

JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/05/2024
Time: 03:00 PM
Location: CR 229 & Videoconference
Committee: Senate Education
Senate Labor and Technology

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: SB 2475 RELATING TO EDUCATION.

Purpose of Bill: Establishes a Harm to Students Registry for all prekindergarten through grade twelve institutions operating in the State to be administered by the Department of Education. Requires schools to complete any investigation into employees who have pending allegations of harming students, regardless of employment status. Requires schools to consult with the Harm to Students Registry before authorizing prospective employees or volunteers to interact with students. Requires schools to share information on ongoing or concluded investigations of infliction of harm to a student when requested by another institution. Establishes an appeal process for individuals who request removal from the Harm to Students Registry. Requires the Hawaii Teacher Standards Board to revoke the licenses of certain individuals who have resigned or retired in lieu of termination. Establishes qualified immunity for employers who provide good faith information or opinion on a current or former employee's job performance.

Department's Position:

Thank you for the opportunity to provide testimony on SB 2475. The Hawaii State Department of Education (Department) supports this measure.

The Department agrees with the Legislature that creating a harm to students registry that is accessible by all pre K-12 educational institutions within the State of Hawaii will aid in preventing the employment of individuals who harm children.

Increasing the ability of both private and public pre K-12 education institutions to communicate and provide vital information to consider in rendering employment decisions is critically important to maintaining healthy and safe learning environments for all of Hawaii's keiki.

The Department respectfully recommends that, for consistency, "Require the" be inserted on page 6, line 9, at the beginning of paragraph (4), such that the paragraph reads: "Require the compilation and maintenance of the registry established pursuant to subsection (a)."

Additionally, the Department requests funding and a 1.0 FTE position in order to effectively implement the goals of this measure.

Thank you for the opportunity to testify on SB 2475.



STATE OF HAWAII
Executive Office on Early Learning
2759 South King Street
HONOLULU, HAWAII 96826

February 2, 2024

TO: Senator Michelle N. Kidani, Chair
Donna Mercado Kim, Vice Chair
Senate Committee on Education

Senator Henry J.C. Aquino, Chair
Senator Sharon Y. Moriwaki, Vice Chair
Senate Committee on Labor and Technology

FROM: Yuuko Arikawa-Cross, Director
Executive Office on Early Learning

SUBJECT: Measure: S.B. No. 2475 – RELATING TO EDUCATION
Hearing Date: Monday, February 5, 2024
Time: 3:00 pm
Location: Conference Room 229

EXECUTIVE OFFICE ON EARLY LEARNING'S POSITION: Support

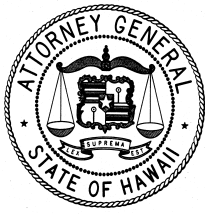
Protecting children against harm is paramount for the Executive Office on Early Learning (EOEL) and we support S.B. No. 2475 and offer comments.

EOEL is committed to providing high-quality early learning programs and services to all keiki across the State. Fundamental components of a high-quality program include safe and nurturing environments and trusting and caring adults. This bill would streamline information about individuals who have perpetuated harm against children, making that information more accessible across schools and potentially departments.

We respectfully request that the Director of EOEL be included in the temporary panel referenced in subsection c (page 4 lines 13 through 18) as EOEL also oversees prekindergarten classrooms.

Classroom and administrative staff of the EOEL Public Prekindergarten program are employees of the Department of Education (HIDOE) and we defer to HIDOE on the provisions of the bill related to implementation.

Mahalo for the opportunity to provide comments on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:
S.B. NO. 2475, RELATING TO EDUCATION.

BEFORE THE:
SENATE COMMITTEES ON EDUCATION AND ON LABOR AND TECHNOLOGY

DATE: Monday, February 5, 2024 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Anne T. Horiuchi, Deputy Attorney General

Chairs Kidani and Aquino and Members of the Committees:

The Department of the Attorney General (Department) provides the following comments.

The bill establishes a "Harm to Students Registry" (Registry) for all prekindergarten through grade twelve institutions operating in the State, to be administered by the Department of Education (DOE). Additionally, the bill: requires schools to complete any investigation into employees who have pending allegations of harming students, regardless of employment status; requires schools to consult with the Registry before authorizing prospective employees or volunteers to interact with students; requires schools to share information on ongoing or concluded investigations of infliction of harm to a student when requested by another institution; establishes an appeal process for individuals who request removal from the Registry; requires the Hawaii Teacher Standards Board (HTSB) to revoke the licenses of certain individuals who have resigned or retired during the pendency of investigation into certain allegations of sexual assault or sexual harassment; and establishes qualified immunity for employers who provide good faith information or opinion on a current or former employee's job performance.

