

Report of the Joint Senate-House Investigative Committee to  
Investigate the State's Compliance With the *Felix* Consent Decree

December 4, 2001

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Preliminary  
Draft

# Chapter 1

## Introduction

The *Joint Senate-House Investigative Committee To Investigate the State's Compliance With the Felix Consent Decree* presents its conclusions to the Legislature in this report. The Committee was established under Senate Concurrent Resolution No. 65, S.D.1, H.D.1, pursuant to Chapter 21, Hawaii Revised Statutes (HRS), which authorizes the Committee to subpoena records and the attendance of witnesses, and take testimony of witnesses under oath. The Committee held a series of public hearings from June to November 2001. This report contains information obtained from those hearings, related additional work by committee staff, and the Committee's conclusions.

Senator Colleen Hanabusa and Representative Scott Saiki served as co-chairs of the Committee. They presided over the hearings. In addition to the two co-chairs, ten committee members represented both houses of the Legislature. Members from the Senate were Vice-Chair Russell Kokubun and Senators Jan Yagi Buen, David Matsuura, Norman Sakamoto, and Sam Slom. Members from the House of Representatives were Vice-Chair Blake Oshiro and Representatives Ken Ito, Bertha Kawakami, Bertha Leong, and Barbara Marumoto. James Kawashima of Watanabe, Ing, and Kawashima served as Special Counsel to the committee. Law firm staff and staff from the Office of the Auditor assisted the Committee in collecting and analyzing information.

## Impetus for the Investigative Committee

The State's educational system and the state budget have been gripped by the *Felix* consent decree since its inception in October 1994. Both legislators and the general public have become concerned about the unclear requirements set by the federal court and exponentially increasing costs. The parents of regular education students have also expressed concerns about the effect of those expenditures on funds available for regular education. The *Felix* consent decree is the outcome of a 1993 lawsuit filed against the State in U.S. District Court on behalf of seven children, their parents (guardians), and mental health advocates. The lawsuit alleged that qualified handicapped children were not receiving the educational and mental health services they needed and that the

State was in violation of two federal laws — the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973.

First enacted by Congress in 1975 as the Education for All Handicapped Children Act, the Individuals with Disabilities Education Act (IDEA) requires states to provide children with disabilities a “free and appropriate education” that emphasizes special education and related services to meet their unique needs. The IDEA applies to students with the following disabling conditions: autism, deaf-blindness, deafness, emotional impairment, hearing loss, learning impairment, mental retardation, orthopedic impairment, other health impairment, speech or language impairment or both, traumatic brain injury, severe multiple impairments, specific learning disabilities, or visual impairment.

Section 504 of the Rehabilitation Act of 1973 (Section 504) applies to children in regular and special education programs that receive federal funding. It stipulates that a qualified person with a disability cannot be excluded from any program receiving federal financial assistance. Section 504 covers a much broader category of students who may have a physical or mental impairment. Physical or mental impairment includes, but is not limited to the following: infectious diseases such as HIV or AIDS, tuberculosis, and Hepatitis B; medical conditions such as juvenile rheumatoid arthritis, chronic asthma, severe allergies, epilepsy, heart disease and cancer; drug addiction; alcohol addiction; attention deficit disorder or attention deficit with hyperactivity disorder; and mental or psychological disorders such as depression, school phobia, and post-traumatic stress disorder.

The *Felix* lawsuit was patterned after those that had met with success on the mainland with one significant difference. Because Hawaii’s school system is the only statewide system in the country, the State is accountable for its most rural and most isolated communities. In essence, this makes the *Felix* consent decree more far-reaching and difficult to comply with.

The federal court granted summary judgment against the State and in favor of the *Felix* plaintiffs on liability. This gave the *Felix* plaintiffs considerable leverage and threatened the State’s control over Hawaii’s statewide school system. Rather than face a federal takeover or be placed into receivership, the State entered into the consent decree, where it waived all rights to appeal and agreed to fully implement a statewide system of care by June 30, 2000. The

State agreed to the consent decree in an attempt to preserve its autonomy and maintain control in the design and implementation of a system of care.

In May 2000, the federal court found the State in contempt for failing to comply with the consent decree and threatened the State with a federal takeover. However, the federal court gave the State a reprieve and set up 56 specific benchmarks for it to meet. For example, all school complexes were to receive "recommendations for compliance" status from the court monitor by October 31, 2001. The federal court ultimately gave the State a final deadline of March 31, 2002, when it must meet all 56 benchmarks or face federal receivership of the educational system.

To meet these benchmarks, the federal court granted the superintendent of education and the director of health extraordinary powers. These so-called "super powers" were issued by the federal court on June 27, 2000, and authorized the two department heads to waive the state procurement laws (Chapters 103D, HRS and 103F), which required that services be purchased by competitive bidding. The federal court's grant of superpowers also permitted department heads to bypass state collective bargaining laws and to pay newly recruited teachers far more than those who were already working for the State. There was even an interpretation of the superpowers that the Board of Education had no role in oversight. The federal court expects all benchmarks to be met without consideration of cost.

Even prior to the granting of extraordinary powers, the Department of Health (DOH) and Department of Education (DOE) had demanded large amounts of funding for *Felix*, claiming that they were needed to meet the requirements of the *Felix* consent decree. Since FY1994-95, expenditures have increased from \$181,071,352 to \$301,863,705 in FY1999-00, and the number of children in the *Felix* class has grown from an estimated 2,894 to 11,842 in FY1999-00.

The Legislature grew increasingly concerned with the rising *Felix* costs. It requested the State Auditor to review expenditures and factors related to the increasing cost. The State Auditor issued an assessment in 1998 (*Assessment of the State's Efforts Related to the Felix Consent Decree*, Report No. 98-20) and a consultant's follow-up report in 2001 (*Follow-Up Review of the State's Efforts to Comply with the Felix Consent Decree*). The DOH and DOE disputed the findings in both reports.

The 1998 Auditor's report found that the State's failure to ensure that the *Felix* consent decree requirements were clear, made the goal of compliance a moving target. Additionally, the State did not clearly and accurately identify funding related to the consent decree. Furthermore, the State's efforts to comply with the *Felix* consent decree were characterized by a lack of leadership, resulting in inefficient delivery of educationally related mental health services.

In response to these findings, the Legislature took steps to establish better accounting of the monies that it appropriated for the *Felix* consent decree. Starting in 1999, the Legislature created a new budget program designation, EDN 150, Comprehensive School Support Services, which it thought would correct unclear and inaccurate identification of funding related to the consent decree. In the same year, Act 91, Session Laws of Hawaii (SLH) 1999, required the DOE to submit a detailed report to both 2000 and 2001 legislative sessions on EDN 150 allocations and expenditures for special education, the decree, and comprehensive student support services. Act 91 also required the DOE and DOH to develop procedures to transfer the delivery of mental health services from the DOH to the DOE.

Despite legislative efforts to clarify the reporting of *Felix*-related expenditures, problems remained. In the Auditor's 2001 follow-up report, consultants from the University of Pennsylvania found that *Felix*-related costs and services continued to be inconsistently reported. The DOE continued to combine *Felix*-related administrative and service costs with other special education costs. The DOH combined costs for compliance with costs for the delivery of services and combined costs for new and experimental services such as Multisystemic Therapy with costs for traditional mental health services. The consultants concluded that it was impossible to determine the cost of core and essential services versus the cost of new, experimental, and non-essential services.

Both the DOE and DOH would blame the Legislature for not giving them enough money whenever the State received a setback in federal court. The DOE and DOH felt that the more money put into *Felix* the greater their chances in achieving compliance. The Legislature suspected the departments were not making the best use of the funding they had received. "The *Felix* consent decree had become a blank check or black hole," became the common legislative perception. However, the federal court repeatedly threatened federal takeover and the Legislature was told not to question, but simply to find more



funds for *Felix*. And while the Legislature did provide such funding, questions have surfaced as to whether there is a surplus of the emergency funds, emphasizing whether the requests were truly exigent in nature.

This conflict led to the creation of the Joint Senate-House Investigative Committee. The Legislature noted that it had relied on the State Auditor to monitor the expenditure of state funds for the *Felix* consent decree on its behalf. However, parties involved in the decree did not cooperate and refused access to certain key information. The Legislature concluded that an investigative setting was the only way it could get its questions answered.

### **Focus of the Investigative Committee**

Senate Concurrent Resolution No. 65, S.D. 1, H.D. 1 called for the Committee's investigation to include:

- A review of the recommendations and implementation of the findings of the 1998 and 2001 *Felix* consent decree reports issued by the Office of the Auditor.
- An assessment of changes that resulted from Act 91, SLH 1999 – the act that shifted fiscal and decision-making authority and accountability from a primarily off campus, medically-based service delivery system to a primarily education-based service delivery system focused on providing services in classroom environments.
- A consideration of how best to transition from a special education service delivery system based on compliance to a more permanent one that is cost-effective, efficient, based on measures and outcomes, and compliant with IDEA and Section 504.
- An examination of federal and other sources of funding for special education in the public school system of Hawaii.

The Committee reviewed the above issues, but its short time frame forced it to focus on three areas. These areas were the possible misidentification of *Felix* class members, questionable *Felix*-related expenditures, and potential conflicts of interest by individuals and entities involved with the consent decree. As will

be discussed later, the Committee was unable to properly investigate the misidentification issue in large part because committee staff was denied access to client files. The Department of the Attorney General cited several federal laws, including the Family Educational Rights and Privacy Act or FERPA, to prevent access. Nevertheless, the Committee uncovered much information related to questionable *Felix*-related expenditures and potential conflicts of interest.

## **Rules of the Investigative Committee**

The Committee adopted rules of procedure in accordance with Chapter 21, HRS and SCR 65, S.D. 1, H.D.1. In summary, the proceedings were conducted in a formal setting. Subpoenas were served and witnesses were given ten days' notice to appear. Unlike other hearings of the Legislature, only those subpoenaed or invited by the Committee testified. Members of the public were not allowed to testify.

Witnesses were questioned under oath. They were allowed to bring an attorney, and a court reporter recorded the proceedings. The Clerk of the House of Representatives served as the official repository of the committee's records. The proceedings were open to the public, unless it was necessary for the committee to meet in executive session to confer with counsel. Olelo, the community access station, telecast most of the hearings live; some hearings were shown on a delayed basis. The written transcripts of the proceedings were placed on the Internet.

Appendix A lists the dates of the hearings, the witnesses, and the subject of their testimony.

## **Obstacles**

The Committee was faced with a number of obstacles that prevented it from obtaining full access to records and key individuals, blocking an in-depth investigation of certain matters. The federal court quashed the subpoenas of Court Monitor Ivor Groves; the administrator of the Felix Monitoring Project, Juanita Iwamoto; and Judith Schrag, who was a member of the Technical Assistance Panel, a court-mandated entity.

The DOE and DOH cited federal laws, such as the Family Education Rights and Privacy Act (FERPA) to deny the Committee's access to files. Private providers of mental health services also denied access to files for allegedly the same reason. However, it is important to note the Committee recognizes the need for privacy protections, and as such, it provided several assurances that the identities of the students could be redacted or substituted with non-descript numbers, for the scope of the inquiry was aimed at the service and provider, not at the student. Despite its attempt to make accommodations, access was continually denied.

Without this access, committee staff were hampered in their efforts to tie allegations of questionable billings to the services ordered for each student. Nor could staff verify whether the State was being accurately billed for services for specific clients at specific times. Moreover, the DOE and DOH responded to requests on *Felix* expenditures by saying that several months would be required to produce some of the required information.

Many people were reluctant to publicly share information on specific incidences of abuse and waste for fear of possible retaliation. The Committee received reports of threats to witnesses and potential testifiers. The Committee gratefully acknowledges those who came forward with their concerns despite this climate of fear.

Despite obstructions, the Committee was able to review some matters in detail. Conclusions and recommendations related to these issues are presented in the following chapter.

## Chapter 2

### Conclusions

During six months of hearings and intense investigative work, this Committee was troubled by much of what it uncovered about the impact of the *Felix* consent decree. The decree has been a double-edged sword. Despite good intentions and improved services to some children with mental disabilities, the decree has also unleashed a Pandora's box of unintended consequences. The unclear requirements for compliance, the extraordinary powers granted by the federal court to certain administrators without any apparent oversight, and the court's curtailment of the Legislature's access to information have exacerbated troubled governmental programs already mired in fiscal mismanagement.

The Committee heard testimony about apparent conflicts of interest, profiteering, and wasteful spending. Such practices erode public confidence in government and erode the morale of those public servants committed to doing a good job. The Committee believes that it is important to bring these practices to light—to understand how and why they occurred and to prevent them in the future.

The Committee has concluded that the implementation of the *Felix* consent decree has been problematic due to several factors. They are:

1. The unclear requirements for compliance concurrent with departmental exploitation of the court's "money is no object" expectations.
2. The generally poor oversight and accountability of the two departments responsible for implementing the *Felix* consent decree and the curtailment by the federal court of oversight by the Legislature.
3. The "superpowers" granted to the superintendent of education and the director of health that allowed them to waive the requirements of the state procurement law and to bypass personnel laws.

We discuss below these three aspects and the environment of waste and profiteering that they fostered.

## **Problems Stemming from Undefined, Unclear, and Costly *Felix* “Compliance” Requirements**

Federal laws have never clearly defined criteria for compliance, leaving the State at the mercy of the federal court. The *Felix* consent decree, issued in October 1994, mandated that the State design and implement a system of care for the *Felix* class by June 30, 2000. The State was also required to maintain specific levels of service and spending. However, a precise definition of compliance was never formally established.

