

**"CHAPTER 302A
EDUCATION**

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Pacific-Asia institute for resilience and sustainability. L 2014, c 229.

Bullying, cyberbullying, and harassment; compliance reports to board. L 2011, c 214.

Concussion educational program. L 2012, c 197; L 2016, c 262.

Declining balance debit card pilot project for school year 2016-2017; report to 2018 legislature. L 2016, c 124, §4(22).

Establishing E academies. L 1999, c 178, §17.

Human resource management model for Waianae complex schools (pilot project). L 2007, c 268.

Non-school hour programs for children and youth, annual report by office of youth services. L 2006, c 281.

Pilot program for lease of public school land; reports to legislature until completion of projects. L 2013, c 155, §4.

Professional development schools grant program. L 2001, c 313.

Report to 2018 legislature on department's progress in implementing use of restraint statutes and expenditure of funds. L 2016, c 151, §1.

Reports to 2017-2018 legislature on progress in complying with licensure and certification requirements of chapter 465D. L 2016, c 107, §3.

Science and technology plan incorporating EPSCor (experimental program to stimulate competitive research) efforts (reports from 2011 and every 5 years thereafter). L 2009, c 137.

Single school calendar. L 2004, c 51, §49; L 2011, c 24.

Skilled worker and business development center at each community college. L Sp 2009, c 34.

Substance abuse treatment programs in schools with greatest need. L 2006, c 268.

Working group on age-appropriate development for children from birth to age five years who are deaf, hard of hearing, or deaf-blind; reports to 2017-2018 legislature (ceases to exist June 30, 2018). L 2016, c 177, §3.

This chapter, enacted by L 1996, c 89, is based on repealed chapters 296, 296C, 296D, 297, 297D, 298, 299, 300, and 301. As appropriate, amendments made to the repealed chapters by cc 48, 90, 91, 122, 123, 160, 162, 265, and 298 of the 1996 session are incorporated into the corresponding sections of chapter 302A.

Pursuant to §23G-15(1), the revisor has omitted all reserved section numbers and renumbered the remaining sections of this chapter as enacted by L 1996, c 89.

Hawaii broadband task force (repealed July 1, 2009). L Sp 2007, c 2.

Human resource management model for Waianae complex schools (pilot project). L 2007, c 268.

Kauai community college--Hawaii excellence through science and technology academy pilot program (reports through 2010 legislature). L 2007, c 111, §§7 to 10.

Interstate compact on educational opportunity for military children, see chapter 311D.

Cross References

Building permit requirements for new developments in school impact districts, see §46-142.5.

Impact fees for public highways, see §§364-121 to 127.

Department of education; organization and functions, generally, see §26-12. See also Const. Art. X.

Departmental data sharing (improving educational and workforce outcomes), see §27-7.

Employment of retirants, see §88-9.

Hawaii agriculture workforce advisory board, see §371-19.

Hawaii farm to school program, see §141-11.

Interstate compact on educational opportunity for military children, see chapter 311D.

K-12 agriculture workforce development pipeline initiative, see §371-21.

Medical marijuana patient and caregiver protections, see §329-125.5.

Law Journals and Reviews

Regression by Progression: Unleveling the Classroom Playing Field Through Cosmetic Neurology. 33 UH L. Rev. 193 (2010).

Translation v. Tradition: Fighting for Equal Standardized Testing ma ka 'Ōlelo Hawai'i. 36 UH L. Rev. 487 (2014).

"Language Is Never About Language": Eliminating Language Bias in Federal Education Law to Further Indigenous Rights. 37 UH L. Rev. 381 (2015).

"PART I. GENERAL PROVISIONS

A. Miscellaneous

Revision Note

Sections 302A-101 and 302A-102 designated as subpart A pursuant to §23G-15.

§302A-101 Definitions. As used in this chapter, the following terms have the following meanings unless the context indicates otherwise:

"Air conditioning" means any mechanical device that cools or heats air.

"Attend" or "attendance" means a student is physically present in school after enrollment.

"Authorizer" has the same meaning as in section 302D-1.

"Board" means the board of education.

"Cafeteria workers" includes all employees of any public school cafeteria other than the cafeteria manager.

"Charter schools" has the same meaning as in section 302D-1.

"Commission" has the same meaning as in section 302D-1.

"Complex" means the high school and those elementary, middle, and intermediate schools that feed into the high school as designated by the department.

"Complex area" means the administrative unit that includes one or more complexes as designated by the department.

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

"Curricular materials" means any systematically organized material designed to provide a specific level of instruction in a subject-matter category, including textbooks, instructional materials, library books, equipment, computer software, digital content accessed through a computer or other electronic medium, digital content available through an internet-based provider of course content, or supplies used in a particular course of study. "Department" means the department of education.

"Department school" means any school that falls within the definition of "public schools", as that term is defined in section 302A-101, and is not a charter school.

"District" means the state public education system as a whole, except as used by the department for federal compliance and reporting requirements.

"Early childhood education" means a developmentally appropriate early childhood development and education program for children from birth until the time they enter kindergarten.

"Early education". DELETED.

"EDN 100" means the budget program identification number for the school-based budgeting program within the department.

"Educational officers" includes principals, vice-principals, and professional employees of the state and district offices of the department, except those employees in the classified service.

"Enroll" or "enrollment" means a student has met all of the department's requirements for entrance and is formally placed on a school's roll.

"Exceptional children" includes:

- (1) Persons under twenty-two years of age who deviate from the so-called normal person in physical, mental, social, or emotional characteristics or abilities to such an extent that specialized training, techniques, and equipment are required to enable these persons to attain the maximum of their abilities or capacities; provided that "exceptional children" shall not include "gifted and talented children";
- (2) Persons under twenty-two years of age who by reason of physical defects cannot attend the regular public school classes with normal children; and
- (3) Persons under twenty-two years of age who are certified by a licensed physician eligible for membership in the state medical society as being emotionally maladjusted or intellectually incapable of profiting from ordinary instructional methods.

"Incumbent teachers" refers to teachers presently in service or on authorized leaves from the department.

"License" means the recognition granted by the Hawaii teacher standards board to an individual to practice the profession of teaching. This definition shall not apply to the term "license" as it is used in sections 302A-425 to 302A-427.

"Private trade, vocational, or technical school" means any plan or method used by any person or persons, firm, or any other organization or corporation for giving instruction in any form or manner in any trade, occupation, or vocation for a consideration, reward, or promise of whatever nature, including correspondence schools located within the State, except as follows:

- (1) Schools maintained, or classes conducted, by employers for their own employees where no fee or tuition is charged;
- (2) Courses of instruction given by any fraternal society, benevolent order, or professional organization to its members, which courses are not operated for profit;
- (3) Flying schools qualified under the Federal Aviation Administration;
- (4) Classes conducted for less than five students at one and the same time;
- (5) Classes or courses of instruction that are conducted for twenty or fewer class sessions during any twelve-month period;

- (6) Avocational, hobby, recreation, or health classes or courses;
- (7) Courses of instruction on religious subjects given under the auspices of a religious organization; and
- (8) Schools registered by the department of commerce and consumer affairs or by boards and commissions placed in the department of commerce and consumer affairs for administrative purposes.

"Public office" excludes notaries public, reserve police officers, officers of emergency organizations for civilian defense or disaster relief, or county charter commissions.

"Public schools" means all academic and noncollege type schools established and maintained by the department and charter schools governed by chapter 302D.

"School-based budget flexibility" means an operating budget preparation and allocation process that provides maximum flexibility to individual schools, complexes, and learning support centers in the preparation and execution of their operating budgets.

"School meals" means breakfast and lunch prepared and served by a school cafeteria.

"Special facilities" includes buildings, equipment, and materials; transportation; boarding homes; and personnel qualified to work with exceptional children.

"Special services" means physiotherapy, or any form of muscle training, speech training, occupational therapy, vocational training, psychological evaluation, or any of them.

"Superintendent" means the superintendent of education.

"Teacher" means a person whose duties in the public educational system are primarily teaching or instruction of students or related activities centered primarily on students and who is in close and continuous contact with students, and shall include but not be limited to classroom teachers, school librarians, counselors, registrars, and special education teachers.

"Vandalism" includes, but is not limited to, mischievous or malicious destruction of property, such as breakage of windows, lockers, and doors.

"Weighted student formula" means a formula for allocating operating moneys to individual public schools that includes a system of weighted characteristics affecting the relative cost of educating each student attending a public school. [L 1996, c 89, pt of §2 and am c 48, §1; am L 1997, c 144, §3; am L 1999, c 62, §3; am L 2002, c 16, §16; am L 2003, c 187, §1; am L 2004, c 51, §§5, 6, and 22, c 220, §2, and c 221, §8; am L 2005, c 87, §3; am L 2006, c 298, §8; am L 2007, c 115, §4; am L 2009, c 26, §2; am L 2012, c 130, §7 and c 133, §6; am L 2013, c 159, §2; am

L 2014, c 9, §3, c 16, §1, c 39, §1, c 215, §2, and c 232, §§5, 6; am L 2015, c 108, §4; am L 2016, c 112, §2]

" **§302A-102 Smoking prohibited.** All public schools within the State, from kindergarten through grade twelve, shall prohibit the use of tobacco at public schools or at public school functions. [L 2004, c 87, §2; am L 2014, c 232, §7]

Note

Part II of chapter 328K referred to in text is repealed. Similar provisions, see chapter 328J.

"B. Board of Education

Revision Note

Sections 302A-121 to 302A-127 designated as subpart B pursuant to §23G-15.

[§302A-121] Board of education; members; student and military representatives. (a) The board shall consist of nine members as follows:

- (1) One member from the county of Hawaii;
- (2) One member from the county of Maui;
- (3) One member from the county of Kauai;
- (4) Three members from the city and county of Honolulu;
and
- (5) Three at-large members; provided that the governor shall select an at-large member as the chairperson.

The members shall be appointed by the governor, with the advice and consent of the senate. The governor may remove or suspend for cause any member of the board.

(b) Pursuant to article XVIII, section 12, of the Hawaii State Constitution, the period of transition from the elected to the appointed board shall be as determined in section 21 of Act 5, Session Laws of Hawaii 2011.

(c) The members of the board shall serve without pay but shall be entitled to reimbursement for necessary expenses, including travel and board and lodging expenses, while attending meetings of the board or when actually engaged in business relating to the work of the board.

(d) Pursuant to section 302A-447, the state student council shall select a nonvoting public high school student representative to the board.

(e) Pursuant to section 302A-1101(c), the board shall invite the senior military commander in Hawaii to appoint a nonvoting military representative to the board. [L 2011, c 5, pt of §2]

Revision Note

In section heading, "representative" changed to "representatives".

" **[§302A-122] Board of education; eligibility.** Except as otherwise provided by law, state officers shall be eligible for appointment and membership to the board. No person shall be eligible for appointment to the board:

- (1) Under section 302A-121(a)(1) through (4) unless the person is a resident of the county from which the person is to be appointed; or
- (2) Under section 302A-121(a)(5) unless the person is a resident of the State. [L 2011, c 5, pt of §2]

" **§302A-123 Board of education; terms.** (a) The governor shall set the terms of the members initially appointed to the board under section 21 of Act 5, Session Laws of Hawaii 2011, as follows:

- (1) Three members shall serve one-year terms;
- (2) Three members shall serve two-year terms; and
- (3) Three members, including the chairperson, shall serve three-year terms.

(b) The term of each member shall be three years, except as provided for in the initial appointment in subsection (a). Notwithstanding any law to the contrary, members shall serve no more than three consecutive three-year terms; provided that the members who are initially appointed to terms of two years or less pursuant to subsection (a) may be reappointed to three ensuing consecutive three-year terms. If a member is nominated to a second or subsequent consecutive term, the senate shall consider the question of whether to reconfirm the member at least one hundred twenty days prior to the expiration of the member's immediately preceding term; provided that if the senate has not taken final action to reconfirm the member by the one hundred twenty-day deadline, the member shall continue to serve until the senate takes final action on the reconfirmation.

(c) The term of the student representative shall be one year. The student representative may be selected for one additional consecutive term; provided that the student

representative shall be a student at the time of selection and shall be a student for the majority of that term.

(d) Every member may serve beyond the expiration date of the member's term of appointment until the member's successor has been appointed by the governor and confirmed by the senate in accordance with sections 302A-121, 302A-126, and 302A-127. [L 2011, c 5, pt of §2; am L 2014, c 17, §1]

Attorney General Opinions

This statute, providing that a holdover member shall serve until a successor has been "appointed by the governor and confirmed by the senate", is constitutional; the state constitution explicitly grants the legislature the authority to regulate the board in this manner. Att. Gen. Op. 16-3.

" **[§302A-124] Board of education; organization; quorum; meetings.** (a) The governor shall select a chairperson of the board; provided that the chairperson shall be selected from among the at-large members. The board shall select a vice chairperson from among its members, and the vice chairperson shall serve as interim chairperson in the event the chairperson's seat becomes vacant.

(b) A majority of all the voting members to which the board is entitled shall constitute a quorum to conduct business. At any time the board has fewer than five voting members, three voting members of the board shall constitute a quorum to conduct business and the concurrence of at least three voting members shall be necessary to make any action of the board valid.

(c) Notwithstanding chapter 92, from the convening of the legislature in regular session to adjournment sine die of each regular session, and during each special session of the legislature, the board may file any notice that specifies only legislation or legislation-related agenda items, no fewer than two calendar days before the meeting. [L 2011, c 5, pt of §2]

" **[§302A-125] Board of education; vacancies.** (a) The governor shall notify the senate in writing within ten days of:

- (1) Removing a member of the board; or
- (2) Receiving notification that a member of the board is resigning or has died;

provided that any vacancy shall be filled by appointment by the governor, with the advice and consent of the senate, in accordance with sections 302A-121, 302A-122, 302A-123, 302A-126, and 302A-127.

(b) Where the chairperson position becomes vacant, the governor may nominate a sitting member of the board to the chairperson position in accordance with subsection (a) and shall fill any resulting vacancy in accordance with subsection (a). [L 2011, c 5, pt of §2]

" **[§302A-126] Board of education; qualifications; administration priorities.** (a) Upon the nomination of any board member, the governor shall provide written documentation articulating the administration's goals and priorities with respect to the formation of a highly-functioning, well-balanced board, and describing the nominee's qualifications.

(b) Each nominee shall meet the following minimum qualifications:

- (1) Record of integrity, civic virtue, and high ethical standards. Each nominee shall demonstrate integrity, civic virtue, and high ethical standards and be willing to hold fellow board members to the same;
- (2) Availability for constructive engagement. Each nominee shall commit to being a conscientious and attentive board member;
- (3) Knowledge of best practices. Each nominee shall have an understanding of best practices in educational governance or shall be willing to be trained in such; and
- (4) Commitment to educational leadership. Each nominee shall have a clear understanding of the board's role in developing and protecting a clear, long-term strategic vision for Hawaii's public schools, and shall understand the need to hold the superintendent of education accountable for making consistent progress toward that vision.

(c) Each nominee shall ideally meet the following recommended qualifications:

- (1) Understanding of collective bargaining. Each nominee should demonstrate an understanding of the collective bargaining process and an ability to participate in that process on behalf of the board free from any conflict of interest;
- (2) Experience governing complex organizations. Each nominee should possess experience with complex organizations and a proven ability to function productively within them;
- (3) Collaborative leadership ability. Each nominee should have substantial leadership experience that ideally illustrates the nominee's ability to function among

- diverse colleagues as an effective team member, with the ability to articulate, understand, and help shape consensus surrounding board policies; and
- (4) Commitment to education. Each nominee's record should demonstrate a deep and abiding interest in education and a dedication to the social, academic, and character development of young people. [L 2011, c 5, pt of §2]

" **[§302A-127] Board of education; senate advice and consent.** In determining whether to confirm the governor's nominees to the board, the senate shall consider the combination of abilities, breadth of experiences, and characteristics of the board, as a whole, that will best serve the diverse interests and needs of the students and their families, the education system in Hawaii from early childhood through higher education, and the public libraries. Such considerations shall include but not be limited to reflecting the diversity of the student population, geographical representation, and a broad representation of education-related stakeholders. [L 2011, c 5, pt of §2]

"PART II. PROVISIONS AFFECTING STUDENTS

A. Student Performance Standards

§302A-201 Statewide performance standards. The board shall establish statewide performance standards and the means to assess the standards based upon the recommendations in the final report of the performance standards commission established pursuant to Act 334, Session Laws of Hawaii 1991; provided that the board may review and modify the performance standards, as the board deems necessary, to reflect the needs of public school students and educational goals adopted by the board. [L 1996, c 89, pt of §2; am L 2002, c 197, §1; am L 2009, c 33, §2; am L 2011, c 133, §§3, 5]

" **§302A-202 REPEALED.** L 2004, c 51, §23.

"B. Curriculum and Instruction

§302A-251 School year; student hours. (a) Notwithstanding any other law to the contrary, beginning with the 2011-2013 school years, all public schools, excluding charter schools and multi-track public schools, shall implement

a school year of one hundred eighty days, excluding professional development days and other non-instructional days negotiated pursuant to chapter 89.

(b) Notwithstanding any other law to the contrary:

(1) For the 2011-2012 school year, fifty per cent of all public elementary schools in the State, excluding charter schools and multi-track public schools, shall implement a school year that includes nine hundred fifteen student hours; and

(2) Beginning with the 2012-2013 school year, all public elementary schools in the State, excluding charter schools and multi-track public schools, shall implement a school year that includes nine hundred fifteen student hours.

(c) Notwithstanding any other law to the contrary, for the 2015-2016 school year, all public secondary schools, excluding charter schools and multi-track public schools, shall implement a school year that includes nine hundred ninety student hours.

(d) Notwithstanding any other law to the contrary, beginning with the 2016-2017 school year, all public schools, excluding charter schools and multi-track public schools, shall implement a school year of one hundred eighty days, excluding professional development days and other non-instructional days negotiated pursuant to chapter 89, that shall include one thousand eighty student hours for both elementary and secondary school grades.

(e) The board, in its discretion, may grant a waiver to any individual school subject to the student hours or one hundred eighty day school year requirements in this section. The board shall adopt policies and procedures to grant a waiver under this subsection.

(f) For purposes of this section, "student hours shall be inclusive of the full school day in alignment with the State's general learner outcomes.

(g) The department of education, with the board of education and office of the governor, and in consultation with representatives of the affected collective bargaining units, shall submit to the legislature, no later than twenty days prior to the convening of the regular sessions of 2013, 2014, 2015, and 2016, a report on its progress and efforts to meet the requirements of subsections (a), (b), (c), and (d). [L 2010, c 167, §3; am L 2011, c 52, §1; am L 2015, c 21, §1]

" **§302A-301 REPEALED.** L 2012, c 133, §31.

" **[§302A-305] Education research and development revolving fund.** (a) There is established, within the department of education, an education research and development revolving fund into which shall be deposited all revenues from the commercial exploitation of products and services developed by the department. The fund shall be used to support research and development of innovative curriculum, instructional aids, related technologies, and the related administrative costs of seeking and maintaining such commercialization. Appropriations or authorizations from the fund shall be expended by the superintendent.

(b) The department shall provide an annual report to the governor and the legislature describing all transactions and activities involved in the administration of the education research and development revolving fund. [L 2001, c 261, §1]

" **[§302A-321] Standards-based curriculum.** (a) When developing a standards-based curriculum and implementing it in a school or complex, at the minimum, the curriculum shall:

- (1) Be specific in its standards-based scope and sequence over a school year for each grade level and course;
- (2) Be consistent in course content;
- (3) Be aligned across all grade levels;
- (4) Specifically address the state content and performance standards and related benchmark maps; and
- (5) Be implemented in all appropriate classrooms in the school or complex.

(b) School complexes may choose to develop an articulated and aligned K-12 standards-based curriculum in one or more of the following core content areas:

- (1) Language arts;
- (2) Mathematics;
- (3) Science; and
- (4) Social studies.

(c) School complexes shall provide professional development.

(d) School complexes that develop a standards-based curriculum shall use standards-based formative assessment tools to monitor student progress, not less than on a quarterly basis throughout the school year.

(e) School complexes shall develop rigorous classroom-based performance assessments.

(f) School complexes may implement software programs at the school level to help to align school course material with Hawaii content and performance and federal educational standards. [L 2006, c 301, §2]

Note

Annual progress reports to legislature through 2009 session.
L 2006, c 301, §3.

" **[§302A-322] American Sign Language.** For purposes of this chapter, American Sign Language shall be recognized as a world language, and any public school may offer a course in American Sign Language. A student who successfully completes a course in American Sign Language shall be entitled to receive credit for that course toward satisfaction of a world language requirement of the public school at which the course is offered. [L 2016, c 152, §2]

"C. Supplementary Programs

§302A-401 Dual credit program. (a) There is created in the department the dual credit program to permit eligible students to enroll in any qualified course offered by the University of Hawaii system.

(b) For the purposes of this section:

"Eligible student" means a public high school student in the ninth, tenth, eleventh, or twelfth grade who:

- (1) Has passed an assessment approved by the college that demonstrates the student's ability to succeed at the college level;
- (2) Is under the age of twenty-one as of September 1 of the school year in which the college course is taken; and
- (3) Has other qualifications deemed appropriate by the department of education or the University of Hawaii; provided that subsequent qualifications do not restrict any student from taking the assessment.

"Qualified course" means any vocational or academic course offered by the University of Hawaii system that also applies to the department's graduation requirements or is otherwise permitted by department rule or policy.

(c) All course credits successfully completed pursuant to this section that would otherwise be transferable but for a student's grade level, shall be transferable to any University of Hawaii system degree granting institution; provided that the student is admitted to the campus where the credit is transferred.

(d) One hundred level or above University of Hawaii courses that fulfill an undergraduate or graduate degree course requirement and that are successfully completed under this section shall also satisfy the department's graduation requirements as determined by the department pursuant to rule.

(e) This section shall not preclude the department and the University of Hawaii from establishing programs by mutual agreement that permit high school students to enroll in college courses. [L 1996, c 89, pt of §2; am L 2000, c 236, §2; am L 2004, c 222, §1; am L 2007, c 282, §2; am L 2015, c 113, §2]

Cross References

Running start program, see §304A-803.

" **§302A-401.5 REPEALED.** L 2012, c 133, §32.

" **§§302A-402, 403 REPEALED.** L 1997, c 144, §§4, 5.

" **§302A-404 School meals.** School meals shall be made available under the school meals program in every school where the students are required to eat meals at school. [L 1996, c 89, pt of §2; am L 2009, c 26, §3]

" **§302A-405 School cafeterias; funds; expenditures.** (a) The price for school meals shall be set by the department to ensure that moneys received from the sale of the meals shall be not less than one-half of the cost of preparing the meals. The prices for school meals may be adjusted annually based on the previous year's costs rounded to the nearest five cents; provided that the department by rule shall provide a lower rate or free meals to children based on their economic need.

(b) All moneys received by or for the public school cafeterias from the sale of meals, the sale of services, the federal government, or any other source, shall be deposited in one special school lunch fund. Except as otherwise provided by the legislature, all expenditures for the operation of public school cafeterias shall be made from this fund.

(c) It is the intent of this section not to jeopardize the receipt of any federal aid and to the extent, and only to the extent necessary to effectuate this intent, the governor may modify the strict provisions of this section, but shall promptly report any such modification with the governor's reasons therefor to the next succeeding session of the legislature for

review. [L 1996, c 89, pt of §2; am L 1998, c 311, §6; am L 2000, c 171, §2; am L 2005, c 71, §2; am L 2009, c 26, §4]

" **§302A-406 Transportation of school children.** (a) The department may provide suitable transportation to and from school and for educational field trips for all children in grades kindergarten to twelve and in special education classes. The department shall adopt policies, procedures, and programs as it deems necessary to provide suitable transportation.

(b) The department shall adopt rules under chapter 91 governing the supervision and administration of the transportation of school children under this section. [L 1996, c 89, pt of §2; am L 2010, c 167, §5; am L 2013, c 257, §2]

Cross References

Interference with the operator of a public transit vehicle, see §711-1112.

State function, see §27-11.

" **§302A-407 School bus contracts.** (a) Any school bus contract between the State and the contractor shall include a provision requiring the contractor to equip the contractor's vehicles with the signs and visual signals described in section 291C-95(d) and (g). The contract shall also include other provisions as may be deemed necessary by the State for the safety of school bus passengers and shall include provisions requiring compliance with the rules and standards described in section 286-181.

(b) All moneys received from students and parents or guardians of students by public schools for state-provided school busing services, as authorized by section 302A-406, shall be deposited into the school bus fare revolving fund. Except as otherwise provided by the legislature, expenditures for the operation of state-contracted school bus services, as authorized by section 302A-406, shall be made from this fund. [L 1996, c 89, pt of §2; am L 2002, c 108, §3; am L 2013, c 257, §3]

Cross References

Pupil transportation safety, see §286-181.

" **[§302A-407.5] School bus fare revolving fund.** (a) There is established in the state treasury the school bus fare revolving fund, into which shall be deposited all moneys

received from students and parents or guardians of students by public schools for state-provided school busing services, as authorized by section 302A-406.

(b) Except as otherwise provided by the legislature, moneys in the school bus fare revolving fund shall be used for school busing services, as authorized by section 302A-406. [L 2002, c 108, §2]

" **§302A-408 After-school and weekend programs.** The department and the appropriate county agencies may establish and regulate programs of after-school and weekend community-school activities for children, including but not limited to child-care programs, arts and crafts, hula, ukulele, and other recreational projects, wherever feasible, at public school and public park facilities. In addition to any appropriation of public funds, reasonable fees established by the agencies operating the programs may be collected from children enrolled, in the furtherance of particular programs. The appropriate agencies may obtain from time to time the services of persons in a voluntary or unpaid capacity, exempt from chapter 76, as may be necessary for carrying out the purposes of this section, and may regulate their duties, powers, and responsibilities when not otherwise provided by law. Any person whose services have been so accepted, while engaged in the performance of duty under this section, shall be deemed a state employee or an employee of a political subdivision, as the case may be, in determining the liability of the State or the political subdivision for the negligent acts of these persons. [L 1996, c 89, pt of §2; am L 2000, c 253, §150; am L 2001, c 174, §1]

Cross References

Employees; criminal history record checks, see §302A-601.5.

Use of school facilities for recreational and community purposes, see §302A-1148.

" **§§302A-409 and 302A-410 REPEALED.** L Sp 2008, c 14, §§3, 4.

" **§302A-411 Kindergarten program; establishment; attendance.**

(a) The department shall establish and maintain kindergartens with a program of instruction as a part of the public school system; provided that:

(1) Attendance in kindergarten shall be mandatory, unless exempted by subsection (b) or section 302A-1132; and

(2) Charter schools shall not be excluded from mandatory participation in the program.

(b) Beginning with the 2014-2015 school year, any parent, guardian, or other person having the responsibility for, or care of, a child who will be at least five years of age on or before July 31 of the school year shall enroll the child in a public school kindergarten unless the child is enrolled at a private school or the child's attendance is otherwise exempt under section 302A-1132.

(c) The department may accept gifts to establish and maintain kindergartens. [L 1996, c 89, pt of §2; am L 1997, c 362, §1; am L 2004, c 219, §2; am L 2006, c 298, §9; am L 2009, c 194, §2; am L 2010, c 183, §2; am L 2012, c 178, §3; am L 2014, c 76, §2]

Cross References

Early childhood education facilities; identifying sites, see §302A-1506.5.

" **§302A-412 Blind or visually handicapped concessionaires.**

(a) Each secondary public school, upon the approval of the principal, may allow on the premises vending machines operated as a concession; provided that the concession shall be operated only by a blind or visually handicapped person, as defined in sections 235-1, 347-1, and 347-2. The location and operation of the vending machines and the items dispensed shall be approved by the principal.

(b) The concession shall be awarded and operated under chapter 102; provided that the selection of a concessionaire shall be in accordance with departmental guidelines and shall take into consideration the price of the items sold and any revenue-sharing arrangement made with school-related program organizations. [L 1996, c 89, pt of §2; am L 2003, c 187, §5; am L 2012, c 133, §7]

" **[§302A-413] Driver education.** (a) The department may establish and administer a motor vehicle driver education and training program to be conducted at each public high school in the State.

(b) The department, for the purpose of this section, shall:

(1) Set the prerequisites and priorities for enrollment in the course of driver education and training, which shall be open to every resident of the State who is

fifteen years of age or older and under nineteen years of age;

- (2) Establish the requirements for and employ necessary instructors, who are certified to have completed satisfactorily an approved instructor's course, to conduct the course in driver education and training;
- (3) Issue a certificate of completion to every student upon satisfactory completion of the course in driver education and training;
- (4) Purchase, rent, or acquire by gift, materials and equipment necessary for the program established by this section; and
- (5) Cooperate with the chief of police in each county in promoting traffic safety.

(c) The department may adopt rules under chapter 91, necessary for the purposes of this section and section 302A-414. [L 1996, c 89, pt of §2]

" **[§302A-414] Courses for instructors in driver education.**

(a) The department shall be responsible for conducting approved courses for instructors in driver education and training.

(b) The department shall certify any person who satisfactorily completes a course for instructors in driver education and training as provided in subsection (a). [L 1996, c 89, pt of §2]

" **§302A-415 Motor vehicles for driving instruction; purchase and sale.** The department may enter into agreements with any dealer or company for the purchase of motor vehicles for driving instruction in the public schools if the agreements provide that the department pay \$1 for each motor vehicle, take title thereto in the name of the State, and agree to resell it to the seller for \$1 within sixty days following the last day of the school year. In the event of the seller's failure to repurchase, the department may retain the motor vehicle or dispose of it in accordance with rules adopted under chapter 91. [L 1996, c 89, pt of §2; am L 2004, c 216, §34]

" **[§302A-416] Driver education fee.** The board may assess a fee for each student enrolling in the driver education program. All such fees collected shall be deposited into the state treasury to the credit of the general fund. [L 1996, c 89, pt of §2]

" **[§302A-417] Traffic safety education.** (a) The department may establish and administer a traffic safety education program

to be conducted at each public school for students from grades kindergarten through twelve.

(b) The department may establish the requirements for the position of traffic safety education specialist and may employ at least one traffic safety education specialist for the purposes of this section. The traffic safety education specialist may be paid out of fees allocated to the director of commerce and consumer affairs from the special drivers education fund account pursuant to section 431:10C-115. [L 1996, c 89, pt of §2]

" **§§302A-418, 419 REPEALED.** L 1997, c 144, §§6, 7.

