

**HB1796**

**HD2 SD1**

**LATE**

**TESTIMONY**



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

**Date:** 04/01/2014

**Committee:** Senate Judiciary and  
Labor/Senate Ways and Means

**Department:** Education

**Person Testifying:** Kathryn S. Matayoshi, Superintendent of Education

**Title of Bill:** HB 1796, HD2,SD1(sscr2953) RELATING TO EDUCATION.

**Purpose of Bill:** Prohibits the use of seclusion in public schools. Establishes conditions and procedures for the use of restraint in public schools. Requires collection and review of data. Requires reports to the legislature. Makes an appropriation. Effective August 26, 2151. (SD1)

**Department's Position:**

The Department of Education (Department) supports the substantive content of HB 1796 HD2 SD1 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 in our public schools.

We request however, that given chemical and mechanical restraints have been removed from this measure, that mandatory annual training and recertification on first aid and CPR (included for the first time pursuant to the SD1) be removed from the bill (Section 2, page 6, line 10).

Further, the Department has estimated that it would require additional funding in the amount of \$700,000 for training and data accountability necessary to effectively implement this measure. We note that this estimation does not include costs for first aid/CPR training and recertification which if included, would further increase the fiscal impact for the Department. We respectfully ask for your favorable support of this appropriation as the Department would not have the means to implement this measure within our budget.

With regard to the new requirement for a report to the Legislature for three consecutive years starting with the regular session 2017, the Department appreciates the recognition that judicious planning would be required before meaningful reporting can commence.

Thank you for this opportunity to testify on this measure.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [baunach@yahoo.com](mailto:baunach@yahoo.com)  
**Subject:** Submitted testimony for HB1796 on Apr 1, 2014 10:00AM  
**Date:** Monday, March 31, 2014 11:29:57 AM  
**Attachments:** [NASP restraints & seclusion.docx](#)

---

**HB1796**

Submitted on: 3/31/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leslie Baunach	Hawaii Association of School Psychologists	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

<http://www.nasponline.org/>

# Advocacy in Action

## Seclusion and Restraint: Federal Updates and Advocacy Opportunities

By Kelly Vaillancourt & Mary Beth Klotz

The issue of seclusion and restraint has been a recent hot topic widely discussed among many education and disability rights advocacy groups, and now the United States Congress. The Children's Health Act of 2000 protects children from abusive seclusion and restraint practices in facilities that receive federal funding such as Medicaid. These centers include residential group homes, treatment facilities, and hospitals. However, there is no federal legislation that regulates the use of these techniques in our public schools. Historically, policies and procedures related to seclusion and restraint in the schools have been maintained at the state and local district level, although examples are limited. As of April, 2012, there are 30 states that have either a statute or regulation providing protection against seclusion and restraint for students. However, there is wide variation among these laws and regulations, and only 13 states have laws or regulations that cover all students, while others only protect students with disabilities (Butler, 2012). Recently, there has been increased debate regarding appropriate staff training, proper seclusion and restraint techniques, monitoring and parent reporting, and when, if at all, these methods are appropriate to use in the public and private school settings.

Over the past several years, allegations of abuse and death related to seclusion and restraint, media coverage of these events, subsequent federal investigations, and Congressional hearings about this topic have resulted in increased pressure on Congress to pass legislation to address the use of seclusion and restraint in the school setting. Currently, there are two pieces of federal legislation that are intended to regulate state and local policy regarding seclusion and restraint, and the U.S. Department of Education recently released a resource document related to this issue. Although NASP does not have a formal position regarding seclusion and restraint, the association actively promotes the use of preventive measures and positive behavioral supports (PBS) with all students. This article will provide you with background information relating to this legislation as well as NASP's response. The article will also highlight key recommendations from the U.S. Department of Education's (2012) *Restraint and Seclusion: Resource Document*, and summarize the behavioral practices that NASP promotes, including the role of the school psychologist in ensuring that all students' behavior is properly supported.

### Definitions of Seclusion and Restraint

It is important to note the distinction between *seclusion* and *time-out*. These two terms are often used interchangeably, but they have very different meanings. Time-out involves removing a student from the group or requiring the student to go to a separate designated area, but the individual is monitored at all times by an adult and is not physically prevented from leaving the area. Typical examples of time-out include sending a student to sit at a desk in the hallway, facing the wall in the classroom, or sitting in a designated section of the classroom away from the rest of the group. The Children's Mental Health Act of 2000 defines seclusion as, "the involuntary confinement of an individual alone in a room or area from which the individual is physically prevented from leaving." Regulations issued around this definition indicate that seclusion can mean confinement in rooms that are locked, blocked by furniture, held shut by staff outside the door, etc. Examples of seclusion include forcing a child into a room and locking the door, strapping a child to a chair, or pinning a student to the floor to keep him or her from leaving an area (National Disability Rights Network [NDRN], 2009).

