

DAVID Y. IGE
GOVERNOR



DR. CHRISTINA M. KISHIMOTO
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

December 30, 2020

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 Report School Year 2019-2020 and School Year 2020-2021," 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>.

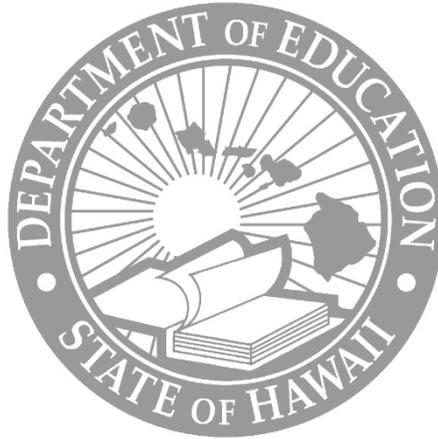
Sincerely,

A handwritten signature in blue ink, appearing to read "CK", representing Dr. Christina M. Kishimoto.

Dr. Christina M. Kishimoto
Superintendent

CMK:bs
Enclosure

c: Legislative Reference Bureau
Civil Rights Compliance Branch



State of Hawaii
Department of Education

Annual Report on Title IX School Year 2019-2020 and School Year 2020-2021

December 2020

House Concurrent Resolution No. 198 (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 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:** In August 2015, the Department hired a Title IX Specialist for the Department's system. Contact information for the Title IX Specialist was posted on the Department's website. Brochures and materials identifying contact information for the Title IX Specialist were distributed.
- **Equity Specialists:** Subsequently, in July 2017, the Hawaii State Legislature approved 18 permanent Equity Specialist positions for the Department's Civil Rights Compliance Branch (CRCB). All of the Equity Specialist positions are currently filled. Three of these positions are based in the state CRCB office.

The remaining 15 Equity Specialist positions are located in 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

The contact information for 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 the complex areas 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 posts a copy of the Annual Notice on its website. The Annual Notice was also included in the 2019-2020 and the 2020-2021 Opening of the School Year packet disseminated to all Department employees prior to the beginning of the school year.

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 Fall 2019, both the Annual Notice and Continuous Notice were revised and sent to all schools to be posted onto their respective websites (Revised Annual Notice) and included in subsequent electronic and printed publications (Revised Continuous Notice). Changes in the Revised Annual Notice include additional protected classes (e.g., ancestry, gender identity, gender expression, and sexual orientation) and a statement regarding the right to receive language assistance free of charge. In addition, non-substantive changes were made to the contact information for the CRCB. The Revised Annual Notice was also translated into 14 languages and posted on the Department's website. Changes in the Revised Continuous Notice include additional protected classes (e.g., ancestry, gender identity, gender expression, and sexual orientation) as well as non-substantive changes to the contact information for the CRCB.

In June 2020, both the Annual Notice and the Continuous Notice were further revised to include updated contact information for new Equity Specialists.

- **Grievance Procedures (Complaints Process):** The Department recommended revisions to Title 8, Chapter 19 of the Hawaii Administrative Rules (HAR), "Student Misconduct, Discipline, School Searches and Seizures, Reporting Offenses, Police Interviews and Arrests, and Restitution for Vandalism" (HAR 8-19). HAR 8-19 governs student-to-student misconduct and discipline. Revisions to HAR 8-19 include a process for student-

to-student misconduct based on a protected class, including but not limited to bullying/cyberbullying, discrimination, and harassment; immediate interventions; and new definitions for what is prohibited protected class conduct (e.g., race/national origin harassment, sexual harassment, gender-based harassment, disability harassment).

The Department recommended the repeal of Chapter 8-41, HAR, “Civil Rights Policy and Complaint Procedure”, and recommended it be replaced by a newly-drafted HAR entitled “Civil Rights Policy and Complaint Procedure for Student(s) Complaints Against Adult(s)” (HAR 8-89). HAR 8-89 sets forth the process for students to file civil rights complaints against adults for prohibited protected class conduct.

Both the revisions to HAR 8-19 and the new HAR 8-89 incorporate the requirements of the Resolution Agreement, specifically a complaint process for students to report instances of protected class discrimination and harassment. In Spring 2018, the CRCB held statewide stakeholder community meetings, including in rural areas such as Hana, Lanai, and Molokai, to gather input regarding the proposed revisions to HAR 8-19 and the new HAR 8-89. A public hearing on HAR 8-19 and HAR 8-89 was held on July 16, 2019. In Fall 2018, the CRCB also held stakeholder meetings with school administrators in each of the complex areas, as well as a second round of community meetings. Based on the feedback received and subsequent revisions, the Hawaii State Board of Education approved both HAR 8-19 and HAR 8-89 in August 2019. HAR 8-89 was approved and signed by the Governor in October 2019. The revised HAR 8-19 was approved and signed by the Governor in November 2019. Implementation guidance for HAR 8-19 was developed and is currently available to school administrators. HAR 8-89, which contains the procedures for investigating complaints based on protected class in student-to-employee situations, did not require new implementation guidelines as the procedures and guidance are contained in the actual rule. The CRCB is responsible for the implementation of HAR 8-89. Training for school administrators on both HAR 8-19 and 8-89 were conducted during the months of November 2019 and December 2019.

