



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

**Date:** 02/26/2020  
**Time:** 12:00 PM  
**Location:** 308  
**Committee:** House Finance

**Department:** Education

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

**Title of Bill:** HB 2203, HD1 RELATING TO DISCIPLINARY ACTIONS IN PUBLIC SCHOOLS.

**Purpose of Bill:** Requires the department of education to track and publish the use of all exclusionary discipline disaggregated by student subgroup. Takes effect on 7/1/2050. (HD1)

**Department's Position:**

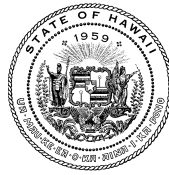
The Department of Education (Department) supports HB 2203, HD1. The Department is committed to ensuring that all public school students are educated in learning environments that are safe, caring, and positive. The Department recognizes the importance and value of student attendance and its impact on student success. Currently, the Department provides its schools with effective systems and supports that reduce the need of exclusionary discipline practices. While exclusionary discipline practices, including suspensions, are not prohibited, they may be used with caution only after all disciplinary options are considered. Special considerations are given when issuing suspensions for students who are in grade K to grade 3.

In January of 2020, the Department implemented a new behavior management system in Infinite Campus (IC) to capture student behavior incidents, inclusionary, and exclusionary disciplinary actions. The Department reports data on subgroups when the subgroup is greater than ten (10) students. Data is not publicly reported for a subgroup with ten (10) or fewer students. This practice ensures that the personally identifiable information of each student is kept private, while also maintaining alignment with Hawaii's approved Hawaii Consolidated State Plan for Every Student Succeeds Act.

Thank you for the opportunity for testimony on HB 2203, HD1.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. 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](http://www.hawaiipublicschools.org).



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

**House Committee on Finance**

Wednesday, February 26, 2020  
12:00 p.m.  
Hawaii State Capitol, Room 308

**House Bill 2203, House Draft 1, Relating to Disciplinary Actions in Public Schools**

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Board of Education ("Board") supports the intent of HB 2203 HD1 but has comments. HB2203 would require the Department of Education ("Department") to track and publish the use of all exclusionary discipline in public schools disaggregated by student subgroups.

The Board supports measures that protect students' civil rights and improve transparency and access to information to encourage an informed and engaged community of citizens, which appears to be included in the intent of this bill.

The Board requests that the Committee amend this bill to clarify the requirement on the Board to "make [the referenced] data public in an annual report" (Page 4, Line 10). As written, it is unclear if the intent is for the Board to transmit this annual report to the Legislature or simply make this report publicly available annually on a date of the Board's choosing. The contemplated report from the Board is clearly different from the Department's report referenced in the new subsection (b) (Page 5, Lines 10-13), which is a report to the Board.

Thank you for this opportunity to testify on behalf of the Board.

Very truly yours,

Catherine Payne  
Chairperson, Board of Education  
Chairperson, 2020 Legislative Ad Hoc Committee

The Hawaii Disability Rights Center submits these comments concerning HB 2203, H.D. 1.

### **Federal Government may eliminate reporting requirements**

This bill would require the Hawaii Department of Education (HIDOE) to report the numbers of children with disabilities suspended. Imposing this requirement is particularly important now that the Federal government is proposing the elimination of this reporting requirement.

### **No current data on suspension rate of children with disabilities**

HIDOE reported in the Federal Civil Rights Data Collection (2015-2016) that it had the highest rate **in the nation** of suspending students with disabilities. After this shockingly high rate was reported multiple times in the news media in mid-2019, HIDOE said it was not correct and claimed it had double counted some suspensions. However, HIDOE has not provided its revised suspension data in a way that makes it possible to determine its new claimed suspension rate for students with disabilities. Thus, the only information available is the Civil Rights Data Collection: which suggests that Hawaii is an outlier and has a gross overreliance on suspensions.

### **Ad Hoc suspensions mean actual suspension time is greater than reported**

Our Center receives frequent reports of students with disabilities sent home from school for partial days, or several days, without the school calling it a suspension, and without the school providing anything in writing. Recent reasons we have heard about why children are being sent home is that the child is having a “bad day”, for “safety reasons” or the teacher or aide is unavailable. We recently heard of a case where the parents were asked to sign the student out as “sick” for two days when the child was really being sent home for behavior problems. Parents have reported to us that they were not allowed to return their child to school, but that the school appeared to treat the time away from school as an unexcused absence (based on the letters and phone calls they received). We suspect that in these cases, the school is not reporting the missed school as a suspension (these are sometimes called “ad hoc” suspensions). This bill makes clear that all school exclusions must be reported and the reasons for the exclusion must be provided.

