



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE

December 31, 2008

Honorable Patricia Hamamoto
Superintendent of Education
Hawaii State Department of Education
P.O. Box 2360
Honolulu, Hawaii 96804

Re: Hawaii State Department of Education
OCR Reference No. 10051060

Dear Superintendent Hamamoto:

This is to notify you that the Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against the Hawaii State Department of Education (HDOE). Specifically, the complaint alleged that:

1. students at Kealakehe Intermediate School (school) were subjected to race, sex, and disability harassment during the 2003-2004 and 2004-2005 school years;
2. students were subjected to retaliation after they reported incidents of race and sex harassment to school officials; and
3. HDOE did not enable parents to utilize its grievance procedures to address the complaints of sex, race, and disability harassment.

OCR conducted its investigation of race harassment and retaliation under the authority of title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination on the bases of race, color, and national origin. Title VI also prohibits retaliation against any individual for the purpose of interfering with any right or privilege secured by Title VI, or because an individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VI.

OCR has authority to investigate complaints of harassment on the basis of sex and retaliation under title IX of the Education Amendments of 1972, and to investigate complaints of harassment on the basis of disability and retaliation under section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990.

915 SECOND AVE., ROOM 3310, SEATTLE, WA 98174-1099
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Also, the regulations under Title IX, Section 504, and Title II require the designation of a person responsible for ensuring compliance with those acts and the establishment of grievance procedures that provide for prompt and equitable resolution of complaints of discrimination under those acts. HDOE is a recipient of federal financial assistance from this Department and is a public entity.

The issues investigated were:

1. Whether students were subjected to a hostile environment because of harassment on the basis of race, sex, or disability, or in retaliation for reporting such harassment and, if so, whether HDOE knew about race, sex, and disability harassment and retaliation and failed to promptly and effectively address it.
2. Whether HDOE failed to maintain a grievance procedure that provided the opportunity for a prompt and equitable resolution to complaints of sex and disability harassment and retaliation.

With regard to the issue of harassment on the basis of disability, our investigation did not substantiate the allegations of disability harassment and retaliation under Section 504 and Title II. OCR obtained information regarding several isolated instances of harassment or name-calling based on disability; however, we have determined that these reports are not sufficient to establish that a hostile environment based on disability harassment existed at the school during the time period in question.

With regard to the issue of whether students were subjected to harassment on the basis of race and sex and subjected to retaliation, we have concluded that HDOE failed to comply with Title VI and Title IX because school officials failed to take prompt and effective steps to stop harassment that school officials knew or should have known about. Also, with regard to HDOE's grievance procedures under Title IX, Section 504, and Title II, we have concluded that HDOE's procedures did not afford a prompt and equitable resolution for complaints of discrimination, harassment, and retaliation. After notifying HDOE of the compliance concerns that we identified, OCR entered into discussions with HDOE regarding a Settlement Agreement that would serve to voluntarily resolve those concerns. HDOE has made a commitment in the agreement to undertake action that, when completed, will fully address the compliance concerns identified by OCR.

Our findings of fact and conclusions are based on information provided by the complainant and interviews with the complainant, students, former students, parents, information provided by HDOE, and interviews with HDOE staff and former staff.

Findings of Fact - Issue No. 1

OCR investigated whether students were subjected to harassment on the basis of race, sex, or disability, or in retaliation for reporting such harassment and, if so, whether HDOE knew about the harassment and failed to promptly and effectively address it.

A. Hostile Racial and Sexual Environment

The evidence established that a racially and sexually hostile environment existed at the school during the 2003-2004 and 2004-2005 school years. OCR obtained substantial evidence that students experienced racially and sexually derogatory name-calling on nearly a daily basis on school buses, at school bus stops, in school hallways, and other areas of the school. Students were called names such as “f*****g haole,” “stupid haole,” “haole b***h,” “haole c**t,” “haole whore,” “micro,” “Jap,” and such students were told “go home,” “you don’t belong here,” and “we don’t want you here,” in conjunction with the term “haole” and racially derogatory terms relating to their race (primarily Caucasian, but also Asian) and sex. The term “haole” is commonly understood to mean a white or Caucasian person and, depending on the context in which it is used, it is sometimes disparaging.

Some school staff reported to OCR that racially and sexually derogatory name-calling was a serious problem and that there were frequent reports made to them by students or their parents. Some school staff testified that they were not aware of the serious nature and extent of the harassment reported to OCR but that they would not be surprised to hear that students were called names involving the use of racial terms.

