

# SB341 SD1

Measure Title:	RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS.
Report Title:	Practice of Behavior Analysis; Exemptions
Description:	Makes exemptions from the behavior analyst licensing requirements permanent for certain teachers working in collaboration with, and direct support workers working under the supervision of, a licensed behavior analyst or licensed psychologist. (SD1)
Companion:	
Package:	None
Current Referral:	EDU, CPH
Introducer(s):	KIDANI, S. CHANG, DELA CRUZ, INOUE, K. Kahele, Kanuha, Nishihara, Shimabukuro, Wakai



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Tuesday, February 26, 2019 at 9:00 a.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 SD1 – RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS

Chair Baker, Vice Chair Chang and members of the committee:

Thank you for allowing us to testify. The University of Hawai'i System is providing comments on SB 341 SD1 Related to the Practice of Behavior Analysis. This legislation, and Section 465D-7, Hawai'i Revised Statutes, indicates that the bill "is not intended to restrict the practice of other licensed or credentialed practitioners practicing within their own recognized scopes of practice."

We are concerned with the current wording of this legislation and statute because it restricts the practice of licensed special education teachers—licensed professionals who have behavior analysis clearly within their scope of training and practice. In turn, this legislation prevents the University of Hawai'i at Mānoa's College of Education (UHM-COE) from delivering our nationally accredited and state approved teacher education program. Specifically, the current legislation does 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 program that includes training in behavior analysis assessment and interventions, we are in violation of Section 465D-7, Hawaii 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 and Section 465D-7, Hawaii 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.



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

**Date:** 02/26/2019

**Time:** 09:00 AM

**Location:** 229

**Committee:** Senate Commerce, Consumer  
Protection, and Health

**Department:** Education

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

**Title of Bill:** SB 0341, SD1 RELATED TO THE PRACTICE OF BEHAVIOR  
ANALYSIS.

**Purpose of Bill:** Makes exemptions from the behavior analyst licensing requirements permanent for certain teachers working in collaboration with, and direct support workers working under the supervision of, a licensed behavior analyst or licensed psychologist. (SD1)

**Department's Position:**

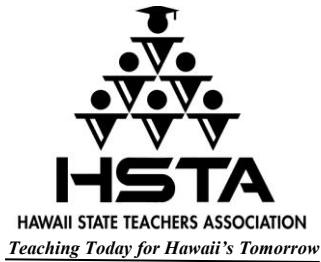
The Department of Education (Department) supports SB 341 SD1 which lifts the timeline requirements regarding who can implement applied behavior analysis (ABA) services and ABA programs.

Specifically, teachers should be allowed to continue implementing ABA programs in collaboration with a Licensed Behavior Analyst (LBA) or a licensed psychologist as teachers work directly with students. Teachers would not be able to continue to educate students if the on or before July 1, 2019 deadline remains in place. Therefore, the Department agrees the deadline for teachers be lifted.

As required in Section 465D-7, HRS, Registered Behavior Technicians (RBTs) under LBA or Board Certified Assistant Behavior Analyst (BCaBA) supervision, direct support worker (paraprofessional) under licensed psychologist or their Master's level or postdoctoral fellow supervisees, direct support worker (paraprofessional) under the supervision of a LBA or licensed psychologist on or before January 1, 2020 can implement ABA services. Therefore, the Department agrees that the January 1, 2020 deadline be lifted as paraprofessionals are under supervision and should be 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 the 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](http://www.hawaiipublicschools.org).



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Logan Okita  
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TESTIMONY BEFORE THE SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

RE: SB 341, SD1 - RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS

TUESDAY, FEBRUARY 26, 2019

COREY ROSENLEE, PRESIDENT  
HAWAII STATE TEACHERS ASSOCIATION

Chair Baker and Members of the Committee:

The Hawaii State Teachers Association **supports SB 341, SD1**, relating to the practice of behavior analysis.

We are in agreement of removing the dates in sections (HRS465D-7; 2), which would remove perceived restrictions imposed on classroom teachers; and (HRS465D-7; 4B), as this provision is already in effect currently for psychologists, whose right to practice was never intended to be infringed upon. HSTA remains in support of licensed psychologists' right to practice applied behavior analysis (ABA), who have ABA in their "education, training, and competence".

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 removal of these dates will ensure that our teachers may implement these ABA plans, 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*

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## COMMITTEE ON COMMERCE AND, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair

Senator Stanley Chang, Vice Chair

DATE: Tuesday, February 26, 2019

TIME: 9:30AM

PLACE: Conference Room 229

### Testimony in SUPPORT of SB341, SD1 WITH AMENDMENTS RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS

The Hawai'i Psychological Association (HPA) appreciates that the legislature revised Section 465D-7, Hawaii Revised Statutes, to clarify that this chapter related to the licensing of Board Certified Behavior Analysts (BCBAs) shall not apply to a licensed psychologist and any supervisee of the licensed psychologist provided that the applied behavior analysis (ABA) services performed are within the boundaries of the licensed psychologist's education, training, and competence.

