



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/20/2014

Committee: House Judiciary

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 1796, HD1(hscr345-14) RELATING TO EDUCATION.

Purpose of Bill: Establishes conditions and procedures for the use of restraint and seclusion in schools.

Department's Position:

The Department of Education (Department) supports HB 1796 HD1 and is committed to ensuring that every student has the opportunity to learn in a safe school environment. This commitment will require the continued refinement of conditions and procedures to effect the appropriate use of restraint and seclusion in our public schools. The Department further appreciates the amendments made in HD1 as it addressed our recommended changes.

We continue to respectfully request a new section be added to the bill to allow for an appropriation to provide resources for training and data accountability to assist with the effective implementation of this measure. The Department would otherwise not have the means to do so under our budget appropriation.

We would also like to request that since implementation of the necessary policies, procedures, training, and notices cannot be in place on July 1, 2014, that Sections 2 and 3 have a delayed effective date.



February 20, 2014

The Honorable Karl Rhoads
The Honorable Sharon E. Har
House of Representatives Committee on Judiciary

RE: Comments on HB1796, HD1

Dear Representative Rhoads, Representative Har and Members of the Committee:

For over 60 years, Easter Seals Hawaii has provided exceptional, individualized, family-centered services to empower infants, children, youth and adults with disabilities or special needs to achieve their goals and live independent fulfilling lives. Easter Seals Hawaii is a statewide CARF accredited organization with 15 facilities from Waimea, Kauai to Hilo, Hawaii providing a variety of programs.

Easter Seals Hawaii offers the following comments:

1. Amend Section 2(a)(1), page 2, line 20, insert “provided that the student’s Behavior Intervention Plan, if available, or other less intrusive interventions have failed or been determined to be inappropriate”. To read, “There is an emergency situation, and restraint or seclusion is necessary to protect a student or other person; **provided that the student’s Behavior Intervention Plan, if available or other less intrusive interventions have failed or been determined to be inappropriate**”.
2. Amend Section 2(c)(4), page 4, line 7, insert “including a list describing mechanic, physical and chemical restraints”. To read, “Definitions of restraints and seclusion, **including a list describing mechanical, physical and chemical restraints.**”
3. Amend Section 2(e)(2), page 5, line 10, insert “which will include information on what part of the student’s Behavior Intervention Plan, if available, or other less intrusive interventions were tried or why deemed inappropriate and; what kind of restraint or seclusion was used.” To read, “Written notification, **which will include information on what part of the student’s Behavior Intervention Plan, if available, or other less intrusive interventions were tried or why deemed inappropriate and; what kind of restraint or seclusion was used,** within twenty-four hours of each incident.
4. Amend in Section 2(h), page 6, line 13, insert “**a Behavior Intervention Plan must be established within 30 days of the use of restraint or seclusion for the student on whom restraint or seclusion was used**”.
5. Amend Section 2(j)(1), page 9, lines 4-15, to delete reference to chemical restraint. This definition allows for the use of a drug or medication that has NOT been prescribed or administered by a licensed physician or other qualified health professional.

Easter Seals Hawaii appreciates the efforts of the Legislature to prevent and reduce the use of restraint or seclusion in public schools while ensuring the safety of all students and personnel. We would welcome the opportunity to work collaboratively with all of the interested parties to resolve these issues. Thank you for your time and consideration.

Respectfully,

Christopher E. Blanchard
President & CEO
Easter Seals Hawaii

HB1796

Submitted on: 2/18/2014

Testimony for JUD on Feb 20, 2014 13:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Rocco	Special Education Advisory Council	Support	Yes

Comments: This testimony is submitted on behalf of Ivalee Sinclair, Chair of the Special Education Advisory Council (SEAC).

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COMMUNITY CHILDREN'S COUNCIL OF HAWAII
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February 20, 2014

Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice-Chair
Chairs of the Judiciary Committee – State Capitol

RE: HB1796, HD 1 – Relating to Education
Restraint of Children in School; Seclusion
Establishes conditions and procedures for the use of restraint and seclusion in schools.

