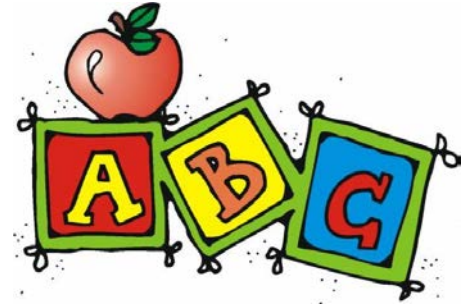


HB1796

HD2



Measure Title: RELATING TO EDUCATION.

Report Title: Restraint and Seclusion; Public Schools

Description: Establishes conditions and procedures for the use of restraint or seclusion in public schools. Requires collection and review of data. Makes an appropriation. Effective August 26, 2151. (HB1796 HD2)

Companion: [SB2371](#)

Package: Keiki Caucus

Current Referral: EDU, JDL/WAM

Introducer(s): MIZUNO, EVANS, HANOHANO



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

Date: 03/14/2014

Committee: Senate Education

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 1796, HD2(hscr776-14) RELATING TO EDUCATION.

Purpose of Bill: Establishes conditions and procedures for the use of restraint or seclusion in public schools. Requires collection and review of data. Makes an appropriation. Effective August 26, 2151. (HB1796 HD2)

Department's Position:

The Department of Education (Department) supports the substantive content of HB 1796 HD2 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.

At this time, the Department is assessing the estimated budgetary needs for training and data accountability necessary to promote the effective implementation of this measure. While we understand this will be a matter for the Ways and Means Committee to address we ask for your favorable support as the Department would not have the means to implement this measure within our budget.

Further, the implementation of the necessary policies, procedures, training, and notices would require judicious planning; as such, we would like to respectfully recommend an effective date of August 2016.

Thank you for this opportunity to testify on this measure.



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
March 14, 2014

The Honorable Jill Tokuda, Chair
Senate Committee on Education
Twenty-Seventh Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Senator Tokuda and Members of the Committee:

SUBJECT: HB 1796 HD2 - RELATING TO EDUCATION

The State Council on Developmental Disabilities **SUPPORTS HB 1796 HD2**. The purpose of the bill is to establish conditions and procedures for the use of restraint and seclusion in schools.

HB 1796 HD2 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.

We are aware that proposed amendments were submitted to the staff of the Senate Education Committee for the Committee's consideration. Our understanding is that the proposed amendments address the following:

1. Prohibits the use of seclusion
2. Provides a definition for seclusion
3. Adds "property damage" when a student's behavior poses an imminent danger
4. Clarifies the definition of "chemical restraint" to exclude medical prescriptions

The Council supports the proposed amendments and believes it provides greater clarity in addressing seclusion and restraints (physical, chemical, and mechanical) 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, there are very minimal restraint protection and no seclusion limits.

The Honorable Jill Tokuda
Page 2
March 14, 2014

The passage of HB 1796 HD2 with the proposed amendments would provide 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 provide a positive school environment.

Thank you for the opportunity to submit testimony **supporting HB 1796 HD2 with the proposed amendments.**

Sincerely,


Waynette K.Y. Cabral, MSW
Executive Administrator


J. Curtis Tyler, III
Chair



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 SENATE THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2014

Committee on Education Testimony on H.B. 1796, H.D.2 Relating to Education

**Friday, March 14, 2014, 1:15 P.M.
Conference Room 414**

Chair Tokuda and Members of the Committee:

The Hawaii Disability Rights Center testifies in support of this bill.

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 pleased that the HD2 version deleted the definition of "chemical restraint" that was in the original bill. The involuntary use of drugs on a child in a school setting is an alarming prospect and it is important to be clear that there is a complete ban on the practice.

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



From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: baunach@yahoo.com
Subject: Submitted testimony for HB1796 on Mar 14, 2014 13:15PM
Date: Tuesday, March 11, 2014 10:25:01 PM
Attachments: [Seclusion and Restraint - Federal Updates and Advocacy Opportunities.pdf](#)

HB1796

Submitted on: 3/11/2014

Testimony for EDU on Mar 14, 2014 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
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.

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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.

Editor's Note:

This month's [Student Connections](#) column provides a field-based example of one graduate student's experience with seclusion, restraint, and positive disciplinary approaches.

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
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U.S. Department of Education. (2012) *Restraint and seclusion: Resource document*. Washington, DC: Author. Retrieved from: 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.

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JILL COMMUNITY CHILDREN'S COUNCIL OF HAWAII
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March 12, 2014

Senator, Jill Takuda Chair Senate education Committee
And Committee members

RE: – HB1796 HD2

The 17 Community Children's Councils (CCCs) **strongly support** this bill as amer ded by the testimony of John Dellera. The Community Children's Council participated in developing these proposed amendments.

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)



S E A C
Special Education Advisory Council
919 Ala Moana Blvd., Room 101
Honolulu, HI 96814
Phone: 586-8126 Fax: 586-8129
email: spin@doh.hawaii.gov

March 14, 2014

**Special Education
Advisory Council**

Ms. Ivalee Sinclair, *Chair*
Ms. Martha Guinan, *Vice
Chair*

Ms. Brendelyn Ancheta
Dr. Tammy Bopp
Dr. Robert Campbell
Ms. Deborah Cheeseman
Ms. Annette Cooper
Ms. Shari Dela Cuadra-Larsen,
liaison to the Superintendent
Ms. Gabriele Finn
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Mr. Tom Smith
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Ms. Amy Weich
Ms. Cari White
Ms. Susan Wood

Jan Tateishi, Staff
Susan Rocco, Staff

Senator Jill Tokuda, Chair
Committee on Education
State Capitol
Honolulu, HI 96813

RE: HB 1796, HD 2 - Relating to Education

Dear Chair Tokuda and Members of the Committee,

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), **strongly supports** HB 1796, HD 2 with the comments below.

SEAC has been part of a working group that gave input to Representative Takumi on the language in the bill and has further refined HB 1796, HD 2 to provide clearer definitions, as well as a prohibition on the use of seclusion in our public schools. A copy of the working group's suggested language (HB 1796, HD 2, SD 1 Draft 7) is attached, and SEAC stands firmly behind these suggestions.

Historically, students with disabilities have been harmed by seclusion and restraints disproportionately more often than their non-disabled peers. Despite the mandate in the Individuals with Disabilities Education Act to provide positive behavioral supports and conduct functional behavioral assessments when a student's behavior interferes with his learning or that of other students, there have been shocking examples, even in Hawaii, of special education students being tied to a tree or desk, or kept in isolation without proper supervision. It is imperative that legislation be enacted to provide clear conditions and procedures to the field regarding restraint and seclusion in public schools.

Thank you for the opportunity to provide testimony on this important legislation. SEAC is happy to answer any questions or concerns.

Respectfully,

Ivalee Sinclair, Chair

attachment

*Mandated by the **Individuals with Disabilities Education Act***

2

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

4 SECTION 1. The purpose of this Act is to:

5 (1) ~~Prevent~~ Prohibit the use of seclusion and reduce the
6 use of restraint ~~and seclusion~~ in public schools;

7 (2) Ensure the safety of all students and personnel in
8 public schools and promote a positive school culture and
9 climate;

10 (3) Protect students from:

11 (A) Physical and mental abuse;

12 (B) Aversive behavioral interventions that compromise
13 health and safety; and

14 (C) Any restraint or seclusion imposed solely for
15 purposes of discipline or convenience;

16 (4) Ensure that restraint ~~or seclusion~~ are is imposed in
17 public schools only when a student's behavior poses an imminent
18 danger of property damage or physical injury to the student,
19 school personnel, or others and only for as long as the danger
20 persists; and

21 (5) Assist public schools by:

1 (A) Establishing policies and procedures to keep all
2 students and school personnel safe, including students with the
3 most complex and intense behavioral needs;

4 (B) Providing school personnel with the necessary
5 tools, training, and support to ensure the safety of all
6 students and all school personnel;

7 (C) Collecting and analyzing data on the use of
8 restraint or seclusion in schools; and

9 (D) Identifying and implementing effective evidence-
10 based models to prevent and reduce restraint or seclusion in
11 schools.

