

## 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 Holualoa 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;

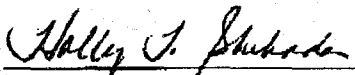
3. By June 30, 2009, the HDOE will provide OCR a report confirming that the training described pursuant to section III.B.1 has been completed. The report will include a statement that the training has been completed in the form approved by OCR and will give the dates and times that the training was completed. 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 IIIB.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

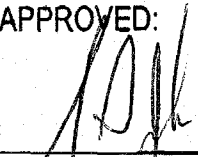
12-29-08  
Date

APPROVED AS TO FORM:

  
Halley J. Schubert  
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