




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

OFFICE OF THE SUPERINTENDENT

September 6, 2018

TO: The Honorable Margaret Cox
Chairperson, Student Achievement Committee

The Honorable Kenneth Uemura
Chairperson, Finance and Infrastructure Committee

FROM: Dr. Christina M. Kishimoto 
Superintendent

SUBJECT: **Committee Action on Approving for Public Hearing Repeal of Hawaii Administrative Rules, Chapter 41, Civil Rights Policy and Complaint Procedure and Adoption of Draft of New Chapter 89, Civil Rights Policy and Complaint Procedures for Student(s) Complaints Against Adult(s)**

1. RECOMMENDATION

The Hawaii State Department of Education (HIDOE) recommends that the Hawaii State Board of Education (BOE) approve for public hearing the repeal of Hawaii Administrative Rules (HAR), Chapter 8-41, Civil Rights Policy and Complaint Procedure and adoption of draft of new HAR, Chapter 8-89 Civil Rights Policy and Complaint Procedures for Student(s) Complaints Against Adult(s).

2. RECOMMENDED EFFECTIVE DATE

Upon BOE approval, the HIDOE will seek the authorization of the Governor to move forward with public hearing.

3. RECOMMENDED COMPLIANCE DATE (if different from the effective date)

Not applicable.

4. DISCUSSION

a. Conditions leading to the recommendation:

In September of 2011, the United States Department of Education, Office for Civil Rights (OCR), initiated a compliance review of the HIDOE. There was no complaint that initiated the September 2011 review. The review focused on policies related to bullying and harassment in 28 HIDOE schools based on race, sex and disability.

The results of the OCR review culminated in a Resolution Agreement between the OCR and the HIDOE on December 20, 2017. The Resolution Agreement requires that the HIDOE create grievance procedures to ensure that the HIDOE provides for the prompt, and equitable resolution of complaints of harassment based on race, sex, and disability.

Additionally, the Resolution Agreement requires the HIDOE to review any other policies, procedures, state laws, or regulations that may apply to harassment of students based on race, sex and disability to ensure consistency with the grievance procedures and appropriate cross references which are easily understood.

The Resolution Agreement directs the grievance procedures to include, at a minimum, the following:

- 1) A notice that complaint procedures apply to complaints alleging all forms of race, sex, and disability discrimination (including racial, sexual, and disability harassment) carried out by employees, students or third parties;
- 2) A clear and easily understood explanation of how and where complaints may be filed, including the title, office address, e-mail address, and telephone number of the individuals with whom to file a complaint;
- 3) Assurance that the HIDOE will take immediate and appropriate steps to stop any harassment, prevent recurrence and remedy discriminatory effects on the complainant and others, if appropriate;
- 4) Provisions for adequate, reliable and impartial investigation of complaints, including the opportunity for the complainant and alleged perpetrator to provide witnesses and evidence;
- 5) Reasonably prompt time frames for the major stages of the investigative process;

- 6) A provision requiring concurrent written notification to both/all parties of the outcome of the complaint investigation and any appeals as well as notification to the complainant of all remedies provided and any other actions taken by the HIDOE that directly relate to the complainant, and notification to the respondent of any actions taken by the HIDOE that directly relate to the respondent;
- 7) Appropriate definitions and examples of what types of actions may constitute racial, sexual, and disability harassment;
- 8) Provisions clarifying that when there is a complaint of alleged racial, sexual, or disability harassment of a student made against an employee, the investigation will be completed even if the employee resigns before it is finished and will include a determination of any potential remedies for complainants and any other students or employees affected by the alleged harassment;
- 9) Provisions clarifying that any informal resolution mechanism set forth in the complaint procedure will only be used if the parties voluntarily agree to their use; that the parties should not be required to resolve the problem directly with each other; and that the parties must be notified that they have the right to end the informal process at any time and begin the formal stage of the complaint process;
- 10) Provisions ensuring that students are notified of the availability of interim measures to protect students during the investigation of possible racial, sexual, or disability harassment and how interim measures may be requested; and that the coordinator(s) will be responsible for ensuring that the schools implement appropriate interim measures;
- 11) Notice of potential remedies for parties, including but not limited to adjustment of academic schedules and coursework, and the provision of academic, medical and psychological support services; and
- 12) A statement that retaliation and retaliatory harassment is prohibited against any individual who files a race, sex, or disability discrimination complaint with the HIDOE or participates in a complaint investigation in any way, as well as a clear explanation of how retaliation or retaliatory harassment can be reported to the HIDOE.

The directed OCR changes to the grievance/complaint procedures listed above necessitated extensive changes to the current HAR rules (Chapter 8-41), and as a result, the HIDOE is proposing that Chapter 41 be repealed and a new

HAR (Chapter 8-89) be adopted. Chapter 89 includes all of the provisions required under the Resolution Agreement.

To comply with the OCR Resolution Agreement and to update the previous outdated rules as well as to increase protection of students' civil rights, the HIDOE drafted HAR Chapter 8-89 which includes the following additional items:

- 1) Protected bases of sexual orientation and gender identity or expression and their definitions. These protected bases are included in Board Policy 305-10 and the newly passed Act 110, Session Laws of Hawaii (SLH) 2018 (relating to civil rights) are included in Chapter 89;
- 2) Definitions of bullying, cyberbullying, dating violence, discrimination, sexual assault, sexual exploitation, and stalking;
- 3) A more detailed definition of harassment, including examples of what types of actions may constitute sexual, racial/color/national origin, disability and gender-based harassment;
- 4) An assurance that HIDOE will take immediate and appropriate steps to stop any harassment, prevent recurrence, and remedy discriminatory effects on the complainant and others;
- 5) An updated description of the complaint process and a clear and easily understood explanation of how and where complaints may be filed. The process that was described in Chapter 41 referenced the HIDOE district complaint board, an entity that no longer exists;
- 6) Provisions for adequate, reliable and impartial investigations during the complaint process and reasonably prompt time frames for the major stages of the investigation;
- 7) A provision requiring concurrent written notification to both/all parties of the outcome of the complaint process as well as notification to the complainant of all remedies provided and any other actions taken by HIDOE that directly relate to the complainant; and notification to the respondent of any actions taken by HIDOE that directly relate to the respondent;
- 8) Provisions clarifying that any informal resolution mechanism offered will only be used if all the parties voluntarily agree to its use; a requirement that the parties are not required to resolve the problem directly with each other; and a requirement that the parties be notified that they have the

right to end the informal process at any time and begin the formal stage of the complaint process;

- 9) Interim measures, which are referred to as immediate interventions, to protect students during the investigation from possible racial, sexual or disability harassment; a description of types of interim measures; and an explanation of how interim measures may be requested; and
 - 10) A description of some of the potential remedies available for the parties upon the completion of the complaint process.
- b. Previous action of the Board on the same or similar matter:

Attempts to revise Chapter 41 occurred from 2008 to 2012. Ultimately a determination was made to defer any further revisions as current BOE Policy #4211 (now #305-10), Anti-Harassment, Anti-Bullying, and Anti-Discrimination Against Student(s) by Employees, was enacted and deemed sufficient to handle complaints.