### **HIDOE culture should not encourage sending children home due to behavior problems**

Sending students with disabilities home due to behavior problems is counterproductive and harmful. It harms the family who miss work or other planned activities to stay with the child. It harms the child’s learning. Some children may prefer to be sent home and thus a suspension is a reward for poor behavior. There is no credible research showing that suspensions are a beneficial means of improving poor behavior of children with disabilities. This bill should be strengthened to limit suspensions to the most egregious behavior, and to encourage a change in culture within HIDOE to move away from suspensions as a primary means of discipline.



Hawai'i

Committees: House Committee on Finance  
Hearing Date/Time: February 26, 2020 at 12:00pm  
Place: Conference Room 308  
Re: Testimony of the ACLU of Hawai'i in Support of H.B. 2203, H.D. 1, Relating to Disciplinary Actions in Public Schools

Dear Chair Luke, Vice Chair Cullen, and members of the Committee:

The American Civil Liberties Union of Hawai'i (ACLU of Hawai'i) writes in **support of, with suggested amendments to, H.B. 2203 H.D. 1.**

The bill language as introduced eliminates school suspensions in pre-kindergarten through elementary school and caps suspensions to ten aggregate days per school year in middle and high school. That language clarifies differences between the types of suspension, including out-of-school, in-school, and ad hoc suspensions, and collects data on disparities in the use of such suspensions. As introduced, the bill is an essential step in protecting a student's right to an education, decreases the likelihood of juvenile or adult criminal legal system outcomes, and increases academic proficiency because it keeps students in school and learning. **H.D. 1 retains only these data protections and not the school suspension elimination and cap language, and the ACLU of Hawai'i respectfully requests that the bill be reverted back to its original version.**

Previous testimony by a few principals and complex area superintendents covered two main points. One, that principals need autonomy to make suspension decisions, and two, school safety is at issue.

First, the ACLU of Hawai'i has seen that unfettered principal autonomy means suspensions happen for reasons unrelated to school safety. In particular, principals have suspended students that *smelled like cannabis*, for anywhere from 43 to 92 days. A school year is 180 days. This loss of educational opportunity is devastating to students' life outcomes and unrelated to the underlying cannabis issue. The bill language as introduced narrowed the allowable reasons for a suspension to immediate physical threats to a student's self or others, thus targeting school safety directly.

Second, because the regulations accompanying the discipline statutes, Chapter 19, do not link the sanctions to the violation, there are huge disparities in the discipline meted out. We have seen these suspensions land disproportionately on Native Hawaiian, Pacific Islander, and students with disabilities in the form of longer and more frequent suspensions. Unfortunately, it is difficult to tell how disproportionately. The ACLU of Hawai'i discovered large disparities in suspensions for Native Hawaiians and students with disabilities<sup>1</sup> resulting in the DOE needing to resubmit its federal 2015-

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<sup>1</sup> Suevon Lee, "Hawaii DOE Releases Revised Data on Student Suspensions," *Civil Beat* <https://www.civilbeat.org/2019/08/hawaii-doe-releases-revised-data-on-student-suspensions/> (August 15, 2019).

16 Civil Rights Data Collection data last year. **The public and the ACLU of Hawai‘i have not yet seen this new data, though we have requested it.**

Third, in meetings with the DOE, a cap of *any* time length lower than the current 92 days was something the DOE could not commit to even discussing. Roughly 37 states have capped or eliminated school suspensions. This adherence to an overly punitive, disproportionate method of discipline is at odds with the leadership Hawai‘i displayed when it became the third state to ban corporal punishment in 1973.<sup>2</sup>

What most counters the disappointing public pushback from certain principals and complex area superintendents are the statements that families, students, and teachers have given to the ACLU of Hawai‘i about the devastating outcomes suspensions have had.

A Native Hawaiian family approached us recently about a suspension their child received first semester for 43 days, after the principal smelled the student’s hands and claimed they smelled like marijuana. No drugs or paraphernalia were found on the student. The student had a clean drug test but was not permitted to return to school. Second semester, this student was suspended for 72 days for a similar allegation. With only 50 days left in this school year, the school is threatening to hold the student back the first 20 days of the next school year. The point of school is to learn, both academic material and right from wrong. What is this except to purely punish? Cannabis is not a reason to disrupt the student’s right to an education. Address the cannabis separately; do not irrevocably damage this student’s education. The family is suffering from the fallout of this incredible decision.

