



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

Date: 01/29/2014

Committee: House Education

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 1796 RELATING TO EDUCATION.

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

Department's Position:

The Department of Education (Department) supports HB 1796 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.

However, the Department recommends the following revisions to strengthen the focus of this bill: 1) the purpose should convey a proactive approach to preventing behaviors that may require physical restraint and seclusion; 2) the roles of the state review team and department team should be reviewed and clarified; and, 3) the definitions in the bill, such as "restraints" and "individualized education program," should be aligned with current state and federal guidelines, as well as researched-based practices.

Further, the Department respectfully requests an appropriation to provide resources for training and data accountability to assist with the effective implementation of this measure as the Department would not have the means to do so under our budget appropriation.



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

January 29, 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. Jenny Gong
Ms. Gabriele Finn
Ms. Tami Ho
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Ms. Dale Matsuura
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Mr. Kenneth Powell
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Ms. Kau'i Rezentes
Ms. Melissa Rosen
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Mr. Tom Smith
Ms. Lani Solomona
Dr. Daniel Ulrich
Ms. Amy Weich
Ms. Cari White
Ms. Susan Wood

Jan Tateishi, Staff
Susan Rocco, Staff

Representative Roy M. Takumi, Chair
House Committee on Education
State Capitol
Honolulu, HI 96813

RE: HB 1796 - Relating to Education

Dear Chair Takumi and Members of the Committee,

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), **supports** HB 1796 that prevents and reduces the use of physical restraint and seclusion in Hawaii schools.

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.

Some of the language in HB 1796 is modeled after the "Keeping All Students Safe Act" introduced by Senator Tom Harken in the U.S. Senate (S. 2020), and Representative George Miller in the House of Representatives (H.R. 1893). One of the important purposes of that Act is "to promote the development of effective intervention and prevention practices that do not use restraints and seclusion." SEAC believes that effective training around positive behavioral supports and other evidence-based interventions will prevent the escalation of behavior that may result in the emergency use of restraint or seclusion.

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

Mandated by the Individuals with Disabilities Education Act



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
January 29, 2014

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

Dear Representative Takumi and Members of the Committee:

SUBJECT: HB 1796 - RELATING TO EDUCATION

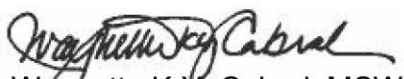
The State Council on Developmental Disabilities **SUPPORTS HB 1796**. The purpose of the bill is to establish conditions and procedures for the use of restraint and seclusion in schools.

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

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

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

Sincerely,


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

Committee on Education Testimony in Support of H.B. 1796 Relating to Education

**Wednesday, January 29, 2014, 2:00 P.M.
Conference Room 309**

Chair Takumi 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 very much in support of this bill since it sets out 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 program 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.

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





COMMUNITY CHILDREN'S COUNCIL OF HAWAII
1177 Alakea Street · B-100 · Honolulu · HI · 96813
TEL: (808) 586-5363 · TOLL FREE: 1-800-437-8641 · FAX: (808) 586-5366

January 28, 2014

Representative Roy M. Takumi, Chair
Representative Takashi Ohno, Vice-Chair
Chairs of the Education Committee – State Capitol

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

Dear Representative Takumi and Vice-Chair Ohno and Members of the Committee,

The 17 Community Children's Councils (CCCs) **supports with amendments** HB1796. We have some amendments to the bill. Here are the proposed amendments to the bill:

- Page 10 line #15 – Behavioral Intervention Place needs to be worded so it addresses seclusion and/or restraint.
- Page 10 line #19 – Individual Education Program same as above.
- Page 11 line #14 (restraint) – Please strike out this definition. See attach definitions for this section.
- Page 12 line#11 to 22 – Please delete these lines not applicable to school setting. Add this definition. Imminent Danger - The term imminent danger means that the threat of death or serious physical or psychological harm will occur immediately or within a short time.

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)

Restraint

Definitions

(1) CHEMICAL RESTRAINT- The term `chemical restraint' means a drug or medication used on a student to control behavior or restrict freedom of movement that is not--

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

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

(2) MECHANICAL RESTRAINT- The term `mechanical restraint' means the use of devices as a means of restricting a student's freedom of movement.

(3) PHYSICAL RESTRAINT- The term `physical restraint' means a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely.

ohno2-Rexie

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 28, 2014 6:41 AM
To: EDNtestimony
Cc: fopawz@mac.com
Subject: Submitted testimony for HB1796 on Jan 29, 2014 14:00PM

HB1796

Submitted on: 1/28/2014

Testimony for EDN on Jan 29, 2014 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
JoAnn Yuen	Individual	Support	No

Comments: I wholeheartedly support HB 1796. This bill appropriate protects the interests of individuals with special needs, classrooms, teachers, families and schools. We have an obligation to protect our youngest citizens. Parents have a right to be informed and to be included in the solution. Collecting and sharing data is a good first step to ensure transparency and provide accountability.

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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Written Testimony Presented Before the
Senate Committee on Education
January 29, 2014, 2:00 p.m. Room 309
by
Donald B. Young
Personal Testimony

HB 1796 RELATING TO THE DEPARTMENT OF EDUCATION

Chair Takumi, Vice Chair Ohno, and Members of the Committee on Education

My name is Donald Young. I am the Dean of the College of Education at the University of Hawai'i at Mānoa.

On behalf of the College of Education, I support HB 1796. This bill provides appropriate and immediate protection for all students and school personnel with regard to physical restraint or seclusion. HB 1796 also provides a road map to direct systemic changes and proactively reduce physical restraint and seclusion in schools.

Creating a system, uniformly governed by policies and procedures, supported by training and resources and, with the built-in capacity to learn and adapt using data and evidence-based models is a good first step. Providing appropriate funding for HB 1796 ensures that the system of protections will be measured, responsive, transparent and accountable.

Thank you for the opportunity to testify.

January 28, 2014

Representative Roy M. Takumi, Chair
Representative Takashi Ohno, Vice-Chair
Chairs of the Education Committee – State Capitol

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

Dear Representative Takumi and Vice-Chair Ohno and Members of the Committee,

As a parent of a child with special needs, a former Behavior Health Specialist with the Department of Education who has personally witnessed dangerous forms of restraint, and an active parent and professional on the Community Children's Council (CCC) legislative committee, I am an advocate for the safety of ALL children. Any parent including myself wants to believe when they drop their child at school that child will remain safe from harm, but this is not the case in Hawaii's public schools. This problem is evidenced by the well know case of restraint at Kiapapa Elementary, that resulted in harm to a child. Nevertheless the Department of Education (DOE) has no known policy to address how these situations will be handled and refuses to go on the record to admit that a solution is needed before a child dies. I believe a response may never be delivered by DOE unless a child dies and/or a law is mandated. Therefore, I strongly agree with the CCCs support of HB1796 with their proposed amendments. Here are the proposed amendments to the bill:

- Page 10 line #15 – Behavioral Intervention Place needs to be worded so it addresses seclusion and/or restraint.
- Page 10 line #19 – Individual Education Program same as above.
- Page 11 line #14 (restraint) – Please strike out this definition. See attached definitions for this section.
- Page 12 line#11 to 22 – Please delete these lines not applicable to school setting. Add this definition. Imminent Danger - The term imminent danger means that the threat of death or serious physical or psychological harm will occur immediately or within a short time.

Thank you for the opportunity to testify.

Sincerely yours,

Deborah Krekel

Restraint

Definitions

(1) CHEMICAL RESTRAINT- The term `chemical restraint' means a drug or medication used on a student to control behavior or restrict freedom of movement that is not--

- (A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and
- (B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under State law.

(2) MECHANICAL RESTRAINT- The term `mechanical restraint' means the use of devices as a means of restricting a student's freedom of movement.

(3) PHYSICAL RESTRAINT- The term `physical restraint' means a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely.

My name is Taffy Perucci and I am deeply concerned about the safety of children, specifically our special needs population and would like to share some thoughts on why I support HB1796.

My background and training is in school psychology for which I received my Masters of Science while attending school in California. In my program we had a heavy emphasis on federal and state law that defined the access and equal rights that all children had the basic rights to. We studied civil rights, education law and mental health and special facilities regulations and its application to the special needs population. While earning my degree I worked at The Institute for Effective Education which was a non-public special education school that utilized the science of Applied Behavior Analysis to manage the behaviorally challenging students they enrolled. The standard was set that child safety was the number one goal and no excuses or failure to acknowledge when things could have been done better was accepted if it compromised the basic rights of the student. We believed all children could learn using proven methods and many of the directors there were also professors from San Diego State and UCSD. From that training ground of practical application in a therapeutic educational setting and my own schooling, I entered a career in school psychology that lasted just over 10 years. I would have stayed in my career until I retired, I was vested in the Hawaii Department of Education, I enjoyed the community and friendship it has brought. However, a troubling, nauseating underbelly exists that made it impossible to continue as it would have condoned the abuse.