The evidence established that a number of harassing incidents involved assaults or other physical harassment. Students and parents testified that students who were perceived to be Caucasian were assaulted, taunted into fighting, and pushed or tripped by other students who called them racially or sexually derogatory names and that they were subjected to other acts of harassment when other students would steal their book bags, backpacks, or other bags and, in some instances, dump or throw their bags out of school bus windows. The evidence also established that:

- most, but not all, of the students who were victimized were Caucasian;
- in most instances the primary perpetrators were “local” or non-white students;
- younger, smaller students who were light-skinned, blonde, or who otherwise were apparently Caucasians were more likely to be picked on than other students;

- terms such as “haole” were frequently used in conjunction with various derogatory terms and that such incidents occurred almost daily over a lengthy period of time;
- in some instances, derogatory terms (racial or sexual) were used in conjunction with physical assaults, theft, or destruction of property and such terms were used in a manner that was meant to convey that the person was unwelcome and unwanted;
- racially and sexually harassing incidents frequently took place in hallways, on school buses and at school bus stops, in restrooms, and in other areas;
- on school buses, other students would not let Caucasian students sit near the front of the bus where they could be closer to the driver; and
- one Caucasian student was repeatedly assaulted with a needle used for ear piercing and this type of harassment was reported by other students.

The evidence established that after reports of racial or sexual harassment were made to school officials, students who were the victims of the race and sex harassment were frequently subjected to retaliation by other students and that many students or parents stopped reporting such incidents because racial and sexual harassment would become even more severe after it was reported. The evidence also established that students and parents stopped reporting such incidents because, based on retaliation experienced following a report of harassment, they believed that school officials were not responding effectively. The evidence established that, in a number of instances, students were assaulted or threatened after reporting such harassment.

B. Notice to School Officials

We next considered whether HDOE officials had actual or constructive notice of the racially and sexually hostile environment and whether school officials had notice of retaliation by students against students who reported such harassment. We considered whether: (1) students or parents filed grievances or complained to school staff or other appropriate personnel about racial or sexual harassment; (2) responsible employees may have witnessed harassment; and (3) school officials may have received notice in an indirect manner, from sources such as a member of the school staff.

The evidence established that HDOE officials who had a responsibility to take steps to prevent harassment had actual notice of many of the incidents that occurred during the 2003-2004 and 2004-2005 school years and that were subsequently reported to OCR.

A school administrator testified to the receipt of numerous reports from parents and students of racially or sexually harassing conduct during this time period. The administrator testified to feeling powerless to take action to prevent the harassment because it was so prevalent and because some offending students believed that they would not be severely disciplined for the conduct. Another administrator testified that the school environment, during the 2003-2004 school year, was very bad and that staff morale was low. She stated that although the school had a zero tolerance policy for such harassment in effect, the reality was that such harassment was not dealt with effectively. Another former administrator testified that, during the 2003-2004 school year, racial and sexual harassment occurred so frequently that it was hard to control and that while the administration had a policy that called for disciplining students for such conduct, he could not think of an instance in which a student was disciplined for making a racial slur.

The evidence established that a number of students and/or their parents reported one or more incidents of race or sex harassment but that, because the students were retaliated against by the offending students or their peers for reporting these incidents, they stopped reporting the conduct to the school. The evidence also established that district officials investigated a physical assault in which a classmate of a student who was disciplined for racial and sexual harassment retaliated against the student who reported the harassment by pushing her down some stairs. The evidence established that such retaliation was commonplace and that, if school officials had been reasonably diligent in making a timely schoolwide inquiry, they would have concluded that such retaliation was common and that it contributed to the racially and sexually hostile environment that existed during the period in question.

The evidence established that school officials were aware that racial and sexual harassment was particularly severe on school buses and at school bus stops. During the 2003-2004 school year, bus service was provided by private companies under contract with the district. During the 2004-2005 school year, the district operated some school buses and the balance were operated by private companies. Several school witnesses testified that both HDOE and the private companies had difficulty finding school bus drivers and that the bus drivers were very reluctant to report disciplinary incidents on the buses. School officials also testified that their ability to respond to harassment concerns on school buses and at school bus stops was hampered by administrative obstacles and a shortage of staff resources.

The evidence established that school officials did not make a schoolwide inquiry regarding race and sex harassment and that, if they had done so, they would likely have learned of many incidents that went unreported to school officials and would have learned the extent to which many incidents of harassment related to race and sex. The evidence established that a proper schoolwide inquiry would have made it apparent to school officials that these incidents were racial and sexual in nature and that a hostile environment existed as a result.

The school maintains information on a database called Safe School Information System (SSIS) regarding disciplinary referrals. OCR reviewed SSIS data and disciplinary records from the school for the 2003-2004 and 2004-2005 school years. The evidence established that there were 45 referrals for conduct that involved sex or race harassment during the 2004-2005 school year and a similar number of referrals during the 2003-2004 school year. The school conducted a survey in January 2005 in an effort to determine how widespread the problem of bullying was. The survey did not specifically ask for information about bullying based on race, sex, or disability harassment. The school principal testified that he was concerned that some of the bullying that he had heard about might be based on protected class status and that he initiated the survey in an effort to establish a baseline for the scope of the problem. The survey indicated that approximately half of all students reported that they were bullied often, that 80-90% of the students reported seeing other students bullied at school, and that 15-20% reported that they were sometimes afraid to come to school because they feared being bullied.

