

Public Education in Hawai‘i: Past, Present & Future

By
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In 1840, missionaries convinced Kamehameha III to form a 21-district public education system with local governance and local funding.¹ Communities with 15 or more school-age children were expected to provide their own schools.² It soon became apparent, however, that the quality of the schools varied dramatically across the islands.³ So in 1844, “all districting was dropped and the schools were placed under central control . . . a distinguishing characteristic of the public schools ever since.”⁴ This leveled the playing field: “Whether the children live in the city or country, in an area favored by great wealth or in a relatively poor area, they have the same opportunity.”⁵ When Hawaii was annexed to the United States in 1898, a Congressional Subcommittee on Education determined that Hawaii’s public schools were on a par with public education in the United States.⁶

At the time of statehood, there were 135,700 public-school students—or 83.9 percent of elementary and secondary students statewide.⁷ The per-student level of spending was below the national average, \$372 versus \$481.⁸ A spokesman for the system said this was misleading because a single district system needs less money to operate: “The States pay more for staffs because of expensive duplication.” He added that the relative smallness of Hawai‘i’s land area

¹ See, e.g., Maenette Kape’ahiokalani Padeken Ah Nee Benham and Ronald H. Heck, *Culture and Education Policy in Hawai‘i: The Silencing of Native Voices*, Lawrence Erlbaum Associates, 1998; M. Armstrong 1887: 29-30; Kamari Maxine Clarke and Deborah A. Thomas, *Globalization and Race*, Duke University Press, 2006.

² Benham, and Heck, p. 64.

³ *Id.*

⁴ Oren E. Long, “Education in Hawai‘i,” *The Honolulu Advertiser*, 6/23/59, p. 17 (Long had been a Superintendent of Public Instruction and Territorial Governor; along with Hiram Fong, he represented Hawai‘i in the U.S. Senate immediately following Statehood.)

⁵ *Id.* In the other 49 states, school boards have historically relied on local property taxes to operate the schools, which generally results in more funding for wealthy communities and less funding in poor communities. See, e.g., TheCenterforPublicEducation.org, “Money matters: A primer on K-12 school funding,” http://www.centerforpubliceducation.org/site/c.kjJXJ5MPIwE/b.4338879/k.D19D/Money_matters_A_primer_on_K_12_school_funding.htm: “Property taxes continue to be the primary source of funding for education for most states and communities, but they aren’t the only taxes collected to fund K–12 education. In many states, a portion of other taxed items may be earmarked for schools. These include sales, motor vehicle, amusement, tobacco, alcohol, utility, and gasoline and mineral taxes. Twenty-four states also draw upon the proceeds from state lotteries to bolster their education budgets. . . . A handful of states provide at least 50 percent of their schools’ total budget [other than from local property tax revenues] (Alabama, Alaska, Arkansas, California, Delaware, Hawai‘i, Idaho, Kansas, Kentucky, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, Utah, Vermont, Washington, West Virginia, and Wisconsin). Hawai‘i and Vermont contribute the highest percentage, each supplying close to 90 percent of their schools’ revenue.”

⁶ Bean, Thomas W. and Jan Zulich, “Education in Hawai‘i: Balancing Equity and Progress, in *Politics: Public Policy in Hawaii* (1992) (“By 1898 when Hawai‘i was annexed to the United States, Hawai‘i’s system was by the United States Congressional Subcommittee on Education as equal to mainland systems of education.”).

⁷ Long *supra* note 3.

⁸ CORE report (1974); “Johnny’s class Getting Smaller, Says Isle Report,” *Honolulu Advertiser*, Oct. 8, 1966.

resulted in lower transportation costs, and that Hawai‘i’s tropical climate eliminated the need for “the more expensive type buildings required by extreme winter weather.”⁹

The average class had nearly 30 students, which was 8 more than the national average.¹⁰ Despite this, parents were generally satisfied with the perceived quality of educational opportunity.¹¹ More than 70,000 parents belonged to the Parents and Teachers Association (PTA)—nearly 12% of the state’s population.¹²

The system was known as the Department of Public Instruction (DPI) and it was headed by the members of an unpaid, appointed Board.¹³ The question of whether Board members should be appointed or elected was hotly debated:

“Public debate over the proposed Constitutional amendment providing for an elected State School Board grows hotter as the Legislature nears a decision. . . . Legislation pending at Iolani Palace proposes that the panels be elected. The Hawai‘i Congress of Parents and Teachers is working for an elected Board. Favoring an appointed Board are the teacher professional organization, Governor Quinn, and the Department of Public Instruction. Generally, Republicans support the appointive system, Democrats favor election.”¹⁴

The *Honolulu Advertiser* favored an appointed Board, partly out of concern over “the possible intrusion of partisan politics into the schools under an elective system.”¹⁵ The *Advertiser* added, “Hawai‘i is highly partisan in public affairs, schools would be no exception.”¹⁶

The public strongly favored an elected school board, 57 percent to 22 percent (the remaining 21 percent had no opinion).¹⁷ In 1961, Governor William Quinn worked out a compromise with the Legislature whereby the Governor would continue to appoint the Board, but would select only from lists provided by elected members of local advisory councils in each of the counties.¹⁸ Quinn’s successor, Governor John A. Burns made clear in his 1962 inaugural

⁹ “Isle Per-Pupil Costs Are Called Misleading,” *Honolulu Star-Bulletin*, Apr. 25, 1959.

¹⁰ “Hawai‘i Public Schools Fall short Of Standards for Accreditation,” *Honolulu Star-Bulletin*, Mar. 22, 1961.

¹¹ See generally, 1960-61 Hawai‘i Dept. of Education Annual Report; Legislative Reference Bureau, REF # LB2809 H38 H3; “Hawai‘i Public Schools Fall Short of Standards for Accreditation,” *Honolulu Star-Bulletin*, Mar. 22, 1961.

¹² Oren E. Long, “Education in Hawai‘i,” *The Honolulu Advertiser*, June 23, 1959, at 17.

¹³ See generally, “Board Holds First and Last Meeting,” *The Honolulu Advertiser*, Aug. 17, 1961 (the Department of Public Instruction changed its name to the Department of Education, and the Commission on Public Instruction--which headed up the Department of Public Instruction--changed to Board of Education).

¹⁴ Editorial, “School Board Pros and Cons,” *Honolulu Advertiser*, Oct. 14, 1959. See, e.g., “Governor Signs Compromise Bill on Board of Education,” *Honolulu Advertiser*, July 12, 1961; Craig, “Citizens want elected school board according to poll,” *Honolulu Advertiser*, Sept. 10, 1961; “Soon: A New School Board,” *Honolulu Advertiser*, July 13, 1961; “PTA Backs School Board Referendum,” *Honolulu Star-Bulletin*, February 17, 1961.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Craig, *supra* note 12.

¹⁸ “Governor Signs Compromise Bill On Board of Education,” *Honolulu Advertiser*, July 12, 1961.

address that he wanted an elected Board.¹⁹ In 1964, the Constitution was changed to provide for popular elections of school board members.²⁰

Another widely debated question was whether responsibility for school facilities should be moved from the counties to the State. Samuel W. King was the Governor who first raised this issue, in 1957. According to King, dividing responsibilities between the counties and the Territory resulted in “buck-passing and confusion.”²¹ The shift eventually happened in 1964.²²

Average teacher pay in 1959 was \$4,850—a number that both political parties said was too low.²³ The Republicans also wanted “a single pay schedule for all teachers, vice-principals, principals and administrative personnel,” which the Democrats opposed because “it rules out merit-based pay raises.”²⁴ The *Honolulu Star-Bulletin* considered it “something of a surprise” that the Republicans were calling for an investigation of “the lack of standardized school design, the requiring of teaching certificates for purely administrative jobs, and the DPI’s promotion system”—because the DOE was technically a part of Quinn’s administration.²⁵ The system was under stress because the school-age population was growing rapidly.²⁶ But by the end of Quinn’s term as Governor in 1962, Hawai‘i’s per-student level of funding was above the national average.²⁷

Governor Burns described education as his top priority.²⁸ He told his Cabinet that he would “beef up” education “even if it means cutting funds for other State departments and asking the Legislature for a tax increase.”²⁹ The head of the teachers’ professional association suggested that public education in Hawai‘i could be second-to-none if only more money were devoted to it:

“Hawai‘i ... now spends 4.5 percent of total personal income on elementary and secondary schools. That national average is 4.3 percent. If Hawai‘i will devote an additional one percent of its personal income to public education, our public educational system can attain the excellence which our people seek.”³⁰

¹⁹ “3 Moves Seen For Hawai‘i Education,” *Honolulu Advertiser*, December 22, 1962, at 1.

²⁰ Hawai‘i State Constitution, Article X, Section 2.

²¹ See, e.g., O’Neill, “State Urged to Take County School Role,” *Honolulu Star-Bulletin*, Oct. 17, 1962, and “School Financing Is Thorny Problem,” *Honolulu Star-Bulletin*, December 3, 1962.

²² Needs citation*

²³ Parmiter, “School System Changes Planned by Both Parties,” *Honolulu Star-Bulletin*, Apr. 24, 1958, at 11. \$4,850 inflated by the consumer price index is \$35,810 for 2009, according to <http://www.measuringworth.com/uscompare/>, last visited Aug. 18, 2009.

²⁴ *Id.*

²⁵ *Id.* (“These sections of the BOP plank have raised eyebrows because, as one Democrat puts it: ‘It’s like the Republican national convention promising to have Congress investigate Eisenhower.’ The [DOE] is an arm of the Territorial executive. And its policies therefore are the policies of Governor Quinn’s Republican administration.”).

²⁶ See, e.g., “Will Summon Legislature if Needed,” *Honolulu Star-Bulletin*, April 15, 1958, and “11 Schools Face Double Shifts by ‘59,” *Honolulu Advertiser*, Jan. 28, 1958.

²⁷ “Isle Per-Student Cost Tops Average,” *Honolulu Advertiser*, Dec. 31, 1962.

²⁸ Hunter, “Education Will Come First, Burns Says of Budgeting,” *Honolulu Advertiser*, page 1, Nov. 30, 1963.

²⁹ *Id.*; See also, Kaser, “Legislature ‘gave moon’ for education in Hawai‘i,” *Honolulu Star-Bulletin*, May 29, 1965.

³⁰ “High Hawai‘i Rank Seen in Education,” *Honolulu Advertiser*, page D-2, Feb. 16, 1967 (quoting Daniel W. Tuttle Jr.).

In 1962, a news reporter asked an assistant Superintendent about specific innovations being tested in some mainland school districts.³¹ After first making clear that members of the Department of Education (DOE)³² were well aware of the new concepts in education, the assistant Superintendent cautioned parents to be realistic:

“Parents in Hawai‘i must remember that the wealthy suburban systems [on the mainland] are small and can move rapidly. They are completely independent to act. . . . It would be folly for Hawai‘i, the ninth largest school system in the country, to move as rapidly.”³³

In 1962-63, a highly regarded administrator from the mainland spent an academic year as principal of Wahiawa Elementary School as part of an exchange program.³⁴ Afterward, he wrote that the people in Hawai‘i’s education system were “heroic,” because they toiled daily despite “overwhelming frustrations.”³⁵ He wrote that “crackpots and demagogues love to get on school boards,”³⁶ and he suggested that Hawai‘i’s schools needed fiscal autonomy and more flexibility with respect to personnel:

“I suspect that in your noble regard for seniority rights you may have built a rigid mechanism that runs you. [Changing this] might enable you to shake some moss loose and prevent rigor mortis from setting in.”³⁷

The DOE’s mission at that time was to provide “a lasting understanding of our American cultural and spiritual background,” and to help each pupil achieve “the best growth of his abilities for useful living.”³⁸

In his 1962 inaugural address, Governor John A. Burns announced that he planned to decentralize the DOE.³⁹ Burns and the members of a task force he established did not view decentralization as necessarily at odds with equality of funding:

“Centralized funding for education need not result in centralized or standardized decision-making. A persuasive case can be made for decentralizing decision-making in various areas because schools have different clienteles and because the most knowledgeable persons to deal with a problem are oftentimes those closest to the children and the community. Such an approach starts with the role of personnel in the

³¹ “Isle Schools Proud of Educational Strides,” Honolulu Star-Bulletin, Nov. 3, 1962, at 17.

³² In 1961, the Department of Public Instruction was renamed Department of Education; See generally, “Board Holds First and Last Meeting,” The Honolulu Advertiser, Aug. 17, 1961.

³³ “Isle Schools Proud of Educational Strides,” Honolulu Star-Bulletin, Nov. 3, 1962, at 17.

³⁴ Needs cite- same as below? Need newspaper*

³⁵ O’Neil, “Exchange Principal: Isle Schools Succeed Despite Great Odds,” Honolulu Star-Bulletin, May 23, 1963, at 1B.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Long, *supra* note 3.

³⁹ *supra* note 16.

individual school or group of schools, rather than starting at the state office.”⁴⁰

The Honolulu Advertiser editorialized that decentralization should be easy for Burns to achieve, because the Superintendent of Education at that time was known to favor it and no new law would be required: “Being basically an administrative move, decentralization should not be difficult.”⁴¹ Despite this initial optimism, the system would remain highly centralized throughout Burns’ 12 years in office. As is detailed later in this paper, Governors Waihee, Cayetano, and Lingle would also attempt, unsuccessfully, to decentralize the system. Governor Abercrombie supported decentralization as a candidate in 2010,⁴² but has apparently not publically addressed the issue since his election as Governor.

Another longstanding aspect of Hawai‘i’s public-education system noted by Burns and subsequent Governors is that the DOE/BOE⁴³ has no control over the level of funding and only shared control over spending decisions.⁴⁴ The Legislature decides how much money to appropriate and has the power to decide how the money must be spent (known as categorical spending, line-item budgeting, and earmarking); then the Governor decides whether to release money that the Legislature has appropriated.⁴⁵ To the DOE/BOE’s consternation, the Legislature has regularly involved itself in spending decisions, and every Governor since Statehood has restricted spending selectively (rather than on a lump-sum basis that would allow the DOE/BOE to choose where to make any necessary cuts).⁴⁶ Because this unusual arrangement has existed for so long in Hawai‘i, most people may simply take it for granted. Interestingly, the same observation was made in 1964 by a BOE member who criticized others for “usurping” the BOE’s prerogative:

“The Legislature is doing [what] the Board of Education should do. The Superintendent is [treated] almost as though he were the executive officer of the Legislature, instead of, as the Constitution indicates, the executive officer of the Board. The only reason . . . this does not seem a major scandal, is simply that it has been going on for so long.”⁴⁷

Because the DOE/BOE has no control over the level of funding and only shared control over spending decisions, prior to 2011 it arguably could not be held accountable (i.e., it had a ready excuse) for low levels of student achievement. The Burns task force pointed this out 35 years ago:

⁴⁰ CORE Report (1974), p. A-26

⁴¹ *supra* note 16.* [make sure the footnote in question is still footnote 16]

⁴² Neil Abercrombie, *A New Day in Hawaii – A Comprehensive Plan, 12* (2010) available at http://governor.hawaii.gov/wp-content/uploads/2012/09/AFG_ANewDayinHawaii_2010.pdf

⁴³ The BOE is a part of the DOE in the same way a corporation’s board of directors is part of that corporation. See Hawai‘i State Constitution, Article X, Sec. 2.

⁴⁴ See *Board of Education vs. Waihee*, 70 Haw. 253, 265 (1989).

⁴⁵ See *Board of Education vs. Waihee*, 70 Haw. 253 (1989); The Center for Public Education, *supra* note 4.

⁴⁶ Categorical funds must be spent for specific purposes set forth by the Legislature, or by Congress. Examples of the categories include vocational education, Hawai‘i studies, ROTC, school lunches, and athletics. Currently there are more than 300 such categories.

⁴⁷ “Legislative ‘Control’ In Education Is Rapped,” *The Honolulu Star-Bulletin*, Mar. 6, 1964.

“The Legislature has the primary power of budgeting for the Department of Education and, consequently, can influence or mandate Department of Education programs, policies, directions, [and] activities very heavily. The Governor exercises this kind of power also with his ability to [release or not to release] funds and the Governor also wields other factors of administrative supremacy that can influence Department of Education operations. The public, therefore, is never sure just who is responsible for a particular decision affecting the Department of Education or who is to be held accountable for its policies.”⁴⁸

Business leaders repeatedly pointed out the need to know “where the buck stops.”⁴⁹ In 1963, the exchange principal mentioned above marveled at the lack of accountability in Hawai‘i’s system and challenged the competence and appropriateness of non-educators in the Legislature and the State Department of Budget & Finance (as it is now known) who were micromanaging public education:

“You have the problem of the Legislature and the State Budget and Review people making the major policy decisions, right down to how much of the budget goes toward the purchase of textbooks. ... I would inquire as to their competency to make such judgments [and note the] considerable opportunity for the intrusion of political influence.”⁵⁰

It was unusual for a principal to be so direct in his criticism of the system. In 1966, the Superintendent of Education said it was unfortunate that more principals did not voice their concerns and frustrations. He had this to say at a large gathering of principals:

“Do not be afraid to stand up and be counted. Do not be afraid to speak out. This is the only way we are going to achieve results. ... You are just as entitled to a point of view ... as anyone else. ... [Principals] might have an even greater obligation to speak out than other people.”⁵¹

The principals in that audience then approved a resolution that requested “a definitive statement on the roles and authority of the State Board of Education, the State superintendent, and the legislative and executive branches of government in matters of education.”⁵² Presumably this was their way of pointing out the problem with having so many different groups in “control” of the system.

In the 1980s, the DOE/BOE argued in court that Governor-imposed spending restrictions “destroyed or limited” the DOE’s ability to operate the schools effectively.⁵³ The DOE/BOE

⁴⁸ CORE Report, p. A-24

⁴⁹ *[cite the major BRT reports]*

⁵⁰ O’Neil, “Exchange Principal: Isle Schools Succeed Despite Great Odds,” Honolulu Star-Bulletin, May 23, 1963, at 1B.

⁵¹ “‘Speak out,’ Jackson tells administrators,” Honolulu Star-Bulletin, Dec. 1, 1966, at A-12.

⁵² “Definitive statement on education roles is asked,” Honolulu Star-Bulletin, Dec. 1, 1966, at A-12.

⁵³ Board of Education vs. Waihee, 70 Haw. 253, 267-268 (1989) (“to plan and efficiently execute ... programs, to set

specifically objected to “the current practice of allowing uninformed budget analysts in the [State] Department of Budget and Finance to make detailed decisions in the allocation of the educational budget, and thus, for all practical purposes, formulate policy and exercise control over the public school system.” The Hawai‘i Supreme Court saw no legal merit in the DOE/BOE’s position: “We have no reason to believe the Governor’s authority ... does not include discretion to restructure ... priorities.”⁵⁴

With the DOE/BOE, Legislature, and Governor each trying to run the schools in those days, there were constant problems with coordination, coherence and accountability.⁵⁵

There also have been problems with accountability at the school level, where Hawai‘i’s principals, far from functioning like chief executive officers of their schools, have historically had little autonomy or authority, and have never been held accountable for results.⁵⁶ Because most of the key decisions have long been made outside the schools and union contracts de-linked each principal’s compensation and job security from student achievement, the education system in Hawai‘i has been described by many as “top-down” and “system-centered,” as opposed to “school-centered.”⁵⁷ Education experts outside Hawai‘i have marveled at the expansive role played by central administration in this state.⁵⁸ Since the following statement was published by one such expert in 1988, the DOE’s role has actually expanded:

Hawai‘i’s Department of Education encompasses all aspects of education – from planning policy to running schools ... from mandating new programs to evaluating them; and from administering schools to assisting them.⁵⁹

Governors Burns, Waihee, Cayetano, and Lingle, the DOE/BOE, and the Legislature each periodically discussed shifting more decision-making to school principals, and some school-oversight responsibilities to local boards or councils. Relatively little came of these debates. In 1989, for example, the Legislature authorized what they called School/Community-Based Management, or SCBM. As initially envisioned, SCBM councils would help individual schools to break out of the DOE’s top-down, one-size-fits-all mold. For example, SCBM councils would be able to seek waivers from system-wide dictates. In reality, however, it took years to get an answer from central administration, and the teachers union, principals union, and BOE each had a veto power.⁶⁰ Here’s how columnist Richard Borreca described the history and eventual impact of SCBM:

priorities for those programs, hire the necessary personnel, and perform necessary repairs and maintenance of school facilities”).

⁵⁴ Board of Education vs. Waihee, 70 Haw. 253, 267-268 (1989); See also, HRS Sec. 37-65 and 37-67.

⁵⁵ George R. Ariyoshi, John Waihee & Ben Cayetano, “Education Reform Must Put Kids First,” Honolulu Advertiser, January 31, 2010, available at <http://the.honoluluadvertiser.com/article/2010/Jan/31/op/hawaii1310341.html>.

⁵⁶ See, e.g., Hawai‘i Business Roundtable Position Paper, p. 2, Mar. 2, 2004.

⁵⁷ *Id.*

⁵⁸ William Ouchi & Bruce Cooper, “Financial Analysis of Hawai‘i Public Schools,” Nov. 23, 2003.

⁵⁹ BW Associates, “Educational Excellence for the Pacific Era,” (Berman Report) p. 18, November 15, 1988.

⁶⁰ Provide Lingle’s example regarding Lahainaluna’s attempt to change its graduation date (in 2003 State of the State address).

