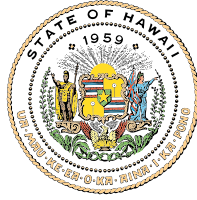


JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT
DEPT. COMM. NO. 196

**STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804**

OFFICE OF THE SUPERINTENDENT

December 22, 2022

The Honorable Ronald D. Kouchi, President
and Members of the Senate
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of Representatives
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the annual report, Title IX School Year 2020-2021 and School Year 2021-2022, pursuant to House Concurrent Resolution No. 198, S.D. 1 (2018). In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at: <http://www.hawaiipublicschools.org/VisionForSuccess/SchoolDataAndReports/StateReports/Pages/Legislative-reports.aspx>.

Sincerely,

A handwritten signature in blue ink that reads "Keith T. Hayashi".

Keith T. Hayashi
Superintendent

KTH:bs

c: Legislative Reference Bureau
Hawaii State Public Library System
University of Hawaii
Office of Talent Management



State of Hawaii
Department of Education

Annual Report on Title IX Compliance 2021-2022

December 2022

House Concurrent Resolution No. 198, Session Laws of Hawaii 2018, requires the Hawaii State Department of Education (Department) to annually report on its efforts to comply with Title IX of the Educational Amendments of 1972 promoting gender equity in athletics as it pertains to the Resolution Agreement with the United States Department of Education, Office for Civil Rights, and the Department.

TITLE IX LEGISLATIVE REPORT

The Hawaii State Department of Education (Department) is committed to Title IX of the Educational Amendments of 1972 (Title IX) and the tenets that it upholds, including equitable use of athletic facilities and resources to ensure that the terms contained in the December 20, 2017, Resolution Agreement with the United States Department of Education, Office for Civil Rights (OCR) are met.

1. Actions taken by the Department to comply with Title IX pursuant to the Resolution Agreement

Compliance Coordinators: On May 7, 2021, the Department submitted a letter to OCR, wherein it stated that the Department believed that it had fulfilled the remaining requirements of the Resolution Agreement. In order to fulfill the terms of the Resolution Agreement, the Department has, among other things:

- Designated a Title IX Coordinator at the State level.
- Posted contact information for the Title IX Specialist on the Department's Civil Rights Compliance Branch's (CRCB) website.
- Distributed brochures and materials identifying contact information for the Title IX Specialist to students, parents, and employees.
- Designated 15 Equity Specialists to serve as Title IX Coordinators at the complex level.

The 15 Equity Specialist positions are assigned to each of the Department's complex areas:

1. Aiea-Moanalua-Radford
2. Leilehua-Mililani-Waialua
3. Farrington-Kaiser-Kalani
4. Kaimuki-McKinley-Roosevelt
5. Campbell-Kapolei
6. Nanakuli-Waianae
7. Pearl City-Waipahu
8. Castle-Kahuku
9. Kailua-Kalaheo
10. Hilo-Waiakea
11. Honokaa-Kealakehe-Kohala-Konawaena
12. Kau-Keaau-Pahoa
13. Baldwin-Kekaulike-Maui
14. Hana-Lahainaluna-Lanai-Molokai
15. Kapaa-Kauai-Waimea

Contact information for each of the Equity Specialists is posted on the Department's CRCB webpage at:

<http://www.hawaiipublicschools.org/ConnectWithUs/Organization/Offices/Pages/CRCO.aspx>.

The Equity Specialists positioned in each of the complex areas listed above also have their contact information posted on each school's website in their respective complex areas.

Notice of Non-Discrimination: The Department has developed the following non-discrimination notices: (1) The Annual Notice of Non-Discrimination (Annual Notice) and (2) the Continuous Notice of Non-Discrimination (Continuous Notice).

