

Date of Hearing: 02/05/2009

Committee: House Higher Education;
House Education

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent of Education

Title: HB 624, Relating to Public Accommodations

Purpose: Specifies state-operated schools, libraries, community colleges, and universities as examples of facilities that are places of public accommodation subject to anti-discriminatory prohibitions.

Department's Position:

The Department of Education ("Department") opposes HB 624, Relating to Public Accommodations, which amends Hawaii Revised Statutes section 489-2 ("HRS 489-2"), to include "state-operated schools" as an example of facilities that are places of public accommodation subject to anti-discriminatory prohibitions. The Department opposes this amendment in order to preserve the original intent of HRS 489. Further, the amendment is unnecessary given that HRS 489 is already applicable to the Department in regards to its public accommodations, and the Department follows other federal and state laws prohibiting discrimination in other instances.

HRS 489 was promulgated in 1986 to ensure that Hawaii joined the “other 38 states including the District of Columbia in enacting laws that would be keeping with Title II of the Civil Rights Act.” Hse. Stand. Comm. Rep. No. 233-86, in 1986 House Journal, at 1086. The general example of “state-operated schools” was arguably not originally provided as an example of facilities considered places of public accommodation in HRS 489 because prohibitions against discrimination in schools in the Civil Rights Act of 1964 were more specifically addressed under Title IV (prohibiting discrimination on the basis of race, color, sex, religion, national origin, by public elementary and secondary schools and public institutions of higher learning); and Title VI (prohibiting discrimination by recipients of federal funding on the basis of race and national origin).

The Department opposes HB 624 because including “state-operated schools” without detailing the specific aspect(s) of “state-operated schools,” can be construed as moving HRS 489 away from the original intent of implementing legislation similar to Title II of the Civil Rights Act. Further, even if “state-operated schools” were defined, or the aspects of “state-operated schools” were explained, the statute would

be redundant, and exceed requirements of Title II of the Civil Rights Act.

The Department also opposes HB 624 because there are more appropriate laws that already address the prohibition of discrimination in Department schools. At the state level, Article X of the State Constitution provides that “[t]here shall be no discrimination in public educational institutions because of race, religion, sex or ancestry” At the federal level, the Department is subject to such laws as Title IV and Title VII of the Civil Rights Act, Title IX of the Education Amendments of 1972, the American with Disabilities Act, and the Individuals with Disabilities Education Improvement Act, as well as monitoring and enforcement by the United States Department of Education.

Furthermore, including “state-operated schools” without providing a complete explanation of the aspect(s) of state-operated schools that would be governed by HRS 489, causes the Department to be susceptible to unknown liability. The Standing Committee report provided that HRS 489 “would provide persons in Hawaii who have been discriminated against, the opportunity to seek redress in

Hawaii rather than with the Civil Rights Office in Washington D.C., or in another state.” Hse. Stand. Comm. Rep. No. 233-86, in 1986 House Journal, at 1087. The amendment will cause an undue burden on the Department in terms of determining the allocation of resources to address potential complaints that would fall under HRS 489. Also, without detail the Department will not be able to determine its obligations, and the vagueness of this amendment would cause frivolous suits to be filed against the State.

The Department respectfully requests the Committee on Higher Education and Committee on Education to oppose HB 624.



**STATE OF HAWAII
BOARD OF EDUCATION**

P. O. BOX 2360
HONOLULU, HAWAII 96804

COMMITTEE ON HIGHER EDUCATION
COMMITTEE ON EDUCATION

Joint Hearing: February 05, 2009
2:00 p.m. in Conference Room 309

Testimony in Strong Support of HB 624

Chairs Chang & Tokumi, Vice-Chairs Nakashima & Berg and Members of the
Committees on Higher Education and Education:

Thank you for giving me the opportunity to provide testimony in strong support of HB
624, relating to public accommodations.

This bill comes at an important time in Hawaii's civil rights history. At a time when our
nation is celebrating the fruits of our anti-discrimination laws, Hawaii's Department of
Education (Department) is urging the Board of Education (Board) to completely repeal
anti-discrimination laws protecting students. But for one single vote, Hawaii
Administrative Rule Chapter 41, prohibiting employees from discriminating against
students, would have been approved for repeal by the Board.

The Department responded to this failed attempt to repeal *all* protections by requesting
the Board to simply revoke protections for students on the bases of "ancestry", "religion"
and "age". A majority of the Board's Committee on Special Programs voted to accept
the Department's recommendation and passed it on to the full board. The Board
remanded this issue back to Committee pending the Attorney General's (AG's) response
to Board members' questions.

At this writing, the AG has not provided a response to questions regarding these
protected categories. Nevertheless, the Department has already indicated that it consulted
the AG's office before deciding to recommend a complete repeal of the Student Civil
Rights Administrative Rule.

Understanding the mission of the AG's office, to defend the State against lawsuits - one
preemptive defense is to take away all legal protections in the first place. Instead of an
Administrative Rule, which has the force and effect of law, the Department is hoping that
a toothless Board Policy, with no legal authority, would provide our students with the
same protections.