“Back in the days of Waihee, the Hawai‘i Business Roundtable, needing decently educated workers, paid for Paul Berman, a national school reform expert, to draw up a new plan. The 1988 Berman report set forth a 10-year ‘Hawai‘i Plan’ heralding a ‘radical reform of the state’s centralized education system.’ Berman’s plan needed School/Community-Based Management Systems (SCBM) which would function almost like local school boards ... Instead, after years of wrangling, SCBM teams would be able to decide whether kids would wear uniforms and little else.”⁶¹

In 2004, the Legislature replaced SCBM with a law that authorizes School Community Councils (SCCs) made up of teachers, parents, students, school staff, and community members (at least one member from each group), plus the school’s principal. In practice, SCCs have turned out to be similarly toothless; a school’s SCC can reject one or more of the principal’s proposed plans, but lacks the authority to reject the DOE/BOE’s decisions for that school, including that school’s strategic, academic, and financial plans, or to deviate from statewide policies and procedures.⁶²

In 2010, just over 55% of the voters amended the state constitution to replace the elected school board with an appointed one. Many people thought an appointed board would work better, because the appointing official would seek out individuals with expertise that is diverse and relevant, and that the public would know who to hold accountable (the Governor) if the BOE failed to produce acceptable results.⁶³ As noted above, this was a particularly controversial issue in the early 1960s, when Governor Quinn fought to maintain an appointed school board, and his successor, Governor Burns, championed the notion of an elected board. Burns achieved his goal in 1964.⁶⁴

The return to an appointed board was aided in early 2010 when three former governors, all Democrats, issued a “manifesto” in which they described the public education system as broken, and suggested three major changes, including replacement of the elected BOE with an appointed one:⁶⁵

“Ask yourself: How many members of the Board of Education can you name? What do you know about their backgrounds? What is their position on education? Most people will have difficulty answering these questions. In contrast, voters closely watch each election for governor and the major issues in the campaigns are well reported and understood. If the governor

⁶¹ Borreca, “Politicians keep talking, students keep waiting,” THE HONOLULU STAR-BULLETIN, Nov. 30, 2003.

⁶² Needs cite*

⁶³ Catherine Payne and Randall Roth, “Appointed school board would help accountability,” THE HONOLULU STAR-ADVERTISER, Oct. 4, 2010, available at http://www.staradvertiser.com/editorials/20101004_Appointed_school_board_would_help_accountability.html; Katherine Poythress, “Decision Time: Appointed vs. Elected Ed Board,” Sept. 17, 2010, Civil Beat, available at <http://www.civilbeat.com/2010/09/4587-decision-time-appointed-vs-elected-ed-board/>; Randall Roth, “Fight education’s special interests,” THE HONOLULU STAR-ADVERTISER, Dec. 6, 2010, available at http://www.staradvertiser.com/editorials/20101206_Dear_Gov_Abercrombie.html.

⁶⁴ Am HB 421 (1964), Haw. Const., art. X, § 2.

⁶⁵ See, Hawaii Children First at <http://www.hawaiichildrenfirst.org/>

were accountable for public education, student outcomes and key education issues would be highlighted as a major part of the state’s main political campaign. ...

“An elected school board may seem more democratic; but few individual voters watch school board campaigns nearly as closely as do the unions that represent teachers, administrators and other employees of the Department of Education.”⁶⁶

The Students in the System

Enrollment in Hawai‘i’s public schools peaked at 189,281 in 1997-98, which was approximately 84 percent of the total school-age children.⁶⁷ The enrollment for 2012-13 is 183,251.⁶⁸ The percentage of school-age children in Hawai‘i who attend a private school has not changed significantly since statehood.⁶⁹ Eleven other states report a higher percentage of students in private schools.⁷⁰ The number and percentage of school-age children who currently are being home-schooled appears to be rising.⁷¹ In 2013, 7,856 children were being homeschooled. It is not clear whether these students are categorized and reported by the DOE as being in private schools, public schools, or simply off the grid. As described below, homeschooling in Hawaii is highly structured, including a written curriculum and mandatory progress reports to the principal of the DOE school that the homeschooled child would otherwise be attending.

In 2010, Hawai‘i’s system was the nation’s 10th largest.⁷² Empirical studies show that large systems tend to have large schools, and Hawai‘i is no exception: for example, the average number of students in Hawai‘i’s high schools is 1,570, nearly double the national average of 768.⁷³ Membership in the PTA (now called the Parent Teachers and Students Association—PTSA) has diminished in membership numbers by about 80 percent since statehood, and currently comprises less than 2 percent of the state’s population (compared to 12 percent in

⁶⁶ Id.

⁶⁷ The Superintendent’s Ninth Annual Report on School Performance and Improvement in Hawaii—1998, available at http://arch.k12.hi.us/PDFs/state/superintendent_report/1998/SuptRept98.pdf.

⁶⁸ Dept. of Education, “Official 2012-13 Public and Charter School Enrollment,” Nov. 14, 2013, available at [https://lilinode.k12.hi.us/STATE/COMM/DOEPRESS.NSF/a1d7af052e94dd120a2561f7000a037c/00ebdabfac05a3dc0a257ab6006fe7e0/\\$FILE/OEC_1213_Nov.14.pdf](https://lilinode.k12.hi.us/STATE/COMM/DOEPRESS.NSF/a1d7af052e94dd120a2561f7000a037c/00ebdabfac05a3dc0a257ab6006fe7e0/$FILE/OEC_1213_Nov.14.pdf).

⁶⁹ Sally Kwak, “Determinants of Student Achievement in Hawaii,” Unpublished manuscript, prepared for the Statehood Conference, Honolulu, Hawaii, Aug. 21, 2009 (publication pending). The total number of students who were enrolled in private school for school year 2012-13 was 37,097, approximately 16.84 percent of school-age children in Hawai‘i. See Hawaii Council of Private Schools, “Private School Enrollment Report 2012-2013,” available at http://issuu.com/haisconnect/docs/hcps_enrollment_rpt_2013.

⁷⁰ Kwak, *supra* note 50.* [make sure all references to the Kwak footnote number cite the correct footnote number]

⁷¹ Kwak, *supra* note 50.*

⁷² Institute of Educational Sciences of the National Center for Educational Statistics, “Characteristics of the Largest 100 Public Elementary and Secondary School Districts in the United States 2008-09 (Nov. 2010).

⁷³ See Dept. of Education, “2012 Superintendent’s 23rd Annual Report,” May 2013, available at http://arch.k12.hi.us/PDFs/state/superintendent_report/2012/2012SuptRptFinal20130514.pdf; see also University of Hawai‘i Public Policy Center, “Report to the 2009 Legislature,” Section III (January 2009).

1959).⁷⁴ The drop off in this form of parental involvement is disconcerting, particularly because the level of parental involvement has been increasing elsewhere.⁷⁵ Do parents of public school students in Hawaii care less about their children's education than do parents elsewhere, or less than did parents in Hawaii a generation or two ago? A former PTSA officer in Hawaii spurned those explanations; according to him, the real reason is that parents see little to gain by trying to get involved: "Parents of public school students are increasingly treating the DOE as a lost cause."⁷⁶

Reasonable Expectations Regarding Student Achievement

Primary predictors of student achievement include family income, the presence of special needs, and limited English proficiency. Demographic information suggests that student achievement in Hawai'i's public education should be relatively high (i.e., compared to public school students in other states). For example, former superintendent Pat Hamamoto has pointed out, "Study after study conclusively find that poverty is the single greatest predictor of student performance,"⁷⁷ yet Hawai'i has a relatively low percentage of students from families below the poverty line (17.3 percent versus the national average of 20.7 percent in 2011).⁷⁸ The percentage of students eligible for free or reduced-price lunches is also lower in Hawaii (46.8) than is the national average (48.1). So if Pat Hamamoto is right about poverty being the single greatest predictor of student performance, the level of student achievement in Hawaii should be above the national average.

Another predictor for student performance in an individual state is the percentage of students who require special-education services. As with poverty as a predictor, the available data having to do with special education suggest that overall student achievement in Hawaii should be above the national average. The percentage in Hawaii of children served under the Individuals with Disabilities Education Act as of 2011 is 11.0, which is significantly below the national average of 13.0 percent.⁷⁹

Yet another predictor is the percentage of students for whom English is not the native language or is not spoken at home. English Language Learners (ELL) in Hawaii comprise only 10.6 percent of the total public-school enrollment. That is only slightly above the national average of 9.8 percent. The percentage of ELL students in some states is dramatically higher than in Hawaii: California (28.9%), Nevada (19.4%), New Mexico (15.7%), and Texas (15%).⁸⁰

⁷⁴ Need to update number and cite source.*

⁷⁵ Digest of Education Statistics, Table 62 (Percentage of elementary and secondary school children whose parents were involved in school activities, by selected child, parent, and school characteristics: 1999, 2003, and 2007), available at http://nces.ed.gov/programs/digest/d11/tables/dt11_062.asp.

⁷⁶ Interview with former PSTA officer and former member of the Board of Education Paul Vierling.

⁷⁷ Hamamoto, "Schools fight poverty's influence on learning," Honolulu Star-Bulletin, Feb. 4, 2007.

⁷⁸ Laura Castner, Karen Cunningham & Amang Sukasih, *Empirical Bayes Shrinkage Estimates of State Supplemental Nutrition Assistance Program Participation Rates in 2008- 2010 for All Eligible People and the Working Poor* 63, Feb. 2013, available at <http://www.fns.usda.gov/ora/MENU/Published/snap/FILES/Participation/Techpartrate2008-2010.pdf>

⁷⁹ U.S. Dept. of Education, *Digest of Education Statistics* 87, June 2012, available at <http://nces.ed.gov/pubs2012/2012001.pdf>.

⁸⁰ U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), *Local Education Agency Universe Survey, 2002-03 through 2010-11*, Nov. 2012, available at

The 2013 Quality Counts Report from *Education Week*⁸¹ ranks Hawai‘i slightly above average on its “chance for success index” (77.2 versus the national average of 76.7).⁸² Hawaii’s demographics are relatively good in the following categories: percent of children in families with incomes at least 200% of poverty level (65.4 versus the national average of 55.1), percent of children with at least one parent working full time and year-round (74.4 versus 71.9), percent of eligible children enrolled in kindergarten programs (81.7 versus 78.0), percent of 3- and 4-year-olds enrolled in preschool (53.8 versus the national average of 47.9), percent of adults age 25-64 with a 2- or 4-year postsecondary degree (42.7 versus 38.8). Hawai‘i is near the national average in other categories: percent of children with at least one parent with a postsecondary degree (46.9 versus the national average of 45.4), percent of children whose parents are fluent English-speakers (81.9 versus 83.2), percent of adults age 25-64 with incomes at or above national median (54.1 versus 51.3), and percent of adults age 25-64 in labor force working full time and full year (71.6 versus 68.7). The only categories in which Hawai‘i scored significantly below average had to do with student performance—which is discussed at length, below.

Is it possible that the particular mix of ethnic groups in Hawaii has an impact on overall student performance? This is highly controversial. Many would say it is relevant only as a proxy for factors like poverty, limited English proficiency, special-education needs, and cultural influences. But this controversy appears to be irrelevant for purposes of this essay because of evidence that each individual ethnic group in Hawaii’s public schools underperforms when compared to its respective counterpart on the mainland. For example, when one compares only Caucasians who do not qualify for the free-lunch program, such student achievement in Hawai‘i is in the bottom tier nationally.⁸³

The simple point for now is that objective indicators suggest that Hawai‘i’s public school students can reasonably be expected to perform at or above the national average.

Hawaiian Students in Hawaii’s Public Schools

Several studies have expressed specific concerns on behalf of Native Hawaiian children⁸⁴ and have suggested that they would learn better in a culture-appropriate setting.⁸⁵ A study

http://nces.ed.gov/programs/digest/d12/tables/dt12_047.asp.

⁸¹ Quality Counts 2013, *Education Week*, Vol. 32, No. 16, Jan. 10, 2013.

⁸² The highest five states are Massachusetts (94.6), New Jersey (91.0), Connecticut (90.7), New Hampshire (89.6), and Maryland (88.2). The lowest five are New Mexico (67.2), Nevada (67.3), Mississippi (68.1), Louisiana (68.5), and West Virginia (71.1).

⁸³ U.S. Department of Commerce, Census Bureau, *Annual Estimates of the Population by Race Alone and Hispanic or Latino Origin for the United States and States: July 1, 2005 (SC-EST2005-04)*, released July 15, 2006, *available at* http://nces.ed.gov/pubs2007/minoritytrends/tables/table_1b.asp.

⁸⁴ As used in this essay, Hawaiians are those individuals who can trace an ancestor back to the arrival of Captain James Cook in 1778.

⁸⁵ *See e.g.*, PASE, “Ka Huaka‘i: 2005 Native Hawai‘i an Educational Assessment,” Pauahi Publications (2005) (“In general, our analysis indicates the need for continued efforts to enhance Native Hawai‘i an education . . . positive results, however, have begun to emerge in culture-based charter schools, immersion schools, and other innovative and enriching programs that infuse cultural significance and place-based relevance to the educational process for Native Hawai‘i an children.”); PASE, “Evaluation Hui Gains Momentum: Hawai‘i’s Research Community Discusses Indigenous Research and Evaluation Considerations,” Dec. 2003 (recommendations include “Hawai‘i an-

published in 2003 and funded by Kamehameha Schools described Native Hawaiian children as having been “left behind in our state public school system.”⁸⁶

“This analysis shows that compared to other major ethnic groups, Hawaiian children have the lowest test scores and graduation rates, and are overrepresented in special education and subsidized lunch programs. Hawaiian students also have disproportionately higher rates of grade retention and absenteeism than do non-Hawaiian students. ... Hawaiian children are too often deprived of opportunities for intellectual engagement, social growth, and other aspects of a quality education that help to pave the way to fulfilling futures.”⁸⁷

Currently, 28% of Hawaii’s public school students are Native Hawaiian, making them the largest ethnic group.⁸⁸ In no state are indigenous students the largest ethnic group in the public schools.⁸⁹ Our DOE acknowledges that Native Hawaiian students experience large disparities in academic achievement and post-high school higher education enrollment compared to all DOE students.⁹⁰ The DOE and the University of Hawaii have set institutional goals to address the disparities and to improve academic achievement.⁹¹

Charter Schools

In 1994, in an attempt to address both general-public demand for more local control of the schools and Native Hawaiian demands for culturally sensitive educational opportunities for Hawaiian children, the Legislature and Governor Waihee authorized a limited number of “student-centered” schools. These are commonly known as charter schools.

focused research and evaluation should be conducted by Hawaiians and for Hawaiians” and “incorporate Hawai‘i an cultural values and protocol”); Frankel, “Hawaiians and Part-Hawaiians Beset With Problems,” *The Honolulu Star-Bulletin*, Jan. 31, 1963, reporting on a study with a blue-ribbon advisor board and funding from the Queen Liliuokalani Trust: “The intermarriage of Hawaiians with other racial groups is not producing the ‘golden boy’ of fiction writers but too often is producing a man tarnished by poverty and delinquency. Instead of being a carefree dweller in Paradise or an important cog in the industrial complex of the 50th State, the Hawai‘i an and part-Hawai‘i an is beset with troubles and woes. He is too often in trouble with the law, too often in trouble within his own family life, and too often too satisfied with a lowly job. He lacks motivation and the desire ‘to get ahead’ in the life of industrial America.”(Members of the trust’s advisory board included “the Reverend Abraham K. Akaka, pastor of the Kawaihāo Church, the Very Reverend Monsignor Charles A. Kekumano, chancellor-secretary of the Roman Catholic diocese of Honolulu, George Ii Brown, philanthropist, capitalist and sportsman, Mrs. Edith KF. Keen, school social worker, George H. Mills, physician, I.B. Peterson, president of the musicians union, Abraham K. Piianaia, former executive director of the Hawai‘i Homes Commission, and businessman, William S. Richardson, Lieutenant governor of the State and attorney, and Mrs. Zena Schuman, civic leader and business woman.”); *see generally*, <http://www.ksbe.edu/pase/default.php>, last visited August 10, 2009.

⁸⁶ “Shawn Malia Kanalaupuni and Koren Ishibashi, “Left Behind? The status of Hawai‘i an Students in Hawai‘i Public Schools,” PASE Report 02-03:13, page 4 (June 2003); for updates and related materials, see <http://www.ksbe.edu/pase/default.php>, last visited Aug. 10, 2009.

⁸⁷ *Id.*, cover page.

⁸⁸ State of Hawaii, *Race to the Top Application Assurances (CFDA No. 84.395A)* 43, May 2010, available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/hawaii.pdf>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

Charter schools can be formed by existing public schools or by any community, group of teachers, or program within an existing school, and are described in legislative history as “a new approach to education that is free of bureaucratic red tape and accommodating of the individual needs of students.”⁹² Like other public schools, charter schools must accept all students, including those with special needs. The primary difference from regular public schools is that charter schools are allowed to operate somewhat independently of the DOE bureaucracy.⁹³ Each charter school is the direct responsibility of a board comprised of individuals who have a strong interest in improving student-achievement levels at that particular school.⁹⁴ Charter schools are generally free to purchase academic-support services from any source, but a glaring inequality is that the “start-up” charter schools (as opposed to regular DOE schools that convert to charters) have to find and pay for their own facilities.⁹⁵

In 2012-13, there were 286 regular DOE schools and of those, 32 were charter schools.⁹⁶ Most of the charter schools are in areas of the state that have exceptionally high numbers of Native Hawaiians, and the programs of instruction at many of these schools are grounded in the Hawaiian culture.⁹⁷ “[I]n 50% of the State’s charter schools, and 19% of HIDOE-managed schools, at least half the students are Native Hawaiian.”⁹⁸ Approximately 88% of the students in Hawaiian culture-based charter schools are Native Hawaiians or part-Hawaiians.⁹⁹ Although one hears many stories about dramatic turnarounds in the attitude and performance of individual students, it is difficult to document such changes because the DOE does not provide baseline data for the years when those students were attending non-charter schools. It is relatively easy to find information about how students do once they are in a charter school, however, and most of it is encouraging. Kanu o ka Aina on the Big Island is one of the state’s oldest and best-run charter schools; its graduation rate is 98 percent and more than 70 percent of the graduates go to college. Such numbers would be impressive even if the student body were not made up almost exclusively of children who had been “left behind by our state public school system,” according to the study cited above.¹⁰⁰ Unsurprisingly, the number and percentage of public-school students who are choosing to attend one of the 32 charter schools are on the rise. During School Year 2012-2013, 9,593 students were enrolled in charter schools, 5 percent greater than the previous

⁹² Act 62. See generally, “Why Charter Schools,” Hawai‘i Association of Charter Schools, available at <http://www.k12.hi.us/~bwoerner/hacs/whycharters.html>, last viewed 6/12/09; see also “Charter School Profiles,” available at <http://www.hcsao.org/hicharters/profiles>, last visited 6/12/09. Because of its autonomy from the system’s central administration (i.e., the DOE), a charter school theoretically is free to “create alternatives and choice within the public school system ... while providing a system of accountability for student achievement.” They also “encourage innovation and provide opportunities for parents to play powerful roles in shaping and supporting the education of their children.” Charter-school advocates view them as “healthy competition” for regular schools.

⁹³ Auditor’s Report No. 02-03, Feb. 2002.

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⁹⁶ State of Hawaii, Dept. of Education, *Superintendents Report 9*, May 14, 2013, available at <http://www.hawaiipublicschools.org/DOE%20Forms/School%20Reports/SuptAnnualReport20130514.pdf>

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⁹⁸ State of Hawaii, *Race to the Top Application Assurances (CFDA No. 84.395A)* 104, May 2010, available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/hawaii.pdf>.

⁹⁹ State of Hawaii, *Race to the Top Application Assurances (CFDA No. 84.395A)* 185, May 2010, available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/hawaii.pdf>.

¹⁰⁰ *

year. The average enrollment per charter school has risen from 139 in 2001-02¹⁰¹ to 299 in 2012-13,¹⁰² and the waitlist has grown to more than 3,000.¹⁰³

Historically, charter school proponents complain that the Legislature and the DOE/BOE have done little to help the charter schools succeed.¹⁰⁴ Some, like former Congressman Ed Case, contend that the DOE/BOE tries to sabotage the charter schools, out of a desire to maintain total control over public education and a fear that the charter schools will out-shine the regular schools:

“Many in the Legislature and DOE/BOE unfortunately oppose charter schools because they fear their autonomy and view them as competing with, not complementing, other public schools. They would rather charter schools fail than prove that school-based flexibility and decisionmaking free of a state central board and administration really work.”¹⁰⁵

Case’s comments are not unique. The U.S. government’s chief advocate for charter schools once described Hawai‘i’s charter schools as “designed to fail.”¹⁰⁶ A former member of the BOE has said, “You need to understand that the DOE’s opposition to the charter schools is philosophic; they view charter schools as destroying the concept of public education as they know it.”¹⁰⁷

In 2012, the Hawaii State Legislature passed Act 130, which established the State Public Charter School Commission and required performance contracts with each charter school.¹⁰⁸ Its proponents viewed this as a formerly lacking system of oversight that will only make charter schools stronger. On July 1, 2013, “all 32 charter schools and the State Public Charter School

¹⁰¹ Interview of Maunalei Love, Executive Director of the Charter School Administrative Office, Aug. 21, 2009.

¹⁰² State of Hawaii, Dept. of Education, *Official Enrollment Count*, available at [http://lilinode.k12.hi.us/STATE/COMM/DOEPRESS.NSF/a1d7af052e94dd120a2561f7000a037c/00ebdabfac05a3dc0a257ab6006fe7e0/\\$FILE/OEC_1213_Nov.14.pdf](http://lilinode.k12.hi.us/STATE/COMM/DOEPRESS.NSF/a1d7af052e94dd120a2561f7000a037c/00ebdabfac05a3dc0a257ab6006fe7e0/$FILE/OEC_1213_Nov.14.pdf).

