

Hawaiian Education in Hawai‘i’s Public Schools: A Path to Reasonable Access

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I. INTRODUCTION

Forty-five years ago, in 1978, citizens of the State of Hawai‘i gathered for a Constitutional Convention (“ConCon”).¹ The 1978 ConCon came about during a time known as the “Hawaiian Renaissance.”² Resistance and cultural renaissance movements around the United States, particularly among Native Americans, helped to spur a “reawakening of Hawaiian culture”³ among Native Hawaiians seeking a path “for economic, social, and cultural justice.”⁴ The ConCon offered a path for those motivated by the Hawaiian Renaissance towards “enrich[ing] children’s education as well as preserv[ing] the [Hawaiian] culture.”⁵ ConCon delegates sought amendments to the state constitution, promoting the study of “Hawaiian language, history and culture

¹1978 *Constitutional Convention*, THE HAW. STATE CONST. CONVENTION CLEARINGHOUSE, https://hawaii.concon.info/?page_id=214 (last visited Nov. 7, 2023). The 1978 Constitutional Convention provided an opportunity for citizens to come together and amend the state constitution. The Hawaiian Affairs Committee used the opportunity to advocate for changes benefiting Native Hawaiians. *Id.*

² Troy J.H. Andrade, *Hawai‘i ‘78: Collective Memory and the Untold Legal History of Reparative Action for Kānaka Maoli*, 24 U. PA. J.L. & SOC. CHANGE 85, 102–03 (2021) (citing GEORGE S. KANAHELE, HAWAIIAN RENAISSANCE 13 (1982)) (describing how shifting views and cultural terrain in Hawai‘i helped create the conditions for a ConCon in 1978).

³ See *id.* at 102–06 (describing the critical establishment of a Hawaiian Studies Program at the University of Hawai‘i and its impact in helping to expose Native Hawaiians to negative impacts of colonization, including suppression of Hawaiian language, traditional dance (hula), music, and the successful voyage across the pacific of the traditional double hulled canoe, Hōkūle‘a).

⁴ See *id.* at 102–17 (describing the efforts of Native Hawaiian activists to politically organize in the 1970s, especially around the use of land and the need to protect important cultural locations such as the island of Kaho‘olawe).

⁵ See Comm. Whole Rep. No. 12, reprinted in 1 PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF HAWAII OF 1978 at 274 (1980) [hereinafter CONCON PROCEEDINGS] (quoting a statement made by Delegate Alice Takehara, speaking in favor of the amendment to support the study of Hawaiian culture, history, and language).

in all phases of state activities.”⁶ The delegates further recognized the revival of the Hawaiian language through proper training of teachers and use of community expertise in public schools as being “essential to the preservation and perpetuation of Hawaiian culture.”⁷

Numerous figures within the Hawaiian Renaissance movement emerged as delegates to the ConCon, helping to support the effort for a grassroots convention where few politicians ran as delegates.⁸ Among the thirty female delegates was Adelaide “Frenchy” DeSoto, a member of Protect Kaho‘olawe ‘Ohana (“PKO”),⁹ who quickly formed alliances with other representatives advocating for improvements to environmental laws and Hawaiian rights via the ConCon.¹⁰ She was selected to chair the Hawaiian Affairs Committee, which the ConCon intended to use as a way to support Native Hawaiian rights.¹¹ The Hawaiian Affairs Committee’s work included the successful passage, and ratification by the electorate, of an amendment to the Hawai‘i State Constitution requiring a Hawaiian Education¹² program in the public schools to promote “the study of Hawaiian culture, history, and language.”¹³ ConCon delegate Masako Ledward saw this requirement as an opportunity for “[a]ll the people of Hawai‘i, not just the children . . . [to] have the opportunity of knowing about the Hawaiian culture.”¹⁴

Article X, section 4, was added to the Hawai‘i State Constitution, enacting a constitutional mandate for Hawaiian Education:

⁶ *See id.*

⁷ *See* Standing Comm. Rep. No. 57, in CONCON PROCEEDINGS, *supra* note 5, at 637.

⁸ *See* Preface, in CONCON PROCEEDINGS, *supra* note 5, at vii.

⁹ *See* Andrade, *supra* note 2, at 117. Many of the Hawaiian Renaissance activists were members of PKO, a grassroots group that, starting in 1976, fought to stop the use of the island of Kaho‘olawe for U.S. military bombing target practice. *Id.* at 112. PKO utilized the physical occupation of Kaho‘olawe as a means to emphasize the sacred significance of the island to Native Hawaiians. *Id.* at 116.

¹⁰ *See id.* at 120–21; *see also* Preface, in CONCON PROCEEDINGS, *supra* note 58, at vii–x.

¹¹ *See* Andrade, *supra* note 2, at 120–22 (describing the work of the Hawaiian Affairs Committee to include the protection of Native Hawaiian rights, traditions, archaeological sites, culture, language, agriculture, and addressing issues related to the Hawaiian Homes Commission Act).

¹² *See* Comm. of the Whole Rep. No. 12, in CONCON PROCEEDINGS, *supra* note 5, at 1016 (outlining the term Hawaiian Education). For the purposes of this Comment, “Hawaiian Education” is broadly used to refer to educational programming and encompasses Hawaiian culture, history, and language in Hawai‘i’s public schools.

¹³ HAW. CONST. art. X, § 4; *see* Comm. of the Whole Rep. No. 12, in CONCON PROCEEDINGS, *supra* note 5, at 1016; *see also* Clarabal v. Dep’t of Educ., 145 Hawai‘i 69, 74, 446 P.3d 986, 991 (2019) (providing extensive background on the constitutional changes from the 1978 ConCon, and delegates’ intentions regarding the Hawaiian language, its recognition as an official language, and the importance of not losing the knowledge and wisdom of the kūpuna in the community).

¹⁴ *See* Whole Rep. No. 12, in CONCON PROCEEDINGS, *supra* note 5, at 273.

The State shall promote the study of Hawaiian culture, history and language. The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program.¹⁵

The ConCon delegates adopted the mandate for Hawaiian Education curricula alongside a constitutional amendment that added Hawaiian as one of two official languages in the State of Hawai'i, which was also ratified by the electorate.¹⁶ In recognizing Hawaiian as an official language, the delegates desired to “give full recognition and honor” to the “rich cultural inheritance”¹⁷ and “overcome certain insults of the past where the speaking of Hawaiian was forbidden in the public school system,” expressly recognizing ‘Ōlelo Hawai‘i¹⁸ as equal to the English language.¹⁹

While modern educational practices recognize the value of culture-based educational programs, at the time of the 1978 ConCon, these methods were not yet well researched nor accepted as effective means of meeting learners’ academic and socio-emotional needs, especially for Indigenous haumāna.²⁰ Regardless, the ConCon delegates recognized the urgent need to overcome the “200 years of deliberate and inadvertent obliteration” of Hawaiian language, culture, and history.²¹ Delegates clearly understood that the arrival of the first Europeans in Hawai‘i directly led to the steady demise of any opportunity for haumāna to experience ‘Ōlelo Hawai‘i, Hawaiian culture, or history in local public schools.²²

¹⁵ HAW. CONST. art. X, § 4.

¹⁶ See Standing Comm. Rep. No. 57, in CONCON PROCEEDINGS, *supra* note 5, at 638.

¹⁷ *Id.*

¹⁸ MARY KAWENA PUKUI & SAMUEL H. ELBERT, HAWAIIAN DICTIONARY 471 (1986) (indicating that ‘Ōlelo Hawai‘i refers to language, speech, word, quotation, statement, utterance, term, or tidings in the Hawaiian Language).

¹⁹ See Comm. of the Whole Rep. No. 12, in CONCON PROCEEDINGS, *supra* note 5, at 1016 (recognizing the inappropriateness of the University of Hawai‘i’s practice of treating ‘Ōlelo Hawai‘i as a foreign language, as the State of Hawai‘i is the “only place where Hawaiian studies is likely to occur” since there is no other “‘aina for Hawaiians”).

²⁰ PUKUI & ELBERT, *supra* note 18, at 536 (indicating that haumāna is the Hawaiian word for students, while haumana is the term used for a singular student); see Shawn Malia Kana‘iaupuni, Brandon Ledward & Nolan Malone, *Mohala i ka wai: Cultural Advantage as a Framework for Indigenous Culture-Based Education and Student Outcomes*, 54 AM. EDUC. RSCH. J. 319S (2017) (discussing the value of culture based educational approaches to strengthen student success and engagement in learning).

²¹ See Whole Rep. No. 12, in CONCON PROCEEDINGS, *supra* note 5, at 274.

²² See Kamanaonāpalikūhonua Souza & K. Ka‘ano‘i Walk, ‘Ōlelo Hawai‘i and Native Hawaiian Education, in NATIVE HAWAIIAN LAW: A TREATISE 1256, 1262–63 (Melody Kapilialoha MacKenzie, Susan K. Serrano & D. Kapua‘ala Sproat eds., 2015).

In the 1820s, Christian missionaries pushed for Native Hawaiians to attend sectarian schools and become literate in ‘Ōlelo Hawai‘i.²³ Unfortunately, much of the missionaries’ work educating the Indigenous population was centered on the idea of “[w]estern superiority” and “instilling a sense of inferiority” within and “concerning everything Hawaiian.”²⁴ The importance of education was further solidified in 1840 when King Kamehameha III established the first public education system in the Kingdom.²⁵ His action set forth the oldest continuously operating public school system west of the Mississippi.²⁶

By the 1850s, thanks to both sectarian and public schools, Hawai‘i’s ‘Ōlelo Hawai‘i literacy rate was high, rivaling literacy rates in western countries.²⁷ However, westerners in Hawai‘i began a strong push for English-medium schools shortly after, diminishing the importance of instruction in ‘Ōlelo Hawai‘i.²⁸ Similarly, the ruling ali‘i,²⁹ alongside the newly formed Department of Public Instruction, pushed for Native Hawaiians to learn English.³⁰ The ali‘i viewed fluency in English as the best way to ensure equity and success for their people in a changing economic and political climate.³¹ On the other hand, the push for English-medium instruction by the western elite was driven by a desire to increase their power and influence, to the detriment of the Hawaiian people and the ruling monarchy.³²

By the time of the illegal overthrow of the Hawaiian Kingdom in 1893³³ and the establishment of the Republic of Hawai‘i in 1894, ‘Ōlelo Hawai‘i

²³ See *id.* at 1263–64. Early missionaries sought to educate Native Hawaiians to facilitate saving their souls via conversion to Christianity. *Id.* Having a literate populace provided an effective means to promote western values and norms. *Id.*

²⁴ See *id.* at 1263 (quoting Ralph K. Stueber, *An Informal History of Schooling in Hawai‘i*, in *TO TEACH THE CHILDREN: HISTORICAL ASPECTS OF EDUCATION IN HAWAI‘I* 16 (Alexander P. Kali ed., 1991)).

²⁵ See *History of Hawaiian Education*, STATE OF HAW. DEP’T. OF EDUC. [hereinafter *History of Hawaiian Education*], <https://www.hawaiipublicschools.org/TeachingAndLearning/StudentLearning/HawaiianEducation/Pages/History-of-the-Hawaiian-Education-program.aspx> (last visited Nov. 7, 2023).

²⁶ *Id.*

²⁷ See Souza & Walk, *supra* note 22, at 1262.

²⁸ *Id.* at 1263–64.

²⁹ PUKUI & ELBERT, *supra* note 18, at 20 (indicating that ali‘i refers to a chief or chiefess, officer, ruler, monarch, noble, king or queen).

³⁰ See Souza & Walk, *supra* note 22, at 1264.

³¹ See *id.* The push for English-medium schools was supported by the ruling ali‘i and seen as necessary to ensure equal footing with foreigners, securing success and power in a quickly changing society. *Id.*

³² See *id.* at 1270–71. Foreign interests saw any efforts to perpetuate Hawaiian culture as detrimental to their efforts to maintain power and influence within society. *Id.*

³³ *Id.* (describing the illegal overthrow of Queen Lili‘uokalani in 1893, and how the eventual establishment of the Republic of Hawai‘i by pro-American westerners was seen as necessary to obtain a protected status from the United States).

had quickly declined in all aspects of society, and the last Hawaiian-medium schools disappeared by 1897.³⁴ In 1896, English was declared the official government language and the “sole medium of instruction” used in Hawai‘i’s public schools.³⁵ Those in power, the western elite, heavily supported a “policy of assimilation through education in English” as they pushed for the “Americanizing” of the Hawaiian people.³⁶

As a result, using ‘Ōlelo Hawai‘i on public school campuses was strictly forbidden.³⁷ Threats of termination were common for teachers who dared to utter ‘Ōlelo Hawai‘i, and haumāna frequently received corporal punishment for speaking in Hawaiian.³⁸ The emphasis on English as the sole medium through which children were allowed to communicate extended beyond the school itself.³⁹ Education officials conducted house visits and reprimanded parents for speaking ‘Ōlelo Hawai‘i in their own homes.⁴⁰ By the early 1980s, the destruction of ‘Ōlelo Hawai‘i was nearly complete.⁴¹ With only a couple thousand native speakers left, very few children knew the language, and most were residents of the “lone remaining Hawaiian-speaking community on the island of Ni‘ihau.”⁴²

Although opportunities to access Hawaiian history, culture, and public education in ‘Ōlelo Hawai‘i have increased since 1978, barriers remain, resulting in insufficient access for all families.⁴³ This Comment examines the extent to which the State of Hawai‘i has met the 1978 ConCon delegates’

³⁴ *Id.* at 1265, 1270.

³⁵ *Id.* at 1270.

³⁶ *Id.* at 1271 (citing a report prepared by the U.S. Hawaiian Commission, which was created after the United States’ annexation of Hawai‘i). The Hawaiian Commission’s recommendations for Hawai‘i discussed the benefits of English-medium instruction for the American-controlled territorial government and the ability to “Americanize” the people of Hawai‘i. *Id.*

³⁷ *Id.* at 1271–73.

³⁸ *Id.* at 1271.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 1273–74.

⁴² *Id.* at 1274. The largest number of native speakers were found on Ni‘ihau due to the unique isolation of the island that was purchased in 1864 by Ni‘ihau Ranch, preventing outsiders from relocating to the island and resulting in the only Native Hawaiian majority population at the time of statehood. Melody Kapilialoha MacKenzie, *Historical Background*, in NATIVE HAWAIIAN LAW: A TREATISE 2, 18 (Melody Kapilialoha MacKenzie, Susan K. Serrano & D. Kapua‘ala Sproat eds., 2015); Julian Aguon, *Native Hawaiians and International Law*, in NATIVE HAWAIIAN LAW: A TREATISE 352, 386 (Melody Kapilialoha MacKenzie, Susan K. Serrano & D. Kapua‘ala Sproat eds., 2015).

