

Date of Hearing: February 8, 2008

Committee: Senate Committee on
Education/Committee on
Tourism and Governmental
Affairs

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.B No. 2664, Relating to Education

Purpose: Establishes an ombudsman for each school district to address questions and concerns of interested parties and appropriates funds for the new position.

Department's Position: The Department of Education (Department) does not support S.B. No. 2664. In the vast majority of cases, the Department has been able to successfully resolve concerns and issues at the school or district level. Only a relative "handful" are brought to the Board of Education's attention for resolution. As such the Department does not have a need for any ombudsman position at the present time.

The Board of Education Ombudsman monthly reports show that in the last eight months of 2007, the number of complainants averaged about 17 persons per month or less than 3 persons per district. Clearly, establishing seven ombudsman positions for each of the Department's school districts is not warranted.

The low number of complainants indicates that questions or problems are being addressed and successfully resolved at the lowest level possible. And, when disagreements cannot be solved at the local, district, or state level, the Board of Education has the staff to assist in finding a solution to the problem.

Thank you for the opportunity to testify on this measure.

From: Grant Kashiwada
To: Members of the Senate Education Committee
Re: SB 2664 – Creation of DOE District Ombudsman Positions

I would like the education committee to reconsider the creation of seven Department of Education (DOE) district ombudsman positions.

On January 23, 2008, the Board of Education (BOE) ombudsman position was eliminated and replaced with a public relations position. For many stakeholders frustrated with the DOE system, Beth McKeen, former BOE ombudsman, was a valuable resource in providing advice and help in order to resolve problems. An effective way for stakeholders to communicate their DOE concerns to the BOE was silenced.

Why did it seem that her position (no staff and no proximity to the other BOE offices) was not a high priority? Why did it not work out?

Who, if anyone, fully utilized the BOE ombudsman's work? How many Senate education committee members requested and obtained information from the former BOE ombudsman on a regular basis? Instead of overseeing the BOE and providing more adequate funding to improve her effectiveness, your bill will fund positions starting from ground zero.

If there was a low priority given by the BOE and the legislature to the BOE ombudsman position, what has changed to merit the creation of these seven new positions?

As a DOE position, a district ombudsman will be beholden to the DOE for his/her position. There will be no independence from the DOE and these positions will be subject to the policies and practices of the DOE.

In the past, as a matter of policy, if one complains about a DOE employee, that DOE employee will be informed of who is making the complaint. What is to assure that names will not be disclosed? Without confidentiality, will anyone (parent, teacher, staff) want to submit complaints?

School Community Councils (SCC) were created to promote accountability. However, DOE administrative rules have diluted their effectiveness. The recent audit of Kailua High School was critical of the restrictiveness of these rules regarding SCCs. As a DOE position, what is to prevent administrative rules from handcuffing these district ombudsmen?

Problems are usually bottled up within the DOE and most are never ever known because stakeholders give up in frustration. Issues regarding students have a time deadline and often are ignored until the problem goes away or the student graduates. How will the creation of these positions (with no authority) effect consequences for DOE inaction and force a timely response?

I ask that you vote against SB2664 since the cost/benefit ratio of these seven positions is not enough for disadvantaged stakeholders with no clout.

Thank you.

Grant Kashiwada

L A T E

Larry Geller
Honolulu, HI 96817

SB2664
EDU/TSG
Friday February 8, 2008
1:45 a.m.
Room 225

COMMITTEE ON EDUCATION
Senator Norman Sakamoto, Chair
Senator Jill N. Tokuda, Vice Chair

COMMITTEE ON TOURISM AND
GOVERNMENT OPERATIONS
Senator Clarence K. Nishihara, Chair
Senator Donna Mercado Kim, Vice Chair

February 7, 2008

Re: SB2664— Establishes an ombudsman for each school district to address questions and concerns of interested parties

In Support

Hawaii was the first state in the country to have a state ombudsman. With thirty years of experience, it's clear that a classical ombudsman can be a success in receiving and investigating citizens' complaints. According to a study, more than 100,000 citizens have approached the office. Nearly 65,000 of them have had their complaints investigated by the Ombudsman, and many more either have gained information from the Ombudsman about government's programs or have learned that they wished to complain about matters outside the Ombudsman's jurisdiction.

I proposed that the Board of Education create an ombuds office to handle all kinds of issues that may arise and to accept complaints from students, teachers and in fact, from anyone in the system. The BOE did create the office, but under Department of Education pressure it was set up not as a traditional ombuds office but rather as a complaint processing office. In particular, it lacked a code of ethics, standards of practice, and was neither neutral nor independent. You may be aware that the ombudsman has just been fired under questionable circumstances. A story ran in Wednesday's Star-Bulletin.

I support the establishment of these school district ombuds offices, but for them to succeed, they should, from the start, follow the well-established principals of the profession. To ensure that this happens, this legislation might specify that a code of conduct and standards of practice be adhered to, modeled after national models such as the one I have attached to this testimony, and mirroring the standards of the Hawaii State Ombudsman. I'm quite sure that the state ombudsman might be tapped for additional guidance.

Neutrality must be guaranteed, as well as independence. This also serves as protection against lawsuits.

Independence is facilitated if the positions report directly to the Superintendent of Schools rather than to anyone at the district level. The bureaucracy may be upset by that, but in a way, that's the idea. An ombudsman subject to firing at the district level is neither neutral nor independent, since at any time in the future the people involved in a dispute can fire the ombudsman.

I have sent additional information to Senator Sakamoto that is too lengthy for short testimony.


Larry Geller

Code of Ethics and Standards of Conduct

by Ombudsman Association



Code Of Ethics

The ombudsman, as a designated neutral, has the responsibility of maintaining strict confidentiality concerning matters that are brought to his/her attention unless given permission to do otherwise. The only exceptions, at the sole discretion of the ombudsman, are where there appears to be imminent threat of serious harm.

The ombudsman must take all reasonable steps to protect any records and files pertaining to confidential discussions from inspection by all other persons, including management.

The ombudsman should not testify in any formal judicial or administrative hearing about concerns brought to his/her attention.

When making recommendations, the ombudsman has the responsibility to suggest actions or policies that will be equitable to all parties.

Standards Of Practice

The mission of the organizational ombudsman is to provide a confidential, neutral and informal process which facilitates fair and equitable resolutions to concerns that arise in the organization. In performing this mission, the ombudsman serves as an information and communication resource, upward feedback channel, advisor, dispute resolution expert and change agent.

While serving in this role:

1. We adhere to The Ombudsman Association Code of Ethics.
2. We base our practice on confidentiality.
 - 2.1 An ombudsman should not use the names of individuals or mention their employers without express permission.
 - 2.2 During the problem-solving process an ombudsman may make known information as long as the identity of the individual contacting the office is not compromised.
 - 2.3 Any data that we prepare should be scrutinized carefully to safeguard the identity of each individual whose concerns are represented.
 - 2.4 Publicity about our office conveys the confidential nature of our work.

3. We assert that there is a privilege with respect to communications with the ombudsman and we resist testifying in any formal process inside or outside the organization.

3.1 Communications between an ombudsman and others (made while the ombudsman is serving in that capacity) are considered privileged. Others cannot waive this privilege.

3.2 We do not serve in any additional function in the organization which would undermine the privileged nature of our work (such as compliance officer, arbitrator, etc.)

3.3 An ombudsman keeps no case records on behalf of the organization. If an ombudsman finds case notes necessary to manage the work, the ombudsman should establish and follow a consistent and standard practice for the destruction of any such written notes.

3.4 When necessary, the ombudsman's office will seek judicial protection for staff and records of the office. It may be necessary to seek representation by separate legal counsel to protect the privilege of the office.

4. We exercise discretion whether to act upon a concern of an individual contacting the office. An ombudsman may initiate action on a problem he or she perceives directly.

5. We are designated neutrals and remain independent of ordinary line and staff structures. We serve no additional role (within an organization where we serve as ombudsman) which would compromise this neutrality.

5.1 An ombudsman strives for objectivity and impartiality.

5.2 The ombudsman has a responsibility to consider the concerns of all parties known to be involved in a dispute.

5.3 We do not serve as advocates for any person in a dispute within an organization; however, we do advocate for fair processes and their fair administration.

5.4 We help develop a range of responsible options to resolve problems and facilitate discussion to identify the best options. When possible, we help people develop new ways to solve problems themselves.

5.5 An ombudsman should exercise discretion before entering into any additional affiliations, roles or actions that may impact the neutrality of the function within the organization.