The evidence also established that a relatively high number of students withdrew during the 2004-2005 school year to attend private schools and that a number of 5th grade elementary school students who were expected to enroll at the intermediate school as 6th graders did not enroll for that school year. OCR obtained information from a number of parents that students were withdrawn because of a racially or sexually hostile environment. The evidence established that a disproportionately high number of students who withdrew from the school or elected not to attend the school following elementary school were Caucasian.

The evidence established that HDOE has a procedure for obtaining information from parents at the time that they withdraw their children from school but that the procedure was not widely used. The evidence did not establish that school officials were specifically notified that a student was being withdrawn on account of race or sex harassment, but the evidence did establish that significantly fewer students were enrolling at the school or remaining at the school than the number projected by the district based on the school population in the area. The evidence established that no effective steps were taken by school officials to identify the reasons that students were withdrawing or to otherwise make diligent efforts to contact these families to determine why they withdrew.

C. Response by School Officials

OCR considered the response by school officials to the harassment by examining reasonableness, timeliness, and effectiveness of the response. We also reviewed whether the response was tailored to redress fully the specific problems experienced at the school and whether the response was reasonably calculated to prevent recurrence and ensure that affected participants were not restricted in their participation or benefits as a result of a hostile environment at the school. We reviewed the school's disciplinary policies, grievance

policies, and any applicable anti-harassment policies and attempted to evaluate whether the response was consistent with any established institutional policies or with responsive action taken with respect to similar incidents.

The evidence established that during much of relevant time period, the school was staffed by two vice principals, one of whom was in his initial year as an administrator and had virtually no experience dealing with race or sex harassment.

Parents and students reported that harassment on buses and at bus stops was rarely addressed effectively or promptly. Several reported that school administrators did not respond to their concerns at all or, when they did so, the response was not effective.

Several school employees, including school administrators, testified that they did not have the tools to deal with some of the harassment because of a school practice that limited discipline for even serious offenses to 10 days of suspension. They testified that HDOE had limited space available in alternative educational settings where serious offenders could attend school and that, as a result, some students were aware that they were unlikely to be expelled or to be severely disciplined.

The evidence established that, in some instances, school officials responded to reports of race and sex harassment by investigating the reports and by taking disciplinary action against the offending students. The evidence established that in many instances the response by the school did not effectively address the problem and that reports to school officials resulted in retaliatory or racially and sexually derogatory harassment that was more severe than the incident that was originally reported.

Prior to December 2004, school officials responded to incidents of racial and sexual harassment on a case by case basis but did not take action to respond to the overall hostile environment that existed at the school. The evidence established that school officials imposed discipline in some cases but that the discipline imposed in relation to individual incidents was not effective in addressing a schoolwide problem. School employees testified that before the current principal was assigned to the school in December 2004, the former principal was frequently absent due to health concerns and that, in general, the school staff suffered from low morale. Several employees testified that the school atmosphere was poor because there was no leadership provided by school administrators.

The evidence established that school administrators believed that they did not have the ability to impose discipline to remove serious offenders from the school because of limited alternative educational settings in the area where the school was located. Several counselors testified that their general approach in handling incidents involving race or sex harassment was to get the victim of the harassment together with the offending student or students and

to help them “work it out” and in some instances the victim of harassment was left alone in a room with the offending student to help them work it out. A number of students and parents of students who reported incidents of race or sex harassment reported a similar response from school officials. The evidence established that this approach for more serious incidents of harassment was not effective in preventing further racial and sexual harassment and retaliation.

OCR has determined that prior to December 2004, there was no coordinated effective systemic response to reports of sexual or racial harassment and retaliation and that, although the environment at the school since December 2004 has improved, HDOE did not promptly and effectively respond to concerns about race and sex harassment and retaliation that were reported to HDOE staff or that HDOE staff should have known about.

Analysis and Conclusions - Issue No. 1

OCR has determined that a racially and sexually hostile environment existed at the school during the 2003-2004 school year and during much of the 2004-2005 school year, that school officials with a responsibility to prevent such harassment knew or should have known about the hostile environment, and that such officials did not take prompt and effective action to respond to the environment.

In making this determination, we evaluated whether HDOE created or was responsible for a racially or sexually hostile environment, i.e., harassing conduct (e.g., physical, verbal, graphic, or written) that was sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a recipient. We evaluated whether students were discriminated against by HDOE on the basis of race or sex because HDOE effectively caused, encouraged, accepted, tolerated, or failed to correct a racially or sexually hostile environment of which it had notice.