Although it might appear that there are specific benchmarks and objective standards for whether schools are in compliance, many of the requirements were introduced at various times since the decree was issued, and many of the standards are arbitrary. Over the years, this has created a “moving target” that makes it difficult to plan sensibly for accomplishing compliance. The Court Monitor's sometimes unexplained changes in the benchmarks left the State even more uncertain over its targets.

The State and other parties to the 1993 lawsuit had no clear definitions and measures when the consent decree was issued. Currently, an unproven and untested protocol is used to assess compliance. Compliance measures include “written” and “oral” components, but are without clear explanations of how requirements for the “written” service testing portion are to be met or what would constitute “passing” activity levels or satisfactory performance in the oral presentations made to the court monitor and the plaintiffs' attorneys. The lack of clarity relating to compliance could extend the life of the decree indefinitely.

### ***Compliance measures appear arbitrary and unscientific***

The primary measure used to determine whether or not services have been adequate, i.e., whether the State is in compliance, is called “service testing.” Court Monitor Ivor Groves and his business partner, Ray Foster, under their company Human Systems and Outcomes, Inc., designed the measure. Service testing consists of a qualitative measure (similar to a case study) that was developed during the initial stages of the consent decree. The tool had not been previously used, and in fact, had to be refined and structured with significant input from DOE administrators. Copyrighted in 1998 by Human Systems and Outcomes, Inc., the service testing instrument is comprised of two

protocols: the *School-Based Services Review* for those with less intensive needs and the *Coordinated Services Review*, which is used to measure results and performance for those *Felix* class members with more intensive needs or complex life situations.

The *School-Based Services Review* is defined as a “Case-Based Protocol of School-Based Services Provided for Students with Special Needs.” The review measures short-term results for children with special needs and those who provide services to these children. These results are intended for use by student services teams to improve “front-line practices.” The protocol asks the reviewer to first assess the case on the basis of level of functioning on a scale of 1 to 10, with “1” as needing constant supervision and “10” as superior functioning. The reviewer’s scores are based on status and service examinations, which include school attendance and learning progress. This information is then presented in report outline form under such headings as “Characteristics of the Student and Family,” “School-Based Services Involvement,” and “Suggestions for Improvement.”

The *Coordinated Services Review* is a more detailed review. It uses a “spot-checking method” for “appraising the current status of persons receiving combinations of public services (e.g., special education, behavioral health, child protection/foster care, juvenile justice, vocational rehabilitation services).” This instrument also looks at short-term results for children with special needs and those providing services to them. This particular protocol states that it is used for “monitoring *Felix* class members and tracking improvements in local interagency practices.” The *Coordinated Services Review* uses narratives, rather than outlines, to tell the story of the child’s background and his family situation. Narrative headings include family situation, school situation, involvement with other child-serving agencies, and other special factors or circumstances. Also, an appraisal is made of system performance covering such areas as “What’s Working” and “Practical Steps to Overcome Problems.”

Each school complex (a high school and its feeder schools) must pass with an 85 percent score on both the School-Based Services Review and the Coordinated Services Review. The basis for this 85 percent “passing” score appears arbitrary. A former DOE official testified that at the start of the compliance reviews the passing score was 70 percent, but too many schools were easily meeting that goal, so the bar was raised. Evidently, many schools did not pass once the higher standard was implemented.



After these two protocols were established, Court Monitor Groves, using his administrative office, Felix Monitoring Project Inc., and his private business partner, Ray Foster, trained and hired a number of independent contractors to collect baseline data for service testing. These service testers then reviewed cases supposedly randomly selected by staff of the Felix Monitoring Project, Inc.

Random samples are a prerequisite for statistical inferences. Although the samples are reportedly randomly selected, the results may not be representative of the larger population. On average, the sample sizes for service testing have been 20 students or less. Statistically, these sample sizes would be too small to permit a valid conclusion on compliance, as sampling bias might influence the results. Also, a disproportionate number of autism cases were included in the samples. This overrepresentation may be an indication that sample selection was not random but biased toward such cases. The committee could not verify the validity of the sample selection because the subpoenas quashed by the federal court prohibited access to case files by committee staff.

Given the numerical target of an 85 percent passing score and the use of a random sample, the general public might be led to believe that the results are somehow “scientific.” However, even Court Monitor Dr. Groves and his partner, Dr. Foster, acknowledge that the service testing protocols were not developed with psychometric properties, that is, the protocols were not tested for reliability and validity as standardized testing measures should be. Furthermore, they stress that the protocol supports a “professional appraisal” of child status and service system performance at a given point in time and the instrument should not be used without proper training and supervision.

### **Meaning of compliance differs**

Dr. Douglas Houck, DOE’s Director of Program Support and Development, testified to the Committee that, in his estimation, the State, overall, was in compliance. Dr. Houck, in a memo dated July 20, 2001, to the superintendent, stated the following:

The fifteen (15) complexes tested during the 2001 calendar year achieved an overall score of 87% on school-based services and 85% on Coordinated Services. This indicates that the State has now

achieved overall substantial compliance with the principles and standards established by the Consent Decree. The Monitor previously established the 85% score as his criteria for meeting substantial compliance. We also need to keep in mind that the Consent Decree speaks only in general terms regarding State wide compliance. It does not address the matter of achieving compliance on a complex-by-complex basis.<sup>1</sup>

When this was brought to the attention of the plaintiffs' attorneys during a federal court hearing in August 2001, they vehemently argued that compliance was supposed to be by individual complex, regardless of whether the State, as a whole, had essentially met the requirements of the consent decree.

### **School complexes are unclear about compliance**

School complexes are unclear about how to "pass" compliance testing. The DOE has issued two main guidelines, but they are inadequate. The first is a one-page document labeled: "Achieving Compliance with Service Testing: Eleven Essential Elements." The document primarily reminds schools to keep accurate and up-to-date files and records to ensure efficient processing of paperwork and provision of services. The second, more detailed document, the product of a collaboration with DOH, is the "Procedural Manual for Service Testing Reviews." It provides a planning guide to prepare for the different steps involved in a compliance presentation review.

In addition, DOE and DOH staff offer basic training on the service testing protocol. Preparation for service testing and compliance presentations is informal and voluntary. For compliance presentations, DOE staff is available to meet with schools and provide informal advice during practice sessions. Even with the training and the internal guidelines, schools reported that they were unsure about how to pass compliance.

Furthermore, the DOE has spent \$2.3 million on targeted technical assistance for those schools facing the most difficulty in passing compliance. However, even today, with compliance appearing more likely, the extent of assistance provided by this program is not demonstrated and speculative.



### ***Compliance is a moving target***

The entire issue of compliance has been a problem from the beginning of the consent decree. The monitor's standards for compliance have changed constantly with the addition of new initiatives, such as reading assessments, which appear to go beyond the requirements of the decree, according to DOE officials who served as point persons for *Felix*.

Currently, Court Monitor Groves distinguishes three levels of compliance. He awards *Partial compliance* when a school complex is able to reach a passing score (85 percent) on only one of the two service testing protocols. He awards *Provisional compliance* when a school complex has passing scores on both protocols, but has yet to schedule a compliance presentation to him and the plaintiff attorneys. *Full compliance* is awarded when the monitor makes a recommendation to the federal court that the complex has demonstrated its compliance with the Individuals with Disabilities Education Act and the consent decree. As of November 1, 2001, 20 of 41 school complexes are in full compliance, eight complexes are in provisional compliance, three are in partial compliance, and the remaining 10 are not in compliance.

### ***The DOE and DOH exploit the money is no object expectations***

The federal court has made it clear that compliance is necessary without regard to cost. This, together with the unclear requirements of the consent decree, made it inevitable that the costs of compliance would escalate. The DOE's expenditures for *Felix* grew from \$77.5 million in 1994 to \$179.8 million in 2001, an increase of 132 percent. The DOH's general fund expenditures for *Felix* grew from \$48 million in 1995 to \$148.2 million in 2001, an increase of 209 percent. Since 1994, the State has spent almost **\$1.5 billion** on *Felix* related programs. Even so, these numbers are understated. They do not include federal funds expended by DOH and expenditures by other agencies, such as the costs for attorneys' fees by the Department of the Attorney General and *Felix* costs for the Department of Human Services.

The Committee finds most disturbing the fact that no one knows how much *Felix* is costing the State. Neither the DOE nor DOH has held itself accountable for using public monies in a responsible and prudent manner. They are unable to accurately identify the costs of *Felix*.

Exhibits 2.1 and 2.2 show the information provided by the DOE and DOH on *Felix* expenditures, respectively.

In FY2000-01, DOE and DOH reported total *Felix* costs of \$328 million. The DOH provided only general fund information of \$148.2 million while the DOE reported expenditures of \$179.8 million from all sources of funding. The DOH claimed that information on non-general fund *Felix* expenditures was not readily available. In addition to the missing non-general fund information from DOH, the DOE may not have included all *Felix*-related costs since it claims that it could not accurately separate *Felix* costs from non-*Felix* special education costs.

### ***Poor cost data reflect poor fiscal management at the DOE***

The DOE has long been characterized by a management structure with poor fiscal accountability, leaving the department unable to accurately assess its needs. Divisions and programs within the DOE do not communicate with each other. For example, budget and accounting functions do not share information and budget requests are not based on expenditure data. DOE continually miscalculates its budget requests, which has led to unnecessary spending and abundant leftover funds. Yet, the DOE has repeatedly requested emergency appropriations from the Legislature. In turn, the Legislature questions whether appropriations based on inaccurate numbers are really warranted.

Legislators have long been frustrated with the DOE's inability to provide adequate information. In testimony, DOE staff continually deferred questions to others or provided inconclusive information. The information was not responsive to the committee's requests.

It is not only the Legislature that is frustrated, the current and former chairs of the Board of Education testified to the Committee that they too had not received adequate answers from the DOE on fiscal matters. Given DOE's fiscal practices, neither the Legislature nor the Board of Education can determine whether public monies have been spent wisely.

### **The DOE has inept fiscal management**

The DOE's internal auditor reported on the difficulty of compiling simple *Felix*-related financial information when he conducted his fiscal review of the *Felix* Response Plan or FRP. The plan consists of 12 items identified by the

**Exhibit 2.1 Estimated DOE Felix Expenditures by Source of Funding for FY1993-94 to FY2000-01**

	1994	1995	1996	1997	1998	1999	2000	2001	TOTAL
General Fund	71,468,776	75,849,984	76,593,555	79,591,409	92,050,860	104,162,667	129,122,624	160,618,775	789,458,650
Other Funds	6,005,410	7,702,779	7,351,428	8,047,446	10,633,527	12,788,898	19,413,448	19,146,885	91,089,821
<b>Total Felix expenditures</b>	<b>77,474,186</b>	<b>83,552,763</b>	<b>83,944,983</b>	<b>87,638,855</b>	<b>102,684,387</b>	<b>116,951,565</b>	<b>148,536,072</b>	<b>179,765,660</b>	<b>880,548,471</b>

<b>Percent increase from prior year</b>	7.85%	0.47%	4.40%	17.17%	13.89%	27.01%	21.02%
<b>Percent increase since 1994</b>	7.85%	8.35%	13.12%	32.54%	50.96%	91.72%	132.03%

