

ACT 274

S.B NO. 3038

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the primary duty of school officials and teachers is the education and training of our youths. The legislature further finds that the rapid increase in the number of disruptive students in our public schools is having a detrimental effect on those students seeking a quality education. Without first establishing discipline and maintaining order, teachers cannot begin to educate our children. The legislature believes that to ensure that schools remain a safe and conducive place of learning, the problem of student discipline that arises from substance abuse, including the consumption of alcohol, while on or off school campuses needs to be addressed.

In 1996, the legislature adopted a zero tolerance policy which provided that a principal may suspend a student who is found to be in possession of a dangerous weapon, intoxicating liquor, or illicit drugs. The constitutionality of this act was subsequently challenged in the case of James P. and Lucille P. versus Paul Le-Mahieu and Robert Ginlack (Civil No. 99-00861 DAE LEK). In this case, a minor was suspended from school for attending a school-related function, held off-campus, while under the influence of alcohol. The federal district court granted the plaintiff's request for an injunction because the court reasoned that Act 90, Session Law of Hawaii 1996, only prohibited the "possession of...intoxicating liquor...while attending school." The court further stated that the defendants did not have evidence of a statutory violation since the minor did not "possess intoxicating liquor while attending school" even if he did drink liquor prior to the school event. At worse, the minor was guilty of being intoxicated at a school function, which is not covered by the statute.

Therefore, the purpose of this Act is to expand the scope of the zero tolerance policy by allowing a principal to suspend a student once it has been determined that the student consumed or used intoxicating liquor or illicit drugs prior to or while attending school or a department-supervised activity.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- 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) Any child who possesses, sells, consumes, or uses intoxicating liquor or illicit 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) Any child who reasonably appears to have consumed or used intoxicating liquor or illicit 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) For purposes of this section:

- (1) "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;
- (2) "Illicit drugs" means substances, the possession, distribution, ingestion, manufacture, sale, or delivery of which are prohibited under chapter 329 and chapter 712, part IV; and
- (3) "Switchblade knife" is as defined in section 134-52.'

SECTION 3. Section 302A-1134.5, Hawaii Revised Statutes, is repealed.

SECTION 4. The board of education shall adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to implement section 302A- , Hawaii Revised Statutes.

SECTION 5. Notwithstanding section 2, until such time as the board of education has adopted rules pursuant to section 4, the superintendent, deputy superintendent, and district superintendent may exclude students from attending school for up to ninety-two school days for the infractions described in section 302A- , Hawaii Revised Statutes.

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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SECTION 8. This Act shall take effect upon its approval.

(Approved June 20, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.