

Hawaii Draft Anti-Bullying Legislation

A BILL FOR AN ACT

RELATING TO EDUCATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. This Act shall be known at the Safe Schools for All Students Act.

SECTION 2. The legislature finds that all students have the right to fully participate in the educational process free from bullying and cyberbullying. A safe and civil environment in school is necessary for students to learn and to meet high academic standards. Bullying and cyberbullying, like other disruptive or violent behaviors, inhibit a student's ability to learn and a school's ability to educate students in a safe environment. It is imperative that all schools and youth-serving agencies in the State establish and maintain clear and consistent policies and procedures to address such behavior. In addition, because students learn by example, school administrators, faculty, staff, parents, guardians, and volunteers should be expected to demonstrate appropriate behavior, treat others with civility and respect, and refuse to tolerate bullying and harassment.

The purpose of this Act, therefore, is to require all youth-serving agencies, public schools, charter schools, and educational institutions that receive state funding to establish, maintain, monitor, and enforce policies and procedures related to all forms of bullying and cyberbullying to protect youth in the State.

SECTION 3. Chapter 302A, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

“§302A-A Definitions. For the purposes of this act, the term:

(a) “Agency” means any state government entity that provides services, activities, or privileges to youth, including the:

- (1) Department of Education;
- (2) State Public Charter School Commission;
- (3) Department of Human Services;
- (4) Department of Agriculture;
- (5) Department of Transportation; and
- (6) University of Hawaii.

(b) “Alternative discipline” means disciplinary action other than suspension or expulsion from school that is designed to correct and address the root causes of a student's specific misbehavior while retaining the student in class or school, or restorative school practices to repair the harm done to relationships and persons from the student's misbehavior. “Alternative discipline” includes, but is not limited to:

Alison Gill 8/14/2014 7:08 PM

Comment [1]: Language in Purpose section is mostly taken from last year's HB 397, modified as appropriate for this bill.

Alison Gill 8/8/2014 3:57 PM

Comment [2]: These will need to be modified to reflect appropriate Hawaii agencies. Ensure that charter schools are covered.

Alison Gill 9/23/2014 10:51 PM

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- (1) Meeting with the student and the student's parents;
- (2) Reflective activities, such as requiring the student to write an essay about the student's misbehavior;
- (3) Counseling;
- (4) Anger management;
- (5) Health counseling or intervention;
- (6) Mental health counseling;
- (7) Participation in skills building and resolution activities, such as social-emotional cognitive skills building, resolution circles and restorative conferencing;
- (8) Community service; and
- (9) In-school detention or suspension, which may take place during lunchtime, after school or on weekends.

(c)(1) "Bullying" means any severe, pervasive, or persistent act or conduct, whether physical, electronic, or verbal that:

- (A) May be based on a youth's actual or perceived race, sex including gender identity or expression, sexual orientation, color, religion, ancestry, or disability, or any other distinguishing characteristic, or on a youth's association with a person, or group with any person, with one or more of the actual or perceived foregoing characteristics; and
- (B) Can be reasonably predicted to:
 - (i) Place the youth in reasonable fear of physical harm to his or her person or property;
 - (ii) Cause a substantial detrimental effect on the youth's physical or mental health;
 - (iii) Substantially interfere with the youth's academic performance or attendance; or
 - (iv) Substantially interfere with the youth's ability to participate in or benefit from the services, activities, or privileges provided by an agency, educational institution, or grantee.

(2) For the purposes of this part, the terms "disability," "gender identity or expression," "place of public accommodation," and "sexual orientation" shall have the same meaning as provided in chapter 489.

(d) "Educational institution" means any local education agency that receives funds from Hawaii, including public charter schools.

(e) "Electronic communication" means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, tablet, pager, or video or audio recording.

(f) "Employee" means an individual who performs a function for the state government for an agency, educational institution, or grantee who receives compensation for the performance of that function.

(g) "Grantee" means an entity or a contractor of an entity that, on behalf of the state government or through state funding, provides services, activities, or privileges to youth.

Alison Gill 8/13/2014 11:25 PM

Comment [3]: Generally, I just define bullying, but since the DOE policy has a bizarre definition of harassment, we may want to define both terms together.

Alison Gill 8/14/2014 7:09 PM

Comment [4]: Made to match Hawaii's non-discrimination law. Note that currently, the HI Human Rights Act does not apply to education.

Differs from nondiscrimination provision in charter school law , missing categories – gender/sex, ethnicity, color, national origin, income level, level of proficiency in the English language, need for special education services, or academic or athletic ability.

(h) "Party" means a person accused of bullying, a target of bullying, or a parent or guardian of either a person accused of bullying or a target of bullying.

(i) "Youth," depending on the context, means:

(1) An individual of 21 years of age or less who is enrolled in an educational institution or who accesses the services or programs provided by an agency or grantee, or an individual of 22 years of age or less who is receiving special education services from an educational institution; or

(2) Individuals as described in subparagraph (A) of this paragraph considered as a group."

