

SB792

Date of Hearing: February 13, 2009

Committee: Senate Education/Housing

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.B. 0792, Relating to Education

Purpose: Requires the department of education to adopt rules to prohibit school bullying and cyberbullying. Makes appropriation.

Department's Position: The Department of Education (Department) opposes S.B. 0792 for the following reasons. While the Department agrees that bullying is becoming increasingly prevalent and more attention needs to be emphasized by the schools, the action to adopt rules to meet this need is currently not necessary. The language, processes and procedures to address and report "bullying" and "cyberbullying" have been included in the proposed Hawaii Administrative Rule, Chapter 19. The proposed Chapter 19 has been approved and is currently awaiting to go to public hearing. In addition, in 2005 the Superintendent convened a safe schools community advisory committee to provide input to the Department regarding the implementation of prevention strategies and interventions to ensure the safety and well-being of all students in Hawaii's public schools. Bullying and cyberbullying are only symptoms of a

school community's climate and approach to addressing school violence and aggression. An effective approach to addressing bullying and cyberbullying warrants a schoolwide, comprehensive and proactive approach aimed at prevention including the ability of adults to supervise, detect and effectively intervene in these situations. Thus, in lieu of the proposed legislation, the Department would appreciate the opportunity to continue to develop this framework for this approach to address the problems with bullying and cyberbullying.



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February 10, 2009

TO: The Honorable Norman Sakamoto, Chair  
Senate Committee on Education

FROM: Martha T. Torney, Executive Director

**SUBJECT: SB 792 REQUIRING THE DEPARTMENT OF EDUCATION TO  
ADOPT RULES TO PROHIBIT SCHOOL BULLYING AND  
CYBERBULLYING**

Hearing: Friday, February 13, 2009, 2:30 p.m.  
State Capitol, Conference Room 225

The Office of Youth Services (OYS) supports the intent of SB 792, which addresses the problem of school-based cyber-bullying among students, as long as its passage does not replace or adversely impact the priorities in the Executive Budget.

Cyber-bullying is a growing problem in the United States and is defined as acts of cruelty by sending or posting harmful material about others through the use of the Internet or other digital technologies (i.e. camera phones, PDAs). Research shows that cyber-bullying is a more complicated issue than other types of bullying that have been present on school campuses for generations. It occurs both within the school environment and off-campus. The OYS further notes that the evolution of face-to-face bullying to cyber-bullying tests the limits of disciplinary actions by school officials.

Because of the unique problems presented by cyber-bullying, any attempt to address it needs to be part of a comprehensive and school-wide approach to providing a safe school environment. We will defer to the Department of Education as to how best accomplish this.

Thank you for the opportunity to present this testimony.

Good afternoon, Senators. My name is Theresa Quitugua and I am a junior at Kohala High School. I am testifying on SB. No. 792, Cyber Bullying. I strongly support this bill for the following reasons.

I support this bill is because bullying continues to be a problem, whether it is in school, out of school, on the computer, or over the phone. We need to push this Bill so kids know that bullying is related to harassment and can result in serious consequences whether it is dealing with suspension or the cops. Some who witness the bullying don't bother to report such actions and just let it go. Witnesses need to report any kinds of bullying before it leads to something even worst. Over and over again throughout, the school year, bullying has been ignored by many teachers, students, and faculty. Ignoring these issues has made some situations develop into even bigger problems.

So in conclusion we need to strongly push this Bill to stop any kinds of bullying in school and out of school and notify kids that there are serious consequences for these actions.



**S E A C**  
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February 13, 2009

**Special Education  
Advisory Council**

Ms. Ivalee Sinclair, *Chair*  
Mr. Steve Laracuente, *Vice  
Chair*

Ms. Brendelyn Ancheta  
Dr. Paul Ban, *Liaison  
to the Superintendent*  
Ms. Sue Brown  
Ms. Deborah Cheeseman  
Ms. Phyllis DeKok  
Ms. Mary Ellis  
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Ms. Cari White  
Ms. Jasmine Williams  
Mr. Duane Yee  
Mr. Shawn Yoshimoto

Jan Tateishi, Staff  
Susan Rocco, Staff

Senator Norman Sakamoto, Chair  
Committee on Education and Housing  
State Capitol  
Honolulu, HI 96813

RE: SB 792 - Relating to Education

Dear Chairman Sakamoto and Members of the Committee:

The Special Education Advisory Council, Hawaii's mandated State  
Advisory Panel under the Individuals with Disabilities Education Act,  
**supports the intent of SB 792.**

SEAC agrees with the authors of this legislation that school bullying is a serious problem, and research has shown that students with disabilities are more likely than their non-disabled peers to be victims of bullying. At the same time, students with conduct-disorders who exhibit antisocial behavior may be more likely to be perpetrators of bullying. The negative effects of bullying, including cyberbullying, include decreased academic performance, increased anxiety, low self-esteem, physical symptoms such as stomach aches and headaches, truancy, depression and even suicide.

This bill would require the Department of Education to adopt rules that prohibit bullying and establish procedures for students and parents to report suspected incidences of bullying. The Board of Education is in the process of revising Chapter 19, the administrative rules related to school discipline. The most recently proposed rules contain many of the elements outlined in this bill including disciplinary procedures, reporting protocols, a process for investigating suspected offenses and definitions for bullying and cyberbullying. The Chapter 19 proposed definitions are similar but not identical to those included in SB 792.

This bill seeks to further prevent and reduce bullying of school students by appropriating funds to implement model anti-bullying programs in



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schools. SEAC is cognizant that the current fiscal crisis may inhibit new funding of programs. However, we would be willing to assist the Department in researching evidenced-based programs that have had success in reducing or preventing school bullying, so that when funds are available, there is more information on hand to choose appropriate interventions.

Thank you for the opportunity to present testimony on this issue. Should you have any questions regarding our position, you are welcome to contact me by phone or email.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ivalee Sinclair". The signature is written in dark ink on a light-colored background.

Ivalee Sinclair, Chair



Via E-mail: EDHTestimony@Capitol.hawaii.gov  
Committee: Committee on Education and Housing  
Hearing Date/Time: Friday, February 13, 2009, 2:30 p.m.  
Place: Room 225  
Re: Testimony of the ACLU of Hawaii in **Opposition to S.B. 792**, Relating to Education

Dear Chair Sakamoto and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to S.B. 792, which requires the Department of Education to adopt rules to prohibit school bullying and cyberbullying. Although the goal of S.B. 792 – ensuring a safe place for all of Hawaii’s students – is laudable, the bill’s language runs afoul of the First Amendment to the United States Constitution and Article I, § 4 of the Hawaii Constitution.

Our primary concern with this bill is that it purports to give the Department of Education authority to regulate speech that occurs outside of school. Simply put, the Department of Education has no authority to regulate students’ speech outside of school and school-related functions. As the United States Supreme Court stated forty years ago, “School officials do not possess absolute authority over their students.”<sup>1</sup> The Court explained further:

Students in school as well as out of school are ‘persons’ under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved.<sup>2</sup>

Parents are understandably concerned about harassment and threats that occur outside of school. However, speech that is threatening or harassing is not protected under the First Amendment and is already prohibited under Hawaii law. If a student threatens someone outside of school, the student can be arrested and prosecuted (just as any other person could be arrested

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<sup>1</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

<sup>2</sup> *Id.*

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Hon. Sen. Sakamoto, Chair, EDH Committee  
and Members Thereof  
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and prosecuted for threatening speech). The Department of Education simply has no authority to regulate out-of-school speech any further, because doing so would infringe on the First Amendment rights of students (as well as on the constitutional rights of the child's parents to raise her or his child free from government interference).

Disciplining a child for out-of-school conduct is a task reserved for the child's parents or guardians (or law enforcement if appropriate). This authority should not – and constitutionally cannot – be delegated to the Department of Education.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,



Daniel M. Gluck  
Senior Staff Attorney  
ACLU of Hawaii

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February 12, 2009

Senator Norman Sakamoto, Chair  
Senator Michelle Kidani, Vice Chair  
Committee on Education and Housing  
Hearing Date: Friday, February 13, 2009  
Support of SB 792, Relating to Education (Bullying and Cyberbullying)

We **strongly support SB 792**, Relating to Education, and requiring the Department of Education to adopt rules to prohibit school bullying and cyberbullying.

We are the parents of a child with Autism who has been subjected to repeated bullying throughout the school year. Our son attends Kailua Elementary in their Special Education program and is in fifth grade. The most recent incident was today, where he was teased and provoked repeatedly, to a point where he lashed out verbally and physically to stop the harassment. Our son is small for his age, wears thick glasses, is very skinny, stutters when he gets excited and because of his disability, often does not even know he is being bullied. He is a perfect target and kids mark him as such. They tease and taunt him, push him around, make fun of him and exclude him.

We have brought the problem to the attention of the school administration and our Individualized Education Plan team as each incident occurs, but nothing is changing. One administrator even told us that she believed it to be a "positive experience" for him. They all say they do not tolerate bullying or harassment, yet it continues to happen. They even place the burden on our son, a boy whose disability makes it difficult to read others' emotions and correctly communicate his own emotions, to remedy the problem by:

- making sure he is not alone
- ignoring it so the bullies don't get a reaction from him
- reporting the bullying as it happens

Shouldn't the main responsibility fall on the bully and not a special needs victim?

He has already missed two days of school because he fears further bullying. He says he does not feel safe at school and he doesn't understand why these kids pick on him.

Government is supposed to help the helpless and defend the defenseless. Please help and defend our son and others like him. He just wants to go to school and learn and enjoy the experience. Instead, he dreads facing these mean kids and wakes up wondering what will happen to him each day.

We respectfully ask for your support on SB 792 and hope you can make a difference in our son's life. Mahalo for this opportunity to testify.

David and Andrea Oka  
Parents of a special needs child  
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