⁴³ Video Conference Interview with Daylin-Rose H. Heather & Ashley Obrey, Native Hawaiian Legal Corp. (June 9, 2022) [hereinafter Heather & Obrey Interview] (discussing the need to remove barriers and create equity for Ka Papahana Kaiapuni programs similar to those offered through English-medium schools).

intent to provide access to Hawaiian Education, with a particular emphasis on ways to ensure all haumāna have reasonable access to ‘Ōlelo Hawai‘i. The examination includes statutes, policies, administrative rules, and programs developed over the last four decades, emphasizing Hawaiian language immersion schools or Ka Papahana Kaiapuni (“Kaiapuni”), also known as “Kaiapuni Educational Programs,”⁴⁴ and other Hawaiian Education programs in the public school system. This Comment begins in Part I with a history of Hawaiian Education in the public schools, including the methods schools used to bring kūpuna⁴⁵ into classroom spaces, the development of the first Hawaiian Immersion programs, as well as changes in the law and Board of Education (“BOE”) policies in support of Hawaiian Education.

Part II of this Comment explores the legal challenges brought against Hawai‘i’s Department of Education for its failure to meet its constitutional obligations to provide Hawaiian Education, with a particular emphasis on the Hawai‘i Supreme Court’s 2019 decision in *Clarabal v. Department of Education* requiring reasonable access to Kaiapuni education.⁴⁶ In Part III, this Comment investigates the State of Hawai‘i’s teacher licensing process and the challenge of attracting, educating, and maintaining a quality teaching force knowledgeable in Hawaiian Education. Part IV explores the Office of Hawaiian Education and its efforts since 2014 to implement Board of Education policies focused on Hawaiian Education and to support Kaiapuni classroom teachers.⁴⁷

Finally, Part V of this Comment provides a menu of strategies that the State of Hawai‘i could use to ensure reasonable access for all haumāna. Despite challenges, recent growth in Hawaiian Education is promising, furthering the “goal of reviving and preserving ‘Ōlelo Hawai‘i and the shared culture.”⁴⁸ The State of Hawai‘i’s path to ensuring reasonable access and promoting BOE’s policy that “all students in Hawaii’s public schools . . .

⁴⁴ For purposes of this Comment, the term Ka Papahana Kaiapuni or “Kaiapuni” refers to Hawaiian Language Immersion programs or schools within Hawai‘i’s public school system.

⁴⁵ PUKUI & ELBERT, *supra* note 18, at 186 (indicating that kupuna is the Hawaiian word for grandparent, ancestor, relative or close friend of the grandparent’s generation, and kūpuna is the plural version of the word).

⁴⁶ See *Clarabal v. Dep’t. of Educ.*, 145 Hawai‘i 69, 446 P.3d 986 (2019).

⁴⁷ See *Hawaiian Education*, STATE OF HAW. DEP’T. OF EDUC., <https://www.hawaiipublicschools.org/TeachingAndLearning/StudentLearning/HawaiianEducation/Pages/home.aspx> (last visited Nov. 7, 2023); see also *Presentation on Teacher Positions Filled; 5-Year Teacher Retention Rates; and Effectiveness of Teacher Shortage Differentials in the Areas of Special Education, Hard-to-Staff, and Hawaiian Language Immersion Programs on Teacher Vacancies and Retention*, STATE OF HAW. BD. OF EDUC., https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/HR_1202022_%20Presentation%20on%20Teacher%20Positions.pdf (last visited Nov. 7, 2023) (outlining the history, implementation, and data collected on teacher shortage differentials).

⁴⁸ See *Clarabal*, 145 Hawai‘i at 87, 446 P.3d at 1004.

graduate with proficiency in and appreciation for the indigenous culture, history, and language of Hawaii”⁴⁹ must include not only adequate funding and resources, but also a comprehensive plan to expand training in ‘Ōlelo Hawai‘i and Hawaiian culture, facilitate increased professional development, target efforts to increase licensed Hawaiian Education teachers, and improve academic and financial planning.⁵⁰ Steps towards expansion in all these areas will further improve reasonable access for all of Hawai‘i’s haumāna and help fulfill the promise of article X, section 4, of the state constitution ratified by the people of Hawai‘i in 1978.

II. HISTORY OF THE HAWAIIAN EDUCATION PROGRAM

A. *Hawaiian Education: 1978 to 2014*

Before the 1980s, the curriculum in Hawai‘i’s public schools focused on Hawaiian Education was very limited, taught only in certain grades or on specific subjects.⁵¹ In addition, most courses that covered Hawaiian issues focused more on “facts, events, people, environment[,] and geography” and not on the culture and language.⁵² Shortly after the enactment of the Hawaiian Education constitutional provision, the Hawai‘i Department of Education (“HIDOE”) created the Hawaiian Studies Program (“HSP”) in response to the constitutional requirement to deliver Hawaiian Education.⁵³ The centerpiece of HSP was launching what is known as the Kūpuna Component of the Hawaiian Education Program.⁵⁴ In line with the constitutional mandate that “the use of community expertise . . . be encouraged as [a] suitable and essential means in the furtherance of the Hawaiian educational program,” the

⁴⁹ STATE OF HAW. BD. OF EDUC., Policy 105-7, Hawaiian Education (2014) [hereinafter BOE Policy 105-7], <https://boe.hawaii.gov/policies/Board%20Policies/Hawaiian%20Education.pdf>.

⁵⁰ *See id.*

⁵¹ *See* Standing Comm. Rep. No. 57, in CONCON PROCEEDINGS, *supra* note 5, at 637–38; *see also History of Hawaiian Education, supra* note 25 (indicating that prior to the 1980s, there were no specific curricular requirements to teach Hawaiian Education).

⁵² *See* Standing Comm. Rep. No. 57, in CONCON PROCEEDINGS, *supra* note 5, at 638.

⁵³ *See Hawaiian Studies*, STATE OF HAW. DEP’T. OF EDUC. [hereinafter *Hawaiian Studies*], <https://www.hawaiipublicschools.org/TeachingAndLearning/StudentLearning/HawaiianEducation/Pages/HSP.aspx> (last visited Nov. 7, 2023) (describing the Hawaiian Studies program).

⁵⁴ *See Hawaiian Studies Program: Kūpuna Component*, STATE OF HAW. DEP’T. OF EDUC. [hereinafter *Kūpuna Component*], <https://www.hawaiipublicschools.org/TeachingAndLearning/StudentLearning/HawaiianEducation/Pages/Kupuna.aspx> (last visited Nov. 7, 2023) (describing the history and evolution of the Kūpuna program).

Kūpuna Component sought to bring community members into classroom spaces.⁵⁵

In addition to the efforts from within HIDEOE, the 1978 amendments to the Hawai'i State Constitution provided the structural springboard for activists in the Hawaiian community to push for efforts to revitalize 'Ōlelo Hawai'i through the public school system. One of the most impactful efforts was the founding of the non-profit 'Aha Pūnana Leo by a group of 'Ōlelo Hawai'i educators in 1982.⁵⁶ Through their research, the leaders of 'Aha Pūnana Leo revealed a path to supporting the survival and revitalization of 'Ōlelo Hawai'i by implementing Hawaiian-Medium Education schools, modeled after similar programs in New Zealand and the Hawaiian-Medium Education schools that existed during the time of the Hawaiian Monarchy.⁵⁷ 'Aha Pūnana Leo selected the Hawaiian phrase "Pūnana Leo," which means "nest of voices," to reflect the method of learning through which the "students are 'fed' solely their native language and culture much like the way young birds are cared for in their own nests."⁵⁸

Over the years, 'Aha Pūnana Leo has seen great success in facilitating families' ability to seek Hawaiian immersion educational opportunities for their keiki,⁵⁹ from pre-kindergarten through twelfth grade.⁶⁰ The year 1987 saw the first pilot of two Hawaiian Language Immersion Programs at Waiuu Elementary on O'ahu, and Keaukaha Elementary School on the east side of Hawai'i Island.⁶¹ Hawai'i's immersion programs "deliver instruction

⁵⁵ HAW. CONST. art. X, § 4; see *Kūpuna Component*, *supra* note 54 (detailing how the Kūpuna program brought those with knowledge of Hawaiian language, culture, and history into schools).

⁵⁶ See *Our History*, 'AHA PŪNANA LEO [hereinafter *Our History*, 'AHA PŪNANA LEO], <https://www.ahapunanaleo.org/history-hl-1> (last visited Nov. 8, 2023).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ PUKUI & ELBERT, *supra* note 18, at 142 (indicating that keiki is the Hawaiian word for child).

⁶⁰ See *Kaiapuni Schools – Hawaiian Language Immersion*, STATE OF HAW. DEP'T. OF EDUC. [hereinafter *Kaiapuni Schools*], <https://www.hawaiipublicschools.org/TeachingAndLearning/StudentLearning/HawaiianEducation/Pages/Hawaiian-language-immersion-schools.aspx> (last visited Nov. 8, 2023). Kaiapuni programs can be found on both HIDEOE and Public Charter School campuses. *Id.* Most Kaiapuni programs operate on a larger school site housing both English-medium and Kaiapuni programs. *Id.* A few school campuses, such as Ānuenu School and Kamakau Lab Public Charter School have a fully immersive Kaiapuni program in every classroom. *Id.*

⁶¹ See *Hawaiian Language Immersion Program*, STATE OF HAW. DEP'T. OF EDUC. [hereinafter *Hawaiian Language Immersion Program*], <https://www.hawaiipublicschools.org/TeachingAndLearning/StudentLearning/HawaiianEducation/Pages/translation.aspx> (last visited Nov. 8, 2023); see also *Board Minutes of Meeting February 15, 1990*, STATE OF HAW. BD. OF EDUC. [hereinafter *1990 BOE Minutes*], <https://drive.google.com/file/d/1yhffWlZDbIGIUnMxSvYR9avorzFsL49U/view> (last visited Nov. 8, 2023).

exclusively through the medium of Hawaiian language” and introduce English instruction starting in the fifth grade.⁶² As of 2023, twenty-eight out of 294 public and charter schools now offer Kaiapuni programming.⁶³

Throughout the 1980s and 1990s, advocacy to expand opportunities for Hawaiian immersion continued at the state legislature, and community stakeholders, such as ‘Aha Pūnana Leo, pushed for the passage of laws to codify Kaiapuni as a valid method of educating Hawai‘i’s haumāna.⁶⁴ Unfortunately, while 1986 was a critical year in which the legislature lifted the “90-year ban on teaching in Hawaiian in public and private schools,”⁶⁵ the legislature provided minimal funding and waited another eighteen years before passing additional legislation related to Hawaiian Education.⁶⁶

In 2004, advocates for Hawaiian Education achieved an important legislative landmark with the enactment of Hawai‘i Revised Statutes (HRS) § 302H, a chapter singularly focused on Hawaiian Language Medium Education.⁶⁷ HRS § 302H-1 codified HIDOE’s ability to deliver educational programming “in the medium of Hawaiian language.”⁶⁸ HRS § 302H-4 also included a provision describing how public schools with students interested in enrolling in Kaiapuni programs may obtain access to such programs:

When fifteen or more qualified children in any one departmental school district wish to enroll in the Hawaiian language medium education program, the superintendent of education may provide facilities for a Hawaiian language

⁶² See *Hawaiian Language Immersion Program*, *supra* note 61 (describing the first Hawaiian language immersion schools).

⁶³ See *Kaiapuni Schools*, *supra* note 60 (listing the current Hawaiian language immersion programs in HIDOE and Public Charter Schools); Video Conference Interview with ‘Ānela Iwane, Kaiapuni Educ. Specialist, Haw. Dep’t of Educ., Off. of Hawaiian Educ. (June 23, 2022) [hereinafter Iwane Interview] (discussing Hawaiian Education and Ka Papahan Kaiapuni programs).

⁶⁴ See *Our History*, ‘AHA PŪNANA LEO, *supra* note 56.

⁶⁵ See *id.*; see also 1986 Haw. Sess. Laws 50–51 (altering the requirement that no less than fifty percent of the school day be spent teaching “the oral expression, the written composition, and the spelling of the English language” to allow for “special projects using the Hawaiian language as approved by the board of education”).

⁶⁶ See Souza & Walk, *supra* note 22, at 1276–79. Despite enrollment increases, a failure of the state to adequately fund and resource Hawaiian Education, funding remained stagnant and decreased throughout the 1990s, resulting in litigation against the State of Hawai‘i in 1995 and 1998. *Id.* A settlement in 2000 resulted in an agreement to raise funding from \$200,000 to \$1,000,000 per year. *Id.*

⁶⁷ HAW. REV. STAT. § 302H-1–7 (2004); see also STAND. COMM. REP. NO. 3144, 22ND LEG. SESS., reprinted in 2004 HAW. SEN. J. 800 (explaining the need for official legislative support of HIDOE, in response to the May 2000 OHA litigation settlement, which created a five year partnership between OHA and HIDOE to implement Hawaiian language programs).

⁶⁸ HAW. REV. STAT. § 302H-1 (2004).

medium education program or provide transportation to the nearest schooling site providing the program, including a charter school site or laboratory school site.⁶⁹

However, despite the legislative intent, the use of “may” in the provision gives HIDOE significant discretion.⁷⁰ Even if there were “fifteen or more” haumāna seeking Kaiapuni programming, HIDOE has the ultimate authority to determine when, where, and *if* it offers Kaiapuni programming within a given geographic area or whether it will provide transportation for Kaiapuni students.⁷¹

Additionally, as with many actions of the state legislature, the passage of the Hawaiian Language Medium Education legislation came with a challenge: the legislature was unwilling to provide immediate funding for expanding Hawaiian language medium programs until HIDOE and BOE could produce a “comprehensive plan by Hawaiian language medium education advocates.”⁷²

The issue of adequate funding and support is an ongoing challenge for Kaiapuni programming, and Hawaiian Education in general.⁷³ Since 2004, schools have funded most, if not all, of their school’s programming needs via Weighted Student Formula (“WSF”) funds, which are specific dollar amounts assigned to each student.⁷⁴ While the legislature allocates to HIDOE some standalone Hawaiian Education funding to supplement school budgets,

⁶⁹ *Id.* § 302H-4 (2004).

⁷⁰ Interview with Dr. Kalehua Krug, Dir., Ka Waihona o Ka Na’auao Pub. Charter Sch., in Kapolei, Haw. (June 17, 2022) [hereinafter Krug Interview] (discussing Hawaiian Education). Dr. Krug is a subject matter expert on ‘Ōlelo Hawai’i and Hawaiian culture-focused frameworks in education. *Id.* Previously Dr. Krug worked as an immersion teacher and educational specialist at both the University of Hawai’i and Hawai’i Department of Education, Office of Hawaiian Education. *Id.*

⁷¹ *Id.* (detailing how the HIDOE’s discretion to determine busing opportunities means that many haumāna cannot easily commute to Kaiapuni programs).

⁷² See CONF. COMM. REP. NO. 127-04, 22ND LEG. SESS., reprinted in 2004 HAW. SEN. J. 800.

⁷³ See *Off. of Hawaiian Affs. v. Dep’t of Educ.*, 951 F. Supp. 1484, 1488 (D. Haw. 1996). In 1995, OHA filed a claim against the State of Hawai’i asserting that the state failed to provide sufficient resources for Hawaiian language programs. *Id.* The case was eventually dismissed on narrow grounds. *Id.*; see also discussion *infra* Part II and Section V.C.