In evaluating whether a hostile environment existed, we considered the severity of incidents that were reported to OCR. We considered: (1) the characteristics and circumstances of the victims, especially the victims’ race, sex, and age; (2) the severity and the nature of the incidents and the regular and persistent nature of the incidents; (3) the fact that, in certain instances, students suffered injury to their persons and injury or loss of property in conjunction with the harassing conduct; (4) the size of the recipient and the location of the incidents; and (5) the fact that the conduct in some instances was perpetrated by a group of students rather than by an individual student. Based on these factors, we determined that a racially and sexually hostile environment existed at the school during the relevant time period.

We also determined that school officials with a responsibility to take steps to prevent racial and sexual harassment knew or should have known of the existence of the racially and sexually hostile environment. We based our determination on the overall number of incidents reported, the testimony of several administrators that they were notified of a number of incidents of racial and sexual harassment, and the testimony of students and parents that they notified school officials of such harassment.

Having determined that a racially and sexually hostile environment existed and that school officials had notice of such an environment, we next evaluated whether the school officials took prompt and effective action in response. We determined that they did not.

We considered whether the response by HDOE included the imposition of appropriate disciplinary measures, the development or dissemination of HDOE policy prohibiting racial and sexual harassment, notice to affected students or parents of HDOE grievance or complaint procedures, the implementation of racial and sexual harassment awareness training, and the provision of counseling for the victims of racial and sexual harassment.

The evidence established that HDOE took some steps beginning in January 2005 to address the issue of race and sex harassment. The current school principal testified about the race and sex harassment awareness training conducted at the school, his efforts to create disciplinary options for serious offenders, and his efforts to obtain information about the extent of the problem by conducting a bullying survey.

With regard to whether HDOE imposed appropriate disciplinary measures in response to the incidents of which they were aware, the evidence established that in some instances, the school imposed discipline on the basis of individual incidents, including counseling to the offending students and their parents, short suspensions, or other discipline. The evidence established that the discipline imposed, given the nature of the incidents, was not effective in preventing further harassment and was not part of a broader plan that was calculated to prevent further harassment.

The evidence established that the measures taken were not sufficient to promptly and effectively prevent continuing incidents of race or sex harassment or retaliation. We have determined that given the severity and scope of the harassment, the fact that it involved assaults or other physical harassment, the frequency of occurrences, and the fact that the harassment continued over a long period of time, the school did not take prompt and effective steps to end the harassment. Certain responses that were warranted given the scope of the problem were not instituted by HDOE. HDOE did not offer psychological counseling to any affected students and no steps were taken to improve the tracking or monitoring the number of racial or sexual harassment incidents. HDOE has not taken other

steps that would likely have been effective in addressing the environment that has existed at the school.

In addition, school employees, in particular school counselors, administrators, or the school safety and security officer have not received any significant training or education relating to the issue of preventing race or sex harassment. Finally, although some steps have been taken to address the serious concern about harassment on school buses or at school bus stops, HDOE's efforts to address harassment in those venues has been inadequate and school administrators have testified that they do not have the resources necessary to take more active steps to address their concerns.

With regard to whether school officials had notice that student-on-student retaliation was occurring, the evidence established that school officials had actual notice of several incidents of such retaliation and that if school officials had made a reasonable inquiry, they would have known that such retaliation was common.

Because the school did not take prompt and effective action to respond to a racially and sexually hostile environment of which school officials had actual or constructive notice, we have determined that HDOE did not comply with the requirements of Title VI and Title IX in this regard. Likewise, because students were routinely retaliated against and were frequently afraid to report incidents of race or sex harassment after reporting an initial incident, we have determined that HDOE did not comply with requirements of Title VI and Title IX in preventing such retaliation by students against other students.

Findings of Fact - Issue No. 2

OCR investigated whether HDOE failed to utilize grievance procedures that provided for prompt and equitable resolution of complaints of harassment and retaliation.

HDOE has a civil rights policy and complaint procedures that are published on its website by reference to Chapter 41 of the state's Administrative Rules. Chapter 41 prohibits discrimination on the bases of race, sex, and disability, prohibits retaliation, and contains a specific prohibition of harassment based on race, sex, or disability that is consistent with federal law.

The Chapter 41 procedures establish a complaint board for each school district, and require that a timely written complaint, on the HDOE complaint form, be filed with the district superintendent. The procedures require the district board to investigate and conduct a hearing on each written complaint and to provide the complainant and respondent a written decision within 10 days of concluding its hearing on the complaint. The procedures also

permit individuals to pursue complaint relief with the federal or state government or to discuss concerns about discrimination with the school principal.

