



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

Date: 04/04/2018
Time: 02:45 PM
Location: 229
Committee: Senate Education
Senate Commerce, Consumer Protection,
and Health

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: HB 2271, HD2 RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS.

Purpose of Bill: Clarifies the provision of behavioral analysis services to students in public schools. (HB2271 HD2)

Department's Position:

The Department of Education (Department) appreciates this opportunity to testify on HB 2271 HD2 as we have continued to seek clarification on the scope and application of Chapter 465D in a school setting.

The Department's work to provide students with applied behavior analysis (ABA) in a school setting is a work in progress. We respectfully ask that this committee replace HB 2271 HD2 with the contents of SB 2925 SD1 HD1 and append the definition of "Applied behavior analysis" under 465D-2 to read:

- "Applied behavior analysis" means interventions that are based on scientific research and the direct observation and measurement of behavior and the environment. The practice of behavior analysis expressly excludes commonly used multi-tiered educational and behavioral strategies (e.g., prompting, reinforcement, antecedent strategies, etc.)"

By clarifying the definition of behavior analysis practices, this will allow teachers to make data-informed instructional and behavioral decisions that support the learning of their students without the need for a licensed behavior analyst (LBA), and being potentially subject to any fines for not possessing an ABA licence from the Department of Commerce and Consumer Affairs.

SB 2925 SD1 HD1 supports the professional standards, competencies and training of our qualified employees recognizing that the scope of practice for a licensed special education

teacher may often overlap behavior analysis practices.

The Department is committed to continuing our discussions with the Hawaii State Teachers Association, Hawaii Government Employees Association, parents and other stakeholders about ABA as we must accomplish this work together. Students are our top priority and all parties are committed to finding common ground to improve our responsiveness to Hawaii's families.

HB 2271 HD2: Impact to Personnel

The Felix Consent Decree and Luke's Law have both served to ensure the Department provides a menu of services delivered by school based behavior health specialists and licensed and credentialed professionals to best meet the needs of students.

A school based behavior health specialist is a masters level mental health professional who provides mental and behavioral health counseling and intervention services supporting all students. These services are provided in the framework of a Positive Behavior Intervention System or as an Individualized Education Program (IEP)-related service. Within the Department, these specialists are bargaining unit members of the Hawaii Government Employees Association.

HB 2271 HD2 would require the Department to:

- Review minimum requirements of approximately 800 Department employees (e.g., school based behavior health [SBBH] employees), which would result in displacement, reassignment and/or requiring employees to seek additional licensing. These employees serve about 10,000 students, 4,545 of whom have IEPs;
- Initiate displacement and/or reassignment of the SBBH employees. This would require the Department to procure licensed contractors to provide services to students; and
- Procure contractors to provide supervision for direct support workers (e.g., educational assistants) as defined in Section 2 (3)(B) who require supervision by a licensed behavior analyst. In Hawaii, a majority of registered behavior technicians (RBTs) are already working for or employed by private health care providers.

The Department continues to build capacity of existing personnel (refer to Table I). Based on original versions of this measure, the Department estimated 38 licensed behavior analysts (LBAs) and 575 registered behavior technicians will be needed based on 575 total students who are receiving ABA services. Pursuant to HB 2271 HD2, the Department anticipates the number of students receiving services will increase. This increase will require additional LBAs and RBTs to meet student service needs.

Costs. The cost of obtaining a Board Certified Behavior Analyst (BCBA) certification for LBAs has been estimated at \$20,000 per individual. This includes both graduate level coursework and required hours of supervision. RBT certification runs about \$1,100 per individual and comprises both didactic and performance training. It should be noted that a RBT must be supervised by a LBA in order to retain their credential. The cost is approximately \$12,600 annually per RBT.

Based on HB 2271, the Department anticipated initial program implementation costs to be approximately \$2.0M with additional post-implementation costs to sustain internal capacity. **However, pursuant to HB 2271 HD2, the scope of students provided ABA services has been expanded which will likely translate to costs exceeding previous estimates.**

Further, the Department will need to procure services for students in need of SBBH services, as SBBH staff lacking or pending licensure will not be able to deliver those services.

Other Costs. The annual contracted costs for an LBA is approximately \$250,000 based on a 40-hour work week at the current Hawaii market rate of \$125 per hour.

There are currently fewer than 160 LBAs in the entire state. This in-state work force situation forces constraints on the Department's ability to fulfill the requirements of the current law. Out of state contractors will further drive up the costs.

Previous versions of this measure:

HB 2271. Clarified the scope of licensure for individuals engaged in the practice of behavior analysis in a school setting and ensures services identified in a student's IEP are provided by licensed and credentialed professionals.

HB 2271 HD1. Afforded the Department additional time to July 1, 2021 to address the work of a direct support worker as detailed in Section 2 (3)(B).

HB 2271 HD2: Challenges

- Limits the practice of behavior analysis in a public school system to a licensed behavior analyst only. Only these licensed behavior analysts would be able to deliver any behavioral intervention services to students with or without disabilities.

The Department recognizes the practice of behavioral analysis in the school setting for all students is valuable. However, required licensure requirements for the Department should be limited to practitioners designing and implementing an applied behavior analysis program for students who exhibit extreme behaviors and for whom less intensive interventions were unsuccessful.

As of February 1, 2018, 1909 students with Autism Spectrum Disorder (ASD) are enrolled in Hawaii public schools. Three hundred thirty-five (335) of the total 1909 ASD students, or 17.5 percent, have IEPs that include ABA services. All 335 of those students are receiving an ABA program. An additional 240 students who are non-ASD also receive ABA services per their IEP to support their learning. Given the broad application of HB 2271 HD2 in providing services to all students, the Department anticipates the scope of students who receive services will expand. Notably, due to the lack of licensed individuals statewide, the Department would not be able to satisfy the needs of all students.

- Broadens definition of the practice of behavior analysis, which limits teachers, school counselors, and other educators, not licensed as a behavior analyst, from effectively managing and supporting student learning.
- Restricts supervision of direct support workers (e.g., educational assistants). Direct support workers who implement a behavior analysis program as defined in Section 2 (3)(B) would only be able to be supervised by a licensed behavior analyst.

Lastly, should HB 2271 HD2 pass in its current form, the Department respectfully requests additional time to meet the mandates of this measure. Similar to the extension of time requested by other state agencies, the Department seeks an implementation of July 1, 2024.

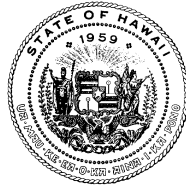
Thank you for this opportunity to provide testimony on HB 2271 HD2.

Table I. Building internal capacity.

The Department needs additional time to build its internal capacity of licensed behavior analysts (LBA) and credentialed paraprofessionals that provide evidence-based interventions as part of an ABA program.

HIDOE BACB (Behavior Analyst Certification Board) Credentialed Personnel				
District/ Complex Area	# of LBAs	# of Individuals in a BCBA* Training Program	# of RBTs	# of Individuals in a RBT Training Program
Honolulu District	1	0	0	10
Central District	1	4	1	21
Leeward District	0	15	0	44
Windward District	4	8	5	29
Hawaii District	0	4	0	30
Maui District	5	7	2	3
Kauai District	1	0	0	5
STATE	3	1	1	3
Total	15	39	9	145

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony COMMENTING on HB2271 HD2
RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS

SENATOR MICHELLE N. KIDANI, CHAIR
SENATE COMMITTEE ON EDUCATION

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, & HEALTH

Hearing Date: April 4, 2018

Room Number: 229

1 **Fiscal Implications:** NONE

2 **Department Testimony:**

3 The Department of Health (DOH) is providing comments to HB2271 HD2 RELATING
4 TO BEHAVIOR ANALYSIS and requests amendments. DOH prefers the Senate companion
5 bill, SB 2925 SD1 HD2 as it reflects the work of many of the stakeholders during this legislative
6 session. We respectfully request that the Committees consider our offered amendments.

7 The DOH-Developmental Disabilities Division (DDD) operates Hawaii's §1915(c)
8 Medicaid Intellectual and Developmental Disabilities (I/DD) Home and Community-Based
9 Services Waiver on behalf of the Department of Human Services, MedQUEST Division. DOH-
10 DDD is committed to raising the quality of behavioral interventions. DOH-DDD is committed to
11 using Licensed Behavior Analysts (LBAs) and Licensed Psychologists working within their
12 respective scopes of practice when an adult participant of the I/DD waiver needs a formal
13 Functional Behavioral Analysis and oversight for the implementation of a Behavior Support
14 Plan. Elements of the current statute are impacting provision and access to behavior analytic
15 services for adults in the Medicaid I/DD waiver.

1 For children who have Autism Spectrum Disorders (ASD), the Centers for Medicare and
2 Medicaid Services (CMS) has clarified that services for the treatment of ASD must be provided
3 through the child's Medicaid health plan through the Early and Periodic Screening, Diagnostic,
4 and Treatment (EPSDT) benefit, and **cannot** be provided as a Medicaid Waiver service.
5 Therefore, the provision of applied behavior analysis in the I/DD waiver is only for adults, and
6 most often for people with entrenched and challenging behaviors that include self-harm and
7 aggression toward others.

8 A primary issue is the broad definition of the practice of behavior analysis in section
9 465D-2, HRS. While the intent of the Legislature was to establish standards for the licensing of
10 behavior analysts to address autism, the broad definition is being interpreted to mean that even
11 simple behavioral interventions, including for adults without autism, require a licensed behavior
12 analyst. There is a lack of workforce of LBAs in Hawaii, and a shortage of LBAs to supervise
13 Registered Behavior Technician (RBT) training hours. These factors, coupled with the fact that
14 most LBAs provide services to children with autism primarily in office-based settings, are
15 limiting access to behavioral analysis services for adults in the waiver who have high-end
16 behaviors that require staff-intensive approaches, and who access their services in homes and in
17 the community. They require implementation of services by teams of people that include a mix
18 of RBTs and trained direct support workers often for many hours during the day and night.

19 If amended, HB 2271 HD2 DOH-DDD strongly supports the exemption in section 465D-
20 7(a) on page 6, line 20 to page 7, line 3 of SB 2925 SD1 HD2. This will help ensure Hawaii's
21 compliance with the I/DD waiver, including its numerous requirements for quality assurance,
22 participant safeguards, and ensuring the rights of participants. DOH-DDD has developed the
23 operational policies and procedures necessary for oversight of behavioral practices,
24 including positive behavioral supports, restrictive interventions, adverse event reporting, and a
25 behavior support review committee. Provider agencies are required to maintain an active
26 nationally-recognized behavior support program. Further, the I/DD waiver requires the state to
27 maintain an adequate provider pool to address the needs of participants.

1 1) DDD has access to LBAs through a service called Training and Consultation and has
2 strong quality oversight of behavioral practices as mentioned earlier. As such, this amendment to
3 Chapter 465D, HRS will mitigate the broad definition of practice of behavior analysis, and allow
4 DOH-DDD to manage the utilization of behavioral services for cases where the design and
5 implementation requires a LBA. Without this exemption, LBAs are far less likely to work with
6 I/DD waiver participants, and access to this critically needed service will continue to be limited.

7 2) Currently, caregivers are not expressly included in the exemptions listed in section
8 465D-7, HRS. Currently, a “family member” is exempt from licensing under section 465D-
9 7(a)(4), HRS. DOH seeks an amendment for caregivers as stated in SB2925 SD1 HD2, similar to
10 the current family exemption. Without this exemption, by January 2019, any caregiver
11 reinforcing behaviors in homes must first become an RBT by obtaining the credential from the
12 Behavior Analyst Certification Board. This will likely disrupt placements for waiver participants
13 as most caregivers will not choose to go through the extensive process to become an RBT.

14 **OFFERED AMENDMENTS:** The DOH offers the following amendments:

15 **Add an exemption to section 465D-7(a), HRS, to read:**

16 An individual who designs or implements applied behavior analysis services to participants in
17 the medicaid home and community-based service (HCBS) waiver program, pursuant to section
18 1915(c) of the Social Security Act on or before January 1, 2024;

19 **Add an exemption to section 465D-7(a)(4), HRS to read:**

20 (4) A family member [or], legal guardian, or caregiver implementing an applied behavior
21 analysis plan and who acts under the direction of a licensed behavior analyst [~~icensed in this~~
22 ~~State;~~] or licensed psychologist; provided that for the purposes of this paragraph, “caregiver”
23 means an individual who provides habilitative services to participants in the Medicaid home and
24 community-based services waiver program, pursuant to section 1915(c) of the Social Security
25 Act, in an adult foster home, developmental disabilities domiciliary home, adult residential care

- 1 home, expanded adult residential care home, special treatment facility, or therapeutic living
- 2 program.
- 3
- 4 Thank you very much for the opportunity to testify.



DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEES ON EDUCATION AND
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, April 4, 2018
2:45 p.m.

**TESTIMONY ON HOUSE BILL NO. 2271, H.D. 2, RELATING TO THE PRACTICE OF
BEHAVIOR ANALYSIS.**

TO THE HONORABLE MICHELLE KIDANI, CHAIR, THE HONORABLE ROSALYN
BAKER, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 2271, H.D. 2, Relating to the Practice of Behavior Analysis. My name is Daria Loy-Goto, and I am the Complaints and Enforcement Officer for the Department’s Regulated Industries Complaints Office (“RICO”). RICO takes no position on this bill and offers the following comments relating to enforcement.

H.B. 2271, H.D. 2, which is a companion to S.B. 2925, amends the law that regulates the practice of behavior analysis. H.D. 2 amends Hawaii Revised Statutes (“HRS”) section 465D-7 to exempt the following individuals from the licensing requirements of behavior analysis:

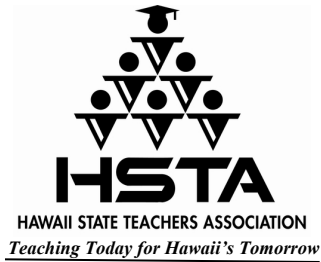
[I]ndividuals directly supervised by a **licensed professional**, such as unlicensed master’s level practitioners, students, and postdoctoral fellows, who may train and supervise a paraprofessional, direct support worker, or parent or guardian in implementing an applied behavioral analysis intervention; provided that the supervision falls within that licensed

professional's scope of practice; provided further that the licensed professional and the supervised individual shall not use the title of "licensed behavior analyst[.]"

RICO requests clarification on which licensed professionals would be included in "licensed professionals" in HRS section 465D-7(a)(1) on page 3, at lines 6 and 12.

H.D. 2 also amends Hawaii Revised Statutes ("HRS") section 465D-7(a)(3)(b) on page 4 lines 11-15 to exempt direct support workers in a school setting working under the supervision of a "professional licensed in this State to practice behavior analysis". RICO understands that licensees other than licensed behavior analysts practice behavior analysis within the scope of their license, such as psychologists. RICO suggests that licensee categories be explicitly identified in this exemption, in order to avoid confusion or ambiguity about the types of licensees who can supervise direct support workers. If this section is intended to authorize supervision by licensed behavior analysts and licensed psychologists only, RICO respectfully suggests that the bill say so explicitly.

Thank you for the opportunity to testify on H.B. 2271, H.D. 2. I am available to answer any questions the Committee may have.



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

Corey Rosenlee
President

Justin Hughey
Vice President

Amy Perruso
Secretary-Treasurer

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Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEES ON
EDUCATION and COMMERCE, CONSUMER PROTECTION,
AND HEALTH

RE: HB 2271, HD 2 - RELATING TO THE PRACTICE OF BEHAVIOR
ANALYSIS

WEDNESDAY, APRIL 4, 2018

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Kidani, Chair Baker, and Members of the Committee:

The Hawaii State Teachers Association **provides comments and suggested amendments for HB 2271, HD 2**, relating to the practice of behavior analysis.

Act 199, Session Laws of Hawaii 2015, otherwise known as Luke's Law, established the behavior analyst program within the Department of Commerce and Consumer Affairs and created licensing requirements for behavior analysts. Licensing of behavior analysis services was made concurrent with mandated insurance coverage for diagnosis and treatment related to autism disorders, with which nearly 1,500 public school students are currently diagnosed.

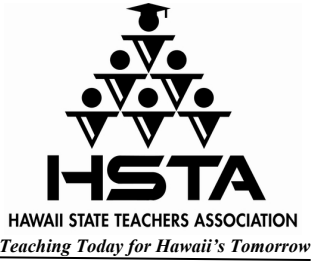
Behavior analysis means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis, as well as the use of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop positive behaviors.

Unfortunately, the DOE is experiencing a shortage of licensed behavior analysts and, in 2016, successfully sought an amendment to state law to allow teachers to perform behavior analysis and prescribe services. Yet, teachers are not trained or qualified to make behavioral diagnoses, and being commanded to do so—some

teachers have been threatened with termination for refusing to complete behavioral diagnoses for which they have no professional training—interferes with their ability to provide a quality learning environment for their students, taking time away from lesson planning, professional development and collaboration, delivery of personalized learning, and more.

This measure does not rectify problems facing the behavior analyst community or the children who depend on their services. To begin, it does not eliminate the staffing shortage that has led to teachers performing behavior analysis, which can only be closed by providing the DOE with funding to hire licensed behavior analysts, either as employees of the department or by contracting with the many private providers who are currently being denied access to the children they're qualified to serve. Moreover, this bill does not repeal teachers from the definition of "direct support worker" under HRS §465D-7 to prevent them from being compelled to perform diagnostic and health-based work for which they are not qualified. Finally, it does not call upon the DOE to allow private behavior analysts to assist students during school hours, despite private insurance companies agreeing to pay for their services. Instead, this proposal further consecrates into state law the problematic and unethical practice of allowing behavior analysis to be conducted by unqualified individuals, whose time is better spent on the professions for which they've been rigorously trained. According to the DOE's own report to the legislature in *Report on Behavior Analyst and Certification Requirements Implementation*, dated January 5th, 2018, the department is supporting efforts for 39 DOE personnel to become BCBA's in an approved program, and assisting another 145 departmental personnel in becoming Registered Behavior Technicians (RBTs) by 2019. We need to continue in this direction, rather than further weakening Luke's Law.

That said, we urge you to protect teachers from being forced to perform behavior analysis services for which they are not qualified by deleting the word "teachers" from page 4, line 2 of this bill and, in turn, adding an exemption to HRS §465D-7 to read: "(8) A licensed classroom teacher who is working in a school setting and providing services related to a behavior analysis program designed by a professional licensed to practice behavior analysis in this State; provided that any services provided by the teacher shall not be considered behavior analysis; and provided further that teachers shall not be required to design or implement behavior analysis services for which they are not licensed."



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

Corey Rosenlee
President

Justin Hughey
Vice President

Amy Perruso
Secretary-Treasurer

Wilbert Holck
Executive Director

To ensure our most vulnerable keiki are given the care they deserve, the Hawaii State Teachers Association asks your committee to consider our comments on this bill.



Hawai'i Psychological Association

For a Healthy Hawai'i

P.O. Box 833
Honolulu, HI 96808

www.hawaiipsychology.org

Email: hpaexec@gmail.com
Phone: (808) 521-8995

COMMITTEE ON EDUCATION
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Senator Kaiali'i Kahele, Vice Chair

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair

Wednesday, April 4, 2018, 2:45pm
Conference Room 229, State Capitol, 415 South Beretania Street

**Comments regarding HB2271_HD2
and recommending amendments
RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS**

The Hawaii Psychological Association (HPA) continues to be concerned that the language in Act 199 and subsequent related legislation, applying to treatment services for autism and the licensure of Board Certified Behavior Analysts (BCBAs), unintentionally restricted well-qualified professionals from providing services to children with autism and other behavioral challenges and provided an inappropriate monopoly for one certifying agency, the Behavior Analyst Certification Board.

Therefore, the HPA strongly supports our recommended amendment incorporated into Section 2(a)(1) of HB 2271_HD2 to clarify Psychologists' scope of practice in the area of Behavior Analysis. This current version of this bill addresses the need to provide behavioral intervention to a large number of students with behavioral challenges in the Department of Education (DOE). HPA's recommended amendment helps by assuring that competent, behaviorally-trained clinicians from psychology and other licensed professions and their supervisees – as well as Licensed Behavior Analysts (LBAs) and their supervisees - can be utilized by the DOE to provide behavior plans and can serve Hawaii families in a variety of other settings. This prevents an unnecessary narrowing of the behavioral health workforce and a monopoly by one certifying agency by allowing more variety in the acceptable training and certification requirements for paraprofessional workers and their supervisors.

To avoid an inappropriate monopoly we would like to propose the following additional amendments:

Section 2(a)(2) – starting on page 3 line 16:

An individual who implements or designs applied behavior analysis services and possesses board certification as an assistant behavior analyst from a nationally certifying agency or the Behavior Analyst Certification Board and who practices in accordance with the most recent supervisory and ethical requirements adopted by the national certifying agency Behavior Analyst Certification Board under the direction of a behavior analyst or psychologist licensed in this State;

Section 2(a)(3)(A) – starting on page 4 line 5:

Is credentialed as a ~~registered~~ behavior technician by a nationally recognized organization or the Behavior Analyst Certification Board, and is under the direction of a behavior analyst or psychologist licensed in this State;

Section 2(a)(4) – starting on page 5 line 6:

A family member or legal guardian implementing an applied behavior analysis plan and who acts under the direction of a behavior analyst or psychologist licensed in this State;

Section 2(a)(6) – starting on page 5 line 15:

A matriculated graduate student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum; provided that the student's or fellow's activities or practice is directly supervised by a behavior analyst or psychologist licensed in this State or an instructor from a nationally recognized training organization or in a Behavior Analyst Certification Board-approved course sequence;

To ensure that the Medicaid-eligible students with Autism Spectrum Disorder have access to all qualified, behaviorally-trained professionals and their supervisees, we recommend the following language be included:

Section 3 – starting on page 6 line 8:

The Department of Education shall create an implementation plan for the delivery of potentially Medicaid-billable ABA services provided by behaviorally-trained licensed psychologists and their supervisees, licensed behavior analysts and their supervisees, and other behaviorally-trained licensed clinicians and their supervisees, to all Medicaid-eligible students diagnosed with autism spectrum disorder within the department.

Please see the attached document from the American Psychological Association Practice Organization: "Statement on Behavior Analysis and Behavior Analysts" and the second attached document from the American Psychological Association on: "Applied Behavior Analysis" which both serve to further support the position that Behavior Analysis is a long-practiced discipline within psychology. The support for these behavioral approaches being voiced by parents in connection with this and other related bills serves to emphasize the effectiveness of this approach, originally developed by and still practiced by many psychologists. The specific degree or certification held by the practitioner does not alter this. Psychologists are not claiming to have a monopoly on these practices, although we pioneered them – we simply do not want to be forced to give up useful technologies that are needed by our keiki and families because a relatively young profession has developed this particular technical expertise.

Importantly, with all of these amendments this bill could improve the financial picture for several state agencies (Early intervention, DDD, CAMHD, as well as DOE) by maintaining more competition for state positions and contracts among a wider group of professional who are competent to provide effective behavioral interventions to our keiki. This can be done without the loss of quality feared by parents as a result of apparent pressure from the LBA's guild organization. As stated by Gina Green Ph.D., BCBA-D, Chief Executive Officer of the Association of Professional Behavioral Analysts:

“(a) the behavior analyst licensure law clearly permits licensed psychologists and other appropriately credentialed professionals to practice ABA without being licensed as behavior analysts, provided that behavior analysis is in their profession's scope of practice and the scope of the individual psychologist's documented training and competence; and (b) licensed psychologists and other professionals already have the right to supervise trainees, paraprofessionals, and others in accordance with the licensure laws and regulations of their respective professions.”

In addition, a large percentage of children with autism and other disorders have other co-occurring mental health disorders. Behavioral technicians are only trained to increase or decrease behaviors, they are not mental health professionals, and therefore, many times these providers can only treat the behavioral part of the presenting problem. Thus, the children, as well as their teachers and families would benefit from having access to professionals, such as psychologists, who are trained to design and implement behavioral interventions and also have extensive expertise in these co-occurring emotional and behavioral disorders, including anxiety, clinical depression, and externalizing disorders.

Thank you for the opportunity to comment on this important legislation.

Tanya Gamby, Ph.D.
President, HPA



Statement on Behavior Analysis and Behavior Analysts

The APAPO Board approved the following "Statement on Behavior Analysis and Behavior Analysts" at its February 2012 meeting:

Psychologists have a long history of developing and implementing effective services, including behavior analysis, for individuals with autism spectrum disorders and their families. Licensed psychologists with competence in behavior analysis are qualified to independently provide and to supervise the provision of behavior analytic services. Therefore, qualified licensed psychologists should be allowed to provide behavior analysis and to call the services they provide "behavior analysis" or "applied behavior analysis" without obtaining additional credentials or licensure. Other professionals who provide behavior analysis should be required by law or regulation to demonstrate education, training and supervision appropriate to a defined scope of practice and to the needs of the jurisdiction. The APAPO Board supports advocacy to ensure that any legislation or regulations regarding behavior analysts or the practice of behavior analysis contain provisions to protect consumers by ensuring that they receive services by appropriately qualified professionals. Further, the APAPO Board recommends that, to the extent that behavior analysts are regulated separately by state law, the benefits of regulation under the state board of psychology should be considered.

The APAPO Board position is supported by two APA policy documents, the [APA Model Act for State Licensure](#) (PDF, 111KB) and the [APA Ethical Principles of Psychologists and Code of Conduct](#). Specifically, section B.3 of the Model Act includes "behavior analysis and therapy" within the definition of the practice of psychology; and Ethics Code Standard 2 requires that "psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence."

750 First Street,
N.E. Washington, DC 20002-4242
(202) 336-5800

(202) 336-5797 Fax

(202) 336-6123 TDD

An affiliate of the American Psychological Association



Applied Behavior Analysis

Adopted as APA Policy by APA Council of Representatives in February 2017

The principles of applied behavior analysis (also known as behavior modification and learning theory), developed and researched by psychology and competently applied in the treatment of various disorders based on that research, is clearly within the scope of the discipline of psychology and is an integral part of the discipline of psychology. Across the United States, applied behavior analysis is taught as a core skill in applied and health psychology programs. As such, the American Psychological Association (APA) affirms that the practice and supervision of applied behavior analysis are well-grounded in psychological science and evidence-based practice. APA also affirms that applied behavior analysis represents the applied form of behavior analysis which is included in the definition of the “Practice of Psychology” section of the APA Model Act for State Licensure of Psychologists. Therefore, APA asserts that the practice and supervision of applied behavior analysis is appropriately established within the scope of the discipline of psychology.

Suggested Citation

American Psychological Association. (2017). *APA Policy: Applied Behavior Analysis*. Retrieved from: <http://www.apa.org/about/policy/applied-behavior-analysis.aspx>

750 First Street, NE
Washington, DC 20002-4242
(202) 336-5500
(202) 336-6123 TDD



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COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair:

Wednesday, April 4, 2018, 2:45pm
Conference Room 229, State Capitol

IN SUPPORT OF HB 2271 WITH AMENDMENTS

Honorable Chairs Kidani and Baker, Vice Chairs Kahele and Tokuda, and members of the committees,

The Hawai'i Association for Behavior Analysis (HABA) would like to send a sincere mahalo to our legislators for listening to families, supporting teachers, and believing in our keiki. While we appreciate the discussions which seek to provide clarity on Chapter 465-D, we feel the language proposed in HB2271 HD2 is too broad to ensure appropriate consumer protections. We respectfully request that the language from SB2925 SD1 be inserted into this bill if it moves forward. Thank you Senators Kidani and Baker for taking a stand. We are grateful for the tireless work you have done to protect our keiki.

Mahalo,

Kathleen Penland, M. Ed. BCBA, LBA
President, Hawai'i Association for Behavior Analysis



Date: April 1, 2018

To: Senator Michelle Kidani, Chair and Senator Kaiali'i Kahele, Vice Chair
Committee on Education

Senator Roslyn Baker, Chair and Senator Jill Tokuda, Vice Chair
Committee on Commerce, Consumer Affairs and Health

Hearing: Wednesday, April 4, 2018, 2:45 p.m., Conference Room 229

From: Linda D. Hufano, Ph.D.
(808) 258-2250

Re: Testimony in Strong Support of HB2271_HD2, Relating to the Practice of
Behavior Analysis, with amendments proposed by the Hawaii Psychological
Association (HPA)

I am a behaviorally-trained psychologist. Over the past 34 years I have worked as a psychologist for the Hawaii Department of Education (HIDOE), branch chief/psychologist for the Child Adolescent Mental Health Division (CAMHD), private practice psychologist in Honolulu and Leeward O'ahu, and have recruited, developed, trained and supervised providers of Applied Behavior Analysis (ABA) and other psychological services to work under contracts with the HIDOE and for the Child and Adolescent Mental Health Division (CAMHD), Developmental Disabilities Division, and Early Intervention Section of the Hawaii Department of Health.

It is clear that there would be a significant lack of trained professionals and paraprofessionals to deliver ABA services if Chapter 465-D continued to be misinterpreted as restricting the provision of ABA services to Licensed Behavior Analysts (LBA's) and Registered Behavior Technicians (RBT's). Parents are reporting waitlists of up to three years for services covered by insurance, including those for children under the age of 6 ("the critical age" for ABA services). The requirement that only an LBA and RBT can deliver ABA services when there are others trained and qualified to do so would impede access of competent interventions for students desperately needing services, be an additional and unnecessary burden on taxpayers, be an unfair restraint of trade for professionals who have been providing this care, and create an illegal monopoly for Licensed Behavior Analysts, Registered Behavior Technicians and their national certifying board.

I strongly support HB2271_HD2 as written as it clarifies that behaviorally-trained licensed psychologists and their supervisees, and other behaviorally-trained licensed professions and their supervisees, can be utilized by the DOE as service providers in addition to LBA's and RBT's.

I am also in strong support of the amendments being proposed by the HPA which would allow the DOE to bill Medicaid for ABA services for Medicaid-eligible students with autism by all qualified service providers, assistants and direct support workers/paraprofessionals:

Section 3 (a): The Department of Education shall create an implementation plan for the delivery of potentially Medicaid-billable applied behavior analysis provided by qualified licensed psychologists and their supervisees, licensed behavior analysts and their supervisees, and other licensed clinicians and their supervisees, for all Medicaid-eligible students diagnosed with autism spectrum disorder within the department.

This can be done without the loss of quality feared by parents as a result. As stated by Gina Green Ph.D., BCBA-D, and Chief Executive Officer of the Association of Professional Behavioral Analysts:

“(a) the behavior analyst licensure law clearly permits licensed psychologists and other appropriately credentialed professionals to practice ABA without being licensed as behavior analysts, provided that behavior analysis is in their profession’s scope of practice and the scope of the individual psychologist’s documented training and competence; and (b) licensed psychologists and other professionals already have the right to supervise trainees, paraprofessionals, and others in accordance with the licensure laws and regulations of their respective professions.”

I am also attaching for your consideration is the California State Plan Amendment (SPA) 14-026, currently in effect in that state. This information was shared with us by colleagues who provide Medicaid reimburses services for Medicaid-eligible students with ASD in the schools. As shown in the BHT Chart (p. 7), the list of qualified professionals who are able to bill is as extensive as the needs of students with this diagnosis and includes BCBA’s and Licensed Practitioners, i.e., physicians and surgeon, physical therapist, occupational therapist, psychologist, marriage and family therapist, educational psychologist, clinical social worker, professional clinical social worker, speech-language pathologist, or audiologist, provided the services are within the experience and competence of the licensee.

Thank you for the opportunity to comment on this important legislation.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
San Francisco Regional Office
90 Seventh Street, Suite 5-300 (5W)
San Francisco, CA 94103-6706



DIVISION OF MEDICAID & CHILDREN'S HEALTH OPERATIONS

January 21, 2016

Mari Cantwell
Chief Deputy Director, Health Care Programs
California Department of Health Care Services
P.O. Box 997413, MS 0000
Sacramento, CA 95899-7413

Dear Ms. Cantwell:

Enclosed is an approved copy of California State Plan Amendment (SPA) 14-026. This SPA was submitted to my office on September 30, 2014 to add Behavioral Health Treatment (BHT) services to the preventive services component of the state plan.

The effective date of this SPA is July 7, 2014 as requested. Enclosed are the following approved SPA pages that should be incorporated into your approved State Plan:

- Limitations on Attachment 3.1-A, pages 18b and 18c
- Limitations on Attachment 3.1-B, pages 18b and 18c
- Supplement 6 to Attachment 3.1-A, page 1
- Attachment 4.19-B, page 74

The state will not need to submit an amendment to the Section 1915(c) waiver, CA.0336 Home & Community Based-Services (HCBS) Waiver for Californians with Developmental Disabilities, prior to the waiver program's renewal. The state's BHT Transition Plan describes a time-limited period of 6 months, beginning in February 2016, in which the state will transition the responsibility for delivering BHT services for EPSDT-eligible children from the Section 1915(c) waiver, CA.0336 HCBS Waiver for Californians with Developmental Disabilities, to the state's Medi-Cal program pursuant to California SPA 14-026.

If you have any questions, please contact Cheryl Young by phone at (415) 744-3598 or by email at Cheryl.Young@cms.hhs.gov.

Sincerely,

/s/

Henrietta Sam-Louie
Acting Associate Regional Administrator
Division of Medicaid & Children's Health Operations

Enclosure

cc: Laurie Weaver, California Department of Health Care Services
Jim Elliott, California Department of Health Care Services
Cynthia Owens, California Department of Health Care Services

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

1. TRANSMITTAL NUMBER:
14-026

2. STATE
CA

FOR: HEALTH CARE FINANCING ADMINISTRATION

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
July 7, 2014

5. TYPE OF PLAN MATERIAL (Check One):

NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:
42 USD 1396(a)(13)

7. FEDERAL BUDGET IMPACT:
FFY 2013 \$19,968,375
FFY 2014 \$99,052,625

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:
Limitations on Attachment 3.1-A Page 18b
Limitations on Attachment 3.1-A Page 18c
Limitations on Attachment 3.1-A Page 18d
Limitations on Attachment 3.1-B Page 18b
Limitations on Attachment 3.1-B Page 18c
~~Limitations on Attachment 3.1-B Page 18d~~
Supplement 6 to Att 3.1 A p.1
Attachment 4.19-B, page 74

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):
Attachment 4.19-B, page 74

10. SUBJECT OF AMENDMENT:
Behavioral Health Treatment (BHT) Services

11. GOVERNOR'S REVIEW (Check One):

GOVERNOR'S OFFICE REPORTED NO COMMENT
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

OTHER, AS SPECIFIED:
The Governor's Office does not
wish to review the State Plan Amendment.

12. SIGNATURE OF STATE AGENCY OFFICIAL:
ORIGINAL SIGNED

13. TYPED NAME:
Toby Douglas

14. TITLE:
Director

15. DATE SUBMITTED:

16. RETURN TO:

**Department of Health Care Services
Attn: State Plan Coordinator
1501 Capitol Avenue, MS 4506
P.O. Box 997417
Sacramento, CA 95899-7417**

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

18. DATE APPROVED:

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:

22. TITLE:

23. REMARKS:

ORIGINAL COMPLETED

STATE PLAN CHART

PRIOR AUTHORIZATION OR OTHER REQUIREMENTS*

PROGRAM DESCRIPTION**

TYPE OF SERVICE

13c	Preventive services (cont.)	Behavioral Health Treatment (BHT)
	Covered as medically necessary services based upon a recommendation of a licensed physician and surgeon or a licensed psychologist after a diagnosis of Autism Spectrum Disorder (ASD). In accordance with 42 CFR 440.130(c), Behavioral Health Treatment (BHT) services, such as Applied Behavior Analysis (ABA) and other evidence-based behavioral intervention services, prevent or minimize the adverse effects of ASD and promote, to the maximum extent practicable, the functioning of a beneficiary. Services that treat or address ASD under this state plan are available only for the following beneficiaries: infants, children and adolescents under 21 years of age. Services that treat or address ASD will be provided to all children who meet the medical necessity criteria for receipt of the service(s).	
	The Comprehensive Diagnostic Evaluation (CDE) is covered under the Physician Services or Other Licensed Practitioner benefit categories, as applicable, for covered Medi-Cal eligible beneficiaries under 21 years of age. For individuals under 3 years of age, a rule out or provisional diagnosis is acceptable to receive BHT services. The CDE must be performed before an individual over the age of 3 receives treatment services.	
	Services include:	
	<ul style="list-style-type: none"> • Behavioral-Analytic Assessment and development of behavioral treatment plan; and • BHT intervention services are identified in the BHT Services Chart in Supplement 6 to Attachment 3.1-A Page 1. 	
	BHT intervention services are interventions designed to treat ASD, including a variety of behavioral interventions identified as evidence-based by nationally recognized	
	BHT services may be provided by one of the following: Qualified Autism Service Provider (see BHT Services Chart in Supplement 6 to Attachment 3.1-A Page 1)	
	BHT intervention services are provided under a prior authorized behavioral treatment plan that has measurable goals over a specific timeline for the specific patient being treated and is developed by a qualified autism service provider. The behavioral treatment plan shall be reviewed no less than once every six months by a qualified autism service provider. Services identified in the behavioral treatment plan may be modified and must be prior authorized.	
	Additional service authorization must be received to continue the service. Services provided without prior authorization shall not be considered for payment or reimbursement except in the case of retroactive Medi-Cal eligibility.	
	Services must be provided, observed and directed under an approved behavioral treatment plan developed by a qualified autism service provider, as described in the BHT Services Chart in Supplement 6 to Attachment 3.1-A Page 1.	
	The behavioral health treatment plan is not used for purposes of providing or coordinating respite, day care, or educational services. No reimbursement is available for respite, day care or educational services. No reimbursement is available to a parent or caregiver of an individual receiving BHT for costs associated with their participation under the treatment plan.	

* Prior authorization is not required for emergency service.
**Coverage is limited to medically necessary services

STATE PLAN CHART

TYPE OF SERVICE	PROGRAM DESCRIPTION**	PRIOR AUTHORIZATION OR OTHER REQUIREMENTS*
13c Preventive services (cont.) BHT (cont.)	research reviews and/or other nationally recognized scientific and clinical evidence and are designed to be delivered primarily in the home and in other community settings.	Qualified Autism Service Professional (see BHT Services Chart in Supplement 6 to Attachment 3.1-1-A Page 1) Qualified Autism Service Paraprofessional (see BHT Services Chart in Supplement 6 to Attachment 3.1-1-A Page 1)

* Prior authorization is not required for emergency service.
**Coverage is limited to medically necessary services

STATE PLAN CHART

PRIOR AUTHORIZATION OR OTHER REQUIREMENTS*

PROGRAM DESCRIPTION**

TYPE OF SERVICE

13c	Preventive services (cont.) Behavioral Health Treatment (BHT)	Covered as medically necessary services based upon a recommendation of a licensed physician and surgeon or a licensed psychologist after a diagnosis of Autism Spectrum Disorder (ASD). In accordance with 42 CFR 440.130(c), Behavioral Health Treatment (BHT) services, such as Applied Behavior Analysis (ABA) and other evidence-based behavioral intervention services, prevent or minimize the adverse effects of ASD and promote, to the maximum extent practicable, the functioning of a beneficiary. Services that treat or address ASD under this state plan are available only for the following beneficiaries: infants, children and adolescents under 21 years of age. Services that treat or address ASD will be provided to all children who meet the medical necessity criteria for receipt of the service(s).	BHT intervention services are provided under a prior authorized behavioral treatment plan that has measurable goals over a specific timeline for the specific patient being treated and is developed by a qualified autism service provider. The behavioral treatment plan shall be reviewed no less than once every six months by a qualified autism service provider. Services identified in the behavioral treatment plan may be modified and must be prior authorized.
		The Comprehensive Diagnostic Evaluation (CDE) is covered under the Physician Services or Other Licensed Practitioner benefit categories, as applicable, for covered Medi-Cal eligible beneficiaries under 21 years of age. For individuals under 3 years of age, a rule out or provisional diagnosis is acceptable to receive BHT services. The CDE must be performed before an individual over the age of 3 receives treatment services.	Additional service authorization must be received to continue the service. Services provided without prior authorization shall not be considered for payment or reimbursement except in the case of retroactive Medi-Cal eligibility.
		Services include: • Behavioral-Analytic Assessment and development of behavioral treatment plan; and • BHT intervention services are identified in the BHT Services Chart in Supplement 6 to Attachment 3.1-A Page 1.	Services must be provided, observed and directed under an approved behavioral treatment plan developed by a qualified autism service provider, as described in the BHT Services Chart in Supplement 6 to Attachment 3.1-A Page 1.
		BHT intervention services are interventions designed to treat ASD, including a variety of behavioral interventions identified as evidence-based by nationally recognized	The behavioral health treatment plan is not used for purposes of providing or coordinating respite, day care, or educational services. No reimbursement is available for respite, day care or educational services. No reimbursement is available to a parent or caregiver of an individual receiving BHT for costs associated with their participation under the treatment plan.

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STATE PLAN CHART

TYPE OF SERVICE	PROGRAM DESCRIPTION**	PRIOR AUTHORIZATION OR OTHER REQUIREMENTS*
13c Preventive services (cont.) BHT (cont.)	research reviews and/or other nationally recognized scientific and clinical evidence and are designed to be delivered primarily in the home and in other community settings.	Qualified Autism Service Professional (see BHT Services Chart in Supplement 6 to Attachment 3.1-A Page 1) Qualified Autism Service Paraprofessional (see BHT Services Chart in Supplement 6 to Attachment 3.1-A Page 1)

* Prior authorization is not required for emergency service.
**Coverage is limited to medically necessary services

BHT Services Chart

Provider Type	Provider Qualifications	Behavioral-Analytic Assessment	Behavioral Treatment Plan Development and Modification	BHT Services	Observation and Direction
Qualified Autism Service Provider ²	Board Certified Behavior Analyst (BCBA) ⁴	X	X	X	X
	Licensed Practitioner ⁵	X	X	X	X
	Associate Behavioral Analyst ⁴	X		X	
Qualified Autism Service Professional ³	Behavior Analyst ⁵	X	X	X	X
	Behavior Management Assistant ⁶	X		X	
	Behavior Management Consultant ⁷	X	X	X	X
Qualified Autism Service Paraprofessional ⁸	Paraprofessional				

¹ Findings and Conclusions: National Standards Project, Phase 2 Addressing the Need for Evidence-Based Practice Guidelines for Autism Spectrum Disorder

² A qualified autism service provider means either of the following:

- ³ A person, entity, or group that is certified by a national entity, such as the Behavior Analyst Certification Board, that is accredited by the National Commission for Certifying Agencies, and who designs, supervises, or provides treatment for pervasive developmental disorder or autism, provided the services are within the experience and competence of the person, entity, or group that is nationally certified.
- ⁴ A person licensed as a physician and surgeon, physical therapist, occupational therapist, psychologist, marriage and family therapist, educational psychologist, clinical social worker, professional clinical counselor, speech-language pathologist, or audiologist pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, who designs, supervises, or provides treatment for pervasive developmental disorder or autism, provided the services are within the experience and competence of the licensee.
- ⁵ An individual who meets all of the following criteria: Provides behavioral health treatment, is employed and supervised by a qualified autism service provider, provides treatment pursuant to a treatment plan developed and approved by the qualified autism service provider, is a behavioral service provider approved as a vendor by a California regional center to provide services as an Associate Behavior Analyst; Behavior Analyst; Behavior Management Assistant; Behavior Management Consultant or Behavior Management Program.
- ⁶ A regional center shall classify a vendor as an Associate Behavior Analyst if the vendor assesses the function of a behavior of a consumer and designs, implements, and evaluates instructional and environmental modifications to produce socially significant improvements in the consumer's behavior through skill acquisition and the reduction of behavior, under direct supervision of a Behavior Analyst or Behavior Management Consultant. Associate Behavior Analysts engage in descriptive functional assessments to identify environmental factors of which behavior is a function. Associate Behavior Analysts shall not practice psychology, as defined in Business and Professions Code Section 2903. A regional center shall classify a vendor as an Associate Behavior Analyst if an individual is recognized by a National Behavior Analyst Certification Board as a Board Certified Behavior Analyst.
- ⁷ Behavior Analyst means an individual who assesses the function of a behavior of a consumer and designs, implements, and evaluates instructional and environmental modifications to produce socially significant improvements in the consumer's behavior through skill acquisition and the reduction of behavior. Behavior Analysts engage in functional assessments or functional analyses to identify environmental factors of which behavior is a function. A Behavior Analyst shall not practice psychology, as defined in Business and Professions Code section 2903. A regional center shall classify a vendor as a Behavior Analyst if an individual is recognized by a National Behavior Analyst Certification Board as a Board Certified Behavior Analyst.
- ⁸ A regional center shall classify a vendor as a behavior management consultant if the vendor designs and/or implements behavior modification intervention services and meets the following requirements:
 - Possesses a valid license as a psychologist from the Medical Board of California or Psychology Examining Board; or
 - Possesses a valid license as a psychologist from the Medical Board of California or Psychology Examining Board; or
 - Is a Licensed Clinical Social Worker pursuant to Business and Professions Code, Sections 4996 et. seq.; or
 - Is a Licensed Marriage and Family Therapist pursuant to Business and Professions Code, Sections 4980 et. seq.; or
 - Is any other licensed professional whose California licensure permits the design and/or implementation of behavior modification intervention services.

- Have two years experience designing and implementing behavior modification intervention services.
- An unlicensed and uncertified individual who meets all the following criteria: Is employed and supervised by a qualified autism service provider, provides treatment and implements services pursuant to a treatment plan developed and approved by the qualified autism service provider, meets the criteria set forth in the regulations adopted pursuant to Section 4686.3 of the Welfare and Institutions Code, has adequate education, training and experience, as certified by a qualified autism service provider.

- Possesses a bachelor of arts or science degree and has either: Twelve semester units in Applied Behavior Analysis (ABA) and one year of experience in designing and/or implementing behavior modification intervention services; or two years of experience in designing and/or implementing behavior modification intervention services; or
- Is registered as either a psychological assistant of a psychologist by the Medical Board of California or Psychology Examining Board; or as an Associate Licensed Clinical Social Worker pursuant to Business and Professions Code, Section 4996.18 et. seq.
- A regional center shall classify a vendor as a behavior management consultant if the vendor designs and/or implements behavior modification intervention services and meets the following requirements:
 - Individuals vendored as a behavior management consultant on, or after, January 1, 2007, shall prior to being vendored, have completed twelve semester units in ABA and possess a license and experience as specified below:
 - Possesses a valid license as a psychologist from the Medical Board of California or Psychology Examining Board; or
 - Is a Licensed Clinical Social Worker pursuant to Business and Professions Code, Sections 4996 et. seq.; or
 - Is a Licensed Marriage and Family Therapist pursuant to Business and Professions Code, Sections 4980 et. seq.; or
 - Is any other licensed professional whose California licensure permits the design and/or implementation of behavior modification intervention services.

- Have two years experience designing and implementing behavior modification intervention services.
- An unlicensed and uncertified individual who meets all the following criteria: Is employed and supervised by a qualified autism service provider, provides treatment and implements services pursuant to a treatment plan developed and approved by the qualified autism service provider, meets the criteria set forth in the regulations adopted pursuant to Section 4686.3 of the Welfare and Institutions Code, has adequate education, training and experience, as certified by a qualified autism service provider.

State Plan Under Title XIX of the Social Security Act
STATE/TERRITORY: CALIFORNIA

**REIMBURSEMENT METHODOLOGY FOR HABILITATION, PREVENTIVE SERVICES
(BEHAVIORAL HEALTH TREATMENT*) AND BEHAVIORAL INTERVENTION SERVICES**

This service is comprised of the following two subcomponents:

A. Non-Facility Based Behavior Intervention Services: Providers and services in this subcategory are Behavior Analysts, Associate Behavior Analysts, Behavior Management Assistants, Behavior Management Intervention Training, Parent Support Services, Individual/Family Training Providers, Family Counselors, and Behavioral Technicians, Educational Psychologists, Clinical Social Workers, and Professional Clinical Counselors. There are two rate setting methodologies to determine the hourly rates for all providers in this subcategory (except psychiatrists, physicians and surgeons, physical therapists, occupational therapists, psychologists, Marriage and Family Therapists (MFT), speech pathologists, and audiologists - see DHCS Fee Schedule below).

1) Usual and Customary Rate Methodology – As described on page 70, above. If the provider does not have a usual and customary rate, then rates are set using #2 below.

2) Median Rate Methodology – As described on page 70, above.

3) DHCS Fee Schedules – As described on page 70, above. The fee schedule, effective October 15, 2015 can be found at the following link: http://files.medical.ca.gov/pubsdoco/Rates/rates_download.asp

B. Crisis Intervention Facility - The following two methodologies apply to determine the daily rates for these providers;

1) Usual and Customary Rate Methodology - As described on page 70, above. If the provider does not have a usual and customary rate; then rates are set using #2 below.

2) Median Rate Methodology - As described on page 70, above.

REIMBURSEMENT METHODOLOGY FOR RESPITE CARE

There are five rate setting methodologies for Respite Services. The applicable methodology is based on whether the service is provided by an agency, individual provider or facility, type of facility, and service design.

1) Rates Set Pursuant to a Cost Statement Methodology - As described on page 69, above. This methodology is used to determine the hourly rate for In-home Respite Agencies. The rate schedule,

* Please refer to Item 13(c) and Supplement 6 to Attachment 3.1-A, page 1, of the State Plan Amendment

Hello! Thank you Senator Baker and Senator Kidani for all your help getting our keiki and their teachers the help that they need. Thank you for reading and listening to testimony- we as parents truly appreciate your time and support. I am still hoping for a resolution to the incident that occurred between my 6 year old autistic son and his principal last summer. Thank you for any help you can give us in that area.

My son is one of the few children who had ABA on their IEP. However, this ABA is not written into the grid of his IEP, it's a footnote in the special information section, and only gives my son's teacher access to an LBA on a very limited basis. My son does not have access to an LBA or an RBT in school, which would be most helpful to him. The LBA he was given through the school was contracted from an outside company, and while I understand they have the right to choose who they contract with, this was a company and an LBA that the DOE had never worked with before, so they basically chose someone at random. They could just as easily have chosen to contract with our LBA, who has been working with my son for a year, without a conflict of interest. Before school started in August, our private insurance approved 40 hours of ABA a week for my son- allowing an RBT or LBA to follow him at school all day long, at no cost to the DOE. They laughed at me when I offered this service to them. This would have been the same provider that works with my son at home, which means they would have been able to provide excellent wrap-around care for my son, being able to observe and help him in all situations he encounters. It would also mean more consistency for my son- working with the same people throughout the day. Consistency is extremely important for autistic children.

The LBA we currently have through the school has repeatedly turned in reports that are very lacking, which I have pointed out every time, and he does not communicate well with either myself or our private LBA, both of which we discussed at length during my son's IEP meetings. Everyone initially agreed that communication was absolutely key, but now we go months without responses to requests for information. While I feel extremely lucky to be one of the few families receiving "ABA through the DOE", I want to make sure you understand that it isn't really ABA. My son has been receiving ABA at home at a rate of 10 hours per week (every week day after school) for a year now so we know what that looks like. I talk with his RBTs every day about how he's been, and I speak with his LBA at least once a week about challenges we're facing that things I'd like them to work on with him. At school, my son isn't working one on one with anyone. The ABA on his IEP is restricted to consulting work and teacher training at a very bare minimum number of hours every month, and the training that the teacher is given isn't monitored well. She self-evaluates how well she implements what she was taught. The school's LBA has never once talked to me about my son, apart from our initial meeting. So yes, it's ABA on the surface, but it most certainly isn't accessible or effective, and it's not what my son needs. It was what the DOE agreed to in a settlement in order for them to avoid us continuing with our due process case.

Recently my son was able to attend a sleep-away camp hosted by the Autism Society of Hawaii and Positive Behavior Supports (an ABA provider). There were LBAs and RBTs present, and he was able to be completely successful, and he had a wonderful time. I know what is possible for my son when he works with properly trained individuals. I know the progress I've seen my son make at home by working one on one with RBTs and LBAs in our home. I realize the school has benefited from the progress my son has made at home, but he continues to struggle during unstructured time at school. This is where I believe he could benefit the most from ABA at school, as I have repeatedly told his team. We simply can't reconstruct large peer group scenarios in our home. These are things that HAVE TO be done at school in order for my son to learn proper social interaction.

All the research shows that the more help our kids get when they're young, the less help they'll need when they're older. That's what I want! I would LOVE for my son to not need any help when he's older! But that won't happen unless he's effectively taught now.

I am in support of HB2271 with amendments, as proposed by HABA.

HB-2271-HD-2

Submitted on: 4/2/2018 8:33:49 AM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Momi Robins-Makaila	Individual	Support	Yes

Comments:

Aloha Senators.

I am an autism consultant teacher in the Mililani District. I support many special education teachers in that district who are capable of designing plans for their students. They engage in this practice regularly. For the small percentage of the cases for children that may require a strict ABA program and or an LBA or BCBA, special education teachers and their multi-disciplinary teams can make that call at their IEP, and SFT meetings. A positive result of this long discussion is that more teachers are aware of the option to consult with BCBA's, however, BCBA's and ABA strict ABA therapy is not needed for all students with autism. Of the 114 cases in our district only 1% of students are actually receiving ABA services, yet all students are making good progress in their schools.

We support this legislation but would like to add that a fully licensed special education teacher with the support of their multi-disciplinary team should be able to design plans and engage in the practice of behavior analysis for their students within their school setting, and should be exempt from chapter 465D.

Please see the 275 plus letters of support including support from Dr. Nancy Aspera, CEO of AIM Health Hawaii, Lei Fountain, Director of The Arc in Hawaii, Chad Palmer Director of public relations of SECOH, University of Hawaii Professor Dr. Mary Jo Noonan who is also a BCBA, parents of students with disabilities, and numerous other reputable teachers, special education teachers, social workers, psychologists, business owners, homemakers, retirees, and many other community members.

Thank you for the opportunity to submit testimony. If you have questions for me, please feel free to contact me at 808-888-9434.

Date: April 1, 2018

To: Senator Michelle Kidani, Chair and Senator Kaiali'i Kahele, Vice Chair
Committee on Education

Senator Roslyn Baker, Chair and Senator Jill Tokuda, Vice Chair
Committee on Commerce, Consumer Affairs and Health

Hearing: Wednesday, April 4, 2018, 2:45 p.m., Conference Room 229

From: Richard J. Kravetz, Ph.D.
(808) 258-2250

Re: Testimony in Strong Support of HB2271_HD2, Relating to the Practice of
Behavior Analysis, with amendments proposed by the Hawaii Psychological Association
(HPA)

As a behaviorally-trained psychologist who has worked in Hawaii for over 30 years, I strongly support HB2271_HD2 which incorporates an amendment from the Hawaii Psychological Association that clarifies the scope of Psychologists' practice of Behavior Analysis. This bill as amended will help assure that in addition to Licensed Behavior Analysts (LBA's), competent, behaviorally-trained psychologists and other licensed professionals can continue to be utilized by the DOE to assess, design, implement and supervise paraprofessionals in providing behavioral interventions for students needing this service.

This should be done without the loss of quality feared by parents as a result of apparent pressure from the LBA's guild organization. As stated by Gina Green Ph.D., BCBA-D, and Chief Executive Officer of the Association of Professional Behavioral Analysts:

“(a) the behavior analyst licensure law clearly permits licensed psychologists and other appropriately credentialed professionals to practice ABA without being licensed as behavior analysts, provided that behavior analysis is in their profession's scope of practice and the scope of the individual psychologist's documented training and competence; and (b) licensed psychologists and other professionals already have the right to supervise trainees, paraprofessionals, and others in accordance with the licensure laws and regulations of their respective professions.”

Members of the LBA's local guild have promulgated the idea that ACT 199 means that only an LBA and the persons they supervise will be able to “legally” design and implement a behavioral intervention in the school setting. The amendments in the current bill will help clarify to families, state agencies, insurance companies and even some licensed or credentialed professionals that it is “not illegal” for them to continue to design, implement and supervise ABA services when that is and has been within their recognized scope of practice, competence and training. Being able to use ABA-trained mental health professionals, such as psychologists, licensed mental health counselors, social workers, and marriage family therapists will continue to give students, school staff and their families' access to professionals who have training in mental health. This is particularly important in properly addressing

the needs of youth with autism who frequently (30-40%) have co-occurring diagnoses of anxiety disorder, clinical depression, externalizing disorders, and are at high risk for post-traumatic stress disorder (PTSD) and suicide. Students in need of behavioral interventions who are not on the autism spectrum often have mental health issues as well, which can be diagnosed by psychologists and other mental health professionals. Identification of a mental health disorder/co-occurring disorder is critical in planning effective behavioral interventions and educational programs for students, with significant improvements being made sooner rather than later.

I also support HPA's proposed amendment for including direct support workers/paraprofessionals who obtain national certification from the Behavioral Intervention Certification Council (BICC) or the Qualified Applied Behavior Analysis Board (QABQ Board). Like the Behavior Analysis Certification Board (BCAB) that certifies BCBA's and RBT's, both certifying agencies are nationally accredited by a board that certifies certifying agencies. Unlike the BCAB, any qualified behaviorally-trained professional can supervise them, including licensed behavior analysts, licensed psychologists and other licensed clinicians with competence in ABA. This may help to solve logistical problems that occur in the DOE when the IEP team considers it appropriate for the direct support worker/paraprofessional to follow a student when an LBA is no longer required.

I also support HPA's proposed amendment to ensure that all qualified service providers are included in the plan Hawaii DOE creates to capture Medicaid reimbursement for services delivered to Medicaid-eligible students with an autism diagnosis in the department. This would allow for service providers with ABA-training to address the general or unique needs a student with ASD may have by an appropriately trained professional, e.g., speech-language pathologist, co-occurring anxiety, clinical depression by a psychologist or other mental health provider, occupational therapist, etc. It is also the model (SPA) approved by the Centers for Medicare & Medicaid Services on January 21, 2016 for the state of California.

Thank you for the opportunity to share my concerns.

HB-2271-HD-2

Submitted on: 4/3/2018 2:14:27 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerilyn Pinnow	Individual	Support	Yes

Comments:

I am in support of HB2271 with amendments, as proposed by HABA. I am grateful to you, --Senator Baker and Senator Kidani for your tireless efforts on this matter. Luke and I are forever grateful. Thank you for your support of our keiki and our teachers. Geri Pinnow and Luke Pinnow

HB-2271-HD-2

Submitted on: 4/1/2018 6:14:14 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Comments	Yes

Comments:

We prefer the language in SB 2925 SD1, especially Section 4 of that bill. Regarding the other issues we defer to HABA as they have more expertise in that area. We were very pleased to see the Senate address the deficiencies of the DOE in providing ABA services to students with autism in SB 2925.

In the past few years since ABA was mandated, DOE has been an incredible obstacle to its implementation in the schools. Despite a ruling from the 9th Circuit which specifies that ABA is the presumptively appropriate therapy to be provided to children with autism spectrum disorders in their IEPs under the IDEA, the DOE consistently refuses to implement it. Somehow, despite the evidence submitted by parents in these IEPs, the DOE often seems to find some pretextual justification to support their position that it is "not necessary". Despite the fact that state law requires that functional behavior assessments be performed by licensed behavior analysts, the DOE often refuses to do so. Most recently, despite the mandate under Medicaid law that medically necessary ABA services be provided in the schools, the DOE refuses to allow providers to come onto campuses to do so. These providers are paid from Medicaid funds and so allowing them to come into the schools would have zero impact on the DOE budget. It would not cost them one penny. Yet, they refuse to allow it under the guise of "non- DOE employees are not allowed on campus", despite the fact the protocols are currently in place for providers such as skills trainers to come to the schools to work with children. In terms of the overall state budget, these "medically necessary services" are funded by Medicaid which means that half the costs are paid by the federal government. We would be pleased to provide the Committee with more information on this issue.

Instead of complying with the current law, the DOE sponsored this original version of the bill, seeking to further restrict the conditions under which a child could receive applied behavior analysis services and seeking to further erode the qualifications required of those who would provide the service. We were pleased to see that the various Committees who heard the bill did not incorporate many of those provisions. We remain concerned that so long as the bill is pending before the legislature, the DOE will

attempt to insert the original provisions. We urge the Senate Committees to reject any such attempt and send a message to the DOE that prolonged non-compliance with the law will not be accepted.

We strongly support the directive in Section 4 of SB 2925 that the DOE implement a plan for the delivery of medicaid billable ABA services to all students diagnosed with autism spectrum disorder. It is not clear exactly what this plan would like and so we would like at a minimum that there be specific language requiring the DOE to allow ABA providers to come onto the school campuses to provide medically necessary ABA services under the Medicaid EPSDT program. We would be happy to work with the Committees to develop some appropriate language.

HB-2271-HD-2

Submitted on: 4/3/2018 10:19:09 AM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Roger Larson	Individual	Support	No

Comments:

I am in support of HB2271 with amendments, as proposed by HABA. I am grateful to you, --Senator Baker and Senator Kidani for your tireless efforts on this matter. Thank you for your support of our keiki and our teachers.

I have been stationed in Hawaii for over two years and have had to constantly fight with the representatives in the DOE to get my child the care he so desperately needed. Some of his teachers truly do care and want to help but are afraid of doing so because of the possible repercussions they may face from the district and state DOE leadership. I thank you for supporting this bill with amendments... it is a great step in a positive direction in supporting both our teachers and our keiki!

HB-2271-HD-2

Submitted on: 4/3/2018 10:41:33 AM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl	Individual	Support	No

Comments:

"I am in support of HB2271 with amendments, as proposed by HABA. I am grateful to you, --Senator Baker and Senator Kidani for your tireless efforts on this matter. Thank you for your support of our keiki and our teachers."

As a retired educator with my experiences in elementary education inclusion here in the DOE and elsewhere, I would like to reiterate the importance of any and all services that will assist our students in and out of the classroom. Even those of us who are dedicated to providing for our students in the public school classroom can not do everything and in some instances are not licensed or trained to do so. We try to be everything to all students but this is not possible nor feasible or pono in the case of certain students. It is important that an ABA be available during the day, one who is licensed to practice behavior analysis as well. In addition to the ways that this person will assist the students and their 'ohana, they will also be of great professional support and learning for the educator as well.

Please pass this bill and put in the check points to make sure that the DOE follows through.

HB-2271-HD-2

Submitted on: 4/3/2018 10:23:18 AM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cheryl Ebisui	Individual	Support	No

Comments:

HB-2271-HD-2

Submitted on: 4/2/2018 9:05:12 AM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Amanda Lipinski	Individual	Support	No

Comments:

As a licensed behavior analyst (LBA), I stand in support of our keiki accessing applied behavior analysis (ABA) in school. Students in need deserve access to an ABA program designed, developed and overseen by an LBA. I support with amendmenets HB2271.

HB-2271-HD-2

Submitted on: 4/3/2018 10:18:09 AM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kahaleno Kamalani	Individual	Support	No

Comments:

I support HB2271 with the amendments proposed by the Hawaii Association for Behavior Analysis. Mahalo Senator Baker and Senator Kidani for the time and effort you have put into this matter to ensure our keiki and teachers get the support they need and deserve.

HB-2271-HD-2

Submitted on: 4/3/2018 9:51:21 AM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lara Bollinger	Individual	Support	No

Comments:

I am in support of HB2271 with amendments, as proposed by HABA.

I am grateful to you, --Senator Baker and Senator Kidani for your tireless efforts on this matter. Mahalo nui loa for your support of our keiki and our teachers.

Lara Bollinger

Haleiwa, HI



4/3/2018

COMMITTEE ON EDUCATION

Senator Michelle N. Kidani, Chair
Senator Kaiali'i Kahele, Vice Chair

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair

Conference Room 229
Hawaii State Capitol
415 South Beretania Street

Re: SUPPORT for HB 2271 HD2– Relating to the Practice of Behavior Analysis

Honorable Senator Kidani, Senator Baker, and Committee Members,

My name is Anne Lau. I have been practicing behavior analysis in Hawai'i for the last 14 years. I would like to thank you for the opportunity to testify in SUPPORT of HB 2271 HD2.

While I support this bill over previous drafts, I would also like to ensure that the exemptions section of our licensure law does not become the place for other professions to widen the scope of their own practice. If psychologists would like to supervise unlicensed practitioners to train and supervise others in psychological services, including behavior analysis, I believe that is best outlined in THEIR licensure law- not ours.

Thank you again for the opportunity to testify on this important matter,

Anne Lau, M.Ed., BCBA, LBA

HB-2271-HD-2

Submitted on: 4/3/2018 5:50:11 AM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maureen mcomas	Individual	Support	No

Comments:

HB2271: Relating to the Practice of Behavior Analysis

Senator Kidani, Senator Baker and Committee Members

I support HB2271 WITH AMENDMENTS that align with the language that Senators Kidani and Baker drafted for SB2925, and is supported by HABA.

Thank you for considering my testimony.

Maureen McComas, Concerned Parent

HB-2271-HD-2

Submitted on: 4/2/2018 7:24:30 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ashley	Individual	Support	No

Comments:

This is my first year working as a licensed Special Education Teacher in the Department of Education and I'm currently seeking my licensure as a Board Certified Behavior Analyst. Before this I was a 1:1 paraprofessional and an Educational Assistant both here on Oahu and on the Big Island for 10 years. As a 1:1 I've experienced what it's like to work with high needs students who needs the direct supervision of an adult. I went to numerous trainings, looked online for strategies that could give me insight, talked to DOE autism consultants, and supervisors. None of them could give me feedback or show me by example on how to help my students. I have experienced what good training looks like and also had my fair share of unqualified individuals instruct me to implement behavioral strategies that they personally have never tried before and were not research-based. I've seen first hand the after effects of unqualified special education teachers who undo all the progress students make in just one interaction. Over the years I found Applied Behavior Analyst (ABA) strategies and tried them with my students. Through trial and error I saw improvements. I worked with various different disabilities and found that ABA strategies make a big difference when consistent and done the right way. After working 8 hours in my classroom, I work in the evenings and weekends as a Registered Behavior Technician (RBT). This summer I worked with a child who received 6 hours of ABA therapy in the home setting and in as little as 3 months made a lot of gains such as now being able to sit to finish a task, respond to his name, and verbally saying what he wants instead of being aggressive! If our students could receive the same support within the school day imagine the outcome! By allowing LBA (Licensed Behavior Analyst) in the school would only add strength to our educational system and show that we truly do support our teachers who have the biggest jobs "educating our keikis". I'm in support of ABA in DOE with amendments.

HB-2271-HD-2

Submitted on: 4/2/2018 11:24:37 AM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeanette Perez	Individual	Support	No

Comments:

COMMITTEE ON FINANCE

Rep. Sylvia Luke,

Chair Rep. Ty J.K. Cullen, Vice Chair

Monday, April 2, 2018

HB 2271 – SUPPORT with AMENDMENTS from HABA Hawaii Association for Behavior Analyst

I support H.B. NO. 2271 **WITH AMENDMENTS** from **HABA (Hawaii Association for Behavior Analyst)**. I am a licensed special education teacher here in Hawaii who has since left the classroom due to poor management by administrators, harassment on a personal level by an administrator and no support for special education. I worked in the fully-self-contained classroom for 5 years. Three of those years were with students with multiple disabilities from PreK-5th grade and 2 were in an “autism” class created by the school.

As a DOE teacher, I struggled with how to support my students with behavior management. Some of my student engaged in self-injurious behaviors and aggression. It was severe enough that one needed to be restrained. I had to beg the district office for support even when I provided them with data on the level of individualized support my student required. I was told there was no money or that they could find people. I asked that my student get a Behavior Support plan in place. The SBBH asked me a series of questions and NEVER did DIRECT OBSERVATION. She wrote a worthless document that did not address the function of the behavior and it did not offer how to implement a replacement behavior. The SBBH refused to work with all my students and said that she did not work with severe (non-verbal) students. Only 1 out of 5 students were able to get SBBH services. He would see her for an hour a week where he was allowed to make sharp weapons which he then used to poke his fellow classmates with. When I addressed these issues she then told me she could no longer work with him. She then had the district psychologist do the student’s BSP. Again, I was interviewed on

what I thought the functions of the behavior were. NO DIRECT OBSERVATION WAS DONE.

I am currently a BCBA candidate and am working as a Registered Behavior Technician (RBT). I get supervised by a licensed BCBA. I currently work with a client who attends that school I have been writing about. The SBBH is a trigger for my client. There is no evidence of this or of any behavior change because the DOE teacher is not currently taking data.

Special education teachers are not qualified to conduct FBA's and write BSP's. I challenge you to ask the DOE where the data is. Where is the data supporting their claim that students in special education with severe behavioral problems are making meaningful progress towards the general education curriculum?

Would we allow hospital employees from janitors and cafeteria staff implement medical interventions? Would we let any doctor perform brain surgery? Would we allow anyone with a driver's license drive heavy equipment or semi-trucks? NO! There are specialized educational programs and licenses that one needs to obtain to perform these jobs.

We need to hold our Department of Education employees to the same standard as we do for those in other positions. If the DOE does not have the capacity to internally bring this service to all students who need it, they need to contract out from a private provider. Denying students medically necessary services in the DOE setting is in direct violation of FAPE and IDEA.

Mahalo for your time,

Jeanette Perez M.A.Ed, RBT-17-40477

Lecturer at The University of Hawaii at Hilo

Department of Kinesiology and Exercise Sciences

200 W. Kāwili St.

Hilo, HI 96720

HB-2271-HD-2

Submitted on: 4/1/2018 2:27:03 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Samantha Davidson	Individual	Support	No

Comments:

Aloha,

I work as a service coordinator for children with behavioral health conditions, I work predominantly with children that have diagnoses of Autism, ADHD, and other neuro developmental disorders. This means I work with families with children in the DOE all over Oahu. One common theme that I see in these schools by sitting in on IEP, 504, and other meetings is a lack of motivation to think outside of the box to provide services that are truly individualized and beneficial for the children. I find that most of the time the DOE is resistant to the input of parents, adversarial to anyone there to advocate for the needs of the children, and resistant to input from parties other than themselves. This results in families that feel powerless, children that are, at best, not learning to their full ability, and at worst, terrified of the adults in their school.

The staff in place at these schools are not trained in behavior modification, have inadequate support to address the behaviors or even evaluate the root cause of the behaviors. In 2018 alone I have had five families report to me that their children have been inappropriately restrained and secluded by DOE staff. One child was put in a high chair to sleep because he wouldn't comply with teachers at nap time. Another was physically restrained and locked in a portable unit while screaming for help as two teachers held his arms and another laid across his legs. A different mother told me that she is worried about losing her job because the school calls her daily and won't let her son attend A plus as a punishment for a well known behavior. I sat in an IEP meeting where the Vice Principal refused to include that a child should learn to button his own pants because "he can just wear pants without buttons. In none of these situations was a functional behavioral assessment complete to determine what was causing the behavior, no one ever batted an eye that these children had been unlawfully restrained or secluded from others.

This is why it is vital that trained professionals are allowed in the DOE to help provide services for our most vulnerable children. I believe that the teachers and administration are acting to the best of their training. But their training and education is not adequate for the services they are being asked to provide. Why would the DOE, State of Hawaii, or anyone else want sub par services for children that are most at risk of abuse, neglect, and diagnosis related disease and complications? I understand the financial implications for a move such of this are huge. But if the state can net 11 million dollars

for trash collection by charging each family \$5, what other small change could be made that could have a monumental impact on these families?

Before you vote on this bill please try to open your hearts to understand the struggles of these families. Understand that these issues are state wide, not just isolated events. And remember that our state has comparatively limited resources for children with extra needs and that the DOE is responsible by federal and state mandates to address these needs. I see the fear, frustration, anger, and complete confusion over why the people who are charged with their child's well being are the ones most resistant to helping on parents faces on a weekly basis. As a mother myself I feel for them deeply and want with all of my heart to help make changes that will positively impact these amazing children.

Mahalo,

Sam Davidson

HB-2271-HD-2

Submitted on: 4/3/2018 1:11:34 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kristen Koba-Burd	Testifying for Aloha Behavioral Associates	Support	No

Comments:

Mahalo Senators Kidani and Baker for your ongoing efforts to support keiki, teachers, and the practice of behavior analysis. I support the proposed amendments submitted by the Hawai'i Association for Behavior Analysis (HABA).

HB-2271-HD-2

Submitted on: 4/3/2018 12:19:48 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeanette White	Individual	Support	No

Comments:

4/4/2018 HB2271

Good afternoon,

Chairs Kidani and Baker, Vice Chairs Kahele and Tokuda and Members of the Senate Committees on Education and Commerce, Consumer Protection, and Health.

My name is Jeanette White. I have submitted testimony many times on behalf of my son. I am writing again because I need to follow through and continue to do what I can so my son will have the best possible outcome at Mililani Mauka Elementary.

You are all familiar with what many families are asking for their children. We need help. We need ABA for our children in the DOE because the DOE is denying our pleas to do what is right and required by law.

Why many in the DOE administration have taken such an adversarial stance is beyond my understanding. If they were in our shoes they would sing a different tune. They would want the supports needed and recommended by their child's doctor.

We should be working together in a collaborative effort for the best outcomes instead of expending wasted energy and funding on disputes and lawsuits. It defies logic in my book.

I SUPPORT HB2271 with amendments, as proposed by HABA. Thank you Senators for all the time you have spent to study and understand what we need for our children and their teachers.

Sincerely,

Jeanette White

Jeanette1@yahoo.com

HB-2271-HD-2

Submitted on: 4/3/2018 12:24:06 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Naomi Tachera	Individual	Support	No

Comments:

Aloha. My name is Naomi Tachera. Native Hawaiian, Hawaii island resident, mother of two sons with autism, graduate student in Exceptional Student Education, pursuing Board Certification, Registered Behavior Technician working with other families for insurance funded Applied Behavior Analysis, volunteer on the Board of Autism Society of Hawai'i, raised over \$14,000 for autism families on Hawai'i Island, volunteer for Hawai'i Association for Behavioral Analysis. All of that is nothing in comparison to advocating for my sons right to ABA by BCBA/RBT's in the Department of Education. I have faced adversity, but the level of bullying and intimidation the DOE brings is absolutely terrifying. As you have heard throughout this legislative session what families are testifying to and what the DOE is claiming are very different. The difference is we want what's right for our kids, they want what's right for themselves, they (DOE) are too far removed from the consequences of the right services. It's a passionate battle, but in the end the only people who suffer are the children who eventually become adults who may not be able to live up to their greatest potential (kÅ«lia i ka nu'u) because the DOE did not provide ABA. I urge you, my family pleads for your support with amendments from HABA.

Me ka ha'aha'a,

Naomi Tachera

HB-2271-HD-2

Submitted on: 4/3/2018 12:43:52 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
carrie williams	Individual	Support	No

Comments:

I have a child entering 6th grade at Wheeler Middle School in August. I am in support of HB2271 with amendments, as proposed by HABA. I am grateful to Senator Baker and Senator Kidani for your tireless efforts on this matter. Thank you for their support of our keiki and our teachers.

HB-2271-HD-2

Submitted on: 4/3/2018 1:51:50 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ashley Hogan	Testifying for HABA	Support	No

Comments:

I am in support of HB2271 with admendments , as proposed by HABA. I am grateful to you Senator Baker and Senator Kidani for your tireless efforts on this matter. Thank you for your suppor of our keiki and our teachers.

HB-2271-HD-2

Submitted on: 4/3/2018 1:48:26 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
stacey valentine-hewett	Individual	Support	No

Comments:

I am a parent of a special need student who has ADHD, Autism and mental health issues who requires and RBT to come in home to work with him as well as an ABA specialist that also comes into the home to work with my child which requires seven days a week of services. He currently sees a Psychiatry. It is tremendous help for my son when his ABA is there for him. I have dealt with the department of education for over 12 years of dealing with this child who I adopted lovely from the state of Hawaii I provide medical coverage for this child I worked with special needs children for over 12 years my child requires more work than ever that I can provide I am a parent who is suffering through cancer and I would hate for this child to have it very hard if he's not prepared for the world The department of education has turned me down numerous times child comes home with homework and he's receiving special ed services but there is no communication in the school in assisting this child with his education RBT ABA analyst has worked has even attended meetings has brought up opinions and concerns and the DOE still continues to push us a side. RBT and ABA analyst has worked very hard with my son however he needs the help in the school which the ABA or RBT can support him and help turn his education experience more positive then ever. We tried for DDD services where we were denied what more does it take to get help I mean help for these children do we need to have more issues like Florida children with mental health with autism with ADHD problem every where. We need to think about the children with special needs to get the services and the support that need to help turn there life to a better experience. That's why I support ABA's to go into the is school to help these kids and I hope that you are listening to me because I am a caring parent that has been fighting for 12 years for this child to get help and now that I'm fighting with cancer I need assistance to help this child before he becomes another number I love him dearly I take a lot of verbal abuse from him and that is why I think the ABA and RBT coming in and assisting my child will play a huge benefit in my child. I support SP bill 2925 thank you very much. For the benefit of our special needs children.

HB-2271-HD-2

Submitted on: 4/3/2018 1:19:43 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Julie Yurie Takishima-Lacasa	Individual	Comments	No

Comments:

COMMITTEE ON EDUCATION

Senator Michelle N. Kidani, Chair

Senator Kaiali'i Kahele, Vice Chair

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair

Senator Jill N. Tokuda, Vice Chair

Wednesday, April 4, 2018, 2:45pm

Conference Room 229, State Capitol, 415 South Beretania Street

Comments regarding HB2271_HD2

RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS

I support the amendments recommended by Hawai'i Psychological Association (HPA) for House Bill 2271 HD2. As a Psychologist, I continue to be concerned that the language in Act 199 and subsequent related legislation, applying to treatment services for autism and the licensure of Board Certified Behavior Analysts (BCBAs), unintentionally restricted well-qualified professionals from providing services to children with autism and other behavioral challenges and provided an inappropriate monopoly for one certifying agency, the Behavior Analyst Certification Board.

Therefore, I support HPA's recommended amendment incorporated into Section 2(a)(1) of HB 2271_HD2 to clarify Psychologists' scope of practice in the area of Behavior Analysis. Further, I support the additional amendments proposed in HPA's submitted testimony that would prevent an unnecessary narrowing of the behavioral health workforce and a monopoly by one certifying agency by allowing more variety in the acceptable training and certification requirements for paraprofessional workers and their supervisors. I also support HPA's amendment that ensures that the Medicaid-eligible students with Autism Spectrum Disorder have access to all qualified, behaviorally-trained professionals and their supervisees.

A large percentage of children with autism and other disorders have mental health related problems. Their teachers and families would benefit from having access to professionals who are trained to design and implement behavioral interventions and have knowledge of emotional and behavioral disorders, including anxiety, clinical depression, and externalizing disorders.

Thank you for the opportunity to provide testimony on this important topic

Sincerely,

Julie Takishima-Lacasa, PhD

Chair, HPA Legislative Action Committee

HB-2271-HD-2

Submitted on: 4/3/2018 2:44:52 PM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for the Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments:

HB-2271-HD-2

Submitted on: 4/2/2018 7:28:17 AM

Testimony for EDU on 4/4/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jari S.K. Sugano	Individual	Comments	No

Comments:

Legislatures are the only ones who can hold the DOE accountable. Comparable to support services such as occupational, speech and physical therapies provided by the DOE, behavioral supports are desperately needed due to an increase in behavioral needs in the school setting. If behavior supports will be utilized as a form of therapy or treatment, it must be properly designed and implemented by trained staff.

Jari Sugano, parent to two young children with autism, both are no longer in the DOE system.