



Agency: Board of Education  
Date/Time: Thursday, February 7, 2019, 1:30 p.m.  
Place: 1390 Miller Street, Honolulu, HI, Room 404  
Re: Testimony of the ACLU of Hawai'i on Board Action for Approving for Public Hearing Draft Amendments to Ch. 19 and Ch. 89

Dear Board of Education Members:

The ACLU of Hawai'i ("ACLU") writes to testify with comments on the Board of Education's revisions to Chapter 19 and replacement of Chapter 41 with Chapter 89 to update the definitions of bullying and harassment on the basis of protected class within the school disciplinary code. As the regulations move to a public hearing, the ACLU of Hawai'i wishes to reiterate the severity of recategorizing such offenses from Class B to Class A for ninth through twelfth grade students. When the purpose of these amendments is to address the vulnerabilities of students in protected classes, we wish to highlight that those students allegedly engaging in bullying behavior may be suffering from trauma or belong to a protected class themselves.

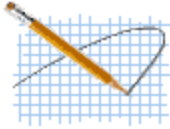
Beyond addressing incidents of bullying and harassment, we urge HIDOE to revise its discipline policies and practices to address overall school climate. The way forward is to make school a more welcoming, inclusive place for all. Moving cyberbullying, bullying, and sexual harassment to Class A violations for older students leans toward over-penalizing student behavior that can be corrected in less punitive ways.

We recommend that the Board reconsider student behavior as a function of school climate, and utilize more student support services to prevent and address unwanted behavior rather than view the issues as being easily solved via punishment and sanctions.

Thank you in advance for your time and attention to this matter. If you have any questions or comments, please feel free to contact me at 380-5422 or [rshih@acluhawaii.org](mailto:rshih@acluhawaii.org).

Sincerely,

Rae Shih  
Legal Fellow  
ACLU of Hawai'i



thaddeus pham <tediousmonkey@gmail.com>

02/05/2019 06:35 PM

To Testimony BOE/HIDOE@HIDOE

cc

Subject Fw: Comments RE: HAR Chapter 19  
and 89

Aloha,

As a public health professional and concerned community member, I respectfully submit the following comments and recommendations. These pertain to the proposed amendments to HAR Chapter 19 and new rules in HAR Chapter 89.

- Please consider removing "Bullying does not include isolated incidents of teasing, horseplay, argument or peer conflict" in the revised definition of "bullying" in Ch. 19 and Ch. 89. This precludes sever instances of bullying and also dismisses patterns of behavior if previous instances were not documented or reported.
- Please consider removing "substantially" in the revised definition of "harassment", where 'harassing conduct must have the effect of "substantially" interfering with a student's educational performance, opportunities or benefits' and "substantially disrupting the orderly operation of a school". This term is unnecessary and difficult to define and thereby effectively enforce.
- Please clarify and expand the limited definition of "systemic discrimination" in Ch. 89, which states DOE's responsibilities to address "systemic discrimination" as "established policy, rules, regulation or procedure has the continuing effect of violating non-discrimination rights". This does not require the DOE to address discrimination that arises from policies that do not exist, and thereby does not provide an incentive to examine, develop, and meaningfully implement policies.

With aloha and respect,

Thaddeus Pham

1013 Prospect Street, #518

Honolulu, HI 96822

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**Testimony to the Hawaii Board of Education, Chairperson Catherine Payne, Vice Chair Brian De Lima, and Members of the Hawaii Board of Education**

**Subject: The Hawaii Department of Education's proposed revisions to Hawaii Administrative Rules Chapter 19 and proposed new rule, Hawaii Administrative Rules Chapter 89, Action Items A and B on the agenda for the HIBOE Business Meeting on February 7, 2019, at 1:30 p.m.**

**Submitted by Josephine L. Chang, JD**

**In opposition to proposed HAR Ch. 19 as revised and in opposition to new HAR Ch. 89 for reasons below.** The reasons are similar but must be carefully considered for the different purposes of these rules, HAR Ch. 19 that focuses on student behavior, and HAR Ch. 89 that focuses on staff and other adult behavior.

