

DEPARTMENT OF EDUCATION

Rules Amending Title 8  
Hawaii Administrative Rules

[Date of Adoption]

1. Chapter 19 of Title 8, Hawaii Administrative Rules, entitled “Student Misconduct, Discipline, School Searches and Seizures, Reporting Offenses, Police Interviews and Arrests, and Restitution for Vandalism” is amended and compiled to read as follows:

“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, AND RESTITUTION FOR VANDALISM

Subchapter 1            General Provisions

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§8-19-2     Definitions  
§8-19-3     Applicability  
§8-19-4     Severability

Subchapter 2           Student Misconduct and Discipline

During the Regular School Year

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- §8-19-6 Prohibited student conduct; [penalties] **class offenses**
- §8-19-7 Crisis [suspension] **removal**
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- §8-19-10 Duration of disciplinary actions
- §8-19-11 [Substitute] **Alternate** educational activities and other assistance when students are [disciplined] **found to be in violation of this chapter**

Subchapter 3 Student Misconduct and Discipline in Summer School

- §8-19-12 Disciplinary actions; authority
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Subchapter 4 School Searches and Seizures

- §8-19-14 Policy on [school searches and seizures] **opening and inspection of student lockers**
- §8-19-15 [Authority] **Policy on general school searches and seizures**
- §8-19-16 [Conditions under which searches and seizures may be carried out] **Authority**
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Subchapter 5 Reporting Offenses

- §8-19-19 Reporting class A and class B offenses occurring in school
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Subchapter 6            Police Interviews and Arrests

- §8-19-22     Police interviews in school for school-related offenses
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Subchapter 7            Restitution for Vandalism

- §8-19-25     Liability for vandalism
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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 ~~[which]~~ **that** will help the student to succeed.

**In 1996, the Hawaii state department of education 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 that allows all students to achieve the Vision of the Public School Graduate<sup>1</sup> in safe, caring, nurturing, and orderly teaching and learning environments.**

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

~~[(b)]~~**(c)** However, when a student's behavior violates established **policies, rules, or regulations** of the department, state or local ~~[riminal]~~ laws, ~~[or the student willfully disobeys legitimate directives of department's personnel,]~~ 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; and
- (4) Maintain proper student conduct to ensure that educational activities and responsibilities remain uninterrupted.

~~[(c)]~~**(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.

~~[(d)]~~**(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.

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<sup>1</sup>Vision of the Public School Graduate, 2005-2008 DEPARTMENT OF EDUCATION Strategic Plan, State of Hawaii Department of Education, Office of Superintendent, June 2005

~~(e)~~(f) On occasions it is necessary for police officers to interview students [during school hours] 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 ] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112)

§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 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 a student or group of students exhibits toward other particular student(s) and the behavior causes mental or physical harm to the other student(s); and is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other students.**

“Burglary” means [intentionally] entering or remaining [unlawfully] **without school authorization** in a building **that is either owned or operated by the department of education** with intent to commit [therein a] **an offense** [crime] against a person, or against **school** property [rights] **or other property located at the school.**

“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,] **or goods** as defined by **the department of education** or by local school rules, **that** is prohibited on [school premises] **campus or other department of education premises, on department of education transportation, or during a department of education sponsored activity or event on or off school property** because the possession or use of the property [on school premises has in the past led to bodily injury or] **may result in a** disruption of school operations.

**Contraband items may include but not limited to the following items: electronic gadgets such as cell phones, iPods, mp3 players, video game players, DVD players, walkie talkies; pornographic materials; gang paraphernalia; skateboards; rubber bands used to shoot projectiles; or food items such as candy, gum unless authorized by school officials.**

**“Controlled substance” means a drug or substance as defined in Schedules I through V in chapter 329, Hawaii Revised Statutes.**

**“Crisis [~~suspension~~] 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, i.e., Internet, cell phone, personal digital assistance (PDA), or wireless hand-held device that a student has exhibited toward another student or employee of the department which causes mental or physical harm to the other student(s)/school personnel and is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening, or abusive educational environment:**

- (1) On campus, or other department of education premises, on department of education transportation, or during a department of education sponsored activity or event on or off school property or;**
- (2) Through a department of education data system without department of education authorized communication or;**
- (3) Through an off campus computer network that is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student/school personnel, or both.**

**In evaluating whether conduct constitutes harassment, intimidation or bullying, special attention should be paid to the words chosen or the actions, taken, whether such conduct occurred in front of others or was communicated to others, how the perpetrator interacted with the victim, and the motivation, either admitted or appropriately inferred. Electronic transmissions include but not limited to the use of data, computer software that is accessed through a computer, a computer network system, other computerized systems, cellular phones or other similar electronic devices that display e-mail, text**

**messaging, blogs, photos, drawings, video clips, on-line community websites, or faxes, or a combination of the above listed.**

“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 ~~[nunchucks]~~ 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 [a] **an instrument whose sole design and purpose is to inflict bodily injury or death. Examples of such instruments include but not limited to** a dirk, dagger, butterfly knife, switchblade knife, blackjack, slug shot, billy, [or] metal knuckles, or other [instrument] **weapons** ~~[whose sole design and purpose is to]~~ **that** inflict bodily injury or death.

~~["Days" means school days.]~~

“Department” means the ~~[Hawaii state]~~ department of education.

“Detention” means detaining a student on school campus during instructional or non-instructional hours to require such 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.

“Dismissal” means the exclusion 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 of education premises, on department of education transportation, or during a department of education 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;
- (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; [øf]
- (5) Impeding or obstructing any person in a public school for the purpose of begging or soliciting alms or other forms of aid[; ~~with the intent to cause physical inconvenience or alarm to a member or members of the public school, or recklessly creating a risk thereof.]; or~~
- (6) Inappropriate physical contact including but not limited to consensual sex or consensual touching of body parts, or both.**

“Drug paraphernalia” means [all] **any** equipment, products, [and] **or** materials of any kind, **or combination thereof** which [are] **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 [~~in parenterally~~] **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 of education, or a person who is a volunteer in a school program, activity, or function that is sponsored or approved by the department of education, or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function.