For purposes of maintenance and ensuring 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. Training on HAR 8-19 and HAR 8-89 have also 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.

In May 2020, the OCR issued new federal regulations pertaining to Title IX. The new federal regulations had an effective date of August 14, 2020. Based on the specific requirements of the new Title IX regulations, a new HAR will be created. Due to the timeframe for which a HAR can be effectuated, on August 14, 2020, the Department disseminated the Interim Grievance Procedures for Sexual Harassment (Interim

Procedures) until a HAR can be implemented. The Interim Procedures reflect the requirements in the new Title IX regulations and creates a process of addressing reports and complaints of sexual harassment. Briefly, according to the new requirements, the Department must respond promptly to reports of sexual harassment, provide supports to complainants, and use a fair grievance process that provides due process to both the complainant and the respondent. The new Title IX regulations expanded the roles of the CRCB Equity Specialists and created new responsibilities that must be implemented throughout all points of the grievance process, including when reports of sexual harassment are received, when formal complaints of sexual harassment are submitted, and during the investigation, decision-making, and appeals portions of the grievance process.

Implementation guidelines are being drafted and virtual training for administrators on the Interim Procedures was held during September 2020 and October 2020. Additional training dates on the Interim Procedures are currently being coordinated.

- **On-Going Compliance:** The CRCB established the Civil Rights Compliance Advisory Committee (Advisory Committee). The Advisory Committee meets annually to: (a) monitor key compliance items; (b) analyze data; (c) solicit community feedback; and (d) report findings. The Advisory Committee members include Department administrators (complex and school level), a teacher representative, an athletics representative, parent representatives, and community members from various stakeholder groups.

The Advisory Committee last met on March 13, 2019. The Advisory Committee members discussed key compliance items such as the Non-Discrimination notices and grievance procedures (HAR 8-19 and HAR 8-89), training on civil rights issues, and exchanged information regarding key civil rights issues.

Planning is underway to hold an Advisory Committee meeting during the spring semester of the 2020-2021 school year.

- **Training:** The CRCB finalized a Request for Proposal for the purposes of training Equity Specialists, Administrators, and Principals about Title IX compliance and related issues. The Department procured the services of (1) the Association for Title IX Administrators (ATIXA) for training pertaining to sexual misconduct offenses and investigations and (2) Good Sports, Incorporated (Good Sports) for training regarding gender equity in athletics.

Title IX Training: Misconduct and Investigations

Between April 2019 and December 2019, ATIXA conducted various types of Title IX training for the Department. Attendees included the CRCB Equity Specialists; at least

one administrator from each of the Department's 256 schools; various state, district, and complex area administrators; and representatives from the Attorney General's office.

Training included two separate four-day sessions and one two-day session for CRCB Equity Specialists. The first training in April 2019 was entitled "PreK-12 Title IX Administrator and Investigator Training and Certification" and focused on the duties and responsibilities of Title IX Coordinators.

The second training for CRCB Equity Specialists was conducted in September 2019 and was entitled "PreK-12 Advanced Coordinator and Investigator Training Certification." During this training, topics covered included recent Title IX court decisions and OCR Title IX Resolution Agreements from other school district jurisdictions; the proposed federal Title IX regulations, including what practices schools must and should prepare to implement; and listening and questioning exercises.

The third training session for CRCB Equity Specialists was conducted in December 2019 and was entitled "Advanced Topics in Title IX." During this training session, topics included how to make findings and analyze relevant information; bias issues in recent case law; factors to consider for credibility; special considerations when interviewing children; specific elements of OCR's proposed regulations for elementary and secondary education; and hot topics in due process, such as discrimination in the process, threats, and free speech.

Between April 2019 and September 2019, at least one school administrator from each of the 256 Department schools, as well as other state and complex area personnel, attended ATIXA's "PreK-12 Title IX Certification Course." This was a two-day Title IX investigator training. Topics included an overview of Title IX, including Title IX case law, notice, reporting, and responsible employee requirements; types of sexual harassment; best practices for Title IX investigations; and other Title IX topics, including pregnant and parenting students and gender identity. Each participant who attended the entire two-day training received a Title IX Investigator Certification from ATIXA.

