

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. So in 1844, “all districting was dropped and the schools were placed under central control ... a distinguishing characteristic of the public schools ever since.”³ When he wrote that in 1959, Senator Oren Long was pointing out that Hawai‘i’s centralized system 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.”⁴

At the time of statehood, there were 135,700 public-school students—or 83.9 percent of elementary and secondary students statewide.⁵ The per-student level of spending was below the national average, \$372 versus \$481.⁶ 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 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.”⁷

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 Maenette Kape’ahiokalani, Padeken Ah Nee Benham, and Ronald H. Heck, *Culture and Education Policy in Hawai‘i: The Silencing of Native Voices*, p. 64, Lawrence Erlbaum Associates, 1998.

³ 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.)

⁴ *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.”

⁵ Long *supra* note 3.

⁶ CORE report (1974); “Johnny’s class Getting Smaller, Says Isle Report,” *Honolulu Advertiser*, Oct. 8, 1966.

⁷ “Isle Per-Pupil Costs Are Called Misleading,” *Honolulu Star-Bulletin*, Apr. 25, 1959.

The average class had nearly 30 students, which was 8 more than the national average.⁸ Despite this, parents were generally satisfied with the perceived quality of educational opportunity.⁹ More than 70,000 parents belonged to the Parents and Teachers Association (PTA)—nearly 12% of the state’s population.¹⁰

The system was known as the Department of Public Instruction (DPI) and it was headed by the members of an unpaid, appointed Board.¹¹ 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.”¹²

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.” The *Advertiser* added, “Hawai‘i is highly partisan in public affairs, schools would be no exception.”¹³

The public strongly favored an elected school board, 57 percent to 22 percent (the remaining 21 percent had no opinion).¹⁴ 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.¹⁵ Quinn’s successor, Governor John A. Burns made clear in his 1962 inaugural address that he wanted an elected Board.¹⁶ In 1964, the Constitution was changed to provide for popular elections of school board members.¹⁷

⁸ “Hawai‘i Public Schools Fall short Of Standards for Accreditation,” *Honolulu Star-Bulletin*, Mar. 22, 1961.

⁹ 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.

¹⁰ Oren E. Long, “Education in Hawai‘i,” *The Honolulu Advertiser*, June 23, 1959, at 17.

¹¹ 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).

¹² 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.

¹³ *Id.*

¹⁴ Craig, *supra* note 12.

¹⁵ “Governor Signs Compromise Bill On Board of Education,” *Honolulu Advertiser*, July 12, 1961.

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

¹⁷ Hawai‘i State Constitution, Article X, Section 2.

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.”¹⁸ The shift eventually happened in 1964.

Average teacher pay in 1959 was \$4,850—a number that both political parties said was too low.¹⁹ 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.”²⁰ 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.²¹ The system was under stress because the school-age population was growing rapidly.²² 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.²³

Governor Burns described education as his top priority.²⁴ 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.”²⁵ 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:

“Daniel W. Tuttle Jr., executive director of the Hawai‘i Education Association said 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,’ Tuttle said.”²⁶

In 1962, a news reporter asked an assistant Superintendent about specific innovations being tested in some mainland school districts. After first making clear that members of the

¹⁸ 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.

¹⁹ 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.

²⁰ *Id.*

²¹ *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.”).

²² 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.

²³ “Isle Per-Student Cost Tops Average,” *Honolulu Advertiser*, Dec. 31, 1962.

²⁴ Hunter, “Education Will Come First, Burns Says of Budgeting,” *Honolulu Advertiser*, page 1, Nov. 30, 1963.

²⁵ *Id.*; See also, Kaser, “Legislature ‘gave moon’ for education in Hawai‘i,” *Honolulu Star-Bulletin*, May 29, 1965.

²⁶ “High Hawai‘i Rank Seen in Education,” *Honolulu Advertiser*, page D-2, Feb. 16, 1967.

Department of Education (DOE)²⁷ were well aware of the new concepts in education, he 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.”²⁸

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. Afterward, he wrote that the people in Hawai‘i’s education system were “heroic,” because they toiled daily despite “overwhelming frustrations.”²⁹ He wrote that “crackpots and demagogues love to get on school boards,”³⁰ 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.”³¹

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.”³²

In his 1962 inaugural address, Governor John A. Burns announced that he planned to decentralize the DOE.³³ 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 individual school or group of schools, rather than starting at the state office.”³⁴

²⁷ 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.

²⁸ “Isle Schools Proud of Educational Strides,” *Honolulu Star-Bulletin*, Nov. 3, 1962, at 17.

²⁹ O’Neil, “Exchange Principal: Isle Schools Succeed Despite Great Odds,” *Honolulu Star-Bulletin*, May 23, 1963, at 1B.

³⁰ *Id.*

³¹ *Id.*

³² Long, *supra* note 3.

³³ *supra* note 16.

³⁴ CORE Report (1974), p. A-26

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.”³⁵ 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.

Another longstanding aspect of Hawai‘i’s public-education system noted by Burns and other Governors is that the DOE/BOE³⁶ has no control over the level of funding and only shared control over spending decisions. 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.³⁷ 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).³⁸ Because this unusual arrangement has existed for so long in Hawai‘i, most people 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.”³⁹

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

“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.”⁴⁰

³⁵ *supra* note 16.

³⁶ 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.

³⁷ See Board of Education vs. Waihee, 70 Haw. 253 (1989); The Center for Public Education, *supra* note 4.

³⁸ 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 an studies, ROTC, school lunches, and athletics. Currently there are more than 300 such categories.

³⁹ “Legislative ‘Control’ In Education Is Rapped,” *The Honolulu Star-Bulletin*, Mar. 6, 1964.

⁴⁰ CORE Report, p. A-24

Business leaders pointed out the need to know “where the buck stops.” 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.”⁴¹

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.”⁴²

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.”⁴³ Presumably this was their way of pointing out the lunacy of 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.⁴⁴ The DOE/BOE 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”⁴⁵).

With the DOE/BOE, Legislature, and Governor each trying to run the schools, there have long been problems with coordination, coherence, and accountability. There also have been

⁴¹ O’Neil, “Exchange Principal: Isle Schools Succeed Despite Great Odds,” Honolulu Star-Bulletin, May 23, 1963, at 1B.

⁴² “‘Speak out,’ Jackson tells administrators,” Honolulu Star-Bulletin, Dec. 1, 1966, at A-12.

⁴³ “Definitive statement on education roles is asked,” Honolulu Star-Bulletin, Dec. 1, 1966, at A-12.

⁴⁴ Board of Education vs. Waihee, 70 Haw. 253, 267-268 (1989) (“to plan and efficiently execute ... programs, to set priorities for those programs, hire the necessary personnel, and perform necessary repairs and maintenance of school facilities”).

