

Date of Hearing: April 2, 2009

Committee: House Higher Education/Education

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: H.C.R. 152 (H.R. 122), Requesting The Hawaii Civil Rights Commission To Form A Working Group To Study The Advisability Of Including State-Operated Schools, Libraries, Community Colleges, And Universities In The Definition Of "Place Of Public Accommodation."

Purpose: To study the advisability of including state-operated schools, libraries, community colleges, and universities in the definition of "place of accommodation" in Section 489-2, Hawaii Revised Statute.

Department's Position: The Department of Education (Department) supports H.C.R. 152 (H.R. 122), as considerations will be given to including state-operated schools in the definition of "place of public accommodation" in Section 489-2, Hawaii Revised Statute.



JAPANESE AMERICAN CITIZENS LEAGUE

HONOLULU CHAPTER

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HCR 152/HR 122: Requesting the Hawai'i Civil Rights Commission to Form a Working Group to Study the Advisability of Including State-Operated Schools, Libraries, Community Colleges, and Universities in the Definition of Place of Public Accommodation

Hearing: Thursday, April 2, 2009 at 2:00 p.m. in Conf. Rm 309

To: The Honorable Jerry L. Chang, Chair, Higher Education Committee,
The Honorable Mark M. Nakashima, Vice Chair Higher Edn. Committee,
The Honorable Roy M. Takumi, Chair, House Committee on Education
The Honorable Lyla B. Berg, Vice Chair, House Committee on Education
Members of the Joint Committee on Higher Education and Education

The JACL Hawai'i, Honolulu Chapter strongly supports the intent of HCR 152/HR 122, but asks that the Hawai'i legislature AMEND HCR 152/HR 122 to urge the Board of Education and the Department of Education to revise Chapter 41 of Title 8 of the Hawai'i Administrative Rules ("HAR") to provide protections for students from discrimination and harassment on all classes identified in the Board of Education's Policy #4211, which include race, color, national origin, sex, physical or mental disability and/or religion, gender identity and expression, socio-economic status, physical appearance and characteristic, and sexual orientation.

Founded in 1929, the Japanese American Citizens League is the nation's oldest and largest Asian Pacific American Civil Rights organization made up of over 20,000 members. Locally, we are a strong civil rights organization committed to the protection of civil and human rights of all. JACL's ongoing mission is to secure and maintain the civil rights of Japanese Americans and all others who are victimized by injustice and bigotry.

The Honolulu Chapter acknowledges the recent threat to undermine protections for our students from discrimination by eliminating "ancestry," "religion," and "age" from HAR §8-41-1. As the Board of Education continues to review Chapter 41, HAR, it is important that the legislature exercise strong leadership to ensure all of our youth and students—whether doing research at a public library, attending public school, or seeking higher education—are protected from discrimination.

While the intent of HCR 152/HR 122 is one way to ensure that Hawai'i youth continue to be protected from discrimination and harassment, the Hawai'i legislature must proceed one step further. The Honolulu Chapter believes that HCR 152/HR 122 should be amended to urge the Board of Education and the Department of Education to revise HAR §8-41-1 to expand protections for all classes identified in its policy.

Sincerely,


Shawn L.M. Benton

President, JACL Hawai'i, Honolulu Chapter
Japanese American Citizens League

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HAWAI`I CIVIL RIGHTS COMMISSION

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April 2, 2009
Rm. 309, 2:00 p.m.

To: The Honorable Jerry Chang, Chair, and Members of the House Committee on Education
The Honorable Roy Takumi, Chair, and Members of the House Committee on Higher Education

From: Coral Wong Pietsch, Chair, and the Commissioners of the Hawaii Civil Rights Commission

RE: H.C.R. No. 152 / H.R. No. 122

The Hawaii Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawaii's laws prohibiting discrimination in employment, housing, public accommodations, and access to State and State-funded services. The HCRC carries out the Hawaii constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sect. 5.

At an earlier hearing before the House Committees on Higher Education and Education, the HCRC supported the intent of H.B. No. 624, which was to protect students against discrimination. However, the HCRC raised the following two concerns regarding the scope of the bill and whether it was tailored to best achieve its intended purpose: 1) that the proposed expansion of HCRC enforcement jurisdiction was broad rather than narrowly focused, and would require substantial additional resources and funding for the HCRC to have the capacity to handle additional complaints; and, 2) that additional enforcement alone would not solve the problem and eliminate discrimination in our public schools and that a comprehensive approach is required.

Based on the two concerns, the HCRC proposed the establishment of a working group to meet and discuss the problem of discrimination in our public educational institutions and make

recommendations to the legislature. To the extent that HCR 152 / HR 122 are consistent with and reflect the recommendation of the HCRC, we certainly support these resolutions. However, we offer the following suggestions:

- 1) HCR 152 / HR 122 create a working group that is charged with studying the advisability of amending the chapter 489 definition of “place of public accommodation” to include state-operated schools, libraries,¹ community colleges, and universities. As emphasized in the HCRC testimony on HB 624, this charge is not comprehensive enough to effectively address the issue of discrimination in our schools. Simply put, enforcement alone will not eliminate discrimination in our public schools, community colleges, and universities. This is a monumentally important endeavor. All agree that our children should not be subjected to discrimination and should be provided a safe learning environment. Discrimination is a learned behavior, and today’s students become tomorrow’s workers, managers, and employers. Our schools are in a unique position to teach and nurture, to change the culture in schools, homes, communities, and the business world. They represent our best chance to eliminate bullying and invidious discrimination, before it becomes a learned behavior. These resolutions call attention to this important problem, and we should take advantage of this opportunity to invite the best minds in our community to discuss the issues involved, to initiate and raise the level of discussion and seek comprehensive solutions to big problems.
- 2) HCR 152 / HR 122 calls for the working group to include representatives from the HCRC, the Board of Education, the Department of Education, the Hawai`i State Library System, the University of Hawai`i, and the American Civil Liberties Union. No doubt that these are all critical stakeholders who should be included in any such working group, but scope and importance of the working group’s charge requires much broader representation than only the HCRC, affected state entities and a single civil rights advocacy organization. The legislature should seek out

¹ Note that the HCRC already exercises jurisdiction over public libraries as places of public accommodation under Chapter 489.

and include stakeholders with interest, expertise, and commitment from the schools, civil rights organizations, labor, business, and the broader community. The working group could include Department of Education (DOE) Civil Rights Compliance Officer Susan Kitsu, University of Hawai`i Civil Rights Counselor Jill Nunokawa, University of Hawai`i Gender Equity Specialist Jennifer Rose, and representatives from the Hawai`i Civil Rights Commission (HCRC), Hawai`i State Teachers Association (HSTA), DOE Safe Schools Advisory Committee, student peer education programs, National Association for the Advancement of Colored People (NAACP), the Afro American Lawyers Association of Hawai`i (AALA), the Hawaii Filipino Lawyers Association (HFLA), the Japanese American Citizens League (JACL), the Hawai`i Immigrant Justice Center (HIJC), the American Civil Liberties Union (ACLU), Parents, Families and Friends of Lesbians and Gays (PFLAG), the Hawai`i State AFL-CIO, the Hawai`i Business Roundtable, the University of Hawai`i Student Equity, Excellence & Diversity (SEED) program, the University of Hawai`i Schools of Social Work, Education, and Law, and the University of Hawai`i Departments of Hawaiian Studies and Ethnic Studies. In the alternative, the working group could be constituted of a smaller number of members, who could then plan and implement a process for soliciting public input.

- 3) If the legislature chooses to expand the scope of the working group and its charge beyond a handful of state agencies discussing and making recommendations limited to whether or not to expand the HCRC's public accommodations jurisdiction under chapter 489, then it should reconsider the designation of the HCRC as the convener of the working group. The HCRC's jurisdiction and expertise lies primarily in the area of civil rights law enforcement. While this is certainly part of a broader discussion of how to eliminate discrimination in public schools and universities, and the HCRC would be honored to participate in that broader discussion, the HCRC is not the best equipped to convene the group, facilitate discussion, and prepare the report back to the legislature. The HCRC has neither the expertise nor the resources that would be serve that purpose. The working group and discussion would best be organized and facilitated by

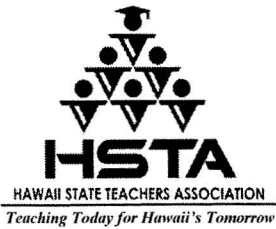
conveners who have expertise in education, perhaps co-chairs from the Department of Education and the University of Hawai`i, with assistance from the Judiciary's Center for Alternative Dispute Resolution, the Mediation Centers of Hawai`i or other professional facilitators.

CONCLUSION

The HCRC appreciates the attention given this important issue, and the consideration that the House Committees on Higher Education and Education have given our recommendations. Now, with an opportunity to meaningfully address the issue of discrimination in our schools, perhaps for the first time, we urge the legislature to go beyond the question of whether the schools should fall under the public accommodations jurisdiction of the HCRC, and invite stakeholders from government, education, labor, business, and the broader community to engage in this important endeavor.

The HCRC is interested, willing, and committed to participation in a working group charged with making recommendations to the legislature on elimination of discrimination in our public schools and universities. However, if the legislature decides to expand the scope of the working group discussion beyond the narrow question of whether HCRC enforcement jurisdiction should be expanded, the HCRC has neither the resources nor the expertise to be the agency designated to convene the working group and prepare the report of its recommendations to the legislature.

Thank you for your consideration of these important issues.



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**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
HIGHER EDUCATION AND EDUCATION**

**RE: HCR152/HR 122 – REQUESTING THE HAWAII CIVIL RIGHTS
COMMISSION TO FORM A WORKING GROUP TO STUDY THE
ADVISABILITY OF INCLUDING STATE-OPERATED SCHOOLS,
LIBRARIES, COMMUNITY COLLEGES, AND UNIVERSITIES IN THE
DEFINITION OF “PLACE OF PUBLIC ACCOMMODATION”.**

April 2, 2009

**ROGER TAKABAYASHI, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION**

Chair Chang, Chair Takumi and Members of the Committees:

The Hawaii State Teachers Association believes students have the right to learn in a safe environment, free of discrimination, harassment and bullying. HSTA supports HCR 152/HR 122, which request the Hawaii Civil Rights Commission (HCRC) to form a working group to study the advisability of including state-operated schools, libraries, community colleges, and universities in the definition of “place of public accommodation”.

If the intent of HCR 152/HR 122 is to form such a group, which would advise the legislature on including state-operated schools, libraries, community colleges, and universities into the definition of a “place of public accommodation” and if the group finds that defining the aforementioned places may afford students greater civil rights protection, then HSTA supports the forming of a working group.

Thank you for the opportunity to testify.

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