The two HDOE website references to Chapter 41 are in sections that are intended for new employees. There is no direct reference on the HDOE website for the complaint procedures and no reference to the identity of the individual who is responsible for coordinating the district's efforts to comply with federal civil rights laws or to an address or telephone number for any individual or office responsible for investigating such concerns.

The school website has been modified, since OCR initiated its investigation, to include information about race and sex harassment. Information regarding the individual who is responsible for coordinating HDOE's efforts to comply with Title IX, Section 504, or Title II was not included in the section on prohibited conduct, or in the section that refers to the state procedures under Chapter 41 relating to civil rights.

HDOE has an office called the Civil Rights Compliance Office (CRCO). There was no reference in Chapter 41 or on the HDOE or school websites to the CRCO, except in the employees section of the HDOE website. That reference identified CRCO as a source for information on employment-related concerns that have to do with civil rights. According to a representative of the CRCO, district superintendents who are notified of civil rights complaints under Chapter 41 usually contact the CRCO. She indicated that the CRCO could bypass the Chapter 41 process. She also indicated that the CRCO had not received any information regarding concerns about race or sex harassment against students during the 2003-2004 or 2004-2005 school years, except the concerns brought to their attention by the complainant.

The complainant testified to discussing reports of race and sex harassment with school officials on numerous occasions beginning in May 2004 (because of an incident at the local elementary school) until she withdrew her daughters from the intermediate school in January 2005. She testified that the first time any HDOE official informed her of HDOE's procedures under Chapter 41 was in December 2004 and that she was otherwise unaware of the HDOE complaint process. She also testified that the information came from the ombudsman's office at HDOE and that no school employee provided her with information about the process.

Several school employees testified that they were not familiar with HDOE's civil rights complaint procedures and that they had never received any training from HDOE regarding the investigation, identification, or prevention of race or sex harassment. One school administrator testified that information was provided to some parents regarding the state's procedures and that parents reported that they believed that the state would not investigate

their concerns and that if they did, they would not take steps to prevent ongoing harassment or retaliation.

Analysis and Conclusions - Issue No. 2

With regard to the issue of whether HDOE failed to adopt and implement grievance procedures that provide for prompt and equitable resolution of complaints of harassment on the basis of sex or disability or complaints of retaliation, the regulations under Title IX, Section 504, and Title II require the designation of a person responsible for ensuring compliance with those acts and the establishment of grievance procedures that provide for prompt and equitable resolution of complaints of discrimination under those acts.

The Section 504 regulations, at 34 CFR 104.7(a), require recipients employing more than 15 people to “designate at least one person to coordinate its efforts to comply with this part.” Section 34 CFR 104.7(b) requires such recipients to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

The regulations under Title IX, at 34 CFR 106.8(a), requires a recipient to “designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.” Section 34 CFR 106.8(b) requires a recipient to “adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.”

The Title II regulations, at 28 CFR 35.107(a), require a “public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.” Subsection 35.107(b) provides that such public entities “shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.”

Because HDOE policies and procedures did not contain information regarding the individual who is designated to coordinate and carry out its responsibilities to ensure compliance with federal civil rights laws, we have determined that HDOE did not comply


with Title IX, Title II, and Section 504 in this regard. Also, because the policies and procedures in effect within the district and at the school during the 2003-2004 and 2004-2005 school years did not provide adequate notice of the procedures for the prompt and equitable resolution of complaints of violations of federal laws prohibiting harassment on the basis of sex and disability, and because local level school officials were not sufficiently familiar with those procedures in order to direct complainants to other means for resolving such complaints, we have determined that HDOE did not comply with Title IX, Title II, and Section 504 with regard to this issue.

The enclosed agreement addresses the compliance issues that OCR identified in its investigation and, upon full implementation of the agreement, OCR will consider HDOE to be in compliance with Title VI, Title IX, Section 504, and Title II with respect to those issues. Based on the enclosed agreement, which OCR will monitor, OCR is concluding its investigation of the complaint as of the date of this letter.

Please be aware that irrespective of our findings, pursuant to section 203 of Title II, the complainant may file a private suit.

Thank you for the cooperation extended to us by you, HDOE staff, and the staff of the HDOE's Civil Rights Compliance Office during the investigation and resolution of this complaint. If you have any questions about his letter, please contact Timothy L. Sell, attorney, by telephone at (206) 220-4780 or by e-mail at timothy.sell@ed.gov.

Sincerely,



Gary D. Jackson
Director
Seattle Office

Enclosure: Settlement Agreement

SETTLEMENT AGREEMENT

I. INTRODUCTION

To resolve the compliance concerns identified by the United States Department of Education, Office for Civil Rights ("OCR"), in its investigation of the Hawaii Department of Education ("HDOE"), OCR Reference No. 10051060, with regard to allegations of racial and sexual harassment under title VI of the Civil Rights Act of 1964 ("Title VI") and title IX of the Education Amendments of 1972 ("Title IX") and with regard to the provision of prompt and equitable grievance procedures under Title IX, section 504 of the Rehabilitation Act of 1973 ("Section 504"), and title II of the Americans with Disabilities Act of 1990 ("Title II"), the parties agree as follows.