⁴⁵ Board of Education vs. Waihee, 70 Haw. 253, 267-268 (1989); See also, HRS Sec. 37-65 and 37-67.

problems with accountability at the school level, where Hawai‘i’s principals, far from being the chief executive officers of their schools, have historically had little autonomy or authority, and have never been held accountable for results. Because most of the key decisions have always been made outside the schools, and union contracts de-link each principal’s salary, benefits, and job security from student achievement, the education system in Hawai‘i has been described as “top-down” and “system-centered,” as opposed to “school-centered.”⁴⁶ Education experts outside Hawai‘i have long marveled at the expansive role played by central administration in this state. 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.”⁴⁷

At the urging of Governors Burns, Waihee, Cayetano, and Lingle, the DOE/BOE and the Legislature have periodically discussed shifting more decision-making to school principals, and some school-oversight responsibilities to local boards or councils. But little has come of these debates. In 1989, for example, the Legislature authorized what they called School/Community-Based Management, or SCBM. As envisioned, SCBM councils would have empowered individual schools and helped them to break out of the DOE’s top-down, one-size-fits-all mold. For example, SCBM councils could seek waivers from system-wide dictates. In reality, however, it could take years to get an answer, and the teachers union, principals union, and the BOE each had a veto power.⁴⁸ In 2003, columnist Richard Borreca described the history and eventual impact of SCBM:

“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.”⁴⁹

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,

⁴⁶ See, e.g., Hawai‘i Business Roundtable Position Paper, p. 1, Mar. 2, 2004.

⁴⁷ BW Associates, “Educational Excellence for the Pacific Era,” (Berman Report) p. 18, November 15, 1988.

⁴⁸ Provide Lingle’s example regarding Lahainaluna’s attempt to change its graduation date (in 2003 State of the State address).

⁴⁹ Borreca, “Politicians keep talking, students keep waiting,” The Honolulu Star-Bulletin, Nov. 30, 2003.

including that school's strategic, academic, and financial plans, or to deviate from statewide policies and procedures.

The Students in the System

Enrollment in Hawai'i's public schools peaked at 189,281 in 1997-98, which was approximately 85 percent of the total school-age children. Enrollment numbers have declined steadily since then, but held steady as a percentage of school-age children.⁵⁰ The enrollment for 2009-10 is 178,057. The percentage of school-age children in Hawai'i who attend a private school now is about 16 percent, which is what it was at the time of statehood.⁵¹ Eleven other states report a higher percentage of students in private schools.⁵² Although precise numbers are not currently available, the percentage of school-age children who currently are being home-schooled appears to be rising.⁵³

Despite declining enrollments, Hawai'i's system is still the nation's 9th largest.⁵⁴ 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 1,468, nearly double the national average of 752.⁵⁵ 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 1959). According to a former PTSA officer, "Parents of public school students are increasingly treating the DOE as a lost cause."⁵⁶

Demographic information indicates that student achievement in Hawai'i's public education system is lower than it should be. Primary predictors include family income, the presence of special needs, and limited English proficiency. Former superintendent Hamamoto has pointed out, "Study after study conclusively find that poverty is the single greatest predictor of student performance."⁵⁷ Yet Hawai'i has a relatively low percentage of students from poor families, as measured by qualification for the free-lunch program under federal criteria—28.86 percent versus the national average of 31.89 percent. Critics of the No Child Left Behind law ridicule its assumption that special-needs students can and should succeed in the academic mainstream (evidently assuming that special-needs students as a group will inevitably perform poorly), yet Hawai'i has a relatively low percentage of students who require special-education

⁵⁰ Sally Kwak, "Determinants of Student Achievement in Hawaii," Unpublished manuscript, prepared for the Statehood Conference, Honolulu, Hawaii, Aug. 21, 2009 (publication pending).

⁵¹ Kwak, *supra* note 50.

⁵² Kwak, *supra* note 50.

⁵³ Kwak, *supra* note 50.

⁵⁴ 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 2005-2006 (June 2008).

⁵⁵ See University of Hawai'i Education Policy, "Just the Facts: A Citizen's Primer on Hawai'i's K-12 Public Education," January 2003, available at <http://www.Hawai'i.edu/hepc/pdf/Reports/Primer.pdf>, last visited 6/12/09; see also University of Hawai'i Public Policy Center, "Report to the 2009 Legislature," Section III (January 2009) ("Not only does Hawai'i have comparatively larger schools and larger student to teacher ratios, Hawai'i, with its single district, is among the largest in the nation.").

⁵⁶ Interview with former PSTA officer and former member of the Board of Education Paul Vierling.

⁵⁷ Hamamoto, "Schools fight poverty's influence on learning," Honolulu Star-Bulletin, Feb. 4, 2007.

services—11.67 percent versus the national average of 14.65 percent.⁵⁸ Some people believe that average student performance in Hawai‘i is necessarily in the lowest tier nationally because so many of our students have limited English proficiency (LEP), but LEP students comprise only 8.67 percent of the total public-school enrollment in Hawai‘i. The percentages are much higher in many other states. The ten states with the highest percentage of LEP students are California (25.6%), New Mexico (19.9%), Nevada (16%), Alaska (15.6%), Texas (15.2%), Arizona (14.9%), Florida (12.2%), Colorado (11.8%), Oregon (10.5%), and Utah (10.2%).⁵⁹

The 2009 Quality Counts Report from *Education Week*⁶⁰ ranks Hawai‘i slightly above average on its “chance for success index” (79.2 versus the national average of 78.9).⁶¹ Hawai‘i has relatively good demographics in the following categories: “percent of children in families with incomes at least 200% of poverty level” (72.0 versus the national average of 60.7), “percent of children with at least one parent with a postsecondary degree” (48.8 versus the national average of 43.9), and “percent of 3- and 4-year-olds enrolled in preschool (53.1 versus the national average of 46.2). Hawai‘i is near the national average in other categories: “percent of children with at least one parent working full time and year-round” (71.4 versus 71.8), “percent of children whose parents are fluent English-speakers” (84.6 versus 84.1), “percent of eligible children enrolled in kindergarten programs” (74.3 versus 76.4), “percent of adults (25-64) with incomes at or above national median” (53.4 versus 50.0), “percent of adults (25-64) with a 2- or 4-year postsecondary degree” (42.5 versus 37.7), and “percent of adults (25-64) in labor force working full time and full year (70.3 versus 68.3). The only categories in which Hawai‘i scored well below average had to do with student performance—which is discussed at length, below. 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.

Some people believe that ethnicity is relevant in predicting levels of student achievement. They point out, for example, that school systems with a high percentage of Hawaiian students tend to have relatively low test scores and that systems with a high percentage of American students of Japanese ancestry usually have relatively high test scores. Most educators, though, feel that ethnicity is relevant only as a proxy for factors like poverty, limited English proficiency, special-education needs, and cultural influences. This controversy does not explain the overall poor performance of Hawai‘i’s public school students, because every ethnic group in Hawai‘i performs poorly when compared to its respective counterpart on the mainland. This is also true for groups based on economic circumstances. For example, when one compares only each state’s Caucasians who do not qualify for the free-lunch program, Hawai‘i is still in the bottom

⁵⁸ Kwak, *supra* note 50.

