

Date: 03/30/2011

Committee: House Finance

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 1485,SD1,HD1 Relating to Reconstituting Schools

Purpose of Bill: Allows the superintendent of education to reconstitute a public school, except for certain charter schools. Allows the superintendent to recommend actions to charter school review panel, including the revocation of a school's charter.

Department's Position: The Department supports this bill as written and urges its passage. This bill will clarify the authority of the superintendent in HRS302A-1114 to meet those duties found in HRS302a-1111. Passage of this bill will further demonstrate the support and commitment of the Hawaii State Legislature for transformative educational reform outlined in the Hawaii Race to the Top application.

The Board of Education, at its March 3, 2011 General Business Meeting, approved the position of support to SB 1485, SD1.



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TESTIMONY BEFORE THE HOUSE COMMITTEE ON FINANCE

RE: SB 1485, SD1, HD1 – RELATING TO RECONSTITUTING SCHOOLS.

March 30, 2011

WIL OKABE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Oshiro and Members of the Committee:

The Hawaii State Teachers Association opposes SB 1485, SD1, HD1, which authorizes the Superintendent of Education, notwithstanding collective bargaining agreements, memorandums of agreement, or memorandums of understanding, to reconstitute any public school, except a charter school. In essence, this bill will allow the superintendent to remove some or all school staff (principal, teachers, educational assistants, etc.) and replace them with a new staff. It is in this regard that HSTA is concerned about the power granted by the bill. Our concerns are in four areas:

1. The notion of reconstituting schools came from federal law. In 2001, Congress reauthorized the Elementary and Secondary Education Act by passing the No Child Left Behind Act. In that law, Congress recognized collective bargaining in Section 1116 (d), which states:

“ (d) CONSTRUCTION— Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or **under the terms of collective bargaining agreements**, memoranda of understanding, or other agreements between such employees and their employers.”

This means that the superintendent must recognize and honor collective bargaining agreements in existence at the time the law was passed. The collective bargaining agreement between the Hawaii State Teachers Association and the State of Hawaii, Board of Education was in existence in 2001.

The ESEA statute is clear about honoring collective bargaining. State law should not supersede federal law.

2. The School Code, under Superintendent-Directed Transfers, states: "The Superintendent may, in extraordinary situations, when considering the welfare of the students, the school or the good of the Department, direct the transfer of any teacher or any educational officer." This section does not qualify restructuring as an extraordinary situation. Therefore, the removal of some or all of a staff at a restructuring school is a breach of School Code, collective bargaining agreements, and due process procedures.
3. Teachers already experience difficulties while fulfilling the demands of NCLB required to meet AYP regardless of a student's circumstances, needs, or learning barriers.

With this bill the DOE proposes yet another huge morale buster for teachers threatening them with removal and transfer to another institution, not because of anything they have personal control over, but because the school as a whole is supposedly not performing at an acceptable level. If a teacher who is performing at a level of excellence is part of a staff to be removed, and he or she were reassigned, that would be unacceptable. If that teacher is kept in place and all other teachers and staff members are replaced, both the excellent teacher who loses trusted support people and the replaced teachers who lose a mentor will be negatively impacted. These are just a few issues that are troubling in regards to how this bill could affect teacher morale.

4. Race-To-The-Top and Schools of Innovation are topics of high interest in looking at student achievement. While the department, HSTA and other public sector unions are actively engaged in discussions on Reform Models it makes no sense to shuffle teachers from one restructured school to the next. Eventually all schools will end up in restructuring as the bar continues to be raised on AYP scores. We all know that every child will not get an A in all classes, and we know that every child will not achieve the required score in math and reading. When extended to its logical conclusion, NCLB becomes a grossly inferior imitation of serious education reform.

By now, it should be apparent that the NCLB law is, in fact, a travesty of a workable solution for the education challenges facing our state and our nation. HSTA believes that reconstitution based on NCLB benchmarks is an imprudent approach to addressing the problem of restructuring schools.

Before reconstituting schools we should have the infrastructure in place to assess standards that measure student achievement and growth, provide for a fully functioning longitudinal data system that can be used to support student assessments and evaluations. It should also ensure every classroom has a highly qualified teacher in every school.

Moving personnel from one school to another without the necessary supports and infrastructures in place does not ensure student achievement. We all want and strive for quality education, providing every student every opportunity to be productive citizens who are college and career ready when they leave our public school system.

For these reasons, HSTA opposes SB 1485, SD1, HD1.

Thank you for the opportunity to testify.