Dear Chair Rhoads and Vice-Chair Har and Members of the Committee,

The 17 Community Children's Councils (CCCs) **strongly supports** HB1796 HD 1 that prevents and reduces the use of physical restraint and seclusion in Hawaii schools.

The 17 Community Children's Councils (CCCs) are community-based bodies comprised of parents, professionals in both public and private agencies and other interested persons who are concerned with specialized services provided to Hawaii's students. Membership is diverse, voluntary and advisory in nature. The CCCs are in rural and urban communities organized around the Complexes in the Department of Education.

Thank you for the opportunity to testimony if there are any questions or you need further information please contact us at 586-5370

Sincerely yours

Tom Smith, Co-Chair

Jessica Wong-Sumida, Co-Chair

(Original signatures are on file with the CCCO)

HB1796

Submitted on: 2/19/2014

Testimony for JUD on Feb 20, 2014 13:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
taffy perucci	Individual	Support	No

Comments: I support this bill with reservations. Section(h)where it indicates that the complex area superintendent needs to be broadened and/or clarified. In the case of Central District, the investigation was poor and claims repeatably denied with regards to Kipapa EI. The CAS did not respond to the community and schools needs. The CAS should review the data quarterly with a parent component of DOE and/or another disability rights organization to promote transparency and to start to earn back the trust of the community.

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Kalma K. Wong
P.O. Box 240364
Honolulu, HI 96824
(808) 393-5218/ kalma.keiko@gmail.com

February 19, 2014

Representative Karl Rhoads
Chair, Cmte. on Judiciary
Hawaii State Capitol, Room 302

Representative Sharon E. Har
Vice Chair, Cmte. on Judiciary
Hawaii State Capitol, Room 438

Re: Testimony in STRONG OPPOSITION to HB1796 HD1; Establishes conditions and procedures for the use of restraint or seclusion in public schools; House Committee on JUD, February 20, 2014, Room 325, 1:00 p.m.

Dear Chair Rhoads, Vice Chair Har, and Members of the House Committee on Judiciary:

I am writing to express my STRONG OPPOSITION to House Bill 1796 HD 1, which establishes the conditions and procedures for the use of restraint and seclusion in public schools.

On the face of it, this bill appears to have the intention of protecting children in Hawaii public schools from improper restraint and seclusion. However, this bill is a Trojan Horse, and actually puts children at greater risk. This bill conveniently offers the Hawaii Department of Education a vague excuse for restraining children and putting them in seclusion.

Perhaps the most disturbing portion of this bill is the definition of "restraint," which includes:

(1) A chemical restraint, which means a drug or medication used on a student to control behavior or restrict freedom of movement that is not:

(A) Prescribed by a licensed physician or other qualified health professional acting under the scope of the professional's authority under state law for the standard treatment of a student's medical or psychiatric condition; and

(B) Administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;

Why would you allow the staff at a HODOE school to administer such drugs or medications for restraint, when they are not even allowed to administer antibiotics, analgesics, and over-the-counter medications?

Also, the requirement of verbal and written notification to the parent or legal guardian, while commendable, is meaningless. A public school classroom or campus consists of Hawaii DOE staff and contracted providers who are typically told NOT to be open with parents or guardians. Contracted providers, in particular, are threatened with termination should they offer such information to parents or guardians.

In light of what happened at Kipapa Elementary, Puohala Elementary, Holomua Elementary, and other schools that have not come to light for the general public, it is evident that the Hawaii DOE lacks the judgment and ethics to determine which situations are appropriate for such extreme measures. Furthermore, the Hawaii DOE lacks the judgment, ethics, and expertise to implement such measures. The Hawaii DOE should NOT be given the option of restraining and secluding children, particularly special education children, who are the specific targets of this bill.

Please OPPOSE HB 1796 HD 1, and protect the children in the Hawaii public school system.

Sincerely,

Kalma K. Wong

HB1796

Submitted on: 2/19/2014

Testimony for JUD on Feb 20, 2014 13:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nyle Dolera	Individual	Oppose	No

Comments: I oppose HB1796. My non-verbal seven year old daughter was strapped to her chair on several occasions. The bill has too many loopholes and allows for the potential for abuse by service providers and Sped teachers. It also raises ethical and legal issues for the DOE. Is the use of the chair being used as a restraint, like Hannibal Lecter in Silence of the Lambs or for the child's safety? Either way wouldn't the straps be secured tightly. You wouldn't wear your seat belt loosely for safety would you? Or is the use of the chair an excuse to give the service provider a break because they work too hard and tired of chasing the child around. Too much potential for abuse!

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LATE



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 20, 2014

The Honorable Karl Rhoads, Chair
House Committee on Judiciary
Twenty-Seventh Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Rhoads and Members of the Committee:

SUBJECT: HB 1796 HD1 - RELATING TO EDUCATION


The State Council on Developmental Disabilities **SUPPORTS HB 1796 HD1**. The purpose of the bill is to establish conditions and procedures for the use of restraint and seclusion in schools.

According to a report entitled, How Safe Is The Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies, May 2, 2013, "Hawaii has a limited statute and a board of education policy, both of which provide very weak protections" (Hawaii Revised Statutes, Section 302A-1141, and Board of Education Policy No. 4201). In the State by State Summary of the report, it is noted that for Hawaii, we have very minimal restraint protection and no seclusion limits.

HB 1796 HD1 specifically addresses the policies and procedures for the use of restraint and seclusion; provides all parents of students to receive, at least annually, written information about the policies and procedures for restraint or seclusion issued by the Department of Education; and training and certification for staff utilizing restraint and seclusion in facilities or programs. This bill provides a framework for the Department of Education and Board of Education to establish comprehensive policies and procedures to keep all students and school personnel safe, and to prevent and reduce restraint and seclusion in schools.

Thank you for the opportunity to submit testimony **supporting HB 1796 HD1**.

Sincerely,


Waynette K.Y. Cabral, MSW
Executive Administrator


J. Curtis Tyler III
Chair



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Honolulu, Hawaii 96813-2991

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LATE

The Twenty-Seventh Legislature, State of Hawaii
The House of Representatives
Committee on Judiciary

Testimony by
Hawaii Government Employees Association

February 20, 2014

H.B. 1796 H.D. 1 – RELATING TO EDUCATION

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the intent of H.B. 1796 H.D. 1, which provides for the protection of students and public school personnel and training for school personnel by creating policies and procedures for the use of restraints or seclusion of students under certain conditions.

Inherent in the responsibilities of our community is to provide a safe and healthy learning environment for our children, educational leaders and staff. This measure will support schools in fulfilling this responsibility by creating a framework of systemic support that includes the establishment of policies and procedures, ensuring all staff is properly trained and requiring that information is shared in a timely manner with parents and legal guardians.

Thank you for the opportunity to testify in strong support of the intent of H.B. 1796 H.D. 1 and your consideration of the proposed amendment.

Respectfully submitted,



Randy Perreira
Executive Director



HAWAII DISABILITY RIGHTS CENTER

1132 Bishop Street, Suite 2102, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: info@hawaiidisabilityrights.org Website: www.hawaiidisabilityrights.org

THE HOUSE OF REPRESENTATIVES THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2014

Committee on Judiciary Testimony on H.B. 1796, H.D.1 Relating to Education

LATE

**Tuesday, February 20, 2014, 1:00 P.M.
Conference Room 325**

Chair Rhoads and Members of the Committee:

The Hawaii Disability Rights Center testifies in support of the intent of this bill, with some reservations.

One of our core functions as the state's protection and advocacy system is to guard against the abuse of individuals with disabilities. In that regard we believe that seclusion and restraint should either never be an option or utilized only as an absolute last resort and only when necessary in the face of no alternatives to prevent further harm. For that reason we are in support of this bill since it sets out the requirement for protocols under which these techniques would only be used as a last resort by properly trained staff, acting in accordance with established procedures designed to maximize the safety of the student. It also provides for prompt notification to the parents and requires that a behavioral health plan be in place in order to avoid these incidents.

These are sound principles and if restraint and seclusion is at all to be sanctioned or tolerated it is essential that these safeguards be in place. We also believe that this mirrors attempts being made at the federal level to combat this problem, which has been fairly well documented around the country. We support this effort to align the State of Hawaii with well accepted best practices, particularly in light of recent incidents at certain schools which have demonstrated that the DOE has not always done a good job of protecting students with disabilities.

We are, however, concerned about the definition of "chemical restraint" found on page 9 of the bill. We have received several inquiries recently in which individuals expressed great concern about what might be permissible within this definition. It is impossible to answer those questions because the definition offers no guidance. It simply defines "chemical restraint" in



terms of what it is not. But it does not set out what in fact it is. For instance, it fails to indicate what types of drugs or medications may be used. Nor does it state who may administer the drugs or under what circumstances that can occur. We see this a very serious flaw in the bill. The involuntary use of drugs on a child in a school setting is an alarming prospect. It is one thing to perform this at a psychiatric facility where the residents have either been civilly committed or found not fit to proceed to trial or not guilty of a crime because they lacked mental capacity. It is quite another to engage in this at a school upon children who have special needs and who are supposed to be receiving services to facilitate their life in the community. We would urge the Committee to either ban the practice completely or at least set out in statute the specific scenarios under which it would be permitted and how and by whom it would be administered. There is no logic or legality at all to providing school children with less procedural safeguards than we offer prison inmates and psychiatric hospital patients.

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

LATE

February 19, 2014

The Twenty-Seventh Legislature, State of Hawaii

House of Representatives

Rep. Karl Rhoads, Chair

Rep. Sharon E. Har, Vice Chair

And Members of the House Committee on Judiciary

RE: HB 1796 HD1 RELATING TO EDUCATION

The use of restraint or seclusion poses an inherent risk to the physical safety and psychological health of everyone involved; it is never risk-free. In addition to producing anxiety, fear and a decreased ability to learn; death, trauma, and injuries can and have resulted from the use of these techniques. All children experience trauma from the use of restraint and seclusion; however, children with significant disabilities are at increased risk if they are not able to fully understand or communicate what happened, how they feel, or report injury or pain as a result of restraint or seclusion.

I am in **SUPPORT** of HB 1796 that prevents and reduces the use of physical restraint and seclusion in Hawaii schools and promotes the safety and well-being of students, staff, and others by establishing policies and procedures for the use of restraints and seclusion.

Respectfully submitted,

Michael E. Makekau

LATE

HB1796

Submitted on: 2/19/2014

Testimony for JUD on Feb 20, 2014 13:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Uilani Chung	Individual	Support	No

Comments: I support the testimony of the Community Children's Council.

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LATE

Testimony for the Committee on Judiciary
Honorable Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice Chair

Hearing date: February 20, 2014 at 1pm in Room 325, State Capitol

My name is Teresa Chao and I would like to submit testimony regarding HB 1796 which will be heard at the Judiciary Committee on February 20, 2014 at 2pm.

I OPPOSE HB 1796 relating to Restraint and Seclusion.

Although this bill claims that its purpose is to protect students from 1) physical or mental abuse, 2) aversive behavioral interventions jeopardizing health and safety, and 3) physical restraint or seclusion used to discipline or for convenience, I believe the true purpose is to protect the DOE and its employees from any additional liability due to the recent surge of crimes against special education children in the DOE system. I have listed only three examples below that have made the news recently.