“§302A-B Bullying prevention task force.

(a) Within 60 days of the effective date of this act, the Governor shall establish a bullying prevention task force.

(b)(1) The task force shall consist of representatives from a diversity of the educational institutions and agencies that will be affected by this act, as well as community representatives, including:

- (A) Teachers;
- (B) Administrators from educational institutions and agencies;
- (C) School mental health professionals;
- (D) Parents, and legal guardians;
- (E) Youth;
- (F) Direct service providers;
- (G) Clergy; and
- (H) Advocates.

(2) In constituting this task force, the Governor shall consider geographic and socioeconomic diversity as well as other forms of diversity.

(c) The task force shall:

- (1) Provide guidance to the Governor regarding the implementation of this act;
- (2) Within 180 days of the effective date of this act, publicize a model policy, which shall contain each of the components required by this act;
- (3) Assist educational institutions and agencies with developing policies in accordance with this act;
- (4) Compile, and make available to each agency, educational institution, and grantee, a list of free or low-cost methods for establishing the bullying prevention programs authorized by this act;

Alison Gill 8/11/2014 11:20 AM

Comment [5]: Where do we want this task force housed? While it could be placed with the Department of Education, this requirements in this bill are broader than education.

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Comment [6]: We can modify who should be included in this task force as appropriate for Hawaii.

Alison Gill 9/23/2014 10:52 PM

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(5) Within 90 days of receipt of the bullying prevention policies submitted by educational institutions, agencies, and grantees, review each adopted policy for compliance with the requirements of this act;

(6) Create resources and hold events to help inform employees, parents, and youth about the requirements of this act; and

(7) Promulgate guidelines to assist the Governor in evaluating the effectiveness of the bullying prevention policies that have been established.

(d) The Governor shall provide the task force with resources and staff support to execute the responsibilities of the task force pursuant to this act.

(e) The task force shall disband 2 years after its initial meeting; provided, that at the discretion of the Governor, a one-year extension may be granted."

“§302A-C Bullying prevention policy.

(a) Within 365 days of the effective date of this act, in coordination with the task force established pursuant to this act, each agency, educational institution, and grantee shall adopt a bullying prevention policy to be enforced:

- (1) On its property, including electronic communication on or with its property;
- (2) At sponsored functions;
- (3) On its transportation, or transportation sponsored by it; and

(4) Through electronic communication to the extent that it is directed at a youth and it substantially interferes with the youth's ability to participate in or benefit from the services, activities, or privileges provided by the agency, education institution, or grantee.

(b) Each agency, educational institution, and grantee shall control the content of its policy; provided, that each policy includes:

- (1) The definition of bullying set forth in this act;
- (2) A statement prohibiting bullying;
- (3) A statement that the policy applies to participation in functions sponsored by the agency, educational institution, or grantee;
- (4) The expected code of conduct;

(5) A list of the consequences, including alternative discipline approaches, that can result from an identified incident of bullying, which are designed to;

- (A) Appropriately correct the bullying behavior;
- (B) Prevent another occurrence of bullying or retaliation;
- (C) Protect the target of the bullying;

(D) Be flexible so that in application they can be unique to the individual incident and varied in method and severity based on the:

- (i) Nature of the incident;

Alison Gill 8/11/2014 11:22 AM

Comment [7]: Ideally, this work would be housed in an agency rather than the task force – this can be modified depending on where the task force is housed.

(ii) Developmental age of the person bullying; and

(iii) Any history of problem behavior from the person bullying;

(6) A procedure for reporting bullying or retaliation for reporting an act of bullying, including for reporting bullying anonymously; provided, that no formal response shall be taken solely on the basis of an anonymous report;

(7) A procedure for prompt investigation of reports of violations of its policy and of complaints of bullying or retaliation, including the name and contact information of the person responsible for investigating reports;

(8) A procedure of prompt notification of the parents or guardians of the student alleged to have committed an act of bullying and the parents or guardians of the student targeted by the alleged act, provided that if the administrator believes, in their professional capacity, that contacting the parent or guardian would endanger the health or well-being of a student, they may delay such contact as appropriate;

(9) An appeal process for a party who is not satisfied with the outcome of the initial investigation; and

(10) A statement that prohibits retaliation against any person who reports or witnesses incidents of bullying.

(c) Within 365 days of the effective date of this act, each agency, educational institution, and grantee shall submit a copy of its adopted policy to the task force.

(d) The requirements of this act and any policy adopted pursuant to this act shall be deemed to constitute health and safety requirements for educational institutions.

(e) Information on the bullying prevention policy shall be incorporated into new employee training.

(f) Each agency, educational institution, and grantee shall develop a plan for how the policy is to be publicized, which shall include:

(1) Making a developmentally-appropriate version of the bullying prevention policy available to youth;

(2) Posting the policy and a developmentally-appropriate version of the policy for youth available on its website;

(3) Making available the name and contact information of the person responsible for investigating reports of bullying.”