- c. Other policies affected:

None.

- d. Arguments in support of the recommendation:

The HIDOE is committed to providing a non-discriminatory learning environment that provides equal access to public education for all students and embraces the values of dignity and respect for one another by strictly prohibiting protected class discrimination, including harassment and sexual harassment.

The HIDOE and its schools prohibit discrimination and harassment (including sexual harassment) and bullying against a student in any program, activity, or service of the HIDOE on the basis of race, color, religion, sex, sexual orientation, gender identity or expressions, age, national origin, ancestry, or disability and any retaliation for reporting such conduct.

The current HAR (Chapter 8-41) is outdated and does not reflect current organizational structure. To continue to protect civil rights and students, the HIDOE needs an updated set of rules. The draft HAR (Chapter 8-89) ensures compliance with applicable federal law, including Title IX; Title VI; Section 504/ADA; and Act 110, SLH 2018. Additionally, Chapter 89 will complement the HIDOE's efforts to ensure that students are safe, healthy, and supported in school, so that they can engage fully in high-quality educational opportunities.

This is in furtherance of and alignment with Goal 1, Student Success, Objective 2, Whole Child, of the HIDOE/Board Strategic Plan 2017-2020 ("Strategic Plan").

e. Arguments against the recommendation:

The HIDOE is not aware of any opposition to the repeal of Chapter 41. However, individuals with concerns regarding proposed recommendations to Chapter 89 may raise the following:

- i. **Definitions.** A need for broader or different definitions of "discrimination," "harassment," "gender identity or expression," and/or "sexual orientation." The definition of "discrimination" is consistent with the provisions of Board Policy 305-10. The definition of "harassment" is taken from case law and is regularly used by other schools and universities, including the University of Hawaii in Executive Policy 1.204, titled "Interim Policy and Procedure on Sex Discrimination and Gender-Based Violence." Further, the current definitions of "gender identity or expression" and "sexual orientation" are the definitions cited in Hawaii Revised Statutes ("HRS") §378-1 and §489-2, and Act 110, SLH 2018.
- ii. **Concerns about the person who acts as the primary decision maker.** A consideration of another HIDOE employee instead of the principal as the primary decision maker because the principal may be perceived to be biased and/or will not take appropriate action against the respondents. However, principals generally supervise the respondents and, as such, need to be involved in the decision-making process. Further, if evidence of a conflict of interest or bias arises, a different decision maker will be selected, such as a complex area superintendent or a designee. Also, the investigator generally will be an employee from the Civil Rights Compliance Office (CRCO) and, as such, outside of the organizational structure of the school. Further, principals will receive mandatory training in civil rights, complaints, and the complaint process applicable to performing their duties as decision makers.

f. Other agencies or departments of the State of Hawaii involved in the action:

None.

g. Possible reaction of the public, professional organizations, unions, HIDOE staff and/or others to the recommendation:

The HDOE anticipates that the public, professional organizations, unions, HDOE staff and others will support the repeal of Chapter 41 and the proposed contents of Chapter 89. As previously noted, individuals or entities may propose recommendations to include broader definitions (as described above); specific employee reporting requirements; and sufficient training of employees, investigators and decision makers in civil rights matters in Chapter 89. Notably, the HDOE is defining reporting requirements in Departmental guidance rather than in the administrative rule as the reporting requirements relate to employment.

h. Educational implications:

The HDOE's proposed recommendation will support a safe and healthy learning environment for all students. This proposal is also in alignment with Goal 1, Student Success, Objective 2, Whole Child, of the Strategic Plan.

i. Personnel implications:

Appropriate staff will receive mandatory training, education and support regarding the new rules. In addition, the CRCO Equity Specialists who are assigned to each complex area will provide support to administrators dealing with protected class conduct at their schools.

j. Facilities implications:

None.

k. Financial implications:

None.

5. OTHER SUPPLEMENTARY RECOMMENDATIONS

None.

CMK:amp
Attachment A: HAR, Chapter 8-41
Attachment B: HAR, Chapter 8-89, Ramseyer format

c: The Honorable Catherine Payne, Chairperson, Board of Education
Civil Rights Compliance Office
Office of Talent Management

HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 2

EDUCATION

PART 1

PUBLIC SCHOOL

CHAPTER 41

CIVIL RIGHTS POLICY AND COMPLAINT PROCEDURE

§8-41-1 Policy and purpose

§8-41-2 Definitions

§8-41-3 Applicability

§8-41-4 District complaint board

§8-41-5 Decision-making authority

§8-41-6 Right to seek other relief

§8-41-7 Right to counsel

§8-41-8 Right to information

§8-41-9 Confidentiality

§8-41-10 Right to discuss with principal

§8-41-11 Complaint procedure

§8-41-12 Waiver of time limits

§8-41-13 Remedy

§8-41-14 Withdrawal of complaint

§8-41-15 Reprisal prohibited; sanctions

Historical Note: This chapter is based substantially upon Department of Education "Rule 52, Relating to Civil Rights Complaint Procedure for Students." [Eff. 12/9/78; am 7/21/80; R 4/21/86]

§8-41-1 Policy and Purpose.

(a) It is the policy of the board of education that there shall be no discrimination in any program, activity, or service of the public school system on the basis of race, color, religion, sex, age, national origin, ancestry or disability. No disabled person who is otherwise qualified shall be denied the opportunity to participate in or receive benefits of, or be subjected to disparate treatment in any program, activity, or service of the public school system. The public school system shall comply with all applicable state and federal nondiscrimination laws and regulations in administering this policy.

