Title 8
Department of Education

Subtitle 2
Education

Part 1
Public Schools

Chapter 19

Student Misconduct, Discipline, School Searches and Seizures, Reporting Offenses, Police Interviews and Arrests, Restitution for Vandalism, Complaint Procedure and Investigation of Discrimination, Harassment (Including Sexual Harassment), Bullying and/or Retaliation

Office of Student Support Services/Student Support Branch
Department of Education • State of Hawaii • RS 20-0715 (Rev. of RS 18-1280) • December 2019

HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 2

EDUCATION

PART 1

PUBLIC SCHOOLS

CHAPTER 19

STUDENT MISCONDUCT, DISCIPLINE, SCHOOL SEARCHES AND SEIZURES, REPORTING OFFENSES, POLICE INTERVIEWS AND ARRESTS, RESTITUTION FOR VANDALISM, AND COMPLAINT PROCEDURE AND INVESTIGATION OF DISCRIMINATION, HARASSMENT (INCLUDING SEXUAL HARASSMENT), BULLYING AND/OR RETALIATION

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Historical Note: This chapter is based substantially upon Department of Education "Rule 21, Relating to Student Discipline" [Eff 3/28/64; am 11/29/73; am 5/01/76; R 9/1/82]; "Rule 3, Relating to Police Interviews and Arrest of Students During School Hours" [Eff 9/23/63; am 6/20/77; R 9/1/82]; "Rule 24, Relating to Students Smoking on School Premises" [Eff 3/28/64; R 9/1/82].

SUBCHAPTER 1

GENERAL PROVISIONS

§8-19-1 Philosophy. (a) Hawaii has established and supports a statewide system of public education. The compulsory nature of school attendance ensures that a student shall have the opportunity for an education. In addition to the education provided during the regular school year, the department offers students the opportunity to receive additional instruction and educational services through a self-supporting summer school program on a voluntary attendance basis. The department is committed to:

(1) Provide the student with optimal learning conditions;
(2) Select appropriate teachers for the student's instruction; and
(3) Other programs that will help the student to succeed.

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In 1996, the department initiated a collaborative and systemic reform known as the Comprehensive Student Support System (CSSS), which provides a continuum of academic, social, emotional, and physical environmental supports and services to all students to facilitate their learning and their meeting of high educational standards. It is a CSSS community of caring and supportive relationships among students, teachers, families, and agencies working together that promote timely and appropriate services for all students. The goal of the school system is to provide a learning experience in safe, caring, nurturing, and orderly teaching and learning environments.

(b) It is the responsibility of every student to demonstrate respectful, responsible, non-discriminatory, safe, and ethical behaviors on department transportation, or during a department sponsored activity on or off school property. The department supports this through the establishment of a proactive systems approach to schoolwide discipline.

(c) However, when a student's behavior violates established policies, rules, or regulations of the department, state or local laws, the department may take appropriate disciplinary action in accordance with this chapter. The purpose of school-administered discipline is to:

(1) Promote and maintain a safe and secure educational environment;

(2) Teach and acknowledge proper behavior which is beneficial to the educational process and self-development;

(3) Deter students from acts which interfere with the purpose of education or which are self-destructive, self-defeating or anti-social;

(4) Maintain proper student conduct to ensure that educational activities and responsibilities remain uninterrupted; and

(5) Stop any discrimination (including unlawful discrimination), harassment (including sexual harassment), or bullying against a student based on a protected class.

(d) An educational worker conducting or participating in a school program, activity, or function sponsored or approved by the department, or hired to engage in carrying out an educational function, has a reasonable expectation to be free of undue disruption and threat of disorder or acts of violence, or both, committed against them by students.

(e) In addition to the disciplinary action taken under this chapter, restitution for vandalism or for negligence shall be made in accordance with the provisions of this chapter. The purpose of restitution is to discourage acts of vandalism and negligence and to ensure recovery of the cost of public property damaged by acts of vandalism and negligence.

(f) On occasions it is necessary for police officers to interview students or to take them into custody. This chapter is also intended to safeguard the rights and interests of students in attendance, to cooperate with police officers in the performance of their duties, to preserve the school milieu, and to delineate responsibilities of school personnel. [Eff 9/1/82; am 5/23/86; am and comp 7/19/93; am and comp 5/19/97; comp 2/22/01; am and comp 9/10/09; am and comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112)

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§8-19-2 Definitions. As used in this chapter:

"Abusive language" means verbal messages that use words in an inappropriate way and may include but is not limited to swearing, name-calling, or profanity.

"Assault" means intentionally, knowingly, recklessly, or negligently causing serious bodily injury or bodily injury to another person with or without a dangerous instrument.

"Bullying" means any written, verbal, graphic, or physical act that hurts, harms, humiliates or intimidates a student, including those with protected class statuses, that is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment.

"Burglary" means entering or remaining without school authorization in a building that is either owned or operated by the department with intent to commit an offense against a person, or against school property or other property located at the school.

"Child Welfare Services" means the Child Welfare Services of the State of Hawaii Department of Human Services.

"Civil Rights Compliance Branch" means the entity within the department responsible for monitoring and/or conducting investigations of discrimination, harassment (including sexual harassment), and/or bullying complaints described in this chapter.

"Class cutting" means an unauthorized absence of a student from class.

"Complex area superintendent" means the chief administrative officer of a complex area and the school complexes therein.

"Contraband" means a property, other than which is unlawful to produce or possess, which, as defined by local school rules, is prohibited on school premises has in the past lead to bodily injury or disruption of school operations.

"Controlled substance" means a drug or substance as defined in parts I through V in chapter 329, Hawaii Revised Statutes.

"Correction and conference with student" means a student meets with an administrator, their teacher(s), and/or parent and receives instruction on demonstrating appropriate behavior.

"Crisis removal" means the immediate exclusion of a student from school in an emergency, because the conduct of the student presents a clear, immediate threat to the physical safety of self or others, or the student is so extremely disruptive as to make the immediate removal of the student necessary to preserve the right of other students to pursue their education free from undue disruption.

"Cyberbullying" means electronically transmitted acts, including but not limited to those transmitted through the Internet, cell phone, or other wireless hand-held device initiated by one student toward another student or employee of the department that hurts, harms, humiliates, or intimidates the student or employee; and is sufficiently severe, persistent or pervasive, that it creates an intimidating, threatening, or abusive educational environment. Cyberbullying can occur:

(1) On campus, or other department premises, on department transportation, or during a department sponsored activity or event on or off school property;
(2) Through a department data system without department authorized communication; or
(3) Through an off campus computer network, if the conduct impacts the educational environment.

Additionally, cyberbullying may also be based on a person's protected class, including but not limited to, a person's race, color, religion, sex, sexual orientation, gender identity, gender expression, age, national origin, ancestry, disability, physical appearance and characteristics, and socio-economic status.

"Dangerous instrument, or 'substance'" means any explosive device, instrument, material, or chemical, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or bodily injury. Examples of such items include but are not limited to knives, pipe bomb devices, fireworks, pepper spray, mace, martial arts devices such as sticks and throwing stars; and inanimate objects such as pipes, sticks, or baseball bats swung at a person in a menacing manner so as to cause or threaten bodily injury.

"Dangerous weapon" means an instrument whose sole design and purpose is to inflict bodily injury or death. Examples of such instruments include but are not limited to a dirk, dagger, butterfly knife, switchblade knife, blackjack, slug shot, billy, metal knuckles, or other weapons that inflict bodily injury or death.

"Department" means the department of education.

"Detention" means detaining a student on school campus during non-instructional hours to require the student to carry out in-school educational or other activities as may be prescribed by school officials as a form of disciplinary action for student misconduct.

"Disciplinary transfer" means the removal of a student from the school the student is attending as a result of a violation of section 8-19-6. Disciplinary transfer does not include cases involving the revocation of geographic exceptions under chapter 13 of title 8 under circumstances in which the purpose for granting the geographic exception is no longer valid.

"Discrimination" means excluding the participation in or denying the benefits of the department's administration of its educational programs and activities, or otherwise treating a student differently on the basis of a protected class.

"Dismissal" means the removal of a student from Hawaii public schools for the remainder of the school year or for a period of not less than one calendar year for firearm violations.

"Disorderly conduct" means the following actions or activities on campus or other department premises, on department transportation, or during a department sponsored activity or event on or off school property:

(1) Engaging in fighting or threatening, or in violent or tumultuous behavior such as yelling or screaming, or both;

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(2) Making unreasonable noise as to cause disruption of normal school operations;
(3) Making any offensively coarse utterance, gesture, or display, or addressing abusive language to any person present, which is likely to provoke a violent response;
(4) Creating a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit;
(5) Impeding or obstructing any person in a public school for the purpose of begging or soliciting alms or other forms of aid; or
(6) Inappropriate physical contact including but is not limited to consensual sex or consensual touching of body parts, or both.

"Drug paraphernalia" means any equipment, products, or materials of any kind, or combination thereof which is used, intended for use, or designed for use, in planting, harvesting, producing, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:

(1) Kits, devices, equipment, separation gins, balance scales, blenders, bowls, containers, spoons, capsules, balloons, envelopes, other objects used, intended for use, or designed for use in preparing, processing, mixing, storing, or concealing controlled substances;
(2) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use by injecting the controlled substances into the human body;
(3) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil, or forms of methamphetamine, or anabolic steroids into the human body, such as:
    (A) Metal, wooden, glass, acrylic, stone, plastic, or ceramic pipes, water pipes, smoking and carburetion masks, roach clips; meaning objects used to hold burning materials such as marijuana cigarettes, that have become too small or too short to be held in the hand;
    (B) Miniature cocaine spoons, and cocaine vials, bongs, ice pipes, or chillers; and
    (C) Any and all other drug paraphernalia as described and defined pursuant to section 329-1, Hawaii Revised Statutes.