Studies have shown that suspensions not only fail to address the root causes of disruptive behavior, but have a profoundly negative impact on students, denying them valuable education time, increasing drop-out rates, and fueling the school-to-prison pipeline.<sup>3</sup> Research indicates that the negative effects

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<sup>2</sup> Brenton Awa, “Some State Lawmakers are Trying to Put an End to Physically Disciplining Children,” KITV, <https://www.kitv.com/story/39855630/some-state-lawmakers-are-trying-to-put-an-end-to-physically-disciplining-children> (January 25, 2019).

<sup>3</sup> Nancy Heitzeg, “Criminalizing Education: Zero Tolerance Policies, Police in the Hallways, and the School to Prison Pipeline,” *Education to Incarceration*, 2014, available at [https://www.hamline.edu/uploadedFiles/Hamline\\_WWW/HSE/Documents/criminalizing-education-zero-tolerancepolice.pdf](https://www.hamline.edu/uploadedFiles/Hamline_WWW/HSE/Documents/criminalizing-education-zero-tolerancepolice.pdf) (citing the National Association for the Advancement of Colored People’s definition of the school-to-prison pipeline: “In the last decade, the punitive and overzealous tools and approaches of the modern criminal justice system have seeped into our schools, serving to remove children from mainstream educational environments and funnel them onto a one-way path toward prison...the School-to-Prison Pipeline is one of the most urgent challenges in education today).

Chair Luke and Members of the Committee on Finance  
February 26, 2020  
Page 3 of 3

of exclusionary discipline are more pronounced for males, students of color and students with disabilities — groups that have historically experienced higher rates of suspension and expulsion.<sup>4</sup>

Using positive alternatives to suspension leads to better school outcomes. After implementing alternative discipline methods<sup>5</sup> several school systems realized large decreases in their rates of suspension.

**Students' due process rights are often not protected.** Students and their parents often are not informed about the details of the suspension, the procedures for contesting such a suspension, and for appealing a decision to impose suspension. The process outlined in Chapter 19 is fundamentally stacked against the student and their family and likely violates their constitutional due process rights by denying them a pre-deprivation opportunity to argue against suspension.<sup>6</sup> This bill as introduced helps ensure due process protections by giving parents and guardians seven school days to appeal a suspension. Students should not be suspended for more than ten days until such hearing takes place.

For these reasons, the ACLU of Hawai'i respectfully requests the Committee to support H.B. 2203 H.D. 1, amended to revert it back to its original form.

Sincerely,

Rae Shih  
Legal Fellow  
ACLU of Hawai'i

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for 50 years.*

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<sup>4</sup> Alyssa Rafa, Education Commission of the States, *The Status of School Discipline in State Policy*, available at <https://www.ecs.org/wp-content/uploads/The-Status-of-School-Discipline-in-State-Policy.pdf>.

<sup>5</sup> See Haw. Admin. Rules § 8-19-6(d) for a partial list of already-established non-suspension disciplinary action.

<sup>6</sup> We believe the existing rules are likely unconstitutional, which warrants that schools provide even more care in guaranteeing due process rights. See *Wynar v. Douglas County Sch. Dist.*, 728 F.3d 1062, 1073 (9th Cir. 2013) (acknowledging that suspensions of over ten days requires a “formal process” and upholding process that included written notice of charges, list of witnesses, right to have an advocate, right to present and confront evidence, and pre-deprivation hearing); see also *Hunger v. Univ. of Hawaii*, 927 F. Supp. 2d 1007, 1018 (D. Haw. 2013) (finding that due process rights of student were violated where he was not given sufficient time to meet with Student Conduct Administrator).

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Committees: House Committee on Finance  
Hearing Date/Time: February 26, 2020 at 12:00pm  
Place: Conference Room 308  
Re: Testimony of the Hawaii Women’s Coalition in Support of H.B. 2203,  
H.D. 1, Relating to Disciplinary Actions in Public Schools

Dear Chair Luke, Vice Chair Cullen, and members of the Committee:

Hawaii Women’s Coalition writes in support of, with suggested amendments to, H.B. 2203 H.D. 1. The bill language as introduced eliminates school suspensions in pre-kindergarten through elementary school and caps suspensions to ten aggregate days per school year in middle and high school. As introduced, the bill is an essential step in protecting a student’s right to an education, decreases the likelihood of juvenile or adult criminal legal system outcomes, and increases academic proficiency because it keeps students in school and learning.

H.D. 1 retains only certain data reporting requirements and not the school suspension elimination and cap language, and the Hawaii Women’s Coalition respectfully requests that the bill be reverted back to its original version.

