

Kalma K. Wong
46-220 Alaloa Place
Kaneohe, HI 96744
(808) 393-5218

February 17, 2009

Representative Jon Riki Karamatsu, Chair
House Judiciary Committee

Representative Ken Ito, Vice-Chair
House Judiciary Committee

Re: STRONGLY OPPOSED to House Bill 87 HD 1
February 17, 2009, Room 325, 2 p.m.

Dear Chair Karamatsu and Vice-Chair Ito, and members of the House Judiciary Committee,

House Bill 87 HD 1 is a bill designed to deny children with special needs in Hawaii the rights they are entitled to under IDEA. For a child to be placed at a private school at the public's expense, it means that the state has not complied with procedures set forth in IDEA, and/or the IEP is procedurally or substantively deficient, and the **private placement has been deemed appropriate** to the child's needs.

HB87HD1 would give the DOE authority to deem a private school or facility inappropriate when that particular private placement has **ALREADY BEEN DEEMED APPROPRIATE**. Allowing the DOE to deem any placement as inappropriate simply because they are denied access to the student for observation, without due consideration for the reasons for denying access, severely violates a child's civil rights.

I urge you to vote NO on House Bill 87. Hawaii's special needs children deserve to have their rights protected.

Sincerely,

Kalma K. Wong
Mother of 2 children with autism
Hawaii Chapter Advocacy Chair,
Autism Speaks

karamatsu3-Leanne

From: jpdell@aloha.net
Sent: Tuesday, February 17, 2009 11:24 AM
To: JUDtestimony
Subject: H.B. No. 87, H.D. 1, RELATING TO EDUCATION

Chair Karamatsu and Members of the Committee:

My name is John P. Deller. I am a caregiver to a 20 year-old man with autism who has received special education and related services from the Hawaii Department of Education for virtually his entire school career, more than half the time in private schools in Hawaii and on the Mainland.

This bill would direct the Department of Education ("DOE") to monitor private schools that provide special education and related services to Hawaii residents and require a change of placement where the private school does not cooperate with such monitoring.

I support the principle that the DOE should monitor private schools providing special education and related services, but I oppose this measure for the following reasons:

1. The term "routine and timely access" is vague. The bill should state that the private school must provide the DOE with reasonable access that does not interfere with the school's provision of special education and related services or impose an undue financial burden on the private school.
2. Whether a private placement is "proper" depends upon all of the facts and is determined under federal law. Also, the provision in the bill that would force a change of placement if DOE finds that a private school did not provide "routine and timely access" would violate the procedural safeguards provisions of IDEA, which require a due process hearing before placement may be changed. Those provisions should be deleted. If the private school does not cooperate with reasonable monitoring requests, the DOE could bring suit to compel its compliance.

I respectfully request that the committee amend the bill to reflect the above comments.

John P. Deller
619 Ahakea Street
Honolulu, HI 96816

Caranthia and James White
3444 James Street
Honolulu, Hawaii 96815
808-384-5453

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
HB 87, HD1
TESTIMONY IN OPPOSITION
Tuesday, February 17, 2009
Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. Our names are Caranthia and James White and I am the parent of a child with an autism spectrum disorder called PDD-NOS. Many of these children with an autism spectrum disorder need to access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to access educational success.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

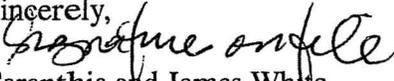
Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,



Caranthia and James White

3444 James Street

Honolulu, Hawaii 96815

**AUTISM SOCIETY OF HAWAII
P.O. BOX 2559
HONOLULU, HAWAII 96802
808 228-0122**

**HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY**

HB 87, HD1

TESTIMONY IN OPPOSITION

Tuesday, February 17, 2009

Conference Room #325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

My name is Naomi Grossman, and I am the president of the Autism Society of Hawaii. The Autism Society of Hawai'i is an affiliate chapter of the Autism Society of America. Its members are composed of families who deal with living with the effects of autism and the professionals and paraprofessionals who serve them.

The Autism Society of Hawai'i will provide leadership in the field of autism dedicated to supporting families who advocate on behalf of their children and are committed to reducing the consequences of autism through education, research and advocacy.

The Autism Society of Hawai'i appreciates the opportunity to comment on the proposed HB 87, HD 1. As parents and friends of children with autism and other related disorders, we know that our children have the potential and hunger to learn. Research shows that parents' involvement in their children's individualized educational program promote positive outcomes.

HB 87, HD1 within which proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. We believe HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the

Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the federal Individuals with Disabilities Education Act (IDEA), whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for the opportunity to testify on HB 87, HD1.

Sincerely,

A handwritten signature in black ink, appearing to read "Naomi Grossman", with a long horizontal flourish extending to the right.

Naomi Grossman

Autism Society of Hawai'i, president

HOUSE OF REPRESENTATIVES

COMMITTEE ON JUDICIARY

HB 87, HD1

TESTIMONY IN OPPOSITION

Tuesday, February 17, 2009

Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Michelle Lee and I am a Mental Health Provider working with special-needs children and their families for the past eight years. Having first hand experience I know the difficulties families face on a daily basis and sympathize with the struggles they are faced with in the school system. Many of these children need to access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to access educational success.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student.

HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. Yes it may sound absurd to not pay, especially when ordered to by federal courts, but this has been happening for many years. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's

relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Lee".

Michelle Lee

House Judiciary Committee
The Honorable Jon Riki Karamatsu, Chair
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving our testimony on HB 87, HD1 relating to Special Education; Oversight and Monitoring. The Ko'olauloa Community Children's Council (KCCC) Parent Support Group is opposed to HB 87. HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous. Secondly, the issue of oversight and monitoring of special education services for children with disabilities in private schools that are placed or referred by public agencies (such as the DOE) are already a part of the Individuals with Disabilities Education Improvement Act of 2004. The Federal Register (34 CFR Parts 300 and 301) already has procedures in place that spell out the DOE's responsibilities towards children with disabilities in private schools placed or referred by public agencies (34 CFR 300.145-147).

Also, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure not pass.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,
(signatures on file)

Donna Brown, KCCC Parent Co-Chair
Dacey Kagawa, KCCC Parent Co-Chair
Charlotte H. Kamauoha, Parent Co-Chair
Community Children's Council Office
1177 Alakea Street, B-100
Honolulu, HI 96813

Josie Suzuki <josiesuzuki@gmail.com>
To: Naomi Grossman <naomigr@gmail.com>

Mon, Feb 16, 2009 at 9:20 PM

Josie Suzuki

2136 Aulii Street

Honolulu, Hawaii 96817

387-7487

HOUSE OF REPRESENTATIVES

COMMITTEE ON JUDICIARY

HB 87, HD1

TESTIMONY IN OPPOSITION

Tuesday, February 17, 2009

Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Josie Suzuki, and I am the parent of a child with Autism.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE

placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

My child is four years old and can only speak three word sentences. She screams when she has difficulty communicating with us. She needs much more speech therapy and ABA therapy than what is offered through the DOE.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,

Josie Suzuki

Josie Suzuki

2136 Aulii Street

Honolulu, Hawaii 96817

Mrs. Jenny Chong
7214 Opaekaa Street
Honolulu, Hawaii 96825
(808) 945-7645

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
HB 87, HD1
TESTIMONY IN OPPOSITION
Tuesday, February 17, 2009
Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Jenny Chong, and I am the parent of a child with PDD-NOS.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicious.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,

JENNY CHONG

7214 Opaekaa Street
Honolulu, HI 96825

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
HB 87, HD1
TESTIMONY IN OPPOSITION
Tuesday, February 17, 2009
Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Julianne King and I am the parent of a child diagnosed with autism. I am also the president of the Beautiful Son Foundation whose purpose is to help families in Hawaii find and fund treatments for autism spectrum disorder.

Through our family's journey w/ autism, I have learned that kids w/ disabilities need protection under the Individual Disabilities Act. They need it in order to access appropriate education. It seems that every year, our community faces battles to reduce and remove appropriate education for our kids.

HB 87, HD1 is not good for our kids. It proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education

It is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous. Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no

knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,

Don King
320 Poopoo Place
Kailua, Hawaii 96734

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
HB 87, HD1
TESTIMONY IN OPPOSITION
Tuesday, February 17, 2009
Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1.