“Extortion” means an act committed by a person ~~[which]~~ **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 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)]~~ **(D)** Commit a penal offense;
  - ~~[(E)]~~ **(E)** Accuse some person of any offense or cause a penal charge to be instituted against some person;
  - ~~[(F)]~~ **(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;
  - ~~[(G)]~~ **(E)** Reveal any information sought to be concealed by the person threatened or any other person;
  - ~~[(H)]~~ **(F)** Testify ~~[or]~~, provide information, or withhold testimony or information with respect to another’s legal claim or defense;
  - ~~[(I)]~~ **(G)** Take or withhold action as a public servant, or cause a public servant to take or withhold such action;
  - ~~[(J)]~~ **(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
  - ~~[(K)]~~ **(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) [~~Intentionally compels~~] **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 subparagraphs (A) through [(K)] **(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 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 not limited to** a starter gun, shotgun, air [~~gun~~] **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
- (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 [~~of more than four ounces~~];
    - (iv) Missile having an explosive or incendiary charge [~~of more than one quarter ounce~~];
    - (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 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.

**(5) The possession or use of a firearm is prohibited on campus, or other department of education premises, on department of education transportation, or during a department of education 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.**

**“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 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 not limited to contracts of indemnity or guaranty and life, health, or accident insurance.

“Harassment” means a ~~[person acts with intent to harass, bully, annoy or alarm if he or she:]~~ **student who is harassing, bullying, including cyberbullying, annoying or alarming another person by engaging in the following conduct that includes but not limited to:**

- (1) ~~[Strikes, shoves, kicks, or otherwise touches]~~ Striking, shoving, kicking, or otherwise touching a person in an offensive manner or subjecting such person to offensive physical contact;**

- (2) [~~Insults, taunts, or challenges~~] **Insulting, taunting, or challenging** another person in a manner likely to provoke a violent response;
- (3) [~~Makes~~] **Making** verbal, or non-verbal expressions [~~for reasons of but not limited to,~~] **that causes others to feel uncomfortable, pressured, threatened, or in danger because of but not limited to the person's** race, color, national origin, ancestry, sex, **including gender identity and expression,** religion, disability, or sexual orientation that creates an intimidating, hostile or offensive educational environment, or interferes with the education of a student, or otherwise adversely affects the educational opportunity of a student **or students;**
- (4) Name [~~calls~~] **calling,** [~~makes~~] **making** rude gestures, [~~insults~~] **insulting,** or [~~constantly teases~~] **teasing** another person who feels humiliated, intimidated, threatened [~~and/or~~] **or** embarrassed;
- (5) [~~Makes~~] **Making** a telephone call without purpose of legitimate communication;
- (6) [~~Makes~~] **Making** repeated communications anonymously, or at extremely inconvenient hours, or in offensively coarse language[;] **on campus or, other department of education premises, on department of education transportation, or during a department of education sponsored activity or event on or off school property;**
- (7) [~~Causes~~] **Causing** fear as to prevent others from gaining legitimate access to or use of school buildings, facilities, **services,** or grounds such as, but not limited to, restroom facilities; **or**
- ~~[(8) Causes others to feel uncomfortable, pressured, threatened, or in danger as a results of sexually-related verbal or physical activity (sexual harassment); or]~~
- ~~[(9) Displays or possesses a "look-alike" gun or weapon; or]~~
- (8) Physically harming, physically restraining, threatening, or stalking, or a combination of the above listed.**

**"Hazing" means any conduct or method of initiation into any student organization or activity, whether on campus or other department of education premises, on department of education transportation, or during a department of education 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 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 when a student is in violation of the Board of Education’s Internet Access Policy,<sup>2</sup> the department’s Internet Access Regulations,<sup>3</sup> and the Network Support Services Branch’s Acceptable User Guidelines<sup>4</sup> for using computers and network resources. Examples of inappropriate or questionable uses of the Department’s computer and network resources include but 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. Copies of these policies are available via the websites listed in the footnotes or may be obtained from school office.**

**“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[, including any controlled substance, drug, intoxicating compound, marijuana, forms of methamphetamine and anabolic steroids, and cocaine forms and derivatives; or other substances which are illegal to possess, use, promote or sell according to any other Hawaii statute or federal law].**

**“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**

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<sup>2</sup> Board of Education Policy 2170, amended 10/1997,  
<http://lilinode.k12.hi.us/STATE/BOE/POL1.NSF>

<sup>3</sup> Hawaii Department of Education 2170.1 Internet Access Regulations, amended 08/2000,  
<http://www.k12.hi.us/~atr/policy2000/intaccreg.htm>

<sup>4</sup> Department of Education Network and Internet Services, updated 11/29/2004;  
<http://nssb.k12.hi.us>

**include but not limited to the development and implementation of behavior support plans, developing behavioral contracts or social skills training, or a combination of the above listed.**

“Insubordination” means [willful or intentional] disregard or refusal to obey an order which a teacher, officer or other employee of the department is entitled to give [and have obeyed].

**“Intoxicating substance use” means the use of any substance, which causes disturbance of the normal physical or mental functioning including but not limited to alcohol, kava, and beetle nut.**

**“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 of education purpose and use. Unless authorized, the possession or use is prohibited on campus, or other department of education premises, on department of education transportation, or during a department of education sponsored activity or event on or off school property.**

“Leaving campus without consent” means leaving the premises of a school, **department of education facility, or department of education 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” in this chapter 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 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 (1) a student arrives to school after school has started and/or (2) a student arrives at class after class has started.**

[“Murder” means intentionally or knowingly causing the death of another person]

“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 18 years of age or older, all parental rights herein transfer to the student.**

“Property damage<sup>[2]</sup> **or vandalism**” means:

- (1) [~~Intentionally or recklessly damaging~~] **Damaging** the property of **the school or** another **person**; [~~or~~]
- (2) [~~Mischievously or maliciously destroying~~] **Destroying** or defacing school property~~[-]~~ **or facility; or**
- (3) **Destroying or defacing school materials, such as but not limited to planners, identification nametags, or meal cards.**

“Rendering a false alarm” means [~~knowingly causing~~] **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.