¹⁰³ Interview of Maunalei Love, Executive Director of the Charter School Administrative Office, Aug. 21, 2009.

¹⁰⁴ In 2009, for example, the Legislature included in the appropriations measure an extensive new requirement that each charter school must provide annual reports on its hiring practices, purchasing practices, etc., ostensibly to see if the charters schools are “following state regulations” that do not apply to the charters. And two members of the BOE repeatedly tried to include bills pertaining to charter schools a new requirement that they be subject to “BOE policies and DOE directives,” which, if enacted, would have marked the end of the charter schools. Because these BOE members managed to get such a provision included in the charter schools’ omnibus bill, the charter schools ended up asking that their own bill be rejected. BOE minutes actually reference explicit statements by board members to the effect that the charter schools must be stopped because they threaten the whole public education system.

¹⁰⁵ Interview with former Congressman Ed Case.

¹⁰⁶ See Drake Beil, “Lack of money, support killing charter schools,” *The Honolulu Advertiser*, Apr. 25, 2004; see also, Brown, “Hawai‘i Board of Education Stifles Charter School Growth,” available at <http://www.grassrootinstitute.org/system/old/GrassrootPerspective/BOEStifles.shtml>, last visited June 27, 2009.

¹⁰⁷ *Supra*, note 56; See also Kawamoto, “Charter schools shafted by DOE,” *The Honolulu Advertiser*, Aug. 3, 2003 and Hawai‘i Educational Policy Center: Charter Challenges: Policy Issues Facing Charter Schools in Hawai‘i, “Funding Charter Schools,” July 2004.

¹⁰⁸ Act 130, SLH 2012 http://www.capitol.hawaii.gov/session2012/bills/GM1232_.PDF

Commission, [. . .] completed the execution of the first charter school performance contracts in the state's history."¹⁰⁹

The performance contract establishes expectations for the academic, financial, and organizational performance of charter schools in order to ensure good outcomes for students and responsible stewardship of public funds[. . .] Performance contracts are a critical component of a high-quality charter school system, and this one helps clarify the responsibilities of the schools and of the Commission itself.¹¹⁰

Opponents of Act 130 viewed it as an attempt to take back autonomy and to make charter schools more like all the other schools in the system.

The legislature has yet to demonstrate aloha for charter schools when it comes to financial support. Although the DOE's all-inclusive annual expenditures penciled out to about \$12,399.00 per student in 2009,¹¹¹ the charter schools have received only about [I need to find this number] per student in each of the past three years. Charter school proponents generally consider this level of funding to be unfair and inadequate, especially for start-up charter schools that must provide their own facilities (and the DOE demands that the facilities satisfy stringent standards).

Home Schooling

Approximately 1.97 million children were being home-schooled in the United States in 2012, and 7,856 of them were in Hawaii.¹¹² To homeschool a child in Hawaii, a parent must first notify the principal of the public school that the child would otherwise be required to attend.¹¹³ The parent will be expected to have developed, and agree to maintain, a planned curriculum that is based on both conventional educational objectives and the needs of the child.¹¹⁴ A written record of progress must demonstrate that the child is acquiring up-to-date knowledge and useful skills.¹¹⁵ The record must be sequential and cumulative, and include beginning and ending dates,

¹⁰⁹ State of Hawaii, Dept. of Education, *Media Release – Performance Contracts Strengthen Charter School Accountability* (Jul. 3, 2013), available at <http://www.hawaii247.com/2013/07/03/performance-contracts-strengthen-charter-school-accountability/>.

¹¹⁰ State of Hawaii, Dept. of Education, *Media Release – Performance Contracts Strengthen Charter School Accountability* (Jul. 3, 2013), available at <http://www.hawaii247.com/2013/07/03/performance-contracts-strengthen-charter-school-accountability/>.

¹¹¹ This all-inclusive figure is arrived at by dividing total budget by total enrollment. Total Expenditures (\$1,406,283,361.00)* / Projected enrollment (178,070) = The BOE/DOE contends that the number is meaningless, because it includes items processed by the Budget & Finance rather than DOE (e.g., fringe benefits) and the amount spent on facilities and the debt service necessitated by investment in facilities. This author believes the all-inclusive per-student number is particularly helpful in comparing the financial resources of public schools to typical private schools. According to the Hawaii Association of Independent Schools, most private schools in Hawaii rely on tuition revenue for the bulk of not just operating costs but also debt service. The all-inclusive number is also helpful in judging the fairness of funds provided to charter schools that have to provide their own facilities.

¹¹² A2Z Homeschooling, *How Many Homeschoolers in America?* (Sept. 1, 2013), http://a2zhomeschooling.com/concerns_homeschooling/numbers_homeschooled_students/

¹¹³ Haw. Rev. Stat. § 302A-1132(a)(5) (2013)

¹¹⁴ Haw. Admin. R. § 8-12-15 (2013).

¹¹⁵ Haw. Admin. R. § 8-12-15 (2013).

instructional hours per week, subject areas, teaching methods, instructional materials, and performance reports.¹¹⁶ Additionally, the child must participate in the Statewide Testing Program in grades three, five, eight, and ten,¹¹⁷ and pass muster with the principal of the school that the parent notified its intent to homeschool.¹¹⁸ In short, the parent must maintain a program of instruction at home that is roughly equivalent to what the child would be getting in a DOE school.

The Adults in the System

*A 2012 study by the Thomas B. Fordham Institute, a conservative think tank, ranked the Hawaii State Teachers Association (HSTA) as the strongest teachers union in the country.*¹¹⁹

The actual number of employees and total money spend each year in Hawaii's public schools are elusive and somewhat controversial. For example, the number of part-time workers and the cost of fringe benefits are usually excluded.¹²⁰ Critics of the DOE maintain that this misleads the public into thinking that the DOE is smaller than it actually is and that the per-student cost of providing a public education in Hawaii is much lower than it actually is.

When all the costs of running the DOE are included, the operating budget for the current 2013-2014 school years totals \$2.64 billion.¹²¹ The capital improvements budget is \$176 million, which is considerable lower than last year's \$324 million.¹²²

[I need to expand this section. Meanwhile, here's what I wrote to Hawaii Business Magazine in response to a reporter's question: Calculating a per-student all-inclusive cost of public education can be difficult and controversial (i.e., any one set of assumptions can be subject to valid criticism). That said, at page 1860 of Operating and Capital Budget by Major Program Area and Intermediate Levels of the Program Structure (available at <http://randallroth.com/files/FY13-15%20Operating%20at%20Intermediate%20levels%20of%20program%20structure%20%28see%201860%29.pdf>) there is a total number for the current 2013-2014 school year of \$2.64 billion. That includes federal as well as state funding, as it should, but does not include the capital improvements budget (CIP) budget. If one truly is after total costs, then CIP or, better

¹¹⁶ Haw. Admin. R. § 8-12-15 (2013).

¹¹⁷ Haw. Admin. R. § 8-12-18(c) (2013).

¹¹⁸ Haw. Admin. R. § 8-12-18(d) (2013).

¹¹⁹ Sarah Butrymowicz, "New Era of Labor: Hawaii's Powerful Teachers Union's Multi-Front War," Time, June 8, 2013, available at <http://nation.time.com/2013/06/08/new-era-of-labor-hawaiis-powerful-teachers-unions-multi-front-war/#ixzz2ZKiaVOqI>.

¹²⁰ The DOE excludes the cost of fringe benefits simply because that function is handled by the State Department of Budget & Finance. While it is literally true that the DOE does not pay those costs, it makes no sense to imply that the cost of fringe benefits for DOE workers is not relevant in calculating a per-student cost. It is worth noting that the 2012 Superintendent's Report stated a total operating budget of \$2.469 billion, which included the cost of fringe benefits. The most recent data regarding part-time workers indicates that they comprise the equivalent of 10,000 full-time employees.

¹²¹ This includes, for example, retirement benefits of \$274,546,000, health benefits of \$231,658,000, and debt service of \$284,657,000. See page 1860 of Operating and Capital Budget by Major Program Area and Intermediate Levels of the Program Structure, available at <http://randallroth.com/files/FY13-15%20Operating%20at%20Intermediate%20levels%20of%20program%20structure%20%28see%201860%29.pdf>

¹²² DOE Budget 2013-2015, page 9.

yet, a rolling average of CIP from the last few years, should be included. After all, private schools and start-up charter schools have to pay for their facilities and interest on any borrowed money. The current CIP is \$176 million, which is considerably lower than last year's \$324 million, according to the DOE Budget 2013-2015, page 9. When the average of those two numbers (\$250 million) is added to the \$2.64 billion mentioned above, the total is \$2.89 billion. If you divide that number by the number of public school students (181,213 in 2011-12, according to the latest Superintendent's Report), the resulting figure is \$15,948. I generally round the number upward or downward (i.e., to either \$15,900 or \$16,000), because citing an exact number like \$15,948 can cause an uninformed person to think that the number is a precise calculation or that the process of arriving at it is not controversial.]

It can be equally difficult to determine the number of people who work for the DOE or on behalf of the DOE. Officially, there are 21,244¹²³ full-time employees, but when you consider the full-time equivalent of part-time workers, the number is much higher. Once full-time-equivalent employees are added to the official numbers, the total is higher than the number of employees at Hawaiian Electric Industries, Hawai'i Medical Services Association, Alexander & Baldwin, Hawaiian Airlines, Kaiser Permanente Hawai'i, First Hawaiian Bank, Bank of Hawai'i, and the Queen's Health Systems, *combined*—make it by far the state's largest employer.¹²⁴

Unions are an imposing presence in Hawai'i's public education system. According to a 2012 study, Hawai'i has the strongest teachers union in the nation.¹²⁵ Among the employees of the DOE are about 11,241¹²⁶¹²⁷ classroom teachers, each of whom must pay dues to the Hawai'i State Teachers Association (HSTA); according to the DOE, 10,852 of them are fully licensed teachers¹²⁸ and the rest provide support services.¹²⁹ There also are 254 principals and a slightly larger number of vice-principals in the 254 regular (non-charter) schools. All of the DOE's principals, vice-principals, outside-the-schools administrators (other than the superintendents), and most of the DOE's non-certified staff belong to the Hawai'i Government Employees Association (HGEA).

These two unions—HSTA and HGEA—won the right to bargain collectively for their respective members shortly after the 1968 Hawai'i State Constitutional Convention voted to make collective bargaining by government workers a constitutional right.¹³⁰ A unionized

¹²³ State of Hawaii, Dept. of Education, *Superintendents 23rd Annual Report* 9, May 14, 2013, available at <http://www.hawaiipublicschools.org/DOE%20Forms/School%20Reports/SuptAnnualReport20130514.pdf>

¹²⁴ Kubota, "State moves up in per-student spending," *The Honolulu Star-Bulletin*, July 28, 2009; see also William Ouchi and Bruce Cooper, "Financial Analysis of Hawai'i Public Schools," Nov. 23, 2003, regarding the number of DOE employees.

¹²⁵ Amber M. Winkler, Janie Scull & Dara Zeelandelaar, *How Strong Are U.S. Teacher Unions? A State-By-State Comparison* (Oct. 29, 2012), available at <http://www.edexcellence.net/publications/how-strong-are-us-teacher-unions.html>.

¹²⁶ State of Hawaii, Dept. of Education, *Superintendents Report* 17, May 14, 2013, available at <http://www.hawaiipublicschools.org/DOE%20Forms/School%20Reports/SuptAnnualReport20130514.pdf>

¹²⁷ Called HSTA(808) 833-2711 1:40 pm July 31, 2013. Left message.*

¹²⁸ State of Hawaii, Dept. of Education, *Superintendents Report* 17, May 14, 2013, available at <http://www.hawaiipublicschools.org/DOE%20Forms/School%20Reports/SuptAnnualReport20130514.pdf>

¹²⁹ University of Hawai'i Public Policy Center, "Report to the 2009 Legislature," Section III (January 2009).

¹³⁰ Needs cite*

teaching corps is now common in public education systems, and a handful of individual school districts allow principals to bargain collectively for compensation and benefits, but Hawai‘i is the only state that has fully unionized management (i.e., principals and other administrators) with near-absolute job security.¹³¹

HSTA and HGEA officials describe themselves as tough negotiators and proactive players in the political arena.¹³² The HGEA staged a 12-day strike in 1994; the HSTA engaged in an 18-day strike in 1973 and a 21-day strike in 2001. The first HSTA strike pitted the union against a political ally, Governor John A. Burns. According to the HSTA’s own website, “once [the teachers] had a taste of the power of collective action, not even the Governor had the power to put the genie back in the bottle.”¹³³

Even staunch union supporters sometimes express concerns about the implications of having both unionized labor *and* unionize management.¹³⁴ Some are particularly concerned that the system’s managers are in the same union as many of the workers—HGEA.¹³⁵ In a 2009 conversation about the role of unions in public education, former Governor Benjamin Cayetano observed, “Not everything the unions want is in the best interests of the kids.”¹³⁶

The HSTA and the state were firmly lectured by the Hawaii Labor Relations Board before the teacher's union went on strike in 2001: “Both sides act somewhat as though they have our schools hostage and are prepared to begin sacrificing hostages unless they achieve their objectives,” the board wrote just before the teachers walked out. The Board later added this: “It comes as no particular surprise that even after ostensibly reaching an agreement which concluded a regrettable 21-day statewide teachers strike, the parties are without an executed collective bargaining agreement and once again making accusations of bad-faith bargaining.”¹³⁷

Allocating funds among the schools

For many years, the processes by which the DOE/BOE allocated non-restricted funds among the individual schools were unclear. This led to uncertainty and distrust. Some principals assumed that a “boat rocker” would pay a price in the form of lower budget allocations: “One principal confided that ‘no principal in Hawai‘i would ever talk stink about the DOE, at least not publicly, because the DOE could make that principal’s life miserable and his job impossible if he were ever perceived to be something other than ‘a team player.’”¹³⁸

¹³¹ See, “School principals bill gets derailed,” Honolulu Star-Bulletin, February 8, 2003; “Local control needed to improve schools,” Honolulu Star-Bulletin, July 24, 2003. When Governor Lingle introduced a bill to remove principals from the union in 2003, opponents in the Legislature contended that the bill was unconstitutional, a position the Honolulu Star-Bulletin called “ridiculous and absurd,” in an editorial.

¹³² See, e.g., HSTA.org, “About HSTA,” available at <http://www.hsta.org/about-history01.php>; last visited June 27, 2009, and HGEA.org, “History of HGEA,” available at <http://www.hgea.org/AboutUs/History.aspx>; last visited June 24, 2009.

¹³³ *Id.*

¹³⁴ Need cite*

¹³⁵ Need cite*

¹³⁶ Interview of Governor Benjamin Cayetano by Randall Roth, August 14, 2009.

¹³⁷ Richard Borreca, “HSTA turns a negotiation into a long, painful opera,” Star-Advertiser, Jul. 31, 2011, at http://www.staradvertiser.com/editorials/20110731_HSTA_turns_a_negotiation_into_a_long_painful_opera.html.

¹³⁸ Roth, “The Promise of the Reinventing Education Act of 2004,” presented to Social Science Association,

“Weighted student formula” (WSF), enacted in 2004, makes nearly half of the allocation process transparent and objective, and shifts theoretical control that portion of each school’s operating budget from the DOE to the principal. The level of funding under WSF reflects each child’s circumstances, and follows each child to whatever school that child attends, “instead of [following] the bureaucracy.”¹³⁹

“[S]chools with high-poverty students, learners for whom English is a second language, rural or isolated populations or high teacher or student turnover ... receive more money per pupil. Special education students ... also get much more money than average.”¹⁴⁰

The WSF concept was developed by Michael Strembitsky, Superintendent of Schools in Edmonton, Canada, and analyzed by UCLA professor William Ouchi in a book, “Making Schools Work: A Revolutionary Plan to Get Your Children the Education They Need.”¹⁴¹ In Edmonton, schools are allocated approximately 80 percent of the school district’s total budget.¹⁴² Each principal controls the school’s operating funds and is not required to purchase services from central administration.¹⁴³

Although on paper WSF has shifted control over nearly half of each Hawai‘i public school’s budget to the principal,¹⁴⁴ almost all of that amount, as a practical matter, must be devoted to essential personnel costs. According to Strembitsky, half of the total budget is barely enough simply to staff the school—control over the rest of the money is what *really* matters, and that half is still controlled outside the schools despite the adoption of WSF.¹⁴⁵ Even the half that a principal in Hawaii theoretically controls is subject to significant limitations. For example, personnel costs are based on statewide averages rather than actual costs, and this has major consequences to individual schools.¹⁴⁶

December 7, 2004; this essay also notes that John Dolly, former Dean of the University of Hawai‘i College of Education, has described Hawai‘i’s public education system as “closed,” and added that a person had to be viewed as a “team player” within the DOE in order to advance.

¹³⁹ Hiller, “Bill gives principals more control over spending,” *The Honolulu Advertiser*, at A1, Apr. 10, 2003, at A1.
¹⁴⁰ *Id.*

¹⁴¹ William Ouchi, “Making Schools Work: A Revolutionary Plan to Get Your Children the Education They Need,” Simon & Schuster (2003); *See also*, Ouchi and Goldschmidt, “A National Study of School District Centralization and Student Performance,” funded by the National Science Foundation.

¹⁴² Edmonton Public Schools, *Budget Services – Allocation* (Accessed 11:13 a.m., Aug. 1, 2013), <http://www.epsb.ca/budget/allocating.shtml>.

¹⁴³ *Id.*

¹⁴⁴ See, H. Mitchell D’Olier, “K-12 Public Education Redesign—Hawai‘i an Style,” presented to the Social Science Association Nov. 3, 2003, at 7. Available at <http://www.castlefoundation.org/pdf/Social-Science-Association.pdf>, (last visited June 11, 2009); cite the Auditor’s Report for the 4% figure. The exact amount controlled by the principals is 47%; Cite 2009 Report to the Legislature. In 2003 the Superintendent stated in a public forum that principals controlled about 15% of the school budget. An earlier report from the state auditor indicated that it was about 4%. When Waimea Middle School on the Big Island converted to a charter school, the portion of the budget controlled by its principal reportedly increased from 5% to 97%.

¹⁴⁵ Needs cite*

¹⁴⁶ Thus, for example, a principal cannot save money by assembling a relatively young, low-paid faculty. Each teachers costs exactly the same so far as the principal is concerned.

Because less experienced (and therefore lower salaried) teachers are more typically found in higher disadvantage schools, the use of average salaries tends to charge these schools an amount that is higher than their teachers' earnings, while lower disadvantage schools (with a higher incidence of more experienced, higher salaried teachers) will be charged an amount that is lower than that paid out by the district to its teachers.¹⁴⁷

In contrast, the use of actual salaries would reflect the reality of exactly what is being paid,¹⁴⁸ so that schools with less experienced teachers would benefit from lower teacher-related costs (i.e., the additional money could be redirected toward other budget items).¹⁴⁹ Teacher unions invariably oppose the use of actual salaries because of their "concern that principals might discriminate against more 'expensive' veteran teachers."¹⁵⁰

Strembitsky and Ouchi contend that WSF can change the culture of a school system from "system-centered" to "school-centered" or "student-centered," only when principals truly control 90 percent or more of their respective school's operating budget and are not forced to do business with a monopolistic provider of administrative services like the DOE.¹⁵¹ They believe that managers within a monopoly tend over time to take their "customers" for granted.¹⁵² Hawai'i's Business Roundtable has expressed similar thoughts:

"Today, in many ways, the principals work for the system. As long as that culture persists, principals will never be empowered. ... A cultural shift will occur [only when] schools control the budget for central office services, and the central staff operates on a cost-recovery basis by selling demand-driven services to the schools."¹⁵³

Is the System Working for the Students?

The key question here is whether Hawai'i's public school system is working well for its students. Although people debate the reasons, there is a widespread perception that the level of student achievement in Hawai'i's public schools is much lower than it should be. Here's how one commentator expressed it a few years ago:

"The answer to how well the public schools are doing can be found on your car radio. If local morning radio types win a laugh by saying, "Don't feel

¹⁴⁷ American Institute for Research, *Evaluation of Hawaii's Weighted Student Formula: Key Considerations 2-3*, (June 2013).

¹⁴⁸ American Institute for Research, *Evaluation of Hawaii's Weighted Student Formula: Key Considerations 3*, (June 2013).

¹⁴⁹ Id.

¹⁵⁰ American Institute for Research, *Evaluation of Hawaii's Weighted Student Formula: Key Considerations 3*, (June 2013).

