



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Hawai‘i

BY HAND DELIVERY

February 9, 2018

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Re: Sex Discrimination Against Female Athletes in Hawai‘i

Dear Dr. Kishimoto, Ms. Kunz, Mr. Carlson, and Ms. Puglisi:

It has come to our attention that the Hawai‘i State Department of Education (“*DOE*”) is engaging in unlawful sex discrimination against female athletes in DOE schools by providing such athletes grossly unequal opportunities and access to athletic programs and facilities in comparison to their male counterparts. The DOE’s sex discrimination violates, at a minimum, the Fourteenth Amendment to the U.S. Constitution, Sections 3 and 5 of Article 1 of the Hawai‘i State Constitution, Title IX of the Education Amendments of 1972,¹ and the U.S. Department of Education’s interpreting regulations.² The ACLU of Hawai‘i Foundation (“*ACLU of Hawai‘i*”) writes to demand that you take immediate action both to cease this discrimination and to rectify existing inequities.

¹ 20 U.S.C. § 1681.

² See, e.g., 34 C.F.R. §§ 106.1, 106.2, and 106.41.

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The ACLU of Hawai‘i is particularly concerned by the revelations contained in the recent February 7, 2018 HONOLULU CIVIL BEAT article entitled “Female Athletes Get the Short End of the Stick at Some Hawaii High Schools.”³ Among other things, the article reveals that—in spite of the more than 16,000 girls in Hawai‘i who participated in high school sports during the 2016-17 school year⁴—many of the DOE’s high schools do not have separate athletic locker facilities for girls, even when boys in those same schools *do* have such access. According to DOE’s 2016 Statewide Athletic Plan, the following 14 schools do not have athletic lockers for female students, while having such facilities for male students: Campbell High School, Kahuku High School, Kailua High School, Mililani High School, Moanalua High School, Pearl City High School, Radford High School, Waialua High School, Konawaena High School, Wāiakea High School, Baldwin High School, Hāna High School, Maui High School, and Kaua‘i High School.⁵ Thus, just two years ago, the majority of Maui’s high schools did not have athletic facilities for girls comparable to those for boys, and a third of Kauai’s and Oahu’s high schools were also non-compliant with Title IX.

These revelations are especially troubling in light of the ACLU of Hawaii’s prior litigation regarding this disparity between the female athlete’s experience and the male athlete’s experience in DOE schools. In 2010, the ACLU of Hawai‘i sued the DOE and the County of Maui on behalf of three female students who were enrolled in the DOE’s school system and wished to participate fully in the DOE’s softball program.⁶ The federal lawsuit alleged, among other things, that female

³ See Suevon Lee, *Female Athletes Get the Short End of the Stick at Some Hawaii High Schools*, HONOLULU CIVIL BEAT (Feb. 7, 2018), <http://www.civilbeat.org/2018/02/female-athletes-get-the-short-end-of-the-stick-at-some-hawaii-high-schools>. The article is enclosed with this letter.

⁴ See National Federation of State High School Associations, *2016-17 High School Athletics Participation Survey Results*, at 56, available at http://www.nfhs.org/ParticipationStatistics/PDF/2016-17_Participation_Survey_Results.pdf.

⁵ See Sato & Associates, Inc., *Statewide Athletic Plan, Master Planning and School Assessment, Job No. Q61002-12, Master Plan for Athletic Facilities*, DEP’T OF EDUC., STATE OF HAWAII (Feb. 2016) at PDF 4-5, available at <https://www.documentcloud.org/documents/4367267-HIDOE-Athletics-Master-Plan-and-Assessment.html>.

⁶ *Nobriga v. Dep’t of Educ., State of Hawaii*, Civ. No. 1:10-cv-00159-DAE-LK, Complaint (Mar. 18, 2010), ECF No. 1. The complaint is enclosed with this letter.

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athletes in Baldwin High School “are being and have been denied equal and adequate access to athletic facilities made available to male athletes,” and that such denial was “because of their gender.”⁷ Soon after this lawsuit was filed, the ACLU of Hawai‘i, the DOE, and the County of Maui entered into a settlement agreement requiring the DOE and the County of Maui to make improvements and expand access to existing girls’ softball facilities, as well as build a new girls’ softball practice field on par with the field already existing for boys.⁸ DOE also agreed to pay the plaintiffs \$75,000 in attorneys’ fees and costs.

We had hoped our prior lawsuit would bolster DOE’s commitment to gender equity in its schools. But as the HONOLULU CIVIL BEAT article makes clear, the immense gap between girls’ and boys’ athletic experiences persists today.

That gap must close now. DOE is required by law to provide the female athletes of Hawai‘i equal access to athletic facilities and programs. Facilities for female athletes can no longer remain a “Wish List” item in the DOE’s master plan.⁹ While we recognize that the DOE has the difficult task of balancing its budget and prioritizing among many different projects, compliance with Title IX is not optional. Simply put, it is unfair and **illegal** that the female athletes of Hawai‘i have been denied full, equal access to the DOE’s athletic programs for this long. Indeed, that this inequality persists today—nearly **half a century** after Hawaii’s own Congresswoman Patsy Mink succeeded in shepherding Title IX into law—is unconscionable.

In light of the above, we demand that, by March 12, 2018, the DOE respond to this letter with a plan that concretely addresses the glaring inequality between girls’ and boys’ athletic facilities in DOE schools—and does so expeditiously. Specifically, the plan must ensure that **all** female athletes in DOE schools are given access to facilities that are comparable to those given to male athletes by the first

⁷ *Id.* at ¶ 1.

⁸ While it was not the subject matter of the lawsuit, we note that in spite of the lawsuit, Baldwin High School is among the high schools with athletic lockers for boys but not for girls.

⁹ See *Statewide Athletic Plan, Master Planning and School Assessment, Job No. Q61002-12, Master Plan for Athletic Facilities*, at PDF 13-14, (listing “Girls athletic locker room and weight room” on “Wish List” for Kailua High School).

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day of the 2018-19 school year. That plan must include expedited construction of girls' athletic locker facilities in schools that currently do not have such facilities. Where such construction is currently unfeasible, the plan must include firm construction dates. Alternatively, the plan might implement the alternating use of existing facilities between the boys' and girls' athletic teams on an equal basis. In other words, we demand that DOE develop a plan to be fully compliant with Title IX by the first day of the 2018-19 school year.

We look forward to working with DOE towards an amicable resolution of this matter. However, if we are unable to come to an agreement, the ACLU of Hawai'i is prepared to take legal action—as we have done before—to ensure that Hawaii's female athletes are no longer denied the equal opportunities and access to which they are entitled under the law.

We would appreciate your acknowledging receipt of this letter as soon as possible. Thank you in advance for your time and attention to this matter. If you have any questions or comments in the interim, please contact me at 522-5908 or mcaballero@acluhawaii.org.

Sincerely yours,



Mateo Caballero
Legal Director

Enclosures: Feb. 7, 2018, HONOLULU CIVIL BEAT article; Mar. 18, 2010 complaint filed in *Nobriga v. Dep't of Educ., State of Hawaii*, Civ. No. 1:10-cv-00159-DAE-LK

Cc (via email): Holly.T.Shikada@hawaii.gov (Deputy Attorney General, Education Division, State Department of the Attorney General); doe_info@hawaiidoe.org