(b) This chapter establishes a procedure in the public school system for filing and resolving complaints regarding alleged violations of nondiscrimination rights protected by federal and state laws. [Eff. 4/21/86; am and comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X §1; HRS §§302A-1101, 302A-1112, 302A-1001, 302A-101, 368-1.5; 42 U.C. 2000d et seq., 34 C.F.R. 100; 5 U.S.C. 301, 34 C.F.R. 101; 29 U.S.C. 706, 794, 34 C.F.R. 104; 20 U.S.C. 1681, 34 C.F.R. 106; 42 U.S.C. 16101 et seq., 45 C.F.R. 90; 42 U.S.C. 12101 et seq., 28 C.F.R. 35)

§8-41-2 Definitions. Whenever used in this chapter, unless the context otherwise requires:

"*Complainant*" means a student or a group of students, or a parent or a group of parents, or a person who meets the essential eligibility requirements to receive the benefits of or to participate in, a program, activity, or service of the public school system, and who submits a complaint alleging a violation of a right to nondiscrimination in education. The term "*complainant*" excludes employees and applicants for employment.

"*Complaint*" means a charge filed under this chapter, which alleges a violation of a right to nondiscrimination in an educational program, activity, or service of the public school system under the following laws:

- (1) Title VI of the Civil Rights Act of 1964, Public Law 88-352, which prohibits discrimination on the grounds of race, color, or national origin;
- (2) Title IX of the Educational Amendments of 1972, Public Law 92-318, which prohibits discrimination on the basis of sex;
- (3) Section 504 of the Rehabilitation Act of 1973 Public Law 92-112, which prohibits discrimination against persons with disabilities;

(4) Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination against persons with disabilities in programs, activities, and services;

(5) Section 368-1.5, Hawaii Revised Statutes which prohibits discrimination against persons with disabilities in any state program or activity;

(6) Article X, Section 1, Hawaii State Constitution, which prohibits discrimination in public educational institutions because of race, religion, sex or ancestry;

(7) Section 296-61, Hawaii Revised Statutes, which prohibits discrimination on the basis of sex;

(8) Age Discrimination Act of 1975, Public Law 94-135.

"*Counsel*" means any person or persons who, upon a request from the complainant or respondent, agrees to assist with the preparation, filing or presentation of any matter arising out of a complaint filed under this chapter.

"*Day*" refers to a business day.

"*Department*" refers to the Hawaii state department of education.

"*Harassment*" means verbal or non-verbal expressions based on race, color, national origin, ancestry, sex, age, religion, or disability which:

(1) create an intimidating, hostile or offensive school environment; or

(2) interfere with the education of a student; or

(3) otherwise adversely affect the educational opportunity of a student. Harassment based on sex includes unwelcome and unwanted sexual advances, sexual remarks, and sexual innuendoes.

"*Parent*" means the natural or legal parent, guardian or custodian of a student.

"*Persons with disabilities*" means persons who have a physical or mental impairment that substantially limits one or more life activities, have records of an impairment, or are regarded as having an impairment.

"*Public school*" means a school established and maintained by the department in accordance with state law.

"*Respondent*" means department personnel who are specifically named in the complaint as having allegedly taken an action which violates the nondiscrimination rights of the complainant; or the department when a complaint alleges systemic discrimination.

"Student" means a person who is currently enrolled in a public school, or in any program or activity conducted by the department.

"Systemic discrimination" means discrimination that results when an established policy, rule, regulation or procedure of the department has continuing effect of violating nondiscrimination rights. [Eff. 4/21/86; am and comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X §1; HRS §§302A-1101, 302A-1112, 302A-1001, 302A-101, 368-1.5; 42 U.S.C. 2000d et seq., 34 C.F.R. 100; 5 U.S.C. 301, 34 C.F.R. 101; 29 U.S.C. 706, 794, 34 C.F.R. 104; 20 U.S.C. 1681, 34 C.F.R. 106; 42 U.S.C. 16101 et seq., 45 C.F.R. 90; 42 U.S.C. 12101 et seq., 28 C.F.R. 35)

§8-41-3 Applicability.

(a) This chapter shall apply to all students who are currently enrolled in Hawaii's public schools or to all persons who meet the essential eligibility requirements to receive the benefits of or to participate in, a program, activity or service of the public school system.

(b) With respect to Section 504 of the Rehabilitation Act of 1973, this chapter shall apply to complaints concerning disparate treatment under Subpart A, General Provisions, and facilities or program accessibility under Subpart C, Program Accessibility, of 34 C.F.R. 104.

(c) This chapter shall apply to students who believe they have been subjected to harassment by employees of the department or other students on the basis of race, color, national origin, ancestry, sex, age, religion, or disability.

(d) Employees of the department who believe that their nondiscrimination employment rights have been violated may file complaints under Policy 5513 of the School Code, Certificated Personnel Policies and Regulations. Employees may also opt to file a grievance in accordance with the applicable collective bargaining agreement. [Eff. 4/21/86; am and comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X §1; HRS §§302A-1101, 302A-1112, 302A-1001, 302A-101, 368-1.5; 42 U.S.C. 2000d et seq., 34 C.F.R. 100; 5 U.S.C. 301, 34 C.F.R. 101; 29 U.S.C. 706, 794, 34 C.F.R. 104; 20 U.S.C. 1681, 34 C.F.R. 106; 42 U.S.C. 16101 et seq. 45 C.F.R. 90; 42 U.S.C. 12101 et seq., 28 C.F.R. 35)

§8-41-4 District complaint board.

(a) There shall be a district complaint board for each school district of the department for the purpose of receiving and hearing complaints.

(b) Each district complaint board shall consist of:

(1) The district superintendent or designee of the school district who shall serve as chairperson of the board;

(2) A principal or designee of a public school in the respective school district who shall be appointed by the district superintendent and who shall serve a term of one school year, subject to recall by the department during the summer vacation period;

(3) The equal educational opportunity coordinator or designee of the school district;

(4) The director of management analysis and compliance branch or designee; and

(5) The president of the district student council or designee who shall serve a term of one school year and, as may be required, during the summer vacation period immediately following the school year.

(c) The following exceptions shall govern the composition of any district complaint board:

(1) If a principal or designee appointed to a district complaint board is from a school at which the student named in a complaint was enrolled at the time of the alleged violation, the chairperson shall appoint an alternate principal or designee to hear the complaint.

(2) If any member of a district complaint board is named as a respondent in a complaint, the chairperson shall appoint an alternate to hear the complaint; provided, if the district superintendent is named as a respondent, the state superintendent of education shall appoint an alternate to serve as chairperson of the district complaint board to hear the complaint.