¹⁵¹ Needs cite*

¹⁵² Needs cite*

¹⁵³ "Redesigning Hawai'i Public Education," Hawai'i Business Roundtable Position Paper, Mar. 2, 2004.

bad, you must be a public school grad," you already know how the public perceives the job done by Hawai'i's Department of Education."¹⁵⁴

The widespread perception that Hawai'i's students are not thriving is not new. The following quote is from a 1988 study that was funded by Hawai'i's Business Roundtable (called the Berman Report): "Officials feel frustrated that the general populace seems to view Hawai'i public education as substandard. Most people do indeed perceive the system as performing below the level of education on the mainland."¹⁵⁵

This perception undoubtedly stems from comparatively low scores on national standardized exams. For example, a 2009 review of all the available data concluded, "Students in Hawaii have consistently underperformed on national tests of Math, Reading, Writing, and Science and continue to do so."¹⁵⁶

The National Center for Education Statistics trend reports show that Hawai'i students have consistently scored below the national average in reading, writing, mathematics and statistics in assessments given in grades 4 and 8, from 1992 through 2011. There are signs of some recent improvement: In 2013, a national study indicated that the average scores on national exams placed Hawai'i 40th in 4th grade reading and 44th in 8th grade reading among the 50 states, 26th in 4th grade math and 38th in 8th grade math.¹⁵⁷ The same study gave Hawaii an overall ranking of 29th in the United States.¹⁵⁸

National Assessment of Educational Progress (NAEP) is consistent from state to state and therefore provides an objective comparison of student achievement in each of the 50 states. Hawai'i's NAEP scores have been in the bottom tier of all the states for many years. In 2011, Hawaii ranked 34th in fourth grade math, 44th in fourth grade reading and science, 44th in eighth grade math, 46th in eighth grade reading, and 48th in eighth grade science.¹⁵⁹ Results from the nationally administered Scholastic Achievement Test (SAT) also have placed Hawai'i at or near the bottom year after year.¹⁶⁰

Comparisons of median SAT scores from state to state can be misleading because the percentage of public school students taking the SAT varies considerably—the higher the participation rate, the lower that state's median test score tends to be—but Hawai'i's participation rate is greater than the national average, so its close to last-in-the-nation standing in

¹⁵⁴ Borreca, "Politicians keep talking, students keep waiting," The Honolulu Star-Bulletin, Nov. 30, 2003.

¹⁵⁵ BW Associates, "Educational Excellence for the Pacific Era," (Berman Report) p. 6, November 15, 1988.

¹⁵⁶ Sally Kwak, *Determinants of Student Achievement in Hawaii*, Unpublished manuscript, prepared for the 50th Anniversary of Hawaii Statehood Conference, Honolulu, Hawaii, Aug. 21, 2009; see also University of Hawaii j Public Policy Center, Report to the 2009 Legislature, II Section II (Jan. 2009).

¹⁵⁷ Education Week, *Quality Counts 2013, Hawaii State Highlights* (2013).

¹⁵⁸ Education Week, *Quality Counts 2013, State Report Cards* (2013).

¹⁵⁹ National Center for Education Statistics, NAEP State Comparisons, *available at* <http://nces.ed.gov/nationsreportcard/statecomparisons/>.

¹⁶⁰ Digest of Education Statistics, National Center for Education Statistics, Table 174, "SAT score averages of college-bound seniors and percent of graduates taking the SAT, by state or jurisdiction: selected years, 1996-96 through 2011-12." The ACT is not helpful in evaluating the performance of public school systems because state averages reflect the scores of private-school students as well as public-school students.

SAT test scores cannot easily be discounted. Furthermore, the combined average SAT scores for public school students in Hawaii is far below that of other students in Hawaii.¹⁶¹

The public has at times had reasons to be confused by media reports that students from Hawai‘i were doing, or not doing, relatively well on the ACT college entrance exam.¹⁶² Test takers from Hawaii in past years have scored well above average on the ACT. How can a state simultaneously do well on the ACT and poorly on the SAT? The company that administers the ACT reports only composite data—that is, it does not report the scores of public and private school students separately.¹⁶³ Second, public school juniors in Hawaii were not required to take the ACT until 2013, so relatively few did so in earlier years.¹⁶⁴ Beginning in 2013, a relatively high percentage of public school students took that exam (a 75% increase in the total number of ACT test takers from Hawaii since the preceding year). The DOE reported that Hawaii “posted lower scores than their national peers” on all four of the benchmark areas (English, Mathematics, Reading, and Science), but Deputy Superintendent Ronn Nozoe saw a silver lining: “The good news is the high number of students challenging themselves with the college rigor of the ACT text.”¹⁶⁵

Another indicator of student achievement is a school system’s graduation rate. For many years the DOE/BOE reported a system-wide graduation rate of about 80% (79.3% in 2009-10; 80.1% in 2010-11; 82.2% in 2011-12).¹⁶⁶ However, national organizations such as the Education Commission of the States (ECS) and Education Research Center disagree, reporting rates for Hawai‘i that are significantly lower than was reported locally: 67.2% for 2010 and 69.2% for 2009, compared to the national average was 74.7%.¹⁶⁷ An analysis of the latest U.S. Department of Education data also suggests that the DOE/BOE’s numbers are somewhat suspect. These data indicate a 2009-10 “Freshman Graduation Rate” of 75.4 percent in Hawaii compared to the

¹⁶¹ In 2008, the combined average SAT scores for public schools (1,371), was far below both private secular schools (1,623) and private religious schools (1,579). See Collegeboard, 2012 College-Bound Seniors State Profile Report – Hawaii. Table 7, available at http://media.collegeboard.com/digitalServices/pdf/research/HI_12_03_03_01.pdf.

¹⁶² See, e.g., Moreno, “Isles a bit above ACT average,” Honolulu Advertiser, August 19, 2009 (“While Hawai‘i’s ACT scores for the graduating class of 2009 showed small decreases from last year, overall the state’s results show that Hawai‘i’s college-bound students are more prepared for post-secondary degree work than many of their national counterparts.”)

¹⁶³ For a breakdown of SAT scores by public, independent, and parochial schools in Hawaii, see “Hawaii SAT scores remain steady,” Honolulu Advertiser, Aug. 26, 2009 (“When the scores are broken down, Hawai‘i’s public school students again fared significantly lower than their private school counterparts on the college entrance exam...Hawai‘i’s public school students averaged 474 in math, 454 in reading and 441 in writing...Hawai‘i’s private school students averaged 574 in math, 537 in reading and 535 in writing. Religious school students averaged 539 in math, 516 in reading and 514 in writing.); also see generally Gima, “SAT scores show mixed results as more isle students take exam,” Honolulu Star-Bulletin, Aug. 26, 2009.

¹⁶⁴ State of Hawaii, Dept. of Education, *Public schools gear up for college-and-career assessments*, April 2013, available at <http://www.hawaiidoereform.org/enews/2013-04/Public-schools-gear-up-for-college-and-career-assessments>.

¹⁶⁵ “ACT results reinforce need for college- and career-readiness focus,” Aug. 21, 2013, available at <http://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/ACT-Results-Reinforce-Need-for-College-and-Career-Readiness-Focus.aspx>.

¹⁶⁶ Superintendent’s 23rd Annual Report, p. 8, (May 2013), available at <http://www.hawaiipublicschools.org/DOE%20Forms/School%20Reports/SuptAnnualReport20130514.pdf>.

¹⁶⁷ Education Week, *State Graduation Report 2013*, available at <http://www.edweek.org/apps/gmap/details.html?year=2013&zoom=6&type=1&id=HI>.

national average of 78.2 percent,¹⁶⁸ and a “Dropout Rate” in Hawaii of 5.7 versus the national average of 38.¹⁶⁹

The National Center for Public Policy and Higher Education once tracked the number of middle school students in each state who made it to various stages of the “educational pipeline.”¹⁷⁰ In Hawaii, only 65 out of 100 ninth graders graduated from high school four years later (versus the national average of 68); 34 of those graduates immediately enter college (versus the national average of 40); 22 of those students are still enrolled a year later (versus the national average of 27); and 12 of those students receive a degree within 150% of the normal time it takes to get that degree (versus the national average of 18). Overall, Hawai‘i was near the bottom, 48th out of the 50 states.¹⁷¹

Placement exams taken by high school graduates wanting to take college-level courses can also be used to measure proficiency levels. In 2013, the University of Hawai‘i administered such exams to more than 3,000 students who self-reported that they had graduated from one of Hawai‘i’s public schools earlier in the year and were enrolling in one of the seven UH community colleges. The percentage of these students who were found to be ready for college transfer-level work (i.e., courses numbered 100 or above) were 50% in reading, 38% in writing, and 21% in math—meaning, for example, that 79% of these graduates needed remediation in math, 62% needed it in writing, and half required remediation in writing.¹⁷² The DOE’s Strategic Plan envisions that its graduates are career ready and “possess the attitudes, knowledge and skills necessary to contribute positively and compete in a global society.”¹⁷³

Some people may assume that a high school graduate always has the option of joining the military. Unfortunately, that simply isn’t the case for a large number of Hawaii’s graduates. Between 2004 and 2009, 38.3% of the young people from Hawaii who took the Armed Services Vocational Aptitude Battery (ASVAB) entrance exam did not meet the minimum necessary to enlist in the U.S. Army, which has a lower minimum than do the other branches (i.e., Marines, Air Force, Navy, and Coast Guard).¹⁷⁴ Hawaii’s pass rate was the lowest in the nation. Except for Mississippi (37.8), the rest of the bottom 10 states—District of Columbia (32.5), Louisiana

¹⁶⁸ U.S. Dept. of Education, Ed Data Express, State Data Table, *available at* <http://www.eddataexpress.ed.gov/state-tables-main.cfm>.

¹⁶⁹ Digest of Education Statistics, National Center for Education Statistics, Table 8, Public high school number of graduates, number of high school dropouts for grades 9–12, and high school event dropout rate for grades 9–12, by gender and state or jurisdiction: School year 2009–10, *available at* http://nces.ed.gov/pubs2013/2013309/tables/table_08.asp.

¹⁷⁰ “The National Center for Public Policy and Higher Education, “The Educational Pipeline: Big Investment, Big Returns,” Policy Alert, Apr. 2004.

¹⁷¹ See <http://www.highereducation.org/reports/pipeline/HI/Hi-b.pdf> for comparisons at each stage of the pipeline.

¹⁷² UHCC Office of Academic Planning, Assessment, and Policy Analysis, as reported in an email from Cheryl Chappell-Long to Melissa Kolonie, dated Nov. 19, 2013.

¹⁷³ State of Hawaii, Dept. of Education, *Strategic Plan 2011-2018 – 2012 Update*, Glossary, *available at* <http://www.hawaiipublicschools.org/DOE%20Forms/Advancing%20Education/StrategicPlan.pdf>

¹⁷⁴ See “38.3% in isles fail military tests, Honolulu Star-Advertiser, Dec. 22, 2010. The available data do not indicate what percentage of the test takers attended public vs. private school, nor is it possible to say what percentage received a substantial portion of their formal education someplace other than Hawaii.

(30.9), South Carolina (29.5), Alabama (28.2), New Mexico (28.2), Arkansas (27.7), Maryland (26.6), and Tennessee (25.1)—did significantly better than Hawaii (38.3).¹⁷⁵

Historically, various studies have found Hawai‘i’s standards, curriculum, and assessments wanting. The Fordham Foundation sharply criticized the DOE/BOE because Hawai‘i’s “standards are not measurable and there is no statewide curriculum.”¹⁷⁶ And a federal panel of experts concluded that the DOE lacked “coherency” in academic content and achievement standards, and in its assessment system.¹⁷⁷ Critics in Hawai‘i have said that this fundamental incoherence takes its toll on both teachers and students.

“How can we realistically expect better student outcomes when our standards are, as the federal panel found, “incoherent”? ... Since the year 2000, our DOE has changed both the standards and the tests used to judge student performance based on those standards every single year. That’s like trying to change every tire and continually repaint the SUV as it rolls down the highway! That’s counterproductive, and it’s terribly unfair to teachers and students.”¹⁷⁸

Since then, there have made additional changes. In fact, Hawaii is now one of the overwhelming majority of states that have adopted national Common Core State Standards (CCSS) in the subject areas of mathematics and English language arts. The standards “focus on core conceptual understandings and procedures starting in the early grades . . .”¹⁷⁹ Proponents point out that states adopting these standards have the possibility of working with other states to develop common assessments and instructional resources and that better assessment systems and instruction are likely to result.¹⁸⁰ Opponents argue that CCSS represents an attempt by the federal government to take over control of education from states and local government, and that the ultimate goal is a one-size-fits-all national education system that would stifle innovation and further strengthen the grip of teacher unions.¹⁸¹ The Hawaii DOE began its implementation of the CCSS in school year 2012-2013 with grades K-2 and 11-12.¹⁸² Full implementation is scheduled at all grade levels in school year 2013-2014.¹⁸³

¹⁷⁵ Non-whites, African-Americans, and Hispanics who took the exam in Hawaii (39.9) performed worse collectively than did their counterparts in other states (21.5); and Caucasians who took the exam in Hawaii (20.1) performed worse than did their counterparts in other states (16.4).

¹⁷⁶ WestEd Study; see also Stuart, “Audit Exposes many Problems With Hawai‘i Public School System,” Hawai‘i Reporter, Feb. 17, 2004 (“The Department of Education has utterly refused to establish an academic curriculum [thereby delegating] this task down for each school to address ad hoc.”)

¹⁷⁷ Nina Buchanan and Mary Anne Raywid, “What is really needed to fight isle’s dismal test scores,” The Honolulu Star-Bulletin, Aug. 6, 2006.

¹⁷⁸ Cite Mary Ann’s article.*

¹⁷⁹ Common Core Standards Initiative, *The Standards*, <http://www.corestandards.org/the-standards> (last visited Aug. 8, 2013, 12:30 P.M.)

¹⁸⁰ NEA Education Policy and Practice Department, *Common Core State Standards: A Tool for Improving Education*, 4 (2010), available at http://www.nea.org/assets/docs/HE/PB30_CommonCoreStandards10.pdf.

¹⁸¹ Mike McShane, *Common Core Complications*, U.S. News, July 3, 2013, available at <http://www.usnews.com/opinion/blogs/economic-intelligence/2013/07/03/five-complications-of-common-core-education-standards>.

¹⁸² State of Haw., Dept. of Education, *Hawaii Content & Performance Standards*, <http://standardstoolkit.k12.hi.us/common-core/> (last visited Aug. 8, 2013, 12:48 P.M.)

¹⁸³ State of Haw., Dept. of Education, *Hawaii Content & Performance Standards*,

There are many other changes going on at Hawaii's DOE. From 2002 to 2012, the federal No Child Left Behind Act (NCLB) law required the DOE to measure school performance based mostly on reading and math test scores.¹⁸⁴ In May 2013, the U.S. Department of Education (USDOE) granted the DOE a waiver from NCLB, and approved the new Strive HI Performance System, in this latest attempt "to ensure all students graduate college- and career-ready."¹⁸⁵ Strive HI "replaces many of the requirements of the . . . NCLB with multiple measures of success to meet the needs of Hawaii's students, educators and schools."¹⁸⁶ The Strive HI Performance Index aligns to the BOE/DOE State Strategic Plan's 2012 vision of success.¹⁸⁷

"Each school [will be] held accountable to meeting ambitious and attainable goals that are customized to each school complex [. . .], based on current performance," and "measures school performance and progress, using multiple measures of student achievement, growth and readiness for success after high school."¹⁸⁸

"We are proud of the work happening at every level of Hawaii's public education system to prepare students for real-world demands and provide better data, tools and support to students, educators and schools. Now, with the approval of the Strive HI Performance System, we've unlocked the potential of all these efforts to work together in a coherent way to support success."¹⁸⁹

"Approval to move forward with the Strive HI Performance System validates our strategic direction and allows us to build on Hawaii's successes. With the new system, we are more focused on college- and

<http://standardstoolkit.k12.hi.us/common-core/> (last visited Aug. 8, 2013, 12:48 P.M.)

¹⁸⁴ Star Advertiser, *Hawaii gets approval for education law waiver*, May 20, 2013, available at

http://www.staradvertiser.com/news/breaking/20130520_Hawaii_gets_approval_for_education_law_waiver.html?id=208162881

¹⁸⁵ State of Haw., Dept. of Education, *News Release - U.S. DOE approves Hawaii's new school accountability and improvement system Strive HI Performance System replaces components of federal NCLB requirements*, May 20, 2013, available at <https://lilinode.k12.hi.us/STATE/COMM/DOEPRESS.NSF/a1d7af052e94dd120a2561f7000a037c/192d7e36a3fd5bbe0a257b71005dc69c?OpenDocument>

¹⁸⁶ State of Haw., Dept. of Education, *News Release - U.S. DOE approves Hawaii's new school accountability and improvement system Strive HI Performance System replaces components of federal NCLB requirements*, May 20, 2013, available at <https://lilinode.k12.hi.us/STATE/COMM/DOEPRESS.NSF/a1d7af052e94dd120a2561f7000a037c/192d7e36a3fd5bbe0a257b71005dc69c?OpenDocument>

¹⁸⁷ State of Haw., Dept. of Education, *News Release - Strive HI System Replaces Parts of NCLB* (May 20, 2013), available at <http://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/Strive-HI-Performance-System-replaces-components-of-federal-NCLB-requirements.aspx>

¹⁸⁸ State of Haw., Dept. of Education, *News Release - Strive HI System Replaces Parts of NCLB* (May 20, 2013), available at <http://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/Strive-HI-Performance-System-replaces-components-of-federal-NCLB-requirements.aspx>

¹⁸⁹ Kathryn Matayoshi, Superintendent, DOE. State of Haw., Dept. of Education, *News Release - Strive HI System Replaces Parts of NCLB* (May 20, 2013), available at <http://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/Strive-HI-Performance-System-replaces-components-of-federal-NCLB-requirements.aspx>

career-readiness, rewarding high-performing schools and customizing support to students, educators and schools with strategies proven in the Zones of School Innovation.”¹⁹⁰

All the above change leaves in place a bureaucratic hierarchy that many people do not think is the best approach to public education. Teachers complain that constant change and growing reliance on bureaucratic processes consume inordinate amounts of their time that they would rather spend teaching.¹⁹¹ The Washington Post ran a story in August of 2013 about Hawaii’s “perpetual teacher shortage.”¹⁹² According to it, “constant educational experimentation” has frustrated many new teachers beyond their tolerance levels. Outside experts and commentators have described a teaching force that is far from satisfied with the degree of support provided by the DOE/BOE:

“Many principals and teachers work in an environment where they do not feel responsible for taking initiative and, in too many cases, wish to work elsewhere.”¹⁹³

“The belief that schools will not improve without providing more authority at the local level is obvious to educators faced with the tedium of bureaucratic mandates.”¹⁹⁴

“I am a retired teacher and survived 35 years in the classroom, and I am now exhausted. The teaching environment is not conducive to good health. The DOE will not support you to make it any easier.”¹⁹⁵

Principals also complain of unnecessary levels of bureaucracy, and severe limitations on a principal’s ability to remove ineffective teachers from the classroom on those relatively rare occasions when it is clearly warranted.¹⁹⁶ It can literally take years of time-consuming effort to terminate a teacher, even if the need to do so is obvious not just to the principal but to everyone else in that school. Even when a principal has finally managed to remove such a teacher, the

¹⁹⁰ Ronn Nozoe, Deputy Superintendent, DOE. State of Haw., Dept. of Education, News Release - *Strive HI System Replaces Parts of NCLB* (May 20, 2013), available at

<http://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/Strive-HI-Performance-System-replaces-components-of-federal-NCLB-requirements.aspx>

¹⁹¹ CARE community sessions (materials available from the author); see also DeRego, Island Voices, The Honolulu Advertiser, p. A16, 10/17/03 (“The belief that schools will not improve without providing more authority at the local level is not only valid, but obvious to educators faced with the tedium of bureaucratic mandates.”).

¹⁹² “Hawaii schools fill teacher shortage with recruits from mainland but struggle to keep them,” The Washington Post, Aug. 10, 2013, at http://articles.washingtonpost.com/2013-08-10/national/41252874_1_hawaii-schools-veteran-teachers-teacher-retention.

¹⁹³ BW Associates, “Educational Excellence for the Pacific Era,” (Berman Report) p. 19, November 15, 1988.

¹⁹⁴ DeRego, Island Voices, Honolulu Advertiser, Oct. 17, 2003, at A16.

¹⁹⁵ Comment from “tired,” on Honolulu Star-Bulletin discussion board, Aug. 20, 2009, available at <http://www.topix.net/forum/source/honolulu-star-bulletin/TCJI7DAAM0DPBVNG2/p3>.

¹⁹⁶ CARE feedback from community sessions; see generally, Jacques Steinberg, “In Hawai‘i, Public Schools Feel a Long Way from Paradise,” New York Times, Oct. 12, 2001, at A-18; see also, Survey on Education for Military Families in Hawai‘i, Nov. 2007; available at <http://www.Hawai'i.edu/hepc/pdf/Reports/HIDOEMilitarySurvey.pdf>; last visited 6/12/09.

result in most cases is that the DOE simply assigns that teacher to another school. A former Executive Director of the teachers union, after 13 years as union head, stated proudly, “No teacher lost her job on my watch.”¹⁹⁷ A life-long educator responded, “If this doesn’t convince you that the HSTA protects its own, rather than students, nothing will.”¹⁹⁸

And who should be better able to evaluate the public school system than the people working within it? When it comes to their own children, public school teachers and board members are voting with their feet. U.S. Census data from 1990 states that about 43% of the public school teachers in Honolulu at that time were sending their own children to private schools, compared to only 31% of the general Honolulu population.¹⁹⁹ But this is not unique to Hawai‘i; “urban public school teachers send their children to private schools at a rate of 21.5 percent, nearly double the national rate of private-school attendance.”²⁰⁰ A 2003 KITV newscast reported, “Board of Education members send their kids to private schools at about three times the rate of other parents in the state.”²⁰¹

Hawai‘i’s reputation for substandard public school education has widespread repercussions. “Business and military leaders say the reputation of Hawai‘i’s public schools makes it difficult for them to attract top personnel to the islands.”²⁰²

“The actual or perceived condition of Hawai‘i’s public schools is ... our State’s biggest business problem. ... Business leaders advise me of the problems with Hawai‘i high school graduates testing for entry-level positions in their companies Similar problems are experience by labor unions in Hawai‘i who find that Hawai‘i high school graduates are unable to pass apprentice examinations. ... The percentage of military families in Hawai‘i that home school their children is dramatically higher than in other military locations in the Unites States. ... Military leadership has considered establishment of Department of Defense schools in Hawai‘i.”²⁰³

The DOE/BOE blamed many of its problems on the No Child Left Behind (NCLB) law, but that legislation simply requires each state, as a condition of federal funding, to develop a plan for ensuring achieving its own goals. The plan must contemplate not only overall student success, but also success by groups at the low end of the achievement gap, such as low-income and non-English speaking students. Each school must demonstrate what’s called Annual Yearly

¹⁹⁷ Roderick McPhee, “Union policies hinder improvement efforts,” *The Honolulu Advertiser*, June 15, 1997, at B3.

