

Monday, February 8, 2011
Conference Room 225 at 1:15 pm

The Senate Committee on Education
The Senate Committee on Human Services

To: Senator Jill N. Tokuda, Chair
Senator Michelle Kidani, Vice Chair
Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Vice Chair

From: Keith H.S. Peck

Re: SB 1284 RELATING TO EDUCATION
Testimony in Opposition, but support of the goals

I am the attorney, the main one that uses the IDEA to get children private school placements. Over two years ago, I spoke with a Representative McKelvey about the problem with over-charging the DOE for autism-related services. I have also spoken with DOE attorneys about the potential false claims in this area of service.

The goals of monitoring the quality and costs of private programs that the state pays for is appropriate. The version of the Bill I reviewed is flawed.

Monitoring by the DOE must be reasonable. It must be restricted. Will the private school be informed ahead of time about an on-site visit. How many DOE people will crowd into a classroom on that visit. How long will they stay. Will the other student's confidentiality be lost. Will their parents have to waive these rights, or will they be able to sue the state. How many times in each semester will the DOE do an on-site visit, unlimited? Without a reasonable limitation, this might violate the Constitution, "as applied"

One of the reasons cited for this law is to monitor the implementation of the IEP. This is an invalid reason, where the student has been unilaterally placed by his parents. In that circumstance, the IEP was rejected and the DOE is required to pay for the private program that was agreed to between the parent and the private school. The IEP is not being implemented at the private school.

Another reason for the monitoring cited is to ensure that the State curriculum is being provided. The Federal law already states that the private school need not follow state standards. The State can't make private schools follow these standards, under the IDEA.

Finally, the state does need to set limits on reimbursements to private schools but cannot legally cap what the schools charge under the "freedom to contract" right of the US constitution. The state does need a mechanism to assess the actual costs of these services and provide for reasonable profits. However, such a mechanism already exists. In each individual court case, they state can ask for the costs associated with the program. The Hearings Officer can then determine what is a reasonable profit.

Thank you,

Keith Peck: 384-7325

LATE

AUTISM SOCIETY OF HAWAII
P.O. BOX 2995
HONOLULU, HAWAII 96802

Monday, February 7, 2011

Conference Room 225 at 1:15 pm

The Senate Committee on Education

The Senate Committee on Human Services

To: Senator Jill N. Tokuda, Chair
Senator Michelle Kidani, Vice Chair
Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Vice Chair

From: Naomi Grossman, Vice President
Autism Society of Hawai'i

Re: SB 1284 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.

First of all, I want to thank the Senate Human Services and Education Committees for thinking of Hawai'i's keikis when you think of restoring Congress' original intent of the Individual's with Disabilities Education Act (I.D.E.A.) that parents who prevail in I.D.E.A. impartial administrative due process deserve to access educational success. Sens. Kennedy, Simon and Kerry argued the importance of children accessing education with the support of procedural safeguards. Senator Edward Kennedy stated,

"The basic purpose of this legislation and its primary intent states that handicapped children and their parents or legal guardians should be able to participate in the due process system and have access to the full range of remedies to protect their educational rights on an equal par with the school districts and I strongly support this purpose," argued Senator Edward Kennedy on "protecting all handicapped children" which later became I.D.E.A. (Senate Congressional Record - July 30, 1985 pp. 21391 – 2)

The Autism Society of Hawai'i is concerned about students' access to educational success under the Individuals with Disabilities Education Act (I.D.E.A.). We are concerned that when protections under this federal law are altered by SB 1284, it serves to also undermine our children's rights to education and privacy rights (FERPA and

HIPAA). If this bill is enacted, doing so, may alter what Congress intended the I.D.E.A. to do by legislatively altering a student's privacy rights and intrusion into the typical educational classroom day thereby jeopardizing the students' unique learning needs in the general education curriculum environment. The following are some examples, that, for these reasons, we are in disagreement with SB 1284.