⁵⁹ See generally, Martin, “Limited English Proficiency Enrollment and Rapidly Rising Costs,” Federation for American Immigration Reform, http://www.fairus.org/site/DocServer/LEP_Special_Report.pdf?docID=1581, last visited Aug. 14, 2009 (“The number of students in special English classes is rapidly rising Over the ten-year period up to 2005, the number of students registered in Limited English Proficiency (LEP) programs increased by more than ... 38 percent and took the total number of students in these programs to nearly 4.5 million persons [nationally]. ... The upward trend in LEP enrollment parallels the upward trend in the illegal immigrant population. We estimate that there are more than 3.5 million children of illegal immigrants in K-12 public school classes.”).

⁶⁰ Quality Counts 2009, Education Week, Vol. 28, No. 17, Jan. 8, 2009.

⁶¹ 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).

tier nationally. If there's nothing wrong with our system of education, why do mainland children of any particular ethnic group perform better on national exams than do members from the same ethnic group in Hawai'i?

Various studies have expressed specific concerns about Hawaiian children⁶² and have suggested that they would learn better in a culture-appropriate setting.⁶³ A study funded by Kamehameha Schools described Hawaiian children as having been “left behind in our state public school system.”⁶⁴

“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.”⁶⁵

Charter Schools

In 1994, in an attempt to address both general-public demand for more local control of the schools and Hawaiian demands for culturally sensitive educational opportunities for

⁶² As used in this essay, Hawaiians are those individuals who can trace an ancestor back to the arrival of Captain James Cook in 1778.

⁶³ 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-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.

⁶⁴ “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.

⁶⁵ *Id.*, cover page.

Hawaiian children, the Legislature and Governor Waihee authorized a limited number of “student-centered” schools. These are commonly known as charter schools.

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.”⁶⁶ 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.⁶⁷ 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. 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 schools that convert to charters) have to find and pay for their own facilities.

Most of the charter schools are in areas of the state that have exceptionally high numbers of Hawaiians, and the programs of instruction at many of these schools are grounded in the Hawaiian culture. 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. Unsurprisingly, the number and percentage of public-school students who are choosing to attend one of the 31 charter schools are on the rise. The projected enrollment this year, 8,424, is 11 percent above last year’s number. The average enrollment per charter school has risen from 139 in 2001-02 to 245 in 2008-09, and the waitlist has grown to more than 3,000.⁶⁸

Charter school proponents complain that the Legislature and the DOE/BOE have done little to help the charter schools succeed.⁶⁹ Some, like former Congressman Ed Case, contend

⁶⁶ 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.

⁶⁷ Auditor’s Report No. 02-03, Feb. 2002.

⁶⁸ Interview of Maunalei Love, Executive Director of the Charter School Administrative Office, Aug. 21, 2009.

⁶⁹ 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

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.”⁷⁰

Case’s comments are far from unique. The U.S. government’s chief advocate for charter schools described Hawai‘i’s charter schools as “designed to fail.”⁷¹ 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.”⁷²

Although the DOE’s all-inclusive annual expenditures penciled out to about \$16,000 per student last year,⁷³ the charter schools have received only about \$8,000 per student in each of the past three years. Recently they were told to expect only \$5,330 per student this year (with the possibility of that increasing to slightly more than \$6,000 if stimulus money is available). Even the larger number would be unfair and inadequate. Especially when you consider that the charter schools have to provide their own facilities (and the DOE demands that the facilities satisfy stringent standards), such a dramatic drop in funding could be the death knell for charter schools in Hawai‘i.

The Adults in the System

The DOE/BOE’s \$2.7 billion budget and 34,000 fulltime-equivalent employees—more employees than Hawaiian Electric Industries, Hawai‘i Medical Services Association, Alexander & Baldwin, Hawaiian Airlines, Kaiser Permanente Hawai‘i, First Hawaiian Bank, Bank of

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.

⁷⁰ Interview with former Congressman Ed Case.

⁷¹ 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.

⁷² *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.

⁷³ This all-inclusive figure is arrived at by dividing total expenditures by total enrollment. 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. See also

Hawai‘i, and the Queen’s Health Systems, *combined*—make it by far the state’s largest employer.⁷⁴

Unions are an imposing presence in Hawai‘i’s public education system. Among the employees of the DOE are about 13,500 licensed teachers, each of whom must pay dues to the Hawai‘i State Teachers Association (HSTA); according to the DOE, 11,226 of them are classroom teachers⁷⁵ and the rest provide support services.⁷⁶ There also are 259 principals and a slightly larger number of vice-principals in the 259 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. A unionized 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.⁷⁷

HSTA and HGEA officials describe themselves as tough negotiators and proactive players in the political arena.⁷⁸ 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.”⁷⁹

Even staunch union supporters sometimes express concerns about the implications of having both unionized labor *and* unionize management. Some are particularly concerned that the system’s managers are in the same union as many of the workers—HGEA. In a 2009

⁷⁴ 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.

⁷⁵ This number comes from the 2009 Superintendent’s Report and includes thousands of licensed teachers who do not fall into everyone’s definition of classroom teacher. See, e.g., Laura Brown, *Top 10 Outrageous Facts about the Hawaii State Teachers’ Association*, *Hawaii Reporter*, Jan. 14, 2010 (“Hawaii’s public schools employ 6,300 classroom teachers”); see also Ouchi and Cooper, *supra*, note 74.

⁷⁶ University of Hawai‘i Public Policy Center, “Report to the 2009 Legislature,” Section III (January 2009).

⁷⁷ 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.

⁷⁸ 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.

⁷⁹ *Id.*

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.”⁸⁰

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.’”⁸¹

A recently adopted “weighted student formula” (WSF) 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.”⁸²

“[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.”⁸³

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.”⁸⁴ In Edmonton, each principal controls 92 percent of the school’s operating funds and is not required to purchase services from central administration.

Although on paper WSF has shifted control over nearly half of each Hawai‘i public school’s budget to the principal,⁸⁵ almost all of that amount, as a practical matter, must be

⁸⁰ Interview of Governor Benjamin Cayetano by Randall Roth, August 14, 2009.

⁸¹ Roth, “The Promise of the Reinventing Education Act of 2004,” presented to Social Science Association, 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.

⁸² Hiller, “Bill gives principals more control over spending,” *The Honolulu Advertiser*, at A1, Apr. 10, 2003, at A1.

⁸³ *Id.*

⁸⁴ 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.

⁸⁵ 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%.

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. Even the half that a principal theoretically controls is subject to significant limitations. For example, personnel costs are based on statewide averages rather than actual costs.⁸⁶

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. They believe that managers within a monopoly tend over time to take their “customers” for granted. 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.”⁸⁷

Is the System Working for the Students?

The central question here, of course, 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 very low. 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 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.”⁸⁸

The widespread perception that Hawai‘i’s students are not being well served 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.”⁸⁹

This perception undoubtedly stems from comparatively low scores on national standardized exams. In 2002, a national study indicated that the average scores on national exams placed Hawai‘i last in reading among the 50 states, fifth worst in math, and third worst in

⁸⁶ Thus, for example, a principal cannot save money by assembling a relatively young, low-paid faculty. Each teacher costs exactly the same so far as the principal is concerned.

