



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

March 1, 2018

TO: The Honorable Lance Mizumoto  
Chairperson, Board of Education

FROM: Dr. Christina M. Kishimoto  
Superintendent

A handwritten signature in blue ink, appearing to read "Christina M. Kishimoto".

SUBJECT: **Committee Action on Finance and Infrastructure Committee  
Recommendations Concerning Board of Education Policy 305-10  
Anti-Harassment, Anti-Bullying, and Anti-Discrimination Against  
Student(s) by Employees**

1. RECOMMENDATION

It is recommended that the Board of Education (Board) approve proposed revisions to Board Policy 305-10 (Attachment B and C) to address anti-harassment, anti-bullying, and anti-discrimination against students and to align this policy with federally defined protected classifications.

2. RECOMMENDED EFFECTIVE DATE

Upon approval by the Board.

3. RECOMMENDED COMPLIANCE DATE (if different from the effective date)

Not applicable.

4. DISCUSSION (if different from the effective date)

a. Conditions leading to the recommendation:

Pursuant to a resolution agreement between the Department and the U.S. Department of Education Office of Civil Rights (OCR), the Department shall fully implement policies and procedures to protect students from harassment

based on race, sex, and disability no later than September 1, 2018. Additionally, the Department will develop training for employees and develop policy education for students and their parents.

While federal law clearly states that the Department is required to comply with Title IX of the Patsy T. Mink Equal Opportunity in Education Act (formerly the Education Amendments of 1972) (Title IX), Title VI the Civil Rights Act of 1964 (Title VI), and Section 504 of the Rehabilitation Act/American with Disabilities Act (ADA), a revised Board Policy 305-10 provides an extra layer of protection for students. The Department's Civil Rights Compliance Office (CRCO) is responsible for Board Policy 305-10 oversight, which currently covers conduct by employees towards students based on students' protected classes, but it does not address conduct between students.

While Hawaii Administrative Rules, Title 8, Chapter 19 (Chapter 19) covers conduct between students, OCR has found that addressing student-to-student conduct under Chapter 19 alone is not sufficient and therefore the Department is proposing the adoption of the policy amendments.

The 2018 Hawaii State Legislature has introduced legislation in both the house (House Bill 2139) and the senate (Senate Bill 2353) to expand the jurisdiction of the Hawaii Civil Rights Commission to include student complaints relating to Title IX. The passage of this recommendation will allow the Department to develop the processes, procedures, and training needed to be in compliance in the event either of the bills becomes law.

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

None.

c. Other policies affected:

None.

d. Arguments in support of the recommendation:

The proposed amendments were drafted in consultation and concurrence with the Department of the Attorney General to ensure compliance with applicable federal law, including Title IX, Title VI, and Section 504/ADA. Additionally, the revisions will complement the Board's and the Department's efforts to ensure that students are safe, healthy, and supported in school, so that they can engage fully in high-quality educational opportunities. This is in furtherance of and alignment with Goal 1, Student Success, Objective 2, Whole Child, of the Department of Education/Board of Education Strategic Plan 2017-2020 (Strategic Plan).

In addition, any conduct that occurs that does not fall under Board Policy 305-10 and is inappropriate conduct between students is currently handled under Chapter 19. If employees engage in inappropriate conduct that does not fall under one of the legally defined protected classes outlined in the policy, the conduct will be handled under State of Hawaii, Department of Education, Code of Conduct which encompasses Board Policies 301-7 Employee Electronic Communication and Technology Use and Access; Board Policy 201-1 Ethics and Code of Conduct; Board Policy 201-2 Accountability of Employees; Board Policy 2170-1 Internet Access Regulations; Board Policy 305-1 Student Safety and Welfare; and Board Policy 500-21 Student Information and Confidential Records.

At present, the recommended language includes clearly defined terms with which the department can comply. The Department recommends using the proposed amendment language because any additional provisions that are not legally defined may be found to be unconstitutionally vague and any disciplinary action taken by the Department relating to them may get set aside.

e. Arguments against the recommendation:

Those opposing the proposed recommendation may argue for a broader list of anti-harassment, anti-bullying, and anti-discrimination issues and/or a broader list of the basis for discrimination.

A broader list would likely create protected classes not currently recognized by federal or state law.

f. Other agencies or departments of the State of Hawaii involved in the action:

None.

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

The Department does not anticipate any objections to the revisions, which are being undertaken to update Board Policy 305-10 to comply with applicable federal law and guidance.

h. Educational implications:

The Department's proposed recommendation is in alignment with Goal 1, Student Success, Objective 2, Whole Child, of the Strategic Plan.

i. Personnel implications:

None.

j. Facilities implications:

None.

k. Financial implications:

None.

