



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

Date: 02/03/2020
Time: 02:45 PM
Location: 016
Committee: Senate Education
Senate Human Services

Department: Education

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

Title of Bill: SB 2085 RELATING TO BEHAVIOR ANALYSIS.

Purpose of Bill: Appropriates funds to the Department of Education to provide public school students with behavior analysis services. Requires the department to seek any necessary approvals from the Centers for Medicare and Medicaid Services to amend the state Medicaid plan to include applied behavior analysis services for eligible students who have been diagnosed with an autism spectrum disorder.

Department's Position:

The Department of Education (Department) supports the intent of SB 2085, which requests a general fund appropriation for fiscal year 2020-2021 to provide public school students with behavior analysis services, and provides the following comments.

As currently written, this bill proposes that licensed clinical social workers, licensed mental health counselors, and advanced practice registered nurses who specialize in psychiatry will be able to provide behavior analysis services throughout the Department. While services provided by these individuals may address behavioral concerns, they are typically not behavior analytic in nature and are rendered concurrently with or in lieu of behavior analysis services. The topic of behavior analysis is generally not included in the education or training of these individuals.

Pursuant to Chapter 465D-7, Hawaii Revised Statutes, licensed clinical social workers and licensed mental health counselors must fall under the category of Master's level practitioners and postdoctoral fellows. Additionally, these individuals must be under the supervision of a licensed clinical psychologist with competency and knowledge in behavior analysis in order to provide behavior analytic services.

As such, the Department respectfully offers the following amendments on page 3, lines 12-15:

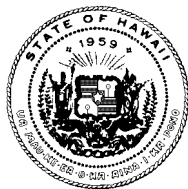
(9) Licensed clinical social workers under the supervision of one or more licensed

psychologists with competency and knowledge in behavior analysis; and
(10) Licensed mental health counselors under the supervision of one or more licensed
psychologists with competency and knowledge in behavior analysis;
~~(11) Advanced practice registered nurses who specialize in psychiatry;~~

Thank you for the opportunity to provide testimony on this measure.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. 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.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 2, 2020

TO: The Honorable Senator Russell E. Ruderman, Chair
Senate Committee on Human Services

The Honorable Senator Michelle N. Kidani, Chair
Senate Committee on Education

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2085 – RELATING TO BEHAVIOR ANALYSES**

Hearing: February 3, 2020, 2:45 p.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) offers information and comments.

PURPOSE: The purpose of this bill is to fund behavior analysis services for public school students.

DHS appreciates the intent to expand applied behavior analysis services for public school students by appropriating additional resources for these services and offers comments relative to Section 3 of the bill. Section 3 requires the Department of Education (DOE) to seek any necessary approvals from the Centers for Medicare and Medicaid Services (CMS) to amend the Medicaid State Plan to provide reimbursements for applied behavior analysis services to Medicaid-eligible students diagnosed with an autism spectrum disorder. Importantly, as the authorized single-state Medicaid agency, the DHS Med-QUEST Division (MQD) is the only entity that has the authority to seek state plan amendments.

DHS notes that currently, although there is no specific reference to Applied Behavior Analyses in the Medicaid State Plan, DOE would be able to bill for those services if all the

necessary criteria were met. However, DHS-MQD in collaboration with DOE could submit such a state plan amendment if the legislature directed it. DHS-MQD and DOE are working and will continue to work together to facilitate billing for eligible services.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR



JOHN S.S. KIM
CHAIRPERSON

STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
(‘AHA KULA HO‘ĀMANA)

<http://CharterCommission.Hawaii.Gov>
1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: (808) 586-3775 Fax: (808) 586-3776

FOR: SB 2085 Relating to Behavior Analysis
DATE: February 3, 2020
TIME: 2:45 P.M.
COMMITTEE: Committee on Education and Committee on Human Services
ROOM: Conference Room 016
FROM: Sione Thompson, Executive Director
State Public Charter School Commission

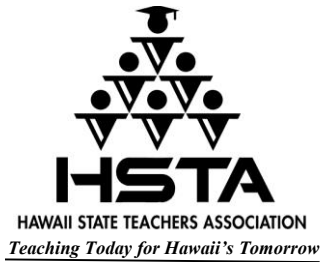
Chair Kidani, Chair Ruderman, and members of the Committees:

The State Public Charter School Commission (“Commission”) appreciates the opportunity to submit this testimony in **SUPPORT of SB 2085 with amendments**. This measure provides funds to the Department of Education (DOE) to provide public school students with behavior analysis services.

The Commission requests that this **measure be amended to clarify that these services are available to public charter school students** as well as students in department schools. The Commission would further support any additional funding that would be needed to ensure that these services are provided to both charter school students and department students.

The Commission looks forward to collaborating with the committee, the DOE, other interested stakeholders, and public charter schools in moving this legislation forward.

Thank you for the opportunity to provide this testimony.



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

Corey Rosenlee
President
Osa Tui Jr.
Vice President
Logan Okita
Secretary-Treasurer
Wilbert Holck
Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEE ON HUMAN SERVICES
AND THE COMMITTEE ON EDUCATION

RE: SB 2085 - RELATING TO BEHAVIOR ANALYSIS

MONDAY, FEBRUARY 3, 2020

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Ruderman, Chair Kidani, and Members of the Committees:

The Hawaii State Teachers Association **supports SB 2085**, with suggested amendments to coorelate with current law, relating to behavior analysis. This bill will appropriate funds to the Department of Education for behavior analysis services and we want to ensure that is clarifies as it should that these services should only be performed by licensed behavior analysts and licensed psychologists' right to practice applied behavior analysis (ABA), who have ABA in their "education, training, and competence" for public school students, or for the services of Registered Behavior Technicians (RBTs), who can be Education Assistants (EAs) if they have gone through the required training and passed the test to become RBTs.

