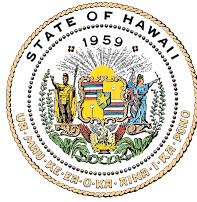


JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT

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

OFFICE OF THE SUPERINTENDENT

December 29, 2023

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

Re: Hawaii State Department of Education Annual Report on Title IX

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

For your information and consideration, a copy of the annual Title IX report is being transmitted, pursuant to House Concurrent Resolution 198, S.D. 1, Session Laws of Hawaii 2018. In accordance with Section 93-16, Hawaii Revised Statutes, the report may also be viewed electronically at: <https://www.hawaiipublicschools.org/VisionForSuccess/SchoolDataAndReports/StateReports/Pages/Legislative-reports.aspx>

Should you have any questions, please contact Ken Kakesako, Director of the Policy, Innovation, Planning and Evaluation Branch, Office of Strategy, Innovation and Performance, via email at ken.kakesako@k12.hi.us or by phone at (808) 282-3430.

Sincerely,

Keith T. Hayashi
Superintendent

KTH:bs
Attachment

c: Legislative Reference Bureau
Hawaii State Public Library System
University of Hawaii
Hawaii State Board of Education
Deputy Superintendent of Operations
Office of Talent Management

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER



State of Hawaii
Department of Education

Annual Report on Title IX School Year 2022-2023 and School Year 2023-2024

December 2023

House Concurrent Resolution No. 198 (2018) requires the Hawaii State Department of Education 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

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 (OCR), and the Department.

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 (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 in each of the complex areas.

The 15 Equity Specialist positions 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 Civil Rights Compliance Branch (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.

Additional Positions

During 2023, the CRCB submitted an unbudgeted need request for an unappropriated position to the Superintendent for a Gender Equity in Athletics Specialist.

Gender Equity in Athletics Specialist

An important aspect of Title IX is gender equity in athletics. Briefly, in 2018, a lawsuit was filed against the Department regarding gender equity in athletics issues, with a focus on James Campbell High School's (JCHS) athletic program. A settlement agreement was recently reached in the lawsuit, where the focus of the agreement is specifically on JCHS. Prior to the settlement agreement, the Department had worked towards resolving many of the issues indicated in the lawsuit. The CRCB recognizes, however, the continued need to work with not only JCHS, but school athletic programs statewide regarding the accommodation of the interests and abilities of the female student athletes.

This position will be solely dedicated to gender equity in athletics, and would allow more time for training with schools and athletic directors regarding maintaining equity within the Title IX athletic benefits and opportunities, as well as how to recognize and respond to possible gender equity issues in school athletic programs. This position will also allow the Department to expand its focus on school athletic programs to the middle and intermediate schools in terms of intramural and extramural athletic programs, as well as publicity and recruitment for high school athletics. Other responsibilities will include conducting athletic self-assessments, identifying interests and abilities in new sports, and being a resource for schools and athletic directors. The goal is to eventually make this a permanent position, where future funds will be requested from the legislature.

The request for the Gender Equity in Athletics position was approved and the CRCB is actively recruiting for this position.

Notices 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 2022-2023 and the 2023-2024 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.

On July 14, 2023, 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 their applicable 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 was held in a virtual format, but recently, requests for training have been in both virtual and in-person formats.

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. 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 corroborates 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 occurred 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 this proposed rule, the grievance process indicated in the Department's Interim Procedures is still in effect.