SB 1284 proposes to amend HRS Section 302A-443 to give the DOE the ability to oversee and monitor students eligible for special education who are placed in private schools. The measure also allows the DOE to set the rates for payment to private special education schools for students placed there.. 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 such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Under HIPAA, a student's records under a medical doctor is subject to specific review and is not readily shared with other agencies 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
naomigr@gmail.com
808 228-0122

Erin Conner

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 07, 2011 12:41 PM
To: EDU Testimony
Cc: threestars@hawaii.rr.com
Subject: Testimony for SB1284 on 2/7/2011 1:15:00 PM

Testimony for EDU/HMS 2/7/2011 1:15:00 PM SB1284

Conference room: 225
Testifier position: oppose
Testifier will be present: No
Submitted by: Linda Elento
Organization: Individual
Address: Kaneohe, HI
Phone: 808-235-7610
E-mail: threestars@hawaii.rr.com
Submitted on: 2/7/2011

Comments:

A contract between private placement providers and all private special education and related service providers per the ADA or IDEA should be fair and written in the student's IEP or other educational service once the DOE is said to be responsible for payment, directly or as reimbursement.

I am strongly opposed to the DOE setting private provider rates which would not be appropriate or in the best interest of the students in need of special education and related services provided by private providers. The DOE could or would not provide such services in the first place, and the DOE should not have the sole authority to subject these students to a quality of service based on a DOE set rate of pay.

Thank you for the opportunity to provide testimony in OPPOSITION of SB1284.

LATE

Monday, February 7, 2011

Conference Room 225 at 1:15 pm

The Senate Committee on Education

The Senate Committee on Human Services

To: Senator Jill N. Tokuda, Chair

Senator Michelle Kidani, Vice Chair

Senator Suzanne Chun Oakland, Chair

Senator Les Ihara, Vice Chair

From: Makiko Dickinson

Re: SB 1284 RELATING TO EDUCATION
Testimony in Opposition

My name is Makiko Dickinson, and I am a parent of a child with autism.

First of all, I want to thank the Senate Human Services and Education Committees for thinking of Hawaii's keikis when you think of restoring Congress' original intent of the Individual's with Disabilities Education Act (I.D.E.A.) that parents who prevail in I.D.E.A. impartial administrative due process deserve to access educational success. Sens. Kennedy, Simon and Kerry argued the importance of children accessing education with the support of procedural safeguards. Senator Edward Kennedy stated,

"The basic purpose of this legislation and its primary intent states that handicapped children and their parents or legal guardians should be able to participate in the due process system and have access to the full range of remedies to protect their educational rights on an equal par with the school districts and I strongly support this purpose," argued Senator Edward Kennedy on "protecting all handicapped children" which later became I.D.E.A. (Senate Congressional Record - July 30, 1985 pp. 21391 - 2)

I am concerned about my child's needs and access to educational success under the Individuals with Disabilities Education Act (I.D.E.A.). I am concerned that when protections under this federal law are altered by SB 1284 it can also undermine my child's rights to education and privacy rights (FERPA and HIPAA), if this bill is enacted. Doing so, alters what Congress intended the I.D.E.A. to do by legislatively altering a student's privacy rights and intrusion into the typical educational classroom day thereby jeopardizing a students' unique learning needs in the general education curriculum environment. I will list some examples of this below. For these reasons, I am in disagreement with SB 1284.

SB 1284 proposes to amend HRS Section 302A-443 to give the DOE the ability to oversee and monitor students eligible for special education who are placed in private schools. The measure also allows the DOE to set the rates for payment to private special education schools for students

placed there. 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 such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Under HIPAA, a student's records under a medical doctor is subject to specific review and is not readily shared with other agencies 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, I am empowered to execute my 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, I oppose SB 1284. We respectfully ask the Committees not to pass the measure.

Thank you for the opportunity to testify.

Sincerely,


Makiko Dickinson
88 Piikoi St. 2402
makiko@hawaiiantel.net
(808) 351-7259

Monday, February 7, 2011
Conference Room 225 at 1:15 pm

The Senate Committee on Education

The Senate Committee on Human Services

To: Senator Jill. N. Tokuda, Chair
Senator Michelle Kidani, Vice Chair
Senator Suzanne Chun-Oakland, Chair
Senator Les Ihara, Vice Chair

From: Teresa Chao Ocampo

Re: SB 1284 RELATING TO EDUCATION
Testimony in OPPOSITION

My name is Teresa Chao Ocampo. I am a child with a disability. I am concerned with the proposed regulations and requirements as stated in SB 1284 related to the DOE monitoring children placed in private schools.

This bill appears to be based on many assumptions implying that the DOE is the only educational agency in the state of Hawaii that is capable of providing educational services, programs, health and safety assurances at a level that no private school can duplicate. However, consider the following:

1. Relating to Common Core Standards: See www.corestandards.org which was a link from "Transforming Hawaii's Public Schools," www.hawaiidoereform.org created as a result from the Race to the Top grant.

SB 1284 argues that the DOE will "ensure that each student is afforded the same opportunity to receive rigorous, standards-based instruction and curriculum that are aligned with the Common Core State Standards that are provided to their peers in public schools." The fact is that this has not yet been determined.

As result of a memorandum of agreement signed on June 1, 2009 between former Governor Linda Lingle and Superintendent Kathryn Matayoshi, an agreement was reached for development of common core state standards for Hawaii's public schools.

Because of the RTTT grants, the DOE was forced to adopt core state standards in order to be competitive for these awards. According to the above website, implementation of common core state standards will not begin until August 2011.

On the other hand, 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 standards-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."

In addition, for several grades, according to www.hawaiidoereform.org, the DOE will continue to "align and test based on HCPS III." In reality, there are several private schools that are as capable as or more so than the DOE in the provision of an educational curriculum as described in SB 1284. Its argument related to core state standards and curriculum provided by the DOE compared to many private placements is moot.

2. According to the NCLB status and Adequate Yearly Progress for the 2010-2011 school year, out of the DOE's 286 schools, 12 schools require "corrective action", 15 schools are scheduled for "planning and restructuring" and 91 schools are "restructuring" for a total of 118 or 41 percent.

Forty-one percent of Hawaii's DOE schools are currently unable to adequately teach at the already low standards set by the federal government's NCLB. Based on this data from the Superintendent's InfoExchange dated October 7, 2010, Hawaii's DOE's schools continue to have major challenges just teaching basic math and English as it has had since the initiation of NCLB in 2002.

Again, there is no proof that the educational standards set by the private schools are lower than those of the Department of Education as that would have to be determined on a case by case basis.

3. According to the common core state standards for students with disabilities as explained at www.corestandards.org, they will face "rigorous grade-level expectations in the areas of mathematics and English language arts." In order to reach these expectations, additional supports, accommodations as well as an IEP that addresses the child's unique learning needs BEYOND what the DOE is currently capable of providing are desperately needed.

Given on-going budget cuts and shortfalls, furloughs, teacher shortages, a 180-day school year requirement, personnel changes, in addition to the forty-one percent of poorly performing schools, it seems highly doubtful that in the event of the implementation for common core state standards for students with disabilities, progress for these students will occur anytime soon. Again, for SB 1284 to imply that the DOE schools will be able to provide a better curriculum for these children at the public school compared to the private school is clearly unbelievable.

4. Related to health and safety, SB 1284 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 speaks for itself.

-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.

5. Related to the “high cost tuition and fees for services by private special education placements, SB 1284 suggests that the DOE should pay reasonable tuition and fees for services.” Private schools are free entities. Their fees are self-determined. The DOE should not have the right to set the fees for private school placements especially since the DOE failed to provide the FAPE that would have prevented placement in the first place. Perhaps the DOE should consider providing FAPE. This would guarantee lower fees without additional legislation.

The true issue in SB 1284 should only 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, the DOE should not be permitted to have unlimited and unchecked authority to access these schools just for the purposes of observation, interviews and review of a student's educational records at a private placement.

In most instances the DOE is fully able of monitoring these students without "invading" these campuses. Prior to the IEP process, many of the private school documents are provided to the DOE. Observations and assessments are permitted as well as properly scheduled visits. Many times the DOE's own providers provide services within the private placement and thus are capable of providing updates on the student's educational progress and status on a continual basis. Many times the providers in specialized schools are MORE qualified than those providers from the DOE and thus provide more insightful information related to the student.

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

At other times, the DOE failed to acquire parental consent prior to an observation or visit to the private school or the visit may be untimely. Without written consent, such observations or visits are illegal. 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 the child's rights and possibly jeopardizing the student's identity.

Denial of access can occur when the DOE fails to notify the private school or parent in advance of their visit without prior notification. Just as the DOE demands such courtesy from outsiders, it is not unreasonable for the private school to expect the same courtesy.

The DOE often times uses a "blanket" consent form which fails to clearly describe the purpose of the visit, the number of visitors, the time of visit, or an end date. Many times, the DOE will use the same consent form as a method of unauthorized and continual access onto these campuses.

As stated under 34 CFR 300.9, the consent requested 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.

Despite 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.

This bill cannot be allowed to pass as it infringes on the rights of private schools as well as the students who attend that school. It also attempts to control a handful of schools in particular by setting their rates for tuition and services.

Despite what individuals may think, parents of special education students take great care in finding an appropriate private placement for their child and sometimes the best placement for the child is OUTSIDE of a DOE school.

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 determination of the appropriateness of 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 it is never been held accountable in these individual situations. This is what led Hawaii into the Felix Consent decree for over ten years.

For the reasons stated, I oppose SB 1284. I respectfully ask that the Committees not pass the measure.

Sincerely,

(signature on file)

Teresa Chao Ocampo

LATE

Monday, February 7, 2011

Conference Room 225 at 1:15 pm
The Senate Committee on Education
The Senate Committee on Human Services

To: Senator Jill N. Tokuda, Chair

Senator Michelle Kidani, Vice Chair

Senator Suzanne Chun Oakland, Chair

Senator Les Ihara, Vice Chair

From: Don King

Re: SB 1284 RELATING TO EDUCATION
Testimony in Opposition

My name is Irene Newhouse, and I am a parent of a child with learning disabilities.

First of all, I want to thank the Senate Human Services and Education Committees for thinking of Hawai'i's keikis when you think of restoring Congress' original intent of the Individual's with Disabilities Education Act (I.D.E.A.) that parents who prevail in I.D.E.A. impartial administrative due process deserve to access educational success. Sens. Kennedy, Simon and Kerry argued the importance of children accessing education with the support of procedural safeguards. Senator Edward Kennedy stated,

“The basic purpose of this legislation and its primary intent states that handicapped children and their parents or legal guardians should be able to participate in the due process system and have access to the full range of remedies to protect their educational rights on an equal par with the school districts and I strongly support this purpose,² argued Senator Edward Kennedy on ³protecting all handicapped children² which later became I.D.E.A.”
(Senate Congressional Record - July 30, 1985 pp. 21391 - 2)

As a parent of a child with special education needs. I was told by my local public school staff [Kamali'i Elementary] that no one could possibly teach our daughter to read any better than she was reading - which was not even 1st grade level at the end of 3rd grade. The principal at the time, Sandra Shawhan, even made the highly unprofessional -as well as incorrect- statement that no progress is still FAPE. I retained Keith Peck, placed our daughter at Horizons Academy, and filed for due process. We obtained reimbursement & payment for future semesters. We were forced to do this every single semester, not just every school year. But guess what? Our daughter learned to read. By the time she finished 8th grade, she wanted to try another setting, and she went to Baldwin High. She did not do well there, so after 6 weeks, I started home schooling her -at her request. She got her GED a year early. When she turned 16, at the end of 10th grade, she applied to MCC, and took the reading assessment required of

each entering student. She came within 1 point of having the reading comprehension of a graduating high school senior. So much for a 3-year reading delay being all that could be expected of her - she was 2 years *ahead*. Our daughter would not have been significantly less educated than she was at Kamali'i if I'd kept her home & set her in front of the TV all day. In fact, I probably should have done that, because it would have saved her from several physical assaults and a lot of teasing.

Horizons Academy had to send their progress reports to Kamali'i & later to Lokelani. Both schools sent people to observe the classroom regularly. Before 6th grade, our daughter found the observations highly stressful, because she felt the Kamali'i staff were just looking for an excuse to pull her back there. However, we did not have to go do due process while she was in middle school. The IEP team at Lokelani understood that Horizons was a more appropriate placement for her, so she did not mind their observers. The Lokelani observers were more open-minded than the Kamali'i observers, and took methods back to Lokelani from Horizons, according to our daughter's teachers. So rather than "monitoring" Horizons' "quality", they were *learning* from them!!!

Now, I ask you -- what possible quality control could Kamali's staff exercise over Horizons? Our daughter was *progressing* at Horizons. She advanced 1.8 years in reading each of the first 3 years she spent at Horizons, whereas she entered Kamali'i in first grade reading at 0.6 grade level & left at the end of 3rd grade reading at 0.9. Kamali'i staff "monitoring" Horizons? That's like having a high school dropout monitor Harvard University- no way they have anything worthwhile to contribute, and they're too ignorant to be able to assess what they're observing. Consequently, Dept. of Ed. monitoring an accredited alternate placement makes absolutely no sense at all. And in fact, it's a huge waste of taxpayer money. Given my experience, I don't see how an alternate placement could possibly be inferior in all respects to a Dept. of Ed.-run school, even if that placement isn't accredited. The parents of special needs students who win alternate placement have, by necessity, become highly aware of their children's needs & progress, and would not keep a child in such a placement if there were nothing to recommend it over public school. Yes, even though they lack education degrees, trust me, they know a whole lot more about their child's situation than 95% of Dept. of Ed. staff, most of whom don't even use their school-supplied computers to google the conditions of the children in their care. Consequently they know next to nothing about conditions that occur in as many as 5-10% of the student population. Been there, done that - handed teachers printouts of internet material on aspects of daughter's challenges that they knew absolutely nothing about, conditions that are so common 1-2 children in every class that teacher has ever had have had these conditions. None of our daughter's teachers had less than 10 years' experience, in which time they must have had 10-20 similarly affected students. Yet they never asked questions of a specialist who attended our daughter's IEP meetings. In fact, they often tried to apply techniques that the specialist had specifically stated were not appropriate for our daughter, and I had to remind them of what he'd told them only a short time before.

Dept. of Ed. staff cannot be relied on to be competent enough to monitor alternate placements in any meaningful way. The only semi-meaningful way I can think of is for the scores of alternately-placed students on the Hawaii assessments to be compared to the scores of similar students in HI public schools. Thus, if an alternate placement serves autistic students, the average scores of its students should be compared to those of autistic students in public school. If the school specializes in dyslexic students, the scores of those students should be compared to those of dyslexic students in public schools. Come to think of it - I don't trust DoE not to skew the selection of students somehow. I read a report submitted by DoE to the federal government that asserts 80-some% of HI sp ed students go on to get a Hawaii diploma - not certificate of attendance, but a diploma. I don't believe that for a minute, given that the graduation rate for normal students isn't nearly that high, and I can't imagine how that statistic is derived. I know that our daughter would never have been able to read well enough to get a

diploma if we'd simply left her in public school.

Irene Newhouse
129 Walua Place
Kihei HI 96753

ph 808 891 2252

LATE

Monday, February 7, 2011

Conference Room 225 at 1:15 pm

The Senate Committee on Education

The Senate Committee on Human Services

To: Senator Jill N. Tokuda, Chair

Senator Michelle Kidani, Vice Chair

Senator Suzanne Chun Oakland, Chair

Senator Les Ihara, Vice Chair

From: Don King

Re: SB 1284 RELATING TO EDUCATION
Testimony in Opposition

My name is Don King, and I am a parent of a child with autism.

First of all, I want to thank the Senate Human Services and Education Committees for thinking of Hawai'i's keikis when you think of restoring Congress' original intent of the Individual's with Disabilities Education Act (I.D.E.A.) that parents who prevail in I.D.E.A. impartial administrative due process deserve to access educational success. Sens. Kennedy, Simon and Kerry argued the importance of children accessing education with the support of procedural safeguards. Senator Edward Kennedy stated,

³The basic purpose of this legislation and its primary intent states that handicapped children and their parents or legal guardians should be able to participate in the due process system and have access to the full range of remedies to protect their educational rights on an equal par with the school districts and I strongly support this purpose,² argued Senator Edward Kennedy on ³protecting all handicapped children² which later became I.D.E.A. (Senate Congressional Record - July 30, 1985 pp. 21391 - 2)

I am concerned about my child's needs and about other students' access to educational success under the Individuals with Disabilities Education Act (I.D.E.A.). I am concerned that when protections under this federal law are altered by SB 1284 it can also undermine my child's rights to education and privacy rights (FERPA and HIPAA), if this bill is enacted. Doing so, alters what Congress intended the I.D.E.A. to do by legislatively altering a student's privacy rights and intrusion into the typical educational classroom day thereby jeopardizing a students' unique learning needs in the general education curriculum environment. I will list some examples of this below. For these reasons, I am in disagreement with SB 1284.

SB 1284 proposes to amend HRS Section 302A-443 to give the DOE the ability to oversee and monitor students eligible for special education who are placed in private schools. The measure also allows the DOE to set the rates for payment to private special education schools for students placed there.. 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 such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Under HIPAA, a student's records under a medical doctor is subject to specific review and is not readily shared with other agencies 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, I am empowered to execute my 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, I oppose SB 1284. I respectfully ask the Committees not to pass the measure.

Thank you for the opportunity to testify.

Sincerely,

/signature on file/

Don King

320 Poopoo Place, Kailua, HI

donking@hawaii.rr.com

808-286-4383

Monday, February 7, 2011
Conference Room 225 at 1:15 pm

The Senate Committee on Education
The Senate Committee on Human Services

To: Senator Jill N. Tokuda, Chair

Senator Michelle Kidani, Vice Chair

Senator [Suzanne Chun Oakland](#), Chair

Senator Les Ihara, Vice Chair

Re: SB 1284 RELATING TO EDUCATION
Testimony in Opposition

My name is Mae Okawa, and I am a parent of a child with Autism.

First of all, I want to thank the Senate Human Services and Education Committees for thinking of Hawai'i's keikis when you think of restoring Congress' original intent of the Individual's with [Disabilities Education Act](#) (I.D.E.A.) that parents who prevail in I.D.E.A. impartial administrative due process deserve to access educational success. Sens. Kennedy, Simon and Kerry argued the importance of children accessing education with the support of procedural safeguards. [Senator Edward Kennedy](#) stated,

"The basic purpose of this legislation and its primary intent states that handicapped children and their parents or [legal guardians](#) should be able to participate in the due process system and have access to the full range of remedies to protect their educational rights on an equal par with the school districts and I strongly support this purpose," argued Senator Edward Kennedy on "protecting all handicapped children" which later became I.D.E.A. (Senate [Congressional Record](#) - July 30, 1985 pp. 21391 - 2)

<<I am concerned about my child's needs and OR My organization is concerned about students'>> access to educational success under the [Individuals with Disabilities Education Act](#) (I.D.E.A.). I am concerned that when protections under this federal law are altered by SB 1284 it can also undermine my child's rights to education and privacy rights (FERPA and HIPAA), if this bill is enacted. Doing so, alters what Congress intended the I.D.E.A. to do by legislatively altering a student's privacy rights and intrusion into the typical educational classroom day thereby jeopardizing a students' unique learning needs in the general education curriculum environment. I will list some examples of this below. For these reasons, I am in disagreement with SB 1284.

SB 1284 proposes to amend HRS Section 302A-443 to give the DOE the ability to oversee and monitor students eligible for special education who are placed in private schools. The measure also allows the DOE to set the rates for payment to [private special education](#) schools for students placed there.. 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 such circumstances, the private school is obligated to protect the [civil rights](#) of the special needs child.

Under HIPAA, a student's records under a medical doctor is subject to specific review and is not readily shared with other agencies 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, I am empowered to execute my 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, my family and I, oppose SB 1284. We respectfully ask the Committees not to pass the measure.

Thank you for the opportunity to testify.

Sincerely,

Mae Y. Okawa

98-719 Iho Place, Apt 401

Aiea, HI 96701

Email: my5okawa@yahoo.com

Home phone: 808-488-06381

LATE

Monday, February 7, 2011
Conference Room 225 at 1:15 pm

The Senate Committee on Education
The Senate Committee on Human Services

To: Senator Jill N. Tokuda, Chair

Senator Michelle Kidani, Vice Chair

Senator Suzanne Chun Oakland, Chair

Senator Les Ihara, Vice Chair

From: Josie Suzuki

Re: SB 1284 RELATING TO EDUCATION
Testimony in Opposition

My name is Josie Suzuki, and I am a parent of a child with Autism.

First of all, I want to thank the Senate Human Services and Education Committees for thinking of Hawai'i's keikis when you think of restoring Congress' original intent of the Individual's with Disabilities Education Act (I.D.E.A.) that parents who prevail in I.D.E.A. impartial administrative due process deserve to access educational success. Sens. Kennedy, Simon and Kerry argued the importance of children accessing education with the support of procedural safeguards. Senator Edward Kennedy stated,

"The basic purpose of this legislation and its primary intent states that handicapped children and their parents or legal guardians should be able to participate in the due process system and have access to the full range of remedies to protect their educational rights on an equal par with the school districts and I strongly support this purpose," argued Senator Edward Kennedy on "protecting all handicapped children" which later became I.D.E.A. (Senate Congressional Record - July 30, 1985 pp. 21391 - 2)

I am concerned about my child's needs and access to educational success under the Individuals with Disabilities Education Act (I.D.E.A.). I am concerned that when protections under this federal law are altered by SB 1284 it can also undermine my child's rights to education and privacy rights (FERPA and HIPAA), if this bill is enacted. Doing so, alters what Congress intended the I.D.E.A. to do by legislatively altering a student's privacy rights and intrusion into the typical educational classroom day thereby jeopardizing a students' unique learning needs in the general education curriculum environment. I will list some examples of this below. For these reasons, I am in disagreement with SB 1284.

SB 1284 proposes to amend HRS Section 302A-443 to give the DOE the ability to oversee and monitor students eligible for special education who are placed in private schools. The measure also allows the DOE to set the rates for payment to private special education schools for students placed there.. 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 such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Under HIPAA, a student's records under a medical doctor is subject to specific review and is not readily shared with other agencies 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, I am empowered to execute my 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, I oppose SB 1284. We respectfully ask the Committees not to pass the measure.

Thank you for the opportunity to testify.

Sincerely,



Josie Suzuki
2801 Kahawai Street
Honolulu, Hawaii 96822
josiesuzuki@gmail.com
387-7487