12 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is
13 amended by adding ~~a~~ new sectionsu to be appropriately designated
14 and to read as follows:

15 **"§302A-A. Use of seclusion and chemical or mechanical**
16 **restraint prohibited.** The use of seclusion, chemical restraint,
17 and mechanical restraint shall be prohibited in public schools
18 regardless of any consent of the student, parents, or guardians.

19 **"§302A-B. Use of physical restraint ~~or seclusion~~**
20 **limited; notification; policies and procedures; training;**
21 **review.** (a) The use of physical restraint ~~or seclusion~~ shall
22 be prohibited in public schools unless:

23 ~~— (1) There is an emergency situation, and restraint or~~
24 ~~seclusion is necessary to protect a student or other person a~~
25 ~~student's behavior poses an imminent danger of physical injury~~
26 ~~to the student, school personnel, or others and only for as long~~
27 ~~as the danger persists; provided that other less intrusive~~

1 interventions have failed or been determined to be inappropriate
2 for the student; ~~or~~

3 ~~—— (2) The parent or legal guardian of a student has provided~~
4 ~~written consent for the use of restraint or seclusion while a~~
5 ~~behavioral intervention plan is being developed.~~

6 (b) ~~At a minimum, any room or structure used for seclusion~~
7 ~~shall:~~

8 ~~—— (1) Be free of objects and fixtures with which the student~~
9 ~~could self-inflict bodily harm;~~

10 ~~—— (2) Provide a teacher with an unobstructed view of the~~
11 ~~student from an adjacent area; and~~

12 ~~—— (3) Provide adequate lighting and ventilation.~~

13 (b) No physical restraint may be imposed:

14 (1) That is life-threatening, including but not limited to
15 physical restraint that may restrict breathing;

16 (2) That is contraindicated based on the student's
17 disability, health care needs, or medical or psychiatric
18 condition, as documented in a health care directive or medical
19 management plan, a behavior intervention plan, an individualized
20 education program, or an individualized family service plan (as
21 defined in section 602 of the Individuals With Disabilities
22 Education Act (20 U.S.C. 1401), or plan developed pursuant to
23 section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

24 (c) All parents and legal guardians of students shall
25 receive, at least annually, written information issued by the

1 department about policies and procedures for restraint ~~or~~
2 ~~seclusion~~. This written information shall include:

3 (1) A brief summary describing the training received by
4 public school staff in using restraint ~~or seclusion~~ in
5 facilities or programs;

6 (2) Information describing state policies and procedures
7 that meet the minimum standards established by state statutes
8 and administrative rules;

9 (3) Information on the procedures for determining when
10 restraint ~~or seclusion~~ can and cannot be properly used in public
11 school settings;

12 (4) Definitions of restraint ~~and seclusion~~;

13 (5) Information on the procedural safeguards that are in
14 place to protect the rights of children and their parents or
15 legal guardians;

16 (6) A description of the alignment of policies and
17 procedures on restraint ~~or seclusion~~ with applicable state laws
18 or department rules;

19 (7) Information on the procedures for notifying parents
20 and legal guardians when restraint ~~or seclusion~~ has been used
21 with their child; and

22 (8) Information on the procedures for notifying parents
23 and legal guardians about any changes to policies and procedures
24 on restraint ~~or seclusion~~.

1 (d) If policy or procedural changes related to restraint
2 ~~or seclusion~~ are made during the school year, staff and parents
3 or legal guardians shall be notified immediately.

4 (e) The board shall establish a policy regarding the use
5 of restraint ~~or seclusion~~ in public schools. The department
6 shall establish procedures to be followed after each incident
7 involving the imposition of restraint ~~or seclusion~~ upon a
8 student, including procedures to provide to the parent or legal
9 guardian of the student:

10 (1) An immediate verbal or electronic communication on the
11 same day as each incident; and

12 (2) Written notification within twenty-four hours of each
13 incident.

14 (f) All public schools shall ensure that staff who use
15 restraint ~~or seclusion~~ in facilities or programs are trained and
16 certified on a periodic basis no less frequent than
17 annually. Training shall include:

18 (1) Evidence-based techniques shown to be effective in the
19 prevention of restraint ~~or seclusion~~;

20 (2) Evidence-based techniques shown to be effective in
21 keeping school personnel and students safe when imposing
22 restraint ~~or seclusion~~;

23 (3) Evidence-based skills related to positive behavioral
24 supports and interventions, safe physical escort, conflict
25 prevention, understanding antecedents, de-escalation, and
26 conflict management;

1 (4) A wide array of prevention and intervention
2 modalities;

3 (5) First aid and cardiopulmonary resuscitation; and

4 (6) Information describing state policies and procedures
5 that meet the minimum standards established by state statute and
6 administrative rules.

7 (g) No less than quarterly, there shall be a review of
8 data on students at each public school who were restrained ~~or~~
9 ~~secluded~~ conducted as directed by each complex area
10 superintendent. The review shall determine whether:

11 (1) There are strategies in place to address the students
12 with dangerous behaviors at issue;

13 (2) The strategies in place are effective in increasing
14 appropriate behaviors of students with dangerous behaviors; and

15 (3) New strategies need to be developed or current
16 strategies need to be revised or changed to prevent the
17 reoccurrence of dangerous behaviors.

18 Patterns and trends in the data that are identified by the
19 review shall be reported to the department.

20 (h) Each public school shall maintain records of its
21 reviews of restraint ~~and seclusion~~ data and any resulting
22 decisions or actions regarding the use of restraint ~~or~~
23 ~~seclusion~~.

24 (i) The department shall review policies and procedures on
25 the use of restraint ~~or seclusion~~, including by reviewing

1 available data on such use, outcomes, settings, individual staff
2 involvement, and programs, and the frequency of use for student
3 populations categorized by: individual students; groups of
4 students; gender; race; national origin; disability status and
5 type of disability; and limited English proficiency, for the
6 purposes of determining:

- 7 (1) Whether policies for restraint ~~and seclusion~~ are
8 being applied consistently;
- 9 (2) The accuracy and consistency with which restraint
10 ~~and seclusion~~ data is being collected, as well as
11 the extent to which this data is being used to
12 plan behavioral interventions and staff training;
- 13 (3) Whether policies and procedures are being
14 implemented with fidelity;
- 15 (4) Whether policies and procedures continue to
16 protect children and adults; and
- 17 (5) Whether policies and procedures remain properly
18 aligned with applicable state statutes and
19 administrative rules and consistent with privacy
20 laws.

21 (j) As used in this section:

22 "Behavioral intervention plan" means a proactive plan
23 designed to address problem behaviors exhibited by a student in
24 the educational setting through the use of positive behavioral
25 supports and interventions.

1 "Positive behavioral supports and interventions" means a
2 systematic approach to embed evidence-based practices and data-
3 driven decision making to improve public school climate and
4 culture and includes a range of systemic and individualized
5 strategies to reinforce desired behaviors and diminish the
6 reoccurrence of problem behaviors in order to achieve improved
7 academic and social outcomes and increase learning for all
8 students, including students with the most complex and intense
9 behavioral needs.