The Annual Notice has been translated into 14 languages and is posted at <http://www.hawaiipublicschools.org/ConnectWithUs/Organization/Offices/Pages/CRCO.aspx>. In addition, each school has posted a copy of the Annual Notice on its website. The Annual Notice has also been included in the 2021-2022 and the 2022-2023 Opening of the School Year packet, which was disseminated to all Department employees prior to the beginning of the school year.

Additionally, the Continuous Notice continues to be included in electronic and printed publications of general distribution that provide school-related information to students, employees, or applicants. These publications include but are not limited to school announcements, school reminders, bulletins, catalogs, student planners, school handbooks, registration forms, school newsletters, and application forms (if applicable). The information included in the Continuous Notice confirms that the Department and its schools do not discriminate on the basis of race, sex, age, color, national origin, religion, or disability in its programs and activities.

In July 2022, both the Annual Notice and the Continuous Notice were sent to all schools. Annually, the schools have been reminded to post the Annual Notice on their respective websites and to include the Continuous Notice in subsequent electronic and printed publications.

Grievance Procedures (Complaints Process): A revised Title 8, Chapter 19 of Hawaii Administrative Rules (HAR) “Student Misconduct, Discipline, School Searches and Seizures, Reporting Offenses, Police Interviews and Arrests, and Restitution for Vandalism” (HAR 8-19), has been in effect since December 2019. Per the revised HAR 8-19, schools have consulted with the CRCB Equity Specialist regarding possible situations of bullying, harassment, discrimination, and retaliation.

Title 8, Chapter 89 of HAR, “Civil Rights Policy and Complaint Procedure for Student(s) Complaints Against Adult(s)” (HAR 8-89), has also been in effect since October 2019. The CRCB has utilized the procedures in HAR 8-89 when investigating protected class student complaints against employees, volunteers, or third-party contractors.

Training for administrators on HAR 8-19 and HAR 8-89 originally occurred in 2019. However, to maintain and ensure that new administrators are aware of the new processes under both HAR 8-19 and HAR 8-89, training on HAR 8-19 and HAR 8-89 continues to be conducted each year. Additionally, training sessions on HAR 8-19 and HAR 8-89 have been conducted upon request by the Department’s complex areas and/or offices or branches. Due to the COVID-19 pandemic and social distancing requirements, training regarding HAR 8-19 and HAR 8-89 has been held in a virtual format since March 2020.

Training on the 2020 Title IX Revisions: In May 2020, OCR issued new final federal regulations, dramatically expanding the requirements for Title IX grievance procedures. The new regulations took effect on August 14, 2020, and significantly impacted how the Department should investigate and address sexual harassment and discrimination. Due to the length of time required to effectuate a new HAR that would reflect the requirements under the new regulations, the Department drafted and disseminated the Interim Grievance Procedures for Sexual Harassment (Interim Procedures) until a HAR can be adopted. The Interim Procedures is posted on the Department’s CRCB webpage at:

<http://www.hawaiipublicschools.org/DOE%20Forms/Civil%20Rights/TitleIXInterimGrievanceProceduresforSexualHarassment.pdf>.

The Interim Procedures reflect the requirements set forth in the 2020 revisions to the Title IX regulations and create a process for addressing reports and complaints of sexual harassment within the Department. In accordance with the 2020 revisions, the Department must respond promptly to reports of sexual harassment, provide support to complainants, and use a fair grievance process that provides due process to both the complainant and the respondent.

The 2020 revisions to the Title IX regulations created new responsibilities for the Department throughout all points of the grievance process, which included: response obligations when reports of sexual harassment are received, as well as detailed obligations under the investigation process itself, the decision-making process, and the appeals portions of the grievance process for both the complainant and the respondent.

The changes in the grievance process resulted in changes and the expansion of the CRCB Equity Specialist's role in several ways. Initially, when a complaint has been received, the Equity Specialist assigned to the Complex immediately collaborates with the school or office to conduct initial fact finding to determine whether the report of sexual harassment meets the criteria for a Title IX grievance. The Equity Specialist also assures that supportive measures have been addressed for the parties involved in the complaint. If it is determined that the complaint meets the criteria for a Title IX grievance, unless there are special circumstances involved, the same Equity Specialist conducts the fact-finding portion of the investigation. The Equity Specialist conducts the investigation for all formal complaints of sexual harassment that meet the criteria for the Title IX grievance process, including investigations where both the complainant and the respondent are students.