"Educational worker" means any administrator, specialist, counselor, teacher, or employee of the department, or a person who is a volunteer in a school program, activity, or function that is sponsored or approved by the department, or a person hired by the department on a contractual basis and engaged in carrying out an educational function.

"Extortion" means an act committed by a person who:

(1) Obtains, or exerts control over, the property or services of another with intent to deprive that person of the property or services by threatening by word or conduct to:
    (A) Cause bodily injury in the future to the person threatened

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or to any other person;

(B) Cause damage to property;

(C) Subject the person threatened or any other person to physical confinement or restraint;

(D) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair the person's credit or business repute;

(E) Reveal any information sought to be concealed by the person threatened or any other person;

(F) Testify provide information, or withhold testimony or information with respect to another's legal claim or defense;

(G) Take or withhold action as a public servant, or cause a public servant to take or withhold such action;

(H) Bring about or continue a strike, boycott, or other similar collective action, to obtain property which is not demanded or received for the benefit of the group which the student purports to represent; or

(I) Do any other act which would not in itself substantially benefit the person committing the act but which is calculated to substantially harm some person with respect to that person's health, safety, education, business, calling, career, financial condition, reputation, or personal relationship;

(2) Compels or induces another person to engage in conduct from which that person has a legal right to abstain or to abstain from conduct in which that person has a legal right to engage by threatening by word or conduct to do any of the actions set forth in paragraph (A) through (I) of this definition; or

(3) Makes or finances any extension of credit, or collects any extension of credit by extortionate means.

"Fighting" means instigating or provoking physical contact involving anger or hostility. Fighting includes but is not limited to:

(1) Engaging in mutual physical contact involving anger or hostility;

(2) Teasing, harassing, threatening, or intimidating others resulting in physical contact involving anger or hostility;

(3) Retaliating physically for teasing, harassing, threatening, or intimidating behavior; verbally inciting; or

(4) Physically supporting a fight by one's presence and encouragement.

"Firearm" means:

(1) Any weapon including but is not limited to a starter gun, shotgun, air guns which includes BB guns, pellet guns, paintball guns, or cross bow or any other instrument which will or is designed to or may readily be converted to expel a projectile;

(2) The frame or receiver of any such weapon;

(3) Any firearm muffler or firearm silencer; or

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(4) Any destructive device. The term "destructive device" means:
(A) Any explosive, incendiary, or poison gas:
(i) Bomb;
(ii) Grenade;
(iii) Rocket having a propellant charge;
(iv) Missile having an explosive or incendiary charge;
(v) Mine; or
(vi) Device similar to any of the devices described in the preceding clause;
(B) Any type of weapon which will, or which may be readily converted to expel a projectile, including but is not limited to a weapon that expels a projectile by action of an explosive or other propellant; or
(C) Any combination or parts either designed or intended for use in converting any device described above, and from which a destructive device may be readily assembled.

"Forgery" means:

(1) A student signing a name other than the student's own name on a document or;
(2) The illegal production or reproduction of materials such as fundraising or sports event tickets.

"Gambling" means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but is not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but is not limited to contracts of indemnity or guaranty and life, health, or accident insurance.

"Gender expression" means the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.

"Gender identity" means a person's internal, deeply-felt sense of being male, female, or other, whether or not that gender-related identity is different from the person's physiology or assigned sex at birth. Everyone has a gender identity.

"Harassment" means any threatening, insulting, or aggressive conduct, which can be written, verbal, or physical, and is directed against a student, including those with protected class status. Harassing conduct must have the effect of:

(1) Placing a student in reasonable fear of harm to his or her person or property;
(2) Interfering with a student's educational performance, opportunities, or benefits; or
(3) Disrupting the orderly operation of a school.

"Hazing" means any conduct or method of initiation into any student organization or activity, whether on campus or other department premises, on department transportation, or during a department sponsored activity or event on or off school property, which willfully or recklessly endangers the physical or mental health of any student. Such conduct shall include, but is not limited to whipping, beating, branding, forced calisthenics, exposure to weather, forced consumption of any food, liquor, beverage, drug or other substance, indecent exposure, or any other treatment or forced physical activity which is likely to adversely affect the physical or mental health, or both, or safety of any student, or which subjects any student to extreme mental stress, including deprivation of sleep or rest, extended isolation, or personal humiliation.

"Hijacking" means to extort from another by a threat or a perceived threat.

"Homicide" means causing the death of another person.

"Inappropriate or questionable uses, or both, of internet materials and equipment" means that a student did not adhere to the department's state and school level technology guidelines. Examples of inappropriate or questionable uses of the department's computer and network resources include but are not limited to disabling or bypassing the filters, gambling software, music sharing software, or sexually explicit photographs and pictures that do not support the department's mission and purpose.

"Illicit drugs" means substances, the possession, distribution, ingestion, manufacture, use, sale, or delivery, of which are prohibited under chapter 329, Hawaii Revised Statutes and chapter 712, part IV, Hawaii Revised Statutes.

"Immediate interventions" means individualized services offered as soon as possible, but no later than seventy-two hours after receipt of the complaint, to either or both the complainant/victim or respondent involved in a complaint as appropriate to protect students from possible harassment or bullying, including racial, sexual, or disability discrimination, harassment or bullying. Immediate interventions may be offered prior to an investigation or while an investigation is pending. Immediate interventions pending an investigation may include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, leaves of absence, increased security and monitoring of certain areas of campus, or other similar accommodations. Immediate interventions may be put in place by the department on a case-by-case and temporary basis after receiving notice of a complaint and before any outcomes – investigatory, disciplinary, or remedial – have been determined. These measures may be instituted to preserve the complainant's/victim's educational experience, ensure the safety of all parties and the broader department community, maintain the integrity of the investigative and/or resolution process, and deter retaliation. Immediate interventions shall be available throughout all phases of an investigation. They may be amended or withdrawn as additional information is gathered.

"Individualized instruction related to student's problem behaviors" means as a result of a disciplinary action the student receives individualized instruction specifically related to the student's problem behaviors. Examples of

individualized instruction include but are not limited to the development and implementation of behavior support plans, developing behavioral contracts or social skills training, or a combination of the foregoing.

"Insubordination" means disregard or refusal to obey an order which a teacher, officer, or other employee of the department is entitled to give.

"In-school suspension" means a student is temporarily removed from his/her school program for disciplinary purposes but remains under the direct supervision of school personnel to complete instruction work.

"Interim alternative educational setting" or "IAES" means a temporary placement for a student who has been suspended or otherwise removed from his current educational placement for disciplinary reasons in which the student continues to receive educational services to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP.

"Intoxicating substance use" means the use of any substance, which causes disturbance of the normal physical or mental functioning including but is not limited to alcohol.

"Laser pen/pointer" means a device that emits a bright laser light that appears as a dot on any surface at which it is aimed and is without authorized department purpose and use. Unless authorized, the possession or use is prohibited on campus, or other department premises, on department transportation, or during a department sponsored activity or event on or off school property.

"Leaving campus without consent" means leaving the premises of a school, department facility, or department program without first obtaining permission from school officials.

"Low intensity problem behaviors" means those behaviors that are demonstrated with low frequency, brief engagement, and do not lead to serious harm.

"Mail" or "mailed" means documents sent via:

(1) Regular mail;
(2) Certified mail; or
(3) Return receipt requested.

"Minor problem behaviors" means demonstration of low-intensity problem behaviors that may include, but are not limited to the following.

(1) "Defiance/disrespect/non-compliance" means student engages in brief or low-intensity failure to respond to adult requests;
(2) "Disruption" means student engages in low-intensity, inappropriate disruption;
(3) "Dress code violation" means student wears clothing that is not within the dress code guidelines defined by the school;
(4) "Inappropriate language" means student engages in low-intensity instance of inappropriate language;
(5) "Physical contact" means student engages in non-serious, inappropriate physical contact;
(6) "Property misuse" means student engages in low-intensity

misuse of property;

(7) "Tardy" means a student arrives to school after school has started, or a student arrives at class after class has started, or both.

"Negligence" means the failure to use the care that a prudent and careful person would use under similar circumstances which results in harm to a person or loss, destruction, breakage, or damage of school books, equipment, or of supplies.

"Parent" means the natural or legal parent, legal guardian or other legal custodian of the student. For students eighteen years of age or older, all parental rights herein transfer to the student, unless the natural or legal parent, legal guardian, or other legal custodian has legally obtained decision making rights for the student.

"Property damage" or "vandalism" means:

(1) Damaging the property of the school or another person;

(2) Destroying or defacing school property or facility; or

(3) Destroying or defacing school materials, such as but is not limited to planners, identification nametags, or meal cards.

"Protected class/basis" for the purposes of this chapter includes race, color, religion, sex, sexual orientation, gender identity, gender expression, age, national origin, ancestry, disability, physical appearance and characteristics, and socio-economic status.