**Problems with proposed revisions to HAR Ch. 19**

**1) Definition of "bullying" for Ch. 19**

The *revised* definition as proposed in HAR Ch. 19 states that:

"Bullying means any written, verbal, graphic, or physical act that hurts, harms, humiliates or intimidates a student(s), including those with protected class statuses, that is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment. Bullying does not include isolated incidents of teasing, horseplay, argument, or peer conflict."

a) **Clarification is needed of the cited change of the word "or" to "that it"**. The DOE states that it proposes to change the word "or" to the words "that it" in the long-standing definition in Ch. 19 of bullying. However, it appears that the word "and" is changed to "that" in the revised definition above, and that the word "or" was not changed and the words "that is" were already in the rules. In any event, the word "or" should not be changed in this definition as that would drastically change the meaning of this definition and lessen the protections for students. The explanation and revised draft does not show how the word "or" was changed and therefore its explanation is not sufficient notice of a change of the word "or."

For comparison, the *current* definition of "bullying" now in HAR Ch. 19 is as follows:

"Bullying means any written, verbal, graphic, or physical act that a student or group of students exhibits toward other particular student(s) and the behavior causes mental or physical harm to the other student(s); and is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other students(s). "

b. **Strong opposition to the addition of the last sentence to the definition of “bullying” to exclude “isolated incidents of teasing, horseplay, argument, or peer conflict.”** I strongly oppose the addition of the last sentence that would exclude “isolated incidents of teasing, horseplay, argument, or peer conflict.” By adding in these exceptions, DOE contradicts and undermines the basic proposed definition of bullying and waters down the protections afforded to students in the basic definition of “bullying”.

The proposed definition of “bullying” and the current definition of “bullying” in Ch. 19 would include any written, verbal, graphic, or physical act that is severe enough to cause harmful impacts to a student and the student’s educational environment, meaning bullying could be a single act and not necessarily require that bullying be pervasive or persistent. However, by adding in the last sentence of exclusions, DOE would contradictorily allow such severe incidents to be excluded as “bullying” and excluded as acceptable if they are considered to be an “isolated” incident, and also considered to be “teasing”, “horseplay”, “arguments”, or “peer conflicts” in the individual discretion of DOE staff who might observe such incidents or in the individual view of the bullying student. By adding in the exclusions, the DOE does not recognize or acknowledge that severe incidents that may be isolated can in themselves cause long lasting and serious harm to a student.

Adding in these exclusions is particularly offensive and disregarding of the plight of bullied students because the words “teasing” and “horseplay” have long been used to justify the failure of DOE to stop, for example, harmful name calling, slurs, ridicule, and shaming of LGBTQ (lesbian, gay, bisexual, transgender and queer) and gender non-conforming students. Instead of excusing harmful bullying behavior if regarded as “teasing” or “horseplay” by observing staff or the bullying students, such “teasing” and “horseplay” that might be fun for the bullies and even staff, should be called out for the harm that bullying in the name of “teasing” or “horseplay” have done. By excusing behavior that is characterized as (just) “teasing” and “horseplay” at the discretion of each individual staff and bullying student, these exclusions would leave bullied students to cope by themselves with what rightfully should be dealt with by DOE staff as harmful bullying. By excusing behavior that is characterized as (just) “teasing” and “horseplay” leaves affected students to continue to experience no support from the school system and to continue to experience compounded harm from the school system. Part of the problem of bullying has been the disregard of staff to stop harmful bullying behavior, including discriminatory bullying in the schools by students, brushing off such behavior as “just teasing or fooling around” thereby faulting the bullied students for being unable to “handle teasing” and for their own suffering, and for feeling intimidated, threatened, humiliated, and hurt by the behavior of other students. Instead of improving protections for students from bullying, these exceptions would make official the DOE’s endorsement of treating students who feel harm from bullying as the problem, and to denigrate their struggles and inability to protect themselves from bullies.

