



HAWAII DISABILITY RIGHTS CENTER

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TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION

To: Senate Committee on Ways and Means:
From: Gary L. Smith, President
 Hawaii Disability Rights Center
Re: House Bill 3352, HD 2, SD1
 Relating to an Audit of the Hawaii Disability Rights Center.
Hearing: Friday, March 28, 2008 at 9:30 A.M.
 Conference Room 211, State Capitol

Members of the Committees on Ways and Means:

Thank you for the opportunity to provide testimony opposing House Bill 3352, HD2, SD2, relating to an Audit of the Hawaii Disability Rights Center.

I am Gary L. Smith, President of the Hawaii Disability Rights Center (HDRC), formerly known as the Protection and Advocacy Agency of Hawaii (PAA). As you may know, we are the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We oppose this bill for the same reasons we expressed during the 2007 legislature, where a very similar Concurrent Resolution was defeated. We are dismayed to see this issue surface again at the legislature. Nothing has changed in the last year to warrant a reconsideration of this bill. Its reintroduction is simply an attempt to use the Legislature to retaliate against HDRC for conducting its federally mandated advocacy on behalf of Hawaii's people with disabilities.

In August 2006, the Hawaii Disability Rights Center (HDRC) received a report of abuse, alleging serious deficiencies in the quality of training and employment, and day and residential care services at Opportunities for the Retarded, Inc. (ORI).

HDRC, the federally-mandated Protection and Advocacy must investigate these reports of abuse and neglect.



ORI strenuously opposed HDRC's lawful investigation, and engaged in tactics that delayed or denied HDRC access to the facility, to clients, and to records.

Failing in the courts, ORI has politicized this situation, and has made repeated broad and baseless allegations that our methodologies were somehow deficient or flawed. As a result, S.B. 2758 and H.B. 3352 have been introduced directing the Legislative Auditor to conduct a financial and management audit of HDRC.

It is important for you to know that the systemic failures are not ours, but ORI's. We urge you to review the report, previously provided to each legislator, "Preliminary Observations, Findings and Recommendations: an Investigation of a Report of Neglect and Abuse at Opportunities for the Retarded, Inc."

We understand that the Legislature is concerned about the litigation between HDRC and Opportunities for the Retarded, Inc. (ORI). The legal proceedings have been seriously protracted. The delay is largely due to the numerous motions filed by the defense in the litigation which took many months to resolve. Since the last legislative session, the following has occurred in the litigation:

- 1) A federal court ruled in favor of HDRC and ordered ORI to comply with HDRC's request for information to conduct its investigation of neglect and abuse at ORI;
- 2) At the request of several legislators, the Department of Attorney General for the State of Hawaii conducted an analysis on the access authority under federal law of HDRC and concluded that it was in agreement with HDRC's analysis of the access authority presented to the Legislature last year;
- 3) The Commissioner of the Federal Administration on Developmental Disabilities (HDRC's primary federal overseer) who visited Honolulu and met with HDRC, ORI and other community organizations and family members fully supported HDRC's activities in connection with the ORI investigation; and,
- 4) At the request of Governor Linda Lingle's office, HDRC prepared and tendered a report summarizing HDRC's observations, findings and recommendations with respect to the allegations of neglect and abuse at ORI.

HDRC and ORI are in the midst of discussions under the supervision of Federal Magistrate Barry Kurren who is attempting to mediate a settlement. Representatives of the respective boards of directors have met and we are continuing our attempts to achieve a collaborative resolution. Recently, HDRC met with the Judge who expressed the same displeasure that we did concerning the politicization of this case and the inappropriate attempt to interject the legislature into this matter. He has ordered the parties into mediation and those sessions have begun.

If, after hearing all this, the Legislature nonetheless feels that further inquiry is warranted and wants the Auditor to conduct some review of the HDRC, we then submit that at the very least, the Legislative Auditor should be directed, as part of the audit, to

fully examine the findings and conclusions stated in our Report titled "An Investigation of a Report of Neglect and Abuse at Opportunities For The Retarded, Inc." This report raises questions, not only about ORI, but about the actions of several state agencies, such as the Department of Health, Department of Human Services and Department of Labor and Industrial Relations, who have a responsibility to monitor activities at ORI. Overseeing the operation of state agencies is exactly within the purview of the Legislative Auditor. Additionally, ORI receives a sizeable amount of financial support from the state. So, if the Legislature wants to audit the HDRC because it has questions about the way in which it has conducted its statutorily mandated investigation at ORI, then, for purposes of being thorough and complete, it should direct the Auditor to review the report on our investigation and make recommendations to the Legislature next year for any further action which it deems may be appropriate. In that way, the legislature will receive a complete, unbiased review of the entire picture, as opposed to just focusing on the actions of this agency in isolation.

If the Committee were inclined to adopt that amendment, we would propose the following language:

In the course of performing the financial and management audit, the Legislative Auditor is directed to review the report entitled "An Investigation of a Report of Neglect and Abuse at Opportunities For the Retarded, Inc." and examine its findings and conclusions and include in its report to the legislature any recommendations for any further audits or other legislative action concerning ORI, Inc. or any state agencies.

Finally, even if the Committee were inclined to conduct an audit, the preferred vehicle would be a Concurrent Resolution and there are currently both SCR 98 and HCR 184 pending before the respective chambers of the legislature. In a tight fiscal year, it makes no sense to expend additional resources to audit a non-profit agency such as ours, which receives such a limited amount of state funds. Additionally, the approach adopted in the SD1 version, which codifies this audit of HDRC in the Hawaii Revised Statutes and provides for it to be conducted at least once every seven years seems particularly extreme. We know of no other non-profit agency singled out in the codified statutes for a periodic legislative audit. We urge the Committee to reject this approach in any event.

We hope that you will see that these measures were introduced in an attempt to inappropriately inject the legislature into the midst of ongoing litigation as well as utilize the legislature to discourage us from fulfilling our federal mandate. For those reasons, we respectfully request that your Committee not advance this measure any further.

Thank you for the opportunity to provide testimony in opposition to this bill.

From: Linda Elento, Member of The Hawaii Down Syndrome Congress

To: COMMITTEE ON WAYS AND MEANS
Senator Rosalyn Baker, Chair
Senator Shan Tsutsui, Vice Chair

Re: WAM, March 28, 2008, 9:30a

HB3352 Still In Support

Relating to an Audit of the Hawaii Disability Rights Center.



The federal government provides non-profit agencies and state agencies money directly and expect these agencies (such as Hawaii Disability Rights Center (HDRC), Head Start organizations and the Department of Education) to report to the federal government that they comply with federal law.

The Individuals with Disabilities Education Improvement Act of 2004 authorizes its grants to fund an advocacy agency to support children with disabilities who need special education and services. To my knowledge, HDRC is the named protection and advocacy center to provide services under the IDEA. But, HDRC selects priority needs that affect the services available to the public. When Free Appropriate Public Education for children with disabilities is not a priority for HDRC, the protection and services are hindered for families with children with disabilities who desperately need help (regardless of their income levels) in obtaining the services and accommodations they are mandated by federal and state laws to receive. My family has proven that the State spends thousands of dollars for us to take our matters to administrative hearings, court reporter services, and federal court). This process is a physical, mental, emotional, and financial drain on families and state resources.

We ask the Legislature to assure the State's needs are being met when these agencies are allowed to decide whom to serve, when to serve, how to serve, in spending federal and state tax dollars and reporting their own information. Please don't assume the federal government provides an audit to determine what our State's needs are and that the funded agency is serving such needs.

Over the past 3 ½ years I have contacted HDRC about four or five times, at least twice we were denied assistance. I found to have worked with HDRC personnel a waste of time when I sought help for my son's special education and medical and language needs. Even after the court allowed a settlement between Developmental Disability Division and HDRC (which applied to my son's case), it took months before I received the assistance of an HDRC representative, which in the end (7 MONTHS LATER) only served the purpose of attending meetings with DDD to apply for Medicaid through the Department of Human Services, receiving evaluations, completing forms, meetings, and then being denied all services and funding; DDD determines that a child's needs are the "parent's responsibility," so services that would ordinarily be provided for an adult would not be provided to a child with the same needs.

These great needs and entitlements of our children with disabilities and their families warrant a thorough audit and complete support of the protection and advocacy agency which is given the money and authority to serve these children.

To: Senate Ways and Means Committee

Re: HB 3352, HD2

For hearing on Friday, March 28 at 9:30

From: Dennis Chun

Testimony in Support

Since 2004, HDRC has been investigating ORI for alleged abuse and neglect; since the beginning, ORI has requested details on the allegations and that information has been denied. The report filed by HDRC dated February 15, 2008 is the first institutional account detailing their allegations of abuse and neglect. Though it is labeled as a preliminary account, it opens a window into the corporate culture, practices and ideology of HDRC.

Federal law empowering HDRC defines abuse and neglect as acts or omissions that caused or may have caused injury or death to a disabled person. It is clear that it was enacted to prevent serious injury rather than to address every situation that remotely could lead to a remote possibility of injury.

There are several allegations raised in the HDRC report which could have lead to such injury and they have been addressed in ORI's response. Without a firm grasp of the facts or of the rules and regulations surrounding the situation, observations were documented expressly for use to discredit ORI. To this day, HDRC has never asked questions relating to allegations; all other agencies routinely do so since it is both expedient and professional. Problems are found, addressed and resolved, not left to fester leading to a federal court case. Failure to inquire can be attributed either to HDRC's willful disregard for the facts or a deliberate ignorance of the facts. The failure to ascertain facts combined with their lack of understanding of rules and regulations covering ORI policy allowed them to retain their mistaken conclusions.

Most of the report deals with matters that have little to do with abuse or neglect.

Among them are

- a. Improper disability ratings
- b. Medicaid irregularities
- c. Violations of wage standards
- d. Operating as a “closed” community
- e. Conflicts of interest
- f. Restrictions on the exercise of freedom of choice and self determination

The report attempts to use the possibility that these matters could lead to abuse and neglect as a substitute for actual findings. Items a.) through c.) should be addressed by the agencies who enforce these laws- failure to refer them to the proper agencies allows the allegations to persist in the hands of those who lack the expertise and enforcement power to either evaluate or remedy the situation.

Items d) and e) deal with HDRC defined conflicts of interest that are neither abuse or neglect; these are criticisms to the program practices of ORI which has had a history of very positive results. The concept that any organization should have to change its successful operations simply because HDRC defines its program methods as having possible conflicts of interest raises serious questions of HDRC's motives and judgment.

Item f) alleges that restricting choice and self determination as defined by HDRC is a cause of abuse and neglect. There are many families who believe that their choices for their loved ones have been wise- HDRC believes that choices are wise only if they conform to the HDRC agenda. Families are subject to HDRC's insistence that the right to choose by clients is more important than the best interests of the client and they are willing to go to court to enforce that view.

The experience of ORI and the insight provided by HDRC's report are symptoms of organizational problems relating to management style, professionalism and competence within this agency designated by the state and given a broad mandate. ORI does not seek support for the audit simply as a means to affect the lawsuit; whatever the outcome of the lawsuit, it will be only on the narrow range of issues before the court. The broader

issues, corporate culture , management, professionalism, competence and judgment will still be unresolved. A management audit by the State Auditor is the only means of reviewing and improving the workings of HDRC; their role in this state is too important to leave the matter unexamined.

testimony

From: Ethel Yamane [ehy@hawaii.rr.com]
Sent: Wednesday, March 26, 2008 3:39 PM
To: testimony
Cc: HPPR@hawaii.rr.com
Subject: Testimony on HB#3352 HD 2 relating to an audit of HDRC. Hearing on 3/28/08, 9:30 am, conf. rm211

Testimony on HB #3352 HD 2

Relating to An Audit of the Hawaii Disability Rights Center

As a concerned citizen, I have observed the struggles of private providers of services to persons with developmental disabilities in providing guidance, protection, education in an environment comparable to any other services for other citizens within the state. As a former administrator with the Department of Health which provided funding and oversight to these private providers of services, I have always marveled at the dedication, patience and sincere interest of the staff working with the clients. When I look back on the Waimano Institution for the mentally retarded and the care of the mentally challenged in the community today, there is no comparison. The clients in the community are really enjoying a normal life in the community.

The Hawaii Disability Rights Center has a right to advocate for persons with disabilities but the persons with developmental disabilities also have the right to privacy. Only when there are specific complaints on someone, the record should be open to HDRC. Otherwise, it will be like a witch hunt looking to find something to charge the providers with. The providers are regularly monitored for compliance by the licensing agency, the funding agencies, both Federal and State. Abuse cases are also reported to the Adult Protective Services of the Department of Human Services.

HDRC has hired attorneys to charge different programs with non-compliances and have made monetary settlements with the programs involved. The private agencies do not have the funds to be paying thousands of dollars to HDRC. Their funds really need to be used to care for the persons with disabilities.

In view of the ongoing disputes with HDRC, an audit of the agency's management and funding activities are warranted. I would also recommend that the audit be completed on a timely basis to meet the immediate needs of persons with developmental disabilities as well as ensure the continuity of services of the private agencies rendering the services.

Respectfully submitted,
Ethel Yamane

TESTIMONY IN SUPPORT OF HB 3352, HD2, SD1

TO: Senate Committee on Ways and Means

FROM: Ronald R. Renshaw

RE: House Bill 3352, HD2, SD1
Relating to an audit of the Hawaii Disability Rights Center

HEARING: Friday, March 28, 2008 at 9:30 a.m.
Conference Room 211, State Capitol, 415 South Beretania Street

Dear members of the Senate Committee on Ways and Means,

Thank you for this opportunity to provide **testimony in support of HB 3352, HD2, SD1**. I support this bill for the following reasons:

It is important that agencies expending state funds be subject to review by the state. Apparently, the agency designated by state law as Hawaii's Protection and Advocacy (P&A) System, the Hawaii Disability Rights Center (HDRC), has not been subject to any state review or oversight in the 30 years since its designation. An audit would ensure that the P&A system's use of public funds is appropriate, efficient, and in conformance with the expectations of the legislature.

A report from the Attorney General's Office, dated September 14, 2007, establishes that, "... *there is authority for the Legislature to direct the auditor to conduct an investigation ... under the DD Act and its regulations, the State (Governor) is responsible for designating a P&A system initially and can redesignate the P&A for 'good cause' Section 104(a)(4) of the DD Act: 45 CFR 1386..20 ... and in fact, the State is responsible for making the 'good cause' determination. If there is evidence that indicates a redesignation of HDRC as the State's P&A agency ought to occur, there are federal procedures which must be followed.*" An audit should provide the state with the information necessary for decision making in its provision of oversight.

The requested audit would also ensure that the legislature is aware of the manner in which the P&A system is carrying out its monitoring and advocacy activities. An audit could address the conflict between the P&A system's right to access people with developmental disabilities and their records, and an individual's (and that individual's family's) right to privacy. It could assess the P&A system's criteria for choosing between litigation and some alternative means of dispute resolution. It could also determine what the P&A system's procedure is for resolution of complaints and/or grievances.

I hope that you will support HB 3352, HD2, SD1. Mahalo.

Respectfully submitted, Ronald R. Renshaw

TESTIMONY IN SUPPORT OF H.B. # 3352 HD 2, SD1 with Comments

TO: Senate Committee on Ways and Means

FROM: Yvonne de Luna

RE: House Bill # 3352, HD2, SD1
RELATING TO AN AUDIT OF THE HAWAII DISABILITY RIGHTS CENTER

HEARING: Friday, March 28, 2008, 9:30 am
Conference Room 211, State Capitol

Dear Members of the Senate Committee on Ways and Means:

I am submitting this testimony in support of House Bill # 3352 HD2, SD1, which requires the auditor to perform a financial and management audit of the Hawaii Disability Rights Center (HDRC), currently the state's designated protection and advocacy (P&A) agency. This bill is strengthened by the addition of periodic audits, which the bill states as every 7 years. However, I hope that the language in the bill (section "d") relating to the periodic audits will not prevent the legislature or the Governor to request follow-up/post-audit reviews by the auditor sooner than that in order to determine actions taken by the P&A with regards to the auditor's recommendations.