¹⁹⁸ *Id.*

¹⁹⁹ Watanabe, “Many public school teachers put own kids in private school,” *The Honolulu Star-Bulletin*, Oct. 10, 2001, available at <http://archives.starbulletin.com/2001/10/10/news/kokualine.html>, citing Denis P. Doyle, “Where Connoisseurs Send Their Children to School,” *Hudson Institute*, Nov. 11, 1999.

²⁰⁰ Denis P. Doyle, Brian Diepold, and David A. DeSchryver, *Where Do Public School Teachers Send Their Kids to School?*, (Sept. 7, 2004), available at http://www.edexcellencemedia.net/publications/2004/200409_wheredopublic/Fwd-1.1.pdf.

²⁰¹ “Large Number of BOE Children Attend Private School: Some BOE Members Say Public Schools Do Not Meet Needs,” *KITV News*, May 2, 2003.

²⁰² George R. Ariyoshi, John Waihee and Ben Cayetano, *Education Reform Must Put Kids First* (Jan. 31, 2010) *Honolulu Advertiser*, available at <http://the.honoluluadvertiser.com/article/2010/Jan/31/op/hawaii1310341.html>.

²⁰³ D’Olier, “K-12 Public Education Redesign – Hawai‘i an Style,” presented to Social Science Association, Nov. 3, 2003.

Progress (AYP), which is determined primarily by test scores. Each state sets its own targets, writes its own exams, and measures the progress of its own students and there are consequences when a school fails repeatedly to make its AYP.²⁰⁴

[Need to add section on Race to the Top and other recent DOE initiatives. Include this quote from a DOE News Release on Aug. 21, 2013, in which the DOE was describing its new Strive HI Performance System: “For the first time, the DOE is holding schools accountable for achievement, growth, achievement gaps, and college and career readiness.” Check with DOE to see if this statement was a mistake, or if they think it’s literally true that the DOE has never held schools accountable for achievement, growth, achievement gaps, and college and career readiness. I think it is true, but I’m surprised that the DOE is saying it.]

[Need also to add a section on Furlough Friday. Some raw material: “While the Lingle administration definitely required state departments to make cuts in the face of steeply declining tax receipts as the economy tanked, the specific decision to cut that many instructional days was something worked out between the DOE and the HSTA.” A. Kam Napier, Wrong on Furlough Friday, Honolulu Magazine, Sept. 2012 (<http://www.honolulumagazine.com/Honolulu-Magazine/September-2012/Wrong-on-Furlough-Fridays/>). See also <http://www.honolulumagazine.com/Honolulu-Magazine/Off-My-Desk/September-2009/The-Indiscriminate-Axe-Part-2/>, The Indiscriminate Axe Part 2, Sept. 25, 2009. Honolulu Advertiser: “In scheduling 17 furlough days that will shut down Hawaii’s public schools, the DOE and the HSTA agreed not to use any of the six available waiver and professional development days to offset the loss of instructional time or relieve parents of child-care worries.” Christie Wilson, Hawaii teacher furloughs will cut class time, not preparation days, Sept. 25, 2009, at <http://the.honoluluadvertiser.com/article/2009/Sep/25/ln/hawaii909250361.html>. Napier: “It was obvious in 2009, and should be remembered now, that Furlough Fridays was nothing less than organized government labor making sure the public would hurt just as much as the union over pay cuts. It was a strike, in everything but name.”]

Who (or What) Needs to Change?

By now, virtually everyone accepts that national test scores coming out of the state’s public schools are relatively low, and that there are other troubling indicators. Opinions differ widely, however, about who or what needs to change. Most of these positions fall into the following categories: (1) flawed assessments; (2) unions that are too politically strong; (3) inadequate funding; (4) deficient students; (5) inadequate system-wide leadership; (6) ineffective teachers and principals; and/or (7) a flawed governance structure. Although more than one of these may have some degree of validity, and some are interrelated, the author of this paper views the last category, flawed governance structure, as the primary and fundamental problem. Before making the case for that conclusion, however, the other six possibilities are considered:

²⁰⁴ Da Silva, “School restructuring costs spark concerns,” The Honolulu Star-Bulletin, Sept. 2, 2008 (“Hawai‘i is among 23 states [that planned for] smaller achievement gains through the first half of the mandate and as a result face steeper, “potentially unreachable” goals as its deadline nears, according to a study last year by the nonpartisan Center on Education Policy.”).

Methods of assessment. Some people insist that Hawai‘i’s public-school students are doing great in ways that cannot be measured objectively, that the public should discount if not ignore completely the troubling test scores, and/or that individual success stories from within the public schools prove that every student has an opportunity for a quality education (i.e., if public school graduates can get into Ivy League schools, then Hawai‘i’s system is obviously not deficient). Although they are actually defending the governance structure, such supporters often position themselves as defending the *people* in the system. For example, a high-level DOE administrator recently responded to public criticism of DOE leadership, not by addressing relevant data, but by characterizing the critics as “disrespectful of and hurtful to the hardworking students, parents, staff, teachers, administrators, and complex area staff of our Hawai‘i public schools.”²⁰⁵

The writers and editors of *Honolulu Magazine* regularly hear the same sort of thing each year when they exam the DOE/BOE closely in an issue devoted to public education:

“We would probably never have taken up this crusade if our schools were even average, ranking say, 25th in the nation. But they don’t. They consistently rank near the bottom, and have for years—so we must do these articles, because it’s our job, our responsibility, to help our readers understand their community better so that all of us, the Hawaii public, can do something to make life better.”²⁰⁶

To defenders of the current governance structure, the mere mention of low test scores is an assault on the children. Such parties also regularly point out that standardized testing is not without its own shortcomings (which is obviously true), but they never offer an alternative way to hold anyone accountable for results. Here’s how a former head of the teachers union put it:

“The media keeps saying the schools are failing because the test scores aren’t as high as some of the rest of the nation. Obviously it’s true because the numbers state so, but is the test the only way you measure student success?”²⁰⁷

The current head of the union stated:

“A major concern has been over the heavy use of student test scores to measure teacher effectiveness. No Child Left Behind has clearly demonstrated that over reliance on student test scores puts undue and unfair pressure on students without providing for a well-rounded education.”²⁰⁸

²⁰⁵ Ronn Nozoe, Op-Ed, “DOE needs Hamamoto,” *Midweek*, Aug. 5, 2009, at 4.

²⁰⁶ Editor’s page, *Schools and Stars*, May 2013, available at <http://www.honolulumagazine.com/Honolulu-Magazine/May-2013/Editors-Page-Schools-and-Stars/>

²⁰⁷ Michael Keany, *Honolulu Magazine*, May 2009, quoting Roger Takabayashi, President of Hawai‘i State Teachers Association, available at <http://www.honolulumagazine.com/Honolulu-Magazine/May-2009/>

²⁰⁸ Maui TV News, *HSTA Responds to BOE Comments As Talks Languish* (Dec. 12, 2012), quoting HSTA President Wil Okabe, available at <http://mauitvnews.com/blog/tag/wil-okabe/>.

One wonders if the union would simply have individual teachers decide for themselves whether they are doing a good job of teaching their students. Putting any group in charge of holding itself accountable is the same as doing away with accountability.²⁰⁹

Critics of that kind of thinking have pointed out practical reasons why standardized testing should be taken seriously:

“Hawai‘i’s test scores have been at or near the bottom for years, and they are not getting better. . . . I agree there are other achievement measures, but in the ‘real world,’ tests do matter a lot. Students need to demonstrate basic competence to get any good job and achieve a minimum test score to enter the military. Tests also determine admission to most post-secondary educational programs, which for most people is the primary gateway to a better life. And anyone wanting to work as a government clerk or secretary must pass a civil service test. . . . Downplaying the importance of test scores is nothing more than an excuse for poor results.”²¹⁰

Such critics also faulted the DOE/BOE for its refusal in the past to measure degrees of improvement in student performance.²¹¹ With the adoption of the Strive HI Index, the BOE/DOE supposedly will track students’ performance in reading, math and science, how well schools are improving students’ reading and math skills over time compared to other schools, whether a school is preparing its students to be college and career ready, and whether a school is closing achievement gaps between high-needs students and non-high needs students.²¹² The Strive HI Performance System is still in the implementation phase, so results will not be available for a few years.

Unions. Hawai‘i’s single-employer, highly centralized public education system benefits unions enormously. It gives them the distinct advantage of having to negotiate only one contract for the entire state. Their stranglehold on the system would weaken dramatically if they had to negotiate with separate employers, such as local school boards.²¹³ Also of significant benefit to the unions is that for many years they would routinely find themselves sitting across the negotiating table from rank amateurs, such as school board members and administrators who had no training or experience in negotiating union contracts. (Private-sector employers utilize the services of an Employers’ Council, pitting professionals against professionals.) Officials of the

²⁰⁹ Unlike responsibility, accountability cannot be shared. Accountability is “ultimate responsibility.” It is where the buck stops, as President Truman so famously put it. In order for a large organization to function properly, everyone from the top to the bottom needs to know where the buck stops in that organization. Where does ultimate responsibility lay? Who can be held accountable? In Hawai‘i’s public education system, there is no clear answer to these questions.

²¹⁰ Lingle, “Student testing matters a lot,” *The Honolulu Advertiser*, at A17, Oct. 15, 2003.

²¹¹ Michael Keany, “Do Teachers Make the Grade?” *Honolulu Magazine*, <http://www.honolulumagazine.com/Honolulu-Magazine/May-2009/Do-Teachers-Make-the-Grade/>, May 2009, (last visited Aug. 16, 2013).

²¹² State of Haw., Dept. of Education, *Strive HI Performance System – Strive HI Index*, (Aug. 16, 2013, 12:13 P.M.), <http://doeweb2.k12.hi.us/strivehisystem/strivehiindex.htm>.

²¹³ Because the DOE is centralized and all teachers are employed by the DOE, the HSTA only has to negotiate one contract. If the DOE was not centralized and teachers were employed by hypothetical local school boards, the HSTA would have to negotiate with all of the school boards.

teachers and principals unions have negotiating expertise and a fiduciary duty to pursue the interests of their members to the exclusion of all other interests. Due to this, it is not surprising that they have historically negotiated agreements to elevate the interests of union members above those of students, parents, and the public.

The unions' power may explain why it is an epic undertaking to remove even an obviously ineffective teacher from the classroom. It also helps explain why teachers with seniority have "bumping" rights,²¹⁴ even when that is not in the best interests of the affected schools. A recent article in *Honolulu Magazine* quoted a principal who said he regularly loses exceptional teachers after they have connected with the students, simply because teachers with more seniority "were placed" at his school.²¹⁵

The teachers union may also have something to do with the perennial shortage of teachers in Hawai'i. Starting pay for a teacher in Hawai'i is about \$43,759 (those with a master's degree start at \$47,259), plus another \$19,000 in fringe benefits.²¹⁶ The total exceeds \$80,000 when annualized. That amount compares quite favorably to starting pay for other jobs in Hawai'i requiring a comparable education. Yet year after year, there is a shortage of public school teachers, which the teachers union cites as a reason to raise teacher salaries and benefits even higher. Some observers believe that the HSTA and others with vested interests have used their political influence to make it difficult for mainland teachers to get certified and hired in Hawai'i. Teachers from the mainland have found the process labyrinthine, which can only be a deterrent to interested and qualified teachers from out of state.

[The cost of fringe benefits in FY 2013 added another 44.54%, according to a memo from Amy S. Kunz, Assistant Superintendent and Chief Financial Officer, entitled Fringe Benefit Rate for FY 2013, dated July 20, 2012.]

Teachers' unions, however, are common, and it would not be surprising to hear of teacher-union officials in other states who similarly seek and use political leverage to enhance the interests of teachers. What makes Hawai'i unique with respect to union influence is the existence of unionized management. A former dean of the College of Education at the University of Hawai'i called it bizarre that the system's managers would belong to a union. Governor Cayetano offered large pay increases for all the principals if they would agree to decertify the union, but the principals declined.²¹⁷ Imagine the management of any other enterprise in Hawai'i, or anywhere else, insisting upon near-absolute job security and salaries totally unrelated to job performance or outcomes.

²¹⁴ Teachers who are laid off from one area, may "bump" the least senior teacher in another department if they are certified to teach in it and their service time exceeds that of the bumped teacher. Honolulu Civil Beat, *Hawaii Teacher Firing*, (Aug. 16, 2013, 2:19 P.M.) available at <http://www.civilbeat.com/topics/hawaii-teacher-firing/>

²¹⁵ *Id.* at note 219, quoting Gerald Teramae, Principal of Kalani High School.

²¹⁶ "Teachers' Salary Schedule, Effective School Year 2013-2014," available at <http://www.hawaiipublicschools.org/DOE%20Forms/OHR%20Employment/TeachersSalary2013.pdf>, (see schedule for teachers who have completed a state-approved teacher education program, and who have 0 years experience); Kubota, "State moves up in per-student spending," Honolulu Star-Bulletin, July 28, 2009.

²¹⁷ "Union policies hinder improvement efforts," Honolulu Advertiser, June 15, 1997, at B3.

Roderick McPhee, a former Superintendent of a mainland public school system and longtime President of Punahou School, opined repeatedly that student achievement in Hawai‘i’s public schools would continue to languish as long as the principals belonged to a union.²¹⁸ He explained that union contracts make it impossible to hold principals accountable, and then added, “If not the principal, who do you hold accountable for student achievement?”

Some people view the unions as part of a politically dominant, “unholy alliance”²¹⁹ that blocks every effort to change the status quo (unless the change would add to the union’s power). One critic privately called it an iron triangle, consisting of union officials, leaders of the DOE/BOE, and legislators who are dependent on the unions. Commentator David Shapiro thinks this cabal only pretends to care about “real” reform:

“To the Democrats [in the Legislature], the ‘stakeholders’ are those who derive power from Hawai‘i’s floundering school system – lawmakers, Board of Education members, administrators and unions representing school employees. Getting them together means cutting a political deal that lets everybody retain their power while giving the false appearance of school reform.”²²⁰

Money. Members of the unholy alliance/iron triangle contend that student achievement will increase significantly only when a lot more money is spent on public education.²²¹

“Roger Takabayashi, president of the HSTA ‘bristles’ when people claim the system is broken. ... ‘The state has not adequately financed public education and real change will not happen until teachers are better paid.’”²²²

The Honolulu Advertiser agrees: “Ultimately, we get what we pay for. ... Low pay for teachers is an embarrassment.”²²³

Such comments are difficult to reconcile with available data. According to the National Education Alliance Rankings and Estimates for 2013, Hawai‘i’s average teacher salary of \$54,070 ranked 20th among the 50 states;²²⁴ and the starting salary for beginning teachers,

²¹⁸ Id.

²¹⁹ The Unholy Alliance was a wrestling tag team managed by Sinister Minister, but the term dates back to the Western European alliances with the Ottoman Empire against the interests of Russia, Greece, and most of the Balkans. The implication is that a small group have banked together to act in their mutual self-interest regardless of the consequences to others.

²²⁰ David Shapiro, “Education reform? Forget it,” *The Honolulu Advertiser*, October 15, 2003

²²¹ See, e.g., Randolph Moore, “Power, Trust, and Resources: Why Act 51 Challenges the Hawai‘i Department of Education,” Speech to Honolulu Rotary, February 1, 2005 (“A study commissioned by the Board of Education and released last week reported that if Hawai‘i utilized best educational practices, we would need to spend an additional \$1,500 per student per year. We now spend about \$9,000 per student.”)

²²² *The Honolulu Advertiser*, p. B4, 10/23/03.

²²³ *The Honolulu Advertiser*, p. A14, 7/11/03 (editorial noting that although Hawai‘i ranks 17th highest among the states, it is last once adjusted for cost of living).

²²⁴ National Education Alliance, *Rankings and Estimates - Rankings of the States 2012 and Estimates of School Statistics 2013*, 19 available at [http://www.nea.org/assets/img/content/NEA_Rankings_And_Estimates-2013_\(2\).pdf](http://www.nea.org/assets/img/content/NEA_Rankings_And_Estimates-2013_(2).pdf).

\$32,092, ranked 13th from the top.²²⁵ For internal accounting purposes, the DOE's 2013 fringe benefits cost 41.54 percent of salary.²²⁶ Applying that rate to the NEA numbers produces an average total compensation (salary plus benefits) of at least \$76,530 (and a starting compensation package of \$45,423). In 2007, Census Bureau data indicated that the average number is higher. They put Hawai'i at 14th highest among the 50 states, at approximately \$51,922²²⁷ On a per-student basis, average teacher pay in Hawai'i reportedly is \$6,681, as compared to a national average of \$6,387.²²⁸

Hawai'i was 13th highest among the 50 states in per-student expenditures for 2011: \$12,004 versus a national average of \$10,560.²²⁹ These numbers exclude a number of categories such as capital expenditures and debt service, but the results are essentially the same when those items are included in all the states' numbers. When every category of education spending is included, Hawai'i's per-student annual spending last year was about \$13,624.²³⁰

Principals are paid based on the level of the school (elementary or secondary) and its size (there are seven difference levels, all based on enrollment numbers). The average salary for a public school principal is \$103,200, compared to \$85,700 nationally; \$91,700 for principals with less than 3 years of experience, \$102,500 for principals with 3 to 9 years of experience, and \$111,200 for principals with 10 or more years experience, compared to national averages of \$80,700, \$85,700, and \$90,300 respectively.²³¹ The salary range is \$85,000 to \$121,000 for elementary, and \$110,000 to \$155,000 for high schools. There is a separate pay range for middle school principals that is between the elementary and high school ranges. Fringe benefits add about 40% to those numbers.

The Superintendent regularly has stated in annual reports that the state's capacity to fund public education exceeds the current level of funding.²³² As a percent of total taxable resources,

²²⁵ National Education Alliance, *2011-13 Average Starting Teacher Salaries by State*, (Aug. 16, 3:40 P.M.) available at <http://www.nea.org/home/2011-2012-average-starting-teacher-salary.html>.

²²⁶ State of Haw., Dept. of Education, Office of Fiscal Services, *Fringe Benefit Rates for FY 2013*, (July 20, 2012), available at http://165.248.6.166/CasualPayroll/2012-07-20_Fringe_Benefit_Rates_for_FY_2013.pdf.

²²⁷ U.S. Census Bureau, *State Rankings - Public Elementary And Secondary School Teachers' Average Salaries, 2007*, available at <http://www.census.gov/compendia/statab/2012/ranks/rank20.html>.

²²⁸ U.S. Census Bureau, *Public Education Finances: 2011*, Table 8 <http://www2.census.gov/govs/school/11f33pub.pdf>.

²²⁹ U.S. Census Bureau, *Public Education Finances: 2011*, Table 8 <http://www2.census.gov/govs/school/11f33pub.pdf>.

²³⁰ This figure is arrived at by dividing total expenditures by total enrollment based on data contained in the 2012 Superintendent's 23rd Annual Report. The BOE/DOE contends that the number is meaningless, because it includes items processed by the Budget & Finance Department (e.g., fringe benefits) and money spent on facilities or debt service necessitated by investment in facilities. This author believes the all-inclusive per-student number is helpful in comparing the resources of public schools to private schools. According to the Hawaii Association of Independent Schools, most private schools in Hawaii rely on tuition revenue for the bulk of not just operating costs but also debt service on capital-improvement debt. The all-inclusive number is also helpful in judging the fairness of moneys paid to the charter schools that have to provide their own facilities.

²³¹ National Center for Education Statistics, *Schools and Staffing Survey -Table 5. Average annual salary for public school principals, by years of experience as a principal and state: 2007-08*, available at http://nces.ed.gov/surveys/sass/tables/sass0708_2009323_p1s_05.asp

²³² Superintendent's Annual Report on Hawaii Public Education 2012, Table 16 and Chart 3, p. 11, available at http://arch.k12.hi.us/state/superintendent_report/annual_report.html; see also, University of Hawaii Public Policy

the amount spent in Hawaii (3.3 percent) is only slightly lower than the national average (3.7 percent) despite a relatively high percentage of children attending private schools.²³³ Well-financed public education systems tend to produce better outcomes than do poorly financed systems, but funding seems not to be an obvious reason for Hawaii's disappointingly low levels of student achievement and high levels of teacher frustration.²³⁴

Deficient public-school students. Another popular chestnut is that Hawai'i's private schools cherry-pick the state's best-behaved and top-performing students, leaving the public schools with children who, as a group, will never achieve academic success. Hawai'i's former Speaker of the House of Representatives, Calvin Say, expressed this kind of thinking several years ago:

"I've always said our public school system is doing a fantastic job with the composition of students that we have The standardized test scores of Hawai'i's high school students fall below the national norm because all the bright ones ... apply to private schools."²³⁵

However, only 15.8 percent of Hawai'i's school-age children (34,132 from a total population of 215,345) attended private schools in 2010.²³⁶ This placed Hawai'i 12th from the top among the 50 states—hardly an explanation for test scores in the bottom tier nationally.²³⁷ And, as discussed above, Hawaii's demographics (e.g., percentage of students from families that have a single parent or are relatively poor and/or non-English speaking) suggest that our students can reasonably be expected to perform at least at the level of the national average.²³⁸

Even if the percentage of children attending private schools were to increase significantly or the percentage of at-risk children would increase, former BOE member Laura Thielen and Honolulu Advertiser columnist David Shapiro would presumably still be in fundamental disagreement with Speaker Say. They view academic achievement primarily as a function of opportunity:

"Some people claim our public student test scores in Hawai'i are low because so many students come from low-income families, speak English as a second language or face learning disabilities. Lurking behind this argument is the implication that at-risk students cannot learn. ... Children

Center, "Report to the 2009 Legislature," SCR 118 S.D. 1, H.D. 1 (January 2009).