"Remedies" are individualized services offered at the conclusion of an investigation that preserve the educational experience or ensure the safety of all students and the broader department community. Remedies for students may include, but are not limited to, the adjustment of academic schedules and coursework, and the provision of academic, medical and psychological support services.

"Rendering a false alarm" means a student causes a false alarm of fire or other emergency to be transmitted to or within an official or volunteer fire department, any governmental agency, or public utility that deals with emergencies involving danger to life or property.

"Restitution" means monetary or non-monetary repayment to the department or the State of Hawaii for the reasonable value of public school property lost, damaged, broken or destroyed as the result of student negligence or vandalism.

"Retaliation" means an adverse action against a student because they engaged in protected activity. Protected activity includes filing a complaint of discrimination, harassment (including sexual harassment), or bullying; participating in a complaint or investigation proceeding dealing with discrimination, harassment (including sexual harassment), or bullying; inquiring about rights under this chapter; or otherwise opposing acts covered under this chapter. An adverse action is any action that would dissuade a reasonable person from making or supporting a complaint under these rules. Reprisals or retaliation shall be prohibited when there is protected activity that was engaged in good faith.

"Robbery" means, in the course of committing a theft, or hijacking, a

student:

(1) Attempts to kill another person, or inflicts or attempts to inflict serious bodily injury upon another person; or

(2) With or without a dangerous instrument:

(A) Uses force against the person with the intent to overcome the owner's physical resistance or physical power of resistance;

(B) Threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property; or

(C) Inflicts serious bodily injury upon another person.

"School" or "public school" means all academic and non-college type schools established and maintained by the department in accordance with state law.

"School books" means library and textbooks.

"School official" means any administrator, specialist, counselor, teacher, school security attendant, or other department employee, responsible for the supervision of students. It does not include individuals whose services are procured.

"School related offenses" means offenses involving school property, or offenses committed on campus, or other department premises, on department transportation, or during a department sponsored activity or event on or off school property.

"School rules" means school wide conduct rules that have been established by the school.

"School staff" means any teacher, officer, or other employee of the department.

"Search" means if after requesting the student to voluntarily relinquish the contraband item(s) and the student refuses and there are reasonable grounds to believe that the student has violated the law or provisions prohibited under this chapter, or if there is a health or safety issue with illicit drugs, dangerous weapons, dangerous instruments or firearms, or a combination of the foregoing, the school official may examine the contents and belongings which may include but are not limited to purses, fanny packs, backpacks, jackets, shoes, socks, or any other outer clothing.

"Seizure" means to take possession of the contraband item(s) that is or are uncovered during a search.

"Serious discipline" means disciplinary actions including dismissals, disciplinary transfers, crisis removals, and suspensions which either exceed ten school days or will result in the student affected being crisis removed or suspended more than a total of ten school days in any single semester.

"Sexual assault" means the act of committing unwanted physical contact of a sexual nature on a person, whether by an acquaintance or by a stranger. Such contact is unwanted when it occurs without consent of the person, or when the person is incapacitated or otherwise incapable of giving consent. Consent means affirmative, conscious, and voluntary agreement to engage in agreed upon forms of sexual contact. If a student is a subject of sexual assault and is

under the age of consent, it shall be deemed that no consent was given. Sexual assault is a form of sexual harassment.

"Sexual exploitation" means the violation of the sexual privacy of another, or taking unjust or abusive sexual advantage of another without consent and when such behavior does not otherwise constitute sexual assault. Consent means affirmative, conscious, and voluntary agreement to engage in agreed upon forms of sexual contact. If a student is a subject of sexual exploitation and is under the age of consent, it shall be deemed that no consent was given. Sexual exploitation is a form of sexual harassment.

"Sexual harassment" means any unwanted, unwelcome, or unsolicited verbal or physical act of a sexual nature directed at an individual because of his or her sex. Sexual harassment can include requests for sexual favors or sexual advances when submission to or rejection of the conduct is either an explicit or implicit term or condition of a student's education or participation in a department program, activity or service; or when submission to or rejection of the conduct is used as a basis in decisions affecting that student's education or participation in a department program, activity, or service. Sexual harassment also includes, but is not limited to, sexual misconduct, unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. It can include conduct such as touching of a sexual nature, making sexual comments, jokes or gestures, writing graffiti or displaying or distributing sexually explicit drawings, pictures or written materials, calling students sexually charged names, spreading sexual rumors, rating students on sexual activity, or circulating, showing, or creating e-mails or websites of a sexual nature. Sexual exploitation and sexual assault also fall under the definition of sexual harassment.

"Sexual orientation" means a person's emotional and sexual attraction to another person based on the gender of the other person. Common terms to describe sexual orientation include, but are not limited to, heterosexual, gay, lesbian, and bisexual. Sexual orientation and gender identity are different.

"Smoking" or "use of tobacco" means possession, use, sale or distribution of tobacco products on campus, or other department premises, on department transportation, or during a department sponsored activity or event on or off school property.

"Stalking" means two or more acts of unwanted behavior, directed at a specific person that is sufficiently serious to cause physical, emotional, or psychological fear or to create a hostile intimidating or abusive educational environment.

"Strip search" means searches, which require the removal of clothing that results in the exposure of the genitals, the female breasts, or underwear or combination thereof.

"Suspension" means exclusion from school for a specific period during a school year.

"Switchblade knife" means any knife having a blade which opens automatically:

(1) By hand pressure applied to a button or other device in the

handle of the knife, or
(2) By operation of inertia, gravity, or both.

"Terroristic threatening" means:
(1) A threat, by word or conduct, to cause bodily injury to another person or serious damage to property of another person;
(2) With the intent to cause, or in reckless disregard of the risk of causing evacuation of a building, place of assembly, or facility of public transportation; or
(3) Displaying a "look-alike" gun or weapon.

"Theft" means:
(1) Obtaining, or exerting control over, the property of another and depriving that person of the property;
(2) Obtaining, or exerting control over, the property of another by deceiving and depriving the person of the property;
(3) Obtaining, or exerting control over, the property of another which the person knows to have been lost or mislaid, or to have been delivered under a mistake as to the nature or amount of the property, the identity of the recipient, or other facts, and with the intent to deprive the owner of the property, the person fails to take reasonable measures to discover and notify the owner;
(4) Obtaining services, known by the person to be available only for compensation, by deception, false token, or other means to avoid payment for the services;
(5) Having control over the disposition of services of another to which the person is not entitled and diverts those services to the person's own benefit or to the benefit of a person not entitled thereto;
(6) Failing to make required disposition of funds by:
    (A) Obtaining property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from the property or its proceeds or from the person's own property reserved in equivalent amount, and dealing with the property as the person's own and failing to make the required payment or disposition; or
    (B) Obtaining personal services from an employee upon agreement or subject to a known legal obligation to make a payment or other disposition of funds to a third person on account of the employment, and intentionally failing to make the payment or disposition at the proper time;
(7) Receiving, retaining, or disposing of the property of another, knowing that it has been stolen, with intent to deprive the owner of the property; or
(8) Shoplifting:
    (A) Concealing or taking possession of the goods or merchandise of any department store or department retail establishment, with intent to defraud;

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(B) Altering the price tag or other price marking on goods or merchandise of any department store or department[of education] retail establishment, with intent to defraud; or

(C) Transferring the goods or merchandise of any department store or department retail establishment from one container to another, with intent to defraud.

"Trespass" means entering or remaining in or upon the premises of any school, or department facility after reasonable warning or request to leave by school authorities or police officer.

"Truancy" means a student is absent from class(es) or the school campus without authorization from the principal or designee. [Eff 9/1/82; am 5/23/86; am and comp 7/19/93; am and comp 5/19/97; am and comp 2/22/01; am and comp 9/10/09; am and comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-101, 302A-1101, 302A-1112, 302A-1134, 302A-1134.5)

§8-19-3 Applicability. (a) The provisions of this chapter shall apply to all students enrolled in a public school during the regular school year, summer session, or intersessions regardless of age with the addition that, outside of the hours when school is in session, boarding students are subject to the dormitory rules developed by the school and agreed upon through written consent by the parent(s) or legal guardian(s) of boarding students.

(b) The Hawaii administrative rules for students with disabilities shall apply in the discipline of students who are eligible to receive special education or other services under those chapters.

(c) References to principal or designee in subchapter 2 shall be construed to include summer school director for purposes of discipline in summer school. References to school year in this chapter shall be construed to mean summer session whenever summer school applies.

(d) Discipline during intersessions and in summer school shall be governed by subchapter 3. Discipline of students who receive special education services during an extension of the student's school year shall be governed by subchapter 2 and the guidelines and requirements of the Hawaii administrative rules for students with disabilities.

(e) In all cases of student-related administrative actions and reporting, chapter 8-34 shall apply. In addition, for students who receive special education services, the Hawaii administrative rules for students with disabilities shall prevail.

(f) No action relating to suspension, serious discipline, or restitution for vandalism or negligence shall be taken except in accordance with this chapter.

(g) All matters relating to police interviews or arrests, or both, of students shall be administered in accordance with this chapter.

(h) For conduct by adult(s) towards student(s) based on the student(s)' protected class, refer to chapter 8-89 for guidance. [Eff 9/1/82; am 5/23/86; am and comp 7/19/93; am and comp 5/19/97; am and comp 2/22/01; am and comp

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9/10/09; am and comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS 302A-1101)

§8-19-4 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable. [Eff 5/23/86; comp 7/19/93; comp 5/19/97; comp 2/22/01; comp 9/10/09] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

§8-19-4.1 Student's right to privacy. (a) Information relating to complaints, investigations, and reports shall remain confidential and will only be shared with appropriate individuals necessary to complete the investigation and decision making process.