II. GENERAL PROVISIONS

- A. The parties to this Settlement Agreement ("Agreement") are the HDOE and OCR.
- B. This Agreement shall become effective when the authorized representatives for both parties have signed the Agreement.
- C. The parties agree that the Agreement resolves only those compliance concerns OCR identified at Kealakehe Intermediate School (KIS) and within the Kealakehe Complex (Complex), which includes KIS, Kealakehe High School, Kealakehe Elementary School, Kahakai Elementary School, and Holuaoloa Elementary School, in the investigation of case No. 10051060.
- D. It is understood that the Agreement does not constitute an admission by the HDOE of any violation of Title VI, Title IX, Section 504, Title II, or of any other law or regulation.
- E. In consideration of the HDOE's implementation of, and adherence to, the provisions of the Agreement, OCR agrees not to initiate enforcement proceedings with respect to the compliance concerns identified in this case. It is agreed, however, that in the event that the HDOE fails to adhere to any provision of the Agreement, OCR will take appropriate measures to effect compliance with Title VI, Title IX, Section 504, and Title II, which may include the initiation of enforcement proceedings.

III. SUBSTANTIVE COMMITMENTS

A. Procedures for Addressing Racial Harassment or Sexual Harassment or Retaliation

- 1. By January 15, 2009, the HDOE Superintendent will assign and direct the Complex Area Superintendent (CAS) to oversee compliance responsibilities under Title VI and Title IX for the Complex, including the coordination of investigations of complaints communicated to Complex administrators from students, parents, guardians, or others who allege racial or sexual harassment, or retaliation under those laws. The HDOE will ensure that:**
 - a. The individual who is assigned these responsibilities is qualified to perform the duties assigned under this section by virtue of training and experience in identifying, investigating, preventing and prohibiting racial and sexual harassment or retaliation in Complex schools;**
 - b. The Complex Principals implement the provisions of HDOE Administrative Rule Chapter 19 ("Chapter 19"), which pertain to students who allege racial, or sexual harassment or retaliation, and that appropriate action is taken if there is confirmation that a student has been subjected to such harassment or discrimination. Chapter 19 is HDOE administrative rule containing provisions relating to student misconduct, discipline, school searches and seizures, reporting offenses, police interviews and arrests, and restitution for vandalism; and**
 - c. The individual assigned under this section will be responsible, in consultation with the HDOE's Civil Rights Compliance Office (CRCO), for ensuring that the substantive and reporting provisions of this Agreement are fully complied with.**

2. By February 27, 2009, the HDOE will provide written notification to Complex employees, students, and students' parents or legal guardians that racial and sexual harassment and retaliation will not be tolerated.
3. By July 31, 2009, the HDOE will take the following actions with regard to procedures relating to civil rights complaints:
 - a. Notify all Complex employees, students, and students' parents or legal guardians of the office address and telephone number of the individual who is responsible for the coordination of investigations of complaints communicated to Complex administrators from students, parents, guardians, or others who allege racial or sexual harassment or retaliation;
 - b. Distribute, to Complex employees, students, and students' parents or legal guardians, information on Chapter 19 relating to student misconduct, discipline, and responsibilities for reporting offenses; and
 - c. Conduct a review of the HDOE policies and procedures for addressing complaints of discrimination on the basis of race, sex, or disability and complaints of retaliation to make certain that such policies and procedures provide for the prompt and equitable resolution of such complaints.
4. By March 31, 2009, the HDOE will produce a written plan intended to prevent Complex students from being subjected to racial or sexual harassment or retaliation. At a minimum, the plan will include:
 - a. A description of how the plan will facilitate reporting and investigating allegations of racial or sexual harassment or retaliation;
 - b. Guidelines on how to fully and promptly respond to all complaints of racial or sexual harassment or retaliation that are received by or on behalf of students;
 - c. Procedures on how to fully and promptly investigate such complaints;