Further, by allowing HDOE staff or students to discretionarily characterize bullying behavior as “arguments” and “peer conflict” and therefore further ignore what is often conflict that often results from bullied students trying to defend themselves from bullying and to speak up against hurtful behavior against them, such as discriminatory bullying behavior because a student is or appears to be LGBTQ or with gender non-conforming expressions. By excluding “arguments” and “peer conflict” in the discretion of staff, the DOE overlooks how the school system forces bullied students to desperately try

to stand up for their own rights to be treated respectfully in Hawaii's schools, because the staff often turns a "blind eye" or minimizes their distress, further eroding their access to education in DOE schools. These exclusions would allow DOE staff to unfairly put equal fault on the defender and to unfairly treat the situation as mutual disagreements, thereby arbitrarily minimizing and dismissing situations that otherwise meet the severity required by this definition of "bullying".

Is the DOE really trying to address embedded biases and discriminatory views towards certain students, such as LGBTQ students, and other vulnerable or disrespected students? Or is the DOE simply trying to assure that the revised rules preserve the status quo and does not place any burden on DOE staff? These exclusions raises questions as to whether the DOE is actually and sincerely trying to create safe and inclusive school environments and provide equal access to public education for **all** students, and whether the DOE truly cares about its most vulnerable and bullied students, including protected status students.

This is a **huge** disappointment to see these exclusions now added to HAR Ch. 19's definition of "bullying". Instead DOE should be doing the long overdue and much needed educating of its staff on why so-called "teasing" and "horseplay", "arguments" and "peer conflict", are not good reasons for DOE staff to ignore or overlook such incidents or to fault bullied students and minimize their harm.

Bottom line, the definition of "bullying" as now proposed, lessens the protections and support for students who are bullied in Hawaii's public schools, and would make these rules worse for the sake of students. Instead of putting students on notice through this rule that bullying behavior can be harmful to another student and is not acceptable, the addition of the exclusions in the last sentence instead gives students and staff easy excuses for such harmful bullying behavior.

## **2) Definition of "harassment" for Ch. 19**

a) **Strong opposition to the revised definition of "harassment"**. I strongly oppose the revisions to the definition of "harassment" because the DOE's revisions would 1) no longer inform students and others or give notice of the kinds of actions and behavior that are prohibited as "harassment", 2) lessen the kinds of conduct that DOE would consider harassment, and 3) add conditions to what would constitute harassment that creates barriers for harassed students making it more difficult for them to access protections and help from DOE. Altogether, these changes would adversely affect all students, including protected status students.

The DOE proposes to delete almost two-thirds of a page that lists and describes the kind of conduct that is regarded as "harassment", and compresses eight paragraphs of listed kinds of harassing conduct into a few words that omit so many kinds of conduct in the process, and moreover, deletes the words "but is not limited to" that had allowed the long list to be instructive but not viewed as exhaustive. The detailed listing of conduct served to inform students of prohibited harassment and also to inform those who are harassed as to the kind of conduct that they should not have to endure in school. The few words now proposed to define harassment and the legalese used in the conditions for harassment

would no longer serve the purpose of informing the students and parents of what could be harassing behavior and what is prohibited. The proposed language also no longer gives DOE staff the guidance that is afforded in the current wording. And by deleting the words, “but is not limited to”, the proposed language further limits the protections afforded to students to only the conduct listed in the few words.

In addition to severely lessening the kinds of conduct that has long been considered as “harassment”, the DOE proposes to add further legal barriers for students who need help from the DOE to stop harassing behavior. The revised wording states that regardless of being subjected to threatening, insulting or aggressive conduct, the student now must prove that the fear that the student feels meets an arbitrary standard of “reasonableness” and regardless of a student experiencing interference with the student’s educational performance, opportunities, or benefits, the student must prove that the interference meets an arbitrary standard of “substantiality” before the DOE will take action to assure the student’s safety and access to the education offered by the school system.

And even if the harassing behavior reported disrupts the orderly operation of a school, it must be shown that the disruption meets some arbitrary standard of “substantiality” before the DOE will take action to address such behavior with the harassing student under the proposed revisions to the definition of “harassment.”