²³³ See "Quality Counts 2009," *supra* at note 60, at 52.

²³⁴ Kwak, *supra* at note 50.

²³⁵ Dunford, "Forums to discuss school system," The Honolulu Star-Bulletin, Oct. 10, 2003 quoting Hawai'i State House of Representatives Speaker Calvin Say; *see also*, Moore, *supra* note 117. "The private schools are populated by students who generally speak English at home, who do not suffer emotional or mental handicaps, and whose parents believe education is so important they are willing to pay taxes to support the public schools and also pay private school tuition. Public schools are disproportionately populated by challenging students and challenging families."

²³⁶ State of Haw., Dept. of Education, Superintendent's 23rd Annual Report (2013).

²³⁷ Kwak, *supra* note 50. Although not necessarily relevant, it is interesting that the percentage of Hawai'i's school-age children in private schools at the time of statehood, at 15.9 percent, was slightly *higher* than it is now.

²³⁸ See discussion in essay *supra*, at notes 57-61.

from low-income families have less preparation, but not less potential to learn.”²³⁹

“[Speaker Say’s] suggestion that the problem rests with an overload of students from poor families and those who speak limited English is especially insulting. . . . The problem isn’t students’ inability to learn; it’s the system’s failure to teach them.”²⁴⁰

On the national scene, President Barack Obama has argued that ethnicity and economic circumstances are overrated as predictors of student achievement: “From the moment students enter a school, the most important factor in their success is not the color of their skin or the income of their parents, it’s the person standing at the front of the classroom.”²⁴¹

System-wide leadership. The BOE is a part of the DOE in the same way that a corporation’s board of directors is a part of that corporation. The BOE is composed of nine voting members, one non-voting student representative, and one non-voting military representative.²⁴² To be a member of the BOE, the Governor must nominate the individual, and the Senate must approve the appointment.²⁴³ It is the Board’s responsibility to “formulate statewide educational policy and appoint the superintendent of education as the chief executive officer of the public school system.”²⁴⁴ The members are not paid and serve on the board for three years.²⁴⁵

Critics of the current board member selection process say that it gives too much power to the Governor.²⁴⁶ Critics of the current board have a unfavorable view of the board meetings being held in during the workday.²⁴⁷ Current HSTA President said that the board has not “lived up to its pledges to remain independent and accessible.”²⁴⁸ However, the new board has also received praise. Some community members have said that the board “has stepped up

²³⁹ Laura Thielen, “Hawai‘i’s Public Schools in the Midst of Crisis,” Hawai‘i Reporter, Sept. 23, 2003; see also, Thielen, “No Child requires Hawai‘i to change,” Honolulu Advertiser, Sept. 30, 2003, at A8.

²⁴⁰ David Shapiro, “Education reform? Forget it,” The Honolulu Advertiser, Oct. 15, 2003.

²⁴¹ See http://www.whitehouse.gov/the_press_office/Remarks-of-the-President-to-the-United-States-Hispanic-Chamber-of-Commerce/

²⁴² Board of Education, *By Laws of the Hawaii Board of Education*, art. 2. (May 27, 2011), available at <http://www.hawaiiboe.net/Meetings/Notices/Documents/04-26-11%20GBM/Board%20of%20Education%20By%20laws%20Final.pdf>

²⁴³ Haw. Const. art. X, § 2.

²⁴⁴ *Id.*, Sec. 3.

²⁴⁵ Board of Education, *By Laws of the Hawaii Board of Education*, art. 2. (May 27, 2011), available at <http://www.hawaiiboe.net/Meetings/Notices/Documents/04-26-11%20GBM/Board%20of%20Education%20By%20laws%20Final.pdf>

²⁴⁶ Honolulu Star Advertiser, *BOE members' first year nets praise and criticism*, (Apr. 28, 2012), available at http://www.hsta.org/images/uploads/April_28_BOE_members_first_year_nets_praise_and_criticism_-_Hawaii_News_-_Honolulu_Star-Advertiser.pdf

²⁴⁷ Honolulu Star Advertiser, *BOE members' first year nets praise and criticism*, (Apr. 28, 2012), available at http://www.hsta.org/images/uploads/April_28_BOE_members_first_year_nets_praise_and_criticism_-_Hawaii_News_-_Honolulu_Star-Advertiser.pdf

²⁴⁸ Honolulu Star Advertiser, *BOE members' first year nets praise and criticism*, (Apr. 28, 2012), available at http://www.hsta.org/images/uploads/April_28_BOE_members_first_year_nets_praise_and_criticism_-_Hawaii_News_-_Honolulu_Star-Advertiser.pdf

communication with the community, including by holding a series of ‘talk story’ gatherings, and has approached issues with a singular focus on improving schools.”²⁴⁹

When members of a governing board attempt to manage, it is often called micromanagement (or, less charitably, “meddling”). The practice can be a nuisance in institutions of modest size and create chaos in organizations that already are unwieldy. As noted above, the DOE/BOE is directly responsible for 286 schools, which are 280 more than are entrusted to the care of most school boards; its \$2.46 billion budget is larger than any other organization in the state; and its employees outnumber those of the state’s eight largest private employers *combined*. In a system of this size and complexity, micromanagement by board members is far more than just a nuisance—it confuses and frustrates staff members, and undermines the authority of the Superintendent.

Prior to the appointment process of board members, members were elected to the BOE. Many people thought an appointed board would work better, because the appointing official would seek out individuals with expertise that is diverse and relevant, and that the public would know who to hold accountable (the Governor) if the BOE failed to produce acceptable results. As noted above, this was a particularly controversial issue in the early 1960s, when Governor Quinn fought to maintain an appointed school board, and his successor, Governor Burns, championed the notion of an elected board. Burns achieved his goal in 1964.²⁵⁰ The author of this essay would favor electing members of local school boards, and appointing members of a statewide board. This is how it’s done in most of the other states.

Three former governors of Hawaii, all Democrats, issued a “manifesto” in early 2010, in which they described the public education system as broken, and suggested three major changes, including replacement of the elected BOE with an appointed one.²⁵¹

“Ask yourself: How many members of the Board of Education can you name? What do you know about their backgrounds? What is their position on education? Most people will have difficulty answering these questions. In contrast, voters closely watch each election for governor and the major issues in the campaigns are well reported and understood. If the governor were accountable for public education, student outcomes and key education issues would be highlighted as a major part of the state’s main political campaign. ...

“An elected school board may seem more democratic; but few individual voters watch school board campaigns nearly as closely as do the unions that

²⁴⁹ Honolulu Star Advertiser, *BOE members' first year nets praise and criticism*, (Apr. 28, 2012), available at http://www.hsta.org/images/uploads/April_28_BOE_members_first_year_nets_praise_and_criticism_-_Hawaii_News_-_Honolulu_Star-Advertiser.pdf

²⁵⁰ Am HB 421 (1964), Haw. Const., art. X, § 2.

²⁵¹ See, Hawaii Children First at <http://www.hawaiichildrenfirst.org/>

represent teachers, administrators and other employees of the Department of Education.”²⁵²

Former superintendent Hamamoto has publicly describes herself as someone who was frequently frustrated with the bureaucracy, who as a principal had to work around the DOE to get things done.²⁵³ Nine years ago, she labeled Hawai‘i’s public-education system “obsolete.”²⁵⁴ Hamamoto was in an impossible situation during her seven years as superintendent. The “buck” did not stop at her desk, because in Hawai‘i’s one-of-its-kind system, the buck stops nowhere. If she is to be faulted, it is for never insisting that the BOE and the Legislature take steps to build accountability into the system.

“There is no doubt about the sincerity of the superintendent, members of the BOE, school principals, or teachers. They are among the most dedicated of public servants. However, their ability to improve student learning has been severely restricted by the way in which Hawai‘i’s public education system is organized. The oversized, overly centralized and bureaucratic Department of Education is not able to realize and utilize the unlimited creative potential of those within the organization.”²⁵⁵

The teachers and principals. In the May 2009 issue of *Honolulu Magazine*, however, writer Michael Keany suggests that teachers might bear some responsibility for the low levels of student achievement in Hawai‘i’s public-education system:

“[F]or eight years, we have covered a state public school system that consistently ranks among the worst in the nation. When we first hit this subject in 2001, this poor ranking had already been the norm for years. The student body changes every year. But the adults who work in the system are the same. ... We have to ask. Does Hawai‘i’s poor educational performance, just maybe, have anything to do with the teachers?”²⁵⁶

Keany points out that the National Council on Teacher Quality ranked Hawai‘i as ‘Last in Class’ in 2007; that a 2008 report on retention of effective new teachers gave Hawai‘i a D grade; and that none of the DOE’s definitions of good teaching is connected to student outcomes in a quantifiable way.

Prior to 2013, teachers are evaluated periodically, but the process is subjective and union contracts limit the ways it can be done: principals assess each teacher as “satisfactory,” “marginal,” or “unsatisfactory” in five areas. And as noted above, it usually takes at least two or three years to remove an “unsatisfactory” teacher from the classroom. Keany quotes Gerald Teramae, Principal of Kalani High School:

²⁵² Id.

²⁵³ Pat Hamamoto, “The State of Public Education,” Jan. 28, 2004.

²⁵⁴ Id.

²⁵⁵ John Kawamoto, “Decentralizing needs open discussion,” *The Honolulu Star-Bulletin*, at A12, Oct. 10, 2003.

²⁵⁶ Keany, *supra* note 127.

“In the business world, if you don’t do your job, if you don’t show up to work on time, meet your deadlines, the [removal] process is not going to take three years. What if that was your kid, [who] had to be in that teacher’s class?”²⁵⁷

And, as noted above, once one principal finally manages to replace a problem teacher, that teacher simply becomes another principal’s problem. That was the old system, and the new system “was a key pledge [. . .] in the state's application for its \$75 million federal Race to the Top grant.”²⁵⁸

In school year 2013-14, the DOE unveiled its new “‘educator effectiveness’ system (EES) — a redesigned teacher evaluation that takes into account student academic achievement.”²⁵⁹ The following year, “pay raises and other personnel consequences, such as termination, will be tied to teachers' ratings.”²⁶⁰ Top DOE administrators commented on the new evaluation system:

"This is not about firing teachers. It's about trying to improve teaching. We hire 800 to 1,000 new teachers a year. We're not looking to get rid of people. We want to help our current teachers get better."²⁶¹

"Effective teachers are key to achieving our goals with students, and the new evaluation design provides teachers with the actionable feedback they need to help drive their professional development and support their own growth plans. This is more than an evaluation; it's a system."²⁶²

[I need to add a section here on EES, including the results of the principals survey that was taken in April, 2014.]

Some people fault the principals, contending that effective principals are entrepreneurial, but that principals in Hawai‘i usually come up through the system and tend to be bureaucratic.²⁶³

²⁵⁷ *Id.*, quoting Gerald Teramae, Principal of Kalani High School.

²⁵⁸ Nanea Kalani, *New Evaluations to Greet Teachers as Classes Begin*, Honolulu Star-Advertiser (Jul. 3, 2013), available at http://www.staradvertiser.com/newspremium/20130703__New_evaluations_to_greet_teachers_as_classes_begin.html?id=214111121

²⁵⁹ Nanea Kalani, *New Evaluations to Greet Teachers as Classes Begin*, Honolulu Star-Advertiser (Jul. 3, 2013), available at http://www.staradvertiser.com/newspremium/20130703__New_evaluations_to_greet_teachers_as_classes_begin.html?id=214111121

²⁶⁰ Nanea Kalani, *New Evaluations to Greet Teachers as Classes Begin*, Honolulu Star-Advertiser (Jul. 3, 2013), available at http://www.staradvertiser.com/newspremium/20130703__New_evaluations_to_greet_teachers_as_classes_begin.html?id=214111121

²⁶¹ Nanea Kalani, *New Evaluations to Greet Teachers as Classes Begin*, Honolulu Star-Advertiser (Jul. 3, 2013), available at http://www.staradvertiser.com/newspremium/20130703__New_evaluations_to_greet_teachers_as_classes_begin.html?id=214111121, quoting Superintendent Kathryn Matayoshi.

²⁶² Nanea Kalani, *New Evaluations to Greet Teachers as Classes Begin*, Honolulu Star-Advertiser (Jul. 3, 2013), available at http://www.staradvertiser.com/newspremium/20130703__New_evaluations_to_greet_teachers_as_classes_begin.html?id=214111121, quoting Deputy Superintendent Ronn Nozoe.

²⁶³ William Ouchi as quoted in Honolulu Advertiser; see also, Issue Brief, NGA Center for Best Practices, Sept. 12, 2003 (Research also suggests that many current and potential principals lack the skills necessary to lead in today’s schools.... Historically, school leaders were expected to perform primarily managerial and political roles. Schools of

The College of Education at the University of Hawai‘i dean in the early 1990s, John Dolly, viewed this as self-perpetuating, saying that individuals who wanted to become a principal in Hawai‘i first had to establish themselves as “team players.” He was particularly critical of individuals who want both to lead and to belong to a union: “If principals are to lead, they need to be out of the union, exercising leadership.”²⁶⁴ Like McPhee, Dolly’s primary concern was accountability: How do you hold accountable someone whose compensation is bargained for collectively and who has near-absolute job security? Because of tenure rights, the only way to remove an ineffective principal from a school is to promote that individual to central administration.

While observations like these are sometimes heard, few people in Hawai‘i blame the individual teachers and the principals for the problems with public education. On this issue, the author of this essay agrees with the Business Roundtable’s assessment:

“The teachers and administrators who serve our children are for the most part dedicated, talented professionals. These men and women are the solution to our educational challenges, not the problem. The problem is our system.”²⁶⁵

A flawed governance structure. For years Rod McPhee insisted that Hawai‘i’s governance structure was *the* reason student-achievement levels are so low. He regularly described that system as too centralized, too bureaucratic, too protective of its under-performing employees, and too adverse to innovation.²⁶⁶ He charged that the DOE, rather than focusing system resources on helping teachers teach and principals manage, constantly busies itself with procedures and processes that actually burden the professionals at the school level. McPhee lamented that the public cannot hold accountable anyone at the school level as long as control resides outside the schools, and it cannot hold the DOE/BOE, the Legislature, or the Governor accountable, since no one of them controls the system. As McPhee once put it, “When everyone is in control, no one is in control.”²⁶⁷

Although many people agree with McPhee, many others find it difficult to believe that a governance structure could so substantially affect student learning. After all, the key to student success is supposed to be what goes on in the classroom. How can decisions made in an office building far removed from the classroom affect the way teachers teach and students learn? And what difference does it make whether funding and spending decisions are made by the Legislature, the Governor, or the DOE/BOE? The following comment on the Star-Bulletin’s comments page is illustrative:

the twenty-first century will require a new kind of principal.”

²⁶⁴ Price of Paradise, chapter 32, “Public Schools,” (Mutual Publishing 1992) at 217.

²⁶⁵ Hawai‘i Business Roundtable Position Paper, p. 1, Mar. 2, 2004. *See also*, Morioka, “Local control needed to improve schools,” Honolulu Star-Bulletin, July 24, 2003 (“Hawai‘i’s public schools are filled with competent, caring teachers and students who have all the potential in the world.”)

²⁶⁶ See, e.g., Roderick McPhee, “Public Education,” Chapter 4 in *The Price of Paradise, Volume II*, p. 29 (Mutual Publishing 1993).

²⁶⁷ Roderick McPhee, “Union policies hinder improvement efforts,” The Honolulu Advertiser, June 15, 1997, at B3.

“Everybody talks about the lack of accountability due to the large bureaucratic system and that we should decentralize the state educational system but let me assure you that would have no bearing as to what is taking place in the classroom and would not mitigate the burden placed on the teachers dealing with the paper maze, controlling students in the classrooms, and the numerous interference by outsiders All of these critics, UH professors, reporters, lay citizens that criticize the local educational system have no clue as to what the teachers go through in the classroom. How will decentralization assist the teacher?”²⁶⁸

The truth is that organizational structure matters a lot. For some, it’s intuitive that centralization and diffused responsibility are the fundamental problems. For others, those are just meaningless words in their personal, experience-based world. Sometimes it helps people like that to talk in terms of accountability. Say, for example, that a teacher perceives a huge problem at her school and she wants something done about it. Imagine how frustrating it would be if everyone she went to just pointed at someone else. It’s called “buck passing.” To prevent that, an organization needs clarity as to exactly where the buck stops.²⁶⁹ That’s accountability, and it’s missing in both the DOE and in the governance of the DOE.

When the important decision-making is performed outside the schools, it’s unfair to hold anyone at the school level accountable for the consequences of those decisions, especially when school-level personnel are forced to spend an inordinate amount of time complying with bureaucratic processes devised by information-starved central managers – as is the case now. And even if it weren’t unfair to hold a particular principal accountable for student success at that principal’s school, how would you go about doing so? After all, that principal’s salary, benefits, and job security are totally unrelated to job performance and student outcomes.

If it weren’t for the human condition, accountability might not be important. People would always do their best, regardless of what might or might not be in it for them. They would obey every law even if enforcement was impossible, and all of us would continue to eat the right foods in the right quantities, even if there were no negative consequences to eating whatever might appeal to us at any particular time.

It obviously is true that a different governance structure would not automatically lead to higher levels of student achievement. The point, though, is that it would make that outcome *possible*. So, rather than view a new governance structure as a “silver bullet,” the current one perhaps should be seen as an impassable roadblock:

“There is no guarantee that changing education governance will improve the quality of education. But changing governance by decentralizing decision-

²⁶⁸ Honolulu Star-Bulletin, Aug. 19, 2009, comment #5, from “satch7,” available at http://www.starbulletin.com/editorials/20090819_Hawai‘is_schools_A_bureaucratic_maze.html

²⁶⁹ President Harry Truman is credited with having made a point about the president’s accountability by famously saying, “the buck stops here.”

making would provide a sound organizational foundation that would allow improvements to be made.”²⁷⁰

For many, the problem has as much to do with the system’s size as it does its structure. A system can be filled with competent and caring individuals, yet consistently fail the students—particularly the most vulnerable students—simply because of the system’s unwieldy size:

“A respectable amount of research shows that the larger the school district, the lower the achievement levels of its students. And a compelling amount of research indicates that the relationship between the size of the school district and the success of its students is particularly strong for disadvantaged students.”²⁷¹

Efforts to Change Hawai‘i’s Public School Governance Structure

Various Governors and other government officials have recognized that the DOE’s centralized, top-heavy governance structure is preventing Hawai‘i’s public school system from performing well, and have tried to change it.²⁷² So far, no one has succeeded.

In 1973, at time when nearly half the parents in the Legislature were sending at least one of their children to a private school,²⁷³ the State Auditor issued a stinging report. According to it, the DOE was “top-heavy,” there was “buck-passing,” central administrators “lacked direction” and “did not really know what was going on in the schools,” and public accountability was “lacking.” Furthermore, school advisory councils were being “held back,” and the BOE was spending almost all its time “managing and controlling central administration rather than formulating policies and overall strategies for public education.”²⁷⁴ In other words, no one was taking responsibility, no one knew what was going on (nor did they even have a way of finding out) and those who might want to step up to the plate were being prevented from doing so.

Soon thereafter, Governor Burns appointed a Commission on Operations, Revenues, and Expenditures (CORE) that recommended decentralization. In doing so, it noted that equitable funding could be retained,²⁷⁵ even in a decentralized system. The 1974 CORE Report noted that funding appeared not to be a problem, and that decentralization was possible without loss of equitable funding.²⁷⁶ Despite Burns’ goal of decentralizing the DOE, the system remained highly centralized.

²⁷⁰ John Kawamoto, “Decentralizing needs open discussion,” *The Honolulu Star-Bulletin*, at A12, Oct. 10, 2003.

²⁷¹ Mary Ann Raywid, by Joe Bard, Clark Gardener & Regi Wieland, “Rural School District Consolidation,” Vol. 4, Issue 2, *Academic Leadership – The Online Journal*, Feb. 12, 2007 ; see also Laura Thielen, “Hawai‘i’s Public Schools in the Midst of Crisis,” *Hawai‘i Reporter*, 9/23/03.

²⁷² Needs cite

²⁷³ Armstrong, “Where Legislators Send Their Children to School,” *Honolulu Star-Bulletin*, Mar. 10, 1973, at 1.

²⁷⁴ Armstrong, “What’s Wrong at the DOE?,” *Honolulu Star-Bulletin*, Feb. 23, 1973.