Restraint, as defined by the Children's Health Act of 2000 and further interpreted by the Center for Medicare and Medicaid Services in final regulations, means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of an individual to move his or her arms, legs, body, or head freely. Restraint also refers to drugs or medications that are used to manage someone's behavior or to restrict their freedom of movement, and are not part of a standard treatment dosage for a diagnosed condition. Restraint does not include physical escort, or the use of devices such as orthopedically prescribed devices, helmets, or bandages (NDRN, 2009).

## **Federal Investigation of Seclusion and Restraint Practices**

Over the past several years, numerous reports examining the use of seclusion and restraint in public and private schools have been released (e.g., National Disability Rights Network, 2009; Butler, 2012). In addition to reports by advocacy organizations, the federal government has also investigated these practices. The United States Government Accountability Office (GAO), at the request of the House of Representatives Committee on Education and Labor, reviewed available data on the use of restraint and seclusion as it pertained to allegations of death and abuse at public and private schools. In addition, as part of the investigation, GAO was asked to provide an overview of laws that addressed the use of seclusion and restraint in public and private schools. The results of this investigation were presented in May 2009 to the House of Representatives Committee on Education and Labor (GAO, 2009). GAO reported that there were no federal laws restricting the use of seclusion and restraint, and that although some states had laws or policies to address the use of these techniques, they varied widely from state to state. In addition, GAO was not able to identify a single repository of information related to the use of seclusion and restraint methods. Although GAO could not investigate every allegation of death and abuse related to the misuse of seclusion and restraint, hundreds of allegations were discovered, and the majority of these involved children with disabilities. In many cases, the teachers and staff who implemented the seclusion and restraint techniques were not properly trained (GAO, 2009). Although there are likely many instances in which seclusion and restraint techniques are used appropriately, the allegations of abuse and death have called into the question the need for these practices in our schools.

In part because of the results of the GAO report, the U.S. Department of Education began to examine seclusion and restraint practices in the school setting. In July, 2009 Secretary of Education Arne Duncan sent a letter to the chief state school officers and encouraged them to review current policy and procedure related to seclusion and restraint, revise them if appropriate, and hold schools accountable to these policies. Additionally, the Office for Civil Rights revised its Civil Rights Data Collection, starting with the 2009-2010 school year, to require reporting the total number of students subjected to seclusion and restraint (U.S. Department of Education, 2012).

## **Proposed Federal Legislation**

Due to the results of the GAO report, Congressional hearings, and pressure from advocacy groups, federal legislation was introduced in the 111th Congress relating to the use of seclusion and restraint in schools. In 2009, the House of Representatives introduced the Keeping All Students Safe Act (H.R. 4257) and the Preventing Harmful Restraint and Seclusion in Schools Act (H.R. 4247). The Senate also introduced a companion bill to the Keeping All Students Safe Act (S. 3895). None of these bills were signed into law. In April 2011, the Keeping All Students Safe Act was reintroduced in the House of Representatives (H.R. 1381) and in December, the Senate introduced its own version (S.2020). There are a host of disability rights and parent advocacy groups that fully support both of these bills that are intended to limit the use of seclusion and restraint in the schools, outline criteria for appropriate use of these methods, and require data collection on the use of these techniques. In addition, these bills promote the use of positive behavioral interventions and supports. However, while NASP fully supports the House bill, it has concerns with language contained in S.2020, outlined in written testimony submitted for a Senate hearing held on July 12, 2012 and summarized below. Readers may also find the full set of NASP recommendations at <http://www.nasponline.org/advocacy/advocacynews.aspx>.

**Allowable use of physical restraint.** NASP recognizes that physical restraint should only be used when absolutely necessary, by trained staff, and in concert with a range of positive discipline and behavioral techniques. NASP's main concern with S. 2020 is the requirement that the use of physical restraint may only be used in instances when the student's behavior poses an immediate danger of serious bodily injury to self or others. The term serious bodily injury as defined in U.S. Criminal Code means being inflicted with an injury or illness that involves: (a) substantial risk of death, (b) extreme physical pain, (c) protracted and obvious disfigurement, or (d) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. Examination of case law indicates that determination of serious bodily injury is based on the type of care that is required by an injured party after such injury occurs, and in cases where the meaning of "serious bodily injury" has been examined, a broken nose and a concussion, injuries that parents and school personnel would consider very serious, did not meet the definition of serious bodily injury (SEA PA 2008; SEA CA 2006). The decision to use seclusion and restraint is generally made when a student is in crisis, with the intent of keeping students and staff safe, and it would be nearly impossible for school staff to predict if the student's behavior would result in serious bodily injury when making this decision. NASP believes that the definition of serious bodily injury is too stringent and may prevent the necessary use of appropriate restraint when it is warranted to ensure the safety of students and staff.

