

**THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009**

Committee on Education and Housing

**Testimony in Opposition to H.B. No. 87, HD 2, Relating to Education
Monday, March 23, 2009, 2:00 p.m.
Conference Room 225**

Chair Sakamoto and Members of the Committee:

My name is John P. Deller. I have helped to care for a boy with autism for the past thirteen years, and as an attorney for the States of New York and Hawaii, I have had substantial experience in the field of special education. I am testifying as a private citizen against this bill.

This bill does two things: (1) it directs the Department of Education (“DOE”) to monitor private schools that provide special education services to students with disabilities, and (2) it provides that a school that the DOE finds does not provide “routine and timely” access to DOE staff for monitoring shall not be considered a proper placement.

I have no objection to the first objective, but strongly oppose the second. In testimony before the House Committee on Finance, Superintendent Hamamoto denied that the measure would change a student’s placement without a due process hearing as required by federal law, but that is exactly what it would do. If a private school resists being monitored, regardless of the circumstances, the DOE could unilaterally decide that the school cannot be approved as a placement by the IEP team and that the “stay put” injunction mandated by federal law would be inapplicable. That would conflict with

federal law and force a change of placement without due process. I therefore request that the measure be held or that the change of placement language be deleted.

If the monitoring provision is retained, I request that the measure **delete the reference to “routine and timely”** because it is vague and it could result in monitoring that interferes with a student’s education or that unduly burdens the private school’s staff. It is important to bear in mind that most, if not all, disabled children who have been placed in private schools are there because a hearings officer found that the DOE is unable to provide a free, appropriate public education. The parties, therefore, are usually adversaries, and the DOE may not be fair and unbiased in its monitoring.

While the DOE should be able to monitor a school’s performance, the legitimate interests of the private school should also be protected. Hence, **the monitoring should be limited to reasonable times that do not disrupt the education of students or unduly burden the private school.** If a school denies access, the DOE would have a right to seek a court order compelling access.

I respectfully submit that before this measure is considered further, the legislature should be informed of specific problems, if any, that the DOE is encountering in its monitoring. **Senate Concurrent Resolution No. 150** is a better approach to the subject than this bill.

Thank you for the opportunity to testify on this important matter.



JOHN P. DELLERA

LATE TESTIMONY

Attention: Senator Norman Sakamoto, Chair, and Senator Michelle Kidani, Vice Chair
Members of the Committee on Education and Housing

Testimony of: Linda Elento, parent, board director of the Hawaii Down Syndrome Congress

Hearing: Monday, March 23, 2009, 2:00 pm

HB87 HD2 Special Education; Oversight and Monitoring: OPPOSE

I personally oppose HB87 HD2 and ask that the Committee on Education and Housing hold this bill, the main reason being, I would not want any student to be faced with a devastating situation similar to my special education eligible son's recent dismissal from a public school on the same day we were informed of that decision made by the school system, without parents (fortunately about two months later, his enrollment was re-instated). Other factors include disciplinary reasons and pendency placement during due process hearings and appeals.

The comments below are quoted from the Federal Register's regulations implementing the IDEA 2004 Part B. My concern is that other factors such a, would be

“Sec. 300.518(d)...The basis for this regulation is the longstanding judicial interpretation of the Act's pendency provision that when a hearing officer's decision is in agreement with the parent that a change in placement is appropriate, that decision constitutes an agreement by the State agency and the parent for purposes of determining the child's current placement during subsequent appeals. See, e.g., Burlington School Committee v. Dept. of Educ., 471 U.S. 359, 372 (1985); Susquenita School District v. Raelee S., 96 F.3d 78, 84 (3rd Cir. 1996); Clovis Unified Sch. Dist. v. Cal. Office of Administrative Hearings, 903 F.2d 635, 641 (9th Cir. 1990).”

Given the state is responsible of enforcing the requirements of the IDEA, general supervision procedures, such as the requirements for State Complaints for special education to determine substantive issues not only procedural issues, need to be priority for the Legislature to ensure that future allegations of the DOE's incompliance of the IDEA in federal court are eliminated. (Authority: 20 U.S.C. 1412(a)(8); 1417(c)); reference: Hawaii Federal District Court, CV-1:2007-00103).

Thank you for your consideration of these serious matters.

Lisa L. Camerino, M.D.
7106 Kamilo Street
Honolulu, Hawaii 96825
808-295-9100
drcamerino@yahoo.com

LATE

SENATE COMMITTEE ON EDUCATION AND HOUSING

HB 87, HD 2

TESTIMONY IN OPPOSITION

Monday, March 23, 2009 at 2 p.m.