“Robbery” means, in the course of committing a theft, or hijacking, a [~~person~~] **student**:

- (1) Attempts to kill another **person**, or [~~intentionally~~] 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) [~~Recklessly inflicts~~] **Inflicts** serious bodily injury upon another **person**.

**“School” or “public school” as used in this chapter means all academic and non-college type schools established and maintained by the department in accordance with the 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 [~~school property during school hours, or offenses committed during school functions or activities, on or off school property.~~] **campus, or other department of education premises, on department of education transportation, or during a department of education sponsored activity or event on or off school property.**

“School [~~rule~~] **rules**” means [~~the rules of conduct adopted by the regular school which is used as the site for the summer school program]~~ **schoolwide 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/safety issue with illicit drugs, dangerous weapons, dangerous instruments or firearms, or a combination of the above listed, the school official may examine the contents and belongings which may include but 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 [~~suspensions~~] **removals**, and suspensions which either exceed ten school days or will result in the student affected being crisis [~~suspended~~] **removed** or suspended more than a total of ten school days in any single semester.

"Sexual offense" or "sexual assault" means [~~rape, sodomy, sexual abuse, incest, indecent exposure, and such other offenses as defined in chapter 707, part V, Hawaii Revised Statutes.~~] **unwanted touching or grabbing of sexual parts, indecent exposure, using force to engage in intercourse, oral sex, or other sexual contact, engaging in intercourse, oral sex, or other sexual contact despite the other person's clearly expressed refusal or mental or physical inability to consent.**

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

"Strip search" means searches, which require the **removal of clothing that results in the** exposure of the genitals, ~~[or] 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] **By** hand pressure applied to a button or other device in the handle of the knife, or
- (2) [by] **By** operation of inertia, gravity, or both.

"Terroristic threatening" means:

- (1)** [a] **A** threat, by word or conduct, to cause bodily injury to another person or serious damage to property of another person; [~~or to commit a felony, such as a bomb threat, within the meaning of the state penal code:];~~ **or**

[~~(1)~~] [~~With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person; or]~~

- (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 [~~with intent to deprive]~~ **and depriving** that person of the property;
- (2) Obtaining, or exerting control over, the property of another by [~~deception]~~ **deceiving** [~~with intent to]~~ **and** [~~to deprive]~~ **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) ~~[Intentionally obtaining]~~ **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~~[, intentionally]~~ **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) ~~[Intentionally obtaining]~~ **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) ~~[Intentionally receiving]~~ **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 of education** store or **department of education** retail establishment, with intent to defraud;
  - (B) Altering the price tag or other price marking on goods or merchandise of any **department of education**

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

"Trespass" means entering or remaining [~~unlawfully~~] in or upon the premises of any school, [~~as defined pursuant to §302A-501, Hawaii Revised Statutes,~~] **or department of education facility** after reasonable warning or request to leave by school authorities or police officer.

"Truancy" means [~~that the~~] **a** student is absent from **class(es) or** the school campus without authorization from the principal or designee.

[~~"Vandalism" means mischievous or malicious destruction or defacement of school property. See definition of "property damage".~~] [Eff 9/1/82; am5/23/86; am and comp 7/19/93; am and comp 5/19/97; am and comp 2/22/01; am and comp ] (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 [~~the~~] **a** public school during the regular school year [~~or~~], 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) [~~Chapter 8-56 and chapter 8-53~~] **Hawaii state 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 [~~mean~~] **include** summer school director [~~and assistant summer school director or designee~~] 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 [~~summer session~~] **an extension of the student's school year** shall be governed by subchapter 2 and the

guidelines and requirements of [~~chapter 8-56 and chapter 8-53~~] **the Hawaii state 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 state 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 [during school hours] shall be administered in accordance with this chapter. [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 ]

(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 [~~which~~] **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 ]  
(Auth: HRS §302A-1112) (Imp: HRS §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 [~~which~~] **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 [~~suspensions~~] **removals** [~~may~~] **shall** be [~~imposed~~] **approved** by the [~~district~~] **complex area** superintendent.

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

~~[(b) — Disciplinary actions against department personnel shall be carried out in accordance with established regulations and procedures of the department.]~~

**(c) In determining disciplinary actions, the principal or designee shall consider 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 ] (Auth: HRS §§302A-1112, 302A-1002) (Imp: HRS §§302A-1112, 302A-1002)

§8-19-6 Prohibited student conduct; ~~[penalties]~~ class offenses.

(a) The following prohibited conduct applies to all students in the public school system ~~[during school hours, on school premises, or during department-supervised activities, on or off school property:]~~, **on campus, or other department of education premises, on department of education transportation, or during a department of education sponsored activity or event on or off school property.**

- (1) Class A offenses[; **unlawful conduct:**]
  - (A) Assault;
  - (B) Burglary;
  - (C) ~~[Dangerous weapons, substances or instruments; possession or use of]~~ **Dangerous instrument; possession or use of;**
  - (D) ~~[Drug paraphernalia; possession, use, or sale of;]~~ **Dangerous weapons; possession, or use of;**
  - (E) ~~[Extortion;]~~ **Drug paraphernalia; possession, use, or sale of;**
  - (F) ~~[Firearms; possession or use of;]~~ **Extortion;**
  - (G) ~~[Illicit drugs; possession, use, or sale of;]~~ **Fighting;**
  - (H) ~~[Murder;]~~ **Firearms; possession or use of;**
  - (I) ~~[Property damage;]~~ **Homicide;**
  - (J) ~~[Robbery;]~~ **Illicit drugs; possession, use, or sale of;**
  - (K) ~~[Sexual offenses; or]~~ **Intoxicating substances; possession, use, or sale of;**
  - (L) ~~[Terroristic threatening;]~~ **Property damage or vandalism;**
  - (M) Robbery;**
  - (N) Sexual offenses; or**

