

JAN 17 2020

A BILL FOR AN ACT

RELATING TO DISCIPLINARY ACTIONS IN PUBLIC SCHOOLS.

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

1 SECTION 1. The legislature finds that there is significant
2 public benefit to ensuring that all students have access to a
3 quality education in a welcoming learning environment. This
4 access leads to higher levels of academic achievement; reduced
5 rates of homelessness, crime, and substance abuse; and better
6 overall social, economic, and physical well-being.

7 The legislature also finds that the disciplinary practice
8 of excluding children, particularly those children that belong
9 to a protected class, from time, resources, and activities at
10 school has a detrimental public impact. Exclusionary school
11 discipline policies, including suspensions, expulsions, and
12 school-based arrests, contribute to the school-to-prison
13 pipeline, a national trend that occurs when students are
14 funneled out of the public school system into the juvenile and
15 adult criminal justice systems. Students who experience
16 exclusionary discipline are more likely to have continued



1 contact with the criminal justice system and less successful
2 outcomes later in life.

3 The legislature also finds that among the many possible
4 disciplinary interventions and consequences available to school
5 officials, exclusions from school, including out-of-school
6 suspension and in-school suspension, are the most serious.
7 Exclusionary school policies can lead to increased rates of
8 disengagement and drop-out in addition to poorer academic and
9 school climate outcomes from schools.

10 The legislature finds that it cannot reconcile the State's
11 compulsory attendance requirements with laws that permit
12 students to be excluded from school activities, often for minor
13 behavioral infractions. The legislature further finds that to
14 the extent practicable, school officials should limit the number
15 and duration of expulsions and suspensions, using them only for
16 legitimate educational purposes. To ensure that students are
17 not excluded from school unnecessarily, the legislature finds
18 that school officials should consider forms of non-exclusionary
19 discipline prior to imposing an out-of-school or in-school
20 suspension.



1 The legislature also finds that research indicates that
2 both students and schools benefit from providing positive
3 supports to students when teaching the social, emotional, and
4 behavioral skills necessary for learning. Early experiences in
5 school, including establishing positive associations with school
6 and building productive relationships with teachers and peers,
7 have a dramatic impact on a child's future success. The
8 practice of imposing out-of-school or in-school suspension on a
9 young child may have profound and negative consequences at a
10 critical developmental stage. Therefore, the legislature finds
11 that implementing inclusionary, rather than exclusionary,
12 discipline practices will result in greater long-term success
13 for the child.

14 The legislature further finds that an estimated thirty
15 states have established a public reporting mechanism for
16 exclusionary discipline, and roughly thirty-seven states cap or
17 eliminate suspensions entirely. The legislature finds that
18 Hawaii would benefit by building upon local and national models
19 to reduce the use of suspensions as a disciplinary tool and
20 eliminate inconsistencies and disparities in the discipline of
21 students. In particular, curbing the disparate application of



1 exclusionary school discipline policies on students based on
2 actual or perceived race, color, religion, age, creed,
3 ethnicity, national origin, alienage, citizenship status,
4 immigration status, disability by an individualized education
5 program or 504 plan, age, sexual orientation, sex, gender,
6 gender identity, gender expression, English language learner
7 status, or weight will help dismantle systemic disparities and
8 lead to a more equitable education system.

9 Accordingly, the purpose of this Act is to:

- 10 (1) Require the department of education to track and
11 publish data regarding all instances in which
12 exclusionary discipline procedures were used,
13 disaggregated by student subgroup;
- 14 (2) Eliminate the use of out-of-school suspensions for
15 students in prekindergarten through grade five; and
- 16 (3) Cap the use of out-of-school and in-school suspensions
17 for students in grades six through twelve.

18 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is
19 amended by adding a new section to part IV, subpart C, to be
20 appropriately designated and to read as follows:



1 "§302A- School discipline data reporting. (a) The
2 board of education and the legislature shall review annually
3 the:

4 (1) Data concerning the number of students who were
5 excluded from school during the previous school year
6 pursuant to section 302A-1134;

7 (2) Type of exclusion from school, including the duration
8 of the exclusion;

9 (3) Reason or rationale for each exclusion from school;

10 (4) Specific school from which each student was excluded;
11 and

12 (5) Age, grade, gender, English language learner status,
13 race, national origin, or disability status of each
14 student excluded from school; provided that disability
15 status shall mean disability status as designated by
16 an individualized education program developed pursuant
17 to part B of the Individuals with Disabilities
18 Education Act, P.L. 101-476, or a 504 plan made
19 pursuant to the United States Rehabilitation Act of
20 1973, title 29 United States Code section 701 et seq.