" **§302A-420 Profits to pupils.** All net profits arising from agricultural and industrial pursuits under sections 302A-420 to 302A-431 at any school, under the rules of the department:

- (1) Shall be used by the school for the purchase of equipment and material, not otherwise provided for in the school budget, that will be of general benefit to the pupils; or
- (2) May be distributed among the pupils actually engaged in the pursuits.

The department shall provide for the keeping of simple books of account, showing the source and distribution of the money resulting from the operations carried on pursuant to this section, and for the auditing of these books of account at least quarterly. [L 1996, c 89, pt of §2; am L 1997, c 144, §2]

" **§§302A-421 to 423 REPEALED.** L 1997, c 144, §§8 to 10.

" **[§302A-424] Regulation of other schools and classes.** The department, at its discretion, may regulate schools, classes, or courses excepted from the definition of "private trade, vocational, or technical school". [L 1996, c 89, pt of §2]

" **§302A-425 License required for private trade, vocational, or technical school.** No private trade, vocational, or technical school shall be operated by any person or persons, firm, or any other private organization or corporation for the purpose of teaching any trade, occupation, or vocation unless there is first secured from the department a license issued in accordance with sections 302A-424 to 302A-428 and in such form as the department may direct. The purpose of the licensing and regulation is to protect consumers against practices by private trade, vocational, or technical schools that are false, deceptive, misleading, or unfair, and to help ensure adequate

educational quality at private trade, vocational, or technical schools. [L 1996, c 89, pt of §2; am L 1998, c 57, §1]

" **[§302A-426] Suspension and revocation of license; procedure.** (a) The department, after notice and opportunity for a hearing, may suspend or revoke a license at any time when, in the judgment of the department, the licensee is not complying with sections 302A-424 to 302A-428 or the rules that may be adopted by the board. The notice of hearing shall be served personally or sent to the licensee by registered or certified mail with return receipt at the licensee's last known address.

(b) Notice of suspension or revocation shall be served personally upon the licensee or sent to the licensee by registered or certified mail with return receipt, and the licensee shall forward the licensee's license at once to the department, and cease at once to operate the private trade, vocational, or technical school.

(c) All proceedings shall be subject to chapter 91. [L 1996, c 89, pt of §2]

" **[§302A-427] Powers of department.** No license shall be issued under sections 302A-424 to 302A-428 until the department has approved the method and content of the advertising, the standards and the methods of instruction, and the equipment provided. The department may consult with trade or vocational experts as to the equipment provided and the standards and methods of instruction offered. The department may adopt reasonable rules relating to the enforcement of sections 302A-424 to 302A-428. [L 1996, c 89, pt of §2]

" **[§302A-428] Penalty.** Any person, firm, or corporation that violates sections 302A-424 to 302A-428 shall be guilty of a misdemeanor, but shall be subject to a maximum fine of not more than \$100 or imprisonment for not more than ninety days, or both. [L 1996, c 89, pt of §2]

" **§302A-429 REPEALED.** L 2012, c 133, §33.

" **§302A-430 Coverage for workers' compensation.** Whenever a student participating in a school-approved work-based learning program sponsored by the department of education or the University of Hawaii undertakes to perform work for a private or public employer as part of the student's work-based learning program, whether paid or unpaid, the State shall be deemed to be the responsible employer for the purposes of workers' compensation coverage, that shall be the student's exclusive

remedy to the same extent as provided for in chapter 386 as against the State and the private employer participating in the program. [L 1996, c 89, pt of §2; am L 1997, c 344, §3; am L 2001, c 242, §2; am L 2008, c 24, §1]

" **§302A-431 Rules; reporting.** (a) The board and the board of regents of the University of Hawaii may adopt necessary rules under chapter 91 to administer and implement sections 302A-430 and 302A-431, including the adoption of safety guidelines and safety inspection procedures of facilities where students are placed. The department and the University of Hawaii shall inspect each facility annually prior to the placement of students with these facilities.

(b) The department and the University of Hawaii shall submit a biennial report to the governor and the legislature prior to the convening of each regular session in the first year of each biennium that identifies the cost impacts to the State of providing workers' compensation coverage for students under sections 302A-430 and 302A-440. [L 1996, c 89, pt of §2; am L 1997, c 344, §4; am L 2012, c 133, §8]

" **§§302A-431.5 to 302A-431.8 REPEALED.** L 2012, c 133, §§34 to 37.

" **§302A-431.9 Veterans high school diploma for armed services veterans and others.** (a) The department shall establish a program to award a veterans high school diploma to qualified veterans who did not receive a high school diploma as a result of compulsory induction into active service in the armed services of the United States.

(b) For purposes of this section, a "qualified veteran" is a person who:

- (1) Was a resident of the State;
- (2) Was compulsorily inducted into the armed services of the United States between:
 - (A) December 1, 1941, and August 30, 1945;
 - (B) June 1, 1950, and July 31, 1953; or
 - (C) August 1, 1964, and January 31, 1973;while attending or enrolled in a high school in the State; provided that the department may consider extending these time periods through rules adopted under chapter 91; and
- (3) Did not complete a high school curriculum and receive a high school diploma.

(c) The department shall also award a veterans high school diploma to any person whose high school education was interrupted due to wartime practices such as internment during World War II.

(d) Qualified persons shall submit to the department, on forms that the department shall prescribe, information establishing eligibility for the award of a veterans high school diploma under this section. [L 2007, c 101, §2]

Note

Section repealed June 30, 2020. L 2012, c 133, §§38, 75; L 2015, c 124, §2.

" **[§302A-432] Adult and community education authorized.** To provide increased opportunity for the people of Hawaii, the department shall establish and regulate a program of adult and community education of less than college grade. The department shall provide public school buildings and other facilities, and use public school equipment under conditions determined by the department, when the equipment is needed, for adult and community education programs. [L 1996, c 89, pt of §2]

" **§302A-433 Scope of adult and community education programs offered.** As rapidly as resources are available and interest is developed, instructional programs shall be initiated in the following fields:

- (1) Basic elementary education. A foundation program in reading and speaking English, writing, and arithmetic for persons with no schooling or only primary grade training;
- (2) Advanced elementary education. A program in advanced elementary education for those persons who have completed four to eight years of schooling and who desire to obtain more complete mastery of the fundamentals;
- (3) Secondary education. A program of secondary education for those adults who, in youth, left school or for some reason had their education curtailed and who now desire to continue their education; for those youths who have been excepted from compulsory attendance under section 302A-1132; and for those youths who are in need of courses to complete their high school graduation requirements;
- (4) Adult literacy education. A basic program in reading and writing English, and arithmetic for persons who

- need to develop or improve their mastery of basic literacy skills in these areas for purposes of enhancing their personal, social, or employment lives;
- (5) Homemaking and parent education. A program in homemaking and parent education for all those parents and other adults who desire training in family life, including child care, nursing, budgeting, and other instruction basic to homemaking;
 - (6) Community education. A program to facilitate understanding and enlightenment in civic duties, responsibilities, and obligations for all persons who desire to keep pace with today's community, national, and world developments and who realize the necessity of continuing study for the adequate fulfillment of their civic functions. Community education addresses responsibilities within a given community, especially concerns related to education and the schools, and offers additional services to supplement and enrich the educational program of in-school children and youths;
 - (7) Naturalization training. The standard course of training provided by the United States Citizenship and Immigration Services, which shall be provided to all those persons who have filed applications for United States citizenship and desire to enroll in such a course under the supervision of the department; and
 - (8) Cultural opportunities. A program of adult and community education that will meet the interests and desires of those people who wish to enrich and to broaden their cultural, recreational, and social interests. [L 1996, c 89, pt of §2; am L 2005, c 22, §13]

" **[§302A-434] Advisory council for adult and community education.** The board shall appoint an advisory council for adult and community education composed of fifteen or more representatives of industry, labor, civic organizations, and education. Appointments shall be for a term of two years with reappointments optional but not to exceed a total of six years on the advisory council. [L 1996, c 89, pt of §2]

" **[§302A-435] Financing adult and community education program.** The financial support for this program shall be in part from fees collected from students enrolled, and in part from public funds appropriated for this purpose. Fees shall be set in accordance with the recommendations of the advisory

council, and may be collected from students regularly enrolled; provided that:

- (1) Adults registered with the department of labor and industrial relations and unemployed shall be granted free enrollment in such courses as will tend to assist these persons in securing employment;
- (2) Adults certified by the department of human services as indigent may be enrolled on a nonfee basis in classes that will tend to assist these persons in becoming self-sustaining;
- (3) Discharged veterans who are entitled to federal educational assistance shall be enrolled upon authorization of the Department of Veterans Affairs and fees shall be charged against federal funds in accordance with Department of Veterans Affairs contract regulations; and
- (4) Administrative and supervisory costs, costs of instruction, and all other necessary expenses not covered by fees and other authorized charges shall be paid for out of funds appropriated for this purpose.
[L 1996, c 89, pt of §2]

" **[§302A-436] Departmental duty toward exceptional children.**

(a) It is hereby declared to be of vital concern to the State that all exceptional children residing in the State be provided with instruction, special facilities, and special services for education, therapy, and training to enable them to live normal competitive lives. In order to effectively accomplish this purpose, the department shall establish and administer instruction, special facilities, and special services for the education, therapy, and training of exceptional children, and provide in connection therewith corrective therapy, together with academic, occupational, and related training. The department shall cooperate with other agencies of the State charged with the administration of laws providing any type of service or aid to the exceptional child, and with the United States government through any appropriate agency or instrumentality in developing, extending, and improving the foregoing instruction, special facilities, and special services.

(b) This program shall include boarding facilities, when necessary, special classes in schools or homes, and such other facilities as shall be required to render appropriate services to the exceptional child. Existing facilities, buildings, and equipment belonging to, or operated by, the State shall be made available for these purposes when use thereof does not conflict with the primary use of the facilities. [L 1996, c 89, pt of §2]

" **§302A-437 REPEALED.** L 1997, c 144, §11.

" **§302A-438 Facilities, service, when required.** Where one or more exceptional children are found in any one complex area superintendent's district, the superintendent of education shall provide instruction, special facilities, and special services according to the specifications of sections 302A-436 to 302A-443 in a manner most expedient and economical. [L 1996, c 89, pt of §2; am L 2003, c 187, §6]

" **[§302A-439] Eligibility standards.** The eligibility of exceptional children for instruction, special facilities, and special services shall be determined in accordance with those standards established by the department. [L 1996, c 89, pt of §2]

" **§302A-440 Coverage for workers' compensation of an exceptional child.** Whenever an exceptional child as defined in section 302A-101 undertakes to perform work for a private employer as part of a school-approved work-based learning program, whether paid or unpaid, the State shall be deemed to be the responsible employer for the purposes of workers' compensation coverage. [L 1996, c 89, pt of §2; am L 1997, c 344, §5; am L 2001, c 242, §3]

" **[§302A-441] Studies, surveys, rules.** The department shall establish and make such studies, surveys, evaluations, and rules as are necessary to carry out the purposes of sections 302A-436 to 302A-443. [L 1996, c 89, pt of §2]

" **§302A-442 Occupational therapy services, physical therapy services, school health services, mental health services, psychological services, and medical services for diagnostic or evaluative purposes.** (a) The department of health, within the funds available, shall be responsible for the related services of school health, mental health, psychological, and medical services for evaluation or diagnostic purposes, and, within the funds available, shall provide for those exceptional children who need these services and who attend public school in the State.

(b) The department of education, within the funds available, shall be responsible for the related services of occupational therapy and physical therapy for evaluation or diagnostic purposes, and, within the funds available, shall provide for those exceptional children who need these services and who attend public school in the State.

(c) The department of health shall work in cooperation with the department of education to implement this section. The procedures to implement this section shall be in accordance with the rules of the department of health and the department of education. [L 1996, c 89, pt of §2; am L 2000, c 123, §1]

" **§302A-442.5 Instructional materials; exceptional children.**

(a) Whenever used in this section, unless a different meaning clearly appears from the context:

"Braille" means the system of reading and writing through touch commonly known as standard English braille.

(b) All publishers of textbooks and instructional materials sold to the State or any public school shall furnish computer diskettes for literary subjects in the American Standard Code for Information Interchange from which braille versions can be produced. Publishers shall also furnish computer diskettes in American Standard Code for Information Interchange for nonliterary subjects including natural sciences, computer science, mathematics, and music when braille specialty code translation software is available.

(c) This section shall not apply to publishers of textbooks and instructional materials written in the Hawaiian language. [L 2002, c 193, §7; am L 2004, c 220, §3]

" **§302A-443 Administrative hearing procedures and subpoena power relating to the education of children with a disability.**

(a) An impartial hearing may be requested by any parent or guardian of a child with a disability, or by the department, on any matter relating to the identification, evaluation, program, or placement of a child with a disability; provided that the hearing is requested:

(1) Within two years of the date the parent, guardian, or department knew or should have known about the alleged action that formed the basis of the request for a hearing; and

(2) Notwithstanding paragraph (1), within one hundred and eighty calendar days of a unilateral special education placement, where the request is for reimbursement of the costs of the placement.

(b) Subsection (a) shall not apply to a parent or guardian of a child with a disability if the parent or guardian was prevented from requesting the hearing due to:

(1) Specific misrepresentations by the department that it had resolved the problem that formed the basis of the complaint; or

(2) The department's withholding from the parent or guardian information that was required by state or

federal laws and regulations to provide a free, appropriate public education to a child with a disability.

(c) The department shall adopt rules that conform to the requirements of any applicable federal statutes or regulations pertaining to the impartial hearing based on the education of a child with a disability. The rules shall provide that any party may be present at the proceeding, be accompanied and advised by counsel or individuals with special knowledge or training with respect to the problems of children with a disability, may require witnesses to be under oath, cross-examine witnesses, and obtain a written or electronic verbatim record of the proceedings.

(d) Any party to these hearings or the hearings officer shall have the right to compel the attendance of witnesses upon subpoena issued by the hearings officer. The fees for attendance shall be the same as for the fees of witnesses before circuit court. In case of the failure of any person to comply with a subpoena, a circuit court judge of the judicial circuit in which the witness resides, upon application of the hearings officer, shall compel attendance of the person.

(e) No later than twenty days prior to the convening of each regular session of the legislature, the department shall submit a report that provides the total number of requests for a due process hearing relating to the reimbursement of costs for a child's placement filed by a parent or guardian of a child with a disability.

(f) The department shall be authorized to monitor any child eligible to receive special education and related services who is placed, whether as the result of a hearing officer's decision, court order, or programmatic placement, at the department's expense, whether by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, in any private school or placement as defined by federal and state law, including any implementing regulations or rules, relating to students with disabilities. Any private school or placement that receives funding from the department for the placement of a student with a disability, whether the funding is by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, shall allow the department access to exercise its authority under this subsection to monitor any student placed at the private school or placement. Monitoring under this subsection shall include but not be limited to:

- (1) The monitoring of all private schools and placements to ensure compliance with all applicable federal,

state, and county laws, rules, regulations, and ordinances pertaining to health and safety;

- (2) The monitoring of all students with disabilities placed in a private school or placement to ensure that:
 - (A) Each student is receiving academic education, instruction, and programming as required by the student's individualized education program; and
 - (B) The curriculum and instruction are rigorous, based on content standards, and aligned with the Common Core State Standards;
- (3) The direct observation of a student with a disability placed in a private school or placement, with or without notice to the private school or placement;
- (4) The review of all records, notes, or documentation related to students with disabilities placed in a private school or placement; and
- (5) The right of the department to talk to the student's teachers at the private school or placement at reasonable times.

(g) Any private school or placement that receives funds from the department, whether by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, shall post with the department by April of each year, the itemized rates, fees, and tuition to be charged for the following school year and shall charge the department the same itemized rates, fees, or tuition it charges parents, legal guardians, or legal custodians who unilaterally place a student at its school, program, or facility. The department shall only pay for services that are specified in a student's individualized education program.

(h) Any private school or placement that receives funds from the department, whether by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, shall provide copies of a student's records to the department within three business days of receipt of a request for such records.

(i) The department shall withhold payment to any private school or placement that restricts or denies monitoring by the department pursuant to its authority under subsection (f).

(j) Subsections (f) through (i) shall not apply to those schools that are full and accredited members in good standing of the Hawaii Association of Independent Schools; provided that the department may monitor any child at such schools eligible to receive special education and related services at the department's expense.

(k) The department may adopt rules pursuant to chapter 91 to effectuate subsection (f). [L 1996, c 89, pt of §2; am L 2005, c 158, §2; am L 2008, c 179, §1; am L 2011, c 129, §2]

Case Notes

The parents of a disabled student were entitled to reimbursement for the costs of the student's private school program, where the decision to enroll the student at that program was bilateral, rather than unilateral; thus, the one hundred eighty day limitations period did not apply. The department of education knew that the student was enrolled at the program for the school year. By waiting so long into the school year to propose a different placement, the department tacitly consented to the student's enrollment at the private program. 788 F.3d 1033 (2015).

Student's placement at a private school was bilateral due to hearing officer's approval in July 2006, and therefore, plaintiffs' request for tuition reimbursement was subject to the two-year statute of limitations in subsection (a)(1); plaintiffs' request was timely. 550 F. Supp. 2d 1238 (2008).

Section did not apply as the state statute of limitations in actions for attorney's fees under the Individuals with Disabilities Education Act. 621 F. Supp. 2d 1013 (2008).

Plaintiff parents' claim that Act 129 (L 2011) was invalid, in that it allowed the department of education to withhold stay put payments if monitoring was not allowed, was not ripe for judicial review. Plaintiffs failed to establish that they or their child would suffer harm from department of education's actions regarding Act 129, L 2011. 897 F. Supp. 2d 1004 (2012).

As claim that health department was legally obligated to pay for child's services at private residential treatment center arose under the federal Individuals with Disabilities Education Act and child did not pursue the remedies available under the federal act to establish health department's obligation to pay for the services, family court lacked jurisdiction to order the department to pay for the services. 96 H. 272, 30 P.3d 878.

" **[§302A-443.5] Education of students with disabilities; private residential facilities; special education schools or programs; accreditation.** (a) As used in this section:

"Accredited private special education school or program" means a private day school, private day program, or any preschool that has earned accreditation according to the requirements and procedures specified by the Western Association of Schools and Colleges, any Hawaii affiliate of the Western

Association of Schools and Colleges, the Hawaii Association of Independent Schools, the National Association for the Education of Young Children, or the National Early Childhood Program for Accreditation.

"Certified or licensed private residential facility" means a private residential school or program that has earned licensure, certification, or accreditation according to requirements and procedures specified by the appropriate state licensure board or department.

"Nonpublic special education school or program" means any privately owned or operated preschool, school, educational organization or corporation, treatment facility, day program, residential program, or any other placement that maintains, conducts, or provides classes or programming, including related services as defined by federal or state laws, rules, or regulations, for the purpose of offering instruction or treatment to students with disabilities for consideration, profit, tuition, or fees.

(b) Any accredited private special education school or program, certified or licensed private residential facility, or nonpublic special education school or program that:

- (1) Provides education, treatment, programming, or related services to students with disabilities who are eligible to receive special education and related services pursuant to federal or state laws, rules, or regulations; and
- (2) Receives funding from the State, either directly or through parental reimbursement,

shall comply with all federal and state laws, rules, and regulations.

(c) Any nonpublic special education school or program that:

- (1) Is not accredited by the Western Association of Schools and Colleges, any Hawaii affiliate of the Western Association of Schools and Colleges, the Hawaii Association of Independent Schools, the National Association for the Education of Young Children, or the National Early Childhood Program for Accreditation; and
- (2) Receives funding from the State, either directly or through parental reimbursement,

shall apply for accreditation within ninety days from the date of accepting a student with disabilities who was placed there as the result of a hearing officer's decision pursuant to section 302A-443, court order, settlement agreement, or placement by the department. Within the ninety-day application period, the

nonpublic special education school or program shall provide proof of its application for accreditation to the department.

(d) The department may adopt rules pursuant to chapter 91 to implement this section. [L 2011, c 128, §2]

" **§§302A-444 to 302A-446 REPEALED.** L 2012, c 133, §§39 to 41.

" **§302A-447 State student council.** (a) There is established within the department for administrative purposes the state student council, which shall consist of representation from each departmental school district.

(b) The council shall determine whether it shall directly select the student representative to the board or whether it shall run an election to select that individual.

(c) The council shall establish policies and procedures governing its operations, including the selection and number of council members, without regard to the public notice, public hearing, and gubernatorial approval requirements of chapter 91, but subject to the open meeting requirements of chapter 92.

(d) The state student council shall cooperate with the student conference committee established under section 317-2 in planning the annual secondary school students conference established under chapter 317. [L 2002, c 172, §2; am L 2011, c 5, §13]

Revision Note

Throughout this section, "state student council" substituted for "Hawaii state student council".

"[D.] Gender Equity in Sports

§302A-461 Gender equity in athletics. (a) No person, on the basis of sex, shall be excluded from participating in, be denied the benefits of, or be subjected to discrimination in athletics offered by a public high school, pursuant to Public Law 92-318, Title IX of the federal Education Amendments of 1972.

(b) This section shall apply to public schools as defined in section 302A-101; provided that it shall apply to grades nine to twelve only.

(c) No private right of action at law shall arise under this section. [L 2000, c 229, pt of §1; am L 2012, c 133, §9]

" **§302A-462 REPEALED.** L 2012, c 133, §42.

" **§302A-463 REPEALED.** L 2010, c 4, §10.

" **§§302A-464 to 302A-467 REPEALED.** L 2012, c 133, §§43 to 46.

"E. School-to-Work--REPEALED

§§302A-471 to 475 REPEALED. L 2005, c 19, §2.

"[F.] Full Participation in School Act

§302A-481 Definitions. As used in this subpart, unless the context otherwise requires:

"Caregiver" means any person who is at least eighteen years of age and:

- (1) Related by blood, marriage, or adoption to the minor, including a person who is entitled to an award of custody pursuant to section 571-46(a)(2) but is not the legal custodian or guardian of the minor; or
- (2) Has resided with the minor for a continuous immediate preceding period of six months or more. [L 2003, c 99, pt of §1; am L 2008, c 114, §1]

" **§302A-482 Affidavit for caregiver consent.** (a)

Notwithstanding any other law to the contrary, a caregiver may consent on behalf of a minor to enrollment in school and to full participation in curricular and co-curricular school activities, if the caregiver possesses and presents to the department of education for inclusion in the minor's file a valid affidavit for caregiver consent provided by the department of education and executed by the caregiver that shall include but not be limited to the following:

- (1) The caregiver's name and current home address;
- (2) The birthdate of the caregiver;
- (3) The number of the caregiver's Hawaii driver's license or state identification card;
- (4) The relationship of the caregiver to the minor;
- (5) The name of the minor;
- (6) The birthdate of the minor;

- (7) The length of time the minor has resided with the caregiver;
- (8) The signature of the caregiver;
- (9) The signature of consent by the minor's parent, guardian, or legal custodian; provided that the signature of the minor's parent, guardian, or legal custodian shall not be necessary if the affidavit states that the caregiver has been unable to obtain the signature of the minor's parent, guardian, or legal custodian; and included a statement by the caregiver documenting the attempts to obtain the signature of the minor's parents, guardian, or legal custodian;
- (10) The minor's residency with the caregiver is not for the purpose of:
 - (A) Attending a particular school;
 - (B) Circumventing the department of education's district exemption process;
 - (C) Participating in athletics at a particular school; or
 - (D) Taking advantage of special services or programs offered at a particular school;
- (11) Notice has been provided by the caregiver to the child protective services unit of the department of human services if the minor covered by this affidavit is residing with the caregiver due to abuse or neglect perpetuated by the minor's parent;
- (12) The following statement:

"General Notices:

This declaration does not affect the rights of the minor's parent, guardian, or legal custodian regarding the care, custody, and control of the minor, and does not give the caregiver legal custody of the minor.

The minor's parent or legal custodian may at any time rescind this affidavit by informing the minor's school principal in writing that the minor is attending school under the authority of this affidavit and that this affidavit has been rescinded.

A person who relies on this affidavit has no obligation to conduct any further inquiry or investigation.

No person who relies in good faith on this affidavit shall be subject to civil or criminal liability or to professional disciplinary action because of that reliance."

(b) The caregiver shall immediately notify the school if the minor no longer resides with the caregiver, and the affidavit for caregiver consent shall be revoked immediately.

(c) The affidavit for caregiver consent shall be superseded upon written notification by the minor's parent, guardian, or legal custodian to the minor's school principal that this affidavit has been rescinded.

(d) Any person who relies in good faith on the affidavit has no obligation to conduct any further inquiry or investigation.

(e) No person who relies in good faith on the affidavit for caregiver consent shall be subject to civil or criminal liability, or to professional disciplinary action because of the reliance.

(f) The affidavit for caregiver consent shall constitute sufficient basis for determination of residency of a minor unless the school determines from actual facts that the minor is not living with the caregiver. The school may also require additional evidence that the caregiver lives at the address provided in the affidavit.

(g) This section shall not apply to the programs and services of minors subject to the Individuals with Disabilities Education Act (20 U.S.C. section 1400 et seq.) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 791). [L 2003, c 99, pt of §1; am L 2004, c 10, §8]

Cross References

Caregiver consent for minor's health care separate and apart from §302A-482, see §577-28.

" **[§302A-484] Transfer by the department of education.** The department of education may transfer a minor to the minor's home school if the minor has been enrolled in a school based on an invalid caregiver affidavit. [L 2003, c 99, pt of §1]

"[G.] Adult Special Education Transfer of Rights
for Students with Disabilities Upon Reaching
the Age of Majority

Revision Note

Enacted as a new part, §§302A-491 to 302A-498 were codified as subpart G of part II pursuant to §23G-15.

[§302A-491] Power of attorney for special education. (a) When a student with disabilities reaches the age of majority all

rights are presumed to transfer to the adult student. The adult student is authorized to make any and all decisions related to the adult student's education, including but not limited to individualized education programs.

(b) An adult student may give an individual instruction to assist in the development and implementation of the adult student's educational programs. An adult student may execute a power of attorney for special education. Unless related to the student by blood, marriage, or adoption, an agent shall not be an owner, operator, or employee of the educational institution at which the adult student is receiving special education services. The power of attorney for special education shall be:

- (1) A written document;
- (2) Executed in the State of Hawaii;
- (3) Notated with the date of execution;
- (4) Specific in identifying the agent by first and last name and relationship to the adult student;
- (5) Indicative of whether the adult student retains the power to make educational decisions while the power is in effect;
- (6) Revocable, with the method of revocation stated in the document;
- (7) Signed by the adult student; and
- (8) Witnessed by one of the following methods:
 - (A) Signed by two individuals who either witnessed the signing of the instrument by the adult student or received the adult student's acknowledgment of the veracity of the signature on the instrument; or
 - (B) Acknowledged before a notary public in the State of Hawaii.

(c) If the power of attorney for special education document does not include the provisions listed above, the power of attorney is invalid and fails to authorize an agent to make decisions for the adult student.

(d) Unless otherwise specified in the power of attorney for special education, the authority of an agent shall be effective throughout the adult student's eligibility for special education, and shall cease to be effective upon revocation by the adult student. [L 2008, c 182, pt of §2]

" **[§302A-492] Revocation of the power of attorney for special education.**

(a) An adult student may revoke the designation of an agent in writing to the supervising teacher.

(b) A teacher, agent, or guardian who is informed of a revocation shall promptly communicate the fact of the revocation

to the supervising teacher and to any educational institution at which the student is receiving special education services.

(c) A decree of annulment, divorce, dissolution of marriage, or legal separation shall revoke a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for special education.

(d) A power of attorney for special education that conflicts with an earlier power of attorney for special education revokes the earlier power of attorney for special education to the extent of the conflict. [L 2008, c 182, pt of §2]

" **[§302A-493] Appointment of an educational representative; conditions.** (a) An educational representative may be appointed if a student lacks decisional capacity to provide informed consent. A determination that the adult student lacks capacity, or that another condition exists that affects the adult student's instruction shall be made by a qualified licensed professional, such as the student's primary physician, psychologist, psychiatrist, or the department of health developmental disabilities division.

(b) The transfer of rights for an adult student who lacks capacity to an educational representative shall be valid throughout the adult student's eligibility for special education. Determinants of the lack of decisional capacity may include the following:

- (1) The student's inability to understand the nature, extent, and probable consequences of a proposed educational program or option, on a continuing or consistent basis;
- (2) The student's inability to make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program, on a continuing or consistent basis; or
- (3) The student's inability to communicate such understanding in any meaningful way.

Upon a determination that an adult student lacks decisional capacity to provide informed consent, the qualified professional shall document appropriately and make reasonable efforts to inform the adult student of the adult student's lack of capacity. The parent(s) of the adult student may act as the educational representative (unless the adult student is married, in which event the adult student's adult spouse shall be designated as the educational representative). If the parent or

adult spouse is not available or competent to give informed consent, the department shall appoint the educational representative from among the following: a competent adult brother or sister, adult aunt or uncle, or grandparent. If these relatives are not willing and able to serve as the adult student's educational representative, then a surrogate parent (who is not an employee of the department of education) shall be designated to serve in this capacity by the department. [L 2008, c 182, pt of §2]

" **[§302A-494] Reconsideration of the need for an educational representative.** (a) If the adult student, educational representative, or qualified professional believes the adult student has regained decisional capacity, the adult student shall be assessed for capacity by a qualified professional who shall determine whether or not the adult student has regained decisional capacity and shall document the decision and the basis for the decision and provide the findings of the reconsideration in writing to be entered into the adult student's educational record. The qualified professional shall notify the adult student and the educational representative of any changes in the adult student's educational program.

(b) A special education decision made by an educational representative for an adult student shall be effective without judicial approval. [L 2008, c 182, pt of §2]

" **[§302A-495] Decisions by guardian.** Absent a court order to the contrary, a special education decision of a guardian appointed pursuant to chapter 560 takes precedence over that of an agent or educational representative. [L 2008, c 182, pt of §2]

" **[§302A-496] Duties and roles of the agent and educational representative.** (a) The agent and educational representative shall have the same duties and responsibilities.

(b) The agent and the educational representative shall be afforded the opportunity to participate in meetings with respect to:

- (1) The identification, evaluation, and educational placement of the student;
- (2) The provision of free, appropriate public education to the student; and

- (3) The provision of input in accordance with the adult student's individual instructions or other wishes, if any, to the extent known.