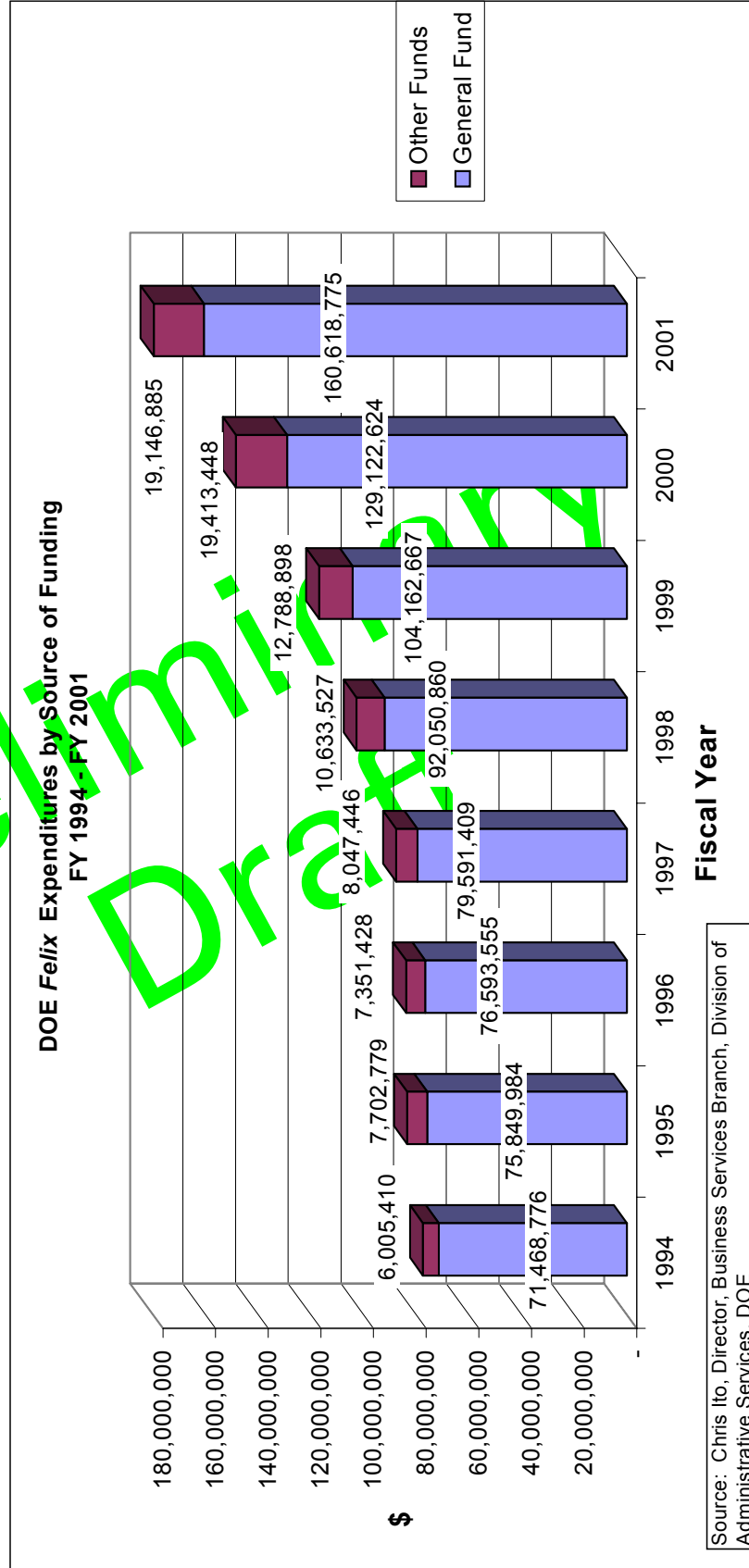


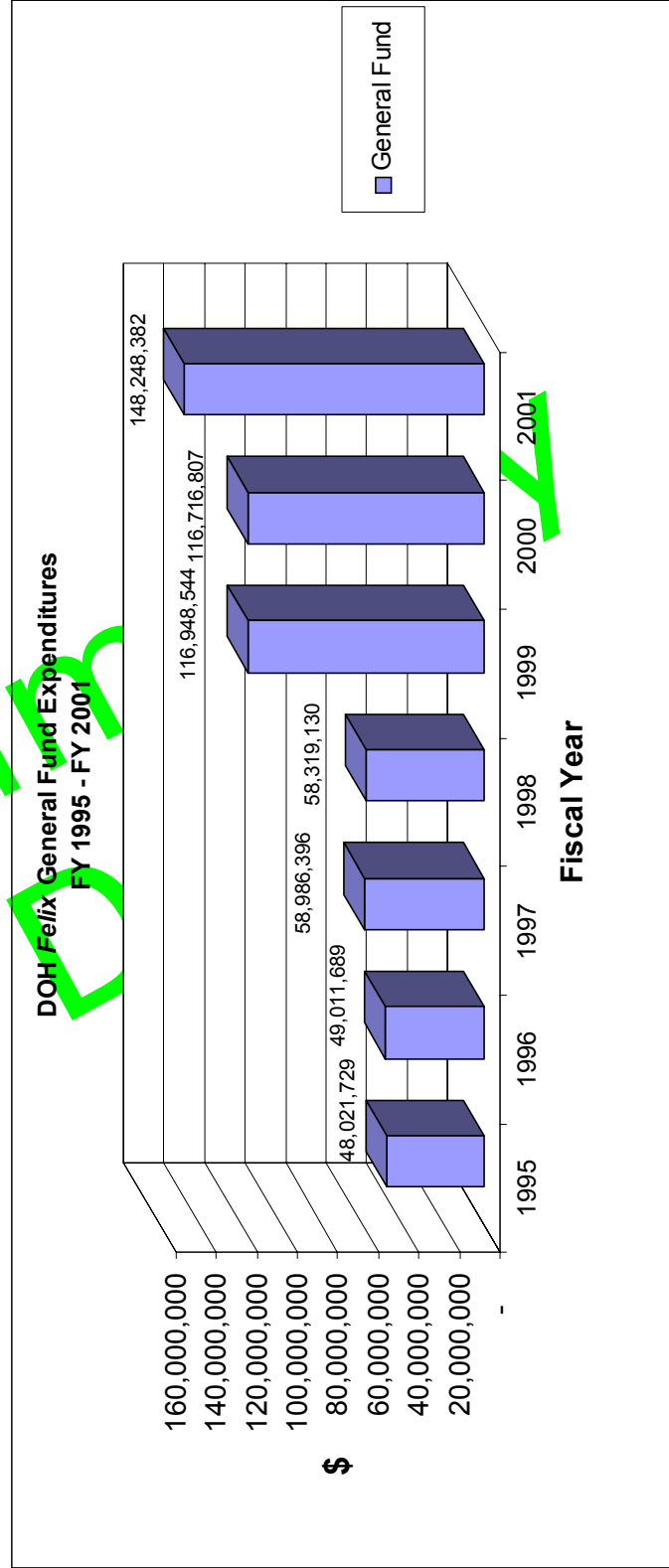
Exhibit 2.2 Estimated DOH Felix General Fund Expenditures from FY1994-95 to FY2000-01

Prog ID	Title	1995	1996	1997	1998	1999	2000	2001	TOTAL
HTH 460	Child and Adolescent Mental Health	29,554,797	34,585,260	45,237,143	44,652,576	102,930,932	99,580,600	123,273,302	479,814,610
HTH 495	Behavioral Health Services Administration	1,697,930	2,092,265	3,340,572	3,322,937	3,623,221	4,855,089	5,504,858	24,436,872
HTH 530	Children with Special Health Needs Services	4,766,542	2,849,514	2,571,203	3,227,941	3,194,614	5,122,741	6,978,269	28,710,824
HTH 550	Maternal and Child Health Services	10,935,203	8,395,271	6,746,929	6,030,276	6,098,159	6,070,170	11,403,746	55,679,754
HTH 501	Developmental Disabilities	1,067,257	1,089,379	1,090,549	1,085,400	1,101,618	1,088,207	1,088,207	7,610,617
<b>Total Felix general fund expenditures</b>		<b>48,021,729</b>	<b>49,011,689</b>	<b>58,986,396</b>	<b>58,319,130</b>	<b>116,948,544</b>	<b>116,716,807</b>	<b>148,248,382</b>	<b>596,252,677</b>

Percent increase from prior year  
Percent increase from 1994

2.06%  
2.06%  
20.35%  
-1.13%  
100.53%  
-0.20%  
27.02%

22.83%  
21.44%  
143.53%  
143.05%  
208.71%



Source: Valerie Ako, Chief, Administrative Services Office, DOH

department as necessary for meeting the requirements of the decree. The audit was initiated by former Deputy Superintendent Pat Hamamoto to determine whether the funds appropriated for the *Felix* Response Plan were being spent appropriately. This was the first ever internal audit of *Felix* expenditures.

The internal auditor spent the majority of his time simply attempting to compile data into an understandable financial format. He identified 38 separate problems that needed correction, such as improper purchases of equipment and misspent funds. The majority of these problems were due to poor communications within the department, lack of effective fiscal management tools and reports, and a lack of general fiscal oversight. Full circle communication was not evident, as individuals in the field were often not given sufficient opportunity to provide input as to budgetary needs for implementing *Felix* programs, neither did program managers clearly communicate budget objectives to those in the field.

The internal auditor found financial data to be seriously fragmented among units such as budget, personnel, accounting, programs, districts, and schools. Program managers did not readily have the information they needed to manage operations. There was no specific official or unit in the department that analyzed *Felix* Response Plan funds in a budget-to-actual expenditure comparison, to determine variances, obtain explanations, or evaluate performance. The internal auditor recommended that the DOE improve its budget communication process; develop a comprehensive *Felix* financial report that extracts and compiles data from programs, budget, personnel, payroll, accounting, districts and schools in an understandable format; and perform complete, on-going financial analysis and audits of *Felix* Response Plan transactions.

### **The DOE purchased laptop computers for vacant positions**

One blatant example of wasted funds is the DOE's unnecessary purchase of equipment for vacant positions. The DOE had requested funding for laptops for *Felix* student services coordinators and special education teachers. The laptops allegedly would give these staff "additional flexibility." However, the DOE purchased laptop computers for *all* student services coordinator and special education teacher *positions*, even vacant positions.

A total of 140 laptops were purchased for vacant positions at a cost of \$294,000. A number of special education positions will remain vacant due to ordinary staff turnover and to the department's inability to fill all positions. The excess laptop computers are either sitting idle or used for purposes other than compliance with the *Felix* consent decree—the purpose the DOE gave the Legislature when it sought the funding.

### **The DOE uses budget program EDN 150 to obscure *Felix* and special education costs**

To obtain a handle on *Felix* costs, the Legislature created a separate budget program designation, EDN 150, Comprehensive School Support Services. However, the new program designation provides false comfort for the Legislature because the DOE still manages to obscure *Felix*-related costs. Even after the creation of EDN 150, *Felix* costs have still been found in other budget program designations. For example, for FY2000-01, the DOE reported to committee staff that over \$100,000 for *Felix*-related expenditures are in EDN 200, which is the program designation for instructional support.

The DOE argues that a special education teacher may be responsible for both *Felix* and non-*Felix* students and calculating a percentage of time spent with the *Felix* child would be nearly impossible. It argues similarly that both *Felix* and non-*Felix* students and related school personnel may use supplies and equipment.

Currently, EDN 150 consists of *Felix* costs, special education costs for non-*Felix* students, and costs related to the education department's school reform effort, Comprehensive Student Support System or CSSS. Combining these three categories under EDN150 makes it very difficult to separate out *Felix* costs.

### **The DOE has unspent funds yet asks for more**

Due to the dysfunctional management structure and poor fiscal management, the DOE's budget requests are often inaccurate and overestimated. The department is itself unable to reach a consensus on its official numbers.

The committee staff found discrepancies in the amounts of surplus funds, carry over funds, and lapsed funds. The amount of carry over funds reported by the DOE's budget office differed significantly from the information provided by



the DOE accounting office. The DOE accounting director, Chris Ito, attributed the surplus differences to reconciling adjustments and timing issues, while the head of DOE's planning, budget, and resource development, Laurel Johnston, stated that there had been internal "quibbling" regarding the accuracy of the numbers. She suggested utilizing the numbers obtained from the accounting office as the "official" numbers.

Each year since the inception of the *Felix* consent decree, the DOE has requested additional funding from the Legislature to comply with the decree. In the 2001 legislative session, the department requested an emergency appropriation for FY2000-01 of \$41.3 million. This amount appears to be arbitrary because the DOE later reduced the request to \$33.4 million and then reduced it again to \$27.9 million.

The Legislature grew more concerned and skeptical at the end of FY2000-01 when the DOE had \$62.5 million in surplus funds of which \$17.4 million were from EDN 150, which includes *Felix* costs. The DOE retained and carried over \$48.2 million from FY2000-01, the same fiscal year that it requested an emergency appropriation for \$27.9 million. In addition to the amount it retained, the DOE lapsed or returned \$14.3 million to the State.

The Committee believes that the DOE may also be inappropriately increasing the amounts of authorized carry over funds by transferring surplus funds from one budget program category to another. Section 37-41, HRS states that, unless otherwise provided by Section 37-41.5 or any other law, every appropriation remaining unexpended and unencumbered at the close of any fiscal year shall lapse and be returned to the general fund. Section 37-41.5 authorizes the department to carry over funds remaining in budget program identification numbers EDN 100 and EDN 150 to the next fiscal year; however, the department has also transferred surplus funds of \$14.3 million from several other program budget identification numbers to EDN 100. By placing surplus funds into EDN 100, the regular education program budget, DOE retains funds that must lapse and become available for other state needs.

In response to legislative inquiries, DOE officials claimed that the large surplus resulted from salary savings from vacant positions. However, the committee's staff found that only 56 percent of the surplus was tied to personal services, while the remaining 44 percent was tied to other current expenses such as supplies, equipment, motor vehicles, and contracted personal services.

### **DOE misuses excess federal impact aid**

The Committee is also concerned that the DOE has mismanaged millions of federal impact aid dollars. The State receives annual reimbursement from the federal government in the form of impact aid funds for federally connected students. The parents of these students are either active duty military or civilians working or living on federal property. The Legislature appropriates impact aid at a specific dollar amount to the department. The impact aid receipts for any given year can vary widely from the appropriation based on such factors as the success of Hawaii's congressional delegation, the actual numbers of federally connected students, and back payments.

Although the number of active duty dependents has been declining and the number of civilian dependents has remained relatively stable since FY1993-94, the amount of federal impact aid received by the State over that period increased from \$23,994,289 in FY1993-94 to \$37,953,371 in FY2000-01. At the same time, the appropriation amount remained at \$19 million until FY1999-00.

In view of the higher federal reimbursements, the Legislature raised the impact aid appropriation to \$24,133,000 in FY2000-01 and to \$25,978,520 in FY2001-02. Despite this higher appropriation, the department has been able to retain a total of \$26,263,292 (\$12,442,921 in FY1999-00 and \$13,820,371 in FY2000-01) in surplus impact aid funds. Exhibit 2.3 displays the history of impact aid appropriations and reimbursements from FY1993-94 to FY2000-01.

Prior to July 1, 2000, any federal impact aid reimbursements in excess of the Legislature's appropriation were lapsed and deposited into the general fund to be available to all other state programs. The 2000 Legislature through Act 234, authorized the DOE to retain the excess funds and spend them at its discretion, albeit within certain parameters as discussed below. Prior to Act 234, the DOE lapsed \$37,623,081 between FY1993-94 and FY1998-99.

### **DOE has misused Act 234**

The Legislature set out certain parameters in Act 234, SLH 2000 that the DOE has ignored. On June 6, 2000, the governor gave the DOE approval to spend over \$12 million in excess impact aid. The law requires the DOE to allocate the excess funds among all program identification numbers, by an amount



Exhibit 2.3 Amount of Federal Impact Aid Received and Amount Appropriated to the DOE, FY1993-94 to FY2000-01



Source: Linda Unten, Budget Specialist, Planning, Budget and Resource Development Office, Office of the Superintendent, DOE

proportionate to the total general fund appropriation made by the Legislature. However, during a committee hearing, the DOE budget and planning head conceded that the DOE allotted all surplus impact aid received in FY1999-00 into only one budget program identification number – EDN 100. By doing so, the DOE inappropriately allocated *Felix* funding within a non-*Felix* program identification number, confusing the amounts available for *Felix* programs.

More importantly, EDN 100 comprises approximately 78 percent of the total, overall DOE appropriation, and EDN 150 comprises about 15 percent. But, the *Felix*-related items to be funded by the \$12 million in excess impact aid totaled 30 percent. The DOE, in essence, doubled the EDN 150 share of excess impact aid, a flaunting of the proportionality requirement of Act 234.

Furthermore, Act 234 also prohibits the DOE from using excess impact aid to create new programs or expand existing ones. Yet, the DOE used \$2.3 million in surplus federal impact aid for “School Based Technical Services Assistance – *Felix*,” a targeted technical assistance program. This resulted in a highly controversial targeted technical assistance contract with Pacific Resources for Education and Learning (PREL) and subcontractor Na Laukoa.

This was a new program that was not eligible for federal impact aid. The concept emerged in May 2000 from discussions between Court Monitor Groves and the former superintendent. Moreover, targeted technical assistance was originally to be funded with emergency general funds requested in the 2001 legislative session.

Act 234 has given the DOE full discretion over surplus federal impact aid, eliminating the checks and balances embedded within the State’s budgeting process. The larger the difference between the level appropriated and the level received, the greater the risk of mismanagement and lack of accountability. The excess funds create a budgetary cushion for the department. Its use could have negative consequences for the Legislature, such as new programs that the Legislature did not authorize but would have little choice but to continue.

The Committee strongly believes that Act 234, SLH 2000 should be reevaluated.

## **Problems Stemming From Inadequate Oversight and Accountability**

Many of the problems that the Committee uncovered could have been prevented had meaningful oversight been maintained over the DOE and DOH. Oversight and monitoring helps to ensure that officials are responsible and accountable for their actions. The Committee believes that access to better information leads to better oversight and accountability. We found numerous instances of questionable practices, mismanagement, waste and potential fraud that could have been prevented had information about them been made public. Unfortunately, this Committee's work has been obstructed by the federal court and interpretation of federal laws that have curtailed access to the information we need.

In addition, the DOE and DOH cited federal laws, such as the Family Education Rights and Privacy Act (FERPA) for denying access to files. Private providers of mental health services also denied legislative staff access to files for allegedly the same reason. These obstructionist tactics prevented Committee staff from verifying allegations of questionable billings and from verifying whether services the State was billed for had actually been provided to specific clients at specific times. Also, the DOE and DOH told the Committee that it would take several months before they could produce the required information on *Felix* expenditures.

### ***Court curtails legislative oversight***

The Committee faced a number of obstacles that prevented it from obtaining full access to records and key individuals, thereby blocking an in-depth investigation of certain matters. The federal court quashed the subpoenas for Court Monitor Groves; for the administrator of the Felix Monitoring Project, Juanita Iwamoto; and for Judith Schrag, a former member of the Technical Assistance Panel, a court-mandated entity.

The Committee issued subpoenas for Court Monitor Groves and Juanita Iwamoto, an official and employee of the Felix Monitoring Project, to provide testimony on July 13, 2001. The Committee needed information from them on many issues, including:

- The numerous changes made to the testing method used to assess compliance,

- Their use of the Hawaii testing instrument in states other than Hawaii,
- The switch from a private provider model to a school based model for mental health services,
- The compensation and benefits package paid to Court Monitor Groves and Ms. Iwamoto,
- The expenses of the Felix Monitoring Project, and
- Their use of business associates to conduct all expense paid seminars and training sessions in Hawaii.

The plaintiffs' attorneys filed a motion to block the Committee's subpoenas for information. Although the Committee's subpoenas were Hawaii State subpoenas, the plaintiffs' attorneys filed their motion in federal court before the same federal judge who had appointed Court Monitor Groves, and who had approved the salaries and expenses incurred by Dr. Groves, Ms. Iwamoto, and the Felix Monitoring Project.

Court Monitor Groves and Ms. Iwamoto, through their own attorney, also joined in the request to block the disclosure of information and asked the federal judge to quash the subpoenas. They asserted that they were entitled to the same immunity that applied to the federal court and cited authority indicating that their actions could not be discovered "however erroneous the act may have been, and however injurious its consequences may have proved to plaintiff."

Judge Ezra, who had created and has filled the *Felix* Monitor position, and who has presided over the *Felix v. Cayetano* litigation, also presided over the motion to block the disclosure of information. He agreed with the position taken by his appointee and the plaintiffs and quashed the subpoenas issued by the Committee. In making his ruling, Judge Ezra stated that he would find in contempt the Committee and the State Auditor if they made any additional requests for information from those whom he had appointed. Judge Ezra also indicated any appeal of his ruling would be unsuccessful because the Committee was not a party to the *Felix* litigation.

The Committee continues to believe that testimony from Court Monitor Groves and other members of the Felix Monitoring Project is essential for examining the impact of the decree and its costs. Although Judge Ezra blocked the Committee's access to information from his appointees, the Committee has persevered and received sworn testimony from other witnesses that question the scientific validity of the testing methodology used by the court appointed monitor. Witnesses also criticized the court monitor's administration of the testing instrument. In addition, the Committee received sworn testimony that the testing instrument developed in Hawaii is being used by Court Monitor Groves in other states.

Approximately two months after the federal court quashed the subpoenas for Court Monitor Groves and Juanita Iwamoto, the Committee issued a subpoena to Judith Schrag. Dr. Schrag was a former member of the *Felix* Technical Assistance Panel. She was also a consultant to the DOE as well as to Court Monitor Groves. In a separate case involving DOE officials, Dr. Schrag had testified about her work with the DOE and the requirements set by Court Monitor Groves. The Committee needed information from Dr. Schrag on such matters as her role as a consultant to the DOE, her relationship with private companies that had contracts with the DOE, her compensation and benefits, and her collaborations with Court Monitor Groves and others. Shortly after she received the subpoena, Dr. Schrag requested a change in the date and time of her appearance before the Committee. The Committee agreed.

Prior to the scheduled appearance of Dr. Schrag, the attorney for Court Monitor Groves and Ms. Iwamoto filed a motion in federal court to quash the subpoena served on Dr. Schrag. Judge Ezra again quashed the subpoena thereby denying the Committee the opportunity to question Dr. Schrag.

Judge Ezra ruled that Dr. Schrag had quasi judicial immunity because she was an advisor who reported to Court Monitor Groves, Judge Ezra's appointee. The judge did not consider Dr. Schrag's work as a consultant for the DOE and her prior deposition testimony in a separate lawsuit brought by a DOE official. Even though the Committee had agreed to accommodate Dr. Schrag by rescheduling the date and time of her appearance, Judge Ezra accused the Committee of harassing her. Without any supporting evidence in the record before him, Judge Ezra reportedly compared the Committee's investigation to the McCarthy hearings on communist activity in the 1950s. Although the federal court has repeatedly threatened to take over the State's school system if

the Legislature did not fund *Felix*-related requests, it has effectively denied access to information on how that appropriated money is being used.

The Committee has authorized taking court action to reverse Judge Ezra's rulings. The Committee seeks to have him disqualified based on his conflict of interest in ruling on his own appointees and in making statements intended to bolster his own credibility and that of his appointees. His public comments have raised questions about his impartiality.

Upon learning of the Committee's intent to challenge his rulings and his impartiality, Judge Ezra called an immediate public status conference in open court. The Committee's lead counsel could not be in attendance, but Judge Ezra ordered the Committee's co-counsel to be in attendance at the status conference. This contradicted his earlier position that the Committee was not a party and any appeal of his rulings would therefore be unsuccessful. At the status conference, Judge Ezra refused to permit the reading of a letter from the Committee's lead counsel who could not attend and disallowed the letter from becoming a part of the record of the proceeding. The letter questioned the propriety of the Judge's actions and indicated that the Committee would request his disqualification.

Judge Ezra's actions were all highly unusual. He scheduled his own status conference. He ordered the attendance of the Committee's co-counsel by a telephone call that the judge placed himself when the Committee was not a party. He refused to permit lead counsel's letter to become part of the record. These actions, together with the judge's highly critical and unsupported comments about the Committee, create the appearance that the judge, instead of remaining a detached and neutral adjudicator, has, perhaps unwittingly, become an interested participant, attempting to protect his appointees and himself.

The Committee, after consulting with counsel, intends to move ahead with legal action to reverse Judge Ezra's actions and disqualify him. Unless the Committee can obtain testimony from Court Monitor Groves, Juanita Iwamoto, and Judith Schrag, it will have many unanswered questions about their roles, those they hired, their compensation and expenditures, and the overall effectiveness of their efforts. The committee's work is incomplete unless it learns more about the benchmarks and how they came about. It needs information on the numerous consultants who were brought to Hawaii to assist



in the development of a system of care and other topics on which only the federally-appointed officials can shed light.

The committee still desires to speak with Lenore Behar, another former member of the Technical Assistance Panel. Dr. Behar is under indictment on 46 counts in North Carolina for allegedly misusing foster care and Medicaid monies. She had a large role in designing Hawaii's system of care that is patterned after her philosophy of a comprehensive continuum of care.

### ***The Board of Education exercises minimal oversight over Felix spending***

The Committee found that the Board of Education also has not received a clear accounting of *Felix*-related costs. The former board chair, Mitsugi Nakashima, and the current board chair, Herbert Watanabe, testified to the Committee about the shrinking role of the board. They described the board's responsibilities as primarily establishing policies and hiring the superintendent who manages the system.

With respect to the budget process, the board reviews and approves the operating and capital improvement project budgets that DOE staff prepares. These are submitted to the governor through the Department of Budget and Finance, to become part of the executive budget requests. Once the appropriations act is signed, the board's role is limited to approving the department's distribution of the governor's budget restrictions.

The board does not receive expenditure information automatically or regularly from the DOE. Additionally, according to the board chairs, the board sometimes receives information that is not useful because of insufficient detail. For example, the board raised questions and did not receive adequate answers about two *Felix*-related contracts. Unresponsive replies to board requests appear typical—when the DOE does not respond to board questions, the chairs stated their only recourse was to maintain a list of IOUs and to remind the superintendent of them.

The board's minimal role has been further diminished by the federal court's granting of "superpowers" to the superintendent. The "superpowers" exempted the superintendent from state procurement and civil service laws. In fact, the Department of the Attorney General emphasized to the board that while it

should be kept informed of *Felix* matters, it should not interfere with compliance efforts.

The DOE bypasses the board on numerous *Felix*-related matters. For example, the board had no opportunity to review two controversial contracts: a \$100 million special education teacher recruitment and leasing contract and a \$2.3 million contract for targeted technical assistance (both discussed in later sections of the report). In addition, although the board normally reviews items related to federal funds, it was not given that opportunity when excess federal impact aid was used instead of general funds for a targeted technical assistance contract.

Surprisingly, the board also did not have any role in the request for emergency appropriations. When the budget administrator was asked why that would be, the only answer was that it would require an emergency meeting, but the DOE had no idea if the board had any resistance toward scheduling one. This only further demonstrates that the DOE does not consider the BOE to have any meaningful role in *Felix* matters.

**The Board of Education recently took a more assertive role in *Felix* matters**

The board chairs revealed to the Committee that over the past year and a half, they have responded to growing concerns from DOE staff about potential problems related to *Felix*. For example, the board instructed the former superintendent to resign from his membership on the Board of Directors of Pacific Resources for Education and Learning (PREL), a federally funded agency that provides assistance to school systems in the Pacific Region.

In August 2000, without board approval, former superintendent LeMahieu awarded PREL a \$2.3 million contract to assist the DOE in achieving compliance with the *Felix* consent decree. Embedded in that contract was a subcontract to Na Laukoa that DOE staff had opposed because of the contractor's lack of qualifications. When questions arose about a conflict of interest, the former superintendent argued that his membership on PREL's board did not pose a conflict of interest. However, upon review of the information submitted and the \$2.3 million PREL contract, the board asked the former superintendent to resign from his position on PREL's board of directors, which he did.



The Committee believes that the Board of Education should be more knowledgeable and involved in the review of *Felix* matters. The board should demand that DOE develop a more accurate and efficient way to explain its budget and expenditure information. Most importantly, regardless of any superpowers granted by the federal court, the board should require the department to justify its spending decisions on *Felix*-related items just as it should for all other expenditures of the department. As will be seen throughout this report, the department's lack of controls in the *Felix* system of care has allowed accountability for spending and effectiveness of services to fall by the wayside. The Board of Education should lead corrective actions.

### ***The DOH has used confidentiality to limit legislative oversight***

The Committee found the DOH to be uncooperative in providing committee staff access to client files and related documentation. The DOH cited its deputy attorney general's interpretation of FERPA, which made the investigation of specific alleged improprieties, waste, or lack of oversight difficult. The DOH first limited its concerns on the confidentiality issue to the revelation of client names. The committee's staff reassured DOH that it was not interested in client names—just in some method of matching billing records, which contained client registration numbers. However, once questions of potential fraud arose and committee staff requested billing records, the DOH also denied access to client numbers. This made it impossible for the Committee to carry out its oversight role and verify allegations of abuse.

### ***Internal monitoring at the DOH is deficient***

In FY1999-00, the DOH Child and Adolescent Mental Health Division had 91 contracts worth approximately \$92.4 million. Most of the contracts are for direct services to children. The DOH has in-house and contracted staff that are supposed to assist the division in monitoring mental health services under the *Felix* consent decree and to ensure that they are cost-efficient.

Despite having established monitoring processes and a certain degree of oversight, the division has not adequately monitored the effectiveness or cost-efficiency of the services it funds. Instead, the division and the department have ignored telltale signs of abuse that foster a culture of profiteering at the State's expense.

The DOH administration exercises minimal oversight over the division's contracts and operations. In fact, Valerie Ako, chief of the department's Administrative Services Office, told the Committee that as of July 2001, her office is no longer involved in the division's contract administration. Instead, the division acts on its own. It bypasses the Administrative Services Office and works directly with the Department of the Attorney General in processing contracts. It has its own staff that outnumbers staff in Ms. Ako's office. Yet the division has failed to prevent abuse and waste on the part of its contractors. The committee found that some private provider agencies have made excessive profits by retaining a large portion of payments they receive from the State for overhead or administrative costs. The division excused these disadvantageous contracts with the rationale that it had little choice, with the threat of federal takeover. The division also argues that it was focused on building system capacity with a network of providers.

The division's contract monitoring focuses on procedural compliance and not on whether services ordered in the student's Individual Education Program (IEP) were actually authorized, delivered, and in conformance with clinical standards. The division relies heavily on computerized verification to validate billings and expends little effort in analyzing anomalies in those billings. Therefore, the division has failed to identify incidences of false billing.

#### **Flex and respite services are not monitored**

The DOH pays for flex services or services other than those under contract. They include payments for such things as medication, mental health services not defined in the Clinical Standards Manual, and recreational activities. Respite services provide a paid caregiver for parents so that they can have a reprieve from the stress that often accompanies caring for a seriously mentally ill or disabled child. Payments for both flex and respite services are tracked manually and entered in summary form into the division's computer system.

Because flex and respite services are highly discretionary, they are highly subject to abuse. For example, the Committee heard complaints of boyfriends and relatives receiving payments and of payments for horseback riding lessons. Despite these pitfalls, the division chief recently rescinded her oversight over the use of these funds and delegated it to the branch chiefs.

The delegation of responsibility and the manual—rather than computerized—tracking of flex and respite service payments has resulted in even less effective

controls and accountability over these payments. For example, as long as four months after the end of the fiscal year, the division was still unable to provide any reports on flex and respite expenditures for FY2000-01. The division has not monitored these expenditures to determine whether patterns of waste, abuse, or fraud have occurred. The DOH's lack of controls over these expenditures and the seeming lack of common-sense justification for such services are of concern to the Committee.

## **Problems Stemming from Court-Granted Extraordinary Powers**

In June 2000, the U. S. District Court granted the superintendent of education and the director of health extraordinary powers to make changes needed to achieve compliance. Under these powers, the two department heads could waive requirements of the procurement law and bypass personnel laws for creating and hiring *Felix*-related positions.

### ***The former superintendent of education appears to have abused superpowers***

The former superintendent used the court-granted "super powers" to enter into a contract with an unqualified provider. These powers allowed him to circumvent the seeking of competitive bids and the approval of the Board of Education and the attorney general.

The federal court has been concerned with those school complexes that have had the most difficulty in passing service testing. This concern resulted in court-approved benchmarks requiring the DOE to identify the 14 complexes with the greatest needs, and to contract with private agencies to coordinate, direct, and provide targeted technical assistance to these complexes. Targeted technical assistance involves working with the schools in each identified complex to develop a Service Design Plan that would enable the DOE to deliver those services that would help schools meet the requirements of the *Felix* consent decree.

Serious ethical concerns arose when the former superintendent personally selected the company of a friend, Kaniu Kinimaka-Stocksdale, for a contract even though DOE staff objected that her company, Na Laukoa, was not qualified. Ms. Kinimaka-Stocksdale does not have any educational or

professional background in mental health. She was previously employed as a hula dancer and operated a modeling and talent agency. She admitted to an intimate relationship with the former superintendent.

The former superintendent and Ms. Kinimaka-Stocksdale deny that the contract was awarded because of their personal relationship, but the former superintendent took a number of steps to ensure that the contract would be granted to Na Laukoa. He altered the funding for the contract from state general funds to excess federal impact aid funds, which are not subject to legislative review. Also, because staff expressed serious concerns with Na Laukoa's qualifications, he created an umbrella contract with Pacific Resources for Learning in Education (PREL). PREL is a nonprofit organization that holds a federal contract with the U.S. Department of Education and grants awards primarily through a competitive process. The contract with PREL stipulated that Na Laukoa be subcontracted for the targeted technical assistance function and specified that Na Laukoa would receive \$688,000 of the over \$2.3 million contract. Unconventionally, the contract between the DOE and PREL already designated Na Laukoa as the sub contractor, such that there was no search for subcontractor providers, thus making the subcontract itself merely perfunctory.

#### **DOE staff objected to the contract**

The former director of the DOE's Student Support Services Branch, Robert Golden, found a presentation conducted by Na Laukoa to be unsatisfactory. The presentation was made two months prior to the PREL contract. Mr. Golden had been directed to attend the presentation by the former superintendent with no explanation as to its purpose. There were no other presenters. Mr. Golden expressed his disapproval to the former superintendent both verbally and in writing. Mr. Golden felt that Na Laukoa had no understanding of school-based services locally or awareness of nationally recognized models on school-based mental health. Failing to persuade the former superintendent, Mr. Golden took his concerns to the Court Monitor, who did nothing.

Additionally, Na Laukoa required considerable "catch up" to fully grasp the DOE's school reform initiative, Comprehensive Student Support System (CSSS). The head of the DOE's Special Education Section, Debra Farmer, stated in her testimony that she spent a significant amount of time training Na Laukoa staff on such basic topics as state and federal special education regulations and service testing – topics in which any qualified agency providing school-based services should already have had expertise.

Health department staff received complaints that some of the therapeutic aides employed by Na Laukoa were abrasive and unprofessional with both DOH and DOE personnel. Furthermore, DOH questioned Na Laukoa's ability to administer a statewide contract.

The more important questions are whether Na Laukoa's services were necessary or worthwhile. The commonly held opinion is that the value of this targeted technical assistance is highly questionable. The technical assistance coordinators, hired by PREL, worked with each complex to help them complete and implement its Service Design Plan, a document required by the court for compliance. When questioned about exactly what type of assistance Na Laukoa provided, the owner of Na Laukoa could not provide an adequate or coherent explanation.

Because of the former superintendent's abuse of his extraordinary powers, the DOE issued a costly contract for Na Laukoa to perform a function that may not have been necessary. The DOE could have sought other more cost-efficient alternatives, including the use of existing staff in the DOE's Special Education Section. The \$2.3 million was a wasteful endeavor that reduced funds that could have been used for direct services to children.

***Superpowers used for a questionable \$100 million contract recommended by a federal court-appointed official***

The DOE used the superpowers again to enter into a controversial contract with a mainland firm to recruit special education teachers. The DOE awarded the contract without competitive bidding and without any review by the Department of the Attorney General.

The federal court has an ongoing concern with the shortage of certified or fully qualified special education teachers and other professionals. On August 3, 2000, Court Monitor Groves set a benchmark for the DOE stating that "national recruitment firm(s) will be retained to recruit qualified professional manpower for difficult-to-serve areas of Hawaii as soon as possible and no later than August 15, 2000." A specific benchmark required that the percentage of licensed and/or trained special education teachers in the classroom would not fall below 85 percent of the total special education teacher positions by September 2000.

According to the former Assistant Superintendent of Administrative Services, Paula Yoshioka, the DOE felt extremely pressured because it had only two weeks to retain a mainland recruitment firm. Since DOE staff had little experience with contracted mainland recruiting for special education teachers, the deputy superintendent at the time contacted Court Monitor Groves for advice. He suggested Columbus Educational Services upon the referral of Judith Schrag, another Technical Assistance Panel member. This Committee finds Dr. Schrag's referral questionable since Columbus had very little experience with hiring special education teachers.

Ms. Yoshioka testified that she contacted Columbus Educational Services and requested submission of a proposal. After reviewing several drafts of the proposal, and apparently without much negotiation, a three-year contract for \$100 million, to be paid through state general funds, was signed. The Columbus contract has been in effect since September 1, 2000 and was exempt from the public bidding process pursuant to the federal court's grant of "super powers" to the superintendent.

Under the contract, Columbus is required to conduct an "extensive search" for candidates who are qualified, licensed, and certified in special education, which includes masters-level counselors (41 FTEs) and special education teachers (332 FTEs). The work is to focus on referring candidates to serve Hawaii's rural areas such as Molokai, Lanai, Kau, and Kohala. Those hired become employees of Columbus for up to three years, subject to the availability of DOE funding. Therefore, special education teachers coming to Hawaii are not state employees, but are merely leased to the department. This arrangement caused much controversy among DOE teachers who discovered that teachers hired by Columbus could be paid upwards of \$102,000, which includes salary, benefits, and incentives, plus a one-time relocation bonus of \$10,000. In fact, by the end of the contract period in August 2003, a special education teacher leased by the State from Columbus would cost the State \$335,250 over three fiscal years.

### **The State covers virtually all contract costs**

The State covered virtually all costs for the Columbus contract. In addition to paying the teachers' salaries and Columbus' profit, the State pays for Columbus' candidate recruitment travel costs, including: 1) Mainland travel (within the continental U.S.) at \$1,430 per trip; 2) Mainland to Hawaii travel



at \$4,505 per trip; and 3) Hawaii inter-island travel at \$845 per trip. The projected travel costs include roundtrip airfare, lodging, meals, auto rental, parking, and taxis. Over a three-year period, Columbus projected that the cost for recruitment travel would be approximately \$2.1 million.

The State also paid for staff support services so that Columbus could set up an office in Honolulu. The start-up included five Columbus employees who would accompany candidates on interviews, facilitate relocation, and support their final decision-making process. The projected total for these staff support services costs are approximately \$3.3 million.

The contract also allows Columbus to retain all of the equipment and furniture it purchases. Normally, such items become the property of the State. Committee staff attempted to determine how much the State has paid Columbus for furniture and equipment. However, the DOE reported that it did not have this information, but that Columbus reportedly purchased furniture at local auctions and that some of the furniture includes personal items of the Honolulu office head.

Columbus Educational Services clearly benefits from the contract since it does not have any liability. Even if Columbus failed to hire a single teacher or if a teacher terminated his or her contract prematurely, Columbus would not have breached its contract with the State.

### **Contract amount fluctuates dramatically**

During one of the investigative hearings, an allegation was made that the Columbus contract started out as high as \$120 million and then was reduced to \$100 million, which became the initial contract amount. Since then, the contract has been amended twice and the total contract amount has fluctuated widely as shown in Exhibit 2.4. It varied from \$100 million to \$40 million to \$63 million.

Ms. Yoshioka testified that the reasons for the amendments were (1) the lack of accurate, updated DOE information on special education teacher vacancies and (2) a decision to focus on hard-to-fill areas. Therefore, the contract amount was reduced to \$40 million on January 28, 2001 to reflect the adjusted amount. The number of recruits needed decreased to 15 masters' level school counselors and 123 special education teachers. The Committee questions whether the true

**Exhibit 2.4****Columbus Educational Services Contract Amounts, FY1999-00 to FY2003-04**

FISCAL YEAR	ORIGINAL CONTRACT (September 1, 2000)	1 <sup>st</sup> AMENDMENT (January 28, 2001)	2 <sup>nd</sup> AMENDMENT (September 1, 2001)
FY2000-01	\$16,401,025	\$7,201,983	\$4,812,732
FY2001-02	\$41,537,419	\$16,341,604	\$25,248,135
FY2002-03	\$42,172,496	\$16,538,047	\$28,546,588
FY2003-04 (for July and August only)	Not applicable	Not applicable	\$4,739,317
	\$100,110,940	\$40,081,634	\$63,346,772
TOTAL			

reason might have been Columbus' inability to hire enough teachers to meet the terms of the original contract.

Another amendment to the Columbus contract was executed on September 1, 2001, which increased the contract amount by \$23 million to \$63.3 million. By June 30, 2002, Columbus is to provide qualified referrals for 14 high-risk counselors and 241 special education teachers for a total of 255 positions. All of these employees will be terminated on August 31, 2003.

The Committee was surprised to find the DOE increasing its contract with Columbus by \$23 million, given its past problems with Columbus. The DOE staff reported that they have been unable to obtain detailed information from Columbus on the actual cost of leasing a special education teacher from Columbus and administrative costs and profit. Columbus reportedly told the DOE that the approximately \$100,000 paid to Columbus for each teacher per year, could be broken down as follows:

- 1/3 base salary (\$33,000 to \$42,000);
- 1/3 employee benefits and taxes (medical, dental, life insurance, disability insurance, pension (401K), payroll taxes; and
- 1/3 additional allowances or incentives (temporary living expenses, travel, housing, technical support, sign-on and retention bonuses).

The DOE staff currently responsible for the administration of the Columbus contract claims that Columbus does not make any profit from the approximately \$100,000 it charges per teacher. However, Ms. Yoshioka's



testimony confirmed that Columbus could indeed retain any remaining balance after salary, benefits, and incentives are paid to the teacher. She also agreed with a Committee member's suggestion that out of a potential balance of close to \$47,000 after salary and benefits are paid, Columbus would profit on whatever remained. Committee staff estimated that Columbus' profit could be as high as \$20,000 per teacher per year. And despite this enormous amount of profit that Columbus could reap, there was nothing to require Columbus to document the breakdown of payment for any meaningful oversight.

Committee staff reviewed correspondence provided by DOE staff and noted its repeated and futile attempts to obtain accurate cost information from Columbus. Some of the correspondence clearly indicated frustration with Columbus and a desire to seek alternatives to the contract. Therefore, the Committee questions why the DOE would increase Columbus' contract amount without adequate cost information.