⁷⁴ See *Weighted Student Formula*, STATE OF HAW. DEP’T. OF EDUC. [hereinafter *Weighted Student Formula*], <https://www.hawaiipublicschools.org/VisionForSuccess/SchoolDataAndReports/StateReports/Pages/Weighted-Student-Formula.aspx> (last visited Dec. 15, 2023) (explaining how the “Weighted Student Formula is a fair and equitable way to distribute funds for school budgets,” providing a “baseline amount per student” as well as “additional funding (‘weights’) aligned with different student needs and characteristics”); see also discussion *infra* Part II and Section V.C.

it has never been enough.⁷⁵ The cost of curricular materials and support required for the delivery of Hawaiian Education and Kaiapuni is often higher than regular school curricula.⁷⁶ “Off-the-shelf”⁷⁷ curriculum is unavailable, and teachers often have to produce and duplicate materials at the school level.⁷⁸ Even in schools with well-established Kaiapuni programs, administrators frequently have to balance the competing priorities of English-medium programs against the needs of Kaiapuni programs.⁷⁹ For example, unlike in gifted and talented programs where haumāna are assigned additional funding, Kaiapuni haumāna are given no such consideration.⁸⁰

Underfunding and lack of resources contributed to the difficulties HIDEOE faced getting a Hawaiian Education program up and running. Despite HIDEOE's best efforts, the Hawaiian Studies Program had a rough start in Hawai'i's public schools.⁸¹ The Kūpuna Component's initial rollout was

⁷⁵ Krug Interview, *supra* note 70 (discussing the need for more robust funding for Kaiapuni programs).

⁷⁶ Iwane Interview, *supra* note 63; Interview with Wilbert Holck, Exec. Dir., Haw. State Tchrs. Ass'n, in Honolulu, Haw. (June 1, 2022) [hereinafter Holck Interview] (discussing the added costs of Kaiapuni programs); see also *Teacher Shortage Crisis Forces Principals to Hire Hawaiian Immersion Teachers Who Don't Speak Hawaiian*, HAW. STATE TCHRS. ASS'N (Nov. 14, 2019) [hereinafter *Teacher Shortage Crisis*], <https://www.hsta.org/news/recent-stories/teacher-shortage-crisis-forces-principals-to-hire-hawaiian-immersion-teachers-who-dont-speak-hawaiian/>.

⁷⁷ Sarah Schwartz, *Off-the-Shelf or Custom-Made? Why Some Districts Are Designing Their Own Curriculum*, EDUCATIONWEEK (Sept. 29, 2022), <https://www.edweek.org/teaching-learning/off-the-shelf-or-custom-made-why-some-districts-are-designing-their-own-curriculum/2022/09> (describing the nature of “off-the-shelf” curriculum and the need for more culturally responsive customized materials).

⁷⁸ Iwane Interview, *supra* note 63; Holck Interview, *supra* note 76. To produce high quality curriculum materials such as textbooks, workbooks, handouts, and other materials, teachers must spend considerable time outside of work generating these printed materials. Iwane Interview, *supra* note 63; Holck Interview, *supra* note 76. Further, the need to reproduce materials on duplication machines at each school increases costs for delivery of Kaiapuni. Iwane Interview, *supra* note 63; Holck Interview, *supra* note 76; see *Teacher Shortage Crisis*, *supra* note 76.

⁷⁹ Krug Interview, *supra* note 70. Principals who have Kaiapuni programs on their campus must balance spending to ensure both English language and Kaiapuni program needs are met. *Id.* Because of the higher cost for things like curriculum, and no additional weighted funds allocated to Kaiapuni to offset those costs, principals have to make difficult decisions, often leaving Kaiapuni programs to make do with less. *Id.*

⁸⁰ See *Weighted Student Formula*, *supra* note 74 (discussing that while some students, such as gifted and talented and English language learners, are assigned a higher formula for weighted student formula funding, Kaiapuni students are not calculated at a higher weighted student formula rate).

⁸¹ See THE AUDITOR, STATE OF HAW., *Management Audit of the Department of Education's Hawaiian Studies Program: A Report to the Governor and the Legislature of the State of Hawai'i*, Report No. 08-02, at 3 (2008) [hereinafter *Hawaiian Education Audit*], <https://files.hawaii.gov/auditor/Reports/2008/08-02.pdf>.

poorly implemented, with vague guidelines and a lack of proper oversight, leading to longstanding dissatisfaction among families and stakeholders.⁸² For example, HIDOE failed to provide Kūpuna training, time to prepare lessons, and often failed to pay community members for working.⁸³ In 2007, the state legislature called for an audit of the Hawaiian Studies Program, and the state auditor’s findings were critical of HIDOE.⁸⁴ In particular, the audit exposed frequent misuse of funds, with nearly three million in resources diverted for “purposes with little or no connection to a Hawaiian education.”⁸⁵ Additionally, the audit revealed that over twenty schools used the funding for things such as computers and furniture despite discontinuing their Kūpuna Component.⁸⁶ Some schools even purchased culturally inappropriate curricula contrary to BOE policy.⁸⁷

Unfortunately, the Great Recession hit Hawai‘i’s shores shortly after the 2008 audit, and the state government’s attention turned to budget cuts, Furlough Fridays, and keeping public schools open as much as possible.⁸⁸ Therefore, while the money from Hawai‘i’s hurricane relief fund in 2010 addressed some of the immediate budget woes, the severe budget restrictions continued, and it would be at least five years before HIDOE could move on.⁸⁹

⁸² *Id.* at 10, 29.

⁸³ *Id.* at 27; *see infra* notes 186–89 and accompanying text.

⁸⁴ *Hawaiian Education Audit*, *supra* note 81, at 27.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 37. Schools were required, per BOE Policy 2240, to purchase textbooks from an approved list or justify selections not on the list. *Id.*; *see Instructional Materials Policy*, State of Haw. Bd. of Educ., (last amended Jan. 5, 2006), <https://boe.hawaii.gov/policies/2200series/Pages/2240.aspx>. Some schools purchased and used a textbook entitled *Hawaiians of Old*, which was not on an approved list as the University of Hawai‘i found the textbook inappropriate due to its “preponderance of sadism and violence,” and portrayal of pre-contact Hawai‘i as a “dark and scary world with merciless rulers, senseless rules, and harsh life or death consequences.” *Hawaiian Education Audit*, *supra* note 81.

⁸⁸ *See* Beth Giesting, *Furlough Fridays, and Other Recession Lessons*, HAW. BUDGET & POL’Y CTR (July 9, 2023, 9:00 AM), <https://www.hibudget.org/blog/furlough-fridays-recession-lessons-hawaii> (describing the draconian cuts made to public education between 2008 and 2011 to balance lost revenue from the great recession).

⁸⁹ *See State Fiscal Reserves*, DEP’T. OF BUDGET & FIN., <https://budget.hawaii.gov/budget/about-budget/state-fiscal-reserves/> (last visited Nov. 8, 2023) (“Act 143. . . appropriated \$67.0 million from [the Hurricane Relief Fund] . . . to restore public school instructional days for school year 2010-11 that were reduced as part of a cost cutting, collective bargaining agreement that furloughed public school teachers for 21 days of which 17 were instructional days.”); Giesting, *supra* note 88; Holck Interview, *supra* note 76 (discussing the difficulty of the fiscal cuts between 2008 and 2013).

B. *Hawaiian Education: 2014 to Present*

Despite the Great Recession, the 2008 Hawaiian Education audit was not forgotten; it created enough political pressure for BOE to reevaluate its policies surrounding HODOE's implementation of Hawaiian Education.⁹⁰ In 2011, under the guidance of the newly appointed BOE Chairperson Don Horner, a BOE task force began to audit, reorganize, and revise all BOE policies, seeking to create "policies that describe[d] the outcomes the Board [was] seeking for the educational system."⁹¹ Horner tasked BOE Student Achievement Committee Chairperson Cheryl Ka'uhane Lupenui with revising the policies on Hawaiian Education and Kaiapuni.⁹² For over a year, Lupenui led more than forty stakeholder meetings to revise two policies: BOE Policy 105-7 addressing Hawaiian Education, and BOE Policy 105-8 addressing Ka Papahana Kaiapuni.⁹³

The passage of the revised Hawaiian Education and Kaiapuni policies in 2014 marked a significant shift; BOE finally strengthened its backing and prioritized providing adequate support for Hawaiian Education.⁹⁴ The strengthened support included a directive to the school superintendent to allocate resources for personnel, curriculum, and professional development for Hawaiian Education.⁹⁵ Significantly, the revised policies moved Hawaiian Education from under the Office of Curriculum Instruction & Student Support, elevating the status of Hawaiian Education within HODOE and creating a standalone Office of Hawaiian Education ("OHE").⁹⁶ The revised policies also called for the OHE Director to have a place on the

⁹⁰ See *Board Policies*, STATE OF HAW. BD. OF EDUC., <https://boe.hawaii.gov/policies/Pages/Board-Policies.aspx> (last visited Nov. 8, 2023); see also *BOE Sets Firm Support of Hawaiian Education*, STATE OF HAW. BD. OF EDUC. (Feb. 18, 2014), <https://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/BOE-sets-firm-support-of-Hawaiian-Education.aspx> (describing BOE's year-long effort to work with stakeholders to revise BOE policies for the advancement of Hawaiian Education).

⁹¹ See *Board Policies*, STATE OF HAW. BD. OF EDUC., <https://boe.hawaii.gov/policies/Pages/Board-Policies.aspx> (last visited Nov. 8, 2023); Michael Keeny & Tiffany Hill, "The Death of Public School": Ten Years Later, HONOLULU MAG. (May 2, 2011), <https://www.honolulumagazine.com/the-death-of-public-school-ten-years-later/> (explaining that prior to 2011, BOE was an elected body and Horner became the first governor-appointed Board of Education chair).

⁹² See *BOE sets firm support of Hawaiian Education*, STATE OF HAW. BD. OF EDUC. (Feb. 18, 2014), <https://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/BOE-sets-firm-support-of-Hawaiian-Education.aspx>.

⁹³ BOE Policy 105-7, *supra* note 49; STATE OF HAW. BD. OF EDUC., Policy 105-8, Ka Papahana Kaiapuni (2014) [hereinafter BOE Policy 105-8], <https://boe.hawaii.gov/policies/Board%20Policies/Hawaiian%20Education.pdf>.

⁹⁴ BOE Policy 105-7, *supra* note 49.

⁹⁵ *Id.*

⁹⁶ *Id.*

Superintendent’s leadership team, singling out Hawaiian Education as the only subject matter to have such priority.⁹⁷ Along with the elevation of OHE, Policy 105-8 outlined BOE’s goals and expectations for Kaiapuni programs and required HIDEOE to develop a strategic plan for the program to ensure that “[e]very student within the State of Hawai‘i’s public school system . . . ha[s] reasonable access to the Kaiapuni Educational Program.”⁹⁸

Unfortunately, despite BOE’s efforts in 2014 to provide reasonable access, the expansion of Kaiapuni schools remains very slow.⁹⁹ With only twenty-eight Kaiapuni programs and schools across the state, ‘Ōlelo Hawai‘i advocates continue to criticize HIDEOE for failing to implement additional Kaiapuni programs.¹⁰⁰ However, HIDEOE must first determine whether there is an adequate demand within a geographic area to support opening a

⁹⁷ See *id.* BOE Policy 105-7 created a standalone Office of Hawaiian Education and recognized that Hawaiian Education holds added significance as a subject matter and priority of the Board of Education. See *Office of Hawaiian Education*, OHE HUB, <https://sites.google.com/k12.hi.us/ohehub/office-of-hawaiian-education?authuser=0> (last visited Sept. 18, 2023). The creation of a director position elevated Hawaiian Education as an area of curricular focus with priority at the highest levels of HIDEOE. *Id.*; see *Department Advances Hawaiian Education*, STATE OF HAW. DEP’T. OF EDUC. (Feb. 3, 2015), <https://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/Hawaiian-Ed.aspx> (describing the importance of the Office of Hawaiian Education Director position in providing “organizational leadership for growth of Ka Papahana Kaiapuni”).

⁹⁸ BOE Policy 105-8, *supra* note 93; see *Clarabal v. Dep’t. of Educ.*, 145 Hawai‘i 69, 71, 446 P.3d 986, 988 (2019). Clarabal’s directive also reflects BOE Policy 105-8:

On review, we hold that the Hawaiian education provision was intended to require the State to institute a program that is *reasonably* calculated to revive the Hawaiian language. Because the uncontroverted evidence in the record demonstrates that providing *reasonable* access to Hawaiian immersion education is currently essential to reviving the Hawaiian language, it is a necessary component of any program that is *reasonably* calculated to achieve that goal. The State is therefore constitutionally required to make all *reasonable* efforts to provide access to Hawaiian immersion education.

Clarabal, 145 Hawai‘i at 71, 446 P.3d at 988 (emphases added).

⁹⁹ See Krug Interview, *supra* note 70.

¹⁰⁰ *Id.*; see HAA Honolulu, *The State of Hawaiian Education: Hōike Ea 2022*, YOUTUBE (July 24, 2022) [hereinafter *Hawaiian Education a Critical Discussion*], https://www.youtube.com/watch?v=1bgkWv_7KZo (recording a panel discussion on the state of Hawaiian Education). The panel was moderated by ‘Ilima Long, and the panelists included Kalehua Krug, Kahele Dukelow, Kaleikoa Ka’eo, and Hiapo Perreira. *Hawaiian Education a Critical Discussion*, *supra*. The panel discussed the challenges of providing quality educational programming while also addressing the lack of availability of Kaiapuni and other Hawaiian Education programming, the challenges of Kaiapuni quality versus quantity, the lack of ‘Ōlelo Hawai‘i teachers, and whether partial access to an ‘Ōlelo Hawai‘i immersion program is better than no access. *Id.*

Kaiapuni program.¹⁰¹ But determining whether there is an adequate demand is also challenging because HIDOE has no accurate or practical means of measuring the community demand for Kaiapuni programs.¹⁰² In addition, HIDOE's determination of community demand for Kaiapuni programs may not accurately reflect the true demand as many parents are ill-informed of their ability to seek such access for their keiki.¹⁰³

However, BOE's focus on recognizing the importance of the Indigenous language and culture of Hawai'i did not stop in 2014.¹⁰⁴ A year after revising the Hawaiian Education and Kaiapuni policies, BOE passed policy E-3: Nā Hopena A'o ("HĀ").¹⁰⁵ HĀ is a "framework of outcomes that reflects the HIDOE's core values and beliefs in action throughout the public educational system."¹⁰⁶

Despite attempts by HIDOE and BOE to improve their efforts towards Hawaiian Education, it was not fast enough for many parents and community members who had run out of patience and sought ways to compel HIDOE to create more opportunities for Hawaiian Education.

III. LEGAL CHALLENGES TO HAWAIIAN EDUCATION

HIDOE's early attempts to provide access to Hawaiian Education were wholly inadequate, leading to litigation by the Office of Hawaiian Affairs

¹⁰¹ *Id.*

¹⁰² *Id.* Some Kaiapuni advocates push for multiple locations to ensure adequate access, while others advocate for a Kaiapuni model prioritizing limited resources, whereby community demand needs to be evident before a program should open. *Id.*

¹⁰³ *See id.*; Video Conference Interview with Dawn Kau'i Sang, Dir., Off. Hawaiian Educ., in Honolulu, Haw. (June 3, 2022) [hereinafter Sang Interview] (discussing the current and future work of OHE, providing information regarding the recent program launched at Kailua High School, and unexpected additional enrollment requests from haumāna who previously participated in K-6 Kaiapuni programs but had moved to English medium programs in middle school) Because there are limited options for access to Kaiapuni programming beyond 6th grade on O'ahu, it is not uncommon for haumāna to switch to English-medium schools in the 7th grade. Sang Interview, *supra*.

