

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

LATE TESTIMONY

Wednesday, March 16, 2011

Conference Room 309 at 2 p.m.

The House Committee on Education

To: Representative Roy M. Takumi, Chair

Representative Della Au Belatti, Vice Chair

From: Naomi Grossman, Vice President

Autism Society of Hawai'i

Re: SB 1284 SD2 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 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.

Under HIPAA, a student's records under a medical doctor is subject to specific review and is not readily shared with other agencies within which includes the DOE. 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. It saddens me that the State of Hawaii has taken this aggressive stance when it comes to requiring me to wave my privacy rights to benefit the state's rights over my child's rights. Under the FERPA, parents are empowered to execute their informed consent rights.

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. Plus, setting reimbursement rates lower than the cost of the services and what is a reasonable fee will result in a loss of services and therefore a denial of FAPE. The market sets the reimbursement rates for services, not the DOE. If the DOE does not like the rate, they have an option. That option is to provide FAPE. This bill will cause a firestorm of litigation costing the taxpayers a fortune.

For the reasons stated, the Autism Society of Hawai'i oppose SB 1284. 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



**LEAP**  
LEVIN EDUCATION ACCESS PROJECT

*Ensuring access to education for all Hawaii's special needs students.*

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Stanley E. Levin  
President

Susan Dorsey  
Director/Lead Attorney

Bruce Ellis  
Supervising Paralegal/Training Director

**LATE TESTIMONY**

March 16, 2011

HOUSE OF REPRESENTATIVES  
REGULAR SESSION OF 2011  
HOUSE COMMITTEE ON EDUCATION

Rep. Roy M. Takumi, Chair  
Rep. Della Au Belatti, Vice Chair

Rep. Henry J.C. Aquino  
Rep. Scott Y. Nishimoto  
Rep. Karen L. Awana  
Rep. Scott K. Saiki  
Rep. Jerry L. Chang  
Rep. K. Mark Takai  
Rep. Faye P. Hanohano  
Rep. Jessica Wooley  
Rep. John M. Mizuno  
Rep. George R. Fontaine  
Rep. Mark M. Nakashima  
Rep. Aaron Ling Johanson

Meeting: March 16, 2011 at 2:00 pm, Conference Room 309

**Re: Testimony: In OPPOSITION of SB 1284 SD 2 Related to Education.**

Dear Chair Takumi, Vice-Chair Belatti and Committee Members:

The Levin Education Access Project opposes SB1284 SD2, relating to Education. The language contained in the measure, in its present form is in

direct contravention with federal law, including the Individuals with Disabilities in Education Act (“IDEA”) as well as federal precedent.

Under the IDEA, parents of children entitled to education and related services under the IDEA have a right to place the child in a private placement and seek reimbursement even where the private school or placement is not provided for in the child’s Individualized Education Program (“IEP”). The language in SB1284 SD2 seeks to establish this right in violation of the IDEA’s statutory command. Furthermore, the provisions in SB1284 SD2 that seek to impose standards based curriculum and instruction based on Common Core State Standards as well as seek to set tuition rates for private placements are also illegal under federal statutory and caselaw. The DOE’s duty to monitor students in private placement is already required by state and federal law.

Under clearly settled United States Supreme Court precedent, parents of children are entitled to tuition reimbursement at private placements based on the principles set forth in the U.S. Supreme Court’s seminal decisions in *School Comm. of Burlington v. Dept. of Education*, 471 U.S. 359 (1985) and *Florence County School District Four v. Carter*, 510 U.S. 7 (1993). Under *Florence County*, a court may award a disabled student the cost of his private placement if: (1) the court determines the student’s IEP is

inappropriate and (2) the student shows that the private placement he seeks is proper. 510 U.S. at 15. To meet the *Florence County* test, a disabled student is not required to demonstrate that he cannot be educated in a public setting or that the private school follow the student's IEP that is found to be a denial of a free appropriate public education as required by the IDEA and its implementing regulations. Under the IDEA, the relevant question is not whether a student could in theory receive an appropriate education in a public setting but whether he will receive such an education. *See also Seattle School District v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) ("the term unique educational needs [shall] be broadly construed to include the handicapped child's academic, social, health, emotional, communicative, physical and vocational needs.").

As written, SB1284 SD2 blatantly violates the IDEA as well as long established federal precedent in several of its provisions, including imposing common-core state standards curriculum on private schools, setting tuition rates for private schools (a provision that also violates the United States and Hawaii Constitutions) and paying only those private schools as provided in the child's IEP.

Thank you for your consideration and the opportunity to submit these comments in opposition to SB 1284 SD2. The Levin Education Access Project strongly urges that this Committee not pass SB1284 SD2 as written.

Sincerely,

Susan K. Dorsey, Esq.  
Levin Education Access Project  
237-5327

**belatti4-Joal**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 16, 2011 1:05 PM  
**To:** EDNtestimony  
**Cc:** bellis@leaphawaii.com  
**Subject:** Testimony for SB1284 on 3/16/2011 2:00:00 PM  
**Attachments:** Opposition to SB1284.pdf

Testimony for EDN 3/16/2011 2:00:00 PM SB1284

Conference room: 309  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Bruce P. Ellis  
Organization: Individual  
Address:  
Phone:  
E-mail: [bellis@leaphawaii.com](mailto:bellis@leaphawaii.com)  
Submitted on: 3/16/2011

**Comments:**

This bill is simply an attempt by the DOE to restrict parents ability to provide their special needs children with what the law requires an appropriate special education.





Dear Members of the Education Committee:

Under the IDEA a child is to receive specifically designed instruction to meet his or her unique educational needs. Those needs are not always academic in nature and are not address by Common Core State Standards. For the students who are typically placed in private programs, which are the subject of this bill, there unique educational needs cannot be address with Common Core State Standards or their needs to not fit Common Core State Standards. As an example, an autistic child is unaware of other people's thoughts and have no desire to request things of others as a non disabled child does intuitively. Therefore one of an autistic child's unique educational needs would be to develop "theory of mind" and/or the ability to request items from another person (getting his wants and needs expressed as a non-disabled child would). This type of need is not addressed in Common Core State Standards yet they are absolutely necessary for a child to at some point benefit from Common Core State Standards and without these abilities that child never will.

Regarding the contention that DOE is unable or not allowed to monitor the progress of children who are in private placements. This is not true. In most cases DOE personnel fail or refuse to abide by the protocols of these private placements. These requirements for observation are as simple as providing the names of those DOE personnel who will be observing in advance or a one week notice requirement as opposed to just showing up when on any given day or time yet DOE fails or refused and then attempts to blame the private placement. Most private placements are very flexible and work with the DOE and some do have a set protocol that need to be followed just as DOE imposes on parents who wish to visit schools or have their experts visit schools.

As for DOE setting the rates of private placements. In most cases the reason these disabled students are at the private placement is because DOE cannot provide for a disabled child's unique educational needs at the public school because their needs cannot be address by the Common State Core Standards. The private placements are usually smaller and provide a more intensive program with a much smaller student to teacher ratio. As an example a child who is autistic, the scientific research on appropriate programs call for intensive one to one services for between 25-40 hours a week using applied behavior analysis. The personnel have specialized training not provided to the average DOE special education teacher, education aide or para-professional. For the most part DOE contracts with outside agencies for these specialized trained personnel at great expense. This is not any different with private placement providers. If the DOE was providing a FAPE to these students in the first place there would be no need to have private placements. Allowing DOE to set what they believe is "reasonable tuition" is simply the fox guarding the hen house and a roundabout way of putting private placements out of business.