10 "Restraint" means:

11 (1) ~~A~~ "mechanical restraint", which means the use of
12 devices as a means of restricting a student's freedom of
13 movement or ability to communicate in the student's primary
14 language or mode of communication; ~~or~~

15 (2) A "chemical restraint", which means a drug or
16 medication used on a student to control behavior or restrict
17 freedom of movement; provided, however, that the term does not
18 include a drug or medication that is

19 (A) prescribed by a licensed physician, or other
20 qualified health professional acting under the scope of the
21 professional's authority under State law, for the standard
22 treatment of a student's medical or psychiatric condition; and

23 (B) administered as prescribed by the licensed
24 physician or other qualified health professional acting under
25 the scope of the professional's authority under State law; or

26 (~~2~~ 3) ~~A~~ "physical restraint", which means a personal
27 restriction other than a chemical restraint or a mechanical

1 restraint that immobilizes or reduces the ability of a student
2 to move the student's arms, legs, or head freely.

3 "Seclusion" means the confinement of a student alone in a
4 room or structure from which the student is physically denied
5 voluntary egress."

6 SECTION 3. Section 302A-1141, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~§~~**302A-1141**~~§~~ **Punishment of pupils limited.** No
9 physical punishment of any kind may be inflicted upon any pupil,
10 except as provided for under sections 302A- and 703-309(2)."

11 SECTION 4. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$ or so much
13 thereof as may be necessary for fiscal year 2014-2015 to provide
14 resources for training and data accountability to assist with
15 the effective implementation of this Act.

16 The sum appropriated shall be expended by the department of
17 education for the purposes of this Act.

18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect on August 26, 2151.

21

JOHN P. DELLERA

Attorney at Law

619 Ahakea Street
Honolulu, HI 96816
Telephone 808 739 9078

**TESTIMONY IN SUPPORT OF H.B. 1796, H.D. 2
RELATING TO EDUCATION**

Friday, March 14, 2014, 1:15 p.m., Room 414

March 11, 2014

The Honorable Jill N. Tokuda, Chair
The Honorable Michelle N. Kidani, Vice Chair
Committee on Education

Dear Chair, Vice Chair, and Members of the Committee:

I am pleased to **testify in support** of H.B. 1796, H.D. 2, **with amendments** attached to this testimony. The amendments would prohibit the use of seclusion and certain types of restraint and limit the use of physical restraint in our public schools.

I have been a caregiver for a child (now a young man) with autism for the past eighteen years and testify on my own behalf. I have worked with a number of parents of children with autism to draft the attached language and understand that the Special Education Advisory Council and the Community Children's Council support these changes.

There is no place for seclusion of students in our schools, especially those with disabilities. There is no place for administering drugs or medication except by a physician as part of the student's standard treatment. And there is no place for mechanical restraints that restrict movement or the ability to communicate. Seclusion and such restraints may traumatize children and cause serious physical or psychological harm to the most vulnerable.

We agree with the limitations on physical restraint and the training and reporting provisions included in House Draft 2. We propose additional provisions to ensure that restraint is used only when imminent danger of property damage or physical injury is threatened and that lasts only as long as the danger persists. The changes we request are in line with federal legislation proposed by Senator Harkin of Iowa ("Keeping All Students Safe Act," S. 2020, 112th Congress, 1st Session) which was recently co-sponsored by Senator Hirono.

I respectfully urge the Committee to pass this measure. Thank you for the opportunity to testify.

Respectfully submitted,

John P. Delleria

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to:

(1) ~~Prevent~~ Prohibit the use of seclusion and reduce the use of restraint ~~and seclusion~~ in public schools;

(2) Ensure the safety of all students and personnel in public schools and promote a positive school culture and climate;

(3) Protect students from:

(A) Physical and mental abuse;

(B) Aversive behavioral interventions that compromise health and safety; and

(C) Any restraint ~~or seclusion~~ imposed solely for purposes of discipline or convenience;

(4) Ensure that restraint ~~or seclusion~~ are is imposed in public schools only when a student's behavior poses an imminent danger of property damage or physical injury to the student, school personnel, or others and only for as long as the danger persists; and

(5) Assist public schools by:

(A) Establishing policies and procedures to keep all students and school personnel safe, including students with the most complex and intense behavioral needs;

(B) Providing school personnel with the necessary tools, training, and support to ensure the safety of all students and all school personnel;

(C) Collecting and analyzing data on the use of restraint ~~or seclusion~~ in schools; and

(D) Identifying and implementing effective evidence-based models to prevent and reduce restraint ~~or seclusion~~ in schools.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding ~~a~~ new sections to be appropriately designated and to read as follows:

"§302A-A. Use of seclusion and chemical or mechanical restraint prohibited. The use of seclusion, chemical restraint, and mechanical restraint shall be prohibited in public schools regardless of any consent of the student, parents, or guardians.

"§302A-B. Use of physical restraint ~~or seclusion~~ limited; notification; policies and procedures; training; review. (a) The use of physical restraint ~~or seclusion~~ shall be prohibited in public schools unless:

~~—~~ (1) There is an emergency situation, and restraint or seclusion is necessary to protect a student or other person a student's behavior poses an imminent danger of physical injury to the student, school personnel, or others and only for as long as the danger persists; provided that other less intrusive interventions have failed or been determined to be inappropriate for the student; ~~or~~

~~(2) The parent or legal guardian of a student has provided written consent for the use of restraint or seclusion while a behavioral intervention plan is being developed.~~

~~(b) At a minimum, any room or structure used for seclusion shall:~~

~~(1) Be free of objects and fixtures with which the student could self-inflict bodily harm;~~

~~(2) Provide a teacher with an unobstructed view of the student from an adjacent area; and~~

~~(3) Provide adequate lighting and ventilation.~~

(b) No physical restraint may be imposed:

(1) That is life-threatening, including but not limited to physical restraint that may restrict breathing;

(2) That is contraindicated based on the student's disability, health care needs, or medical or psychiatric condition, as documented in a health care directive or medical management plan, a behavior intervention plan, an individualized education program, or an individualized family service plan (as defined in section 602 of the Individuals With Disabilities Education Act (20 U.S.C. 1401), or plan developed pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(c) All parents and legal guardians of students shall receive, at least annually, written information issued by the department about policies and procedures for restraint ~~or seclusion~~. This written information shall include:

(1) A brief summary describing the training received by public school staff in using restraint ~~or seclusion~~ in facilities or programs;

(2) Information describing state policies and procedures that meet the minimum standards established by state statutes and administrative rules;

(3) Information on the procedures for determining when restraint ~~or seclusion~~ can and cannot be properly used in public school settings;

(4) Definitions of restraint ~~and seclusion~~;

(5) Information on the procedural safeguards that are in place to protect the rights of children and their parents or legal guardians;

(6) A description of the alignment of policies and procedures on restraint ~~or seclusion~~ with applicable state laws or department rules;

(7) Information on the procedures for notifying parents and legal guardians when restraint ~~or seclusion~~ has been used with their child; and

(8) Information on the procedures for notifying parents and legal guardians about any changes to policies and procedures on restraint ~~or seclusion~~.

(d) If policy or procedural changes related to restraint ~~or seclusion~~ are made during the school year, staff and parents or legal guardians shall be notified immediately.

(e) The board shall establish a policy regarding the use of restraint ~~or seclusion~~ in public schools. The department shall establish procedures to be followed after each incident involving the imposition of restraint ~~or seclusion~~ upon a student, including procedures to provide to the parent or legal guardian of the student:

(1) An immediate verbal or electronic communication on the same day as each incident; and

(2) Written notification within twenty-four hours of each incident.

(f) All public schools shall ensure that staff who use restraint ~~or seclusion~~ in facilities or programs are trained and certified on a periodic basis no less frequent than annually. Training shall include:

(1) Evidence-based techniques shown to be effective in the prevention of restraint ~~or seclusion~~;

(2) Evidence-based techniques shown to be effective in keeping school personnel and students safe when imposing restraint ~~or seclusion~~;

(3) Evidence-based skills related to positive behavioral supports and interventions, safe physical escort, conflict prevention, understanding antecedents, de-escalation, and conflict management;

(4) A wide array of prevention and intervention modalities;

(5) First aid and cardiopulmonary resuscitation; and

(6) Information describing state policies and procedures that meet the minimum standards established by state statute and administrative rules.