(b) Identifiable information regarding a student will not be disclosed without notice to the student's parent or legal guardian.

(c) Investigation records shall be maintained by the department separate from educational records. [Eff NOV 17 2019] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112)

SUBCHAPTER 2

STUDENT MISCONDUCT AND DISCIPLINE DURING THE REGULAR SCHOOL YEAR

§8-19-5 Disciplinary actions; authority. (a) Suspensions exceeding ten school days or suspensions that will result in the student being suspended more than a total of ten school days in any single semester, disciplinary transfers, dismissals, and extension of crisis removals shall be approved by complex area superintendent.

(b) Crisis removals and suspensions of ten school days or less may be approved by the principal or designee.

(c) In determining disciplinary actions, the principal or designee shall consider the intention of the offender, the nature and severity of the offense, the impact of the offense on others including whether the action was committed by an individual or a group of individuals such as a gang, the age of the offender, and if the offender was a repeat offender. [Eff 9/1/82; ren §8-19-4, 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp] (Auth: HRS §§302A-1112, 302A-1002) (Imp: HRS §§302A-1112, 302A-1002)

§8-19-6 Prohibited student conduct; class offenses. (a) The following prohibited conduct applies to all students in the public school system, on campus, or other department premises, on department transportation, or during a department sponsored activity or event on or off school property.

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(1) Class A offenses:
  (A) Assault;
  (B) Bullying (for students in grades 9-12);
  (C) Burglary;
  (D) Cyberbullying (for students in grades 9-12);
  (E) Dangerous instrument, or substance; possession or use of;
  (F) Dangerous weapons; possession, or use of;
  (G) Drug paraphernalia; possession, use, or sale of;
  (H) Extortion;
  (I) Fighting;
  (J) Firearms; possession or use of;
  (K) Harassment (for students in grades 9-12);
  (L) Homicide;
  (M) Illicit drugs; possession, use, or sale of;
  (N) Intoxicating substances; possession, use, or sale of;
  (O) Property damage or vandalism;
  (P) Robbery;
  (Q) Sexual assault;
  (R) Sexual exploitation;
  (S) Sexual harassment (for students in grades 5-12);
  (T) Stalking; or
  (U) Terroristic threatening.
(2) Class B offenses:
  (A) Bullying (for students in grades K-8);
  (B) Cyberbullying for students in grades K-8);
  (C) Discrimination;
  (D) Disorderly conduct;
  (E) False alarm;
  (F) Forgery;
  (G) Gambling;
  (H) Harassment (for students in grades K-8);
  (I) Hazing;
  (J) Inappropriate or questionable uses, or both of internet materials or equipment, or both;
  (K) Retaliation;
  (L) Sexual harassment (for students in grades K-4);
  (M) Theft; or
  (N) Trespassing.
(3) Class C offenses:
  (A) Abusive language;
  (B) Class cutting;
  (C) Insubordination;
  (D) Laser pen/laser pointer; possession or use of;
  (E) Leaving campus without consent;
  (F) Smoking or use of tobacco substances; or
  (G) Truancy.

(4) Class D offenses:
(A) Contraband; possession or use of;
(B) Minor problem behaviors; or
(C) Other school rules.
(i) Any other conduct as may be prescribed and prohibited by school rules. Individual school rules shall be published or made available for inspection at the school office and shall inform students, school staff, and parents of the prohibited conduct under class A through D of this section.
(ii) No disciplinary action amounting to serious discipline shall be imposed for violation of any individual school rule as a class D offense.

(b) Any student who possesses a firearm shall be dismissed from school for not less than one calendar year period. The possession or use of a firearm is prohibited on campus, or other department premises, on department, or during a department sponsored activity or event on or off school property except for participation in athletic teams, clubs and/or Junior Reserve Officer Training Corp (JROTC) shooting sports programs and marksmanship training, education, and competitions. The superintendent or designee, on a case-by-case basis, may modify the dismissal of a student found to be in possession of a firearm. If a student is dismissed from school, that student shall be provided alternate educational activities or other appropriate assistance as provided in section 8-19-11.

(c) Any student who possesses, sells, or uses a dangerous weapon, switchblade knife or any improperly used knife, intoxicating substance(s), or illicit drug(s) while attending school may be excluded from attending school for up to ninety-two school days. Any student who reasonably appears to be under the influence of, have consumed or used intoxicating substance(s) or illicit drug(s) prior to attending school or attending department-supervised activities held on campus, or other department premises, on department transportation, or during a department sponsored activity or event on or off school property may be excluded from attending school for up to ninety-two school days and the school shall administer a substance use screening tool to determine whether there is a need for the student to be referred for a substance abuse assessment pursuant to section 302A-1134.6(f), Hawaii Revised Statutes. The school administrator shall comply with the provisions of this chapter by conducting an investigation of the reported incident and inform the parent of the disciplinary action. In addition, the school administrator shall arrange for the student to be screened by a trained screener. The designated screener will summarize the results with the student, and inform the school administrator of the results. The school administrator shall then inform the family of the screening results, the early return provisions of the law, and provide a contact list of medical insurance agencies that conduct substance abuse assessments. During the screening the student will be asked a series of questions to determine if the student is at low, high or very-high risk for a substance use problem. If the screening interview indicates high or very- high

results, the student will be referred for a formal substance abuse assessment. A formal substance abuse assessment serves to provide expert clinical opinion to determine if a substance abuse problem exists, and if so, offer treatment recommendations. If referred for a substance abuse assessment, students with medical health insurance shall be asked to contact their medical health carrier to schedule an appointment. Professionals who can provide substance abuse assessments include certified substance abuse counselors (CSAC), psychiatrists, advanced practice registered nurses (APRN), psychologists, and licensed clinical social workers. The principal or designee can approve suspensions of one to ten school days. The complex area superintendent shall approve suspensions exceeding ten school days. In exercising this discretion and determining disciplinary actions, the principal or designee shall consider, the nature and severity of the offense, the impact of the offense on others, the age of the offender, and if the offender is a repeat offender. If the student is excluded from attending school, the principal or designee shall ensure that alternate educational activities or other appropriate student support assistance shall be provided, and that the student is referred for appropriate intervention or treatment services, or both, as determined by the principal or designee in consultation with the appropriate school staff or in accordance with the Hawaii administrative rules for students with disabilities, if applicable.

(d) Disciplinary action shall be taken for all class offenses in grades kindergarten through twelve in accordance with procedures established under this chapter and within the following options as determined by the authorities designated in section 8-19-5. Interventions to teach students appropriate behaviors must be instituted when disciplinary actions are imposed. Disciplinary action options may include the following:

(1) Correction and conference with student;
(2) Detention;
(3) Crisis removal;
(4) Individualized instruction related to student's problem behaviors;
(5) In-school suspension;
(6) Interim alternate education setting;
(7) Loss of privileges;
(8) Parent conferences;
(9) Time in office;
(10) Suspension of one to ten school days;
(11) Suspension of eleven or more school days;
(12) Saturday school;
(13) Disciplinary transfer;
(14) Referral to alternative education programs;
(15) Dismissal; or
(16) Restitution.

(e) Students shall be counseled in addition to any disciplinary action taken under subsections (c) and (d).

(f) No action amounting to serious discipline shall be imposed on students for committing class D offenses.

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(g) No suspension or serious discipline shall be imposed on any student because of class cutting or truancy.

(h) The disciplinary action options of subsections (c) and (d) shall be construed as disciplinary actions within a school year.

(i) Disciplinary actions may be carried over to the following school year if the offense is committed within twenty school days from the last instructional day for students in that school year. [Eff 9/1/82; am and ren §8-19-5, 5/23/86; am and comp 7/19/93; am and comp 5/19/97, am and comp 2/22/01; am and comp 9/10/09; am and comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1134, 302A-1134.5)

§8-19-7 Crisis removal. (a) A principal or designee, in an emergency, may crisis remove a student immediately based upon preliminary inquiry and findings that the student's conduct presents a clear immediate threat to the physical safety of self or others or is so extremely disruptive as to make the student's immediate removal necessary to preserve the right of other students to pursue an education free from undue disruption.

(b) Upon imposition of a crisis removal, schools shall make a good faith effort to inform the parent immediately by telephone.

(c) A follow-up written notice of the crisis removal shall be personally delivered or mailed to the parent. The notice of the crisis removal shall contain the following written statements:

(1) Allegations of the specific acts committed by the student that form the basis of the crisis removal;
(2) The allegations of the specific acts that were substantiated;
(3) A statement of the disciplinary action(s); and
(4) A statement of a conference date, time, and place offered by the school administration to meet with the parent. A copy of the crisis removal notice shall be mailed to the complex area superintendent. In addition to the crisis removal notice required by this subsection, the principal or designee shall attempt to confirm the notice by telephoning the parent.

(d) A student who is the subject of a crisis removal shall be permitted to resume attendance at school as soon as the crisis no longer exists.

