DAVID Y. IGE
GOVERNOR

KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAI`I
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAI`I 96804

Date: 02/02/2015

Committee: House Education

Department: Education

Person Testifying: "Kathryn S. Matayoshi, Superintendent of Education"

Title of Bill: HB 0012 RELATING TO THE DEPARTMENT OF EDUCATION.

Purpose of Bill: Bars prohibition of student or class participation in a fundraiser or charitable activity in conjunction with a nonprofit organization as part of a school project when participation benefits student learning.

Department's Position:
The Department of Education strongly supports HB12 because we believe it is critically important for students and schools to partner with non-profit community organizations to foster civic engagement and service learning. Moreover, we believe that school or class participation in fundraising or charitable activities directly promote character education pursuant to Board of Education Policy 2109 (Character Education) which provides in relevant part:

> *The vitality and viability of our democratic way of life are dependent on all students developing into responsible and caring citizens who respect themselves, others, and the world in which they live. Character education is the process through which students are provided opportunities to learn and demonstrate democratic principles and core ethical values such as civic responsibility, compassion, honesty, integrity, and self-discipline. . . .*
>
> *Character education must be incorporated into the curriculum at each grade level in the public schools. For character education to flourish, it must be infused into the culture of each classroom as well as the entire school. Students need continuing, real-life opportunities to learn to act morally and ethically. The ultimate objective is the development of students who make virtues integral parts of their personality.*

This bill, which provides the authority under HRS Chapter 302A relating to Education, will allow our students to engage as described above. We therefore ask for your favorable consideration of this measure.

HAWAII
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ETHICS
COMMISSION
State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

February 2, 2015

The Honorable Roy M. Takumi, Chair
The Honorable Takashi Ohno, Vice Chair
Honorable Members
House Committee on Education
Hawaii State Capitol, Room 332
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on HB No. 12, Relating to the Department of Education**

Hearing: Monday, February 2, 2015, 2:00 p.m.
State Capitol, Conference Room 309

Testifying: Susan D. Yoza, Associate Director
Hawaii State Ethics Commission

Thank you for the opportunity to testify on H.B. No. 12, Relating to the Department of Education. The State Ethics Commission ("Commission") offers the following comments about this bill.

I. State Ethics Commission's Review of Charitable Fundraising Activities in Department of Education Schools

In 2014, the Commission undertook a review of charitable fundraising activities in Department of Education (""DOE") schools. As part of this review, the Commission's staff obtained information from DOE administrators and faculty about the various types of charitable fundraisers occurring in DOE schools. The Commission's staff also obtained information from a number of private charities about their partnership activities with the DOE.

At its meeting on December 17, 2014, the Commission considered the information obtained about student fundraising in DOE schools to determine whether these activities are consistent with the State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84, which prohibits the use of state resources for "private business purposes."1 The Commission acknowledged the DOE's belief that fundraising activities to support private

1 HRS section 84-13(3) prohibits the use of state time, equipment, and facilities for private business purposes. The State Ethics Code defines a "business" to include for-profit and not-for-profit organizations.

charities serve a legitimate educational purpose, consistent with the DOE's mission to educate students. The Commission concluded it was reasonable to recognize that fundraising for a private charity may serve a legitimate educational purpose rather than a private business purpose. The Commission therefore determined that the State Ethics Code does not prohibit a school's use of students and state resources for charitable fundraising activities where the DOE articulates a reasonable, legitimate educational purpose associated with the fundraising activity. The Commission also determined that the State Ethics Code prohibits favoritism or preferential treatment by school employees when selecting charitable fundraising activities and that the State Ethics Code prohibits the DOE from coercing or pressuring students or their families to participate in fundraising activities.2

Attached to this testimony is a letter, dated January 30, 2015, from the Commission's Executive Director to the Superintendent of Education advising the DOE of the Commission's determination concerning the application of the ethics laws to student fundraising activities in DOE schools.

II. H.B. No. 12, Relating to the Department of Education

H.B. No. 12 provides that nothing shall prohibit school or class participation in fundraising or charitable activities as part of a school project when the activities benefit student learning pursuant to criteria established by the DOE in accordance with HRS chapter 91 (relating to administrative rulemaking). The bill's requirement that charitable activities benefit student learning appears to be consistent with the Commission's position that there must be a legitimate educational purpose associated with student fundraising activities in DOE schools. The Commission agrees that the benefit to student learning, i.e. the educational purpose, associated with charitable fundraising activities should be determined pursuant to criteria established by the DOE.