In September 2019, ATIXA presented "PreK-12 Title IX Senior Level Administrator Training" to the Department's Leadership Team. In attendance were the Superintendent, the Deputy Superintendent, the Chief of Staff to the Superintendent, Assistant Superintendents, Complex Area Superintendents, and representatives from the Legislature. Topics for this presentation included an overview of Title IX, Title IX case law, recent OCR Title IX Resolution Agreements, the role of the Title IX Coordinator (including the role of the CRCB and school administrators), and other Title IX topics (e.g., pregnant and parenting students and gender identity).

Title IX Training: Gender Equity in Athletics

In June 2019 and July 2019, Good Sports conducted Title IX training regarding gender equity in athletics. Full-day classroom training occurred on Oahu, Big Island, Maui, and Kauai.

The classroom training provided an overview of gender equity in school athletic programs and information regarding the benefits and opportunities in athletics specified in Title IX's implementing regulations. The classroom training was attended by school administrators, Athletic Directors, the CRCB Equity Specialists, representatives from the Attorney General's office, representatives from the Office of Curriculum and Instructional Design, and representatives from the Office of Facilities and Operations. As part of the classroom training, each participant received a copy of Good Sports Title IX high school athletics manual entitled *Title IX and Interscholastic Athletics: How it all Works – In Plain English*, as well as the "Athletics Self-Assessment," which is a workbook of athletic program assessment forms that Good Sports individualized for Hawaii.

In addition to the Good Sports full-day classroom training, Good Sports also provided on-site training at the Department's high schools with athletic programs. The on-site training included training on assessing issues schools should be aware of when providing gender-equitable benefits and opportunities in their athletic programs.

For the 2019-2020 school year, Good Sports developed a revised Athletic Self-Assessment individualized for the Department. Good Sports also conducted four one-day training on Oahu, Big Island, Maui, and Kauai, for Athletic Directors to complete the new self-assessment forms.

On July 12, 2019, both ATIXA and Good Sports were presenters for three break-out sessions during the Department's 2019 Educational Leadership Institute conference.

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

- Schools that were identified as having a male-only athletic locker room (and no corresponding female athletic locker room) began to alternate using the locker room between the male and female athletes by sports season.

These schools were:

1. Aiea High
2. Campbell High
3. Kaimuki High
4. Kauai High

5. Maui High
6. Mililani High
7. Moanalua High
8. Radford High
9. Waialua High
10. Waianae High
11. Waipahu High

For some of these schools, concerns arose because the athletic locker rooms were attached to the male Physical Education (PE) locker rooms and separated by a see-through gate. For these schools, the Department took measures to ensure that both male and female athletes could use the athletic locker room. These schools include:

1. Aiea High
2. Kaimuki High
3. Kauai High
4. Mililani High
5. Moanalua High
6. Waipahu High

At Aiea High, the see-through gate was replaced with a solid entryway that may be locked.

At Kaimuki High, the female PE locker room already had a partitioned area of lockers, so a separate entrance to the partitioned side of the locker room was installed, creating a dedicated area for female athletes.

At Kauai High, Moanalua High, and Waipahu High, the Department replaced the see-through gate with a solid entryway, as well as created a similar entryway between the female locker room and the athletic locker room.

At Mililani High, the Department replaced the see-through gate with a solid entryway and created a similar entryway on the female locker room side and an enclosed hallway that leads from the female area to the athletic locker room.

The CRCB also established a Gender Equity in Athletics Committee (Gender Equity Committee) composed of both Department employees and members of the community, including representatives from all islands. The Gender Equity Committee last met on August 26, 2019. During this meeting, committee members had a robust discussion regarding several items, including a debriefing on the Good Sports training provided to all schools during June 2019 and July 2019. Other issues that were discussed included facilities concerns, the new Self-Assessment schedule, the process for the student-athlete interviews, and the Student Interest Survey.

Planning is underway to hold a Gender Equity Committee meeting during the spring semester of the 2020-2021 school year.

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

- **Athletic Facilities:** For Fiscal Year 2020-21, the Department requested \$23.5 million to implement improvements in various schools statewide for gender equity projects.

A summary of the Department's CIP budget request is available at:

http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/FIC_10032019_Action%20on%20DOE%27s%20Supplemental%20CIP%20Budget%20for%20FY%202020-2021.pdf.

- **Further Title IX Training and Consultation:** During SY 2020-2021, the Department proposed to expand the Title IX training to teachers, counselors, and students. Additional training and consultation pertaining to gender equity in programs and services are also being proposed for new Athletic Directors, School Administrators, and Equity Specialists. As such, the Department submitted a request for additional Title IX training funds during the 2020 legislative session. Although the funding request for additional monies made substantial headway, it did not succeed due to the onset of the pandemic and the current financial status of the State of Hawaii.