

2024 Draft Annual Report Recommendations to the Superintendent

May 10, 2024

Data Related to the Bullying/Cyberbullying of Students with Disabilities

Issue #1: According to stopbullying.gov and many other sources, children with disabilities—such as physical, developmental, intellectual, emotional, and sensory disabilities—are at an increased risk of being bullied. The 2020-21 Civil Rights Data Collection from the Office for Civil Rights (OCR) reported that “students served under IDEA represented 14% of total K-12 student enrollment but accounted for 45% of students who reported as being harassed or bullied on the basis of disability.”

SEAC has long called attention to this concerning statistic given that bullying and cyberbullying of students with IEPs and 504 Plans can jeopardize the delivery of a free appropriate public education. This school year, SEAC prioritized information gathering and problem-solving around the issue of bullying of students with disabilities. However, the lack of timeliness and transparency of Hawaii student data related to bullying of our population has hampered SEAC’s ability to provide informed recommendations to the Department. For example, SEAC sought data trends on the utilization and substance of complaints made through the Speak Now HIDOE app and was told that there is no public accounting on utilization or trends related to this student reporting. Similarly, there is no transparency or accounting for what actions school administrators take in response to the complaints. SEAC also requested Chapter 19 data on bullying complaints involving students with disabilities (as the victim or the perpetrator) and were told that we must wait for the data to be released by OCR—a delay of at least two years in accessing this data.

Recommendation #1: Provide public access to bullying data available to the Department—Speak Now HIDOE data, OCR data, etc.—no more than one year after the data is collected and personally identifiable information is removed.

Data Related to the Bullying/Cyberbullying of Students with Disabilities

Issue #2: There appears to be a very large disparity between middle and high school student-reported incidences of bullying/cyberbullying via the Hawaii Youth Risk Behavior Survey (HYRBS) administered every two years, and the Civil Rights Data Collection (CRDC) bullying data collected by all public schools and reported to the Office for Civil Rights. In the 2021 HYRBS 33% of middle schoolers reported being bullied on school property in the past 12 months. That sample population represented 9,800 middle school students. Assuming that a minimum of 10% of those students were students with disabilities—the percentage of students with IEPs in the total school population—that would constitute 980 students with disabilities. By contrast, SEAC was told that the numbers of students reporting bullying based on their disability that went into the CRDC submission was so small that many of the cells contained less than 10 students. Regardless of whether each student’s definition of bullying matches up completely with the Chapter 19 definitions, the reality is that many of our vulnerable students are feeling unsafe at school and potentially missing school and/or experiencing academic struggles due to a perceived threat on campus or traveling to and from campus.

Recommendation #2: Publish all reports of bullying via a Chapter 19 complaint whether the complaint was substantiated or not to get a better picture of how many bullying incidences are being reported to school personnel. Place a high priority on investigating the mismatch in HYRBS reported data and CRDC data and work with SEAC and other stakeholder groups to address the barriers to learning that bullying and cyberbullying pose for all children, and especially children with disabilities.

Dispute Resolution: State Written Complaints

Issue: State written complaints are one of the guaranteed procedural safeguards in the Individuals with Disabilities Education Act (IDEA) offered to parents of eligible children with disabilities when a dispute arises over a child's identification, evaluation, program, placement or discipline. State complaints can also be filed by any organization or individual (including those from another state) to report a perceived violation of IDEA. In SY 22-23 seventeen (17) written complaints were filed. SEAC and the general public has no access to information regarding the nature, scope and parties involved in these complaints, because the state is not required to publish written complaints or investigation results. However, Hawaii formerly published redacted state complaints during the period of the *Felix Consent Decree*, and 18 states currently provide access to this information on their state Department of Education websites. Hawaii's lack of transparency with regard to state written complaints since *Felix* prevents SEAC and others from identifying key issues and systemic concerns discovered through the complaint process and from evaluating the effectiveness of this dispute resolution option in protecting students with disabilities.

Recommendation: Publish complaints reports on the HIDOE website after redacting personally identifiable information. Join with SEAC to annually review this information and develop data-driven improvement activities, as warranted.

Dispute Resolution: Mediation

Issue: Families and schools under-utilize mediation as a low cost, relationship-preserving method of special education conflict resolution. The Center for Appropriate Dispute Resolution in Special Education (CADRE) lists additional benefits of mediation including high rates of compliance with settlements, mutually satisfactory outcomes, a greater degree of control and predictability of outcome, and personal empowerment. In SY 2022-23, only 3 mediations per 10,000 special education students were held in Hawaii-- less than half of the national average (6.6 per 10K). However, 80% of Hawaii's mediations that year reached a settlement agreement—far higher than the national average of 50% agreement—demonstrating that mediation can be seen as a win-win for both family and school.

Recommendation: Initiate a media campaign with support from SEAC, the Community Children's Councils and other family stakeholder groups to highlight the benefits of mediation and other early conflict resolution activities.

Dispute Resolution: Timeliness of Due Process Decisions

Issue: Chapter 60 and IDEA set a timeline of 75 days for completion of a hearing and delivery of the decision to the parties. This includes 30 days to allow for the resolution process and 45 days from the time the hearing is convened to the rendering of the decision. The clear intent of IDEA is to expedite the hearing process to minimize harm to the student. Hearing officers may grant an extension to this timeline at the request of either party, but only for good cause and no more than 45 days. SEAC is concerned that many of Hawaii's due process complaints are taking much longer than 75 days to deliver the decision to the plaintiffs and the respondents. One factor that may be contributing to the delayed timeline is that hearing officers on average are taking one month or more to file a decision after the final hearing.

Recommendation: Consult with the Office for Dispute Resolution to uncover the reasons for the large number of hearing requests that proceed to hearing and exceed the recommended 75-day timeline set by IDEA. Report those findings to SEAC and other key stakeholders, so that we may work with the Department on designing improvements that ensure the timeliness and integrity of this important procedural safeguard.

Pre-School Least Restrictive Environment (LRE)

Issue: In November 2023, the U.S. Departments of Education and Health and Human Services, released a joint policy statement that all young children with disabilities should have access to high-quality inclusive early childhood programs that provide individualized and appropriate support so they can fully participate alongside their peers without disabilities, meet high expectations, and achieve their full potential. SEAC has long advocated for HIDOE to do more to partner with private preschools, HeadStart, and the Executive Office on Early Learning Public Pre-Kindergarten Program to offer inclusive placements for preschool children with IEPs as Hawaii has some of the lowest rates of preschool LRE in the nation. In addition, the rate of inclusive preschool enrollments has been declining over the 3-yr. period from SY 20-21 to SY 22-23 where only 17% of children with IEPs received the majority of special education and related services in the regular early childhood program.

Recommendation: Work with the newly formed Interagency Preschool Group to set immediate annual targets to grow the number of Head Start/DOE inclusive preschool programs statewide and place more students with IEPs in the EOEL Public Pre-Kindergarten Program classrooms.