Studies have shown that suspensions not only fail to address the root causes of disruptive behavior, but have a profoundly negative impact on students, denying them valuable education time, increasing drop-out rates, and fueling the school-to-prison pipeline.<sup>1</sup> Research indicates that the negative effects of exclusionary discipline are more pronounced for males, students of color and students with disabilities – groups that have historically experienced higher rates of suspension and expulsion.<sup>2</sup>

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<sup>1</sup> Nancy Heitzeg, “Criminalizing Education: Zero Tolerance Policies, Police in the Hallways, and the School to Prison Pipeline,” *Education to Incarceration*, 2014, available at [https://www.hamline.edu/uploadedFiles/Hamline\\_WWW/HSE/Documents/criminalizing-education-zero-tolerancepolice.pdf](https://www.hamline.edu/uploadedFiles/Hamline_WWW/HSE/Documents/criminalizing-education-zero-tolerancepolice.pdf) (citing the National Association for the Advancement of Colored People’s definition of the school-to-prison pipeline: “In the last decade, the punitive and overzealous tools and approaches of the modern criminal justice system have seeped into our schools, serving to remove children from mainstream educational environments and funnel them onto a one-way path toward prison...the School-to-Prison Pipeline is one of the most urgent challenges in education today).

<sup>2</sup> Alyssa Rafa, Education Commission of the States, *The Status of School Discipline in State Policy*, available at <https://www.ecs.org/wp-content/uploads/The-Status-of-School-Discipline-in-State-Policy.pdf>.



Using positive alternatives to suspension leads to better school outcomes. After implementing alternative discipline methods<sup>3</sup> several school systems realized large decreases in their rates of suspension.

Thank you for your support for this important measure.

Sincerely,  
Hawaii Women's Coalition

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<sup>3</sup> See Haw. Admin. Rules § 8-19-6(d) for a partial list of already-established non-suspension disciplinary action.



Hawaii  
**Children's Action Network Speaks!**  
Building a unified voice for Hawaii's children

*Hawai'i Children's Action Network Speaks! is a nonpartisan 501c4 nonprofit committed to advocating for children and their families. Our core issues are safety, health, and education.*

To: Representative Luke, Chair  
Representative Cullen, Vice Chair  
House Committee on Finance

Re: HB 2203 HD1- Disciplinary Actions in Public Schools  
Hawai'i State Capitol, Room 308  
12:00PM, 2/26/2020

Chair Luke, Vice Chair Cullen, and committee members,

**On behalf of Hawaii Children's Action Network Speaks!, we are writing to support in support HB 2203 HD1- Relating to Disciplinary Actions in Public Schools and ask that the bill be amended to its original version.**

The usage of suspension and expulsion in schools has long proved to be a counterproductive, detrimental means of discipline. Research has shown that young children who are suspended or expelled are 10 times more likely to drop out of high school, experience academic failure and grade retention and face incarceration than those who are not.

When suspension and expulsion are used to handle behavior that has broken a rule or policy of the school, the school misses an opportunity to get to the root of the child's behavior. These young children being pushed out of the classroom are often those in need of intervention and support. Research on exclusionary discipline found that students with disabilities are two times more likely to receive out-of-school suspensions<sup>1</sup>. Young children with undiagnosed behavioral or developmental disabilities might be suspended or expelled thus mislabeled, which impedes the process of getting them the additional resources they need.

**For these reasons, HCAN Speaks! respectfully requests the Committee to support and amend this measure to its original language.**

Thank you,

Kathleen Algire  
Director, Public Policy and Research

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<sup>1</sup> U.S. Department of Health and Human Services and U.S. Department of Education. (2014). Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings. Retrieved from <https://www2.ed.gov/policy/gen/guid/school-discipline/policy-statement-ece-expulsions-suspensions.pdf>.

**HB-2203-HD-1**

Submitted on: 2/25/2020 9:29:22 AM

Testimony for FIN on 2/26/2020 12:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Younghi Overly	aaup of hawaii	Support	No

Comments:



**LATE**

**HB2203 HD1**  
**RELATING TO DISCIPLINARY ACTIONS IN PUBLIC SCHOOLS**  
Ke Kōmike Hale o ka 'Oihana 'Imi Kālā

Pepeluali 26, 2020

12:00 p.m.

