



Hawai'i

Committee: Committee on Education
Hearing Date/Time: Friday, January 31, 2020/2:45pm
Place: Conference Room 229
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 2486, Relating to Education Data.

Dear Chair Kidani, Vice Chair Kim, and members of the Committee on Education:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in support of S.B. 2486, which would reform Hawaii's laws on education data collection practices and make data more accessible to families, community members, and advocates.

Hawaii's current data collection policy is to have no policy at all, and provides no way to check if the data is accurate. This bill requires the Hawai'i State Department of Education ("DOE") to create mandatory policies for data collection and implement an audit process for determining if the data collected and submitted is accurate.

The federal Department of Education ("ED") requires all districts to submit biennially a set of data indicators called the Civil Rights Data Collection ("CRDC"). The last published collection was the 2015-16 school year. The DOE sends a guidance memo out each time the CRDC needs submission, but does not have official policies or requirements for how individual schools and complex areas must submit and verify this data. Individual principals send in their data, and it is up to those principals and complex area superintendents to verify this data. The central office at the DOE does not verify the accuracy of this data or enforce data collection best practices.

The Hawai'i Department of Education submitted inaccurate data and misrepresented data to the Federal Department of Education. There are two widespread examples of how this data has been inaccurate in the past, to the detriment of the children the DOE serves:

1. The DOE had to resubmit their 2015-16 CRDC data to the federal government in August 2019¹ after the ACLU of Hawai'i alerted them in June 2019² of drastic disparities in the

¹ Suevon Lee, "Hawaii DOE Releases Revised Data on Student Suspensions," *Civil Beat* <https://www.civilbeat.org/2019/08/hawaii-doe-releases-revised-data-on-student-suspensions/> (August 15, 2019).

² Suevon Lee, "ACLU Says Hawaii Schools Are Suspending Too Many Students," *Civil Beat* <https://www.civilbeat.org/2019/06/aclu-says-hawaii-schools-are-suspending-too-many-students/> (June 14, 2019).

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number and length of suspensions, particularly for Native Hawaiian and Pacific Islander students and students with disabilities. The DOE hired an outside consultant to recalculate their school discipline indicators.

For instance, the DOE said it double-counted suspension term lengths. As another example, the DOE reported zero school psychologists employed in 2015-16. Because school psychologists are employed at the complex level, only reporting school-level data meant that none were counted in that year's CRDC data. This results in advocates being unable to determine if the level of staffing is sufficient to meet students' needs.

2. The DOE misrepresented that it had collected data on instances of restraint³ and seclusion, per state and federal law requirements, when it had not.⁴ It reported zero uses of restraint in the 2015-16 CRDC. Per a public records request the ACLU of Hawai'i submitted in January 2019, the DOE reported at least 67 cases in 2017-18. The DOE admitted in July 2019 that by reporting "zero" instances, it meant it **did not collect this data for the 2015-16 year at all**, rather than having zero instances of restraint. This particularly affects children with disabilities; We owe it to our most vulnerable students to identify this data, and protect them.

The Federal Department of Education is rolling back data reporting requirements in the Civil Rights Data Collection. This bill retains those protections. Under this presidential administration, the federal government has consistently walked back or removed civil rights protections relating to transgender students; discrimination affecting an entire protected class within schools or school systems, including race, gender, national origin, and English Language learner and disability status; and now, in the types of data indicators school systems must collect. ED is proposing to modify future CRDC requirements. If the DOE does not collect data on student discipline, school climate, and student achievement, the state is not able to determine if there are deficiencies (or even success stories) and is not adequately serving its students.

The Department of Education does not adequately analyze its data for instances of disparity; this bill requires data analysis to identify disparities. Simply collecting data is step one. Step two is to analyze the data collected for disparities. "Do we suspend more Native Hawaiian youth than

³ U.S. Department of Education, "*Restraint and Seclusion: Resource Document*," p. 2 <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf> (May 2012). Restraint means physically, mechanically, or chemically (via drug) to control movement or behavior; children have been injured and even died while in school due to these methods.³ The use of restraint presents high risks to the student's safety, and ED has found no evidence that using such methods decreases the behaviors that precipitated the need for restraints.

⁴ Suevon Lee, "Hawaii Provided 'Inaccurate' Data On Student Restraint And Seclusion," *Civil Beat* <https://www.civilbeat.org/2019/07/hawaii-provided-inaccurate-data-on-student-restraint-and-seclusion/> (July 8, 2019).

Japanese youth? At which schools?” These types of questions could not be answered under current data practices. The ACLU of Hawai‘i has submitted numerous public records requests related to school discipline disparities, but these requests have been returned unfulfilled because the DOE does not maintain these types of records. However, this is basic information that all interested parents, community members, advocates, and students should have access to; requiring this analysis and that the DOE take steps to address any disparities found, means that students will be identified and served.

The Department of Education does not adequately publish or make available data to families and advocates. The types of data collection and analysis required in this bill have been implemented in part or whole in over 30 states. This legislation is necessary to identify instances of disparity between our most vulnerable populations of students, and ensure that the disparities are rectified. The bill requires the DOE to make the data publicly available, in a format easy to understand. If we are truly dedicated to raising academic achievement, knowing how we decide to sanction students is imperative.

For the above reasons, we urge the Committee to support this measure. Thank you for the opportunity to testify.

Sincerely,

Rae Shih
Legal Fellow
ACLU of Hawai‘i

The mission of the ACLU of Hawai‘i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai‘i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai‘i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai‘i has been serving Hawai‘i for 50 years.