

August 29, 2025

**VIA EMAIL** (keith.hayashi@k12.hi.us)

The Honorable Keith T. Hayashi  
Superintendent, Hawai'i State Department of Education  
1390 Miller Street  
Honolulu, Hawai'i 96813

**Re: Response to July 16, 2025 letter from the Office of the Superintendent regarding Report No. 25-06, Audit of the Department of Education and the Department of Transportation's Administration of Driver Education Programs**

Dear Superintendent Hayashi:

We received your letter dated July 16, 2025, requesting revisions to Report No. 25-06, *Audit of the Department of Education and the Department of Transportation's Administration of Driver Education Programs*. **Report No. 25-06 was issued on April 23, 2025, three months prior to your comments about the report.** More concerning, your letter reflects a serious misunderstanding of the audit findings and the department's legal responsibilities. For that reason, we are compelled to address your comments; however, we do not believe that any of the requested revisions are warranted.

Initially, we must address the timing of your letter. As you know, we transmitted a draft of the report to you on April 11, 2025 and invited you to schedule a meeting to discuss the draft report. We also informed you that the department could provide written comments to the draft report **by Monday, April 21, 2025**, and that the department's written comments would be included as part of the final report.

While you did not participate, we did meet with the Assistant Superintendent, Office of Curriculum and Instructional Design, and others in her office, including the resource teacher who works with the high schools that offer driver education, as well as the Internal Audit Director and a member of her staff on April 17. During the one-hour meeting, the Assistant Superintendent and others raised what we understood to be the department's concerns about the report, specifically, a sidebar on page 19 of the audit report (*Who You Know*) and an error on page 20 of the report, which we corrected. The issues stated in your letter were not raised by the Assistant Superintendent or any other participant.

When we did not receive any written comments or other communication from the department by April 21, the date by which we had requested the comments, we followed up, inquiring whether the department intended to provide written comments. We were informed by email on April 22

from the Internal Audit Director, “**We do not intend to provide written comments to the draft report.**”

It is unclear why – **three months later** – the department changed its position about offering written comments; it is unclear why the department did not discuss the concerns expressed in your letter at the exit conference, which we had explained was the primary purpose of that meeting. If the department had raised its current concerns during the audit process, as it was supposed to do, we could have clarified what seems to be the department’s misunderstanding of the audit findings and its legal obligation to promulgate administrative rules. In the future, we hope the department will respect our process as well as engage in a more thorough, considered, and timely review of the report.

First, the department claims that Act 42 (Session Laws of Hawai‘i 1966) does not require the department to establish and administer a motor vehicle driver education and training program at its public high schools. That contention, however, ignores the unambiguous legislative intent stated in Act 42, which clearly established a driver education program in the department:

**The purpose of this Act is to establish a statewide driver education and training program** which will consist of an approved course of study to include at least thirty hours of classroom instruction and six hours of behind-the-wheel training, **administered through the department of education and offered by certified instructors**, outside of regular school hours, at each public high school in the State, on a voluntary basis.  
(Emphasis added.)

Act 42, codified at Section 302A-413 through 416, Hawai‘i Revised Statutes (HRS), notes that high schools can offer driver education instruction “on a volunteer basis”; however, that does not mean **the program** – or the department’s responsibility to establish such a program – is voluntary. Rather, that language means that every high school is not required to offer driver education, and we do not suggest otherwise. But, the department **is required** to develop a program to serve as the framework for those high schools that decide to offer driver education, which framework includes, among other things, establishing prerequisites for enrollment in a driver education course, issuing certificates to students who satisfactorily complete the driver education instruction, and acquiring the necessary materials and equipment. *See* Section 302A-413(b), HRS. The department’s driver education program – established by law – is simply different from other extracurricular activities like robotics or debate.

Second, the department contends that, while it is authorized to promulgate administrative rules for its driver education program, it is not required to do so. The department is plainly wrong. The department is confusing the Legislature’s delegation of rulemaking power in Section 302A-413(c), HRS, with the mandatory requirements of the Hawai‘i Administrative Procedures Act (HAPA), Chapter 91, HRS. Hawai‘i law on this is uncontroversial and well-settled: the department **must** engage in rulemaking under HAPA where its actions affect “private rights of or procedures available to the public” and the agency statement of particular or general applicability “implements, interprets, or prescribes law or policy, or describes the ... procedure ... of any agency.” Section 91-1(4), HRS; *see also Yoshimura v. Kaneshiro*, 149 Hawai‘i 21, 481 P. 3d 28,

48 (2021); *Green Party v. Nago*, 138 Hawaii 228, 231, 378 P.3d 944 (2016); *Prince Hotel Waikiki v. City and County of Honolulu*, 89 Hawaii 381, 392, 974 P.2d 21 (1999).

Here, the manner in which the department offers driver education instruction falls squarely within the definition of a rule – the procedures each high school employs to provide instruction to students clearly affect “private rights of or procedures available to the public” and “implement[], interpret[], or prescribe[] law or policy, or describe[s] the ... procedure” of an agency. Those procedures are of “generally applicability and ... future effect” upon the students interested in driver education instruction each year. *Yoshimura v. Kaneshiro*, 149 Hawai‘i 21, 481 P. 3d 28, 48 (citing *Green Party v. Nago*, 138 Hawaii at 240, 378 P.3d at 956). The department, therefore, is **required** to promulgate administrative rules to provide uniformity and consistency to its driver education instruction.

As we reported, instruction is currently offered differently at each high school – without consistently and publicly available information and guidance about who can and how to apply for a driver education class, the application process, how schools select students, and the use of waitlists. The department cannot offer driver education instruction – because it is a department program – arbitrarily, capriciously, and opaquely.

The department’s rejection of the importance of and need to adopt administrative rules is even more puzzling given that the department is aware that its current arbitrary approach has resulted in favoritism and inequities in enrollment, which we reported. We strongly urge the department to ensure that driver education instruction in its schools is offered transparently, fairly, and objectively, which is not how instruction is currently offered.

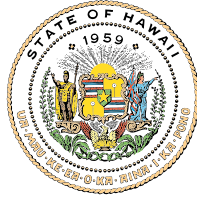
As we noted above, we do not believe that your concerns merit any substantive revision to the report; however, we will reissue the report to include your letter and this response. Importantly, your letter fails to address the issues we found with driver education instruction at the department’s high schools. The department must be accountable for its driver education program, which we found to be incomplete and lacking necessary structure.

Very truly yours,



Leslie H. Kondo  
State Auditor

cc: Board of Education (boe.hawaii@boe.hawaii.gov)  
Teri Ushijima, EdD., Assistant Superintendent, Office of Curriculum and Instructional Design  
(teri.ushijima@k12.hi.us )  
Denise Yoshida, Internal Audit Director (denise.yoshida@k12.hi.us )



**STATE OF HAWAII**  
**DEPARTMENT OF EDUCATION**  
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OFFICE OF THE SUPERINTENDENT

July 16, 2025

Mr. Leslie H. Kondo  
State Auditor  
465 S. King Street, Room 500  
Honolulu, HI 96813-2917

Dear Mr. Kondo,

Thank you for taking the time to complete the audit of the Hawai'i State Department of Education (Department). The purpose of this letter is to provide clarification of statements made in the State of Hawai'i Office of the Auditor, audit of the Department and the Hawai'i State Department of Transportation's Administration of Driver Education Programs, Report No. 25-06 (Audit Report).

The Audit Report raised Act 42, Session Laws of Hawai'i 1966 (Act 42), for the proposition that the Department is required to provide driver education and training. That, however, is inaccurate. The Legislature has never mandated that the Department establish and administer a motor vehicle driver education and training program. Rather, it has always been permissible. This has not changed since the law's inception.

The Audit Report is correct that the Legislature first addressed driver education with Act 42. That measure, however, did not require the Department to establish and administer a driver's education program. The Act merely states, "[t]he Department is hereby *authorized* to establish and administer a motor vehicle driver education and training program to be conducted at each public high school in the State after regular school hours, on Saturdays and during the summer recess." (emphasis added) Despite the references to "urgency" found in Act 42, the Legislature still chose not to mandate a driver education program.

To this day, the program remains permissible under Section 302A-413(a), Hawai'i Revised Statutes (HRS). Not once during the nearly six decades after Act 42's inception has the Legislature made any such mandate. The Department is unaware of why the Legislature did not mandate the program when enacting the statute.

Like the driver education and training program in general, the Department's interpretation of the statute is that the Department is authorized to promulgate administrative rules; it is not required to do so.

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The Legislature has mandated the Department to promulgate administrative rules on multiple occasions. *E.g.*, HRS § 302A-406(b) (transportation); § 302A-704(b) (exemplary teachers); § 302A-1113 (seal); § 302A-1143.5(b) (career and technical education programs); § 302A-1148(a) (use of school facilities); and § 302A-1905 (trademarks). Here, the Legislature did not.

The Department would request revisions be made to the Audit Report to address the concerns raised above. Thank you for taking the time to read the Department's clarification of its position with respect to the Audit Report.

Should you have any questions, please contact the Director of Internal Audit, Denise Yoshida, at [denise.yoshida@k12.hi.us](mailto:denise.yoshida@k12.hi.us) or by phone at (808) 784-6235.

Sincerely,



Keith T. Hayashi  
Superintendent

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c: Internal Audit Office  
Policy, Innovation, Planning and Evaluation Branch