(3) If any member of a district complaint board has reason to be disqualified from hearing a complaint, the chairperson may appoint an alternate to hear the complaint; provided in the case of a district superintendent, the state superintendent may appoint an alternate who shall serve as chairperson to hear the complaint.

(d) The district complaint board shall meet as necessary on a regularly scheduled date once every calendar month to hear complaints which may have been filed.

(e) At each regularly scheduled meeting, the district complaint board shall hear those complaints received at least fifteen days prior to the regularly scheduled meeting.

(f) A quorum of a district complaint board shall be three board members or designees.

(g) Each board member or designee shall have one vote.

(h) A decision of a district complaint board shall require the concurring vote of a majority of the board members or designees who are present at the board hearing on the subject complaint. [Eff. 4/21/86; am and comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112, 20 U.S.C. 1405, 29 U.S.C. 706, 794, 34 C.F.R. 104.7; 20 U.S.C. 1681, 1682, 34 C.F.R. 106.8)

§8-41-5 Decision-making authority. The authority to adjudicate complaints shall rest with the district complaint boards or the state superintendent of education or designee when a district complaint board fails to reach a decision because there is no concurring majority. [Eff. 4/21/86; comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112)

§8-41-6 Right to seek other relief. Nothing in this chapter shall be construed to limit or waive the right of the complainant to seek other relief as provided under federal and state laws. A complainant has the right to file a discrimination complaint with the federal or state government:

(1) without filing a complaint under this chapter;

(2) at the same time a complaint is filed under this chapter;

(3) at any time during the pendency of a complaint filed under this chapter; or

(4) after a complaint filed under this chapter has been adjudicated. [Eff. 4/21/86; am and comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112, 368-3; 42 U.S.C. 2000d et seq. 34 C.F.R. 100)

§8-41-7 Right to counsel. Complainants and respondents shall have the right to seek counsel at their own expense in preparing, filing, and presenting any matter arising out of a

complaint. [Eff. 4/21/86; comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 42 U.S.C. 2000d et seq., 34 C.F.R. 100.9; 5 U.S. C. 301, 34 C.F.R. 101.11)

§8-41-8 Right to information. A complainant and respondent shall have access to information and records in the possession of the department which bear upon the validity of the complaint except for such information and records that must remain confidential in accordance with federal and state laws. (Eff. 4/21/86; comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112)

§8-41-9 Confidentiality. Complaint records shall remain confidential. They shall be maintained separate and apart from student and personnel files. [Eff. 4/21/86; comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112)

§8-41-10 Right to discuss with principal. Nothing in this chapter shall be construed to prevent or discourage a complainant from discussing discrimination concerns with the school principal prior to filing a complaint. (Eff. 4/21/86; comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112)

§8-41-11 Complaint procedure. (a) The complainant shall file a written complaint with the district superintendent of the school district in which the alleged violation took place. The written complaint shall be filed within twenty days of the alleged violation and shall be made on a form provided by the department. There shall be no time limit for a complainant to file a written complaint alleging systemic discrimination. A copy of the written complaint shall be sent by mail, return receipt requested, to each respondent by the department within three days of receipt of the written complaint.

(b) The district complaint board shall investigate and afford all parties a hearing on all written complaints as provided herein. All parties to a complaint shall be given written notice of the hearing by registered or certified mail, return receipt requested, at least ten days before the scheduled hearing. The notice shall include the following:

(1) The date, time, place, and nature of the hearing;

(2) The nondiscrimination law allegedly violated;

(3) A statement of the issues or actions involved;

(4) The fact that any party may retain counsel if so desired;

and

(5) The fact that any party who has difficulty speaking or understanding the English language may request appropriate assistance in that person's native language by the district complaint board.

(c) Any party in a district complaint board hearing who has difficulty speaking or understanding the English language shall be provided appropriate assistance in that person's native language by the district complaint board. Reasonable modifications shall be made for any party in a hearing with a disability.

(d) The district complaint board shall provide the complainant and respondent a written decision within ten days of concluding its hearing on the complaint. The written decision shall be a declaratory finding on the merits of the complaint. The written decision shall be sent by registered or certified mail, return receipt requested.

(e) A decision of a district complaint board shall be final unless the district complaint board is unable to reach a decision because there is no concurring majority.

(f) If a district complaint board fails to reach a decision because there is no concurring majority as provided herein, the complaint, recorded proceedings of the hearing, and any and all evidence accepted at the hearing shall automatically be forwarded to the state superintendent of education or designee who shall hear and examine the evidence and render a decision on the merits of the complaint within fifteen days from the date the district complaint board concluded its hearing. The decision of the state superintendent or designee shall be final under this section. The written decision shall be sent by registered or certified mail, return receipt requested, to the complainant and respondent. [Eff. 4/21/86; am and comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 20 U.S.C. 1405, 29 U.S.C. 706, 794, 34 C.F.R. 104.7; 20 U.S.C. 1681, 1682, 34 C.F.R. 106.8)

§8-41-12 Waiver of time limits. The time limits established under this chapter may be waived for good and just cause at the discretion of the chairperson of the presiding district

complaint board, or at the discretion of the state superintendent of education or designee under section 8-41-11(f). [Eff. 4/21/86; comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 5 U.S.C. 301, 34 C.F.R. 101.42)

§8-41-13 Remedy. If a decision of a district complaint board, or the state superintendent of education or designee under section 8-41-11(f) of this chapter, requires remedial action by the department, the state superintendent of education shall promptly and equitably determine an appropriate remedy and be responsible for its implementation. [Eff. 4/21/86; comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112)

§8-41-14 Withdrawal of complainant. A complainant may withdraw the complaint any time prior to the conclusion of the hearing by the district complaint board. [Eff. 4/21/86; comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112)

§8-41-15 Reprisal prohibited sanctions. Reprisal is prohibited against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding as provided herein. Any employee of the department who violates this section shall be subjected to disciplinary action. [Eff. 4/21/86; comp OCT 28, 1995] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112)

DEPARTMENT OF EDUCATION

Adoption of Chapter 8-89
Hawaii Administrative Rules

Date

1. Chapter 8-89, Hawaii Administrative Rules, entitled “Civil rights Policy and Complaint Procedure for Student(s) Complaints Against Adult(s)”, is adopted to read as follows:

“HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 2

PART 1

PUBLIC SCHOOL

CHAPTER 89

CIVIL RIGHTS POLICY AND COMPLAINT PROCEDURE FOR
STUDENT(S) COMPLAINTS AGAINST ADULT(S)

§8-89-1	Policy and Purpose
§8-89-2	Definitions
§8-89-3	Applicability

§8-89-4	Severability
§8-89-5	Reporting Requirements
§8-89-6	Complaint and Investigative Procedure
§8-89-7	Continued Investigation
§8-89-8	Retaliation Prohibited
§8-89-9	Right to Seek Other Relief
§8-89-10	Translation, Interpretation, Writing Assistance, or Reasonable Accommodation
§8-89-11	Student's Right to Privacy

Historical Note: This chapter is based substantially upon Department of Education "Rule 52, Relating to Civil Rights Complaint Procedure for Students" and Hawaii Administrative Rules, Title 8, Chapter 41, "Civil Rights Complaint Procedure." [Eff. 12/9/78; am 7/21/80; R 4/21/86, am and comp 10/28/1995]

§8-89-1 Policy and Purpose. (a) The Hawaii State Department of Education ("DOE") is committed to providing a non-discriminatory learning environment that provides equal access to public education for all students and embraces the values of dignity and respect for one another by strictly prohibiting protected class discrimination, including harassment and sexual harassment. The DOE and its schools prohibit discrimination, and harassment (including sexual harassment) and bullying against a student in any program, activity, or service of the DOE on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, ancestry, or disability, and any retaliation for reporting such conduct.

(b) The DOE shall take immediate and appropriate steps to stop discrimination, harassment (including sexual harassment) or bullying against a student to prevent recurrence and remedy discrimination effects on the complainant or others, if appropriate.

(c) The DOE Civil Rights Compliance Office ("CRCO") shall coordinate the implementation of this chapter. The CRCO shall be responsible for monitoring complaints and investigations of complaints filed under this chapter, disseminating appropriate information about discrimination, harassment (including sexual harassment) and bullying to DOE students, parents or legal guardians, employees, volunteers, and third parties, and providing training to DOE students, employees, volunteers, and third parties regarding their rights and responsibilities as it relates to discrimination, harassment (including sexual harassment) and/or

bullying.

(d) No person who is otherwise qualified shall be denied the opportunity to participate in or receive benefits of, or be subjected to disparate treatment in any program, activity, or service of the DOE based upon one or more of these protected classes. This chapter applies to conduct that occurs on DOE property or outside of DOE property, if the conduct was in connection with a DOE-sponsored program or activity.

(e) The DOE shall comply with all applicable state and federal nondiscrimination laws and regulations in administering this chapter, including but not limited to:

- (1) Title VI of the Civil Rights Act of 1964, Public Law 88-352, which prohibits discrimination on the basis of race, color or national origin;
- (2) Title IX of the Educational Amendments Act of 1972, Public Law 92-318, which prohibits discrimination on the basis of sex;
- (3) Title IV of the Civil Rights Act of 1964, which prohibits discrimination on the basis of religion;
- (4) Section 504 of the Rehabilitation Act of 1973, Public Law 92-112, which prohibits discrimination against persons with disabilities;
- (5) Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination against persons with disabilities in programs, activities, and services;
- (6) Article X, Section 1, Hawaii State Constitution, which prohibits discrimination in public educational institutions because of race, religion, sex or ancestry;
- (7) Age Discrimination Act of 1975, Public Law 94-135;
- (8) Section 302A-461, Hawaii Revised Statutes, which prohibits discrimination on the basis of sex in athletics offered by a public high school;
- (9) Section 302A-1001, Hawaii Revised Statutes, which prohibits discrimination on the basis of sex in any educational or recreational program or activity receiving state or county financial assistance or utilizing state or county facilities; and
- (10) Act 110, SL 2018, which prohibits discrimination on the basis of sex, gender identity or expression or sexual orientation in any state educational program or activity or any educational program or activity that receives state funding.

(f) This chapter establishes a complaint procedure in the DOE for resolving complaints filed by or on behalf of students who may have been subjected to protected class discrimination, harassment (including sexual

harassment), bullying, or retaliation, by employees, volunteers, and/or third parties. Any student, parent or legal guardian of any student, or employees or volunteers who witness or are otherwise aware of conduct prohibited by this chapter, may file complaints regarding an alleged violation under this chapter. For protected class complaints of student misconduct towards another student, refer to Hawaii Administrative Rules §8-19-16. [Eff. _____] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X §1; HRS §§302A-1101, 302A-1112, 302A-1001, 302A-101, ; 42 U.C. 2000d et seq., 34 C.F.R. 100; 5 U.S.C. 301, 34 C.F.R. 101; 29 U.S.C. 706, 794, 34 C.F.R. 104; 20 U.S.C. 1681, 34 C.F.R. 106; 45 C.F.R. 90; 42 U.S.C. 12101 et seq., 28 C.F.R. 35)

§8-89-2 Definitions. Whenever used in this chapter, unless the context otherwise requires:

“Bullying” means any written, verbal, graphic, or physical act that an employee, a volunteer, and/or a third-party exhibits toward a particular student that is based on a protected class, is repeated over time, and is sufficiently severe, persistent, or pervasive and (1) unreasonably interferes with the student’s academic performance or (2) creates an intimidating, hostile, or offensive educational environment. It is noted that isolated or one-time incidents of intentional inappropriate behavior may not fall within the definition of bullying; however, it may still be considered inappropriate and subject to corrective action.

“Child Welfare Services” means the Child Welfare Services of the State of Hawaii Department of Human Services.

"Complainant" means any student, parent or legal guardian of any student, employee, volunteer or member of the community who witnesses or is otherwise aware of conduct prohibited by this chapter who files a complaint regarding an alleged violation under this chapter.

