

JAN 19 2024

A BILL FOR AN ACT

RELATING TO EDUCATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. The legislature finds that Hawaii's
3 prekindergarten through grade twelve schools have increasingly
4 served as safe havens for individuals who aim to exploit their
5 positions at schools to carry out acts that harm children,
6 violating the inherent trust in those positions. Recent
7 investigations and reports indicate that offenses including but
8 not limited to sexual abuse, physical assault, and other forms
9 of harassment have been committed against students on various
10 public and private prekindergarten through grade twelve campuses
11 throughout the State. The school personnel or volunteer
12 involved in these offenses often seeks to continue harming
13 children by taking advantage of the inability of educational
14 institutions to effectively share information with each other
15 that may prevent future employment in similar educational
16 settings.



1 The legislature further finds that based on real or
2 perceived legal restrictions, educational institutions fail to
3 provide vital information to one another regarding individuals
4 who have committed various forms of harassment against students,
5 creating a revolving door for repeat offenders and perpetrators
6 at prekindergarten through grade twelve schools.

7 The legislature recognizes that it is essential to prevent
8 the presence of these individuals on any prekindergarten through
9 grade twelve campus and from serving in any capacity that
10 requires interaction with or close proximity to students.
11 Therefore, preventative measures are required to preserve the
12 safety of both public and private prekindergarten through grade
13 twelve campuses and bolster protections for students from harm.

14 Therefore, the purpose of this Act is to:

15 (1) Establish a registry for all prekindergarten through
16 grade twelve educational institutions within the State
17 to report instances of acts that demonstrate harm to
18 students by school personnel or volunteers;

19 (2) Establish qualified immunity for employers who provide
20 good faith information or opinion on a current or
21 former employee's job performance; and



1 (3) Require the Hawaii teacher standards board to revoke
2 the licenses of certain individuals who have resigned
3 or retired during a pending investigation into
4 allegations of sexual assault or sexual harassment.

5 SECTION 2. Section 302A-1002, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "~~§~~302A-1002~~§~~ **Reporting of crime-related incidents~~(-)~~;**
8 **harm to students registry; appeals.** (a) There is established a
9 harm to students registry, which shall be made accessible to any
10 institution within the State. Pursuant to chapter 350, the
11 department shall compile a registry of individuals found to have
12 inflicted harm to a student in the State. The registry shall
13 contain:

- 14 (1) The full and legal name of the individual;
15 (2) The name of the reporting institution;
16 (3) Any significant dates including but not limited to the
17 date of the incident and the date of the institution's
18 final finding as a result of its investigation
19 pursuant to subsection (b); and
20 (4) Any other information deemed necessary by the
21 department.



1 Institutions shall share information relating to any ongoing or
2 concluded investigation of infliction of harm to a student when
3 requested by another institution.

4 (b) An institution shall register with the department via
5 the registry any final finding resulting from its investigation
6 that an employee of the institution engaged in acts or omissions
7 that resulted in the infliction of harm to a student,
8 notwithstanding whether the employee was terminated, retired,
9 resigned, or banned from the school, pending completion of the
10 investigation. Notwithstanding the status of employment of the
11 employee or future involvement with the school, each institution
12 shall complete the investigation.

13 (c) Any person whose name appears on the registry may
14 appeal to the office of the superintendent to remove their name
15 from the registry. Upon submission of the appeal, the
16 superintendent shall convene a temporary commission to determine
17 the deletion from the registry. The temporary commission shall
18 comprise of the following members:

- 19 (1) The superintendent or their designee;
20 (2) The executive director of the state public charter
21 school commission or their designee; and



1 (3) The executive director of the Hawaii Association of
2 Independent Schools or their designee.

