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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. B. Committee Action on approving for public hearing repeal of Hawaii Administrative Rules, Chapter 41, Civil Rights Policy and Complaint Procedure and adoption of draft of new Chapter 89, Civil Rights Policy and Complaint Procedures for Student(s) Complaints against Adult(s)

Dear Chairs Cox and Uemura and Members of the Committees,

The Special Education Advisory Council (SEAC) appreciates the opportunity to provide testimony on the proposed rules for Chapter 89. We find the new rule much more comprehensive than Chapter 41, and we support the Department’s efforts to provide greater protections to students in protected classes from bullying and harassment.

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.

Chapter 89 establishes complaint and investigative procedures for students in protected classes, including students with disabilities, who may have been harassed or bullied by school personnel or volunteers. SEAC recommends the following edits to the proposed rules to strengthen the protection of students with disabilities:

RECOMMENDATION 1

Under §8-89-2 Definitions. Harassment - “Disability harassment” After defining disability harassment, the following statement is made: “Complaints relating to the denial of free appropriate public

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

RECOMMENDATION 1 (cont.)

education (FAPE) are addressed under Hawaii administrative rules§§ 8-60 and 8-61.” While this statement is factually true, SEAC believes this statement is more appropriately included in § 8-89-6 - Complaint and Investigative Procedure 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 the protected class 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 unless the natural or legal parent, legal guardian, or other legal custodian has legally obtained decision making rights for the student” needs to be amended to add “including through the provisions offered to parents of adult students with disabilities under Act 182.”

SEAC’s rationale:

There are many reasons why parents of students with disabilities choose not to obtain legal guardianship of their adult children. 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 §8-89-6 Complaint and Investigative Procedure

Add procedures regarding parent notification of alleged misconduct toward a student when the

RECOMMENDATION 4 (cont.)

person(s) making the complaint is other than the parent. SEAC’s rationale:

Schools cannot assume that a child with a disability will report suspected abuse to his or her parents directly. Children with disabilities often lack the ability to clearly express events that happen at school that may have upset or traumatized them. In other instances, prohibited discrimination may be occurring and neither the student or the parent is aware that it is taking place. If a third party reports alleged misconduct, it is the parent’s right to know of the complaint as soon as it is filed or within 24 hours of its filing.

RECOMMENDATION 5

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

Add the following language to the description of the investigational process: “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 a school employee who discriminates suffers consequences, so, too, do schools who violate their obligations under Section 504.

RECOMMENDATION 6

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.

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