	DEPARTMENT OF PUBLIC SAFETY	EFFECTIVE DATE: April 26, 2021	POLICY NO.: COR.14.17
	CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES	SUPERSEDES (Policy No. & Date): "NEW"	
SUBJECT: TITLE IX EQUAL ACCESS TO EDUCATIONAL SERVICES		Page 1 of 8	

1.0 PURPOSE

The purpose of this policy is to ensure, pursuant to Title IX, that all inmate students and providers of federally funded educational services and programs are able to participate in an educational environment free of sexual discrimination and harassment.

2.0 SCOPE

This policy and procedures apply to all correctional facilities and assigned personnel that includes staff, contractors and volunteers.

3.0 REFERENCES, DEFINITIONS & FORMS

.1 Reference(s)

- a. Department of Public Safety (PSD), Policy and Procedures (P & P), ADM.01.12, Complaints.
- b. PSD, P & P, ADM.08.08 Prison Rape Elimination Act (PREA)
- c. PSD, P & P, COR 12.03 Inmate Grievance.
- d. Hawaii Revised Statutes (HRS) § 586-1, Domestic Abuse Protective Orders, Definitions.
- e. HRS § 709-906, Abuse of family or Household Members; Penalty.
- f. Title IX of the Educational Amendments of 1972, Public Law 92-318.
- g. Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g; 34 CFR 99).
- h. PSD, Memorandum No. 2018-3315, PREA, Fraternization Between Staff and Inmates, and Reporting of Incarcerated Relatives.
- i. Jeldness v. Pearce, 30 F.3d 1220 (1994)

.2 Definition(s)

- a. Actual Knowledge - Notice of sexual discrimination arising from sexual harassment or allegations of sexual harassment to any employee of an

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educational institution. This means that when any PSD employee has notice of discrimination based on sexual harassment or allegations of sexual harassment, they must report such knowledge to their supervisors or designated Title IX Coordinators. Supervisors or Title IX Coordinators must then report the information received to the CRCO.

- b. Notice - (includes but not limited to) A report of sexual discrimination or harassment to the Title IX Coordinator or any PSD employee, and observation or witnessing of sexually discriminating or harassing conduct by any PSD employee.
- c. Complainant - An individual who is alleged to be the victim of conduct that could constitute sexual discrimination or harassment.
- d. Consent - An affirmative, conscious, and voluntary agreement to engage in agreed upon forms of sexual contact.
- e. CPS-E - Hawaii State Department of Public Safety Corrections Program Services Education branch.
- f. CRCO - Hawaii State Department of Public Safety Civil Rights Compliance Office, the entity within PSD and is responsible for ensuring PSD is in compliance with, and implements federal and state laws and regulations, and internal PSD policies and rules pertaining to the civil rights of inmate students, PSD personnel, and others, i.e., volunteers who provide educational services and programs. The CRCO is also responsible for monitoring and/or conducting investigations of discrimination on the basis of sex, including sexual harassment and protected class.
- g. Dating Violence - Violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; or by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Hawaii (see HRS 586-1, HRS 709-906).
- h. Educational Program or Activity - Locations, events, or circumstances over which PSD exercises substantial control over both the respondent and the context in which the sexual discrimination or harassment occurs.

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- i. **Formal Complaint** - A document filed by a complainant or signed by the Title IX Coordinator alleging sexual discrimination or harassment against a respondent and requesting that PSD investigates the allegation of sexual discrimination or harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the educational program or activity of PSD with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator, and by any additional designated method.
- j. **Document Filed by the Complainant** - A document or electronic submission (such as by electronic mail or through an online portal provided for this purpose) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.
- k. **Dating Violence** - Violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Hawaii (see HRS 586-1, HRS 709-906); or by any other person against an adult or youth victim who is protected from the person's acts under the domestic or family violence laws of the State of Hawaii.
- l. **Domestic Violence** - Violence committed by a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, a person similarly situated to a spouse of the victim under the domestic or family violence laws of the local jurisdiction. Hawaii law on "domestic abuse" includes persons who have or have had a dating relationship.
- m. **PSD** - Hawaii State Department of Public Safety.
- n. **Respondent** - An individual who has been reported to be the perpetrator of conduct that could constitute sexual discrimination or harassment.

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o. Sexual Abuse or Assault

1. Sexual abuse of an offender, detainee, or resident by another offender, detainee or resident if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse, includes any of the following acts:
 - a) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - b) Contact between the mouth and the penis, vulva, or anus;
 - c) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
 - d) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

2. Sexual abuse of an offender, detainee, or resident by a staff member, contractor, or volunteer, regardless of consent by the offender, detainee, or resident, includes any of the following acts:
 - a) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - b) Contact between the mouth and the penis, vulva, or anus;
 - c) Contact between the mouth and body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
 - d) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
 - e) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the

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staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

- f) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in (1) through (5) above;
 - g) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an offender, detainee, or resident; and
 - h) Voyeurism by a staff member, contractor, or volunteer.
- p. Sexual Discrimination - Prohibited conduct that includes harassment on the basis of sex. This can take many forms including (but not limited to):
1. Verbal or written harassment
 2. Sexual assault, including rape and other unwanted sexual touching
 3. Stalking (when done on the basis of sex)
 4. Dating or domestic violence
- q. Sexual harassment - Conduct on the basis of sex that satisfies one or more of the following: (1) An employee of PSD conditioning the provision of an aid, benefit or service of PSD on an individual's participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to PSD's educational program or activity; or (3) "Sexual assault," "dating violence," "domestic violence," or "stalking."
- r. Stalking - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. For purposes of this definition, "course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly or through third parties by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. "Reasonable person" means a

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reasonable person under similar circumstances and with similar identities to the victim. "Substantial emotion distress" means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

- s. Supportive measures - Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to PSD's CPS-education programs and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or PSD's educational environment, or deter sexual discrimination or harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, security escort, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of PSD learning center areas, and other similar measures. PSD must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of PSD to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
 - t. Title IX Coordinator: With guidance from the CRCO, the Title IX Coordinator is responsible for coordinating PSD's compliance with Title IX, and other related discrimination laws, and handles cases alleging misconduct, specifically sexual misconduct, gender-based discrimination, harassment, intimate partner violence, and stalking for students, teachers, staff, volunteers, and others participating in educational services.
- .3 Form(s)
- a. PSD 8215, Administrative Remedy Form

4.0 POLICY

- .1 All inmate students shall have equal opportunities and access to participate in federally funded educational programs.

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- .2 All teachers, volunteers, visitors, and staff employees who participate and provide educational services shall also be protected by Title IX.
- .3 Every facility with educational centers shall have a designated Title IX Coordinator who will work with both CRCO and CPS-E to ensure compliance with Title IX.
- .4 All PSD employees who observe or witness sexually discriminating or harassing conduct by any PSD employee that takes place within the jurisdiction of where educational services or programs are provided shall give notice to the designated Title IX Coordinator.

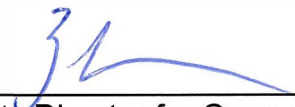
5.0 PROCEDURES

- .1 Each facility education supervisor (or designee) shall serve as the Title IX Coordinator who shall be the main point of contact for the filing of all formal complaints and documents to be filed by complainants.
- .2 Title IX Coordinators shall ensure that all inmates, teachers, staff, and others who participate in educational programs or services shall be informed of their rights, pursuant to Title IX.
- .3 Title IX Coordinators shall coordinate with CRCO and CPS-E to ensure that when complainants file grievances to include documents filed by complainants that both complainants and respondents are both informed of their rights and next steps to take.
- .4 Supportive measures can be considered and implemented by the Title IX Coordinators after consultation with CRCO and CPS-E and meeting with both complainants and respondents to ensure the safety for all parties and to maintain equal opportunities and access to education for all students.
- .5 Title IX Coordinators shall gather all pertinent information on all inmate grievances and non-inmate complaints, which shall be submitted to CRCO for investigation. The information gathered shall include (but not limited to) issues involving consent, alleged conducts involving dating violence, sexual assault, sexual harassment, and stalking.
- .6 PSD, P & P, COR 12.03, Inmate Grievances process shall be used to guide inmates in filling out PSD 8215, Administrative Remedy Form and filing their formal Title IX complaints.


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- .7 PSD, P & P, ADM.01.12, Complaints process shall be used to guide non-inmate complainants in filing their formal complaints.
- .8 If either, PSD, P & P, COR 12.03 or PSD, P & P, ADM.01.12 should conflict with Title IX, Title IX shall prevail.
- .9 Title IX Coordinators shall consult with CRCO and CPS-E to ensure that all inmate grievances and non-inmate complaints are processed and completed in a timely manner and in compliance with all Title IX mandates.

APPROVAL RECOMMENDED:


 _____ April 26, 2021
 Deputy Director for Corrections Date

APPROVED:


 _____ April 26, 2021
 DIRECTOR Date

STATE OF HAWAII – DEPARTMENT OF PUBLIC SAFETY
ADMINISTRATIVE REMEDY FORM

Do Not Write in this Space
OFFICIAL USE ONLY
Date Received: _____
Date Logged: _____
Date Returned: _____
Response Due: _____

(This Control No. Must
Accompany All Appeals)

NAME: _____ SID: _____

HOUSING: _____ CONTROL NO: Step 1 _____
Facility Module/Unit/Block/Cell Step 2 _____

- TO: (Step) 1. _____ Section supervisor/Inmate Grievance Specialist
2. _____ Appeal Branch/Core Program Administrator/Inmate Grievance Specialist
3. _____ Appeal Institutions/Core Program Division Administrator/Inmate Grievance Specialist

I attempted to solve this problem through informal discussion with: _____ on _____
Resolution could not be obtained because: _____

Subject cannot be resolved informally because: _____
Attachments included: (must submit signed verification of informal resolution sought) _____

STATEMENT OF COMPLAINT/GRIEVANCE:

RESOLUTION SOUGHT:

INMATE SIGNATURE

DATE

RESOLUTION: (Do Not Write In This Space. OFFICIAL USE ONLY)

SIGNATURE OF RESPONDENT

TITLE

DATE

Appeals must be filed within five (5) calendar days upon receipt. Signed & dated ROAs must be returned. Step 3 responses are final.

INMATE ACKNOWLEDGED RESPONSE

DATE