¹⁰⁴ *See* Clarabal v. Dep't. of Educ., 145 Hawai'i 69, 77, 446 P.3d 986, 994 (2019).

¹⁰⁵ STATE OF HAW. BD. OF EDUC., Policy E-3, Nā Hopena A'o ("HĀ") (2015) [hereinafter BOE Policy E-3], [https://boe.hawaii.gov/policies/Board%20Policies/Nā%20Hopena%20A'o%20\(HĀ\).pdf](https://boe.hawaii.gov/policies/Board%20Policies/Nā%20Hopena%20A'o%20(HĀ).pdf) (explaining that the HIDOE Superintendent tasked OHE with pilot implementation of the HĀ framework to "identify the best strategy to inform future expansion of [the] work"); *Nā Hopena A'o (HĀ)*, STATE OF HAW. BD. OF EDUC., <https://www.hawaiipublicschools.org/TeachingAndLearning/StudentLearning/HawaiianEducation/Pages/HA.aspx> (last visited Nov. 10, 2023).

¹⁰⁶ BOE Policy E-3, *supra* note 105 (highlighting that HĀ established six outcomes for students rooted in Hawai'i: "a sense of belonging, responsibility, excellence, aloha, total-well-being and Hawaii").

("OHA") in 1995.¹⁰⁷ In *Office of Hawaiian Affairs v. Department of Education*, OHA asserted that BOE and HIDOE violated state and federal law by failing to provide sufficient resources, such as classrooms, learning materials, and teachers, for Hawaiian language programs.¹⁰⁸ OHA alleged that BOE and HIDOE violated article X, section 4 of the Hawai'i State Constitution "by failing 'to provide a comprehensive Hawaiian education program' and failing to encourage 'community expertise' to develop Hawaiian-language programs and teachers," as well as failing to support the "customary rights" for the use of Hawaiian language protected by HRS § 1-1.¹⁰⁹ Additionally, OHA's lawsuit asserted a violation of the Native American Languages Act ("NALA") of 1990 and the First and Fourteenth Amendments of the U.S. Constitution.¹¹⁰ NALA preserves, protects, and promotes Native Americans' rights to have education in their own languages.¹¹¹

Unfortunately, OHA's attempt to address significant underfunding issues and seek better government support for Hawaiian Education and Kaiapuni schools was unsuccessful.¹¹² The court dismissed each of OHA's claims on narrow grounds; most crushing was the court's failure to find an affirmative duty on the State "to promote [the] Hawaiian language through funding immersion programs."¹¹³ The court also held that if NALA were to apply to the State of Hawai'i, it would "at most, . . . prevent[] the State from barring the *use* of Hawaiian languages in schools."¹¹⁴

While OHA's suit was unsuccessful in establishing a federal law cause of action, further litigation filed in 1998 led to a settlement in which HIDOE

¹⁰⁷ See *Off. of Hawaiian Affs. v. Dep't of Educ.*, 951 F. Supp. 1484, 1487-88 (D. Haw. 1996).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 1487. Section 1-1 of the Hawai'i Revised Statutes established the "common law of England" as the law of the State of Hawai'i, except as provided by the "Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage." *Id.*; HAW. REV. STAT. § 1-1. While OHA argued that § 1-1 required the state to protect the "customary rights" of Hawaiians to use the Hawaiian language, the court remanded the state law claims to state court citing the Eleventh Amendment of the U.S. Constitution. *Off. of Hawaiian Affs.*, 951 F. Supp. at 1487.

¹¹⁰ *Id.* (holding that while the case started in state court, the HIDOE quickly sought and successfully moved the case into federal court and U.S. District Court Judge Alan Kay's decision articulated the many legal barriers to OHA's success while acknowledging that legislative efforts supported Hawaiian-language revitalization); 25 U.S.C.A. § 2904.

¹¹¹ See Souza & Walk, *supra* note 22, at 1276-77.

¹¹² *Off. of Hawaiian Affs.*, 951 F. Supp. at 1501.

¹¹³ See *id.* at 1494-95, 1498 (ruling in favor of the state's sovereign immunity and holding that NALA is merely a policy goal to encourage and promote the use of native language, and created no private right of action).

¹¹⁴ *Id.* at 1495 (emphasis added).

agreed to increase funding for Kaiapuni programs.¹¹⁵ At the time of settlement in 2000, HIDOE set aside roughly 1.5 million dollars for Kaiapuni program support.¹¹⁶ OHA also committed additional funding to help support the needs of Hawaiian-medium schools.¹¹⁷ In addition, OHA established a trust fund, which OHE administers, and provides approximately \$175,000 annually for special Hawaiian Education projects.¹¹⁸

With only twenty-eight schools statewide,¹¹⁹ access to Kaiapuni programs remains very limited despite BOE's recent efforts to establish policies supporting Hawaiian Education. The lack of access to any Kaiapuni program on the island of Lāna'i led to the Clarabal litigation in October 2014.¹²⁰ Before 2013, the Clarabal 'ohana lived in Maui where the Clarabal keiki were enrolled in the Kaiapuni program at Pā'ia Elementary.¹²¹ Then, in 2013, the Clarabal 'ohana moved to the island of Lāna'i where there were no Kaiapuni programs.¹²² Because of their prior immersion experience, the Clarabal's two daughters could only read and write in 'Ōlelo Hawai'i.¹²³ The Clarabal keiki struggled academically throughout their first year at the Lāna'i school.¹²⁴ They were reprimanded for doing their work in 'Ōlelo Hawai'i, and one keiki had to repeat a grade.¹²⁵ The Clarabal 'ohana worked with school officials

¹¹⁵ See Souza & Walk, *supra* note 22, at 1278.

¹¹⁶ See *id.*

¹¹⁷ See *id.*

¹¹⁸ See *Fiscal Year 2021 Appropriation Summary*, STATE OF HAW. DEP'T. OF EDUC. [hereinafter *Fiscal Year 2021 Appropriations*], <https://www.hawaiipublicschools.org/DOE/%20Forms/budget/FY2021-Act-9-Appropriation-Summary.pdf> (last visited Nov. 10, 2023); Iwane Interview *supra* note 63.

¹¹⁹ See *Kaiapuni Schools*, *supra* note 60; see also *Fiscal Year 2021 Appropriations*, *supra* note 118. While twenty-eight offerings of Kaiapuni across the state may seem adequate, most of the programs are not K-12. *Kaiapuni Schools*, *supra* note 60. For example, on Hawai'i Island there is only one elementary non-charter Kaiapuni program and on Lāna'i there is only K-1 instruction in 'Ōlelo Hawai'i. *Id.* While funding for Hawaiian Education has increased to approximately 5.5 million dollars a year, the total funds set aside by HIDOE for all Hawaiian Education and Kaiapuni programs is still less than one-half of one percent (0.28%) of the overall two billion-dollar HIDOE budget. *Fiscal Year 2021 Appropriations*, *supra* note 118.

¹²⁰ See *Clarabal v. Dep't. of Educ.*, 145 Hawai'i 69, 77, 446 P.3d 986, 994 (2019); see also Video Conference Interview with Sharla Manley, former Litig. Dir., Native Hawaiian Legal Corp. (July 22, 2022) [hereinafter *Manley Interview*] (discussing her role as lead counsel in *Clarabal v. Dep't of Educ.*, the significant barriers the Clarabal 'ohana faced in seeking Kaiapuni programming for their keiki on Lāna'i, and the intense reluctance from the school administration due to alleged resistance within the school staff to use school resources for a Kaiapuni program).

¹²¹ *Clarabal*, 145 Hawai'i at 77, 446 P.3d at 994.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at n.17

over an entire year, relying on promises from the school’s administration that there would be a Kaiapuni teacher available in the 2014–2015 academic year.¹²⁶ Yet, when Ms. Clarabal showed up on the first day of school with her keiki, the classroom was empty because the school had failed to secure a Kaiapuni teacher.¹²⁷ Thus, the Clarabal ‘ohana felt they had no choice but to take legal action against HIDOE.¹²⁸

The Clarabals’ lawsuit centered around HIDOE’s failure to provide a Kaiapuni program on Lāna‘i, which was required under article X, section 4 of the Hawai‘i Constitution.¹²⁹ In 2019, the Hawai‘i Supreme Court ruled in favor of the Clarabal ‘ohana and held:

[T]he Hawaiian education provision was intended to require the State to institute a program that is reasonably calculated to revive the Hawaiian language. Because the uncontroverted evidence in the record demonstrates that providing reasonable access to Hawaiian immersion education is currently essential to reviving the Hawaiian language, it is a necessary component of any program that is reasonably calculated to achieve that goal. The State is therefore constitutionally required to make all reasonable efforts to provide access to Hawaiian immersion education.¹³⁰

Although the court remanded the case for a further determination on whether HIDOE “ha[d] taken all reasonable measures to provide access to a Hawaiian immersion program to Clarabal’s two daughters,” the parties later reached a settlement outside of court.¹³¹ Afterward, OHE helped launch the first combined grade K-1 Kaiapuni program on Lāna‘i School’s campus

¹²⁶ *Id.*; Manley Interview, *supra* note 120 (discussing how the school administration led the Clarabals to believe that a Kaiapuni program would open on Lāna‘i in school year 2014–15. The Clarabals were encouraged to and helped to prepare the classroom. However, there was no teacher on the first day of school and the position was still vacant weeks later and never filled).

¹²⁷ *See Clarabal*, 145 Hawai‘i at 77, 446 P.3d at 994.

¹²⁸ *Id.*; Manley Interview *supra* note 120.

¹²⁹ *See Clarabal*, 145 Hawai‘i at 77–78, 446 P.3d at 994–95.

¹³⁰ *See id.* at 71, 446 P.3d at 988.

¹³¹ *See id.* at 87, 446 P.3d at 1005; *see also* Suevon Lee, *Lanai School Gets Hawaiian Immersion Classroom*, HONOLULU CIV. BEAT (Oct. 6, 2021), <https://www.civilbeat.org/2021/10/lanai-school-gets-hawaiian-immersion-classroom/> (reporting that although the case was remanded for further determination, the parties subsequently reached a settlement. However, HIDOE and the Clarabal ‘ohana have not publicly disclosed any information on the terms of the settlement agreement).

during the 2021–2022 academic year, seven years after the lawsuit was first filed.¹³²

While the Hawai‘i Supreme Court did not specify what it considered to be reasonable access, it did indicate that the school’s previous efforts, such as hiring a long-term substitute teacher to provide three hours of weekly instruction in ‘Ōlelo Hawai‘i, were likely insufficient.¹³³ The court also suggested possible steps to remedy the issue on Lāna‘i, including financial incentives to attract teachers, providing transportation on and off-island, utilizing more than one teacher for instruction, using community members who know ‘Ōlelo Hawai‘i, modifying the school schedule, or “any other alternative method of providing access to a Hawaiian immersion program.”¹³⁴ While all of the options proposed by the court could be utilized, all of them would require the state to make a more concerted effort to address funding priorities for Hawaiian Education.¹³⁵

While *Clarabal* established a constitutional mandate for reasonable access to Kaiapuni in our public schools, many factors continue to affect HIDOE’s ability to fully deliver the promise of Hawaiian Education, including a need to strengthen and expand funding and teacher licensing,¹³⁶ increased professional development coursework for all employees,¹³⁷ improvements in Academic and Financial planning for all schools,¹³⁸ and an update to assess the success of HIDOE efforts since the 2008 audit of Hawaiian Education.¹³⁹

IV. ENSURING QUALITY TEACHERS: HAWAI‘I TEACHER STANDARDS BOARD

Qualified teachers must be available to staff the Kaiapuni classrooms for HIDOE to increase access to Kaiapuni programs across the state. But like in other states across the nation, individuals must hold a license or a special permit issued by the Hawai‘i Teachers Standards Board (“HTSB”), the licensing authority for Hawai‘i public school teachers, before they can teach.¹⁴⁰ Such licensing can be a significant barrier to those who speak ‘Ōlelo Hawai‘i but do not have the traditional teaching credentials, such as a four-year teaching degree.

¹³² See Lee, *supra* note 131.

¹³³ See *Clarabal*, 145 Hawai‘i at 92–93, 446 P.3d at 1009–10.

¹³⁴ *Id.* at 87, 446 P.3d at 1004.

¹³⁵ See *Fiscal Year 2021 Appropriations*, *supra* note 118; see *supra* notes 72–80 and accompanying text (discussing HIDOE’s pre-existing funding challenges).

¹³⁶ See *infra* Section V.A.

¹³⁷ See *infra* Section V.B.

¹³⁸ See *infra* Section V.C.

¹³⁹ See *infra* Section V.D.

¹⁴⁰ See HAW. REV. STAT. § 302A-801, -805 (2001).

Like BOE's Hawaiian Education policies, HTSB has promulgated several administrative rules in support of the growing need for teachers of Hawaiian culture, history, and 'Ōlelo Hawai'i.¹⁴¹ Initially, HTSB provided no option to seek a license in any area of Hawaiian Education, forcing many to pursue licensing in social studies or in a foreign language.¹⁴² However, in 2002, the HTSB appointed a Hawaiian Studies Panel to study and make recommendations for establishing a license in Hawaiian Studies.¹⁴³ The work of the panel has evolved into the current Hawaiian Focus Workgroup, formed in 2022, to review both licensing standards and teacher preparation programs to ensure the needs of Hawaiian Education programs across the state are met.¹⁴⁴

Over the last twenty years, various licensure types related to Hawaiian Education have been approved.¹⁴⁵ Advocates for Hawaiian Education emphasized the importance of ensuring haumāna enrolled in Kaiapuni schools have access to a teacher fluent in 'Ōlelo Hawai'i.¹⁴⁶ Unfortunately, despite the increase in available licenses related to Hawaiian Education, the number of vacancies for licensed teachers who possess knowledge of Hawaiian history, culture, and 'Ōlelo Hawai'i expertise continue to be at critical levels.¹⁴⁷ Hawai'i has some of the highest teacher turnover and vacancy rates nationwide¹⁴⁸ and impacts on Kaiapuni programs are even

¹⁴¹ Interview with Felicia Villalobos, Exec. Dir., Haw. Tchrs. Standards Bd. (HTSB), in Honolulu, Haw. (June 3, 2022) [hereinafter Villalobos Interview] (discussing HTSB work related to in-state educator preparation programs and Hawaiian special permit and teacher licensing for areas of Hawaiian language, knowledge, culture, and Kaiapuni).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* (discussing how because some educators have expressed confusion regarding the nuanced differences in the five Hawaiian Education license types, the panel is considering combining and streamlining the areas into two to three licenses).

¹⁴⁵ See *License Fields*, STATE OF HAW., HAW. TCHR. STANDARDS BD., <https://hawaiiteacherstandardsboard.org/content/wp-content/uploads/License-Fields-5-5-21.pdf> (last visited Nov. 10, 2023).

¹⁴⁶ Sang Interview, *supra* note 103; Krug Interview, *supra* note 70; Heather & Obrey Interview, *supra* note 43.

