

Date: 02/09/2011

Committee: House Education

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 1562 Relating to Special Education

Purpose of Bill: Changes terminology from "exceptional child" to "student with a disability" and clarifies criteria for designation; clarifies definition of services auxiliary to education required to be provided to students with a disability; clarifies eligibility standards for preschool students with a disability; clarifies charter school duties toward children with a disability; establishes certification criteria for persons who provide interpreting services for children who are deaf or hard of hearing and certain students with a disability.

Department's Position: The Department of Education (Department) does not support HB 1562. The amendments exceed the requirement of the federal law, the Individuals with Disabilities Education Improvement Act (IDEA); remove needed language; violate the IDEA; or are already sufficiently addressed in IDEA and in Hawaii Administrative Rules (HAR) Chapter 60.

Section 1: The new Section, §302A – Educational interpreting services; students with a disability, is not needed. The Department's Office of Human Resources establishes and updates the minimum qualifications required for all Department positions. The Office of Human Resources does so in accordance with changing national standards and trends. The suggested minimum requirements for educational interpreters in HB 1562 were implemented by the Office of Human Resources in July 2009. Therefore, the Department does not support adding this section to Chapter 302A because the minimum qualifications for educational

interpreters, as with all Department positions, follow national standards and will undergo periodic review for updates.

The proposed new Section, §302A- Special education preschool programs; students with a disability, is not needed. The Code of Federal Regulations (CFR) 34, §300.114 and HAR, Chapter 60, Section 8-60-15, Least restrictive environment; 34 CFR §300.115 and HAR, Chapter 60, Section 8-60-16, Continuum of alternative placements, and: 34 CFR §300.116 and HAR Chapter 60 §8-60-17, Placements, all address state requirements to provide a continuum of educational placements to address the unique needs of eligible children with disabilities beginning at age three.

Any decision about the program and placement for a child with a disability of any age, including age three through five, must also be in accordance with the Individuals with Disabilities Education Act (IDEA) and Chapter 60. Program and placement is not based on parental preference. The following citation describes the requirements.

§8-60-17(1) The placement decision: (A) Is made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and (B) Is made in conformity with the LRE provisions of this subchapter, including sections 8-60-15 through 8-60-18.

(2) The student's placement: (A) is determined at least annually; (B) is based on the student's IEP; and (C) is as close as possible to the student's home.

Section 2: Section 302A-101, Hawaii Revised Statutes:

1. The insertion of the definitions in Section 302A-101 of the Hawaii Revised Statutes is unnecessary as "related services" and "student with a disability" are defined in IDEA. In addition, including "music

and art therapy” in the definition of “related services” exceeds the services under the IDEA and would require the Department to provide services not required by federal law. This would impose additional cost and resources to the Department.

2. The insertion of “special education” in the definition of “Charter schools” would violate the IDEA. Public schools, including public charter schools do not have flexibility and independent authority regarding special education. All are governed by the IDEA and Chapter 60.
3. Although the language should be amended, maintaining the definition for “Exceptional children” is needed. The definition is not only consistent with Act 163, but also delineates the scope of special education, excluding “gifted and talented children.” Including this group of students would impose additional cost and resources to the Department—evaluations and eligibility determinations, Individualized Education Programs (IEPs), meetings, etc.

Section 5: The suggested amendment to §302A-439 Eligibility standards, is not appropriate. There are currently two sections in Chapter 60 that address the transition of children from Part C to Department preschool programs at age three. One section (§8-60-12) describes the flexibility for IEP teams to develop either an IEP or an Individualized Family Support Plan (IFSP) which is the Part C plan for supporting the family and child. Another section (§8-60-47) describes the obligation of the IEP team to consider the IFSP content in the development of the initial IEP.

§8-60-12 Transition of students from the Part C program to preschool programs. The State shall ensure that: (1) Students participating in early

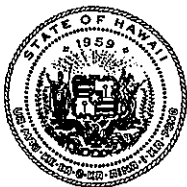
intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act; (2) By the third birthday of a student described in paragraph (1), an IEP, or if consistent with section 8-60-47(b), an IFSP has been developed and is being implemented for the student.

If an IEP team decides that it is more appropriate for a child to continue to receive services similar to those the child had been receiving from the Department of Health, Early Intervention, they may do so within existing regulations.

Section 9: Section 302B-1, Hawaii Revised Statutes:

The insertion of "special education" in the definition of "Charter schools" would violate the IDEA. Public schools, including public charter schools do not have flexibility and independent authority regarding special education. All are governed by the IDEA and Chapter 60.

The Department does not support this Bill.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Education

H.B. 1562, RELATING TO SPECIAL EDUCATION

**Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Acting Director of Health**

February 9, 2011

1 **Department's Position:** The Department of Health (DOH) does not support Section 5 of H.B. 1562
2 due to lack of a Hawai'i 3-5 Transition Task Force recommendation to extend early intervention (EI)
3 services for children over age 3 years, lack of federal regulations defining the new education component
4 for EI services for children over age 3 years, and lack of resources for the DOH to extend EI services to
5 children age 3-4 years.

6 **Fiscal Implications:** The DOH will need additional staffing and/or funding resources to extend EI
7 services to children age 3-4 years.

8 **Purpose and Justification:** Section 5 of H.B. 1562 requires that, in the transition of eligible students
9 with a disability from DOH EI services to special education preschool programs, the Department of
10 Education (DOE) and DOH shall enter into an agreement to extend the student's eligibility for DOH
11 services to at least the first day of the next school year, at the option of the parent and consistent with
12 federal laws and regulations.

13 Act 289 of the 2007 Hawai'i State Legislature established the Hawai'i 3-5 Transition Task Force
14 to study the feasibility of expanding EI services to children ages 3-5 years. A needs assessment survey
15 showed that the majority of families, after experiencing DOE preschool, did not think that further EI

1 services would have been better for their child. Task Force recommendations did not include expanding
2 EI services for children over age 3 years.

3 Federal regulations have not yet been established for the new educational component that
4 promotes school readiness and incorporates preliteracy, language, and numeracy skills, as specified in
5 Part C of the Individuals with Disabilities Education Act (IDEA). DOH EI services for children age 3-4
6 years will need to incorporate this new component.

7 The DOH does not have staff or funding to provide EI services to children age 3-4 years, and
8 additional resources will be needed.

9 Regarding Section 7 of H.B. 1562, Act 259 of the 2001 Hawai'i State Legislature transferred the
10 funding and positions from DOH to DOE to provide occupational therapy, physical therapy, special
11 language, and audiological services.

12 Thank you for the opportunity to testify.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
919 ALA MOANA BOULEVARD, ROOM 113
HONOLULU, HAWAII 96814
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
February 9, 2011

The Honorable Roy M. Takumi, Chair
House Committee on Education
Twenty-Sixth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Takumi and Members of the Committee:

SUBJECT: HB 1562-- RELATING TO SPECIAL EDUCATION

The State Council on Developmental Disabilities (DD) **supports the intent of HB 1562 with respect to the sections that change the terminology of exceptional children to student with a disability.**

The change in replacing exceptional children with student with a disability would be in line with the Department of Education's (DOE) use of the term and its definition in Chapter 60 of its Hawaii Administrative Rules. However, there is an added provision that provided that a student who is affected by an identified condition who does not require special education, but only requires related services other than speech-language pathology services, shall not be deemed a student with a disability. We defer to DOE for the implications of this provision as it relates to special education services.

The Council supports the provision of educational interpreting services provided by qualified interpreters recognized by a national interpreter certification process. The bill indicates that the Educational Interpreter Performance Assessment is the preferred qualification. We do not have a preference of which national certification assessment is used to determine an interpreter's qualifications. For other sections of the bill that address Charter Schools and related services, we defer to DOE for the staff and fiscal resources required to implement those sections.

Thank you for the opportunity to present testimony on HB 1562.

Sincerely,

Handwritten signature of Liz Ann Salvador in black ink.

Liz Ann Salvador
Chair

Handwritten signature of Waynette K. Y. Cabral in black ink.