I also support this bill for several other reasons:

First of all, HDRC's overall financial accountability, operations, effectiveness of governance, and appropriate administration of programs and services has not been reviewed by the state since its inception 30 years ago. I believe our state needs to ensure the agency it designated is attaining the objectives and results expected of them while also examining how well they are organized and managed and how efficiently they acquire and utilize resources. Protection and Advocacy systems are required in order for a state to receive federal allotment for state councils on developmental disabilities or for the protection and advocacy of individual rights. Thus, appropriate and efficient utilization of these funds/resources in our state and an assessment of its direct impact on our community should be reviewed by our state on a regular basis.

According to the federal Administration on Developmental Disabilities, the need for accountability is identified in Section 104 of the Developmental Disabilities Act, a federal law, which led to the creation of P&A agencies such as HDRC. It is also identified in the Government Performance and Results Act of 1993, and the Program Assessment Rating Tool (PART), administered by the Office of Management and Budget. An audit of HDRC would seem necessary for our state to be in accordance with the Hawaii Revised Statute (H.R.S.) subsection 333F-8.5, the state law relating to the development of Hawaii's P&A system. The state law's purpose was to comply with federal law.

Moreover, the flexibility in the federal law has created great variability in terms of program implementation and impact on individuals with developmental disabilities and their families. The unique nature and variation in needs and services for the disabled population poses a challenge to both federal and state programs providing services. An audit by our state, regularly and on an as needed

basis, would be important for policymakers to evaluate the performance of our P&A system to assure quality of service and to measure its impact on our community. Besides, even Congress recognized the necessity of a periodic review of the laws it enacted such as the Developmental Disabilities Act, which it requires to be reviewed every 7 years.

Secondly, I support the idea that, through this audit, the Legislature and the Governor, will have the opportunity to receive a thorough assessment and hopefully, recommendations, which could reinforce or help to change and/or improve our P&A system, its policies, financial, program, operation and/or administration management. Actually, audit of the designated P&A has been done in other states.

Families/guardians, persons with disabilities, service providers and concerned individuals have raised their concerns as to how HDRC resolves conflicts between a patient and their rights to privacy, conflicts on the service providers' obligations to disclose patient information and records to HDRC, and conflicts on the justification and manner in which HDRC demands from service providers and their families/guardians unrestricted and unaccompanied access to the patient and the patient's records. Moreover, how HDRC handles abuse and neglect complaints, how it determines the merit of litigation as opposed to other means of dispute resolution and how it handles complaints/ grievances against it, needs to receive its overdue evaluation.

"There is authority for the Legislature to direct the auditor to conduct an investigation," according to our state's Attorney General (AG) report in Sept. and Oct. 2007. Since our public agencies are subject to state audits, there should be no reason to exempt HDRC from such oversight.

It had been suggested in the AG's report that perhaps our P&A's efforts should focus on augmenting current services and not duplicating them. Without a thorough audit of our state's P&A system, how would the current legislature and Governor know what the state created 30 years ago still works and what ideas should they consider in order to ensure the efficiency, effectiveness and economy of our state P&A system.

It is important to note that there are variations in the structure of P&A system in other states. There are states in which the P&A is an independent state agency as opposed to a non-profit agency (like HDRC). There are Commissions, which have been set up by law specifically to provide oversight of the state's designated P&A, for instance. On the other hand, there are states, which designated their P&As as a special project for their community Legal Aid Society or as part of their Disabilities Law Program/Center. Furthermore, how the P&As carry out their mandated priorities or their job seems to also vary from state to state and other agency or service providers within those states may be tasked with handling certain priorities, possibly, in part, to avoid duplication of efforts and maximize use of limited dollars so more people can be served.