¹⁴⁷ See *Office of Hawaiian Education Seeks Teachers for Kaiapuni and Hawaiian Knowledge Classrooms*, HAW. STATE DEP'T. OF EDUC. (Mar. 18, 2019) [hereinafter *Office of Hawaiian Education Seeks Teachers for Kaiapuni and Hawaiian Knowledge Classrooms*], <https://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/OH-E-seeks-Kaiapuni-teachers.aspx>.

¹⁴⁸ See The Associated Press, *Hawai'i Teacher Retention Rate Hovers Just Above 50%*, HAW. PUB. RADIO (Jan. 22, 2022, 9:30 AM), <https://www.hawaiipublicradio.org/local-news/2022-01-22/hawaii-teacher-retention-department-of-education>; Matt Barnum, *Teacher Turnover Hits New Highs Across the U.S.*, CHALKBEAT (Mar. 6, 2023, 12:00 AM), <https://www.chalkbeat.org/2023/3/6/23624340/teacher-turnover-leaving-the-profession-quitting-higher-rate>.

more significant.¹⁴⁹ Although Kaiapuni offerings are expanding, the number of Kaiapuni teacher vacancies continues to increase, from thirty-one openings in 2017 to seventy-five in 2022.¹⁵⁰

In 2016, in line with Hawai'i Administrative Rules title 8, HTSB approved the establishment of a special permit in Kaia'ōlelo-Kaiapuni Hawai'i, Hawaiian Language Immersion, and Hawaiian Knowledge.¹⁵¹ Anyone from the community may apply for a special permit to teach in Kaiapuni programs in public schools for up to five years, renewable for a total of ten years, even if they have no university-level education.¹⁵²

While not ideal, the Hawaiian special permit serves as a temporary stopgap in the system. The special permit system, however, does not support the long-term need for fully licensed teachers who have both Hawaiian knowledge and traditional western university pedagogy in the field of education.¹⁵³ Many institutions support the implementation of the Hawaiian special permit, including OHA, Kamehameha Schools, the 'Aha Kauleo Hawaiian Language Immersion Advisory Council, and OHE.¹⁵⁴ Supporters of the special permit argue that cultural knowledge combined with fluency in 'Ōlelo Hawai'i is a unique skill set that haumāna in Kaiapuni schools need much more than the western pedagogy learned in traditional teacher preparation programs.¹⁵⁵

The initial rollout of the Hawaiian special permit program encountered difficulties because there was no existing plan that would allow those with a permit to easily work toward a teaching credential and full licensure.¹⁵⁶

¹⁴⁹ Holck Interview, *supra* note 76 (discussing HSTA's efforts to end the teacher shortage crisis and the high teacher vacancy rates in Hawai'i's public schools); see *Ending Hawai'i's Teacher Shortage Crisis*, HAW. STATE TCHRS. ASSOC., <https://www.hsta.org/crisis/> (last visited Nov. 10, 2023) (outlining HSTA's goals to develop and expand programs to attract new teachers and retain existing ones).

¹⁵⁰ Iwane Interview, *supra* note 63.

¹⁵¹ HAW. ADMIN. R. § 8-54-9.6 (LEXIS through 2023); see also *New Business Item 16-06 Hawaiian Language Immersion Licenses and Permits*, STATE OF HAW., HAW. TCHR. STANDARDS BD. [hereinafter HTSB NBI 16-06], https://hawaiiteacherstandardsboard.org/content/wp-content/uploads/2016-2017_NBI-16-06-Hawaiian-Language-Immersion-Licenses-and-Permits.pdf (last visited Nov. 10, 2023) (approving criteria for awarding special permits to eligible individuals to fill critical shortage vacancies in needed fields).

¹⁵² HAW. ADMIN. R. § 8-54-9.6 (LEXIS through 2023).

¹⁵³ See HTSB NBI 16-06, *supra* note 151; Iwane Interview, *supra* note 63.

¹⁵⁴ See *Office of Hawaiian Education Request Regarding Hawaiian Language Immersion Teachers Temporary Permit and License, Report by: HSTB Executive Director Lynn Hammonds*, STATE OF HAW. DEP'T. OF EDUC., HAW. TCHR. STANDARDS BD., (on file with author provided by HTSB); Villalobos Interview, *supra* note 141.

¹⁵⁵ Krug Interview, *supra* note 70 (discussing how the cultural and linguistic competency of Kaiapuni teachers is critical for delivery of a high-quality and culturally appropriate Kaiapuni program, and how without such competency, Kaiapuni programs will struggle for success even if the teachers have traditional educational pedagogy preparation).

¹⁵⁶ Iwane Interview, *supra* note 63.

However, OHE quickly recognized the expectation gap and worked with HTSB to remedy the permit system and implement yearly evaluations and accountability checks to ensure progress towards a teaching degree.¹⁵⁷ Today, individuals seeking a Hawaiian special permit must work with OHE, which verifies that each permittee is fluent in ‘Ōlelo Hawai‘i, has completed thirty hours of teacher induction professional development, and has submitted a cultural growth and development plan working towards teacher licensure.¹⁵⁸

While the special permit serves to meet the state’s immediate need for Kaiapuni teachers fluent in ‘Ōlelo Hawai‘i, the licensing board and local universities are also working to increase the total number of licensed teachers.¹⁵⁹ As a result, Hawai‘i Administrative Rules title 8, section 54-19, requires educator preparation programs to provide “evidence that their [teacher] candidates are prepared to incorporate . . . into their practice: the integration of Hawaiian language, history and culture in order to promote and perpetuate traditional ways of knowing, learning and teaching.”¹⁶⁰ To ensure that every educator pursuing an in-state teaching degree will be aware of Hawaiian Education, all educator preparation programs offered in the State of Hawai‘i, not just the Kaiapuni preparation programs, must meet this requirement regardless of the education degree sought.¹⁶¹ Currently, each in-state educator preparation program, both private and public, must provide HTSB proof of their efforts to meet the requirement for integration of Hawaiian Education into their programs.¹⁶²

¹⁵⁷ *Id.*

¹⁵⁸ See HTSB NBI 16-06, *supra* note 151; Iwane Interview, *supra* note 63; see also *Office of Hawaiian Education Seeks Teachers for Kaiapuni and Hawaiian Knowledge Classrooms*, *supra* note 147 (requiring permit holders to complete thirty hours of induction professional development, providing teachers with HODOE orientation and support as new teachers). Each permit holder must develop their cultural growth and development plan, showing evidence of working towards the coursework required to obtain full teacher licensure. *Office of Hawaiian Education Seeks Teachers for Kaiapuni and Hawaiian Knowledge Classrooms*, *supra* note 147.

¹⁵⁹ Video Conference Interview with Kahea Faria, Assistant Specialist, Univ. of Haw. at Mānoa, Inst. for Tchr. Educ. (June 15, 2022) [hereinafter Faria Interview] (discussing teacher preparation programs. Ms. Faria is a native speaker, raised on the island of Ni‘ihau, and currently works supporting teacher candidates, especially those seeking work in Hawaiian Education. Ms. Faria is a subject matter expert in ‘Ōlelo Hawai‘i and Hawaiian culture-focused frameworks in education).

¹⁶⁰ HAW. ADMIN. R. § 8-54-19 (LEXIS through 2023).

¹⁶¹ *Id.*; Villalobos Interview, *supra* note 141 (explaining that the HAR requirement helps ensure that each educator pursuing an in-state teaching degree will be aware of Hawaiian Education, irrespective of the degree subject matter).

¹⁶² HAW. ADMIN. R. § 8-54-19 (LEXIS through 2023).

However, accomplishing this requirement remains a challenge, as many programs lack staff with subject matter expertise in Hawaiian Education.¹⁶³ For example, the University of Hawai‘i at Mānoa offers over fifteen educator licensure pathways, including elementary, multiple secondary subjects, and specialty areas such as early childhood and special education, making it nearly impossible to provide resources and staff to support the integration of Hawaiian Education into each program.¹⁶⁴ It is also challenging for educator preparation programs to find ways to incorporate such requirements into the existing curricula plans for each of the educator degree programs and licensure pathways.¹⁶⁵

Additionally, unlike states such as Alaska, North Dakota, and South Dakota, which require their educators to complete coursework related to the Indigenous peoples of that area,¹⁶⁶ Hawai‘i does not require out-of-state applicants to show competency in Hawaiian Education.¹⁶⁷ A lack of exposure to the unique context of teaching in Hawai‘i’s public schools is further compounded by forty-two percent of the newly employed teachers in Hawai‘i graduating from out-of-state teacher preparation programs, and nearly twenty-eight percent having no teacher preparation coursework.¹⁶⁸ Teacher unfamiliarity with Hawaiian Education must be addressed, as understanding these areas is “essential in the fulfillment of their roles as educators.”¹⁶⁹

¹⁶³ Villalobos Interview, *supra* note 141; Faria Interview, *supra* note 159.

¹⁶⁴ See *College of Education: School for Teacher Education*, UNIV. OF HAW. AT MĀNOA, COLL. OF EDUC., <https://manoa.hawaii.edu/catalog/schools-colleges/education/ste/> (last visited Nov. 10, 2023).

¹⁶⁵ Faria Interview *supra* note 159.

¹⁶⁶ See *Teacher License Reciprocity Guidelines by State*, CONCORD UNIV., DEP’T. OF EDUC. CERTIFICATION [hereinafter *Teacher License Reciprocity Guidelines by States*], <https://concord.edu/wp-content/uploads/Academics/PDF/Teacher-Education-Reciprocity-Guidelines-by-State.pdf> (last visited Nov. 10, 2023).

¹⁶⁷ Villalobos Interview *supra* note 141; see *Teacher License Reciprocity Guidelines by State*, *supra* note 166.

¹⁶⁸ See STATE OF HAW. DEP’T. OF EDUC., EMPLOYMENT REPORT SCHOOL YEAR 2021–2022 [hereinafter EMPLOYMENT REPORT], <https://www.hawaiipublicschools.org/Reports/EmploymentReport2021-22.pdf> (last visited Aug. 1, 2023) (reporting that 41.7% of all newly hired teachers earned their teaching degree out-of-state, 30.7% earned in-state, and 27.6% were hired without any teaching degree).

¹⁶⁹ See Keali‘i Kukahiko et al., *Pūpūkai Holomua: Moving Hawaiian Education for All Learners Beyond the COVID Pandemic*, 17 AAPI NEXUS J., 9 (Fall 2020) (describing “how the unique contexts of Hawai‘i differs from the continental United States”); HAW. ADMIN. R. § 8-54-19 (LEXIS through 2023); see discussion *infra* Section V.A.

V. OHE'S EFFORTS IN SUPPORT OF REASONABLE ACCESS TO HAWAIIAN EDUCATION

As discussed above, OHE was established in 2015 after BOE's revised Hawaiian Education policies were adopted.¹⁷⁰ In line with BOE's Nā Hopena A'o policy, OHE seeks to “develop the skills, behaviors, and dispositions that are reminiscent of Hawai'i's unique context, and to honor the qualities and values of the indigenous language and culture of Hawai'i.”¹⁷¹ OHE's effort includes working within the broader community, faculty and staff to implement HĀ.¹⁷²

Director Dawn Kau'i Sang has led OHE since its inception with a passion for moving past a monocultural, western-focused educational system and a desire to find ways to implement changes and effect generational change for Hawai'i's haumāna.¹⁷³ Director Sang also recognizes the need to address both student and Kaiapuni teachers' historical trauma, including the residual impacts of the mandates of the federal No Child Left Behind (“NCLB”) standardized testing and the resulting perception that Kaiapuni haumāna and programs are failures.¹⁷⁴

Since its inception, OHE has made remarkable progress – a testament to its dedication and passion for Hawai'i's keiki. Within six months of Sang's

¹⁷⁰ BOE Policy 105-7, *supra* note 49; BOE Policy 105-8, *supra* note 93.

¹⁷¹ See OHE Hub, *Nā Hopena A'o (HĀ)*, STATE OF HAW. DEP'T. OF EDUC., OFF. OF HAWAIIAN EDUC., <https://sites.google.com/k12.hi.us/ohehub/n%C4%81-hopena-a%CA%BB0-h%C4%81?authuser=0> (last visited Nov. 10, 2023).

¹⁷² *Id.*

¹⁷³ Sang Interview, *supra* note 103 (describing the importance of moving beyond a monocultural system in education); see Jessica Terrell, *First-Ever Head of Hawaiian Education Foresees 'Revolutionary' Changes*, HONOLULU CIV. BEAT (Aug. 24, 2015), <https://www.civilbeat.org/2015/08/first-ever-head-of-hawaiian-education-foresees-revolutionary-changes/> (describing Sang's goal of “an education system with multiple pathways and world views, where all students are provided the opportunity to graduate biliterate, bilingual and bicultural” and the need to “transform the way [Hawai'i's] public education (system) does education”).

¹⁷⁴ *Id.* NCLB was a federal law passed in 2002, requiring schools to implement standardized testing which measured a school's adequate yearly progress for student achievement. No Child Left Behind Act of 2001, Pub. No. 107-110 115 Stat. 145 (2002). Because NCLB was based on a high-stakes pass/fail model, it created perceptions in the community, and among Kaiapuni haumāna, parents, and most especially educators, that Kaiapuni Schools were “junk schools.” Sang Interview, *supra* note 103. However, that narrative is wholly false, driven by standardized testing which was neither written in 'Ōlelo Hawai'i nor based on a culturally-responsive assessment model. See generally Henry May et al., *Using State Tests in Education Experiments: A Discussion of the Issues* app. A, NAT'L CTR. EDUC. EVALUATION & REG'L ASSISTANCE, <https://ies.ed.gov/ncee/pdf/2009013.pdf> (last visited Sept. 18, 2023) (discussing the relationship between NCLB and state testing policies); Elise Trumbull & Sharon Nelson-Barber, *The Ongoing Quest for Culturally-Responsive Assessment for Indigenous Students in the U.S.*, 4 POL'Y & PRAC. REVS. (June 7, 2019).

appointment, OHE published its priorities plan and a plan for significant revisions to the Kaiapuni education administrative framework; both documents have served as a roadmap to successfully expanding access to Hawaiian Education for all haumāna.¹⁷⁵ The priorities and framework seek to create opportunities to maximize OHE's resources and impact, with much of the initial focus on professional development of teachers and administrators,¹⁷⁶ as well as implementation of community engagement activities via the schools, and partnerships with multiple agencies and organizations throughout the community.¹⁷⁷

Under Director Sang's leadership, and in compliance with BOE policy, HIDOE continuously seeks guidance and feedback from key stakeholders such as OHA, the University of Hawai'i, 'Aha Pūnana Leo, and the Charter School Commission regarding Hawaiian Education and Kaiapuni programs.¹⁷⁸ One of OHE's primary methods of gathering community feedback is via 'Aha Kauleo, which BOE initially established as the Hawaiian Language Immersion Advisory Council in 1990.¹⁷⁹ The Advisory Council's purpose was to advise on "matters concerning the education of children in the program," as well as make recommendation for procedures, activities, and "needs of Hawaiian language immersion students."¹⁸⁰ Today, 'Aha Kauleo is a community-based consortium consisting of parent, teacher, and administrator representatives from Kaiapuni schools, collegiate level representatives, and community partners, such as OHA, Kamehameha Schools/Bishop Estate (Kamehameha Schools), and 'Aha Pūnana Leo.¹⁸¹ In

¹⁷⁵ See *Plan for Office of Hawaiian Education Priorities*, STATE OF HAW. DEP'T. OF EDUC., OFF. OF HAWAIIAN EDUC. (Dec. 9, 2015) [hereinafter *OHE Priorities*], https://www.hawaiipublicschools.org/DOE%20Forms/Hawaiian/OHE_DeliveryPlan.pdf; see also *The Foundational & Administrative Framework for Kaiapuni Education*, STATE OF HAW. DEP'T. OF EDUC., OFF. OF HAWAIIAN EDUC. (2015) [hereinafter *Kaiapuni Framework*], <https://www.hawaiipublicschools.org/DOE%20Forms/KaiapuniFrameworkFinal.pdf>.