(g) No less than quarterly, there shall be a review of data on students at each public school who were restrained ~~or~~ ~~secluded~~ conducted as directed by each complex area superintendent. The review shall determine whether:

(1) There are strategies in place to address the students with dangerous behaviors at issue;

(2) The strategies in place are effective in increasing appropriate behaviors of students with dangerous behaviors; and

(3) New strategies need to be developed or current strategies need to be revised or changed to prevent the reoccurrence of dangerous behaviors.

Patterns and trends in the data that are identified by the review shall be reported to the department.

(h) Each public school shall maintain records of its reviews of restraint ~~and seclusion~~ data and any resulting decisions or actions regarding the use of restraint ~~or~~ ~~seclusion~~.

(i) The department shall review policies and procedures on the use of restraint ~~or seclusion~~, including by reviewing available data on such use, outcomes, settings, individual staff involvement, and programs, and the frequency of use for student populations categorized by: individual students; groups of students; gender; race; national origin; disability status and

type of disability; and limited English proficiency, for the purposes of determining:

- (1) Whether policies for restraint ~~and seclusion~~ are being applied consistently;
- (2) The accuracy and consistency with which restraint ~~and seclusion~~ data is being collected, as well as the extent to which this data is being used to plan behavioral interventions and staff training;
- (3) Whether policies and procedures are being implemented with fidelity;
- (4) Whether policies and procedures continue to protect children and adults; and
- (5) Whether policies and procedures remain properly aligned with applicable state statutes and administrative rules and consistent with privacy laws.

(j) As used in this section:

"Behavioral intervention plan" means a proactive plan designed to address problem behaviors exhibited by a student in the educational setting through the use of positive behavioral supports and interventions.

"Positive behavioral supports and interventions" means a systematic approach to embed evidence-based practices and data-driven decision making to improve public school climate and culture and includes a range of systemic and individualized strategies to reinforce desired behaviors and diminish the

reoccurrence of problem behaviors in order to achieve improved academic and social outcomes and increase learning for all students, including students with the most complex and intense behavioral needs.

"Restraint" means:

(1) ~~A~~ "mechanical restraint", which means the use of devices as a means of restricting a student's freedom of movement or ability to communicate in the student's primary language or mode of communication; or

(2) A "chemical restraint", which means a drug or medication used on a student to control behavior or restrict freedom of movement; provided, however, that the term does not include a drug or medication that is

(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; or

(~~2~~ 3) A "physical restraint", which means a personal restriction other than a chemical restraint or a mechanical restraint that immobilizes or reduces the ability of a student to move the student's arms, legs, or head freely.

"Seclusion" means the confinement of a student alone in a room or structure from which the student is physically ~~prevented from leaving~~ denied voluntary egress."

SECTION 3. Section 302A-1141, Hawaii Revised Statutes, is amended to read as follows:

"~~§~~**302A-1141** **Punishment of pupils limited.** No physical punishment of any kind may be inflicted upon any pupil, except as provided for under sections 302A- and 703-309(2)."

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2014-2015 to provide resources for training and data accountability to assist with the effective implementation of this Act.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on August 26, 2151.

Testimony in Support of H.B.1796 H.D.2

March 12, 2014

The Honorable Jill N. Tokuda, Chair
The Honorable Michelle N. Kidani, Vice chair
Committee on Education

Dear Chair, Vice chair, and Members of the Committee:

It is a great privilege to be able to be able to **testify in support** of H.B. 1796, H.D. 2, **with amendments** attached to this testimony. The attached amendments would prohibit the use of seclusion and specific types of restraint to limit the use of physical restraint used in our public schools.

I am a parent of a 6 year old child with Down syndrome/Autism who was inappropriately and unnecessarily secluded in her Department of Education special education classroom for approximately 90 minutes per day which resulted in severe trauma and aversive behaviors that have taken months to heal and resolve.

It is my understanding that the Special Education Advisory Council, Community Children's Council and DD Council all support these proposed amendments in the attached draft of this bill.

Extensive research has shown that using these types of dangerous restraints and seclusions on our children in our public schools causes trauma, injury and death. This is a very small list of web-sights where articles can be found to support banning use of restraints, seclusions except in circumstances where injury to the student, property, staff or other students is imminent:

Psychology today: www.psychologytoday.com/em/85463

APRAIS ((alliance to prevent restraint, aversive intervention and seclusion)
www.stophurtingkids.com

www.wrightslaw.com

www.TASH.org (Equal opportunity and inclusion for people with disabilities)

www.govtrack.us/congress/bills/111/hr4247/tact

www.ndrn.org (National disability Rights Network)

www.ndss.org (National Down Syndrome Society)

It is not acceptable to use seclusion in our schools, especially for those children with disabilities. It is not acceptable to use mechanical restraints that restrict movement or the ability to communicate such as duct tape, ropes, chairs that strap arms and legs. There is no reason for administration of drugs or medications in our schools, except those prescribed by a licensed physician and part of the student's standard treatment and documented treatment plan.

Seclusion and restraints may and do traumatize children and cause serious physical and psychological harm to the most vulnerable, as was such the case of our daughter.

I agree with the limitations on physical restraint and the training and reporting provisions as stated in House Draft 2. We propose additional provisions that will safeguard against restraint and seclusion being implemented in our public schools except in those cases where imminent danger of property damage or physical injury is threatened and that lasts only as long as the danger persists. These changes we request and support are in line with federal legislation proposed by Senator Harkin of Iowa " Keeping All Students Safe Act", S. 2020,112th Congress, 1st Session which was recently co-sponsored by Senator Mazie Hirono.

It is with all due respect that I advocate for the Committee to pass this measure to ensure our children will be safe in our public schools. Mahalo nui for the opportunity to testify .

Respectfully,

Maureen McComas

From: [Candice Young](#)
To: [EDU Testimony](#)
Subject: HB 1796 HD2, SD1 (Draft8).pdf
Date: Thursday, March 13, 2014 11:22:23 AM
Attachments: [HB 1796 HD2, SD1 \(Draft8\).pdf](#)
[ATT00001.txt](#)

Dear Honorable Legislators,

I am supporting the passage of this bill with attached amendments. Please hear our children's voices as if they were your own!

Sincerely,
Candice Young
Parent

From: [Jennifer Davidson](#)
To: [EDU Testimony](#)
Subject: HB 1796 please pass with these proposed amendments
Date: Thursday, March 13, 2014 1:06:58 PM
Attachments: [HB 1796 HD2, SD1 \(Draft 8\).pdf](#)

Aloha Legislators,

I am writing to urge you to pass HB 1796 with the proposed amendments attached to this letter. The state of special education in Hawaii was one of our chief reasons for leaving the Islands in June of 2013. Sadly, the aloha that was shown to Kanoa, our son with Down syndrome, in the streets, beaches, and other public places of Oahu did not extend to the public school classroom. We heard from friends about their children with sensory issues pushed to break point by uneducated teachers and staff and then restrained. Parents were not permitted access to their keiki in special education and were not notified of the restraint as a common and persistent form of control in the classroom. The pattern of mismanagement and restraint went on for months before the parents found out and removed their children from the public school system with no other alternative than homeschool. HB 1796 with these proposed amendments would be a huge step toward safeguarding special needs keiki from unnecessary restraint and other inhumane punishments such as seclusion. These keiki are the most vulnerable among us, often bringing gifts in their joyous spirit and unprecedented outlook on life. They need protection for a safe classroom.

Mahalo for your consideration,

Jenny Davidson

West Bath, Maine 04530

Please see attached HB 1796 with ammendments.

Georgianne Nacionales
HCR 1 Box 5436
Keaau, HI 96749

March 11, 2014

Committee on Education HI

Dear Committee on Education:

Thank you for extending the opportunity to testify on HB1796, relating to education. **I support HB1796, with reservations.**

Initially, I thought that the bill appeared to have the intention of protecting children in Hawaii public schools from improper restraint and seclusion, which I support. I also support and believe that all students should have the opportunity to learn in a safe environment. I however, have reservations on whether or not this power to restrain could potentially be misused in the public school system.

Sincerely,

Georgianne Nacionales

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

March 12, 2014

Senator Jill Tokuda
Chair, Senate Cmte. on Education
Hawaii State Capitol, Room 218

Senator Michelle N. Kidani
Vice Chair, Senate Cmte. on Education
Hawaii State Capitol, Room 228

Re: Testimony in STRONG OPPOSITION to HB1796 HD2; Establishes conditions and procedures for the use of restraint or seclusion in public schools; Senate Committee on Education, March 14, 2014, Room 414, 1:15 p.m.

Dear Chair Tokuda, Vice Chair Kidani, and Members of the Senate Committee on Education:

I am writing to express my STRONG OPPOSITION to House Bill 1796 HD 2, 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.

First of all, on Page 2 line 20, the term “emergency situation” is not explicitly defined, and is extremely subjective. This opens the door for children to be restrained or secluded by the public school staff in any situation and for any reason provided someone feels it is an “emergency.”

On Page 2 line 22 and Page 3 lines 1-2, it states that seclusion or restraint may be used, “...provided that other less intrusive interventions have failed or been determined to be inappropriate...” This does not state WHO is to determine what is appropriate or not appropriate in such situations, nor does it state what qualifications are needed to be able to make this determination.

On Page 3 lines 3-6, it states that, “The parent or legal guardian of a student has provided written consent for the use of restraint or seclusion while a behavioral plan is being developed.” Does this mean that parents will be manipulated during the IEP meeting to sign such a consent form? There is absolutely no reason to give consent for such measures simply because a behavioral plan is being developed.

On Page 5 lines 1-2, it states that, “The board shall establish a policy regarding the use of restraint or seclusion in public schools.” The current Board of Education (BOE) lacks the transparency

that the previously elected BOE had. In the past, meetings were held later in the day when parents and guardians were more likely to be able to attend. Also, the public is no longer allowed to testify on issues other than what is on the agenda, which in effect puts a muzzle on parents and guardians. The public is now allowed very little input when it comes to policy making by the BOE.

Finally, on Page 5 lines 2-10, it states that the Department of Education will establish procedures regarding the "...immediate verbal or electronic communication on the same day as each incident; and written notification within twenty-four hours of each incident." This requirement is meaningless. A public school classroom or campus consists of Hawaii DOE staff and contracted providers who are **explicitly** 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 2, and protect the children in the Hawaii public school system.

Sincerely,

Kalma K. Wong

The Hawaii legislature and the DOE have every intention of passing HB1796 HD2 regardless of the inherent dangers to the special needs keiki of this state. This bill, although poorly written, is on the fast track for passage. Because of the legislature's lack of dedication and discussion to such an important issue, I OPPOSE HB 1796 HD2 because more children's lives will be at stake.

The need for HB 1796 HD2, by allowing any DOE employee to restrain or seclude a special education student under the vagueness of the definition of "imminent danger" reveals the true reason why the DOE supports this bill. The brutality of deeper on-going criminal activities within the DOE including the sexual abuse encouraged by a DOE counselor of the Hawaii Deaf and Blind School and the physical abuse of special education children at Kipapa Elementary school at the hands of a minimally trained DOE educational assistant and a DOE special education teacher are intended to "shut up" the special education children. The DOE's employees are creating indefensible legal cases that are financially draining the ever unaccountable DOE and its administration.

The Hawaii legislature is desperate to legalize these criminal activities through the passage of this bill. The education committee passed this bill including the chemical restraint section after receiving clarification from its one and only, apparent source of information. 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 the legislature NEEDS her approval for any DOE policy. It 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 relationship does not currently exist in Hawaii. 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, the legislature, the DOE's advocates and SEAC will continue to cost the state taxpayers millions of dollars because of bad advice from within. Why does the legislature continuously fail to execute due diligence by asking for information from outside legal counsel or outside advocates? 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 HD2. 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 SB 1284 before it became law as Act 129. After this bill was passed, SEAC assisted in the finalization of regulations, procedures and policies for supporting the implementation of Act 129. Similarly, policies for HB1796 HD 2 will be written AFTER the passage of the bill and most likely with assistance from SEAC.

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.

SEAC's advice and implementation plans for Act 129 were basically illegal. Yet their policies 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. HB1796 HD2 is on the same path as SB 1284 and it will result in the death of a child before the DOE gets the customary slap on the wrist for its criminal activities.

The Hawaii legislature will again make another mistake that will end up costing the taxpayers more money because of the lack of due diligence on such an important issue.

Magnifying the liaisons among the DOE organizations, testimony provided in favor of this bill come from various organizations that are run by the DOE or supported by the DOE. This includes the CCCO, the DOE's Children's Community Council Office where Ms. Sinclair has been a long-time DOE employee as a Family Specialist.

As the SEAC chairperson, supervised and appointed by the Superintendent and as a long-time DOE employee under the DOE's CCCO, Ms. Sinclair cannot be expected to be impartial when her supervisor is the superintendent of the Department of Education. The rejection of Act 129 in US District Court clearly validates the erroneous information provided to the legislature.

Also, Ms. Sinclair's influence reaches widely into the community. Members of the Autism Society of Hawaii, ASH, who submitted testimony in favor of this bill, again include Ms. Ivalee Sinclair and Ms. Joanne Yuen. Ms. Jessica Sumida-Wong who submitted testimony under the Legislative committee of the DOE's CCCO is also the executive director of ASH. She is also a professional co-chair for a CCC in East Honolulu and a contracted provider for the DOE.

Currently, Tom Smith who submitted testimony under the Legislative committee of the CCCO is also from Bayada, a private contracted provider for the DOE. Ms. Deborah Krekel is a parent advocate with the Learning Disabilities Association of Hawaii, LDAH, which is funded by the DOE.

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 director of ASH. Perhaps Senator Chun-Oakland along with the

legislature's favorite advocate for the DOE, Ms. Sinclair are the real reasons why HB 1796 has gained so much speed moving through the legislature.

The conflicts of interest are numerous. The legislature's dependence on one special DOE employee for legal matters is irresponsible, biased and poor work. This failure to delve into the real issues has resulted in laws that backfire, resulting in numerous lawsuits against the DOE, and ultimately the state of Hawaii. This poorly written bill is not the appropriate instrument for these children. They deserve more than just being restrained or isolated in a room when in fact for some, their whole lives are limited to just their mind.

I oppose HB1796 HD2. But, I will not be surprised to find out after all is said and done by June or so that this bill is passed with the chemical restraint portion of the bill initially recommended by Ms. Sinclair which was taken out, is reinserted during conference where parents do not have a say during these closed sessions. These types of tricks are all too frequent in our legislature.

I pray that this bill will not pass at all. These children deserve more. The legislature and the DOE need to stop trying to "contain" these children in such a barbaric manner.

Thank you,

Teresa Chao Ocampo

From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: boots4347@gmail.com
Subject: Submitted testimony for HB1796 on Mar 14, 2014 13:15PM
Date: Friday, March 14, 2014 11:05:53 AM

HB1796

Submitted on: 3/14/2014

Testimony for EDU on Mar 14, 2014 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Angela Kim	Individual	Oppose	No

Comments: As a parent of 3 rambunctious boys and a caring human being. I do NOT want educators having the power to handle my children or any child in a manner I would not to control a situation. Remember they are educators and not trained police officers.

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.

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From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: ilkered3@rocketmail.com
Subject: Submitted testimony for HB1796 on Mar 14, 2014 13:15PM
Date: Friday, March 14, 2014 12:27:40 AM

HB1796

Submitted on: 3/14/2014

Testimony for EDU on Mar 14, 2014 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Elento	Individual	Comments Only	No

Comments: 1. This bill should have a purpose that addresses the DOE's inappropriate use of restraints and seclusion for a child with a disability to comply with the "order of the day." This should never happen. What should the child with a disability be doing instead of being forced to comply with the class activity of the moment? 2. I witnessed a DOE aide place her legs over my four year old's legs to keep him in a nap position as the rest of the class was supposed to take a nap. Being right after lunch, I had previously agreed with the special education teacher that due to his severe swallowing disorder, he was not able to be down on the floor after eating lunch. Instead my child was to play learning games on the classroom computer. 3. The words "structure used for seclusion" could be left to one's imagination and still be lawful. 4. The words "student alone" in reference to seclusion would no longer be "seclusion" if a person monitoring the child in the same area were present. I believe that still equates to seclusion. 5. The definitions regarding behavioral intervention plan and positive behavior supports should be rewritten and must address individual students, not a systemic approach requiring reviews and finding patterns. Instead, the statute would clearly need to specify or mandate the actual process of creating and implementing a plan or just simply stating when any restraint or seclusion is prohibited -- such as to make a child be compliant with the class schedule of the moment. 6. My disabled child requires more time to respond and is difficult for others to understand with speech. My child is misunderstood. 7. A statute must recognize an individual student's disabilities, and mental health needs. The police department and DOE need training for students with disabilities and known tendencies for particular reactions or miscommunication. Sign language and speech are required for many individuals even if they are not deaf. 8. Thank you for your attention to these concerns.

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.

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From: [Hilary](#)
To: [EDU Testimony](#)
Subject: Testimony Regarding HB1796: Submitted 24 hours prior to 3/14/2014 scheduled hearing.
Date: Thursday, March 13, 2014 10:24:47 AM
Attachments: [HWCs Comments Re HB1796 Hawaii.3.4.2014.FINAL.pdf](#)
[Pics of wrecked classroom.2pics.pdf](#)

WARNING

HB 1796 and SB2371: Use of Restraint and Seclusion in Schools Restraint Bill threatens the ability of every teacher and school in Hawaii to maintain a safe, effective, least restrictive environment conducive to learning.

To All Hawaii Legislators,

We have been watching the issue of restraint in Hawaii schools. This correspondence concerns the Proposed HB1796 and SB2371, concerning the Use of Restraints & Seclusions in Schools. We support reasonable legislation on restraint and seclusion. Unfortunately the proposed legislation will not have even the basic fundamental functions to promote school safety.

Who we are: Handle With Care Behavior Management System, Inc. is a crisis intervention, behavior management and restraint training service provider. We are experts in the field of crisis intervention, behavior management and restraint and are committed to teaching staff how to create a learning environment that is safe and free from threats of physical harm and significant disruption. Website: www.handlewithcare.com

Attached are our comments to Proposed HB1796 and SB2371. Regardless of your personal beliefs on the issue of restraint and seclusion in schools, you should read the attached document as it outlines the Hawaii and Federal laws that will be violated along with the real impact the this well-intentioned, but ill-advised legislation will have on schools, if passed.

Also attached are pictures of a classroom when educators and staff cannot intervene unless the student is in imminent or actual danger of PHYSICAL harm.

Thank you for your attention.

Bruce Chapman, President
Hilary Adler, Esq. VP
Handle With Care
Tel: 845-255-4031; Fax: 845-256-0094
Web Site: www.handlewithcare.com
Email: Hilary@handlewithcare.com or HWCBruce@aol.com

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Bruce Chapman
President

Hilary Adler
Vice President

March 4, 2014

VIA Email and Facsimile

Hawaii Legislature

Senate Bill Sponsors: Chun, Oakland, Galuteria & Shimabukuro

House Bill Sponsors: Mizuno, Evans and Hanohano

Hawaii State Capitol

415 South Beretania St

Honolulu, HI 96813

Re: Comments Re: Proposed HB1796 and SB2371: Use of Restraint and Seclusion In Schools.

To: Senators: Chun, Oakland, Galuteria & Shimabukuro, and
Representatives: Mizuno, Evans and Hanohano,

This correspondence concerns Proposed House Bill 1796 (“HB1796”) and its companion Senate Bill 2371 (“SB2371”) (collectively “Bill” or “Bills”): Use of Restraints & Seclusions in Schools.

We support reasonable legislation on restraint and seclusion. Unfortunately the proposed legislation will not have even the basic fundamental functions to promote school safety. This correspondence will address the legal and practical implications of the proposed Bill.

Legal Considerations:

Point 1: HB1796 and SB2371 conflict with State and Federal law

HB1796 and SB2371 state that “The purpose of this Act is to.... (4) Ensure that restraint or seclusion are imposed in public schools **only** when a student’s behavior poses an imminent danger of physical injury to the student, school personnel, or others.”

The Bill further states that “The use of restraint or seclusion shall be prohibited in public schools unless: there is an emergency situation, and restraint or seclusion is necessary to protect a student or other person....”

Comment: The language of the Bill is confusing as it sets forth 2 different standards of intervention, neither of them legal. The first standard is “imminent danger of physical injury.” The second standard is “emergency intervention.” Besides the fact that the standards are inconsistent and there is no definition for what constitutes an “emergency intervention,” both standards are illegal and problematic.

(A) The Constitution, Code and Legal Precedent of the State of Hawaii

Hawaii Constitution: Article 1: Bill of Rights. Section 2: Rights of Individuals:

All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property.

(B) Hawaii Rev. Stat. §703-306. Use of force for the protection of property.

Hawaii Statute allows the reasonable use of force in the protection of property. A person is justified [has a right] in the use of force upon or toward another when the actor reasonably believes that such force is necessary to prevent the theft, criminal mischief, or any trespassory taking of tangible, movable property in the actor’s possession or in the possession of another person for whose protection the actor acts.

(5) The justification afforded by this section extends to the use of confinement [i.e. restraint and seclusion] as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as the actor knows that the actor can do so with safety to the property.

Conclusion: The right to property which includes the right to protect and preserve said property, is a natural right that is protected under both the U.S. and Hawaii Constitutions. Hawaii Statute also gives all persons, including school staff, the right to use physical force in the protection of their property, as well as a student’s or school property. The proposed restraint and seclusion legislation is unlawful as it conflicts with these rights under existing Constitutional and Hawaii law.

While self-protection and protection of property laws are represented in Hawaii’s penal code as a justification defense, defense of self or others and the protection of property are, in actuality, unwaivable rights. The defense is written into the penal code in order to protect a person’s right to life, liberty, property and safety of self and others as enumerated in the U.S. 5th and 14th Amendments as well as Hawaii law. Any limitation placed on the right to defend one’s self, others or property beyond what is reasonable is subject to ‘strict scrutiny’ for it to pass constitutional muster.

Point 2: HB1796 and SB2371 not allowing educators to use restraint or seclusion unless there is “imminent danger of physical injury” and/or “emergency situation” is unlawful.

(A) Haw. Rev. Stat. §703-309: Use of force by persons with special responsibility for care, discipline, or safety of others

Hawaii Statute allows for the use of force by a parent, guardian or other person similarly responsible for the general care and supervision of a minor, including a principal, the principal's agent, teacher or person otherwise entrusted with the care or supervision for a special purpose of a minor. As long as the use of force is reasonably related to the purpose of safeguarding or promoting the welfare of a minor, including the prevention or punishment of the minor's misconduct, maintaining reasonable discipline in a school class or at activities supervised by the DOE....