- (O) Terroristic threatening.**
- (2) Class B offenses[; unlawful conduct]
- (A) [~~Disorderly conduct;~~] **Bullying;**
- (B) [~~False alarm; rendering of;~~] **Cyberbullying;**
- (C) [~~Gambling;~~] **Disorderly conduct;**
- (D) [~~Harassment;~~] **False alarm;**
- (E) [~~Theft; or~~] **Forgery;**
- (F) [~~Trespassing;~~] **Gambling;**
- (G) Harassment;**
- (H) Hazing;**
- (I) Inappropriate or questionable uses, or both of internet materials or equipment, or both;**
- (J) Theft; or**
- (K) Trespassing.**
- (3) Class C offenses[; department prohibited conduct:]
- (A) [~~Class cutting;~~] **Abusive language;**
- (B) [~~Insubordination;~~] **Class cutting;**
- (C) [~~Leaving campus without consent;~~] **Insubordination;**
- (D) [~~Smoking, use of tobacco substances;~~] **Laser pen/laser pointer; possession or use of;**
- (E) [~~Truancy; or~~] **Leaving campus without consent;**
- (F) [~~Laser pen/laser pointer; possession or use of~~] **Smoking or use of tobacco substances; or**
- (G) Truancy.**
- (4) Class D offenses[; school prohibited conduct:]
- (A) Contraband; possession or use of; [or]
- (B) Minor problem behaviors; or**
- (C) Other school rules.**
- ~~(B)~~**(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 [punishment] **disciplinary action** amounting to serious discipline shall be imposed for violation of any individual school rule as a class D offense. [~~However, serious discipline due process procedures shall apply in cases involving violation of school rules~~]

~~resulting in a student being crisis-suspended more than a total of ten days in any single semester. Individual school rules shall be published or made available for inspection at the school office and shall inform students and school staff of the prohibited conduct under class A through D of this section.]~~

(b) Any student ~~[found to be in possession of]~~ **who possesses** a firearm shall be dismissed from school for not less than [a] one **calendar** year period. The superintendent **or designee**, on a [case by case] **case-by-case** basis, may modify the ~~[punishment]~~ **dismissal** of a student found to be in possession of a firearm. If a student is dismissed from school, that student shall be provided ~~[substitute]~~ **alternate** educational activities or other appropriate assistance as provided in [§] **section** 8-19-11.

(c) Any student ~~[found to be in possession of]~~ **who possesses, sells, or uses** a dangerous weapon, switchblade knife or any improperly used knife, intoxicating ~~[liquor]~~ **substance(s)**, or illicit ~~[drugs]~~ **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 of education premises, on department of education transportation, or during a department of education 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 arranges 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 he/she 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 are asked to contact their medical health carrier to schedule an appointment. Students without medical insurance may contact a Department of Health approved provider to schedule a substance abuse assessment. 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. ~~[If the total number of days of suspension exceeds ten then the provisions of §8-19-9 shall apply.]~~ The complex area superintendent shall approve suspensions exceeding ten school days. In exercising this discretion and determining ~~[sanctions]~~ **disciplinary actions**, ~~[schools]~~ **the principal or designee** shall consider the nature and severity of the offense, the impact of the offense on others, ~~[and]~~ the age of the offender, ~~[as well as whether]~~ **and if** the offender is a repeat offender. If the student is excluded from attending school, the principal or designee shall ensure that ~~[substitute]~~ **alternate** educational activities or other appropriate **student support** assistance shall be provided, and that the ~~[child]~~ **student** is referred for appropriate intervention ~~[and]~~ **or** treatment services, **or both**, as determined by the principal **or designee** in consultation with the appropriate school staff or in accordance with ~~[or chapter 8-53]~~ **the Hawaii state administrative rules for students with disabilities**, if applicable.

(d) Disciplinary action shall be taken for ~~[either]~~ **all** class ~~[A and class B]~~ offenses in grades ~~[seven]~~ **kindergarten** through twelve in accordance with procedures established under ~~[the]~~ **this** chapter and within the following options as determined by the authorities ~~[stipulated]~~ **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;**
- ~~[(1)]~~ **(2) Detention;**
- ~~[(2)]~~ **(3) Crisis [suspension;] removal;**
- ~~[(3)]~~ **(4) [Suspension of one to ten days;] Individualized instruction related to student's problem behaviors;**
- ~~[(4)]~~ **(5) [Suspension of eleven or more days;] Loss of privileges;**

~~[(5)]~~ **(6)** ~~[Disciplinary transfer; or]~~ **Parent conferences;**

~~[(6)]~~ **(7)** ~~[Dismissal.]~~ **Time in office;**

**(8)** **Time away from class/activity;**

**(9)** **Suspension of one to ten school days;**

**(10)** **Suspension of eleven or more school days;**

**(11)** **Saturday school;**

**(12)** **Disciplinary transfer;**

**(13)** **Referral to alternative education programs;**

**(14)** **Dismissal; or**

**(15)** **Restitution.**

~~[(e)]~~ Disciplinary action shall be taken for class C and class D offenses in grades seven through twelve in accordance with procedures established under this chapter and within the following options as determined by the authorities stipulated in §8-19-5:

~~(1)~~ Reprimand and warning;

~~(2)~~ Parent conferences;

~~(3)~~ Referral to an alternative education program;

~~(4)~~ Detention;

~~(5)~~ Crisis suspension;

~~(6)~~ Suspension of one to ten days;

~~(7)~~ Suspension of eleven or more days;

~~(8)~~ Disciplinary transfer; or

~~(9)~~ Dismissal.]

~~[(f)]~~ Disciplinary action shall be taken for class A through class D offenses in grades kindergarten through six in accordance with procedures established under this chapter and within the options provided in subsection (e) of this section as determined by the authorities stipulated in §8-19-5.]