(e) A crisis removal shall not continue for more than ten school days, except when approved by the complex area superintendent during an appeal. [Eff 9/1/82; am and ren §8-19-6, 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

§8-19-7.1 Investigation. (a) Immediately after making a crisis removal or whenever the principal or designee has reason to believe that a student has engaged in an activity warranting the imposition of a suspension, the principal or designee shall initiate a thorough investigation. Complaints of discrimination, harassment (including sexual harassment), bullying and/or retaliation are subject to the complaint and investigation provisions of section 8-19-30.

(b) When conducting an investigation, the principal or designee shall make a good faith effort at the earliest point possible to inform the parent about the school's investigation. If after making reasonable attempts, the principal or designee is unable to contact the parent, the school may engage in and complete the investigation. The investigation shall be completed as quickly as possible. If the principal or designee elects to initiate proceedings for the imposition of serious discipline other than crisis removal, the principal or designee upon completion of the investigation, shall make a written report containing a brief summary of the testimony of witnesses interviewed, any other evidence, and the principal or designee's reason(s) for the initiation of disciplinary proceedings.

(c) The principal or designee shall give to the parent notice of the findings against the student. If the student or parent denies the charge(s), the principal or designee shall indicate to the parent and the student the evidence to support the findings of the school official. The student or parent shall be given an opportunity to present the student's version of the incident. [Eff and comp 9/10/09; am and comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

§8-19-8 Suspension. (a) Whenever a principal or designee has reason to believe that a student has engaged in activity warranting the imposition of suspension, the principal or designee shall immediately conduct an investigation of the incident. Upon completion of the investigation and findings, the student may be suspended if the principal or designee finds that the findings are sustained. The principal or designee shall inform the parent in writing of the findings and the disciplinary actions.

(b) If the student or parent denies the charge(s), the principal or designee shall indicate to the student and parent what evidence school authorities have to support the findings of the school official. The student or parent, or both shall be given an opportunity to present the student's version of the incident. However, where the student is unable to understand the seriousness of the charges, the nature of the proceedings, and consequences thereof, or is of such age, intelligence or experience as to make meaningful discussion difficult, the principal or designee shall request that the parent be present to participate in the discussion.

(c) If the total number of days in any single semester for suspensions exceeds ten school days, the due process procedures of this chapter shall apply unless otherwise indicated by law.

(d) The parent shall be given verbal notice of any suspension regardless of its length. Prior notice for suspension shall be by telephone, if feasible, and the written notice personally delivered or mailed to the parent upon completion of the investigation. The suspension notice shall contain the following written statements:

(1) Allegations of the specific acts committed by the student that form the basis of the suspension;
(2) The allegations of the specific acts that were substantiated;
(3) A statement of the disciplinary action(s); and
(4) A statement of a conference date, time, and place offered by the

school administration to meet with the parent.
A copy of the notice shall be mailed to the complex area superintendent. In addition to the notice required by this subsection, the principal shall attempt to confirm the notice by telephoning the parent. [Eff 9/1/82; am and ren §8-19-7, 5/23/86; am and comp 7/19/93; comp 5/19/97; am and comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

§8-19-9 Due process for suspensions exceeding ten days, disciplinary transfer, and dismissal. (a) If, based upon the investigation, the principal or designee believes that a student engaged in an activity which constitutes a violation of this chapter, and if the principal or designee recommends that serious discipline other than crisis removal be imposed, the principal or designee shall immediately notify the complex area superintendent to initiate disciplinary proceedings by obtaining verbal authorization from the complex area superintendent.

(b) Upon obtaining verbal authorization from the complex area superintendent, the principal or the designee will make a good faith effort to inform the parent of:

(1) The serious discipline incident,
(2) The opportunity to appeal, and
(3) That the disciplinary action will be implemented immediately.

(c) Within three school days of the verbal authorization from the complex area superintendent, the principal or designee shall mail a written notice of the serious discipline incident with the appeal form to the parent. A facsimile signature of or an electronic approval confirmation of the complex area superintendent on the serious discipline incident form is sufficient. The written notice of serious discipline shall contain the following statements:

(1) Allegations of the specific acts committed by the student that form the basis of the serious discipline;
(2) The allegations of the specific acts that were substantiated;
(3) A statement of the disciplinary action(s); and
(4) A statement that the parent has a right to an appeal to the complex area superintendent at which time the parent may present evidence, call and cross-examine witnesses, and be represented by legal counsel and to the extent the parent provides a written notice of legal representation at least ten calendar days prior to the appeal.
(5) If the student or parent would like to file an appeal, the appeal must be submitted in writing and received by the complex area superintendent by the close of business of the seventh school day from the date of the issued serious discipline notice. The student shall be permitted to attend the school of the student pending the appeal unless the principal finds the continued presence of the student creates a substantial risk to self or others or to the rights of other students to pursue their education free from disruption. However, the student shall not participate in any extracurricular activities, including

but are not limited to athletics, trips, or clubs.

(d) Upon receipt of a written request for an appeal, the complex area superintendent shall, within ten school days, schedule an appeal and shall inform the parent of the date, time, and place. Written notice of the appeal shall be mailed to the parent and principal or designee at least fifteen calendar days before the appeal. The appeal shall be conducted by the complex area superintendent or by an impartial department person, or an impartial designee, who may be an official of the department, designated by the complex area superintendent. The appeal shall be conducted as follows:

(1) The appeal shall be closed unless the student or parent requests that it be public;

(2) Parent and principal or designee have the right to present evidence, cross-examine witnesses, and submit rebuttal testimony;

(3) Parent and principal or designee may be represented by legal counsel;

(4) The complex area superintendent or the impartial department designee need not follow the formal rules of evidence;

(5) The complex area superintendent or the impartial department designee shall impartially weigh the evidence presented;

(6) A parent, at the parent's own expense, may record or obtain a copy of the department's tape recording, or transcript of the department's tape recording of the proceedings only if requested for purposes of court review. The complex area superintendent or the impartial department designee shall record a transcript or tape recording of the proceedings;

(7) The complex area superintendent shall no later than seven school days from the close of the appeal render a decision in writing stating clearly the action(s) to be taken and the bases for such actions. The written decision shall be mailed or personally delivered to the parent, the student's attorney of record, and a copy to the school. If the disciplinary action is upheld, the complex area superintendent shall indicate the total number of suspension days and within the suspension beginning and ending dates take into consideration the number of suspension days the student may have already served.

(e) The parent may appeal the decision of the complex area superintendent by providing written notice of their appeal and a specific statement whether they are requesting a hearing to the superintendent of education or state level designee identifying the specific issues and arguments with supporting documents and evidence the individual is appealing. The written appeal shall be delivered to the superintendent of education or state level designee within seven school days of the date of the complex area superintendent's written decision. If no specific request is made for a hearing, the superintendent of education or state level designee shall render a decision based upon the entire record of the proceedings of the complex area superintendent and the parent submitted on the appeal. The superintendent of education or state level designee shall render a final written decision. The student shall be

permitted to attend the school of the student pending the appeal unless the complex area superintendent finds that the continued presence of the student creates a substantial risk to self or others or to the rights of other students to pursue their education free from disruption. Where the student is to be excluded from school pending the appeal, the superintendent of education or state level designee shall render a decision within twenty-one calendar days of the date of the receipt of the appeal.

(f) Upon written receipt of an appeal, from the parent or the parent's legal counsel, the written decision of the complex area superintendent and all documents and recordings from the proceeding provided for in subsection (d) of this section shall be forwarded to the superintendent of education or state level designee within ten calendar days. The superintendent of education or state level designee shall examine the evidence and render a decision based on the disciplinary action within fourteen calendar days. The decision shall be personally delivered or mailed to the parent or attorney of record. In addition, the parent shall be informed of the right to submit written exceptions to the decision and to present argument to the superintendent of education or state level designee. In the event that a parent should file written exceptions for the length of time of a firearms dismissal or modification based upon a designee's decision, the written exception will be heard by the superintendent of education or the state level designee. Written exceptions and the request to present argument to the superintendent of education or state level designee must be received within five calendar days of the date of the decision rendered by the superintendent of education, designee or state level designee. A parent may submit written exceptions and waive the right to present argument; however, there will be no right to present argument without first submitting written exceptions. If the parent has timely submitted written exceptions and requests the right to present the argument, the superintendent of education or state level designee shall, within two school days of receiving the request to present argument, inform the parent of the specific date, time, and place to present their arguments. The date for presentation of argument shall be no less than five calendar days and no more than fourteen calendar days from the date of the notice informing the parent of the specific date, time, and place to present their arguments. The superintendent of education or state level designee shall mail a written decision to the parent or the attorney of record within fourteen calendar days of the date of the presentation of the argument or in the case where the parent has waived the parent's right to present argument, within fourteen calendar days of the receipt of the parent's written exceptions. [Eff 9/1/82; am and ren §8-19-8, 5/23/86; am and comp 7/19/93; am and comp 5/19/97; am and comp 2/22/01; am and comp 9/10/09; am and comp NOV 17 2019] (Auth: HRS §302A- 1112) (Imp: HRS §302A-1112)

§8-19-10 Duration of disciplinary actions. (a) If the disciplinary action could not be imposed as result of the appeal process, the disciplinary action may be carried over to the next school year at any public school and does not include summer school.

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(b) If the acts, which resulted in disciplinary action, was committed within twenty days from the last instructional day for students in the school year the disciplinary action may be carried over to the next school year at any public school and does not include summer school.

(c) This section shall not apply to firearm violations. Disciplinary action for firearm violations is a mandatory not less than one calendar year.

(d) Other than as described in subsections (a) and (b), no disciplinary action shall continue beyond the school year in which the action was committed. [Eff 9/1/82; ren §8-19-9, 5/23/86; comp 7/19/93; am and comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1134)

§8-19-11 Alternate educational activities and other assistance when students are found to be in violation of this chapter. (a) The complex area superintendent shall ensure that alternate educational activities or active participation of the public or private agencies are provided as appropriate for all students who are crisis removed for a period exceeding ten school days or suspended for a period exceeding ten school days.

(b) For all students who are suspended for one to ten school days, the principal or designee may consider providing alternate educational activities based on student's need.

(c) The Hawaii administrative rules for students with disabilities shall apply for students eligible under this chapter. [Eff 9/12/82; am and ren §8-19-10, 5/23/86; comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: §302A-1112) (Imp: HRS §§302A-1112, 302A-1128)

SUBCHAPTER 3

STUDENT MISCONDUCT AND DISCIPLINE DURING SUMMER SCHOOL

§8-19-12 Disciplinary actions; authority. The summer school director or designee shall impose disciplinary action against any student attending summer school. [Eff 5/23/86; comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: HRS 302A-1112)

§8-19-13 Prohibited student conduct; class offenses. (a) The following prohibited conduct applies to all students in summer school during summer school hours, on campus, or other department premises, on department transportation, or during a department sponsored activity or event on or off school property.

(1) Class A offenses:
- (A) Assault;
- (B) Bullying (for students in grades 9-12);
- (C) Burglary;

(D) Cyberbullying (for students in grades 9-12);
(E) Dangerous instrument, or substance; possession or use of;
(F) Dangerous weapons; possession, or use of;
(G) Drug paraphernalia; possession, use, or sale of;
(H) Extortion;
(I) Fighting;
(J) Firearms; possession or use of;
(K) Harassment (for students in grades 9-12);
(L) Homicide;
(M) Illicit drugs; possession, use, or sale of;
(N) Intoxicating substances; possession, use, or sale of;
(O) Property damage or vandalism;
(P) Robbery;
(Q) Sexual assault;
(R) Sexual exploitation;
(S) Sexual harassment (for students in grades 5-12);
(T) Stalking; or
(U) Terroristic threatening.

(2) Class B offenses:
(A) Bullying (for students in grades K-8);
(B) Cyberbullying (for students in grades K-8);
(C) Discrimination;
(D) Disorderly conduct;
(E) False alarm;
(F) Forgery;
(G) Gambling;
(H) Harassment (for students in grades K-8);
(I) Hazing;
(J) Inappropriate or questionable uses, or both of internet materials or equipment, or both;
(K) Retaliation;
(L) Sexual harassment (for students in grades K-4);
(M) Theft; or
(N) Trespassing.

(3) Class C offenses:
(A) Abusive language;
(B) Class cutting;
(C) Insubordination;
(D) Laser pen/laser pointer; possession or use of;
(E) Leaving campus without consent;
(F) Smoking or use of tobacco substances; or
(G) Truancy.

(4) Class D offenses:
(A) Contraband; possession or use of;
(B) Minor problem behaviors; or
(C) Other school rules.

(b) Class C and D offenses: A summer school student who commits two of any class C or D offense as defined in section 8-19-6 in the course of summer school shall receive a warning for the first offense and may be released from summer school for the second offense.

(c) Any student who commits a class A or class B offense shall be dismissed from summer school. The summer school director or designee shall notify and meet with the student and parent prior to dismissal from summer school. The summer school director shall file a report with the complex area superintendent and shall provide a copy to the parent.

(d) A summer school director or designee, in an emergency, may impose a crisis removal of a student immediately after finding that the student's conduct presents an immediate clear threat to the physical safety of self or others or is so extremely disruptive as to make the student's immediate removal necessary to preserve the right of other students to pursue an education free from undue disruption. The summer school director or designee shall inform and meet with the student and parent prior to the student's reinstatement in summer school. No student shall be reinstated without the meeting. The summer school director or designee shall file a report with the complex area superintendent and shall provide a copy to the parent. [Eff 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; am and comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

SUBCHAPTER 4

SCHOOL SEARCHES AND SEIZURES

§8-19-14 Policy on opening and inspection of student lockers. School lockers provided to the students on campus are subject to opening and inspection (and external dog sniffs) by school officials at any time with or without cause, provided that the searches are not because of the student's race, color, national origin, ancestry, sex, gender identity and expression, religion, disability, or sexual orientation. Section 8-19-15 shall have no applicability to the opening and inspection (and external dog sniffs) of student lockers. None of the restrictions in sections 8-19-15 through 8-19-18 or related to general school searches and seizures shall in any way be construed to create an expectation of privacy in student lockers. Students should assume that their lockers are subject to opening and inspection (and external dog sniffs) any time with or without cause. [Eff 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112)]

§8-19-15 Policy on general school searches and seizures. Except as provided in section 8-19-14 regarding student lockers, students have a reasonable expectation of privacy in their persons on campus, or other department premises, on department transportation, or during a department

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sponsored activity or event on or off school property. Schools have an equally legitimate need to maintain order and an environment where learning can take place. In fulfilling this legitimate need, school officials may on occasions need to carry out searches and seizures on campus, or other department premises, on department transportation, or during a department sponsored activity or event on or off school property. As a general policy, except as provided in section 8-19-14 regarding student lockers, the searches and seizures are permissible if there are reasonable grounds to suspect, based on the attendant circumstances that the search will turn up evidence that the student or students have violated or are violating either the law or the student conduct prohibited under this chapter. Searches and seizures conducted by school officials shall abide by the provisions of this subchapter. [Eff 5/23/86; comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; am and comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112)]

§8-19-16 Authority. Except as provided in section 8-19-14 regarding student lockers, property may be searched if there are reasonable grounds to suspect, based on the attendant circumstances that the search will turn up evidence that student or students, or others on campus, or other department premises, on department transportation, or during a department sponsored activity or event on or off school property have violated the law or the provisions of this chapter. A school official conducting a search shall be accompanied by another school official serving as a witness, unless it is an emergency where prompt action is necessary to protect the health or safety, or both of any person or persons. [Eff 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; am and comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112)

§8-19-17 Conditions under which general school searches and seizures may be carried out. (a) Except as provided in section 8-19-14 regarding student lockers searches and seizures may be carried out by school officials when all of the following conditions are met:

(1) If at the time of the search, there are reasonable grounds to suspect based on the attendant circumstances that the search will turn up evidence that the student or students have violated the law or provisions prohibited under this chapter.

(2) The manner in which the search is to be conducted is reasonably related to the purpose of the search.

(3) The student who will be subjected to a search shall be informed of the purpose of the search and shall be given an opportunity to voluntarily relinquish the evidence sought by the school official.

(b) The principal or designee of the school shall be informed by the school official who will conduct the search that a search is to be conducted and of the purpose of the search unless it is an emergency where immediate action is necessary to protect the health or safety, or both of a person or persons.

(c) If more than one student is suspected of committing a violation, then, if practical and not a risk to health or safety, the school official conducting the search shall start with the student most suspected of having the item sought in the search. [Eff 5/23/86; am and comp 7/19/93; am and comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp **NOV 17 2019**] (Auth: HRS §§302A-1112, 703-309(2)) (Imp: Hawaii Const. Art. X, §3, HRS §§302A-1101, 302A-1112, 703-309(2))

§8-19-18 Prohibited searches and seizures. Except as provided in section 8-19-14 regarding student lockers:

(1) Random searches are prohibited.
(2) Strip searches are prohibited.
(3) A school official shall not conduct a search requiring bodily contact of a student except when such a search is necessary to prevent harm to the health or safety, or both of a person or persons.
(4) In the course of a search, the use of force against a student is prohibited unless the school official believes that the force to be used is necessary to prevent harm to the health or safety, or both of a person or persons or where the student physically resists the search.
(5) A search conducted under the provisions of this subchapter shall be limited to the object or objects for which the search was conducted. However, any other object observed during a search may be seized by a school official when possession of the object is a violation of law or the provisions of this chapter, or when non-seizure may pose a threat to the health or safety, or both of a person or persons, including the school official conducting the search. [Eff 5/23/86; comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp **NOV 17 2019**] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112)

SUBCHAPTER 5

REPORTING OFFENSES

§8-19-19 Reporting class A and class B offenses occurring in school. (a) Any teacher, official, or other employee of the department who is a witness to a class A or class B offense as defined in this chapter, or who has reasonable cause to believe that a class A or class B offense has been committed or will be committed, against a student, teacher, official, or other employee of the department, or involving school property, shall promptly report the incident to the principal or designee. Nothing in this subsection shall be construed to prohibit or prevent a teacher, official, or other employee of the department from reporting class C or class D offenses to the principal or designee.

(b) Upon receiving a class A or class B offense report, the principal or

designee shall conduct an investigation to determine whether the behavior requires a direct call to the police or whether the behavior can be handled through school disciplinary procedures. The principal or designee shall call the police whenever there is perceived danger and the behavior cannot be handled by the school staff.

(c) The principal or designee shall record the incident information into the department's electronic database system within five school days of the reported offense.

(d) The principal or designee shall notify the reporting teacher, official, or other employee, of the disciplinary action, if any, taken on the class offense(s) within five school days after the incident is reported in accordance with subsection (c).