Comments: According to Statute, schools act "*in loco parentis*" for students in matters relating to school discipline. Meaning, educators are justified in using force towards students who represent a danger to themselves, others, school property, misbehave or interrupt class.

The stated purpose of the proposed Bill is to require schools use the least restrictive yet effective intervention. The way the Bill is written, educators cannot restrain a student unless there is imminent or actual physical injury, but they can strike a student under those circumstances. It seems strange for the proposed Bill to ban restraint, a less invasive intervention, while allowing, HRS 703-309(2) interventions which could include strikes and law enforcement-type interventions.

Point 3: Not allowing educators to use restraint or seclusion unless there is "imminent danger of physical injury" and/or an "emergency situation" standard is ill-advised.

Hawaii's proposed restraint Bill is problematic:

- The Bill does not allow Hawaii educators to physically intervene to stop a situation before becoming physically dangerous.
- The Bill does not allow educators to physically move a student who is disrupting a classroom. Any student not wishing to be in class can throw a tantrum, and either hold all the other students hostage to her behavior or force the removal of the entire class. This can result in emotional contagion, and can act as a reinforcement of the aberrant behavior.
- The Bill does not allow educators to physically intervene if the student is destroying property.

Comments: The children most affected by this rule have serious destructive and self-destructive episodes that involve direct assaults on others, self-destructive behaviors and destruction of property. These episodes may begin with an initial destruction of property and quickly escalate to serious assaults on self or others. The elapse in time can often be measured in seconds.

Our concern is not the value of the property but the serious and possibly irreparable damage to the child's relationship with his or her teachers/school/caregivers as they sit idly by during the onset of one of these episodes. When a child perceives the adults who are entrusted with his care and welfare unresponsive to his demonstrations, an escalation of the destructive impulses can ensue until the child finally crosses the threshold where the adults are compelled to interrupt his destruction. Creating the perception in the mind of the child of indifference to his destruction of

property or self-injurious gestures is patently neglectful and will likely reinforce and encourage an exacerbation of aberrant behavior. It matters not whether the property being destroyed is valued at \$3.00 or \$3,000.00, the damage to the child's relationship with his educators and caregivers and his prospects for success in life is predictable.

We should all be able to agree that the goal of Education and/or treatment is to prepare and enable children to ultimately achieve success as adults. There is no social situation where the destruction of public or private property will be tolerated, except for the artificial one the legislature is proposing by this Bill.

Point 4: Identical legislation was enacted as a regulation in the State of Maine. The consequences of the regulation, led to the repeal and amendment of the regulation, one season after its enactment.

Maine: A Case Study:

In 2012, Maine's Department of Education, ignoring opposition from schools, educators and parents, changed their restraint regulations. Maine's DOE enacted a restraint rule only allowing educators to physically intervene if the student presents an imminent threat of physical harm to self or others.

As a result, violence and misbehavior in schools increased. Classrooms were routinely disrupted, and educators were getting injured more frequently and more severely.

To quote Maine's special education administrators, directors and school superintendents:
"Maine's restraint and seclusion regulation by all accounts **was** a disaster."

- Maine SAD Director and Special Services Director view Maine's regulation on physical restraint and seclusion "with total negativity" . . . "If a student is tearing things apart from a room" . . . [what Maine's] law is saying is 'You can't stop that child – if you do, that's illegal.'"
- Maine SAD Director says "the only thing [a teacher or school can do with a student throwing a temper tantrum or tearing up a room] is call the police." (Police intervention for a student throwing a temper tantrum is clearly excessive and highly uncalled for.)

A Maine board member publicly commented:

- Maine's regulation was modeled after a guidance document obtained from, but not endorsed by, the federal government.
- Maine's regulation contains a multitude of practical implementation problems that makes it extremely problematic for school districts to implement.
- More students and staff are being injured, and there has been more serious property damage and significant disruption, than if schools had been allowed to continue under the reasonable restraint standard previously utilized in public schools.

- The regulation also requires public school districts to spend more money for less effective interventions than previously utilized, and many students will have to be placed in more restrictive learning environments in order to protect students, staff, and others from physical harm.
- Under the regulation, that expense may have to totally be paid from State financial coffers, as the regulation does not allow for any planning on how to safely restrain or seclude special education students to be written into special education student programs (IEPs).
- [The Board] is additionally concerned that the prohibitions on planning for safe restraint and seclusion in an IEP document may violate federal law. Historically, courts have held that in certain anticipated serious misbehavior situations, restraint of special education students should be planned by the same team of qualified professionals that plans for all of the child's specialized education needs.
- Maine's regulation is an example of good intention leading to bad choices that, unfortunately, will have a detrimental effect on both school staff and students.

As a result of the chaos and violence the regulation caused, **all four education associations in Maine** asked the State to revise the rule to allow restraint and seclusion to:

- Be used to stop students causing a disturbance and disrupting the education environment, but who were not an imminent or actual threat of physical injury;
- Be used to stop students from destroying property; and
- Be used as part of an IEP or BP.

One Season After the Regulation was Enacted, Maine's DOE Amended Its Regulation.

- Maine's Superintendent of Schools conceded that DOE made a mistake and would revise in the fall the restraint and seclusion policy it enacted in that Summer.
- To read the article go to: <http://www.bridgton.com/new-restraint-policy-could-be-a-touchy-subject/>

Point 5: Not allowing the use of physical intervention to be written into a student's educational/behavioral plan could violate a student's right to a free and appropriate public education and treatment. The provision is also ill-advised, and not in the best interest of the students or staff.

There are three main groups of children injured by the proposed legislation:

1. Children committed or adjudicated to a residential/school setting by a Family court.
2. Children who are enrolled in a particular private or public school precisely because of the reputation of the school in its ability to provide for the special

educational, psychological and psychiatric needs of the child - in the judgment of the parental authority.

3. Children who must be enrolled in a particular local public school regardless of its lack of expertise because better choices are financially beyond the means of the parents.

Congress rejected banning the use of restraint and seclusion as part of an IEP or behavioral plan on three separate occasions. NDRN and Protection and Advocacy, thwarted at the Federal level before going state by state to try and convince legislators or unelected administrative agency employees to enact restraint rules that the Federal government repeatedly dismissed as illegal and ill-advised.

The National School Boards Association and the American Association of State Administrators have also expressed serious objections to the prohibition of restraint and seclusion as part of a behavior management plan.

- AASA has long opposed the prohibition of seclusion and restraint in public schools. AASA believes the use of seclusion and restraint has enabled many students with serious emotional or behavioral conditions to be educated not only within our public schools, but also in the least restrictive and safest environments possible.
- IDEA was never meant to restrict parents from receiving a unique, effective education plan for their child: For these students, legislation or state policy that prohibits these practices from being written into an individualized education plan (IEP) or behavioral intervention plan means that school personnel are unable to work with parents to create a plan for coping with the student when their behavior becomes unmanageable.
- Legislation or policy that prohibits parents and school personnel from communicating about the student's needs and corresponding school interventions runs counter to the entire purpose of the Individuals with Disabilities in Education Act (IDEA).

The Supreme Court has held that a child is deprived of FAPE if the school system has violated IDEA's procedural requirement. *Rawley* (SCOTUS 1982) The proposed Bill does not allow licensed, qualified professionals, guardians and parents working with and familiar with the child and his needs to develop an appropriate IEP. Hawaii's legislature is outside the student's treatment team and has no more authority to dictate to the team/family what intervention is in the student's best interests than it does telling a physician which medication to prescribe.

Other Federal laws that are violated by proposed HB1796 and SB2371:

The United States Constitution:

Specifically, 5th and 14th Amendment rights to due process/equal protection.

Youngberg v. Romeo, 457 U.S. 307 (1982)

This Supreme Court ruled that the legal responsibility for making treatment decisions is exclusively in the hands of the professionals who work directly with

the child and who are best able to 1) determine the clinical needs of the child and 2) balance those needs with the overall safety and security of the school.