"Complaint" means a charge filed under this chapter, which alleges that a student participating in a program, activity, or service of the DOE was subjected to discrimination, harassment (including sexual harassment) or bullying by an employee, a volunteer, and/or a third party in violation of board of education rules, policies and directives, and federal and state regulations and laws, including, but not limited to, the following laws:

- (1) Title VI of the Civil Rights Act of 1964, Public Law 88-352, which prohibits discrimination on the basis of race, color, or national origin;

- (2) Title IX of the Educational Amendments Act of 1972, Public Law 92-318, which prohibits discrimination on the basis of sex;
- (3) Title IV of the Civil Rights Act of 1964, which prohibits discrimination on the basis of religion;
- (4) Section 504 of the Rehabilitation Act of 1973, Public Law 92-112, which prohibits discrimination against persons with disabilities;
- (5) Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination against persons with disabilities in programs, activities, and services;
- (6) Article X, Section 1, Hawaii State Constitution, which prohibits discrimination in public educational institutions because of race, religion, sex or ancestry;
- (7) Age Discrimination Act of 1975, Public Law 94-135;
- (8) Section 302A-461, Hawaii Revised Statutes, which prohibits discrimination on the basis of sex in athletics offered by a public high school;
- (9) Section 302A-1001, Hawaii Revised Statutes, which prohibits discrimination on the basis of sex in any educational or recreational program or activity receiving state or county financial assistance or utilizing state or county facilities; and
- (10) Act 110, SL 2018, which prohibits discrimination on the basis of sex, gender identity or expression or sexual orientation in any state educational program or activity or any educational program or activity that receives state funding.

“Cyberbullying” refers to a type of bullying based on a person’s protected class that includes electronically transmitted acts via the Internet, cell phone, personal digital assistant (PDA), wireless hand-held device, or other such devices that is sufficiently severe, persistent or pervasive and either:

- (1) Unreasonably interferes with the student’s academic performance; or
- (2) Creates an intimidating, hostile, or offensive educational environment. In evaluating whether conduct constitutes harassment, intimidation or bullying, special attention should be paid to the words chosen or the actions, taken, whether the conduct occurred in front of others or was communicated to others, how the perpetrator interacted with the victim, and the motivation, either admitted or appropriately inferred. Electronic transmissions include but are not limited to the use of data, computer software that is accessed through a computer, a

computer network system, other computerized systems, cellular phones or other similar electronic devices that display e-mail, text messaging, blogs, photos, drawings, video clips, on-line community websites, or faxes, or a combination of the foregoing. Cyberbullying may include electronic transmittal of communication constituting sexual harassment, racial harassment, disability harassment, or gender-based harassment, as defined below.

“Dating violence” means any physical, sexual, emotional, financial, or psychological abuse or threats of abuse against another person who is or has been in a social relationship of a romantic or intimate nature with the alleged abuser. Dating violence is a form of sexual harassment.

“Decision maker” means the administrator with authority to make decisions regarding findings on complaints filed under this chapter.

“Discrimination” means excluding the participation in or denying the benefits of the DOE’s administration of its educational programs and activities, or otherwise treating a student differently on the basis of a protected class.

“Director” means the director of the CRCO.

“DOE” refers to the Hawaii State Department of Education.

“DOE employees with supervisory authority” refers to employees with supervisory responsibilities in their position description.

“Employee” means a DOE employee.

“Gender identity or expression” includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with a person’s sex at birth.

“Harassment” is a form of discrimination and is defined as unwelcome conduct that is based on a person’s protected class, that is sufficiently severe, persistent or pervasive and has the purpose or effect of either:

- (1) Limiting a student’s ability to participate in or benefit from an educational program, activity, or service; or
- (2) Creating an intimidating, hostile, or offensive educational environment. The conduct must be both objectively and subjectively perceived as offensive.

The reporting party must view the conduct as offensive, and a reasonable person with the same fundamental characteristics as the reporting party (e.g., actual or perceived sex, age, race, gender, sexual

orientation, gender identity or gender expression) must also view the conduct as offensive. Harassment includes but is not limited to:

- (1) "Sexual harassment" means any unwanted, unwelcome, or unsolicited verbal or physical act of a sexual nature directed at an individual because of his or her sex. Sexual harassment can include requests for sexual favors or sexual advances when submission to or rejection of the conduct is either an explicit or implicit term or condition of a student's education or participation in a DOE program, activity or service; or when submission to or rejection of the conduct is used as a basis in decisions affecting that student's education or participation in a DOE program, activity, or service. Sexual harassment also includes, but is not limited to, sexual misconduct, unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. It can include conduct such as touching of a sexual nature, making sexual comments, jokes or gestures, writing graffiti, displaying or distributing sexually explicit drawings, pictures, or written materials, calling students sexually charged names, spreading sexual rumors, rating students on sexual activity, or circulating, showing, or creating e-mails or websites of a sexual nature. Sexual exploitation, sexual assault, and domestic violence also fall under the definition of sexual harassment;
- (2) "Racial/color/national origin harassment" means physical, verbal, graphic, or written conduct that is based on a person's race, color, or national origin, including harassment on the basis of actual or perceived shared ancestry or ethnic characteristics, or harassment based on language proficiency or accent;
- (3) "Disability harassment" means physical, verbal, graphic, or written conduct that is based on disability, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic, electronic, or written statements, or conduct that is physically threatening, harmful, or humiliating. Complaints relating to the denial of free appropriate public education (FAPE) are addressed under Hawaii Administrative Rules §§ 8-60 and 8-61; or
- (4) "Gender-based harassment" means any physical, verbal, graphic or written conduct based on sex, gender, sexual orientation, or sex stereotyping, even if those acts do not involve conduct of a sexual nature. Gender-based harassment

also includes harassment for exhibiting what is perceived as a stereotypical characteristic for one's sex or for failing to conform to stereotypical notions of masculinity and femininity, regardless of the actual or perceived sex, gender, sexual orientation, gender identity, or gender expression of the individuals involved.

"Immediate interventions" means individualized services offered to either or both the complainant or respondent involved in a complaint as appropriate to protect students from possible racial, sexual, or disability harassment. Immediate interventions may be offered prior to an investigation or while an investigation is pending. Immediate interventions for students pending an investigation may include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, leaves of absence, increased security and monitoring of certain areas of campus, or other similar accommodations. Immediate interventions may be put in place by the principal or designee on a case-by-case and temporary basis after the DOE receives notice of a complaint and before any outcomes – investigatory, disciplinary, or remedial – have been determined. These measures may be instituted to preserve the complainant's educational experience, ensure the safety of all parties and the broader DOE community, maintain the integrity of the investigative and/or resolution process, and deter retaliation. Immediate interventions shall be available throughout all phases of an investigation. They may be amended or withdrawn as additional information is gathered.

"Investigator" means an administrator, individual, or group of individuals assigned to investigate complaints made pursuant to this chapter. There may be circumstances that require having an investigator external to the DOE investigate complaints.

"Legal Guardian" means a person who has the legal right and authority to make educational and other decisions for a child under the person's guardianship.

