



**STATE OF HAWAII
BOARD OF EDUCATION**

P.O. BOX 2360
HONOLULU, HAWAII 96804

February 03, 2011

MEMO TO: All Members of the Board of Education

FROM: Garrett Toguchi, Chairperson
Board of Education

A handwritten signature in black ink, reading "Garrett Toguchi".

**SUBJECT: RECOMMENDATION FOR BOARD ACTION ON APPROVAL FOR
PUBLIC HEARINGS ON PROPOSED AMENDMENTS TO CHAPTER 41,
HAWAII ADMINISTRATIVE RULES, CIVIL RIGHTS POLICY AND
COMPLAINT PROCEDURE**

1. RECOMMENDATION

It is recommended that the Board of Education (Board) approve the proposed amendments to Chapter 8-41, Civil Rights Policy and Complaint Procedure, ("Chapter 41"), Hawaii Administrative Rules, for public hearings as specified in Attachment A.

The proposed amendments include the following:

- Language that specifies that Board policies are authoritative in establishing prohibited behavior relating to student safety;
- "Extended learning opportunities" as a time in which students should be protected; and
- All the protected classes listed in the Policy and Purpose section are consistently listed in the Applicability section.

2. RECOMMENDED EFFECTIVE DATE

Upon approval by the Board and the Governor.

3. RECOMMENDED COMPLIANCE DATE

Upon approval by the Board and the Governor.

4. DISCUSSION

a. Conditions leading to the recommendation

In September 2007, the Board accepted the recommendations of the Department's Safe Schools Advisory Committee, which included proposed amendments to Chapter 41.

b. Previous action of the Board on the same or similar matter

On April 21, 1986, the Board adopted Chapter 41, Civil Rights Policy and Complaint Procedure, Hawaii Administrative Rules. Chapter 41 covered anti-discrimination for employees and students based on specific protected bases as required by federal and state law. Since then, Chapter 41 has been amended once on October 28, 1985.

In February 2008, the Board adopted Board Policy 4211, "Anti Harassment, Anti-Bullying, and Anti-Discrimination Against Student(s) by Employees Policy" (Board Policy 4211).

In August 2009, the Board recommended for approval of the proposed amendments to Chapter 8-41, Civil Rights Policy and Complaint Procedure, Hawaii Administrative Rules, for public hearings.

On October 20, 2009, the Department of the Attorney General submitted a letter to the Board stating that they reviewed the proposed changes and have concerns.

c. Other policies affected

None.

d. Arguments in support of the recommendation

Amending Chapter 41 would align the Department's civil rights complaint procedure with federal and state laws and Board policies.

e. Arguments against the recommendation

There is a concern that listing all the protected classes in Board Policy 4211 in Chapter 41 would create new legal rights of protection and safety for students; however, the Board has already extended the right to students to be able to file complaints of discrimination based on all categories listed in Board Policy 4211 when it was adopted in February 2008.

f. Findings and conclusions of the Board Committee

Not applicable.

g. Other agencies or departments of the State involved in the action

Department of the Attorney General.

h. Possible reaction of the public, professional organizations, unions, Department staff and/or others to the recommendation

Public reaction to amending Chapter 41 should be favorable because it is aligned with the recommendations of the Department's Safe Schools Community Advisory Committee which reflected needs and solutions of the community.

The proposed amendments put Department employees on notice of the complaint investigative procedures that currently apply to current employees based on Board Policy 4211, "Anti-Harassment, Anti-Bullying, and Anti-Discrimination Against Student(s) By Employees Policy." This clarity and consistency would decrease non-compliance due to confusion.

i. Educational implications

The proposed amendments would increase awareness that students deserve an educational environment that is safe and nurturing, ensuring that the Department provides equal access to educational opportunities to all students.

j. Personnel implications

None.

k. Facilities implications

None.

I. Financial implications

None.

5. **OTHER SUPPLEMENTAL RECOMMENDATIONS**

None.

Attachments (2)