~~[(g)]~~ **(e)** Students shall be counseled in addition to any disciplinary action taken under subsections (c)[,] **and** (d). ~~[and (e) of this section.]~~

~~[(h)]~~ **(f)** No action amounting to serious discipline shall be imposed on students for committing class D offenses. ~~[and, all other provisions of this chapter notwithstanding,]~~

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

~~[(i)]~~ **(h)** The disciplinary action options of subsections **(c) and** (d)[,] ~~(e), and (f)]~~ shall be construed as disciplinary actions within a school year. ~~[; provided,]~~

**(i)** ~~[disciplinary]~~ **Disciplinary** actions may be carried over to the ~~[ensuing]~~ **following** school year if the offense is committed within twenty school days from the last instructional day for students in ~~[the]~~ **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 ] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1134, 302A-1134.5)

§8-19-7 Crisis [suspension] **removal**. (a) A principal or designee, in an emergency, may crisis [suspend] **remove** a student immediately **based** upon preliminary [investigation] **inquiry** and [finding] **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. [~~However, if the total number of days in any single semester for crisis suspension exceeds ten days, the due process procedures of §8-19-9 shall apply. Prior notice for crisis suspension shall be by telephone, if feasible.~~]

(b) [~~Immediately after making a crisis suspension, the principal or designee shall initiate the investigation and hearing procedures under §8-19-9 unless it is determined that the suspension exceeding ten days, disciplinary transfer, or dismissal need not be administered. Before commencing the investigation, schools shall make a good faith effort to notify the parent of an impending school investigation of an offense allegedly committed by the student.~~] **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 [suspension] **removal** shall be personally delivered or mailed to the [student and the] parent [~~immediately upon completion of an investigation~~]. The notice **of the crisis removal** shall contain the following **written** statements:

- (1) [~~A statement of the specific acts allegedly~~] **Allegations of the specific acts** committed by the student [which] **that** form the basis of the [action] **crisis removal**;
- (2) The [rule allegedly violated] **allegations of the specific acts that were substantiated**;
- (3) A statement of the **disciplinary** [action] **action(s)**; and
- (4) [~~That the parent may request a conference with the principal or designee.~~] **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 [district] **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 [~~suspension~~] **removal** shall be permitted to resume attendance at school [~~pending a hearing~~] as soon as the [~~exclusion of the student is no longer necessary under subsection (a) of this section~~] **crisis no longer exists**.

(e) A crisis [~~suspension~~] **removal** shall not continue for more than ten school days, except when [~~extended~~] **approved** by the [~~district~~] **complex area** superintendent during **an appeal** [~~hearing~~]. [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 ] (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.**

**(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 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

] (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 ~~[or cause to be conducted]~~ an ~~[informal]~~ investigation of the ~~[activity]~~ **incident**. Upon ~~[preliminary]~~ **completion of the** investigation and findings, ~~[schools shall make a good faith effort to notify the parent of the school investigation of an offense allegedly committed by the student.]~~ **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) ~~[The principal or designee shall give to the student notice of the charges against the student.]~~ If the student **or parent** denies the ~~[charge]~~ **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) ~~[The student may be suspended if the principal or designee finds that the charges findings are sustained.]~~ If the total number of days in any single semester for suspensions exceeds ten **school** days, the due process procedures of ~~[\$8-19-9]~~ **this chapter** shall apply **unless otherwise indicated by law**. ~~[Students who receive special education or other services under chapter 8-56 or chapter 8-53, however, may be suspended no more than ten days during the school year, unless otherwise indicated in chapter 8-56 or chapter 8-53.]~~

(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 ~~[student and the]~~ parent upon completion of the investigation. The **suspension** notice shall contain the following **written** statements:

- (1) ~~[A statement of the specific acts allegedly]~~ **Allegations of the specific acts committed** by the student ~~[which]~~ **that** form the basis of the ~~[action]~~ **suspension**;
- (2) The ~~[rule allegedly violated]~~ **allegations of the specific acts that were substantiated**;
- (3) A statement of the **disciplinary** ~~[action]~~ **action(s)**; and

- (4) ~~[That the parent may request a conference with the principal or designee.]~~ **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 [district] **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 ]  
(Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

§8-19-9 ~~[Suspension]~~ **Due process for suspensions exceeding ten days, disciplinary transfers, and dismissal.** ~~[(a) Whenever a principal or vice principal designee has reason to believe that a student had engaged in activity warranting the imposition of suspension exceeding ten days, disciplinary transfer, or dismissal, the principal or vice principal shall immediately conduct or cause to be conducted or cause to be conducted an informal investigation of the activity. When conducting an investigation, the school shall make a good faith effort at the earliest point possible to notify the parent about the school's investigation, of the offense allegedly committed by the student. The investigation shall be completed as quickly as practicable after the discovery of the activity constituting the offense. If the principal or vice principal elects to initiate proceedings for the imposition of serious discipline other than crisis suspension or discipline which results in a removal or a cumulative removal of 10 days other than crisis suspension, the principal or vice principal 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 vice principal designee reasons for the initiation of disciplinary proceedings. This report shall be retained for the applicable school year.]~~

~~[(b)]~~ **(a)** If, based upon [that] **the** investigation, the principal or [vice principal] **designee** believes that a student [has] engaged in an activity which constitutes a violation of this chapter, and if the principal or [vice principal] **designee** recommends that serious discipline other than crisis [suspension] **removal** be imposed, the principal or [vice principal] **designee** shall immediately notify the [district] **complex area** superintendent [and shall] **to** initiate disciplinary proceedings[, after approval by the district superintendent, in accordance with this section.] **by obtaining verbal authorization from the complex area**

superintendent. [The student or parent may appeal to the district superintendent within five calendar days of the receipt of the written notice about the suspension. The student shall be permitted to attend the regularly assigned school of the student pending the hearing 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. No serious discipline other than crisis suspension shall be administered until after the notice and hearing requirements of this section have been met.]

