



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/27/2018
Time: 11:00 AM
Location: 308
Committee: House Finance

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: HB 2418 RELATING TO FUNDS USED FOR THE SETTLEMENT OF CLAIMS.

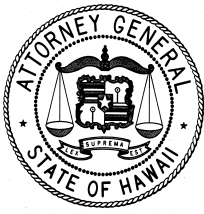
Purpose of Bill: Authorizes the Department of Education to expend previously appropriated funds to satisfy the settlement of class counsel attorney's fees related to a class action lawsuit against the State.

Department's Position:

The Department supports the intent of HB 2418. The Department was aware of the settlement, associated attorney fees, and had planned accordingly to cover costs for this case, without a separate appropriation request via ATG-1. However, this is a unique circumstance driven by the expansiveness of the case, as it relates to the change in requirements for special education services up to age 22.

With regard to Part II, the unencumbered carryover balance as of June 30, 2017 has been committed towards special education programmatic services. While the department understands the concern this measure seeks to address, there are current projects underway that the department has committed funds, which include covering shortfalls in contracted services (i.e. OT, PT, SLP) and positions at the complex areas to provide the supports necessary to train school level personnel to incorporate inclusive practices.

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 2418, RELATING TO FUNDS USED FOR THE SETTLEMENT OF CLAIMS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, February 27, 2018 **TIME:** 11:00 a.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Anne Horiuchi, Deputy Attorney General or
Ryan Roylo, Deputy Attorney General or
Holly Shikada, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General ("Department") supports part I of this bill.

The purpose of part I, section 1, is to authorize the Department of Education to expend previously appropriated funds to satisfy the settlement of class counsel's attorney's fees related to a class action lawsuit against the State. Part II lapses unexpended and unencumbered carryover balances.

The expenditure of \$1,500,000 in part I is that portion of the settlement negotiated, with the assistance of the United States District Court for the District of Hawaii, to satisfy class counsel's attorney's fees. This case was in litigation for seven (7) years. The State originally prevailed at trial, but the trial decision was overturned by the Ninth Circuit Court of Appeals and remanded for a determination of the appropriate remedy for Class Members. The negotiations relating to the remedies took place over a four-year time span. The Department submits that \$1,500,000 in attorney's fees for class counsel is reasonable for this case.

Thank you for the opportunity to provide testimony in support of part I of this bill.

HB-2418

Submitted on: 2/26/2018 9:38:07 AM

Testimony for FIN on 2/27/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Oppose	Yes

Comments:

IN STRONG OPPOSITION. The department is responsible for the exorbitant cost of lawyers fees. As a tax payer we already expanded funds but this bill says we didn't cover the entire bill?



S E A C
Special Education Advisory Council
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Phone: 586-8126 Fax: 586-8129
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February 27, 2018

LATE

**Special Education
Advisory Council**

Ms. Martha Guinan, *Chair*
Ms. Dale Matsuura, *Vice Chair*
Dr. Patricia Sheehey, *Vice
Chair*
Ms. Ivalee Sinclair, *Vice Chair*

Ms. Brendelyn Ancheta
Ms. Deborah Cheeseman
Ms. Annette Cooper
Mr. Motu Finau
Ms. Gabriele Finn
Mr. Sage Goto
Dr. Kurt Humphrey
Ms. Bernadette Lane
Ms. Kaili Murbach
Ms. Stacey Oshio
Ms. Kau'i Rezentos
Ms. Charlene Robles
Ms. Rosie Rowe
Mr. Daniel Santos
Mr. James Street
Dr. Todd Takahashi
Dr. Daniel Ulrich
Mr. Steven Vannatta
Mr. Gavin Villar
Dr. Amy Wiech
Ms. Jasmine Williams
Ms. Susan Wood

Dr. Robert Campbell, *liaison
to the military*
Dr. Christina Tydeman, *liaison
to the Superintendent*

Amanda Kaahanui, Staff
Susan Rocco, Staff

Representative Sylvia Luke, Chair
Committee on Finance
Hawaii State Capitol
Honolulu, HI 96813

RE: H.B. 2418 - Relating to Funds Used for the Settlement of Claims

Dear Chair Luke and Members of the Committee,

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), **supports the intent** of H.B. 2418 which authorizes the Department of Education to expend previously appropriated funds to satisfy the settlement of class counsel attorney fees related to the *E.R.K. v. DOE* decision by the 9th Circuit Court of Appeals.

In anticipation of the final settlement regarding compensatory services for E.R.K. class members, the Department of Education reserved funds from salary savings over the course of several years to pay plaintiff attorneys. SEAC finds this expenditure appropriate as it was related to IDEA services which should have been provided to these plaintiffs up until their 22nd birthday, assuming their continued eligibility for special education and related services.

SEAC **strongly disagrees**, however, with the proposal in Part II of this bill to have the remaining carry-over funds totalling \$4,750,000 lapse to the credit of the general funds. These funds were appropriated by the Legislature to provide specifically for the needs of students with disabilities who are eligible under IDEA. They are currently committed to paying for shortfalls in OT, PT and SLP services and for inclusive practices as outlined in students' individualized education programs. Further, the Board of Education and the Department of Education are committed to anticipating future salary savings and ensuring that allocated funds are re-directed to mutually agreed upon budget priorities in a timely and responsible manner.

Thank you for this opportunity to provide our testimony. If you have further questions, please feel free to contact us.

Respectfully,


Martha Guinan
SEAC Chair


Ivalee Sinclair
Legislative Committee Chair