Conference Room 225

Dear Chair Sakamoto, Vice Chair Kidani, and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Lisa Camerino, M.D., and I am the parent of Jonathan Camerino with Autism, and a physician who has been treating and advocating for the rights of children of disabilities for 3 years in Hawaii, and 4 years in Oregon. These children desperately need access to positive outcomes through special education under IDEA in order to achieve educational success.

HB 87, HD 2 proposes to authorize and obligate 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 inappropriate placement for the student. HB 87, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education. It is also unnecessary since Act 179 which was passed by the Legislature last year requires DOE to monitor any child who has undergone a unilateral placement in a private school.

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, DOE has failed to make payments to the private school or facility despite the fact that the 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.

Under 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 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 obligation and violation of rights of these special children in many aspects.

I, myself, have gone through the due process hearing twice in 2 years, and having received a fair and favorable decisions by a hearing officer, I believe that the current IDEA is sufficient in protecting my son and others like him, rights to receive what they deserve although not perfect, and HB 87, HD2 will not help these special children in protecting their rights of education.

Through 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 accepting my testimony on HB 87, HD 2.

Sincerely,

Lisa Camerino, M.D.
7106 Kamilo street, Honolulu, Hawaii 96825
808-295-9100
drcamerino@yahoo.com

The Honorable Senator Norman Sakamoto, Chair
The Honorable Senator Michelle Kidani, Vice Chair
Senate Committee on Education and Housing
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

LATE

March 22, 2009

Subject: Testimony in Opposition to HB87 HD2, Relating to Education
Monday, March 23, 2009, 2:00 p.m.
Conference Room 308

Dear Chair Sakamoto, Vice Chair Kidani and members of the Committee,

Thank you for receiving my testimony in opposition to HB87 HD2. I am a parent of two children with special needs, both on the Autism Spectrum, and I am also a graduate student at the University of Hawaii at Manoa Master's of Social Work program. While I can appreciate the intent of HB87 HD2 to give the Department of Education (DOE) authority to oversee and monitor students with special education services who are placed in private schools/facilities at public expense, I strongly oppose this measure due to the following:

- The language on page 1, lines 15-18 and page 2, lines 1-5 authorizes the DOE to deem a private school/facility as an inappropriate placement if it does not allow the DOE "routine and timely access to monitor the delivery of special education and related services." It goes on further to authorize the DOE to strike out the private school/facility as a placement for the child's Individualized Education Plan (IEP) team to consider.

To allow the DOE authorization to deem a private school/facility as an inappropriate placement and to remove it entirely as a consideration of placement due to "routine and timely access" issues rather than the "appropriateness" of the education the child is receiving is very questionable and quite concerning. Under the IDEA, whether or not a private school or facility is an appropriate placement is determined by the child's IEP team or as a result of a due process hearing.

The parents and child are an important part of the *child's* IEP team. For the DOE to deem the private school/facility as an inappropriate placement due to access issues between the two agencies and to remove the private school/facility as a placement for consideration tramples on parents and children with special needs' ability to participate in the IEP team as full and equal partners in decision-making. Additionally, mandating that a private school be automatically deemed inappropriate because the DOE is not permitted routine and timely access violates the child's due process rights under federal law.

One of the core values of Social Work is social justice. The ethical principle behind this core value is that social workers are to challenge social injustice wherever it exists (NASW Code of Ethics). Children with special needs and their families should not be made to pay for access issues that need to be resolved between the DOE and the private

school/facility. To do so, and by sanction of the law is an injustice to children with special needs and their families.

I therefore oppose HB87 HD2 and ask that the afore-mentioned provision be stricken out entirely from the bill.

Respectfully,

Charlotte H. Kamauoha

56-132 Huehu Place
Kahuku, HI 96731

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. 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, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2 be held.

Thank you for receiving my testimony on HB 87, HD 2.

Sincerely,

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

LATE

Kamakana M. Fitchett
UK Address:
1 Penton Rise
Islington, London WC1X 9EH
UK

U.S. Citizen Address
637 Kaiemi St.
Kailua, Hawaii 96734
808 262-4768

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my letter on HB 87, HD2. My name is Kamakana Fitchett, and I am the aunt of a child with autism. My niece and many like her desperately need access to special education and services provided for children with disabilities and their families under the Individuals with Disabilities Education Act (IDEA) to be able to achieve full educational and personal success.

HB 87, HD2 proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. However, the bill also states that should the private school or facility fail to allow the DOE routine and timely access to the delivery of special education and related services, the placement of the student in question will be deemed inappropriate. This is outrageous as it clearly violates the right of these children, who need special education, to due process as well as violating their civil rights.

HB 87, HD2 clearly violates children with special needs' right to due process because under the IDEA the appropriateness of a child's placement within a private school or facility is a question, which must be decided through a due process hearing. The needs of each child are unique and must be considered on an individual basis before a decision is made. Placing, within a piece of legislation, no less, a mandate which bypasses completely such a hearing is no less than criminal and could lead to legal action against the DOE.

Additionally, there a number of compelling reasons why a private school or facility might not permit DOE staff and personnel access to a child's records or to observe a child. First, there have been cases in which the DOE has failed to pay the private school or facility despite a requirement to do so spelled out by either, the Individualized Education Program (IEP) team when the IEP team agreed to the placement of the child in the private school or facility in question or a due process hearing decision or a federal court decision. Secondly, there have been occasions where individuals have sought access to the child and were not part of their IEP team and the parents of the child were unaware of this individual's relationship to the child's educational needs. In which case a private school, any school in fact, would be under legal obligation not to allow this individual access to the child to protect his or her civil rights.

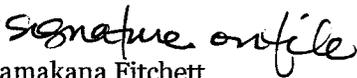
Furthermore, Act 179 which was passed by the Legislature last year already requires the DOE to monitor any child who has undergone a unilateral placement in a private school. This renders HB 87, HD2 redundant.

I am an aunt of a child with special needs and I can attest to the fact that navigating the IEP process is difficult and time consuming. Not only does my sister carefully attend to my niece's physical needs, which are various and often elaborate. I have also watched and listened as she fought at every turn, to ensure that her daughter's educational needs were fulfilled as spelled out by law. She has been forced to maintain constant vigilance over my niece's school program in order to ensure her basic safety needs. At the same time balancing the needs of her husband and other children. The additional hardship this type of legislation would put on my sister and the families of other 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 their rights.

It is the duty of us all to protect and safeguard those who are most vulnerable, none more so than a child with disabilities. It is unthinkable that such legislation as HB 87, HD2 would be allowed to pass into law. My niece and others like her are individuals and each case must be assessed in a manner that remains in line with the 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 services promised, which so many of these children and their families desperately need.

Therefore, I respectfully ask that HB 87, HD 2 be opposed.

Thank you for receiving my letter on HB 87, HD2.

Sincerely, 
Kamakana Fitchett
637 Kaiemi St. Kailua, HI 96734

LATE

Mr. & Mrs. Samuel A.S. Young, Jr.
98-1085B Komo Mai Drive
Aiea, Hawaii 96701
486-0330

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Cheryl D. Young, and I am the parent of a child with autism, apraxia and other neurological disabilities.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,

Cheryl D. Young
Samuel A. S. Young, Jr.

Lynette Sheppard
350 Aoloa Street B125
Kailua, Hawaii 96734
808-561-7363

LATE

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

March 23, 2009
Conference Room #225/2:00pm

Dear Chair Sakamoto, Vice Chair Kidani, and Members of the Committee:

Thank you for receiving my heartfelt testimony on HB 87, HD 2. My name is Lynette Sheppard. I have been providing direct speech, language, and communication services to children with special needs at a private school in Honolulu for over six years. Part of my job, has been my passionate involvement with the due process system, at which time, on each occasion, witnessed the extreme individual attention paid by the hearings officer to rule on that child's appropriate placement. The hearings officer's ruling is based on the testimony of family and professionals that includes detailed documentation and reporting. This painstaking decision for placement is made on each child's unique and individual needs based on supports and services needed. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child clearly violates the child's due process rights. There are many compelling reasons why a private facility would not permit DOE personnel access to observe a child or allow access to his/her records: in some cases for example, the DOE has failed to make payment to the private school/facility despite placement as result of IEP team agreement, due process hearing decision, or federal court decision. Additionally, parents would not have knowledge of individuals seeking this access, and if not a direct part of the child's IEP team, these parents would also have no knowledge of their relationship to their child's educational needs. Therefore, HB 87, HD2 would be in direct violation of the civil rights of our special needs children by impeding the private school's obligation to protect these civil rights. This, without question, would lead to continued and extremely unnecessary litigation.

On behalf of the children relying on the legal and moral protections of IDEA, I respectfully ask that this measure be held. Thanking you in advance for your consideration of my testimony in opposition of HB 87, HD2, I am, sincerely,

Lynette Sheppard
signature on file

LATE

Don King
320 Poopoo Place
Kailua, Hawaii
808-262-2552

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Julianne King and I am the parent of a child with autism.

Our family has been advocating for the rights of children with disabilities for 6 years in Hawaii. 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, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,
/Signature on file/
Don King

LATE

Julianne King
320 Poopoo Place
Kailua, Hawaii
808-262-2552

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Julianne King and I am the parent of a child with autism.

Our family has been advocating for the rights of children with disabilities for 6 years in Hawaii. 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, HD 2 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.

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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, HD 2.

Sincerely,
/Signature on file/
Julianne King

LATE

NATHAN GLADSTONE
6682B 106TH ST.
EWA BEACH, HI 96706

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Nathan Gladstone, and I am a skills trainer that works with special needs kids.