I am the parent of a child with an autism spectrum disorder called PDD-NOS. Many of these children with an autism spectrum disorder need to access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to access educational success.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony,
Elena Hamm

*Elena Hamm
1550 Pohakuy St. #309
Honolulu, HI 96817*

Kiele Pennington
817 Malulani St.
Kihei, Hawaii 96753
808 879-3825

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
HB 87, HD1

TESTIMONY IN OPPOSITION

Tuesday, February 17, 2009
Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Kiele Pennington, and I am the parent of a child with autism. Many of these children need to access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to access educational success.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances, the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

As a parent of child with special needs, I can attest to the fact that navigating the IEP process is difficult and consuming. It has been a struggle for our family to work with the school to create a program that is appropriate to our daughter's needs. We have been forced to maintain constant vigilance over her school program in order to ensure her basic safety needs. All the while balancing the needs of the rest of the family, private therapies, evaluations, and ongoing medical issues. The additional hardship this type of legislation would put on families of children with special needs is unconscionable. Should a child with special needs be placed in a private school, this type of legislation would create a "back door" for the DOE to strip the child of those rights. It is hardly appropriate to create blanket legislation such as this that would give power to an institution that, in most cases, is unable to provide an appropriate education to begin with. Our children are individuals and each case must be assessed in a manner that remains in line with IDEA and in adherence to a child's civil rights.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Diane Corn and I am the parent of a child with severe learning disabilities and resultant emotional outfall. I am a single parent taking care of my two children and elderly mother. Nevertheless, the only place for my child to receive the services he desperately needs is through private placement which I have successfully accomplished through due process at great cost emotionally, physically and financially for me and my family. As it is the only way that I can assure that my child receives an education under IDEA in hopes of being a productive member of our society, we have stayed the course and my child is placed in school by court order.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In my child's case, as many other cases, the DOE has failed to make payment to the private school or facility despite the fact that my child was placed at the private school as a result of a due process hearing decision and a decision by the federal court. I am concerned also that the individuals seeking to have access to my child are not part of the IEP team and I have no knowledge of that individual's relationship to my child's educational needs. Under such circumstances, it is my understanding that my child's school is obligated to protect the civil rights of my special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates my child's due process rights. Passage of such a law would only lead to unnecessary litigation.

I have always followed every aspect of the law in securing my child's right to an education. I do not want to be forced yet again to go to due process because a court order regarding where my child is placed is being ignored by the failure of the DOE to pay my child's school for the services rendered.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that HB 87, HD1 be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,

DIANE CORN
645 Ilikai St.
Kailua, HI 96734
(Signature on file)

129 Walua Place
Kihei HI 97653

17 Feb. 2009

Dear Chair Karamatsu, Vice Chair Ito, and Members of the Committee,

I am the parent of a child who does not have a single normal input or output channel or from her brain. She has dysfunction of sensory integration, an anxiety disorder, auditory processing disorders, an eye movement disorder that leaves her seeing double much of the time, and fine motor deficits compounded by the visual impairment.

At the end of third grade in a public school, she was not even reading at first grade level. When my husband & I questioned this lack of achievement, we were told that this is all she can accomplish. When we persisted that this must be wrong – after all, she has a normal IQ – we were attacked personally.

We went to due process & our daughter was privately placed at public expense. Kamali'i Elementary School took us to due process every single semester, not just every year, yet they lost every time, because at Horizons Academy, our daughter's reading was improving 1.5 to 2 grade levels every year, when Kamali'i had been unable to advance her even a few months per year.

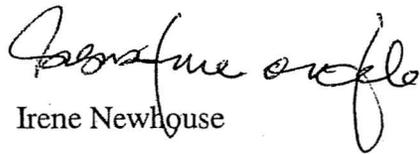
This was some years ago, and our daughter is now almost 16. She reads well above grade level.

During her years at Horizons, her progress reports were always submitted to DoE, and DoE sent observers. During the elementary school years, these observers were extremely disruptive to her education because she felt their purpose was to find fault with a school she loved & haul her back to her previous nightmarish experience. Lokelani Intermediate School was far less adversarial, and, although her placement was reviewed annually, she was placed at Horizons w/out the need for due process. She was then far less anxious about the observations.

I find HB 87 HD1 unnecessary because a mechanism for oversight already exists. However, I have to ask myself why on the earth the Legislature is even considering this measure for another reason. DoE was totally not up to the job of teaching our daughter to read, so what qualifies them to have any opinion whatsoever regarding the competency of the school that DID teach her to read? Our daughter is far from the only child whose education DoE is botching – I teach part-time at a private after-school tutoring center whose very existence is due to DoE incompetence. Where is the oversight for these cases? It was up to us, her parents, to figure out that our daughter was ill-served. If we were not graduates of public schools in states that rank better than 25th in the US, we wouldn't have had any idea – DoE certainly bent over backward to try to convince us of the exact opposite. And they do such an outstanding job of convincing other parents that

their children are not their responsibility, NCLB notwithstanding, that parents feel their only option is to pay the tutoring center I just mentioned.

HB 87 HD1 should be held.

A handwritten signature in cursive script, appearing to read "Irene Newhouse".

Irene Newhouse

HOUSE OF REPRESENTATIVES

COMMITTEE ON JUDICIARY

HB 87, HD1

TESTIMONY IN OPPOSITION

Tuesday, February 17, 2009

Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Tanya Blanco and I have been working with special-needs children and their families for several years. Having first hand experience I know the difficulties families deal with on a daily basis and sympathize with the struggles they are faced with in the school system. Many of these children need to access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to access educational success.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student.

HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. Yes it may sound absurd to not pay, especially when ordered to by federal courts, but this has been happening for many years. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's

relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,

A handwritten signature in cursive script that reads "Tanya Blanco-Gurtiza".

Tanya Blanco-Gurtiza

Linda A.M. Castro
1450 Young Street #2309
Honolulu, HI 96814
Phone 808-258-1387

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
HB 87, HD1 TESTIMONY IN OPPOSITION
Tuesday, February 17, 2009 Conference Room 325 at 2pm

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Linda Castro and I am the parent of a child with Autism.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous. Secondly, there are many compelling reason why a private school might not permit Department of Education personnel to access and observe a child or the child's records. In some cases, the Department of Education has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances, the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due processes hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services. Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,
Linda A.M. Castro
1450 Young Street #2309
Honolulu, HI 96814

Teresa Chao Ocampo
215 N. King Street, Apt. 207
Honolulu, HI 96817

February 17, 2009

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice-Chair
House Judiciary Committee
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: Testimony for HB 87 HD1 to be heard by JUD on Tuesday, 2-17-09 at 2:00pm in House Conference Room 325.

As a parent of a special needs child, I STRONGLY OPPOSE bill HB 87 HD1 for several reasons but most obviously, this bill is a direct violation of the guidelines stated in 20 U.S.C. 1415 (g) Appeals, and (i) Administrative Procedures under 20 U.S.C. 1415, Procedural Safeguards, of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004, 20 U.S.C. 1400 et. seq.). It also violates corresponding sections of the DOE's own Procedural Safeguards Notice that includes IDEA 2004 and Hawaii Law and Regulations.

Given that so many members of this respected committee is composed of attorneys, either practicing or non-practicing, I am certain that your cumulative experiences will guide you in making the correct decision regarding to HB 87 HD1.

I agree that the DOE has a responsibility and obligation to provide a Free Appropriate Public Education to all special needs children under IDEA, including those who are placed in a private school at the public's expense. However, I do not agree that the DOE should be permitted to have unlimited and unchecked authority to access these schools just for the purposes of observation, interviews and review of a student's educational records at a private placement with the authority to change a child's placement as described in HB 87 HD1 without due process.

ALL children in private schools are protected by privacy laws, state and federal laws. Private schools are also protected by these same laws. This bill as written unduly empowers the DOE, a public entity, with unrestricted

authority to violate the rights of special needs children AND the rights of ALL individuals associated with a PRIVATE entity in the name of a Free Appropriate Public Education.

1. HB 87 HD1 would allow the DOE to REVERSE a hearing officer's legally binding decision on a child's placement AFTER the 30 calendar day time period to appeal has lapsed. Additionally, HB 87 HD1 would permit the DOE to REVERSE any decision made on appeal at the state and federal level. This bill directly violates the following provisions stated IDEA 2004.

Under 20 U.S.C. 1415 (i) (1)(A) it states, "**a decision made in a hearing conducted pursuant to an IMPARTIAL DUE PROCESS HEARING, shall be FINAL (my emphasis), except that any party involved in such hearing may appeal such decision.**"

Under 20 U.S.C. 1415 (g) (1) it states, "... **any party aggrieved by the findings and decision rendered in such a hearing MAY APPEAL such findings and decision...**"

Under 20 U.S.C 1415 (i) (B) (2) (A), it states that "**any party aggrieved by the findings and decision made under the impartial due process hearing or who does not have the right to appeal, shall have the right to bring a civil action with respect to the complaint presented, which action may be brought to any State court or competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.**"

As per the DOE's Procedural Safeguards Notice for Parents and Students, under "Civil Actions, Including The Time Period In Which To File Those Actions," it states "**The Party (Parents or the Department) bringing the action has 30 CALENDAR DAYS (my emphasis) from the date on which the party received the hearing decision to file a civil action.**"

If the losing party DOES NOT APPEAL within 30 days, the hearing officer's decision is FINAL.