- d. A description of student discipline, as defined in Chapter 19, that is available for use by school officials in response to conduct by students that is determined to be harassment based on race or sex or in retaliation;
 - e. Procedures the HDOE will use to establish and maintain a method for tracking racial or sexual harassment or retaliation complaints under Chapter 19 for the Complex, including a database that reflects the basis for racial or sexual harassment or retaliation complaints, the specific allegations, identification of the alleged perpetrators, the discipline imposed on students found to have violated the HDOE's Chapter 19 and whether such students have engaged in other similar conduct;
 - f. Information about Complex efforts to prevent and eliminate such racial or sexual harassment or retaliation, and the ongoing efforts to educate students, parents, and school staff about the HDOE's policies prohibiting such harassment, as well as the Complex schools' reporting, investigation and prevention practices, policies and procedures; and
 - g. Provisions on how information about Complex efforts to prevent and eliminate such harassment or discrimination will be disseminated to Complex school staff, officially identified volunteers, students, and parents or legal guardians.
5. By March 31, 2009, the HDOE will produce a written plan intended to prevent Complex students from being subjected to racial or sexual harassment or retaliation while accessing school transportation under the jurisdiction of the HDOE. At a minimum, the plan will include:
- a. Written policies, guidelines, and procedures that establishes HDOE's jurisdiction and authority over conduct that may constitute racial or sexual harassment or retaliation on school buses and at school bus stops that are under the jurisdiction of the HDOE;

- b. Training for Complex transportation employees who provide school bus transportation for students, regarding conduct that may constitute racial or sexual harassment or retaliation;
- c. Written notice to Complex transportation employees and transportation contractors who provide school bus transportation for students about their obligation to take action to help prevent or eliminate such conduct on school buses by reporting the racial or sexual misconduct to the designated school or appropriate Complex staff;
- d. Data concerning student misconduct on school buses under the jurisdiction of the HDOE pursuant to Chapter 19 which constitutes such racial or sexual harassment or retaliation; and a description of how the transportation staff records and reports racial or sexual harassment or retaliation under III.A.4.e.

B. Training

- 1. By March 31, 2009, the HDOE, in consultation with OCR, will plan training for all Complex administrators, teachers, staff, and officially identified volunteers designed to:
 - a. Provide information and understanding of the general requirements under Titles VI and IX, as well as related HDOE policies and procedures pertaining to racial or sexual harassment or retaliation, as well as the HDOE complaint procedures that are established in compliance with Title IX, Section 504, and Title II;
 - b. Promote awareness about the potential impact that such racial or sexual harassment or retaliation may have on students;
 - c. Provide information about the HDOE's policies and procedures related to preventing such racial or sexual harassment or retaliation;
 - d. Communicate the obligation of Complex staff to address incidents and allegations of racial or sexual harassment or retaliation and the

responsibility of the administrators, faculty, and staff to support and implement applicable policies and procedures;

- e. Provide information about the Complex written plan intended to prevent Complex students from being subjected to racial and sexual harassment or retaliation;
 - f. Provide information about how a student may file a complaint of alleged racial or sexual harassment or retaliation, including who to contact, names, title, office location, and telephone numbers; and
 - g. Issue a letter to all contracted bus companies in the complex to remind and train contract providers about their general obligations under Titles VI and IX pertaining to racial, sexual, or disability harassment or retaliation.
2. By March 31, 2009, an individual or individuals, knowledgeable about the provisions of Title VI and Title IX which prohibit racial or sexual harassment or retaliation, and the HDOE policies, procedures, and practices that are effective in preventing such harassment, will be selected to conduct the training described in III.B.1.a-g.
 3. By May 29, 2009, the HDOE will complete the training developed under section III.B.1.a-g, within the time frame indicated in the reporting section of this agreement.
 4. By February 27, 2009, the HDOE, in consultation with OCR, will develop or procure training for Complex students that is grade level and age appropriate and that addresses HDOE and Complex policies and procedures relating to racial or sexual harassment, consistent with Title VI and Title IX.
 5. By April 30, 2009, the HDOE will provide the training developed in III.B.4 to all Complex students.

C. Publication of Notice

1. By July 31, 2009, the HDOE will provide written notification to all Complex school employees, bus contractors, officially identified volunteers, students, and students' parents or legal guardians regarding:
 - a. HDOE policies that includes Title VI and Title IX and the retaliation provision that prohibit racial or sexual harassment or retaliation;
 - b. The responsibility under Chapter 19 to report incidents of racial or sexual harassment or retaliation to the Complex or School officials who are responsible for addressing student misconduct, discipline, and prevention of racial or sexual harassment;
 - c. The Complex's commitment to investigating complaints of such harassment or discrimination, reporting incidents of such harassment and discrimination, and taking appropriate action;
 - d. A statement that students and parents or legal guardians may bring formal and informal concerns of racial or sexual harassment or retaliation by students to the attention of the CAS, or school officials; and
 - e. The name, title, office location, telephone number, and email address of the CAS, and school principals responsible for receiving complaints of racial or sexual harassment, or retaliation; and information about how to use the HDOE's complaint procedures.
2. The written notification described under III.C. 1. a-e will be disseminated using methods determined by the HDOE to be the most effective and will include posting on the school's website, publication in a school newsletter or bulletin, and posting the notice at a prominent location on the school's facilities.