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The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Finance
Testimony by
HGEA/AFSCME Local 152
March 30, 2011

S.B. 1485, S.D. 1, H.D. 1 - Relating To Reconstituting Schools

The Hawaii Government Employees Association, HGEA/AFSCME, Local 152, AFL-CIO opposes S.B. 1485, S.D.1, H.D.1 Relating to Reconstituting Schools.

The State Constitution provides public employees the right to organize for the purposes of collective bargaining. Wages, hours and other terms and conditions of work are negotiable matters with HGEA as the exclusive representative of bargaining units 02, 03, 04, 06, 08, 09 & 13. We oppose any measure that seeks to circumvent our collective bargaining rights.

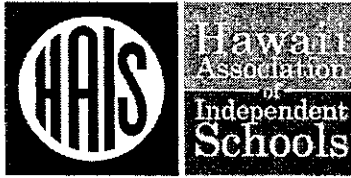
As written, this bill only requires the department to negotiate the process of reassigning employees of the reconstituted school to other positions within the department for which the employees are qualified. This language is very limiting and presumes there are sufficient positions for the potential reassignment of affected employees. This will be problematic.

Needless to say, this bill is contrary to the state's application for Race to the Top and the on-going discussions that focus on the Zones of Innovation and ultimately the system. We continue to advocate that administrators, teachers and support personnel need a system of support in order to help every student. The idea of replacing all or most of the personnel will be counterproductive to these efforts.

Thank you for the opportunity to testify.

Respectfully submitted,

Leiomalama Desha
Executive Assistant



Wednesday, March 30, 2011
2:00 p.m.
Conference Room 308

TESTIMONY TO
THE HOUSE COMMITTEE ON FINANCE

RE: SB 1485, SD 1, HD 1 – Relating to Reconstituting Schools

Dear Chair Oshiro, Vice Chair Lee, and Members of the Committee,

My name is Robert Witt and I am executive director of the Hawaii Association of Independent Schools (HAIS), which represents 99 private and independent schools in Hawaii and educates over 33,000 students statewide.

We support SB 1485, SD 1, HD 1, which would allow the superintendent of education to reconstitute a public school that has been in restructuring for four or more years, as well as recommend actions to the charter school review panel, including revocation of the school's charter.

We believe reconstitution is a tool the superintendent needs to be able to catalyze change in schools that are not serving our children well. The superintendent would be able to use this strategy to significantly benefit children whose learning has not been adequate in our most struggling schools.

Mahalo for this opportunity to testify.



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

TESTIMONY ON SENATE BILL 1485, SENATE DRAFT 1, HOUSE DRAFT 1, RELATING TO RECONSTITUTING SCHOOLS

House Committee on Finance
Hon. Marcus R. Oshiro, Chair
Hon. Marilyn B. Lee, Vice Chair

Wednesday, March 30, 2011, 2:00 PM
State Capitol, Conference Room 308

Honorable Chair Oshiro and committee members:

I am Kris Coffield, representing the Imua Alliance, a nonpartisan political advocacy organization that currently boasts over 60 local members. On behalf of our members, we offer this testimony in opposition to SB 1485, SD1, HD1 relating to reconstituting schools.

While the Imua Alliance supports efforts to improve the education being offered to Hawaii's children, we feel that SB 1485, SD1, HD1 impedes, rather than advances, efforts to improve the state's school system. Though the federal No Child Left Behind Act mandates that all students be proficient in core subjects by 2014, granting the superintendent reconstitution authority, especially under the vague prescriptions provided for in this bill, is a recipe for disaster that subverts the collective bargaining process, while undermining the consistency needed to improve student performance.

Without question, Hawaii's education system faces challenges. Right now, 92 local schools are undergoing restructuring, the highest level of state intervention afforded under NCLB. Since 2006, over 100 of Hawaii's 286 public schools have entered restructuring. Unfortunately, SB 1485, SD1, HD1, like the federal law it seeks to buttress, fails to acknowledge the myriad factors impacting student performance—parental involvement, economic status, nutrition, physical and psychological health, unfunded achievement mandates, to name just a few—and, instead, places all responsibility for student achievement at the feet of teachers, principals and school administrators. In essence, SB 1485, SD1, HD1 discounts the overwhelming amount of data showing that standardized metrics, which NCLB uses to evaluate the academic vitality of a school, are an extremely limited method of evaluating performance, forcing teachers to “teach to the test,” schools to cut the budget of programs in non-core content areas such as the arts and languages (section §302A- (a)(1) instructs the superintendent to consider reading and math scores, but not other indicators of achievement, like advanced placement enrollment or graduation rate), and administrators to impose stricter hiring protocols at a time when teacher

shortages are worsening. It is also worth noting that a shadow is cast over any bill predicated upon NCLB, this year, as the federal mandate's reauthorization is in jeopardy. Just last week, President Barack Obama called for replacing NCLB with standards-based learning programs that are "more flexible and focused on what's best for our kids," such as Race to the Top, which awarded Hawaii \$75 million for the implementation of progressive educational reforms, last August.