“§302A-D Secondary investigation appeal.

(a)(1) A party who is not satisfied with the outcome of the initial investigation conducted pursuant to this act may request a secondary investigation by submitting a written appeal to the higher-level authority in the agency, educational institution, or grantee designated to hear appeals within 30 days of the conclusion of the investigation.

(2) The secondary investigation shall be completed within 30 days of receipt of the appeal, unless:

- (A) Circumstances require additional time to complete a thorough investigation;
- (B) The higher-level authority sets forth those circumstances in writing; and
- (C) The additional time does not exceed 15 days.

(b)(1) When an appeal for a secondary investigation is submitted, the agency, educational institution, or grantee shall inform the party about his or her ability to seek further redress under chapter 489.

(2) This section shall not be construed to limit the right of a person to assert or seek redress for a claim arising under chapter 489."

“§302A-E Retaliation, reporting, and immunity.

- (a) An employee, volunteer, or youth shall not retaliate against a victim or witness of bullying or a person who reports bullying.
- (b) An employee or volunteer who has witnessed bullying in violation of a bullying prevention policy, or has reliable information that a person has been subject to bullying in violation of a bullying prevention policy, shall promptly report the incident or information to the person designated by the agency, educational institution, or grantee as responsible for investigating the reports.
- (c) An employee, volunteer, or youth who promptly and in good faith reports an incident of, or information on, bullying in compliance with the policy of the agency, educational institution, or grantee shall be immune from a cause of action for damages arising from the making of such report.”

“§302A-F Bullying prevention programs.

- (a) Following the adoption of a bullying prevention policy each agency, educational institution, and grantee shall:
 - (1) Establish an annual bullying prevention program for youth, which for each educational institution should align with established health-education standards;
 - (2) Inform youth about their right to be free from discrimination in public accommodations and education, and of the remedies available for a violation of their rights under chapter 489; and
 - (3) Provide annual training on bullying prevention to all employees and volunteers who have significant contact with youth.”

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“§302A-G Reporting requirements.

- (a) Each educational institution shall provide to the Governor, by a date determined by the Governor, an annual report regarding the aggregate incidents of bullying, and any other information that the Governor determines is necessary or appropriate.

- (b) The Governor shall:

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(1) By September 1, 2016, and biennially thereafter, review the programs, activities, services, and policies established pursuant to this act of each agency, educational institution, or grantee to determine their effectiveness and whether the agency, educational institution, or grantee is in compliance with this act; and

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(2) Report the findings to the Legislature by December 31 of each year that a report is due, along with an assessment of the current level and nature of bullying in agencies, educational institutions, and grantees, the department's evaluation of the sufficiency of funding for bullying prevention programs, and any recommendations for legislative, policy, or programmatic change to better address bullying in the state.~

SECTION 4. Section 302D-34, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A public charter school shall not discriminate against any student or limit admission based on race, color, ethnicity, national origin, religion, gender including gender identity or expression, sexual orientation, income level, disability, level of proficiency in the English language, need for special education services, or academic or athletic ability."

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Alison Gill 8/13/2014 11:36 PM

Comment [8]: This section amends charter school nondiscrimination protections to include gender identity and expression.

SECTION 5. Section 489-2, Hawaii Revised Statutes, is amended by amending the definition of "place of public accommodation" to read as follows:

"Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, education, or transportation facility of any kind whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors. By way of example, but not of limitation, place of public accommodation includes facilities of the following types:

- (1) A facility providing services relating to travel or transportation;
- (2) An inn, hotel, motel, or other establishment that provides lodging to transient guests;
- (3) A restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises of a retail establishment;
- (4) A shopping center or any establishment that sells goods or services at retail;
- (5) An establishment licensed under chapter 281 doing business under a class 4, 5, 7, 8, 9, 10, 11, or 12 license, as defined in section 281-31;
- (6) A motion picture theater, other theater, auditorium, convention center, lecture hall, concert hall, sports arena, stadium, or other place of exhibition or entertainment;
- (7) A barber shop, beauty shop, bathhouse, swimming pool, gymnasium, reducing or massage salon, or other establishment conducted to serve the health, appearance, or physical condition of persons;
- (8) A park, a campsite, or trailer facility, or other recreation facility;
- (9) A comfort station; or a dispensary, clinic, hospital, convalescent home, or other institution for the infirm;

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Comment [9]: This section expands non-discrimination protections to education, as a form of public accommodation.

- (10) A professional office of a health care provider, as defined in section 323D-2, or other similar service establishment;
- (11) A mortuary or undertaking establishment; ~~and~~
- (12) A school, college, or educational institution; and
- (13) An establishment that is physically located within the premises of an establishment otherwise covered by this definition, or within the premises of which is physically located a covered establishment, and which holds itself out as serving patrons of the covered establishment."

SECTION 6. The Governor, pursuant to chapter 91, shall issue rules to implement the provisions of this act.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. This Act shall take effect upon its approval.