"I am a skills trainer who has been advocating for the rights of children with disabilities for 5 years in Hawaii. 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, HD 2 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.

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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, HD 2.

Sincerely,

Signature on file

Nathan Gladstone

6682B Ewa Beach, HI 96706

LATE

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

March 23, 2009

Senator Norman Sakamoto, Chair
Senator, Michelle Kidani, Vice-Chair
Senate Committee on Education and Housing
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: Testimony in STRONG OPPOSITION to HB 87 HD2 to be heard by EDH on Monday, 3-23-09 at 2:00 pm, Senate Conference Room 225.

I STRONGLY OPPOSE bill HB 87 HD2 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 under Chapter 56.

I agree that the DOE has a responsibility and obligation to provide a Free Appropriate Public Education to all special needs children under IDEA 2004, including those who are placed in a private school at the public's expense. However, there is an underlying hypocrisy within this bill based on the assumption that children who receive special education in the public schools are currently properly monitored and supervised.

The DOE's Special Education Section, Part B, Six-Year Student Performance Plan and Annual Performance Report (Overview for 2007-2008) is a report that shows how the DOE for the most part failed to comply with federal IDEA law. According to this report, the DOE missed the majority of its SELF-IMPOSED targets related to the actual IMPLEMENTATION of IDEA for its own PUBLIC school students while meeting most of those targets related to the procedural reporting of complaints, due process hearings, mediation and resolution meetings.

If the DOE is currently unable to provide adequate oversight ensuring the appropriate delivery of IDEA services to its PUBLIC school students, what level of oversight and supervision should we expect from the DOE towards children in PRIVATE placement under HB 87 HD2 given that the private placement has been legally deemed "appropriate" by a Hearing Officer?

This bill leads one to ask "What is the true intent of HB 87 HD2?" Is this bill designed to ensure that all special needs children OUTSIDE the public school system are afforded the same basic rights under IDEA as their public school peers or is it meant to reduce or eliminate their ever-limited rights under IDEA?

Based on the harsh wording in this bill, the intent is questionable. Special needs children are fragile; to pretend that they are not is callous and insensitive. If the true purpose of HB 87 HD2 was to ensure the delivery of a Free Appropriate Public Education to the special needs children in private placement, the wording of this bill would not be meant to hurt the child.

However, removing a child from any private placement and presumably placing the child into a public school during the course of the school year without any consideration given to the mental and physical chaos the child would surely experience is truly cruel. Should these children be played with like toys at the leisure of this bill? This is what HB 87 HD2 proposes, although unintentionally.

I do not have any qualms about the DOE's self-imposed mandate to provide oversight for special needs children placed in a private placement. That is the intent behind Act 179 which was passed last year. However, I do not agree to permit the DOE to have unlimited and unchecked authority to access private schools just for the purposes of observation, interviews and review of a student's educational records with the authority to change a child's placement as described in HB 87 HD2 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.

Legal issues will financially plague the DOE and the State of Hawaii if HB 87 HD2 is passed. This bill will also lead to an increase in civil litigations and due process hearings which would ultimately lead to undesired outcomes

for the Department of Education. Although I am not an attorney, the following is BASIC information related to IDEA 2004:

1. HB 87 HD2 as written 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 HD2 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 (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.”**

Given that Hawaii's DOE is considered a “one-tier” system where the local educational agency is the same as the state educational agency, any due process hearing decisions may be appealed directly to any State court that has authority to hear this type of case or any district court of the United States.

As per the DOE's Procedural Safeguards Notice for Parents and Students, p. 34, 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 finalized 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 HD2.

2. HB 87 HD2 would allow the DOE the authority to deem a child's placement as inappropriate AND it would give the DOE the authority to change a child's placement without due process to the child. This negates the intended purpose of the Procedural Safeguards as expressed in IDEA 2004 as well as that of an Impartial Due Process Hearing. This bill would directly violate a federal law.

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 to assure impartiality and the depth of legal knowledge of a Hearing Officer, HB 87 HD2 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, unmandated requirements. As written, this bill completely and fully violates federal IDEA 2004 law as it seeks to overrule any legally binding decision made by a Hearing Officer of the State of Hawaii.

3. With the DOE's initial failure to appeal comes the implicit agreement with the Hearing Officer's decision as to the appropriateness of the child's private placement. **This automatically becomes the last agreed-upon placement.** HB 87 HD2 violates this inherent agreement between the parents and the DOE.

HB 87 HD2 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 an independent Hearing Officer's determination as to 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 purposes of documentation of appropriateness of any private placement is unlawful. The DOE is not authorized to overturn a Hearing Officer's decision once it has been finalized.

The question again arises. Does this bill support the educational needs of the child or is it intended to place the needs of the Department of Education ABOVE AND BEYOND those of the child? Again, please refer to the numerous missed targets in the DOE's Annual Performance Report for 2007-2008 related to the IMPLEMENTATION of IDEA 2004 for these children. The answer will be obvious.

4. Under HB 87 HD2, 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 HD2 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 bill would automatically allow a Hearing Officer to lean in favor of parents as HB 87 HD2 permits the DOE to make such a **PREDETERMINATION PRIOR to an IEP meeting.** This directly violates 20 U.S.C 1415(f) (3) (E) (ii) (II) as cited above.

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 HD2 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. More impartial due process hearings at all local, state and federal levels as well as in civil cases will increase as a result of this bill. MORE parents will succeed in their due process hearings rather than fail.

This bill would be a financial disaster for the State of Hawaii because HB 87 HD2 is fundamentally flawed and undeniably violates the current federal IDEA 2004 law.

Please place the rights of our children first, NOT LAST. I respectfully ask you to please hold this bill.

Sincerely,
Teresa Chao Ocampo

Josie Suzuki
2136 Aulii Street
Honolulu, Hawaii 96817
808-387-7487

LATE

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Josie Suzuki, and I am a parent of a child with Autism. As a parent of a special needs child, it is very stressful, heartbreaking, and exhausting, just to name a few. My child is currently enrolled in the DOE system. We are very thankful that she is in the system because we would not be able to afford the speech therapy or occupational therapy that she needs in order to learn the skills that she would need for adulthood. My daughter is four years old, and she is trying so hard to communicate with us, but doesn't know the words to ask for certain things. She screams most of the time in frustration. We find it hard enough to get the services that she needs, in order for her to succeed through the IEP process. We worry about her future and want her to live a productive and normal life.

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, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education. HB 87, HD 2 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, HD 2 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.

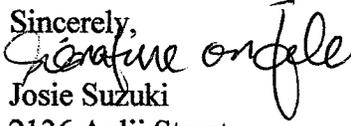
Additionally, under the IDEA, whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. 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, HD 2.

Sincerely,


Josie Suzuki

2136 Aulii Street

Honolulu, Hawaii 96817

Donna Ylen
779 Pahumele Place
Kailua, Hawaii, 96734
808-375-8505

LATE

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Donna Ylen, and I am the parent of a child with special needs.

I have been advocating for my son's rights since the day he entered the DOE system. My son and many other children need to have access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to access educational success.

HB 87, HD 2 proposes to authorize and obligate the DOE as overseers and monitors of those students who are eligible for special education and have been placed in private schools to meet their individual educational needs.

I object to HB 87, HD 2 as this is giving the DOE system that has not met the child's needs access to private information and further violates that child's civil rights. The bottom line is HB 87, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

Also, the bill further states, "If the private school or facility does not allow the department routine and timely access to monitor the delivery of special education and related services, the placement of the student in the private school or facility shall be deemed inappropriate placement for the student and shall not be considered the last agreed-upon placement. The Individual education program team shall reconvene to determine and new placement for the student, and shall not consider the private school or facility in which the student was inappropriately placed."

HB 87, HD 2 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, HD 2 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. It is my understanding 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 the placement of the child in 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, HD 2.

Sincerely,
SIGNATURE ON FILE
Donna Ylen

LATE

Donnie E. Rincon
2752-D Pali Highway
Honolulu, HI 96817

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION
Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Donnie E. Rincon, and I am the parent of two children with dyslexia and severe processing disorder. As a mother, it seems to me that we shouldn't be ADDING more laws on top of others that are already in place. If the question is how IDEA is being implemented then shouldn't the bureaucracy be put in a position to file a due process hearing against the parent? It seems that only parents are put in a position to file due process. Parents will have to deal with yet another burden when they are already overburdened. All parents want to for our children to access an appropriate education in FAPE.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,
Donnie E. Rincon
2752-D Pali Highway
Honolulu, HI 96817

LATE

Serena Tzen g
1212 Nuuanu Ave 1901
Honolulu, Hawaii 96817
(808)341-63 34

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2

TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Serena Tzeng, and I am the parent of a child with Autism Spectrum Disorder and minor cerebral palsy.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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 a child with disability, I had been struggling in the darkness for more than a decade before things turning around; Margaret started receiving appropriate education and that had changed her life. These changes provide an opportunity for her to explore and reach her possible potential. On Mauka & Makai day, while she was standing there paddling on the paddling board, balance well and enjoy the sandy beach. You will not believe that is the same girl could not stand any tiny sand on her hand and had severe body coordination problem. I feel thankful that appropriate placement and program addressed her unique individual needs and provided Margaret a second chance to grow.

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, HD 2.

