



S E A C
Special Education Advisory Council
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March 23, 2022

**Special Education
Advisory Council**

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Senator Michelle N. Kidani, Chair
Committee on Education
Hawaii State Capitol
Honolulu, HI 96813

RE: HB 2125, HD 2 – Relating to Official School Business

Dear Chair Kidani and Members of the Committee,

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Council under the Individual's with Disabilities Act (IDEA) has serious reservations about HB 2125, HD 2 that creates a misdemeanor for disrupting or interfering with the administration or functions of any school, school administration office, or school board.

Existing harassment law provides a better vehicle for addressing harassment to educational workers. The members of SEAC believe strongly in the safety of teachers, school personnel and any person on a school campus. While no one disputes that school personnel should be protected from anyone making harassing threats to their personal safety or that of their families, SEAC does not believe HB 2125, HD 2 as written is either enforceable or necessary. Hawaii's existing harassment statute, HRS §711-1106, has clear definitions and ample case law to provide protection to victims of harassment while at the same time preserving the rights of citizens to engage in political expression. It would be far better to amend this existing statute to explicitly include educational workers or to say that any government department could file on behalf of a government employee, if appropriate, than to create a new law that is subject to misinterpretation.

The proposed classification of harassment of an educational worker law as a misdemeanor would impose significantly harsher penalties than the existing harassment law. In Hawaii, misdemeanors are punishable by up to one year in prison and a fine of up to \$2,000. Current harassment law, by contrast, is classified as a petty misdemeanor, punishable by up to 30 days in jail and a fine of up to \$1,000. Even if a parent is ultimately cleared of the charge of committing harassment of an educational worker, he or she would have



been significantly harmed financially and emotionally by being arrested, having to find legal counsel, child care for their children, etc.

Special education parents are being improperly targeted for the harassment misdemeanor.

SEAC's greater objection to HB 2125, HD 2 is the secondary intent of the bill, as stated by HIDOE's Risk Manager Russell Suzuki in the Committee on Judiciary & Hawaii Affairs hearing held February 24, 2022. He cited special education parents specifically as the reason for the harassment bill when they interfere with school's operations by refusing to accept legal notices for hearing, emails, telephone notifications or written notifications on purpose thereby forcing the Department to be out of compliance with federal and state laws for timeliness.

SEAC believes there must be a high level of threat to validate taking legal action against parents trying to exercise their due process rights. IDEA places a high value on the participation of parents in their child's education while at the same time offering protections to schools when parents are unresponsive to requests to participate. For example, if a parent refuses to provide consent for services, the school is not obligated to provide special education. If a parent fails to respond to an invitation to an annual IEP meeting to review a child's program and placement, the school team can proceed without the parent, providing that they keep a record of attempts to include him or her. In the case of due process hearings, a hearing officer may grant legal extensions to the 75-day timeline set by IDEA to both the A.G.'s Office representing the Department, and to the plaintiff attorney. In the 20 years that SEAC has been monitoring due process hearings, Hawaii has never been found to be out of compliance with due process timelines.

The Department has only provided anecdotal data to justify serious legal action against parents. While the Department has provided no statistics to warrant the enactment of this law, SEAC believes the number of parents whose actions were cited by Mr. Suzuki to be extremely low. In 2020-21, the latest year for which we have IDEA dispute resolution data, there were 20,017 students eligible for IDEA services. Only 54 due process hearing requests were filed, with most reaching a settlement agreement prior to an actual hearing. **Only 15 requests were fully adjudicated** at the time Dispute Resolution Table 6 was submitted to the Office of Special Education Programs, with 16 complaints pending further action.

HB 2125 negatively impacts parent/school partnerships and potentially harms students with disabilities. As you know, SEAC is made up of a majority of parents of children with disabilities and individuals with disabilities, and it is significant to note that our membership voted unanimously to express concern over the wording of this legislation. Many parents of children with disabilities, including a number of our SEAC members, are extremely worried due to the vague language in HB 2125 that they could be punished with a serious fine or jail time, if they exercise their legal right to advocate on behalf of their child with a disability. It has long been documented throughout the nation that special education parents in particular fear retaliation, if they speak up for their child's rights. This bill adds a chilling reminder of that threat and may silence many families from advocating for the individualized services and supports that their child needs to succeed.



For all the reasons stated above, SEAC urges your committee to seriously consider the negative impact this bill has on families of students with disabilities and find a more reasonable solution for protecting educational workers from the threats to their personal safety and/or the “government operations of an educational worker.” Specifically, we ask the Committee to do the following:

- Request data from the Department regarding the number of cases of harassment, their frequency, the types of actions, the responses to the actions, whether police reports or complaints were made, etc., so that you can analyze the extent of the need and an appropriate solution;
- Clearly define terms like “government operations of an educational worker;”
- Obtain input from county prosecutors on the enforceability of the legislation as currently drafted.

Hasty legislation without a foundation of well-analyzed data and clear definitions does not ensure either protection or justice.

Thank you for the opportunity to express our concerns regarding this controversial and potentially harmful legislation.

Respectfully,

Martha Guinan
Chair