



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

Date: 03/28/2019

Time: 02:00 PM

Location: 329

Committee: House Consumer Protection &
Commerce

Department: Education

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

Title of Bill: SB 0341, SD2, HD1 RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS.

Purpose of Bill: Exempts certain teachers working in collaboration with a licensed behavior analyst or licensed psychologist from behavior analyst licensing requirements. Clarifies that the licensure exemption for registered behavior technicians applies to those working under the direction of a licensed behavior analyst or licensed psychologist. (SB341 HD1)

Department's Position:

The Department of Education (Department) offers comments regarding SB 341 SD2 HD1 amendments exempting licensed general or special education teachers and individuals, who implement but do not design or monitor applied behavior analysis (ABA) plans in collaboration with a licensed behavior analyst (LBA) or licensed psychologist, continues to exempt direct support workers who directly implement an ABA program under supervision for a LBA and licensed psychologist and deletes the proposed exemption for licensed special education teachers and individuals in an approved accredited special education training program who are working toward licensure as special education teachers whose scope of practice and training includes ABA.

The Department agrees that both licensed general and special education teachers, or teachers enrolled in a state-approved teacher education program working toward licensure should be allowed to continue implementing behavior analysis services in collaboration with a LBA or a licensed psychologist as teachers work directly with students. Without lifting the timeline requirement, a teacher's ability to address individual student needs using evidence-based practices would be significantly limited. The Department agrees with permanently exempting teachers that implement behavior analysis services and who are working in collaboration with a LBA or licensed psychologist.

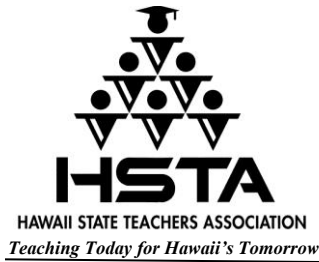
However, the Department also believes licensed special education teachers and individuals in

approved and accredited special education training programs who are working toward licensure as special education teachers whose scope of practice and training includes behavior analysis should also be allowed to assess, design and monitor behavior analysis plans.

As currently required in Section 465D-7, HRS, beginning January 1, 2020 paraprofessionals implementing ABA services must become Registered Behavior Technicians (RBTs) under LBA or Board Certified Assistant Behavior Analyst (BCaBA) supervision. The Department recommends Section 1 (4) lines 5 to 20 in its entirety be deleted as it is in direct conflict with Section 1 (1) lines 7 to 17, page 1, and lines 1 to 7, page 2. Specifically, the Department has supported the removal of the January 1, 2020 lifted deadline in SB 341 SD2 because Section 1 (1) ensures paraprofessionals are under supervision and allowed to continue to implement ABA services. This will allow the Department to better meet staffing needs and provide the necessary ABA services to all students.

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

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.



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

TESTIMONY BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

RE: SB 341, SD2, HD1 - RELATING TO THE PRACTICE OF BEHAVIOR
ANALYSIS

THURSDAY, MARCH 28, 2019

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Takumi, and Members of the Committee:

The Hawaii State Teachers Association **supports SB 341, SD2, HD1** with a one word, suggested amendment, relating to the practice of behavior analysis.

We suggest one amendment to HRS465D-7(2), which is the current section pertaining to teachers to avoid confusion. We are not just talking about the plans, but the actual ABA services.

Our suggested amendment to delete the word “plans” and insert the word “services” instead, in section 1, page 2, line 14, of SB341, SD2, HD1.

“applied behavior analysis services ~~plans~~, in a school setting in direct collaboration with a licensed behavior analyst or a licensed psychologist.’

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. Act 205 further clarified the licenses requirements for behavior analysts. The clarification in this law as written in SB341, Sd2, HD1 with the amendment we suggested, will ensure that our teachers may implement these ABA services, under the direct supervision of an Licensed Behavior Analyst or a licensed psychologists who have ABA in their “education, training, and competence’, as was the intention of this law.

To ensure our most vulnerable keiki are given the care they deserve, 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 CONSUMER PROTECTION & COMMERCE
Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair

DATE: Thursday, March 28, 2019
TIME: 2:00 pm
PLACE: Conference Room 329

Testimony in Support of SB341 SD2 HD1 with AMENDMENTS RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS

The Hawai'i Psychological Association (HPA) strongly supports SB341 SD2 HD1 with amendments. Last year the legislature clarified that licensed psychologists are exempt from the law licensing behavior analysts (HRS 465D) provided that the behavior analysis services performed are within the boundaries of the licensed psychologist's education, training, and competence. HRS 465D-7 also clarifies that the licensed psychologist may supervise master's level practitioners and postdoctoral fellows who may in turn supervise direct support workers, paraprofessionals, caregivers, parents, and guardians in a manner and to the extent determined by the supervising psychologist.

HPA respectfully proposes amending SB341 SD2 HD1 to include guidance for the Department of Education to seek necessary approvals to bill for services provided for Medicaid-eligible students diagnosed with autism by an array of qualified licensed behavioral professionals and their supervisees as is the practice in other jurisdictions (e.g., California). We recommend the following paragraph be added as SECTION 2 (page 5, starting on line 17):

SECTION 2. The department of education will seek any approvals that may be necessary from the Centers for Medicare and Medicaid services to amend the state Medicaid plan to provide reimbursement for necessary ABA services provided to Medicaid-eligible students diagnosed with autism, including services provided by provided by licensed mental health professionals with specialized training in ABA. This can include: licensed behavior analysts, licensed psychologists, licensed clinical social workers, advance practice registered nurses with a specialization in psychiatry, licensed marriage family therapists, licensed mental health counselors, and those they supervise.

Thank you for the opportunity to provide input into this important bill.

Sincerely,

Julie Takishima-Lacasa, Ph.D.
Chair, HPA Legislative Action Committee



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Consumer Protection & Commerce
Thursday, March 28, 2019 at 2:00 p.m.

By
Nathan Murata, Dean
College of Education
And
Michael Bruno, PhD
Interim Vice Chancellor for Academic Affairs
University of Hawai'i at Mānoa

SB 341 SD2 HD1 – RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS

Chair Takumi, Vice Chair Ichiyama and members of the committee:

Thank you for allowing us to testify. The University of Hawai'i System is opposed to SB 341 SD2 HD1 Related to the Practice of Behavior Analysis. This legislation, and Section 465D-7, Hawai'i Revised Statutes, indicates that the legislation "is not intended to restrict the practice of other licensed or credentialed practitioners practicing within their own recognized scopes of practice." However, the legislation restricts the practice of **licensed** special education teachers—licensed professionals who have behavior analysis clearly within their scope of training and practice. Please reinstate exemption #10 from SB 341 SD2 (p.5, line 15) into this legislation:

(10) A licensed special education teacher or an individual who is working toward licensure as a special education teacher and who is enrolled in a state-approved and nationally-accredited special education teacher preparation program that includes training in behavior analysis assessment and interventions; provided that the applied behavior analysis services performed are within the boundaries of the licensed special education teacher's or individual working toward licensure as a special education teacher's scope of education, training, and practice."

Without this exemption, **licensed** special education teachers are relegated to little more than paraprofessionals working under the supervision of behavior analysts.

If exemption #10 is not reinstated into this legislation, the legislation will prevent the University of Hawai'i at Mānoa's College of Education (UHM-COE) from delivering our nationally accredited and state approved teacher education programs. Specifically, the

legislation will not allow us to prepare special education teachers to conduct behavioral assessment or to develop and implement interventions based in applied behavior analysis. If we deliver our state-approved and nationally accredited special education teacher preparation programs that include training in behavior analysis assessment and interventions, we are in violation of Section 465D-7, Hawai'i Revised Statutes. Without applied behavior analysis in their training, special education teacher candidates who graduate from the University of Hawai'i at Mānoa (UHM) will not meet state licensing requirements (completion of a non-accredited program) and will not be prepared to pass the state licensing exam (Praxis) which includes questions on applied behavior analysis. Given the extreme and chronic shortage of licensed special education teachers in our state, it is in the interest of the state of Hawai'i to allow UHM-COE to fully implement its nationally accredited and state-approved special education teacher preparation programs.

Applied behavior analysis has a strong evidence base and is a foundation of special education assessment and instruction. The UHM-COE and Colleges of Education across the nation have been preparing special educators in the area of severe disabilities and autism to implement behavior analysis procedures since the early 1970s – about 30 years prior to the licensing of behavior analysts. The UHM program for preparing behavior analysts (also in the UHM-COE) uses the core courses of our special education teacher training program in the area of severe disabilities/autism. Our special education teacher graduates are well-trained in (a) principles of behavior, (b) behavioral assessment methods, (c) behavioral intervention methods, (d) procedures to promote generalization, (e) communication assessment and intervention, (f) functional behavior assessment for challenging behavior, and (g) positive behavior support interventions – scope of practice areas that overlap with those of behavior analysts. The fact that applied behavior analysis is within the training and scope of practice of special education teachers is evidenced in our journals, textbooks, accreditation standards, and licensing exams, including the Special Education Praxis exam required by the Hawai'i Teacher Standards Board.

The license and recognized scope and practice of special education teachers in the state of Hawai'i must be respected and supported. The current wording of SB 341 SD2 HB1 and Section 465D-7, Hawai'i Revised Statutes, does not do that. Please rework the language of this bill to allow special education teachers, qualified licensed psychologists, and behavior analysts to meet the needs of Hawai'i's special education students. The licensing of behavior analysts should not restrict the recognized scope and practice of licensed special education teachers and other qualified professionals.

Thank you.



COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Conference Room, State Capitol
415 South Beretania Street
3/28/2019

COMMENTS ON SB 341 SD2 HD1

Honorable Chair, Vice Chair, and members of the Committee:

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. In regard to SB341 SD2 HD1 HABA would like to offer the following comments for your consideration.

- With regard to the exemption of special education teachers, we would respectfully request that the following non-substantive changes be made to exemption 2: changing the word “plans” to “services”.
- As licensed psychologists are already explicitly carved out in exemption 1, there is no need to add the phrase “licensed psychologist to exemption (4A). Any RBT who is practicing must be overseen by a licensed behavior analyst or licensed psychologist and supervised in accordance with the Behavior Analyst Certification Board (BACB).

We appreciate the opportunity to testify on this measure. We are available for questions.

Mahalo,

Kathleen Penland

Kathleen Penland, M.Ed., BCBA, LBA
HABA Past President

SECTION 1. Section 465D-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter is not intended to restrict the practice of other licensed or credentialed practitioners practicing within their own recognized scopes of practice and shall not apply to:

(1) A licensed psychologist and any supervisee of the licensed psychologist; provided that applied behavior analysis services performed are within the boundaries of the licensed psychologist's education, training, and competence; provided further that neither the licensed psychologist nor any supervisee of the licensed psychologist purports to be a licensed behavior analyst; and provided further that master's level practitioners and postdoctoral fellows may provide training and supervision to direct support workers, paraprofessionals, caregivers, parents and guardians in a manner and to the extent determined by the supervising licensed psychologist.

For purposes of this paragraph, "supervisee" means a master's level practitioner, postdoctoral fellow, direct support worker, paraprofessional, caregiver, parent, or guardian who provides applied behavior analysis services;

(2) A licensed general or special education teacher or an individual who is working as a general or special education teacher and is enrolled in a state-approved teacher education program working towards licensure who implements, but does not design or monitor applied behavior analysis services plans; in a school setting in direct collaboration with a licensed behavior analyst or a licensed psychologist ~~on or before July 1, 2019~~;

(3) An individual who implements or designs applied behavior analysis services and possesses board certification as an assistant behavior analyst by the Behavior Analyst Certification Board and who practices in accordance with the most recent supervisory and ethical requirements adopted by the Behavior Analyst Certification Board under the direction of a licensed behavior analyst;

(4) An individual who directly implements applied behavior analysis services and:

(A) Is credentialed as a registered behavior technician by the Behavior Analyst Certification Board, and is under the direction of a licensed behavior analyst ~~or licensed psychologist~~; or

(B) Is a direct support worker who directly implements an applied behavior analysis program under the supervision of a licensed behavior analyst or licensed psychologist on or before January 1, 2020;

provided that for purposes of this paragraph, "direct support worker" means a paraprofessional who directly implements intervention or assessment plans under supervision and does not design intervention or assessment plans;

(5) A family member, legal guardian, or caregiver implementing an applied behavior analysis plan and who acts under the direction of a licensed behavior analyst or Hawaii-licensed psychologist; provided that for the purposes of this paragraph, "caregiver" means an individual who provides habilitative services in an adult foster home, developmental disabilities domiciliary home, adult residential care home, expanded adult residential care home, special treatment facility, or therapeutic living program pursuant to the medicaid home and community-based services waiver program authorized by section 1915(c) of the Social Security Act;

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

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

(8) A matriculated graduate student or postdoctoral fellow whose activities are part of a defined applied 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 licensed behavior analyst, licensed psychologist, or an instructor from a nationally recognized training organization or in a Behavior Analyst Certification Board-approved course sequence; or

(9) An individual pursuing experience in applied behavior analysis consistent with the Behavior Analyst Certification Board's experience requirements; provided that the experience is supervised by a licensed behavior analyst.

SB-341-HD-1

Submitted on: 3/27/2019 10:00:54 AM

Testimony for CPC on 3/28/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support SB341. By allowing certain teachers to help children with behavior issues while in collaboration with, and under the supervision of, licensed behavior analysts or psychologists, you thereby can help more children just as effectively, and much more cost efficiently, than by hiring more licensed behavior analysts and psychologists.

Thank you for the opportunity to present my testimony.

Sincerely,

Andrea Quinn

Kihei

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair

LATE

DATE: Thursday, March 21, 2019
TIME: 2:00pm
PLACE: Conference Room 309

**Testimony in Support of SB341 SD2 HD1 with AMENDMENTS
RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS**

I appreciate that SB341, SD2 HD1 continues to note the exemption for licensed psychologists any supervisee of the licensed psychologist to provide behavior analysis services, provided that applied behavior analysis services are performed are within the boundaries of the licensed psychologist's education, training, and competence, and provided further that master's level practitioners and postdoctoral fellows may provide training and supervision to direct support workers and others.

As a Hawaii-licensed psychologist, I have been practicing ABA for over 30 years. I was mentored by O. Ivar Lovaas, a psychologist at UCLA who pioneered the treatment of children with autism using ABA under a multi-tiered model of service delivery. Dr. Lovaas and his colleagues conducted research that demonstrated this approach as effective treatment for these children. His use of is ABA methodology and his training of ABA paraprofessionals continues to be recognized as the "gold standard"

I support HPA's amendment to SB341 SD2 HD1, which encourages the Hawaii Department of Education to seek necessary approvals to bill for services provided for Medicaid-eligible students diagnosed with autism by an array of qualified licensed behavioral professionals, including licensed psychologists, licensed behavior analysts, other licensed behavioral health providers and their supervisees as is the practice in other jurisdictions (e.g., California).

Thank you for the opportunity to provide input into this important bill.

Richard J. Kravetz, Ph.D.
President and Hawaii Licensed Psychologist
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COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair

DATE: Thursday, March 21, 2019
TIME: 2:00pm
PLACE: Conference Room 309

LATE

**Testimony in Support of SB341 SD2 HD1 with AMENDMENTS
RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS**

I appreciate that SB341 SD2 HD1 continues to note licensed psychologists any supervisee of the licensed as the first exemption from the licensure law for applied behavior analysts. O. Ivar Lovaas and his colleagues at UCLA pioneered the use behavior analysis techniques in treating young children with autism. Many psychologists in Hawaii are trained in ABA and this exemption will allow them to continue to provide ABA within the boundaries of the psychologist's education, training, and competence, and to supervise master's level practitioners and postdoctoral fellows may in turn provide supervision to the paraprofessionals who work under their direction. A mid-tier model of supervision that was used by Lovaas and his colleagues continues to be the "gold standard" for the delivery of ABA services to children with autism.

I also support the amendment to SB341 SD2 HD1 offered by the Hawaii Psychological Association, which encourages the Hawaii Department of Education to seek necessary approvals to bill for services provided for Medicaid-eligible students diagnosed with autism by an array of qualified licensed behavioral professionals, including licensed psychologists, licensed behavior analysts, other licensed behavioral health providers and their supervisees as is the practice in other jurisdictions (e.g., California). There are many ABA-trained licensed professionals who are trained to assess and treat the co-occurring mental health issues that frequently co-occur with autism and may be best treated by professionals who have training in mental health as well as ABA. These conditions include anxiety, depression, ADHD and PTSD.

Thank you for the opportunity to provide input into this important bill.

Linda D. Hufano, Ph.D.
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