Lumi 308

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2203 HD1, which would require regular data reporting on school exclusionary discipline, such as in-school and out-of-school suspension, disaggregated by demographics including age, grade, gender, race, and disability. **Collecting, analyzing, and publicly reporting such data will enable the state to best examine and address exclusionary school policies, the “school-to-prison pipeline” they may create, and the disparate impacts they may have upon students from marginalized groups, especially Native Hawaiian youth. OHA respectfully asks for the Committee’s consideration and inclusion of provisions in the previous draft of this measure,** which would have also substantially restricted the use of exclusionary discipline in an age-appropriate way, limiting the long-term harmful impacts of suspensions upon our youth.

Suspensions and other exclusionary discipline actions may result in serious and negative collateral consequences for affected students, including, potentially, a disproportionate number of Native Hawaiians. Recent data, specifically from Hawai‘i’s special education population,<sup>1</sup> indicate that while **Native Hawaiian and Pacific Islander students make up 39 percent of students in special education in the islands, they represent more than half of the special education students that are suspended.**<sup>2</sup> Other unpublished data further indicate that Native Hawaiian students generally may be disproportionately subject to suspensions and other exclusionary discipline actions (while Native Hawaiians made up 24.5% of the student population in 2018, they also made up 41.3% of the total number of students who were suspended). Exclusionary discipline policies, like suspensions, are highly correlated with poor educational outcomes,<sup>3</sup> and a disproportionate suspension rate for Native Hawaiian students may be contributing factor to their substantial and continuing gaps in student achievement and growth, school

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<sup>1</sup> The special education population is central to discussion about exclusionary discipline because it includes students with disabilities, who are suspended at rates roughly three times higher than students without disabilities. SPECIAL EDUCATION ADVISORY COUNCIL ANNUAL REPORT FOR SY 2018-19, 4 (2019), <http://seac-hawaii.org/wp-content/uploads/2019/07/19-Annual-Report.pdf>.

<sup>2</sup> *Id.* at 5.

<sup>3</sup> See Danfeng Soto-Vigil Koon, Exclusionary School Discipline: An Issue Brief and Review of the Literature (last accessed Feb. 24, 2020) available at [https://www.law.berkeley.edu/files/BMOC\\_Exclusionary\\_School\\_Discipline\\_Final.pdf](https://www.law.berkeley.edu/files/BMOC_Exclusionary_School_Discipline_Final.pdf).

engagement, promotion and graduation, and post-high enrollment and completion.<sup>4</sup> Moreover, nationally, researchers continue to explore the relationship between exclusionary discipline and juvenile involvement in the criminal justice system, commonly referred to as the “school-to-prison pipeline.” It is surmised that students who are suspended, expelled, or arrested in school are at an increased risk for later criminal justice involvement.<sup>5</sup> Thus, the overrepresentation of Native Hawaiians within the juvenile and criminal justice systems may be correlated with a disproportionate number of Native Hawaiian students subject to suspensions or similar exclusionary discipline actions.

**More and better data will be critical to addressing the harsh and long-lasting impacts of school suspensions and exclusionary discipline actions on our youth, including, potentially, a disproportionate number of Native Hawaiian students.** Such data may enable policymakers to more directly address the likely related consequences of low educational attainment and high involvement in juvenile and criminal justice systems. Moreover, **the thoughtful restrictions on the use of out-of-school suspension proposed by HB2203, as originally introduced, would ensure that any harmful impacts from out-of-school suspensions will be proactively limited.** Thus, **OHA respectfully urges this Committee to amend this draft to align with the previous draft, to ensure students are kept in school as much as possible, and out of the juvenile and criminal justice systems.**

Accordingly, OHA urges the Committee to **PASS** HB2203 HD1. Mahalo piha for the opportunity to testify on this measure.

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<sup>4</sup> See Ka Huaka’i Native Hawaiian Educational Assessment 2014 Executive Summary 13 (2014) available at [http://www.ksbe.edu/assets/spi/pdfs/kh/Ka\\_Huakai\\_Executive\\_Summary.pdf](http://www.ksbe.edu/assets/spi/pdfs/kh/Ka_Huakai_Executive_Summary.pdf). See State of Hawai’i, Open Performance Dashboard: Equitable Access to Education (last accessed Feb. 25, 2020) available at <https://dashboard.hawaii.gov/stat/goals/5xhf-begg/nmui-ua2k/diax-hqta>, giving data showing that Native Hawaiian students graduate from high school at rates slightly lower than the state average, but attain a post-secondary degree at roughly one third the rate of adults statewide.

<sup>5</sup> See American Civil Liberties Union, School-to-Prison Pipeline, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline> (last accessed Feb. 24, 2020); see also The Council of State Governments & Public Policy Research Institute (2011) available at , [https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf).