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To: All State of Hawai‘i Board of Education Members

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re: DOE Civil Rights Compliance Branch (CRCB) Has Serious Problems

Aloha Board of Education Members,

“The moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; those who are in the shadows of life, the sick, the needy and the handicapped.”¹

By this test, the DOE Civil Rights Compliance Branch is a complete moral and legal failure. I am asking the Board to create policies that provide oversight and accountability of CRCB operations. I have many suggestions for improvement, but they are meaningless until you understand the problem. I’ll begin with a couple true, illustrative examples.

BACKGROUND STORIES

My education and early career is in audio engineering and information technology. In my forties, I decided to become a public school teacher in a high need area of Hawai‘i, so I got a teaching certificate from California State University and became a fully-licensed teacher in 2007 at Na‘alehu Elementary School, the Southernmost public school in the U.S. on Hawai‘i Island. In 2008, I asked for a reasonable disability accommodation. The CRCO (Civil Rights Compliance Office, as the CRCB was named back then) Compliance Officer, Beth Schimmelfennig, denied the requested accommodation. Ms. Schimmelfennig is now the Executive Director of the CRCB and continuing to deny reasonable disability requests (RDAs) for handicapped employees.

The RDA I’d requested was simply a key to the parking gate so that I could work in my classroom after 4:30 pm M-F (when the staff locked the school driveway gate) and on weekends. I’m handicapped. In rural Na‘alehu, the school parking gate is along Mamalahoa Highway and the school is set back over 600 feet. When the request was denied, I filed a discrimination complaint with the CRCO. What ensued thereafter were several years of harassment and retaliation of which, of course, I complained about, and Ms. Schimmelfennig did nothing to

¹ Hubert Humphrey, November 1, 1977

rectify. The HSTA was not very helpful. At first, my UniServ tried to say it wasn't a grievance issue, which was wrong. The HSTA eventually filed a grievance, but the Uniserv was ignorant of the ADA laws, and the HSTA would not allow me to pay for an attorney to take the ADA violations before a court of law. Eventually, in December 2011, an arbitrator decided that indeed I should have the gate key, but I would have to reapply. More hassles. The retaliation wasn't going to go away, so I quit working for the DOE. Being a DOE teacher was, by far, the worst job I have ever had in my life because of how I was treated when I asserted my ADA rights.

Ms. Schimmelfennig had been questioned during the arbitration proceedings for my grievance, and that's when I learned that she has no formal legal training in civil rights. Apparently, she's just stuck around so long that now she's the Executive Director of the State DOE Civil Right Compliance Branch. This is not good for all disabled DOE employees, not until she gets more legal training and is held accountable for the actions of the CRCB. But, accountability? Hah! How many years has the public been screaming for accountability in all areas of the DOE yet it's *still* not forthcoming?

In 2012, another teacher at the same school, Sue Aina, who is far more disabled than I, requested the same accommodation (a key to the gate). Ms. Schimmelfennig denied it again, completely ignoring the arbitrator's decision regarding my grievance. Then, for the next several years, Ms. Aina endured harassment and retaliation while Ms. Schimmelfennig did nothing.

Around 2014, a lawyer, kind enough to assist but who turned out to be very incompetent at trial, filed a lawsuit with Ms. Aina as Plaintiff. That's when accommodations she had requested and fought for finally began to materialize. The lawsuit concluded on November 10, 2021. Based on "Findings of Fact," the First Circuit bench trial judgment of *Aina v. Department of Education* was entered in favor of the DOE. I was a paralegal assisting Ms. Aina's attorney, and know this case intimately. I agree that, *at that time* (November of last year), the findings of fact were in the DOE's favor, but they were entirely based on the fact that Ms. Aina had been granted these reasonable disability accommodations. But now that the trial is over, Ms. Schimmelfennig has allowed the new Principal to take away the accommodations!

I wish I could say this unbelievable, but it's par for the course. The Na'alehu Elementary school Principal is back to discriminating against Ms. Aina, and Beth Schimmelfennig is once again not doing her job, and not following the law ([click here² to read my recent correspondence to Ms. Schimmelfennig](#) on this matter).

WHY THE BOE MUST CHANGE THE STATUS QUO

Over the years while fighting for ADA rights for myself and Ms. Aina, and the education rights of a SpEd student I tutored for five years, I've learned some valuable information you're not likely to get from the DOE but, as our State's Education Policy makers, you should know.

² <https://freespeech4us.com/screwing-the-handicapped>

Last year, I made several UIPA³ requests to the DOE and William S. Richardson School of Law and discovered that *none* of the DOE CRCB employees has sufficient, formal legal training in the Americans with Disability Act or Civil Rights law in general. Please read the results of that research by [clicking here](#).⁴ The CRCB Executive Director, Ms. Schimmelfennig, herself, has no formal legal training.

As it stands in Hawai'i, it is impossible to have legal violations of the ADA by the DOE properly addressed. First of all, when it comes to requests for reasonable workplace disability accommodations (RDAs), RDAs should be granted – period -- unless too expensive or impractical (called an “undue hardship”). Support the handicap not with platitudes, but with reasonable accommodations. But, that apparently is not part of the Schimmelfennig CRCB mission. In all my years, and Sue's years, being denied several simple RDAs, it is not common practice for the CRCB to not even talk to the disabled employee at all before issuing its denial. The CRCB always sides with the administrator, there are administrators who don't want to be bothered with handicapped employees and they use RDA denials as a way to make the handicapped employee's work life more difficult. The ADA exists to prevent this kind of abuse, but if the CRCB isn't going to abide by the ADA, whatcha gonna do? Get screwed. The Principal obviously intends to make Ms. Aina's work life as difficult as possible. The lawsuit is over so now, Ms. Aina, who has to use a wheelchair at work, has been assigned to work in a classroom that's too small and unsafe. The details are in [my letter to Ms. Schimmelfennig](#) last week I posted online.⁵ She is doing nothing to fix the problem.

Second of all, agencies which are supposed to help, do nothing. The HSTA is ineffective in protecting disabled teachers' rights. The Hawai'i Civil Rights Commission is not interested in what they consider “labor” disputes. The EEOC does nothing except issue a Notice of Right to Sue, usually a year after a complaint is made. I've not been able to get any information from EEOC-Hawai'i if they have EVER done *anything* to address *any* ADA complaints against the DOE. I know Sue and I can't be the only ones.

Third, civil rights law in the State of Hawai'i is practically nonexistent. Most of the attorneys in this state are educated at the William S. Richardson School of Law which doesn't have *any* classes in civil rights law which includes the ADA (affecting all DOE employees) and the IDEA – Individuals with Disabilities Education Act. Not one class, much less an entire program. No wonder the people employed in the CRCB are clueless about how to follow the law.

Fourth, of the few civil rights attorneys that actually are lurking around in Hawai'i, they're all on Oahu, and will not take cases related to the outer islands. At least, that was status as of 8 years ago. The only reason an attorney took Ms. Aina's case was because I volunteered to do the work necessary to interface with the attorney on Oahu because I rented an apartment there from 2012 to 2023. Besides, what DOE teacher do you know who can afford to hire an attorney?

³ UIPA – Uniform Information Practices Act. The HI State equivalent of the Federal FOIA (Freedom of Information Act).

⁴ <https://freespeech4us.com/hawaii-doe-civil-rights>

⁵ <https://freespeech4us.com/screwing-the-handicapped>

Lastly, there are significant challenges to justice when our Department of the Attorney General interprets its duty to “protect the interest of the state” as defending the misguided and unlawful CRCB decisions instead of advising the CRCB how to follow the law, and get all disabled teachers any low-cost, reasonable accommodation they need to succeed.

WHAT THE BOE HAS THE POWER TO DO

The Board of Education has the power to set policies which require that a certain percentage of CRCB employees must have legal training and experience in Civil Rights law, and the Executive Director must be one of those that meet this requirement. If that means we have to hire outside of Hawai‘i, then that’s what must be done. Also, all CRCB employees must have ongoing civil rights training. The EEOC offers many training programs. This is just like requiring teachers to have a certain type and level of education to be employed long term, and doing ongoing trainings to recertify their license every certain number of years.

The BOE has the power to set policies that require greater accountability and oversight of the CRCB. In written testimony for BOE General Business Meeting on August 18, 2023, I offer several standard, time-tested business practices for better communication, organization improvement, and oversight that can be applied to oversight of CRCB operations and “customer” satisfaction. [Click here to read that treatise.](#)⁶

The BOE also has the power to evaluate Superintendent Hiyashi each year. I think it’s important to include in Superintendent Hiyashi’s year-end evaluation how he addresses Ms. Schimmelfennig’s ADA violations in the short term and the long term. I would expect that any Superintendent worth his weight would do two things:

- 1.) Instruct Ms. Schimmelfennig to follow the ADA and explain to the Principal that she’s required to provide a classroom for Ms. Aina large enough to accommodate her wheelchair. Ms. Aina can just go back to the classroom she had last year; and,
- 2.) Investigate CRCB operations over the coming months, and include in next year’s strategic plan (which should be completed before Mr. Hiyashi’s evaluation) specific steps for improving the civil rights education of CRCB employees as well as oversight for the branch’s operations.

Mahalo for your consideration,



Vanessa Ott

cc: Keith Hayashi, Superintendent, State of Hawai‘i Department of Education.

⁶ <https://freespeech4us.com/dear-hawaii-boe#f8f94e93-90ca-4aef-97d9-074aaca43186>