### ***The DOE created questionable Felix positions***

The DOE has also created a number of *Felix*-related positions. This Committee has yet to receive the information it requested from DOE on position descriptions and justifications for these positions. At first glance, responsibilities for these positions are unclear and compensation appears to be arbitrary. For example, the superintendent's office has three new *Felix* "assistant" positions. One supervisor is supposed to oversee the other two staff, but one subordinate is paid the same salary as the supervisor and the other subordinate is at a much higher rate than the supervisor. The DOE should be focusing its staffing efforts on school-level positions, not on the state and district levels.

### **The *Felix* Consent Decree Had Unfortunate Consequences: Conflicts of Interest and Self-Serving Practices**

From the court monitoring personnel through the plaintiffs' attorneys down to the former superintendent of education and staffs at the DOE and DOH, instances of apparent conflicts of interest and self-serving profiteering are easily found. We believe that this climate of profiteering is a byproduct of the federal court's protection of court appointed personnel, the superpowers given to the heads of the DOE and DOH, the curtailment of the Legislature's

investigative powers, and lackadaisical monitoring, particularly by the DOH. Those who profit while violating state ethics law appear to suffer no consequences.

The plaintiffs' attorneys fees have increased ever since the consent decree was issued in 1994. Many providers who received contracts appear to have had an unfair advantage. One issue that was raised throughout the investigative hearings was the conflicts of interest that allegedly exist between some DOH employees and some of the private provider agencies.

### ***Court monitor was self-serving***

In the prior section, the Committee discussed the service-testing instrument used to measure compliance with the *Felix* decree. Court Monitor Groves and his business partner, Ray Foster, designed the instrument shortly after the decree was issued. Although they apparently did not charge the State for use of the instrument, the State basically paid for its development because anything the Court Monitor worked on related to *Felix* could be charged to the State. Committee witnesses testified that modified versions of the protocol developed in Hawaii have been used in other states, possibly for a fee. Furthermore, Dr. Foster was paid for providing service testing training. For FY2000-01 alone, the budget for service testing costs was \$412,000, with \$50,000 for Dr. Foster to provide training.

The extent to which either the Court Monitor or his business partner might have benefited from the service testing instrument could not be determined. Committee staff were denied copies of federally-required tax documents that should be readily provided upon request.

One committee witness claimed that DOE staff worked on some of the components of the protocol, but were not credited for their efforts. Furthermore, DOE staff was not informed that Court Monitor Groves and Dr. Foster were planning to copyright the document for marketing and distribution in other states. Interim superintendent Hamamoto testified that she did not know that the service testing instrument was owned by Court Monitor Groves and his partner—yet, she was the designated primary *Felix* compliance official when she was deputy superintendent.

### ***The State has paid over \$1.5 million to plaintiffs' attorneys***

The consent decree requires the State of Hawaii to pay fees and costs to attorneys representing the *Felix* plaintiffs. The State has paid over \$1.5 million in fees and costs so far. As part of its investigation, the Committee subpoenaed all documents relating to legal services and costs of private attorneys involved in the *Felix* consent decree. In reviewing the information, we found fees charged by the plaintiffs' attorneys have increased.

In 1994, after the decree was filed, the State paid \$347,638 in attorneys' fees and costs to four law firms for the work they did from 1991 to 1994. They were: (1) Alston Hunt Floyd & Ing; (2) Eric Seitz, Esq.; (3) Protection & Advocacy/Schember-Lang, Esq. and (4) Disabled Legal Rights Project/Cooper, Esq. The decree allows the attorneys to recover:

- Reasonable attorneys fees and expenses, and
- Fees and expenses of expert witnesses.

### ***Fees continue to increase***

The State is paying increasing fees to plaintiffs' attorneys, even though the decree is largely silent on their role once the decree was filed. The only specific reference in the original decree required the plaintiffs to review and approve an Implementation Plan. As seen in Exhibit 2.5 below, in the six years since the decree was issued, attorneys' fees have generally increased, from \$93,822 in 1995, the year after the decree was issued, to \$271,841 in 2000.

Based on the information that was provided, from 1991 to approximately April 2001 the State paid \$1,559,535 in attorneys' fees and costs to plaintiffs' attorneys.

### ***The plaintiffs' attorneys' role is not clearly defined***

The deputy attorney general representing the State in the *Felix* lawsuit conceded that legal activity by plaintiffs, instead of decreasing, has increased over the years. He testified that Court Monitor Groves proposed that the plaintiffs' attorneys increase their involvement in the process, which began two or three years after the decree had been issued. On more than one occasion,

**Exhibit 2.5**  
**Fees Paid to Felix Plaintiffs' Attorneys, 1991 to 2001\***

YEAR	AMOUNT
Prior to 1995	\$373,949
1995	\$93,822
1996	\$153,159
1997	\$148,205
1998	\$204,539
1999	\$200,782
2000	\$271,841
2001**	\$113,238
<b>TOTAL:</b>	<b>\$1,559,535</b>

\* Excludes fees paid for individual claims.

\*\* In addition, plaintiffs' attorneys have submitted \$102,927 in requests for payment for services rendered through approximately August 2001. These requests are apparently pending with the Department of the Attorney General.

even the federal court has expressed concerns about the over-participation by plaintiffs' attorneys in consent decree activities and the amount of attorneys' fees being charged to the State.

Plaintiffs' attorneys appear to be overly involved in a number of compliance activities. For example, they appear to have taken an active role in reviewing whether or not individual school complexes are in compliance with the terms of the decree. They attend school complex compliance presentations, sit alongside the court monitor and appear to provide input as to whether a school complex has achieved compliance. Even the interim superintendent has affirmed to the committee that the plaintiffs' attorneys' over-involvement affected morale in the schools and affected the compliance efforts. The Committee has been unable to determine why the plaintiffs' attorneys have assumed this role since it was prohibited from questioning Court Monitor Groves about this as well as other types of issues.

**Attorneys' fees lack careful scrutiny**

Plaintiffs' attorneys submit their invoices to the Department of the Attorney General for review and payment. Once the parties agree on the amount of fees owed, they submit a stipulation for payment for the court's approval. Upon approval by the court, the attorney general directs the DOE to remit a check to the respective attorneys. Exhibit 2.6 shows the attorneys' fees that have been paid to individual law firms from 1991 to approximately mid 2001. (The exhibit excludes recent payment requests of \$102,927 that appear to be pending with the Department of the Attorney General.)

## Exhibit 2.6 Fees Paid to Law Firms, 1991 to 2001

YEAR	ATTORNEY	AMOUNT
Prior to 1995	Alston Hunt Eric Seitz Susan Cooper Suzanne Young <b>Total</b>	\$263,524 \$59,505 \$19,475 \$31,445 <b>\$373,949</b>
1995	Alston Hunt Eric Seitz Susan Cooper Suzanne Young <b>Total</b>	\$58,369 \$23,197 \$4,950 \$7,306 <b>\$93,822</b>
1996	Alston Hunt Eric Seitz Susan Cooper Suzanne Young <b>Total</b>	\$95,758 \$46,759 \$1,350 \$9,292 <b>\$153,159</b>
1997	Alston Hunt Eric Seitz Susan Cooper Suzanne Young <b>Total</b>	\$91,005 \$53,507 \$1,050 \$2,643 <b>\$148,205</b>
1998	Alston Hunt Eric Seitz Susan Cooper <b>Total</b>	\$125,852 \$77,237 \$1,450 <b>\$204,539</b>
1999	Alston Hunt Eric Seitz Susan Cooper <b>Total</b>	\$138,721 \$60,499 \$1,562 <b>\$200,782</b>
2000	Alston Hunt Eric Seitz Susan Cooper <b>Total</b>	\$214,470 \$54,949 \$2,422 <b>\$271,841</b>
2001*	Alston Hunt (through April 30) Eric Seitz (through July 9) Susan Cooper (through March 31) <b>Total</b>	\$72,591 \$39,762 \$885 <b>\$113,238</b>

\* partial amount

Generally, a review of the reasonableness of attorney's fees is based on the following guidelines: (1) time and labor required, difficulty of the questions involved and requisite skill required; (2) customary charges for similar services; (3) the amount in controversy and the benefits resulting to the client from the services; (4) certainty of the compensation; and (5) whether the acceptance of the particular case will preclude the lawyer's appearance for

others or the loss of other employment. Courts note that the legal profession is a branch of the administration of justice and not a mere money-getting trade.

The Committee found that the Department of the Attorney General paid in full almost all of the fees requested by the plaintiffs' attorneys. The office appears not to have scrutinized the billings in any meaningful way. When the Committee questioned the deputy attorney general about the appropriateness of certain time entries, he indicated that, to some extent, the attorney general's department was trying to accommodate the plaintiffs by gathering "the consent or the support of the Plaintiffs and not have a very adversarial situation where we would have to not only confront them on the attorney's fees issues but also on the compliance issues."

The Committee questions whether the attorney general's department followed any guidelines or standards in determining whether the fees and costs requested were reasonable. For example, the Committee found billings for:

- Charge of 0.4 hours to "work on political issues";
- Attendance at three different meetings on educational plans for individual *Felix* students on the Big Island, including payment of airfare and travel expenses to attend the meetings;
- Partial attendance at MST (presumably Multisystemic Therapy) training;
- Monitoring *Felix*-related legislative bills and speaking with legislators during the 2001 session by Alston Hunt;
- Multiple vague references in Alston Hunt legal invoices to conversations with various individuals such as "Kauai mom," "Konawaena mom," or "Big Island grandmother";
- Airfare and related travel expenses for a plaintiff's attorney on a neighbor island to fly to Honolulu to attend compliance presentations, meetings, and court hearings despite the fact that the attorney moved from Honolulu after the consent decree; and
- Airfare and related travel expenses for plaintiffs' attorneys to travel to the neighbor islands to attend school complex compliance presentations.

- Alston Hunt staff to prepare for and attend a legislative investigative committee hearing on July 13, 2001;
- A plaintiff attorney's attendance at a legislative investigative committee hearing on August 20, 2001;
- Quashing the Committee's subpoenas of the court monitor and Juanita Iwamoto, executive director of the Felix Monitoring Project, Inc., including multiple communications with the monitor and Iwamoto regarding the subpoenas;
- Meeting with the Court regarding "legislative activity" on June 15, 2001.
- Costs of various meals for lunch/dinner meetings with plaintiffs' attorney, court monitor or others, totaling approximately \$400;
- Conversations and meetings with members of the investigative committee;
- Time to pull articles re: "Legislative attacks on *Felix*".

#### **Disparity in billing rates and amounts**

The plaintiffs' attorneys charge different fees. It is unclear why the Alston Hunt law firm billed twice as much in legal fees and costs as Mr. Seitz's law firm, when presumably Mr. Seitz is also representing *Felix* plaintiffs and rendering services that he deems necessary to adequately represent his clients. In addition, the lead Alston attorney's present billing rate is \$250/hour compared to Mr. Seitz's \$200/hour rate. Mr. Seitz's rate has remained the same since the inception of the case, while the Alston attorneys' rates have steadily increased since 1994.

#### **Total legal fees and costs are not known**

The State also pays attorneys' fees in addition to those paid in the *Felix* litigation. These claims are outside the *Felix* consent decree but relate to special education. Parents often file individual claims on behalf of their children for violations of the IDEA or Section 504. Individuals who prevail at an administrative hearing are entitled to attorneys' fees. The Committee was



not able to obtain information from the attorney general's department about the amount of attorneys' fees and amount the State paid for individual claims. They have been described as a "formidable amount." Sometimes the attorneys' fees exceed the cost of the services that the plaintiffs are requesting.

***The DOH staff have many apparent conflicts of interest***

The Committee found numerous instances where DOH staff appear to have conflicts of interest. Often, DOH staff responsible for preparing proposals ended up receiving a contract for the services ordered under the proposals. Personal relationships were often involved in service programs. We give some examples below.

**Personal relationships were involved in the implementation of MST**

In a later section, we discuss the MST, a home-based experimental program. The program coordinator was John Donkervoet, the husband of Tina Donkervoet, the chief of the DOH Child and Adolescent Mental Health Division. Although Dr. Donkervoet did not report directly to his wife, his supervisor, head of clinical services, Mary Brogan, reported directly to Ms. Donkervoet.

Both Dr. and Ms. Donkervoet acknowledged the Committee's concerns over an appearance of a conflict of interest. In fact, Ms. Donkervoet had asked the State Ethics Commission to determine whether there were any ethical considerations. Dr. Donkervoet said the issue of conflict of interest was one of the reasons why he resigned from his MST coordinator position in October 2001. This was, however, more than one and a half years after he had been appointed and just before he was scheduled to testify to the Committee.

Furthermore, in the mid-1990s, John Donkervoet had worked with the developer of MST, Scott Henggeler, at the Medical University of South Carolina. Both Dr. Donkervoet and Dr. Henggeler stood to gain from the implementation of MST. Dr. Henggeler charges a licensing fee for the use of MST and also charges for consultation and training. Committee staff could not get information on the amount of the licensing fee, but found that in FY2000-01 the DOH spent \$522,000 on MST Clinical Consultation and Training.

### **Former DOH employees may have violated ethics laws**

Two former employees of the DOH Child and Adolescent Mental Health Division are owners of Hoahana Institute, a for-profit provider agency that obtained a contract with the division to provide outpatient and intensive support services to *Felix* children. Linda Hufano, Hoahana vice president, was formerly head of the DOH Child and Adolescent Mental Health Division's Children's Mental Health Services Team. Her husband, Dr. Richard Kravetz, Hoahana Institute's president, was still employed as head of the division's Diamond Head Adolescent Day Treatment Program when he began providing services for the division under the Hoahana contract. The contract became effective on July 1, 1997—only nine months after Dr. Hufano had left the division and two weeks before Dr. Kravetz's resignation.