In total, these revisions to the definition of “harassment” only serves to lessen the DOE’s responsibilities to protect students from harm in our public schools. It is a shame that the DOE has put so much effort into protecting itself from responsibility to address harmful harassment of students when its stated purpose was to improve these rules to better protect its students. By these revisions, the DOE only shows that it is not meeting the needs of the students nor of the community to recognize the risks that students face in the schools and to provide protection to students when in the care of the DOE school system.

### **Problems with the proposed new HAR Ch. 89**

#### **1) Definition of “bullying” in Ch. 89**

**Strong opposition to the last sentence in the definition of “bullying” in proposed HAR Ch. 89 that would exclude “isolated incidents of teasing, horseplay, argument, or peer conflict.”**

*SEE MY OPPOSITION ABOVE TO THIS LAST SENTENCE IN THE DEFINITION OF “BULLYING” in PROPOSED HAR CH. 19.*

It would be even more egregious if bullying behavior towards any student in this definition by staff or other adults on campus is excused and excluded from discipline by the DOE simply because the incident was isolated and characterized as “teasing”, “horseplay”, “argument” or “peer conflict”. No administrator, teacher, or other staff or adults in schools should engage in “teasing” or “horseplay” with students that in any way cause a student to feel intimidated or threatened regardless of whether it is a single incident. A single incident of bullying that intimidates and threatens a student always leaves the

bullied student afraid of more bullying thereafter, and when it is perpetrated by an adult, it should Adults in the school, particularly school employees and contractors should be those that understand that “teasing” that is at the expense of a student and not the adult, that adults who have authority over students would have an unfair and scary imbalance of power over students, that makes adult teasing and horseplay with a student as always having the potential of bullying a student. And adult should not engage in “argument” with a student either but remain in the role of a school authority, and try to effectively try to hear all students and handle their reasons for having an opposing view, and an adult who argues with a student also has the upper hand due to the imbalance of power held. Also, “peer conflict” does not apply to adults in conflict with students. Students are clearly not able to operate on a level of peers when they are students and the other is an adult with authority, including administrators, teachers, other staff and contractors and volunteers in the schools.

## 2) Definition of “harassment” in Ch. 89

**Strong opposition to the definition of harassment for its limited definition and for the inclusion of arbitrary conditions that a harassed student must meet before the DOE will even consider protecting and helping the student from harassment.**

*SEE MY OPPOSITION ABOVE TO THE DEFINITION OF “HARASSMENT” IN PROPOSED HAR CH. 19.*

The decision to include arbitrary conditions or standards of “reasonable fear” and “substantial interference” places a burden of proof that was not in HAR Ch. 41 (Civil Rights Policy and Complaint Procedure) and makes Ch. 89 far less inclusive of the harassing situations that students encounter in the schools and far more discouraging and confusing to students and parents who might consider seeking protections and support from the DOE by filing a complaint of harassment.

Here is the definition of “harassment” in HAR Ch. 41:

*“Harassment” means verbal or non-verbal expressions based on race, color, national origin, ancestry, sex, age, religion, or disability which:*

- (1) create an intimidating, hostile or offensive school environment; or*
- (2) interfere with the education of a student; or*
- (3) otherwise adversely affect the educational opportunity of a student. Harassment based on sex includes unwelcome and unwanted sexual advances, sexual remarks, and sexual innuendoes.*

Ch. 89 would not better serve the needs of students who are harassed by adults by this new definition. Instead of improving protections of students from harassment, these rules are being written so as to limit the responsibility of DOE adults to refrain from harassing behavior with students in DOE schools.

And placing a heavy burden on students to qualify their complaints about adults, is in conflict with the DOE and BOE's Code of Conduct for adults towards student in nondiscrimination and other conduct.