Separate from the fact-finding portion of the investigation referenced in the previous paragraph, the Title IX grievance process utilizes a decision-making panel comprised of a second CRCB Equity Specialist and the respondent's administrator in lieu of a single decision maker. The assigned Equity Specialist on the decision-making panel assists the administrator with making findings of fact and determinations of responsibility.

For reports of sexual harassment between students that do not meet the requirements for the Title IX grievance process, schools continue to consult with the CRCB Equity Specialist regarding next steps and immediate interventions for the parties. For reports of sexual harassment of a student by an employee that do not meet the requirements for the Title IX grievance process, the Equity Specialist investigates to determine whether the respondent violated any other Board of Education Policies and/or Department directives, rules, or guidelines.

Virtual training for administrators on the Interim Procedures was held during September 2020 and October 2020. Upon request, additional training on the Interim Procedures has also been provided to complex administrators. Administrators in the Baldwin-Kekaulike-Maui were trained over a series of five two-hour sessions. Training is scheduled for administrators in the Kau-Keaau-Pahoa complex during their November 29, 2022 vice-principals meeting and their December 1, 2022 principals meeting.

In June 2022, OCR announced a new proposed rule-making regarding Title IX regulations. The proposed rules vastly differ from the current procedures, where much of the due process steps required by the 2020 revisions have been heavily modified and/or removed. As OCR has not yet

finalized the proposed rules, the grievance process indicated in the Department’s Interim Procedures is still in effect.

Additional Training: In June 2021, the Association of Title IX Administrators conducted four half-day trainings for the CRCB Equity Specialists. The training focused on the 2020 revisions to the federal Title IX, as well as informal resolution and the intersection of 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act.

Also, in June 2021, Good Sports virtually attended a facilities’ “walk through” at an Oahu high school in regards to the school’s softball and baseball fields and provided training to the “walk through” participants on how to access athletic facilities.

2. Actions taken by the Department to comply with Title IX with regard to all athletic facilities, including, but not limited to: fields, locker rooms, and transportation

Good Sports developed a revised Athletic Self-Assessment individualized for the Department. Good Sports also conducted four one-day trainings on Oahu, Big Island, Maui, and Kauai, for Athletic Directors to complete the new self-assessment forms.

During the 2020-2021 school year, the Fall and Winter athletic seasons were canceled due to the COVID-19 pandemic. Although the Department allowed a Spring athletic season, the season was shortened to a very condensed time frame - approximately four weeks. Because of this, high schools with competitive athletic programs were not required to complete the Athletic Self-Assessment during the 2020-2021 school year.

During the 2021-2022 school year, although there was a delayed start to the Fall 2021 athletic season, high school competitive athletic programs resumed. Therefore, the Athletic Self-Assessment was administered that school year.

The Office of Facilities and Operations (OFO) is also working on various gender equity projects, including improvements to softball fields and the construction of girls’ athletic locker rooms. The softball field has been in use at Campbell High School since February 2022 and at Pearl City High School since April 2022. The improvements to softball facilities at King Kekaulike High School are nearing the end of construction, and a new construction job at the school that will reorient the softball field is pending construction. Construction has started for the girls’ athletic locker room at Mililani High School and is estimated to be completed in July 2023. Other projects include softball field improvements and girls’ athletic locker rooms at various high schools, as follows:

- Castle High School, Softball Field improvements: job initiated and scoping meeting to be scheduled.
- Kaimuki High School, Softball Field improvements: anticipated bid before June 2024.
- Kapiolani Elementary School (for Hilo High School), Softball Field improvements: anticipated start of construction in 2023.
- King Kekaulike High School, Baseball and Softball complex: anticipated start of construction in 2023.
- Konawaena High School, Softball Field improvements: anticipated start of construction 2023.
- Moanalua High School, Softball Field: anticipated start of construction in 2023
- Moanalua High School, Softball Field, Phase 2: design; anticipated bid open date by June 2024.