Moreover, under 20 U.S.C 1415 (i) (1) (B), it states that "**a decision made under an APPEAL shall be FINAL (my emphasis).** Therefore, once a child's placement has been determined by a hearing officer or by an appeals court, it CANNOT be unilaterally changed by the DOE the under the guise of "oversight" and "monitoring" as would be permitted by HB 87 HD1.

2. HB 87 HD1 would allow the DOE the authority to determine whether or not a child's placement is appropriate AND it would give the DOE the authority to change a child's placement without due process to the child.

This undermines the intended purpose of the Procedural Safeguards as expressed in IDEA 2004 and it defeats the purpose of an Impartial Due Process Hearing:

As per the DOE's own Procedural Safeguards Notice, it states that an Impartial hearing officer, at minimum-

1. Must not be an employee of the Department or any State agency that is involved in the education or care of the child;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of IDEA 2004 and Federal and State regulations pertaining to IDEA 2004, and the legal interpretations of IDEA 2004 by Federal and State courts; and
4. Must have the knowledge and ability to conduct hearings and to make and write decisions, consistent with appropriate, standard legal practice.

Under Impartial Due Process Hearing, 20 U.S.C 1415 (f) (3) (E) (i), it states that **"a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education."**

As per 20 U.S.C 1415 (f) (3) (E) (ii) **the hearing officer, in matters alleging a procedural violation, may find that a child did not receive a free appropriate public education only if the procedural inadequacies-**

- (I) impeded the child's right to a free appropriate education;**
- (II) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or**
- (III) caused a deprivation of educational benefits.**

A hearing officer, other than an appeals court, as an impartial party, is the only party authorized to make an independent decision on the appropriateness of a child's private placement. This decision is based on evidence presented during hearing by BOTH parents and the DOE and it is based on a preponderance of the evidence in the determination of the DOE's provision of a free appropriate public education to the child.

Given the strict requirements in assuring impartiality and depth of legal knowledge of a hearing officer, HB 87 HD1 easily dismisses the hearing officer's decision based on the DOE's inability to acquire observations, interviews and educational records of a child in private placement. The

reasoning behind this bill is completely irrational and unrelated to the provision of a free appropriate public education.

3. With the DOE's initial failure to appeal a due process decision comes the implicit agreement with the hearing officer's decision as to the appropriateness of the child's private placement. **This becomes the last agreed-upon placement.** HB 87 HD1 violates this inherent agreement between the parents and the DOE.

Starting on line 17 of HB 87 HD1 it states "the placement of the student in the private school or facility shall be deemed an inappropriate placement for the student and shall not be considered the last agreed-upon placement. The Individualized Education program team shall reconvene to determine a new placement for the student, and shall not consider the private school or facility in which the student was inappropriately placed."

Whatever challenges the DOE may face in acquiring observations, interviews or access to educational records for a child placed in a private placement, it was the DOE's INITIAL failure to provide FAPE as required by federal and state laws that resulted in the hearing officer's determination of the appropriateness of the private placement in the first place. Removal of the child from the legally determined and last agreed-upon placement to satisfy the DOE's technical purposes of documentation of "appropriateness" of the private placement is unlawful and is not a solution to these challenges.

4. Under HB 87 HD1, the DOE, for whatever reasons, will have the authority to independently deem a child's placement inappropriate, hold a superficial IEP team meeting and change the child's placement with a PREDETERMINED intention to do so, thereby preventing the parents from participating as equal participants of the IEP team as required by IDEA 2004.

Decisions about a child's placement cannot be made PRIOR to an IEP meeting. Only AFTER the IEP team meets with the parents and reaches a CONSENSUS can the decision on changing placement be made. IDEA is very clear on this, yet **HB 87 HD1 permits and even encourages the DOE to make a UNILATERAL DECISION thereby preventing parents from "meaningful participation" in the educational decision-making process.**

As another procedural flaw, this would automatically allow a hearing officer to lean in favor of parents as HB 87 HD1 would allow this

PREDETERMINATION to be made, therefore directly violating 20 U.S.C 1415(f)(3)(E)(ii)(II) as cited above.