In April 2023, OCR announced a new and proposed rule-making regarding transgender student athletes and school athletic programs. Under the proposed rule, schools would be prohibited from adopting a policy that categorically bans transgender students from participating on school athletic teams consistent with their gender identity. The proposed rule also, however, would allow schools to develop criteria that:

“Serve important educational objectives, such as ensuring fairness in competition or preventing sports-related injury. These criteria would have to account for the sport, level of competition, and grade or education level to which they apply. These criteria could not be premised on disapproval of transgender students or a desire to harm a particular student. The criteria would also have to minimize harms to students whose opportunity to participate in a male or female team consistent with their gender identity would be limited or denied.”[1]

[1] See OCR Fact Sheet: U.S. Department of Education's Proposed Changes to its Title IX Regulations on Student's Eligibility for Athletic Teams (April 6, 2023) at <https://www2.ed.gov/about/offices/list/ocr/docs/t9-ath-nprm-factsheet.pdf>. (last checked on November 6, 2023)

As OCR has not yet finalized this proposed rule, the Department continues to work with students on a case-by-case basis, where for all practical purposes, students are allowed to participate according to their gender identity.

Civil Rights Compliance Workgroup

In Fall 2023, the CRCB established the Civil Rights Compliance Workgroup (CRC Workgroup), which is comprised of community stakeholders, as well as Department representatives from the school level (faculty and administration), complex level, and state level positions. The CRC Workgroup met on August 23, 2023, and is scheduled to meet again on November 16, 2023 and April 18, 2024.

On August 23, 2023, the CRC Workgroup members were divided into three Sub-Groups: (1) Race and Religion, (2) Sex and Gender, and (3) Disability. Each Sub-Group was tasked with discussing relevant issues and concerns, as well as determining a project goal that could reasonably be accomplished during the 2023-2024 school year. Specifically regarding Title IX, the Sex and Gender Sub-Group was comprised of state, complex, and school-level administrators, as well as community stakeholders. One school administrator spoke about the high turnover of administrators in her particular complex. The discussion then focused on the need for more robust training on Title IX (as well as protected classes in general) for administrators. Although training was previously done in the past, more recent administrators have not received the training. It was then determined that the project goal for the Sex and Gender Sub-Workgroup would be on developing a more robust training plan that focused on Title IX issues (as well as protected class in general). A training plan was drafted, with Title IX topics including sex harassment; the Department's Interim Grievance Procedures for Sexual Harassment; the Department's Guidance on Supports for Transgender Students; and Gender Equity in Athletics. The draft training plan also included future plans for public service announcement (PSA) type formats for parents and students in regards to what harassment and discrimination may look like and how to report such incidences of harassment and/or discrimination.

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

During the 2022-2023 school year, high school athletics returned to its normal schedule. Although the initial plan was to administer the Athletic Self-Assessment, it was ultimately determined that the Athletic Self-Assessment would be restarted during the 2023-2024 school year.

As previously stated, the lawsuit filed in 2018 against the Department regarding gender equity in athletics issues at JCHS was recently settled. Moving forward, the terms indicated in the settlement agreement will likely affect the policies and procedures used to address gender equity in athletics. The CRCB will revise and update current policies and procedures, as appropriate, to align with the terms of the settlement agreement.

The Office of Facilities and Operations is also working on various gender equity projects, including improvements to softball fields and the construction of girls' athletic locker rooms. The softball field at Campbell High School has been in use since February 2022. The softball field at Pearl City High School has been in use since April 2022. The improvements to the softball facilities at King Kekaulike High School are nearing the end of construction, and a new 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 April - May 2024. Other

projects include softball field improvements and girls' athletic locker rooms at various high schools, as follows:

- Castle High School, Softball Field improvements: In design; anticipate bid open date by June 2024.
- Kaimuki High School, Softball Field improvements: In design; anticipated bid open date by June 2024, but due to site conditions, the softball improvements may need to be timed with a future track and field improvement project that would relocate and regrade both facilities.
- Kapiolani Elementary School (for Hilo High School), Softball Field improvements: In construction; estimated completion in March 2024.
- King Kekaulike High School, Baseball and Softball complex: In construction; estimated completion in January 2025.
- Konawaena High School, Softball Field improvements: In construction contracting; the notice to proceed has not yet been issued so there is no completion date scheduled yet.
- Moanalua High School, Softball Field: In construction; estimated completion in December 2023.
- Moanalua High School, Softball Field, Phase 2: In design; anticipate bid open date by June 2024.
- Puuhale Elementary School (for Farrington High School), Softball Field: In design; anticipate bid open date by June 2024.
- Roosevelt High School, Softball Field improvements: In design; anticipate bid open date by March 2024.
- Mililani High School, Girls' Athletic Facilities, Phase 2: In construction contracting; the notice to proceed has not yet been issued so there is no completion date scheduled yet.
- Mililani High School, Girls' Athletic Facilities, Phase 3: In design; anticipate bid open date by June 2024.
- Kaimuki High School, Girls' Athletic Locker Room: design: In design; anticipate bid open date by June 2024.
- Kauai High School, Girls' Athletic Locker Room: In construction; estimated completion in January 2025.
- Maui High School, Girls' Athletic Locker Room, and Other Facilities: In construction contracting; the notice to proceed has not yet been issued so there is no completion date scheduled yet.
- Moanalua High School, Girls' Athletic Locker Room, and Other Facilities: In design; mixed use project needs line item funding for support facilities in addition to gender equity funding, anticipated in FY26.
- Radford High School, Girls' Athletic Locker Room: In construction; estimated completion in October 2024.
- Waianae High School, Girls' Athletic Locker Room: In construction; estimated completion in January 2025.
- Waipahu High School, Girls' Athletic Locker Room: In construction; estimated completion in February 2025.
- Waiakea High School, Girls' Athletic Locker Room: In design; anticipate bid open date by June 2024.
- Leilehua High School, Girls' Athletic Locker Room: In design; budgeted construction funds in FY25 so anticipate bid open date before 2026.
- Hana High and Elementary School, Girls' Athletic Locker Room: In design; budgeted construction funds in FY25 so anticipate bid open date before 2026.

The aforementioned status updates are subject to change, as the Department is working out a proposed lapse of Capital Improvement Project funding.

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

Athletic Facilities

For the biennium budget for Capital Improvement Projects for fiscal years 2023-2024 and 2024-2025, the Department requested \$13,600,000 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_1020222_Board%20Action%20on%20the%20Department%27s%20CIP%20Budget%20for%20the%202023-2025%20FB_rev1.pdf

The Board of Education recently approved the Department's supplemental budget request for Capital Improvement Projects for fiscal year 2024-2025 (FY25). As part of the supplemental budget request, \$6.3 million was proposed for the completion of gender equity compliance projects. This budget is based on construction for two girls' athletic locker room projects that have allotted design funds. A third project just starting design may include facilities other than the girls' athletic locker room due to site constraints, and will need line item funding in fiscal year 2025-26 when funding for the new multipurpose facility can be requested.

A summary of the Department's supplemental budget request for fiscal year 2024-2025 is available at:

https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/FIC_100423_Action%20on%20DOE%27s%20Supplemental%20Operating%20Budget%20Request%20FY25.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. The CRCB originally initiated the Request for Proposal process to procure web-based training on Title IX; however, with the assistance of the Department's Procurement Branch, the CRCB utilized an exception, per the Hawaii Administrative Rules, and has contacted with the Association of Title IX Administrators (ATIXA) to provide both on-line and in-person training pertaining to Title IX.

The on-line training will be made available to all Department employees, as well as Charter School employees, and will focus on the definition of sexual harassment, how to recognize possible sexually harassing conduct, as well as on how to appropriately address reports and complaints of sexual harassment.

The in-person training will be made available to the CRCB Equity Specialists, Charter School representatives, and other Department employees, as appropriate. The in-person training is comprised of two four-day sessions that will occur in December 2023 and February 2024.

The in-person training will focus on investigation procedures, report writing, decision-making, gender equity in athletics, as well as ADA/505, and informal resolution.

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 sex harassment where both the complainant and the respondent are students, such situations as 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 more thoroughly manage and monitor its various responsibilities and tasks. The total amount for the budget request was approved, and the CRCB is working to finalize a contract for a case management system.