⁸⁷ “Redesigning Hawai‘i Public Education,” Hawai‘i Business Roundtable Position Paper, Mar. 2, 2004.

⁸⁸ Borreca, “Politicians keep talking, students keep waiting,” The Honolulu Star-Bulletin, Nov. 30, 2003.

⁸⁹ BW Associates, “Educational Excellence for the Pacific Era,” (Berman Report) p. 6, November 15, 1988.

science.⁹⁰ In 2004, another research organization concluded that the conventional wisdom was correct: “Hawai’i consistently ranks in the bottom tier of states and territories, and in some cases at the very bottom of the list, with respect to indices of student achievement.”⁹¹ 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.”⁹²

Although recent scores on state tests have shown some improvement, it is too early to tell for sure because of recent changes to the test.⁹³ That’s not a problem with the National Assessment of Educational Progress (NAEP), which is consistent from state to state, and 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.⁹⁴ The 2007 composite scores are the most recent; they place Hawai’i 5th from the bottom of the 50 states (slightly ahead of Alabama, Louisiana, California, and New Mexico).⁹⁵ Results from the nationally administered Scholastic Achievement Test (SAT) also place Hawai’i at or near the bottom year after year.⁹⁶

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 right in the middle of the 50 states, so its last-in-the-nation standing in 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.⁹⁷

The public is sometimes confused by media reports that students from Hawai’i do relatively well on the ACT college entrance exam.⁹⁸ Composite data on ACT scores is unhelpful

⁹⁰ Quality Counts 2002: Building Blocks for Success, Education Week with funding from Pew Charitable Trusts.

⁹¹ WestEd Report on Student Achievement in Hawai’i, Mar. 8, 2004.

⁹² Sally Kwak, “Determinants of Student Achievement in Hawaii,” Unpublished manuscript, prepared for the Statehood Conference, Honolulu, Hawaii, Aug. 21, 2009; see also University of Hawai’i Public Policy Center, “Report to the 2009 Legislature,” Section II (Jan. 2009).

⁹³ See, e.g., Superintendent’s 19th Annual Report, RS 09-0714 (Feb. 2009); Da Silva, “DOE blasted over giddy test report: The content had been changed to subjects known to students,” The Honolulu Star-Bulletin, Sept. 17, 2007. (“Top state Department of Education officials have accepted blame for celebrating gains in annual state testing without emphasizing that results were based on new standards that made year-by-year comparisons misleading.”); and Altonn, “Isle students’ scores track nation’s,” The Honolulu Star-Bulletin, June 17, 2009, at 9 (“Only two years of comparable data were available for Hawai’i because the DOE started a new testing system in 2007 so trends couldn’t be identified in student achievement ... however, if increased scores ... continue, Hawai’i is ‘moving in the right direction’ ...”).

⁹⁴ WestEd Report (2004).

⁹⁵ National Center for Educational Statistics, “The Nation’s Report Card,” at <http://nces.ed.gov/nationsreportcard/>.

⁹⁶ Digest of Education Statistics, National Center for Education Statistics, Table 134, “SAT score averages of college-bound seniors and percent of graduates taking the SAT, by state or jurisdiction: selected years, 1987-88 through 2005-06.” 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.

⁹⁷ In 2008, the combined average SAT scores for public schools (1,369), was far below both private secular schools (1,646 combined) and private religious schools (1,569 combined). See Craig Gima, “SAT scores show mixed results as more isle students take exam,” Honolulu Star-Bulletin, Aug. 26, 2009; see also, Henshaw, “A call to get rid of public schools,” Honolulu Star-Bulletin, Aug. 30, 2009.

⁹⁸ 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

in evaluating a state's public education system, however, because it does not report the scores of public and private school students separately.⁹⁹ Also, relatively few of Hawai'i's college-bound students take the ACT.¹⁰⁰

Another indicator of student achievement is a school system's graduation rate. For years the DOE/BOE has reported a system-wide graduation rate of about 80% (79.2% for the most recent reporting period, 2005-06).¹⁰¹ 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: 67.4% for 2005 and 63.95% for 2006, compared to the national average was 70.6%.¹⁰² An analysis of the latest census data also suggests that the DOE/BOE's numbers are somewhat suspect. These data indicate a "Freshman Graduation Rate" of 75.5 percent in Hawaii compared to the national average of 80.62 percent, and a "Dropout Rate" in Hawaii of 4.7 versus the national average of 3.06.¹⁰³

Placement exams taken by high school graduates wanting to take college-level courses can also be used to measure proficiency levels. In 2008, 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 48% in reading, 35% in writing, and 21% in math—meaning, for example, 79% of these graduates needed remediation in math, nearly two-thirds needed it in writing, and more than half required remediation in writing.¹⁰⁴ The DOE's website envisions that its graduates will pursue post-secondary education and careers "without need for remediation."¹⁰⁵

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

that Hawai'i's college-bound students are more prepared for post-secondary degree work than many of their national counterparts.")

⁹⁹ 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.

¹⁰⁰ See, e.g., *id.* (Carol Shikada, director of the state Department of Education's Student Support Branch, said the ACT has had a smaller presence in Hawai'i mainly because it is a test traditionally recommended by Midwestern universities and colleges. Most Hawai'i students look toward the East and West coasts for school, she said.)

¹⁰¹ Superintendent's 19th Annual Report, p. 9, RS 09-0714 (Feb. 2009); cite Kawamoto letter June 15, 2009.

¹⁰² Quality Counts 2009, *supra* at note 60; see also EdWeek.org, "Diplomas Count 2009," Education Week, <http://www.edweek.org/ew/toc/2009/06/11/index.html>, (last visited June 12, 2009); and Moreno, "Hawai'i graduations disputed," The Honolulu Advertiser, June 9, 2009; see also, Education Week, *Diplomas Count*, June 11, 2009, p. 33.

¹⁰³ See Kwak *supra*, at note 50; the dropout rate in this study is based on a sample size of 13,479.

¹⁰⁴ UHCC Office of Academic Planning, Assessment, and Policy Analysis, as reported in a letter to the authors, dated July 2, 2009.

¹⁰⁵ Introduction, Vision & Goals, available at http://doe.k12.hi.us/about/intro_vision.htm, last visited Aug. 11, 2009.

measurable and there is no statewide curriculum.”¹⁰⁶ And a federal panel of experts concluded that the DOE lacked “coherency” in academic content and achievement standards, and in its assessment system.¹⁰⁷ Critics in Hawai‘i say 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.”¹⁰⁸

The National Center for Public Policy and Higher Education issued a report in April 2004 that tracked the number of middle school students who made it to various stages of the “educational pipeline” in each state.¹⁰⁹ For example, only 65 out of 100 ninth graders graduate from high school four years later (versus the national average of 68); and only 34 of those graduates immediately enter college (versus the national average of 40); and only 22 of those students are still enrolled a year later (versus the national average of 27); and only 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.¹¹⁰

Teachers frequently complain that bureaucratic processes consume inordinate amounts of time that they would rather spend teaching.¹¹¹ 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.”¹¹²

“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.”¹¹³

¹⁰⁶ 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.”)