3 The commission shall serve as the final arbitrator of
4 appeals authorized by this section.

5 (d) The board shall adopt rules pursuant to chapter 91 to:

6 (1) Require a report to appropriate authorities from a
7 teacher, official, or other employee of the department
8 who knows or has reason to believe that an act has
9 been committed or will be committed, which:

10 (A) Occurred or will occur on school property during
11 school hours or during activities supervised by
12 the school; and

13 (B) Involves crimes relating to arson, assault,
14 burglary, disorderly conduct, dangerous weapons,
15 dangerous drugs, harmful drugs, extortion,
16 firearms, gambling, harassment, intoxicating
17 drugs, marijuana or marijuana concentrate,
18 murder, attempted murder, sexual offenses,
19 rendering a false alarm, criminal property
20 damage, robbery, terroristic threatening, theft,
21 or trespass;



1 (2) Establish procedures for disposing of any incident
2 reported; [~~and~~]

3 (3) Impose, in addition to any other powers or authority
4 the department may have to discipline school
5 officials, appropriate disciplinary action for failure
6 to report these incidents, including probation,
7 suspension, demotion, and discharge of school
8 officials[~~+~~]; and

9 (4) Compilation and maintenance of the registry
10 established pursuant to subsection (a).

11 (e) As used in this section:

12 "Employee" means all employees, contractors, and volunteers
13 of any institution.

14 "Final finding" means the conclusion of an institution's
15 investigation that results in a determination by the
16 institution.

17 "Inflicted harm to a student" or "infliction of harm to a
18 student" means a student has been subjected to sexual contact or
19 conduct, including but not limited to sexual assault as defined
20 in the Penal Code, molestation, sexual fondling, incest, or
21 prostitution; obscene or pornographic photographing, filming, or



1 depiction; or other similar forms of sexual exploitation,
2 including but not limited to acts that constitute an offense
3 pursuant to section 712-1202(1)(b).

4 "Institution" means any educational institution that serves
5 any combination of students from grades prekindergarten through
6 grade twelve within the State.

7 "Investigation" means any fact finding by an institution
8 related to an individual's potential infliction of harm to a
9 student; provided that the investigation involves, at a minimum:

10 (1) An investigator who is not a party or witness in the
11 investigation and does not report to a complaining
12 party or accused party;

13 (2) An opportunity for the complaining party and accused
14 party to provide information to the investigator
15 regarding the alleged misconduct or other
16 circumstances that caused initiation of the
17 investigation;

18 (3) Representation for an accused bargaining unit employee
19 as required by law and the applicable collective
20 bargaining agreement;



- 1 (4) Consideration of the information provided by all
2 parties and witnesses who participated in the
3 investigation; and
- 4 (5) Reasoned findings based on the information gathered
5 that support the conclusion, to at least a
6 preponderance of the evidence, that the individual
7 inflicted harm to a student.

8 "Registry" means the harm to students registry established
9 in this section containing a list of individuals compiled by the
10 department that have been found through an institution's
11 investigation to have demonstrated acts resulting in the
12 infliction of harm on a student."

13 SECTION 3. Section 302A-1003, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"~~§~~302A-1003~~§~~ Indemnity upon reporting.** (a) The
16 State shall indemnify and hold harmless anyone participating in
17 good faith in making a report pursuant to section 302A-1002 from
18 any civil or criminal liability that might otherwise be incurred
19 or imposed by, or as a result of, the making of the report.

20 (b) An employer that provides to a prospective employer
21 information or opinion about a current or former employee's job



1 performance is presumed to be acting in good faith and shall
2 have qualified immunity from civil or criminal liability for
3 disclosing the information and for the consequences of the
4 disclosure.

5 (c) The good faith presumption under subsection (b) shall
6 be rebuttable upon a showing by a preponderance of the evidence
7 that the information or opinion disclosed was:

8 (1) Knowingly false; or

9 (2) Knowingly misleading.

10 (d) Nothing in this section shall affect the rights,
11 obligations, remedies, liabilities, or standards of proof under
12 chapters 89, 92F, 368, and 378."

13 PART II

14 SECTION 4. Chapter 302C, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 **"§302C- Investigation of misconduct; reporting to**
18 **department of education; harm to students registry. (a)**

19 Pursuant to section 302A-1002, a private school shall report to
20 the department of education via the registry any final finding
21 resulting from a private school's investigation that an employee



1 or volunteer of the institution engaged in acts or omissions
2 that resulted in the infliction of harm on a student,
3 notwithstanding whether the employee or volunteer was
4 terminated, retired, resigned, or banned from the school,
5 pending completion of the investigation. Notwithstanding the
6 employment status or future involvement of the employee or
7 volunteer with the school, each private school shall complete
8 the investigation.