The Department notes that the registration of sex offenders required by chapter 846E, Hawaii Revised Statutes (HRS), applies to sex offenders who have been convicted of a sexual offense. While a criminal conviction requires proof beyond a

reasonable doubt in a court of law, listing on the Registry would only require an investigation and findings made by an educational institution outside of a court of law. While the bill creates a process for a person to appeal to have that person's name removed from the Registry, that appeal process ends at an administrative tribunal and is not subject to a section 91-14, HRS, appeal to the court system. Further, there are circumstances where a person could be listed on the Registry, yet have been exonerated in a court of law.

The Department also suggests the following revisions:

- Section 1 of the bill provides that the bill is applicable to prekindergarten, but the bill only adds references to the Registry to chapters 302A, 302C, and 302D, HRS, which apply to the DOE, private schools, and public charter schools, respectively. The Department suggests adding similar provisions to chapter 302L, HRS, regarding the Early Learning System, to make the bill applicable to prekindergarten, if that is the Legislature's intent.
- New subsection (a) to be added to section 302A-1002, HRS, states: "[p]ursuant to chapter 350, the department shall compile a registry of individuals found to have inflicted harm to a student in the State." Page 3, lines 10-12. Chapter 350, HRS, relates to child abuse, and is under the purview of the Department of Human Services (DHS). The reference to chapter 350 is confusing and should be removed; if there are provisions within chapter 350 that the Legislature believes should be mirrored in this bill, the Department suggests adding those specific provisions to the amendments to chapters 302A, 302C, and 302D, HRS, as appropriate.
- Additionally, new subsection (a) states that the DOE "shall compile a registry of *individuals* found to have inflicted harm to a student in the State" – not a registry of *employees* found to have inflicted harm to a student. Page 3, lines 11-12. This broadens the scope of the Registry well beyond current and former employees, contractors, and volunteers of institutions. The Department suggests replacing "individuals" with "employees" on page 1, line 11, and replacing "individual" with "employee" on page 3, line 14.

- New subsection (a) to be added to section 302A-1002, HRS, also states: "Institutions shall share information relating to any ongoing or concluded investigation of infliction of harm to a student when requested by another institution." Page 4, lines 1-3. To avoid a potential violation of the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), the Department suggests adding the following to the end of subsection (a): "The information shared shall not include personally identifiable information of any student."
- The Department further notes that there is no requirement in the bill that the DOE, private schools, or charter schools actually conduct an investigation into whether an employee inflicted harm on a student. Nor is there a requirement that it was an investigation as defined by the statute. The Department suggests that the requirement that an educational institution conduct an investigation as defined by statute whether an employee inflicted harm on a student be added to the amendments to chapters 302A, 302C, and 302D, HRS.
- The bill does not require the DOE itself to consult the Registry to determine if a candidate for employment or prospective volunteer is listed on the Registry. The Department suggests that such a requirement be added to the amendments to chapter 302A, HRS.
- Section 6 adds new subsection (d) to section 302A-602, HRS. Page 14, lines 3-10. The first portion of subsection (d) provides for the revocation of a license by the Hawaii Teacher Standards Board if a person resigns or retires during the pendency of any investigation into allegations of sexual assault or sexual harassment, including criminal and workplace investigations. *Id.* at lines 3-8. The next portion of subsection (d) states that "the person's name shall be included on the [Registry]." *Id.* at lines 9-10. It is not clear that listing the resigned/retired employee's name on the Registry may occur sometime after license revocation, or that it may not occur at all, if the final finding from the investigation is that the teacher *did not* engage in acts or omissions that

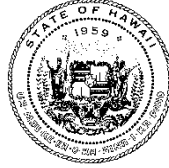
resulted in the infliction of harm to a student. The Department suggests revising the bill on page 14, lines 8-10, to state:

. . . harassment, including criminal and workplace investigations, and the person's name shall be included on the harm to students registry established pursuant to section 302A-1002[-], provided that inclusion on the registry shall only occur after an investigation conducted pursuant to section 302A-_____ results in a final finding that the person engaged in acts or omissions that resulted in the infliction of harm to a student.

(Suggested new wording to the bill is underscored.)