D. Actions to Support Affected Students

1. By March 31, 2009, the CAS and school principal will issue a letter to the students and their parents or legal guardians whose identities are provided to the CAS by OCR, who still attend Hawaii Public Schools, and who have alleged that in school year 2004-2005 while attending KIS the student was subjected to racial or sexual harassment or retaliation. The letter will contain, at a minimum, the following provisions:
 - a. A statement that racial or sexual harassment or retaliation is unacceptable and will not be tolerated by the school and that policies prohibiting such conduct will be strictly enforced;
 - b. A statement confirming that the HDOE, the Complex, and the school are committed to taking the necessary steps to provide students a positive educational environment free from racial or sexual harassment and retaliation and that the HDOE's policies and procedures prohibit such harassment and retaliation; and
 - c. An invitation for students and their parents or legal guardians who still attend the a HDOE public school to contact a school administrator, CAS, or HDOE CRCO Director with respect to any current concerns regarding racial or sexual harassment or retaliation and an assurance that the principal or the CAS or the CRCO Director will provide assistance in addressing any such concerns.

E. Information Regarding Students Withdrawn from Complex Area Schools


By May 29, 2009, the HDOE will ensure that, when a student is withdrawn from a Complex Area school, school officials will request information from the student's parent or guardian regarding the reason for the withdrawal and, if the reasons given by the parent or guardian relate to concerns about racial or sexual harassment or retaliation, school officials take steps to investigate those concerns and respond consistent with HDOE policies and procedures.

IV. REPORTING PROVISIONS

- A. By January 30, 2009, the HDOE will provide OCR a report that confirms that the CAS has been designated to coordinate the Complex efforts to comply with and carry out its responsibilities under Title VI and Title IX. The report will include a summary of the qualification and experience of the CAS.
- B. By March 31, 2009, the HDOE will provide OCR a copy of the notice sent to employees, students, and students' parents or legal guardian that student racial or sexual harassment, discrimination, and retaliation will not be tolerated.
- C. By August 31, 2009, the HDOE will provide OCR a report confirming what actions have been taken regarding procedures relating to civil rights complaints as described under III.A.3.a-c.
- D. By April 30, 2009, the HDOE will provide a copy of the written plan intended to prevent Complex students from being subjected to racial and sexual harassment or retaliation described under section III.A.4.a-g.
- E. By April 30, 2009, the HDOE will provide OCR a copy of the written plan intended to prevent Complex students from being subjected to racial or sexual harassment or retaliation while accessing school transportation as described under section III.A.5.a-d.
- F. The HDOE will provide OCR with information about its training as follows:
 1. By April 30, 2009, the HDOE will provide OCR a copy its proposed training for school employees, pursuant to section III.B.1, and within 30 days after receipt of the report, OCR will approve the training program or suggest revisions that are to be included;
 2. By April 30, 2009, HDOE will provide OCR a report that includes information regarding the identification, training, and experience of the trainer or trainers designated to provide the training as described under III.B.2, above;

3. By June 30, 2009, the HDOE will provide OCR a report confirming that the training described pursuant to section III.B.1 has been completed. The report will include a statement that the training has been completed in the form approved by OCR and will give the dates and times that the training was completed. The report will also include the names of the Complex administrators, teachers, staff, and officially identified volunteers who participated in the training;
 4. By March 31, 2009, the HDOE will provide OCR a copy of its proposed training for students pursuant to section III.B.4 and, within 30 days after receipt of the report, OCR will approve the training program or suggest revisions that are to be included;
 5. By March 31, 2009, the HDOE will provide OCR a report about the trainer for students designated to provide the trainings describe under section III.B.4 for students that includes information regarding the identification of the trainer, background, and experience of the trainer or trainers designated to provide the training as described under III.B.5, above; and
 6. By May 29, 2009, the HDOE will provide OCR a report confirming that the training described pursuant to section III.B.4 has been completed. The report will include a statement that the training has been completed in the form approved by OCR and the dates and times that the training was conducted. The report will also include the number of students who participated in the training and a summary of the training designed under section III.B.4, which includes an outline of the training conducted, including names, and experience of the trainers.
- G. By August 31, 2009, the HDOE will provide OCR a copy of the notice that is published under section III.C.
- H. By April 30, 2009, the HDOE will provide OCR a report indicating that it has sent letters to the students and their parents or legal guardians identified by OCR under section III.D.1.

APPROVED:



Patricia Hamamoto
Superintendent
Hawaii State Department of Education

12-29-08
Date

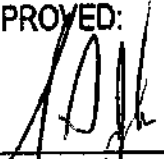
APPROVED AS TO FORM:



Deputy Attorney General
State of Hawaii

12-26-08
Date

APPROVED:



Gary D. Jackson
Director, Seattle Office
Western Division
United States Department of Education

12-31-08
Date