

JAN 23 2015

A BILL FOR AN ACT

RELATING TO BULLYING.

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

1 SECTION 1. This Act shall be known as the safe schools for
2 all students act.

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



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

7 SECTION 3. Definitions. For the purposes of this Act, the
8 term:

9 "Agency" means any state government entity that provides
10 services, activities, or privileges to youth, including the:

- 11 (1) Department of education;
- 12 (2) State public charter school commission;
- 13 (3) Department of human services;
- 14 (4) Department of agriculture;
- 15 (5) Department of transportation; and
- 16 (6) University of Hawaii.

17 "Alternative discipline" means disciplinary action other
18 than suspension or expulsion from school that is designed to
19 correct and address the root causes of a student's specific
20 misbehavior while retaining the student in class or school, or
21 restorative school practices to repair the harm done to



1 relationships and persons from the student's misbehavior.

2 Alternative discipline includes but is not limited to:

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

17 "Bullying" means any severe, pervasive, or persistent act
18 or conduct, whether physical, electronic, including any form of
19 cyberbullying, or verbal that:

- 20 (1) May be based on a youth's actual or perceived race,
- 21 sex including gender identity or expression, sexual



1 orientation, color, religion, ancestry, or disability,
2 or any other distinguishing characteristic, or on a
3 youth's association with a person, or group with any
4 person, with one or more of the actual or perceived
5 foregoing characteristics; and

6 (2) Can be reasonably predicted to:

7 (A) Place the youth in reasonable fear of physical
8 harm to his or her person or property;

9 (B) Cause a substantial detrimental effect on the
10 youth's physical or mental health;

11 (C) Substantially interfere with the youth's academic
12 performance or attendance; or

13 (D) Substantially interfere with the youth's ability
14 to participate in or benefit from the services,
15 activities, or privileges provided by an agency,
16 educational institution, or grantee.

17 "Disability" shall have the same meaning as provided in
18 chapter 489, Hawaii Revised Statutes.

19 "Educational institution" means any local education agency
20 that receives funds from the State, including public charter
21 schools.



1 "Electronic communication" means a communication
2 transmitted by means of an electronic device, including a
3 telephone, cellular phone, computer, tablet, pager, or video or
4 audio recording.

5 "Employee" means an individual who performs a function for
6 the State or for an agency, educational institution, or grantee
7 and who receives compensation for the performance of that
8 function.

9 "Gender identity or expression" shall have the same meaning
10 as provided in chapter 489, Hawaii Revised Statutes.

11 "Grantee" means an entity or a contractor of an entity
12 that, on behalf of the State or through state funding, provides
13 services, activities, or privileges to youth.

14 "Party" means a person accused of bullying, a target of
15 bullying, or a parent or guardian of either a person accused of
16 bullying or a target of bullying.

17 "Place of public accommodation" shall have the same meaning
18 as provided in chapter 489, Hawaii Revised Statutes.

19 "Sexual orientation" shall have the same meaning as
20 provided in chapter 489, Hawaii Revised Statutes.

21 "Youth", depending on the context, means:



- (1) An individual of twenty-one 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 twenty-two years of age or less who is receiving special education services from an educational institution; or
- (2) Individuals as described in paragraph (1) of this definition considered as a group.

SECTION 4. Bullying prevention task force. (a) Within sixty days of the effective date of this Act, the governor shall establish a bullying prevention task force within the governor's office.

(b) In convening this task force and selecting its members, the governor shall consider geographic and socioeconomic diversity as well as other forms of diversity. The governor shall appoint eleven representatives from a variety of educational institutions and agencies that will be affected by this Act, as well as community representatives, including:

- (1) Teachers;
- (2) Administrators from educational institutions and agencies;



(3) School mental health professionals;

(4) Parents and legal guardians;

(5) Youth;

(6) Direct service providers;

(7) Clergy; and

(8) Youth advocates.

