

AUTISM SOCIETY OF HAWAI'I
P.O. BOX 2995
HONOLULU, HAWAI'I 96802

LATE TESTIMONY

Wednesday, March 30, 2011

Conference Room 308 at 2 p.m.

The House Committee on Finance

To: Representative Marcus R. Oshiro, Chair

Representative Marilyn Lee, Vice Chair

From: Naomi Grossman, Vice President

Autism Society of Hawai'i

Re: SB 1284 SD2 HD1 RELATING TO EDUCATION
Testimony in Opposition

My name is Naomi Grossman, and I am the vice president of the Autism Society of Hawai'i. The Autism Society of Hawai'i is an affiliate chapter of the Autism Society of America. Its membership are composed of families who deal with living with the effects of autism and the professionals and paraprofessionals who serve them.

The Autism Society of Hawai'i provides leadership in the field of autism dedicated to supporting families who advocate on behalf of their children and are committed to reducing the consequences of autism through education, research, and advocacy.

The Autism Society of Hawai'i appreciates the opportunity to testify in opposition of SB 1284 SD 2 HD 1 Relating to Education.

SB 1284 proposes to amend HRS Section 302A-443 to give the DOE authorization to monitor students with disabilities who are placed, at DOE's expense, at private schools or placements. SB 1284 SD2 requires private schools or placements to post rates, fees, and tuition by April of each year. SD 1284 SD2 requires the DOE to pay only for private school or placement services that are specified in a student's individualized education program and to withhold payment to private schools or placements that restrict or deny monitoring by DOE. Effective 07/01/2050. (SD2)

In response, and in most instances, the DOE is fully able to monitor students. However, there are many compelling reasons why a private school would not permit the DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Educational Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs.

Recently, the 9th Circuit issued a decision on March 28 that held that a school district cannot withhold tuition for a unilateral private placement following a denial of FAPE because the school doesn't meet state standards. By accepting IDEA funds, the DOE agreed to provide FAPE and must follow a hearings officer decision.

Release of information for observations and assessments should follow protocol standards in order to protect student rights. Under HIPAA, a student's medical records is subject to review. A clinical psychologist under APA standards may need to review the questions from the public school with the parent before disclosure can occur and be deemed appropriate. Scheduling reviews and observations without prior authorization is not appropriate. The Felix Service Testing and Monitoring Project required Reviewers to extend notice, consent form exchanges and scheduling to meet public school protocol and preparation for the reviews where special needs students were monitored. A reasonable effort needs to be provided as a courtesy gesture is appropriate for private schools as well.

Under the federal Individuals with Disabilities Education Act (I.D.E.A.), the DOE is required to provide a free and appropriate public education (F.A.P.E.) to all students. When the DOE is unable to do so, the IDEA gives parents the option of placement in a private school at public expense. Whether a private school is an appropriate placement and whether the costs associated with that placement are appropriate are matters which the Courts must decide. The due process decision is the threshold of the standard for appropriate education programming and related services. Those are not for the DOE to determine, and legislate. Allowing the DOE to do so may violate the I.D.E.A. In many cases, the DOE has been found in noncompliance with the IDEA standard and thus is not the impartial monitor over the private placement when placement is awarded to the student and their family. Having the DOE being determined as the monitor may not be appropriate.

Hawai'i Department of Education receives nearly a quarter of the State's entire operating budget, the largest amount of any state agency, and that the department's appropriations, in fiscal years 2003 through 2008, increased nearly sixty-four per cent from \$1.5 billion to \$2.4 billion, while enrollment has stayed roughly the same, but that Hawai'i's public schools' test scores repeatedly rank among the lowest in the nation despite the increased funding (HB 479).

As it currently exists, HRS Section 302A-443 already permits the DOE to monitor students who have undergone a unilateral private placement so this legislation is redundant and unnecessary. The DOE has the option to provide FAPE if they do not like private school programs and placement. This bill will cause litigation and more costs to taxpayer dollars if it is passed into law.

We would strongly recommend that the bill be held and that the DOE, if it truly seeks to save expenditures under the IDEA, develop the capacity and the will to comply with the IDEA, so that fewer private placements will be necessary.

For the reasons stated, the Autism Society of Hawai'i oppose SB 1284 SD2 HD1. We respectfully ask the Committees not to pass the measure.

Thank you for the opportunity to testify.

Sincerely,

Naomi Grossman
Autism Society of Hawai'i, vice president
naomigr@gmail.com
808 228-0122

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 30, 2011 2:35 PM
To: FINTestimony
Cc: threestars@hawaii.rr.com
Subject: Testimony for SB1284 on 3/30/2011 2:00:00 PM

Testimony for FIN 3/30/2011 2:00:00 PM SB1284

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Linda Elento
Organization: Individual
Address:
Phone:
E-mail: threestars@hawaii.rr.com
Submitted on: 3/30/2011

LATE TESTIMONY

Comments:

Chair Oshiro, Vice Chair Lee and Members of the House Committee on Finance,

I oppose SB1284 SD2 version for reasons stated by the written testimony of Hawaii Disability Rights Center submitted to the Education committee hearing of March 16, 2011.

Thank you for the opportunity to provide testimony.

David and Laurie Kahiapo
41-201 Kauholokahiki St.
Waimanalo, HI 96795

Wednesday, March 30, 2011

Conference Room 308 at 2 p.m.

The House Committee on Finance

LATE TESTIMONY

To: Representative Marcus M. Oshiro, Chair

Representative Marilyn Lee, Vice Chair

From: David and Laurie Kahiapo

Re: SB 1284 SD2 HD 1 RELATING TO EDUCATION
Testimony in Opposition

Our names are David and Laurie Kahiapo and we are parents of a student who has been in need of specialized, intensive program for the past 17 years. I appreciate the opportunity to testify in opposition of SB 1284 SD 2 HD 1 Relating to Education.

SB 1284 SD2 HD1 authorizes the DOE to monitor students with disabilities who are placed, at DOE's expense, at private schools or placements. Requires private schools or placements to post rates, fees, and tuition by April of each year. Requires DOE to pay only for private school or placement services that are specified in a student's individualized education program (IEP) and to withhold payment to private schools or placements that restrict or deny monitoring by DOE. Exempts certain schools. SB 1284 SD2 HD1 proposes to amend HRS Section 302A-443. Exempts certain schools. Effective 07/01/2050. (SD2 HD1)

In response, and in most instances, the DOE is fully able to monitor students. However, there are many compelling reasons why a private school would not permit the DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Educational Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs.

Recently, the 9th Circuit issued a decision on March 28 and held that a school district cannot withhold tuition for a unilateral private placement following a denial of FAPE because the school doesn't meet state standards. By accepting IDEA funds, the DOE agreed to provide FAPE and must follow a hearings officer decision.

Under HIPAA, a student's records under a medical doctor is subject to specific review and is not readily shared with other agencies. For example, the clinical psychologist can review questions from the school but shall discuss that with the parent/guardian before disclosure to the other

agency is appropriate. No other state across the United States has created this level of intrusion into the privacy rights of children under the I.D.E.A.

Under the federal Individuals with Disabilities Education Act (I.D.E.A.), the DOE is required to provide a free and appropriate public education (F.A.P.E.) to all students. When the DOE is unable to do so, the IDEA gives parents the option of placement in a private school at public expense. Whether a private school is an appropriate placement and whether the costs associated with that placement are appropriate are matters which the Courts must decide. The due process decision is the threshold of the standard for appropriate education programming. Those are not for the DOE to determine, and legislate. Allowing the DOE to do so may violate the I.D.E.A. In many cases, the DOE has been found in noncompliance with the IDEA standard and thus is not the impartial monitor over the private placement when placement is awarded to the student and their family. Having the DOE being determined as the monitor with this particularity may not be appropriate.

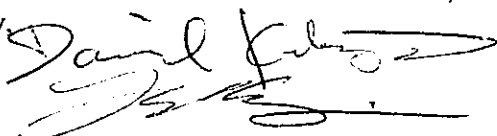
As it currently exists, HRS Section 302A-443 already permits the DOE to monitor students who have undergone a unilateral private placement so this legislation is redundant and unnecessary. The Legislature repealed the DOE's authority to monitor private schools in Act 188, SLH 1995. This bill would reinstate such authority, but only for monitoring private schools that educate children with disabilities. The limitation is discriminatory and particularly inappropriate, in view of the fact that children placed in private facilities under the IDEA have been placed there because the DOE has failed or refused to provide a free appropriate public education. There is no legitimate reason for the DOE to monitor a This bill will cause a firestorm of litigation costing the taxpayers a fortune.

School districts are required to provide a FAPE – a free and appropriate education to children who qualify for special education services under the IDEA. If they fail to do so, placement at a private facility is an option which the law allows. The DOE resists paying for these private placements because it incurs the expense of paying for teachers and staff who are properly trained to educate a very difficult population. By accepting IDEA funds, however, the DOE agreed to provide FAPE and thus brings upon itself the obligation to reimburse private school tuition by its unwillingness to do so in the public schools or in private schools the DOE selects.

Furthermore, as a result of the Felix case, it was recognized that there is a large component of these special education programs that need to focus on the behavioral needs of the child. For that reason, some of the placements that are utilized in Hawaii to satisfy the IDEA requirements are CARF accredited as mental health treatment facilities. In light of that, we submit that if any agency is to engage in monitoring to ensure that the child is receiving the services to which they are entitled, perhaps it ought to be the Department of Health, inasmuch as they have more background and competence in the oversight of facilities that provide mental health services and other related activities.

For the reasons stated, I oppose SB 1284 SD2 HD1 and I respectfully ask the Committees not to pass the measure. Thank you for the opportunity to testify.

Sincerely,



David and Laurie Kahiapo, gopono@gmail.com