

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

ON THE FOLLOWING MEASURE:

H.B. NO. 2043, H.D. 1, RELATING TO EDUCATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Thursday, February 8, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

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

Chair Tarnas and Members of the Committee:

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

The bill establishes a "Harm to Students Registry" (Registry) for all preschools and K-12 educational institutions within the State that contains information on school employees, contractors, or volunteers for whom, as a result of an investigation, a final finding has been issued that the individual has inflicted harm on a student. The bill defines "inflicted harm on a student;" allows for an appeal process to remove an individual's name from the Registry; and appropriates funds to the Department of Education (DOE) for the establishment of a position within the DOE to manage the Registry.

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 bill also requires the DOE to maintain the Registry, with the intent to make the Registry accessible to other institutions in the State. Page 5, lines 8-11. 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 proceedings surrounding the Registry, we strongly recommend that the Registry and related employment documents obtained from non-government educational institutions be exempted from disclosure under the Uniform Information Practices Act.

The Department also suggests the following revisions:

- As noted above, new section 302A-__(d), HRS, on page 5, lines 8-11, requires the sharing of information relating to investigations. 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 (d): "The information shared shall not include personally identifiable information of any student."
- There is no requirement in the bill that the DOE, private schools, charter schools, or public prekindergarten programs or 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. All of the statutes have a definition of "investigation," but to get on the Registry, the investigation needs to be conducted in accordance with the section 302A-__(c) definition. The Department suggests that the requirement that an educational institution conduct an investigation as defined by statute (i.e., section 302A-__(c)) whether an employee inflicted harm on a student be

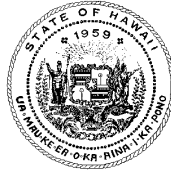
added to the amendments to chapters 302A, 302C, 302D, and 302L, HRS.

- 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.
- In new section 302A-__(c)(3), revise page 4, line 18, to state: "belong to a bargaining unit and is not entitled to" (New material is underscored.)
- In new section 302A-__(f), revise page 5, line 20, to replace "three members" with "four members."
- Section 5 of the bill (page 12, line 11, through page 15, line 5) adds provisions regarding the Registry to chapter 302L, HRS, regarding the Early Learning System. However, the provisions only relate to *public* prekindergarten programs or schools, and the early learning system under chapter 302L encompasses "[a]ll existing early learning programs and services, whether publicly- or privately-run[.]" See section 302L-2(2)(A), HRS. If it is the Legislature's intent to make the bill applicable to public *and private* prekindergarten programs or schools, the Department recommends removing the word "public" before all references to "prekindergarten program or school" in section 5.

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

JOSH GREEN, M. D.
GOVERNOR
KE KIA'ĀINA

SYLVIA LUKE
LT. GOVERNOR
KA HOPE KIA'ĀINA



BRENNA H. HASHIMOTO
DIRECTOR
KA LUNA HO'OKELE

RYAN YAMANE
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
KA 'OIHANA HO'OMŌHALA LIMAHANA
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

Statement of
BRENNA H. HASHIMOTO
Director, Department of Human Resources Development

Before the
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thursday, February 8, 2024
2:00PM
State Capitol, Conference Room 325

In consideration of
HB2043, HD1, RELATING TO EDUCATION

Chair Tarnas, Vice Chair Takayama, and the members of the committee.

The Department of Human Resources Development (DHRD) is in **support** of HB 2043, HD1.

The purpose of this bill is to establish a harm to student registry for all preschools and K- 12 educational institutions within the State that contains information of school employees, contractor, or volunteers for whom, as result of an investigation, a final finding has been issued that the individual has inflicted harm on a student. Defines "inflicted harm on a student". Allows for an appeal process to remove an individual's name from the registry.

DHRD appreciates being included as an employer that can access the registry. The information provided by the registry will be essential during a suitability investigation into an individual who is being offered a civil service position that may work directly with children.

Thank you for the opportunity to provide testimony on this measure.



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

February 7, 2024

TO: Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

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

SUBJECT: Measure: H.B. No. 2043 H.D. 1 – RELATING TO EDUCATION
Hearing Date: Thursday, February 8, 2024
Time: 2:00 pm
Location: Conference Room 325

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 H.B. No. 2043, H.D. 1.

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 departments.

We would like to thank the Legislature for the inclusion of the Director of EOEL be included in the temporary panel and defer to the Department of Education on provisions related to implementation.

Mahalo for the opportunity to testify in support of this measure.

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER



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

Date: 02/08/2024

Time: 02:00 PM

Location: 325 VIA VIDEOCONFERENCE

Committee: House Judiciary & Hawaiian
Affairs

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: HB 2043, HD1 RELATING TO EDUCATION.