¹⁷⁶ *OHE Priorities*, *supra* note 175, at 1.

¹⁷⁷ *Kaiapuni Framework*, *supra* note 175, at 17, 36, 38.

¹⁷⁸ See *Hawaiian Language Immersion Program*, *supra* note 61.

¹⁷⁹ See *1990 BOE Minutes*, *supra* note 61, at 19–22.

¹⁸⁰ *Id.*

¹⁸¹ See 'AHA KAULEO [hereinafter 'AHA KAULEO], <https://sites.google.com/hawaii.edu/aha-kauleo/home?authuser=0> (last visited Oct. 12, 2023); see also Iwane Interview, *supra* note 63. Ironically, while 'Aha Kauleo has advised HIDOE and OHE on matters related to Hawaiian Education for more than thirty years, the BOE recently called the 'Aha's role into question. Iwane Interview, *supra* note 63. Thankfully, OHE staff were able to unearth the original BOE actions creating the advisory council and reinforcing the critical role of community advisors. *Id.* While Ms. Iwane declined to go into specifics about the nature of the questioning, it seems that recent BOE members turnover has contributed to a lack of understanding among BOE members regarding the importance of Hawaiian Education, related policies, and the role of 'Aha Kauleo. See *id.*

addition to its advocacy work within HODOE and with BOE, 'Aha Kauleo's work also includes advocating for legislative changes and funding support for Kaiapuni schools.¹⁸²

With OHE's overall plan of priorities and revised Kaiapuni education administrative framework, the OHE staff has charted a course to improve the Hawaiian Studies and Hawaiian Language Immersion programs, furthering the intent of the 1978 delegates to the ConCon.¹⁸³

A. Hawaiian Studies Program

One of the primary ways through which OHE integrates the HĀ framework is through the Hawaiian Studies Program.¹⁸⁴ The Hawaiian Studies Program is a "K-12 program, [delivered in English-medium classrooms,] that provides curriculum support and resources in the instruction and learning of Hawaiian culture, history, and language."¹⁸⁵ The primary method for integrating Hawaiian concepts and content into classrooms continues to be through funding school-level Kūpuna Component positions in local elementary schools.¹⁸⁶

In the 1980s, the Kūpuna Component consisted of Native Hawaiian elders from the community.¹⁸⁷ Today, however, many of the staff are much younger and are graduates of Kaiapuni programs or enrolled in Hawaiian Studies coursework at local universities.¹⁸⁸ As a result, HODOE rebranded the name of HSP staff from Kūpuna to Cultural Personnel Resources ("CPR") to more accurately reflect the types of community members working in our schools.¹⁸⁹

OHE recently expanded a school's ability to utilize their legislative funding in multiple ways.¹⁹⁰ In 2020, OHE released a new model, the first in forty years, that gives schools more flexibility in implementing Hawaiian

¹⁸² See 'AHA KAULEO, *supra* note 181.

¹⁸³ See *OHE Priorities*, *supra* note 175; see *Kaiapuni Framework*, *supra* note 175.

¹⁸⁴ See *Hawaiian Studies Program*, STATE OF HAW. DEP'T. OF EDUC., OFF. OF HAWAIIAN EDUC. [hereinafter *Hawaiian Studies Program*], <https://sites.google.com/k12.hi.us/ohe/hub/hawaiian-studies-program-hsp?authuser=0> (last visited Oct. 12, 2023).

¹⁸⁵ *Id.*

¹⁸⁶ See *id.* ("Elementary schools statewide receive funding to hire Kūpuna (or CPR's) as part-time teachers on the school staff."); *Kūpuna Component*, *supra* note 54 ("The Kūpuna Component aims to enrich students' learning about cultural practices, historical information, and the Hawaiian language.").

¹⁸⁷ See *Kūpuna Component*, *supra* note 54.

¹⁸⁸ Video Conference Interview with Ku'uleialohapoint'ole Makua, Hawaiian Stud. Educ. Specialist, Hawaiian Stud. Program, in Honolulu Haw. (June 23, 2022) [hereinafter *Makua Interview*] (discussing the dwindling group of original elders who began with the Kūpuna program, and the gradual transition to those who have graduated from Kaiapuni programs).

¹⁸⁹ See *Kūpuna Component*, *supra* note 54.

¹⁹⁰ Makua Interview, *supra* note 188.

Studies and the Kūpuna funds.¹⁹¹ The new program is called the ‘Āina Aloha Pathway, which provides a set of learning targets and addresses ‘Ōlelo Hawai‘i, Kuana‘ike,¹⁹² and Honua.¹⁹³ The revised management and options for repurposing Kūpuna funds for the ‘Āina Aloha Pathway offer the necessary infrastructure and funding for schools to go out into the community and consult with cultural practitioners on a regular basis.¹⁹⁴ In addition, the new flexible structure significantly expands educational opportunities for haumāna by allowing schools to seek out and easily fund place-based learning experiences, such as visits to local fishponds.¹⁹⁵

As an added support for school campuses hoping to attract and retain CPR, BOE recently changed its administrative rules to allow a significant increase in the pay rate for part-time temporary teachers.¹⁹⁶ In 2005, the compensation rate was \$22.43 per hour for part-time temporary teachers with a bachelor’s degree and \$20.67 per hour for part-time temporary teachers without an undergraduate degree.¹⁹⁷ In 2021, the BOE sought to repeal the entire rule to allow more flexibility to increase pay over time.¹⁹⁸

In May of 2022, BOE issued a new policy in which a part-time temporary teacher’s pay would be based on the full-time teacher’s salary schedule, allowing for regular increases as teacher pay increases.¹⁹⁹ This BOE action paved the way for the first pay increase for CPR staff in sixteen years.²⁰⁰

¹⁹¹ See *‘Āina Aloha Competency Survey and Process Guide*, STATE OF HAW. DEP’T. OF EDUC., OFF. OF HAWAIIAN EDUC.) [hereinafter *‘Āina Aloha*].

¹⁹² PUKUI & ELBERT, *supra* note 18, at 171. Kuana means “position” or “standing.” *Id.* ‘Ike means “knowledge” and “perceive.” *Id.* at 96. Together, kuana‘ike in this context means “worldview.” *‘Āina Aloha*, *supra* note 191, at 1.

¹⁹³ PUKUI & ELBERT, *supra* note 18, at 80. Honua means “land, earth, or world.” *Id.* In this context it means place; *‘Āina Aloha supra* note 191, at 2; *see also* Makua Interview, *supra* note 188 (discussing how the program has grown from seven schools in school year 2019-2020 to sixteen schools in school year 2021-2022 and allows more flexibility of funding use to meet individual school needs related to Hawaiian Studies).

¹⁹⁴ Makua Interview, *supra* note 188.

¹⁹⁵ *Id.*

¹⁹⁶ See *Board Action on Pay Rates for Part-Time Temporary Employees*, STATE OF HAW. BD. OF EDUC. (Dec. 16, 2021) [hereinafter *Board Action on Pay Rates*], https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_12162021_Board%20Action%20on%20Pay%20Rates%20PTT.pdf; HAW. ADMIN. CODE § 8-66-8 (LEXIS through 2023) (noting the compensation rates for part-time teachers, such as Kūpuna or CPR, was codified into the administrative rules in 2012 and repealed in May of 2022).

¹⁹⁷ *Board Action on Pay Rates*, *supra* note 196. The compensation rate was later codified in the Hawai‘i Administrative Rules. HAW. ADMIN. CODE § 8-66-8 (LEXIS through 2023).

¹⁹⁸ *Board Action on Pay Rates*, *supra* note 196.

¹⁹⁹ *Id.* (noting the BOE repealed HAR § 8-66 by public hearing on July 15, 2021).

²⁰⁰ *Id.* (recording that compensation was increased to between \$26.39 and \$42.16 per hour).

B. *Hawaiian Language Immersion Program: Ka Papahana Kaiapuni*

OHE's second priority is the Hawaiian Language Immersion Program ("HLIP").²⁰¹ Since 1987, HIDOE has maintained a HLIP,²⁰² the Kaiapuni program, in the public school system.²⁰³ The Kaiapuni program delivers instruction entirely in 'Ōlelo Hawai'i from kindergarten to the fifth grade and introduces English for the first time at the middle and high school levels.²⁰⁴ Every haumāna has the right to seek enrollment into a Kaiapuni program.²⁰⁵ A student is not required to be Native Hawaiian to enroll.²⁰⁶

In 2000, the litigation in *OHA v. HIDOE* resulted in settlement, sparking an increase in funding for Hawaiian Education, particularly for Kaiapuni programs.²⁰⁷ The settlement generated increased funding for Hawaiian Education, especially for Kaiapuni programs.²⁰⁸ The additional resources were utilized to establish thirty-six "off-ratio" teaching positions, which were annually distributed to Kaiapuni programs throughout the state.²⁰⁹ The initial goal of providing off-ratio Kaiapuni positions was to supplement school-level programs and reduce fiscal pressures on schools to meet Kaiapuni staffing needs.²¹⁰ Unfortunately, over the years, some schools have over-relied on the additional staffing funded by the state.²¹¹ As a result, administrators have often failed to make use of the funds each Kaiapuni haumāna brings to their campuses to meet Kaiapuni needs.²¹² The failure to plan resource allocation in a thoughtful manner creates inequity in educational opportunities for students and leads to the burnout of Kaiapuni teachers, who often have to juggle instruction planning and translating materials for multiple subject areas.²¹³

²⁰¹ See *Office of Hawaiian Education*, OHE HUB, <https://sites.google.com/k12.hi.us/ohehub/office-of-hawaiian-education> (last visited Sept. 23, 2023).

²⁰² Over time, the Hawai'i Language Immersion Program has also become known as Ka Papahana Kaiapuni or "Kaiapuni." *Hawaiian Language Immersion Program*, *supra* note 61.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ See Souza & Walk, *supra* note 22, at 1278–79; see also *supra* Part II.

²⁰⁸ See Souza & Walk, *supra* note 22, at 1278–79.

²⁰⁹ Iwane Interview, *supra* note 63. An off-ratio position is an extra teaching position that is not funded by a school's budget. *Id.* Instead, the funding for an off-ratio position comes from other means, such as a grant or additional state or federal funding. *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*; Krug Interview, *supra* note 70.

²¹² Krug Interview, *supra* note 70 (discussing how each student enrolled on a campus is assigned a weighted student formula value that is used for fiscal planning purposes).

²¹³ Holck Interview, *supra* note 76 (discussing HSTA's efforts to support the challenges of teaching in a Kaiapuni program); see *Teacher Shortage Crisis*, *supra* note 76.

Initially, off-ratio positions were provided to schools using a two-one-two ratio, whereby each Kaiapuni elementary school received two positions, each intermediate school received one position, and each high school received two positions.²¹⁴ However, an increase in the number of Kaiapuni schools combined with a lack of commensurate increase in OHE's Kaiapuni budget means the staffing ratio has been unsustainable.²¹⁵ For the 2022–2023 school year, OHE projected it would need fifty-one off-ratio positions to meet Kaiapuni program staffing projections; however, funding has been stagnant, only allowing for thirty-five positions for years, forcing OHE to ration the available positions.²¹⁶

Despite budget difficulties, OHE continues to find ways to support the demand for and needed expansion of existing Kaiapuni programs and launches new programs across the state.²¹⁷ Six schools have added a new grade level to their Kaiapuni program each year.²¹⁸ Recent efforts to open new programs continue, including new programs at Castle High School in school year 2022–2023 and Blache Pope Elementary in 2023–2024.²¹⁹ Unfortunately, while community members and advocates of Hawaiian Education continue to seek the expansion of the Kaiapuni program, HIDOE is unable to meet enrollment demands, and most Kaiapuni schools have a waiting list of haumāna seeking enrollment.²²⁰

Recently, parents and community activists came together to advocate for secondary Kaiapuni programming on the west side of O'ahu.²²¹ Andrea Dias-Machado, parent of a sixth grader at Waiiau Elementary School, leads the work.²²² She and other families living in west O'ahu were concerned that once haumāna completed the sixth grade, they would no longer have access to Kaiapuni programs due to the lack of secondary Kaiapuni programming in their area.²²³ The only schools on O'ahu that provide secondary Kaiapuni programming are Ānuenu School in Honolulu, Ke Kula 'o Samuel M. Kamakau Public Charter School in Kāne'ohe, Kailua High School, and

²¹⁴ Iwane Interview, *supra* note 63.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*; see also *Kaiapuni Schools*, *supra* note 60.

²²⁰ See *Hawaiian Education a Critical Discussion*, *supra* note 99.

²²¹ Video Conference Interview with Andrea P. Dias-Machado, Owner and Principal Consultant, Huliau Aloha, LLC (June 21, 2022) [hereinafter Dias-Machado Interview]. Ms. Dias-Machado works in community advocacy, seeking to support Hawaiian culture-based programs in support of Native Hawaiian learners, 'ohana, and communities. *Id.* Her current focus is access to secondary-level Kaiapuni programming for haumāna in the 'Ewa Moku. *Id.*

²²² *Id.*

²²³ *Id.*

Kahuku High School, all of which are still miles away from the 'Ewa Moku.²²⁴ It is remarkable and perplexing that thirty-five years since the first Kaiapuni school opened at Waiiau Elementary, there are still no options for Kaiapuni haumāna in seventh through twelfth grade on the west side of O'ahu.²²⁵ This is particularly shocking because some of the largest concentrations of Native Hawaiians live in that area.²²⁶

Motivated by the *Clarabal* decision,²²⁷ Dias-Machado used her extensive experience in community organizing to bring stakeholders together and gather data through focus groups held in the fall of 2021.²²⁸ The focus group data revealed a strong need for secondary Kaiapuni schooling in west O'ahu.²²⁹ Additionally, many haumāna either lacked transportation to the secondary program or had to travel long distances to the secondary program.²³⁰ As a result, many felt forced out of the Kaiapuni programs.²³¹

Parents and guardians who decided to make the long commute reported a reduced ability to be involved or supportive in their child's education and worries about their children's safety in an emergency situation.²³² Families whose haumāna moved on to schools in Honolulu or on the Windward side reported having to change jobs, adjust their budget for increased transportation costs, and limit or omit spending on other afterschool programs and sports their keiki had wanted to participate in.²³³ All stakeholders reported impacts on their 'ohana's quality of life and inability to learn and contribute within their immediate community as crucial factors in deciding if the daily trek to Honolulu or the Windward side was worth the financial and emotional drain.²³⁴

²²⁴ See 'Ewa, AVA KONOHIKI, <http://www.avakonohiki.org/699ewa.html> (last visited Oct. 12, 2023). 'Ewa Moku is a land division in the southwestern side of the island of O'ahu which includes the area known as "Pearl Harbor." *Id.* During the Kingdom of Hawai'i the land was known to have cultivation of kalo and fishponds. *Id.* AVA Konohiki is a non-profit organization which works with young Native Hawaiians at the university level to gather and publish Kingdom of Hawai'i land records for public access and use in land management practices which are grounded in traditional Hawaiian land stewardship. AVA KONOHIKI, <http://avakonohiki.weebly.com/about-ava.html> (last visited Oct. 9, 2023); Dias-Machado Interview, *supra* note 221; see also *Kaiapuni Schools*, *supra* note 60.