"Parent" means the natural or legal parent, legal guardian, or other legal custodian of a student. For students eighteen years of age or older, all parental rights herein transfer to the student unless the natural or legal parent, legal guardian, or other legal custodian has legally obtained decision making rights for the student.

"Persons with disabilities" means persons who have a physical or mental impairment that substantially limits one or more life activities, have a record of an impairment, or are regarded as having an impairment.

"Protected class/basis" for the purposes of this chapter includes

race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, ancestry, and disability.

“Remedies” are individualized services offered at the conclusion of an investigation that preserve the educational experience or ensure the safety of all parties and the broader DOE community. Remedies for students may include, but are not limited to, the adjustment of academic schedules and coursework, and the provision of academic, medical and psychological support services.

“Respondent” means the employee, volunteer, and/or third party who is identified in the complaint as having allegedly discriminated against, harassed, or bullied a student. Respondent also includes the DOE when a complaint alleges systemic discrimination.

“Retaliation” means an adverse action against an employee, volunteer, and/or student because they engaged in protected activity. Protected activity includes filing a complaint of discrimination, harassment (including sexual harassment), or bullying; participating in a complaint or investigation proceeding dealing with discrimination, harassment (including sexual harassment), or bullying; inquiring about rights under this chapter; or otherwise opposing acts covered under this chapter. An adverse action is any action that would dissuade a reasonable person from making or supporting a complaint under these rules. Reprisals or retaliation shall be prohibited when there is protected activity that was engaged in in good faith.

“School” means all academic and non-college type schools established and maintained by the DOE in accordance with state law.

“Sexual assault” means the act of committing unwanted physical contact of a sexual nature on a person, whether by an acquaintance or by a stranger. Such contact is unwanted when it occurs without consent of the person, or when the person is incapacitated or otherwise incapable of giving consent. If a student is a subject of sexual assault and is under the age of consent or if the perpetrator of sexual assault is an adult and an employee or volunteer of the DOE, it shall be deemed that no consent was given. Sexual assault is a form of sexual harassment.

“Sexual exploitation” means the violation of the sexual privacy of another, or taking unjust or abusive sexual advantage of another without consent and when such behavior does not otherwise constitute sexual assault. Consent means affirmative, conscious, and voluntary agreement to engage in agreed upon forms of sexual contact. If a student is a subject of sexual exploitation and is under the age of consent or if the perpetrator of sexual exploitation is an adult and an employee or volunteer of the DOE, it shall be deemed that no consent was given. Sexual

exploitation is a form of sexual harassment.

“Sexual orientation” means having preference for heterosexuality, homosexuality, or bisexuality; having a history of any one or more of these preferences; or being identified with any one or more of these preferences.

“Stalking” means two or more acts of unwanted and harassing behavior, directed at a specific person that is sufficiently serious to cause physical, emotional, or psychological fear or to create a hostile, intimidating, or abusive environment.

"Student" means a person who is currently enrolled in a public school, or in any program, service, or activity conducted by the DOE.

"Systemic discrimination" means discrimination that results when an established policy, rule, regulation or procedure of the DOE has the continuing effect of violating non-discrimination rights.

“Third party” means any person who is not a employee or volunteer of the DOE who is on the DOE’s property with the permission of the DOE.

"Volunteer" means any person who has been officially recognized by a DOE administrator as someone who is authorized to perform work or services for the DOE without compensation. [Eff. _____] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X §1; HRS §§302A-1101, 302A-1112, 302A-1001, 302A-101, ; 42 U.S.C. 2000d et seq., 34 C.F.R. 100; 5 U.S.C. 301, 34 C.F.R. 101; 29 U.S.C. 706, 794, 34 C.F.R. 104; 20 U.S.C. 1681, 34 C.F.R. 106; 45 C.F.R. 90; 42 U.S.C. 12101 et seq., 28 C.F.R. 35)

§8-89-3 Applicability. (a) This chapter shall apply to all students who are currently enrolled in the DOE schools and covers all protected class conduct of DOE employees (including full-time, part-time, casual, substitute, and temporary employees), volunteers, or third parties that occurs on DOE property or outside of DOE property, if the conduct was in connection with a DOE-sponsored program or activity, or if the conduct occurs outside of the context of school activities and that conduct negatively impacts a student’s ability to participate in or to receive benefits, services, or opportunities in the school’s program or activities. Charter schools are excluded from this chapter and are subject to regulations promulgated by the Hawaii State Public Charter School Commission.

(b) With respect to Section 504 of the Rehabilitation Act of 1973, this chapter shall apply to complaints concerning disparate treatment

under Subpart A, General Provisions, and facilities or program accessibility under Subpart C, Program Accessibility, of 34 C.F.R. 104.

(c) For conduct by students toward other students, refer to Hawaii Administrative Rules, Title 8, Chapter 19. [Eff.] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X §1; HRS §§302A-1101, 302A-1112, 302A-1001, 302A-101, ; 42 U.S.C. 2000d et seq., 34 C.F.R. 100; 5 U.S.C. 301, 34 C.F.R. 101; 29 U.S.C. 706, 794, 34 C.F.R. 104; 20 U.S.C. 1681, 34 C.F.R. 106; 45 C.F.R. 90; 42 U.S.C. 12101 et seq., 28 C.F.R. 35)

§ 8-89-4 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable. [Eff.] (Auth: HRS §302A-1112)

§8-89-5 Reporting Requirements. Student(s) or their parent(s), or legal guardian(s) should inform any DOE employee with supervisory authority or the CRCO of any discrimination, harassment (including sexual harassment), bullying, or retaliation engaged in by DOE employees (including full-time, part-time, casual, substitute, and temporary employees), volunteers, or third parties covered under this chapter in order to address and prevent further incidents from occurring. [Eff.] (Auth: HRS §302A-1112)

§8-89-6 Complaint and Investigative Procedure. (a) Complaints stemming from allegations that fall under this chapter may be filed by:

- (1) Students who experience protected class discrimination, harassment (including sexual harassment), bullying, or retaliation;
- (2) Students who witness protected class discrimination, harassment (including sexual harassment), bullying, or