¹⁰⁷ Nina Buchanan and Mary Anne Raywid, “What is really needed to fight isle’s dismal test scores,” The Honolulu Star-Bulletin, Aug. 6, 2006.

¹⁰⁸ *Id.*

¹⁰⁹ “The National Center for Public Policy and Higher Education, “The Educational Pipeline: Big Investment, Big Returns,” Policy Alert, Apr. 2004.

¹¹⁰ See <http://www.highereducation.org/reports/pipeline/HI/HI-b.pdf> for comparisons at each stage of the pipeline.

¹¹¹ 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.”).

¹¹² BW Associates, “Educational Excellence for the Pacific Era,” (Berman Report) p. 19, November 15, 1988.

¹¹³ DeRego, Island Voices, Honolulu Advertiser, Oct. 17, 2003, at A16.

“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.”¹¹⁴

Principals also complain of unnecessary levels of bureaucracy, and particularly about union contracts that severely limit a principal’s ability to remove ineffective teachers from the classroom.¹¹⁵ It can literally take years of time-consuming effort to remove a single ineffective teacher, even if the need to do so is obvious not only to the principal but also to everyone else in that school. Even when a principal has finally managed to remove such a teacher, the 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.”¹¹⁶ A life-long educator responded, “If this doesn’t convince you that the HSTA protects its own, rather than students, nothing will.”¹¹⁷

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.¹¹⁸ 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.”¹¹⁹

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

“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 experienced 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

¹¹⁴ 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>.

¹¹⁵ 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.

¹¹⁶ Roderick McPhee, “Union policies hinder improvement efforts,” The Honolulu Advertiser, June 15, 1997, at B3.
¹¹⁷ *Id.*

¹¹⁸ 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.

¹¹⁹ “Large Number of BOE Children Attend Private School: Some BOE Members Say Public Schools Do Not Meet Needs,” KITV News, May 2, 2003.

military locations in the United States. ... Military leadership has considered establishment of Department of Defense schools in Hawai‘i.”¹²⁰

The DOE/BOE blames 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 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.¹²¹

There are consequences when a school fails repeatedly to make its AYP. Whether these consequences are good or bad depends on your vantage point. For example, after two years, parents of students in that school are allowed to move their children to another school (i.e., they are given “school choice”), and after three years of not making AYP, a school must offer supplemental services to qualifying students, such as one-on-one tutoring. The ultimate sanction under NCLB is a state takeover. That’s not possible in Hawai‘i, of course, because the state already has operating control of every public school. For Hawai‘i, the ultimate consequence presumably would be wholesale changes in a school’s personnel.

A record number of schools in Hawai‘i are currently in non-compliance.¹²² Because of existing union contracts, however, the DOE/BOE’s options are limited. Former superintendent Hamamoto tried without success to get a bill passed in 2009 that would have empowered her to change a sanctioned school’s principal and make wholesale changes in the faculty at a school that has been in restructuring for four or more years without significant academic improvement. Although Hamamoto described the measure as “necessary,” the Legislature chose not to pass it, citing, among other things, potential harm to the unions.¹²³ The teachers union argued that the bill would violate union contracts, and added that it would harm the affected institutional communities:

“Labor unions representing teachers and principals argue that giving the DOE the authority to overhaul a school would circumvent the collective bargaining process. ... [and] according to HSTA President Roger Takabayashi, by removing the current school staff and replacing it, the DOE would uproot institutional knowledge of the community and its unique cultural makeup. ... [the teachers at the “failing” school] know each other, they know the community, they know the families.”¹²⁴

¹²⁰ D’Olier, “K-12 Public Education Redesign – Hawai‘i an Style,” presented to Social Science Association, Nov. 3, 2003.

¹²¹ 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.”).

¹²² *Id.*

¹²³ Da Silva, “DOE seeks failing-school overhaul,” Honolulu Star-Bulletin, Jan. 4, 2009; see also “Keany, “Do Teachers Make the Grade,” Honolulu Magazine, May 2009.

¹²⁴ Moreno, “Hawai‘i DOE wants power to restructure failing schools,” The Honolulu Advertiser, Feb. 8, 2009.

Who (or What) Needs to Change?

By now, virtually everyone accepts that national test scores coming out of the state's public schools are 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:

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.”¹²⁵

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:

“This month, we once again take stock of Hawaii’s public school system. It’s a feature that’s become an annual commitment, and, each year, we get accused of dwelling on the negative. ... 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.”¹²⁶

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 the current head of the teachers union puts it:

¹²⁵ Ronn Nozoe, Op-Ed, “DOE needs Hamamoto,” *Midweek*, Aug. 5, 2009, at 4.

¹²⁶ Editor’s Page, *Honolulu Magazine*, May 2009, available at <http://www.honolulumagazine.com/Honolulu-Magazine/May-2009/Editor-039s-Page-What-039s-the-Difference/>.

“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?”¹²⁷

One wonders if the union would simply have the 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.¹²⁸

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.”¹²⁹

Such critics also fault the DOE/BOE for its refusal to measure degrees of improvement in student performance.¹³⁰ The DOE/BOE says it lacks the ability to measure and analyze changes in individual student performance, but how hard could it be to keep track of how individual students in individual classes perform at the beginning and end of any particular year, look to see which teachers consistently produce above or below average levels of improvement, and then try to determine the reasons? Of course, this approach could put some teachers on the spot, and that may explain union opposition to it, but that is not reason enough not to do it.¹³¹

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. Also of significant benefit to the

¹²⁷ 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/>

¹²⁸ 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.

¹²⁹ Lingle, “Student testing matters a lot,” The Honolulu Advertiser, at A17, Oct. 15, 2003.

¹³⁰ 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. 20, 2009).

¹³¹ The National Education Association (NEA) is predictably against such a move: “It is inappropriate to require that states be able to link data on student achievement to individual teachers for the purpose of teacher and principal evaluation.” See “The NEA, Stuck in Reverse,” at <http://www.publiccharters.org/node/1121>.

unions is that they routinely find themselves sitting across the negotiating table from rank amateurs, such as school board members who have no training or experience in negotiating union contracts. (Private-sector employers utilize the services of an Employers' Council, pitting professionals against professionals.) Because officials of the teachers and principals unions have superior negotiating expertise and a fiduciary duty to pursue the interests of their members to the exclusion of all other interests, it is hardly surprising that union officials have historically negotiated work rules that elevate the interests of union members above those of students, parents, and the public.

The unions' power may explain why the teacher-assessment system is so primitive, and why it is an epic undertaking to remove even obviously ineffective teachers from the classroom. It also helps explain why teachers with seniority have "bumping" rights, 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.¹³²

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 \$43,157 (those with a master's degree start at \$46,609), plus another \$16,000 in fringe benefits.¹³³ The total approaches \$80,000 when annualized. That amount compares 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.

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.¹³⁴ 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.

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

¹³² *Id.* quoting Gerald Teramae, Principal of Kalani High School.

¹³³ "Teachers' Salary Schedule, Effective School Year 2009-2010," available at <http://doe.k12.hi.us/personnel/teachersalarieschedule.pdf> (see schedule for teachers who have completed a state-approved teacher education program, and who have 0-3 years experience); Kubota, "State moves up in per-student spending," *Honolulu Star-Bulletin*, July 28, 2009.

¹³⁴ "Union policies hinder improvement efforts," *Honolulu Advertiser*, June 15, 1997, at B3.

public schools would continue to languish as long as the principals belonged to a union.¹³⁵ 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 seem to think that the buck should stop at the Superintendent’s desk. But how does a Superintendent motivate principals who have near-absolute job security and salaries totally unrelated to job performance or outcomes? Indeed, one wonders how a Superintendent could exercise much, if any, authority under such circumstances. Former Governor Cayetano has described a meeting about ten years ago between a group of principals and the Superintendent at that time, Paul LeMahieu. Although LeMahieu was the system’s chief executive officer and therefore the principals’ boss, they told him to stay quiet and just listen.¹³⁶ The current Superintendent is widely respected by the principals, but no organization can function effectively when its CEO must simply depend on the good will of her staff.

Some people view the unions as part of a politically dominant, “unholy alliance”¹³⁷ that blocks every effort to change the status quo (unless the change would benefit union members). One critic 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.”¹³⁸

Money. Members of the so-called iron triangle contend that student achievement will increase significantly only when a lot more money is spent on public education.¹³⁹

“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.’”¹⁴⁰

¹³⁵ Id.

¹³⁶ Interview with Benjamin Cayetano, Aug. 14, 2009.

¹³⁷ 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.

¹³⁸ David Shapiro, “Education reform? Forget it,” The Honolulu Advertiser, October 15, 2003

¹³⁹ 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.”)

¹⁴⁰ The Honolulu Advertiser, p. B4, 10/23/03.

The Honolulu Advertiser agrees: “Ultimately, we get what we pay for. ... Low pay for teachers is an embarrassment.”¹⁴¹

Such comments are difficult to reconcile with available data. According to the American Federation of Teachers’ (AFT) Survey and Analysis of Teacher Salary Trends for 2007, Hawai‘i’s average teacher salary of \$51,916 ranked 14th among the 50 states; and the starting salary for beginning teachers, \$37,250, ranked 8th from the top.¹⁴² For internal accounting purposes, the DOE assumes that fringe benefits cost between 40 and 41 percent of salary. Applying that rate to the AFT numbers produces an average total compensation (salary plus benefits) of at least \$72,682 (and a starting compensation package of \$52,150). Census Bureau data indicate that the average number is higher. They put Hawai‘i at 11th highest among the 50 states, at approximately \$66,000, plus \$22,500 in benefits.¹⁴³ On a per-student basis, average teacher pay in Hawai‘i reportedly is \$6,517, as compared to a national average of \$5,867.¹⁴⁴ Average principal compensation in Hawai‘i for 2009 reportedly is \$147,000 (which includes benefits).¹⁴⁵

Hawai‘i was 13th highest among the 50 states in per-student expenditures for 2006-07: \$11,060 versus a national average of \$9,666.¹⁴⁶ 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. Hawaii is above the national average even when all numbers are adjusted for regional cost differences: \$10,426 in Hawaii versus the national average of \$9,963.¹⁴⁷ When every category of education spending is included, Hawai‘i’s per-student annual spending last year was about 16,000.¹⁴⁸

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 pay 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.

¹⁴¹ 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).

¹⁴² Kubota, “State moves up in per-student spending,” Honolulu Star-Bulletin, July 28, 2009; see also American Federation of Teachers Survey and Analysis of Teacher Salary Trends 2007, which is based on data from state education agencies, the U.S. Department of Defense, the Bureau of Labor Statistics, the Department of Housing and Urban Development, the U.S. Census Bureau and the bureau of Economic Analysis. The full report is available at www.aft.org/salary/2007/download/AFT2007SalarySurvey.pdf.

¹⁴³ Kwak, *supra* note 50.

¹⁴⁴ Kubota, “State moves up in per-student spending,” Honolulu Star-Bulletin, July 28, 2009.

¹⁴⁵ Email from Laura Brown regarding financial report provided by DOE’s chief financial officer, James Brese.

¹⁴⁶ Kwak, *supra* note 50.

¹⁴⁷ See also, “Quality Counts 2009,” *supra* at note 60; and “Education Financing in Massachusetts and the 50 States, 2006, Appendix B, at http://www.massbudget.org/file_storage/documents/SchoolFinanceUpdate070109.pdf.

¹⁴⁸ This figure is arrived at by dividing total expenditures by total enrollment. 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.

The Superintendent regularly states in her annual reports that the state's capacity to fund public education exceeds the current level of funding.¹⁴⁹ As a percent of total taxable resources, however, the amount spent in Hawaii (4.2 percent) is significantly higher than the national average (3.7 percent).¹⁵⁰ Well-financed 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.¹⁵¹

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 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."¹⁵²

U.S. Census Bureau data, however, reports that only 15.6 percent of Hawai'i's school-age children (33,441 from a total population of 214,169) attended private schools in 2006-07. This placed Hawai'i 12th from the top among the 50 states—hardly an explanation for test scores in the bottom tier nationally.¹⁵³ 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.¹⁵⁴

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

¹⁴⁹ Superintendent's Annual Report on Hawaii Public Education at 28, available at http://arch.k12.hi.us/state/superintendent_report/annual_report.html; see also, University of Hawaii Public Policy Center, "Report to the 2009 Legislature," SCR 118 S.D. 1, H.D. 1 (January 2009).

¹⁵⁰ See "Quality Counts 2009," *supra* at note 60, at 52.

¹⁵¹ Kwak, *supra* at note 50.

¹⁵² 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."

¹⁵³ 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.

¹⁵⁴ See discussion in essay *supra*, at notes 57-61.

argument is the implication that at-risk students cannot learn. ... Children from low-income families have less preparation, but not less potential to learn.”¹⁵⁵

“[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.”¹⁵⁶

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.”¹⁵⁷

Ineffective 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. To be a member of the BOE, people need only to be elected (i.e., there are no qualifications related to education, experience, or accomplishment). Members of the BOE are supposed to limit themselves to formulating policy and overseeing its implementation.¹⁵⁸ Management is the prerogative of the system’s chief executive officer, the Superintendent of Education.¹⁵⁹ Critics of the current board say too many of its members have close ties to the unions and to others who work in the system. These members appear not to understand or care about the difference between governance and management:

“More than a few members of the BOE have axes to grind, and the culture seems to be, ‘I’ll let you grind your ax if you let me grind mine.’ They act like politicians, constantly making deals to get their pet programs approved. And they manage by crisis and reaction rather than vision and proactively.”¹⁶⁰

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 259 schools, which are 253 more than are entrusted to the care of most school boards; its \$2.7 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.

¹⁵⁵ 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.

¹⁵⁶ David Shapiro, “Education reform? Forget it,” *The Honolulu Advertiser*, Oct. 15, 2003.

¹⁵⁷ See http://www.whitehouse.gov/the_press_office/Remarks-of-the-President-to-the-United-States-Hispanic-Chamber-of-Commerce/

¹⁵⁸ Haw. Const. art. X, § 2.

¹⁵⁹ *Id.*, Sec. 3.

¹⁶⁰ Paul Vierling, see *supra*, note 56.

Many people think an appointed board would work better, because they think the appointing official (presumably the Governor) 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 1964.¹⁶¹ 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 changing, including replacing the elected BOE with an appointed one:¹⁶²

“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 represent teachers, administrators and other employees of the Department of Education.”¹⁶³

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.¹⁶⁴ Five years ago, she labeled Hawai‘i’s public-education system “obsolete.”¹⁶⁵ 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

¹⁶¹ Am HB 421 (1964), Haw. Const., art. X, § 2.

¹⁶² See, Hawaii Children First at <http://www.hawaiichildrenfirst.org/>

¹⁶³ *Id.*

¹⁶⁴ Pat Hamamoto, “The State of Public Education,” Jan. 28, 2004.

¹⁶⁵ *Id.*

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.”¹⁶⁶

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?”¹⁶⁷

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.

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:

“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?”¹⁶⁸

And, as noted above, once one principal finally manages to replace a problem teacher, that teacher simply becomes another principal’s problem. The system is no better off.

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.¹⁶⁹ 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

¹⁶⁶ John Kawamoto, “Decentralizing needs open discussion,” *The Honolulu Star-Bulletin*, at A12, Oct. 10, 2003.

¹⁶⁷ Keany, *supra* note 127.

¹⁶⁸ *Id.*, quoting Gerald Teramae, Principal of Kalani High School.

¹⁶⁹ 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 twenty-first century will require a new kind of principal.”

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.”¹⁷⁰ 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.”¹⁷¹

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.¹⁷² 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.”¹⁷³

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:

“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

¹⁷⁰ Price of Paradise, chapter 32, “Public Schools,” (Mutual Publishing 1992) at 217.

¹⁷¹ 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.”)

¹⁷² See, e.g., Roderick McPhee, “Public Education,” Chapter 4 in *The Price of Paradise, Volume II*, p. 29 (Mutual Publishing 1993).

¹⁷³ Roderick McPhee, “Union policies hinder improvement efforts,” The Honolulu Advertiser, June 15, 1997, at B3.

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?"¹⁷⁴

The truth is that organizational structure matters a lot. For some, it's intuitive that centralization and diffused control 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.¹⁷⁵ 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 level 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 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-making would provide a sound organizational foundation that would allow improvements to be made."¹⁷⁶

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:

¹⁷⁴ Honolulu Star-Bulletin, Aug. 19, 2009, comment #5, from "satch7," available at http://www.starbulletin.com/editorials/20090819_Hawai%27is_schools_A_bureaucratic_maze.html

¹⁷⁵ President Harry Truman is credited with having made a point about the president's accountability by famously saying, "the buck stops here."

¹⁷⁶ John Kawamoto, "Decentralizing needs open discussion," The Honolulu Star-Bulletin, at A12, Oct. 10, 2003.

“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.”¹⁷⁷

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. 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,¹⁷⁸ 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.”¹⁷⁹ 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,¹⁸⁰ 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.¹⁸¹ Despite Burns’ goal of decentralizing the DOE, the system remained highly centralized.

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.¹⁸² 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

¹⁷⁷ 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.

¹⁷⁸ Armstrong, “Where Legislators Send Their Children to School,” *Honolulu Star-Bulletin*, Mar. 10, 1973, at 1.

¹⁷⁹ Armstrong, “What’s Wrong at the DOE?,” *Honolulu Star-Bulletin*, Feb. 23, 1973.

¹⁸⁰ CORE Report, p. A-15

¹⁸¹ CORE Report, p. A-26

¹⁸² BW Associates, “Educational Excellence for the Pacific Era,” (Berman Report) p. 19, November 15, 1988.

schools and small schools-within-schools. Authority in the system would be clarified so that statewide leadership could set high standards.”¹⁸³

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.”¹⁸⁴ 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.’”¹⁸⁵

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.¹⁸⁶

“[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.”¹⁸⁷

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.”¹⁸⁸

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:

¹⁸³ *Id.*, p. 8; cite Slater, et al, too.

¹⁸⁴ Governor John Waihee as quoted at Tschumy, “Reinventing education,” Honolulu Star-Bulletin, Dec. 5, 2004.

¹⁸⁵ Borreca, “Politicians keep talking, students keep waiting,” The Honolulu Star-Bulletin, Nov.30, 2003.

¹⁸⁶ *Id.*

¹⁸⁷ 1991 Berman Report, Legislative Reference Bureau.

¹⁸⁸ 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”)

“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.”¹⁸⁹

Several Task Force members noted “a cacophony of orchestrated [opposition],”¹⁹⁰ 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.”¹⁹¹

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.¹⁹² 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.

“[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.”¹⁹³

¹⁸⁹ 1992 Task Force on Education Governance, Benjamin Cayetano, Chairman, p. 49.

¹⁹⁰ Barbara L. Okamoto letter to Task Force, Mar. 16, 1992.

¹⁹¹ Paige E. Lawes’ letter to Task Force, Mar. 16, 1992.

¹⁹² 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/.

¹⁹³ Borreca, “Kickin’ around education reform again,” *Honolulu Star-Bulletin*, Mar. 21, 2004.

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;¹⁹⁴ in 1995, she found that the DOE lacked management controls and expenditure information necessary to determine the operations costs of specific schools and programs;¹⁹⁵ a year later, the Auditor again found that the DOE's school-level expenditure data was unreliable;¹⁹⁶ 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,¹⁹⁷ 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."¹⁹⁸

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 budgeting, and providing greater independence to principals. ... In short, the Task Force envisions a public school system that is decentralized and accountable."¹⁹⁹

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

¹⁹⁴ *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.

¹⁹⁵ *Status Report on Monitoring Fiscal Accountability of the Department of Education: Case Study – Royal Elementary School*, Report No. 95-23.

¹⁹⁶ *Fiscal Accountability in the Department of Education: How Accurate Are Textbook Costs?* Report No. 97-1

¹⁹⁷ *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.

¹⁹⁸ 1998 report (98-4).

¹⁹⁹ *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).

Neighbor Islanders, supported it.²⁰⁰ 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.”²⁰¹ The unions opposed it, however, and that was enough to kill it in the Senate.²⁰² 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.”²⁰³

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.²⁰⁴ In her first State of the State address to the Legislature, she called upon lawmakers to decentralize the system.²⁰⁵ 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. Also, she wanted local school boards to provide support and oversight to the principals.

