



S E A C
Special Education Advisory Council

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**Special Education
Advisory Council**

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Catherine Payne, Chair
Hawaii State Board of Education
P. O. Box 2360
Honolulu, HI 96804

RE: VII. D. Board Action on Finance and Infrastructure and Student Achievement Joint Committee recommendations concerning the adoption of draft of new Chapter 89, Civil Rights Policy and Complaint Procedures for Student(s) Complaints against Adult(s)

Dear Chair Payne and Members of the Committee,

The Special Education Advisory Council (SEAC) welcomes this opportunity to provide further testimony on the proposed rules for Chapter 89. We are appreciative that the latest draft of Chapter 89 incorporates a number of recommendations from our September 6th testimony including:

- revising the parent definition to acknowledge parents of adult children with disabilities who are acting as their child's educational representative or agent under a Power of Attorney and therefore retain their legal right to make educational decisions for their child;
- adding the above-mentioned parents as parties authorized to file complaints; and
- requiring that the principal or their designee ensure that a student's free and appropriate public education (FAPE) is not affected in complaints involving students with disabilities.

SEAC continues to have concerns about two recommendations that we believe are not adequately addressed in this second draft, and we would therefore like to restate them:

RECOMMENDATION 1

Under §8-19-2 Definitions. "Immediate interventions"

State a specific timeline for "immediate" interventions (for example, within 24-48 hours).

SEAC's rationale:

The Department revised its original definition of immediate intervention to state that it should be implemented "as soon as possible." This phrase is much too subjective. Specifying a concrete timeline will create uniform expectations between school officials and parents.



RECOMMENDATION 2

Under §8-89-6 Complaint and Investigative Procedure (i)

Add a requirement that a copy of the investigative findings be given to the complainant, and to the parent of the student with a disability, if the complainant is other than the parent.

SEAC rationale:

As a procedural safeguard, SEAC believes the investigative procedure regarding alleged misconduct toward students with disabilities should mirror the timelines and requirements for written complaints under Chapter 60, including providing a copy of the report to the parent within 60 days.

In addition to these two recommendations, SEAC has a few **questions or comments** regarding the following changes to the proposed Chapter 89 rules and subsequent training:

Definition of Bullying

Will combining the definitions of bullying and harassment and removing the terms “disability harassment” and “hostile environment” make it harder to follow the Office for Civil Rights (OCR) guidance to the field dated October 21, 2014 regarding disability-based harassment investigations? Will it make categorical data collection more difficult?

Changing the class offense of bullying/harassment and cyberbullying

Will increasing the severity of a bullying offense from Class B to Class A result in a greater number of suspensions? SEAC has previously noted that students with certain kinds of emotional disabilities may be more likely to exhibit bullying behavior. If discipline measures imposed for a more serious Class A offense include missing instructional time, then students under suspension will be at greater risk of negative educational and post-school outcomes. SEAC believes that the emphasis should be much more on preventing bullying/harassment and intervening early with positive behavioral supports, rather than imposing harsh punishments.

Training on New Procedures in Chapters 19 and 89

Training of administrators needs to include how to determine if FAPE has been affected for students with a disability. Ideally it should include OCR’s recommended proactive steps to take when a complaint of bullying involving a student with a disability is received. These include convening the IEP or 504 Team to determine whether and to what extent: 1) the student’s educational needs have changed; 2) the bullying impacted the student’s receipt of FAPE services, and 3) whether additional or different services are needed and provided in a timely manner.

Thank you for the opportunity to provide recommendations on these important regulations. Should you have questions, we will be happy to provide answers or clarification.

Respectfully,


Martha Guinan
SEAC Chair


Ivalee Sinclair
Legislative Committee Chair