

**HB1562****EDN Hearing Date: February 9, 2011****LATE TESTIMONY**

Dear Representative Jessica Wooley:

Thank you for introducing HB1562 regarding Special Education. As your constituent, I am in strong support of this bill and appreciate your consideration of the following comments and supporting references before Monday's scheduled decision-making by the House Education Committee.

I would also like to provide comments on why I disagree with the Department of Education's Position that the bill violates the IDEA or would result in "removed needed language."

HB1562, Page 2, Lines 1 - 5

Virginia's education regulations effective 2010. Weblink found at:  
[http://www.doc.virginia.gov/special\\_ec/regulations/state/index.shtml](http://www.doc.virginia.gov/special_ec/regulations/state/index.shtml)  
Regulations Governing Special Education Programs for Children with Disabilities in Virginia (PDF) (2010)

Taken from State of Virginia's Department of Education, 8VAC20-81-40. Special education staffing requirements. "E. Educational interpreting services. . . .4. For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by the local educational agency."

Hawaii Legislature supports sign language and speech for children with disabilities who hear: HR231 (2006 Regular Session), SCR17 (2007 Regular Session), SCR195 (2010 Regular Session).

Regarding the Department of Education's written testimony (02-09-2011), Section 1:

The educational interpreter services comment does not mention having separate interpreter/sign language requirements for "certain students with a disability who hear." One barrier to students receiving any sign language instruction is the ASL interpreter requirements and expense to be qualified to provide educational interpreter services. Some students with disabilities who hear do not need certified interpreters, but rather an educational aide, teacher or communication aide who is trained to work with the student who hears along with understanding the unique needs because of a disability, not hearing loss. Using sign language simultaneously with speech is peer reviewed and scientifically-based. In particular our students with Down syndrome who hear are still not receiving instruction in sign language with speech in the Department of Education at a standard

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required to benefit from a special education as required by IDEA and federal regulations.

HBI562, Page 2, Lines 6 – 11

In accordance with the IDEA, other states allow for continued early intervention services at the choice of the parent in lieu of special education preschool program, e.g., New Mexico, Virginia, and Pennsylvania.

Additional information at the USDOE's website:

<http://www2.ed.gov/programs/osepeip/index.html>

"The Individuals with Disabilities Education Act (IDEA), as amended, allows states, at their discretion, to make available for early intervention services under Part C to children with disabilities beyond age 3 until the children enter or are eligible under state law to enter kindergarten or elementary school, if the children are eligible for services under the Preschool Grants for Children of Disabilities Program (see # 84.173, under topical heading "Special Education") and previously received services under the Part C program. Recovery Act funds are set aside in FY 2009 for states that may elect to pursue this option."

Attachments: Letter from Senator Daniel Akaka, dated 04-21-2006 supporting a parent's choice, and New Mexico's Part C Option Memo of Understanding 12-2009

Regarding the DOE's written testimony (02-09-2011):

The special education preschool programs comment that placement is not based on parental preference misconstrues the fact that the IDEA allows for states to have parents request continued early intervention services "until ready for kindergarten" in lieu of changing to special education preschool program. Some states allow this option until the beginning of the next school year after a child turns 3 years old.

In addition for children of preschool age, the USDOE considers home as a Least Restrictive Environment "LRE" and parental preference/choice for continuing early intervention Part C services in lieu of Part B preschool services. These two Parts have separate and distinctive services that a parent has the option to choose under IDEA.

Relative to parent choice, our state supports the choice of charter schools, and Hawaii state law 302A-1143 and the HAR's provision for geographical exception is an option. The Hawaii Administrative Rules Title 8-13 for GE's does not specifically say that preschool students may not receive GE's, yet the DOE has a policy that preschool students cannot get a GE and the district office determines where a preschool student attends a preschool program. Preschool age should also be afforded GE's like K-12 students (not to mention charter schools, there's at least one charter school that has a preschool program). If K-12 students may apply for GE's, then preschool students should be able to apply in the same manner. The Board of Education voted to amend HAR chapter 13 this past year but I am not aware if the HAR has been approved by the Governor and in effect at this time.

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HB1562, Page 2, Lines 20 – 21

Federal law and regulations do not distinguish one related therapy over another as required or not. Music and art therapy services do not exceed the services under the IDEA.

Regarding the DOE's written testimony, Section 2: (1) The related services comment that music and art therapy exceeds the services under the IDEA I believe is incorrect. The IDEA/federal regulations consider music and art therapy as related services just like any other related service, including occupational therapy and physical therapy.

HB1562, Page 4, Lines 1-5

Proposed amendments to the definition of charter schools are taken from HRS 302B with the addition of "special education."

Regarding the DOE's written testimony: I do not agree that (2) adding "special education" in the definition of Charter schools would violate IDEA. Is the proposed wording not clear enough, the fact that charter schools are responsible, and the state charter school definition (302B) includes "independent authority" for curriculum framework and other instances, which should include special education in the definition. for example, a charter school would need a special ed teacher or related service provider who has experience, knowledge and is driven by the needs and mission of the charter school (not the DOE). the line of authority memo from Supt Hamamoto is dated August 2005, and 302B states the CSAO as the liaison between charter schools and the DOE, with funding, services or both being provided to the charter schools by the DOE.

Attachment: Authority for Special Education

HB1562, Page 4, Lines 12 – 20

Gifted and talented children does not seem to be referenced anywhere else in 302A or associated with exceptional children and is defined in 302A-101.

Regarding the DOE's written testimony (3): the gifted and talented children are not a part of the student with a disability definition in this section, and I'm not sure how gifted and talented are thought to be included in IEP processes within this proposed section.

Please note the similarity between the language for preschool children in HB1562, Page 2, Lines 6 – 11 and [§302A-444] Programs for gifted and talented children. "The department may provide a statewide flexible system of educational placement and programs within the public school system that the department determines is appropriate for meeting the unique educational needs of gifted and talented children. The nature and scope of the department's educational placement and programs shall be based on, but not

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be limited to, the following factors:

- (1) The availability of financial and physical resources within the department;
- (2) The nature of the child's gift or talent; and
- (3) Whether the child's educational placement and program should focus on, or be limited to, a particular area of gift or talent, or whether the educational placement and program should address other areas that may be beneficial to the development of the child as a whole. [L 1996, c 89, pt of §2]"

HB1562, Page 5, Line 1 – 8

Age limits were changed this past legislative session; extending the age should be considered, as did Michigan (through age 26).

HB1562, Page 5, Line 9 – 11

Special services is replaced with Related services definition from HAR 8-60.

HB1562, Page 7 Lines 14 – 22

See earlier example of New Mexico's agreement between education and health departments for extending early intervention services (IDEA, Part C) in lieu of special education preschool programs (Part B).

Regarding the DOE's written testimony Section 5: The comment for 302A-439 eligibility standards is misleading to make one think a parent/IEP team can choose an IFSP and considered to remain a "Part C" plan, as the IFSP would be subject to Part B preschool program requirements and funding (completely separate and different than Part C), nor does the parent get to choose the IFSP format without the DOE consenting (that's my understanding). The chaos, disruption of services and change of providers are still required precisely on the 3rd birthday, whereas continued early intervention services known as the Part C Option in the CFR/ [idea.ed.gov](http://idea.ed.gov) would not necessarily have to change providers or coordination services.

HB1562, Page 8, Lines 13 – 21, and Page 9, Lines 1 – 9

Speech and language pathology and audiological services are not defined in education statutes. The transfer of these positions from the DOH to the DOE left gaps, such as responsibility of treating dysphagia in students (swallowing disorders) by a trained speech language pathologist, and knowledge of genetic conditions that lead to an increased risk of certain disabilities and educational needs.

HB1562, Page 10, Line 7

Regarding the DOE's written testimony: Section 9: The comment that special education being added to definition of charter schools would violate the IDEA is not based on any federal law or regulation to my knowledge It doesn't seem that adding "special education" would change the fact that special education is governed by the IDEA and chapter 60.

HB1562, Page 10, Line 20

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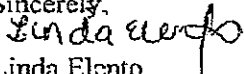
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A charter school must be specifically included in the IEP team, and a student should not be denied the opportunity to know a charter school is a choice as it is for any other student, to apply and be accepted, regardless if an IEP exists to be operational in another school; otherwise children with disabilities will continue to be kept away from charter schools. Just like the GE process is not considered an IEP placement, the charter school choice is not an IEP placement, although both a school being considered as a GE or charter school choice could be an IEP team placement.

Regarding the Department of Health's written testimony (02-09-2011): Briefly, the task force study referred to was to focus primarily on the expansion of early intervention to all children, and studies/discussions to provide continued early intervention in lieu of special education preschool was not completed, nor should the report from a small survey of parents opinions without given options be considered reliable. From the research I have done, there is no memo of agreement between DOE and DOH other than the school based behavioral health services. HB1562 would encourage that agreement so that federal and state funds that would be used for special education preschool services may be transferred to DOH to reimburse for continued Part C services.

Thank you for your consideration of these comments in support of HB1562.

Sincerely,



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