**(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) [Prior notice for serious discipline other than crisis suspension shall be mailed by the district superintendent (certified mail, return receipt requested) to the student and parent immediately upon completion of the investigation required in subsection (a).] 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) [A statement of the specific acts allegedly] **Allegations of the specific acts committed** by the student [which] **that** form the basis of the [recommended action] **serious discipline;**

(2) The [rule allegedly violated] **allegations of the specific acts that were substantiated;**

(3) A statement of the [recommended action] **disciplinary action(s); and**

(4) A statement that the [student] **parent** has a right to [a hearing] **an appeal** [before] **to** the [district] **complex area** superintendent at which time the [student] **parent** may present evidence, call, and cross-examine witnesses, and be represented by [a representative of the student or parent's choosing, including] legal counsel[;] **and to the extent the**

**parent provides a written notice of legal representation at least 10 calendar days prior to the appeal.**

- (5) ~~[A statement that the hearing may be requested in writing or orally by personal visit or telephone call to the district superintendent; and]~~ **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 not limited to athletics, trips, or clubs.**

- ~~[(6) A statement that unless the hearing is requested within five school days from the date of receipt of the notice, the recommended action of the principal or vice principal; shall be implemented without the hearing.]~~

~~[A copy of the notice shall be mailed to the principal or vice principal. In addition to the notice required by this section, the district superintendent shall attempt to confirm the notice by telephoning the parent.]~~

(d) Upon receipt of a **written** request for ~~[a hearing]~~ **an appeal**, the ~~[district]~~ **complex area** superintendent shall, within ten school days, schedule ~~[a hearing]~~ **an appeal** and shall ~~[notify]~~ **inform** ~~[all interested parties]~~ **the parent** of ~~[it's]~~ **the** date, time, and place. Written notice of the ~~[hearing by certified mail (return receipt requested)]~~ **appeal** shall be ~~[given]~~ **mailed** to the ~~[parties]~~ **parent and principal or designee** at least fifteen calendar days before the ~~[hearing]~~ **appeal**. The ~~[hearing]~~ **appeal** shall be conducted by the ~~[district]~~ **complex area** superintendent or by an impartial **department of education** person, **or an impartial designee**, who may be an official of the department, designated by the ~~[district]~~ **complex area** superintendent. The ~~[hearing]~~ **appeal** shall be conducted as follows:

- (1) ~~[It shall be private]~~ **The appeal shall be closed** unless the student or parent requests that it be public;
- (2) ~~[All parties]~~ **Parent and principal or principal's designee** have the right to present evidence, cross-examine witnesses, and submit rebuttal testimony;

- (3) ~~[All parties]~~ **Parent and principal or principal's designee** may be represented by legal counsel;
- (4) The ~~[district]~~ **complex area** superintendent or **the impartial department of education** designee need not follow the formal rules of evidence;
- (5) The ~~[district]~~ **complex area** superintendent or **the impartial department of education** designee shall impartially weigh the evidence **presented**;
- ~~[(6)]~~ ~~The district superintendent or designee may request and consider any records or information relevant to the charge or disposition, provided that the record or information shall be made available to the student and parent, or the representative of the student and parent;~~
- ~~[(7)]~~ **(6)** A parent, at the parent's own expense, may ~~[make]~~ **record or obtain a copy of the department's tape recording, or transcript of the department's tape recording of the proceedings** ~~[from the department a transcript or tape recording of the hearing]~~ only if requested for purposes of court review. The ~~[department]~~ **complex area superintendent or the impartial department of education designee** shall ~~[make]~~ **record** a transcript or tape recording of the ~~[hearing]~~ **proceedings**;
- ~~[(8)]~~ **(7)** ~~[No]~~ **The complex area superintendent shall no** later than ~~[three]~~ **seven** school days ~~[after]~~ **from** the close of the ~~[hearing,]~~ **appeal** ~~[the district superintendent shall]~~ render a decision in writing stating clearly the ~~[action]~~ **action(s)** to be taken and the ~~[reasons therefore]~~ **bases for such actions**. The **written** decision shall be mailed ~~[(certified mail return receipt requested)]~~ or personally delivered to the ~~[student and to the]~~ parent, ~~[or]~~ 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.**
- ~~[(9)]~~ ~~[In the event that the hearing is conducted by a person other than the district superintendent, the recommended decision and record shall be reviewed by the district superintendent who may accept, reject, or modify the decision, provided that in the event any change is made, the district superintendent~~

shall state the reasons therefore in writing. Any recommended or final decision shall be based solely on a preponderance of the evidence adduced at the hearing; and

~~[(10)] [Any procedure in the hearing may be modified or waived by stipulation of the parties and an informal settlement may be reached by stipulation, agreed settlement, consent order, or default.]~~

(e) The ~~[student or]~~ 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 ~~[within ten school days of the action of the district superintendent which shall be deemed the date the decision was mailed.]~~ **or 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 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 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 designee shall render a final written decision.** The student shall be permitted to attend the ~~[regularly assigned]~~ school of the student pending the appeal unless the ~~[district]~~ **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 designee** shall render a decision within ~~[fifteen school]~~ **twenty-one calendar** days of the ~~[filing]~~ **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 ~~[district]~~ **complex area** superintendent and all ~~[records, evidence, and pleadings in]~~ **documents and recordings in from** the proceeding provided for in subsection (d) of this section shall be forwarded to the superintendent of education ~~[who]~~ **or designee within ten calendar days. The superintendent of education or designee** shall examine the evidence and render a decision **based** on the disciplinary action **within fourteen (14) calendar days.** ~~[The decision shall contain a determination of each issue of fact incident or law that may be necessary to it.]~~ The decision shall be personally delivered or mailed ~~[(certified mail, return receipt~~

requested)) to the [student and] parent or attorney of record. In addition, the [student and] parent shall be informed of the right to [file] **submit written** exceptions to the decision and to present argument to the superintendent of education [at a specific date, time, and place] **or designee. Written exceptions and the request to present argument to the superintendent of education or designee must be received by the Office of Superintendent within five (5) calendar days of the date of the decision rendered by the superintendent of education or 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 designee shall, within two (2) school days of receiving the request to present argument, inform parent of the specific date, time, and place to present their arguments. Said date for presentation of argument shall be no less than five (5) calendar days and no more than fourteen (14) 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 designee shall mail a written decision to the parent or the attorney of record within fourteen (14) calendar days of the date of the presentation of the argument or in the case where the parent has waived their right to present argument, within fourteen (14) calendar days of the receipt of parent's written exceptions.**