9 (b) All private schools shall inquire with the department
10 of education to confirm whether a candidate for employment or
11 prospective volunteer at their institution is listed on the
12 registry. Each private school shall consult the registry before
13 authorizing a candidate's or volunteer's assistance at any
14 school event at the school that requires the candidate's or
15 volunteer's interaction with, or close proximity to, a student.
16 If the candidate's or volunteer's name is listed in the
17 registry, the private school shall cease to consider the
18 candidate for employment and shall not authorize the volunteer's
19 assistance in a role that involves interaction with, or close
20 proximity to, a student.



1 (c) All private schools shall share information relating
2 to any ongoing or concluded investigation of infliction of harm
3 to a student when requested by another institution.

4 (d) For purposes of this section, "registry" means the
5 harm to students registry established pursuant to section 302A-
6 1002."

7 SECTION 5. Chapter 302D, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 **"§302D- Investigation of misconduct; reporting to**
11 **department; harm to students registry.** (a) Pursuant to section
12 302A-1002, the executive director shall report to the department
13 via the registry any final finding resulting from a charter
14 school's investigation that an employee or volunteer of the
15 institution engaged in acts or omissions that resulted in the
16 infliction of harm on a student, notwithstanding whether the
17 employee or volunteer was terminated, retired, resigned, or
18 banned from the school, pending completion of the investigation.
19 Notwithstanding the employment status or future involvement of
20 the individual with the school, each charter school shall
21 complete the investigation.



1 (b) All charter schools shall inquire with the department
2 to confirm whether a candidate for employment or prospective
3 volunteer at their institution is listed on the registry. Each
4 charter school shall consult the registry before authorizing a
5 candidate's or volunteer's assistance at any event at the school
6 that requires the candidate's or volunteer's interaction with,
7 or close proximity to, a student. If the candidate's or
8 volunteer's name is listed in the registry, the charter school
9 shall cease to consider the candidate for employment and shall
10 not authorize the volunteer's assistance in a role that involves
11 interaction with, or close proximity to, a student.

12 (c) All charter schools shall share information relating
13 to any ongoing or concluded investigation of infliction of harm
14 to a student when requested by another institution.

15 (d) For purposes of this section "registry" means the harm
16 to students registry established pursuant to section 302A-1002."

17 SECTION 6. Section 302A-602, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§302A-602 Teachers; licenses and certificates.** (a) No
20 person shall serve as a teacher in the department without first
21 having obtained a license from the Hawaii teacher standards



1 board in [~~such~~] the form as the Hawaii teacher standards board
2 determines. The department shall establish types of
3 certificates in the educational field and the requirements to
4 qualify for those certificates issued to individuals who are not
5 required to obtain a license pursuant to sections 302A-801 to
6 302A-808.

7 (b) Beginning with the 2002-2003 school year, no person
8 paid under the salary schedule contained in the unit 5
9 collective bargaining agreement shall serve as a teacher in the
10 department without first having obtained a license pursuant to
11 sections 302A-801 to 302A-808 from the Hawaii teacher standards
12 board in [~~such~~] the form as the Hawaii teacher standards board
13 determines.

14 (c) Beginning with the 2002-2003 school year, the
15 department may employ unlicensed individuals as emergency hires
16 pursuant to sections 302A-801 to 302A-808. The Hawaii
17 Association of Independent Schools may, on a voluntary basis,
18 collaborate with the department of education by reporting to the
19 department the names of all individuals who were previously
20 employed at a private school in the State and meet the criteria



1 for placement on the list of individuals disqualified from
2 employment with the department pursuant to this Act.

3 (d) Any person paid under the salary schedule contained in
4 the unit (5) collective bargaining agreement shall have the
5 person's license revoked by the Hawaii teacher standards board
6 if the person resigns or retires during the pendency of any
7 investigation into allegations of sexual assault or sexual
8 harassment, including criminal and workplace investigations, and
9 the person's name shall be included on the harm to students
10 registry established pursuant to section 302A-1002."

11 PART III

12 SECTION 7. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 8. This Act shall take effect upon its approval.

15

INTRODUCED BY Michelle R. Tidani



S.B. NO. 2475

Report Title:

DOE; State Public Charter School Commission; HTSB; Private Schools; Harm to Students Registry; Employees; License Revocation; Appeal; Qualified Immunity

Description:

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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