- The bill requires the DOE to maintain the Registry, with the intent to make the Registry accessible to other institutions in the State. Page 4, lines 1-3. Such records, however, would also normally be subject to the Uniform Information Practices Act, chapter 92F, HRS. Because the Registry impacts both private-school and public-school employees, there is a risk that highly sensitive employment information of non-government employees could be released. To protect the State from liability, and based upon our concerns regarding the extrajudicial procedures surrounding the Registry, we recommend that the Registry and related employment documents obtained from non-government educational institutions be exempted from disclosure under the Uniform Information Practices Act.

Thank you for the opportunity to provide comments on this bill.



STATE OF HAWAII
HAWAII TEACHER STANDARDS BOARD
650 IWILEI ROAD, SUITE 268
HONOLULU, HAWAII 96817

WRITTEN TESTIMONY BEFORE THE SENATE COMMITTEE ON EDUCATION and the COMMITTEE ON LABOR & TECHNOLOGY

PERSON TESTIFYING: Felicia Villalobos, Executive Director, on behalf of the Hawai'i Teacher Standard Board (HTSB)

DATE: February 5, 2024

TIME: 3:00 pm

LOCATION: Conference Room 229 and Video Conference

TITLE OF BILL: SB2475 RELATING TO EDUCATION, DOE; State Public Charter School Commission; HTSB; Private Schools; Harm to Students Registry; Employees; License Revocation; Appeal; Qualified Immunity

PURPOSE OF BILL: Establishes a Harm to Students Registry for all prekindergarten through grade twelve institutions operating in the State to be administered by the Department of Education. Requires schools to complete any investigation into employees who have pending allegations of harming students, regardless of employment status. Requires schools to consult with the Harm to Students Registry before authorizing prospective employees or volunteers to interact with students. Requires schools to share information on ongoing or concluded investigations of infliction of harm to a student when requested by another institution. Establishes an appeal process for individuals who request removal from the Harm to Students Registry. Requires the Hawai'i Teacher Standards Board to revoke the licenses of certain individuals who have resigned or retired in lieu of termination. Establishes qualified immunity for employers who provide good faith information or opinion on a current or former employee's job performance.

POSITION: Comments

Chair Michelle Kidani, Chair Aquino, and Members of the Committees;

Hawai'i Teacher Standards Board ("HTSB") supports the efforts to establish this Harm to Students Registry, and also to require schools to complete any investigation into employees who have pending allegations of harming students regardless of employment status.

Although the HTSB understands the efforts to create this Harm to Students Registry and would support its creation, we are concerned about the criteria for someone to be put on this registry. This bill as it is currently written, would only require that there be an 'ongoing' or "concluded" investigation without any final disposition following the investigation. Until there is a final disposition or disciplinary action taken following the completion of the investigation it is premature to place an employee on the Harm to Students Registry. **We currently have a legal process in place which does revoke an individual's license or permit following the completion of an investigation and after the individual's time to appeal the employer's decision has expired.**

Until the investigation by the employer has been completed, a formal disciplinary action has been rendered by the employer, and the time for the individual to appeal the employer's disciplinary action has expired, HTSB is not able to revoke a person's license by law.

HTSB does not conduct investigations, they are completed by the department who has the FTE investigators to do this work, and even if an individual resigns or retires, the department can continue an investigation and should. There is a process in place, and HTSB has revoked licenses. We want this process to continue, and all investigations to be completed and rulings made, so we have solid evidence of wrongdoing that would result in the revocation of a teaching license.

So yes, a Harm to Students Registry would be very helpful to the HTSB and the public, following the completion of an investigation and a final determination made by the department after the investigation has been completed to ensure employees have their legal protections afforded by law. **The department already has the ability to remove an individual from the classroom or school while an investigation is completed, which will serve as a safeguard towards further harm to students and we think this process should be continued. Requiring HTSB to revoke an individual's license when the individual retires or resigns in lieu of termination is unnecessary as HTSB currently has a legal mechanism in place to revoke an individual's license when the individual has retired or resigned in lieu of being terminated.**

The Hawai'i Teacher Standards Board thanks you for listening to our concerns.