Our state has an enormous responsibility to strengthen public accountability of government programs and to assess and assist these programs to make sure our tax dollars are spent wisely and well. It is also the state's responsibility to have uniform, meaningful and systematic public scrutiny of its governmental financial activities. The audit is important and a periodic review would ensure a systematic way of strengthening public accountability.

Thank you and I hope to gain your support for this bill.

testimony

From: kuulei [kuuleikiliona@hawaii.rr.com]
Sent: Thursday, March 27, 2008 1:30 AM
To: testimony
Subject: AMENDED--HB 3352, HD2, SD1

AMENDED

TESTIMONY IN SUPPORT OF HB 3352, HD2, SD1

Requesting Audit of Hawaii Disability Rights Center

TO: Committee on Ways and Means
Rosalyn H. Baker, Chair

FROM: Ku'ulei Kiliona, advocate/private citizen
kuuleikiliona@hawaii.rr.com

Date: Friday, March 28, 2008
Time: 9:30 a.m.
Place: Conf. Room 211

Dear Chairs and Committee Members,

I am in strong support of HB 3352, HD2, SD1, requesting a financial and management audit of the Hawaii Disability Rights Center (HDRC). Let me first point out that HDRC has said this measure is only an issue between two parties, but that is not so.

I have been an advocate for people with disabilities for over twenty years here in Hawaii. I have assisted people on all of the islands and areas of the state. A good part of my training came from the Developmental Disabilities Council. I also have a strong background from various sources that have also contributed to my training and abilities. Over the years, I have continuously heard complaints from people disabilities that HDRC refused to help them or dropped the ball on their case. Thus, HDRC is not fulfilling their mission. I have also heard this complaint from one of their former staff members, a secretary/paralegal. On neighbor islands, the only source of representation is by hiring a private attorney or having HDRC take one's case. Often, hiring a private attorney is not an option due to financial situations.

Last month, at a hearing, I gave testimony about a man in Hilo named Larry who had contacted HDRC years ago, but never received the assistance he sought even though he was told they would help. Instead, they dropped the ball. As a result of not receiving their help, **Larry has been forced to live in an institutionalized setting at the long term care unit of Hilo hospital against his will for 30 years.** Larry did not contact HDRC only once or

twice, but on several occasions over the 30 years. He has never received any help from HDRC.

After my testimony last month, HDRC was again contacted to help Larry. Gary Smith, the director of HDRC said that papers needed to be filled out in order to get services, but that they would help. Donald Thomas of HDRC's East Hawaii office took two weeks to find the paperwork. Next, he decided that Larry should continue to be institutionalized because he could not swallow on his own. I believe this is a decision for a medical doctor. It is not for Mr. Thomas or HDRC to decide. Hence, HDRC dropped the ball again and acted in a manner not consistent with their mission.

Over the last 30 years, Larry has suffered enormous abuse while being institutionalized: mental, physical, emotional and spiritual. Hearing of Larry's plight, a couple of unpaid advocates set out to help Larry. With a doctor's consent, they have been able to arrange an independent living setting for Larry with all the services he needs. He now rents his own apartment. He also has an attorney who will be filing a lawsuit against those who abused him.

It's a shame that HDRC, an agency given the mission to help people with disabilities, drops the ball on vulnerable people such as Larry. If they had done their job years ago or even in the last month, Larry's situation would never have come to overt abuse and a lawsuit.

Truly, it is time to audit HDRC to make sure they are fulfilling their mission and that tax dollars are correctly spent. Additionally, bonuses for certain staff and director, Gary Smith (\$20,000) also need to be looked into.

Mahalo for the opportunity to submit written testimony.

Sincerely,

Ku'u lei A. Killiona

To: Senate Ways and Means Committee

Re: HB3352, for decision making on Friday, March 28 at 9:30

From: Dennis Chun

This is a housekeeping suggestion regarding HB3352 which currently amends the statute regarding the State Auditor. HRS 23-5 . It specifies an audit of the Hawaii Disability Rights Center (HDRC) but its implementation may be difficult if HDRC changes its name or a successor agency is designated. To prevent this outcome, the reference to HDRC should be replaced by "The entity or agency designated under chapter 333F-8.5".