[Eff 9/1/82; am and ren §8-19-11, 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; am and comp NOV 17 2019] (Auth: HRS §§302A-1112, 302A-1002) (Imp: HRS §§302A-1112, 302A-1002)

§8-19-20 Indemnity upon reporting offenses. Any teacher, official, or other employee of the department who in good faith reports as required under §8-19-19 shall be indemnified and held harmless in accordance with section 302A-1003, Hawaii Revised Statutes. [Eff 9/1/82; am and ren §8-19-12, 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: HRS §§302A-1112, 302A-1003) (Imp: HRS §302A-1112, 302A-1003)

§8-19-21 Failure to report class A or class B offenses occurring in school; consequences. (a) The superintendent of education shall furnish an annual written notice to all schools and offices that failure to report class A or class B offenses occurring on campus, or other department premises, on department transportation, or during a department sponsored activity or event on or off school property may result in disciplinary actions against responsible teachers, officials, or other employees of the department. Disciplinary actions may include:

(1) Oral warning;
(2) Written warning;
(3) Suspension without pay;
(4) Demotion; or
(5) Dismissal.

(b) Teachers, officials, or other employees of the department who fail to report offenses as required by section 8-19-19 may be disciplined in accordance with the regulations and procedures of the department.

(c) Any teacher, official, or other employee of the department who is disciplined for failure to report class A or class B offenses occurring on campus, or other department premises, on department transportation, or during a department sponsored event on or off property shall have the right to appeal the disciplinary action as provided by state law or the regulations and procedures of the department or applicable collective bargaining agreements. [Eff 9/1/82; am

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and ren §8-19-13, 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; am and comp NOV 17 2019] (Auth: HRS §§302A-1112, 302A-1002) (Imp: HRS §§302A-1112, 302A-1002)

SUBCHAPTER 6

POLICE INTERVIEWS AND ARRESTS

§8-19-22 Police interviews in school for school-related offenses. (a) Police officers may appear at a school to question a student. Upon arrival at the school, the police officer shall be directed to the principal or designee to request permission to interview a student. If permission to interview a student is to be granted, the principal or designee shall make an effort to inform the parent of the police interview and the right to be present when the interview is conducted. The interview may be conducted if the principal or designee is unable to inform the parent or if the parent is informed and declines to be present, or if after a reasonable period of time after the notice is given the parent fails to appear at school for the police interview.

(b) The principal or designee shall be present during a police interview unless excluded by the police officer.

(c) If a student is arrested, the principal or designee shall follow the procedures prescribed in section 8-19-24. [Eff 9/1/82; am and ren §8- 19-14, 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112)

§8-19-23 Police interviews in school for non-school-related offenses. (a) Police officers shall contact the school and advise the principal or designee of the nature and circumstances of the visit. Upon arrival at the school, the police officer shall be directed to the principal or designee to request permission to interview a student.

(b) Prior to any interview, the principal or designee shall inform the parent of the right to be present while the police interview is conducted. The interview can take place upon obtaining verbal consent from the parent. The notification and consent requirements of this subsection shall not be followed if the nature of the interview involves child abuse or other offenses where a parent or household member is suspected of committing an offense against the student.

(c) The principal or designee shall keep a log and record the student's name, the date of the police interview, and the police officer's name and badge number and police report number if available.

(d) If the student is arrested by the police, the principal or designee shall follow the procedure prescribed in section 8-19-24. [Eff 9/1/82; am and ren §8-19-15, 5/23/86; am and comp 7/19/93; am and comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: HRS §302A- 1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112)

§8-19-24 Police arrests in school. Police shall be directed to the principal or designee. Whenever possible the student shall be sent to the principal's office for the police officer to effect the pending arrest. Upon police arrival to arrest a student, the principal or designee shall make a good faith effort to inform the parent. [Eff 9/1/82; am and ren §8-19-16, 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112)

SUBCHAPTER 7

RESTITUTION FOR VANDALISM

§8-19-25 Liability for vandalism. (a) When any student is found to be responsible for an act of vandalism against any public school building, facility, or ground, restitution shall be made by the student or parent. There shall be no restitution when vandalism cannot be proved to have been committed by the student.

(b) Notwithstanding the provisions of this chapter, the State may elect to bring any appropriate action for the recovery of damages to school properties.

(c) If a student is to be disciplined for an act of vandalism under this chapter, restitution procedures shall be initiated only after the disciplinary procedures of this chapter have been completed and the principal or designee conducting the investigation has reason to believe that the student has violated the provisions of this chapter. [Eff 5/23/86; comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1153)

§8-19-26 Procedures applicable to vandalism. (a) Whenever a principal or designee has reason to believe that a student may be responsible for an act of vandalism against any public school building, facility or ground, the principal or designee shall immediately initiate an investigation.

(b) If the vandalism is an act which subjects the student to disciplinary action under this chapter, the principal or designee shall include as part of the investigation required under sections 8-19-7, 8-19-8, 8-19-9, and 8-19-10, a determination of the facts and circumstances that support restitution under this subchapter. Further action related to restitution shall be held in abeyance until disciplinary action has been determined and appeal procedures have been exhausted.

(c) If after the investigation, the principal or designee has reason to believe that a student is responsible for the vandalism, the principal or designee shall schedule a conference with the student and parent. Attendance at the conference shall be limited to the principal or designee, student, and parent.

(d) Advance written notice of the conference shall be made on

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departmental forms, which shall be delivered by mail to the parent. No student or parent shall be required to make restitution in any manner unless the parent has been notified and has been given an opportunity to be heard. The notice shall inform the parent of the findings and the date, time, and location of the conference. The notice shall be mailed at least fifteen calendar days before the date of the conference. When necessary to achieve effective communication the notice shall be provided in the native language of the parent. The school may use other means of communication, such as the telephone, to augment the written communication between the school and the parent.

(1) The parent shall respond to the notice within seven calendar days from the date of the notice.

(2) The conference date provided for in the notice may be rescheduled if the parent of the student contacts the school to arrange for a new conference date. The request to reschedule the conference shall be made within seven calendar days of the date of the notice.

(3) The conference and an informal settlement may be agreed upon in cases where damages do not exceed $3,500. If a settlement is reached, a written agreement for restitution shall be executed between the parent and school. A written agreement shall be executed only if the damages do not exceed $3,500.

(e) If a parent fails to respond to the notice within the time limit, the principal or designee may:

(1) Reschedule the conference date if the principal or designee determines that the failure to respond was for good cause or if it is in the best interest of the school or student; or

(2) Inform the parent in writing that a notice was given for an opportunity to be heard at a conference with the principal or designee, and because of the failure to respond to the notice, the matter shall be referred to the complex area superintendent by the principal or designee for further action.

(f) The conference shall be conducted in the following manner:

(1) The parties present at the conference shall be the principal or designee, student, and parent. Except for the principal or designee of the school in which the vandalism occurred, the student, and the parent, no other person shall be permitted to be present at the conference for any reason.

(2) At the conference, the principal or designee of the school in which the vandalism occurred shall present the findings of the investigation and the restitution requirements.

(3) If the student and the parent agree with the amount and manner in which restitution is to be made, the principal or designee, the student and the parent shall execute a written agreement on departmental forms which shall specify the manner in which restitution is to be made and the time period within which the restitution shall be completed, provided that the damages do not exceed $3,500. Restitution may be made in any manner, including monetary

restitution by the student and parent. If damages exceed $3,500, the matter shall be referred to the complex area superintendent who shall refer the matter to the attorney general for further action.

(4) When the restitution is completed, all records and documents regarding the investigation and conference shall be maintained at the school for three years. No information about the investigation, conference and the actions taken shall be communicated to any person not directly involved in the proceedings.

(5) If a written agreement is executed and the parent or student fails to comply with the terms of the agreement, the principal or designee may forward the matter to the complex area superintendent. The complex area superintendent shall review the matter and take appropriate action, which may include referral to the attorney general for further action.

(6) If the student and the parent do not agree with the findings made by the principal or designee, the principal or designee shall transmit all the records and documents regarding the investigation and conference, and shall report the findings and circumstances of the matter to the complex area superintendent who shall review the matter and take appropriate action which may include referral of the matter to the attorney general for further action. If damages exceed $3,500, the matter shall be referred to the attorney general for further action. [Eff 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp 9/10/09; comp NOV 17 2019] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1153)

§8-19-27 REPEALED [R 2/22/01]

§8-19-28 REPEALED [R 2/22/01]

§8-19-29 REPEALED [R 2/22/01]

SUBCHAPTER 8

COMPLAINTS PROCEDURE AND INVESTIGATION OF DISCRIMINATION, HARASSMENT (INCLUDING SEXUAL HARASSMENT), BULLYING AND/OR RETALIATION

§8-19-30 Complaint procedure. (a) The department will take immediate and appropriate steps to stop any discrimination, harassment (including sexual harassment), or bullying against a student, including those based on a protected class as defined in section 8-19-2, to prevent its recurrence and to remedy discriminatory effects on the complainant/victim or others, if appropriate.

(b) Complaints regarding inappropriate behavior or stemming from

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allegations that fall under this chapter may be filed at any time by:

(1) Students who experience discrimination, harassment (including sexual harassment), bullying, or retaliation;

(2) Students who witness discrimination, harassment (including sexual harassment), bullying, or retaliation against another student;

(3) Parents, legal guardians, educational representatives, or individuals with a power of attorney who know about or witness discrimination, harassment (including sexual harassment), bullying, or retaliation against a student; or

(4) Employees, staff, or volunteers who witness or know about discrimination, harassment (including sexual harassment), bullying, or retaliation against a student.