5. OTHER SUPPLEMENTARY RECOMMENDATIONS

None.

CMK:cm

Attachment A: Current Board Policy 305-10, current version

Attachment B: Board Policy 305-10, redline version of recommended changes

Attachment C: Board Policy 305-10, clean version of recommended changes

c: Civil Rights Compliance Office

Office of Fiscal Services

Office of Strategy, Innovation, and Performance

**POLICY 305-10**

**ANTI-HARASSMENT, ANTI-BULLYING, AND ANTI-DISCRIMINATION AGAINST STUDENT(S) BY EMPLOYEES**

The Department of Education strictly prohibits discrimination, including harassment, by any employee against a student based on the following protected classes: race, color, national origin, sex, physical or mental disability, and/or religion. In addition to the above protected bases, the Department of Education strictly prohibits any form of harassment and/or bullying based on the following: gender identity and expression, socio-economic status, physical appearance and characteristic, and sexual orientation.

A student shall not be excluded from participation in, be denied the benefits of, or otherwise be subjected to harassment, bullying, or discrimination under, any program, services, or activity of the Department of Education.

The Department of Education expressly prohibits retaliation against anyone engaging in protected activity. Protected activity is defined as anyone who files a complaint of harassment, bullying, or discrimination; participates in complaint or investigation proceedings dealing with harassment, bullying, or discrimination under this policy; inquires about his or her rights under this policy; or otherwise opposes acts covered under this policy.

The Department of Education shall develop regulations and procedures relating to this policy to include personnel action consequences for anyone who violates this policy.

[Approved: 02/17/2015 (as Board Policy 305.10); amended: 06/21/2016 (renumbered as Board Policy 305-10)]

*Former policy 4211 history: approved: 02/21/2008*

POLICY 305-10

ANTI-HARASSMENT, ANTI-BULLYING, AND ANTI-DISCRIMINATION AGAINST  
STUDENT(S) ~~BY EMPLOYEES BASED ON PROTECTED CLASSES~~

The Department of Education (~~Department~~) and the schools contained within are subject to all federal and state laws and constitutional provisions prohibiting ~~strictly prohibits~~ discrimination, ~~including and~~ harassment, ~~by any employee against a student based on the following protected classes:~~ basis of race, color, national origin, sex, ~~physical or mental disability, and/or religion.~~ In addition to the above protected bases, the Department of Education ~~strictly prohibits any form of harassment and/or bullying based on the following:~~ sexual orientation, gender identity and/or expression, socio-economic status, physical appearance and characteristic, and sexual orientation religion, age, or disability.

A student shall not be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, harassment (including sexual harassment), or bullying, ~~or discrimination~~ under, any program, services, or activity of the Department ~~of Education on the following bases: race, color, national origin, sex, sexual orientation, gender identity or expression, religion, age, or disability.~~

The Department ~~of Education~~ expressly prohibits retaliation against anyone ~~engaging because he/she engaged~~ in protected activity. Protected activity ~~is defined as anyone who files~~ includes making a complaint of harassment, bullying, or discrimination; ~~participates~~ participating in complaint or investigation proceedings dealing with harassment, bullying, or discrimination under this policy; ~~inquires~~ inquiries about ~~his or her~~ rights under this policy; or otherwise opposes acts covered under this policy.

The Department ~~of Education~~ shall develop ~~regulations and procedures~~ standard practices relating to this policy ~~to include personnel action consequences for anyone who violates this policy.~~

[Approved: 02/17/2015 (as Board Policy 305.10); amended: 06/21/2016 (renumbered as Board Policy 305-10)]

*Former policy 4211 history: approved: 02/21/2008*

**POLICY 305-10**

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A student shall not be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, harassment (including sexual harassment), or bullying under any program, services, or activity of the Department on the following bases: race, color, national origin, sex, sexual orientation, gender identity or expression, religion, age, or disability.

The Department expressly prohibits retaliation against anyone because he/she engaged in protected activity. Protected activity includes making a complaint of harassment, bullying, or discrimination; participating in complaint or investigation proceedings dealing with harassment, bullying, or discrimination under this policy; inquiries about rights under this policy; or otherwise opposes acts covered under this policy.

The Department shall develop practices relating to this policy.

[Approved: 02/17/2015 (as Board Policy 305.10); amended: 06/21/2016 (renumbered as Board Policy 305-10)]

*Former policy 4211 history: approved: 02/21/2008*