**Mandatory debriefing session.** S. 2020 would require that parents be notified following each instance of seclusion and restraint. In addition, after each instance, a debriefing session, with all school personnel who were in proximity of the student before, during, and after the use of restraint, must take place within 5 school days. There are parts of the debriefing session that NASP supports, including the identification of additional positive strategies that could be used with the student in the future. However, this bill would also require that schools refer a student for eligibility consideration for IDEA or Section 504 if the student is not already receiving services or accommodations or document why a referral was not made. NASP believes it is inaccurate to assume that when a child receives behavioral interventions in school, including seclusion and restraint, that it is because the student has a disability. Requiring school personnel to prove they are not negligent in identifying a student's disability would lead to a host of unintended consequences, including unnecessary referrals to special education and unnecessary litigation. Although there are concerns regarding this language in S. 2020 and the potential burdens it could place on school personnel, NASP does support many other aspects of the bill, including the recommended use of multitiered problem-solving strategies and PBS.

## **Department of Education Restraint and Seclusion Resource Document**

In response to the growing national concern, in May of 2012, the U.S. Department of Education published a resource document that states, school districts, school staff, parents, and other stakeholders may use when developing or refining policies and procedures on the use of seclusion and restraint. The document is applicable to all students, not just those with disabilities, and stresses that every effort should be made to structure learning environments and provide supports so that restraint and seclusion are unnecessary. In particular, it recommends that schools review their strategies when there is repeated use of restraint or seclusion for an individual child, multiple uses within the same classroom, or multiple uses by the same individual. The Department, in collaboration with the Substance Abuse and Mental Health Services Administration (SAMHSA), included 15 basic principles in the document that should be considered a framework to ensure that any use of seclusion and restraint occurs in a manner that protects the safety of all children and adults in school. School psychologists can take a leadership role in helping districts and schools adopt policies that reflect these 15 principles. In particular, school psychologists can work with school personnel to develop and implement prevention measures such school-wide positive behavior support systems, functional behavioral assessments, and training on deescalation techniques to defuse potential violent dangerous behavior. The resource tool is not intended to provide formal guidance to states and districts and does not require any specific actions or mandate any new requirements regarding the use of seclusion and restraint.

## NASP's Best Practice Recommendations

NASP believes that the creation of positive conditions for learning is essential to student success and foundational to effective school discipline policies. To help students learn to their fullest potential, schools need to actively cultivate conditions that promote safety, prevent negative behaviors, foster increased student engagement, and support social- emotional wellness, mental health, and positive behavior (NASP, 2011). In order to establish positive school climates and conditions for learning, NASP supports the use of multitiered problem-solving models that feature interventions that are evidence based, implemented with fidelity, and include objective and validated measures to monitor student progress (NASP, 2009). School-wide positive behavioral support programs help prevent negative behaviors and improve school safety and are central to positive conditions for learning. School psychologists play important leadership roles in designing and implementing these models, and advocating for culturally competent and equitable discipline practices for all students. Ultimately, it is these positive discipline practices and preventive measures that reduce or eliminate the need for use of seclusion and restraint in schools.

## References

- Butler, J. (2012). *How safe is the schoolhouse? An analysis of state seclusion and restraint laws*. Autism National Committee. Retrieved from [www.autcom.org/pdf/HowSafeSchoolhouse.pdf](http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf)
- Kutz, G. D. (2009). *Seclusion and restraints: Selected cases of death and abuse at private and public schools and treatment centers*. (GAO- 09-719T). Washington, DC: U.S. Government Accountability Office, Forensic Audits and Special Investigations. Retrieved from <http://www.gao.gov/assets/130/122526.pdf>
- National Association of School Psychologists. (2009). *Appropriate behavioral, social and emotional supports to meet the needs of all students* [Position Statement]. Bethesda, MD: Author. Retrieved from [http://www.nasponline.org/about\\_nasp/positionpapers/AppropriateBehavioralSupports.pdf](http://www.nasponline.org/about_nasp/positionpapers/AppropriateBehavioralSupports.pdf)
- National Association of School Psychologists. (2011). *Safe, supportive conditions for learning: Making connections for student success legislative priorities*. Retrieved from [http://www.nasponline.org/advocacy/news/2011/November/Briefing\\_Key\\_Messages.pdf](http://www.nasponline.org/advocacy/news/2011/November/Briefing_Key_Messages.pdf)
- National Disability Rights Network. (2009, January). *School is not supposed to hurt: Investigative report on abusive restraint and seclusion in schools*. Retrieved from <http://www.napas.org/images/Documents/Resources/Publications/Reports/SR-Report2009.pdf>  
(Updated in 2010).
- U.S. Department of Education. (2012) *Restraint and seclusion: Resource document*. Washington, DC: Author. Retrieved from: [www.ed.gov/policy/restraintseclusion](http://www.ed.gov/policy/restraintseclusion)