TO: The Honorable Michelle Kidani, Chair
The Honorable Donna Mercado Kim, Vice Chair
Senate Committee on Education

The Honorable Henry Aquino, Chair
The Honorable Sharon Moriwaki, Vice Chair
Senate Committee on Labor and Technology

FROM: Philip Bossert, Executive Director
Hawaii Association of Independent Schools

RE: **SB 2475 - Relating to Education
In Strong Support with clarifying amendment**

DATE: Monday, February 5, 2024
3:00 p.m.; Conference Room 229

Aloha Chairs Kidani and Aquino, Vice Chairs Kim and Moriwaki and members of the Committees:

The Hawaii Association of Independent Schools (HAIS) and its subsidiary, the Hawaii Council of Private Schools (HCPS), strongly supports SB 2475. The establishment of a Harm to Students Registry in Hawaii will close a significant loophole in the hiring of school personnel that allows employees who have harmed students – in particular sexually abusing students – and released from one institution to seek employment at a new school and cause harm once again. There are multiple cases of this happening in Hawaii in past years.

Unfortunately, it is often the case that an institution, in order to avoid tarnishing its reputation with a sexual abuse incident becoming public, will simply terminate the offending person and not report it to the police. Likewise, parents are often reluctant to put their children through the additional trauma of having to testify in public about a sexual abuse incident that they have been a victim of. Repeat offenders are thus able to move undetected from one school to another and continue to harm students.

This registry, similar to ones in Texas and New Jersey, would require schools that have released an employee for harming a student to report that employee and the incident to the registry. And it will require any public, charter or private school in the state to check this registry before offering employment to a new employee. If the applicant's name is found to be on the registry, then that person should not be allowed to work in a school.

The creation of this statewide registry for all PK-12 schools will help to prevent the repeated harm that such persons cause. I urge you to support this bill and help to close this loophole. We only respectfully request one clarifying amendment to add language that would make clear that the public schools shall also not hire or engage with any individuals whose names are in the registry.

Thank you for the opportunity to provide this testimony. I would be happy to answer any questions you might have on this issue.



PUNAHOU SCHOOL

1601 Punahou Street, Honolulu, HI 96822-3336
Tel: 808.944.5700 mlatham@punahou.edu

Michael E. Latham, Ph.D.
President

To: The Honorable Michelle Kidani, Chair
The Honorable Donna Mercado Kim, Vice Chair
Senate Committee on Education

The Honorable Henry Aquino, Chair
The Honorable Sharon Moriwaki, Vice Chair
Senate Committee on Labor and Technology

From: Michael E. Latham
Governance Committee Chair, Hawaii Association of Independent Schools
President, Punahou School

Re: **SB 2475 – Relating to Education**
In Strong Support with clarifying amendment

Date: Monday, February 5, 2024
3:00pm, Conference Room 229

Aloha Chairs Kidani and Aquino, Vice Chairs Kim and Moriwaki, and Members of the Committee:

As a Board member and Chair of the Governance Committee of the Hawaii Association of Independent Schools, and as the President of Punahou School, I write in strong support of SB 2475. When parents enroll their sons and daughters at our state's public, charter, and independent schools, they are entrusting us with the safety of their children, and we must do all we can to earn that trust. This legislation will directly promote that vital work by creating a Harm to Students Registry empowering school officials to take affirmative steps to prevent perpetrators of sexual misconduct from moving from one school to another with impunity.

At the present, schools often dismiss employees for engaging in misconduct, but bad actors frequently are hired by other institutions where they may continue to prey on vulnerable students. To avoid defamation claims, schools may decline to share information with each other. In other instances, legal settlements may preclude the kind of warnings necessary to keep students safe. The Harm to Students Registry created by this bill will require schools to report the names of perpetrators to a central registry, provide schools with indemnification as they act in good faith, and require school hiring officers to consult the registry and decline to hire individuals named in it. It also ensures appropriate due process by requiring that schools conduct an investigation and creates a meaningful appeals process as well.

I firmly believe that a balanced, careful approach of this kind will help to protect our students. Perpetrators of misconduct are frequently serial actors, and this bill, like laws currently in effect



PUNAHOU SCHOOL

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Michael E. Latham, Ph.D.
President

in other states, will prevent them from further damaging young lives. I strongly encourage you to support this bill, and respectfully request one clarifying amendment to add language making clear that public schools shall also not hire or engage with any person named on the registry.

Thank you for the opportunity to testify in support of this measure.



Kamehameha Schools®

Senate Committee on Education &
Senate Committee on Labor and Technology

Time: 3:00 p.m.

Date: February 5, 2024

Where: Conference Room 229

TESTIMONY

By Dr. Wai‘ale‘ale Sarsona
Kamehameha Schools

RE: **SB 2475, Relating to Education**

E nā Luna Ho‘omaluku Kidani me Aquino, nā Hope Luna Ho‘omaluku Kim me Moriwaki, a me nā lālā o kēia mau Kōmike o ka ‘Aha Kenekoa, aloha kākou! My name is Dr. Wai‘ale‘ale Sarsona, Vice President of Hi‘ialo at Kamehameha Schools.

