



HAWAII DISABILITY RIGHTS CENTER

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LATE

TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION

To: Senate Committee on Human Services and Public Housing
From: Gary L. Smith, President
 Hawaii Disability Rights Center
Re: House Bill 3352, HD 2
 Relating to an Audit of the Hawaii Disability Rights Center.
Hearing: Thursday, March 13, 2008 at 1:15 P.M.
 Conference Room 016, State Capitol

Members of the Committees on Human Services and Public Housing :

Thank you for the opportunity to provide testimony opposing House Bill 3352, HD2 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. A mediator has been appointed by the Court and meetings with the mediator are scheduled for this week.

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.

We propose, therefore, that the bill be amended to add 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.

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.

To: Senate Committee on Human Services and Public Housing

Re: HB 3352, HD2

For hearing on Thursday, March 13 at 1:15 p.m.

From: Dennis Chun

LATE

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.