Doctors Hufano and Kravetz appear to have violated several sections of the State Ethics Code. Section 84-18(c), HRS prohibits a former state employee from receiving compensation to represent a business on matters in which he participated or on matters involving official action by the particular agency with which he had served for a period of *12 months* after his termination. Section 84-14(d), HRS prohibits a state employee from being compensated to assist or represent a business on a matter in which he has or will participate and on a matter before his own agency. Both sections are intended to prevent a third party from obtaining an inside track or unfair advantage with a state agency through either a current or former employee.

The nature of Dr. Hufano's duties at Hoahana Institute during her 12-month "cooling off period" appear to violate the second part of Section 84-18(c). She established Hoahana Institute along with some others a month before she left the DOH. Dr. Hufano ended her position with the Child and Adolescent Mental Health Division on September 30, 1996. However, she participated in writing Hoahana Institute's response to the contract proposal during the early part of 1997 and signed the response on March 12, 1997. On May 16, 1997, she also gave a written response to the division, affirming that Hoahana Institute had submitted its best and final offer regarding the services it was to provide.

The nature of Dr. Kravetz's duties at Hoahana Institute appear to violate the second part of Section 84-18(c), as well as Section 84-14(d). He resigned from the Child and Adolescent Mental Health Division on July 15, 1997. However, he signed Hoahana's contract on July 17, 1997—just two days after his date of

termination. Possibly a more serious ethics violation is the fact that Dr. Kravetz also participated in writing Hoahana Institute's contract proposal while still employed at the division.

**The DOH Child and Adolescent Mental Health Division is remiss about ethical considerations**

The DOH's Child and Adolescent Mental Health Division appeared to disregard about the State Ethics Code. According to a July 10, 1997 memo from former division chief Rich Munger, employees could work with private provider agencies as long as their involvement did not constitute a conflict of interest. However, the example used to describe a conflict of interest was that of an employee authorizing services that he would also provide. The division did not seem to view its own employee writing a proposal and bidding on the same proposal as a problem, even though this clearly points to an unfair advantage.

Furthermore, the division has no measures to ensure that private provider agencies abide by the State Ethics Code. The division does not adequately review private provider agencies' responses to proposals. For example, if it had carefully reviewed Hoahana Institute's proposal, the division would have discovered that Dr. Kravetz was still employed at the division. This should have raised a red flag during the review process.

Also, although private providers are required to sign a Standards of Conduct Declaration, which covers the State Ethics Code, the division does not verify whether statements are accurate. The division's actions are reactive, and it investigates potential violations only when brought to its attention by an outside party.

In a belated response to the allegations against Doctors Hufano and Kravetz, the Child and Adolescent Mental Health Division contacted both the Department of the Attorney General and the State Ethics Commission. At one point, the division considered ending its contract with the Hoahana Institute, but, instead, chose to wait for close to three years for a response from the State Ethics Commission. In the meantime, the division extended Hoahana's contract even though, in November 1997, it had sent a memo to the Department of the Attorney General stating that the contract should be terminated immediately.

## **The *Felix* Consent Decree Has Fostered an Environment of Waste and Profiteering**

In an environment where money is no object, questionable practices are often not scrutinized carefully. Violations have occurred without sanctions or other consequences. Both the DOE and DOH were profligate with public monies. The departments sometimes spent wastefully and imprudently.

### ***The DOH allows providers to overcharge for services***

The Committee has found numerous instances where private provider agencies have overcharged the State for services. Inadequate controls impair the DOH's ability to ensure that children actually receive the services the State is paying for. The DOH Child and Adolescent Mental Health Division has only recently become concerned about this.

We note some examples of apparent overcharges below.

- A private provider billed the State for more hours worked by some employees than the number of hours it was paying them for according to the provider's payroll register.
- A therapist was paid for 1765.8 hours worked during August 1999 amounting to \$59,987.69. The billing included 7 hours of individual therapy, 5 hours of group therapy, 9 hours of therapeutic aide services, and 106 hours of Biopsychosocial Rehabilitation (BPSR) for a total of ***127 hours for one day***. BPSR billings may combine services by more than one clinician under one clinician's name, however, the lead clinician under whose name the billing is made is expected to be substantially involved. The DOH is still using and paying the therapist for services.
- A therapist billed for services for two sequential hours of billing—the first hour on the Big Island and the second hour on Oahu.
- Some providers appear to bill for individual services when they actually serviced clients in groups. This is not appropriate except for services designated and priced as group sessions.

- Committee staff also identified patterns of multiple billings being submitted for the same client on the same day.
- Often providers offer services that do not adhere to the DOH's clinical standards. For example, services limited to 12 weeks except in exceptional cases are routinely exceeded. One private provider agency provided services to 77 clinical clients (72 percent) for periods exceeding 12 weeks, 18 (17 percent) for at least a year. The State pays for these services at \$70 per hour and annual billings for a single client can exceed \$30,000.

### **Providers profit from excessive markups for therapeutic aide services**

The DOH Child and Adolescent Mental Health Division has a standard rate schedule attached to its request for proposals for mental health services. Private provider agencies bidding on these proposals must stay within the standard rate schedule. For example, the State reimburses private provider agencies a maximum of \$29 an hour for therapeutic aide services. This arrangement may encourage some private provider agencies to “underpay” its employees and contractors so that it can keep a larger amount in profit. We found markups of up to 250 percent for some services.

Therapeutic aides are used quite extensively to provide mental health services and may have only a high school diploma. According to the division's clinical standards manual, a therapeutic aide must have two years of work with children and/or adolescents. They must also be trained by someone trained or certified through the *Felix* Staff/Service Development Institute. Whether these standards ensure effective services is not known.

The Committee found that some private provider agencies have excessive markups. A private provider testified to the Committee that therapeutic aides are paid between \$11 to \$20 per hour. The records available to the Committee indicate an actual range of \$10 to \$17 per hour, with an average hourly pay of around \$13.

One provider's bill during FY2000-01 for therapeutic aides totaled 18,835 hours and \$749,885. Assuming that the employees were paid between \$13 and \$15.50 an hour, the payroll for 18,835 hours would be between \$245,000 and \$292,000, leaving the employer with a markup of between \$458,000 and \$505,000 or 157 percent to 200 percent. This differential is far greater than

can be explained by the cost of employee benefits, training and supervision, and a reasonable profit.

A private provider maximized its profit by billing 3,425 hours and \$240,000 for one therapeutic aide for FY2000-01, or up to \$805 per client per day. If the aide were paid at the reported top rate of \$20 an hour, the payroll cost to the employing private provider agency would be \$68,500, leaving the provider with \$171,500 to cover costs and profit, a markup of almost 250 percent.

Another private provider charged the State \$70 an hour for up to 11.5 hours a day for intensive in-home services by a therapeutic aide. Intensive in-home services are supposed to pair a mental health professional with a paraprofessional to provide therapeutic and systematic support to a client and family. However, the Committee found providers frequently billing this service under the credentials of therapeutic aides who are not necessarily mental health professionals. The division has confirmed that, in at least one instance, a therapeutic aide worked alone without a mental health professional.

**The DOH Child and Adolescent Mental Health Division is unconcerned about potential fraud.**

Conceptually, the Child and Adolescent Mental Health's billing system is simple and effective. Mental health services are specified by a group of professionals and are documented in a child's Individual Education Program (IEP). A care coordinator or an equivalent person at a school identifies a suitable private provider agency and issues a service authorization. The service authorization data is entered into the division's computer system.

The private provider agency assigns a clinician who is an employee or independent contractor. As services are provided, the clinician submits the billing to the contracted provider, who in turn submits the billing data in electronic form to the division. The electronic billing data is automatically checked by the computer to ensure that the billing data corresponds with the service authorization. A rejected bill is returned to the provider for resolution. According to division personnel, the most frequent problems that occur with automatic verification of billings are data mismatches, such as misspellings or inputting errors.

The Child and Adolescent Mental Health Division relies extensively on the automated check for ensuring that billings are accurate. Since the division has



not assigned any fiscal staff to identify cases of false billings, abuse and possibly fraud have resulted. Additionally, audits conducted by the division are not designed to discover billing abuse, but merely focus on documentation and adherence to clinical standards. Division personnel directly involved with service authorizations informed the Committee in testimony and informally that providers have found ways to “beat the system” that can only be detected by critically analyzing billing data and targeting questionable patterns.

For example, committee staff identified service providers whose billing patterns appear potentially abusive. Some of these problems date back at least two years and some of these same clinicians are known chronic abusers. These clinicians have been brought to the attention of superiors but no action has been taken.

### **Computer problems continue**

In the *Study on the Privatization of the Child and Adolescent Mental Health Program (Report No. 99-12)*, the Auditor found several problems with the Department of Health’s Child and Adolescent Mental Health Management Information System or CAMHMIS. At the time, the division had not adequately planned for the inclusion of private providers in the system. Without additional training or support from the division, private providers had submitted the following types of data errors: invalid service authorization codes, total service units billed in excess of units authorized, unauthorized service codes, and services provided prior to their authorization. The division acknowledged at the time of the study that it had problems with its management information system.

According to Child and Adolescent Mental Health staff, all of these problems have been resolved. However, during the course of the hearings, the Committee heard the same concerns regarding invalid codes, improper billings, and excess units or hours billed. For example, the computer system does not have a proper coding for day treatment services. Therefore, all day treatment hours are billed under one service provider’s name, resulting in an unusually high number of hours. Although those large numbers of hours may well include a number of different service providers, verifying their accuracy is difficult. Another problem is presented by billings for group therapy that may actually be providers billing for more than one client during the same period of time. Of significant concern is circumstantial evidence that progress notes to document and substantiate billings may have been falsified or merely produced

with any service being provided. This is especially disconcerting since it not only undermines the prognosis and development, if any, of the student, but also questions the accuracy of DOH's billing protocol.

The DOH has largely taken a reactive stance to these concerns and the Deputy Director of Behavioral Health constantly reiterated during her testimony to the Committee she would initiate an investigation if the Committee pointed out specific incidences of abuse. The DOH is missing the point – it needs to take preventive action.

### ***MST was a costly, wasteful experiment***

The DOH has wasted state funds on an expensive, experimental form of treatment called Multisystemic Therapy or MST. During the 2000 legislative session, the department requested \$1.2 million for MST as part of its emergency appropriation request. The DOH had issued a Request for Proposal in October 1999 for MST Services and awarded contracts in January 2000 with the knowledge that it did not have adequate funding for MST's implementation.

Furthermore, the consultants who worked on the *Felix* follow-up study for the Office of the Auditor found that using MST for the *Felix* class was questionable. MST had never been used with the same category of special education or mental health needs as *Felix* class children. MST was viewed as an experimental service that had not been used by other school districts and should not have been considered an “essential” service.

Concern with the DOH's questionable use of MST for the *Felix* class was confirmed by Len Bickman who was the lead researcher for the Fort Bragg Study in North Carolina that concluded that treatment outcomes for children with mental health needs were no different from the control group in the study. Reviewing a videotape of John Donkervoet's testimony to the Committee, Dr. Bickman stated that the research citing the effectiveness of MST to treat mental health problems of non-delinquent children and adolescents is weak to non-existent. Moreover, the only research that studied this type of children was conducted by Scott Henggeler, the founder of MST, and not an independent party – subjecting the studies to a potential bias toward favorable outcomes.

The budget for MST in FY1999-00 was \$1.25 million and \$2.5 million for FY2000-01. The Child and Adolescent Mental Health Division, which is responsible for MST, estimated in February 2001 that it would have a shortfall of \$1.65 million for MST and would need \$4.15 million. In other words, in one year, the cost of MST increased by approximately \$3.5 million.

Approximately \$1.12 million or one-third of this increase in cost was due to the addition of a second component of the MST initiative called the MST Continuum research project. The project was terminated well before completion and without any perceivable benefit to the children and families who participated.

### **MST was mandated by the consent decree despite its experimental nature**

The Committee questioned DOH administrators about the circumstances that led to the federal court mandating MST as a part of the consent decree. To the Committee's knowledge, other types of treatment are not specifically named in the decree. In its *Stipulation Regarding the Plans for Strengthening and Improving the System of Care* dated July 21, 2000, the federal court required the inclusion of MST and described it as a necessary component of the development of a system of care in Hawaii. A specific court benchmark required that at least 56 youth be receiving services by July 2001.

It was clear that Court Monitor Groves was familiar with the research project. The DOH notified him in April 2001 that the MST Continuum was failing. In the court monitor's second quarterly report for 2001, he noted that the department could not reach the benchmark and that he had no additional recommendations for how to improve the enrollment process for the MST Continuum study. He then simply replaced MST with a vague benchmark stating that both the departments of health and education must address the continued expansion and development of evidence-based interventions.

While the Committee recognizes the apparent improvement of the potential MST students, in that the number being sent to the mainland for treatment are at an all-time low, it in no way deflects the basic question as to why an experimental program was a benchmark.

### **MST was a failure**

After a little over a year, the MST Continuum study was shut down for lack of participants. The DOH had promised families who had agreed to participate in

the research project that they would receive MST Continuum services for two years. However, since the study was terminated abruptly, the DOH reneged on its agreement.

Families were informed of the termination of the study in a hasty manner. The DOH told parents that the transition would occur over the next few weeks to several months with care taken to ensure that youths and families would experience no gap in services. An MST team member testified to the Committee that she was given only two and a half days to transition the families she was working with and inform them that they would no longer be able to contact her for assistance.

Families who participated in the MST Continuum were supposed to be transitioned into alternative treatments. How this disruption in service impacted the youth and the families is not known.

