



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

OFFICE OF THE SUPERINTENDENT

February 15, 2018

TO: The Honorable Kenneth Uemura
Chairperson, Finance and Infrastructure Committee

FROM: Dr. Christina M. Kishimoto
Superintendent

A handwritten signature in blue ink, appearing to be "CK", next to the name of the Superintendent.

SUBJECT: **Committee Action on Board Policy 305-10 Anti-Harassment, Anti-Bullying, and Anti-Discrimination against Student(s) by Employees**

1. RECOMMENDATION

The Department of Education (Department) recommends that the Board of Education's (Board) Finance and Infrastructure Committee revise policy 305-10 with the proposed language detailed in Attachment B to include harassment, bullying, and discrimination based on protected classes that occurs between students. In addition, the recommended revisions outline prohibited conduct that is based on the protected classes as defined by federal law.

2. RECOMMENDED EFFECTIVE DATE

The Department recommends that the committee approve and adopt the policy as described in section 1.0, with immediate effective and compliance dates.

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

See section 2.0.

4. DISCUSSION (if different from the effective date)

a. Conditions leading to the recommendation:

The U.S. Department of Education's Office for Civil Rights (OCR) enforces Title IX of the Educational Amendments of 1972 (Title IX), Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act of 1990 (ADA) as it

pertains to students. The covered conduct not only includes conduct by employees or adults toward students during school activities, but includes conduct between students during school activities. Up to this point, Hawaii Administrative Rules (Chapter 19) had addressed all student-to-student conduct under all circumstances. However, OCR, pursuant to a compliance audit, has found that addressing student-to-student conduct under Chapter 19 alone is not sufficient. OCR has recommended that policies and procedures be put in place to address student-to-student conduct under Title IX, Title VI, and Section 504/ADA separate from Chapter 19. As such, the Department is recommending this revision of policy 305-10 to include this conduct, which will be overseen by the Department's Civil Rights Compliance Office.

Attachment A is a redline that marks up the current text with revisions, Attachment B is a clean version after revisions, and Attachment C is the current policy.

- 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 Department's proposed recommendations ensure compliance with applicable federal law, including Title IX, Title VI, and Section 504/ADA. Additionally, the recommended revisions will complement the Department's efforts to ensure all 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 DOE/BOE Strategic Plan 2017-2020 (Strategic Plan).

- 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. At present, the recommended language ensures compliance with federal law identified in section 4.d.

- 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 policy 305-10 to comply with applicable federal law and guidance. However, the Department has identified potential arguments against the recommendation in section 4.e.

- h. Educational implications:

The Department's proposed recommendation is in alignment with Goal 1, Student Success, Objective 2, Whole Child, of the Strategic Plan. See section 4.d.

- i. Personnel implications:

None.

- j. Facilities implications:

None.

- k. Financial implications:

None.

5. OTHER SUPPLEMENTARY RECOMMENDATIONS

None.

CMK:cmp

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

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

Attachment C: Policy 305-10, current version

- c: The Honorable Lance A. Mizumoto, Chairperson, Board of Education
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 (~~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

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

The Department of Education (Department) and the schools contained within are subject to all federal and state laws and constitutional provisions prohibiting discrimination and harassment on the basis of race, color, national origin, sex, sexual orientation, gender identity or expression, 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 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 standard 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

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