---

Kelly Vaillancourt, NCSP, is NASP Director of Government Relations and Mary Beth Klotz, PhD, NCSP, is NASP Director, IDEA Projects and Technical Assistance.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [kjbm2415@gmail.com](mailto:kjbm2415@gmail.com)  
**Subject:** Submitted testimony for HB1796 on Apr 1, 2014 10:00AM  
**Date:** Monday, March 31, 2014 11:50:48 AM

---

**HB1796**

Submitted on: 3/31/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kevin Bardsley-Marcial	Individual	Support	No

Comments: I support HB1796 HD2 SD1 as submitted in Standing Committee Report no. 2953 with STRONG SUPPORT on granting financial support requested by the Department of Education in order to establish a startup date of July 2014. Thank you for the opportunity to testify if there are any questions or you need further information please do not hesitate to contact me. Sincerely yours: Kevin Bardsley-Marcial

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



## COMMITTEE ON JUDICIARY AND LABOR

Sen: Clayton Hee, Chair

Sen: Maile S.L. Shimabukuro, Vice Chair

## COMMITTEE ON WAYS AND MEANS

Sen; David Y. Ige, Vice Chair

Sen: Michelle N. Kidani, Vice Chair

Date: 4/1/2014

Time: 10:00

Place: Conference Room 211

Dear Senators:

I am writing you to share my support for HB1796, the Restraints and Seclusion Bill. According to the US Department of Education Summary of Seclusion and Restraint Statues by Territory (page 51 of attached doc), the following statues are the only safeguards that are currently in place in Hawaii:

- **Hawaii Revised Statute Section 302A-1141**
- **Hawaii Board of Education Policy 4200 STUDENT SAFETY AND WELFARE POLICY** (Approved: 10/70, Amended: 3/88, 7/91)
- **Hawaii Board of Education Policy 4201- USE OF FORCE POLICY** (approved 2002)
- **Hawaii Board of Education Policy 4211 - ANTI-HARASSMENT, ANTI-BULLYING, AND ANTI-DISCRIMINATION AGAINST STUDENT(S) BY EMPLOYEES POLICY** (Approved: 02/21/08)
- **HAWAII ADMINISTRATIVE RULES: DEPARTMENT OF EDUCATION TITLE 8 SUBTITLE 2 PART 1 CHAPTER 19- STUDENT MISCONDUCT, DISCIPLINE, SCHOOL SEARCHES AND SEIZURES, REPORTING OFFENSES, POLICE INTERVIEWS AND ARRESTS, AND RESTITUTION FOR VANDALISM**

Hawaii needs safeguards in place to protect our most vulnerable populations of special education students from abuse at the hands of staff. A recent example is the Kipapa Elementary case where one of the many abuses reported was when a child with Autism was made to eat her own vomit according to the 63 page report issued by Judge Haunani Alm.

In the big picture of this debate, and the need for safeguards, the United States Government Accountability Office (GAO) testified in 2009 before the Committee on Education and Labor and the House of Representatives regarding allegations of death and abuse at residential programs for troubled teens. The full report has been attached for your consideration and highlights from the GOV are as follows:

Recent reports indicate that vulnerable children are being abused in other settings. For example, one report on the use of restraints and seclusions in schools documented cases where students were pinned to the floor for hours at a time, handcuffed, locked in closets, and subjected to

other acts of violence. In some of these cases, this type of abuse resulted in death. Given these reports, the Committee asked GAO to (1) provide an overview of seclusions and restraint laws applicable to children in public and private schools, (2) verify whether allegations of student death and abuse from the use of these methods are widespread, and (3) examine the facts and circumstances surrounding cases where a student died or suffered abuse as a result of being secluded or restrained. GAO reviewed federal and state laws and abuse allegations from advocacy groups, parents, and the media from the past two decades. GAO did not evaluate whether using restraints and seclusions can be beneficial. GAO examined documents related to closed cases, including police and autopsy reports and school policies. GAO also interviewed parents, attorneys, and school officials and conducted searches to determine the current employment status of staff involved in the cases.

GAO found no federal laws restricting the use of seclusion and restraints in public and private schools and widely divergent laws at the state level. Although GAO could not determine whether allegations were widespread, GAO did find hundreds of cases of alleged abuse and death related to the use of these methods on school children during the past two decades. Examples of these cases include a 7 year old purportedly dying after being held face down for hours by school staff, 5 year olds allegedly being tied to chairs with bungee cords and duct tape by their teacher and suffering broken arms and bloody noses, and a 13 year old reportedly hanging himself in a seclusion room after prolonged confinement. Although GAO continues to receive new allegations from parents and advocacy groups, GAO could not find a single Web site, federal agency, or other entity that collects information on the use of these methods or the extent of their alleged abuse. GAO also examined the details of 10 restraint and seclusion cases in which there was a criminal conviction, a finding of civil or administrative liability, or a large financial settlement. The cases share the following common themes: they involved children with disabilities who were restrained and secluded, often in cases where they were not physically aggressive and their parents did not give consent; restraints that block air to the lungs can be deadly; teachers and staff in the cases were often not trained on the use of seclusions and restraints; and teachers and staff from at least 5 of the 10 cases continue to be employed as educators.

To bring this back home, in what appears to be an attempt to quantify the number of cases where restraint and seclusion was used, the Office of Civil Rights (CRDC) is now monitoring individual states, including Hawaii ([www.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf](http://www.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf)) The CRDC now collects school- and district-level information about students in public schools that includes (1) the number of U.S. Department of students by race/ethnicity, sex, Limited English Proficiency (LEP) status, and disability status subjected to physical restraint; (2) the number of students by race/ethnicity, sex, LEP status, and disability status subjected to mechanical restraint; (3) the number of students by race/ethnicity, sex, LEP status, and disability status subjected to seclusion; and (4) **the total number of incidents of physical restraint, mechanical restraint, and seclusion by disability status.** In a 2009 report by the CRDC, estimated values for Hawaii have been compiled. Based what the Hawaii State Department of Education reported to the Office of Civil Rights, no mechanical restraints on IDEA students nor physical restraints on IDEA students occurred in the state. At that time, I was employed as a school psychologist in DOE and know firsthand, and have documentation, that this is inaccurate and simply not true.



Reported to be harassed on the basis of disability	M	0 (b)	0	0	0 (b)	0	0	0 (b)	0	0
	F	415 (b)	0	0	0 (b)	0	0	0 (b)	0	0
	<b>T</b>	<b>415</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Disciplined for harassment on the basis of sex	M	13 (b)	1,914	120	93 (b)	455	2,594	906 (b)	349	88
	F	7 (b)	626	30	30 (b)	97	789	136 (b)	90	32
	<b>T</b>	<b>20</b>	<b>2,539</b>	<b>150</b>	<b>123</b>	<b>552</b>	<b>3,383</b>	<b>1,042</b>	<b>439</b>	<b>120</b>
Disciplined for harassment on the basis of race	M	0 (b)	0	0	0 (b)	0	0	0 (b)	0	0
	F	0 (b)	0	0	0 (b)	0	0	0 (b)	0	0
	<b>T</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Disciplined for harassment on the basis of disability	M	0 (b)	0	0	0 (b)	0	0	0 (b)	0	0
	F	0 (b)	0	0	0 (b)	0	0	0 (b)	0	0
	<b>T</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

‡ Estimate has been suppressed. Associated standard error exceeds 50 percent of the estimate.

† Estimate has been suppressed due to differences about 50 percent from other reported data sources from the U.S. Department of Education

! Associated standard error exceeds 30 percent of the estimate. Interpret data with caution.

\* Interpret data with caution. Estimate has been flagged for large differences from other reported data sources from the U.S. Department of Education.

(a) Interpret data with Caution. Estimate presented is a subtotal associated with a grand total that has been flagged for being different from other U.S. Department of Education data sources.

(b) Interpret data with Caution. Estimate presented is a subtotal associated with a grand total that has been suppressed for being different from other U.S. Department of Education data sources.

So what are we, or you, to do about this? To date, restraint and seclusion is being monitored at the federal level, but there is yet to be a mechanism in place to enforce the accurate reporting of the abuses at the federal level. Individual states have created their own state level statutes to protect the children in their own states. However, for us, we have nothing currently on the books that requires accountability at the school, complex, district or state level. We do each however have an ethical obligation to create such legislation and mechanisms. In review of the ethical standards from the following role groups, it is mandatory for each of these role groups to deliver their care and services in a way that does not inflict harm, physical or psychological pain or jeopardize the safety and welfare of those in their care. It is clear that information is not being reported on the number of restrains and seclusions that are occurring in our schools from the school-to-the-district, district-to-the-state, and state-to-the- federal level. Below you will find a listing of the code of ethics that covers almost every certified school employee.

- The American Psychological Association's [Ethical Principles of Psychologists and Code of Conduct](#)
- The Behavior Analyst Certification Board's [Guidelines for Responsible Conduct for Behavior Analysts](#)

- [The National Association of School Psychologists' Professional Conduct Manual](#)
- [The National Association of Social Workers' Code of Ethics](#)
- [The National Education Association's Code of Ethics of the Education Profession](#)

I find it inexcusable that there are no safe guards that are enforced in our public schools. As a previous state employee for 5 ½ years, I trained staff in positive behavior support, interventions and a crisis response model. For over 2 years I advocated for a system of change which fell on deaf ears with my DES and CAS. I stopped training, along with 3 other trainers because we felt it was unethical to train staff in such a technique and then have no oversight in how and when it was being applied. Please carefully review the attached position statement from the Executive Council of the Association for Behavior Analysis International on restraint and seclusion procedures. It nicely sums-up the ethical responsibility of each professional group in the schools and provides a template of the components that need to be addressed.

I thank you for your time and attention to this matter. Let's not wait until a child is dead at the hands of a teacher or staff member. Laws are to protect our citizens and our most vulnerable citizens need our protection. I support HB

Testimony Respectfully Submitted by:  
Taffy Perucci, MS

**From:** [Kevins.Keeper](#)  
**To:** [JDLTestimony](#)  
**Subject:** testimony HB1796 Restraint and Seclusion relating to education  
**Date:** Monday, March 31, 2014 6:45:55 PM

---

From: Robin Hall

Re HB1796 Restraint and Seclusion relating to education

Senators, thank you for supporting this bill to protect Hawaii's youth.

After a life of torture, a 10 year old girl is able to attend school. Being denied an IEP and behavioral supports requested by guardians, the youth has flash backs resulting in her hiding under her desk. Under the definition of the law, the school required compliance dragging her out and using restraints. The administration who restrained her left bruises on her back from knees which did not allow her to breathe. The little girl was fighting for her life. Why did anyone need to touch her? Who was trained in appropriate restraint or for behavioral intervention and supports? This incident was not isolated but rather repeated and justified by the DOE as was seclusion by locking her in an unsafe room on the second floor with windows.

Administration of several schools did call for assistance during several incidences being instructed to not touch the youth. Although, under the current restraint and seclusion regulations, the youth was injured almost daily. We were not notified of restraint usage many times until picking her up from the after school program where they sated she had been complaining of injuries and breathing difficulty. We begged the DOE from the Complex Area personnel, State Personnel, and Senators to intervene but, under the current law there was no help. Even advocacy agencies were unable to help us when Principal Steve Nakasato refused to implement interventions such as behavioral supports stating if she failed to comply she would be restrained as a perceived danger to herself or others. Behavioral specialist, Dr. Jarret Horibata followed her to another school setting up 504 services and behavioral interventions.

This bill would require checks and balances. Parents/guardians would be notified immediately to allow medical attention should it be needed and by collecting and analyzing restraint/seclusion data, there seems to be an accountability factor written into the bill.

Hawaii DOE states finance issues hinder implementation of this bill. Can Hawaii afford the lawsuits?

Youth with mental health need protection but so do the ones who don't have a diagnosis. For these reasons I support the proposed amended draft of this bill.

Thank you so much for your support of Hawaii's children.

Robin Hall

Committee on Judiciary and Labor  
Committee on Ways and Means

Testimony on HB1796 HD2 SD1

Tuesday, April 1, 2014  
10AM  
Conference Room 211  
State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

Senators David Y. Ige and Clayton Hee and respective committee members:

I OPPOSE HB1796 HD2SD1 because the intentions of this bill are NOT to keep our keiki safe, but to legalize and excuse the criminal activities that have been on-going within the Hawaii public schools.

At the same time, support garnered in favor of this bill come from the DOE and various DOE organizations. It is not reflective of the opinions of the community at large regardless of the “community organizations” in support of this bill.

The inter-relationships among these various organizations including the State Council of Developmental Disabilities, Children’s Community Council of Hawaii, Special Education Advisory Council, Hawaii Association of School Psychologists, Hawaii Disability Rights Center and the individuals from these organizations who provided testimony are numerous. These liaisons shed light on how quickly a poorly written and barely thought out bill such as HB1796 can be fast-tracked through the legislature and passed with little to no notice given to the parents of students in the public schools until after it becomes law.

This bill claims that it would protect students from “physical and mental abuse” and from “any restraint imposed solely for the purposes of discipline or convenience.” However, in direct contradiction to this claim, this same DOE system knowingly allowed the brutality of sexual abuse and rape to continue for several years within the DOE’s School for the Deaf and Blind without consequence. This came to light only when a parent filed a lawsuit against the DOE despite the fact that the Principal and then Superintendent were informed of the coerced sexual acts as early as 2007 as documented in a complaint lodged against the DOE in Hawaii’s First Circuit Court on August 10, 2011. Although this was settled out of court, the DOE admitted no wrong-doing. No one from the DOE was ever held responsible for these actions. Was this deliberate indifference or the type of protection we are to expect from the DOE?

On December 27, 2013, an administrative judge documented how the special education children were physically abused and inappropriately restrained at the hands of a DOE



educational assistant and a DOE special education teacher at Kipapa Elementary School in a 62-paged report. Despite these findings, the AG's office conducted a one-sided report that found nothing wrong and the DOE claimed then and has continued to claim that nothing inappropriate occurred to warrant any disciplinary action. No one from the DOE, including the DOE special education teacher and her assistant were ever held responsible for their actions despite being caught on tape.

Ironically, the employees who reported these incidents were threatened with lawsuits and the administrative judge who wrote the decision was unexpectedly forced into sudden retirement on December 31, 2013 just four days after this decision was made public.

Are DOE employees going to protect our children more so with such a bill in place? How are parents to believe that the children will be safer with this restraint bill when they are not currently safe at the hands of the same employees? The DOE's employees are creating indefensible legal cases that are financially draining the ever unaccountable DOE and its administration.

It is obvious that the Hawaii legislature is desperate to legalize these criminal activities through the passage of this bill. In this harried process, the legislative committees have primarily relied on one individual for their source of information related to education, Ms. Ivalee Sinclair, chairperson for SEAC since 2005. She has never practiced medicine or law and yet, she has always been the legislature's trusted source of information. Why?

The purpose of SEAC, which is mandated by IDEA, is to advise the Superintendent of the DOE and to have an active and influential role in the decisions affecting policies, programs and services that impact students with disabilities but it does not mean that SEAC should essentially be allowed to create policy. SEAC is meant to serve as a check and balance type agency that tries to uphold the integrity of the federal IDEA law within the DOE. This type of check and balance currently does not exist in Hawaii's school system.

On the contrary, Hawaii's SEAC is under the SUPERVISION of the DOE. According to SEAC's by-laws, membership is by appointment of the Superintendent. This arrangement reflects an ongoing conflict of interest that puts the special education children at the mercy of the DOE.

SEAC has supported many bills that supposedly had Hawaii's special education children's best interests in mind. However, this has often not been the case. The legislature, the DOE's advocates and SEAC's lack of due diligence have historically cost the state taxpayers millions of dollars because of bad advice from within. They rarely, if ever, have sought information from outside legal counsel and advocates, relying only on SEAC for important educational matters. This makes no sense unless there are answers they do not want to hear.

In 2011, SB1284 was a bill in a similar situation as HB1796. At that time, SB1284 allowed the DOE to monitor private schools as educational placements using tactics that

violated a student's educational rights. This bill was rushed through the legislature and passed despite vehement objections from parents from the community. SEAC aligned itself with the DOE's wishes with complete disregard of obvious violations in IDEA's procedural safeguards, by supporting SB1284 before it became law as Act 129. After this bill was passed, SEAC assisted in the finalization of their recommendations on regulations, procedures and policies for supporting the implementation of Act 129 which further violated the student's educational rights.

In 2012, Act 129 was preempted where a US District court ruled that the DOE cannot withhold tuition payments to private schools regarding disputes over monitoring. Other provisions of this bill have also been preempted as well forcing the DOE to pay what it owes to the private schools, and rightfully so. Why was this exercise necessary when the outcome was so predictable, leading to unnecessary financial burdens on the taxpayer at the same time chiming in with the DOE in blaming the high costs on special education children?

SEAC's advice and implementation plans for Act 129 were basically illegal. Yet their recommendations enabled the DOE to greatly violate the educational rights of the special education students, the rights of the very same students that they are meant to protect. Similar to SB1284, the policies for restraint required in HB1796 will also be written AFTER the passage of the bill and most likely with assistance from SEAC. Like SB1284, history will repeat itself. HB1796 will lead to more costly lawsuits against the DOE and the state.

Let's magnify the conflicts of interest that exist among the DOE's support groups when it wants the legislature to pass a bill, especially when it is on their fast track. Testimony provided in favor of this bill come from various organizations that are run by the DOE or are financially supported by the DOE and most have a connection to SEAC and Ms. Ivalee Sinclair who has worked with the DOE since the 1990's.

Ms. Sinclair's influence reaches widely into the community. As the SEAC chairperson, she is supervised and appointed by the DOE's Superintendent as stated in SEAC's bylaws.

Ms. Sinclair is also a long-time DOE employee of the DOE's Children's Community Council Office (CCCO) as a Family Specialist. The DOE superintendent again is her supervisor.

With these conflicts of interests, she cannot be impartial when her supervisor is the superintendent of the Department of Education. The rejection of Act 129 in US District Court demonstrates how this expectation is unrealistic. It clearly highlights the inappropriate relationships that exist allowing the DOE to wield influences on bills that should support the basic needs of our children but instead feeds the needs of the Department of Education.

Members of the Autism Society of Hawaii, ASH, who submitted testimony in favor of this bill, again include Ms. Ivalee Sinclair, an honorary ASH Board Member, Dr. Joanne Yuen, an ASH Board Member and Mr. John Deller, an ASH Board Member.

Ms. Jessica Sumida-Wong who submitted testimony under the Legislative Committee of the DOE's CCCO of Hawaii is the executive director of ASH. She is also a professional co-chair for a CCC in East Honolulu and is a DOE contracted provider from Hawaii Behavioral Health. As such, Ms. Sumida-Wong is a DOE employee.