Purpose of Bill: Establishes a harm to students registry for all preschools and K-12 educational institutions within the State that contains information on school employees, contractors, or volunteers for whom, as result of an investigation, a final finding has been issued that the individual has inflicted harm on a student. Defines "inflicted harm on a student". Allows for an appeal process to remove an individual's name from the registry. Appropriates funds. Effective 7/1/3000. (HD1)

Department's Position:

Thank you for the opportunity to provide testimony on HB 2043, HD1 "Relating to Education," as amended. 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 appreciates the placement of a 1.0 FTE position to implement this measure's goals effectively.

Thank you for the opportunity to testify on HB 2043, HD1.



TO: The Honorable David Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

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

RE: **HB 2043 HD1 - Relating to Education
In Strong Support with clarifying amendment**

DATE: Thursday, February 8, 2024
2:00 p.m.; Conference Room 325

Aloha Chair Tarnas, Vice Chair Takayama and Members of the Committee:

The Hawaii Association of Independent Schools (HAIS) and its subsidiary, the Hawaii Council of Private Schools (HCPS), strongly supports HB 2043 HD1. 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 David Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

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

Re: **HB 2043 HD1 – Relating to Education
In Strong Support with clarifying amendment**

Date: Thursday, February 8, 2024
2:00pm, Conference Room 325

Aloha Chair Tarnas, Vice Chair Takayama, 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 HB 2043 HD1. 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 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®

House Committee of Judiciary & Hawaiian Affairs

Time: 2:00 p.m.

Date: February 8, 2024

Where: Conference Room 325

TESTIMONY

By Dr. Wai‘ale‘ale Sarsona
Kamehameha Schools

RE: HB 2043 HD1, Relating to Education

E Luna Ho‘omalua Tarnas, Hope Luna Ho‘omalua Takayama, a me nā lālā o kēia Kōmike o ka Hale o nā Lunamaka‘āinana, aloha kākou! My name is Dr. Wai‘ale‘ale Sarsona, Vice President of Hi‘ialo at Kamehameha Schools.

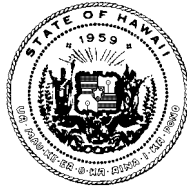
Kamehameha Schools **supports** HB 2043 HD1, which establishes a Harm to Students Registry for all prekindergarten through grade twelve institutions operating in the State to be administered by the Department of Education. We believe that student safety and well-being must always be at the center and 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 pōina ‘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.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

February 7, 2024

To: The Honorable Representative David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Cathy Betts, Director

SUBJECT: [HB 2043 HD1](#) – RELATING TO EDUCATION.

Hearing: February 8, 2024, 2:00 p.m.
Conference Room 325, State Capitol & Video Conference

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this measure and reiterates its request for an amendment to have access to the harm to student registry. Specifically, we request an amendment of Section 2, paragraph (e) (page 5, lines 12-14), to read as follows:

"(e) The harm to students registry shall be made accessible to any institution within the State, [and] the department of human resources development, and the department of human services."

PURPOSE: This bill establishes a harm to students registry for all preschools and K-12 educational institutions within the State that contains information on school employees, contractors, or volunteers for whom, as result of an investigation, a final finding has been issued that the individual has inflicted harm on a student. Defines "inflicted harm on a student". Allows for an appeal process to remove an individual's name from the registry. Appropriates funds. Effective 7/1/3000. (HD1)

The Committee on Human Services amended the measure by:

- (1) Clarifying that the Department of Education is not required to provide representation for an accused party that does not belong to a bargaining unit and who is not entitled to representation pursuant to a collective bargaining agreement;
- (2) Providing the Department of Human Resources Development with access to the harm to students registry;
- (3) Adding the Director of the Executive Office on Early Learning, or the Director's designee, to the temporary panel to determine removal of a person's name from the harm to students registry;
- (4) Inserting language that includes all public prekindergarten programs and schools under the Executive Office on Early Learning under the requirements of this measure;
- (5) Inserting language appropriating an unspecified amount of funds to establish one full-time equivalent (1.0 FTE) permanent position within the Department of Education to manage the harm to students registry and carry out any other requirements of this measure;
- (6) Changing the effective date to July 1, 3000; and
- (7) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

DHS comments that the proposed definition of "Inflicted harm on a student" does not refer to section 350-1, Hawaii Revised Statutes, which identifies a broader range of child abuse and neglect.

DHS requests amendments to allow DHS access to the harm to the student registry, final findings, and the investigation. DHS Child Welfare Services Branch (CWS) and Adult Protection & Community Services Branch (APS) investigate reports of abuse and neglect of minors and vulnerable adults and review applications to become resource caregivers. The Child Care Licensing Program (CCL) conducts background and suitability reviews for individuals interested in becoming child care providers and investigates violations of child care licensing rules. CWS also provides information to the Family Court regarding the background of petitioners seeking the adoption of a minor. Additionally, if injuries occur in a private regulated child care setting, CWS and CCL both conduct investigations of the reported injury.

February 7, 2024

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To enhance DHS risk and suitability assessments included in these investigations, DHS requests an amendment authorizing DHS access to the harm to student registry, the final findings, and the investigation.

DHS will need time to work with DOE to develop and implement a data-sharing agreement.

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