Sincerely,  
Bruce P. Ellis

**belatti4-Joal**

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**From:** Naomi Grossman [naomi\_grossman@yahoo.com]  
**Sent:** Wednesday, March 16, 2011 1:54 PM  
**To:** EDNtestimony  
**Cc:** einew137 Newhouse  
**Subject:** SB 1284 SD2 and SB 1503 SD2 House Committee on Education - March 16 at 2 pm in Conf Rm 309

--- On **Wed, 3/16/11, Irene Newhouse** <einew@hotmail.com> wrote:

From: Irene Newhouse <einew@hotmail.com>  
Subject: once more testimony on monitoring private placements  
To: naomi\_grossman@yahoo.com  
Date: Wednesday, March 16, 2011, 6:13 AM

Here I am, once more, Naomi! Please submit my testimony for both SB 1284 and SB 1503 for today's testimony. Since I am in Kihei, Maui, I will not be able to testify in person.

Irene

No one is more committed to the concept of public education than I am. All my education, including graduate school, has been at public institutions. This is also true for my husband. Consequently, we planned on a public education for our daughter. Well, that got us huge slaps in the face! Our daughter, adopted from Romania at age 4, has many neurological challenges due to having spent all those years in orphanages. Our home elementary school was completely unable & unwilling to cope with her issues. We were even told that no progress is still FAPE, & if we didn't believe that, we could waste a lot of money on an attorney and lose at due process. Funny thing - we WON placement at Horizons Academy at public expense for our daughter, as her case was a repeat of a Supreme Court case from the 1980s, the Shannon Carter case. At Horizons Academy, our daughter entered 4th grade not being able to read even at 1st grade level, and left after 8th grade reading at 7th grade level. Yes, an average of 1.5 grade levels per year progress. During that time, staff from Kamali'i and Lokelani repeatedly came to 'monitor' our daughter's progress. They had NOTHING positive to contribute to her education, because they'd messed it up royally in the first place! In fact, our daughter found Kamali'i observations stressful & disruptive. She KNEW they were there to try to pull her back into a place she viewed with horror [she was also bullied & assaulted there] because the hearing officer only made his judgement valid for 1 semester. Our attorney had to file for DP & stay put twice a year! Every time we either won, or the DAG told Kamali'i to settle, as they had no case. Right - the DoE's own attorneys told them they had no case. Our daughter's IEPs were SO BAD her case was open & shut!! After our first IEP meeting, I bought an "IEP 100" book from amazon.com. I was astonished - every single thing that book said was bad practice or outright illegal was in our daughter's IEP. Simple googling indicated that this book was not the only source of similar information - there were 100s such sources. I was once even in the amusing position of watching a Columbus teacher warn IEP staff that our daughter's IEP was illegal & nobody, from the principal on down, listened to her. Although she was recruited at great expense from out of state, she went back the next year, because she couldn't in good conscience work for DoE. How on EARTH can you expect an organization that dysfunctional to 'monitor' private placement in any meaningful way??? How on EARTH does it make sense to pay a private school only for IEP items when the reason a child has been placed at that school is that DoE staff refused to come up with an appropriate IEP in the first place???? Remember - hearing officers are state employees who have determined that DoE has consistently not educated a child in ways that contravene federal law.

Our daughter is almost 18 now. Public high school didn't work for her, so I home schooled her. She got her GED a year early, with scores high enough to qualify for a diploma. I am not an educator. I have never had a single education course. Yet I was able to build on the foundation she got at Horizons Academy to that extent, and the so-called experts at DoE couldn't even make it out of the starting gate. She's now at UH Maui College part time & taking English 100. She's the youngest student in her class, yet the instructor used her first writing exercise as a model for the other members of her class. [By the way - she is classmates with another ex-Horizons student, several years older than she is. He went to DoE high school. She was at first jealous of his far greater fluency of ideas, but has watched as his writing has been down-graded for major grammar and punctuation problems, while her work is consistently praised for its correct grammar & punctuation. I was not an English major, either. I am a scientist, yet I managed to teach her far more grammar than her fellow students have gotten]. DoE staff at Kamali'i told me that she was uneducable & that I was in denial at the extent of her debilitating learning disorders, and that I should listen to the experts -them. Who was more correct? And that's what's so tragic - I've since met 3 other young adults who had similar experiences with DoE elementary schools. Their parents also refused to believe the 'experts' & their children ended up at Horizons. One student was able to pass Seabury Hall's entrance tests & graduate - SH is the Punahou of Maui. One student is graduating this year from Kihei Charter High School. And the last is still at Horizons. He can read, too, something Kamali'i staff told his mother would never happen. I am not particularly well-connected in the community, so the fact that I know so many people with similar experiences is alarming. And what is more alarming - how many other young people are there, whose parents didn't know enough to disbelieve DoE staff, so their children never have a chance? Dyslexia, one of our daughter's challenges, occurs in up to 20% of students, and DoE can't do a thing with it. DD has a former friend her age, whose dyslexia was far milder than hers. This young woman actually graduated from special education reading at Kamali'i, went to Waldorf through 8th grade & is now at Baldwin. She was retained a year. She is struggling in her subjects. At this point, our daughter reads FAR better than she does. And this young lady is one of the most striking successes of DoE special education, but Horizons & home school have resulted in our daughter, with far greater challenges, out-performing her academically. Not a ringing endorsement for DoE, is it?