²⁷⁵ CORE Report, p. A-15

²⁷⁶ CORE Report, p. A-26

By 1988, little had changed. The Berman Report, published that year, described the public school governance structure as “overly centralized” and incapable of holding anyone accountable for student achievement.²⁷⁷ It then laid out a detailed plan of decentralization:

“The public school system should be gradually shifted to a community-centered school system [L]ocal schools and community boards would have the authority to control their educational programs and to be accountable for results. Principals and teachers would be empowered to tailor their school to local conditions, and parents would have a choice of schools and small schools-within-schools. Authority in the system would be clarified so that statewide leadership could set high standards.”²⁷⁸

Governor Waihee used this report in his contemporaneous efforts to decentralize the system. He noted a need to change the “culture” of the DOE: “Nowhere is the need for a change of mindset so poignant than in the way we govern our schools.”²⁷⁹ After much arm-twisting, he convinced the Legislature to authorize a form of SCBM that would function almost like local school boards.

“In 1989 [Governor Waihee] called for a system where ‘local school communities would have charge of almost all budgets, setting educational programs and priorities and increased involvement in staffing.’”²⁸⁰

Three years later, however, Berman expressed deep skepticism about the system’s intentions and its ability to change, and doubted that the DOE would ever reform itself.²⁸¹

“[DOE officials] continue to send signals that are in conflict with the expressed decentralization intent [and] it thus seems to many that the DOE is not really interested in true reform, only in a process that looks like decentralization.”²⁸²

A year later (1992), Governor John Waihee formed a Task Force on Educational Governance, with then-Lt. Governor Ben Cayetano as its chairman. Waihee saw a need to decentralize, and Cayetano’s Task Force agreed:

“The State’s existing highly centralized system has distanced Hawai‘i’s people from their schools and has become unable to respond appropriately to the State’s continually changing and developing educational needs.”²⁸³

²⁷⁷ BW Associates, “Educational Excellence for the Pacific Era,” (Berman Report) p. 19, November 15, 1988.

²⁷⁸ *Id.*, p. 8; cite Slater, et al, too.

²⁷⁹ Governor John Waihee as quoted at Tschumy, “Reinventing education,” Honolulu Star-Bulletin, Dec. 5, 2004.

²⁸⁰ Borreca, “Politicians keep talking, students keep waiting,” The Honolulu Star-Bulletin, Nov.30, 2003.

²⁸¹ *Id.*

²⁸² 1991 Berman Report, Legislative Reference Bureau.

²⁸³ 1992 Task Force on Education Governance, Benjamin Cayetano, Chairman, at p. 49. (“Approximately 92% of the people surveyed by the Task Force felt that the existing governance system required major change”)

The Task Force said the system's focus should be on student achievement rather than on "processes and procedures," and that this should be done by shifting decision-making to the schools, and linking teacher and administrator assessments to student achievement.

Aware of Strembitsky's work in Edmonton, the Task Force recommended that principals be allowed to purchase services from the private sector if the DOE and other state agencies failed to provide valuable support services in a timely and cost-effective manner. This would serve "as a means of ensuring the responsiveness and appropriateness of [DOE] services to school needs." The Cayetano Task Force also recommended lump-sum budgeting for the Legislature and something akin to that for the Governor:

"It is important and necessary that the Governor have sufficient fiscal controls to ensure that expenditures do not exceed revenues. However, the purpose for exercising such controls should be explicitly stated when imposed to ensure that the public is fully informed of actions affecting education. Furthermore, restrictions should only be imposed for anticipated revenue shortfalls and not because of policy differences. The DOE and SCBM councils at the school level should have the discretion to determine where their actual reductions will be made."²⁸⁴

Several Task Force members noted "a cacophony of orchestrated [opposition],"²⁸⁵ and blamed the teachers union for its sending agents to sabotage the Task Force's effort to empower SCBM:

"Teachers espousing the Hawai'i State Teachers Association's position ... expressed nearly hysterical fears – fear of losing job security; fear of being accountable The 'tug of war' that developed wearied the Task Force into capitulating and gutting empowerment from SCBM. Without the power to make fiscal and personnel decisions, SCBM would be rendered impotent."²⁸⁶

The Superintendent under Waihee, Charles Toguchi, also felt strongly that the system needed a transformation. He sent a team to study how Strembitsky had dramatically raised the levels of student achievement and satisfaction levels among teachers, parents, and administrators in Edmonton—through decentralization.²⁸⁷ Toguchi's team returned enthusiastic about allocating school funding directly to the schools and putting each principal in control of the school's academic and financial plans. It could all be done internally, without the need for legislation. Many central administrators would have to return to the classroom, but that would be a small price to pay for student success. Opposition from the unions and within the DOE, however, ultimately proved too powerful.

²⁸⁴ 1992 Task Force on Education Governance, Benjamin Cayetano, Chairman, p. 49.

²⁸⁵ Barbara L. Okamoto letter to Task Force, Mar. 16, 1992.

²⁸⁶ Paige E. Lawes' letter to Task Force, Mar. 16, 1992.

²⁸⁷ See e.g., Ted Kolderie, "Mike Strembitsky and site-management in Edmonton," Dec. 1990 at <http://www.educationevolving.org/pdf/Strembitsky.pdf>; and Elizabeth Steinberger, "Michael Strembitsky on Results-Driven Decision Making," *School Administrator*, Nov. 1995, at http://findarticles.com/p/articles/mi_m0JSD/is_10_52/ai_77196865/.

“[Toguchi’s] plan to reform education in Hawai‘i aimed right at the heart of the DOE bureaucracy. Dubbed Ke Au Hou, ‘A New Era,’ Toguchi’s creative plan would have reassigned 1,000 school officials and made another 630 change jobs. From his first speech to his last, Toguchi called for decentralizing the DOE. Toguchi battled the Board of Education, the unions for teachers and principals and the whole DOE bureaucracy until 1994, and [then] saying, ‘I’ve given it my all,’ Toguchi resigned.”²⁸⁸

A series of State Auditor reports then portrayed the system as unwieldy and central administration as incapable of sound financial management. For example: In 1994, the State Auditor encouraged the DOE to track administrative and school-level expenditures as a necessary step in the direction of empowering principals and to give SCBMs a chance to work;²⁸⁹ in 1995, she found that the DOE lacked management controls and expenditure information necessary to determine the operations costs of specific schools and programs;²⁹⁰ a year later, the Auditor again found that the DOE’s school-level expenditure data was unreliable;²⁹¹ and then, in 1998, the Auditor found that the DOE was over-representing expenditures at the school level and failing to identify moneys spent at an administrative level on behalf of a school, or on purely administrative functions,²⁹² which had the effect of overstating the amount of money that actually reached the classroom while understating the cost of central administration. These deficiencies, along with the DOE’s refusal to relinquish its “command and control” authority, were preventing implementation of SCBM:

“The Department of Education ... has not given schools sufficient autonomy and flexibility. ... [J]ust four percent of the [school-level] expenditures had no departmental or other agency limitations. The Department of Education has not provided the level of support schools need to assume their new responsibilities.”²⁹³

Also in 1998, Governor Cayetano formed a bipartisan Economic Recovery Task Force. It stressed that the public-education system *had* to improve if Hawai‘i was serious about having a sound economy, and that the system’s governance structure was the obvious place to begin. Like other groups in prior years, this one concluded that the system had to be decentralized:

“The key to increasing the effectiveness of our public school system is to place authority and responsibility for education closer to the school level. The Task Force determined that this could best be accomplished by establishing four appointed County school boards, adopting school-based

²⁸⁸ Borreca, “Kickin’ around education reform again,” Honolulu Star-Bulletin, Mar. 21, 2004.

²⁸⁹ *The Feasibility of Applying the Micro-Financial Analysis Model to Expenditures for Public Education in Hawai‘i: What Reaches the Classroom?* Report No. 94-6.

²⁹⁰ *Status Report on Monitoring Fiscal Accountability of the Department of Education: Case Study – Royal Elementary School*, Report No. 95-23.

²⁹¹ *Fiscal Accountability in the Department of Education: How Accurate Are Textbook Costs?* Report No. 97-1

²⁹² *Fiscal Accountability Audit of the Department of Education: The Public and the Schools Need to Know the True Costs of Education*, Report No. 98-5.

²⁹³ 1998 report (98-4).

budgeting, and providing greater independence to principals. ... In short, the Task Force envisions a public school system that is decentralized and accountable.”²⁹⁴

During the 2002 legislative session, the House of Representatives passed a measure calling for local school boards. Two out of three members of the public, including three out of four Neighbor Islanders, supported it.²⁹⁵ Brian Schatz, a Representative who has since become chairman of the state Democratic Party, was one of many supporters: “Having local boards will enable citizens to know who their BOE candidates and board members are to keep in touch with them ... to express the needs of their children.”²⁹⁶ The unions opposed it, however, and that was enough to kill it in the Senate.²⁹⁷ Representative Ken Ito, chairman of the House Education Committee and a strong supporter of the measure, called it a form of decentralization that would empower communities. Big Island Representative Helene Hale was more specific:

“I am thoroughly convinced that if we really want to ... improve our educational system, we have to get rid of the tremendous bureaucracy that is situated in Honolulu, and bring our educational system back to the communities.”²⁹⁸

In a further show of union strength, immediately after the session ended Ito was removed not only from the chairmanship of the Education Committee but also from the committee itself.

The election of Linda Lingle as Governor later that year led many to hope that public-education reform might finally happen. After all, she had run on a platform of “change,” and had described public education as her top priority.²⁹⁹ In her first State of the State address to the Legislature, she called upon lawmakers to decentralize the system.³⁰⁰ Specifically, Lingle wanted to remove principals from the union, give them control over the bulk of their own budgets, and hold them accountable for improved student performance.³⁰¹ Also, she wanted local school boards to provide support and oversight to the principals.³⁰²

“The public knows and we should not be afraid to say it – Hawai‘i’s public school system is broken. ... The time has come to move resources and decision-making away from the DOE’s central office in Honolulu and to empower local communities to think and act in their own best interest. ... Just about every study of individual-school effectiveness has stressed the

²⁹⁴ Hawai‘i’s Economic Future: Proposals of the Economic Revitalization Task Force,” Hawai‘i’s Economy, Special Edition (Mar. 1998), p. 16, available at http://Hawai'i.gov/dbedt/info/economic/data_reports/Hawai'i-econ/he3-98.pdf (last visited Aug. 1, 2009).

²⁹⁵ The People’s Pulse, Winter 2003.

²⁹⁶ Gov. News Release, Mar. 6, 2003, at http://Hawai'i.gov/gov/news/releases/2003/News_Item.2006-01-19.1512.

²⁹⁷ Arakawa, “Bill calls for 15 school boards,” Honolulu Advertiser, Feb. 16, 2002.

²⁹⁸ Press Release from Governor’s Office, Mar. 6, 2003.

²⁹⁹ See, e.g., Dunford, “Lingle refines new legislative proposals,” The Honolulu Star-Bulletin, Oct. 14, 2003, at A5; Arakawa, “Lingle adviser named to education role,” The Honolulu Advertiser, Oct. 10, 2003, at B2 (Lingle said, “Education reform is her No. 1 priority.”)

³⁰⁰ Governor Lingle State of the State address to the Legislature, Jan. 21, 2003.

³⁰¹ Needs cite

³⁰² Needs cite

critical role played by the school principal. Hawai'i is the only state in America in which principals belong to a union. It has proven to be disastrous for the children. ... The hiring and evaluating of principals should be done at the local level.”

Opinion polls at the time seemed to support Lingle’s assertion that something was “broken,” and that the system needed to be decentralized:

“Hawai‘i’s residents—whether parents of [current students] or not—rate public schools poorly Ratings for neighborhood public schools were only marginally higher than for state schools overall.”³⁰³

“Residents clearly favor decentralization including more authority for principals. ... A staggering 67% of those polled favored shifting most decisions from the DOE to principals.”³⁰⁴

Lingle also asked the Legislature to give charter schools greater autonomy and fair funding.³⁰⁵ In doing so, she suggested that charter schools were the quickest way to provide a meaningful choice for parents who could not afford a private school, and she accused the DOE of trying to sabotage the charter schools:

“The current DOE attitude toward charter schools is benign neglect at best and antagonistic at worst. ... Right now, the funding assumes that the value of services provided by the DOE is nearly as much as all the money going into salaries of the teachers and principal, rent, and other costs of operation. This is absurd. My proposal is to give the charter schools the full cost of educating a child and then let the principal of each charter school decide if what the DOE has to offer is worth paying for. Fair funding is just the beginning. Under my plan, charter schools would be free to make their own hiring decisions. The UPW would not have a lock on any jobs, nor would the HGEA or the HSTA. Once hired, teachers, secretaries and janitors would be free to form or join a union, but that would be their choice.”

Not one of the Governor’s bills even made it out of the House or Senate education committee.³⁰⁶ Disappointed but undeterred, she prepared for the 2004 session by collecting additional information about key issues.³⁰⁷ Getting it was usually difficult, and sometimes impossible.³⁰⁸ For example:

³⁰³ The People’s Pulse, at 1-2 (Summer 2003) (“Pulse”).

³⁰⁴ Pulse, p. 1 (Spring 2003).

³⁰⁵ Needs cite

³⁰⁶ Some blamed this on politics: David Shapiro, “Education reform? Forget it,” The Honolulu Advertiser, Oct. 15, 2003 (“The only difference between then and now is the politics – lawmakers now have a Republican governor who wants the reforms.”); see also Borreca, “On Politics: Democrats stumble across new political landscape,” The Honolulu Star-Bulletin, July 27, 2003.

³⁰⁷ Arakawa, “Lingle adviser named to education role,” Honolulu Advertiser, Oct. 10, 2003, at B2.

³⁰⁸ The author of this essay was Lingle’s Senior Policy Adviser during her first year as governor, and then worked

“Because senior DOE administrators were saying that parents already could move freely from one public school to another simply by getting a district waiver, DOE officials were asked for the number of parents who had sought a district exemption in recent years, the number of exemptions that had been granted, and the basis on which the decisions were made. The DOE’s response to all three requests was, ‘We don’t have that information.’

“Asked to explain budget allocations to individual schools, DOE officials said simply that they were not able to do so. They had neither a formula nor comprehensive guidelines for doing the allocations, and their accounting system lacked the sophistication needed to allocate spending by individual school (as had been reported a decade earlier in the series of State Auditor reports).

“Asked about per-student expenditures, DOE officials pointed to the \$3,805 per student being given to the charter schools. When pressed for details about how that number had been determined, senior DOE administrators acknowledged that the actual per-student cost was probably closer to \$6,000, the difference being ‘overhead.’ They said it would be impossible to provide a precise number.”³⁰⁹

When this lack of information was brought to the attention of DOE Superintendent Patricia Hamamoto, she attributed the problem to management and accounting systems dating back to the 1980s, and to a bureaucratic system that she called obsolete.³¹⁰

At about the same time, the Hawai‘i Business Roundtable and the Harold K. L. Castle Foundation funded a study lead by Dr. William Ouchi. Although then living in California, Ouchi was not the typical “mainland expert.” The longtime professor of organizational theory at UCLA had been born and raised in Hawai‘i, and his mother, aunt, and sister had taught in Hawai‘i’s public school system for many years. The master of ceremonies at Ouchi’s wedding was Senator Daniel Inouye.

Dr. Ouchi had just completed a National Science Foundation project that studied large school districts in the United States and Canada.³¹¹ The data showed that decentralized school systems invariably got better results than did highly centralized ones—not only higher levels of student-achievement as measured by standardized tests, but also greater satisfaction levels among parents, teachers, and principals.

exclusively on education reform during the 2004 legislative session. As such he met many times with the Superintendent, BOE members, union officials, and legislators, plus numerous teachers and principals. The following anecdotes are based on his notes.

³⁰⁹ *Id.*

³¹⁰ Hamamoto, “The State of Public Education,” address to the Hawai‘i State Legislature, Jan. 28, 2004.

³¹¹ *See, e.g.*, William Ouchi, “Making Schools Work: A Revolutionary Plan to Get Your Children the Education They Need,” Simon & Schuster (2003).

Ouchi stressed the importance of assembling reliable data, explaining that highly centralized school systems in his experience invariably lacked reliable accounting systems.³¹² He said these basic numbers were particularly important: (1) how much money was being expended each year within the entire education system, (2) how much of that money actually made it to the classroom, (3) how many people worked for the DOE, and (4) how many of those employees were classroom teachers who actually reported to a principal.

Ouchi offered his services, *pro bono*, and suggested the retention of Bruce Cooper, a professor of education finance at Fordham University with a national reputation in school finance. They were assisted by four-person teams from the state Department of Budget & Finance and Department of Accounting & General Services in the data gathering. The DOE/BOE initially resisted but then Superintendent Hamamoto determined that these agencies were legally entitled to the requested information.

Ouchi and Cooper eventually calculated that the all-inclusive per-student education cost in Hawai‘i was not “about \$6,000,” as the DOE had told Lingle, but exactly \$10,422.³¹³ The per-student cost for operations alone was \$8,473. Furthermore, only 49 cents of each dollar was actually reaching the classroom. Ouchi and Cooper also determined that less than one-third of the DOE’s employees were classroom teachers who reported directly to a principal.³¹⁴

The DOE/BOE immediately questioned the professors’ methodology, objectivity, and each of their conclusions.³¹⁵ The DOE’s director of communications also questioned their motives, publicly accusing Ouchi of concocting “phony research” in exchange for “free trips.”³¹⁶ The Superintendent declined to comment on that accusation, other than to explain that her communications director had just been “exercising his first-amendment rights.”³¹⁷

The DOE/BOE eventually accepted the professors’ per-student cost numbers as accurate,³¹⁸ but continued to challenge the estimate that only 49 cents of each dollar spent on

³¹² Hawaii has been notoriously bad in this respect, earning an F grade in one national comparison. See Malia Zimmerman, “Hawaii DOE gets failing grade for fiscal transparency, Hawaii Reporter, Aug. 29, 2013 (“When the state education departments provide incomplete or misleading data, they deprive taxpayers of the ability to make informed decisions about public school funding. At a time when state and local budgets are severely strained, it is crucial that spending decisions reflect sound and informed judgment.”)(“Hawaii DOE has failed to post the most recent two years of per pupil expenditures or its capital expenditures and fails to provide a table or graph to compare changes in per pupil – or capital improvement – spending.”).

³¹³ William Ouchi and Bruce Cooper, “Financial Analysis of Hawai‘i Public Schools,” Nov. 23, 2003.

³¹⁴ The professors found that there were 23,790 fulltime employees and “casual hires” who comprised another 10,000 fulltime-equivalent employees.

³¹⁵ Needs cite

³¹⁶ Needs cite

³¹⁷ Derrick DePledge, “Schools official won’t be punished,” The Honolulu Advertiser, Dec. 9, 2003; Laura Brown, “The Best Case for Reform of the DOE Came from an Act of Desperation on Spokesman’s Part,” Hawai‘i Reporter, Dec. 11, 2003, available at <http://www.Hawaiireporter.com/story.aspx?38ebf89f-c391-48ed-8450-94536d8fbd9>, last visited 6/16/09.

³¹⁸ Hawai‘i Department of Education Response to Cooper-Ouchi Financial Report, Legislative Hearing, December 2, 2003 (“data can be used to draw any number of conclusions,” “let’s not confuse fact with bias,” and “nothing in the Cooper/Ouchi Report links governance and student achievement.”).

operations was actually getting to the classroom. According to the DOE, the correct amount was 51 cents.³¹⁹

The two sides also went back and forth over the number of employees and teachers who report to a principal. Definitional issues and growing distrust complicated matters. Eventually both sides agreed that there were 9,119 regular teachers and 1,841 special-education teachers who reported directly to principals rather than to central administration. They continued to disagree, however, on the total number of DOE employees. The DOE wanted to exclude approximately 10,000 “casual hires,” and a much larger number of part-time and seasonal workers, explaining that its tracking system was not able to classify any of those positions by function.

The professors wrote a companion report that sharply criticized the Legislature for meddling in school matters. This brought to mind comments Dean John Dolly had made a decade earlier:

“The government has no business intruding into the classroom—an unfortunately common practice in this state. I have witnessed the legislature debate what subjects should be offered in a high school, and whether certain programs should be mandated. No wonder we have problems in public education in Hawai‘i, when legislators are telling the schools what they should and shouldn’t be doing.³²⁰”

Ouchi and Cooper noted instances of individual principals taking their concerns directly to key legislators, who reportedly then ordered detailed changes to a school’s budget:³²¹

“The current level of micromanagement of the education budget at the State Capitol is unprecedented in our experience. . . . This undermines the independence of the Board of Education and the State Superintendent and further centralizes the key decisions about the operation of schools.”

The professors explained that the Legislature’s micromanagement meant that politics rather than sound educational policy was controlling key decisions, and they added that this unprecedented level of involvement was a predictable consequence of Hawai‘i’s unique governance structure:

“We believe that it is enabled by and exists because of the single statewide school district. Every other state has local school boards that report not directly to elected state leaders but rather to a state Board of Education. The state Board of Education acts as a buffer to protect local school boards

³¹⁹ Hawai‘i Department of Education Response to Cooper-Ouchi Financial Report, Legislative Hearing, December 2, 2003 (“data can be used to draw any number of conclusions,” “let’s not confuse fact with bias,” and “nothing in the Cooper/Ouchi Report links governance and student achievement.”).

See also Pichaske, “Study reaps Hawai‘i’s schools, calls the system top-heavy,” Honolulu Star-Bulletin, Sept. 10, 1993, at A1.

³²⁰ John P. Dolly, “Public Schools,” *The Price of Paradise*, Ch. 32, p. 214.