²²⁵ Dias-Machado Interview, *supra* note 221; see *Kaiapuni Schools*, *supra* note 60.

²²⁶ Dias-Machado Interview, *supra* note 221.

²²⁷ See *Clarabal v. Dep't of Educ.*, 145 Hawai'i 69, 71, 446 P.3d at 986, at 988; see also *supra* Part II.

²²⁸ Dias-Machado Interview, *supra* note 221.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

Considering the generally slow pace of change within HIDOE, it is remarkable that Dias-Machado's efforts paid off within just one school year.²³⁵ The HIDOE Campbell-Kapolei Complex Area Superintendent and OHE acknowledged the need for Kaiapuni programming on the west side of O'ahu and launched a satellite campus at Ānuenu School at the start of the 2023-2024 school year.²³⁶ However, opening a satellite campus is only just the beginning of establishing more prominent Kaiapuni programming.²³⁷ In addition to maintaining student demand for a program, the school will need adequate funding, land, and facilities for a permanent home, as well as teachers fluent in 'Ōlelo Hawai'i to staff the satellite campus.²³⁸

Experiences of community members such as Dias-Machado demonstrate a lack of reasonable access and exemplify the ongoing struggles to expand Kaiapuni programs throughout the state. Yet, HIDOE has no accurate methodology to assess the actual demand for Kaiapuni schools.²³⁹ For example, although anecdotal evidence suggests that some HIDOE school staff actively discourage families from applying for Kaiapuni programs, enrollment increased above the expected amount when new Kaiapuni schools opened, and many have waiting lists.²⁴⁰ Therefore, to ensure reasonable access, HIDOE must establish suitable methods to gauge community interest, while also removing barriers to access, including the need to travel long distances to access Kaiapuni.²⁴¹

C. Access to Coursework in 'Ōlelo Hawai'i

Kaiapuni teachers must have knowledge of Hawaiian history and culture, as well as fluency in 'Ōlelo Hawai'i for the proper delivery of an immersive educational program.²⁴² Because many teachers did not grow up learning 'Ōlelo Hawai'i in a Kaiapuni program or at home, access to coursework in 'Ōlelo Hawai'i plays a crucial component in the expansion of teachers who can teach in Kaiapuni schools.²⁴³

²³⁵ *Id.* (acknowledging that HIDOE might not have been as receptive to community needs without the *Clarabal* decision).

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*; Krug Interview, *supra* note 70 (noting that the lack of clear data on Kaiapuni interest likely contributed to earlier dismissals by HIDOE asserting that programs were not in demand).

²⁴⁰ Dias-Machado Interview, *supra* note 221; Krug Interview, *supra* note 70; see *Hawaiian Education A Critical Discussion*, *supra* note 99.

²⁴¹ Dias-Machado Interview, *supra* note 221; Krug Interview, *supra* note 70.

²⁴² Krug Interview, *supra* note 70; see *supra* Parts I, II.

²⁴³ Sang Interview, *supra* note 103; Faria Interview, *supra* note 159.

In 2019, Director Sang successfully secured one million dollars to cover the cost of any HIDEOE employee who wished to take ‘Ōlelo Hawai‘i classes through the University of Hawai‘i community college system.²⁴⁴ The opportunity to take ‘Ōlelo Hawai‘i coursework was available for five semesters and proved incredibly popular with teachers and other HIDEOE employees.²⁴⁵ While COVID-19 related impacts placed a temporary stop to access, new funding allows for free ‘Ōlelo Hawai‘i coursework through fall of 2024.²⁴⁶ Such opportunities are critical for teachers seeking higher-level ‘Ōlelo Hawai‘i classes as they are the ones most likely to seek future Kaiapuni teaching positions.²⁴⁷ Providing a way for teachers to study ‘Ōlelo Hawai‘i at little to no cost will increase HIDEOE’s ability to attract and retain teachers for Hawaiian Education, especially for Kaiapuni teaching positions.²⁴⁸

D. Reducing Certification Costs: Educator Preparation Programs

Ultimately, the most significant obstacle affecting reasonable access to Hawaiian Education is the lack of fully qualified teachers.²⁴⁹ Finding ways to attract, train, and retain teachers, especially for Hawaiian Education programs, is daunting.²⁵⁰ The Hawai‘i State Legislature recently began allocating funds for the Grow Our Own (“GOO”) Teachers Initiative, a program that provides Hawai‘i residents an opportunity to obtain a teaching degree at little to no cost.²⁵¹ GOO programs have gained much popularity in recent years, especially in Hawai‘i, where local data shows that state residents are more likely to stay teaching in Hawai‘i longer.²⁵² While initial

²⁴⁴ See HIDEOE to Provide Free Hawaiian Language Courses For All Employees Through UH Community Colleges, HAW. STATE DEP’T. OF EDUC. (Nov. 21, 2019), <https://www.hawaiipublicschools.org/ConnectWithUs/MediaRoom/PressReleases/Pages/HawaiianLanguageLearningOpportunity.aspx#:~>.

²⁴⁵ Sang Interview, *supra* note 103.

²⁴⁶ *Id.* Director Sang continues to seek grants or other funding to pay for future ‘Ōlelo Hawai‘i classes. *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ Iwane Interview, *supra* note 63 (discussing the difficulties of finding individuals who have the language and cultural background to teach Kaiapuni and the challenge of retaining teachers seeking full licensure to continue as Kaiapuni teachers); see Suevon Lee, *DOE Offers Free Hawaiian Language Classes to All Staff*, HONOLULU CIV. BEAT (Nov. 21, 2019), <https://www.civilbeat.org/2019/11/doe-offers-free-hawaiian-language-classes-to-all-staff/> (“[O]ne of the biggest shortage areas among the state’s teaching staff is in the area of Hawaiian language immersion.”).

²⁵⁰ Iwane Interview, *supra* note 63.

²⁵¹ See “Grow Our Own” Teachers Initiative, UNIV. OF HAW. AT MĀNOA, COLL. OF EDUC. (June 20, 2022, 8:00 PM), <https://coe.hawaii.edu/goo/>. State stipends would cover the cost of tuition and fees. *Id.*

²⁵² Holck Interview, *supra* note 76.

GOO funding supported individuals seeking a degree in other high-needs areas, such as special education or math, many in the Hawaiian Education community were concerned that efforts to support Hawaiian Education teacher candidates were insufficient.²⁵³ Thus, in the 2022 legislative session, 'Aha Kauleo, OHA, the University of Hawai'i at Mānoa College of Education, the University of Hawai'i at Hilo College of Hawaiian Language, and other community advocates pushed for GOO funding specifically for students seeking a teaching degree in Hawaiian Education.²⁵⁴ Advocates cited the 2019 designation of Hawaiian language and Hawaiian language immersion as a Federal Teacher shortage area and the need to fund teacher candidates in these areas.²⁵⁵ While the proposed legislation failed to advance during the session, the University of Hawai'i at Mānoa College of Education's GOO program is now able to fund Hawaiian Education teacher candidates.²⁵⁶ Moving forward, more funding like this will remove financial barriers to access. This funding's reduction of the cost of teaching degree programs will help in increasing access as it will provide a pipeline of teachers who can teach in Hawaiian Education.

E. *Attracting and Retaining Teachers: Kaiapuni Shortage Differentials*

HIDOE's ability to attract and retain Hawaiian language immersion teachers significantly impacts a student's access to Kaiapuni programs.²⁵⁷ For example, in 2019, there were 161 Kaiapuni teacher positions, a third of which were left vacant due to a lack of qualified teachers.²⁵⁸ Of the filled positions, only fifty-four teachers were fully qualified and licensed in Hawaiian Education.²⁵⁹ The lack of fully qualified teachers has a significant impact on the availability of high quality education. In December 2019, HIDOE

²⁵³ Faria Interview, *supra* note 159.

²⁵⁴ See *Relating to Equitable Distribution of Grow Our Own Resources For Hawaiian Immersion Teachers: Hearing on HB2284 HD1 Before the H. Comm. On Finance.*, 31st Leg., Reg. Sess. (Haw. 2022) [hereinafter *Grow Our Own*] https://www.capitol.hawaii.gov/sessions/Session2022/Testimony/HB2284_HD1_TESTIMONY_FIN_02-25-22.PDF.

²⁵⁵ *Id.* OHA's testimony explained the need for additional funds to develop more Hawaiian Immersion teachers to "close the gap" by training eighty new teachers. See *id.* Its testimony also emphasized how distribution of these resources furthers the state's obligation to provide access to Hawaiian education programming in public schools. See *id.*

²⁵⁶ Faria Interview, *supra* note 159; see *Grow Our Own*, *supra* note 254.

²⁵⁷ Iwane Interview, *supra*, note 63.

²⁵⁸ See *Board Action on Extra Compensation For Classroom Teachers in Special Education, Hard-To-Staff Geographical Locations, and Hawaiian Language Immersion Programs*, STATE OF HAW. BD. OF EDUC. [hereinafter *Board Action on Extra Compensation*], https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/Special_12052019_Action%20on%20Extra%20Compensation%20for%20Classroom%20Teachers.pdf (last visited Nov. 5, 2023).

²⁵⁹ *Id.*

Superintendent Dr. Christina M. Kishimoto requested BOE's approval of shortage differentials to qualified and licensed teachers as a way to fill vacancies in the Hawaiian Language Immersion Programs.²⁶⁰ In support of her request, Superintendent Kishimoto cited the Hawai'i Supreme Court *Clarabal* decision,²⁶¹ arguing that the BOE is "requir[ed] . . . [to] make 'reasonable efforts' to provide students access to Hawaiian language immersion education."²⁶² Moreover, Kishimoto asserted that the shortage differentials were necessary to comply with BOE Policy 105-8, which states that Kaiapuni teachers should be "appropriately compensated"²⁶³ due to the "additional demands and qualifications of Hawaiian language."²⁶⁴

BOE formally approved an annual shortage differential of \$8,000, beginning in the spring of 2020, for licensed classroom teachers working at Hawaiian Immersion schools.²⁶⁵ However, BOE lacked the necessary funding, more than one million dollars, to pay for the shortage differentials.²⁶⁶ Governor Ige stepped in by setting aside funding for shortage differentials in his proposed budget for the 2020 legislative session.²⁶⁷ Although the COVID-19 pandemic disrupted distribution of the differentials, BOE repeatedly affirmed its support for providing shortage differentials.²⁶⁸

That commitment to recruitment and retention has paid off. The total number of fully qualified teachers filling Kaiapuni positions and the number of teachers qualifying for the shortage differential has grown incrementally.²⁶⁹ Advocates for Kaiapuni schools see the differential as an effective method of attracting, retaining, and adequately compensating Kaiapuni teachers for the added education, experience, and cultural knowledge they bring to their classrooms.²⁷⁰ Consequently, the fight for shortage differentials has also increased students' access to Kaiapuni schools,

²⁶⁰ *Id.*

²⁶¹ *See supra* Part II.

²⁶² *Board Action on Extra Compensation, supra* note 258.

²⁶³ *Board Action on Extra Compensation, supra* note 258; *see* BOE policy 105-8, *supra* note 93.

²⁶⁴ *Board Action on Extra Compensation, supra* note 258.

²⁶⁵ *Id.*

²⁶⁶ Holck Interview, *supra* note 76.

²⁶⁷ *Id.* (discussing HSTA's efforts to support implementation of shortage differentials); *see Board Action on Extra Compensation, supra* note 258.

²⁶⁸ Holck Interview, *supra* note 76. The COVID-19 pandemic began a few months after approval of the shortage differentials, causing HIDEO to absorb approximately \$1.5 million in Kaiapuni differentials for the next two school years. *Id.* COVID-19 also stopped any additional funding for implementing the shortage differential at six Kaiapuni charter schools, creating a disparity between HIDEO and Charter teachers in Kapauni programs. *Id.*

²⁶⁹ Iwane Interview, *supra* note 63.

²⁷⁰ *Id.*

further supporting OHE's efforts to provide reasonable access to Hawaiian Education.

VI. HAWAIIAN EDUCATION PROGRAM: OPTIONS TO ENSURE REASONABLE ACCESS

BOE policies, such as HĀ, cannot be passed and immediately integrated overnight, as ensuring reasonable access to Hawaiian Education requires concrete and deliberate action.²⁷¹ The BOE, Superintendent, district and school-level administrators, teachers, and support staff must not only understand HĀ, but they must also embrace it as a foundational component of teaching and learning in Hawai'i's public schools.²⁷²

In *Clarabal*, the court acknowledged that “reasonable access is dependent on the totality of the circumstances” and remanded the case to determine whether “all reasonable steps” had been taken to “afford Clarabal’s daughters access to Hawaiian immersion education.”²⁷³ While the court did not specifically define what constituted reasonable access to Kaiapuni programs, it provided some concrete possibilities the HODOE should consider:

[S]teps might include providing greater financial or other incentives to attract immersion teachers to Lāna‘i, furnishing transportation for a teacher to commute to Lāna‘i, using multiple instructors to share teaching duties, partnering with community members knowledgeable in ‘ōlelo Hawai‘i, modifying school days or hours of instruction to accommodate the availability of a teacher, or adopting any other alternative method of providing access to a Hawaiian immersion program. Ultimately, all reasonable alternatives are to be considered to determine whether access to a Hawaiian immersion program is feasible, and the State is constitutionally obliged to take a reasonable course of action that would afford access.²⁷⁴

While the court discussed the issue of reasonable access, it only addressed the issue as applied to Kaiapuni programs²⁷⁵ and did not address the state's broader obligation to ensure a “Hawaiian education program consisting of language, culture and history in the public schools” for all haumāna.²⁷⁶ While increased compensation through shortage differentials is

²⁷¹ See BOE Policy E-3, *supra* note 105.

²⁷² Makua Interview, *supra* note 188.

²⁷³ See *Clarabal v. Dep't of Educ.*, 145 Hawai'i 69, 86–87, 446 P.3d 986, 1003–04 (2019).

²⁷⁴ See *id.* at 87, 446 P.3d at 1004.

²⁷⁵ *Id.*; Heather & Obrey Interview, *supra* note 43.

