

Date of Hearing: Friday, February 22, 2008

Committee: Senate Committee on Education

WRITTEN TESTIMONY ONLY

Board: Education

Person Testifying: Donna Ikeda, Chairperson, Board of Education

Title of Bill: S.B. No. 2140, Relating to Minors

Purpose of Bill: Requires the Board of Education (Board) to establish an Internet safety policy for minors that includes monitoring the online activities of minors and implementing a technology protection measure for all computers in public schools and public libraries that have Internet access.

Board's Position: Chairperson Sakamoto, Vice Chairperson Tokuda, and members of the Senate Committee on Education, thank you for this opportunity to provide written comments on S.B. No. 2140.

The Board recognizes the importance of upholding safe Internet use and access by minors in public schools and public libraries.

The Board has taken no official position on this measure; however, we would like to affirm our commitment to establishing statewide policies that encourage the safe and responsible use of computers in public schools and public libraries.

In May 2007, the Board approved Board Policy 9200, "Hawaii State Public Library System Internet Acceptable Use Policy," which balances library security and available resources with customer privacy and access.

Board Policy 2170, "Internet Access Policy," requires the Superintendent and State Librarian to develop regulations and/or guidelines governing Internet access in order to foster and encourage safe, responsible, and appropriate use of the Internet in public schools and public libraries.

Pursuant to Board Policy 2170, the Department established Regulation 2170.1, "Internet Access Regulations," which requires every school to have an Internet Acceptable Use Policy. The regulations also specify that DOE schools must block access to inappropriate sites.

HSPLS's Internet Use Guidelines were adopted in March 2007. Among other provisions, the guidelines state that filtering software is installed on all HSPLS Internet computers, and specify that no HSPLS public access computer may be used to view or display obscenity, child pornography, or other illegal content.

Under the federal Children's Internet Protection Act, schools and libraries that receive discounted telecommunications services under the E-Rate (*services paid with funds under Title III of the federal Elementary and Secondary Education Act*) are required to block or filter Internet access to visual depictions that are obscene, are children pornography, or are harmful to minors. Both DOE and HSPLS have web content filtering to support the safe and appropriate use of the Internet and firewalls to prevent network intrusion.

The Board recognizes that oversight of online activities of minors supports the enforcement and promotion of safe and responsible computer use in public schools and public libraries. However, "monitoring" has broad policy implications and greater implementation considerations, such as the extent of monitoring and data collection; financial and human resource considerations; workload; and privacy rights, to name a few. Issues related to Internet safety in public schools and public libraries merit greater discussion. The Board will take up these issues and review existing policies in committee.

Finally, the Board believes that while sound educational policies and laws are necessary to the safe and responsible use of the Internet, emphasis must be on educational strategies and dissemination of information that educate, prepare, and encourage minors to make safe and responsible choices while using the computer and the Internet.

Thank you for the opportunity to comment on this measure.



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HAWAII STATE PUBLIC LIBRARY SYSTEM
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TESTIMONY
OF
RICHARD BURNS
STATE LIBRARIAN
HAWAII STATE PUBLIC LIBRARY SYSTEM

TO THE
SENATE COMMITTEE ON EDUCATION
February 22, 2008

SB 2140 – RELATING TO MINORS

The federal Children's Internet Protection Act (CIPA) requires content filters on all public and school library computers, including staff computers. The Hawaii State Public Library System (HSPLS) contracted with 8e6 Technologies to install, monitor, and support this technology in July of 2004. This filter meets the federal requirements by blocking visual images that are defined as obscene, contain child pornography or are harmful to minors, as this federal law mandates.

According to CIPA, library staff must, upon request, unfilter constitutionally protected internet sites for patrons 17 years and older. Computers may only be unfiltered by library staff for legitimate adult use. Most observers agree that without this provision the Supreme Court would have struck down CIPA.

HSPLS defines viewing inappropriate sites in the library as disruptive behavior in our Administrative Rules and our House Rules. Viewing inappropriate sites is prohibited in our Internet Acceptable Use Policy which patrons must accept prior to accessing the internet.

HSPLS has had very few instances of patrons viewing inappropriate materials and in almost all cases when patrons were reminded of our policy they have immediately ceased viewing inappropriate sites. Failure to do so at library staff's request may result in the user being banned from the library for a period to be determined by the branch manager.

We understand that the Department of Education (DOE) has a similar federally-mandated filter in place on computers in their libraries, because we share facilities at our twelve Public and School Libraries across the state.

While we recognize the potential hazards in cyberspace, it is important to remember that the internet is a tool, and as with all tools, users must be taught and trained how to use it responsibly. HSPLS professional librarians are trained to assist the public in accessing appropriate, quality, age appropriate sites which provide authoritative, peer-reviewed information.

Given that both HSPLS and the DOE already have filters on their computers, we feel this legislation is unnecessary.

**LATE****BY FAX: 586-6659**

Committee: Committee on Judiciary and Labor
 Hearing Date/Time: Friday, February 22, 2008, 1:00 p.m.
 Place: Room 211
 Re: Testimony of the ACLU of Hawaii in Opposition to SB 2140, Relating to Minors

Dear Chair Sakamoto and Members of the Committee on Education:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to SB 2140.

This bill violates students' First and Fourteenth Amendment rights. The bill's language is vague and overbroad in that it does not sufficiently explain what internet use is prohibited. Innocent students may be punished for accessing perfectly appropriate sites because they lack the knowledge to know what constitutes material that is "obscene" or "harmful."

Worse, this bill allows individual school officials to censor material based on content, depending on the individual's personal belief as to whether something is "harmful" or "obscene." Although the ACLU does not oppose legislation restricting minors' access to materials that are otherwise illegal for minors to obtain, this bill goes much too far and is unconstitutional as written.

The United States Supreme Court views school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853, 868 (1982). Schools have leeway based on "legitimate goals" about what books they select for the libraries, textbooks (within the list approved by the state) for the curriculum, or material on the required reading list. *Id.* at 869. While schools possess significant discretion to determine the content of their school libraries, however, they may not exercise that discretion in a narrowly partisan or political manner. *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 637 (1943). School computers - whether placed in the school library or elsewhere - must be subjected to the same standard.

Furthermore, once a book is in a school library, an authorized school official can only remove a book by following certain procedures if it is "pervasively vulgar" or if it is not "educationally suitable." *Island Trees*, at 890. School internet use policies should be subject to the same

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standard. A school cannot remove books from school library shelves simply because the school officials dislike the ideas they contain, *id.*, and the school cannot restrict internet access based on individual school officials' subjective beliefs as to what is "harmful." The First Amendment includes the "right to receive ideas," especially in the special context of a school library, where "a student can literally explore the unknown." *Id.* at 867. School officials simply may not engage in the "narrowly partisan suppression of ideas" by removing books from the library. *Id.* at 890.

Schools should not be using filters on library computers to keep out content that minors have a legal right to access – for example, websites for gay and lesbian teens or websites about contraception, abortion, or prevention of sexually transmitted diseases – nor should they be punishing students for accessing the same. Under this bill, however, school officials will have unfettered discretion to do exactly that. The ACLU of Hawaii strongly urges this Committee to hold this bill.

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

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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