- retaliation against another student;
- (3) Parents or legal guardians who know about or witness protected class discrimination, harassment (including sexual harassment), bullying, or retaliation against a student;
 - (4) Employees, staff, or volunteers who witness or know about protected class discrimination, harassment, (including sexual harassment) bullying, or retaliation against a student.
- (b) Complaints alleging violations of this chapter can be made using the DOE's Anti-Harassment, Anti-Bullying, and Anti-Discrimination Against Student(s) Policy Complaint Form. Individuals who do not have access to or prefer not to use the DOE's Anti-Harassment, Anti-Bullying, and Anti-Discrimination Against Student(s) Policy Complaint Form can nonetheless make a complaint, either in writing or orally, by providing the DOE with the following information:
- (1) The name of the respondent or a sufficient description of the respondent so that an identity can be determined;
 - (2) The date(s) when the alleged discrimination occurred;
 - (3) The protected basis of the complaint and a factual description of how the discrimination allegedly occurred;
 - (4) A description of the injury or harm, if any; and
 - (5) Attachments, if any, documenting the alleged conduct.
- (c) Written complaints may be given to any teacher or staff, principal, vice-principal, complex area superintendent, or the CRCO. Verbal complaints may be made either in person or over the phone to any teacher or staff, principal, vice-principal, complex area superintendent, or the CRCO.
- (d) When a complaint is received, the CRCO shall promptly assess the situation and take any of the following actions:
- (1) All complaints alleging violations of this chapter will be investigated in accordance with subsections §8-89-6(f)-(i). All other complaints will be referred to the appropriate office for review;
 - (2) If deemed appropriate, the CRCO will offer the parties an opportunity to resolve the complaint informally before any formal investigation process begins. This informal process will only be used if the parties voluntarily agree to participate. The CRCO will not require the parties to resolve the complaint directly with each other. Once the informal process is initiated, either party has the right to end the informal process at any time and begin the formal investigative process.
 - (3) Informal resolution is not appropriate in cases where:

- (A) The allegation is serious enough that it appears to place the complainant or any other person at physical risk;
- (B) The incident has resulted in a criminal charge;
- (C) The incident involves a referral to the police or Child Welfare Services;
- (D) The complaint involves an allegation of severe, persistent or pervasive harassment or other serious form of discrimination;
- (E) There is a pending investigation against the respondent;
- (F) There is an objective and obvious power imbalance between the parties; or
- (G) A formal investigation is otherwise appropriate under the circumstances.

If informal resolution is not appropriate, or if the parties are unable to come to a resolution, a formal investigation will be conducted.

(e) Both parties may make a request for immediate interventions to the principal, any vice principal, the complex area superintendent, or the CRCO. The principal or designee may institute immediate interventions without a request, if they deem them appropriate. Immediate interventions will be considered by the principal or designee, in consultation with the CRCO, and if it is determined that immediate interventions are necessary, the principal or designee will implement the immediate interventions. Failure to comply with the terms of immediate interventions may be considered a separate violation, which may result in a separate investigation, findings, and determination.

(f) When an investigation is required, the CRCO will assign an impartial investigator to conduct the investigation.

(g) The complainant and respondent will be allowed to provide the assigned investigator the names of witnesses who they believe have information relevant to the complaint and provide evidence that they believe is relevant to the complaint. Once the investigator has obtained the necessary relevant information and documents, the investigator will analyze and document the available evidence, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence--including inculpatory and exculpatory evidence--and take into account the unique and complex circumstances of each case. Once that is complete, the investigator will prepare a final investigation report, which will include findings of facts and determinations of any violations of rules, policies, and/or procedures.

(h) The final investigation report shall be forwarded to the decision

maker, who shall determine any appropriate action, which may include discipline. If there is a finding of cause, the decision maker shall determine any appropriate discipline to end the discrimination, prevent its recurrence and remedy its effects on the complainant and/or school. The decision maker, in consultation with the CRCO, shall determine whether any remedies will be provided to students involved in the investigation. If it is determined that remedies will be provided, the principal or designee will implement the remedies. The complainant shall be notified of any remedies provided and any other actions taken by the DOE that directly relate to the complainant. The respondent shall be notified of any actions taken by the DOE that directly relate to the respondent.

(i) The investigator shall make a good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution. The investigation will be completed within sixty (60) calendar days of the filing of a complaint or from the report of the suspected violation of this chapter, unless the CRCO determines in its discretion that more time is required to initiate and complete the investigation. If the investigation cannot be completed within the sixty (60) calendar day time frame, the CRCO will notify the complainant and respondent in writing of the status of the investigation and provide an update on status every thirty (30) calendar days thereafter. [Eff.] (Auth: HRS §302A-1112)

§8-89-7 Continued Investigation. When a complainant makes a complaint against an employee, the investigation shall be completed in the event that the employee resigns before it is finished and shall include a determination of any potential immediate interventions and/or remedies for complainant(s) and any other students or employees affected by the alleged harassment. Additionally, the CRCO shall investigate allegations of violations of this chapter even absent a filing of a formal complaint or if a complaint has been withdrawn. [Eff.] (Auth: HRS §302A-1112)

§8-89-8 Retaliation Prohibited. Retaliation and retaliatory harassment is prohibited against any person because he/she engaged in a protected activity. [Eff.] (Auth: HRS §302A-1112)

§8-89-9 Right to Seek Other Relief. Nothing in this chapter shall be construed to limit or waive the right of the complainant to seek other relief as provided under federal and state laws. A complainant has the right to file a discrimination complaint with the federal or state government:

- (1) Without filing a complaint under this chapter;
- (2) At the same time a complaint is filed under this chapter;
- (3) At any time during the pendency of a complaint filed under this chapter; or
- (4) After a complaint filed under this chapter has been addressed.

[Eff. _____] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112, 368-3, 42 U.S.C. 2000d et seq. 34 C.F.R. 100)

§8-89-10 Translation, Interpretation, Writing Assistance, or Reasonable Accommodation. Any individual making a complaint or participating in an investigation that requires translation, interpretation, or writing assistance shall be afforded such assistance by the DOE. Any individuals with disabilities who require reasonable accommodation(s) to make a complaint or participate in an investigation shall be afforded such assistance by the DOE. [Eff. _____] (Auth: HRS §302A-1112)

§8-89-11 Student's Right to Privacy. (a) Information relating to complaints, investigations, and reports shall remain confidential and shall only be shared with appropriate individuals on a "need to know" basis.

(b) Identifiable information regarding a student shall not be disclosed without notice to the student's parent or legal guardian.

(c) Investigation records shall be maintained by the DOE separate from educational records." [Eff. _____] (Auth: HRS §302A-1112)