

Date of Hearing: February 25, 2008

Committee: Senate Ways and Means

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.B. No. 2879, S.D. 1, Relating to Education

Purpose: Amends section 302A for advance special education directives; to provide an array of options for when a student reaches the age of 18, regarding the transfer of rights, with respect to the student's education.

Department's Position: The Department does not support S.B. No. 2879, S.D. 1. While the Department recognizes a need for options for parents and students with regard to the transfer of rights when a student reaches the age of majority (18), it has concerns as it is currently drafted. Of note is a single individual making the determination of whether an adult student is incapacitated. Having a single individual determine if the student is incapacitated, especially in lieu of a judicial process, is limited in providing safeguards to ensure the protection of the rights of the adult student. Additionally, the bill does not align with the current implementation of the Individualized Education Program (IEP) process §8-56-3 (c) which requires a team

approach towards the development of the student's IEP.

Specifically, as currently drafted, the bill can be interpreted as giving the person authorized to make educational decisions on behalf of the adult student the legal authority to direct a teacher and/or institution, which is beyond the rights afforded to a parent, and would not be appropriate.

While alternatives regarding legal guardianship and the transfer of rights need to be explored, the language and the process, as currently drafted, is insufficient in providing the necessary safeguards to ensure the educational rights of an adult student.

As such, the Department is unable to support S.B. No. 2879, S.D. 1 as it is written.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
919 ALA MOANA BOULEVARD, ROOM 113
HONOLULU, HAWAII 96814
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
February 25, 2008

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Ways and Means
Twenty-Fourth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Senator Baker and Members of the Committee:

SUBJECT: SB 2879 SD1 – RELATING TO EDUCATION

The position and views expressed in this testimony do not represent nor reflect the position and views of the Department of Education (DOE).

The State Council on Developmental Disabilities **SUPPORTS SB 2879 SD1**. The purpose of SB 2879 SD1 is to establish a power of attorney for special education; a process to appoint a surrogate decision maker for an adult student that lacks capacity; and clarify the authority of a guardian of an adult student.

The Council is a member of the Chapter 56/60 Community Workgroup that was convened by DOE in June 2007 to provide DOE with input and recommendations to establish administrative rules to implement the Individuals with Disabilities Education Act of 2004. One of the recommendations of the Workgroup was to offer alternatives to guardianship for adult students with a disability receiving special education and related services from DOE.

The Council endorses this bill as it provides options other than guardianship for an adult student with a disability to make decisions about his/her education endeavors. In Hawaii, when a student reaches age 18 years, it is a given assumption that the student can provide informed consent and make educational decisions. Parents who were involved with their son's/daughter's education no longer have the right to participate or intervene in their son's/daughter's educational matters. In order to continue to be involved, the only alternative is to pursue guardianship.

The Honorable Rosalyn H. Baker
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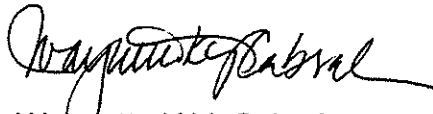
SB 2879 SD1 provides less restrictive alternatives (power of attorney and surrogate decision maker) for parents to remain involved if their son/daughter is not capable of making educational decisions.

We are aware of the concerns expressed by DOE regarding: 1) a single individual making the determination of whether an adult student is incapacitated, and 2) current language of the bill is insufficient to provide necessary safeguards to ensure the educational rights of the adult student. We are willing to work with DOE and other concerned parties to amend the bill to provide less restrictive alternatives to guardianship while maintaining the educational rights of students.

We support amending the bill to remove the appropriation section on page 15, lines 3-8. This has been discussed with DOE and Chairs of the Senate Education and Judiciary Committees.

Thank you for the opportunity to provide testimony in support of SB 2879 SD1.

Sincerely,

A handwritten signature in black ink, appearing to read "Waynette K.Y. Cabral", with a long horizontal flourish extending to the right.

Waynette K.Y. Cabral
Executive Administrator



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Fourth Legislature, 2008 Session

Senate Committee on Ways and Means
The Honorable Rosalyn H. Baker, Chair
The Honorable Shan S. Tsutsui, Vice Chair

Monday, February 25, 2008 10:30 a.m.
State Capitol, Conference Room 211

by

The Honorable Frances Q.F. Wong
Senior Judge/Deputy Chief Judge
Family Court, First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2879, S. D. 1, Relating to Education.

Purpose: Establishes a power of attorney for special education; process to appoint surrogate decision maker for an adult student that lacks capacity; and clarifies the authority of a guardian of an adult student.

Judiciary's Position:

The Judiciary takes no position on this measure, but offers the following comments so that persons truly needing to file a guardianship petition are not misinformed..

In the Family Court of the First Circuit, a large percentage of petitioners who initiate guardianship actions are self-represented and are thus able to avoid the cost of an attorney. The Court offers a "do-it-yourself" packet which is used by many parties. The Family Court service center and court staff offer procedural assistance. There is also an on-site Legal Aid desk. The forms are also available on the Judiciary's website at www.courts.state.hi.us (Forms/Oahu/Family Court/guardianship). Due to increasing volume and increasingly complex cases, it does take several months for a hearing to take



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Senate Committees on Ways and Means
Monday, February 25, 2008
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place. Hopefully, the two Judges authorized by the 2007 Legislature will ease this strain once the positions have been funded.

Thank you for the opportunity to submit testimony on this matter.



HAWAII DISABILITY RIGHTS CENTER

900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: info@hawaiidisabilityrights.org Website: www.hawaiidisabilityrights.org

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: Senate Bill 2879, SD1
Relating to Education

Hearing: Monday, February 25, 2008 10:30 AM
Conference Room 211, State Capitol

Members of the Committee on Ways and Means:

Thank you for the opportunity to provide testimony supporting Senate Bill 2879, SD 1, Relating to Education.

I am Gary L. Smith, President of the Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A). 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 support this bill. We represent a lot of parents and their children with special educational needs. Needless to say, many of these parents are quite involved with the efforts to protect their children and to provide them with the best possible educational opportunities. As long as the children are under the age of eighteen, there are no legal obstacles presented to their participation. However, once the student does attain the age of eighteen, then there are legal ramifications whereby the parent may not have the same set of rights in terms of remaining involved and being able to participate in the proceedings relative to the educational needs of the child.

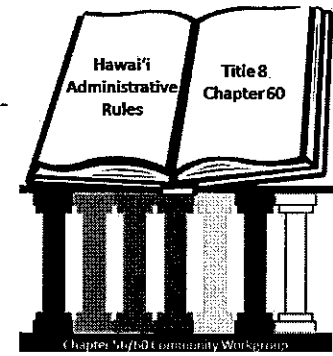
This bill remedies the current situation where the parent may be forced to apply for guardianship in order to continue to participate. It creates alternative remedies such as a power of attorney for special education or the appointment of an educational surrogate. These are both less restrictive methods than guardianship



and are very useful tools and we support these efforts. We urge the Committees to act favorably upon this measure.

Thank you for the opportunity to testify in support of this bill.

The Community Workgroup



Date: February 24, 2008

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

Fr: Ivalee Sinclair, Community Workgroup Leader

Re: SB 2879 – **Support** to RELATING TO EDUCATION: Establishes a power of attorney for special education; establishes the process to appoint a surrogate decision maker for an adult student that lacks capacity; and clarifies the authority of a guardian an adult student.

On behalf of the Chapter 56/60 Community Workgroup, I **support** SB 2879.

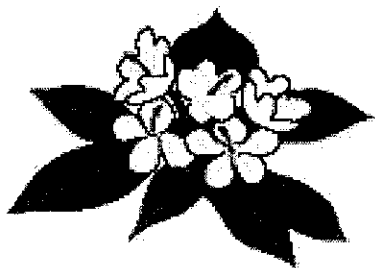
We humbly ask that you put forward this bill so we can continue discussions with the Department of Education and the legislature to refine the language of this bill. We also ask that you **amend** this bill to remove the appropriation as the Department of Education has informed us that additional funding is not necessary, as they will be able to implement the provisions of this bill within their current budget.

The Chapter 56/60 Community Workgroup was convened last summer to provide input and feedback to the Department of Education (DOE) to align the Hawai'i Administrative Rules with the Reauthorization of IDEA 2004. With over 300 changes to the Hawai'i rules, there was only one area of concern which could not be remedied through the Administrative Rules process, but would require a new law. With encouragement from the DOE, the Community Workgroup drafted the proposed legislation, which is before you now as SB 2879.

When a student turns 18 in our state, it is presumed the student is capable of making decisions and providing informed consent. The schools will respect the decisions of the student, unless the student is found to be incapable of making decisions or providing consent. If the student does not have the ability to provide informed consent as it relates to their educational program, the federal law requires that each state *"shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this subchapter."* Currently, our state guidelines are restrictive, and provides for the single remedy of guardianship, which is the antithesis of self-determination. As you will hear from other testimony; families are being forced into guardianship which can be extremely costly – just for the sake of participating in their adult student's educational program. More so, this has become an ethical dilemma for many families who philosophically do not believe in guardianship and would never seek guardianship as in every other scenario, the alternatives to guardianship are adequate.

SB2879 maintains the option for guardianship, while it expands choice to include a special education power of attorney and a process to appoint a surrogate decision maker. This proposed statute was modeled after our Hawai'i Uniform Health Care Decision Act (HUHCDA). The rationale being, the HUHCDA has the strongest protection for our most vulnerable population, therefore its structure would be quite appropriate for our students.

Thank you for time and consideration. The Community Workgroup is available for questions and further discussion.



S E A C
Special Education Advisory Council
919 Ala Moana Blvd., Room 101
Honolulu, HI 96814
Phone: 586-8126 Fax: 586-8129
email: spin@doh.hawaii.gov

February 6, 2008

TESTIMONY TO THE SENATE COMMITTEE ON
WAYS & MEANS
RE: SB 2879, SD 1 - Relating to Education

**Special Education
Advisory Council**

Ms. Ivalee Sinclair, *Chair*
Mr. Steve Laracuente, *Vice
Chair*

Ms. Janet Bamford
Dr. Paul Ban, *Liaison
to the Superintendent*
Ms. Sue Brown
Ms. Deborah Cheeseman
Ms. Phyllis DeKok
Mr. Lee Dean
Ms. Mary Ellis
Ms. Debra Farmer
Ms. Gabriele Finn
Ms. Martha Guinan
Mr. Henry Hashimoto
Ms. Tami Ho
Ms. Barbara Ioli
Ms. Valerie Johnson
Ms. Shanelle Lum
Ms. Rachel Matsunobu
Ms. June Motokawa
Ms. Barbara Pretty
Ms. Susan Rocco, *Ex-officio*
Dr. Patricia Sheehy
Mr. August Suehiro
Ms. Jan Tateishi, *Ex-officio*
Ms. Judy Tonda
Dr. John Viesselman
Ms. Cari White
Ms. Jasmine Williams
Mr. Duane Yee
Mr. Wilfred Young

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), is in **strong support** of the above legislation establishing a Power of Attorney for special education and a process to appoint a surrogate decision maker for adult students who do not have the capacity to make informed educational decisions on their own behalf.

The Council has been seeking expanded transfer of right options beyond guardianship since 2004 when the Department of Education began enforcing IDEA 97 language which required a parent to secure formal guardianship in order to continue involvement in educational decisions, in cases where an adult student is clearly not able to make an informed choice about educational decisions. We attempted as part of the Chapter 56/60 Community Work Group to include additional options in new administrative rules for special education required as a result of IDEA 2004 but were told that these options must be introduced legislatively.

Since this bill was heard jointly by the Senate Committees on Education and Judiciary & Labor, the Council has been working collaboratively with the Department and the Community Work Group to refine language to address concerns of the Department. There is no longer a money request in the bill, as the Department has agreed to implement the transfer of rights options without additional funding.

We urge your support of SB2879, SD 1 which honors the intent of IDEA to ensure that a student's rights are protected through student and parent involvement in all decisions relating to identification, evaluation, program and placement throughout the student's eligibility for services.

Sincerely,

Ivalee Sinclair, Chair



HILOPA'A

Family to Family Health Information Center

Date: February 24, 2008

To: COMMITTEE ON WAYS & MEANS
Senator Rosalyn H. Baker, Chair
Senator Shan S. Tsutsui, Vice Chair

Fr: Leolinda Parlin, State Coordinator for Family Voices of Hawai'i

Re: SB 2879 – **Strong Support & Request AMENDMENT** to RELATING TO EDUCATION: Establishes a power of attorney for special education; establishes the process to appoint a surrogate decision maker for an adult student that lacks capacity; and clarifies the authority of a guardian an adult student.

On behalf of Family Voices of Hawai'i, I submit this testimony in **support** of SB 2879 and request that the bill be **amended** to remove the appropriation from the bill. A group of community stakeholders, the Chapter 56/60 Workgroup, has been working closely with the Department of Education (DOE) on this bill. We have been informed by the DOE that the appropriation is not necessary.

As an organization, Family Voices is national grass roots organization of family of friends of child with special health care needs. In Hawai'i, we operate the federally funded Hilopa'a Family to Family Health Information Center. The Center was launched at the end of October of last year. Since then, we have already received calls from families seeking assistance in dealing with the dilemma of being forced into guardianship for the sole purpose of participating in special education planning meetings. While the guidelines for special education may suggest families employ a power of attorney for their adult child, this guideline is inconsistently applied and lacks the full weight and mandate of a law.

For many, guardianship is a costly, time consuming, and permanent endeavor. For others, entertaining guardianship can prompt an ethical crisis. For these reasons, and many others, the issue of the "correctness" of the imposition of guardianship is being played out in court. Alaska requires individuals to exhaust all of the alternatives to guardianship before it will grant it. In Iowa, the court must consider the availability of third party assistance to meet a proposed ward's need for such necessities. Similarly, in the state of Pennsylvania, the courts have determined, "Persons cannot be deemed incapacitated if their impairments are counter-balanced by friends, family or other support."

It is the intent of the proponents of this bill to utilize our legislative system to insure the choices and options for our families are codified into state law. SB 2879 is in alignment with the cultural change and civil rights movement occurring across our country. There is no need for us to wait for a court decision to do the right thing. This bill provides a continuum of choices and options that will meet the needs of Hawai'i's adult students in special education and their families.

Thank you for time and consideration in supporting SB 2879.