The whole premise these bills are based on -- that the Department of Education acts professionally and has professional standards & capabilities -- is completely wrong. I cannot put it more clearly than that. Furthermore, if these bills are passed, parents will be forced to sue DoE for limiting their child's access to FAPE, and DoE will lose. If the legislature's goal is to make more work for the AG's office, wasting valuable taxpayer dollars in the process, by all means go ahead & pass these bills. Parents whose children are placed privately at public expense are sufficiently savvy to monitor their child's educational progress w/out DoE hindrance, and to know when it's time to sue again. Contrary to what DoE tells you, parents of children who go to DP are not snobs looking for a free private education. We just want our children to be able to grow up, get a job & move out, and we realize if our kids can't even read, that's not going to happen. Yet DoE pretends we want the moon.

Though when you consider an average high school graduate reads at 6th grade level, I guess demanding that your child be able to read at grade level looks like the moon, No Child Left Behind notwithstanding. Note: our daughter started taking classes at UHMC at age 16. At that age, she placed, on the nationally-normed reading comprehension assessment all students registering at UHMC must take, because they don't even trust the DoE, 1 point below college-level reading comprehension. Yep, in 2 years of home school I'd taken her from 1 year behind grade level to 2 years ahead of grade level. I fully admit, I could not have taught her to read. But once she got that, it didn't take rocket science or teacher certification to hone her skills.

Irene Newhouse  
129 Walua Place  
Kihei HI  
ph 808 264-6977

Mrs. Dolly La Touf

933 Kaheka Street A-103

Honolulu, Hawaii 96814

Wednesday, March 16, 2011

Conference Room 309 at 2 p.m.

The House Committee on Education

To: Representative Roy M. Takumi, Chair

Representative Della Au Belatti, Vice Chair

From: Dolly La Touf

Re: SB 1284 SD2 RELATING TO EDUCATION  
Testimony in Opposition

My name is Dolly La Touf and I am a volunteer guardian ad litem and I work with children and their families under the Individuals with Disabilities Education Act (I.D.E.A.) and Section 504. I have front line knowledge and experience working with children and their families deal with in the education system and throughout life domains.

I appreciate the opportunity to testify in opposition of SB 1284 SD 2 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.

Under HIPAA, a student's records under a medical doctor is subject to specific review and is not readily shared with other agencies within which includes the DOE. 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. It saddens me that the State of Hawaii has taken this aggressive stance when it comes to requiring me to wave my privacy rights to benefit the state's rights over my child's rights. Under the FERPA, parents are empowered to execute their informed consent rights.

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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. Plus, setting reimbursement rates lower than the cost of the services and what is a reasonable fee will result in a loss of services and therefore a denial of FAPE. The market sets the reimbursement rates for services, not the DOE. If the DOE does not like the rate, they have an option. That option is to provide FAPE. This bill will cause a firestorm of litigation costing the taxpayers a fortune.

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

Sincerely,

Dolly La Touf  
230-7468  
La2fdoll@aol.com