



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Human Services
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by
Carrie K.S. Okinaga
Vice President for Legal Affairs and University General Counsel
University of Hawai'i

SB No. 569 – RELATING TO THE HAWAII CIVIL RIGHTS COMMISSION

Chair Ruderman, Vice Chair Rhoads and members of the committee:

Thank you for the opportunity to present testimony in opposition to SB 569 – Relating to the Hawaii Civil Rights Commission. This bill is illogical on its face, and for no apparent reason, places only the University (as opposed to all public schools) in an untenable position of potentially inconsistent regulation by the federal and State regulators/enforcement.

The stated purpose of SB 569 is to “clarify” the legislature’s intent that H.R.S. § 368-1.5 provide a counterpart under state law to Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, as amended (“Section 504”) which prohibits disability discrimination in federally-funded programs and services. The stated need for this “clarification” is the Hawaii Supreme Court’s decision in Hawaii Technology Academy and the Department of Education v. L.E. and Hawaii Civil Rights Commission, 141 Hawaii, 147, 407 P.3d 103 (2017), which held that the legislature intended H.R.S. § 368-1.5 to provide the HCRC with jurisdiction over disability discrimination claims in public education only when federal protections under Section 504 do not apply.

Instead of then amending H.R.S. § 368-1.5 to expressly include disability protections for all public school students (primary, secondary and post-secondary), the bill expressly excludes from the HCRC’s jurisdiction, public and charter schools that provide preschool, primary, or secondary education, even though the Hawai’i Technology Academy was a charter school. Because of this exclusion, the bill only applies to the University of Hawai’i as the exclusive public post-secondary institution in the State. The purported basis for excluding public and charter schools providing preschool, primary or secondary education from these “protections” is that federal law preempts State law when schools are offered protections and services under federal law, in particular, the Individuals with Disabilities Education Act, P.L. 101-476, as amended (“IDEA”) and Section 504.

The University of Hawai’i is subject to Section 504, i.e., federal law. The U.S. Department of Education Office for Civil Rights (“OCR”) fields complaints based on disability discrimination, and OCR has been active in enforcing upon its interpretations of regulations pertaining to web accessibility as well as student housing access at the University. Students may also file a complaint with the U.S. Department of Justice and/or file a federal lawsuit. The same logic behind excluding the public primary and secondary schools from HCRC’s jurisdiction should apply to the University.

The University of Hawai'i strives to ensure that our students with disabilities are offered equal access and services at all of our campuses and programs, and the resources and accommodations offered by the University to its students, see, e.g., the KOKUA program (<http://hawaii.edu/kokua/>). We have requested via the HCRC's attorneys the facts or situations that may have given rise to the need for this bill, such that the risk of inconsistent regulation and enforcement would be worth taking (and only for the University apparently), and have offered dialogue with the HCRC, with no response to date.

Based on the foregoing, the University of Hawai'i strongly urges the committee to hold this bill. In the alternative, if this bill was intended to address public schools that are not subject to Section 504, i.e., federal law, the University respectfully requests that the committee amend the preamble in SB 569 to also exclude public universities that provide post-secondary education services from HCRC jurisdiction, and that "or universities" and "or post-secondary" be added to the proposed HRS § 368-1.5(e), as follows:

(e) As used in this section, the term "program or activity" does not include public schools or universities that provide preschool, primary, ~~or~~ secondary, or post-secondary education services."

Thank you for your time and consideration.