**3) Definition of “systemic discrimination” in Ch. 89 is sorely and unfairly inadequate.**

As testified earlier, I strongly oppose the limited definition of “systemic discrimination” proposed for HAR Ch. 89 as it allows only a small possibility for students and parents to complain of discrimination towards students that result from failures of the DOE system. This definition for “systemic discrimination” does not include all of the actions that are needed from the DOE systemwide in order to actually assure nondiscrimination in each and every school, and in fact, leaves out the most important aspect, that is, the responsibility of DOE to fully and effectively implement those nondiscrimination policies, rules, regulations, and procedures that are needed, in order to actually prohibit discrimination in the schools.

The proposed definition states that:

“systemic discrimination” means discrimination that results when an established policy, rule, regulation or procedure of the department has the continuing effect of violating non-discrimination rights.

This definition does not allow students and parents to hold DOE responsible for the failure to establish necessary policy, rule, regulation or procedure or for any inaction by DOE to provide the necessary training, resources, and inclusion in all aspects of school life of minority populations and minority students, including curriculum, library collections, school activities, and opportunities and others that are afforded to students in the DOE system. This proposed definition allows the DOE to simply adopt nondiscrimination policies, rules, regulations and procedures but not take the implementation steps needed.

As a result of this failure to recognize the breadth of its responsibilities even in these rules, the DOE continues to keep its head in the sand and has yet to undertake the wholesale effort that is needed to bring all of its system into alignment with its nondiscrimination responsibilities. The task only becomes larger the longer DOE fails to act on even basic training for all on the protected classes, and continues to leave the most vulnerable students to try to survive in a discriminatory environment.

**4. Need to inform students and parents and community on rights in applicable state laws and DOE/BOE policies and procedures in Ch. 89.**

**By failing to provide a complete list of applicable state laws and DOE/BOE policies and procedures in Ch. 89, these rules give inadequate notice of the rights and protections regarding nondiscrimination that is afforded to students, staff, and others in the schools.**

Chapter 89 does not list all applicable state nondiscrimination laws and relevant DOE/BOE policies that provide students, staff and others additional nondiscrimination protections, such as Hawaii civil rights



laws, and DOE/BOE Policy 305.10, Code of Conduct, and Guidance on Supports for Transgender Students, and any others that schools must also comply with. These rules should fully inform parents and others in the community of the policies and procedures that they should be able to rely on.

A complete listing of the relevant state laws and DOE and BOE policies and procedures in addition to the federal laws and new state law listed is particularly necessary to fully inform all stakeholders in light of the limited civil rights protections currently afforded under federal laws, and the broader protections provided in state civil rights laws and DOE/BOE policies and procedures.



**S E A C**  
**Special Education Advisory Council**

**919 Ala Moana Blvd., Room 101**

**Honolulu, HI 96814**

**Phone: 586-8126 Fax: 586-8129**

**email: [spin@doh.hawaii.gov](mailto:spin@doh.hawaii.gov)**

**February 7, 2019**

**Special Education  
Advisory Council**

Ms. Martha Guinan, *Chair*  
Ms. Dale Matsuura, *Vice Chair*  
Dr. Patricia Sheehey, *Vice  
Chair*  
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Mr. Drew Saranillio, *liaison  
to the Superintendent*  
Dr. Bob Campbell, *liaison to  
the military community*

Amanda Kaahanui, Staff  
Susan Rocco, Staff

Catherine Payne, Chair  
Hawaii State Board of Education  
P. O. Box 2360  
Honolulu, HI 96804

RE: VI. A. Board Action on approving for public hearing adoption of  
the draft of new Chapter 89, and  
VI. B. Board Action on approving for public hearing draft  
amendments to Chapter 19

Dear Chair Payne and Members of the Committee,

The Special Education Advisory Council (SEAC) welcomes this opportunity to provide further testimony on the proposed rules for Chapter 19 and Chapter 89. We concur with the proposed updates suggested by school administrators regarding uncoupling the bullying and harassment definition, clarifying the circumstances where cyberbullying would be covered by these rules, and changing the timeline for completing Chapter 19 investigations to five school days, rather than five calendar days.

