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**S E A C**

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September 6, 2018

Maggie Cox, Chair

Student Achievement Committee Kenneth Uemura, Chair

Finance and Infrastructure Committee Hawaii State Board of Education

P. O. Box 2360 Honolulu, HI 96804

RE: II. A. Committee Action on approving for public hearing draft amendments to Hawaii Administrative Rules, Chapter 19

Dear Chairs Cox and Uemura and Members of the Committees,

The Special Education Advisory Council (SEAC) appreciates the opportunity to provide testimony on draft amendments to Chapter 19 prior to public hearings. We are supportive of the Department’s efforts to provide a more timely and comprehensive response to bullying and harassment of public school students based on race, sex and disability. These efforts include the hiring of equity specialists, notice to students and their families, enhanced training and written grievance procedures for addressing complaints of discrimination and harassment filed by students, parents, employees and other parties.

It is well documented that students with disabilities are bullied 2-3 times more than students without disabilities. Research has also shown a connection between certain kinds of emotional disabilities and bullying behavior. Bullying can cause lasting harm to all involved including poor academic achievement, depression and low self-esteem, and negative impacts to future employment and social relationships.

With respect to Chapter 19, we ask for your consideration of the following recommendations to strengthen the protection of students with disabilities:

RECOMMENDATION 1

Under §8-19-2 Definitions. Harassment (3) “Disability harassment” After defining disability harassment, the following statement is made: “Complaints relating to the denial of free appropriate public education (FAPE) are addressed under Hawaii administrative rules

*Mandated by the* ***Individuals with Disabilities Education Act***

RECOMMENDATION 1 (cont.)

§§ 8-60 and 8-61.” While this statement is factually true, SEAC believes this statement is more appropriately included in SUBCHAPTER 8 - COMPLAINTS RELATING TO PROTECTED CLASS CONDUCT, along with a description of the investigative process.

SEAC’s rationale:

The investigative process is what determines whether the complaint of disability harassment created a hostile environment for a student with a disability and whether that student’s receipt of appropriate services may have been affected, thereby resulting in a FAPE violation under IDEA or Section 504. Neither Chapter 60 or Chapter 61 includes language about disability harassment, so parents and teachers may not be aware of its effect on the provision of FAPE, or that bullying can be the basis of a written or due complaint under those chapters. The investigative process for complaints related to protected class conduct should make that determination and provide the parent with guidance on how to proceed with a written complaint or due process complaint under the appropriate administrative rule.

RECOMMENDATION 2

Under §8-19-2 Definitions. “Immediate interventions” Specify a specific timeline for “immediate” interventions.

SEAC’s rationale:

The term “immediate” sets an expectation with parents that information or service offered will occur on the same day as the complaint is filed. When schools fail to notify parents of optional interventions in a timely manner, it creates a basis of mistrust between home and school. Specifying a timeline will create uniform expectations between school officials and parents.

RECOMMENDATION 3

Under §8-19-2 Definitions. “Parent”

The statement “for students eighteen years of age or older, all parental rights herein transfer to the student” needs to be amended to add “Parents of students with disabilities eighteen years of age or older may continue to act as the educational representative to make educational decisions for their adult student under the provisions of Act 182 (2009).

SEAC’s rationale:

Disability advocates helped to pass SB 2879 (Act 182) during the 2008 Legislative Session. It allows alternatives to legal guardianship for retaining the right to act as the decision maker under IDEA for educational decisions pertaining to their adult child when that child lacks decisional capacity or when he or she elects to have his parent(s) appointed as his Power of Attorney for Educational Decisions. (see attached synopsis of Act 182)

RECOMMENDATION 4

Under SUBCHAPTER 8, §8-19-31 Investigation (a)

The draft language reads “Once an investigation is initiated, the principal or designee shall make

RECOMMENDATION 4 (cont.)

a good faith effort *at the earliest point possible* to inform the parent about the investigation.” This sentence should be amended to specify a timeline (for example, *on the day of the complaint*, *within 24 hours of a complaint*, etc.) rather than use the vague language “at the earliest point possible.”

SEAC’s rationale:

Having vague timelines reduces accountability and leads to misunderstandings between parents and school personnel. SEAC has asked the Department on several occasions to issue instructions to the field to notify parents of incidents at school **on the same day of the incident**. Children with disabilities often lack the ability to clearly express events that happen at school that may have upset

or traumatized them. Parent have a right to timely information so that they can appropriately support and/or advocate for their child.

RECOMMENDATION 5

Under SUBCHAPTER 8, §8-19-31 Investigation (b)

Add the following language to the description of the investigational duties: “When investigating disability harassment, the investigator will consider factors outlined by the Office for Civil Rights to determine whether harassment occurred under Section 504 and whether there was a denial of FAPE under Section 504 or IDEA.” (See attached Office for Civil Rights **Dear Colleague Letter: Responding to Bullying of Students with Disabilities**, dated October 21, 2014).

SEAC rationale:

OCR has outlined a clear process for analyzing complaints involving the bullying of students with disabilities. They also provide a decision tree for how OCR conducts its investigations. It is

important for school-level personnel as well as equity specialists to understand their obligations in this respect to avoid findings of discriminatory treatment. While the student who violates Chapter 19 suffers consequences, so, too, do schools who violate their obligations under Section 504.

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 Ivalee Sinclair

SEAC Chair Legislative Committee Chair