As previously stated, the State Ethics Code prohibits an employee from giving a particular charity preferential treatment. The Commission therefore recommends that language be added to H.B. No. 12 stating that the DOE shall adopt reasonable objective criteria for the selection of charities to guide the selection process. Such criteria will reduce the likelihood of favoritism or other misuse of an employee's official position in the selection of charitable fundraising activities.

The Commission also recommends that language be added to H.B. No. 12 stating that

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2 HRS section 84-13, prohibits state employees from using their official positions to give themselves or anyone else "unwarranted privileges, exemptions, advantages, contracts, or treatment."

the DOE criteria for charitable fundraising activities shall strictly prohibit coercing or pressuring students or their families to participate in fundraising activities. Even seemingly innocent measures associated with a fundraising campaign may result in coercion or pressure to participate. For example, setting participation or donation goals for classes may result in students feeling compelled to participate or to meet fundraising goals so as not to disappoint their teachers or classmates. The Commission believes the DOE must adopt measures to ensure that no students or families are pressured to participate in fundraising activities.

We appreciate the opportunity to testify on H.B. No. 12, Relating to the Department of Education. We would like to thank this Committee for its consideration of our testimony.

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State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

January 30, 2015

Via Email: kathryn_matayoshi@notes.k12.hi.us

Kathryn S. Matayoshi
Superintendent of Education
Department of Education
Queen Liliuokalani Bldg.
1390 Miller Street
Honolulu, Hawaii 96813

Re: Fundraising

Dear Superintendent Matayoshi:

At its meeting of December 17, 2014, the State Ethics Commission ("Commission") considered whether certain types of student fundraising activities in Department of Education ("DOE") schools are consistent with the State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84. The Commission determined that student fundraising activities, generally, are not prohibited by the State Ethics Code. As explained below, the Commission's determination was premised on certain assumptions about the process by which the fundraising activities are vetted and approved.

A. The State Ethics Code

The Fair Treatment provision of the State Ethics Code prohibits the use of state resources, which include class time, school equipment, and school facilities for "private business purposes."[1] More generally, the statute also prohibits state employees, which includes DOE administrators, principals and teachers, from using their state positions to give themselves or anyone else "unwarranted privileges, exemptions, advantages, contracts, or treatment."

> **§84-13 Fair treatment.** No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

[1] HRS section 84-3 defines "business" as including "a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit." Emphasis added.

* * *

(3) Using state time, equipment or other facilities for private business purposes.

Accordingly, state employees may not "unfairly" favor a private organization, including a non-profit organization. Similarly, state employees are prohibited from misusing their positions to pressure or coerce others to support a charity or to participate in fundraising activities.

B. Fundraising to Support DOE Schools and School-Associated Groups

The Commission understands that a DOE school may involve its students in activities to raise funds for the school or to support a student group that is associated with the school, such as the school marching band or a school sports team. The monies raised through these types of fundraising activities solely benefit the DOE school or the student group. For example, the school marching band may want to off-set some of the travel costs to participate in the Macy's Thanksgiving Day Parade or a school club may wish to raise money for equipment or supplies.

The Commission is informed that schools regularly "partner" with private for-profit organizations such as Zippy's and School Kine Cookies and that the fundraising activities may include student sales of candy, cookies, Zippy's chili, Entertainment Books, huli-huli chicken, and other similar products. Schools and the student groups generally receive a portion of the revenue generated through the sales of the products. The student sales generally also generate revenue for the private businesses. At times, a private business may offer students monetary and other prize incentives for certain levels of sales. It is the Commission's understanding that schools and student groups rely on these fundraising efforts to help pay for school programs or supplies.

The Commission does not construe the State Ethics Code to prohibit the use of school resources, including class time, school equipment and school facilities, for fundraising activities that support the school and the student group. Although the Commission recognizes that, generally, selling a product may benefit the private business with which the school has chosen to partner, the Commission concluded that the primary purpose of the fundraising activities is to benefit the school and the student group. In other words, the Commission considers that the activities serve a "legitimate state purpose" rather than a "private business purpose."

The Commission, however, notes that the State Ethics Code prohibits "favoritism" or preferential treatment in the school's selection of the private business "partner." For example, a principal cannot decide to raise monies for the school by selling cookies because the cookies are made by his sister's business. To avoid allegations or

appearances of "favoritism," the Commission strongly recommends that DOE implement certain reasonably objective criteria to select the private business with which the school will "partner." The Fair Treatment law also prohibits DOE from requiring or pressuring students or their families to participate in the fundraising activities.