Moreover, section §302A- (a) of SB 1485, SD1, HD1 states, "Notwithstanding collective bargaining agreements, memorandums of agreement, or memorandums of understanding, the superintendent may reconstitute a public school, except a charter school, that has been in restructuring as defined by the No Child Left Behind Act of 2001...for four or more school years and has not made significant toward improving academic performance as determined by a statistical analysis of academic data." This contradicts previous statements released by the superintendent's office, however, including a statement made, in 2005, that "restructuring of public schools shall follow all applicable federal, state or local laws, including policies procedures, rules, regulations, due process, and appropriate collective bargaining agreement provisions. Specifically, all transfers and/or removal of school personnel from their assigned schools must follow appropriate School Code provisions, collective bargaining agreements, and due process procedures." As the Hawaii State Teachers Association has pointed out during previous hearings, the School Code's stipulations governing superintendent-directed transfers clearly state that transfers are to occur "in extraordinary situations, when considering the welfare of the students, the school or the good of the Department." Neither the School Code nor SB 1485, SD1, HD1 possess language defining restructuring as an "extraordinary situation" under which transfers may take place, despite section §302A- (b) of this bill calling for the replacement of staff, including teachers, at reconstituted schools and §302A- (c) of this measure directing the Department of Education to reassign employees of a reconstituted school to other positions within the department for which they are qualified.

Finally, the ambiguity of this measure indicates the highly subjective nature of evaluating education performance and could lead to unfair assessment. For example, section §302A- (a)(2) compels the superintendent to consider "other programs being used by the school to address student proficiency," but does not state which or what kind programs; section §302A- (a)(3) requires the superintendent to consider the number of highly qualified teachers at a school, but does not provide a ratio of highly qualified teachers to students that would merit a passing grade; section §302A- (b)(3) allows the superintendent to change the membership of a school community council, but doesn't specify whether such changes are to include composition of the council or the by-laws regulating council formation; and section §302A- (c) obliges the Department of Education to negotiate with "respective unions" on reassignment, but does not specify outright the extent to which such negotiations shall be subject to collective bargaining agreements. These are just a few of the clauses in SB 1485, SD1, HD1 that deserve closer attention before the bill becomes law.

At the very least, the reassignment provisions of SB 1485, SD1, HD1 should be amended to comport with the potential corrective actions enumerated in NCLB. According to Title I, Part A, Subpart 1, Sec. 1116(b)(8)(B)(ii) of the law, alternative governance arrangements enacted by local educational agencies may include replacing "all or most of the school staff (which may include the principal) **who are relevant to the failure to make adequate yearly progress.**" Thus, §302A- (b)(1) of this measure should be amended to read: "Replacing all or most of the staff who are relevant to the failure to make adequate yearly progress, including teachers, principals, and support staff." While this change may seem menial, its addition into the legislation affords a necessary layer of protection for high performance teachers and staff, and logically extends from the evaluation benchmark outlined in §302A- (a)(3), which affirms the need to consider the number of highly qualified or effective teachers at a school *prior* to the authorization of reconstitution. The suggested additional language is not redundant, however, because §302A- (a)(3) pertains to the process of determining whether or not a school should be reconstituted, while §302A- (b)(1) relates to the reconstitution process, itself, once initiated.

In summation, SB 1485, SD1, HD1 sends the wrong message to all stakeholders in educational governance. When the Hawaii State Board of Education supported a similar measure, in 2009, they did so because the proposed legislation granted the board control of the reconstitution process, and board members argued that a democratically elected body would be more effective than an administrative department in responding to community concerns. Today, the particulars of educational governance are different; we no longer have an elected BOE and the current board has not taken a stand on the matter. Therefore, suggestions that the BOE is on board with the idea, should they arise, are facile at best, fraudulent at worst. Ideally, the bill should be deferred until 2012, when the status of NCLB will have been decided by the federal government. If the measure is to be adopted, though, it should include additional language to bring Hawaii's corrective procedures into alignment with those delineated by NCLB, including a clause stating that only teachers and staff germane to performance failure will be subject to replacement and/or reassignment.

Mahalo for the opportunity to testify in opposition to this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance