will follow the same process until OCR approves the plan.

B. HDOE will implement the plan.

REPORTING REQUIREMENT: Within 30 days of receiving written notification from OCR of its approval of the plan, HDOE will provide documentation to OCR demonstrating the steps it has taken to implement the plan as of that date. HDOE will provide additional reports to OCR every six months updating OCR on its implementation of the plan, until HDOE completes implementation of the plan.

V. **GENERAL MONITORING PRINCIPLES**

HDOE understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, HDOE understands that during the monitoring of this Agreement, OCR may visit HDOE, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether HDOE has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title VI, at 34 C.F.R. § 100.3; Title IX, at 34 C.F.R. §§ 106.8, 106.9, and 106.31; Section 504, at 34 C.F.R. §§ 104.4, 104.7, and 104.8; and Title II, at 28 C.F.R. §§ 35.106, 35.107, and 35.130, which were at issue in this compliance review. Upon completion of the obligations under this Agreement, OCR shall close this case. HDOE understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give HDOE written notice of the alleged breach and a minimum of 60 calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of HDOE’s representative below.

Signed:

_____/s/_____

December 20, 2017 _____

Christina Kishimoto
Superintendent
Hawaii State Department of Education

Date