1 The board of education shall make this data public in an annual
2 report, reporting the data required by this section when the
3 number of students in a particular data subgroup is greater than
4 five and redacting when the number of students in a particular
5 data subgroup is five or less; provided that the personally
6 identifiable information of each student shall be kept private.

7 (b) The superintendent, or the superintendent's designee,
8 shall review annually the discipline data collected pursuant to
9 this section and section 302A-1134, to determine whether the
10 discipline imposed has a disproportionate impact on students
11 based on race, ethnicity, national origin, gender, English
12 language learner status, or disability status, provided that
13 disability status shall mean disability status as designated by
14 an individualized education program developed pursuant to part B
15 of the Individuals with Disabilities Education Act, P.L.
16 101-476, or a 504 plan made pursuant to the United States
17 Rehabilitation Act of 1973, title 29 United States Code section
18 701 et seq. If the superintendent or the superintendent's
19 designee determines that the discipline data collected indicates
20 a disparity, the superintendent or complex area superintendent
21 shall respond appropriately to address the disparity. In



1 addition to the data submitted, the department must submit an
 2 annual report to the board describing what action, if any, the
 3 superintendent, complex area superintendent, principal, or any
 4 designee has taken to address the disparity. If no disparity is
 5 found for a particular school or complex area, the report shall
 6 include a statement to that effect. Any report made pursuant to
 7 this section shall be deemed to be a public record."

8 SECTION 3. Section 302A-1134, Hawaii Revised Statutes, is
 9 amended to read as follows:

10 "**§302A-1134 Exclusion from school.** (a) If [~~for any~~
 11 ~~reason a child becomes a detriment to the morals or discipline~~
 12 ~~of any school,]~~ the principal of a school determines that a
 13 student in grades six through twelve has engaged in conduct
 14 that:

15 (1) Involves the possession of a dangerous weapon without
 16 prior authorization by the principal; or

17 (2) Seriously endangers the health or safety of others,
 18 while on school grounds, in a school vehicle, or at a school
 19 program, activity, or function that is established, sanctioned,
 20 or approved by the school, and it is determined that the student
 21 poses a safety threat that cannot be addressed by means other



1 than exclusion from school, the child may be precluded from
2 attending school for up to three school days by the principal,
3 with the approval of the complex area superintendent[-];
4 provided that no student in prekindergarten through grade five
5 shall be precluded from attending school for disciplinary
6 reasons. The principal and complex area superintendent shall
7 exhaust alternative behavioral and disciplinary interventions
8 before excluding the student from school. The department shall
9 seek the active participation of other public and private
10 agencies in providing help to these children before and after
11 they have left school. [~~An appeal may be taken on behalf of the~~
12 ~~child to the superintendent of education within ten days from~~
13 ~~the date of such action.~~]

14 (b) If the complex area superintendent, upon
15 recommendation by the principal, determines that a longer period
16 of exclusion from school is necessary to resolve a safety threat
17 posed by a student under subsection (a), the complex area
18 superintendent shall submit to the superintendent:

- 19 (1) The reason that an extended exclusion from school is
20 the appropriate disciplinary action;
21 (2) The duration of the extended exclusion from school;



1 (3) The reason why an extended number of days is
2 necessary; and
3 (4) Any steps taken to mitigate any academic impact of
4 exclusion from school for an extended period;
5 provided that the period of suspension shall not exceed seven
6 days. If a child is excluded from attending school for five or
7 more school days, the superintendent shall ensure that
8 substitute educational activities or other appropriate
9 assistance shall be provided.

10 (c) If the department elects to expel a child, the
11 department shall submit a written expulsion decision to the
12 board of education. A copy of the written expulsion decision
13 shall be delivered contemporaneously by the department to the
14 parent or legal guardian of the child. A written expulsion
15 decision shall include:

16 (1) Each specific reason that removing a child from the
17 learning environment is in the best interest of the
18 school; and
19 (2) A detailed rationale as to the specific duration of
20 the expulsion.



1 An expelled child shall be immediately transferred to an
2 alternative education setting. For purposes of this section,
3 expulsion means permanent exclusion from school for eight or
4 more days.

5 (d) An appeal may be taken to the superintendent of
6 education on behalf of any child that is excluded from school
7 pursuant to this section, provided that an appeal shall be
8 submitted within seven school days from the date of the action.
9 An appeal may be initiated by a parent, legal guardian, or
10 department-assigned representative of the child. A parent or
11 legal guardian of the child shall be notified in writing that
12 they may opt out of an appeal; provided that this notice shall
13 be given contemporaneously with notice of exclusion from school.