Kamehameha Schools **supports** SB 2475, which establishes a Harm to Students Registry for all prekindergarten through grade twelve institutions operating in the State to be administered by the Department of Education. We believe that student safety and well-being must always be at the center and this bill will help educational institutions have access to information about applicants who were found to cause harm to our keiki in their previous employment at an educational institution.

He lei pōhaku ‘ole ke keiki. A child is a lei that is never forgotten. We firmly believe that our keiki are indeed our most beautiful lei and deserve our full support and attention. We also know that we need to get this right and we are grateful for the opportunity to be involved in this process.

Founded in 1887, Kamehameha Schools is an educational organization striving to restore our people through education and advance a thriving Lāhui where all Native Hawaiians are successful, grounded in traditional values, and leading in the local and global communities. We believe that community success is individual success, Hawaiian culture-based education leads to academic success and local leadership drives global leadership. Hānai i ke keiki; ola ka lāhui.

‘A‘ohe hana nui ke alu ‘ia. No task is too great when we work together.

SB-2475

Submitted on: 2/4/2024 2:59:22 PM

Testimony for EDU on 2/5/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Tamara Paltin	Individual	Support	Written Testimony Only

Comments:

I support SB2475, for the safety of our students.

Mahalo,

Tamara Paltin

February 5, 2024

The Honorable Michelle N. Kidani, Chair
The Honorable Donna Mercado Kim, Vice Chair
Senate Committee on Education

The Honorable Henry J.C. Aquino, Chair
The Honorable Sharon Y. Moriwaki, Vice Chair
Senate Committee on Labor and Technology

Re: **SB 2475 – Relating to Education
In Strong Support with clarifying amendment**

Date: Monday, February 5, 2024
3:00pm, Conference Room 229

Aloha Chair Kidani, Vice Chair Mercado Kim, Chair Aquino, Vice Chair Moriwaki and Members of the Committees on Education, and Labor and Technology:

I am writing in strong support of SB 2475 – Relating to Education.

While I have served on the governing boards of several schools, including Punahou School and KCAA Preschools of Hawaii currently and The University of Hawaii System and Pomona College in the past, I am supporting this legislation in my individual capacity.

During my experience with schools, I have learned much about the problem of sexual predators and have thought a great deal about how to stop them. Over the years and across the nation, we have seen regular instances of sexual predators preying on children in schools, religious institutions, youth organizations and athletic teams.

While we all want to stop these heinous acts, the current law does not adequately protect our children in one key respect. In some cases, predators are caught and there is sufficient evidence for criminal prosecution. In other cases, however, the evidence may not meet the criminal standard of “beyond a reasonable doubt” even though the allegations are more likely true than not. Alternatively, some organizations fear reputational damage and choose to secretly settle the allegations under confidentiality agreements. (I should mention that Punahou has not taken this approach, and decided instead to be transparent and proactive about this issue, believing that taking away the secrecy and implied shame is the best way to prevent it.)

PAGE TWO

The Honorable Michelle N. Kidani, Chair Committee on Education

The Honorable Donna Mercado Kim, Vice Chair Committee on Education

The Honorable Henry J.C. Aquino, Chair Committee on Labor and Technology

The Honorable Sharon Y. Moriwaki, Vice Chair Committee on Labor and Technology

In the above cases where the allegations do not result in criminal prosecution, the end result is that the alleged offender is terminated by the employer but is not stopped from seeking employment at other organizations serving youth. In addition, the risk of being sued for defamation often deters that employer from warning other organizations about the alleged offender. Finally, the research on sexual predators suggests that a substantial majority of abuse is committed by serial offenders. Sadly, if not stopped, serial offenders will continue to hurt children at successive organizations.

This bill would provide a way for schools that have duly investigated an allegation of sexual abuse and concluded that termination of an individual is justified (including after considering any appeals from that individual), to provide notice to other potential employers through the registry. The bill would also prohibit other private organizations from hiring that individual. I strongly encourage you to support this bill, and respectfully request one clarifying amendment to add language making clear that public schools shall also not hire or engage with any person named on the registry.

By preventing the rehiring of such individuals and depriving them of easy opportunities to commit more abuse, we can keep more children safe.

Very truly yours,



Mark Fukunaga

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