Thus our amendment is to align this bill with the language that already exists in HRS Chapter 465D. The way forward is to continue to uphold the rigor, as required HMSA, Kaiser, etc. and Medicaid plans. Last year, HMSA testified that they were reimbursing Licensed Behavior Analysts (LBA) and Registered Behavior Technicians (RBT) under the supervision of an LBA. The law also allows for psychologists to seek reimbursement when ABA is in their "education, training, and competence". This bill, as written would further expand service providers to include social workers, mental health counselors, and psychiatric nurses; none of which are qualified to design and oversee ABA services.

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.

Act 199, Session Laws of Hawaii 2015, 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. Act 205 further clarified the licensing qualifications for those who conduct Functional Behavior Assessments (FBAs), and design and monitor Applied Behavior Analysis (ABA) Plans in our state.

This bill will provide the HIDOE with funding to hire licensed behavior analysts, or psychologists with the licensed psychologists' right to practice applied behavior analysis (ABA), who have ABA in their "education, training, and competence, either as employees of the department or by contracting with the many private providers, until the HIDOE has built their capacity for these professionals within the department.

According to *Report on Behavior Analyst and Certification Requirements Implementation*, released by the DOE on January 5th, 2018, the department has been supporting efforts for 39 DOE personnel to become BCBAs in an approved program, and assisting another 145 departmental personnel in becoming Registered Behavior Technicians (RBTs) by 2019. HSTA has not received an update as to the progress of these DOE personnel and if they have become BCBAs or RBTs, thus the HIDOE will need more funds to ensure this not only the direction they are heading, but to hire outside experts as necessary until they have built capacity within the HIDOE. Our teachers sometimes need the support of other professionals with other areas of expertise; this area is one of them.

To improve the learning experiences of our most vulnerable keiki, the Hawaii State Teachers Association asks your committee to **support** this bill.



Hawai'i Psychological Association

For a Healthy Hawai'i

P.O. Box 833
Honolulu, HI 96808

www.hawaiipsychology.org

Phone: (808) 521-8995

COMMITTEE ON HUMAN SERVICES

Senator Russell E. Ruderman, Chair

Senator Karl Rhoads, Vice Chair

COMMITTEE ON EDUCATION

Senator Michelle N. Kidani, Chair

Senator Donna Mercado, Vice Chair

DATE: Monday, February 3, 2020

TIME: 2:45pm

PLACE: Conference Room 016

Testimony in Support of SB2085 RELATING TO BEHAVIOR ANALYSIS

The Hawai'i Psychological Association (HPA) supports SB2085. This bill would appropriate funds to the Department of Education to provide public school students with behavior analysis services provided by a wide range of qualified professionals including licensed psychologists and their supervisees and require the department to seek any necessary approvals from the Centers for Medicare and Medicaid services to amend the state Medicaid plan to include applied behavior analysis services for eligible students who have been diagnosed with an autism spectrum disorder.

Thank you for the opportunity to provide testimony in support of this important bill.

Sincerely,

Julie Takishima-Lacasa, Ph.D., President
Chair, Legislative Action Committee
Hawai'i Psychological Association



COMMITTEE ON EDUCATION
Senator Michelle N. Kidani, Chair
Senator Donna Mercado Kim, Vice Chair

COMMITTEE ON HUMAN SERVICES
Senator Russell E. Ruderman, Chair
Senator Karl Rhoads, Vice Chair

Conference Room 016, State Capitol
415 South Beretania Street
February 3, 2020, 2:45 pm

COMMENTS ON SB 2085

Honorable Chairs, Vice Chairs, and members of the Joint Committees:

On behalf of the Hawai'i Association for Behavior Analysis (HABA), we would like to thank you for your continued support for our keiki and our teachers. We appreciate the opportunity to testify on this measure. With regard to SB2085 HABA would like to offer the following **comments** for your consideration.

We support funding for behavior analysis services, but in order to maintain consumer protections, we respectfully ask the committees to amend this bill to mirror the current behavior analyst licensure law.

We do not support the language in this bill allowing individuals who are not qualified to perform behavior analysis services, because we strongly believe that if these services are provided that students should receive quality services. We are concerned that other professionals (and graduate and post-graduate students) are being put in positions to practice outside of their scope of competence and may perform tasks out of fear of being relieved of their duties. We recognize there should be some exceptions to our licensure law, which are recognized in the current exemptions in the Behavior Analyst

Licensure Law in HRS Chapter 465D. We therefore request that this bill mirror only allow those allowed to practice according to Chapter 465D.

Currently, the DOE is not recouping any of the funding it expends on behavior analysis through federal Medicaid reimbursement. Since this bill is seeking to require the DOE to seek federal Medicaid reimbursement for applied behavior analysis, the only way for this to occur is if the behavior analyst licensure law is precisely followed.

For the above reasons, we respectfully request that Section 2 of this bill be amended as follows:

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2020-2021 for the department of education to provide public school students with behavior analysis services performed by **individuals permitted to perform such services pursuant to Hawaii Revised Statutes Chapter 465D.** ~~the following individuals:~~

- ~~(1) Licensed behavior analysts;~~
- ~~(2) Board certified assistant behavior analysts under the supervision of one or more licensed behavior analysts;~~
- ~~(3) Students pursuing a graduate level certificate in behavior analysis under the supervision of one or more licensed behavior analysts;~~
- ~~(4) Licensed psychologists;~~
- ~~(5) Master's level practitioners under the supervision of one or more licensed psychologists;~~
- ~~(6) Postdoctoral fellows under the supervision of one or more licensed psychologists;~~
- ~~(7) Registered behavior technicians;~~
- ~~(8) Paraprofessionals under the supervision of:~~
 - ~~— (A) One or more licensed psychologists;~~
 - ~~— (B) A licensed psychologist's master's level or postdoctoral fellow supervisee; or~~
 - ~~— (C) One or more licensed behavior analysts on or before January 1, 2020;~~
- ~~(9) Licensed clinical social workers;~~

~~(10) Licensed mental health counselors; and~~

~~(11) Advanced practice registered nurses who specialize in psychiatry;~~

~~provided that the department of education may contract with any type of service provider listed in this Act for the purposes of this Act.~~

We appreciate the opportunity to testify on this measure.

Mahalo,

Kyle Machos, M.A., BCBA, LBA
President, Hawai'i Association for Behavior Analysis
On behalf of HABA Board, Legislation Committee, and Members

SB-2085

Submitted on: 1/31/2020 4:58:17 PM

Testimony for EDU on 2/3/2020 2:45:00 PM

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

Comments:

We have mixed feelings about this bill. On the one hand, few entities have advocated as strongly as we have for the provision of ABA in the schools. In fact, we are currently in litigation with the DOE because they don't provide it sufficiently and they won't even allow outside providers to come in and serve those children, even though it would not cost them any money. So, any additional appropriation that could be given to the DOE for this purpose is clearly a good thing.

That said, the current law is pretty clear in terms of who is qualified to provide ABA. Unfortunately, many of the professions listed in this bill are not. So, for the bill to allow the DOE to contract with unqualified providers is not only a violation of current law, but also a huge step backwards in terms of what is the best practice. We would prefer to see the money appropriated to those who are actually capable of and qualified to provide the requested services.



SENATE BILL 2085, RELATING TO BEHAVIOR ANALYSIS

FEBRUARY 3, 2020 · SENATE EDUCATION
COMMITTEE AND SENATE HUMAN SERVICES
COMMITTEE · CHAIRS SEN. MICHELLE N. KIDANI
AND SEN. RUSSELL E. RUDERMAN

POSITION: Support.

RATIONALE: The Democratic Party of Hawai'i Education Caucus supports SB 2085, relating to behavior analysis, which appropriates funds to the Department of Education to provide public school students with behavior analysis services and requires the department to seek any necessary approvals from the Centers for Medicare and Medicaid Services to amend the state Medicaid plan to include applied behavior analysis services for eligible students who have been diagnosed with an autism spectrum disorder.

Hawai'i's special needs students deserve our help. For the 2017-2018 school year, the statewide achievement gap between high needs students—which includes SPED children, English language learners, and economically disadvantaged students—and non-high needs students was 32 percent for language arts and 28 percent for math. While State Superintendent Christina Kishimoto and the Hawai'i Board of Education have prioritized closing the achievement gap, doing so requires providing additional resources, including for behavior analysis services.

Behavior analysis involves 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.

Act 199, Session Laws of Hawaii 2015, 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.

Yet, the DOE is experiencing a shortage of licensed behavior analysts. To rectify this problem, the department originally sought to allow teachers to perform behavior analysis and prescribe services. Teachers are not trained or qualified to make behavioral diagnoses, however, and being compelled to do so would reduce time to prepare for and perform the professional tasks that comprise the practice of teaching, like innovative lesson planning, professional development and collaboration, and delivery of individualized and personalized learning.

According to *Report on Behavior Analyst and Certification Requirements Implementation*, released by the DOE in 2018, the department was, at that time, supporting efforts for 39 DOE personnel to become BCBAs in an approved program and assisting another 145 departmental personnel in becoming Registered Behavior Technicians by 2019. Our state should continue funding the training of BCBAs and RBTs, as well as the provision of their services, to ensure that all students requiring behavioral support receive the care they need to fulfill their individualized education program requirements and achieve their fullest potential.

COMMITTEE ON HUMAN SERVICES
Senator Russell E. Ruderman, Chair
Senator Karl Rhoads, Vice Chair

COMMITTEE ON EDUCATION
Senator Michelle N. Kidani, Chair
Senator Donna Mercado Kim, Vice Chair

Monday, February 3, 2020; 2:45PM

Conference Room 016
State Capitol, 415 South Beretania Street

SB 2085: COMMENTS

Aloha Chairs, Vice Chairs, and Members of the Committee:

I am writing today with comments on SB2085. While I support the funding and further development of applied behavior analysis (ABA) services in our state, I cannot support the additional carve-outs proposed in the current bill. The preamble language references our licensure statute, Chapter 465D, but the language in this bill significantly deviates from it.

We appreciate your intention to help develop a workforce, but do not feel this is the way. The way forward is to continue to uphold the rigor, as required by our commercial (HMSA, Kaiser, etc.) and federal (Medicaid, TRICARE) plans. Last year, HMSA testified that they were reimbursing Licensed Behavior Analysts (LBA) and Registered Behavior Technicians (RBT) under the supervision of an LBA. The law also allows for psychologists to seek reimbursement when ABA is in their “education, training, and competence”. This bill, as written would further expand service providers to include social workers, mental health counselors, and psychiatric nurses; none of which are qualified to design and oversee ABA services. Since 1/1/2016 (and as of 2/1/2020), there have been 369 individuals licensed as behavior analysts in Hawai‘i (<https://pvl.ehawaii.gov/pvlsearch/license/BA-369>). There are currently 1,000 RBTs who live throughout the state (<https://www.bacb.com/services/o.php?page=101135&s=1>).

At a legislative briefing I attended on 1/17/2020, the Hawai‘i Department of Education testified that out of 188,000 students in our state, 1700 have met the HIDOE’s criteria for autism. Of those 1700, Assistant Superintendent Heidi Armstrong testified that 177 currently receive ABA services. When asked how many were currently meeting the criteria for Medicaid reimbursement, she was unable to produce a number. It was estimated by AS Armstrong that about 50% would be eligible; so if 177 students are receiving the service and about 50% are eligible for reimbursement, that means the state is only (potentially) recuperating federal dollars for ABA services for an estimated 88 keiki. 88 out of 188,000 students. The DOE also testified

that they were currently contracting for ABA services at a cost of \$40 million (or more) annually. Using the DOE's figures and assuming they are correct, that means it costs the HIDOE approximately \$225,000 per student who is receiving ABA services. This seems hard to believe. For keiki who are able to access 40 hours of care a week, including supervision and training, the costs typically reported by insurers are between \$100,000-150,000 per patient. Why then does it cost the HIDOE an estimated \$100,000 more per student to provide a lower density, and arguably a lower quality of service?

While we are questioning data, we should look at the 1700/188,000 number provided by the DOE. Using the Center for Disease Control (CDC)'s statistics, 1 in 59 keiki have autism (<https://www.cdc.gov/ncbddd/autism/data.html>). If there are 188,000 students in Hawai'i, statistically the number of keiki with autism would be closer to 3,100; an almost doubling of the number provided by Assistant Superintendent Armstrong at the 1/17/2020 legislative briefing. While it is possible that our keiki are under diagnosed or struggle to get diagnosed; I have also attended meetings personally where school teams have vehemently denied and refused to recognize an autism diagnosis, even when made by reputable medical professionals (e.g., Dr. Karen Tyson, Dr. Jeffrey Okamoto) as recently as January 2020.

When the Department of Education comes into compliance with the Behavior Analyst licensure law, it is estimated that \$48-50 million dollars (<https://www.westhawaii.com/2018/10/08/business/guess-which-agency-may-be-forgoing-millions-in-fed-dollars/>) in federal funds could be recouped by the state of Hawai'i (for ABA, SLP, OT, PT, etc.). With an estimated special education budget of \$360 million dollars, \$50 million would be helpful, at the very least.

I urge you to allocate any funds you believe are needed to implement this program and provide access to these medically-necessary services for our keiki on school campuses during the school day. I respectfully request that you maintain current consumer protections and refrain from allowing any further extensions or exemptions for providers who do not meet the medical rigor required of ABA providers.

I am available to answer any questions or provide additional resources, as needed.

Mahalo,



Amanda N Kelly, PhD, BCBA-D, LBA
amanda.n.kelly@hotmail.com

SB-2085

Submitted on: 2/1/2020 3:58:50 PM

Testimony for EDU on 2/3/2020 2:45:00 PM

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

Comments:

Should be available to all students. This particular issue has been too long a wait from the DOE. ANother AUDIT issue?

SB-2085

Submitted on: 2/2/2020 11:26:50 AM

Testimony for EDU on 2/3/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kristen Koba-Burd	Individual	Comments	No

Comments:

I support funding for applied behavior analysis (ABA) services in the Department of Education, but to ensure consumer protection, I do not support the proposed carve-outs for other providers in SB2085's current language. I respectfully ask the committees to please uphold the existing exemptions in the behavior analyst licensure law.

COMMITTEE ON HUMAN SERVICES
Senator Russell E. Ruderman, Chair
Senator Karl Rhoads, Vice Chair

COMMITTEE ON EDUCATION
Senator Michelle N. Kidani, Chair
Senator Donna Mercado Kim, Vice Chair

Monday, February 3, 2020; 2:45PM

Conference Room 016
State Capitol, 415 South Beretania Street

SB 2085: COMMENTS

Aloha Chairs, Vice Chairs, and Members of the Committee:

I am writing today with comments on SB2085. While I support funding and further development of applied behavior analysis (ABA) services in our state, I do not support the additional carve-outs proposed in the current version of the bill.

I am concerned with the potential for harm which can result when individuals without proper training, experience, and knowledge attempt to design behavior analytic interventions. The harm that comes from the misapplication of the science of behavior analysis is long-lasting. An individual trained in social work or psychiatric nursing has not received the necessary training to implement behavior analysis services. Their lack of training can lead to harm to our most vulnerable keiki.

Additionally, regarding Medicaid funding, the Department of Education (DOE) has the ability to pull down millions in federal funding from Medicaid reimbursement. To access this funding, the Department must use approved providers – currently Licensed Behavior Analysts (LBA) and Registered Behavior Technicians (RBT) under the supervision of an LBA.

According to the Department of Education's testimony at a legislative briefing on January 17, 2020, they are currently contracting with outside service providers for both LBA and RBT services. One of these contracts, with Bayada, is in excess of \$40 Million. DOE has multiple agency contracts, putting the estimated cost of services well above this figure. Given that Assistant Superintendent Heidi Armstrong stated that there are only 177 keiki in the public schools who are receiving any ABA services, this number per child (about \$226,000) well

exceeds the amount that insurance pays for a 40-hour, year-round program (between \$100,000-150,000)!

I respectfully urge you to provide any funding this legislature deems necessary to give our keiki access to these necessary services. I also respectfully request that you maintain the current language of the behavior analyst licensure law regarding the exemptions for licensure.

Thank you for remaining champions for our keiki!

Mahalo,

Lara Bollinger

Lara Bollinger, MEd, BCBA, LBA

Lara.bollinger@gmail.com

SB-2085

Submitted on: 2/2/2020 2:37:44 PM

Testimony for EDU on 2/3/2020 2:45:00 PM

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

Comments:

COMMITTEE ON HUMAN SERVICES

Senator Russell E. Ruderman, Chair

Senator Karl Rhoads, Vice Chair

COMMITTEE ON EDUCATION

Senator Michelle N. Kidani, Chair

Senator Donna Mercado Kim, Vice Chair

Conference Room 016, State Capitol
415 South Beretania Street

February 3, 2020, 2:45 pm

SB 2085: COMMENTS

Aloha Chairs, Vice Chairs, and Members of the Committee:

I am writing today with comments on SB2085. While I support the funding and further development of Applied Behavior Analysis (ABA) services in our state, I cannot support the additional carve-outs proposed in the current bill. The preamble language

references our licensure statute, Chapter 465D, but the language in this bill significantly deviates from it.

At the time of my first testimony in 2016 in support of Applied Behavior Analysis, *my son was the first to receive ABA through Medicaid*. In the four years since, I received a Bachelors in Psychology, a Masters in Special Education and Applied Behavior Analysis. I became a Registered Behavior Technician (RBT) in the final semester towards licensure as a Special Education Teacher, and I will be ready to sit for my BCBA (Board Certified Behavior Analyst) exam, all while raising two sons with autism. This has been the 5th year of writing testimony to protect the rights of my children have to qualified professionals work with my children. In addition to caring for my children, I committed to becoming a professional for them and others like them, as I cannot rely on systems like the Department of Education to do the right thing. It is very disappointing that the same dedication towards building capacity has not been in the forefront of the DOE's efforts.

Mahalo,

Naomi Tachera

SB-2085

Submitted on: 2/3/2020 2:15:49 AM

Testimony for EDU on 2/3/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mr and Mrs John McComas	Individual	Comments	No

Comments:

Aloha Chairs, Vice Chairs and Committee Members.

We support funding provision of Applied Behavior Analysis in the school setting.

We oppose the language in SB 2085 which suggests to remove/decrease the critical component of the consumer protection that the current law (Chapter 465D) provides our keiki in the school setting by having only those professionals who have the education and training to design, evaluate and oversee the provision of Applied Behavior Analysis-Licensed Behavior Analysts and Licensed Psychologists with ABA in their education, training and competence. There are more than 360 Licensed Behavior Analysts in HI and that number is increasing rapidly. This more than serves our students according to figures recently released by the DOE at a meeting with the legislators on 1/17/2020.

We respectfully request that you keep in place critical consumer protections offered by Chapter 465D which does not allow exemptions from providers who are not trained to meet the medical stringencies required to design, evaluate and oversee Applied Behavior Analysis.

We have experienced firsthand with two of our children, the damage that can be inflicted when ABA is not provided by those licensed professionals who are qualified to do so in the school setting, and exactly what the language in SB 2085 suggests will take place.

Respectfully yours,

Mr. and Mrs. John McComas

Honolulu, HI

SB-2085

Submitted on: 2/2/2020 1:47:05 PM

Testimony for EDU on 2/3/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
maile rogers	Individual	Oppose	No

Comments:

I have two boys that fall on the autism spectrum. Both require help. One of them received the minimum of help through the DOE, only after going to due process three times, the other was completely denied eligibility. Both my boys receive many hours of ABA services through our private insurance. Neither receives direct ABA through the DOE. Every LBA I have encountered through the DOE has been subpar at best, and outright unethical at worst. The contract the DOE asked them to sign explicitly states several ways they will be required to break their ethical code. I have asked, at every IEP meeting, for the school to allow my insurance- funded ABA providers on campus and they refuse. The DOE is not equipped to provide the care my children require to access their education, and the DOE will not allow my private providers to come on campus, making it very difficult, and sometimes impossible for my children to access their education. The DOE has had time to meet the requirements of the law. They have been dragging their feet for years. There are other solutions, please don't give them another "out". Protect our children. Please help us as parents. Our keiki are our most valuable asset as a society. They deserve the best. Thank you!

COMMITTEE ON HUMAN SERVICES
Senator Russell E. Ruderman, Chair
Senator Karl Rhoads, Vice Chair

COMMITTEE ON EDUCATION
Senator Michelle N. Kidani, Chair
Senator Donna Mercado Kim, Vice Chair

Monday, February 3, 2020; 2:45PM

Conference Room 016
State Capitol, 415 South Beretania Street

SB 2085: OPPOSITION

Aloha Chairs, Vice Chairs, and Members of the Committee,

My name is Ashley Monden and I am a Special Education teacher in the Hawai'i Department of Education. I have worked with special needs children in Hawaii for 11 years. **I am submitting testimony in opposition of SB2085.** I started off working in emergency shelters around Oahu servicing runaways and troubled youths and then transitioned to working 1:1 for students with autism in Hawai'i public schools, while at the same servicing students and families in-home and in the community. My love for education began when I was out in the community servicing low income housing families with my grandfather teaching children younger than myself how to read as a church volunteer. From there I worked in a charter school as an educational assistant for 8 years. I then decided to further my career as a special education teacher. I went into special education with the desire to make a change. Throughout my years working in various school settings I have observed unqualified individuals work with special needs students and personally witnessed the long-term negative impact inadequate training has on them. I have experienced what quality training looks like. I have also had my fair share of unqualified individuals instruct me to implement behavioral strategies they have never personally tried before, which were not research-based. I have worked with special education teachers, who are often general education teachers who pass the praxis to fill high-need positions and I have seen first hand the detrimental effects unqualified special education teachers can have on our students.

Four years ago, when I was hired as an emergency-hire special education teacher at a charter school in Hilo, and when I was in my first year of teaching, I had no concept of what a Functional Behavior Assessment (FBA) and Behavior Support Plan (BSP) entailed. I was told to revise and write a number of them for my students. Despite being untrained and my repeated requests for help dismissed, I was advised by administrators and colleagues that I was "smart enough" to "figure it out" and was left to complete the FBA/BSP without guidance from a Licensed Behavior Analyst (LBA) or anyone with any proper professional training. In all

professions we specialize in a certain area. For licensed clinical social workers they work with the family and they see their fair share of children with behavior problems, but it is not their main focus. For advanced practice registered nurses who specialize in psychiatry they focus on client care, but behavior is not their main focus. If we start giving more responsibilities to other professions who do not specialize in behavior like Licensed Behavior Analysts what message are we sending to our children? If you wouldn't let a doctor level psychiatrist or a pediatrician operate on you because they do not specialize in surgery, then why should we allow other licensed professionals to provide a specialized service to our children, for which they are not trained?

I am a HDOE Special Education teacher and I endeavor to keep my students' best interests as a primary factor in appropriately developing strategies, which will develop and improve their skills. To address the issue of unsatisfactory training, I am actively pursuing coursework to gain additional knowledge towards certification as a Board Certified Behavioral Analyst (BCBA). However, because I did not obtain my training through the UH/DOE partnership, I have been unable to obtain practicum supervision to qualify for the BCBA exam while working as a DOE teacher.

At the school level I hope to educate others as to the scope and serious nature of what ABA services mean for our students. They have a right to access their medically-necessary and educationally-necessary services during the school day. While I appreciate the intention for additional funding, I respectfully ask for you to refer to the language in the current licensure law, with regard to who can design, oversee, and practice ABA. We need to create an environment, which will develop critical thinkers and leaders, who are able to navigate the world with their heads held high and who are determined to create a better tomorrow! This can only be achieved by placing qualified professionals with students who have unlimited potential.

It is in the best interest of the students that SB2085 does not pass, as it is written.

Mahalo,

Ashley Monden
Special Education Teacher
O'ahu

COMMITTEE ON HUMAN SERVICES

Senator Russell E. Ruderman, Chair

Senator Karl Rhoads, Vice Chair

COMMITTEE ON EDUCATION

Senator Michelle N. Kidani, Chair

Senator Donna Mercado Kim, Vice Chair

Monday, February 3, 2020; 2:45PM

Conference Room 016

State Capitol, 415 South Beretania Street

SB 2085: OPPOSITION

To whom this may concern,

My name is Lisa, and I am writing to you to inform you that I am against you allowing psychiatric nurses, social workers, and mental health counselors to design, implement, and oversee the practice of Applied Behavior Analysis (ABA). I believe Board Certified Behavior Analysts (BCBA) should be the ones to design and oversee the practice. BCBAs take specific classes, receive supervision, pass an examination, and have continuing education (CE) and ethics requirements. Although other professionals, such as psychiatric nurses, social workers, and mental health counselors, have the children/adults in their best interest, ABA is not in their education, training, and competence. Like with any other occupation, you would want them to have thoroughly studied it. For example, would you allow these workers to perform a surgery on a patient? Or would you allow them to work in a dental office cleaning the patient's teeth? Just like I do not think we should allow a BCBA to perform a surgery on a patient, that would not be ethical nor is it in their scope of practice. Although other professionals work closely with children/adults with special needs and mental health issues, this does not mean they are qualified to design and oversee the practice of ABA. I believe if a patient has a recommendation for ABA, they should work with a Board Certified Behavior Analyst (BCBA), and together they could make a strong team to work collaboratively for the child. We should think about how we would want our own family members to be treated if they needed help. We would want the best for them, and the best doctor or practitioner to help them. No matter how dedicated and caring other professionals are, it places our children at great risk if they could receive services from someone who does not know how to design and oversee ABA services.

Mahalo,

Lisa Sakuda

O'ahu

COMMITTEE ON HUMAN SERVICES
Senator Russell E. Ruderman, Chair
Senator Karl Rhoads, Vice Chair

COMMITTEE ON EDUCATION
Senator Michelle N. Kidani, Chair
Senator Donna Mercado Kim, Vice Chair

Monday, February 3, 2020; 2:45PM

Conference Room 016
State Capitol, 415 South Beretania Street

SB2095: COMMENTS

Aloha Chairs, Vice Chairs, and Members of the Committee,

I am writing with regard to concerns related to SB2085 bill relating to Behavior Analysis. I am a Board Certified Behavior Analyst (BCBA), also Licensed as a Behavior Analyst (LBA) in the state of Hawaii. I have been working in the field of ABA and Human Services for over 10 years and have experience in psychiatric hospitals, residential services, in-home, schools, and clinics with experience in Rhode Island, Massachusetts, California, and Hawai'i. My years of experience in hospitals and other medical settings gives me a unique perspective since becoming a BCBA.

I am specifically concerned about the language in the bill allowing Licensed Clinical Social Workers, Licensed Mental Health Counselors and Advanced Practice Registered Nurses who specialize in Psychiatry to design and implement Applied Behavior Analysis (ABA) Services, as this would be out of their scope of practice and could potentially cause harm to the individuals receiving the services. In order to become a BCBA with current requirements, one must have over a thousand experience hours while under supervision of a Master's or Doctoral level BCBA, obtain a master's degree, and pass a board examination. There is also an enforceable Code of Ethics all certificants must abide by, which helps protect consumers of behavior analytic services, the providers, and our practice.

I fully support extra funding for ABA Services to ensure that students receive their medically necessary services and supports during school, but I do not support loosening the criteria for what constitutes as a qualified medical ABA provider.

Mahalo,
Jennifer Lonardo, MA, BCBA, LBA
Hawai'i Island, Kona

COMMITTEE ON HUMAN SERVICES
Senator Russell E. Ruderman, Chair
Senator Karl Rhoads, Vice Chair

COMMITTEE ON EDUCATION
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Monday, February 3, 2020; 2:45PM

Conference Room 016
State Capitol, 415 South Beretania Street

SB 2085: OPPOSITION

Aloha Chairs, Vice Chairs, and Members of the Committee,

Thank you for taking the time to allow me to express my concerns for my child's safety regarding SB2085. I am the mother of a six year in HIDOE and he is now receiving Applied Behavior Analysis (ABA) services. My child has severe autism, Oppositional Defiant Disorder (ODD), sensory issues and severe Attention Deficit Hyperactivity Disorder (ADHD). He has been injured many times while only having a Skills Trainer (ST) to watch over him as he needs 1:1 assist at all times for his safety and the safety of others.

1/1/2020 made it possible for our keiki to be a little more successful by implementing that all Skills Trainers (STs) become Registered Behavior Technicians (RBTs). This is crucial to Applied Behavior Analysis (ABA) being not only effective but ethical. ABA therapy could potentially be dangerous to implement by a social worker, child psychologist, or anyone who has not passed the BCBA exam or is not a certified RBT, with supervision by a Board Certified Behavior Analyst (BACB). There is no substitute for this type of professional. There is no such thing as RBT- or BCBA- "in training". BACB ethics have worked to protect the ethical execution of ABA services and was written into the Behavior Analyst licensure law. My child has suffered many injuries when he was without appropriate support from properly licensed and trained professionals. We, the parents of Hunter Steven, are asking for your support in protecting the implementation of ABA in HIDOE. It has been a huge challenge to get this service for my child. It is crucial to his future and is his right to access quality education here on Maui.

As parents, we worry for his safety and the safety of any person who is unskilled to be implementing his Behavior Intervention Plan (BIP) and crisis plan. Please help us relay to the HIDOE the importance of these trained professionals, the risks that they are not considering, and also the ethics of the BACB that is in direct connection to having a Functional Behavior Assessment (FBA) and Behavior Plans in place.

Please help our keiki to receive proper ABA services. If there is an issue with funding, it would also be my suggestion that while offering procedural safeguards before IEP meetings, the consent for MedQuest services should also be offered --and explained to parents. This consent is not being offered; I have never received a copy.

Our voices have not been heard and many of us are speaking on behalf of our non verbal autistic children. We need your help to protect the laws of ABA in Hawai'i.

Thank you so much for your time.

Rachel Stevens
Maui



LATE

Chairs Kidani and Ruderman, Vice Chairs Kim and Rhoads, and members of the committees:

I am writing about SB2085 because my family has major concerns about these additional professionals being allowed to practice Applied Behavior Analysis (ABA) on our son. There is a science to ABA and not just anyone can practice it. It can take an individual years to become proficient in ABA and administer it properly without doing harm.

What kind of consumer protection do our children in DOE schools have now? My answer is none.

The DOE is already giving our son the "low-bid" minimally qualified, inexperienced, newly certified contracted Licensed Behavior Analyst in school. This new law will further allow the DOE to put anyone on the job that's insufficient and unqualified. One reason the DOE cannot fill and retain employees (Licensed teachers, Occupational Therapists, Speech Language Pathologists, LBAs, RBTs, etc.) is because of the low pay/compensation, mistreatment and lack of support. Who is the DOE going to retain when districts require these professionals to violate their occupational and personal ethical standards and jeopardize their certification? Most will come aboard then move on. Leaving us in the same predicament.

The DOE has blocked our son's DOE LBA and RBT (Registered Behavior Technician) from communicating with us directly. They have put a communication ban in the contract with Bayada (contracted provider) so they can't talk to parents. That is completely absurd that I should have to go through the school to talk to a provider who has direct contact with my son. This is also against the ethical guidelines that LBAs must adhere to or jeopardize their certification. Yet, the DOE LBA abides by it.

The school is having a teacher without ABA certification relay any info about my son's services to us. There is a high likelihood that misinformation will be provided. There will also be misinterpretation of what is being relayed both ways. Why is the DOE allowed to behave in this way?

None of the added people in this bill would qualify for Medicaid reimbursement by the Medquest providers. See the HMSA letter of testimony for HB 1269 from Feb. 13, 2019. Insurers will not reimburse for services from these additional persons added to the list.

Families do not need the state to give money to a poorly managed and designed system run by the DOE. What families need is for funding to be used for insurance approved ABA providers on campus. This would serve multiple purposes. Firstly, the insurer has already vetted the approved ABA provider so the DOE would be able to get Medicaid reimbursement for ABA services, unlike the list of providers being proposed. Secondly, we would have much needed continuity of care. I cannot begin to tell you what a struggle it is to juggle two different ABA teams (one provided by DOE contract during school, the other insurance provided after school) trying to be sure that everyone is on the same page and doing everything as similarly as possible. It's nearly impossible to accomplish this and expect as good an outcome had it been the same provider in both settings. Now that the DOE has banned contractors from communicating with parents (see last page with Bayada communication policy) it will be worse than before.

My family asks you to consider the additional consequences that our son will have to endure at the hands of the DOE. Thank you very much for hearing our pleas.

Sincerely,

Jeanette White
Concerned Parent

5.2.2. Service Operations

- 5.2.2.1. PROVIDER staff works collaboratively with the HIDOE and all members of a student's educational team. It shall not include the provision of direct services to a student or parent communication, unless otherwise approved by the HIDOE. It is the HIDOE's responsibility to communicate information regarding the student to the parent, including but not limited to topics such as program modifications and student progress.

- 5.2.2.2. Teaming and collaboration are critical in the development and implementation of appropriate educational services for students. It is required that the PROVIDER staff shall communicate directly with the HIDOE regarding any issues that may affect or impact the student's progress.

LATE

As a parent of a child with autism in the DOE, I would like to share some of the experiences we've had and how they affected my child. Based on these experiences, I believe that the DOE staff is not capable of providing the services that children with ASD need.

When my child started 1st grade, he had an IEP and the school gave him a 1 to 1 aid in the general ed classroom. The aid seemed to be very young and inexperienced and not trained to be able to handle all the needs of my child. That aid was soon replaced with another, who also seemed to be inexperienced and lacked the necessary training for the job. During the course of that year we went through about 4 to 5 aids and none of them were able to help our child succeed in the classroom.

Our child had such a poor experience that he was refusing to enter the classroom in the morning. He was so terrified to go to school because of the bad care he was receiving. He would also run from the classroom, and during one incident made it all the way to the parking lot before he was caught by the aid. Our child was eventually placed in a separate classroom, isolated from the rest of his peers and unable to get the education that he deserved. Although our child was capable of completing the work that was assigned, the lack of support he received for his diagnosis resulted in him being pulled away from his class.

After several long and drawn out IEP meetings with the school, we were able to get them to assign an RBT as our child's aid. The RBT was contracted through a private company and was supervised by an LBA. The services that our child received from the RBT were like night and day compared to the DOE aids. The RBT had an education focused on behavior analysis and had several years of experience helping kids like our son. She worked well with our son and understood his needs. She knew what strategies were needed to help him get through his day and get the most from his education. Our child's attitude towards school greatly improved and the number of good days in school greatly increased. It is now two years later, and our child is in 3rd grade. He still has a contracted RBT and he is able to stay with his peers and complete his work with minimal issues.

In conclusion, based on my experience with the DOE I don't believe they are capable of providing the services that children with ASD need. It is much better for these children to get support from contracted RBTs and LBAs who are educated and experienced in the field of ABA. The services that they provide have had a positive impact on our child and many others and removing them from the schools will result in much worse educational experience for our children with ASD.

Sincerely,

Richard E. Elg

SB-2085

Submitted on: 2/2/2020 3:00:04 PM

Testimony for EDU on 2/3/2020 2:45:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Melissa Urquidi	Individual	Oppose	No

Comments:

My name is Melissa Urquidi and I am writing as a parent and as a service provider for Applied Behavior Analysis (ABA). I have worked with special needs children in the state of Hawaii since 2009 in the home and Department Of Education setting. I am submitting testimony in OPPOSITION of SB2085.

As a service provider working with students in the DOE system, for the last 11 years in Hawaii, I have found that staff across the board need greater supports. I have reviewed several Behavior Support Plans (BSP) and find them to be grossly inadequate in comparison to professionals who have a solid understanding of the science behind ABA. I have seen BSPs that have recommended strategies without gathering solid evidence of a function of the behavior, inappropriate recommendations that do not meet the function of students' behavior/s and that have led to escalation of behaviors increasing students' chances of harm in the school setting. I have seen inadequate implementation of BSPs that have also led to more restrictive learning environments and transitions that did not offer enough support to keep the student in a classroom with their peers. I have seen regression of students' behaviors which have impeded students' opportunities to receive access to instruction and the curriculum. Sadly I have also seen so many subjective information being passed to staff in these BSP that have written by unqualified staff which do not lead to effective treatment strategies being applied to the students. Instead it paints inaccurate pictures of students needs and strengths which also continuously harm our students as they have to fight the negative perspectives of their educators and support staff.

As a parent I have also watched my own child fail miserably in this system that never sought to understand what his true needs and strengths are. I have been told he couldn't count to 10 when he could already count to 100. I have been given empty binders showing me empty page after empty page showing me that he refused to comply with any of their directions and then was told he was underachieving and did not understand simple concepts. This was all inaccurate and the DOE refused to give him the proper supports to help him succeed. I watched as my son grew increasingly depressed and watched him struggle to engage in even daily routine care expectations such as brushing his teeth. We were given aide after aide that that was not a registered behavior technician and so was not able to properly support him. The DOE placed him in more and more restrictive environments until he was left in a corner with walls, cabinets and his 1:1 support blocking him in. I took him out of full day school half-way

through the year so that I could teach him at home and help him gain the instruction he was losing daily. Untrained professionals almost broke my child. Untrained professionals caused him harm, neglected his needs and were emotionally abusive to him. My family worked tirelessly, lost sleep, and health to keep him together while we were watching him fall apart day after day. Trained professionals are a necessity for our keiki and their families. Every child deserves a fair opportunity to learn and thrive.

I strongly OPPOSE SB2085 as it is written.

Melissa Urquidi

Parent

BCBA, LBA