³²¹ William Ouchi and Bruce Cooper, “Financial Analysis of Hawai‘i Public Schools,” Nov. 23, 2003, at p. 5.

from improper political interference from the state capitol. While education and politics must co-exist, they should not be commingled.”³²²

Ouchi and Cooper also explained the importance of knowing which teachers report to a principal: teachers who report to administrators outside the school may or may not be providing valuable services in the eyes of the school’s principal. When principals are captive consumers of services provided and controlled by others, it is unfair to hold the principals accountable for student achievement. Here’s how the professors explained it:

“Although many of the central staff personnel work each day at school campuses rather than in central office buildings, they nonetheless work under the supervision of central office managers rather than under principals. They are therefore an element of central administrative control. Principals, given control over their budgets, might well choose to deploy those staff salaries in very different uses.”³²³

Like the State Auditor, Ouchi and Cooper found egregious weaknesses in the DOE’s information systems, including an inability to allocate costs properly.³²⁴ The issue at the heart of the matter was not accounting, but accountability:

“The DOE’s practice in reporting expenditures is simply to allocate all expenditures to the school level, whether the function is a school, district, or state function. ... Thus, the information that is given to parents, voters, and the media may be inaccurate or misleading. ... For years people in Hawai’i have been arguing over the amount the Department of Education spends on administrative expenses. The DOE has repeatedly stated that its administrative expenditures are less than 3% of total DOE expenditures. ... The DOE was unable to demonstrate how this 3% could be arrived at using generally accepted reporting standards.”

In another example of numbers that could not be substantiated, the DOE told the professors that Hawai’i’s private schools spent far more per student than did the public schools. The professors found that this was true only with respect to a handful of high-profile private schools—Punahou, Iolani, Seabury Hall, and Hawai’i Preparatory Academy—but not for the vast majority of the private schools.

“[W]e found that among the 114 private schools in Hawai’i, the median tuition in 2002-03 was \$4,675, less than half of what the public schools spend (this study excluded the Kamehameha Schools, due to their very low tuition). ... Most of these schools have negligible endowments.”³²⁵

³²² *Id.*, p. 7.

³²³ *Id.*

³²⁴ *Id.*, p. 3.

³²⁵ *Id.*

The professors speculated that the cost of educating children in Hawai‘i’s private schools is comparatively low because of their streamlined governance structures: “Private schools do not have to carry the expense of the large administrative bureaucracies of the DOE, and their very decentralized nature enables them to achieve cost savings in many other ways.”³²⁶ The DOE had simply grown too big:

“Study after study has shown that as organizations grow beyond a certain point, they inevitably spend a larger and larger percentage of their total resources on administration. ... [T]he DOE [apparently] reached that point long ago. Even ignoring casual hires, there has been a large increase in the percentage of employees who are not teaching. ... This is exactly what one would expect to find in a large, highly centralized system.”³²⁷

Armed with previously unavailable data, and assisted by Ouchi and Cooper and Strembitsky (the fellow who had turned around the Edmonton school system), a blue-ribbon panel of community leaders sought public input into the issues, and then worked with their expert advisers to formulate a specific plan for Hawai‘i’s public schools. The resulting package was patterned after Strembitsky’s work in Edmonton: it stressed the need to decentralize by giving principals control over at least 90 percent of their respective school’s budget, and putting the principals on performance contracts keyed to improvement in student achievement levels. But that was just the beginning. To increase transparency and fairness, the plan included weighted student formula (WSF), for allocating funds to the individual schools. To increase coherence, the Legislature would be required to provide lump-sum budgets to the DOE/BOE and the Governor could restrict spending, if at all, only on a lump-sum basis (fiscal autonomy similar to that enjoyed by the University of Hawai‘i). And to promote innovation and choice, the cap on the number of charter schools would be doubled, and the funding would finally be fair, including money for facilities. There were numerous other aspects to the blue-ribbon panel’s plan, but by far the most politically sensitive of them was the proposal that the BOE limit itself to developing academic standards and holding accountable seven new local school boards.³²⁸

Some panel members liked the idea of local school boards because they valued the idea local control and “home rule”—that is, they saw them as worthy ends. One such panel member observed that local boards would be especially good for the neighbor islands:

“Neighbor islanders have strong resentments about the way Honolulu dominates and directs affairs across the islands. To say that the people on what we of Oahu call ‘the outer islands’ want to run their own schools is to put it mildly. Given that they are taxpayers in a democratic state, and that in the other 49 states taxpayers exercise local control of their schools, it

³²⁶ It should be remembered, however, that public schools are legally required to accept all comers, including special-needs students who, on average, cost more than \$30,000 per year to educate. DOE critics counter that, however, by pointing out the private school ASSETS serves the same student population at a significantly lower per-student cost.

³²⁷ *Id.*

³²⁸ The package also provided for greater support for home-schooled children, and a transparent, liberal policy of district exemptions that would permit parents to choose where to send their children.

would appear that people here also should be entitled to control their own schools.”³²⁹

Other panel members viewed local school boards as mere means to an end—that is, they were the only practical way to decentralize without having to rely upon the DOE for implementation:

“Even though public opinion and educational research have supported decentralization for years, the DOE has managed to maintain a tight grip on virtually all the money, and to deny the schools a say in critically important decisions. . . . Any effort to decentralize that must rely upon those who will lose authority, is bound to fail. . . . Given the history of the past 30 years, it would be unwise to expect the DOE to restructure itself, even if the Legislature were to mandate that it do so.”³³⁰

The entire panel recognized that it would be theoretically possible to decentralize Hawai‘i’s school system simply by giving the principals control over virtually all of the money. But implementing such an approach would not be easy, fast, or foolproof. Thousands of little decisions would determine its success or failure. In past years, the DOE demonstrated an ability to make any new idea fail (SCBMs and charter schools are recent examples). Following Lingle’s 2003 State of the State address in which she said that the system was “broken,” large signs had appeared on the walls of the DOE/BOE’s main office building proclaiming, “We are NOT broken.” The people who cheered at the sight of those signs are the same ones who would be making the thousands of little decisions—unless local school boards become part of the equation.

“There is a long history of the DOE and BOE promising a decentralization of the system, but they have never done it.”³³¹

“Without local boards the DOE/BOE will find a way to sabotage the effort. This is, after all, what happened to SCBMs and the charter schools.”³³²

The education establishment—particularly union officials and the DOE/BOE—were sharply critical of these proposals, with one notable exception: they liked the weighted student formula (WSF). For WSF to work properly, however, administrators need sophisticated accounting systems and a culture of accountability, neither of which were currently in place, according to Ouchi and Cooper:

“WSF requires that each principal receive reliable and stable financial forecasts and budget figures. . . . We cannot see how WSF could be successfully implemented by the present DOE central office staff

³²⁹ Mary Ann Raywid, “Let each island govern its own education affairs,” Honolulu Star-Bulletin, Dec. 4, 2003.

³³⁰ Citizens Achieving Reform in Education (CARE), Report to the Governor, Dec. 15, 2003.

³³¹ *Id.*

³³² Interview with Mary Ann Raywid (notes on file with the author); See also, Uyehara, “Hawai‘i’s Educational System Must Be Restructured So It Can Improve,” Hawai‘i Reporter, Sept. 26, 2003 (“Schools cannot be restructured until the BOE is dismantled. . . . It really is time to redo the entire system.”).

organization. The DOE staff presented us with significantly different cost figures every few days during our inquiry. If they did this within the framework of WSF, the result would be chaos in the schools.”³³³

Polls indicated widespread public support for the panel’s proposals. When asked, “Would you favor or oppose making school principals accountable for the progress of their students?” 80% were in favor, 14% were opposed, and 6% were unsure. When asked, “Would you favor or oppose allowing schools to control the spending of at least ninety cents per dollar of money spent on public education?” 75% were in favor, 13% were opposed, and 12% were unsure. Finally, when asked, “Would you favor or oppose giving Hawai‘i residents the right to vote on whether to create locally elected school boards?,” 74% were in favor, 17% were opposed, and 9% were unsure.³³⁴

Union officials accused the panel members and their expert advisers of bashing Hawai‘i’s students and teachers, and of stirring up the public needlessly. They said the system had a bad reputation only because people were always complaining about it. *The Honolulu Advertiser* seemed to join hands with the education establishment, asserting in an editorial “many states have looked admiringly at Hawai‘i’s statewide, centralized, standardized system.”³³⁵ The *Advertiser* also portrayed in a negative way the public conversation that the blue-ribbon panel’s decentralization plan had started: “It’s hard to open a car door around here without banging into someone complaining about our public schools.”³³⁶

The real problem, according to the *Advertiser* and members of the education establishment, was the public’s failure to support the tax increases needed to fund education properly. They also ridiculed the notion that local school boards would result in higher levels of student achievement: Instead of saving money, local boards would “swell the very bureaucracy the panel wants to eliminate.”³³⁷

In a meeting with the *Advertiser*’s editorial board, it quickly was apparent that its members were viewing local school boards as the only major piece of the proposed package of changes. The blue-ribbon panel’s advisers explained that the core issue was actually accountability, which required a shift of authority from the DOE to the schools. They added, though, that it would be irresponsible to put huge sums of money into the hands of individual principals without also providing support and oversight at a level that was neither too close (where conflict of interests and micromanagement could be problems) nor too far (such as at the state level). They also explained that new local boards were the only reliable way to break up the DOE, and that this was necessary because of the DOE history of sabotaging reform measures such as SCBM and charter schools. The advisers explained that the seven new school boards would hire from the existing DOE those individual administrators who would be needed to provide support and oversight to the schools; and that those new boards would form a hui to provide the relatively

³³³ Ouchi & Cooper, *supra* note 214.

³³⁴ The Tarrance Group, Jan. 29 and Feb. 1-2, 2004; 600 registered “likely” Voters; 4.1% margin of error.

³³⁵ “School reform is not change for change sake,” *The Honolulu Advertiser*, Oct. 6, 2003, at A6.

³³⁶ Editorial, *Honolulu Advertiser*, Oct. 16, 2003, at A16.

³³⁷ HSTA President Roger Takabayashi, as quoted at “Gov’s strategy just a starting point for ed reform,” *The Honolulu Star-Bulletin*, Dec. 17, 2003; see also commentaries by Hara and Cochran.

few administrative services that could best be provided on a system-wide basis. When all that hiring was over, the remaining thousand or so DOE administrators would be given the opportunity to return to the classroom. Some of those administrators would not like either option, and that would be unfortunate, but the important issue was the best interests of the children, and not the happiness of central administrators.³³⁸

Whether the *Advertiser* board did not understand any of this, or simply did not believe it, their editorial voice continued to portray local school boards as the central idea—as an end in itself rather than a means to an end, or mere ingredient in a decentralization recipe. After portraying local school boards as a self-contained plan to solve all the system’s ills, they expressed incredulity that expanding the number of entities involved with education would improve accountability: “How would adding seven or more locally elected school boards lessen the diffusion of responsibility?”³³⁹

The battle during the 2004 legislative session was highly charged, but the end was never in doubt: The Legislature was determined not to enact the blue-ribbon panel’s proposals ... the Governor was determined not to sign whatever “fake” reform the Legislature would pass in lieu of the panel’s proposals for “real” reform ... and the Legislature was certain to override the Governor’s veto. That’s what the experts predicted, and that’s what happened. The only complication was that Lingle exercised what she called a “soft veto,” which included the offer of a compromise:

“The bill [produced by the Legislature] mainly protects the status quo, and in one case it makes matters much worse by increasing bureaucracy and reducing accountability. ... I am exercising what I call a ‘soft veto.’ ... Because we still have one week left in the regular session of 2004, the executive and legislative branches have time to come together to craft an education bill that will bring about meaningful education reform. ... These changes are:

“Give principals control over 70 percent of their operating budgets initially, but phase-in a plan that would allow them eventually to control 90 percent of funds. At first glance it may not appear there is much difference between giving principals 70 percent versus 90 percent of the money. But it will mean a world of difference in the classroom. That is because at 70 percent most of the spending is already predetermined since it goes to salaries and related items over which the principal has little or no control. It is only when principals are given authority for 90 percent of more of the funds at their schools that they truly gain the financial flexibility they need to make meaningful improvements.

³³⁸ From the author’s notes and interviews of Laura Thielen, Michael Strembitsky, William Ouchi, Bruce Cooper, and Mary Anne Raywid.

³³⁹ “Education panel paints only part of picture,” *The Honolulu Advertiser*, Dec. 17, 2003.

“Empower principals, set standard for their performance, and hold them accountable. In business, in education, and in every social organization, leadership makes the difference. Individual teachers also make a difference. But it is the principals who can inspire, motivate, and lead their schools by example.

“Give charter schools their fair share of funding, for facilities as well as for operations, so they can provide instruction that is culturally appropriate for their communities. Charter schools have demonstrated that they can produce successful, self-confident students, even in the face of tremendous obstacles created by the Department of Education. Such schools are especially important for Hawaiian students, who suffer greatly under the Department of Education’s one-size-fits-all system.

“Instead of launching the ‘weighted student formula’ in the 2006-07 school year, start this sensible funding plan ... earlier.

“Make the school community councils advisory in nature. That way, councils can offer their recommendations to principals without complicating the decision-making process or confusing who the public should hold accountable.

“Education reform is not about us – it is about the children. ... If the Legislature makes the ‘five easy fixes’ listed above, we will have a much better bill that will really advance the cause of student achievement through education reform. ... I am recommending these five revisions on behalf of people all across our State who have watched many previous attempts to fix our schools and who should not settle for less than real education reform this time. While far from perfect, this modified legislation would move us ahead.”³⁴⁰

The Legislature chose not to make any of these “five easy changes.” The new law, the grandly named Reinventing Education Act of 2004 (a.k.a. Act 51), called for more math textbooks, smaller class sizes in the lower grades, a two-tiered kindergarten, centralization of the school calendar, student-activities coordinators at every school, training and rewards for teachers and principals, weighted student formula (WSF) to allocate money to the individual schools, replacement of School Community-Based Management Councils (SCBMs) with School Community Councils (SCCs), and acquisition of new information technology, among miscellaneous other items.

Lingle criticized Act 51 as “business as usual”—an assortment of feel-good provisions that did not address the core problem, which was the existing governance structure. She pointed out that only one of the changes had actually required legislation, which meant that Act 51 was

³⁴⁰ Statement of Objections to Senate Bill No. 3238, Apr. 29, 2004; available at <http://www.capitol.Hawaii.gov/session2004/gms/GM519.pdf>, (last visited June 9, 2009).

another example of the Legislature trying to do the DOE/BOE's job. She was not the only political leader to view Act 51 as "fake reform." Former Congressman Ed Case said it clearly and powerfully:

"Act 51 was an attempt to head off public demand for education reform by doing the minimum necessary to appear to be delivering reform without actually doing so. That was compounded through the implementation and administration of the law by a system that didn't believe in it to start with."³⁴¹

Update on Act 51

As of this date, the DOE has not carried out the 2004 legislative mandate that public school principals be put on a performance contract.³⁴² After nine years the DOE has not made significant strides toward implementing the mandate. It is not clear whether the DOE is trying to sabotage the performance-contract initiative, or that its collective hands are tied by existing union contracts. The principals union says it would be illegal for the DOE to force any individual principal to sign a performance contract, because that it is a matter subject to collective bargaining. For whatever reason, the DOE has not pushed the issue.

Performance contracts are more than just nice things to have. They are critically important if we are serious about finally doing something to raise the levels of student achievement. As noted above, "How do you hold accountable a principal whose compensation, benefits, working conditions, and very job cannot be based on student achievement or improvement at that principal's school?"

Also in 2009, the DOE continues to rely on a "horse and buggy" information system, despite publicly acknowledging that it cannot support even existing needs. Echoing the State Auditor and Professors Ouchi and Cooper, the Hawai'i Business Roundtable has noted that good decisions start with reliable information, something that the DOE often lacks:

"The DOE needs good information systems to manage its resources, including financial, technical and human resources. The hoped for outcome is that the DOE will be able to provide the public, legislature and the department's managers and leaders, with the data to make good decisions based on timely information, on allocation and utilization of resources, and report on progress towards its goals."³⁴³

The State Auditor also has identified "systemic shortcomings" in implementing Act 51, and noted that the DOE's financial systems are "inadequate to provide principals with information needed to effectively manage their multi-million dollar

³⁴¹ Interview with Ed Case.

³⁴² David Shapiro, *It's About Time Principals Made Good on Contract IOU*, Honolulu Star-Advertiser (Feb 8, 2012), available at http://www.staradvertiser.com/newspremium/20120208__Its_about_time_principals_made_good_on_contract_IOU.html?id=138913404

³⁴³ Testimony Before Senate Committee on Economic Development and Taxation, Feb. 12, 2008, SB 3251, SD1).

budgets.” The report’s bottom line: “Unless the department can provide competent guidance, it is unrealistic to expect schools to develop effective strategic plans and related performance-based improvement processes.”³⁴⁴

The DOE acknowledges an inability to conduct regular financial audits of the schools,³⁴⁵ and its chief financial officer expresses frustration over the DOE’s antiquated systems.

“[W]e have great people, but not so good systems. ... I cannot tell you how frustrating it is that I cannot give you the information you requested ... and even more frustrating that requests that [Superintendent Hamamoto] sometimes makes for information cannot be fulfilled either.”³⁴⁶

One knowledgeable observer believes that the DOE is not trying to keep the public in the dark. According to him, “it’s much worse than that.” The truth, according to him, is that they have only a vague notion of what it costs to educate a student in a particular school, or how much of the operating budget actually gets to the classroom as opposed to being consumed by the bureaucracy.” In other words, the DOE itself is in the dark. It’s not a matter of bad people intending to do a bad job; instead, it’s the predictable consequences of a governance system that lacks accountability.

In 2009, the State Auditor issued a scathing report on the DOE’s procurement practices involving hundreds of millions in facilities money. She decried the underlying “culture” that allowed those practices not just to occur but to continue unabated for years:

“Our audit revealed a lack of proper leadership and controls over the department’s procurement process and a resulting indifference toward procurement compliance ... The department lacks corrective or disciplinary procedures for procurement violations, and the Board of Education has not [provided] oversight of procurement. The result is much confusion among employees and dissent within the department over proper procurement policies and procedures. ... The office’s many large-dollar capital projects were commonly procured with minimal planning and oversight. ... The department has not maintained effective internal control [and] lacks required monitoring controls over its internal controls.”³⁴⁷

“The second phase of our audit revealed an organizational culture of disregard for procurement rules We encountered numerous instances of department personnel manipulating the professional services selection process and awarding contracts to predetermined consultants. ... We

³⁴⁴ Management Audit of Kailua High School, Report No. 06-06, Sept. 2006; see also, Gima, “Kailua High audit raises questions about reform,” The Honolulu Star-Bulletin, Sept. 30, 2006.

³⁴⁵ *Id.*

³⁴⁶ Excerpts from email sent from James Brese to Laura Brown on May 7, 2008.

³⁴⁷ Procurement Audit of the Department of Education: Part 1, Report No. 09-03 (Feb. 2009).

discovered several other alarming practices ... that appeared to be fraudulent and unethical.”³⁴⁸

In past years, the DOE periodically claimed to lack the money needed for soap, paper towels, and toilet paper, not to mention textbooks that are not obsolete.³⁴⁹ And now the system’s chief financial officer and other senior members of the DOE’s leadership team admit that they lack basic managerial information about how \$2.7 billion is spent. This brings to mind Albert Einstein’s definition of insanity: “doing the same thing over and over again and expecting different results.”

Changing the status quo will necessarily involve a shift of power. The parties who currently wield that power—primarily union leaders and elected officials who enjoy union support—are not going to give up that power simply because it’s the “right thing to do.” As Governor Cayetano has said, “The people with power will not give it up unless they get something in return—there will have to be a negotiation of some kind.”³⁵⁰

If you are troubled by what you have read in this essay, start talking about it with others. Contact elected officials, including state representatives and senators, BOE members, and anyone else who sooner or later has to face the voters, and let them all know what it is that troubles you. Ask them why so much in the existing system is based on the concerns of the adults rather than the needs of the children. Ask them exactly what they are doing to make the system student-centered rather than system-centered. Show them the data and respectfully demand to know why our children are not faring better.

Don’t kid yourself. Change will not be easy. As Walter Heen once said, “Educational centralization is a mountain that defies Sisyphus.”³⁵¹ Hawai‘i’s highly centralized system has concentrated enormous amounts of power in the hands of a relative few, and they are determined to keep it. They have demonstrated time and again an awesome ability to prevent meaningful reform. That will begin to change only when instead of saying “shame on them,” we start saying “shame on us.”

It’s time to say “no more,” and to mean it.

³⁴⁸ Procurement Audit of the Department of Education: Part 2, Report No. 09-04 (Feb. 2009).

³⁴⁹ See, e.g., Essoyan, “Schools Under Stress: Still not enough textbooks, and too many that are obsolete,” Honolulu Star-Bulletin, Jan. 27, 2003 (“Many schools report not enough toilet paper and other supplies to keep bathrooms stocked.”); DePledge, “School restrooms ‘pathetic,’” Honolulu Advertiser, June 7, 2004 (“There are no locks on stall doors. Light fixtures are broken. There is often no soap, paper towels or toilet paper.”); *See also*, “Folwell Dunbar, “Soft Measures,” Miller-McCune, Vol. 2, No. 5, at 31 (“Whenever I evaluate a school, my first stop is the boys’ bathroom because, without an un-flushed urinal of doubt, it is every school’s least common denominator.”).

³⁵⁰ Interview of Governor Benjamin Cayetano by Randall Roth, Aug. 14, 2009.

³⁵¹ Walter Heen is a trustee of the Office of Hawai‘i an Affairs who previously has served as chairman of the Democratic Party, judge of the Intermediate Court of Appeals, U.S. attorney, state representative, and city councilman, among other key positions.