Otherwise, the agent and the educational representative shall participate in accordance with the determination of the student's best interest. In determining the student's best interest, the student's personal values, to the extent known, shall be taken into consideration. [L 2008, c 182, pt of §2]

" **[\$302A-497] Educational information.** The agent for the power of attorney for special education or educational representative is authorized to make educational decisions for a student and has the same rights as the student to request, receive, examine, copy, and consent to the disclosure of the individualized education plan or any other educational records. [L 2008, c 182, pt of §2]

" **[\$302A-498] Effect of copy.** A copy of a transfer of student's rights, revocation of the power of attorney for special education, the finding of lack of capacity, or the reconsideration of the appointment of an educational representative has the same effect as the original. [L 2008, c 182, pt of §2]

"[H.] STUDENT ONLINE PERSONAL INFORMATION PROTECTION

[\$302A-499] Definitions. As used in this subpart, unless the context otherwise requires:

"Covered information" means personally identifiable information or material, or information that is linked to personally identifiable information or material, in any media or format that is not publicly available and is:

(1) Created by or provided to an operator by a student, or the student's parent or legal guardian, in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for K-12 school purposes;

(2) Created by or provided to an operator by an employee or agent of a K-12 school or complex for K-12 school purposes; or

(3) Gathered by an operator through the operation of its site, service, or application for K-12 school purposes and personally identifies a student, including information in the student's educational record or electronic mail, first and last name, home address, telephone number, electronic mail address,

or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information.

"Interactive computer service" means that term as defined in title 47 United States Code section 230.

"K-12 school" means a school that offers any of grades kindergarten to twelve and that is a public school, as defined in section 302A-101.

"K-12 school purposes" means purposes that are directed by or that customarily take place at the direction of a K-12 school, teacher, or complex area superintendent or that aid in the administration of school activities, including instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, parents or legal guardians, or are otherwise for the use and benefit of the school.

"Operator" means, to the extent that it is operating in this capacity, the operator of a website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes.

"Targeted advertising" means presenting advertisements to a student where the advertisement is selected based on information obtained or inferred over time from that student's online behavior, usage of applications, or covered information.

"Targeted advertising" does not include advertising to a student at an online location based upon that student's current visit to that location, or in response to that student's request for information or feedback, without the retention of that student's online activities or requests over time for the purpose of targeting subsequent advertisements. [L 2016, c 40, pt of §1]

" **[§302A-500] Prohibited activity; permitted disclosures and uses; limitations.** (a) An operator shall not knowingly do any of the following:

- (1) Engage in targeted advertising on the operator's site, service, or application; or target advertising on any other site, service, or application, if the targeting of the advertising is based on any information,

including covered information and persistent unique identifiers that the operator has acquired because of the use of that operator's site, service, or application for K-12 school purposes;

- (2) Use information, including persistent unique identifiers, created or gathered by the operator's site, service, or application, to amass a profile about a student except in furtherance of K-12 school purposes. As used in this section, "amass a profile" does not include the collection and retention of account information that remains under the control of the student, the student's parent or guardian, or a K-12 school;
- (3) Sell or rent a student's information, including covered information. This paragraph does not apply to the purchase, merger, or other type of acquisition of an operator by another entity if the operator or successor entity complies with this section regarding previously acquired student information; or
- (4) Except as otherwise provided in subsection (c), disclose covered information unless the disclosure is made for the following purposes:
 - (A) In furtherance of the K-12 school purpose of the site, service, or application, if the recipient of the covered information disclosed under this subsection does not further disclose the information unless done to allow or improve operability and functionality of the operator's site, service, or application;
 - (B) To ensure legal and regulatory compliance or protect against liability;
 - (C) To respond to or participate in the judicial process;
 - (D) To protect the safety or integrity of users of the site or others or the security of the site, service, or application;
 - (E) For a school, educational, or employment purpose requested by the student or the student's parent or guardian; provided that the information is not used or further disclosed for any other purpose; or
 - (F) To provide to a third party, if the operator contractually prohibits the third party from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information

provided by the operator with subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices.

Nothing in this section shall prohibit the operator's use of information for the purposes of maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application.

(b) An operator shall:

- (1) Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information designed to protect that covered information from unauthorized access, destruction, use, modification, or disclosure; and
- (2) Delete within a reasonable time period a student's covered information if the K-12 school or complex requests deletion of covered information under the control of the K-12 school or complex, unless a student or a student's parent or guardian consents to the maintenance of the covered information.

(c) An operator may use or disclose covered information of a student under the following circumstances:

- (1) If other provisions of federal or state law require the operator to disclose the information and the operator complies with the requirements of federal and state law in protecting and disclosing that information;
- (2) For legitimate research purposes as required by state or federal law and subject to the restrictions under applicable state and federal law or as allowed by state or federal law and under the direction of a K-12 school, complex, or the department, if covered information is not used for advertising or to amass a profile on the student for purposes other than K-12 school purposes; or
- (3) To a state or local educational agency, including K-12 schools and complexes, for K-12 school purposes, as permitted by state or federal law.

(d) This section shall not prohibit an operator from doing any of the following:

- (1) Using covered information to improve educational products if that information is not associated with an identified student within the operator's site, service, or application or other sites, services, or applications owned by the operator;
- (2) Using information that is not associated with an identified student to demonstrate the effectiveness of

- the operator's products or services, including the marketing of the products or services;
- (3) Sharing information that is not associated with an identified student for the development and improvement of educational sites, services, or applications; or
 - (4) Recommending to a student any of the following:
 - (A) Additional content relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party;
 - (B) Additional services relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party; or
 - (C) Responding to a student's request for information or for feedback without the information or response being determined in whole or in part by payment or other consideration from a third party.
- (e) This section shall not:
- (1) Limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or under a court order;
 - (2) Limit the ability of an operator to use student data, including covered information, for adaptive learning or customized student learning purposes;
 - (3) Apply to general audience websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications;
 - (4) Limit service providers from providing internet connectivity to schools or students and their families;
 - (5) Prohibit an operator of a website, online service, online application, or mobile application from marketing educational products directly to parents or guardians if the marketing did not result from the use of covered information obtained by the operator by providing services covered under this section;
 - (6) Impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or

- downloading software or applications to review or enforce compliance with this section on those applications or software;
- (7) Impose a duty upon a provider of an interactive computer service to review or enforce compliance with this section by third-party content providers; or
 - (8) Prohibit students from downloading, exporting, transferring, saving, or maintaining their own student data or documents. [L 2016, c 40, pt of §1]

"PART III. PROVISIONS AFFECTING SCHOOL PERSONNEL

Attorney General Opinions

Bargained for random drug testing program for public school teachers with appropriate procedural protections is constitutional and would not violate either the federal or state Constitution. If a court were to find such a program to violate either the federal or state Constitution, the doctrine of qualified immunity would bar personal liability for any state official; if a court were to impose personal liability, based upon past history and practice, the legislature would fund payment of the claims. Att. Gen. Op. 08-1.

A. Specific Definitions

§302A-501 Definitions. (a) For the purposes of sections 302A-602 to 302A-612, "school" includes every academic and noncollege type of school under governmental supervision.

(b) For the purposes of subpart D:

"Board" means the Hawaii teacher standards board.

"Emergency hire" means an unlicensed employee of the department paid under the salary schedule contained in the unit 5 collective bargaining agreement.

"License" means the document signifying the board's grant of permission to practice the profession of teaching.

"Teacher" means a licensed employee of the department paid under the salary schedule contained in the unit 5 collective bargaining agreement. [L 1996, c 89, pt of §2; am L 1999, c 218, §2; am L 2001, c 312, §3]

"B. Employment Conditions and Compensation

Attorney General Opinions

Bargained for random drug testing program for public school teachers with appropriate procedural protections is constitutional and would not violate either the federal or state Constitution. If a court were to find such a program to violate either the federal or state Constitution, the doctrine of qualified immunity would bar personal liability for any state official; if a court were to impose personal liability, based upon past history and practice, the legislature would fund payment of the claims. Att. Gen. Op. 08-1.

§302A-601 REPEALED. L 2004, c 51, §24.

" **§302A-601.3 REPEALED.** L 2012, c 133, §47.

" **§302A-601.5 Employees of the department of education and teacher trainees in any public school; criminal history record checks.** (a) The department of education, including the Hawaii state public library system, shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or seeking employment in any position, including teacher trainees, that places them in close proximity to children. These procedures shall include criminal history record checks in accordance with section 846-2.7.

Information obtained pursuant to this subsection shall be used exclusively by the employer or prospective employer for the purpose of determining whether a person is suitable for working in close proximity to children. All such decisions shall be subject to applicable federal laws and regulations currently or hereafter in effect.

(b) The employer or prospective employer may refuse to employ, and may:

- (1) Refuse to issue a certificate for school administrators;
- (2) Revoke the certificate for school administrators;
- (3) Refuse to allow or continue to allow teacher training; or
- (4) Terminate the employment of any employee or deny employment to an applicant,

if the person has been convicted of a crime, and if the employer or prospective employer finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety, or well-being of children. Refusal, revocation, or termination may occur only after appropriate investigation and notification to the employee or applicant for employment of results and planned action, and after the employee or applicant

for employment is given an opportunity to meet and rebut the finding. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 or 89, or administrative regulation of the department of education.

(c) This section shall not be used by the department to secure criminal history record checks on persons who have been employed continuously by the department, including the state public library system, on a salaried basis prior to July 1, 1990.

(d) Notwithstanding any other law to the contrary, for purposes of this section, the department of education, including the Hawaii state public library system, shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91. [L 2003, c 95, pt of §4; am L 2014, c 39, §2]

Cross References

Private school record checks, see §302C-1.

Attorney General Opinions

Bargained for random drug testing program for public school teachers with appropriate procedural protections is constitutional and would not violate either the federal or state Constitution. If a court were to find such a program to violate either the federal or state Constitution, the doctrine of qualified immunity would bar personal liability for any state official; if a court were to impose personal liability, based upon past history and practice, the legislature would fund payment of the claims. Att. Gen. Op. 08-1.

" **§302A-602 Teachers; licenses and certificates.** (a) No person shall serve as a teacher in the department without first having obtained a license from the Hawaii teacher standards board in such form as the Hawaii teacher standards board determines. The department shall establish types of certificates in the educational field and the requirements to qualify for those certificates issued to individuals who are not required to obtain a license pursuant to sections 302A-801 to 302A-808.

(b) Beginning with the 2002-2003 school year, no person paid under the salary schedule contained in the unit 5 collective bargaining agreement shall serve as a teacher in the department without first having obtained a license pursuant to sections 302A-801 to 302A-808 from the Hawaii teacher standards

board in such form as the Hawaii teacher standards board determines.

(c) Beginning with the 2002-2003 school year, the department may employ unlicensed individuals as emergency hires pursuant to sections 302A-801 to 302A-808. [L 1996, c 89, pt of §2 and am c 122, §§2, 7; am L 1999, c 218, §4; am L 2001, c 312, §§4, 11; am L 2002, c 193, §1]

" **§302A-602.5 Certificates; revocation.** The department may revoke any certificate after its issuance if the certificate holder does not possess the requisite qualifications. For the purposes of this section, the term "certificate" does not include a license issued by the Hawaii teacher standards board pursuant to part III, subpart D. [L 1996, c 122, §§1, 7; am L 1999, c 218, §4; am L 2001, c 312, §§5, 11; am L 2002, c 193, §2]

" **§302A-603 Teaching without certificates or licenses; penalty.** (a) Except as otherwise provided, before the 1997-1998 school year, whoever serves in the department as a teacher without holding an unrevoked certificate issued under sections 302A-602 to 302A-639, and 302A-701, shall be fined not more than \$25.

(b) Beginning with the 1997-1998 school year, whoever serves in the department as a teacher, paid under the salary schedule contained in the unit 5 collective bargaining agreement, without holding an unrevoked or unsuspended license or credential issued under sections 302A-801 to 302A-808, shall be fined not more than \$500.

(c) Beginning with the 2002-2003 school year, an individual paid under the salary schedule contained in the unit 5 collective bargaining agreement, without holding an unrevoked license issued under sections 302A-801 to 302A-808, shall be fined not more than \$500.

(d) Beginning with the 2002-2003 school year, emergency hires shall not be subject to this penalty. [L 1996, c 89, pt of §2 and am c 122, §§3, 7; am L 1999, c 218, §4; am L 2001, c 312, §§6, 11; am L 2002, c 193, §3; am L 2012, c 133, §10]

" **§302A-604 Complex area superintendents.** The superintendent of education, with the approval of the board, shall appoint complex area superintendents for schools. The complex area superintendents shall supervise the delivery of administrative and instructional support services within their respective complex areas, including:

(1) Personnel, fiscal, and facilities support;

- (2) Monitoring of compliance with applicable state and federal laws;
- (3) Curriculum development, student assessment, and staff development services; and
- (4) Special education programs and special schools within the complex area. [L 1996, c 89, pt of §2; am L 2003, c 187, §7; am L 2012, c 133, §11]

" **§302A-604.5 REPEALED.** L 2009, c 31, §2.

" **§302A-605 Principals and vice-principals.** Principals and vice-principals shall meet the department's certification requirements. [L 1996, c 89, pt of §2; am L 2000, c 31, §1; am L 2001, c 256, §2 and c 287, §1; am L 2010, c 34, §2; am L 2011, c 75, §2; am L 2014, c 232, §8]

" **§302A-606 REPEALED.** L 2012, c 133, §48.

" **§302A-607 REPEALED.** L 2008, c 222, §2.

" **[§302A-608] Reemployed teachers; rights.** After the completion of the probationary period without discharge, such teachers as are thereupon reemployed shall continue in service in the public schools during good behavior and competent service and prior to the age at which the teachers are eligible for retirement, pursuant to section 88-73 or 88-281, and shall not be discharged or demoted except for one or more of the causes specified in section 302A-609. [L 1996, c 89, pt of §2]

" **[§302A-609] Causes for discharge or demotion; preferred eligibility list.** Causes for the discharge or demotion of a teacher shall be inefficiency or immorality; wilful violations of policies and rules of the department; or for other good and just cause. The department, without a hearing, may terminate the tenure rights of a teacher who fails to return to service, except when caused by illness, following the expiration of an approved leave of absence. Teachers may also be dismissed because of a decrease in the number of pupils or for other causes over which the department has no control. Dismissals due to a decrease in the number of pupils or for causes over which the department has no control shall begin with those teachers with the least number of years of service. The teachers so

dismissed shall be placed on a preferred eligibility list and shall have the right to be restored to duty in the order of length of service whenever vacancies occur in which the teacher is qualified. [L 1996, c 89, pt of §2]

Attorney General Opinions

Bargained for random drug testing program for public school teachers with appropriate procedural protections is constitutional and would not violate either the federal or state Constitution. If a court were to find such a program to violate either the federal or state Constitution, the doctrine of qualified immunity would bar personal liability for any state official; if a court were to impose personal liability, based upon past history and practice, the legislature would fund payment of the claims. Att. Gen. Op. 08-1.

" **§302A-610 Job-sharing.** (a) A job-sharing program is established in the department subject to the requirements in this section.

(b) The superintendent shall announce the job-sharing program to all full-time, tenured, certificated personnel of the department, excluding educational officers, and shall solicit the voluntary requests of personnel interested in participating in the program.

The superintendent, in consultation with the recognized employee bargaining units, shall formulate and adopt guidelines for the implementation of this section. Employees who respond to the announcement and other persons who request information shall receive a full written description of the terms of the program when the guidelines are finalized, and those persons desiring to participate may apply to participate in the program. The employees who apply for participation shall obtain the concurrence of their immediate supervisor, other appropriate personnel officers, and the superintendent. Those persons who qualify then shall be interviewed by a personnel officer of the department.

Upon the selection of a permanent, full-time employee for job-sharing, the superintendent shall convert the position of the employee into two job-sharing positions, one of which shall be filled by the employee, and the other by the hiring of a new hire or by another tenured, certificated employee of the department, excluding any educational officer.

A person hired to fill a job-sharing position shall be recruited through this section and shall possess the minimum

requirements of the full-time position that was converted into a job-sharing position under this section.

(c) Benefits that can be divided in half, such as the number of days of sick leave, and are considered to be an equitable share when divided, shall be computed on that basis. Benefits that cannot be divided, such as eligibility for membership in the public employees' health plan shall be given to the job-sharers without the foregoing division, notwithstanding any provision of chapter 87 or 88 to the contrary. The newly hired job-sharer shall be excluded from collective bargaining under chapter 89.

The full-time permanent employee shall not lose membership in an employee bargaining unit because of participation in this program, any other law to the contrary notwithstanding. Union membership or service fees paid by the job-sharer under this section shall be at a level consistent with normal union membership dues or service fees. The State's contribution to the job-sharers' prepaid health, prepaid dental, and group life insurance plans shall be the same as for full-time employees, any other law to the contrary notwithstanding. Job-sharers shall be covered under chapter 386 and the applicable provisions of chapter 383. Service credit for the tenured teacher participating in the program under this section shall be given on the same basis as that for full-time employees. Nothing in this section shall be construed, however, to vest any person with any rights to permanent employment status, whether under civil service or otherwise, which did not exist prior to the participation of the person in the job-sharing program. The granting of tenure shall be under applicable statutes. No full-time position shall be abolished or reduced to a half-time position except for the purpose of job-sharing. In a reduction-in-force procedure, consideration of a job-sharer's tenure rights shall be on the same basis as that of a full-time employee. Nothing in this section shall impair the employment or employment rights or benefits of any employee.

(d) Tenured employees sharing full-time positions with other tenured employees shall not be required to relinquish their duty-free period. The job-sharing team shall submit to its principal a job-sharing proposal that preserves its duty-free period and meets the educational needs of its students. Where the job-sharing team cannot reach a reasonable scheduling agreement, the team may agree to waive its contractual rights by executing a contract waiver.

(e) Participation in the program shall require the commitment on the part of all parties to a contractual agreement for one year; provided that the employee shall be given the option to renew the contract for another year, subject to

approval by the immediate supervisor and personnel officer of the department.

(f) No job-sharing position committed to a specified period of time under the terms of the contractual agreement shall be converted to full-time status before the termination of the contractual agreement. A job-sharing vacancy created by the resignation, retirement, or other permanent or temporary severance of employment with the department on the part of any person may be filled by the department either through recruitment of another person pursuant to this section, or by increasing the remaining half-time job-sharing person to full-time employment by mutual agreement.

(g) Upon the termination of contractual agreements, all job-sharing positions shall be renegotiated or reconverted to full-time positions, and the employees who held the full-time positions prior to their participation in the job-sharing program under this section shall be entitled to resume their positions without loss of previous tenure or other employee rights.

(h) Beginning with the 2002-2003 school year, this section shall be interpreted as though the term "certificated" read "licensed" as the latter term is used in subpart D, and as circumstances require. [L 1996, c 89, pt of §2; am L 2001, c 312, §§7, 13; am L 2002, c 16, §32]

Note

Chapter 87 referred to in text is repealed.

" **[§302A-611] Authorized leaves of absence; tenure status unaffected.** The granting of authorized leaves of absence by the department to regularly employed teachers shall not affect any of the tenure rights that the teacher may have acquired prior thereto under section 302A-608. [L 1996, c 89, pt of §2]

" **[§302A-612] School teachers afflicted with tuberculosis.** No person who has contracted tuberculosis, while afflicted with the disease, may be allowed to teach in any public school. [L 1996, c 89, pt of §2]

" **[§302A-613] Exchange teachers and educational officers; terms of contract.** (a) The superintendent may contract for the exchange of teachers and educational officers of the State with teachers and educational officers of any other state, country, or territory. Teachers and educational officers of the State so exchanged shall be paid their regular salaries. The qualifications of all teachers and educational officers from any

such state, country, or territory so exchanged shall be equal to the qualifications of the teachers and educational officers exchanged by the State. In the selection of teachers and educational officers to be exchanged, preference shall be given in the following order: teachers over educational officers; principals and vice-principals over other educational officers.

(b) All teachers and educational officers so exchanged by the State shall be furnished transportation to and from the state, country, or territory with which exchanged.

(c) No compensation shall be paid by the State to teachers and educational officers exchanged from any other state, country, or territory; provided that in any case where the exchanged teacher or educational officer sent from Hawaii becomes incapacitated or, for any reason, leaves the exchange position permanently, the department may pay the visiting exchange teacher or educational officer an amount not to exceed the salary rating of the teacher or educational officer on exchange from Hawaii. The arrangement may continue until the end of the current school year or until such time as some satisfactory adjustment has been made. [L 1996, c 89, pt of §2]

" **[\$302A-614] Sabbatical leaves authorized.** (a) The department may grant a year's or six months' sabbatical leave of absence to any teacher or educational officer who has served seven years in the public schools of the State. The teacher or educational officer shall be guaranteed a return to the teacher's or educational officer's or an equivalent position at the expiration of the leave.

(b) In granting sabbatical leaves, the department shall consider, but not be limited to, the following:

- (1) The nature and length of professional educational course work, research, or other professional activity approved by the department; and
- (2) Applicant's seniority; provided that seniority shall not be the dominant factor in granting sabbatical leaves.

(c) The leave shall not be extended beyond one year and may not be repeated until after a period of seven additional years of service. [L 1996, c 89, pt of §2]

" **[\$302A-615] Pay while on sabbatical.** Teachers or educational officers on sabbatical leave shall be paid an amount equal to one-half of the salary to which the teacher or educational officer would be entitled if regularly reappointed. The payments shall be made in regular monthly installments, the last two of which shall not be made until after the teacher or educational officer has returned to the teacher's or educational

officer's position in the department. A teacher or educational officer granted sabbatical leave may engage in any form of employment provided the conditions established in section 302A-616 are fulfilled. [L 1996, c 89, pt of §2]

" **§302A-616 Conditions of sabbatical leave of absence.** (a)

A teacher or educational officer on sabbatical leave shall devote one-half of the teacher's or educational officer's total leave to professional educational course work, research, or other professional activity approved by the department. The department shall establish guidelines and criteria of professional educational course work, research, or other professional activity. Before granting a sabbatical leave to a teacher or educational officer, the department and the teacher or educational officer shall enter into a contract, which shall provide for the following:

- (1) That the teacher or educational officer agrees to return to serve in the department, the University of Hawaii, or any community college for a period of not less than two years within one year after termination of the teacher's or educational officer's sabbatical leave;
- (2) That upon failure of the teacher or educational officer to comply with paragraph (1), the teacher or educational officer agrees to refund to the department all moneys received while on sabbatical leave;
- (3) That upon failure of the teacher or educational officer to comply with paragraph (2), the teacher or educational officer agrees to pay for all costs incurred by the department in enforcing paragraph (2);
- (4) That upon failure to comply with paragraph (1), the educational officer's Hawaii teaching certificate shall be canceled by the department; and
- (5) Any other provisions deemed necessary by the department to be included in the contract.

(b) Beginning with the 2002-2003 school year, this section shall be interpreted as though the term "certificate" read "license", as the latter terms are used in subpart D, and as circumstances require. [L 1996, c 89, pt of §2; am L 2001, c 312, §§8, 13]

" **§302A-617 REPEALED.** L 1997, c 144, §12.

" **§302A-618 Classification, teachers.** (a) The designation of any teacher to any given class shall be determined by the department in accordance with licensing requirements.

(b) Any teacher teaching technical school courses who is transferred to a community college under the jurisdiction of the board of regents of the University of Hawaii shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege.

(c) Beginning with the 2002-2003 school year, this section shall be interpreted as though the terms "certification" and "certificate" read "licensing" and "license", as the latter terms are used in subpart D, and as circumstances require. [L 1996, c 89, pt of §2; am L 2001, c 312, §9]

" **§302A-619 Classification, educational officers.** The board shall classify all educational officer positions of the department and shall adopt two separate classification/compensation plans for educational officers. One classification/compensation plan shall be for principals and vice-principals and shall be based on the general pattern of a school administrator's career development and associated school administrator's qualification requirements. A separate classification/compensation plan shall be for all other educational officers and shall be reflective of the career development pattern and qualification requirements for the respective professional field of expertise; provided that both classification/compensation plans shall include classification appeals procedures. [L 1996, c 89, pt of §2; am L 2004, c 51, §13]

" **[§302A-620] Classification/compensation appeals board; adjustments to classification/compensation plan.** (a) There shall be established a classification/compensation appeals board within the department for administrative purposes. The appeals board shall be composed of three members. One member shall be appointed by the board of education and one member appointed by the exclusive bargaining unit representing educational officers. The third member shall be appointed by the governor and shall serve as chairperson. No member shall be an employee of the department, a member of the board of education, or an employee of the organization representing educational officers. The appeals board shall sit as an appellate body on matters of classification/compensation. All decisions of the appeals board shall be by majority vote and be binding on both parties.

(b) The appeals board shall meet biennially every even-numbered year to receive pricing appeals from affected persons and parties relating to the classification/compensation plan. All petitions for appeal shall be filed with the appeals board within twenty days from the date set by the appeals board for receipt of these appeals.

The appeals board shall meet on a quarterly basis as needed to receive classification appeals. All petitions for educational officer classification appeals shall be filed with the appeals board within twenty working days from the date of receipt of notification of the classification action or twenty working days from the date of receipt of the superintendent's written decision on the employee's internal administrative review appeal.

(c) The appeals board shall function independently of the board of education and the department, but may procure office facilities and clerical assistance from them. Neither the appeals board nor any of its members or staff shall consult with any member of the board of education or department except on notice and opportunity for the appealing employee or the employee's representative to participate.

The appeals board shall adopt policies and standards relative to classification/compensation. The appeals board may adopt rules pursuant to chapter 91 for the conduct of appeal hearings.

(d) The appeals board shall make whatever adjustments that are necessary to the affected classes where the appeals have been filed in the classification/compensation plan.

The appeals board shall hear pricing appeals and complete the final adjustment to the classification/compensation plan by the first Wednesday of December of all even-numbered years. Following the final pricing adjustment to the classification/compensation plan, the superintendent shall submit to the legislature, through the office of the governor, a report setting forth the classification/compensation plan and the cost thereof for its information and approval. The approved classification/compensation plan shall be effective as of July 1 of each odd-numbered year.

The appeals board shall hear classification appeals on a quarterly basis upon receipt of the appeals. The effective date of the appeals for twelve-month educational officers shall be the first pay period immediately following the receipt of the current position description by the classification/compensation section of the department. The effective date for ten-month officers shall be the beginning of the appropriate semester (September or January).

(e) Notwithstanding any other laws to the contrary, each member of the appeals board shall receive \$50 per day for each day on which work is done by them in connection with authorized activities of the appeals board. The cost thereof shall be met by legislative appropriations for the appeals board. [L 1996, c 89, pt of §2]

" **§302A-621 Salary; deputy superintendent, assistant superintendents, complex area superintendents.** The salaries of the deputy superintendent, assistant superintendents, and complex area superintendents shall be set by the board; provided that the salaries of the deputy superintendent, assistant superintendents, and the complex area superintendents shall not exceed the superintendent's salary. [L 1996, c 89, pt of §2; am L 2003, c 187, §8; am L 2011, c 132, §1]

" **§302A-622 REPEALED.** L 2009, c 51, §2.

" **§302A-623 Salary ranges, educational officers.** Salary ranges for educational officer positions of the department shall be determined by the board based on the position classification/compensation plan approved by the board. Salary ranges for educational officer positions shall be subject to the requirements of section 302A-625. [L 1996, c 89, pt of §2; am L 2016, c 87, §2]

" **§302A-624 Teachers' salary schedule.** (a) The salary schedule for all teachers of the department shall be negotiated pursuant to section 89-9.

(b) All teachers shall meet the following requirements:

- (1) A teacher shall earn at least five credits within a three-year cycle to receive increment or longevity step increases in the third year of the three-year cycle;
- (2) A teacher who fails to meet the requirement set forth in paragraph (1) shall not be eligible for any increment or longevity step increases until the teacher earns the credit requirement for the three-year cycle;
- (3) Any credit earned in excess of any three-year credit requirement may not be carried over beyond the three-year cycle; and
- (4) Credits earned may be in the form of in-service, university, or other credits approved by the department.

(c) A teacher shall be required to spend at least one year in Class III before going on to Class IV, at least one year in Class IV before going on to Class V, at least one year in Class V before going on to Class VI, and at least one year in Class VI before going on to Class VII.

(d) In case of promotion from a teaching position to an educational officer, the employee shall receive compensation at the lowest step of the higher grade that exceeds the employee's existing compensation by at least eight per cent if such a step exists.

(e) Effective July 1, 2006, the minimum hourly or minimum per diem rate for substitute teachers shall be determined by the legislature as follows; provided that any individual in Class I, II, or III who works less than a full seven-hour work day shall be compensated on a pro-rated, hourly basis:

- (1) Class I: other individuals who do not possess a bachelor's degree shall be compensated at a rate of not less than \$125 for a full work day;
- (2) Class II: individuals with a bachelor's degree shall be compensated at a rate of not less than \$136 for a full work day; and
- (3) Class III: department of education teachers, or licensed or highly qualified teachers, shall be compensated at a rate of not less than \$147 for a full work day.

(f) Effective July 1, 2008, the board shall provide wage adjustments for substitute teachers. The wage adjustments shall be comparable to the across-the-board wage adjustments for teachers that are negotiated for bargaining unit (5) subject to legislative approval, pursuant to section 89C-5. The board may also adjust hours, benefits, and other terms and conditions of employment for substitute teachers. [L 1996, c 89, pt of §2; am L 2005, c 70, §1; am L 2006, c 263, §2; am L 2008, c 187, §2]

Case Notes

As §661-1 contains a limited waiver of sovereign immunity for claims against the State that are founded upon a statute or founded upon a contract with the State, the circuit court did not err when it allowed plaintiff substitute teachers to pursue breach-of-contract claims against the State where the teachers were in a contractual relationship with the State, sought money that they claimed were due them for the work they performed under the contract, and alleged that under the express and implied terms of their agreement, they were entitled to pay in accordance with subsection (e). 122 H. 150 (App.), 223 P.3d 215 (2009).

Notwithstanding subsequent changes to the class II classification designation, the 1996 legislature's deliberate choice was to tie a substitute teacher's pay to that of a regular full-time certified teacher based on an appropriate four years of college and other department of education (DOE)

requirements; thus, subsection (e) continued to govern the pay terms of the parties' agreement and this section continued to tie the substitute teachers' pay to that of full-time teachers who possessed an appropriate four years of college education and other DOE requirements until June 30, 2005. 122 H. 150 (App.), 223 P.3d 215 (2009).

The State's sovereign immunity from plaintiff substitute teachers' claims against the State was waived under §661-1 where subsection (e) thereof stated that the per diem salary for substitute teachers "shall be" based on the formula that it described, and subsection (e), as a pay-mandating statute, provided an alternative basis for invoking the court's jurisdiction under the "founded upon any statute" language in §661-1. 122 H. 150 (App.), 223 P.3d 215 (2009).

Where the issue of mutual assent as to a per diem rate of pay other than required pursuant to subsection (e) was not material because (1) it was undisputed that an essential and material part of the parties' agreement was that the substitute teachers' pay was "subject to applicable state laws"; and (2) the parties could not contract to violate a law determining a rate of pay, whether it be more or less than directed by the legislature, the circuit court properly granted plaintiff teachers summary judgment on issue that State violated its contractual obligations to pay the per diem rate during the applicable period. 122 H. 150 (App.), 223 P.3d 215 (2009).

" **§302A-625 Educational officers' salary schedules.** The salary schedule for all educational officers of the department shall be negotiated pursuant to section 89-9. [L 1996, c 89, pt of §2; am L 2001, c 256, §3]

" **§302A-626 REPEALED.** L 2016, c 87, §4.

" **[§302A-627] Salary ratings of entering or reentering teachers; credit for military service.** (a) Any teacher with more than one year of teaching experience, and so accredited by the department, entering or reentering the service of the department shall have the teacher's salary rating determined by the personnel executive of the department, any other law to the contrary notwithstanding, so that the salary rating shall be equal to the salary ratings held by incumbent teachers in the department with the identical number of years of experience.

(b) Any teacher who served on active duty with the armed forces of the United States shall be given credit by the department for the teacher's military service in the

determination of the teacher's salary, the teacher's eligibility for leaves of absence, and for all other purposes of seniority. Both reentering and entering teachers shall have each year of their military service or six months thereof credited as a year of teaching experience; provided that no more than four years of credit for military service shall be allowed. Evidence of military service shall be by certificate. [L 1996, c 89, pt of §2]

" **[§302A-628] Change in classification.** Any teacher who qualifies for a higher class shall be transferred to the higher class as of the beginning of the next semester and shall receive the salary at the appropriate step and range of the higher class. [L 1996, c 89, pt of §2]

" **[§302A-629] Educational officers; demotion, transfers.** Any educational officer demoted to a position in a lower salary range shall continue to be paid the educational officer's previous salary for the first year of the educational officer's demotion, after which time the educational officer shall be compensated at the appropriate step in the salary range to which the educational officer has been demoted. Unless otherwise provided by the department, any educational officer who is in a school in which the school rating has declined to a number that would place the educational officer in a lower classification shall continue to be paid at the educational officer's same salary range as long as the educational officer remains in the same position in the same school. [L 1996, c 89, pt of §2]

" **§302A-630 [Teachers; additional benefits or credits.]** (a) Teachers with special assignments, where their responsibilities are greater, may be provided additional benefits by the department.

(b) Teachers in Hawaiian language medium education whose responsibilities are greater or unique and require additional language skills may be provided additional benefits by the department.

(c) In determining additional benefits for vocational agriculture and technical school teachers, the department may allow credit for practical experience.

(d) In determining additional benefits for teachers, staff, and administrators in Hawaiian language medium education, the department may allow credit for practical experience. [L 1996, c 89, pt of §2; am L 2004, c 133, §3]

Cross References

Hawaiian language medium education, see chapter 302H.

" **§302A-631 Educational officers with special assignments; principals and vice-principals at special needs schools.** (a) Educational officers at the state, district, and school levels with special assignments, where their duties and responsibilities are greater than the duties and responsibilities falling within the scope of their ordinary duties and responsibilities, shall be provided additional benefits by the department.

(b) Principals and vice-principals at special needs schools shall be provided additional benefits by the department pursuant to section 302A-625. As used in this subsection, "special needs schools" means those schools having a relatively large proportion of students exhibiting low performance, as indicated by such factors as low standardized achievement test scores, a high retention rate, and a low graduation rate for the area. [L 1996, c 89, pt of §2; am L 2001, c 256, §5]

" **[§302A-632] Additional benefits to certain [school personnel and] teachers.** The department shall provide additional benefits to grade level chairpersons, department heads, registrars, and librarians in schools. The department shall also provide additional benefits to teachers assigned to schools in areas designated as limited environment communities by the department. [L 1996, c 89, pt of §2]

" **§302A-633 REPEALED.** L 1997, c 144, §13.

" **§§302A-633.5, 302A-638.5, and 302A-640 REPEALED.** L 2012, c 133, §§49 to 51.

" **§302A-633.6 Allocations for coaches.** (a) Persons who serve as coaches for school activities shall be paid a portion or all of their allocation for their services, which shall increase by the same percentage as specified in a collectively bargained agreement negotiated for bargaining unit (5) and in force for that time period.

(b) The base stipend for coaches shall be the compensation amounts for coaches for the 2000-2001 school year. Effective July 1, 2003, the base stipend for all coaches of department of education activities shall be increased by fifty per cent for coaches who are employed by the department of education in a teaching capacity and by twenty-five per cent for coaches who

are not employed by the department of education in a teaching capacity.

(c) Coaches covered by this section may choose to waive all or part of the coach's right or interest in the payment stipend. If a coach chooses to waive all or part of the stipend, the department of budget and finance shall dispense funds in the amount of the waiver directly to the school to be used for the benefit of the coach's team. No amount waived under this section shall be deemed to be or reported as income of the coach choosing to waive. [L 2001, c 315, §2; am L 2002, c 230, §1]

" **§§302A-634, 635 REPEALED.** L 2000, c 253, §§139, 140.

" **§302A-636 Cafeteria managers.** All cafeteria managers employed in the department shall be employed and have their salaries fixed in accordance with chapter 76 and the appropriate collective bargaining agreement, executive order, executive directive, or rule, and the monthly rates of basic compensation so determined shall be payable over a twelve-month period without proration or deduction for periods when school is not in session. Cafeteria managers shall have the same vacation and sick leave allowances as school teachers and principals. [L 1996, c 89, pt of §2; am L 2002, c 148, §25]

Cross References

Criminal history record checks, see §846-43.

" **§302A-637 Cafeteria workers.** All cafeteria workers employed in the department shall be employed and have their compensation adjusted in accordance with chapter 76 and the appropriate collective bargaining agreement, executive order, executive directive, or rule, and the monthly rates of basic compensation so determined shall be payable for employment over a twelve-month period. All cafeteria workers shall be employed on a full-time basis, except that a limited number of part-time workers may be employed by the department. No cafeteria worker employed on a part-time basis shall work less than twenty hours per week. The department shall establish a schedule, based on factors that determine the need for part-time workers, fixing the number of part-time workers that may be employed by the department. [L 1996, c 89, pt of §2; am L 2002, c 148, §26]

" **[§302A-638] Evaluation of teachers and educational officers.** The department shall establish an evaluation program for all teachers and educational officers. The evaluation shall

be performed at least once in each school year. The program shall define the criteria for evaluation and assign responsibilities for the application of the criteria. The evaluation of a teacher or educational officer shall be on the basis of efficiency, ability, and such other criteria as the department shall determine. [L 1996, c 89, pt of §2]

" **§302A-639 Houseparents; statewide center for students with hearing and visual impairments.** All houseparents at the statewide center for students with hearing and visual impairments employed in the department shall be employed and have their compensation adjusted according to chapter 76 and the appropriate collective bargaining agreement, executive order, executive directive, or rule, and the monthly rates of basic compensation so determined shall be payable for employment over a twelve-month period. All houseparents shall be employed for twelve months on a full-time basis. [L 1996, c 89, pt of §2; am L 2002, c 148, §27]

" **[§302A-641] Meal count assistants, adult supervisors, and classroom cleaners; minimum wage.** Except as provided in section 387-9, the wages of meal count assistants, adult supervisors, and classroom cleaners of the department shall be no less than the current state minimum wage as required in section 387-2. [L 2005, c 191, §1]

"C. Staff Development and Incentives

§302A-701 Incentive packages for quality teachers, principals, and vice-principals. Teachers, principals, and vice-principals in the public school system may accept incentive packages provided by local communities for the purpose of retaining those teachers, principals, and vice-principals in schools with high teacher, principal, or vice-principal turnover. Packages may include such items as:

- (1) Provision of housing;
- (2) Provision of mileage reimbursement;
- (3) Provision of discounts at local businesses; and
- (4) Other items not covered by chapter 89, and agreed upon by the community. [L 1996, c 89, pt of §2; am L 2001, c 256, §6]

Cross References

Other incentives, see chapter 304A.

Teachers' housing, see §§302A-831 to 835.

" **[§302A-702] Candidates for certification.** (a) There is created in the department, a national board certification support program to provide assistance to any teacher in a public school who becomes a candidate for national board certification.

(b) The Hawaii teacher standards board shall develop, implement, and administer the program. [L 2001, c 314, §2]

" **§302A-703 Educational officers, salary incentives.** (a) The salary ranges for principal and vice-principal positions shall be determined by the board, based on the position classification/compensation plan approved by the board and salary incentives designed to:

- (1) Keep exemplary principals and vice-principals at the school level;
- (2) Encourage exemplary principals and vice-principals to accept long-term assignments to hard-to-staff schools, special needs schools, and schools with high teacher turnover;
- (3) Encourage exemplary teachers to become vice-principals;
- (4) Encourage exemplary vice-principals to become principals; and
- (5) Encourage exemplary educational officers to become vice-principals.

(b) The department shall develop a definition of "exemplary" in consultation with the appropriate collective bargaining representative.

Salary ranges and salary incentives for educational officer positions shall be subject to the requirements of section 302A-625. [L 2001, c 256, pt of §1; am L 2016, c 87, §3]

" **§302A-704 Tuition assistance for exemplary teachers to attend the University of Hawaii.** (a) The superintendent, subject to the availability of funds, may award tuition assistance to exemplary teachers who want to become vice-principals in Hawaii's public schools, and who are:

- (1) Residents of the State, as defined by the board of regents pursuant to section [304A-402]; and
- (2) Taking courses that will lead to certification as a public school principal, on any campus of the University of Hawaii.

(b) The superintendent shall adopt rules in accordance with chapter 91 to carry out the purposes of this section. The rules shall include:

- (1) A definition of "exemplary teacher" as determined under section 302A-703(b);
 - (2) Descriptions of the minimum academic qualification of students who may be awarded full or partial tuition assistance under this section;
 - (3) Listings of acceptable fields of study, degrees, and periods of eligibility for students who may be awarded tuition assistance under this section;
 - (4) Procedures for demonstrating the ongoing, satisfactory academic performance of students who have accepted tuition assistance under this section;
 - (5) Explanations of any obligations for students who have accepted tuition assistance under this section;
 - (6) Procedures for administratively transferring moneys for tuition assistance awarded under this section from the department of education to the University of Hawaii; and
 - (7) Procedures for enforcing this subsection.
- (c) Chapters 42F, 103D, and 103F shall not apply to this section. [L 2001, c 256, pt of §1; am L 2006, c 75, §8]

" **§302A-705 REPEALED.** L 2012, c 133, §52.

" **§302A-706 Teacher national board certification incentive program.** (a) There is established within the department the teacher national board certification incentive program to recognize and support exemplary teaching practice by supporting public school teachers who have achieved national board certification under the certification program of the National Board for Professional Teaching Standards. The teacher national board certification incentive program shall provide:

- (1) A \$5,000 bonus per year for each public school teacher who maintains current national board certification;
- (2) \$1,500 upon completing all components of the certification program of the National Board for Professional Teaching Standards;
- (3) A reimbursement of the remainder of the national board certification application fee upon achievement of national board certification; and
- (4) An additional \$5,000 bonus per year for each public school teacher who maintains current national board certification and who teaches at:
 - (A) A school in a focus, priority, or superintendent's zone, or other similar designation, as determined by the department;

- (B) A school with a high turnover rate, as determined by the department; or
- (C) A hard-to-fill school, as determined by the department.

(b) The incentive program shall include a mentoring component that encourages and enables national board-certified teachers to assist other teachers and share their teaching expertise. [L 2004, c 51, §38; am L 2007, c 228, §1; am L 2015, c 107, §1]

" **[§302A-707] Felix stipend program special fund.** (a) There is established the Felix stipend program special fund, into which shall be deposited all moneys received as repayment from students due to a breach in contractual agreements under the Felix stipend program, which offers tuition waivers for qualified candidates who enroll at the University of Hawaii in special education teacher programs at the undergraduate, post-baccalaureate, and graduate levels in exchange for their agreement to work for the department for a period of three to five years immediately following completion of their teacher preparation program.

(b) The special fund shall be administered and used by the department to provide ongoing funding for the provision of tuition assistance to students for the Felix consent decree recruitment and retention program, or any successor programs, and related costs. [L 2007, c 276, §2]

" **[§302A-708 Career development opportunities.]** The department of education shall provide career pathways development and training opportunities to all school health aides in the school health services field and other fields within the department of education to ensure the opportunity for continued employment with the department of education. [L 2007, c 105, §4]

"D. Hawaii Teacher Standards Board

Note

Subpart heading reenacted by L 2001, c 312, pt of §10.
Professional development schools grant program. L 2001, c 313.

§302A-801 Hawaii teacher standards board established. (a)

There is established the Hawaii teacher standards board, which shall be placed within the department for administrative purposes only. The board shall consist of fifteen members, including not less than six licensed teachers regularly engaged in teaching at the time of the appointment, three educational officers employed at the time of the appointment, the chairperson of the board of education or the chairperson's designee, the superintendent or the superintendent's designee, a representative of independent schools, the dean of the University of Hawaii college of education or the dean's designee; provided that one teacher member shall be engaged in teaching at a Hawaii public charter school at the time of appointment and the dean's designee shall be chosen from the member institutions of the teacher education coordinating committee established under section 304A-1202, and two members of the public.

(b) Except for the chairperson of the board of education, superintendent, and dean of the college of education, the governor shall appoint the members of the board pursuant to section 26-34, from a list of qualified nominees submitted to the governor by the departments, agencies, education stakeholder groups, and organizations representative of the constituencies of the board; provided that the governor may request additional names of qualified nominees from the departments, agencies, education stakeholder groups, and organizations representative of the constituencies of the board at any time. To the extent possible, the board membership shall reflect a combination of abilities, breadth of experiences, and characteristics that will best serve the diverse interests and needs of elementary and secondary school personnel and the education system in Hawaii from early childhood through higher education. Such considerations shall include but not be limited to reflecting the diversity of the student population, geographical representation, and a broad representation of education-related stakeholders.

(c) Notwithstanding any law to the contrary, appointed board members shall serve not more than three consecutive three-year terms. Teacher and educational officer members who retire during a term may serve the remainder of their current term.

(d) Board members shall receive no compensation. When board duties require that a board member take leave of the board member's duties as a state employee, the appropriate state department shall allow the board member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to perform that board member's duties. Board

members shall be reimbursed for necessary travel expenses incurred in the conduct of official board business.

(e) The chairperson of the board shall be designated by the members of the board.

(f) The board may employ an executive director for a term of up to four years, who shall be appointed by the board of education without regard to chapters 76 and 89; provided that the board shall submit a nominee to the board of education for approval or disapproval; provided further that if the nominee is disapproved, the board shall submit another nominee to the board of education for approval or disapproval.

The board may terminate the executive director's contract for cause; provided that the board shall submit the recommendation for termination to the board of education for approval or disapproval. [L 1996, c 89, pt of §2; am L 1999, c 218, §3; am L 2001, c 312, pt of §10; am L 2006, c 75, §9; am L Sp 2009, c 2, §2; am L 2011, c 134, §1; am L 2014, c 39, §3]

Cross References

Definitions, see §302A-501.

" **§302A-802 Licensing standards; policies.** (a) The board shall establish licensing standards that govern teacher licensing in Hawaii. Licensing standards established by the board shall be adopted as rules under chapter 91 unless otherwise specified in this subpart.

(b) In the development of its standards, the board shall consider the existing teacher applicant pool that is available in the State and the level of the qualification of these applicants, as well as the nature and availability of existing preservice teacher training programs.

(c) The board shall adopt policies, exempt from chapters 91 and 92, to initiate the following:

- (1) Develop criteria allowing more individuals with trade or industry experience to teach in vocational, technical, and career pathway programs, and criteria for the issuance of permits allowing qualified individuals to teach when recommended by the superintendent or the commission, when appropriate. The department or the commission, when appropriate, shall be responsible for the review and acceptance of the relevant licenses, certificates, or other qualifications related to an individual's vocational, technical, or career pathway education-related experience that the department or the commission, when

appropriate, deems necessary for a permit. The department or the commission, when appropriate, shall have the authority to waive the requirement of a bachelor's degree to teach in a vocation, technical, or career pathway education program;

- (2) Develop a plan to accept teachers from any state as long as they have completed state-approved teacher education programs and pass relevant Hawaii teacher examinations or their equivalent;
- (3) Clarify the requirements, on a state-by-state basis, for out-of-state licensed teachers to obtain a license in Hawaii;
- (4) Develop a plan to facilitate licensing for those who intend to teach in Hawaii immersion programs, the island of Niihau, or any other extraordinary situation as defined by the superintendent or the superintendent's designee, or by the commission, when appropriate; and
- (5) Pursue full teacher license reciprocity with all other states. [L 1996, c 89, pt of §2; am L 2001, c 312, pt of §10, §13; am L 2002, c 16, §18; am L 2005, c 159, §12; am L 2006, c 226, §2; am L 2007, c 146, §2; am L 2014, c 39, §4]

" **§302A-803 Powers and duties of the board.** (a) In addition to establishing standards for the issuance and renewal of licenses and any other powers and duties authorized by law, the board's powers shall also include:

- (1) Setting and administering its own budget;
- (2) Adopting, amending, or repealing the rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations, and state and federal funds;
- (4) Submitting an annual report to the governor, the legislature, and the board of education on the board's operations and expenditures, and from the 2007-2008 school year, submitting a summary report every five years of the board's accomplishment of objectives, efforts to improve or maintain teacher quality, and efforts to keep its operations responsive and efficient;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing fees in accordance with chapter 91 and determining the manner by which fees are collected and subsequently deposited into the state

treasury and credited to the Hawaii teacher standards board special fund;

- (7) Establishing penalties in accordance with chapter 91;
- (8) Issuing, renewing, forfeiting, restoring, conditioning, revoking, suspending, and reinstating licenses;
- (9) Developing criteria for a full career and technical education license, limited to career and technical education teaching assignments, allowing qualified individuals with at least an associate's degree, coursework, industry experience, and content expertise to teach;
- (10) Reviewing reports from the department and commission on individuals hired on an emergency basis;
- (11) Applying licensing standards on a case-by-case basis and conducting licensing evaluations;
- (12) Preparing and disseminating teacher licensing information to schools and operational personnel;
- (13) Approving teacher preparation programs;
- (14) Establishing policies and procedures for approving alternative pathways to teaching;
- (15) Administering reciprocity agreements with other states relative to licensing;
- (16) Conducting research and development on teacher licensure systems, beginning teacher programs, the assessment of teaching skills, and other related topics;
- (17) Participating in efforts relating to teacher quality issues, professional development related to the board's standards, and promotion of high teacher standards and accomplished teaching;
- (18) Adopting applicable rules and procedures; and
- (19) Adopting, amending, repealing, or suspending the policies and standards of the board.

(b) If, in accordance with chapter 92, the board determines, on a case-by-case basis, that extenuating circumstances exist to justify the suspension, the board may temporarily suspend its rules, or any portion thereof. The board shall establish, in accordance with chapter 91, procedures for the suspension of its rules. When determining whether to suspend its rules, the board shall also establish the length of time for which the suspension shall be in effect.

(c) The board, in accordance with chapter 92, may also amend licensing-related fees and set or amend other charges related to the performance of its duties.

(d) The board may delegate to its executive director, or other designee, any of its powers and duties as it deems

reasonable and proper; provided that the delegation of powers and duties by the board shall be made in accordance with procedures set forth in this subsection. The board shall not delegate its discretionary functions resulting in a final decision in:

- (1) Adopting, amending, or repealing rules;
- (2) Ordering disciplinary action against a licensee, including license revocation or suspension, or the imposition of conditions or fines; provided that summary suspensions may be delegated; or
- (3) Granting or denying permits or licenses, including license renewals and reinstatements, or otherwise conditioning permits or licenses, unless the granting, denying, or otherwise conditioning of a permit or license does not require the exercise of the board's expertise and discretion.

To delegate authority, the concurrence of a majority of the members to which the board is entitled shall be necessary for any action taken by the board to be valid. The board shall conduct its meetings to delegate powers and duties to its executive director, or other designee, in accordance with chapters 91 and 92. [L 1996, c 89, pt of §2; am L 1997, c 195, §2; am L 2000, c 106, §§1, 4; am L 2001, c 312, pt of §10 and §§12, 13 and c 314, §3; am L 2002, c 16, §19 and c 193, §4; am L 2003, c 3, §11; am L 2007, c 263, §§2, 4; am L Sp 2009, c 2, §§3, 5; am L 2010, c 184, §2; am L 2011, c 134, §2; am L 2014, c 39, §5]

" **§302A-804 Powers and duties of the department, commission, and charter schools.** (a) The department, commission, and charter schools shall retain all of their rights and powers except for the authority provided to the board under this subpart.

(b) The department's powers and duties under this subpart shall be limited to:

- (1) Hiring, except in emergency situations as described in this chapter, licensed teachers to teach in their fields of licensing;
- (2) Reporting data annually to the board about the supply of, and demand for, teachers in department schools, including the identification of shortage areas, out-of-field teaching assignments, numbers of teachers teaching out-of-field, numbers and types of courses and classes taught by out-of-field teachers, and numbers and types of students taught by out-of-field teachers;

- (3) On an emergency and case-by-case basis, hiring unlicensed individuals; provided that:
 - (A) A list of the names, work sites, teaching assignments, and progress toward licensing of these individuals shall be reported to the board and any changes shall be updated on a monthly basis by the department;
 - (B) There are no properly licensed teachers for the specific assignments for which the individuals are being hired; and
 - (C) No individual may be employed by the department on an emergency basis for more than three years. During this time, the individual shall demonstrate active pursuit of licensing in each year of employment;
 - (4) Submitting an annual report to the board documenting:
 - (A) The number of emergency hires in department schools by subject matter areas and by school;
 - (B) The reasons and duration of employment for the emergency hiring enumerated in subparagraph (A);
 - (C) Individual progress toward licensing; and
 - (D) The department's efforts to address the shortages described in subparagraph (A); and
 - (5) Providing any other information requested by the board that is pertinent to its powers and duties.
- (c) The commission's powers and duties under this subpart shall be limited to:
- (1) Reporting data annually to the board about the supply of, and demand for, teachers in charter schools, including the identification of shortage areas, out-of-field teaching assignments, numbers of teachers teaching out-of-field, numbers and types of courses and classes taught by out-of-field teachers, and numbers and types of students taught by out-of-field teachers;
 - (2) Submitting an annual report to the board documenting:
 - (A) The number of emergency hires in charter schools by subject matter areas and by school;
 - (B) The reasons and duration of employment for the emergency hiring enumerated in subparagraph (A); and
 - (C) Individual progress toward licensing; and
 - (3) Providing any other information requested by the board that is pertinent to the commission's powers and duties.
- (d) A charter school's powers and duties under this subpart shall be limited to:

- (1) Except in emergency situations as described in this chapter, hiring licensed teachers to teach in their fields of licensing;
- (2) On an emergency and case-by-case basis, hiring unlicensed individuals; provided that:
 - (A) A list of the names, work sites, teaching assignments, and progress toward licensing of these individuals shall be reported to the board and any changes shall be updated on a monthly basis by the charter schools;
 - (B) There are no properly licensed teachers for the specific assignments for which the individuals are being hired; and
 - (C) No individual may be employed by the charter school on an emergency basis for more than three years. During this time, the individual shall demonstrate active pursuit of licensing in each year of employment; and
- (3) Providing any other information requested by the board that is pertinent to the charter school's powers and duties. [L 1996, c 89, pt of §2; am L 2001, c 312, pt of §10; am L 2008, c 125, §§2, 4; am L 2011, c 23, §1; am L 2014, c 39, §6]

" **§302A-805 Teachers; license required; renewals.** Beginning July 1, 2002, all new licenses shall be issued by the board. No person shall serve as a half-time or full-time teacher in a public school without first having obtained a license from the board under this subpart. All licenses issued by the board shall be valid only for the fields specified on the licenses and shall be renewable every five years for a standard license and every ten years for an advanced license if the individual continues to:

- (1) Satisfy the board's licensing standards and submits verification, in a form specified by the board, that the individual has completed activities specified by the board in fulfillment of each of the teacher performance standards established by the board;
- (2) Show evidence of successful teaching in the previous five years through verification by a supervisor, in a form specified by the board;
- (3) Meet the professional fitness requirements established by the board;
- (4) Satisfy the board's requirements for renewal of licenses; and
- (5) Pay all applicable license fees in a timely manner.

The board shall randomly audit a licensee's compliance with paragraph (1) and may establish rules, pursuant to chapter 91, for the random audits.

No person shall be issued a license or teach on an emergency basis in the public schools without having first paid the fees established by the board in accordance with chapter 91.

The failure to timely renew a license, pay all fees in a timely manner, or comply with any other requirement provided by law or administrative rule shall result in the automatic forfeiture of the license. A person with a forfeited license shall not teach at a public school until that person's license is restored. Restoration of a license shall require compliance with the renewal requirements provided by law or administrative rule and payment of all applicable renewal and late fees. Upon restoration of a person's license, the person may teach at a public school. [L 1996, c 89, pt of §2; am L 1997, c 195, §3; am L 2000, c 106, §§2, 4; am L 2001, c 312, pt of §10, §12; am L 2004, c 10, §9; am L Sp 2009, c 2, §§4, 12; am L 2010, c 184, §§3, 9; am L 2011, c 134, §3; am L 2014, c 39, §7]

Note

Interim policies for sharing information necessary for licensing and verifying status of teachers. L Sp 2009, c 2.

" **[§302A-805.5] Approval of teacher education programs; professional development of teachers.** The board shall be responsible for approving teacher education programs that meet the standards established by the board. The board may engage in efforts relating to the improvement of instruction through teacher education and professional development, and to attract qualified candidates for teacher training from among the high school graduates of the State. [L 2001, c 312, pt of §2]

" **[§302A-805.6] Efforts related to teacher quality.** (a) The board may participate in efforts relating to issues affecting teacher quality. The board may conduct professional development activities related to its standards, and shall promote and support high teacher standards and accomplished teaching through means deemed appropriate by the board.

(b) To remain current with trends and issues in teacher licensure systems, beginning teacher programs, the assessment of teaching skills, teacher development, and other related topics, the board shall participate in programs and attend conferences and training that address these topics. The board may conduct research and development activities for the purpose of staying

abreast of or better understanding these trends and issues. [L 2001, c 312, pt of §2]

" **§302A-806 Hawaii teacher standards board special fund.**

There is established within the state treasury a special fund to be known as the Hawaii teacher standards board special fund, into which shall be deposited all moneys received by the board in the form of appropriations, fees, fines, grants, donations, or revenues regardless of their source. The special fund shall be administered by the department and used to pay the expenses of the board, including but not limited to the payment of all operational and personnel costs, and reimbursements to board members for travel expenses incurred. [L 1996, c 89, pt of §2; am L 2001, c 312, pt of §10; am L 2002, c 178, §5]

" **§302A-807 Refusal, suspension, revocation, and reinstatement of licenses.**

(a) The board shall serve as the final adjudicator for appeals relating to licensing, including the issuance or nonissuance of licenses, and the condition, suspension, nonrenewal, and revocation of licenses.

(b) The board shall establish procedures for the conduct of proceedings for the consideration of requests filed with the board. In every case to condition, revoke, or suspend a license, the board shall give the person concerned written notice that a request has been filed with the board. The board shall conduct a hearing in conformity with chapter 91, and shall provide for confidentiality of the proceedings to protect the parties. In all proceedings before it, the board may administer oaths, compel the attendance of witnesses and production of documentary evidence, and examine witnesses. In case of disobedience by any person to any order of the board or to any subpoena issued by the board, or the refusal of any witness to testify to any matter that the person may be questioned lawfully, any circuit judge, on application of the board or a member thereof, shall compel obedience in the case of disobedience of the requirements of a subpoena issued by a circuit court or a refusal to testify.

(c) Any applicant who has been refused a license, or any licensee whose license has been conditioned, suspended, or revoked, shall have the right to appeal the board's decision to the circuit court of the circuit in which the applicant or licensee resides in the manner provided in chapter 91; provided that out-of-state resident applicants shall file their appeals in the first circuit court.

(d) Upon revocation of a license, the board may disclose the name, birthdate, social security number, and any other pertinent information about the former holder of the license:

- (1) To the department;
- (2) To the commission; and
- (3) For the purpose of exchanging information under chapter 315 with other national or state teacher certification agencies about school personnel who have had licenses revoked.

(e) The board shall not renew or reinstate, or shall deny or suspend any license or application, if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education, or has failed to comply with a repayment plan.

The board in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license, and unless otherwise provided by law, shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity. [L 1996, c 89, pt of §2; am L 2001, c 312, pt of §10 and §13; am L 2002, c 16, §20 and c 226, §4; am L 2003, c 3, §12 and c 133, §5; am L 2011, c 134, §4; am L 2014, c 39, §8]

" **§302A-808 Penalty.** Any person who engages in the profession of teaching in a public school without first being issued a license or hired on an emergency basis as defined in this chapter shall be fined not more than \$500. Any person who knowingly or intentionally violates this subpart by employing an individual as a public school teacher who does not possess a valid license or is not a department of education or charter school emergency hire as defined in this chapter may be fined not more than \$500. All fines shall be deposited into the Hawaii teacher standards board special fund. [L 1996, c 89, pt of §2; am L 2001, c 312, pt of §10; am L 2003, c 3, §13; am L 2014, c 39, §9]

" **§302A-809 REPEALED.** L 2001, c 312, pt of §10.

"[E.] Teachers' Housing

§302A-831 REPEALED. L 2012, c 133, §53.

" **[§302A-832] Teachers' housing program; administration.**

(a) The department shall administer the teachers' housing program under this subpart. The department shall:

- (1) Administer the teachers' housing revolving fund under section 302A-833;
- (2) Provide annual statements under section 302A-834;
- (3) Conduct annual reviews of units under section 302A-835; and
- (4) Perform any other duty necessary to effectuate this subpart.

(b) The department may adopt rules pursuant to chapter 91 to effectuate this subpart. [L 2005, c 204, pt of §1]

" **[§302A-833] Teachers' housing revolving fund.** (a) There is established in the state treasury a revolving fund to be known as the teachers' housing revolving fund to be administered by the department of education. The director of finance shall transfer any moneys appropriated for the purposes of teacher housing to the teachers' housing revolving fund. All unexpended balances of appropriations, allocations, allotments, special revolving funds, or other funds heretofore created and made available for the purposes of developing or administering teachers' housing projects shall be transferred to the teachers' housing revolving fund. Notwithstanding any law to the contrary, all moneys, including refunds, reimbursements, and rentals, for housing from teacher tenants shall be deposited in the revolving fund.

(b) The revolving fund may be used by the department of education for any and all of the purposes of teachers' housing, including the planning, construction, maintenance, and operation of teachers' housing, as well as for the salaries of the necessary personnel in charge thereof.

(c) Whenever the governor determines that the amount in the teachers' housing revolving fund exceeds the requirements of the teacher housing program, the department shall transfer the excess to the state general fund. [L 2005, c 204, pt of §1]

" **[§302A-834] Annual statements.** The department of education shall annually prepare for the director of human services and the director of finance a full, detailed description and

financial statement of the planning, construction, repair, maintenance, and operation of teachers' housing. [L 2005, c 205, pt of §1]

" **[§302A-835] Annual review; disposal of units.** The department of education shall annually review the status of and necessity for subsidized teachers' housing throughout the State and, upon determination that any particular housing unit is no longer necessary, shall dispose of that unit by sale, demolition, or otherwise. Any net proceeds from the disposal of a unit shall be paid to the governmental entity vested with fee title to the unit at the time of disposition, and any deficit incurred in the disposal shall be paid by the State. [L 2005, c 204, pt of §1]

"[F.] School Health Services Program

Revision Note

Sections 302A-851 to 855, enacted as a new part, are redesignated as a subpart pursuant to §23G-15.

Cross References

Career development opportunities, see §302A-708.

Medically accurate sexuality health education, see §321-11.1.

[§302A-851] Purpose; establishment of program. The purpose of this [subpart] is to establish a statewide school health services program. There shall be within the department a permanent comprehensive school health services program for grades kindergarten through twelve in all the public schools of this State. It is in the general welfare of the State to protect, preserve, care for, and improve the physical and mental health of Hawaii's children by making available at the public schools first aid and emergency care, preventive health care, health appraisals and follow-ups, and health room facilities. [L 2007, c 105, pt of §2]

" **[§302A-852] Teenage health program.** The department, in cooperation with the department of health, may establish a statewide teenage health program designed to enhance self-esteem, facilitate communication between students and their parents, incorporate ho'oponopono techniques in group discussions, expand peer counseling efforts, and provide more

counseling opportunities. In implementing this program, the department shall strive to respect and include the diverse needs and values of parents and teenagers served by the program. [L 2007, c 105, pt of §2]

" **§302A-853 Administration of medication.** School health aides may assist students by administering oral and topical medication, and in emergency situations, other premeasured medication; provided that:

- (1) If the student receiving the medication is a minor, a parent or guardian requests and authorizes the administration of medication;
- (2) The medication has been prescribed by a licensed physician, as defined in section 334-1, or by a practitioner with prescriptive authority;
- (3) The administration of the medication is with the approval of the department of health; and
- (4) The administration of the medication is necessary for the health of the student and for the student's attendance at school. [L 2007, c 105, pt of §2; am L 2012, c 134, §2]

" **§302A-854 School health aides; compensation.** All full-time school health aides employed in the department shall be employed and have their compensation fixed in accordance with chapter 76 and the appropriate collective bargaining agreement, executive order, executive directive, or rule. [L 2007, c 105, pt of §2; am L 2012, c 134, §3]

" **§302A-855 REPEALED.** L 2012, c 134, §4.

"PART IV. PROVISIONS AFFECTING SYSTEM STRUCTURE

A. Specific Definitions

[§302A-901] Specific definitions. For the purposes of sections 302A-1154 to 302A-1163, "school" means any day care center, child care facility, headstart program, preschool, kindergarten, elementary, or secondary school, public or private, including any special school for children in the State. [L 1996, c 89, pt of §2]

"B. Accountability

[§302A-1001] Student bias. No person in the State, on the basis of sex, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational or recreational program or activity receiving state or county financial assistance or utilizing state or county facilities. [L 1996, c 89, pt of §2]

Cross References

Gender equity in sports, see §§302A-461 to 467.

" **[§302A-1002] Reporting of crime-related incidents.** The board shall adopt rules pursuant to chapter 91 to:

- (1) Require a report to appropriate authorities from a teacher, official, or other employee of the department who knows or has reason to believe that an act has been committed or will be committed, which:
 - (A) Occurred or will occur on school property during school hours or during activities supervised by the school; and
 - (B) Involves crimes relating to arson, assault, burglary, disorderly conduct, dangerous weapons, dangerous drugs, harmful drugs, extortion, firearms, gambling, harassment, intoxicating drugs, marijuana or marijuana concentrate, murder, attempted murder, sexual offenses, rendering a false alarm, criminal property damage, robbery, terroristic threatening, theft, or trespass;
- (2) Establish procedures for disposing of any incident reported; and
- (3) Impose, in addition to any other powers or authority the department may have to discipline school officials, appropriate disciplinary action for failure to report these incidents, including probation, suspension, demotion, and discharge of school officials. [L 1996, c 89, pt of §2]

Note

Bullying, cyberbullying, and harassment; compliance reports to board. L 2011, c 214.

Cross References

Zero tolerance policy for drugs and weapons, see §302A-1134.6.

Attorney General Opinions

Bargained for random drug testing program for public school teachers with appropriate procedural protections is constitutional and would not violate either the federal or state Constitution. If a court were to find such a program to violate either the federal or state Constitution, the doctrine of qualified immunity would bar personal liability for any state official; if a court were to impose personal liability, based upon past history and practice, the legislature would fund payment of the claims. Att. Gen. Op. 08-1.

" **[§302A-1003] Indemnity upon reporting.** The State shall indemnify and hold harmless anyone participating in good faith in making a report pursuant to section 302A-1002 from any civil liability that might otherwise be incurred or imposed by, or as a result of, the making of the report. [L 1996, c 89, pt of §2]

" **§302A-1004 Educational accountability system; annual reports.** (a) The department shall implement a comprehensive system of educational accountability to motivate and support the improved performance of students and the education system. This accountability system shall:

- (1) Include student accountability; school or collective accountability; individual professional accountability for teachers, principals, and other employees; and public accounting to parents, community members, businesses, higher education, media, and political leadership;
- (2) Link authority and resources to responsibility;
- (3) Define clear roles for all parties and lines of responsibility and mutual obligation and develop a collaborative process with stakeholders, including representatives of appropriate bargaining units, parents, administration, and students;
- (4) Assess and track measures of academic achievement, safety and well-being, and civic responsibility of individual students at selected grade levels and report trend data on these measures over time annually;
- (5) Invoke a full and balanced set of appropriate consequences for observed performance, including rewards and recognition for those schools that meet or

exceed their goals, assistance to those that fall short, and sanctions for those that, given adequate assistance and ample time, continue to fail to meet goals;

- (6) Involve an annual statewide assessment program that provides a report card containing trend data on school, school complex, and system performance at selected benchmark grade levels with performance indicators in areas relating to student achievement, safety and well-being, and civic responsibility. These performance indicators shall include but not be limited to:
 - (A) Student performance relative to statewide content and performance standards; and
 - (B) School attendance and dropout rates;
- (7) Require that teachers and administrators engage in the continuous professional growth and development that ensure their currency with respect to disciplinary content, leadership skill, knowledge, or pedagogical skill, as appropriate to their position. This requirement may be established by the department in terms of credit hours earned or their equivalent in professional development activity certified by the department as appropriate in focus and rigor;
- (8) Establish an explicit link between professional evaluation results and individual accountability through professional development of the knowledge, skill, and professional behavior necessary to the position, by requiring that results of the professional evaluation be used by the department to prescribe professional development focus and content, as appropriate;
- (9) Include an annual statewide fiscal accountability program, which includes a published report card that contains trend data on school, school complex, and systemwide plans and results, including:
 - (A) Amounts allocated;
 - (B) Amounts expended;
 - (C) Amounts carried over; and
 - (D) Any significant changes to the budget, with an explanation for the change;
- (10) Include an evaluation of the effectiveness of complex area superintendents and principals in supporting:
 - (A) Students' academic achievement, safety and well-being, and civic responsibility; and
 - (B) The satisfaction of stakeholders affected by the work of the complex area superintendents and

principals, which may be measured by broadbased surveys; and

(C) Fiscal accountability.

(b) The department shall annually post on the department's website information on the specifics of the implementation of the comprehensive accountability system, as well as the fiscal requirements and legislative actions necessary to maintain and improve the accountability system.

(c) The department shall also annually post on its website information that includes but is not limited to the following:

- (1) Results of school-by-school assessments of educational outcomes;
- (2) Summaries of each school's standards implementation design;
- (3) Summary descriptions of the demographic makeup of the schools, with indications of the range of these conditions among schools within Hawaii;
- (4) Comparisons of conditions affecting Hawaii's schools with the conditions of schools in other states;
- (5) Other such assessments as may be deemed appropriate by the board; and
- (6) Any other reports required by this section.

(d) The department shall provide electronic access to computer-based financial management, student information, and other information systems to the legislature and the auditor. The department shall submit to the legislature and to the governor, at least twenty days prior to the convening of each regular session, a school-by-school expenditure report that includes but is not limited to the following:

- (1) The financial analysis of expenditures by the department with respect to the following areas:
 - (A) Instruction, including face-to-face teaching, and classroom materials;
 - (B) Instructional support, including pupil, teacher, and program support;
 - (C) Operations, including non-instructional pupil services, facilities, and business services;
 - (D) Other commitments, including contingencies, capital improvement projects, out-of-district obligations, and legal obligations; and
 - (E) Leadership, including school management, program and operations management, and district management; and
- (2) The measures of accuracy, efficiency, and productivity of the department, districts, and schools in delivering resources to the classroom and the student.

(e) The superintendent of education is responsible for the development and implementation of an educational accountability system. The system shall include consequences and shall be designed through a collaborative process involving stakeholders that shall include parents, community members, the respective exclusive representatives, as well as others deemed appropriate by the superintendent.

For the purposes of this section, negotiations under chapter 89 shall be between the superintendent or the superintendent's designee and the respective exclusive representative, and shall be limited to the impact on personnel arising from the superintendent's decision in implementing the educational accountability system. After the initial agreement is negotiated, provisions on the impact of the accountability on personnel may be reopened only upon mutual agreement of the parties. [L 1996, c 89, pt of §2; am L 1999, c 74, §2 and c 199, §2; am L 2000, c 238, §1; am L 2004, c 51, §56; am L 2014, c 232, §9]

" **[§302A-1005] Reconstituting schools.** (a) Notwithstanding collective bargaining agreements, memorandums of agreement, or memorandums of understanding, the superintendent may reconstitute a public school, except a charter school, that has been in restructuring under the No Child Left Behind Act of 2001, Public Law 107-110, for four or more school years and has not made significant advancements toward improving academic performance as determined by a statistical analysis of academic data; provided that the following have been considered:

- (1) Student proficiency in reading and math in the period during which the school is in restructuring;
- (2) Interventions and other programs being used by the school to address student proficiency;
- (3) The number of highly qualified or effective teachers at the school;
- (4) Professional development being conducted at the school;
- (5) Input from school faculty and staff, complex specialists, and state office program specialists; and
- (6) Input from the school community council;

provided further that the superintendent has made a recommendation to the board to reconstitute the school, taking into consideration the recommendation of the complex area superintendent, if any.

(b) In reconstituting a public school, the superintendent may take actions that include:

- (1) Replacing all or most of the staff, including teachers, principals, and other support staff;
- (2) Entering into a contract with a private entity to manage the school; and
- (3) Changing the membership of the school community council.

(c) The department shall negotiate with the respective unions the process of reassigning employees of the school to be reconstituted to other positions within the department for which the employees are qualified.

(d) The department shall follow the current hiring and recruiting procedures for all employees to be employed at the reconstituted school.

(e) The board shall adopt rules pursuant to chapter 91 as may be necessary to implement this section. [L 2011, c 148, §2]

"C. Organization

§302A-1101 Department of education; board of education; superintendent of education. (a) There shall be a principal executive department to be known as the department of education, which shall be headed by a policy-making board to be known as the board of education. The board shall have power in accordance with law to formulate statewide educational policy, adopt student performance standards and assessment models, monitor school success, and appoint the superintendent of education as the chief executive officer of the public school system.

(b) The board shall appoint, and may remove, the superintendent by a majority vote of its members. The superintendent:

- (1) May be appointed without regard to the state residency provisions of section 78-1(b);
- (2) May be appointed for a term of up to four years; and
- (3) May be terminated only for cause.

(c) The board shall invite the senior military commander in Hawaii to appoint a nonvoting military representative to the board, who shall serve for a two-year term without compensation. As the liaison to the board, the military representative shall advise the board regarding state education policies and departmental actions affecting students who are enrolled in public schools as family members of military personnel. The military representative shall carry out these duties as part of the representative's official military duties and shall be guided by applicable state and federal statutes, regulations,

and policies and may be removed only for cause by a majority vote of the members of the board.

(d) The board shall appoint the state public charter school commission which shall serve as the statewide charter authorizer for charter schools, with the power and duty to issue charters, oversee and monitor charter schools, hold charter schools accountable for their performance, and revoke charters. [L 1996, c 89, pt of §2; am L 2000, c 257, §1; am L 2006, c 298, §10; am L 2007, c 115, §5; am L 2011, c 5, §14; am L 2012, c 130, §8]

Law Journals and Reviews

The Privacy Rights of Public School Students. 32 UH L. Rev. 305 (2010).

" **§302A-1102 Department of education; statewide administrative services.** The department shall serve as the central support system responsible for the overall administration of statewide educational policy, interpretation, and development of standards for compliance with state and federal laws, and coordination and preparation of a systemwide budget for the public schools. [L 1996, c 89, pt of §2; am L 2012, c 133, §13]

" **§302A-1103 Principal; authority and responsibility.** The role of the principal shall include but not be limited to overseeing the day-to-day management of the school, the primary function of which is to develop and deliver instructional services to students in accordance with statewide educational policy and to enable students to meet or exceed statewide academic standards. The principal shall:

- (1) Ensure that the curriculum facilitates the achievement of the statewide student performance standards adopted for the public school system;
- (2) Develop and present to the school community council for its review and approval, academic and financial plans relating to the school;
- (3) Exercise authority over the implementation of the budget, policies, and operations of the school; and
- (4) Collaborate with other principals in the principal's school complex to ensure that:
 - (A) Logical, sequential curricula are adopted within the school complex;

- (B) Best practices are shared among and implemented by schools within the school complex;
- (C) The goals and objectives of the school complex are being met;
- (D) The use of school complex-based personnel and contractors who divide their time between more than one school in a school complex is coordinated to maximize efficiency; and
- (E) The passage of students through the continuum of grades is coordinated in a manner consistent with section 302A-1004. [L 1996, c 89, pt of §2; am L 2004, c 51, §16 and c 221, §10]

" **§302A-1104 REPEALED.** L 2012, c 133, §54.

" **§§302A-1105 and 302A-1106 REPEALED.** L 2011, c 5, §§18, 19.

" **§302A-1106 REPEALED.** L 2011, c 5, §19.

" **§302A-1106.5 Board of education; community meetings.** The board shall hold not less than one community meeting annually in each county in addition to their regular meetings to discuss and receive input from the community on public education and public library issues. The board chairperson shall designate board members to attend the community meetings. These community meetings shall not be held for the purpose of formulating educational policy. The community meetings shall be exempt from sections 92-2.5, 92-7, 92-9, and 92-41; provided that the board shall give written public notice of each community meeting. The meeting notice shall indicate the date, time, and place of the meeting, and shall be filed in the office of the lieutenant governor and in the board's office for public inspection six calendar days before the meeting. The notice shall also be posted at the site of the meeting. [L 2004, c 51, §58; am L 2011, c 5, §15]

" **§§302A-1107 to 1109 REPEALED.** L 1996, c 160, §§1 to 3.

" **§302A-1110 Educational districts not applicable.** The educational districts established by section 4-1 shall not be applicable to, nor alter, the school districts established for

administrative purposes by the department. [L 1996, c 89, pt of §2; am L 2011, c 5, §16]

" **§302A-1111 Duties of superintendent.** (a) Under policies established by the board, the superintendent shall be designated as the chief executive officer of the public school system having jurisdiction over the internal organization, operation, and management of the public school system, as provided by law; and shall administer programs of education and public instruction throughout the State, including education at the preschool, primary, and secondary school levels, and such other programs as may be established by law.

(b) Except as otherwise provided, the superintendent shall sign all drafts for the payment of moneys, all commissions and appointments, all deeds, official acts, or other documents of the department. The superintendent may use a printed facsimile signature in approving appointments, contracts, and other documents. [L 1996, c 89, pt of §2; am L 2006, c 126, §1]

" **[§302A-1112] Rules.** Subject to chapter 91, the board may adopt rules for the government of all teachers, educational officers, other personnel, and pupils, and for carrying out the transaction of its business. [L 1996, c 89, pt of §2]

Law Journals and Reviews

The Privacy Rights of Public School Students. 32 UH L. Rev. 305 (2010).

" **[§302A-1113] Seal.** The department shall adopt a seal, the impression of which shall be necessary to authenticate all of its appointments, commissions, final acts of the nature of record, and all other documents issued by it. Upon authorization by the superintendent, a facsimile impression of the seal may be used to authenticate these documents. [L 1996, c 89, pt of §2]

" **§302A-1114 Power of appointment, removal.** The department, from time to time, may appoint and remove such teachers, educational officers, and other personnel as may be necessary for carrying out the purposes of sections 302A-201, 302A-401 to 302A-410, 302A-1001 to 302A-1004, 302A-1101 to 302A-1122, 302A-1301 to 302A-1305, 302A-1401 to 302A-1403, and 302A-1503 to 302A-1506, and regulate their duties, powers, and

responsibilities, when not otherwise provided by law. [L 1996, c 89, pt of §2; am L 1999, c 62, §4; am L 2012, c 133, §14]

Note

Section 302A-410 referred to in text is repealed.

" **§302A-1115 REPEALED.** L 2007, c 41, §2.

" **[§302A-1116] Authority to create temporary positions.** The department may create temporary positions as it deems necessary; provided that:

- (1) The department's expenditures shall not exceed its allocated budget;
- (2) The term of each position shall not exceed one year; and
- (3) The department shall report the creation of temporary positions to the department of budget and finance. [L 1996, c 89, pt of §2]

" **[§302A-1117] Records, evidence.** The department shall cause all its proceedings, doings, and acts to be recorded, and these records, from time to time, shall be filed in the archives of the department. A certified copy of a record or any portion thereof, when signed by the superintendent under the seal of the department, shall be competent evidence of all it contains in any court. [L 1996, c 89, pt of §2]

Cross References

Public records, see chapter 92.

" **[§302A-1118] Publications by department.** The department may prepare or cause to be prepared, printed, and published, such reports, pamphlets, duplicate certificates, outlines of courses, etc., as in the discretion of the department may seem advisable, and sell or dispose of the publications. All sums of money received from the sale of the publications shall be deposited to the credit of the general fund of the State. [L 1996, c 89, pt of §2]

" **§302A-1119 REPEALED.** L 1997, c 144, §14.

" **[§302A-1120] Public library system; board control.** The board, through the state librarian, shall have direct control of the public library system, but not including school libraries. The board may adopt rules under chapter 91 for the purpose of this section. [L 1996, c 89, pt of §2]

" **§302A-1121 REPEALED.** L 1997, c 144, §15.

" **[§302A-1122] Gifts.** The board may receive and manage moneys or other property, real, personal, or mixed, that may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for the purposes of the department. All such moneys received by, or on behalf of, the department shall be paid into the state treasury, and all such moneys are appropriated for the use of the department. The board shall cause to be kept suitable books of accounts wherein shall be recorded each gift, the essential facts of its management, and the expenditure of the income. [L 1996, c 89, pt of §2]

" **§§302A-1123, 1123.5, 1123.6 REPEALED.** L 1999, c 62, §§6 to 8.

" **§302A-1124 Mandate to initiate school community councils.**
(a) The department, through the board and its superintendent, shall establish a school community council system under which each public school, excluding charter schools, shall create and maintain a school community council. Each school community council shall:

- (1) Review and evaluate the school's academic plan and financial plan, and either recommend revisions of the plans to the principal, or recommend the plans for approval by the complex area superintendent;
- (2) Ensure that the school's academic and financial plans are consistent with the educational accountability system under section 302A-1004;
- (3) Participate in principal selection and evaluation, and transmit any such evaluations to the complex area superintendent; and
- (4) Provide collaborative opportunities for input and consultation.

(b) School community councils shall be exempt from the requirements of chapters 91 and 92. The school community councils shall:

- (1) Make available the notices and agendas of public meetings:

- (A) At a publicly accessible area in the school's administrative office so as to be available for review during regular business hours; and
 - (B) On the school's internet web site, not less than six calendar days prior to the public meeting, unless a waiver is granted by the superintendent in the case of an emergency; and
- (2) Make available the minutes from public meetings on a timely basis in:
- (A) The school's administrative office so as to be available for review during regular business hours; and
 - (B) On the school's internet web site.

(c) Complex area superintendents may require revisions to a school's academic and financial plans if the plans are in violation of law or conflict with statewide educational policies and standards, or are otherwise in the best interests of the school.

(d) The superintendent of education may recommend to the board of education dissolution of a school community council and establish an interim school community council if the school community council engages in any act or omission that would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct. The superintendent may recommend to the board the removal of any member of a school community council. The superintendent shall appoint or facilitate the creation of an interim school community council at any school that has not established a council or has had its council dissolved. In appointing or facilitating the creation of an interim school community council at any school that has had its council dissolved, the superintendent may appoint individuals who were previously members of the council.

(e) Unless otherwise specified, each school community council shall establish policies governing the council's composition, election, staggered terms of office for members, operation, and vacancies; provided that:

- (1) The number of school personnel [on] any school community council shall be equal to the number of primary stakeholders on the school community council;
- (2) At the elementary and middle school levels, each school community council shall be composed of the principal and at least one member representing each of the following groups:
 - (A) Parents elected by ballots distributed among and collected from the parents of the school's students;

- (B) Teachers elected by ballots distributed among and collected from teachers of the school;
 - (C) Noncertificated school personnel elected by ballots distributed among and collected from noncertificated personnel of the school;
 - (D) Community representatives elected by ballots distributed among and collected from parents of the school's students; and
 - (E) Student representatives selected by the student council of the school; and
- (3) At the high school level, each school community council shall be composed of the principal and at least one member representing each of the following groups:
- (A) Parents elected by ballots distributed among and collected from parents of the school's students;
 - (B) Teachers elected by ballots distributed among and collected from teachers of the school;
 - (C) Noncertificated school personnel elected by ballots distributed among and collected from noncertificated personnel of the school;
 - (D) Community representatives elected by ballots distributed among and collected from the parents of the school's students; and
 - (E) Student representatives selected by the student council of the school.

For the purposes of this subsection, "primary stakeholders" means students, parents, and community members.

(f) School community councils shall elect officers, including:

- (1) A chairperson;
- (2) A vice-chairperson;
- (3) A secretary; and
- (4) Other officers as needed to perform stated duties in support of the work of the council.

(g) The principal shall have the authority to set aside any decision made by the school community council if the principal determines it to be in the best interests of the school; provided that the principal notifies the school community council. If the school community council opposes a decision of the principal, an appeal shall first be brought to the complex area superintendent for resolution and, if necessary, to the superintendent and, finally, to the board of education.

(h) Complex area superintendents shall assist the school community councils and principals within their respective complex areas in:

- (1) Obtaining the support and services of the department;
and
- (2) Ensuring the progress and success of the school's academic and financial plan. [L 1996, c 89, pt of §2; am L 2004, c 51, §25 and c 221, §11; am L 2005, c 174, §1; am L 2006, c 298, §11]

" **§302A-1125 Educational objectives.** The board shall formulate policy and exercise control as may be necessary to define a common set of educational goals that the schools shall be responsible for fulfilling. The board shall also be responsible for formulating standards for measuring the efforts of each participating school toward achieving those goals each year. The participating schools shall be free to use all reasonable means to accomplish those goals with the resources available to them. [L 1996, c 89, pt of §2; am L 2012, c 133, §15]

" **§302A-1126 Waiver of policy, rule, or procedures.** Any state agency that may be required to act under state law on a matter affecting an individual school or its school community, shall waive otherwise applicable policies, rules, or procedures when requested to do so by a school community council unless the agency, within thirty days, can justify a denial to the appropriate authority. The board shall adopt procedures necessary to process waivers initiated by a school community council. Any general waiver of policy, rule, or procedures granted by the board to a specific school or schools may be extended by the board to apply to other schools under comparable circumstances. This section shall apply to collective bargaining agreements as provided for in all relevant collective bargaining agreements negotiated pursuant to chapter 89. [L 1996, c 89, pt of §2; am L 2004, c 51, §26]

" **§302A-1127 REPEALED.** L 2012, c 133, §55.

" **§302A-1128 Department powers and duties.** The department shall have entire charge and control and be responsible for the conduct of all affairs pertaining to public instruction in the public schools the department establishes and operates, including operating and maintaining the capital improvement and repair and maintenance programs for department and school facilities. The department may establish and maintain schools

for secular instruction at such places and for such terms as in its discretion it may deem advisable and the funds at its disposal may permit. The schools may include high schools, kindergarten schools, schools or classes for early childhood education, boarding schools, Hawaiian language medium education schools, and evening and day schools. The department may also maintain classes for technical and other instruction in any school where there may not be pupils sufficient in number to justify the establishment of separate schools for these purposes. [L 1996, c 89, pt of §2; am L 1998, c 309, §2; am L 1999, c 190, §1; am L 2000, c 20, §1; am L 2003, c 220, §2; am L 2004, c 133, §4; am L 2005, c 189, §4; am L 2006, c 298, §19; am L 2012, c 133, §16; am L 2015, c 108, §5]

Cross References

Hawaiian language medium education, see chapter 302H.
Transcription of instructional materials, see §103-72.

Law Journals and Reviews

"Officially" What? The Legal Rights and Implications of 'Ōlelo Hawai'i. 30 UH L. Rev. 243 (2007).

" **[§302A-1129] Schools; opening and closing.** The board may open new schools or close existing schools. [L 1996, c 89, pt of §2]

" **§302A-1130 Public schools special fees and charges.** (a) The department may assess and collect special fees and charges from students for co-curricular activities.

(b) Special fees and charges collected from students for co-curricular activities shall be deposited into insured checking or savings accounts and expended by each individual school. [L 1996, c 89, pt of §2; am L 2003, c 187, §9; am L 2004, c 220, §4; am L 2012, c 133, §17]

" **§302A-1130.5 REPEALED.** L 2012, c 133, §56.

" **§302A-1130.6 Curricular materials fee special account.** There is established within the department a curricular materials fee special account, into which shall be deposited all fees and charges collected from students or their parents or guardians for the loss, destruction, breakage, or damage of

curricular materials. Disbursements from this special account shall be expended by the department for the purposes of purchasing, replacing, or repairing curricular materials. [L 2004, c 220, §1; am L 2012, c 133, §18; am L 2016, c 112, §3]

" **§302A-1131 REPEALED.** L 2004, c 219, §3.

" **§302A-1132 Attendance compulsory; exceptions.** (a) Unless excluded from school or excepted from attendance, all children who will have arrived at the age of at least five years on or before July 31 of the school year, and who will not have arrived at the age of eighteen years, by January 1 of any school year, shall attend either a public or private school for, and during, the school year, and any parent, guardian, or other person having the responsibility for, or care of, a child whose attendance at school is obligatory shall send the child to either a public or private school. Attendance at a public or private school shall not be compulsory in the following cases:

- (1) Where the child is physically or mentally unable to attend school (deafness and blindness excepted), of which fact the certificate of a duly licensed physician shall be sufficient evidence;
- (2) Where the child, who has reached the fifteenth anniversary of birth, is suitably employed and has been excused from school attendance by the superintendent or the superintendent's authorized representative, or by a family court judge;
- (3) Where, upon investigation by the family court, it has been shown that for any other reason the child may properly remain away from school;
- (4) Where the child has graduated from high school;
- (5) Where the child is enrolled in an appropriate alternative educational program as approved by the superintendent or the superintendent's authorized representative in accordance with the plans and policies of the department, or notification of intent to home school has been submitted to the principal of the public school that the child would otherwise be required to attend in accordance with department rules adopted to achieve this result; or
- (6) Where:
 - (A) The child has attained the age of sixteen years;
 - (B) The principal has determined that:
 - (i) The child has engaged in behavior which is disruptive to other students, teachers, or staff; or

- (ii) The child's non-attendance is chronic and has become a significant factor that hinders the child's learning; and
- (C) The principal of the child's school, and the child's teacher or counselor, in consultation with the child and the child's parent, guardian, or other adult having legal responsibility for or care of the child, develops an alternative educational plan for the child. The alternative educational plan shall include a process that shall permit the child to resume school.

The principal of the child's school shall file the plan made pursuant to subparagraph (C) with the child's school record. If the adult having legal responsibility for or care of the child disagrees with the plan, then the adult shall be responsible for obtaining appropriate educational services for the child.

(b) Any employer who employs a child who is excused from school attendance in accordance with subsection (a)(2) shall notify the child's school within three days upon termination of the child's employment.

(c) Beginning with the 2014-2015 school year, any parent, guardian, or other person having the responsibility for, or care of, a child who will be at least five years of age on or before July 31 of the school year shall enroll the child in a public school kindergarten unless the child is enrolled at a private school or the child's attendance is otherwise exempt under this section. [L 1996, c 89, pt of §2 and am c 162, §2; am L 2014, c 76, §3]

Cross References

Kindergartens; attendance, see §302A-411.

Case Notes

Because the State provides schooling for all children between the ages of six and eighteen, plaintiff, a minor, had a property interest in plaintiff's education. 950 F. Supp. 2d 1159 (2013).

" **[§302A-1133] Emergency measures.** The department of health may implement emergency measures to refuse, modify, or limit attendance at any school in the State pursuant to section 321-1 if it is determined that there is imminent danger of an epidemic

or serious outbreak of communicable disease. [L 1996, c 89, pt of §2]

" **§302A-1133.5 Parent and guardian accountability for compliance with student code of conduct.** (a) The department shall inform all parents and guardians of the student code of conduct and of their responsibilities with respect to ensuring that their children comply with the code. The department also shall provide assistance and advice to parents and guardians in meeting their responsibilities under the code.

(b) The failure of a student to meet the requirements for regular attendance and punctuality shall subject the student's parent, parents, or guardian to the penalties provided in section 302A-1135. Destruction of school property by a student, in addition to all other legal action that may be taken, shall subject the student's parent, parents, or guardian to proceedings under section 302A-1153, as appropriate. [L 1997, c 361, §2; am L 2006, c 38, §5; am L 2012, c 133, §19]

" **§302A-1134 Exclusion from school.** (a) If for any reason a child becomes a detriment to the morals or discipline of any school, the child may be precluded from attending school by the principal, with the approval of the complex area superintendent. The department shall seek the active participation of other public and private agencies in providing help to these children before and after they have left school. An appeal may be taken on behalf of the child to the superintendent of education within ten days from the date of such action.

(b) Any child who, while attending school, is found to be in possession of a firearm, shall be excluded from attending school for not less than one year. The due process procedures of chapter 19 of the Department of Education, Hawaii Administrative Rules, shall apply to any child who, while attending school, is alleged to be in possession of a firearm. The superintendent, on a case-by-case basis, may modify the exclusion of a child found to be in possession of a firearm while attending school. If a child is excluded from attending school, the superintendent shall ensure that substitute educational activities or other appropriate assistance shall be provided. The superintendent shall submit to the United States Department of Education, the state board of education, and the legislature an annual report indicating the number of students excluded, the types of firearms found in their possession, and the schools from which they were excluded.

(c) Unless otherwise required by the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., no person

who is twenty years of age or over on the first instructional day of the school year shall be eligible to attend a public school; provided that if a person reaches twenty years of age after the first instructional day of the school year, the person shall be eligible to attend public school for the full school year. [L 1996, c 89, pt of §2 and am c 90, §3; am L 2003, c 187, §10; am L 2010, c 163, §1; am L 2014, c 215, §3]

Case Notes

Because student was ineligible under the Individuals with Disabilities Education Act when student commenced student's administrative challenge to Act 163, L 2010 [which amended subsection (c)], student was fully entitled to an automatic injunction preserving student's placement at a private school during the pendency of the dispute; that automatic injunction should have held in abeyance any changes to student's educational placement, whether the result of Act 163 or some other cause. 727 F.3d 911 (2013).

Where student argued that department of education's (DOE) appeal became moot when student turned twenty-two, and the sole object of student's challenge to Act 163, L 2010 [which amended subsection (c)], was to secure educational services until student reached the Individuals with Disabilities Education Act's default eligibility age of twenty-two, the appeal was not moot because, inter alia, the DOE was reasonably likely to face these challenges to the law again. 727 F.3d 911 (2013).

Act 163 [L 2010, amending subsection (c)] barring both general education and special needs students from attending public school after the last day of the school year in which they turned twenty violated the Individuals with Disabilities Education Act (IDEA). The department of education's community schools for adults, which were exempt from Act 163, offered, at taxpayer expense, the opportunity for nondisabled twenty- and twenty-one-year-olds to complete their secondary educations and earn high school diplomas. Providing IDEA services to disabled children of those ages would be consistent with "[S]tate law or practice ... respecting the provision of public education", so the State must do so. However, plaintiffs did not establish a prima facie case of disability discrimination under the Americans with Disabilities Act or the Rehabilitation Act because plaintiffs failed to produce evidence of the existence of a reasonable accommodation; plaintiffs did not identify changes to the structure or curricula of the community schools for adults that would make them generally accessible to disabled students. 728 F.3d 982 (2013).

" **§302A-1134.5 REPEALED.** L 2000, c 274, §3.

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

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

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

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

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

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

- (1) The school shall administer a screening tool approved by the department to determine whether there is a need for the child to be referred for a substance abuse assessment;
- (2) The child shall be allowed to return to school earlier than the department's original disciplinary

determination; provided that the child gives the school evidence of the following:

- (A) A substance abuse assessment has been completed; and
 - (B) The child is progressing toward clinical discharge from any substance abuse treatment or substance abuse counseling recommended by the substance abuse assessment;
- (3) If the substance abuse assessment finds that the child does not need substance abuse treatment or substance abuse counseling, the school may allow the child to return to school earlier than originally indicated; provided that:
- (A) The child provides a certified copy of the assessment; and
 - (B) The child's parent or legal guardian consents to the child and the child's family receiving follow-up counseling or other student support services to be provided by the department.

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

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

- (g) For purposes of this section:

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

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

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

(h) The board of education shall adopt rules in accordance with chapter 91 to implement this section. [L 2000, c 274, §§2,

4; am L 2004, c 44, §14; am L 2005, c 213, §§2, 5; am L 2006, c 205, §4(1), (2)]

Note

Students may be excluded from attending school for up to ninety-two school days until rules are adopted. L 2000, c 274, §5.

Cross References

Self-administration of medication by student and emergency administration permitted, see §302A-1164.

" **[§302A-1135] Penalty.** If any child of school age persists in absenting oneself from school, the family court judge, upon a proper petition, citation, or complaint being made by the schoolteacher or any other officer or agent of the department, or police officer, or any other person, shall cause the child, and the father or mother, guardian, or other person having charge of the child, to be summoned to appear before the judge. Upon its being proved that the person responsible for the child had not used proper diligence to enforce the child's regular attendance at school, the responsible party shall be guilty of a petty misdemeanor. This section shall not apply to any child not liable to compulsory attendance at school. [L 1996, c 89, pt of §2]

Cross References

Jurisdiction of family court, see chapter 571.

" **[§302A-1136] Enforcement.** The department shall be charged with the enforcement of sections 302A-1132 to 302A-1135. Nothing in this section shall relieve any chief of police or police officer of the chief's or officer's responsibility for the enforcement of these sections, but their enforcement shall be subject to the plans and policies of the department. [L 1996, c 89, pt of §2]

" **[§302A-1137] Attendance records; availability to authorized police officers.** Dates of attendance of a student shall be made available to authorized police officers upon request. [L 1996, c 89, pt of §2]

" **[§302A-1138] Permit to leave grounds.** All principals in the public schools, upon the written request of the parent, guardian, or other person having the care and control of any pupil attending any public school, shall permit any such pupil to leave the school grounds during intermissions. Any principal granting such a permit shall not be held liable for the action of the pupil during the intermissions and while the pupil remains outside of the school grounds. [L 1996, c 89, pt of §2]

" **[§302A-1139] Religious education.** (a) The department shall provide for the release of, and shall release, any pupil in any public school from attendance at the public school for a period not to exceed sixty minutes each week during the school year, on such days and during such school hours as the department shall designate, for the purpose of receiving religious instruction from the religious organization of the pupil's choice when the release is requested in writing by a parent, guardian, or other person having custody or control of the pupil. Actual attendance at the sessions of the religious instruction shall count as attendance at the public schools for all purposes where attendance forms the basis of computation.

(b) The privilege of this release shall be withdrawn by the department in case the pupil does not actually attend the sessions of religious instruction. No teacher of the public schools shall participate in religious instruction during the school hours for which the teacher is employed to teach in the public schools, and no public funds shall be used directly or indirectly for religious instruction, at any time when its use would otherwise be required in connection with the regular program of the school. [L 1996, c 89, pt of §2]

" **[§302A-1140] Religious holy days.** The board shall release any public school student from school attendance for the purpose of observing religious holy days that fall on regularly scheduled school days, when the release is requested in writing by a parent, guardian, or other person having custody or control of the pupil. Actual attendance at observances shall count as an excused absence at the public schools for all purposes where attendance forms the basis of computation. [L 1996, c 89, pt of §2]

" **§302A-1141 Punishment of pupils limited.** No physical punishment of any kind may be inflicted upon any pupil, except as provided for under sections 302A-1141.4 and 703-309(2). [L 1996, c 89, pt of §2; am L 2014, c 206, §3]

Note

Report to 2018 legislature on department's progress in implementing use of restraint statutes and expenditure of funds. L 2016, c 151, §1.

" **[§302A-1141.3] Use of seclusion, chemical restraint, or mechanical restraint prohibited.** *[Section effective August 1, 2016.]* The use of seclusion, chemical restraint, or mechanical restraint shall be prohibited in public schools regardless of any consent of the student, parents, or guardians. [L 2014, c 206, pt of §2]

Note

Report to 2018 legislature on department's progress in implementing use of restraint statutes and expenditure of funds. L 2016, c 151, §1.

" **[§302A-1141.4] Use of physical restraint limited; notification; policies and procedures; training; review.** (a) The use of physical restraint shall be prohibited in public schools unless a student's behavior poses an imminent danger of property damage or physical injury to the student, school personnel, or others and only for so long as the danger persists; provided that other less intrusive interventions have failed or been determined to be inappropriate for the student.

(b) No physical restraint may be imposed that is life threatening, including physical restraint that may restrict breathing.

(c) The board shall establish a policy regarding the use of restraint in public schools. The department shall establish procedures to be followed after each incident involving the imposition of restraint upon a student, including procedures to provide to the parent or legal guardian of the student:

- (1) An immediate verbal or electronic communication on the same day as each incident; and
- (2) Written notification within twenty-four hours of each incident.

(d) All parents and legal guardians of students shall receive, upon the student's entry into public school, written information issued by the department about policies and procedures for restraint. This written information shall include:

- (1) A brief summary describing the training received by public school staff in using restraint in facilities or programs;
 - (2) Information describing board policy;
 - (3) Information on the procedures for determining when restraint can and cannot be properly used in public school settings;
 - (4) Definitions of restraint;
 - (5) Information on the procedural safeguards that are in place to protect the rights of children and their parents or legal guardians;
 - (6) A description of the alignment of policies and procedures on restraint with applicable state laws or department rules;
 - (7) Information on the procedures for notifying parents and legal guardians when restraint has been used with their child; and
 - (8) Information on the procedures for notifying parents and legal guardians about any changes to policies and procedures on restraint.
- (e) The department shall make information relating to policies and procedures available on the department's website.
- (f) If policy or procedural changes related to restraint are made during the school year, the department shall post the changes on its website immediately.
- (g) All public schools shall ensure that staff who use restraint in facilities or programs are trained, recertified, or trained and recertified on a periodic basis no less frequently than annually. Training shall include:
- (1) Evidence-based techniques shown to be effective in the prevention of restraint;
 - (2) Evidence-based techniques shown to be effective in keeping school personnel and students safe when imposing restraint;
 - (3) Evidence-based skills related to positive behavioral supports and interventions, safe physical escort, conflict prevention, understanding antecedents, de-escalation, and conflict management;
 - (4) A wide array of prevention and intervention modalities; and
 - (5) Information describing state policies and procedures that meet the minimum standards established by state statutes and administrative rules.
- (h) No less than annually, there shall be a review of data on students at each public school who were restrained, which shall be conducted as directed by each complex area superintendent. The review shall determine whether:

- (1) There are strategies in place to address the students with dangerous behaviors at issue;
- (2) The strategies in place are effective in increasing appropriate behaviors of students with dangerous behaviors; and
- (3) New strategies need to be developed or current strategies need to be revised or changed to prevent the reoccurrence of dangerous behaviors.

Patterns and trends in the data that are identified by the review shall be reported to the department.

(i) Each public school shall maintain records of its reviews of restraint data and any resulting decisions or actions regarding the use of restraint.

(j) The department shall review policies and procedures on the use of restraint, including by reviewing available data on such use, outcomes, settings, individual staff involvement, and programs, and the frequency of use for student populations categorized by: individual students; groups of students; gender; race; national origin; disability status and type of disability; and limited English proficiency, for the purposes of determining:

- (1) Whether policies for restraint are being applied consistently;
- (2) The accuracy and consistency with which restraint data is being collected, as well as the extent to which this data is being used to plan behavioral interventions and staff training;
- (3) Whether policies and procedures are being implemented with fidelity;
- (4) Whether policies and procedures continue to protect students; and
- (5) Whether policies and procedures remain properly aligned with applicable state statutes and administrative rules and consistent with privacy laws.

(k) As used in this section:

"Behavior intervention plan" means a proactive plan designed to address problem behaviors exhibited by a student in the educational setting through the use of positive behavioral supports and interventions.

"Chemical restraint" means a drug or medication used on a student to control behavior or restrict freedom of movement; provided that the term does not include a drug or medication that is:

- (1) Prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under state law, for the

standard treatment of a student's medical or psychiatric condition; and

- (2) Administered as prescribed by a licensed physician or other qualified health professional acting under the scope of the professional's authority under state law.

"Emergency situation" means a student's behavior that poses an imminent danger of property damage or physical injury to the student, school personnel, or others and only for so long as the danger persists.

"Mechanical restraint" means the use of devices as a means of restricting a student's freedom of movement or the ability to communicate in the student's primary language or mode of communication.

"Physical restraint" means a personal restriction, other than a chemical or mechanical restraint, that immobilizes or reduces the ability of a student to move the student's arms, legs, or head freely.

"Positive behavioral supports and interventions" means a systematic approach to embed evidence-based practices and data-driven decision-making to improve public school climate and culture and includes a range of systemic and individualized strategies to reinforce desired behaviors and diminish the reoccurrence of problem behaviors in order to achieve improved academic and social outcomes and increase learning for all students, including students with the most complex and intense behavioral needs.

"Restraint" means:

- (1) A mechanical restraint;
- (2) A chemical restraint; or
- (3) A physical restraint.

"Seclusion" means the confinement of a student alone in a room or structure from which the student is physically denied voluntary egress. [L 2014, c 206, pt of §2]

Note

Report to 2018 legislature on department's progress in implementing use of restraint statutes and expenditure of funds. L 2016, c 151, §1.

" **§302A-1142 REPEALED.** L 2012, c 133, §57.

" **§302A-1143 Attending school in what service area.** A person of school age shall be required to attend the school of

the service area, as determined by the department, in which the person resides, unless:

- (1) The person is enrolled in a Hawaiian language medium education program or charter school;
- (2) A geographic exception to attend a school in another service area is requested and granted at the discretion of the department; or
- (3) Out-of-service-area attendance is mandated by the department or by federal law. [L 1996, c 89, pt of §2; am L 2004, c 133, §5; am L 2012, c 133, §20]

Cross References

Hawaiian language medium education, see chapter 302H.

" **§302A-1144 REPEALED.** L 2012, c 133, §58.

" **§302A-1145 Transfer to another school.** No school shall receive any child under eighteen years of age, who has attended another school of the same class in the same complex area, unless the child produces to the school in which to be enrolled, a certificate of release of the school last attended by the child. If the child applies to enroll in a school of higher grade, a certificate of proficiency shall be required or a lawful excuse for its absence. The children from one complex area desiring to enter a school in another complex area may be received or enrolled upon producing a certificate of release from the school last attended in the other complex area. [L 1996, c 89, pt of §2; am L 2014, c 16, §2 and c 232, §10]

" **§302A-1146 REPEALED.** L 2012, c 133, §59.

" **[§302A-1147] Use of school grounds by county recreation departments.** The board, upon request by a county, shall make school grounds available after school hours in the county where the request is made, for use by the county requesting the same whenever this can be done without interference with the normal and usual activities of the school and its pupils. [L 1996, c 89, pt of §2]

" **§302A-1148 Use of school facilities and grounds.** (a) All public school buildings, facilities, and grounds shall be available for general recreational purposes, and for public and

community use, whenever these activities do not interfere with the normal and usual activities of the school and its pupils. Any other law to the contrary notwithstanding, the department shall adopt rules under chapter 91 as are deemed necessary to carry out the purposes of this section and may issue licenses, revocable permits, concessions, or rights of entry to school buildings and grounds for such periods of use as deemed appropriate by the department. All such dispositions, including those in excess of fourteen days, need not be approved by the board of land and natural resources; provided that approval by the board of land and natural resources shall be required when the dispositions are for periods in excess of a year. The department may assess and collect fees and charges from the users of school buildings, facilities, grounds, and equipment, which include fees and charges assessed and collected by the department for parking on roadways and in parking areas under the jurisdiction of the department, pursuant to section 302A-1151.6. The fees and charges shall be deposited into a separate fund and expended by the department under rules as may be adopted by the board; provided that any parking fees assessed and collected by a school shall be deposited to the credit of that school's nonappropriated local school fund account.

(b) A separate subaccount of the fund established pursuant to subsection (a), to be known as the school facilities subaccount, shall be established for all proceeds from the leases, permits, interest income generated from public school lands, and other revenue generated from the nonpermanent disposition of public school lands, including facilities, pursuant to section 302A-1151.1. The subaccount shall be governed by section 302A-1151.2. [L 1996, c 89, pt of §2; am L 2010, c 190, §3; am L 2013, c 155, §3]

Cross References

After-school and weekend programs, see §302A-408.

" **[§302A-1148.5] Use of school grounds; assumption of risk.** Any person who enters school grounds for the purpose of using the school's grounds, facilities, or equipment for recreational purposes, and who is not a student or member of the faculty or administration of that school, is deemed to assume the risk of liability for any injuries or death resulting from the use of the grounds, facilities, or equipment. This assumption of risk shall not apply if:

- (1) The person is an invitee or licensee to whom a duty of care is owed by the school; provided that the person

- has received prior written authorization from the school principal or other responsible person to use the school's grounds, facilities, or equipment; or
- (2) The injuries or death were caused by wilful or wanton misconduct, including but not limited to the wilful or malicious failure to guard or warn against a dangerous condition, use, or structure which was knowingly created or perpetuated, and wilful or malicious failure to guard or warn against a dangerous activity which was knowingly perpetuated. [L 1997, c 285, §1]

Revision Note

Subsection designation deleted pursuant to §23G-15(1).

" **[§302A-1149] Use of school facilities for after-school child care.** The department may enter into agreements and contracts with individuals, organizations, or agencies for the use of public school buildings, facilities, and grounds for the operation of after-school child care programs. The board shall issue such rules as are necessary to carry out the purposes of this section. [L 1996, c 89, pt of §2]

" **§302A-1149.5 After-school plus program revolving fund.**

(a) There is established in the state treasury the after-school plus program, hereinafter A+, revolving fund to be administered by the department.

(b) The A+ revolving fund shall consist of fees collected by the department for A+ and all interest earned on the deposit or investment of moneys in the after-school plus program revolving fund.

(c) The department may establish appropriate fees and other charges to be assessed to each participant for A+. The revenues from those fees and charges shall be deposited into the revolving fund to be used for the program. [L 2004, c 221, §2; am L 2008, c 33, §2; am L 2012, c 133, §21]

Note

Non-school hour programs for children and youth, annual report by office of youth services. L 2006, c 281.

" **§302A-1150 REPEALED.** L 2012, c 133, §60.

" **§302A-1151 Sale of school lands unnecessary for school purposes.** The chairperson of the board of land and natural resources is hereby requested, upon the recommendation and approval of the superintendent, to sell any state lands, including the buildings thereon, once used but no longer necessary for school purposes; provided that no school facility or portion of a school facility shall be sold before that facility or portion of the facility is made available for use by the department or charter schools, pursuant to sections 302A-1151.5 and 302D-24. [L 1996, c 89, pt of §2; am L 2010, c 144, §4; am L 2012, c 130, §9]

Cross References

Sale by board of land and natural resources, see §171-19.

" **§302A-1151.1 Pilot program for lease of public school land.** (a) There shall be established within the department a pilot program for the lease of public school land, including facilities. The department, in consultation with the board of education and any other appropriate agency, shall serve as the facilitator of the pilot program.

(b) Notwithstanding sections 171-13 and 302A-1151, or any other law to the contrary, the department may lease public school land on terms it deems appropriate, including a leaseback of all or a portion of the improvements constructed; provided that:

- (1) The board may identify and select up to five public school land sites as candidates for participation in the pilot program; provided that:
 - (A) During the identification and selection process, the board shall be subject to chapter 92, shall hold at least one public meeting in each affected community, and shall foster school and community participation; and
 - (B) If the site is on land owned by the county, the department shall consult with the county;
- (2) The department may lease public school land for no more than three public school land sites identified and selected by the board pursuant to paragraph (1) under leases for a term of not more than fifty-five years per lease, unless extended pursuant to section 171-36, to lessees who shall be required to modify, construct, or utilize facilities to benefit public educational purposes, in accordance with specific

request for proposal or request for information guidelines;

- (3) Each lease shall stipulate that the lessee may retain any revenue generated from the facilities; provided that:
 - (A) The lessee shall be obligated to maintain and operate the facilities to benefit public educational purposes for the length of the lease;
 - (B) The lessee shall be obligated to pay to the county all applicable property tax on the value of any improvements;
 - (C) A leasehold premium may be charged to the lessee for the right to use the public school land based on a competitive process that complies with applicable sections of chapter 103D;
 - (D) Upon the expiration of the lease, the facilities shall revert to the department; and
 - (E) All revenues and proceeds derived by the State under this section shall be deposited in the school facilities subaccount pursuant to section 302A-1151.2; and
- (4) Notwithstanding any law to the contrary, the department may enter into leaseback agreements that allow the department to lease or sublease the property to a third party. The department may lease back the property from the third-party lessee or sublessee for a contractual period of time, after which the department shall own any improvements.
 - (c) Any redevelopment involving nonschool purposes shall:
 - (1) Comply with county plans, ordinances, and zoning and development codes; and
 - (2) Acquire all required government approvals and permits.
 - (d) Nothing in this section shall preclude the department from working with and receiving assistance from any other department or agency in carrying out the purposes of this section.
 - (e) Any lease entered into by the department pursuant to subsection (b) shall be fully executed no later than five years from July 1, 2013.
 - (f) For purposes of this section, public educational purposes shall include but are not limited to:
 - (1) A new revenue source from the redevelopment of one or more underutilized department facilities;
 - (2) New construction of department facilities or renovation of existing, underutilized department facilities into a twenty-first century school; or

(3) A combination of paragraphs (1) and (2). [L 2013, c 155, pt of §2; am L 2015, c 115, §1]

Note

Public school land pilot program; reports to legislature until completion of projects. L 2013, c 155, §4.

" **[§302A-1151.2] School facilities subaccount.** (a) All proceeds from the leases, permits, interest income generated from public school lands, and other revenue generated from the nonpermanent disposition of public school lands, including facilities, pursuant to section 302A-1151.1 shall be deposited into the school facilities subaccount established pursuant to section 302A-1148(b).

(b) Except as otherwise provided, all moneys in the school facilities subaccount shall be used exclusively for the new construction and upgrade of twenty-first century school facilities, as well as the repair and maintenance of existing school facilities. [L 2013, c 155, pt of §2]

" **§302A-1151.5 Use of vacant public school facilities.** (a) When the department considers whether to close any particular public school, it shall simultaneously give reasonable consideration to making all or portions of the facilities of the public school available to charter schools and pre-plus programs; provided that the facilities may be used for any other purpose the board deems appropriate.

(b) The department shall identify unused public school facilities that may be appropriate for:

- (1) Charter schools;
- (2) Early learning programs, such as the pre-plus program; and

(3) Any other purpose the board deems appropriate. Suitable empty classrooms, as determined by the department, shall be inventoried for potential use by charter schools, early learning programs, such as the pre-plus program, or for any other purpose the board deems appropriate. Priority shall be given to facilities on sites with sufficient space for three or more classrooms.

(c) The department shall adopt rules necessary to carry out the purposes of this section.

(d) For purposes of this section, "public school" means any school that falls within the definition of public schools in section 302A-101, except for charter schools.

[(e)] Upon receipt of a notice pursuant to subsection (b), the executive office on early learning shall solicit applications from pre-plus programs interested in using and occupying all or portions of the facilities of the public school and submit a prioritized list of pre-plus programs to the department for final determination of which pre-plus program, if any, shall be authorized to use and occupy the public school facilities. [L 2010, c 144, §2; am L 2012, c 130, §10 as superseded by c 133, §22 and c 178, §4]

Note

In subsection (e), the reference to subsection (b) is to former subsection (b) that was deleted by L 2012, c 133, §22.

" **[§302A-1151.6] Parking; control by department.** (a) The department may adopt rules in accordance with chapter 91 to govern the traffic and parking conditions on roadways and other areas under the jurisdiction of the department.

(b) The department, in accordance with chapter 91, may:

- (1) Assess fees for parking on roadways and in parking areas under the jurisdiction of the department; and
- (2) Adopt rules relating to the assessment and collection of fees for parking specified in this section.

(c) Fees collected under this section shall be deposited into the same fund into which fees and charges assessed and collected by the department for the use of school facilities under section 302A-1148 are deposited; provided that any parking fees assessed and collected by a school shall be deposited to the credit of the school's nonappropriated local school fund account.

(d) The department may contract with the department of accounting and general services or a private entity to implement this section. [L 2010, c 190, §2]

" **[§302A-1152] Unauthorized vehicles on school or public library grounds.** Any unauthorized vehicle parked on school or public library grounds may be towed away at the owner's expense, or the owner or driver of the vehicle may be arrested by any police officer without warrant, on complaint of the principal, librarian, or other person in charge of the school or library. Notwithstanding any other law to the contrary, upon conviction for parking an unauthorized vehicle on school or public library grounds, the owner or driver of the vehicle shall be fined not more than \$50. [L 1996, c 89, pt of §2]

" **§302A-1153 Vandalism damage to public school property.**

(a) Any pupil found to be responsible for an act of vandalism against any public school, building, facility, or ground shall make restitution in any manner, including monetary restitution by the pupil or pupil's parents, or guardian, or both.

This section shall be in addition to, and shall in no way limit the provisions of any other law concerning, offenses against property rights.

(b) No pupil, parent, or guardian shall be required to make restitution in any manner unless the pupil and the parents or guardian have been notified and have been given an opportunity to be heard, on any report of vandalism involving the pupil, and the pupil, parent, or guardian have executed a written agreement to make restitution.

(c) The principal of the school in which the vandalism occurred shall make or order an investigation of the vandalism. If after the investigation, the principal has reasonable cause to believe that a specific pupil is responsible for the vandalism, the principal shall schedule a conference with the pupil and the pupil's parents or guardian. Except for the principal of the school in which the vandalism occurred, the pupil and the parents or guardian, no other person shall be permitted to be in the conference for any reason.

(d) At the conference, the principal of the school in which the vandalism occurred shall present the findings of the investigation and the requirements of restitution to the pupil and parents or guardian.

If the pupil and the parents or guardian agree with the findings of the principal and the manner in which restitution is to be made, the principal and the pupil and parent or guardian shall execute a written agreement which shall specify the manner in which restitution is to be made.

Agreements shall be made only for damages that do not exceed \$3,500.

If restitution is made in this fashion, then no information about the investigation, conference, and the actions taken shall be communicated to any person not directly involved in the proceedings.

If the pupil and parent or guardian do not agree with the findings made by the principal, the principal shall report the findings, including all the records and documents regarding the investigation and conference, to the complex area superintendent, who shall review the findings and may refer the matter to the attorney general for any further action pursuant to section 577-3.

(e) If the damages exceed \$3,500, the principal shall report the matter to the complex area superintendent, who shall refer the matter to the attorney general for any further action pursuant to section 577-3.

(f) Notwithstanding any provisions in this section to the contrary, the State may elect to bring any appropriate action for the recovery of all damages to school properties. Nothing in this section shall limit the right of the State to bring an action against any person to recover these damages. [L 1996, c 89, pt of §2; am L 2003, c 187, §11]

Cross References

Responsibility for damages to textbooks, equipment, and supplies, see §302A-1130.5.

" **§302A-1154 Immunization upon attending school; tuberculosis clearance.** (a) No child shall attend any school in the State unless the child presents to the appropriate school official documentation satisfactory to the department of health that the child has received immunizations against communicable diseases as required by the department of health.

(b) No child shall attend any school for the first time in the State unless the child presents to the appropriate school official documentation satisfactory to the department of health that the child has been examined and tested according to the rules of the department, and is free from tuberculosis in a communicable form. [L 1996, c 89, pt of §2; am L 1998, c 60, §1; am L 2000, c 109, §1; am L 2014, c 16, §3 and c 232, §11]

" **§302A-1155 Provisional attendance at school.** (a) A child may attend school provisionally upon submitting written documentation from a licensed physician, physician assistant, advanced practice registered nurse, or an authorized representative of the department of health stating that the child is in the process of receiving the required immunizations. Further documentation showing that the required immunizations have been completed shall be submitted to the appropriate school official no later than three months after the child first attends the school. If all of the required immunizations cannot be completed within three months due to the length of the minimum intervals between doses of a particular vaccine required by the department of health, provisional attendance may be extended so long as the child's parent or guardian provides documentation that appointments for required immunizations have

been made and that progress toward completing the immunizations continues in accordance with the requirements of the department of health.

(b) Provisional attendance at school may be suspended by the department of health when there is danger of an epidemic from any of the communicable diseases for which immunization is required. [L 1996, c 89, pt of §2; am L 1997, c 217, §1; am L 1998, c 60, §2; am L 2000, c 109, §2; am L 2009, c 151, §8; am L 2014, c 16, §4 and c 232, §12]

" **§302A-1156 Exemptions.** A child may be exempted from the required immunizations:

- (1) If a licensed physician, physician assistant, or advanced practice registered nurse certifies that the physical condition of the child is such that immunizations would endanger the child's life or health; or
- (2) If any parent, custodian, guardian, or any other person in loco parentis to a child objects to immunization in writing on the grounds that the immunization conflicts with that person's bona fide religious tenets and practices. Upon showing the appropriate school official satisfactory evidence of the exemption, no certificate or other evidence of immunization shall be required for entry into school. [L 1996, c 89, pt of §2; am L 2009, c 151, §9; am L 2014, c 45, §7]

" **[§302A-1157] Exemptions from immunization; not recognized; epidemic conditions.** If at any time there is, in the opinion of the department of health, danger of an epidemic from any of the communicable diseases for which immunization is required under sections 302A-1154 to 302A-1163, no exemption from immunization against the disease shall be recognized. Quarantine shall be a legal alternative to immunization. [L 1996, c 89, pt of §2]

" **§302A-1158 Immunization of indigent children.** The department of health shall provide all immunizations and tuberculin tests to comply with sections 302A-1154 to 302A-1163, as far as public funds will permit, to each child whose parents, guardians, or custodians cannot afford to have the child immunized or tested for tuberculosis, and who have not been exempted under section 302A-1156. Nothing in this section shall preclude the department of health from distributing

immunizations and vaccines to physicians, advanced practice registered nurses, or other authorized persons as required by law or by the rules of the department of health. [L 1996, c 89, pt of §2; am L 1998, c 60, §3]

" **§302A-1159 Physical examination required.** (a) No child shall attend any school for the first time in the State unless the child presents to the appropriate school official a report from a licensed physician, physician assistant, or advanced practice registered nurse of the results of a physical examination performed within twelve months before the date of attendance at school. A child may attend school provisionally upon submitting written documentation from a licensed physician, physician assistant, advanced practice registered nurse, or other authorized representative of the department of health stating that the child is in the process of undergoing a physical examination. Further documentation showing that the required physical examination has been completed shall be submitted to the appropriate school official no later than three months after the child first attends the school.

(b) Beginning with the 2017-2018 school year, every child entering seventh grade shall present to the appropriate school official written documentation from a licensed physician, physician assistant, or advanced practice registered nurse showing completion of a physical examination performed within twelve months before the date of attendance. The department shall send notification of the physical examination requirement to the child's parents or guardians, upon the child's entrance into sixth grade, and post the requirement on the department's website. By December 31 of each year, the department shall provide to the department of health a list of students attending seventh grade who have not submitted appropriate written documentation, along with directory information as allowed under the federal Family Educational Rights and Privacy Act. [L 1996, c 89, pt of §2; am L 1998, c 60, §4; am L 2000, c 109, §3; am L 2014, c 16, §5 and c 232, §13; am L 2016, c 185, §2]

Cross References

Department of education student physical examination follow-up assistance and consultations, see §321-35.

" **§302A-1160 Student's health record.** The department of education shall provide student health record forms for immunization and physical examination to the schools, private physicians, advanced practice registered nurses, and authorized

personnel of the department of health. [L 1996, c 89, pt of §2; am L 1998, c 60, §5; am L 2000, c 109, §4]

" **§302A-1161 Notification for noncompliance.** If a child does not complete the immunizations required under section 302A-1154 or the physical examination required under section 302A-1159 within the period provided by section 302A-1155 after provisional attendance at school, the administrator of the school shall cause a notice to be sent to the parent or guardian of the child stating that if the required immunizations or physical examination is not completed within thirty days of the date of the notice, the child shall not be permitted to attend school. [L 1996, c 89, pt of §2; am L 1997, c 217, §2; am L 2014, c 16, §6 and c 232, §14]

" **§302A-1162 Rules.** (a) The department of health shall adopt rules under chapter 91 relating to immunization, physical examination, and tuberculin testing under sections 302A-1154 to 302A-1163. Immunizations required, and the manner and frequency of their administration, shall conform with recognized standard medical practices. The list of diseases and minimum requirements for protection under sections 302A-1154 to 302A-1163 may be revised whenever the department of health deems it necessary for the protection of public health.

(b) The department shall establish by rule standards for documentation of compliance with school health requirements under sections 302A-1154 through 302A-1163.

(c) The department may adopt, amend, or repeal rules pursuant to chapter 91 to establish a list of specific vaccines that are available or may become available. Notwithstanding the notice, public hearing, and comment requirements of chapter 91 and the provisions of chapter 201M, the director of health, in consultation with the state epidemiologist, may adopt, amend, or repeal as rules, the immunization recommendations of the United States Department of Health and Human Services, Advisory Committee on Immunization Practices, including interim recommendations, as they apply to the list of specific vaccines, if any, described in this subsection. The department shall make the adoption, amendment, or repeal of rules regarding United States Department of Health and Human Services, Advisory Committee on Immunization Practices immunization recommendations known to the public by:

- (1) Giving public notice of the substance of the proposed rules at least once statewide; and
- (2) Posting the full text of the proposed rulemaking action on the Internet as provided in section 91-2.6.

The rules, when adopted, amended, or repealed pursuant to chapter 91 as modified by this section, shall have the force and effect of law. The department may defer the effective date of adopted, amended, or repealed rules to allow sufficient time to ensure compliance with the new, amended, or repealed rules. [L 1996, c 89, pt of §2; am L 2000, c 109, §5; am L 2013, c 231, §2]

" **[§302A-1163] Enforcement.** The department of health shall administer and enforce the immunization and tuberculin test requirements under sections 302A-1154 to 302A-1163. [L 1996, c 89, pt of §2]

" **§302A-1164 Self-administration of medication by student and emergency administration; self-testing and self-management of diabetes by student; assistance with diabetes testing; blood glucose monitoring by student; assistance with blood glucose monitoring; permitted.** (a) The department shall permit:

- (1) The self-administration of:
 - (A) Medication by a student for asthma, anaphylaxis, diabetes, or other potentially life-threatening illnesses; and
 - (B) Blood glucose monitoring by a student; and
 - (2) Department employees and agents to volunteer to administer:
 - (A) Insulin or assist a student in administering insulin via the insulin delivery system that the student uses;
 - (B) Glucagon in an emergency situation to students with diabetes;
 - (C) Auto-injectable epinephrine in an emergency situation to students with anaphylaxis; or
 - (D) Blood glucose monitoring or assist a student with blood glucose monitoring.
- (b) The student's parent or guardian shall provide the department with:
- (1) Written authorization for the self-administration of medication or the emergency administration of glucagon or auto-injectable epinephrine;
 - (2) In the case of self-administration of medication:
 - (A) Written certification from the student's physician, advanced practice registered nurse, or physician assistant stating that the student with diabetes may perform the student's own blood glucose checks, administer insulin through the student's insulin delivery system, and otherwise

attend to the care and management of the student's diabetes during any school-related activity, and that the student may possess on the student's person all necessary supplies and equipment to perform the diabetes monitoring and treatment activities, if applicable; and

- (B) Written certification from the student's physician, advanced practice registered nurse, or physician assistant stating that the student:
 - (i) Has asthma, anaphylaxis, or another potentially life-threatening illness; and
 - (ii) Is capable of, and has been instructed in, the proper method of self-administration of medication or blood glucose monitoring; and
- (3) In the case of administration of insulin or emergency administration of glucagon to a student with diabetes, blood glucose monitoring of a student, or auto-injectable epinephrine to a student with anaphylaxis, written certification from the student's physician, advanced practice registered nurse, or physician assistant stating that the student has medical orders that insulin, glucagon, blood glucose monitoring, or auto-injectable epinephrine may be administered by a volunteer.

(c) The department shall inform the student's parent or guardian in writing that the department and its employees or agents shall not incur any liability as a result of any injury arising from compliance with this section.

(d) The student's parent or guardian shall sign a statement acknowledging that:

- (1) The department and its employees or agents shall not incur any liability as a result of any injury arising from compliance with this section; and
- (2) The parent or guardian shall indemnify and hold harmless the department and its employees or agents against any claims arising out of compliance with this section.

(e) The permission shall be effective for the school year for which it is granted and shall be renewed for each subsequent school year upon the fulfillment of the requirements in this section.

(f) Notwithstanding any other law to the contrary, a student who is permitted to self-administer medication under this section shall be permitted to carry an inhaler or auto-injectable epinephrine, or both, at all times if the student does not endanger the student's person or other persons through the misuse of the inhaler; provided that the department,

its employees or agents may confiscate a student's medication, inhaler, or auto-injectable epinephrine if the student's self-administration of the medication exceeds the student's prescribed dosage, or if the student endangers others with the student's medication, inhaler, or auto-injectable epinephrine.

For the purposes of this section, the term "inhaler" includes:

- (1) Metered-dose, breath-actuated, and dry powder inhalers; and
- (2) Spacers and holding chambers.

(g) Any employee or agent who volunteers to administer insulin or glucagon in an emergency situation to a student with diabetes or auto-injectable epinephrine to a student with anaphylaxis or who volunteers to administer or assist a student with blood glucose monitoring shall receive instruction in the proper administration of insulin, glucagon, ~~[e]~~ auto-injectable epinephrine, or blood glucose monitoring by a qualified health care professional. A "qualified health care professional" means a licensed physician, physician assistant, advanced practice registered nurse or registered nurse, or certified diabetes educator. The student's parent or guardian shall supply the school with the glucagon kit required to administer the glucagon, any supplies necessary to administer insulin, blood glucose monitoring, or with auto-injectable epinephrine supplies to administer epinephrine. The school shall store the glucagon kit, insulin supplies, blood glucose monitoring supplies, or auto-injectable epinephrine supplies in a secure but accessible location.

(h) Any person, except for a qualified health care professional providing the training required in subsection (g), who acts in accordance with the requirements of this section shall be immune from any civil or criminal liability arising from these acts, except where the person's conduct would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct. [L 2004, c 19, §1; am L 2005, c 207, §1; am L 2009, c 151, §10; am L 2015, c 214, §1; am L 2016, c 10, §1]

"D. New Century Charter Schools--Repealed

§§302A-1181 to 1192 REPEALED. L 2006, c 298, §3.

Note

L 2006, c 38, §6 purports to amend §302A-1186.

"PART V. PROVISIONS AFFECTING FINANCIAL STRUCTURE

A. Specific Definitions--Repealed

§302A-1201 REPEALED. L 2012, c 133, §61.

"B. Budget

§302A-1301 School system financial accountability. (a) Beginning with the 1995-1997 fiscal biennium, the department's administrative expenditures shall not exceed 6.5 per cent of the total department operating budget, excluding expenditures for agencies administratively attached to the department, unless approved by the legislature.

(b) Not less than seventy per cent of appropriations for the total budget of the department, excluding debt service and capital improvement programs and appropriations for agencies administratively attached to the department, shall be expended by principals. [L 1996, c 89, pt of §2; am L 2004, c 51, §57; am L 2014, c 232, §15]

" **§302A-1301.5 Curricular materials; digital format.** Moneys allocated for printed curricular materials may be expended to purchase digital formats of the curricular materials. [L 2016, c 112, §1]

" **§§302A-1302 and 302A-1303 REPEALED.** L 2012, c 133, §§62, 63.

Note

L 2012, c 130, §11 purports to amend §302A-1302.

" **§302A-1303.5 Committee on weights.** (a) There is established within the department of education the committee on weights to develop a weighted student formula pursuant to section 302A-1303.6. The committee may:

- (1) Create a list of student characteristics that will be weighted;
- (2) Create a system of weights based upon the student characteristics that may be applied to determine the relative cost of educating any student;

- (3) Determine specific student weights, including their unit value;
- (4) Determine which moneys shall be included in the amount of funds to be allocated through the weighted student formula;
- (5) Recommend a weighted student formula to the board of education;
- (6) Perform any other function that may facilitate the implementation of the weighted student formula; and
- (7) Meet not less than once every odd-numbered year, to review the weighted student formula and, if the committee deems it necessary, recommend a new weighted student formula for adoption by the board of education.

(b) The composition of the committee on weights shall be determined by the board of education based on recommendations from the superintendent of education and dean of the University of Hawaii at Manoa college of education and include principals, teachers, and other members with the appropriate professional skills, experiences, and qualifications needed to facilitate the work of the committee. The superintendent or the superintendent's designee shall chair the committee on weights.

(c) The committee on weights may form advisory subcommittees to obtain input from key stakeholders as determined necessary by the committee.

(d) The members of the committee on weights shall serve at the pleasure of the board of education and shall not be subject to section 26-34. Members of the committee on weights shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties. [L 2004, c 51, §3; am L 2011, c 93, §2; am L 2012, c 133, §23]

" **§302A-1303.6 Weighted student formula.** Based upon recommendations from the committee on weights, the board of education may adopt a weighted student formula for the allocation of moneys to public schools that takes into account the educational needs of each student. The department, upon the receipt of appropriated moneys, shall use the weighted student formula to allocate funds to public schools. Principals shall expend moneys provided to the principals' schools. This section shall only apply to charter schools for fiscal years in which the charter schools elect pursuant to section 302D-29 to receive allocations according to the procedures and methodology used to calculate the weighted student formula allocation. [L 2004, c

51, §4 and am c 221, §7; am L 2006, c 298, §13; am L 2011, c 93, §3; am L 2012, c 130, §12 and c 133, §24]

" **§302A-1304 REPEALED.** L 2002, c 158, §1.

" **§302A-1305 Inactive student activity accounts.** Student activity funds that are left in the school for a period of five years after the graduation of the class shall be deposited into the nonappropriated local school fund account unless the graduating class donates, in writing, the funds to the school within the five-year period. Moneys in the nonappropriated local school fund account may be used by the school. [L 1996, c 89, pt of §2; am L 2012, c 133, §25]

" **§302A-1306 REPEALED.** L 2004, c 51, §27.

" **§302A-1307 REPEALED.** L 2004, c 51, §28.

" **§302A-1308 REPEALED.** L 2012, c 133, §64.

" **§302A-1309 REPEALED.** L 2004, c 51, §29.

" **§302A-1310 Out-of-school time instructional programs; funds, expenditures.** All moneys received by and for the public out-of-school time instructional programs from tuition and other fees or from any other source shall be deposited in a special out-of-school time instructional program fund; and except as otherwise provided by the legislature, all expenditures for the operation of public out-of-school time instructional programs shall be made from this fund. [L 1996, c 89, pt of §2 and am c 123, §3; am L 2001, c 163, §4]

" **[§302A-1311] Appropriations for trust funds of the department of education.** Notwithstanding any other law to the contrary, in any fiscal year, if the amount of revenues deposited into a trust fund of the department of education exceeds the amount appropriated from that fund for that year, the superintendent may approve expenditures in excess of the amount appropriated, up to the amount by which revenues for that fund exceed the appropriations from that fund for a fiscal year; provided that the department shall submit a report annually to the governor and the legislature of all expenditures in excess

of each fund's appropriation for each fiscal year. [L 2000, c 234, pt of §2]

" **§302A-1312 Six-year program and financial plan for school repair and maintenance.** (a) The department of education shall prepare a six-year program and financial plan for school repair and maintenance that shall be:

- (1) Based on:
 - (A) Estimated preventive and scheduled maintenance costs;
 - (B) Budgeted recurring maintenance;
 - (C) Health and safety requirements; and
 - (D) Legal mandates;
- (2) Insofar as is practical, prepared in accordance with the principles and procedures contained in section 514A-83.6 or 514B-148; and
- (3) Submitted initially to the legislature not less than thirty days prior to the convening of the 2002 regular session, with annual funding requirements for the physical plant operations and maintenance account submitted not less than thirty days prior to the convening of the 2002 regular session and each regular session thereafter;

provided that the governor may incorporate the six-year program and financial plan required by this subsection into the six-year program and financial plan required by section 37-69, if the plan required by this subsection is incorporated without reductions or restrictions.

(b) The department of education shall develop and maintain a facilities physical analysis report and a facilities financial analysis report for each public school. These reports shall be posted electronically on the Internet.

(c) For the purposes of this section, the superintendent of education shall develop and implement appropriate planning procedures and follow-up accountability reports to ensure sound planning, control, and accountability in the use of moneys allocated by the legislature. The department of education shall annually post on the department's website information that shall include:

- (1) List of projects initiated by the department of education; and
- (2) List of projects completed with associated actual cost. [L 2001, c 316, pt of §3(1); am L 2003, c 188, §7; am L 2004, c 164, §9; am L 2005, c 93, §7 and c 189, §5; ree L 2006, c 38, §7; am L 2008, c 28, §6; am L 2012, c 133, §26; am L 2014, c 232, §16]

Note

Section 302A-1309 referred to in subsection (c) is repealed.

" **§302A-1313 REPEALED.** L 2012, c 133, §65.

" **[§302A-1314] Hawaii 3Ts school technology laboratories fund.** (a) There is established the Hawaii 3Ts school technology laboratories fund (hereinafter, "fund") as a separate fund of the Economic Development Alliance of Hawaii Inc., a Hawaii nonprofit organization. Moneys received from the state, county, or federal government, private contributions of cash or other property, and the income and capital gains earned by the fund shall constitute its assets.

(b) The Economic Development Alliance of Hawaii Inc. shall expend moneys in the form of either grants to organizations or contracts with private vendors from the fund for the establishment and maintenance of technology laboratories in public schools in Hawaii. Such expenditures shall be in accordance with this section, and consistent with the criteria and recommendations of the Hawaii 3Ts school technology laboratories board.

(c) The fund may receive contributions, grants, endowments, or gifts in cash or otherwise from all sources, including corporations or other businesses, foundations, government, individuals, and other interested parties. The legislature intends that the public and private sectors work together as partners in securing contributions for the fund, and that the Economic Development Alliance of Hawaii Inc., through its Hawaii 3Ts project, assist the public and private sectors in reviewing and investigating all potential funding sources. The State may appropriate moneys to the fund; provided that any appropriations made by the State are not intended to supplant the funding of any existing public school programs for the establishment and maintenance of school technology laboratories.

(d) The Economic Development Alliance of Hawaii Inc. shall appoint the members of the Hawaii 3Ts school technology laboratories board, which shall be responsible for:

- (1) Soliciting and otherwise raising moneys for the fund;
- (2) Establishing criteria for proposals to be funded and the expenditure of funds;
- (3) Reviewing grant proposals utilizing criteria established by Hawaii 3Ts school technology laboratories board; and

- (4) Making recommendations for grants and other specific expenditures to the Economic Development Alliance of Hawaii Inc.

Members of the advisory board shall be stakeholders in Hawaii's public education and workforce development entities, including students and parents, teachers and principals, business and community leaders, representatives from the county economic development boards, and representatives from the department of education, the department of business, economic development, and tourism, and the department of accounting and general services, who shall be represented on the advisory board.

(e) In managing the moneys in the fund, the Economic Development Alliance of Hawaii Inc. shall exercise ordinary business care and prudence given the facts and circumstances prevailing at the time of action or decision. In doing so, the Economic Development Alliance of Hawaii Inc. shall consider its long-term and short-term needs in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, price trends, and general economic conditions.

(f) There may be an endowment component of the fund.

(g) The use of any state moneys may be restricted by the legislation appropriating these moneys to the fund.

(h) The Economic Development Alliance of Hawaii Inc. is authorized to expend the principal from the fund for the purposes of the fund.

(i) Any organization submitting a proposal to the Economic Development Alliance of Hawaii Inc. for fund moneys shall meet all of the following standards at the time of applications:

- (1) Be a for-profit organization duly registered under the laws of the State, or be a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax, or be an agency of the State or a county;
- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation;
- (3) In the case of an applicant that is not a state or county government agency, have bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of potential conflict of interest situations;
- (4) Have experience with the project or in the program area for which the proposal is being made; and
- (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments.

(j) All proposals approved by the Hawaii 3Ts school technology laboratories board and for which the Economic Development Alliance of Hawaii Inc. intends to provide fund moneys shall be approved by the director of business, economic development, and tourism for consistency in meeting the purposes of this section.

(k) Organizations or agencies to which fund moneys are awarded shall agree to comply with the following conditions before receiving the award:

- (1) Employ or have under contract persons qualified to engage in the activity to be funded;
- (2) Comply with applicable federal, state, and county laws; and
- (3) Comply with any other requirements prescribed by the Economic Development Alliance of Hawaii Inc. to ensure adherence by the recipient of the award with applicable federal, state, and county laws and with the purposes of this section.

(l) Chapter 103D shall not apply to organizations or agencies that apply for grants or contracts under this section; provided that the Economic Development Alliance of Hawaii Inc. shall be held accountable for the use of the funds under a contract with the department of business, economic development, and tourism.

(m) Any contracts awarded by the Economic Development Alliance of Hawaii Inc. shall be made under as much competition as practical to execute its purposes.

(n) The fund shall be audited annually by an independent auditor retained by the Economic Development Alliance of Hawaii Inc. The auditor's report of each annual audit shall be submitted to the department of business, economic development, and tourism not later than thirty days from the date the audit report is received by the Economic Development Alliance of Hawaii Inc. In addition, the Economic Development Alliance of Hawaii Inc. shall retain for a period of three years, and permit the department of accounting and general services, the department of education, the department of business, economic development, and tourism, state legislators, and the auditor, or their duly authorized representatives, to inspect and have access to, any documents, papers, books, records, and other evidence that is pertinent to the fund.

(o) The fund shall not be placed in the state treasury, and the State shall not administer the fund, nor shall the State be liable for the operation or solvency of the fund, the Economic Development Alliance of Hawaii Inc., or Hawaii 3Ts.

(p) For every dollar granted to a recipient by the fund, a minimum of 50 cents in value shall be from private, federal, county, or community sources.

(q) For purposes of this section, "school technology laboratory" means a multi-station computer laboratory that offers students a variety of different types of hardware and software applications.

[(r)] The Economic Development Alliance of Hawaii Inc. shall submit an annual report for approval by the director of business, economic development, and tourism on the progress of the Hawaii 3Ts school technology laboratories fund by December 1 of each year. The director of business, economic development, and tourism shall transmit the report along with comments from the department of business, economic development, and tourism to the legislature no later than twenty days prior to the convening of each regular session. [L 2004, c 218, §§2, 3]

Revision Note

L 2004, c 218, §3 is codified to this section as subsection (r) pursuant to §23G-15.

" **§302A-1315 REPEALED.** L 2015, c 147, §5.

"C. Federal Funding

§302A-1401 Administration and use of federal funds. The board, designated as the administrators of such funds as may be allotted to the State under federal legislation for public educational purposes, subject to such limitations as may be imposed by congressional action, shall use and expend the funds:

- (1) To improve the program of the public schools of the State, including any grades up to the fourteenth grade or such lower grade as shall be prescribed as a maximum for such purposes by the Act of Congress concerned, by expanding the educational offerings, particularly in the rural districts;
- (2) For the payment of salaries to teachers;
- (3) To employ additional teachers to relieve overcrowded classes;
- (4) To adjust the salaries of teachers to meet the increased cost of living, within such limits as may be fixed by, and pursuant to, state law;
- (5) To provide for the purchase of supplies, apparatus, and materials for the public schools; and

- (6) For any of such purposes and to such extent as shall be permitted by the Acts of Congress concerned. [L 1996, c 89, pt of §2; am L 2012, c 133, §27; am L 2015, c 108, §6]

" **[§302A-1402] Custodian of federal funds.** The director of finance is designated as custodian of all funds received as the state apportionment under any federal appropriations for public educational purposes and the director shall disburse the funds, pursuant to the requirements, restrictions, and regulations of the federal acts under which the funds may be provided, on vouchers approved by the board, or by any subordinate thereunto duly authorized by the board. [L 1996, c 89, pt of §2]

" **§302A-1403 Authority to secure federal funds.** The department, the state public charter school commission, a charter school authorizer, director of finance, and governor may take such steps and perform such acts as may be necessary or proper to secure any such federal funds for the purposes specified in sections 302A-1401 and 302A-1402. [L 1996, c 89, pt of §2; am L 2006, c 298, §20; am L 2012, c 130, §13]

" **§302A-1404 Federal impact aid military liaison.** (a) The department and the state public charter school commission or an authorizer, as appropriate, may retain and expend federal indirect overhead reimbursements for discretionary grants in excess of the negotiated rate for such reimbursements as determined by the director of finance and the superintendent or the director of finance and the state public charter school commission or an authorizer, as appropriate.

(b) Each fiscal year the department of education may set aside \$100,000 of federal impact aid moneys received pursuant to this section to:

- (1) Establish and fund a permanent, full-time military liaison position within the department of education; and
- (2) Fund the joint venture education forum to facilitate interaction between the military community and the department of education.

The military liaison position established under paragraph (1) shall be exempt from chapter 76 but shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State. [L 2000, c 234, pt of §2; am L 2004, c 147, §2; am L 2006, c 298, §21; am L 2012, c 130, §14 and c 133, §28]

Cross References

Federal funds; general fund offset, see §29-25.

" **§302A-1405 Federal grants revolving fund.** (a) There is established a federal grants revolving fund into which shall be deposited the department's share of federal indirect overhead reimbursements, pursuant to section 302A-1404. Unless otherwise provided by law, all other receipts shall immediately be deposited to the credit of the general fund of the State. The department may expend funds in the federal grants revolving fund to search for discretionary grants, develop program applications to secure additional revenues for the department, monitor grant execution, ensure compliance with grant requirements, and audit grant expenditures. Moneys in the revolving fund may be expended for consultant services and operational expenses, including the creation and hiring of temporary staff.

(b) The department shall prepare and submit an annual report on the status of the federal grants revolving fund to the legislature. The annual report shall include but not be limited to a list of the grant applications to the federal agencies and the grant awards received. [L 2000, c 234, pt of §2; am L 2009, c 35, §2]

" **[§302A-1406] Department of education federal revenue maximization program revolving fund; established.** (a) There is established in the state treasury the department of education federal revenue maximization program revolving fund to be administered by the department. Moneys from the revolving fund shall be expended by the department for medicaid-eligible services provided by the department and administrative costs related to the department of education federal revenue maximization program.

(b) The department of education federal revenue maximization program revolving fund shall consist of:

- (1) Federal revenue collected by the department for administering and operating the department of education federal revenue maximization program;
- (2) Legislative appropriations;
- (3) All interest earned on the deposit or investment of moneys in the department of education federal revenue maximization program revolving fund; and

- (4) Any other moneys made available to the department of education federal revenue maximization program revolving fund from other sources. [L 2006, c 244, §2]

"PART VI. PROVISIONS AFFECTING FACILITIES

A. Facilities and Equipment

§§302A-1501, 302A-1501.5, and 302A-1502 REPEALED. L 2012, c 133, §§66 to 68.

" **§302A-1502.4 Hawaii 3R's school improvement fund.** (a) There is established the Hawaii 3R's school improvement fund (hereinafter, "fund") as a separate restricted fund of Hawaii 3R's, a Hawaii nonprofit organization. Moneys received from the State, county, or federal government, private contributions of cash or other property, and the income and capital gains earned by the fund shall constitute its assets.

(b) Hawaii 3R's shall expend moneys from the fund in the form of either grants to organizations or contracts with private vendors for the improvement of public schools and benefit of students in Hawaii in accordance with this section.

(c) The fund may receive contributions, grants, endowments, or gifts in cash or otherwise from all sources, including corporations or other businesses, foundations, government, individuals, and other interested parties. The fund shall also receive moneys transferred to it from the school-level minor repairs and maintenance special fund established under section 302A-1504.5. The legislature intends that public and private sectors review and investigate all potential funding sources. The State may appropriate moneys to the fund; provided that any appropriations made by the State are not intended to supplant the funding of any existing programs.

(d) Chapter 103D shall not apply to organizations or agencies that apply for grants or contracts under this section; provided that Hawaii 3R's shall be held accountable for the use of the funds under a contract with the department.

(e) The fund shall not be placed in the state treasury, and the State shall not be liable for the operation or solvency of the fund or Hawaii 3R's. [L 2003, c 214, §2; am L 2004, c 51, §54 and c 213, §3; am L 2011, c 150, §2; am L 2012, c 133, §29; am L 2014, c 207, §2]

" **§302A-1502.5 REPEALED.** L 2005, c 22, §44.

Cross References

Hawaii 3R's school repair and maintenance fund, see §302A-1502.4.

" **§302A-1502.6 REPEALED.** L 2012, c 133, §69.

" **§302A-1503 Donated school equipment and fixtures; repair and maintenance responsibility.** (a) The department may accept donations of school equipment or fixtures on behalf of the department, individual schools, or school complexes. Donations that meet current educational specifications or exceed existing educational specifications shall be deemed acceptable in instances where the donations enhance the school environment or improve the administration of school programs in accordance with criteria established by the department pursuant to chapter 91.

(b) The department may accept a donation only if the equipment or fixture is useful to enhance the physical environment or safety of a school, or is a benefit to learning.

(c) The private source making a donation shall not be liable upon any claim for injury arising from the donated equipment or fixture; provided that this provision shall not affect the responsibility or liability of manufacturers of defective products nor shall it affect the responsibilities of negligent persons who cause dangerous conditions that result in injury. [L 1996, c 89, pt of §2; am L 2009, c 63, §3]

" **§302A-1504 REPEALED.** L 2010, c 31, §3.

" **§302A-1504.5 School-level minor repairs and maintenance special fund[;] reporting of carry over funds.** (a) There is established within the state treasury a special fund to be known as the school-level minor repairs and maintenance special fund, into which shall be deposited all moneys collected pursuant to section 235-102.5(b), and any other moneys received by the department in the form of grants and donations for school-level improvements and minor repairs and maintenance. The special fund shall be administered by the department and used to fund school-level minor repairs and maintenance. The department shall transfer moneys collected pursuant to section 235-102.5(b), and may transfer any other moneys received in the form of grants and donations for school-level improvements and minor

repairs and maintenance to the Hawaii 3R's school improvement fund established pursuant to section 302A-1502.4.

(b) The department shall submit to the director of finance a report that shall be prepared in the form prescribed by the director of finance and shall identify the total amount of funds in the school-level minor repairs and maintenance special fund that will carry over to the next fiscal year. The department shall submit the report to the director of finance within ninety days of the close of each fiscal year and a copy of the report to the legislature no later than twenty days prior to the convening of each regular session. [L 2001, c 311, §2; am L 2002, c 16, §23; am L 2010, c 31, §2; am L 2014, c 207, §3]

" **§§302A-1505 and 302A-1506.5 REPEALED.** L 2012, c 133, §§70, 71.

" **§302A-1506 Public school facilities.** The department may enter into such contracts, leases, lease-purchase agreements, or other transactions as may be necessary for the acquisition of public school facilities, including any lands for these facilities, on such terms as it may deem appropriate with the concurrence of the director of finance. [L 1996, c 89, pt of §2 and am c 265, §1; am L 2007, c 220, §4]

" **§302A-1507 Classroom cleaning project; established.** (a) There is established a classroom cleaning project in all public schools, excluding charter schools. Each school, through its school community council, may develop mechanisms to provide for classroom cleaning, including but not limited to having parent, student, or other community groups clean the classrooms on a regular, continuing basis.

(b) Schools may use any available resources to achieve the purposes of this section; provided that no full-time custodial staff employed at the school shall be displaced.

(c) Nothing in this section shall prohibit the use of volunteers for classroom cleaning. [L 1996, c 89, pt of §2; am L 2004, c 51, §31; am L 2006, c 298, §15; am L 2012, c 133, §30]

Cross References

Classroom cleaning; exception, see §89-23.

