

SB2873

**Date:** 02/10/2010

**Committee:** Senate Education and Housing

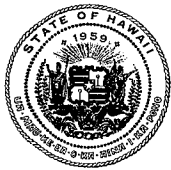
**Department:** Education

**Person Testifying:** Kathryn Matayoshi, Interim Superintendent of Education

**Title of Bill:** SB 2873

**Purpose of Bill:** Exempts teachers from receiving compensation for private instruction or tutoring to any student when there are special circumstances beyond the control of the teacher or student, such as furlough or the lengthy illness of a student.

**Department's Position:** The Department of Education (DOE) supports SB 2873 so long as the Ethics Code is complied with. However, the DOE does not believe this bill is necessary. The Department of Education supports the opportunity for a free education to all students in the State of Hawaii as well as an end to furloughs.



# HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

February 10, 2010

The Honorable Norman Sakamoto, Chair  
The Honorable Michelle Kidani, Vice Chair  
Senate Committee on Education and Housing  
Hawaii State Capitol, Room 230  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **Testimony on S.B. No. 2873, Relating to Code of Ethics**

Hearing: Wednesday, February 10, 2010, 1:20 p.m.  
State Capitol, Conference Room 225

Written Testimony From: Hawaii State Ethics Commission

The Honorable Norman Sakamoto, Chair; The Honorable Michelle Kidani, Vice Chair;  
and Honorable Members of the Senate Committee on Education and Housing:

Thank you for this opportunity to submit written testimony on S.B. No. 2873, Relating to Code of Ethics. We regret that we cannot testify in person. We have a Commission meeting scheduled for this time.

While the Hawaii State Ethics Commission is sympathetic to the need for student instruction, with all due respect, the Commission cannot support this bill.

The purpose of this bill is to create an exemption for teachers to the application of the State Ethics Code in certain situations. The bill provides that, notwithstanding any provision of the State Ethics Code, a Department of Education (DOE) teacher may provide private instruction or tutoring, for compensation, to any of the teacher's current, future, or former students in special situations such as the furlough of the teacher or the lengthy illness of the student.

Again, the Hawaii State Ethics Commission is sympathetic to the situation that this bill is attempting to address. However, the Commission believes that allowing teachers to privately tutor their current or future students raises legitimate concerns under the State Ethics Code.

Hawaii Revised Statutes section 84-13, the Fair Treatment section of the State Ethics Code reads, in relevant part:

**§ 84-13 Fair treatment.** No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

The Fair Treatment law generally prohibits a state employee from using his state position to grant himself or anyone else any favoritism or preferential treatment. HRS subsection 84-13(4) specifically prohibits a state employee from engaging in a substantial financial transaction with a person in a subordinate position.

If a teacher were allowed to privately tutor the teacher's own students, then this would set up a difficult situation in the DOE classroom. The teacher would be faced with teaching two categories of students, those who are engaged in a private financial relationship with the teacher and those who are not. The Hawaii State Ethics Commission believes that this situation would create serious favoritism concerns under the Fair Treatment section of the State Ethics Code. The Commission believes that it is quite likely that complaints would be made by those students who are not the private employers of the teacher.

In October of last year, the Hawaii State Ethics Commission's staff met with the Superintendent of the DOE about this matter. As a result of that meeting, the Commission and the DOE issued a joint memo concerning the application of the State Ethics Code to the private tutoring of students. A copy of the memo is attached to this testimony.

The Commission is very willing to continue to work with the DOE to address any concerns arising from the private tutoring of students. The Commission does believe, however, that the private tutoring of students raises legitimate ethics concerns.

For the reasons set forth above, the Hawaii State Ethics Commission cannot support this bill. We appreciate the opportunity to testify on S.B. No. 2873, Relating to Code of Ethics. We would like to thank this Committee for its consideration of our testimony.



# HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

October 7, 2009

## The Application of the State Ethics Code to DOE Furloughed Teachers

1. The State Ethics Code, set forth in chapter 84 of the Hawaii Revised Statutes (“HRS”), applies to teachers and other employees and officials of the State Department of Education (“DOE”).
2. For the reasons set forth in Advisory Opinions Nos. 95 and 150 (attached), DOE teachers, including furloughed teachers, are barred by the State Ethics Code from privately teaching or tutoring their current students, or prospective students, for pay or other consideration. “Prospective students” means those DOE students who are likely in the future to become students of a DOE teacher. Specifically, HRS section 84-13(4) bars teachers, including furloughed teachers, from engaging in substantial financial transactions with anyone supervised by them, including their students, as well as the parents of their students.
3. The restrictions in the State Ethics Code set forth above do not bar a DOE teacher, employee, or a furloughed teacher from accepting employment with a private entity that offers teaching services or other services to students, so long as the teacher or employee does not take action in his or her official capacity as a DOE teacher or employee directly affecting such an entity. As a caveat, teachers who seek employment with a private entity offering teaching services or other services to students, may wish to assure themselves that such entities are in compliance with all applicable laws and standards for the rendering of such services.
4. Under the State Ethics Code, the facilities of the DOE may be used by outside organizations so long as the DOE has a policy in place that allows for fair and equal access to such facilities by all interested organizations. Of course, such a DOE policy may take into account specific considerations relating to the use of facilities, as long as such policies are reasonable and fair.

### Potential DOE Administrative and Legal Issues

Aside from the application of the State Ethics Code, the State Ethics Commission cannot speak to administrative matters, legal issues, or other matters of concern under the purview of the DOE, or to which the DOE is subject.

Daniel J. Mollway  
Executive Director, State Ethics Commission

Patricia Hamamoto  
Superintendent, Department of Education

Attachments