



February 14, 2011
1:15 p.m.
Conference Room 225

TESTIMONY TO
THE SENATE COMMITTEE ON EDUCATION

RE: SB 1503 SD 1 – Relating to Special Education

Dear Chair Tokuda, Vice Chair Kidani, and Members of the Committee,

My name is Robert Witt and I am executive director of the Hawaii Association of Independent Schools (HAIS), which represents 99 private and independent schools in Hawaii and educates over 33,000 students statewide. My testimony today is on behalf of our member schools, along with the member schools of Hawaii Catholic Schools, with permission from Superintendent Carmen Himenes.

The Association **supports** SB 1503 SD1 – Relating to Special Education, which requires certain private special education schools and programs that provide services to students with disabilities and thereby receive state funding to do so, to comply with all applicable federal and state laws, along with all applicable rules and regulations.

HAIS also hereby agrees with the Department of Education that to assure high quality, transparent, and reliable services to these students in schools which are dedicated to their own continuous self-reflection and improvement, that **formal accreditation** via the Western Association of Schools and Colleges, the Hawaii Association of Independent Schools, or any WASC affiliate in Hawaii, should and must be the State standard.

HAIS also stipulates that Hawaii Catholic Schools is a WASC affiliate and that the accreditation program it provides meets this new standard.

HAIS wishes to engage with DOE in any and all ongoing efforts, following adoption of this measure, to create administrative rules in alignment with the spirit of this proposed measure. In particular, HAIS will wish to define “access” for the purposes of “monitoring” in ways that are true to the independence of its member schools, while simultaneously allowing DOE to meet its obligations to federal authorities.

Thank you for the opportunity to testify in support of this measure.

SB1503

EDU Hearing Date: February 14, 2011

ATTENTION: SENATE COMMITTEE ON EDUCATION

Senator Jill Tokuda, Chair

Senator Michelle Kidani, Vice Chair

I recognize the committee has scheduled this hearing for an SD1. My testimony is in strong support of the original bill SB1503, and I appreciate your consideration of the following comments and supporting references to retain the language in SB1503.

I would also like to provide comments on why I disagree with the Department of Education's Position that the companion bill HB1562 heard by the House Education committee on February 9, 2011, violates the IDEA or would result in "removed needed language."

SB1503, Page 2, Lines 1 – 5

Reference: Virginia's education regulations effective 2010. Weblink found at:

http://www.doe.virginia.gov/special_ed/regulations/state/index.shtml

Regulations Governing Special Education Programs for Children with Disabilities in Virginia (PDF) (2010)

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

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

Regarding the Department of Education's written testimony of the companion bill HB1562 (02-09-2011), Section 1:

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

instruction in sign language with speech in the Department of Education at a standard required to benefit from a special education as required by IDEA and federal regulations.

The federal and state laws and regulations specifically define the rights of individuals with severe hearing loss to receive sign language interpreter services in education and state agencies and court systems. The Department has job descriptions that include communication aides and interpreters for students with severe hearing loss. The Educational Interpreters program at the University of Hawaii/Kapiolani Community College operates with grants and I ask that your committee consider the availability of those grants to encourage sign language and speech for those individuals who hear and those who provide education and other services to them.

Individuals with foreign languages are given rights to interpretation and special English as a Second Language services. Although mode of communication is to be considered for a child who hears and has no written language an IEP, the Department continues to deny these students instruction and the use of sign language with speech. This mode of communication is not an alternative to speech, nor is another method a replacement for the individual's unique needs and successful ability to learn with sign language and speech. For example, last week I met another mom whose young child was denied sign language when the child moved to another school district. After some time, the child has severely regressed in her ability to learn.

SB1503, Page 2, Lines 6 – 11

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

Additional information at the USDOE's website:

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

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

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

Regarding the DOE's written testimony of the companion bill HB1562 (02-09-2011):

The special education preschool programs comment that placement is not based on parental preference misconstrues the fact that the IDEA allows for states to have parents request continued early intervention services "until ready for kindergarten" in lieu of changing to special education preschool program. Some states allow this option until the

beginning of the next school year after a child turns 3 years old. I would like to also stress the need and value of families' support of these children as well as support directly to the children.

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

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

SB1503, Page 2, Lines 20 – 21 – 21

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

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

SB1503, Page 4, Lines 1-5

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

Regarding the DOE's written testimony: I do not agree that (2) adding "special education" in the definition of Charter schools would violate IDEA. Is the proposed wording not clear enough, the fact that charter schools are responsible, and the state charter school definition (302B) includes "independent authority" for curriculum framework and other instances, which should include special education in the definition. Access to the general curriculum means the charter school's curriculum and the special education supports to access the unique charter school. For example, a charter school might need a special education teacher or related service provider who has experience, knowledge and is driven by the needs and mission of the charter school (not the DOE) of which a charter school has authority of personnel management. The line of authority memo from Superintendent Patricia Hamamoto is dated August 2005, and 302B states

the Charter School Administrative Office as the liaison between charter schools and the DOE, with funding, services or both being provided to the charter schools by the DOE.

Attachment: Authority for Special Education

SB1503, Page 4, Lines 12 – 20

Gifted and talented children does not seem to be referenced anywhere else in 302A or associated with exceptional children and is defined in 302A-101. Regarding the DOE's written testimony (3): the gifted and talented children are not a part of the student with a disability definition in this section, and I'm not sure how gifted and talented are thought to be included in IEP processes within this proposed section.

Please note the similarity between the language for preschool children in SB1503, Page 2, Lines 6 – 11 and [§302A-444] Programs for gifted and talented children. "The department may provide a statewide flexible system of educational placement and programs within the public school system that the department determines is appropriate for meeting the unique educational needs of gifted and talented children. The nature and scope of the department's educational placement and programs shall be based on, but not be limited to, the following factors:

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

SB1503, Page 5, Line 1 – 8

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

SB1503, Page 5, Line 9 – 11

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

SB1503, Page 7 Lines 14 – 22

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

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

necessarily have to change providers or coordination services.

SB1503, Page 8, Lines 13 – 21, and Page 9, Lines 1 – 9

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

SB1503, Page 10, Line 7

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

SB1503, Page 10, Line 20

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

Regarding the Department of Health's written testimony (02-09-2011): Briefly, the task force study referred to was to focus primarily on the expansion of early intervention to all children, and studies/discussions to provide continued early intervention in lieu of special education preschool was not completed, nor should the report from a small survey of parents' opinions without given options be considered reliable. From the research I have done, there is no memo of agreement between DOE and DOH other than the school-based behavioral health services. SB1503 would encourage that agreement so that federal and state funds that would be used for special education preschool services may be transferred to DOH to reimburse for continued Part C services.

Thank you for your consideration of these comments in support of SB1503.

Sincerely,

Linda Elento, threestars@hawaii.rr.com

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

LATE

Monday, February 14, 2011

Conference Room 225 at 1:15 pm

The Senate Committee on Education

To: Senator Jill N. Tokuda, Chair

Senator Michelle Kidani, Vice Chair

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

Re: SB 1503 SD1 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 1503 SD 1 relating to education, regarding a standard for accreditation of certain special education private schools. It is fundamental to know that what you are buying is evidenced by the criteria, AND, IF, that criteria has been met, or not.

First of all, I want to thank the Senate Committee on Education for thinking about 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)

SB 1503 SD 1 requires that certain private special education schools and programs within which provide services to students with disabilities who receive state funding comply with federal and state laws, rules, and regulations. It further requires accreditation within a certain time for certain private schools or programs that accept students with disabilities who receive state funding.

Reviewing SB 1503 SD 1 establishes a review of standards for certain private special education schools and programs. On the other hand, going back to the Individualized Education Program under the Individuals with Disabilities Education Act (I.D.E.A.), it is essential, if not by law, requires that the measure of the standard for the student under the I.D.E.A., is evidenced by the *program and related services, and not the place*.

In order for students to be served appropriately, the question is the fulfillment of the program in place. Therefore, fulfillment, in my mind, is the legal requirement. The status of the entity is relevant, not the entity or the private school to fulfilling this standard is the measure.

When school IEP teams or hearing officer decision-making determines a certain private school is appropriate to provide the appropriate programming, that private school has met the status of the entity fulfilling the requirements of providing special education programming to the student.

For the reasons stated, the Autism Society of Hawai'i opposes SB 1503 SD1. Thank you for the opportunity to testify. We respectfully ask the Senate Committee on Education not pass the measure.

Sincerely,

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