C. Fundraising to Support a Private Charity

The Commission also understands that numerous DOE schools involve their students, sometimes during class time and using school facilities, in raising funds for private charitable organizations. Fundraising activities include asking students to donate money or items, asking students to sell products, and asking students to secure pledges to sponsor their participation in a fundraising event.

DOE provided numerous examples of these types of student fundraising to support private charities: Leukemia & Lymphoma Society's Pennies for Patients; American Heart Association's Jump Rope for Heart; BizGym Foundation's Lemonade Alley; Hawaii Food Bank food drives; Ronald McDonald House Charities of Hawaii's "Make Change Count" Coin Drive and McFun-Raiser Program; and Keiki O Ka Aina Family Learning Centers' and KHON2's Laulima Giving Program.

The Commission understands that DOE believes that fundraising activities to support private charitable organizations serve a legitimate educational purpose, consistent with DOE's education mission. DOE describes these activities as encouraging civic and community responsibility and promoting good citizenship. In addition, some fundraising projects include activities that teach students, for example, business skills, health and physical education.

However, in contrast to the student based fundraising that benefits a school or a school group, in this case, the fundraising benefits a private business, albeit a non-profit organization. As discussed above, the State Ethics Code prohibits the use of class time, school equipment, and school facilities for "private business purposes."

The Commission recognizes that DOE's mission, broadly, is to educate students. The Commission further acknowledges that DOE is responsible for determining the manner in which it advances its broad mission. Accordingly, in the Commission's opinion, it is reasonable and appropriate to recognize that fundraising for a private charity may serve a legitimate educational purpose rather than a private business purpose. Thus, the Commission believes that the State Ethics Code does not prohibit the use of state resources for a charitable fundraising activity where the DOE articulates a reasonable, legitimate educational purpose associated with the fundraising activity.

Notwithstanding the Commission's conclusion that the statute does not prohibit the school's use of students and its resources to support fundraising for private charities, the State Ethics Code prohibits an employee from giving a particular charity "unwarranted privileges, exemptions, advantages, contracts, or treatment." As suggested above, to prevent situations in which a DOE employee misuses his position in selecting the charity, the Commission strongly recommends that DOE adhere to objective criteria to guide the selection process.

The Commission further strongly recommends that DOE strictly prohibit coercing or pressuring students or their families to participate in fundraising activities. Certain seemingly innocent measures associated with a fundraising campaign are inconsistent with the Fair Treatment law and therefore inappropriate: class/student donation goals; class/student participation goals; class or school-wide prizes or incentives associated with a level of donations or participation; charts or posters reflecting the names of students who are participating in the fundraising activities; limiting participation in school activities to those students who raise donations or who are involved in the fundraising activities. The Commission further suggests that DOE require students and their families to "opt in" to participate in fundraising activities.

D. DOE Administrative Rules

The Commission notes that DOE has promulgated administrative rules applicable to charitable fundraising in schools, Hawaii Administrative Rules ("HAR") Title 8, Subtitle 2, Part 1, Chapters 45 and 46. While it is beyond the Commission's authority to enforce the DOE charitable fundraising rules, the Commission notes that the rules appear to be consistent with the State Ethics Code's Fair Treatment provision and address the Commission's concerns relating to coercion raised above. DOE's adherence to its rules likely will greatly assist in addressing Fair Treatment law concerns.

For example, the rules appear to require that an educational purpose be "of primacy" in a fundraising endeavor.[2] This requirement appears consistent with the Commission's position that there must be a reasonable, legitimate, and articulated educational purpose relating to the fundraising activities that are intended to support a private charity. The rules also appear to require an application process for charities.[3] Such an application process likely will address issues relating to the selection of the charities, reducing the likelihood of favoritism or other misuse of an employee's position in the selection process. Finally, the rules appear to require affirmative parental permission before a child participates in a charitable fundraising event,[4] which is consistent with the

[2] HAR sections 8-45-1(a),(b),(e); 8-46-3(2),(3).

[3] HAR sections 8-45-1(f); 8-46-3(1).

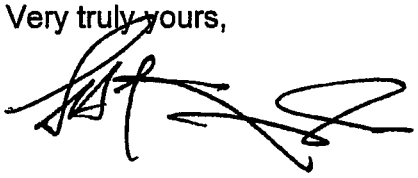
[4] HAR section 8-46-3-5.