(c) The task force shall:

(1) Provide guidance to the governor regarding the implementation of this Act;

(2) Within one-hundred eighty 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 agencies, institutions, and grantees 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;

(5) Within ninety days of receipt of the bullying prevention policies submitted by agencies, educational



institutions, 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) Members of the task force shall serve without compensation but shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties.

(f) The task force shall terminate two years after its initial meeting; provided that at the discretion of the governor, a one-year extension may be granted.

SECTION 5. Bullying prevention policy. (a) Within three-hundred sixty-five days of the effective date of this Act, in coordination with the task force established pursuant to section



4 of 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 within its property;

(2) At functions sponsored by the agency, educational institution, or grantee; and

(3) On vehicles owned or sponsored by the agency, educational institution, or grantee.

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

(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) A code of conduct;

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



1 (A) Appropriately correct the bullying behavior;

2 (B) Prevent another occurrence of bullying or
3 retaliation;

4 (C) Protect the victim of the bullying; and

5 (D) Be flexible so that they can be uniquely applied
6 to the individual incident and varied in method
7 and severity based on the:

8 (i) Nature of the incident;

9 (ii) Developmental age of the person who
10 committed the bullying; and

11 (iii) Any history of problem behavior from the
12 person who committed the bullying;

13 (6) A procedure for reporting bullying or retaliation for
14 reporting an act of bullying, including a procedure
15 for anonymous reports of bullying; provided that no
16 formal response shall be taken solely on the basis of
17 an anonymous report;

18 (7) A procedure for prompt investigation of reports of
19 violations of its policy and of complaints of bullying
20 or retaliation, including the name and contact



1 information of the person responsible for
2 investigating reports;

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

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

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

15 (c) Within three-hundred sixty-five days of the effective
16 date of this Act, each agency, educational institution, and
17 grantee shall submit a copy of its adopted policy to the task
18 force.

19 (d) The requirements of this Act and any policy adopted
20 pursuant to this Act shall be deemed to meet any health and



1 safety standards that are required for educational institutions,
2 if applicable.

3 (e) Information on the bullying prevention policy shall be
4 incorporated into each agency, educational institution, and
5 grantee's new employee training.

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

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

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

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

17 SECTION 6. Secondary investigation; appeal. (a) A party
18 who is not satisfied with the outcome of the initial
19 investigation conducted pursuant to this Act may request a
20 secondary investigation by submitting a written appeal to the
21 higher-level authority in the agency, educational institution,



1 or grantee designated to hear appeals. A written request for an
2 appeal shall be submitted within thirty days of the conclusion
3 of the initial investigation.

4 (b) The secondary investigation shall be completed within
5 thirty days of receipt of the written request for appeal,
6 unless:

7 (1) Circumstances require additional time to complete a
8 thorough investigation;

9 (2) The higher-level authority sets forth those
10 circumstances identified pursuant to paragraph (1) in
11 writing; and

12 (3) The additional time does not exceed fifteen days.

13 (c) When a written request for an appeal for a secondary
14 investigation is submitted, the agency, educational institution,
15 or grantee shall inform the party about their ability to seek
16 further redress under chapter 489, Hawaii Revised Statutes.

17 (d) This section shall not be construed to limit the right
18 of a person to assert or seek redress for a claim arising under
19 chapter 489, Hawaii Revised Statutes.



1 SECTION 7. Retaliation, reporting, and immunity. (a) An
2 employee, volunteer, or youth shall not retaliate against a
3 victim or witness of bullying or a person who reports bullying.

4 (b) An employee or volunteer who has witnessed bullying in
5 violation of a bullying prevention policy, or has reliable
6 information that a person has been subjected to bullying in
7 violation of a bullying prevention policy, shall promptly report
8 the incident or information to the person designated by the
9 agency, educational institution, or grantee as responsible for
10 investigating the reports.

11 (c) An employee, volunteer, or youth who promptly and in
12 good faith reports an incident of, or information on, bullying
13 in compliance with the policy of the agency, educational
14 institution, or grantee shall be immune from a cause of action
15 for damages arising from the making of such report.

16 SECTION 8. Bullying prevention programs. Following the
17 adoption of a bullying prevention policy, each agency,
18 educational institution, and grantee shall:

- 19 (1) Establish an annual bullying prevention program for
20 youth, which for each educational institution should
21 align with established health-education standards;



- 1 (2) Inform youth about their right to be free from
2 discrimination in public accommodations and education,
3 and of the remedies available for a violation of their
4 rights under chapter 489, Hawaii Revised Statutes; and
5 (3) Provide annual training on bullying prevention to all
6 employees and volunteers who have significant contact
7 with youth.

8 SECTION 9. Reporting requirements. (a) Each educational
9 institution shall provide to the governor, by a date determined
10 by the governor, an annual report regarding the aggregate
11 incidents of bullying, and any other information that the
12 governor determines is necessary or appropriate.

13 (b) By September 1, 2016, and biennially thereafter, the
14 governor shall:

- 15 (1) Review the programs, activities, services, and
16 policies established pursuant to this Act of each
17 agency, educational institution, or grantee to
18 determine their effectiveness and whether the agency,
19 educational institution, or grantee is in compliance
20 with this Act; and



(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 of education'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 10. 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."

SECTION 11. Section 489-2, Hawaii Revised Statutes, is amended by amending the definition of "place of public accommodation" to read as follows:



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

- 9 (1) A facility providing services relating to travel or
10 transportation;
- 11 (2) An inn, hotel, motel, or other establishment that
12 provides lodging to transient guests;
- 13 (3) A restaurant, cafeteria, lunchroom, lunch counter,
14 soda fountain, or other facility principally engaged
15 in selling food for consumption on the premises of a
16 retail establishment;
- 17 (4) A shopping center or any establishment that sells
18 goods or services at retail;
- 19 (5) An establishment licensed under chapter 281 doing
20 business under a class 4, 5, 7, 8, 9, 10, 11, or 12
21 license, as defined in section 281-31;



1 (6) A motion picture theater, other theater, auditorium,
2 convention center, lecture hall, concert hall, sports
3 arena, stadium, or other place of exhibition or
4 entertainment;

5 (7) A barber shop, beauty shop, bathhouse, swimming pool,
6 gymnasium, reducing or massage salon, or other
7 establishment conducted to serve the health,
8 appearance, or physical condition of persons;

9 (8) A park, a campsite, or trailer facility, or other
10 recreation facility;

11 (9) A comfort station; or a dispensary, clinic, hospital,
12 convalescent home, or other institution for the
13 infirm;

14 (10) A professional office of a health care provider, as
15 defined in section 323D-2, or other similar service
16 establishment;

17 (11) A mortuary or undertaking establishment; [and]

18 (12) A school, college, or educational institution; and

19 ~~[(12)]~~ (13) An establishment that is physically located
20 within the premises of an establishment otherwise
21 covered by this definition, or within the premises of



1 which is physically located a covered establishment,
 2 and which holds itself out as serving patrons of the
 3 covered establishment.

4 No place of public accommodation defined in this section
 5 shall be requested to reconstruct any facility or part thereof
 6 to comply with this chapter."

7 SECTION 12. This Act does not affect rights and duties
 8 that matured, penalties that were incurred, and proceedings that
 9 were begun before its effective date.

10 SECTION 13. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 14. This Act shall take effect upon its approval.
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Report Title:

Education; Youth; Students; Youth-serving Agencies; Bullying; Cyberbullying; Educational Institutions

Description:

Requires educational institutions and all youth-serving agencies to create and implement anti-bullying policies. Establishes a bullying prevention task force to provide guidance. Outlines the requirements for each institution or agency's policy and specifies reporting, investigation, and appeals procedures involving incidents of bullying. Provides immunity to reporters of bullying in the event of a cause of action for damages arising from the making of a report. Requires institutions and agencies to establish annual bullying prevention programs for youth and to provide bullying prevention training to all employees and volunteers who have significant contact with youth. Requires institutions and agencies to report aggregate figures regarding bullying to the governor and requires the governor to report to the legislature regarding bullying and the effectiveness of anti-bullying policies.

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