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LATE

Senator David Y. Ige, Chair
Senator Michelle Kidani, Vice Chair
Committee on Ways and Means

Meeting: February 25, 2011 at 9am, Conference Room 211

Testimony: In OPPOSITION of SB1284 SD1 Related to Education

I do not have any qualms about the DOE's self-imposed mandate to provide oversight for special needs children placed in a private placement. That was the intent behind Act 179 which was passed 2008. However, with the over-reaching language in SB 1284 SD1, I do not agree with allowing the DOE unlimited access and authority to a private school, a student and a student's educational records for the purposes of observation, interviews and review of a student's educational records without the inclusion of an independent, unbiased system of checks and balances that would ensure the rights of the private school and its students. The only rights SB 1284 SD1 is concerned with are those of the DOE.

Due process hearings have historically averaged approximately six to nine months for a decision. Given DCCA's recent enforcement of the 45 calendar days to complete a due process hearing after the expiration of the 30 calendar day period to conduct a resolution meeting in the due process timeline, parents most likely will be forced into a minimum of two due process hearings for EACH school year as a result of SB 1284 SD1. Based on my own experiences with due process, I believe that SB 1284 SD1 will INCREASE the number of due process hearings and additional litigation resulting in the DOUBLING of the expenses that the DOE is trying to avoid.

Although SB 1284 SD1 claims that the private placements do not "afford the same opportunity [for the disabled children] to receive rigorous, standards-based instruction and curriculum" as per the Common Core State Standards "which are provided to their peers in public schools" this is clearly false.

The DOE has not yet begun implementing the Common Core State Standards.

The DOE only adopted the Common Core State Standards in order to compete for the RTTT awards. According to the DOE's educational reform website, implementation of this curriculum will not begin until August 2011.

Additionally, many of Hawaii's private schools are accredited, for example, by the Western Association of Schools and Colleges (WASC). As per the WASC website, "All students participate in a rigorous, relevant and coherent stands-based curriculum that supports student achievement of the Hawaii Content and Performance Standards (HCPS) and the General Learner Outcomes through successful completion of any course of study offered."

Despite the DOE's negative claims against private schools, many have similar curricula as that of the DOE which directly contradicts the claims made in SB 1284 SD1.

Further, the DOE is hardly in a position to boast a "rigorous, standards-based instruction" when FORTY-ONE percent of its schools failed to meet the NCLB requirements. According to the NCLB status and Adequate Yearly Progress for the 2010-2011 school year, 12 schools require "corrective action", 15 schools are scheduled for "planning and restructuring" and 91 schools are "restructuring." Out of the DOE's 286 schools, 118 or 41 percent of our public schools continue to struggle to teach basic reading and math to regular education students at the already low standards set by NCLB. This poor performance has continued since 2002.

The legislature should spend more time demanding greater accountability and progress from our publicly supported schools rather than further diminishing the rights and due processes of special needs children by bills such as SB 1284 SD1.

The argument stated in SB 1284 SD1 related to common core state standards and curriculum provided by the DOE compared to many private placements is moot. There is no proof that the educational standards set by the private schools are lower that those of the Department of Education as that would have to be determined on a case by case basis.

Related to health and safety, SB 1284 SD1 stated that the DOE should be permitted to monitor private schools to "ensure compliance with all applicable federal, state, and county laws, rules and regulations pertaining to health and safety. The DOE is an educational agency, it is not the government. It is not and should not have the authority to "govern" over other private schools under the pretense of monitoring. These issues are entirely separate and should remain separate.

As for safety, the following are examples of DOE teachers including Special Education teachers and their activities against helpless children. I believe the following headlines taken from our local newspaper speak volumes.

-A Kona teacher charged for child abuse of an 11-year old boy.

-A special education teacher on Hilo was arrested for drug distribution.

-A Leilehua high school Special education teacher arrested for selling methamphetamine while at school.

-A Makapu Elementary school teacher arrested for molesting two girls at a Kaneohe School.

The true issue in SB 1284 SD1 should be related ONLY to the DOE's ability to monitor the implementation of a child's IEP placed in a private placement.

I agree that the DOE has a responsibility and obligation to provide a Free Appropriate Public Education to all special needs children under IDEA, including those who are placed in a private school at the public's expense. However, SB 1284 SD1 fails to include or even suggest any system of checks and balances to ensure the rights of the private schools and their students all the while leaving these decisions up to the discretion of the DOE.

In most instances the DOE is fully capable of monitoring students without "invading" private school campuses. Many of the private school's documents are provided to the DOE without much ado and many educational documents are actually generated by DOE providers. Observations and assessments are permitted as well as properly scheduled visits if accompanied by parental consent. Many times the DOE's own providers provide services within the private placement and thus have the ability to provide updates on the student's educational progress and status on a daily basis. At times the providers in specialized schools are MORE qualified than those providers from the DOE and thus provide very insightful information related to the student to parents and DOE providers.

However, there are many instances in which the private school could refuse to allow the DOE on its campus. In several past cases the DOE failed to make payment to the school or facility despite an IEP team's decision, a due process decision or a federal court decision.

Denial of access can occur when the DOE fails to notify the private school or parent in advance of their visit without prior notification or parental consent. The unscheduled visit may be untimely or inopportune where the child was sick

or unavailable. Written consent for observations or visits are required as per 34 CFR 300.9 of the DOE's Procedural Safeguards Notice. Just as consent is required when the DOE conducts an observation of a child on its OWN campus, it is equally required on a private school campus.

Sometimes, DOE personnel while visiting one student at the private placement will inquire about another student placed in the same private placement, thus violating that child's rights and possibly jeopardizing his or her identity. According to the DOE's contracted SPED attorney from the mainland, any inquiry regarding other students in this situation is prohibited.

The DOE has often used a "blanket" consent form which fails to clearly describe the purpose of the visit, the number of visitors, the time of visit, or a start or end date at the private school. Many times, the DOE will use the same consent form as a method of unauthorized and continual access onto these campuses, which technically can be considered trespassing. This type of open-ended consent violates 34 CFR 300.9.

The consent requested as per 34 CFR 300.9 must clearly identify all relevant information including records (if any) that will be released and to whom, related to the action for which the parent gives consent and that the parent must understand and agree in writing to that action. Based on my past personal experiences, the DOE refused to satisfy these requirements for no apparent reason despite numerous requests for clarification.

In addition to these examples, HRS Section 302A-443 already permits the DOE to monitor students who have undergone unilateral private placement so this legislation is redundant and unnecessary. It permits the DOE to greatly overstep its authority into the private sector without requiring or having the same requirements of itself.

SB 1284 SD1's requirement to "withhold payment to any private school or placement that restricts or denies monitoring of students by the department of education" directly challenges a hearing officer's decision thus further violating a child's educational rights under IDEA. According to the DOE's Procedural Safeguards Notice under Hearing Decisions, 34 CFR 300.513, the hearing officer may decide in favor of the parents alleging procedural violations.

TWO of these procedural violations are the "deprivation of an educational benefit" and the interference with a child's right to a free and appropriate public education."

Once the DOE chooses to withhold payment to a private school for the purposes of manipulating a private school into allowing access to a student in

this manner, the DOE will violate the child's right to FAPE once again by "depriving" the child from an educational benefit, even more so should the parents be unable to meet a sudden financial burden as a result of the DOE's actions. At the federal level, this type of activity would not bode well for the DOE as both the DOE and the state of Hawaii would be ill-prepared financially should a class action lawsuit arise from this legislation due to the infringement of the rights of private businesses and the students protected under IDEA and FERPA as well as their civil rights.

Whatever challenges the DOE may face in acquiring observations, interviews or access to educational records for a child placed in a private placement, it was the DOE's INITIAL failure to provide FAPE as required by federal and state laws that resulted in the private placement in the first place.

The DOE, as a one-tiered agency, is not capable of being impartial nor does it need to be impartial. It has no supervisory boards and has never been held accountable in these individual situations. This boldness is what led Hawaii into the Felix Consent decree for over ten years.

For the reasons stated, I oppose SB 1284 SD1. I respectfully ask that this Committee do not pass the measure as written.

Sincerely,

(Signature on file)

Teresa Chao Ocampo