SEAC is also supportive of limiting the designation of bullying, cyberbullying and harassment as a Class A offense to high school students only. However, if discipline measures imposed for a more serious Class A offense include missing instructional time, then students under suspension will be at greater risk of negative educational and post-school outcomes. SEAC believes that the emphasis should be much more on preventing bullying/harassment and intervening early with positive behavioral supports, rather than imposing harsh punishments.

SEAC continues to have concerns about two recommendations that we believe have not addressed in either the previous or current drafts, and we would therefore like to restate them:

**RECOMMENDATION 1**

**Under §8-19-2 and §8-89-2 Definitions. "Immediate interventions"**  
**State a specific timeline for "immediate" interventions (for  
example, within 24-48 hours).**



SEAC's rationale:

The Department defines the timeline for immediate intervention to be "as soon as possible." This phrase is much too subjective. Specifying a concrete timeline will create uniform expectations between school officials and parents.

RECOMMENDATION 2

Under SUBCHAPTER 8, §8-19-31 Investigation (a)

The draft language reads "Once an investigation is initiated, the principal or designee shall make a good faith effort at the earliest point possible to inform the parent about the investigation." **This sentence should be amended to specify a timeline (for example, on the day of the complaint, within 24 hours of a complaint, etc.) rather than use the vague language "at the earliest point possible."**

SEAC's rationale:

Having vague timelines reduces accountability and leads to misunderstandings between parents and school personnel. SEAC has asked the Department on several occasions to issue instructions to the field to notify parents of incidents at school affecting their child on the same day of the incident. Children with disabilities often lack the ability to clearly express events that happen at school that may have upset or traumatized them. Parents have a right to timely information, so that they can appropriately support and/or advocate for their child

Thank you for the opportunity to provide comments and recommendations on these important regulations. Should you have questions, we will be happy to provide answers or clarification.

Respectfully,

  
Martha Guinan  
SEAC Chair

  
Ivalee Sinclair  
Legislative Committee Chair



February 7, 2019

TO: Dr. Christina M. Kishimoto, Superintendent, Hawai'i State Department of Education  
Catherine Payne, Chairperson, State of Hawai'i, Board of Education

RE: Proposed Hawai'i Administrative Rule Chapter 89 and on Proposed (Revised) Hawai'i  
Administrative Rule Ch. 19

Subject: **OPPOSITION TO APPROVAL FOR PUBLIC HEARING**

Dear Superintendent Kishimoto and Chairperson Payne,

On behalf of the Hawaii Queer/Transgender Community Alliance, we would like to make the following comments and recommendations, pertaining to the proposed amendments to HAR Chapter 19 and new rules in HAR Chapter 89 and go on record for being in opposition to approval of a public hearing relating to those rules.

**We feel it is premature to move to public hearing as there are substantive problems with the current proposed language and the Hawai'i Department of Education has not sought sufficient input from the larger LGBTQ+ community or the Hawai'i Queer/Transgender Community Alliance.**

Before moving forward:

- Please consider removing "Bullying does not include isolated incidents of teasing, horseplay, argument or peer conflict" in the revised definition of "bullying" in Ch. 19 and Ch. 89. This precludes severe instances of bullying and also dismisses patterns of behavior if previous instances were not documented or reported.
- Please consider removing "substantially" in the revised definition of "harassment", where "harassing conduct must have the effect of *substantially* interfering with a

student's educational performance, opportunities or benefits" and "substantially disrupting the orderly operation of a school". This term is unnecessary and is difficult to define and effectively enforce.

- Please clarify and expand the limited definition of "systemic discrimination" in Ch. 89, which states DOE's responsibilities to address "systemic discrimination" as "established policy, rules, regulation or procedure has the continuing effect of violating non-discrimination rights". This does not require the DOE to address discrimination that arises from policies that do not exist, and thereby does not provide an incentive to examine, develop, and meaningfully implement policies.
- Please clarify specific examples on how the proposed amendments and rules will benefit populations at increased risk for bullying, especially sexual and gender minorities.

Thank you for your consideration of our concerns. We look forward to working with the Hawai'i Department of Education and the Board of Education to address and improve the proposed rules to protect the most vulnerable children in our public schools.