HPA therefore requests amending Section 1(a)(4)(A) on page 3 line 8, in accord with recent changes in the BACB's regulations governing registered behavior technicians:

(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

Further, HPA is concerned that Section 465D-7 may unintentionally restrict many other well-qualified, licensed or credentialed professionals from practicing ABA within their own recognized scope of practice. Professionals who should also be exempt may include licensed special education teachers, clinical social workers, marriage family therapists, mental health counselors, school psychologists, school counselors, provided that the applied behavior analysis



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*(ABA) services performed are within the boundaries of the licensed or credentialed practitioner's education, training, and competence.*

We would like to point out that the proviso, underscored above, should apply to all licensed professionals, including licensed behavior analysts, licensed psychologists, and other licensed or credentialed professionals. The American Psychological Association's *Ethical Principles of Psychologists and Code of Conduct* requires that "Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training supervised experience, consultation, study or professional experience" [page 5, Section 2, 201(a)].<sup>1</sup> Similarly, the Behavior Analyst Certification Board's (BACB's) *Professional and Ethical Compliance Code for Behavior Analysts* adopted by requires that "Behavior analysts provide services, teach , or conduct research in new areas (e.g., populations, techniques, behaviors) only after first undertaking appropriate study, training, supervision, and/or consultation from persons who are competent in those areas" [page 4, Section 1, 102(b)].<sup>2</sup> Not all licensed behavior analysts would consider themselves competent to work with a student with autism; some may have only been supervised in working with adults, may not have been trained on early intervention protocols, are not experienced in techniques for dealing with severe aggression, or do not have mental health training needed to treat an individual with autism and a co-occurring with mental health issues such as anxiety, depression, suicidality.

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

Sincerely,

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

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<sup>1</sup> American Psychological Association: *Ethical Principles of Psychologists and Code of Conduct*. (Effective date June 1, 2003 with amendments effective June 1, 2010 and January 1, 2017. Copyright@2017)

<sup>2</sup> Behavior Analyst Certification Board, Inc. (BCAB): *Professional and Ethical Code for Behavior Analysts*. (Copyright @2018, all rights reserved. Ver. December 17, 2018.)





COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair  
Tuesday, February 26, 2019, 9:00 AM  
Conference Room 229, State Capitol  
415 South Beretania Street

**COMMENTS**

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, HABA would like to offer the following comments for your consideration.

In 2015, Behavior Analyst Licensure law passed, and in 2016, it was amended to allow the Department of Education three years to develop an internal ABA workforce. Applied behavior analysis depends on a tiered delivery of service model. In order to be reimbursed for services, there needs to be a licensed behavior analyst who oversees registered behavior technicians. With no exceptions, this needs to be the standard of care in the licensure law.

The current law exempts direct support workers in school settings from being registered under the law until 2020. When passed, the stated purpose of the existing law was to allow time for the Department of Education to allow time to comply with licensure requirements, which would include staffing both licensed behavior analysts as well as registered behavior technicians.

Instead of doing so, by makes the exemption permanent as proposed in this bill, HABA is concerned that this measure essentially lets the Department of Education continue to stall implementation of the law. Making the exemption permanent sets a standard in the law that allows for licensed behavior analysts to legitimately supervise direct support workers. If the committee is inclined to move this measure, we would ask that the bill be amended to delete paragraph (B) at page 3, lines 9-13. We note that this would still preserve the exemption for psychologists to use direct support workers as set forth in 467D-7(a)(1).

Alternatively, we would ask the committee to hold this bill and allow for the original intent of the law to be implemented. With the exemption set to expire in the upcoming 2019-2020 School Year, we believe that the Department of Education should not delay in providing licensed behavior analysts and registered behavior technicians, to provide autism treatment services pursuant to an Individualized Education Plan.

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

Mahalo,

*Kathleen Penland, M. Ed., BCBA, LBA-25*

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

**SB-341-SD-1**

Submitted on: 2/25/2019 8:51:14 AM

Testimony for CPH on 2/26/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Linda Hufano	Testifying for Alaka'i Na Keiki	Support	No

Comments:

**SB-341-SD-1**

Submitted on: 2/25/2019 1:44:03 PM

Testimony for CPH on 2/26/2019 9:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Oppose	No

Comments:

**SB-341-SD-1**

Submitted on: 2/25/2019 2:54:31 PM

Testimony for CPH on 2/26/2019 9:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

**SB-341-SD-1**

Submitted on: 2/20/2019 11:36:07 AM

Testimony for CPH on 2/26/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann Yabusaki	Individual	Support	No

Comments:

I am writing in support of SB341. The bill addresses the need for more people to be able to help our keiki with the provision of collaboration and supervision by more experienced and perhaps knowledgeable others such as psychologists. Often times the teachers and others in the classroom know the children best and can intervene in a timely fashion to the needs of the moment. I strongly support this bill.

Thank you for your consideration,

Ann S. Yabusaki, Ph.D., MFT

**SB-341-SD-1**

Submitted on: 2/25/2019 11:35:58 AM

Testimony for CPH on 2/26/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
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