Waynette K. Y. Cabral, MSW
Executive Administrator

Keiko Kajiwara
Board Certified Music Therapist
94-979 Kauolu Place, #1202
Waipahu, HI 96797

February 9, 2011

Mr. Representative Roy Takumi
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re.: House Bill 1562

Dear Representative Roy Takumi, Chair of the House Education Committee,

My Name is Keiko Kajiwara. I am a Board Certified Music Therapist, practicing music therapy in Hawaii since 2000. I support this bill especially for including the language, Music Therapy and Art Therapy as related services, to children with disabilities. Music and Art Therapies are considered related services under the current IDEA and are provided in many other States under their Special Education systems without cost to the parents.

Over the last decade, I have received hundreds of inquiries from teachers and parents about providing music therapy in Special Education. I also conducted music therapy assessment for dozens of Hawaii's children in Special Education paid by the DOE, observing the great potential those children exhibited through music therapy. Especially, music therapy seemed to serve those children as a unique expressive, communicative tool to learn, socialize, and facilitate their development, otherwise not possible.

Though my observation and supporting research articles provided to the DOE, my record showed, only a handful children out of 30 or so recommended cases were able to receive services before 2003. More surprisingly after that, only one student in the entire system was authorized to continue with music therapy and no assessment was authorized by the DOE although increased numbers of teachers and parents were requesting for it.

I humbly ask your committee to understand the agonies of those children and families who desperately need Music Therapy and Art Therapy as only tools to have their chance to grow and develop their specific skills for their life. It is very important the law states that Music Therapy and Art Therapy are recognized as related services to Hawaii's children.

Currently, the Department of Health contracts music therapy as an Early Intervention service and the Department of Human Services contracts music therapy with their children and youth services. As the effectiveness of music therapy is clearly evidenced in those contracts, it is my hope that the DOE now would also realize how important to consider music and art therapies in the Special Education program.

Thank you for the opportunity to support the HB 1526,

Keiko Kajiwara, MME, MA, MT-BC
Phone: (808) 352-5278
Email: kkajiwara@soundingjoymt.org

EDNtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 08, 2011 6:35 PM
To: EDNtestimony
Cc: jmccomas001@hawaii.rr.com
Subject: Testimony for HB1562 on 2/9/2011 2:05:00 PM

Testimony for EDN 2/9/2011 2:05:00 PM HB1562

Conference room: 309
Testifier position: support
Testifier will be present: No
Submitted by: John McComas
Organization: Individual
Address: 91-107 Aipoola Place Ewa Beach, HI
Phone: 808-218-9763
E-mail: jmccomas001@hawaii.rr.com
Submitted on: 2/8/2011

Comments:

Please pass this bill. It will greatly improve the special education our children with disabilities will receive. Under the current laws, FAPE is not being met, IDEA is not being met. I am the father of a 3 year old with Down Syndrome, and we are in Due Process against the DOE for not meeting our daughter;s individual needs. I support this bill.

EDNtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 08, 2011 6:09 PM
To: EDNtestimony
Cc: mmccomas@hawaii.rr.com
Subject: Testimony for HB1562 on 2/9/2011 2:05:00 PM

Testimony for EDN 2/9/2011 2:05:00 PM HB1562

Conference room: 309
Testifier position: support
Testifier will be present: No
Submitted by: Maureen McComas
Organization: Individual
Address: 91-107 Aipoola Place Ewa Beach, HI
Phone: 808-450-2859
E-mail: mmccomas@hawaii.rr.com
Submitted on: 2/8/2011

Comments:

Please pass this bill and help our children with disabilities have access to the free and public education that they are entitled to and not receiving under the current laws. As the parent of a 3 year old with Down Syndrome, we are appalled at the "one size fits all" attitude under the current laws. We are currently in litigation against the DOE for not meeting FAPE or IDEA. Our children deserve every opportunity to learn, and are not receiving those opportunities under the current laws. Please pass HB 1562 and show your support for our SPED children!!

EDNtestimony

From: Irene Newhouse [einew@hotmail.com]
Sent: Saturday, February 05, 2011 7:54 AM
To: EDNtestimony
Subject: H.B. NO. 1562

provided that a student affected by an identified condition who does not require special education, but only requires related services other than speech-language pathology services shall not be deemed a student with a disability."

This wording seems to me to leave the door open for the following: a blind student with normal or above-average IQ not being deemed a student with a disability because he/she only requires related services like audio textbooks, Braille instruction, Braille-to-print conversion for assignments, etc. Is this intended? What happens to such a student?

Irene Newhouse
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