St. Catherine's Care Center of Findlay v. Centers for Medicare & Medicaid Services, Docket No. C-01-721; Decision No Cr1190 (June 14, 2004)

A Federal Administrative Court ruled that it is the responsibility of the entity that directly cares for the client to determine crisis intervention program in place at the school must meet the real needs of the school **and “neither federal reimbursement practices nor state screening practices relieves the [school] of its responsibility to provide its [students] with necessary care and services.”)**

Conclusion: Treatment and educational decisions including i.e. what should be included in a behavioral or educational plan rests with the person and the professionals treating and/or educating the person, not the legislature. Banning the use of restraint as part of a behavioral/educational plan may limit a child's right to a free and appropriate public education, as well as their right to an effective educational and behavioral plan.

Therapeutic value of physical restraint, and how it is effective in calming children down:

Below are some of the reasons why physical restraint, when done properly, can be an important, effective and therapeutic intervention that addresses the violent or aggressive behavior of some children. The Bullet Points are from: Dr. David Ziegler, The Therapeutic Value of Using Physical Interventions To Address Violent Behavior In Children

- Physical touch can be very therapeutic to children, particularly in a crisis. Touch is considered a basic need for all children. When a young child is frightened, the first instinct is to hold on to a trusted adult. Children who demonstrate serious acting out often do not know how to ask for what they need, yet supportive, firm, and safe physical touch can give a child a message of reassurance. When a young child is in a crisis situation, touch can be one of the most reassuring interventions when the touch lets the child know that the adult will insure the situation will be managed safely for everyone.
- Emotionally defended children can become psychologically more real and available after an emotional release during a physical restraint. This dynamic is not restricted to children. It is often when our emotions overwhelm us that we open to learning something new that we have defended ourselves from. For some children it is difficult to get to this place without some form of emotional meltdown that often accompanies a physical intervention.

- Children need to know the adult will insure everyone's safety. The adult is responsible to insure the child cannot hurt him or herself or others. The adult cannot put the responsibility on a child to regain inner control once it has been lost. The amount of time it takes for any crisis situation to be under control, during which time chaos reigns, is the amount of inner fear the child has.
- Young children with emotional disturbances need and often seek closeness with adults and violence is less threatening than other forms of intimacy. Behavior cannot always be taken at face value with children who experience violent rages. In fact, these children can often act counter-intuitively. They can push you away when they want closeness, they can strike at you when they are beginning to care about you, and they can act in ways to receive reassuring touch by becoming aggressive and violent to self or others. It is important to understand why a child is acting the way they are. At times, a frightened child seeks and needs the reassurance of physical touch when they can't allow themselves to ask for physical comfort. It is often trusted adults that young children become violent with, because they know they are safe and they will get the reassurance they need. If they do not find the physical reassurance they need and seek, they will often raise the level of acting out until they get it.
- Physical restraint is the surest and most direct way to prevent injury and significant property damage when the child loses control. There was an article in *Children's Voice* (Kirkwood, 2003) describing a child doing significant damage to a company van with a rock. In this example the adults stood by and did not stop the child and the author called this a better, however more costly, intervention. This seems to defy common sense. Would any parent stand by as a child does thousands of dollars in damage to the family car? By standing by, instead of taking responsibility and correcting the behavior, the adults are reinforcing the destructive and socially maladaptive behavior. Kids, as well as adults, view themselves in relation to their own behavior. It only makes sense from a practical and therapeutic perspective to stop children from hurting others and doing damage they will use to feel worse about themselves. Physical interventions may be the best way to insure this.
- Traumatized children must learn that emotionally charged situations and all physical touch does not end in being used or abused. The human being has several types of memory, including factual (explicit), subjective (implicit), emotional, experiential and body memories (Ziegler, 2002). Early experiences of touch can establish a lifelong trajectory of meaning attributed to physical touch. It is common that children with emotional disturbances have difficulty with caring touch. Body memories need to be addressed while the child is still young or the child can avoid the very closeness they need. Abused children learn that when someone gets angry someone else gets hurt. Supportive physical restraint retrains the body not to fear touch from others.
- An intervention considered to be good parenting is likely to be good psychological treatment. Psychologists, family therapists and parent trainers would all call stopping a child from running into a busy street good supervision and effective parenting.

They would also recommend a parent prevent an older and much larger sibling from physically harming a younger sibling. It is not hard to imagine the same parenting consultants suggesting that when an angry child is heading for the family car with a baseball bat, that the bat be taken away before the damage occurs. If these parenting interventions would be basic common sense to most everyone, why would some call these same interventions unhelpful and non-therapeutic to children with serious anger problems?

- Children with emotional disturbances need the assurance that adults are safely and appropriately in control of the environment. Serious acting out such as violence is often seeking this assurance. Most emotional problems in children have their source in chaotic, abusive and/or neglectful home environments at some point in the child's life. To be in a home where the adults are not in control of themselves or the environment is like going down the road in the back seat of a car with no one driving, it is terrifying to a child who has been there. These children often test that the adults can safely and appropriately manage the challenges. Often it is only when the child has such reassurance and can rely on others for basic needs (Maslow), he or she can once again get back to the task of being a child.

Conclusion: Schools are responsible for maintaining a safe and effective environment conducive to learning. The argument that all physical restraints can and should be avoided at all cost, may address the principle of prevention, but misses the point of adult responsibility and treatment. In the extreme, even if all physical restraints could be avoided, clearly it is not beneficial for a child to rage out of control while an adult passively stands by, allowing a child in a rage to do whatever he or she cares to do. One may call this "preventing" a restraint, but how did it address the responsibility of a school to create an environment conducive to learning? A necessary component of which would be socialization and the extinguishment of serious violent and antisocial behavior. Not having access to effective and safe behavior modification measures can create more risk for students and staff. **Not intervening when a therapeutic response is called for is not so much prevention of restraint as it is an abdication of adult responsibility.**

Summary:

For the foregoing reasons we believe that proposed HB1796 and SB2371:

- Conflict with an individual's inalienable civil rights;
- Conflict with Federal and State laws, and
- Are not in the best interest of the students or mission of the schools. That it is the parents, the child and the persons with the professional judgment, education and experience to determine what is in the best interests of the child should determine treatment.

- **Proposed HB1796 and SB2371 should be amended: to include a consistent standard of when restraint and seclusion is allowed. :**
 - To include a consistent standard of when restraint and seclusion is allowed i.e. least restrictive, reasonable and effective to maintain safety and an environment conducive to learning.
 - Allow the use of restraint or seclusion to stop students causing a disturbance and disrupting the education environment, but who were not an imminent or actual threat of physical injury;
 - Allow the use of restraint or seclusion to stop students from destroying property; and
 - Allow the use of restraint or seclusion part of an IEP or BP.

We write this email not because we cannot comply with Hawaii's proposed legislation, but because the proposed regulation is a bad idea and not in the best interests of your educators, schools or students.

RETALIATION WILL NOT BE TOLERATED. This correspondence is being sent in accordance with our first amendment right to freedom of speech which includes the right to comment on any state action or legislation. Any retaliation including, but not limited to, restriction of free access to a marketplace in order to silence and punish legal speech including i.e. limiting any school's ability to purchase quality training will not be tolerated by us and should never be tolerated by a free society or any entity in the State of Hawaii.

Sincerely,

Bruce Chapman

Bruce Chapman, President

Attachments: Pictures of property destruction in classrooms.

Cc w/attachments: All Hawaii legislators; Hawaii Governor's Office and Staff; Hawaii's AG's Office; Hawaii DOE; Hawaii BOE, Hawaii Teachers Association, Hawaii Superintendents, Principals and Schools, Hawaii Charter School Commission