I was hired in the DOE in February of 2008 as a school psychologist in the Leilehua complex which covers 9 schools. In 2009 I was asked to attend a training for trainers for the Non-Violent Crisis Intervention (CPI) Program. From my previous experience and training, I took the opportunity as a way to instill the values that I had learned. I trained with a partner for that first year and then monitored through antidotal meetings and conversations about the effectiveness of the trainings I was providing and how they were being used. I was concerned with the lack of evidence based behavioral strategies used to deescalate students when they were upset or frustrated. I brought these concerns to my supervisor that we had no way of knowing how many kids were being restrained or locked in rooms because there was no data or documentation happening. Then I found a board of education policy (Use of Force policy #4201) that noted force could be used “to restrain a student from an act of wrongdoing, ” “for the protection ... public property” and “To implement a therapeutic behavioral plan as prescribed in a student’s Individualized Education Plan or Section 504 Modification Plan.” I was confused because all children at some point or another are in the “wrong doing” and property can be replaced, but mostly, to use “force” to implement the letter of the law in an IEP or 504 is asinine and is the complete opposite of what the evidence based research suggests. Forcing compliance through physical means is violation of that child’s rights and is nothing more than involuntary treatment for their often preexisting mental health and behavioral needs that have gone unaddressed.

With much frustration, I emailed my district educational specialist (DES) with my concerns. Over two years, I sent dozens of e-mails, collaborated with other school psychologist and trainers and drafted internal policies and shared literature and there was no response. I personally had to ask a teacher to leave a room after seeing her on the floor with a child in an inappropriate and harmful restraint. There was no where, or way, to report this except to my DES that didn’t see a need to rock the boat. Not giving up, I sent an e-mail to the central district DES in September of 2010 providing him and the other

trainers with the 'Preventing Harmful Restraint and Seclusion in Schools Act' that was being reviewed at that time in Washington DC. Warning them that the federal government was likely to make them pay attention to what was happening. I shared that I was concerned about our lack of internal and external policies and that there was no way to manage or track when and where restraints were being used. I spent almost 2 years trying to convince, argue, persuade and beg for systematic change under the tenor of the still currently employed DES, my former boss. Nothing happened. In that time, allegations of abuse came from all over the district, and still nothing changed. No change, no acknowledging the need. More excuses than books in all the schools. In 2012 I stepped down from my training duties and in spring 2013 I brought 2 years' worth of documentation to the complex area superintendent along with another colleague who was stepping down from training for similar ethical reasons. Still nothing happened. People still had their jobs, it was unconscionable to me that a child's basic civil rights could be so recklessness violated and in such a public manner. It was nothing short of abuse and discrimination in its worst form and just like we all learned from the civil rights movement, staying quiet and letting it happen just eats at the core of the community till it's rotten and foul. That is the broken system of the DOE and the underbelly where they allow physical and emotional harm, but refuses to acknowledge and be accountable for.

My decision to leave DOE may have been more difficult had there been evidence of a will to correct the ethical and legal wrongs that were brought up for years regarding restraint procedures and accountability of school level staff. No outcome was ever reached or removing incompetent staff at the higher levels that refused to develop policies to protect children.

Both the Substance Abuse and Mental Health Services Administration (SAMHSA) and the National Association of State Mental Health Program Directors (NASMHPD) have called for the reduction and elimination of coercive practices such as seclusion and restraint. **Seclusion and restraint are safety measures, not treatment, and they should never be part of standard treatment for someone's condition. I am opposed to the use of seclusion and restraint in all but the most extreme instances where there are serious and immediate threats to physical safety and health** . They should be used only in settings that are prepared to address the inherent physical and psychological risks involved.

I believe there are good teachers and teachers that need more help and training. The system needs to be forced through legal mandates to right the wrongs and develop a system that values the rights of children and supports teachers in learning the skills to effectively manage children with behavioral and mental health needs.

Thank you,
Taffy Perucci

ohno2-Rexie

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 29, 2014 9:11 AM
To: EDNtestimony
Cc: lle96707@hotmail.com
Subject: Submitted testimony for HB1796 on Jan 29, 2014 14:00PM

HB1796

Submitted on: 1/29/2014

Testimony for EDN on Jan 29, 2014 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Laura L Epstein	Individual	Support	No

Comments: I am writing in support of legislation that would improve the safety of the students in our schools. Currently in some schools students are being restrained in an unsafe manner (against walls, on the floor, etc.) and when they posed no danger to self or others but instead were refusing to follow directions. There is currently no required documentation after a restraint, so data is not reviewed to determine if appropriate intervention was used or if there are students in need of more intensive behavioral and emotional support. Because the DOE Use of Force Policy is written in a broad manner, indicating that force can be used to "restrain a student from an act of wrong doing" and there is no current legislation in the state about restraint, staff members engaging in inappropriate restraint measures may not face any consequences for doing so, and are not consistently provided with follow up training after engaging in inappropriate restraint. Additionally, Child Protective Services will not take reports about possible abuse in schools so there is no confidential way for staff members to report abusive behavior by other staff members in schools. Investigations currently are supposed to be done by principals, but they may be too close to the situation to objectively investigate staff at their own schools. Sincerely, Laura L. Epstein, Psy.D.

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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