Unlike the legislature, the Board of Education and the Department of Education, relies solely on the Attorney General's office for advice and counsel on all legal matters. This puts the AG in a conveniently self-serving position. It is the classic case of the fox guarding the hen house. Most of the current board members do not have the legal background to challenge the AG's assertions or recognize when his opinions lack balanced legal analyses. Nor do most of the Board members understand the distinction between the AG's responsibility to his administration, versus our responsibility to our students.

If the AG says its okay to repeal all civil rights protections, then the majority of the Board follows. Could you imagine if the legislature had to rely on the AG for all of its legal analyses?

Given our statutorily mandated dependence on the AG's office, the Board of Education cannot be relied upon to safeguard the civil rights of its students at this time. We need to ensure that our public schools students will have the same protections against discrimination as their private school counter parts. The current public accommodations statute allows the State of Hawaii Civil Rights Commission jurisdiction to protect private school students, however, the Commission cannot find the authority to provide those same protections to our public school students.

It is my understanding that one of the hesitations the Civil Rights Commission has regarding the enforcement of non-discrimination laws in our public schools is that they cannot levy punitive fines against the Department. However, the Department of Labor appears to have the authority to levy fines against the Department for workplace safety violations.

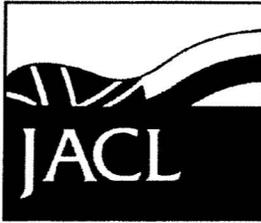
I urge your Committees to provide clarification to the Commission that just because public schools and libraries are not a business, this does not mean they do not accommodate the public. Currently under HRS 489-2, "a park" is considered a "place of public accommodation" even though it is not operated as a business. "Institutions for the infirm" are also considered a "place of public accommodation", even though a state psychiatric hospital may not be run as a business nor is it completely open to the public.

When students are forced by law to attend our public schools, we have an added burden to ensure their civil rights are protected while they are in our care. To this end, I testify in strong support of HB 624.

Yours truly,

A handwritten signature in black ink, appearing to read "Kim Coco Iwamoto". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Kim Coco Iwamoto, Esq.
State of Hawaii Board of Education Member



JAPANESE AMERICAN CITIZENS LEAGUE
HONOLULU CHAPTER
P.O. BOX 1291, HONOLULU, HAWAII 96807
PHONE: 523-8464

Working For A Greater America

**HB 624: Relating to Public Accommodations
Testimony in Support**

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Clayton Ikei
William Kaneko
Colbert Matsumoto
Alan Murakami

Hearing: Thursday, February 5, 2009 at 2:00 p.m. in Conf. Rm 309

To: The Honorable Jerry L. Ching, Chair, Higher Education
The Honorable Roy M. Takumi, Chair, Education
Members of the Joint Committee on Higher Education and Education

The JACL Hawai'i, Honolulu Chapter strongly supports HB 624, which includes state-operated schools, libraries, community colleges, and universities as places of public accommodation subject to anti-discriminatory prohibitions.

Founded in 1929, the Japanese American Citizens League is the nation's oldest and largest Asian Pacific American Civil Rights organization made up of over 20,000 members. Locally, we are a strong civil rights organization committed to the protection of civil and human rights of all. The Honolulu chapter is a staunch supporter of the human and civil rights of all people.

The Department of Education's ("DOE") Civil Rights Policy, Chapter 41, Hawai'i Administrative Rules, limits the classes protected from discrimination to race, color, religion, sex, age, national origin, ancestry or disability. However, passage of HB 624 will ensure that students will also be protected from discriminatory practices on the basis of sexual orientation and gender identity or expression.

According to a report by the DOE's Safe Schools Community Advisory Committee, more than half of middle school students and 44% of high-school students within the public school system reported being bullying by their peers at least once a year. Nearly 7% of middle school and high school students were afraid to go to school at least once a month because they felt unsafe at school or on their way to class while 36% of middle school and 28% of high school students reported having their belonging stolen or deliberately damaged at school at least once a year. This measure will ensure that Hawai'i public school students will have some protection against discrimination based upon their sexual orientation or gender identity or expression.

Our history of advocacy on behalf of all people and ongoing mission to preserve the rights of all who fall victim to social injustice, compels us to work to ensure all in our State, especially the youth of Hawai'i, are afforded the protections that which they are entitled to. The JACL Hawai'i urges you to pass HB 624 for the protection of Hawai'i's youth. Thank you for this opportunity to testify.

Sincerely,

Shawn L.M. Benton
President, JACL Hawai'i, Honolulu Chapter
Japanese American Citizens League

To: Rep. Jerry L. Chang, Chair, Higher Education Committee
Rep. Mark M. Nakashima, Vice Chair, Higher Education Committee
Members, House Committee on Higher Education
Rep. Roy M. Takumi, Chair, Education Committee
Rep. Lyla B. Berg, Vice Chair, Education Committee
Members, House Committee on Education

Fr: Rae N. Watanabe, Asst. Prof. of English, CC
PO Box 160916
Honolulu, Hawai'i 96816

Date: February 4, 2009

Hrg: February 5, 2009 at 2:00 p.m.

Re: **Strong Support for HB 624, Relating to Public Accommodations**

I teach English at Leeward Community College. Students who learn are students who feel safe. A student who is discriminated against for any reason whatsoever is a student whose time and/or success in school is limited.

As a state and a nation, we cannot afford to lose good minds with the promise to be great minds just because they may be a bit different from the so-called norm.

Please pass it out of committee.