14 ~~(b)~~ (e) Any child who, while attending school, is found
15 to be in possession of a firearm, shall be excluded from
16 attending school for not less than one year. The due process
17 procedures of chapter 19 of the Department of Education, Hawaii
18 Administrative Rules, shall apply to any child who, while
19 attending school, is alleged to be in possession of a firearm.
20 The superintendent^[7] shall consider each case and, on a case-
21 by-case basis, may modify the exclusion of a child found to be



1 in possession of a firearm while attending school. If a child
2 is excluded from attending school[7] for five or more school
3 days, the superintendent shall ensure that substitute
4 educational activities or other appropriate assistance shall be
5 provided. The superintendent shall submit to the United States
6 Department of Education, the state board of education, and the
7 legislature an annual report indicating the number of students
8 excluded, the types of firearms found in their possession, and
9 the schools from which they were excluded.

10 [4e] (f) Unless otherwise required by the Individuals
11 with Disabilities Education Act, 20 U.S.C. 1400, et seq., no
12 person who is twenty years of age or over on the first
13 instructional day of the school year shall be eligible to attend
14 a public school; provided that if a person reaches twenty years
15 of age after the first instructional day of the school year, the
16 person shall be eligible to attend public school for the full
17 school year.

18 (g) The department shall submit an annual report to the
19 board of education and the legislature that includes data
20 related to every school exclusion made pursuant to this section,
21 including the:



- 1 (1) Number of students who are excluded from school
2 pursuant to this section;
- 3 (2) Reason or rationale for each exclusion from school
4 made pursuant to this section;
- 5 (3) The school from which each student was excluded; and
- 6 (4) Age, grade, gender, English language learner status,
7 race, national origin, or disability status of each
8 student excluded from school; provided that disability
9 status shall include disability status as designated
10 by an individualized education program developed
11 pursuant to part B of the Individuals with
12 Disabilities Education Act, P.L. 101-476, or a 504
13 plan made pursuant to the United States Rehabilitation
14 Act of 1973, title 29 United States Code section 701
15 et seq.
- 16 (h) For purposes of this section "dangerous weapon" means
17 a dirk, dagger, butterfly knife, blackjack, slug shot, billy,
18 metal knuckles, or other instrument whose sole design and
19 purpose is to inflict bodily injury or death; provided that
20 firearms are excluded from this definition.



1 (i) The board of education shall adopt rules in accordance
2 with chapter 91 to implement this section."

3 SECTION 4. Section 302A-1134.6, Hawaii Revised Statutes,
4 is amended to read as follows:

5 "**§302A-1134.6 [Zero tolerance] Out-of-school and in-school**
6 **suspension policy.** [~~(a) Any child who possesses, sells, or~~
7 ~~uses a dangerous weapon or switchblade knife, while attending~~
8 ~~school or while attending department supervised activities held~~
9 ~~on or off school property, may be excluded from attending school~~
10 ~~for up to ninety two school days, as determined by the principal~~
11 ~~and approved by the superintendent or other individuals~~
12 ~~designated pursuant to rules adopted by the board.~~

13 ~~(b) Except as provided in subsection (f), any child who~~
14 ~~possesses, sells, consumes, or uses intoxicating liquor or~~
15 ~~illegal drugs, while attending school or while attending~~
16 ~~department supervised activities held on or off school property,~~
17 ~~may be excluded from attending school for up to ninety two~~
18 ~~school days, as determined by the principal and approved by the~~
19 ~~superintendent or other individuals designated pursuant to rules~~
20 ~~adopted by the board.~~



1 ~~(c) Except as provided in subsection (f), any child who~~
2 ~~reasonably appears to have consumed or used intoxicating liquor~~
3 ~~or illegal drugs prior to attending school or attending~~
4 ~~department supervised activities held on or off school property,~~
5 ~~may be excluded from attending school for up to ninety two~~
6 ~~school days, as determined by the principal and approved by the~~
7 ~~superintendent or other individuals designated pursuant to rules~~
8 ~~adopted by the board.~~

9 ~~(d)]~~ (a) In any case of exclusion from school, the due
10 process procedures as set forth in the provisions of Hawaii
11 administrative rules relating to student discipline shall apply.

12 ~~[(e)]~~ (b) If a child is excluded from attending school for
13 more than ~~[ten]~~ five school days, the superintendent or the
14 superintendent's designee shall ensure that substitute
15 educational activities or other appropriate assistance are
16 provided, such as referral for appropriate intervention and
17 treatment services, as determined by the principal in
18 consultation with the appropriate school staff.

19 (c) No child in the state may receive longer than ten
20 school days of out-of-school or in-school suspension from school
21 per school year.