" **[§302A-1508] Education design and construction project assessment fund.** (a) There shall be established in the department a revolving fund to be known as the education design and construction project assessment fund for the purpose of defraying the costs of:

- (1) Carrying out construction projects managed by the department;
- (2) Managing funds representing accumulated vacation and sick leave credits and retirement benefits for non-general fund employees in the construction program in accordance with section 78-23;
- (3) Equitably collecting and distributing moneys for other current expenses associated with capital improvement, repairs and maintenance, and repairs and alterations projects; and
- (4) Managing payments for employee transportation requirements such as car mileage reimbursements in accordance with applicable law and collective bargaining agreements.

(b) The superintendent shall assess construction projects managed by the department based on the superintendent's evaluation of the costs of services for capital improvements, repairs and maintenance, and repairs and alterations projects. All assessments collected shall be deposited into the education design and construction project assessment fund.

(c) All expenditures from the education design and construction project assessment fund shall be made by the superintendent in accordance with applicable law and rules. [L 2005, c 189, §1]

" **[§302A-1509] Environmentally-sensitive cleaning and maintenance products for use in public schools.** The department of education shall require that all public school facilities give first preference, where feasible, to the purchase and use of environmentally-sensitive cleaning and maintenance products that have been approved by the Green Seal program pursuant to section 321-26.5, for use in public school facilities:

- (1) To clean hard surfaces in bathrooms such as counters, walls, floors, fixtures, basins, tubs, or tile;
- (2) To eliminate dirt and stains on rugs and carpeting;
- (3) For routine cleaning of hard surfaces, including impervious flooring such as concrete or tile; provided that this category shall not include:
 - (A) Products intended primarily to strip, polish, or wax floors; or
 - (B) Cleaners intended primarily for cleaning toilet bowls, dishes, laundry, upholstery, or wood;

- (4) To clean glass, windows, mirrors, or metallic or polished surfaces;
- (5) For routine, non-specialized hand cleaning;
- (6) Paper towels or other paper used for cleaning; provided that this category shall not include toilet paper, facial tissue, or paper towels used for drying hands; and
- (7) Other categories as identified in the department of health. [L Sp 2009, c 13, §1]

" **[§302A-1510] Sustainable schools initiative.** (a) The department shall establish a goal of becoming net-zero with respect to energy use, producing as much renewable energy as the department consumes across all public school facilities, by January 1, 2035.

(b) The department shall use the amount and value of energy consumed by the department across all public school facilities during the 2015-2016 fiscal year as the benchmark for measuring the department's progress toward the energy usage goal set forth in subsection (a).

(c) The department shall submit an annual report that shall include information on:

- (1) The overall progress toward the net-zero energy goal set forth in subsection (a);
- (2) Its plans and recommendations to advance the net-zero energy goal set forth in subsection (a); and
- (3) Any challenges or barriers encountered or anticipated by the department in meeting the net-zero energy goal set forth in subsection (a).

(d) The department shall expedite the cooling of all public school classrooms to a temperature acceptable for student learning. When implementing classroom cooling measures, the department, and any contractor hired to implement classroom cooling measures, shall maximize energy efficiency and installation and operating cost savings over the entire life of the project.

(e) Pursuant to this section, the department shall include in the report the status of the implementation of measures taken to cool public school classrooms as required by subsection (d). The report shall include the following information:

- (1) The number of completed classrooms in which cooling measures were implemented and the number of classrooms remaining that require cooling;
- (2) The different types of cooling measures implemented;
- (3) The approximate cost per classroom for planned cooling measures, including installation, upgrades, equipment,

- maintenance, and projected operating costs over the life of the installed cooling measures;
- (4) The approximate cost per completed classroom for cooling measures implemented, including installation, upgrades, equipment, maintenance, and projected operating costs over the life of the installed cooling measures;
 - (5) The number of completed classrooms in which energy efficiency measures were installed or implemented and the number of classrooms remaining that require energy efficiency measures; and
 - (6) The different types of energy efficiency measures installed or implemented.
- (f) The department shall report its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of each regular session. [L 2016, c 176, §2]

"B. School Impact Fees

Note

Subpart heading amended by L 2010, c 188, §3.
Implementation procedures; annual reports to legislature. L 2007, c 245, §§4, 6.

Revision Note

Sections 302A-1601 to 1611, enacted as a new part, are redesignated as a subpart pursuant to §23G-15.

Cross References

Building permit requirements for new developments in school impact districts, see §46-142.5.

Impact fees for public highways, see §§264-121 to 127.

§302A-1601 Findings. New residential developments within identified school impact districts create additional demand for public school facilities. As such, once school impact districts are identified, new residential developments shall be required to contribute toward the construction of new or expansion of existing public school facilities through:

- (1) The land requirement, either through an in lieu fee or actual acreage (unless land is not required in the school impact district), based on each new residential

- development's proportionate share of the need to provide additional public school sites; and
- (2) The construction requirement either through an in lieu fee or actual construction based on each new residential development's proportionate share of the need to construct additional school facilities.

A study commissioned by the State has identified the land dedication requirement that is consistent with proportionate fair-share principles and the net capital cost of school facilities, excluding land costs, that is consistent with proportionate fair-share principles.

The State determines that new residential developments within designated school impact districts shall provide land for schools or pay a fee in lieu of land proportionate to the impacts of the new residential development on existing school facilities. The State also determines that new residential developments within designated school impact districts shall also pay school construction cost component impact fees proportionate to their impacts.

In determining the amounts of land component impact fees and construction cost component impact fees, the intent of the school impact fee calculations is that new residential developments should not be charged for a higher level of service than is being charged to existing developments.

This subpart establishes the methodology for developers to provide their proportionate share of the land and the construction cost of new or expanded school facilities needed to serve new residential developments, as determined in sections 302A-1606 and 302A-1607, respectively. [L 2007, c 245, pt of §2; am L 2010, c 188, §4]

" **§302A-1602 Definitions.** As used in this subpart, the following terms shall have the following meanings unless the context indicates otherwise:

"Construction cost" means the net cost to construct a school, including without limitation, planning, design, engineering, grading, permits, construction, and construction and project management, but not including the cost to acquire land.

"Construction cost component impact fee" means ten per cent of the share of the construction cost for the required new school, the expansion of existing school facilities that is attributable to a specific new residential development, or both.

"Cost per student" means the average of actual school construction costs, expressed in current dollars, divided by the

respective design enrollments, for schools constructed within approximately the last ten years.

"County" means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and the county of Maui.

"Design enrollment" means the maximum number of students, or student capacity, a permanent school facility is designed to accommodate.

"Developer" means a person, corporation, organization, partnership, association, or other legal entity constructing, erecting, enlarging, altering, or engaging in any new residential development activity.

" Dwelling unit" or "unit" means a multi-family or single-family residential unit.

"Fee in lieu" means a fee determined pursuant to section 302A-1606 that is paid in lieu of the dedication of land.

"Land area per student" means the area of land in acres required per student for a school site based on design standards for schools, which may include the actual school site size and the design enrollment of schools constructed within approximately the last ten years.

"Land component" means a fee simple property that is vacant, suitable for a school site, and improved with infrastructure that is the total school area dedication requirement for a new residential development in a school impact district.

"Land component impact fee" means the land component, the fair market value of the land component, or any combination thereof that is attributed to a specific new residential development.

"Level of service" means the percentage of classrooms that are located in permanent structures, but not including classrooms located in portable buildings.

"Multi-family unit" means any dwelling unit other than a single-family dwelling unit.

"New residential development" means new residential projects involving rezoned properties or parcels, current zoned parcels with or without buildings, and redevelopment projects. These projects include subdivisions and other forms of "lot only" developments (when the dwelling units will not be built by the developer), and developments that include single-family and multi-family units, condominiums, and additional or accessory dwelling units as defined by each county.

"Owner" means the owner of record of real property or the owner's authorized agent.

"Proportionate share" means the pro rata share of the school impact fee attributed to the specific new residential development based on the number of units in the development.

"Recent school site area averages" means the department's historical average acres for new elementary (K-5), middle (6-8), and high (9-12) schools. Based on historic schools constructed in the 1997 to 2007 period, the initial recent school site area averages are as follows:

	Land Area/school	Enrollment/school	Land Area/student
Elementary	12.5 acres	800 students	.0156 acres
Middle	16.5 acres	1,500 students	.0110 acres
High	49 acres	1,600 students	.0306 acres

"Revenue credit" means the state general excise tax revenues under chapter 237 that will be generated by a new dwelling unit and used to fund school capital facilities and pay for outstanding debt on existing facilities.

"School facilities" means the facilities owned or operated by the department, or the facilities included in the department of education capital budget or capital facilities plan.

"School impact district" means a geographic area designated by the board where an anticipated new residential development will create the need for one or more new schools or the expansion of one or more existing schools that are or will be located within the area and will primarily serve new dwelling units within the area.

"Single-family unit" means a detached dwelling unit not connected to any other dwelling unit, or a detached building containing two dwelling units.

"Single-family unit count" means the total single-family units planned for a proposed new residential development.

"Student generation rate" means the number of public school students generated by each multi-family and single-family unit when a residential development has matured and enrollment per unit no longer fluctuates significantly, or has substantially achieved a steady state. The student generation rate for a school impact district shall be based on analysis of the existing number of residential units and public school students in an area, and the student generation rates of comparable projects and areas. [L 2007, c 245, pt of §2; am L 2010, c 188, §5]

" **§302A-1603 Applicability and exemptions.** (a) Except as provided in subsection (b), any person who seeks to develop a new residential development within a designated school impact district requiring:

- (1) A county subdivision approval;
- (2) A county building permit; or

(3) A condominium property regime approval for the project, shall be required to fulfill the land component impact fee or fee in lieu requirement and construction cost component impact fee requirement of the department, including all government housing projects and projects processed pursuant to sections 46-15.1 and 201H-38.

(b) The following shall be exempt from this section:

- (1) Any form of housing permanently excluding school-aged children, with the necessary covenants or declarations of restrictions recorded on the property;
- (2) Any form of housing that is or will be paying the transient accommodations tax under chapter 237D;
- (3) All nonresidential development; and
- (4) Any development with an executed education contribution agreement or other like document with the department for the contribution of school sites or payment of fees for school land or school construction. [L 2007, c 245, pt of §2; am L 2010, c 188, §6; am L 2016, c 237, §2]

" **§302A-1604 Designation of school impact districts.** (a) The board shall designate a school impact district for school impact fees only after holding at least one public hearing in the area proposed for the school impact district. The written analysis, prepared in accordance with subsection (b), shall be made available to the public at least thirty days prior to the public hearing. Notice of the public hearing shall be made as provided in section 1-28.5. The notice shall include a map of the proposed school impact district and the date, time, and place of the public hearing.

(b) Prior to the designation of a school impact district, the department shall prepare a written analysis that contains the following:

- (1) A map and legend describing the boundaries of the proposed school impact district area, which may range from one school to one or more high school complexes, as well as maps and legends describing surrounding districts and school enrollments at existing school facilities in and around the school impact district;
- (2) The need to construct new or expand existing school facilities in the proposed school impact district area within the next twenty-five years to accommodate projected growth in the area based on various state and county land use, demographics, growth, density,

- and other applicable historical data projections and plans;
- (3) An analysis to determine appropriate student generation rates by dwelling unit type for all new residential developments in the school impact district area to provide the basis for determining the steady state enrollment generated by new residential developments that will need to be accommodated. The analysis shall also consider enrollment at existing school facilities, in and around the school impact district;
 - (4) Student generation rates, based on full build-out of the developments when student generation rates are anticipated to be in a steady state mode;
 - (5) An analysis to estimate the number of students generated by all new residential developments in the school impact district at the point in time when the total enrollment from these developments is anticipated to peak. This information is required for or related to the determination of the impact fee, and will provide the basis for determining the maximum enrollment generated by new residential developments that will need to be accommodated in both permanent facilities and portable buildings;
 - (6) Calculation of the current statewide level of service;
 - (7) An analysis of appropriate school land area, or other appropriate state lands, and enrollment capacity, which may include nontraditional (i.e., mid-rise or high-rise structures) facilities to accommodate the need for public school facilities in high-growth areas within existing urban developments;
 - (8) A statewide classroom use report, which shall include the following:
 - (A) Current design enrollment per school (i.e., maximum number of students per classroom per school);
 - (B) Current total student enrollment per school; and
 - (C) Current number of classrooms not being used for active teaching; and
 - (9) An analysis including the advantages and disadvantages of making more efficient use of existing or underused assets in the school impact district through school redistricting.

The analyses specified in paragraphs (3) and (6) shall be periodically updated pursuant to section 302A-1612(b). [L 2007, c 245, pt of §2; am L 2010, c 188, §7]

" **§302A-1605 Impact fee analysis.** Upon designation of a school impact district, the department shall prepare an impact fee analysis that shall include, at a minimum, an analysis including the advantages and disadvantages of potential changes to statewide school site areas and design enrollment standards that may be appropriate for application in the particular school impact district. This analysis may include, for example, non-traditional facilities such as mid-rise or high-rise structures in existing urban areas where new residential developments are expected to generate the need for new school construction. [L 2007, c 245, pt of §2; am L 2010, c 188, §8]

Revision Note

Subsection designation deleted pursuant to §23G-15.

" **§302A-1606 Land component impact fee; determining the amount of land or fee in lieu.** (a) The school land area requirements for new residential developments in a school impact district shall be based on recent school site area averages, student generation rates, and the number of dwelling units in the new residential development.

(b) The following formula shall be used to determine the total school land area requirement for each individual new residential development in a school impact district:

Elementary school student generation rate
per single-family unit (x) number of single-
family units (x) recent school site area
average for the land area per elementary
school student;

plus (+)

Elementary school student generation rate
per multi-family unit (x) number of multi-
family units (x) recent school site area
average for the land area per elementary
school student;

plus (+)

Middle school student generation rate per
single-family unit (x) number of single-
family units (x) recent school site area
average for the land area per middle school
student;

plus (+)

Middle school student generation rate per
multi-family unit (x) number of multi-family

units (x) recent school site area average
for the land area per middle school student;

plus (+)

High school student generation rate per
single-family unit (x) number of single-
family units (x) recent school site area
average for the land area per high school
student;

plus (+)

High school student generation rate per
multi-family unit (x) number of multi-family
units (x) recent school site area average
for the land area per high school student;

equals (=)

Total school land requirement.

(c) The procedure for determining whether the dedication of land is required or a payment of a fee in lieu is required for a new school facility or to satisfy the land component impact fee shall be as follows:

- (1) A new residential development with fifty or more units shall include a written agreement between the owner or developer of the property and the department, executed prior to issuance of a building permit, under which the owner or developer has:
 - (A) Agreed to designate an area to be dedicated for one or more schools for the development, subject to approval by the department; or
 - (B) Agreed to pay to the department, at a time specified in the agreement, a fee in lieu of land dedication;
- (2) A new residential development with less than fifty units shall include a written agreement between the owner or the developer of the property and the department, executed prior to the issuance of the building permit, under which the owner or developer has agreed to a time specified for payment for the fee in lieu;
- (3) Prior to approval of any change of zoning, subdivision, or any other approval for a:
 - (A) Residential development with fifty or more units; or
 - (B) Condominium property regime development of fifty or more units,the department shall notify the approving agency of its determination on whether it will require the

development to dedicate land, pay a fee in lieu thereof, or a combination of both for the provision of new school facilities;

- (4) The department's determination to require land dedication or the payment of a fee in lieu, or a combination of both, shall be guided by the following criteria:
 - (A) The topography, geology, access, value, and location of the land available for dedication;
 - (B) The size and shape of the land available for dedication;
 - (C) The location of existing or proposed schooling facilities; and
 - (D) The availability of infrastructure;
- (5) The determination of the department as to whether lands shall be dedicated or whether a fee in lieu shall be paid, or a combination of both, shall be final;
- (6) When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land; and
- (7) When the payment of a fee in lieu is required, the fee in lieu shall be paid based on the terms contained in the written agreement.

(d) In determining the value per acre for any new residential development, the fee simple value of the land identified for the new or expanded school facility shall be based on the appraised fair market value of improved, vacant land, zoned for residential use, and serviced by roads, utilities, and drainage. An appraiser, licensed pursuant to chapter 466K, who is selected and paid for by the developer, shall determine the value of the land. If the department does not agree with the developer's appraisal, the department may engage another licensed appraiser at its own expense, and resolve, through negotiation between the two appraisers, a fair market value. If neither party agrees, the first two appraisers shall select the third appraiser, with the cost of the third appraisal being shared equally by the department and the developer, and the third appraisal shall be binding on both parties.

(e) The developer or owner of new residential developments of fifty or more units shall either pay the fee in lieu based on the land value as determined in subsection (d) or convey appropriate acreage as determined in subsection (b). When conveying the fee simple interest for the new or expanded school facility, the developers shall be credited the difference

between the fair market fee simple value of the property and the developers' proportionate share of the value of the land as determined in subsection (d) against any construction cost component impact fee. Any excess may be transferred and used as credit against any future land or construction cost requirements on any other development of the State.

(f) The dollar amount of the fee in lieu shall be determined using the following formula:

Acres of land subject to the fee in lieu, as determined under subsection (c) multiplied by the value per acre of land determined pursuant to subsection (d).

[L 2007, c 245, pt of §2; am L 2010, c 188, §9]

" **§302A-1607 Construction cost component impact fee; determining the amount of the fee.** (a) The construction cost component impact fees shall be calculated using the following factors:

- (1) For new school construction, the cost per student for each school type (elementary, middle or intermediate, and high school) shall be based on the ten-year average construction of a new school facility using the Honolulu assessment district in 2006 as the base. Costs for construction completed earlier than 2006 shall be escalated to 2006 using the engineering news-record construction cost index;
- (2) For expansion of existing school facilities, the cost per student for each school type (elementary, middle or intermediate, and high school) is based on the ten-year average construction of whatever components are required to expand the school using the Honolulu assessment district in 2006 as the base;
- (3) The cost per student in other assessment districts shall be the cost per student in the Honolulu assessment district multiplied by the appropriate cost factor in subsection (d). At least every three years, the department shall update the cost per student based on the construction of a new permanent school facility, and present the written analysis to the board for review; and
- (4) Student generation rates, as defined in section 302A-1602.

(b) The student generation rate for each school type (elementary, middle or intermediate, and high school) shall be multiplied by the cost per student for each school type

(elementary, middle or intermediate, and high school) to determine the cost per dwelling unit in the development.

(c) The construction cost component impact fee shall be based on recent public school construction costs. The 1997 to 2007 period school construction costs per student, adjusted for both the year 2007 and for the Honolulu assessment district, are as follows:

- (1) Elementary schools: \$35,357 per student;
- (2) Middle and intermediate schools: \$36,097 per student;
and
- (3) High schools: \$64,780 per student.

The costs per student for other assessment districts shall be determined by multiplying the Honolulu assessment district costs per student by the applicable cost factor in subsection (d). These costs per student shall be updated at least every three years, pursuant to the provisions in section 302A-1612.

(d) The State shall be divided into the following twenty-six geographically limited cost districts, and the cost factors listed for each cost district shall be applied to the calculation of school construction costs per unit pursuant to subsection (c):

Cost District	School District	Cost Factor
Honolulu	Honolulu	1.00
Ewa	Leeward/Central	1.00
Wahiawa	Central	1.05
Waialua	Central	1.10
Koolaupoko	Windward	1.00
Koolauloa	Windward	1.00
Waianae	Leeward	1.10
Hilo	Hawaii	1.15
Puna	Hawaii	1.20
Kona	Hawaii	1.20
Hamakua	Hawaii	1.20
South Kohala	Hawaii	1.20
North Kohala	Hawaii	1.25
Pohakuloa	Hawaii	1.25
Kau	Hawaii	1.30
Wailuku	Maui	1.15
Makawao	Maui	1.25
Lahaina	Maui	1.30
Hana	Maui	1.35
Molokai	Molokai	1.30
Lanai	Lanai	1.35
Lihue	Kauai	1.15
Koloa	Kauai	1.20
Kawaihau	Kauai	1.20

Waimea	Kauai	1.25
Hanalei	Kauai	1.25

(e) At least every three years, and concurrent with any update of the costs per student, the department shall update the revenue credits and present the written analysis to the board for review. The calculation of revenue credits shall be reviewed and calculated recognizing that the impact fee shall be set at one hundred per cent of the fair market value of the land and ten per cent of the total school construction cost.

(f) The construction cost component of the impact fees per dwelling unit shall be ten per cent of the amounts calculated according to the following formula:

Cost per dwelling unit from subsection (b) minus any amount by which the revenue credit per dwelling unit from subsection (e) exceeds ninety per cent of the per unit construction cost.

(g) The amount of the fee shall be adjusted from the date it was determined to the date it is paid using the engineering news-record construction cost index, or an equivalent index if that index is discontinued.

(h) Any new residential development shall be required to obtain a written agreement executed between the owner or developer of the property and the department, prior to the issuance of a building permit, under which the owner or developer has agreed to a time specified for payment of its construction cost component impact fee. [L 2007, c 245, pt of §2; am L 2010, c 188, §10]

" **§302A-1608 Accounting and expenditure requirements.** (a) Each designated school impact district shall be a separate benefit district. Fees collected within each school impact district shall be spent only within the same school impact district for the purposes collected.

(b) Land dedicated by the developer shall be used only as a site for the construction of one or more new schools or for the expansion of existing school facilities. If the land is never used for the school facility, it shall be returned to the developer, or the developer's successor in interest. Once used, the land may be sold, with the proceeds used to acquire land for school facilities in the same school impact district.

(c) If the land is not used for a school facility within twenty years of its dedication, it shall be returned to the developer, or the developer's successor in interest.

(d) Once used for school facilities, all or part of the land may be later sold. Proceeds from the sale shall be used to

acquire land for school facilities in the same school impact district.

(e) Fee in lieu funds may be used for school site land acquisition and related expenses, including surveying, appraisals, and legal fees. With the exception of urban Honolulu, fee in lieu funds shall not be used for the maintenance or operation of existing schools in the district; construction costs, including architectural, permitting, or financing costs; or for administrative expenses.

(f) Notwithstanding any other law to the contrary, fee in lieu funds from projects within a county-designated transit oriented development zone may also be used to purchase completed construction, construct new school facilities in new or existing school sites, improve or renovate existing structures for school use, or lease land or facilities for school use within a county-designated transit oriented development zone.

[(g)] Notwithstanding subsection (e), in urban Honolulu, fee in lieu funds may be used to purchase completed construction, construct new school facilities, improve or renovate existing structures for school use, or lease land or facilities for school use.

[(h)] Construction cost component impact fees shall be used only for the costs of new school facilities that expand the student capacity of existing schools or adds student capacity in new schools. Construction cost component impact fees may not be used to replace an existing school located within the same school impact district, either on the same site or on a different site.

[(i)] Eligible construction costs include planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining to educational facilities.

[(j)] Construction cost component impact fees shall not be expended for:

- (1) The maintenance or operation of existing schools in the district; or
- (2) Portable or temporary facilities.

[(k)] If a closure, demolition, or conversion of an existing permanent department facility within a school impact district that has the effect of reducing student capacity occurs, an amount of new student capacity in permanent buildings equivalent to the lost capacity shall not be funded with school impact fees.

[(l)] Fees in lieu, proceeds from the sale of all or part of an existing school site that has been dedicated by a developer pursuant to the requirements of this subpart, and construction cost component impact fees shall be expended or

encumbered within twenty years of the date of collection. Fees shall be considered spent or encumbered on a first-in, first-out basis. An expenditure plan for all collected impact fees shall be incorporated into the annual budget process of the department and subject to legislative approval of the budget.

[(m)] As used in this section, "urban Honolulu" means the Kalihi to Ala Moana school impact district. [L 2007, c 245, pt of §2; am L 2010, c 188, §11; am L 2016, c 130, §4 and c 237, §3]

Note

Subsections (f) and (g) are printed as enacted.

" **§302A-1609 Refunds of fees.** If a fee in lieu or a construction cost component impact fee is not expended within twenty years of the date of collection, the department shall either:

- (1) Refund to the developer, or the developer's successor in interest, the amount of the fee in lieu paid and any interest accrued thereon; or
- (2) Recommit part or all of the fees for another twenty-year period for construction of new schools in the school impact district, as authorized by the developer or the developer's successor. [L 2007, c 245, pt of §2; am L 2010, c 188, §12]

" **§302A-1610 Credits for land dedication.** (a) Any owner of a development subject to the land component impact fee requirements pursuant to this subpart may apply for credit against any similar dedication or payment accepted and received by the department for the project; provided that any such owner who dedicates more land for school facilities than is required for the development shall receive credit for the excess dedicated land area.

(b) Any credit provided for under this section shall be based on the value determined in the manner provided under section 302A-1606.

(c) Excess credits for land contributions prior to July 1, 2010, that are in excess of a developer's requirement under this subpart shall be based on the determined value of the excess dedication; provided that the credit amount shall not exceed the value of the dedication or fee in lieu required under this subpart.

(d) In addition to or instead of applying credits to future developments, the department may execute with an owner of credits an agreement to provide for partial or full reimbursement from the school impact fee payments collected from other developers within the same school impact district. The reimbursements shall not exceed the amount of the fee revenues available in the account for that school impact district. [L 2007, c 245, pt of §2; am L 2010, c 188, §13]

Revision Note

"July 3, 2007" substituted for "the effective date of this Act".

" **§302A-1611 Credits for excess contributions or advance payment of required construction cost component impact fees.**

(a) Any owner of a development subject to the construction cost component impact fee requirements pursuant to this subpart shall receive credit for any similar contribution, payment, or construction of public school facilities accepted and received by the department for the portion of the development that is in excess of the impact fee required under this subpart for that development. No credit shall be authorized against the impact fees in lieu.

(b) A credit may be applied only against school impact fees that would otherwise be due for new residential developments for which the payment or contribution was agreed to in a written educational contribution agreement.

(c) Excess contribution credit may be applied to the construction cost component impact fee requirement for any future development by the same owner in the same school impact district, or with the written approval of the owner of the credit, to any future development by a different owner in the same school impact district.

(d) In addition to or instead of applying the credits to future developments, the department may execute with an owner of the credits an agreement to provide for partial or full reimbursement from the impact fee payments collected from other developers within the same school impact district. The reimbursements shall not exceed the amount of the impact fee revenues available in the account for that school impact district.

(e) Any owner of a development shall receive credit for any part of its required construction cost component impact fee that, with the approval of the department, is paid in advance of the time specified in the written agreement executed in

accordance with section 302A-1607(h). The department shall maintain an accounting of the amount of the credit applicable to the new residential development and shall reduce the amount of the credit by the amount of the impact fees that would otherwise be due for each building permit issued for the new residential development. After the credit balance is exhausted, no additional credits shall be applied to subsequent building permits issued within the new residential development.

(f) If private construction of school facilities is proposed by a developer after July 1, 2010, if the proposed construction is acceptable to the department, and if the value of the proposed construction exceeds the total impact fees that would be due from the development, the department shall execute with the developer an agreement to provide reimbursement for the excess credit from the impact fees collected from other developers within the same benefit district. For the purposes of this section, the private construction of school facilities is a "public work" pursuant to chapter 104. [L 2007, c 245, pt of §2; am L 2010, c 188, §14]

Revision Note

"July 3, 2007" substituted for "the effective date of this Act".

" **[§302A-1612] Use of data reflecting recent conditions in impact fee calculations.** (a) Every three years beginning in 2010, the department shall concurrently update the following:

- (1) School site area averages, using the total school land requirement for each individual in a school impact district as calculated pursuant to section 302A-1606(b);
- (2) Elementary, middle or intermediate, and high school permanent facility construction costs per student, as provided under section 302A-1607; and
- (3) Revenue credit per unit figures provided pursuant to section 302A-1607(e).

(b) Every three years following the initial determinations made pursuant to section 302A-1604, the department shall update the following:

- (1) Student generation rates for each established school impact district; and
- (2) The statewide level of service.

(c) Every three years beginning in 2010, the department shall, where appropriate, update the list of cost factors for the twenty-six geographically limited cost districts, as

provided in section 302A-1607(d), by incorporating any changes to the cost factors that have been made by the department of accounting and general services.

(d) If any data update required by this section is not completed within the specified time, the most current data shall be used until the update is completed. [L 2010, c 188, §2]

"[PART VII.] SECONDARY SCHOOL STUDENTS CONFERENCE

[§302A-1801] Purpose. The purpose of this part is to provide for the establishment of an annual conference of secondary school students, which will enable students in the State's secondary schools to identify, discuss, and arrive at recommended solutions to major youth problems, with emphasis on school problems that require attention and joint action by the students, the department, and the legislature. The conference format shall be recommended by the student conference committee, under the guidance of the student conference advisory committee. [L 2013, c 156, pt of §1]

" **[§302A-1802] Student conference committee.** There is created a student conference committee composed of sixteen secondary school students. There shall be two students from each of the seven local school districts, who shall be selected by the superintendent or the superintendent's designee, and two students from schools represented by the Hawaii Association of Independent Schools, who shall be selected by a representative of the Hawaii Association of Independent Schools. [L 2013, c 156, pt of §1]

" **[§302A-1803] Duties of the student conference committee.** It shall be the duty of the student conference committee, under the guidance of the student conference advisory committee, to:

- (1) Plan and coordinate all phases of the annual conference of secondary school students;
- (2) Set the theme, scope, and format of the conference;
- (3) Set the agenda of the conference;
- (4) Determine the number of participants;
- (5) Plan and provide for food, lodging, and the transportation of all participants;
- (6) Evaluate the worth and effectiveness of the conference; and

(7) Consider and act on any other matter relevant to or necessary to effectuate the purpose of this part. [L 2013, c 156, pt of §1]

" **[\$302A-1804] Student conference advisory committee.** There is created a student conference advisory committee to assist and advise the student conference committee in planning, coordinating, and evaluating the annual conference of secondary school students. The department shall maintain guidelines and procedures for the establishment of the student conference advisory committee. [L 2013, c 156, pt of §1]

" **[\$302A-1805] Annual conference.** The annual conference of secondary school students shall be held once each school year, subject to program and funding limitations. [L 2013, c 156, pt of §1]

" **[\$302A-483] Penalties.** Any caregiver who makes a false statement in the affidavit for caregiver consent required under section 302A-482, shall be subject to the penalties under part V of chapter 710. [L 2003, c 99, pt of §1]