Mr. Tom Smith who submitted testimony under the Legislative Committee of the CCCO of Hawaii with Ms. Sumida-Wong is a professional co-chair of the CCC in Windward and is a DOE contracted provider from Bayada. As such, Mr. Smith is also a DOE employee.

Ms. Sumida-Wong and Mr. Smith of the Legislative branch of the Children's Community Council Office of Hawaii always submit testimony on behalf of the 17 state-wide CCC's claiming to have their support. In reality, the majority of the individual CCC's rarely discuss any of the issues as represented by Ms. Sumida-Wong and Mr. Smith. The Children's community Council Office and the 17 Children's Community Councils are ALL offices of the DOE and are organized by the DOE with limited parental participation in most of these councils.

Ms. Deborah Krekel is a parent advocate with the Learning Disabilities Association of Hawaii, LDAH, which is funded by the DOE. She is also a SEAC member who works with Ms. Ivalee Sinclair.

Ms. Waynette Cabral of the State Council on Developmental Disabilities has had a long-standing relationship with Ms. Sinclair and SEAC. The DD division has always submitted testimony in tandem with SEAC regardless of the issue.

The Hawaii Association of School Psychologists who submitted testimony in support of this bill are DOE employees.

A relationship even exists with Senator Chun-Oakland who submitted this bill as a part of a "package" along with the companion bill SB 2371 on behalf of the Keiki Caucus. She too is an honorary Board Member of ASH.

There is an irony when the Senate Committee of Education claims that the changes made to HB1796 "will promote the safety and well-being of students and school personnel" in the public schools when in fact, the children are the ones who are currently not safe in the public schools especially those who cannot adequately communicate.

The instances of rape and sexual abuse in the Hawaii School for the Deaf and Blind and those special education children who were purposefully physically abused at Kipapa Elementary School by DOE employees were only cases that have been brought to light. There have been many cases of abuse of special education children, known among the

community, that have gone unreported and have been just as violent and brutal. I doubt that members of the legislature will honestly believe that the children will be safer with HB1730 in place when there is a greater inherent danger in instances when a bill is “thrown together” for the sake of having a bill, as is often seen with this legislature.

The Department of Education has never been held responsible for any of their crimes, not even a slap on the wrist. As the legislature privately laments about the high costs of educating our children year after year while the DOE publicly blames these high costs on the special needs children, the legislature has always supported the DOE, not the community, not the parents, and not the voters. The legislature has never held the DOE accountable for their excessive expenditures, mis-management of funds, and fraudulent activities as identified in several state audits.

An independent, comprehensive audit on the Department of Education has not been conducted for over FORTY-ONE years and this year makes forty-two since HB1530 requesting such an audit was killed on January 15, 2014, the same day it was introduced.

The legislature does not want to know how much the DOE is mis-spending taxpayer monies in civil lawsuits, administrative hearings, AG fees and other mis-managed DOE departments. The numerous quick-fix, ill-thought out educational bills passed by the legislature time and time again resulting in the numerous lawsuits have exponentially compounded the costs of educating these children and are the REAL causes of increased educational costs. Refusing to conduct an audit is the legislature’s only way of preventing the public from finding out the REAL truth about what is going on in the Department of Education.

HB1796 has sped through the legislature thus far. As of this writing, there have been a total of 29 Ayes and 3 no votes where the same legislator voted NO on three different committees. The discussions have already been held and the decision to pass this bill was made long before the votes were cast despite the testimonies. We all knew this bill was going to pass the moment it was introduced. These votes are evidence of that.

Educational bills such as HB1796 are created by legislators, the DOE and quasi-community advocates who claim to care about our children when in reality this is the farthest thing from the truth. The adults need to take responsibility for their actions and stop blaming helpless children.

In summary, I STRONGLY OPPOSE HB1796.

Thank you,

Teresa Chao

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [lle96707@hotmail.com](mailto:lle96707@hotmail.com)  
**Subject:** Submitted testimony for HB1796 on Apr 1, 2014 10:00AM  
**Date:** Tuesday, April 01, 2014 6:48:42 AM

---

**HB1796**

Submitted on: 4/1/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Laura L Epstein	Individual	Support	No

Comments: I am writing to offer my support of legislation that would provide protection for students in Hawaii's public schools. Currently the use of force policy is written in such a way that does not make it clear what type of behavior would be inappropriate or dangerous when it comes to restraint. Restraint can be dangerous, and can lead to death if used inappropriately. It should only be done in emergency situations when there is no other choice. Additionally, documentation is very important so that a student's emotional and behavioral status can be monitored and additional interventions put into place if necessary. Thank you for your time.  
Sincerely, Dr. Laura L. Epstein Clinical Psychologist

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)