I strongly urge this Judiciary Committee to carefully review the legality of this bill. I understand the DOE's responsibility to these children and I do not object to the basic premise of this bill, which is to ensure that all special needs children in private schools receive a free appropriate public education. However, HB 87 HD1 wrongfully encourages the violation of basic rights afforded to special needs children under IDEA 2004 while at the same time attempting to protect these same rights through the Department of Education.

The goal of this bill should be to protect the rights of ALL individuals involved in this process, not to gain rights for some at the expense of others. This bill will ultimately lead to MORE impartial due process hearings at all local, state and federal levels. It will also lead to MORE decisions in favor of the parents because HB 87 HD1 is fundamentally flawed.

Please place the rights of our children first, NOT LAST. Do not let this bill pass.

Signature on file

Sincerely,

Teresa Chao Ocampo

HOUSE OF REPRESENTATIVES

COMMITTEE ON JUDICIARY

HB 87, HD1

TESTIMONY IN OPPOSITION

Tuesday, February 17, 2009

Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Shannon Tsubaki and I am a Mental Health Provider working with special-needs children and their families. I also have a niece and cousin with autism. Having first hand experience I know the difficulties families face on daily basis and sympathize with the way many of them are treated by our school system. Many of these children need to access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to access educational success.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. Yes it may sound ridiculous to just not pay, especially when ordered to by federal courts, but this has been happening for many years. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's

relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shannon Tsubaki', with a long horizontal flourish extending to the right.

Shannon Tsubaki, MA

Vera Marie and Vernon Asato
94-1023 Mawaho Street
Waipahu, HI 96797
688-2525

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
HB 87, HD1
TESTIMONY IN OPPOSITION
Tuesday, February 17, 2009
Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Vera Marie Asato and I am the parent of a child with Asperger's. Many of these children need to access positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to access educational success.

HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous. Secondly, there are many compelling reasons why a private school would not permit DOE

personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,
Vera Marie Asato
94-1023 Mawaho Street
Waipahu, HI 96797

April Kimura
Badges Hawaii
P.O. Box 107 Kan., HI 96744

House of Representatives
Committee on Judiciary
HB 87, HD1
Testimony in Opposition
February 17, 2009
Conference Room 325 at 2p.m.

Dear Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is April Kimura, and I am the parent of a child with autism and hearing impairment. I have been advocating for the rights of my daughter for 10 years. She needs to access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to access educational success.

My husband and I are experiencing one of the most difficult times in our lives trying to get our daughter, Faith, the free and appropriate education that she needs, now, in order not to burden our entire community later on when we are not here to help her. (IDEA) was created for people like us to get the proper education available for our daughter because we know her the best. Our decisions are the best for our child because we love her the most.

If we chose a private placement in the first place, it could have been because our public school wasted our time and money for years and still didn't produce or try to understand what our daughter's disability requires.

It may have been out of desperation that we had to get her some real help. It is also a possibility that the public school we had her in does not have one person knowledgeable about autism enough to even care about our daughter's education at all. And, it is a fact that a "team" of these people did not do my daughter any service or justice recently.

Therefore, I am against this bill that would limit our authority, as well as the authority we choose, in making decisions and educating our daughter. And, giving authority back to where we just suffered a nightmare and wasted your money and mine is inconceivable.

Therefore, I respectfully ask that this measure be held.

Thank you for receiving our testimony on HB 87, HD1.

Sincerely,

*April M Kimura (mother
of Faith)*

April and Brian Kimura

Susan Callahan

1510 Ohialoke Street

Honolulu, Hawaii, 96821
808 295-13333

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
HB 87, HD1
TESTIMONY IN OPPOSITION
Tuesday, February 17, 2009
Conference Room 325 at 2 p.m.

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD1. My name is Susan Callahan, and I am the parent of a child with multiple disabilities. HB 87, HD1 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. HB 87, HD1 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD1 is unnecessary because Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD1 is therefore duplicitous.

Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or the fact that the child was placed at the private school as a result of a

due process hearing decision or decision by the federal court. In other instances the individuals seeking to have access to the child are not part of the IEP team and the child's parents have no knowledge of that individual's relationship to their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for receiving my testimony on HB 87, HD1.

Sincerely,
Susan Callahan

1510 Ohialoke Street

Honolulu, Hawaii

96821