~~[(g)—After consideration of the exceptions and arguments presented to the superintendent of education, the superintendent of education shall review and mail a written decision (certified mail, return receipt requested) to the student and parent, or attorney of record within a reasonable time. The decision of the superintendent of education shall be final.] [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~~  
] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

§8-19-10 Duration of disciplinary actions. ~~[No dismissal (with the exception of firearm violations) shall continue beyond the school year in which it is made and no crisis suspension or suspension shall be for an indefinite period; provided, any disciplinary action may be carried over to the ensuing school year if the offense is committed within twenty school days from the last instructional day for students in the school year.]~~ **(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.**

**(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 sections (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 ] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1134)

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

**(b) For all students who are crisis removed for a period exceeding ten school days, suspended for a period exceeding ten school days, or dismissed, the principal or designee shall ensure that alternate educational activities are provided as appropriate.**

**(c) Chapters 8-56 and Chapter 8-53 shall apply for students eligible under these provisions.** [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 ] (Auth: §302A-1112) (Imp: HRS §302A-1112, §302A-1128)

### Subchapter 3

#### Student Misconduct and Discipline During Summer School

§8-19-12 Disciplinary actions; authority. ~~[(a)] [Disciplinary action against any student attending summer school shall be imposed by the]~~ **The summer school director or designee shall impose disciplinary action against any student attending summer school.**

~~[(b)]—Disciplinary action against department personnel shall be carried out in accordance with established regulations and procedures of the department.] [Eff 5/23/86; comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp ] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)~~

§8-19-13 Prohibited student conduct; [penalties] class offenses.

(a) The following prohibited conduct applies to all students in summer school during summer school hours, on ~~[school premises, or during department-supervised activities, on or off school property,]~~ **campus, or other department of education premises, on department of education transportation, or during a department of education sponsored activity or event on or off school property.**

- (1) Class A offenses~~[- unlawful conduct:]~~
  - (A) Assault;
  - (B) Burglary;
  - (C) ~~[Dangerous weapons, substances or instruments; possession or use of]~~ **Dangerous instrument; possession or use of;**
  - (D) ~~[Drug paraphernalia; possession, use, or sale of;]~~ **Dangerous weapons; possession, or use of;**
  - (E) ~~[Extortion;]~~ **Drug paraphernalia; possession, use, or sale of;**
  - (F) ~~[Firearms; possession or use of;]~~ **Extortion;**
  - (G) ~~[Illicit drugs; possession, use, or sale of;]~~ **Fighting;**
  - (H) ~~[Murder;]~~ **Firearms; possession or use of;**
  - (I) ~~[Property damage;]~~ **Homicide;**
  - (J) ~~[Robbery;]~~ **Illicit drugs; possession, use, or sale of;**
  - (K) ~~[Sexual offenses; or]~~ **Intoxicating substances; possession, use, or sale of;**

- (L) [~~Terroristic threatening.~~] **Property damage or vandalism;**
- (M) Robbery;**
- (N) Sexual offenses; or**
- (O) Terroristic threatening.**
- (2) Class B offenses[; ~~unlawful conduct~~]
  - (A) [~~Disorderly conduct;~~] **Bullying;**
  - (B) [~~False alarm; rendering of;~~] **Cyberbullying;**
  - (C) [~~Gambling;~~] **Disorderly conduct;**
  - (D) [~~Harassment;~~] **False alarm;**
  - (E) [~~Theft; or~~] **Forgery;**
  - (F) [~~Trespassing.~~] **Gambling;**
  - (G) Harassment;**
  - (H) Hazing;**
  - (I) Inappropriate or questionable uses, or both of internet materials or equipment, or both;**
  - (J) Theft; or**
  - (K) Trespassing.**
- (3) [~~All other~~] **Class C and D** offenses: [~~Any other behavior which disrupts the class or is a violation of school rules.~~] **A summer school student who commits any class C or D, or both offenses as specified in section 8-19-6 twice 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.**

(b) 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. [~~Failure to attend the meeting may result in dismissal of the student.~~] The summer school director shall file a report with the [~~district~~] **complex area** superintendent and shall provide a copy to the [~~student and~~] parent.

(c) A summer school director **or designee**, in an emergency, may impose a crisis [~~suspension~~] **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 [~~notify~~] **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 [district] **complex area** superintendent and shall provide a copy to the [student and] parent.

~~[(d)—A student whose behavior is disruptive to the class or is a violation of school rules shall be reprimanded or counseled. A student may be dismissed from summer school if misconduct continues after receiving a reprimand or counseling.] [Eff 5/23/86; am and comp 7/19/93; comp 5/19/97; comp 2/22/01; am and comp ]~~  
(Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

#### Subchapter 4

#### School Searches and Seizures

~~§8-19-14 Policy on [school searches and seizures] **opening and inspection of student lockers.** [Students have a legitimate expectation of privacy in school and during department-supervised activities, on or off school property. Their expectation of privacy extends to their persons and personal effects as well as school property assigned for their individual use. School officials shall respect and uphold these privacy rights of students. Schools, on the other hand, 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 school premises or during department-supervised activities. As a general policy, such searches and seizures are permissible only when the health or safety of a person or persons would be endangered if a search or seizure is not carried out by school officials. Searches and seizures conducted by school officials shall abide by the provisions of this subchapter.] **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 such 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 ] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112)]

§8-19-15 [~~Authority.~~] **Policy on general school searches and seizures.** [~~Searches and seizures may be carried out on school premises, or during department-supervised activities, on or off school property, by any school official who is responsible for the supervision of the student or property to be searched. 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 of a person or persons. It is not necessary for school officials to obtain a warrant before conducting a search of a student or property.]~~ **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 of education premises, on department of education transportation, or during a department of education 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 of education premises, on department of education transportation, or during a department of education sponsored activity or event on or off school property. As a general policy, except as provided for in section 8-19-14 regarding student lockers, such 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 ] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112)]