²⁷⁶ HAW. CONST. art. X, § 4; Heather & Obrey Interview, *supra* note 43.

promising, other methods, such as mandatory professional development, HIDEOE's reassessment of current academic and financial planning, and an audit for accountability on the use of Hawaiian Education funding could prove to be effective in supporting a system-wide embrace of the constitutional mandate for Hawaiian Education.²⁷⁷

A. Mandatory Training for All Employees

Delivery of Hawaiian Education has been embedded in the Hawai'i State Constitution since 1978.²⁷⁸ Yet, the state does not require or provide for any sort of standardized training for all HIDEOE employees, thereby not fulfilling the constitutional provision, BOE Policy 105-7 addressing Hawaiian Education, BOE Policy 105-8 addressing Ka Papahana Kaiapuni, or BOE policy E-3 addressing HĀ.²⁷⁹ In addition to a lack of standardized training, HIDEOE also fails to provide their employees with sufficient knowledge regarding the Hawaiian Education programs. For example, in its annual opening school year packet, HIDEOE failed to mention Hawaiian Education as an area of importance, violating BOE policy 105-7, which requires HIDEOE to “[p]rovide educators, staff and administrators with a fundamental knowledge of and appreciation for the indigenous culture, history, places and language of Hawaii.”²⁸⁰ If HĀ is genuinely a “framework of outcomes that reflects the HIDEOE’s core values and beliefs in action throughout the public educational system,” then all school stakeholders, not just OHE, should be required to be well-informed of and incorporate the framework into their work and responsibilities.²⁸¹

Systemic change requires the shared knowledge and shared purpose of all stakeholders. Requiring training of all HIDEOE employees, not just the teachers, on how to integrate practices such as the ‘Āina Aloha Pathway²⁸² into the curriculum at each school would substantially strengthen teaching practices, allowing the content to be rooted in and centered around Hawai'i and its unique history.²⁸³ This knowledge is especially critical when an average of forty-two percent of our educators come from out-of-state teacher preparation programs.²⁸⁴ Thus, all HIDEOE staff, from the Superintendent to

²⁷⁷ See HAW. CONST. art. X, § 4.

²⁷⁸ *Id.*

²⁷⁹ Heather & Obrey Interview *supra* note 43; BOE Policy 105-7, *supra* note 49; BOE Policy 105-8, *supra* note 93; BOE Policy E-3, *supra* note 105.

²⁸⁰ See STATE OF HAW. DEP'T. OF EDUC., OPENING OF SCHOOL YEAR PACKET FOR SCHOOL YEAR 2022–2023 (May 26, 2022), <https://4.files.edl.io/5876/07/17/22/033850-c4483116-121a-4768-a304-a5aa4750515d.pdf>; BOE Policy 105-7, *supra* note 49.

²⁸¹ BOE Policy E-3, *supra* note 105.

²⁸² See ‘Āina Aloha, *supra* note 191, at 1 (outlining learning targets addressing ‘Ōlelo Hawai'i, Kuana'ike (worldview), and Honua (place)).

²⁸³ *Id.*

²⁸⁴ See EMPLOYMENT REPORT, *supra* note 168, at 15.

school principals, should be required to complete professional development on Hawaiian Education, including learning about ways to integrate practices into their work, using both the HĀ framework and the ‘Āina Aloha Pathway.²⁸⁵ Classroom-level staff should also have similar professional development, including opportunities to work in professional learning communities to build and develop their practice in support of Hawaiian Education.²⁸⁶ Professional development opportunities can be easily incorporated into the school year at little to no cost.²⁸⁷ The schools already have built-in collaboration and professional development days and hours for teachers and administrators that can be utilized for such work.²⁸⁸ It is also critical to consider the training of other school-level staff such as educational and administrative assistants.²⁸⁹ They must understand the importance of Hawaiian Education and Kaiapuni schools to ensure each haumana experiences a positive and supportive learning environment honoring the importance of Hawaiian Education.²⁹⁰ Although such training may not directly impact the accessibility of Hawaiian Education, it could lead to simple yet significant actions, such as incorporating ‘Ōlelo Hawai‘i into school signage and materials and infusing Hawaiian cultural practices into school events. The small changes will build upon themselves, working towards BOE’s policy goal of “[e]nsur[ing] that all students in Hawaii’s public schools will graduate with proficiency in and appreciation for the indigenous culture, history, and language of Hawai‘i.”²⁹¹

B. Coursework Requirements for Teacher Licensure

The Hawai‘i Teachers Standards Board and educator preparation programs at local universities should be encouraged to increase support for Hawaiian Education. While the current administrative rules call for in-state educator preparation programs to ensure that candidates can integrate Hawaiian language, history, and culture into their practice to “perpetuate traditional ways of knowing, learning, and teaching,” the programs need to improve the

²⁸⁵ See ‘Āina Aloha, *supra* note 191; see also BOE Policy E-3, *supra* note 105.

²⁸⁶ Professional learning communities occur when a team of educators come together to discuss, learn, and improve their teaching practice.

²⁸⁷ Holck Interview, *supra* note 76 (discussing ways professional development could be integrated into the school year and day).

²⁸⁸ *Id.*

²⁸⁹ Krug Interview, *supra* note 70 (noting that other educational staff play a critical role in supporting and educating the whole child and meeting each haumana’s needs).

²⁹⁰ *Id.*

²⁹¹ BOE Policy 105-7, *supra* note 49.

depth and breadth of such preparation.²⁹² One way to ensure compliance with the administrative rules is for HTSB to scrutinize the coursework required by local universities and further define how programs can comply with the administrative rule requirements for Hawaiian Education.

In addition to in-state educator preparation requirements, HTSB should consider amending all teacher-licensing requirements to include state-specific coursework in Hawaiian studies, like the requirements in states such as Alaska, North Dakota, and South Dakota.²⁹³ For example, to be fully licensed in Alaska, applicants are required to complete three credits in Alaskan Studies and Multicultural Education or Cross-Cultural Communications.²⁹⁴ The qualifying coursework involves studying the environment, Indigenous Peoples, Alaska's economic and political history, and the importance of effective teaching and learning in a multicultural student population.²⁹⁵ Requiring similar course work based on Hawai'i's culture, history, and 'Ōlelo Hawai'i could positively impact the teaching and learning in classrooms across the state and ensure better integration and acknowledgment of Hawaiian Education.

C. Hawaiian Education: School Academic and Financial Plans

HIDOE academic and financial planning processes can be better utilized in support of Hawaiian Education. Currently, there are two funding mechanisms for Hawaiian studies and Kaiapuni programs. Under the Weighted Student Formula, each haumana is assigned a dollar value, based on individual characteristics.²⁹⁶ In addition, OHE is awarded some program funds to help cover the cost of school-level off-ratio Hawaiian Studies and Kaiapuni program staffing.²⁹⁷

²⁹² HAW. ADMIN. R. § 8-54-9.6 (LEXIS through 2023); Faria Interview, *supra* note 159 (explaining how only recently the teacher preparation programs have been able to be more deliberate in incorporating Hawaiian Education components into the curriculum).

²⁹³ See *Teacher License Reciprocity Guidelines by States*, *supra* note 166.

²⁹⁴ See *Initial Teacher Certificate*, ALASKA DEP'T. OF EDUC. & EARLY DEV., <https://education.alaska.gov/teachercertification/certification/initial> (last visited Nov. 6, 2023).

²⁹⁵ See *Alaska Studies Coursework Requirement*, ALASKA DEP'T. OF EDUC. & EARLY DEV., <https://education.alaska.gov/teachercertification/alaska-studies> (last visited Nov. 6, 2023); see also *Multicultural Education/Cross-Cultural Communication Coursework Requirement*, ALASKA DEP'T. OF EDUC. & EARLY DEV., <https://education.alaska.gov/teacher/certification/culture> (last visited Nov. 7, 2023).

²⁹⁶ See *Weighted Student Formula*, *supra* note 74. Under WSF, Hawaiian Education is not provided additional funding. *Id.* The only characteristics that are provided additional weighted funds are gifted & talented, economic disadvantaged, limited English Proficiency, and transiency. *Id.*

²⁹⁷ Iwane Interview, *supra* note 63.

In 2004, WSF became the primary funding mechanism for Hawai'i's public schools, which HIDOE states is a "fair and equitable way to distribute funds for school budgets."²⁹⁸ Each year a committee sets the base weight or value for each haumana based on the total number of enrolled students.²⁹⁹ In addition to a base value, haumana may be allocated additional funds if they have certain "needs and characteristics" that impact their learning.³⁰⁰ Currently, haumāna who are economically disadvantaged, have limited English proficiency, are gifted and talented, or are experiencing homelessness are assigned an additional weight, which increases the amount of money a school is provided for that specific haumana.³⁰¹ For example, the base weight for a haumana in the 2021–2022 school year was \$4,490.93.³⁰² If a student had certain characteristics, the base weight could increase by thousands of dollars.³⁰³ However, despite the higher costs of administering a Kaiapuni program, haumāna enrolled in Kaiapuni programs receive no added weight.³⁰⁴

Kaiapuni programs have more significant expenses than traditional English-medium classrooms, including the increased cost for smaller class sizes, resource needs, and cultural programming.³⁰⁵ Thus, one way to more effectively support Kaiapuni program costs and expenses is to create an added weight for each Kaiapuni haumana.³⁰⁶ Not only would this help adequately fund Kaiapuni programs, but it would also build in financial incentives for schools seeking to expand or develop Kaiapuni programs.³⁰⁷

In addition to implementing the WSF, the state legislature established a new process for school planning and spending.³⁰⁸ Every school principal is required to create an Academic Plan that includes information about the school's demographic data, curriculum, assessment, and instructional practices, and must develop a Financial Plan to meet the needs of the Academic Plan.³⁰⁹ Although principals are required to work on these plans

²⁹⁸ See *Weighted Student Formula*, *supra* note 74.

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.* (indicating that the committee on weights determines the different amounts for weighting each year and weighted amounts can differ from year to year).

³⁰⁴ See *id.*

³⁰⁵ See *Teacher Shortage Crisis*, *supra* note 76.

³⁰⁶ Manley Interview, *supra* note 120.

³⁰⁷ Krug Interview, *supra* note 70.

³⁰⁸ See *Academic Plan and Financial Plan*, *supra* note 74.

³⁰⁹ See *Academic Plan and Financial Plan*, STATE OF HAW., DEP'T OF EDUC., <https://www.hawaiipublicschools.org/DOE%20Forms/SCC/AcAndFinPlans.pdf> (last visited

with a local School Community Council comprised of community and school stakeholders, they are not required to incorporate BOE Policy 105-7 regarding Hawaiian Education or Policy 105-8 regarding Ka Papahana Kaiapuni into their academic and financial planning.³¹⁰ Because schools are not required to consider Hawaiian Education needs in their academic and financial plans, schools often lack explicit plans to meet the DOE's constitutional obligation to deliver Hawaiian Education. Therefore, a straightforward way to ensure schools thoughtfully incorporate Hawaiian Education into their teaching and learning practices is to require principals to include Hawaiian Education in their academic and financial plans.

More specifically, principals of Kaiapuni schools should be required to account for the haumāna enrolled in their Kaiapuni programs in their academic and financial plans to ensure that WSF funds are directed appropriately towards programming for those same Kaiapuni haumāna.³¹¹ Such requirements would also ensure that principals are not taking resources away from Kaiapuni haumāna and guarantee that a school is not overly reliant on the OHE-provided off-ratio positions.³¹² Including Hawaiian Education in a school's academic and financial plans could also help administrators advocate for additional WSF weights for Kaiapuni haumāna, as it could show that WSF base funding does not cover the total cost of programming for each Kaiapuni haumāna. In addition, requiring administrators to incorporate Hawaiian Education into school academic and financial plans would align with the BOE policy requirements for "administration support of Hawaiian Education" and "allocation of resources including personnel and fiscal . . . throughout the department."³¹³

D. *Audit of Hawaiian Education*

An updated audit regarding the use of Hawaiian Education funding could prove an effective means to determine the ways in which schools are utilizing Hawaiian Education funding and those in need of additional resources to support Hawaiian Education. It has been over fifteen years since the state last audited HIDEOE's Hawaiian Studies Program.³¹⁴ It is time to consider another audit of HIDEOE's support and implementation of Hawaiian Education and Kaiapuni programming. The state's audit should include not only funding that goes through OHE but also, and more importantly, how school

Nov. 7, 2023) (indicating that each school's academic and financial plan is supposed to outline the school's priorities and programs along with funding plans).

³¹⁰ *Id.*; Krug Interview, *supra* note 70; BOE Policy 105-7, *supra* note 49; BOE Policy 105-8, *supra* note 93.

³¹¹ Krug Interview, *supra* note 70.

³¹² *Id.*; see Iwane Interview, *supra* note 63 (describing off-ratio positions).

³¹³ BOE Policy 105-7, *supra* note 49.

³¹⁴ See *Hawaiian Education Audit*, *supra* note 81.

administrators are distributing WSF funding for Kaiapuni haumāna. The limited funding provided to OHE is insufficient to continue the expansion of Kaiapuni programming.³¹⁵ Without an audit, an independent report, or comprehensive data on Kaiapuni costs, the Hawai'i State Legislature is unlikely to be convinced to provide more money and resources for Hawaiian Education.³¹⁶ The audit should consider not only spending on Hawaiian Education, but also the geographic locations of Kaiapuni programming, grade level offerings, and whether HIDOE is adequately ensuring financial accountability among school, district, and state level administrators in line with BOE policy.³¹⁷ Such an audit would facilitate greater accountability for funding needs for Hawaiian Education.

VII. CONCLUSION

Since its creation in 2015, OHE has expanded professional development, provided flexibility in funding and resources for schools to implement the Hawaiian Studies Program, supported the expansion of 'Ōlelo Hawai'i teachers through the Hawaiian special permit, and increased compensation for Kaiapuni classroom teachers through shortage differentials. OHE's efforts toward supporting Hawaiian Education while enduring the last three years of school disruptions from the COVID-19 pandemic have been remarkable.

However, the State of Hawai'i's path to increasing and ensuring reasonable access to Kaiapuni educational programming and promoting the BOE's Hawaiian Education policy goal of "[e]nsur[ing] all students in Hawai'i's public schools will graduate with proficiency in and appreciations for the indigenous culture, history, and language of Hawai'i" must go beyond OHE's current efforts.³¹⁸

HIDOE needs to implement a comprehensive plan to work with universities and HTSB to expand the number of Hawaiian Education licensed teachers and initiate professional development for all employees to ensure knowledge of Hawaiian history, culture, and language.³¹⁹ HIDOE should also reassess its current academic and financial planning process and ensure school, district, and state-level administrators are implementing BOE Hawaiian Education and Ka Papahana Kaiapuni policies into their plans.³²⁰

In addition, the State of Hawai'i must prioritize adequate funding and resources. Conducting an independent audit of HIDOE's implementation of

³¹⁵ Iwane Interview, *supra* note 63.

³¹⁶ Krug Interview, *supra* note 70.

³¹⁷ BOE Policy 105-7, *supra* note 49.

³¹⁸ BOE Policy 105-7, *supra* note 49; BOE Policy 105-8, *supra* note 93.

³¹⁹ BOE Policy 105-7, *supra* note 49; BOE Policy 105-8, *supra* note 93.

³²⁰ BOE Policy 105-7, *supra* note 49; BOE Policy 105-8, *supra* note 93.

Hawaiian Education and Kaiapuni programs at the state, district, and school level would provide an independent assessment as well as recommendations for improvements in funding allocation and use. These combined efforts would support a system-wide embrace of Hawaiian Education and improve reasonable access for all of Hawai‘i’s haumāna.³²¹

³²¹ See *Clarabal, v. Dep’t of Educ.*, 145 Hawai‘i 69, 87, 446 P.3d 986, 1004 (2019).