
A BILL FOR AN ACT

RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS.

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

1 SECTION 1. The legislature finds that the department of
2 education is committed to equity and excellence in the State's
3 public schools and provides educational supports and services to
4 students, including those students with disabilities, to enable
5 all students to successfully discover and embark on their chosen
6 path in life.

7 The legislature further finds that the broad definition of
8 "practice of behavior analysis" under chapter 465D, Hawaii
9 Revised Statutes, has resulted in department of education
10 employees being referred to the department of commerce and
11 consumer affairs' licensing division for alleged violations of
12 this chapter. The department of education was not aware that
13 the definition of "practice of behavior analysis" could be
14 interpreted so broadly, applicable to all department of
15 education employees and volunteers, even when these employees or
16 volunteers are performing their function of redirecting students
17 while they are standing in lunch lines or on the playground.



1 Nearly every department of education employee and volunteer uses
2 behavioral interventions when working with students to ensure a
3 safe learning environment for all students. According to the
4 department of education, the department previously interpreted
5 the "practice of behavior analysis" to apply to a very small
6 subset of employees and was unaware that the term was being
7 interpreted so expansively.

8 The legislature additionally finds that this expansive
9 interpretation of "practice of behavior analysis" under chapter
10 465D, Hawaii Revised Statutes, has a direct impact on all school
11 personnel, all 179,255 public school students, and all charter
12 and private school students. The legislature notes that
13 addressing behaviors through the use of interventions is the
14 foundation of education, as one cannot effectively teach without
15 being able to manage the behaviors of school children.

16 Accordingly, the purpose of this Act is to clarify the
17 scope of licensure for individuals engaged in the practice of
18 behavior analysis in a school setting.

19 SECTION 2. Chapter 465D, Hawaii Revised Statutes, is
20 amended by adding a new section to be appropriately designated
21 and to read as follows:



1 "§465D- Practice of behavior analysis; scope of
2 licensure; school setting. (a) Persons engaged in the practice
3 of behavior analysis in a school setting shall meet the
4 licensing requirements of this chapter or possess board
5 certification from a national certifying agency only when
6 serving a student:

7 (1) With severe challenging behavior or communication and
8 social interaction issues, or both, that:

9 (A) Present a safety risk to self or others, such as
10 self-injury, aggression toward others,
11 destruction of property, elopement, or severe
12 disruptive behavior; or present a significant
13 functional interference at school; and

14 (B) Negatively impact the student's access to
15 education;

16 (2) Whose behaviors have not been amenable, as determined
17 by the student's multi-disciplinary school team, to
18 multi-tiered positive behavioral supports and whose
19 behaviors are reasonably expected by the student's
20 multi-disciplinary school team to improve



1 significantly with an applied behavior analysis
2 program; or

3 (3) With communication and social interaction issues that:

4 (A) Have not been amenable, as determined by the
5 student's multi-disciplinary school team, to
6 other interventions; and

7 (B) Are reasonably expected by the student's multi-
8 disciplinary school team to improve significantly
9 with an applied behavior analysis program.

10 (b) Persons meeting the licensing requirements of this
11 chapter or possessing board certification from a national
12 certifying agency may supervise, as authorized by their license
13 or board certification, registered behavior technicians or other
14 individuals who possess board certification from a national
15 certifying agency and directly implement behavior analysis
16 services under this section."

17 SECTION 3. Section 465D-7, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) This chapter is not intended to restrict the practice
20 of other licensed or credentialed practitioners practicing



1 within their own recognized scopes of practice and shall not
2 apply to:

3 (1) An individual working within the scope of practice or
4 duties of another licensed profession that overlaps
5 with the practice of behavior analysis; provided that
6 the person does not purport to be a behavior analyst;

7 (2) An individual who implements or designs applied
8 behavior analysis services and possesses board
9 certification as an assistant behavior analyst by the
10 Behavior Analyst Certification Board and who practices
11 in accordance with the most recent supervisory and
12 ethical requirements adopted by the Behavior Analyst
13 Certification Board under the direction of a behavior
14 analyst licensed in this State;

15 (3) An individual who directly implements applied behavior
16 analysis services and:

17 (A) Is credentialed as a registered behavior
18 technician by the Behavior Analyst Certification
19 Board, and is under the direction of a behavior
20 analyst licensed in this State;



- 1 (B) Is a direct support worker who [~~provides autism~~
2 ~~treatment services pursuant to an individualized~~
3 ~~education plan~~] directly implements an applied
4 behavior analysis program under supervision of a
5 licensed professional and does not design
6 intervention or assessment plans on or before
7 [January 1, 2019; ~~or~~] July 1, 2020; or
- 8 [+](C) [+](C) Is a direct support worker who provides medicaid
9 home and community-based services pursuant to
10 section 1915(c) of the Social Security Act on or
11 before January 1, 2019;
- 12 provided that for purposes of this paragraph, "direct
13 support worker" means a teacher or paraprofessional
14 [~~who directly implements intervention or assessment~~
15 ~~plans under supervision and does not design~~
16 ~~intervention or assessment plans~~];
- 17 (4) A family member or legal guardian implementing an
18 applied behavior analysis plan and who acts under the
19 direction of a behavior analyst licensed in this
20 State;



1 (5) An individual who engages in the practice of behavior
2 analysis with nonhuman or nonpatient clients or
3 consumers including but not limited to applied animal
4 behaviorists and practitioners of organizational
5 behavior management;

6 (6) A matriculated graduate student or postdoctoral fellow
7 whose activities are part of a defined behavior
8 analysis program of study, practicum, or intensive
9 practicum; provided that the student's or fellow's
10 activities or practice is directly supervised by a
11 behavior analyst licensed in this State or an
12 instructor in a Behavior Analyst Certification Board-
13 approved course sequence; or

14 (7) An individual pursuing experience in behavior analysis
15 consistent with the Behavior Analyst Certification
16 Board's experience requirements; provided that the
17 experience is supervised by a behavior analyst
18 licensed in this State."

19 SECTION 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

John
Richard ...
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John M. ...
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JAN 22 2018



H.B. NO. 2271

Report Title:

Practice of Behavior Analysis; School Setting; Scope of
Licensure

Description:

Clarifies the scope of licensure for individuals engaged in the
practice of behavior analysis in a school setting.

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not legislation or evidence of legislative intent.*