Sincerely,

Signature on file

Serena Tzeng

1212 Nuuanu Ave 1901

Honolulu, Hawaii 96817

LATE

Susan Callahan
1510 Ohialoke Street
Honolulu, Hawaii, 96821
808 295-1333

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani 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, as in my

sons case ; 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 – *signature on file*
1510 Ohialoke Street
Honolulu, Hawaii
96821

Bonnie Graham
P.O. Box 283036
Honolulu, HI 96828

LATE

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Bonnie Graham, and I am the parent of a child with learning disabilities.

I am a parent who has been advocating for the rights of children with disabilities for 5 years in Hawaii. 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, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,

Bonnie Graham

The Honorable Senator Norman Sakamoto, Chair
The Honorable Senator Michelle Kidani, Vice Chair
Senate Committee on Education and Housing
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

March 22, 2009

Subject: Testimony in Opposition to HB87 HD2, Relating to Education
Monday, March 23, 2009, 2:00 p.m.
Conference Room 308

Dear Chair Sakamoto, Vice Chair Kidani and members of the Committee,

Thank you for receiving my testimony in opposition to HB87 HD2. I am a parent of two children with special needs, both on the Autism Spectrum, and I am also a graduate student at the University of Hawaii at Manoa Master's of Social Work program. While I can appreciate the intent of HB87 HD2 to give the Department of Education (DOE) authority to oversee and monitor students with special education services who are placed in private schools/facilities at public expense, I strongly oppose this measure due to the following:

- The language on page 1, lines 15-18 and page 2, lines 1-5 authorizes the DOE to deem a private school/facility as an inappropriate placement if it does not allow the DOE "routine and timely access to monitor the delivery of special education and related services." It goes on further to authorize the DOE to strike out the private school/facility as a placement for the child's Individualized Education Plan (IEP) team to consider.

To allow the DOE authorization to deem a private school/facility as an inappropriate placement and to remove it entirely as a consideration of placement due to "routine and timely access" issues rather than the "appropriateness" of the education the child is receiving is very questionable and quite concerning. Under the IDEA, whether or not a private school or facility is an appropriate placement is determined by the child's IEP team or as a result of a due process hearing.

The parents and child are an important part of the *child's* IEP team. For the DOE to deem the private school/facility as an inappropriate placement due to access issues between the two agencies and to remove the private school/facility as a placement for consideration tramples on parents and children with special needs' ability to participate in the IEP team as full and equal partners in decision-making. Additionally, mandating that a private school be automatically deemed inappropriate because the DOE is not permitted routine and timely access violates the child's due process rights under federal law.

One of the core values of Social Work is social justice. The ethical principle behind this core value is that social workers are to challenge social injustice wherever it exists (NASW Code of Ethics). Children with special needs and their families should not be made to pay for access issues that need to be resolved between the DOE and the private

school/facility. To do so, and by sanction of the law is an injustice to children with special needs and their families.

I therefore oppose HB87 HD2 and ask that the afore-mentioned provision be stricken out entirely from the bill.

Respectfully,

Charlotte H. Kamauoha

56-132 Huehu Place
Kahuku, HI 96731

LATE

Joe D'Alessandro
Colleen Pegg
656 Meakanu Ln., #1601
Wailuku, HI 96793
808-242-1100

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION
Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidaniand Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Joe D'Alessandro. My wife, Coleen Pegg and I are the parents of a child with severe developmental disabilities.

We have been advocating for the rights of children with disabilities for several years in the state of Hawaii. Many of our children need access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 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.

My child, Matthew D'Alessandro, has been a special ed. student at Wailuku Elementary School since 2005. His team is currently looking at placement in a private institution here in Maui because it will provide the least restrictive environment for him short of institutionalization on the mainland. While the school has tried to implement an effective plan for him, it has failed, not only in our eyes, but in the opinion of his team and representatives of 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, HD 2.

Sincerely,

Joe D'Alessandro
Colleen Pegg
656 Meakanu Ln, 1601
Wailuku, HI 96793
808-242-1100

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

LATE

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00pm

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD2. My name is Linda Castro and I am the parent of a child with Autism. Many of these children like my son need access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to access and achieve educational success.

HB 87, HD2 proposes to authorize and obligate the Department of Education 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 Department of Education 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, HD2 is both unnecessary and violates the due process rights as well as civil rights of these children who need special education.

HB 87, HD2 is unnecessary because Act 179 which was passed by the Legislature last year already requires the Department of Education to monitor any child who has undergone a unilateral placement in a private school. HB 87, HD2 is therefore duplicitous.

Secondly, there are many compelling reason why a private school might not permit Department of Education personnel to observe a child or the access a child's records. In some cases (as in ours), 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 in cases where 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, the decision of 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, HD2.

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

LATE

Makiko Dickinson
88 Piikoi St. #2402
Honolulu, HI 96814

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

I am a parent who has been advocating for the rights of children with disabilities for 5 years in Hawaii. 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, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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 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, HD 2.

Sincerely,



Makiko Dickinson
88 Piikoi St. #2402
Honolulu, HI 96814

LATE

Ms. Fay Yamamoto
2832 Kalawao Street
Honolulu, HI 96822

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION
Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Fay Yamamoto, and I am the parent of a child with autism.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

First of all, HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,

Fay Yamamoto

LATE

Lori Iha
94-819 Meahale Street
Waipahu, HI 96797
808.625.8443

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Lori Iha, and I am the parent of a child with Autism. All children deserve to access education through the Individuals with Disabilities Education Act (IDEA), even children with autism.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,

Signature on file

Lori Iha

98-819 Meahale Street

Waipahu, Hi. 96797

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LATE

Nicole Pinketti
1508 Pensacola St APT 305
Honolulu, Hi 96822

**THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION**

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Nicole Pinketti and I have been working with children with disabilities for 3 years in Hawaii. Many of these children need the access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Pinketti", written over a horizontal line.

Nicole Pinketti
1508 Pensacola st Apt 305
Honolulu Hi 96822

LATE

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Michael Akau, and I am advocating for the rights of children with disabilities in Hawaii. Many of these children need access to special education under the Individuals with Disabilities Education Act (IDEA) in order to have educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates civil rights of children who need special education.

HB 87, HD 2 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, HD 2 is therefore duplicitous.

There are compelling reasons why a private school would not permit DOE personnel access to observe a child or to the child's records. In some cases, there are unmet financial obligations by the DOE. This situation has happened even though the Individualized Education Program (IEP) team agreed to placement of the child at the private school, or 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 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 before rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because

DOE is not permitted access to a child violates the child's due process right. Passage of such a law would only led to unnecessary litigation.

Through the IDEA, Congress has acted to improve the lives of children with disabilities 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, HD 2.

Sincerely

A handwritten signature in black ink, appearing to read "Michael Akau", written in a cursive style.

Michael Akau
1655 Makaloa St #1018
Honolulu, HI 96814

LATE

Jennifer Tano
45-221 Nakuluai Pl.
Kaneohe, Hi. 96744
(808) 235-6392

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Jennifer Tano and I have been working with children with disabilities for 12 years in Hawaii. Many of these children need the access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,



Jennifer Tano
45-221 Nakuluai Pl.
Kaneohe, Hi. 96744

Michelle Lee
1508 Oili Loop
Honolulu, HI 96816

LATE

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Michelle Lee, and I am a mental health provider who has been advocating for the rights of children with disabilities for 8 years in Hawaii. 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, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,
Michelle Lee 

LATE

Cyrus Camp
1308 A Center Street
Honolulu, HI 96816
(808)384-0790

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Cyrus Camp, and I have been working with children with disabilities for 2 years in Hawaii. Many of these children need the access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,

A handwritten signature in black ink, appearing to read "Cyrus Camp". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Cyrus Camp
1308 A Center Street
Honolulu, HI 96816
(808)384-0790

Nadia Drews
581 Kamoku St #2308
Honolulu, HI 96826

LATE

The Senate
The Twenty-fifth Legislature
Regular session of 2009
Committee on education and housing
HB 87. HD 2
Testimony in Opposition

Monday, March 23, 2009
Conference Room 225 at 2:00PM

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Nadia Drews. I am writing in opposition to HB 87, HD 2. I am a Biller working with children with special education needs in a private school functioning as a placement facility. The disabilities that these children have are varied, i.e. autism, neurological, and behavioral disorders, but the children need to have an environment where they can thrive educationally.

HB 87, HD 2, if passed will authorize and obligate the DOE to monitor and oversee all aspects of the children's education, including conducting interviews and file inspections on demand. The proposal also states that if the placement facility does not provide access to files, and to the children for interviews and observations in a routine and timely manner, that the child will be summarily removed from the placement facility, the placement facility will be deemed inappropriate, and a new placement will be decided upon with no input from the child's team or parents. This violates the due process rights of the child being removed.

Also, there are reasons why a school would be unable to grant access to files on an on-demand basis. First, there are times when the DOE fails to make timely payments to the school, despite the IEP team placing the child at the school, or due to the child being placed as a result of a due process hearing, or federal decision. Second, sometimes the people seeking access to the child's files are not part of the IEP team, and the parents would have no knowledge of someone accessing the child's files. This is in violation of the privacy laws that have been passed. In addition, whether or not a school or facility is appropriate is not up to the DOE, as stated under the IDEA (Individuals with Disabilities Act). This decision can only be made in a due process hearing. By taking the child's doctors, providers and parents out of the decisions, the child's individual needs are not being considered. Again, this violates the child's civil rights.