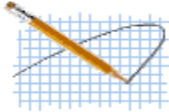
With aloha and gratitude,

Camaron Miyamoto and Thaddeus Pham on behalf of the

**Hawai'i Queer/Transgender Community Alliance**

Domestic Violence Action Center  
GLSEN Hawai'i Chapter  
Hawai'i Health & Harm Reduction Center  
Hawai'i LGBT Legacy Foundation  
HepFree Hawai'i  
LGBT Caucus, Democratic Party of Hawai'i  
Maui AIDS Foundation  
Mental Health America Hawai'i  
Planned Parenthood Votes Northwest and Hawaii  
Residential Youth Services & Empowerment  
University of Hawai'i at Mānoa, LGBTQ+ Center  
Windward Community College LGBTQ+ Commission

*The Hawai'i Queer/Transgender Community Alliance is a coalition of stakeholders across Hawai'i dedicated to increasing the health and well-being of sexual and gender minority people (e.g. lesbian, gay, bisexual, transgender, mahu, gender nonconforming, queer, and other persons) in our islands. We strive for the betterment of our communities through collective action including policy change, research, data collection, and capacity building. In our efforts, we humbly and intentionally acknowledge that sexual and gender identities intersect with many other identities including age, race, socioeconomic status, disability, country of origin, citizenship status, and more.*



L Elento <iliked3@rocketmail.com>

02/07/2019 02:00 PM

To Testimony BOE/HIDOE@HIDOE

cc

Subject Fw: Testimony Gen. Bus. 02/07/2019

How can schools create inclusion? Consider additional funds and informed, trained decision makers, including parents.

I agree with the Student Achievement Committee this morning that parents need information from the schools but also the district and state staff and departments. Training and memos from one level to the next departmental level does not usually get to parents of students with disabilities. Students with disabilities like my child may not be able to hear information, find information and communicate information.

Recently parents told me at my child's school that they were not aware of the school's Morning Bulletin (some, but not all, school announcements such as afterschool clubs and sports tryouts). It may be harder to provide supports, but if our students and their parents as well as special ed staff are not aware of such announcements, these students will not be included.

The DOE's ~~Line of Authority for Special Education~~ on its website removed the authority, decision making authority for compliance with Section 504 and the ADA.

Who makes the offer of FAPE? ~~Who makes an offer~~ of FAPE that also meets the separate definition of FAPE under Section 504?

The US Education Department issued a letter with its legal basis on the KM v. Tustin case, see photo:

"...K.M. v. Tustin Unified School

District, 725 F.3d 1088 (9th Cir. 2013), cert. denied, 134 S. Ct. 1493 (2014), a Ninth Circuit three-judge panel decision in which the panel held that compliance with the Individuals with Disabilities Education Act (IDEA) does not satisfy all claims under Section 504 of the Rehabilitation Act or under the Americans with Disability Act (ADA). Based on that holding, the panel concluded a school district's provision of an IEP valid under the IDEA does not automatically preclude liability under Section 504 or the ADA. OCR bases its legal conclusion on the holding in Tustin." Thank you for your attention.

Linda Elento, parent

Photo:



← tustin

1 of 4 < >

would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens.

Although neither the DCL nor FAQ sheet recites the Title II "effective communication" regulation in the text of the documents, the DCL and FAQs cite the regulation, 28 C.F.R. § 35.160, in a footnote. Both documents cite *K.M. v. Tustin Unified School District*, 725 F.3d 1088 (9th Cir. 2013), cert. denied, 134 S. Ct. 1493 (2014), a Ninth Circuit three-judge panel decision in which the panel held that compliance with the Individuals with Disabilities Education Act (IDEA) does not satisfy all claims under Section 504 of the Rehabilitation Act or under the Americans with Disability Act (ADA). Based on that holding, the panel concluded a school district's provision of an IEP valid under the IDEA does not automatically preclude liability under Section 504 or the ADA. OCR bases its legal conclusion on the holding in *Tustin*.

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