The MST Continuum study has closed, but the DOH plans to continue home-based MST services. But home-based MST is also plagued with problems. A Therapist Adherence Measure or TAM was used to assess whether therapists were adhering to the MST treatment model by taking six factors into consideration. Three of the six factors were supposed to be positively correlated with positive outcomes for families who received home-based MST treatment.

The TAM scores of the therapists have not improved over the past year. The DOH acknowledged the negative scores and noted that the MST therapists are doing worse this year than last year on specific factors, including lack of adherence to the MST model.

The DOH attributed the decline in performance by MST therapists to high staff turnover and the lack of qualified candidates for MST therapist positions. Given the concerns with properly implementing the MST model and the health department's inability to determine cost-effectiveness, the Legislature should proceed cautiously before approving more spending for MST.

***A DOH employee has a private business on the grounds of a private provider***

Dr. David Drews, chief of the Diamond Head Family Guidance Center<sup>2</sup>, appears to have a conflict of interest. Dr. Drews was involved in a business relationship with a state-contracted private provider agency, Loveland Academy. Dr. Drews' relationship with Loveland Academy appears to be a conflict of interest because he oversaw authorization of services and payments to private provider agencies including Loveland Academy. Although he was not directly involved on a daily basis with service authorizations, he had the authority to override decisions made by subordinate staff, including care coordinators.

Since July 1, 1999, Loveland Academy has been under contract with the DOH Child and Adolescent Mental Health Division for assessment and diagnostic, outpatient, and intensive support and day treatment services to *Felix* class children between the ages of 3 to 20. Many of Loveland's clients are within the caseload of the Diamond Head Family Guidance Center. When testifying to the Committee, Dr. Drews acknowledged that, on occasion, he has reviewed Loveland's billings and has been contacted directly by Loveland's staff regarding billing concerns.

Dr. Drews also established Central Pacific University, a distance education institution located on Loveland's campus. Dr. Drews established the university on August 17, 1999, one month after Loveland opened its doors. The university stemmed from Dr. Drews' previous association with Honolulu University, another distance education institution. Both Central Pacific University and Honolulu University lack accreditation from an agency recognized by the U.S. Secretary of Education. In addition to lacking accreditation, they charge tuition on a degree basis rather than on a per-semester or per-credit basis. For \$3,000, a student can receive a bachelor's degree, for \$3,500, a master's degree, and for \$4,000, a doctorate.

Central Pacific University and Loveland have a formal relationship. According to an October 1, 1999 Memorandum of Agreement, Dr. Drews renovated several classrooms in exchange for use of classroom space at Loveland. Until October 2001, Central Pacific University prominently displayed its banner on one of Loveland's buildings. The university advertises itself as having an

innovative practicum program at Loveland for its psychology students, and Dr. Dukes claimed to be a member of the university's advisory board.

Dr. Drews appears to have violated the DOH Child and Adolescent Mental Health Division's policy and procedure manual relating to outside employment and relevant business interests. The manual states that employees are prohibited from engaging in any practice, outside employment, or relevant business interest that creates a conflict of interest or the appearance of a conflict of interest. Although Dr. Drews disclosed his interest in Central Pacific University in September 1999, he listed only the university's office address located on Kapiolani Boulevard and omitted Central Pacific University's campus address, which is located on the grounds of Loveland Academy. Therefore, on paper, the connection between Loveland and Central Pacific University is hard to discern.

#### **Allegations of preferential treatment for Loveland have been raised**

Family guidance centers refer clients and authorize treatment services. Dr. Drews apparently gave Loveland Academy preferential treatment. During the first three months of Loveland's contract, Dr. Drews was allegedly at odds with the Leeward and Central Oahu Family Guidance Center chiefs regarding the appropriate level of Biopsychosocial Rehabilitation (BPSR) service authorizations that Loveland was to receive. Both Loveland and Dr. Drews insisted that BPSR Level III services, at a rate of \$40 an hour, was necessary to treat children with Autism Spectrum Disorders and Pervasive Developmental Disorders (PDD). However, the other chiefs believed that BPSR Level II services, at a much lower rate of \$15 an hour, was equally appropriate. The division's clinical services director and contracts management supervisor agreed, stating in a letter that the division had advised Loveland both prior to the contract signing and at a Clinical Standards training workshop that BPSR Level II was designed specifically for the autistic population.

This dispute was finally resolved in October 1999, when the family guidance centers agreed to (1) authorize BPSR Level III when making initial referrals for autistic and PDD children and (2) to review each case after six weeks to determine if BPSR Level II was appropriate. The Committee, however, has not yet determined if any of Loveland's cases were actually reduced to BPSR Level II.



Apparently, the Committee's concerns have caused Dr. Drews to rethink his relationship with Loveland. As a direct result of the Committee's inquiries, Dr. Drews formally terminated his business relationship with Loveland Academy in a memo dated October 15, 2001.

## Recommendations

1. The Committee should continue its work during the 2002 legislative session in order to address the matters it could not complete in the interim as well as to prepare for the post decree continuum of care. The Legislature will need to address such issues as:

- the transfer of a significant portion of the *Felix* population to school-based services;
- any gap groups that may result;
- the continued participation and support of communities and whether best practices serve as the basis for service delivery; and
- other issues.

The Committee should continue to build on the contributions and efforts of all those individuals who have brought the system of care to the point of compliance.

2. The Legislature should closely scrutinize the extraordinary or "super powers" granted by the federal court.
3. The amount of federal impact aid that exceeds the authorized appropriation in the general appropriations act or the supplemental appropriations act should be subject to legislative oversight. The appropriation of anticipated impact aid should be raised to be closer to actual receipts.
4. The DOE should improve its fiscal management by:
  - Developing a means of reconciling budget and expenditure information.

- Developing functional reports, such as an analysis of budgeted to actual expenditures.

These reports should be routinely shared with the Board of Education, the governor, and the Legislature.

5. The DOE should provide a further breakdown of EDN 150 by separating *Felix* costs from overall special education and CSSS costs.
6. The Board of Education should require the DOE to strengthen its accountability for compliance with the *Felix* consent decree. The board should routinely share any accountability reports with the Legislature and the governor.
7. The DOH should ensure that it has proper and adequate oversight over *Felix*-related contract and expenditures by establishing a formal review system for all private provider agencies contracted by its Child and Adolescent Mental Health Division.
8. The Child and Adolescent Mental Health Division should abide by its policy and procedure manual and take appropriate actions to guard against conflicts of interest.
9. The Child and Adolescent Mental Health Division should take additional steps to ensure that provider agencies are not in violation of the State law, including but not limited to the State Ethics Code and procurement law. Such steps should include:
  - a. Reviewing an agency's proposal for possible ethical violations.
  - b. Addressing any concerns arising from the proposal (i.e. requiring the agency to provide a written explanation of how it would ensure the State that an employee's position will not present an ethical conflict).
10. The Department of the Attorney General should review all of the concerns raised in the report such as private provider contracts, billings and fees, and alleged conflicts of interest.

<sup>1</sup> Memorandum to Paul LeMahieu, Ph.D., Superintendent of Education from Douglas Houck, Ed.D., Director of Program Support and Development, Subject: Profile of Overall System Performance on *Felix* Service Testing, July 20, 2001.

<sup>2</sup> According to staff at the Child and Adolescent Mental Health Division, there is no official date when the Diamond Head Family Guidance Center “merged” with the Kalihi-Palama Family Guidance center to form the Honolulu Family Guidance Center. Staff indicate that the change occurred some time in early 2000. The “merger” occurred so the Department of Health could have the same point of reference as the Department of Education’s Honolulu District.

Preliminary  
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**Appendix A**  
**Brief Synopsis of Hearings**

<b>Date of Hearing</b>	<b>Name and Title of Testifier</b>	<b>Subject of Testimony</b>
June 19, 2001	No witnesses.	The Committee met to adopt rules for the conduct of the investigation and to discuss organizational and procedural matters for future hearings including securing attendance of witnesses by subpoena.
July 13, 2001	<ul style="list-style-type: none"> <li>Ivor Groves, <i>Felix</i> Court Monitor</li> <li>Juanita Iwamoto, Executive Director, Felix Monitoring Project</li> </ul>	Subpoena quashed by federal court.
	Marion Higa, State Auditor	Discussed findings of her office's prior <i>Felix</i> reports and obstacles her staff encountered during the course of their work.
August 20, 2001	Douglas Houck, retired Director of Program Support and Development, Department of Education	Compliance issues and efforts related to the consent decree.
	<ul style="list-style-type: none"> <li>Bruce Anderson, Director of Health</li> <li>Paul LeMahieu, former Superintendent</li> </ul>	Presented documents to the Committee pursuant to subpoena.
September 17, 2001	<ul style="list-style-type: none"> <li>Robert Golden, retired Director of the Student Support Services Branch, Department of Education</li> <li>Debra Farmer, Administrator, Special Education Section, Department of Education</li> </ul>	Targeted technical assistance and the Department of Education's contract with Na Laukoa.
	Russell Suzuki, Deputy Attorney General	Plaintiff attorney fees.

October 3, 2001	Judith Schrag, <i>Felix</i> Technical Assistance Panel member	Rescheduled
	Margaret Pereira, mental health worker for various private provider agencies	Questionable billing practices and Multisystemic Therapy or MST Continuum projects.
	<ul style="list-style-type: none"> <li>Kenneth Gardiner, Mental Health Supervisor, Department of Health</li> <li>Michael Stewart, Care Coordinator, Department of Health</li> </ul>	Questionable billing practices and potential conflicts of interest by private providers contracting with the State.
October 5, 2001	Karen Ehrhorn, Chief Financial Officer of Pacific Resources for Education and Learning (PREL)	PREL's subcontract with Na Laukoa.
October 6, 2001	Danford Sakai, former Hawaii District Superintendent	PREL's subcontract with Na Laukoa.
	Albert Yoshii, former Personnel Director, and now <i>Felix</i> DOE Contract Compliance Director	Columbus Educational Services and PREL/Na Laukoa contracts.
October 12, 2001	Richard Kravetz, President of Alakai Na Keiki	Alakai Na Keiki's billing practices.
	Ronald Higashi, Executive Director of the Susannah Wesley Community Center	Produced and authenticated documents requested by subpoena.
	Don Burger, Program Director, PREL	PREL's subcontract with Na Laukoa.
October 13, 2001	<ul style="list-style-type: none"> <li>Patricia Jean Dukes, President, Loveland Academy</li> <li>Margaret Koven, Clinical Director, Loveland Academy</li> </ul>	Allegations of questionable billing practices at Loveland Academy.
	David Drews, Branch Chief, Honolulu Family Guidance Center	Alleged conflict of interest of his duties as a state employee, his establishment and presidency of Central Pacific University, and his alleged business relationship with Loveland Academy.

October 17, 2001	Judith Schrag	Rescheduled
	<ul style="list-style-type: none"> <li>Dennis McLaughlin, President, CARE</li> <li>Tina McLaughlin, Vice-President, CARE</li> </ul>	Billing practices at CARE.
	<ul style="list-style-type: none"> <li>Sharon Nobriga, Co-Executive Director, Hawaii Families as Allies</li> <li>Vicky Followell, Co-Executive Director, Hawaii Families as Allies</li> </ul>	Purpose of Hawaii Families as Allies and its involvement with the <i>Felix</i> consent decree.
	Kate Pahinui, former Director of Hawaii Ohana Project	Project's involvement with the Court Monitor and his associates as well as the service testing instrument.
October 20, 2001	Kenneth Omura, point person for <i>Felix</i> in the Department of Education	Compliance issues and service testing.
	Kaniu Kinimaka-Stocksdaile, owner of Na Laukoa	Subcontract with PREL to provide targeted technical assistance to the Department of Education. Her relationship with former Superintendent LeMahieu
October 27, 2001	John Donkervoet, former MST Coordinator, Department of Health	Concerns with MST and particularly the MST Continuum research project; responded to Ms. Pereira's allegations.
	Edwin Koyama, Internal Auditor, Department of Education	Internal audit he conducted on the <i>Felix</i> Response Plan earlier this year.
October 31, 2001	<ul style="list-style-type: none"> <li>Mitsugi Nakashima, former Chair, Board of Education</li> <li>Herbert Watanabe, Chair, Board of Education</li> </ul>	Board's involvement with the <i>Felix</i> consent decree. Specific emphasis was placed on the Na Laukoa subcontract with PREL and the Columbus Educational Services contract.
	Paula Yoshioka, former Assistant Superintendent, Division of Administrative Services	Columbus Educational Services contract.
November 2, 2001	Judy Schrag	Subpoena quashed by federal court.
	Mary Brogan, former Clinical Director, Child and Adolescent Mental Health Division, Department of Health	Division's contract monitoring, questionable billings, and service testing.



November 3, 2001	Chris Ito, Director, Business Services Branch, Department of Education	Department of Education's expenditures for the <i>Felix</i> consent decree.
	Valerie Ako, Chief, Administrative Services Office, Department of Health	Contract monitoring and budgeting for the consent decree.
	Christina Donkervoet, Chief, Child and Adolescent Mental Health Division	Contract monitoring, questionable billings, and MST.
November 7, 2001	<ul style="list-style-type: none"> <li>• Bruce Anderson, Director of Health</li> <li>• Anita Swanson, Deputy Director, Behavioral Health Administration</li> </ul>	Departmental efforts to comply with the <i>Felix</i> consent decree.
November 9, 2001	Laurel Johnston, Assistant Superintendent, Planning, Budget, and Resource Development	Department of Education's budgeting practices and accountability over <i>Felix</i> -related funds.
November 10, 2001	Patricia Hamamoto, Interim Superintendent	Department of Education's efforts to comply with the <i>Felix</i> consent decree.
November 16, 2001	Marion Higa, State Auditor	General overview of the Committee's conclusions and discussed obstacles her staff and the Committee faced while attempting to gather information.