5.6 We do not make binding decisions, mandate policies or adjudicate issues for the organization.

6. We remain an informal and off-the-record resource. Formal investigations - for the purpose of adjudication - should be done by others. In the event that an ombudsman accepts a request to conduct a formal investigation, a memo should be written to file noting this

action as an exception to the ombudsman role. Such investigations should not be considered privileged.

6.1 We do not act as agent for the organization and we do not accept notice on behalf of the organization We do always refer individuals to the appropriate place where formal notice can be made.

6.2 Individuals should not be required to meet with an ombudsman. All interactions with the ombudsman should be voluntary.

7. We foster communication about the philosophy and function of the ombudsman's office with the people we serve.

8. We provide feedback on trends, issues, policies and practices without breaching confidentiality or anonymity. We identify new problems and we provide support for responsible systems change.

9. We keep professionally current and competent by pursuing continuing education and training relevant to the ombudsman profession.

10. We will endeavor to be worthy of the trust placed in us.

© 1985 - The Ombudsman Association

GLOSSARY

Confidential

Confidential describes communications, or a source of communications, which are intended to be held in secret. In an ombudsman's work confidentiality is often accomplished by providing anonymity to the source of communications. When the source of a communication is kept secret or private, this is known as an anonymous communication.

Independent

An ombudsman functions independent of line management. The ombudsman reporting relationship is with highest authority in an organization.

Neutrality

We do not serve as advocates for any person in a dispute within an organization; however, we do advocate for fair processes and their fair administration.

When making recommendations, the ombudsman has the responsibility to suggest actions or policies that will be equitable to all parties.

Privilege

Privilege is a legal term which describes a relationship which the law protects from forced disclosure. Traditional privileges are client/lawyer, doctor/patient, priest/penitent, husband/wife. An ombudsman privilege differs from these other forms of privilege because the office holds the privilege and it cannot be waived by others. The privilege is necessary to preserve the process that allows people to come forward to resolve their concerns in a confidential setting without the risk of reprisal.

Ombudsman Association biography and additional articles:
<http://www.mediate.com/people/personprofile.cfm?auid=339>

View this article at:

www.mediate.com/articles/toastds.cfm



Designed & Developed by
[Resourceful Internet Solutions](#)
Home of [Mediate.com](#)

This article is provided by Mediate.com, the most visited dispute resolution site on the Web.

Mediate.com offers:

- Over 2,000 Free Articles
- Locate A Mediator
- Dynamic Web Site Systems
- MediatorDirect Area Code Placements
- Dynamic Statewide Banners See www.mediate.com

testimony

From: S. Chinen [SChinen@hawaii.rr.com]
Sent: Thursday, February 07, 2008 6:26 PM
To: testimony
Subject: SB 2664

L A T E

February 7, 2008

Honorable State Senate Members,

I question the wisdom of terminating the services of Beth McKeen, former BOE ombudsman, and creating 7 Department of Education ombudsmen positions.

Prior to knowing about Beth's office, I would first go to the school principal, and even to the complex area superintendent to get issues heard and hopefully resolved. Instead of acting upon or even acknowledging the problem, the "waiting" game was played and won by the principal and CAS. I would spend hours at meetings, promised that "we'll look into it", had earfuls of DOE jargon, and no action or results.

When I first learned of the BOE ombudsman's office, I tentatively called. I did not get a machine or a receptionist, I spoke directly with Beth McKeen. She was an excellent listener, asked for clarification on certain points, and took notes throughout the conversation. One could remain anonymous if desired.

For me, Beth McKeen was a lifeboat in a DOE ocean. Finally there was someone that really cared, listened carefully, and had a heart. She was outside of DOE jurisdiction, cared about the public school students, and her job was to report to the Board of Education.

The ombudsman position has now been eliminated completely, replaced by a BOE member for communications and public relations.

We don't need to hear from another mouth about public relations. We need someone to hear our voices, that will report it to a Board of Education who will be on the side of our public school students, fix the wrongs, and fight for our kids.

We don't need 7 DOE ombudsmen under the control of the current Complex Area Superintendents, who report to the Superintendent of Education.

We don't need more layers of filtering and watering down of complaints, concerns, and problems. We need a BOE ombudsman, someone outside of the DOE machine, of value to the Board of Education as their ears, eyes and conscience; and a Board

of Education that listens, pays attention, and acts for the benefit and advancement of our public school children.

Sarah Chinen
SChinen@hawaii.rr.com