1. The Hawaii School for the Deaf and Blind—incidents of sexual abuse and rape occurred on campus were reported as early as 2009 but went unheeded until a parent brought a lawsuit against the DOE in 2011. The DOE settled this case.
2. Kipapa Elementary School—early this year an Administrative Hearings Judge recently found more than one special education child was abused by DOE employees. At least 3 more special education students will be represented in additional lawsuits against the DOE later this year from this school.
3. Niu Valley Elementary School—a DOE educational assistant stabbed a special education student with a pencil on February 11, 2014 because the student allegedly would not sit down.

I cannot recall a single newsworthy article describing a special education child harming any teacher, educational assistant, principal or student in the Hawaii DOE. This begs the question. Who is this bill intended to protect, the children or the DOE?

Under HB 1796, would holding the head of a child face-down be considered an acceptable restraint? Would tying a child to a chair be an acceptable restraint? Could stabbing a child in the back with a pencil be considered "reasonable force?" Would these actions be more acceptable if a child was non-verbal? Would these types of abuses occur against regular non-disabled students?

The providers involved in these instances were DOE principals, a DOE counselor, DOE special education teachers and DOE educational aides and assistants. HB 1796 implies that special training would somehow protect children, yet given the nature of the disabilities of the students involved, these providers should have already been specially trained specifically for these circumstances. These children should have been protected even without this bill. Yet this was not the case.

These examples are cases that were brought to the public's attention through the media. However, the more disturbing matter is that there are numerous abuses by DOE employees on special education students that have gone unreported even to the

parents. The lack of attention does not minimize the severity of the crime, but it does allow DOE employees to elude accountability as is often seen on a local level.

Despite the criminality of the newsworthy cases, ALL of the DOE employees seem to have disappeared, their whereabouts unknown. No single individual to date has ever been held accountable for his or her actions. DOE or AG findings of any related investigation have never been divulged to the public, redacted or not. No DOE administrator has ever been held accountable for these crimes and yet the legislature has HB 1796 and its companion bill, SB 2371, on a fast track.

The public recognizes that this legislature has already made up its mind on these bills without performing due diligence on investigating the issues or consequences of such a poorly written bill. HB 1796 states that the BOE and DOE are responsible for that.

Hawaii is one of the few remaining states that does not have a restraint and seclusion law. However, a bill such as HB 1796 speaks in too many generalities leaving loopholes that would most likely legalize continued abuse in the schools. Requiring the BOE and DOE to create policies and procedures AFTER such a bill is passed is irresponsible and opens the Hawaii DOE to more liability to an already over burdened system.

Greater thought must be given to the issues surrounding restraint and seclusion if the public is to believe that the DOE and legislature truly want to keep the children safe. Passing HB 1796 with such superficial requirements through the legislature's fast track will clearly show the public what this bill is really NOT about.

Thank you,
Teresa Chao

TESTIMONY FOR HOUSE BILL 1796 HD1, RELATING TO EDUCATION.

To: Representative Karl Rohads, Chair
Representative Sharon E. Har, Vice Chair
Members of the House Committee on Judiciary

RE: HB 1796 Relating to Education

LATE

HEARING DATE: Thursday, February 20, 2014, 1:00 PM
House Conference Room 325

My name is Ashley Canillo and as a concerned citizen I am thankful for the opportunity to submit a testimony in support of HB 1796 HD1. House Bill 1796 HD1 establishes conditions and procedures for the use of restraint or seclusion in public schools.

While I am not a parent at this time, I strongly feel urge the Committee to move this bill forward as I feel that all students and personnel should be safe and in a positive environment. I believe that there are other solutions that will cause less harm then the use of restraints or seclusions in public schools. Parents should not have to worry that their child is not safe from harm when they drop them off at school in the mornings. We live in a time where there are numerous evidence based practices that are effective and can support the prevention of using restraints or seclusions in schools. I believe that with more tools, trainings, and supports the school personnel will be better able to work with students that may have complex and/or intense behavioral needs that may have led to seclusions and/or restraints in the past.

In closing, I would like to reiterate my support for HB 1796 HD 1 that will establish conditions and procedures for the use of restrain or seclusion in public schools.

Sincerely,
Ashley Canillo
acanillo@hawaii.edu