State Ethics Code's provision that prohibits the misuse of position to coerce or apply undue pressure on students and/or their families to participate in the fundraising.

Conclusion

This letter is intended as general advice regarding fundraising in schools. Particular fundraising programs may raise unique concerns that are not addressed by this document. If DOE has or individual school have concerns or questions about a particular fundraising effort, DOE and/or the school is urged to consult the Commission for more specific advice about the application of the State Ethics Code.

Very truly yours,



Leslie H. Kondo
Executive Director and
General Counsel

HAWAII
COMMON CAUSE
Holding Power Accountable

House Committee on Education
Chair Roy Takumi, Vice Chair Takashi Ohno

Monday 2/2/2015 at 2:00 PM in Room 309
HB 12 Relating to the Department of Education

TESTIMONY IN OPPOSITION
Barbara Polk, Interim Chair, Common Cause Hawaii

Dear Chair Takumi, Vice Chair Ohno, and members of the House Committee on Education:

Common Cause Hawaii opposes HB12.

I am testifying on behalf of Common Cause Hawaii because I had the opportunity to serve as its representative on a committee convened by the staff of the Ethics Commission to consider the use of State resources for private interests as it applied to fund raising for charities. One issue we discussed was fundraising activities in the public schools.

This bill, if passed, would allow any of the more than 10,000 classroom teachers and 287 principals to engage their class or school in charitable activities for any of the almost 1000 non-profit charities registered with the Tax and Charities Division of the Hawaii Office of the Attorney General, subject only to assurance that the activity benefits student learning.

We oppose this bill because it allows for differential treatment by state employees of some charities as opposed to others; because it undermines parental choice of what charities to support; and because of pressure on students to participate.

1. Violation of fair treatment of the Ethics Code.

The State Ethics Code's fair treatment provision (Section 84-13) does not permit using one's position as a state employee to secure advantages for oneself or others. All persons in the State have the right to expect fair treatment. When a teacher or principal chooses one charity over another, this provision is violated. Do we want to encourage this type of partisanship among state employees? What is to prevent a teacher from initiating a fund raising activity that benefits his or her spouse or adult child who is the paid head of that charity?

2. Violation of parental (and student) choice.

The list of nearly 1000 charities includes ones that are connected to various religions, ones that support or oppose controversial policies (i.e., abortion rights, marriage equality), charities that support military groups (which may be objected to by pacifists), and many charities that support groups or policies that most people would not see as priorities for their charitable giving. In fact, it would be difficult to find ANY charity on the list that all people would see as a priority to support. To allow schools and classrooms to pick a charity they happen to favor and engage students in raising money for that charity violates parental or student choice about charities to support.

3. Pressure on students to participate.

Students come from families with varied income levels, different numbers of extended family members or friends, and therefore differences in their ability to raise or contribute money to charity. Though I believe that DOE guidelines discourage competitions in raising money or in other ways pressuring students to participate, this is almost impossible to implement. We learned of a boy from a very poor family who was

told that he didn't have to participate, who nevertheless felt the pressure from peers and eventually started stealing his father's pocket change. What has this exercise taught this child?

4. Can charity be forced?

DOE sees as part of its educational responsibility the building of good citizenship. They define being charitable as part of good citizenship. As a result, almost any fund raising or other charitable support activity engaged in by a class or school could be justified as "benefiting student learning." But does it? We do not believe that charity can be forced.

For these reasons, we encourage the committee to defer HB 12.

Thank you for the opportunity to testify in opposition to HB12.

46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

TESTIMONY FOR HOUSE BILL 12, RELATING TO THE DEPARTMENT OF EDUCATION

House Committee on Education
Hon. Roy M. Takumi, Chair
Hon. Takashi Ohno, Vice Chair

Monday, February 2, 2015, 2:00 PM
State Capitol, Conference Room 309

Honorable Chair Takumi and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 300 local members. On behalf of our members, we offer this testimony in support of House Bill 12, relating to the Department of Education.

IMUAlliance has worked with public school classes to develop fundraising strategies for anti-human trafficking nonprofits. Students involved in these projects learned about, among things, human rights, international current events, financial literacy, business planning, speech and writing, economics, and entrepreneurial skill. According to state law, fundraising plans crafted by students with whom we work cannot be brought to fruition as a school-community partnership. If schools and classes are allowed to engage in charitable activities that advance learning growth, as this bill envisions, the projects could be turned into mutually beneficial service learning projects that span the course of a semester or school year, building students' civic engagement and bringing hope to survivors of sex trafficking.

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

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance