

Date of Hearing: April 24, 2009

Committee: House Education

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.C.R. 150, SD1 (SSCR 1102), Urging the Superintendent of Education to establish and facilitate a special education private school task force to advise the Department of Education on policies or procedures for oversight and monitoring of private school or facility placements.

Purpose: DOE; Special Education Private School Task Force; Establish

Department's Position: The Department of Education (Department) supports S.C.R. 150, SD1 (SSCR 1102). Students with disabilities are placed in private schools or facilities as a result of an Individualized Education Program (IEP) team decision, a due process hearing decision, or a settlement agreement. Pursuant to Individuals with Disabilities Education Improvement Act of 2004 (IDEA), the Department is required to provide a free appropriate public education (FAPE) to all students with disabilities, including students placed in a private school or facility at public expense. To fulfill this federal mandate, the Department must monitor every student's progress to ensure the delivery of FAPE. In the past, the Department has been denied timely access to monitor these students and their

educational records because they are not educated on a public school campus. By creating a task force, the Department will be able to study the barriers and strengths of the current monitoring system. The Department supports S.C.R. 150, SD1 (SSCR 1102).



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

April 24, 2009

The Honorable Roy M. Takumi, Chair
House Committee on Education
Twenty-Fifth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Takumi and Members of the Committee:

SUBJECT: SCR 150 SD1 – URGING THE SUPERINTENDENT OF EDUCATION ESTABLISH AND FACILITATE A SPECIAL EDUCATION PRIVATE SCHOOL TASK FORCE TO ADVISE THE DEPARTMENT OF EDUCATION ON POLICIES OR PROCEDURES FOR OVERSIGHT AND MONITORING OF PRIVATE SCHOOL OR FACILITY PLACEMENTS.

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 (DD) **SUPPORTS SCR 150 SD1**. SCR 150 SD1 urges the Superintendent of Education to establish and facilitate a Special Education Private School Task Force to advise DOE on policies or procedures for oversight and monitoring of private school or facility placements. The task force will sunset on June 30, 2011.

Act 179, Session Laws of Hawaii 2008, amended Section 302A-443 to include the following provision, "The department shall exercise oversight and monitoring of any child who has undergone unilateral special education placement as soon as practical after placement." This provision addresses the Individuals with Disabilities Education Improvement Act of 2004 requirement that DOE provide a free appropriate education to all students with disabilities, including students placed in a private school or public facility at public expense.

The Special Education Private School Task Force would assist DOE in developing policies and procedures to address its responsibility to provide oversight and monitoring of private school or public facility placements. Policies and procedures

The Honorable Roy M. Takumi
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April 24, 2009

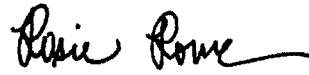
would include, but not be limited to, routine and timely access to monitor students in private school or public facility placements. Routine and timely access of monitoring, and access to a student's records has been an issue between DOE and the private school placement. Having policies and procedures in place will provide clear guidelines to assure that DOE meets their obligation to monitor a student's progress without hardship on the private school or facility placement in allowing access to records and for DOE to be on site.

Thank you for the opportunity to present testimony in support of SCR 150 SD1.

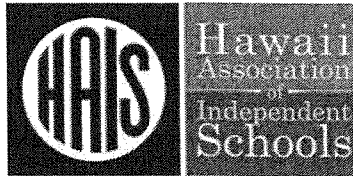
Sincerely,



Waynette K.Y. Cabral
Executive Administrator



Rosie Rowe
Chair



April 24, 2009
2:00 p.m.
Conference Room 329

TESTIMONY TO
THE HOUSE COMMITTEE ON EDUCATION

RE: SCR 150, SD1 - Urging the Superintendent of Education
to Establish and Facilitate a Special Education Private School Task Force
to Advise the Department of Education on Policies or Procedures for Oversight and
Monitoring of Private School or Facility Placements

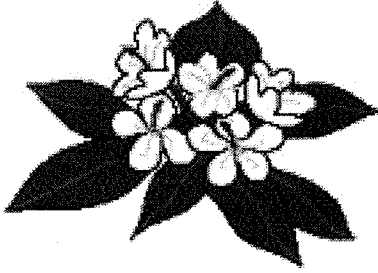
Dear Chair Takumi, Vice Chair Berg, and Members of the Committee:

My name is Robert Witt, and I am executive director of the Hawaii Association of Independent Schools (HAIS), which represents 97 private and independent schools across the state that educate over 30,000 elementary and secondary students with a wide range of abilities and learning styles.

The Association is in strong support of Senate Concurrent Resolution 150, Senate Draft 1, which urges the establishment of a task force to advise the Department of Education (DOE) on policies and procedures for the monitoring of private school or facility placements.

HAIS acknowledges that the landscape of private educational institutions in Hawaii is varied and respects the DOE's concerns regarding the oversight of special education students who are placed in private schools or facilities at public expense. To that end, we would be pleased to have a representative of our organization serve on the proposed Special Education Private School Task Force and would welcome the opportunity to both assist in advising the DOE on ways to both improve its current policies and procedures for private school placements and streamline its protocols for the oversight and monitoring of placed students to ensure that they receive a high-quality and appropriate education.

Mahalo for the opportunity to testify on this important matter.



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

April 24, 2009

**Special Education
Advisory Council**

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

Ms. Brendelyn Ancheta
Dr. Paul Ban, *Liaison
to the Superintendent*
Ms. Sue Brown
Ms. Deborah Cheeseman
Ms. Phyllis DeKok
Ms. Mary Ellis
Ms. Debra Farmer
Ms. Gabriele Finn
Ms. Martha Guinan
Mr. Henry Hashimoto
Mr. John Hinkle
Ms. Tami Ho
Ms. Barbara Ioli
Ms. Shanelle Lum
Ms. Rachel Matsunobu
Ms. June Motokawa
Ms. Kristy Nishimura
Ms. Connie Perry
Ms. Barbara Pretty
Ms. Kau'i Rezentes
Dr. Patricia Sheehey
Mr. August Suehiro
Ms. Judy Tonda
Ms. Cari White
Ms. Jasmine Williams
Mr. Duane Yee
Mr. Shawn Yoshimoto

Jan Tateishi, Staff
Susan Rocco, Staff

Representative Roy M. Takumi, Chair
House Committee on Education
State Capitol
Honolulu, HI 96813

RE: SCR 150, SD 1- URGING THE SUPERINTENDENT OF
EDUCATION TO ESTABLISH AND FACILITATE A SPECIAL
EDUCATION PRIVATE SCHOOL TASK FORCE TO ADVISE THE
DEPARTMENT OF EDUCATION ON POLICIES OR PROCEDURES
FOR OVERSIGHT AND MONITORING OF PRIVATE SCHOOL OR
FACILITY PLACEMENT

Dear Chair Takumi and Members of the Committee,

The Special Education Advisory Council (SEAC), Hawaii's State
Advisory Panel under the Individuals with Disabilities Education Act
(IDEA), **supports** SCR 150, SD 1.

Through the work of our Due Process Committee SEAC is
aware of some of the issues regarding access to students with disabilities
whose tuition and related services in private schools or facilities are
paid for by the Department. We agree that a special education private
school task force can be effective in shedding light on barriers to access
and recommending solutions to improve and streamline oversight and
monitoring. We welcome the opportunity to participate.

SEAC contends that one such solution would be the development
of clear criteria which private schools and facilities must meet in order to
be eligible for receipt of public funds under IDEA. These criteria could
include the right of the Department to reasonable access to the student
and his/her records. Through our research, we learned that most other
states are using some form of established standards for selecting and
paying for private school placements at public expense.

Thank you for the opportunity to provide testimony on this issue.

Sincerely,

Ivalee Sinclair, Chair



A non-profit organization run by and for persons with disabilities

Hawaii Centers for Independent Living
414 Kuwili Street, Suite 102
Honolulu, Hawaii 96817

Phone: (808) 522-5400
Fax: (808) 522-5427
TTY/TDD: (808) 536-3739
Website: <http://www.hawaii-cil.org>

Representative Roy M. Takumi, Chair
Representative Lyla B. Berg, Vice Chair
Committee on Education

Hawaii Centers for Independent Living
Friday, April 24, 2009, 2:00 PM, Conference Room 329

Supporting the intent of SCR150 SD1, Urging the Superintendent of Education to Establish and Facilitate a Special Education Private School Task Force to Advise the Department of Education on Policies or Procedures for Oversight and Monitoring of Private School or Facility Placements, and offering amendments

Hawaii Centers for Independent Living is a non-profit organization operated by and for people with disabilities to ensure their rights to live independently and fully integrated in the community of their choice, outside of institutional care settings. As a non-profit, statewide resource, HCIL serves people of any age with any type of disability. HCIL was founded on the historical constitutional beliefs of civil rights and the empowerment of people with disabilities to have equal access, opportunities, and choices in life, no matter how severe their disability.

We support the intent of SCR150 SD1, Urging the Superintendent of Education to Establish and Facilitate a Special Education Private School Task Force to Advise the Department of Education on Policies or Procedures for Oversight and Monitoring of Private School or Facility Placements, but wish to offer an amendment.

We feel that the composition of the task force as specified in the resolution does not include the point of view of parents of special needs students, or of anyone with the appropriate legal background. Therefore, we request that you add two additional members, a parent of a student who is placed in a private school or other facility, and someone with legal expertise pertaining to special education.

We urge the committee to pass SCR150 SD1 with the amendment specified. Thank you for this opportunity to testify.

Sincerely,

signature on file

Mark F. Romoser

Policy and Program Analyst



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

HOUSE OF REPRESENTATIVES

THE TWENTY-FIFTH LEGISLATURE

REGULAR SESSION OF 2009

Committee on Education

Comments on S.C.R. No. 150, Urging the Superintendent of Education To Establish and Facilitate a Special Education Private School Task Force

Friday, April 24, 2009, 2:00 p.m. Conference Room 329

Chair Takumi and Members of the Committee:

The Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A) is 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 are testifying to offer comments on this measure.

The resolution would urge the Superintendent of Education to establish a task force to oversee the Department of Education's monitoring of private schools that provide special education services to residents of Hawaii. The task force would include the senior hearings officer appointed by the director of the Department of Commerce and Consumer Affairs ("DCCA"), among others.

First, it is not appropriate for a DCCA hearings officer or designee to participate in



in the work of the task force because of conflicts of interest and improper *ex parte* contacts with the DOE as a party to litigation. Hearings officers serve as impartial deciding officials in due process hearings, and they should not, therefore, advise the Department of Education ("DOE") on issues that are likely to come before them as hearings officers. The task force would assist the DOE in designing policies and procedures for monitoring private schools, which could be relevant in deciding whether a particular school is a proper placement. If the hearings officer contributed to monitoring procedures, a conflict of interest would arise in due process hearings that involve a challenge to those procedures. Furthermore, by participating on the task force, the hearings officer could receive improper *ex parte* communications from the DOE about pending litigation that could disqualify the hearings officer.

Second, we request that a representative of the Hawaii Disability Rights Center ("HDRC") be included on the task force. HDRC and its predecessors have been designated since 1977 to provide advocacy services to persons with developmental disabilities and mental illness pursuant to Section 333F-8.5 of the Hawaii Revised Statutes. As Hawaii's protection and advocacy agency, HDRC is obligated "to protect the legal and human rights of individuals with developmental disabilities," 42 U.S.C. § 15041, and to investigate incidents of abuse or neglect of such individuals. 42 U.S.C. § 15043(a)(2)(B). The agency is, therefore, well positioned to advise DOE with respect to its monitoring of private schools in order to ensure that disabled students receive proper services.


At the same time, HDRC could ensure that monitoring does not interfere with

educational services. The DOE is an adversary where students are placed in private schools without its agreement, and it could be biased in its monitoring. As an advocate for the disabled, HDRC could assist in developing procedures that reduce the risk of bias. For the same reason, adding a representative of The Autism Society to the task force would lend balance.

Thank you for your consideration.

DATED: Honolulu, Hawaii, April 23, 2009.

HAWAII DISABILITY RIGHTS CENTER



John P. Deller, Executive Director



COMMUNITY CHILDREN'S COUNCIL OF HAWAII
1177 Alakea Street • B-100 • Honolulu • HI • 96813
TEL: (808) 586-5363 • TOLL FREE: 1-800-437-8641 • FAX: (808) 586-5366

April 24, 2009

The Honorable Roy Takumi,
Chair, House Education Committee
The Honorable Lyla Berg,
Vice-Chair, House Education Committee

RE: Testimony supporting SCR 150, SD1, Establishment of taskforce on oversight and monitoring of private school placements by the Department of Education.

Representative Takumi, Representative Berg and Members of the Committee, my name is Tom Smith and I am the Chair of the Legislative Committee of the Community Children's Council of Hawaii. Thank you for the opportunity to present our testimony in strong support of SCR 150, SD1.

The 17 Community Children's councils (CCCs) of Hawaii are community based organizations located in both rural and urban areas across the state focused children with special needs. Under the leadership of an elected parent and professional co-chair, provide local resources, workshops, forums, fairs and participate in quality assurance activities at the local level and strive to provide a community voice on behalf of children with special needs.

We fully support the passage SCR 150, SD1, as a means of determining the factors impacting on the placement of student with disabilities in private schools or facilities.

We welcome the establishment of the taskforce and offer assistance which we may be able to provide as it addresses the issues raised in the course of these hearings. We would be glad to sponsor any activities to gather additional information and recommendations needed from the broader community. We whole heartedly support the present composition of task force members. Additional parent and community members can be added to the work of this task force as it addresses the issues and procedures needed to be developed.

Mahalo Nui Loa for the opportunity to provide support for this essential piece of legislation. We are available for any questions.

Respectfully,

Tom Smith,
Jessica Wong-Sumida,
Chairs, CCC Legislative committee of Hawaii
(Signature on file at CCCO)

Teresa Chao Ocampo
215 N. King Street, Apt. 207
Honolulu, HI 96817

April 24, 2009

The House
Committee on Education
SCR 150 SD1

Testimony in SUPPORT for SCR 150 SD1 with amendments.

Dear Chair Takumi, Vice-Chair Berg and Members of this Committee:

As a parent, I am writing to support the INTENT of SCR 150 SD1. I agree that the provision of special education services as well as the implementation of the IEP require monitoring and supervision when a special needs child is placed into a private placement whether it is a private school or other educational facility.

In order for the findings from a such a Task Force as proposed in SCR 150 SD1 be representative of the TRUE issues that currently affect the DOE's ability for oversight and monitoring in the provision of special education in private placements, the findings from such a Task Force must be made by a VARIETY of parties. These parties should be representative of ALL types of individuals including those with a legal background involved in the placement process. Understanding the legal rights of the child, parents and private placement is the key to avoiding potentially costly and unnecessary litigation against the Department of Education in the future.

With this in mind, I recommend the following amendments to SCR 150 SD1 as follows:

1. Instead of requesting the Superintendent establish a Task Force for this resolution, I recommend that a NEUTRAL party be asked to take on this role. Conflicts of interest already exist given the number of proposed Task Force members, many of whom who are affiliated with the DOE.

In addition, despite the fact that the Hearings Officer has a legal background, the Department of Commerce and Consumer Affairs has a contract with the DOE and the hearings officers are trained by the DOE. This is another conflict of interest that could potentially affect the findings of the Task Force.

The Hawaii Disability Rights Center has had a great deal of interaction with BOTH the Department of Education and several private schools in which children have been privately placed. This organization has worked extensively in the area of special education.

An independent party such as the Executive Director or his designee from this agency should be able to contribute valuable insight and comment for the purposes of SCR 150 SD1. This representative would better serve both the DOE and the special needs child in the establishment of the proposed Task Force.

2. Out of the seven proposed Task Force members, five are potentially from the Department of Education or have some affiliation with the Department. These include a) a representative from the Department of Education, b) a representative from the Special Education Advisory Council; c) a representative from the University of Hawaii, College of Education; d) a representative administrator from a public school with experience with private school placements; and e) a representative from a public charter school.

With this type of composition, it would be very difficult for the findings from this Task Force to be truly reflective of the challenges and difficulties the private placements encounter as well as those of the special needs student. It would also permit unintended, yet, undue bias from that of the Department of Education to be entered into the findings of the Task Force.

I recommend that the representative from SEAC be one of the parent-members with experience with private placements. Currently, there are several members of this Council who are directly affiliated with the DOE including the Chairperson.

I recommend the deletion of a), d) and/or e) above because they are all DOE representatives.

The same argument applies to charter schools since they are also considered to be DOE schools. In addition, most charter schools do not have the funding to support special needs children and in reality, these children are usually forced back into the public school. Therefore the experiences of charter schools with privately placed students are practically non-existent and extremely limited at best.

In addition, there is NO one public school administrator who has extensive experience in private school placements since there is such a small number of privately placed children year to year.

Reconsideration should be given to a representative from the University of Hawaii, College of Education, Special Education. This individual's contribution would be debatable since the input would be, for the most part academic. This representative should be eliminated from the Special Task Force altogether.

Furthermore, SCR 150 requires that the election of the chairperson be someone other than a DOE employee. With the proposed members of the Task Force, the chairperson will most likely be the Senior Hearings Officer or the representative from HAIS and possibly the representative from the University of Hawaii. I believe it is unwise to permit this type of predetermination to be made which could lead to potentially undesired outcomes for all parties involved.

3. In order to accurately represent the needs and issues of the private placements, the special needs children as well as the parents, there must be a greater representation of OTHER individuals who are involved in the placement process.

I believe the Task Force should also include the following representatives:

- a. A parent who has experienced more than one year of having a special needs child in any type of private school, facility, day treatment facility or hospital;
- b. A representative from any private day treatment facility in Hawaii that provides educational and related services to special needs children;
- c. A representative from any hospital in Hawaii with an educational component which is or has been considered a private placement;
- d. A representative from any for-profit special school in Hawaii that provides special education and related services that is NOT a member of HAIS. Not all private placements are members of HAIS;
- e. A representative from the Autism Society who will be able to address issues related to children with autism as well as other disabilities.

Previous testimony from the Department of Education stated "In the past, the Department has been denied timely access to monitor these students and their educational records because they are not educated on a public school campus."

From my own personal experience, I can confidently state without a doubt that the two Principals from my child's home schools were never concerned OR interested in monitoring or supervising my child's progress during the school year while he was placed in a private placement.

I believe the DOE's perception as per their testimony on this issue is totally inaccurate. In addition, **HRS 302A-443 was signed only last year, thus, public school administrators were NOT required to supervise or monitor any privately placed students if at all prior to this statute.** Again, I must reiterate that the DOE has never had any prior interest in monitoring privately placed children until the recent passing of this statute.

I hope the TRUE intent of SCR 150 SD1 is to gain a comprehensive understanding of the difficulties and challenges that both the DOE and private placements experience in the enforcement of 320A-443 of the Hawaii Revised Statutes. If this is so, this Committee should seriously make EVERY effort to achieve this goal by including OTHER representatives who can provide the valuable input and a balanced view for this purpose.

Undoubtedly, the findings from this Special Task Force will lay the groundwork for the introduction of future policies to allow the DOE to legally supervise and monitor privately placed special education students. If conducted properly, the policies will most likely improve the delivery of services to these special needs children, if not these policies could potentially lead to an increase in undesired litigation in the future.

I urge this Committee to seriously consider these recommendations and adopt them into SCR 150 SD1

Thank you for this opportunity to testify in this very important matter.

Sincerely,

Teresa Chao Ocampo
(Signature on file)