(c) Complaints alleging violations of this chapter may be made using the Department of Education Hawaii Administrative Rules Title 8, Chapter 19 Complaint Form, and the complaint may be filed at any time. Individuals who do not have access to or prefer not to use the Department of Education Hawaii Administrative Rules Title 8, Chapter 19 Complaint Form may nonetheless make a complaint, either in writing or orally, by providing the following information:

(1) The name of the respondent or a sufficient description of the respondent so that an identity can be determined;

(2) The date(s) when the alleged discrimination, harassment (including sexual harassment), bullying, or retaliation allegedly occurred;

(3) A factual description of how the discrimination, harassment (including sexual harassment), bullying, or retaliation allegedly occurred and the protected basis of the complaint, if any;

(4) A description of the injury or harm, if any; and

(5) Attachments, if any, documenting the alleged conduct.

(d) Written complaints may be given to any teacher or staff, principal, vice-principal, complex area superintendent, or the Civil Rights Compliance Branch. Verbal complaints may be made either in person or over the phone to any teacher or staff, principal, vice-principal, complex area superintendent, or the Civil Rights Compliance Branch.

(e) The principal or designee or complex area superintendent, in consultation with the Civil Rights Compliance Branch, will assess the complaint to determine if the factual allegations allege actionable discrimination, harassment (including sexual harassment), bullying, or retaliation. Complaints that do not fall under the subchapter will be referred to the appropriate office or administrator for review.

(f) When a complaint is filed, the principal or designee will either:

(1) Immediately initiate an investigation pursuant to section 8-19-31; or

(2) If deemed appropriate, offer the parties an opportunity to resolve the complaint informally before any formal investigation process begins. This informal process will only be used if the parties voluntarily agree to participate. The parties are not required to resolve the complaint directly with each other. Once the informal process is initiated, either party has the right to end the informal process at any time, which will result in starting the formal investigative

process.

Informal resolution is not appropriate in cases where:

(1) the allegation is serious enough that it appears to place the complainant/victim or any other person at physical risk;

(2) the incident has resulted in a criminal charge;

(3) the incident involves a referral to the police or Child Welfare Services;

(4) the complaint involves an allegation of severe, persistent or pervasive bullying or other serious form of discrimination;

(5) there is a pending investigation against the respondent;

(6) there is an objective and obvious power imbalance between the parties; or

(7) an investigation is otherwise appropriate under the circumstances.

If informal resolution is not appropriate, or if the parties are unable to come to a resolution, an investigation will be initiated by the principal or designee in accordance with section 8-19-31.

(g) Both parties may make a request for immediate interventions to the principal, any vice principal, the complex area superintendent, or the Civil Rights Compliance Branch. The principal or designee may institute immediate interventions without a request, if they deem them appropriate. Immediate interventions will be considered by the principal or designee, in consultation with the Civil Rights Compliance Branch, and if it is determined that immediate interventions are necessary, the principal or designee will implement the immediate interventions. The Civil Rights Compliance Branch will ensure that such immediate interventions are taken. Failure to comply with the terms of immediate interventions may be considered a separate violation, which may result in a separate investigation, findings, and determination. [Eff NOV 17 2019] Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 5 U.S.C. §301, 42 U.S.C. §2000d et seq., 34 C.F.R. §100.9; 34 C.F.R. §101.11)

§8-19-31 Investigation. (a) When a complaint is made, the principal or designee will assign an impartial school level investigator ("investigator") to conduct a thorough and impartial investigation. Once an investigation is initiated, the principal or designee shall make a good faith effort at the earliest point possible to inform the parents about the investigation. If after making reasonable attempts, the principal or designee is unable to contact the parent, the investigator may engage in and complete the investigation.

The complainant/victim and respondent will be allowed to provide the names of witnesses who they believe have information relevant to the complaint and provide evidence that they believe is relevant to the complaint.

(b) Once the investigator has obtained the necessary relevant information and documents, the investigator will analyze and document the available evidence, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence, including inculpatory and exculpatory evidence, and take into account the unique and complex circumstances of each case. Once that is complete, the investigator will prepare findings of fact and make a determination on any appropriate action that needs to be taken to end any discrimination,

harassment, bullying, or retaliation and prevent its recurrence and remedy its effects on the complainant/victim and the department community. The investigator will forward their findings to the principal or designee, who will determine whether the facts constitute prohibited student conduct under either section 8-19-6(a) or 8-19-13(a). Any disciplinary actions taken will be subject to the provisions of sections 8-19-5 through 8-19-13, as applicable, including the right to appeal.

(c) At the conclusion of the investigation, the principal or designee, in consultation with the Civil Rights Compliance Branch, shall determine whether any remedies will be provided to any individual involved in the investigation. If it is determined that remedies will be provided, the principal or designee will implement the remedies. The complainant/victim will be provided written notification of whether the allegations have been substantiated, the outcome of the investigation, any remedies provided, and any other actions taken by the department that directly relate to the complainant/victim. The respondent will be provided written notification of whether the allegations have been substantiated, the outcome of the investigation, any remedies provided, and any other actions taken by the department that directly relate to the respondent.

(d) The investigator will seek to complete the investigation within five school days from the date the investigator was assigned the matter. If the investigation takes longer than five days, the investigator will notify the parties in writing of the delay, provide reasons for the delay, and the length of additional time needed to complete the investigation. [Eff NOV 17 2019] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 5 U.S. C. §301, 42 U.S.C. §2000d et seq., 34 C.F.R. §100.9; 34 C.F.R. §101.11)

§8-19-32 Continued investigation. The department will investigate allegations of violations of this subchapter even absent a filing of a formal complaint or if a complaint has been withdrawn. [Eff NOV 17 2019] (Auth: HRS §302A-1112)

§8-19-33 Language assistance, writing assistance, or reasonable accommodation. Any individual making a complaint or participating in an investigation that requires language assistance or writing assistance shall be afforded such assistance by the department. Any individuals with disabilities who require reasonable accommodation(s) to make a complaint or participate in an investigation shall be afforded such assistance by the department. [Eff NOV 17 2019] (Auth: HRS §302A-1112)

§8-19-34 Retaliation prohibited. Retaliation and retaliatory harassment is prohibited against any person because the person engaged in a protected activity.
[Eff NOV 17 2019] (Auth: HRS §302A-1112)

§8-19-35 Right to seek other relief. Nothing in this chapter shall be construed to limit or waive the right of the complainant/victim to seek other relief

as provided under federal and state laws. A complainant/victim has the right to file a discrimination complaint with the federal or state government, including law enforcement agencies:

(1) Without filing a complaint under this chapter;
(2) At the same time a complaint is filed or an incident is reported under this chapter;
(3) At any time during the pendency of a complaint filed or an incident reported under this chapter; or
(4) After a complaint filed or incident reported under this chapter has been addressed." [Eff NOV 17 2019] (Auth: HRS §302A-1112)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 8-19, Hawaii Administrative Rules, shall take effect ten days after filing with the office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on and filed with the Office of the Lieutenant Governor.

CATHERINE PAYNE, Chairperson
Board of Education

APPROVED AS TO FORM

Deputy Attorney General

David Y. Ige
Governor
State of Hawaii

Dated: 11-07-2019

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LIEUTENANT GOVERNOR'S OFFICE

Filed

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STATE OF HAWAI'I
DEPARTMENT OF EDUCATION

DEPARTMENT OF EDUCATION
HAWAI'I ADMINISTRATIVE RULES
TITLE 8, CHAPTER 19

COMPLAINT FORM

COMPLAINANT INFORMATION

Last Name	First Name	Middle Name	
Number and Street	City	State	Zip
Home Phone ( )	Work Phone ( )		
School/Office	Complex Area		

ALLEGED VICTIM(S)

Name	Address	Phone Number
Name	Address	Phone Number

COMPLAINANT STATUS (Check Applicable Box)

❑ Student ❑ Parent ❑ Legal Guardian ❑ Staff ❑ Other (Specify) _____

ALLEGED STUDENT OFFENDER(S) (If Known)

Name	Grade	School
Name	Grade	School
Name	Grade	School

BASIS OF COMPLAINT (Check Applicable Box)

❑ Discrimination ❑ Harassment (including Sexual Harassment) ❑ Retaliation ❑ Bullying

Date(s) of Incidents ____/____/____ ____/____/____ ____/____/____

COMPLAINT SUMMARY (Identify: Who, What, When, and Where)

(Additional pages and attachments may be submitted with this complaint form.)

WITNESS INFORMATION (Provide Names of Witnesses)

Name	❑ Student ❑ Adult	Address/Organization	Phone
Name	❑ Student ❑ Adult	Address/Organization	Phone
Name	❑ Student ❑ Adult	Address/Organization	Phone

Statement: The information provided above is truthful and correct to the best of my knowledge.

_____ ____/____/____
Complainant's Signature Date

Received by:

_____ ____/____/____
Principal or Designee Date

Principal or Designee:
Date Received By

In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require reasonable accommodations due to a disability, please contact a supervisor, principal, complex area superintendent, or assistant superintendent.

RS 20-0759, December 2019 (Rev. of RS 20-0638)