1 (d) The superintendent and each complex area
2 superintendent shall provide ongoing professional development to
3 teachers, administrators, board of education members, school
4 resource officers, and staff on the adverse consequences of
5 school exclusion and involvement in the justice system,
6 effective classroom management strategies, culturally responsive
7 discipline, and developmentally appropriate disciplinary methods
8 that promote positive and healthy school climates.

9 ~~[(f) A child determined to be in violation of subsection~~
10 ~~(b) or (c) shall be subject to the department's disciplinary~~
11 ~~rules; provided that:~~

12 ~~(1) The school shall administer a screening tool approved~~
13 ~~by the department to determine whether there is a need~~
14 ~~for the child to be referred for a substance abuse~~
15 ~~assessment;~~

16 ~~(2) The child shall be allowed to return to school earlier~~
17 ~~than the department's original disciplinary~~
18 ~~determination; provided that the child gives the~~
19 ~~school evidence of the following:~~

20 ~~(A) A substance abuse assessment has been completed;~~
21 ~~and~~



1 ~~(B) The child is progressing toward clinical~~
2 ~~discharge from any substance abuse treatment or~~
3 ~~substance abuse counseling recommended by the~~
4 ~~substance abuse assessment;~~

5 ~~(3) If the substance abuse assessment finds that the child~~
6 ~~does not need substance abuse treatment or substance~~
7 ~~abuse counseling, the school may allow the child to~~
8 ~~return to school earlier than originally indicated;~~
9 ~~provided that:~~

10 ~~(A) The child provides a certified copy of the~~
11 ~~assessment; and~~

12 ~~(B) The child's parent or legal guardian consents to~~
13 ~~the child and the child's family receiving~~
14 ~~follow up counseling or other student support~~
15 ~~services to be provided by the department.~~

16 ~~In determining whether to allow the child to~~
17 ~~return to school early, the school administrator shall~~
18 ~~review and determine the nature and severity of the~~
19 ~~offense, the impact of the offense on others, the age~~
20 ~~of the offender, and whether the offender is a repeat~~
21 ~~offender; and~~



1 ~~(4) For the child's first violation of subsection (b) or~~
2 ~~(c), if the child provides evidence of clinical~~
3 ~~discharge from the substance abuse treatment program~~
4 ~~or substance abuse counseling, all records of~~
5 ~~disciplinary action relating to the original offense~~
6 ~~shall be expunged. For the purposes of this~~
7 ~~paragraph, "expunged" means the records of substance~~
8 ~~abuse assessment shall be segregated and kept~~
9 ~~confidential but shall be destroyed upon graduation of~~
10 ~~the child.~~

11 ~~(g)]~~ (e) For purposes of this section:

12 ~~["Dangerous weapon" means a dirk, dagger, butterfly knife,~~
13 ~~blackjack, slug shot, billy, metal knuckles, or other instrument~~
14 ~~whose sole design and purpose is to inflict bodily injury or~~
15 ~~death; provided that firearms are excluded from this definition.~~

16 ~~"Illegal drugs" means the possession, distribution,~~
17 ~~ingestion, manufacture, sale, or delivery of substances which~~
18 ~~are prohibited under chapter 329 and chapter 712, part IV.~~

19 ~~"Switchblade knife" is as defined in section 134-52.]~~

20 ~~"In-school suspension" means the temporary removal of a~~
21 ~~child, for disciplinary purposes, from the child's regular~~



1 classroom or program while the child remains under the direct
2 supervision of school personnel.

3 "Out-of-school suspension" means an exclusion from school
4 for the duration of at least part of one school day where the
5 child is prohibited from participating in school activities or
6 being on school premises. If the superintendent, complex area
7 superintendent, principal, or other school official requests
8 that a parent remove a child from school grounds for
9 disciplinary reasons or from regularly scheduled school
10 activities due to behavior or disciplinary reasons, for any
11 length of time during a school day, the request constitutes a
12 suspension and is subject to the requirements of this section.

13 [~~h~~] (f) The board of education shall adopt rules in
14 accordance with chapter 91 to implement this section."

15 SECTION 5. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 6. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect on July 1, 2020.

2

INTRODUCED BY: _____

Francis R. Sroufe



S.B. NO. 2578

Report Title:

DOE; Schools; Discipline; In-School Suspension; Out-of-School Suspension

Description:

Requires the Department of Education to track and publish the use of all exclusionary discipline disaggregated by student subgroup. Restricts the use of out-of-school and in-school suspensions among students in grades 6 through 12. Eliminates the use of out-of-school suspensions for students in prekindergarten through grade 5.

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