~~§8-19-17 [Prohibited searches and seizures.]~~ **Conditions under which general school searches and seizures may be carried out.** ~~[(a)~~

~~Random searches are prohibited.~~

~~———— (b) ——— Strip searches are prohibited.~~

~~———— (c) ——— A school official shall not conduct a search requiring bodily contact of a student of the opposite sex except when such a search is necessary to prevent imminent harm to the health or safety of a person or persons.~~

~~———— (d) ——— 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 imminent harm to the health or safety of a person or persons. When the use of force is necessary, the degree of force shall not be designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress, or gross degradation.~~

~~———— (e) ——— Seizure of the personal effects of a student resulting from 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, including the possession of contraband constituting a class D offense under this chapter, or when non-seizure may pose a serious threat to the health or safety of a person or persons, including the school official conducting the search.]~~ **Except as provided in §8-19-14 regarding student lockers:**

**(a) 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 ] (Auth: HRS §§302A-1112, 703-309(2)) (Imp: Hawaii Const. Art. X, §3, HRS §§302A-1101, 302A-1112, 703-309(2))

~~§8-19-18 [Searches and seizures involving law enforcement officers.]~~ **Prohibited searches and seizures. Except as provided in section 8-19-14 regarding student lockers:** [School officials shall cooperate with law enforcement officers in the conduct of criminal investigations on school premises and during department-supervised activities in accordance with the provisions of sections 22, 23, and 24 of this chapter relating to police interviews and arrests. However, school officials shall not conduct any search and seizure in conjunction with, or at the request of, law enforcement officers as part of a criminal investigation. Law enforcement officers shall be permitted to carry out searches and seizures which they deem necessary under the prevailing legal standards of criminal investigations.]

**(a) Random searches are prohibited.**

**(b) Strip searches are prohibited.**

**(c) 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.**

**(d) 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.**

**(e) 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 ] (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 ~~[a preliminary]~~ **an** investigation to determine as to 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) ~~[Upon determining that a class A or class B offense has occurred, the]~~ **The** principal or designee shall ~~[submit a school incident report to the district superintendent]~~ **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, ~~[in writing,]~~ of the ~~[dispositive]~~ **disciplinary** action, **if any,** taken on the class ~~[A or B offense]~~ **offense(s)** within five **school** days after the ~~[offense]~~ **incident** is reported in accordance with subsection (c).

(e) If the teacher, official, or other employee is dissatisfied with the ~~[dispositive]~~ **disciplinary** action taken on the offense reported, or if no ~~[dispositive]~~ **disciplinary** action has been taken within ten **school** days

after the [offense] **incident** was reported by the teacher, official, or other employee, the person who made the report may appeal to the [district] **complex area** superintendent, in writing, ~~that appropriate dispositive action be taken on the offense reported~~.

(f) Within five **school** days of receiving an appeal as provided in subsection (e), the [district] **complex area** superintendent or designee shall notify the appellant, in writing, of the [dispositive] **disciplinary** action taken on the offense reported.

~~[(g) Incident reports filed with the district superintendent shall be disposed of pursuant to guidelines established by the department.] [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 ] (Auth: HRS §§302A-1112, 302A-1002) (Imp: HRS §§302A-1112, 302A-1002)~~

§8-19-20 Indemnity upon reporting class A and class B 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 ] (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; [penalties] consequences. (a) The superintendent of education shall furnish an annual written notice to all schools and [districts] **offices** that failure to report class A or class B offenses occurring [~~in school or during school functions~~] **on campus, or other department of education premises, on department of education transportation, or during a department of education 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 class A or class B 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 [~~in school or during school functions, on or off school property,~~] **on campus, or other department of education premises,** [~~during school hours,~~] **on department of education transportation, or during a department of education 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 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 ] (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 [~~notify~~] **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 [~~notify~~] **inform** the parent or if the parent is [~~notified~~] **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.**

[~~(b)~~] **(c)** If a student is arrested, the principal or designee shall follow the procedures prescribed in §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 ] (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 ~~notify~~ **inform** the parent of the ~~[police interview and the]~~ right to be present while the **police** interview is conducted. ~~[No interview shall be granted until consent is obtained from the parent.]~~ **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) — Where the request for an interview is granted and where the parent is unable to attend the interview, the parent or student may request that the principal or designee be present at the interview as an observer.]~~

~~[(d)]~~ **(c)** The principal or designee shall keep a log and record the **student's** name ~~[of the student],~~ **the** date~~[-, starting and ending time]~~ of the police interview, ~~[name of the school official present,]~~ and the ~~[name of ]~~ **police officer's name and badge number and police report number if available.**

~~[(e)]~~ **(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 ] (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 ~~[notification that a student has been arrested by the police]~~ **police arrival to arrest a student,** the principal or designee shall make ~~[an]~~ **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 ] (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 ~~[been found guilty of the offense]~~ **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 ] (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 ~~[make or order]~~ **initiate** an investigation, ~~[of the offense. The investigation shall be completed as quickly as practicable after the discovery of the offense.]~~

(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, ~~[and]~~ 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 ~~[reasonable cause]~~ **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 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 [them] **the parent** of the [charges] **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 [~~may be waived by the parent~~] and an informal settlement [~~reached~~] **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.

~~[(4) If the conference is waived, the parent shall be informed that a notice and an opportunity to be heard at a conference with the principal or designee was given to the parent and that the opportunity to be heard was waived by the parent.]~~

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

(1) Reschedule the conference date if it 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 [a] **the** failure to respond to the notice, the matter shall be referred to the [district] **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 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 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 [district] **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 [district] **complex area** superintendent. The [district] **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 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 [district] **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 ]  
(Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1153)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored and bold.
3. Additions to update source notes reflect these amendments and compilations 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 (date) and filed with the Office of the Lieutenant Governor.

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Garrett Toguchi  
Chairperson  
Board of Education

APPROVED TO FORM:

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Deputy Attorney General