

HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 3

PUBLIC LIBRARIES

CHAPTER 205

CIVIL RIGHTS COMPLAINT PROCESS

§8-205-1 Statement of purpose. Nondiscrimination on the basis of race, religion, color, national origin, sex, including gender identity or expression, sexual orientation, age, disability, ancestry, or marital status is a basic right guaranteed by federal and state laws. The purpose of this chapter is to establish policies for filing and resolving complaints regarding alleged violations of the right to nondiscrimination as protected by federal and state laws. Unless otherwise stated in this chapter, the relief and review process is set forth in chapter 8-210.2. The policies contained in this chapter are not exclusive. Any remedy available at law is available in addition to these policies. The policies in this chapter are intended to effectuate an informal and expeditious resolution of a complaint alleging violation of the right to nondiscrimination. [Eff 8/7/93; am 1/2/96; am and comp 05/24/2010] (Auth: HRS §§296-19, 312-1) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const., Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489)

§8-205-2 REPEALED. [R 05/24/2010]

§8-205-3 Applicability. This chapter shall apply to all library customers and employees of the system. Any individual who believes that he or she has been discriminated against by HSPLS or an HSPLS employee shall have the right to file a complaint. The complaint must

be delivered to the office of the state librarian within thirty days of the date of the alleged violation. The complaint shall identify the specific location or library that gave rise to the facts of the complaint, the names of the HSPLS personnel involved to the extent known and available to the party at the time, a specific description of the nature of the problem, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the party at the time. [Eff 8/7/93; am and comp 05/24/2010] (Auth: HRS §§296-19, 312-1) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const., Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489)

§8-205-4 Complaint board. (a) There shall be a complaint board established for the purpose of receiving and hearing a complaint filed by a complainant. Each member of the board shall not have any conflicting interest in the complaint by being directly involved or participating in any action or conduct alleged in the complaint or in the investigation of the complaint, or have a direct interest in the outcome of the decision.

(b) Each complaint board shall consist of:

- (1) Any person duly appointed and authorized by the state librarian who shall serve as chairperson of the board;
- (2) The library manager or the manager's designee of a public library not involved in the complaint; and
- (3) The system's personnel officer or the officer's designee.

(c) If a member of the complaint board is disqualified, the chairperson shall appoint an alternate from the same role group to hear the complaint; provided that, if the chairperson has reason to be disqualified from hearing a complaint, the state librarian shall appoint an alternate to the board to serve as chairperson of the complaint board to hear the complaint.

(d) A complaint board shall be established within fifteen days after receipt of a complaint properly filed by a complainant at the office of the state librarian.

(e) A quorum of the complaint board shall be two board members or designees.

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

(g) A decision of the complaint board shall require the concurring vote of at least two board members or designees and shall be made no later than thirty days after the date the hearing is concluded. [Eff 8/7/93; am 1/2/96; am and comp 05/24/2010] (Auth: HRS §312-1) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const., Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489

§8-205-5 Right to seek other relief. Nothing in this chapter shall be construed to limit or waive the right of a complainant to seek other relief as provided under federal and state laws, provided the complainant has exhausted all administrative processes and remedies as set forth in chapter 8-205. [Eff 8/7/93; am and comp 05/24/2010] (Auth: HRS §§296-19, 312-1) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const., Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489)

§8-205-6 Right to counsel. Complainants and respondents shall, at their own expense, have the right to seek counsel in preparing, filing, and presenting any matter arising out of a complaint. [Eff 8/7/93; comp 05/24/2010] (Auth: HRS §§296-19, 312-1) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const., Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489)

§8-205-7 Right to information. A complainant and respondent shall have access to information and records in the possession of the system, except any information and records that must remain confidential in accordance with federal and state laws. [Eff 8/7/93; comp 05/24/2010] (Auth: HRS §296-19) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const., Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489)

§8-205-8 Confidentiality. Complaint records shall remain confidential in accordance with federal and state laws. They shall be maintained separate and apart from the library customer and personnel files. [Eff 8/7/93; am and comp 05/24/2010] (Auth: HRS §296-19) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const.,

Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489)

§8-205-9 Right to discuss with library personnel. Nothing in this chapter shall be construed to prevent or discourage a complainant from discussing discrimination concerns with any public library personnel prior to filing a complaint. [Eff 8/7/93; comp 05/24/2010] (Auth: HRS §296-19) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const., Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489)

§8-205-10 REPEALED. [R 05/24/2010]

§8-205-11 Waiver of time limits. The time limits established under this chapter may be waived for good and just cause by the chairperson of the presiding complaint board. However, under no circumstances shall a written decision be issued later than thirty days after the date the hearing is concluded. [Eff 8/7/93; am 1/2/96; am and comp 05/24/2010] (Auth: HRS §296-19) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const., Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489)

§8-205-12 Remedy. If a decision of the complaint board requires remedial action by the system, the state librarian shall promptly and equitably determine an appropriate remedy and implement it. [Eff 8/7/93; am 1/2/96; am and comp 05/24/2010] (Auth: HRS §296-19) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const., Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489)

§8-205-13 Withdrawal of complaint. A complainant may withdraw the complaint at any time prior to the conclusion of the hearing by the complaint board. [Eff 8/7/93; am 1/2/96; comp 05/24/2010] (Auth: HRS §296-19) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const., Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489)

§8-205-14 Reprisal prohibited; sanctions. Reprisal is prohibited against any person who has made a complaint, testified, assisted, or participated in any manner in a proceeding as provided herein. Any employee of the system who violates this chapter shall be subject to disciplinary action. [Eff 8/7/93; comp 05/24/2010] (Auth: HRS §296-19) (Imp: 29 U.S.C. §§794, 706; 20 U.S.C. §1405; 34 C.F.R. §104; Hawaii Const., Art. I, §§1, 2; HRS §§296-19, 296-61, 368-1, 378-2; HRS Chapter 489)