- Puuhale Elementary School (for Farrington High School), Softball Field: design; anticipated bid open date by June 2024.
- Roosevelt High School, Softball Field improvements: design; anticipated bid open date by June 2024.
- Mililani High School, Girls' Athletic Facilities, Phase 2: anticipated start of construction in 2023.
- Mililani High School, Girls' Athletic Facilities, Phase 3: scoping; anticipated bid open date by June 2024.
- Kaimuki High School, Girls' Athletic Locker Room: design; anticipated bid open date by June 2024.
- Kauai High School, Girls' Athletic Locker Room: construction; estimated construction completion date February 2023.
- Maui High School, Girls' Athletic Locker Room, and Other Facilities: anticipated start of construction in 2023.
- Moanalua High School, Girls' Athletic Locker Room, and Other Facilities: due diligence design.
- Radford High School, Girls' Athletic Locker Room: estimated start of construction in 2023.
- Waianae High School, Girls' Athletic Locker Room: estimated start of construction in 2023.
- Waipahu High School, Girls' Athletic Locker Room: estimated start of construction in 2023.

3. All requests for appropriations, positions, and any proposed legislation to comply with the requirements of Title IX

Athletic Facilities: For Fiscal Year 2022-2023, the Department requested \$10.15 million in funding for gender equity compliance projects.

A summary of the Department's supplemental budget request for Fiscal Year 2022-2023 is available at:

https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/FIC_10212021_Recommendation%20on%20Supplemental%20Budget.pdf.

The Department recently sent the Board of Education a proposed biennium budget for Capital Improvement Projects for fiscal years 2023-2024 and 2024-2025. As part of the biennium budget request, \$13,600,000 was proposed for gender equity projects.

A summary of the Department's Capital Improvement Projects biennium request for fiscal years 2023-2024 and 2024-2025 is available at:

https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_10202022_Board%20Action%20on%20the%20Department%27s%20CIP%20Budget%20for%20the%202023-2025%20FB_rev1.pdf.

Further Title IX Training: During the 2022 legislative session, Act 242 was passed. Act 242, in part, requires the Department to provide data on the number of administrators, teachers, and counselors who were trained on Title IX and the Department's applicable policies concerning harassment on the basis of sex. As part of this bill, the Legislature allocated \$350,000 to be used towards such training for Department employees, as well as for Charter School employees. Therefore, the Department is currently undergoing a request for proposal process to procure web-based training on Title IX.

Case Management System: The CRCB is responsible for a variety of tasks and responsibilities, including investigating allegations of discrimination and harassment on the basis of a protected class. The CRCB does not have a formal case management system and manually keeps track of the cases and tasks.

Act 242 also requires the Department to provide specific data on Title IX and non-Title IX sexual harassment complaints. Currently, the CRCB keeps manual data on the following:

1. All reports of sexual harassment that meet the Title IX criteria;
2. Non-Title IX reports of sexual harassment for situations where the complainant is a student, and the respondent is an employee.
3. Non-Title IX reports of sexual harassment for situations where both the complainant and the respondent are employees.

Regarding reports of non-Title IX sexual harassment where both the complainant and the respondent are students, such situations are addressed per the procedures indicated in HAR 8-19. These cases are then logged into Infinite Campus, the Department's Student Information System.

In order to better manage and keep track of its responsibilities, the CRCB submitted a budget request for \$130,000. The purpose of the budget request was for a formal case management system that would allow the CRCB to better manage and monitor its various responsibilities and tasks. The total amount for the budget request was approved, and the CRCB is currently undergoing the request for proposal process to procure a formal case management system.