“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 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:

²⁰⁰ The People's Pulse, Winter 2003.

²⁰¹ Gov. News Release, Mar. 6, 2003, at http://Hawaii.gov/gov/news/releases/2003/News_Item.2006-01-19.1512.

²⁰² Arakawa, “Bill calls for 15 school boards,” Honolulu Advertiser, Feb. 16, 2002.

²⁰³ Press Release from Governor's Office, Mar. 6, 2003.

²⁰⁴ 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.”)

²⁰⁵ Governor Lingle State of the State address to the Legislature, Jan. 21, 2003.

“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.”²⁰⁶

“Residents clearly favor decentralization including more authority for principals. . . . A staggering 67% of those polled favored shifting most decisions from the DOE to principals.”²⁰⁷

Lingle also asked the Legislature to give charter schools greater autonomy and fair funding. 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.²⁰⁸ Disappointed but undeterred, she prepared for the 2004 session by collecting additional information about key issues.²⁰⁹ Getting it was usually difficult, and sometimes impossible.²¹⁰ For example:

“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

²⁰⁶ The People’s Pulse, at 1-2 (Summer 2003) (“Pulse”).

²⁰⁷ Pulse, p. 1 (Spring 2003).

²⁰⁸ 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.

²⁰⁹ Arakawa, “Lingle adviser named to education role,” Honolulu Advertiser, Oct. 10, 2003, at B2.

²¹⁰ The author of this essay was Lingle’s Senior Policy Adviser during her first year as governor, and then worked 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.

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."²¹¹

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.²¹²

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.²¹³ 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.

Ouchi stressed the importance of assembling reliable data, explaining that highly centralized school systems in his experience invariably lacked reliable accounting systems. 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.

²¹¹ *Id.*

²¹² Hamamoto, "The State of Public Education," address to the Hawai'i State Legislature, Jan. 28, 2004.

²¹³ *See, e.g.*, William Ouchi, "Making Schools Work: A Revolutionary Plan to Get Your Children the Education They Need," Simon & Schuster (2003).

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 \$10,422.²¹⁴ 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.²¹⁵

The DOE/BOE immediately questioned the professors’ methodology, objectivity, and each of their conclusions. The DOE’s director of communications also questioned their motives, publicly accusing Ouchi of concocting “phony research” in exchange for “free trips.” The Superintendent declined to comment on that accusation, other than to explain that her communications director had just been “exercising his first-amendment rights.”²¹⁶

The DOE/BOE eventually accepted the professors’ per-student cost numbers as accurate,²¹⁷ but continued to challenge the estimate that only 49 cents of each dollar spent on operations was actually getting to the classroom. According to the DOE, the correct amount was 51 cents.²¹⁸

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.

²¹⁴ William Ouchi and Bruce Cooper, “Financial Analysis of Hawai‘i Public Schools,” Nov. 23, 2003.

²¹⁵ The professors found that there were 23,790 fulltime employees and “casual hires” who comprised another 10,000 fulltime-equivalent employees.

²¹⁶ 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.

²¹⁷ 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.”).

²¹⁸ 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.

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.”²¹⁹

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:²²⁰

“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 from improper political interference from the state capitol. While education and politics must co-exist, they should not be commingled.”²²¹

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.

²¹⁹ John P. Dolly, “Public Schools,” *The Price of Paradise*, Ch. 32, p. 214.

²²⁰ William Ouchi and Bruce Cooper, “Financial Analysis of Hawai‘i Public Schools,” Nov. 23, 2003, at p. 5.

²²¹ *Id.*, p. 7.

Principals, given control over their budgets, might well choose to deploy those staff salaries in very different uses.”²²²

Like the State Auditor, Ouchi and Cooper found egregious weaknesses in the DOE’s information systems, including an inability to allocate costs properly.²²³ 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.”²²⁴

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.”²²⁵ 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

²²² *Id.*

²²³ *Id.*, p. 3.

²²⁴ *Id.*

²²⁵ 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.

percentage of employees who are not teaching. ... This is exactly what one would expect to find in a large, highly centralized system.”²²⁶

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.²²⁷

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 would appear that people here also should be entitled to control their own schools.”²²⁸

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

²²⁶ *Id.*

²²⁷ 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.

²²⁸ Mary Ann Raywid, “Let each island govern its own education affairs,” Honolulu Star-Bulletin, Dec. 4, 2003.

would be unwise to expect the DOE to restructure itself, even if the Legislature were to mandate that it do so.”²²⁹

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.”²³⁰

“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.”²³¹

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 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.”²³²

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

²²⁹ Citizens Achieving Reform in Education (CARE), Report to the Governor, Dec. 15, 2003.

²³⁰ *Id.*

²³¹ 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.”).

²³² Ouchi & Cooper, *supra* note 214.

to create locally elected school boards?,” 74% were in favor, 17% were opposed, and 9% were unsure.²³³

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.”²³⁴ 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.”²³⁵

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.”²³⁶

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 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.²³⁷

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 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

²³³ The Tarrance Group, Jan. 29 and Feb. 1-2, 2004; 600 registered “likely” Voters; 4.1% margin of error.

²³⁴ “School reform is not change for change sake,” *The Honolulu Advertiser*, Oct. 6, 2003, at A6.

²³⁵ Editorial, *Honolulu Advertiser*, Oct. 16, 2003, at A16.

²³⁶ 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.

²³⁷ From the author’s notes and interviews of Laura Thielen, Michael Strembitsky, William Ouchi, Bruce Cooper, and Mary Anne Raywid.

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?”²³⁸

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.

“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

²³⁸ “Education panel paints only part of picture,” The Honolulu Advertiser, Dec. 17, 2003.

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.”²³⁹

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 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.”²⁴⁰

Update on Act 51

²³⁹ 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).

²⁴⁰ Interview with Ed Case.

As of this date, no principal has entered into a performance contract. After five years zero progress has been made toward implementation. 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.”²⁴¹

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 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.”²⁴²

The DOE acknowledges an inability to conduct regular financial audits of the schools,²⁴³ 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.”²⁴⁴

²⁴¹ Testimony Before Senate Committee on Economic Development and Taxation, Feb. 12, 2008, SB 3251, SD1).

²⁴² 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.

²⁴³ *Id.*

²⁴⁴ Excerpts from email sent from James Brese to Laura Brown on May 7, 2008.

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.”²⁴⁵

“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 discovered several other alarming practices ... that appeared to be fraudulent and unethical.”²⁴⁶

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.²⁴⁷ 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

²⁴⁵ Procurement Audit of the Department of Education: Part 1, Report No. 09-03 (Feb. 2009).

²⁴⁶ Procurement Audit of the Department of Education: Part 2, Report No. 09-04 (Feb. 2009).

²⁴⁷ 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.”).

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.”²⁴⁸

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.”²⁴⁹ 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.

²⁴⁸ Interview of Governor Benjamin Cayetano by Randall Roth, Aug. 14, 2009.

²⁴⁹ 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.