I am asking that the current measures set forth under the IDEA be upheld, as they are sufficient for keeping the children's rights intact. Thank you again for receiving my testimony.


Nadia Drews

Robert W Fry JR
PO Box 100
Kaneohe HI, 96744

LATE

The Senate
The Twenty-fifth Legislature
Regular session of 2009
Committee on education and housing
HB 87, HD2
Testimony in oppositions

Monday, March 23, 2009
Conference Room 225 at 2:00p.m.

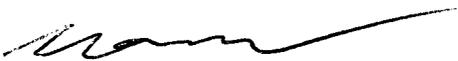
Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Robert W. Fry JR. I am writing in opposition to HB 87, HD 2. I am a Therapeutic Aide working with children with special education needs in a private school functioning as a placement facility. The disabilities that these children have are varied, i.e. autism, neurological, and behavioral disorders, but the children need to have an environment where they can thrive educationally.

HB 87, HD 2, if passed will authorize and obligate the DOE to monitor and oversee all aspects of the children's education, including conducting interviews and file inspections on demand. The proposal also states that if the placement facility does not provide access to files, and to the children for interviews and observations in a routine and timely manner, that the child will be summarily removed from the placement facility, the placement facility will be deemed inappropriate, and a new placement will be decided upon with no input from the child's team or parents. This violates the due process rights of the child being removed.

Also, there are reasons why a school would be unable to grant access to files on an on-demand basis. First, there are times when the DOE fails to make timely payments to the school, despite the IEP team placing the child at the school, or due to the child being placed as a result of a due process hearing, or federal decision. Second, sometimes the people seeking access to the child's files are not part of the IEP team, and the parents would have no knowledge of someone accessing the child's files. This is in violation of the privacy laws that have been passed. In addition, whether or not a school or facility is appropriate is not up to the DOE, as stated under the IDEA (Individuals with Disabilities Act). This decision can only be made in a due process hearing. By taking the child's doctors, providers and parents out of the decisions, the child's individual needs are not being considered. Again, this violates the child's civil rights.

I am asking that the current measures set forth under the IDEA be upheld, as they are sufficient for keeping the children's rights intact. Thank you again for receiving my testimony.



Robert W. Fry JR

Christopher J. Blas
1322 Olino St. Apt # A
Honolulu, HI 96818

LATE

The Senate
The Twenty-fifth Legislature
Regular session of 2009
Committee on education and housing
HB 87, HD2
Testimony in oppositions

Monday, March 23, 2009
Conference Room 225 at 2:00p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

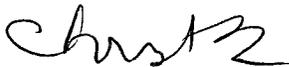
Thank you for receiving my testimony on HB 87, HD 2. My name is Christopher J. Blas. I am writing in opposition to HB 87, HD 2. I am an Intensive Instructional Services Coordinator working with children with special education needs in a private school functioning as a placement facility. The disabilities that these children have are varied, i.e. autism, neurological, and behavioral disorders, but the children need to have an environment where they can thrive educationally.

HB 87, HD 2, if passed will authorize and obligate the DOE to monitor and oversee all aspects of the children's education, including conducting interviews and file inspections on demand. The proposal also states that if the placement facility does not provide access to files, and to the children for interviews and observations in a routine and timely manner, that the child will be summarily removed from the placement facility, the placement facility will be deemed inappropriate, and a new placement will be decided upon with no input from the child's team or parents. This violates the due process rights of the child being removed.

Also, there are reasons why a school would be unable to grant access to files on an on-demand basis. First, there are times when the DOE fails to make timely payments to the school, despite the IEP team placing the child at the school, or due to the child being placed as a result of a due process hearing, or federal decision. Second, sometimes the people seeking access to the child's files are not part of the IEP team, and the parents would have no knowledge of someone accessing the child's files. This is in violation of the privacy laws that have been passed. In addition, whether or not a school or facility is appropriate is not up to the DOE, as stated under the IDEA (Individuals with Disabilities Act). This decision can only be made in a due process hearing. By taking the child's doctors, providers and parents out of the decisions, the child's individual needs are not being considered. Again, this violates the child's civil rights.

I am asking that the current measures set forth under the IDEA be upheld, as they are sufficient for keeping the children's rights intact. Thank you again for receiving my testimony.

Christopher J. Blas



Marsha Mahelona
92-1025 Okaa St. 1-106
Kapolei, HI 96707

LATE

The Senate
The Twenty-fifth Legislature
Regular session of 2009
Committee on education and housing
HB 87, HD2
Testimony in oppositions

Monday, March 23, 2009
Conference Room 225 at 2:00p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Marsha Mahelona. I am writing in opposition to HB 87, HD 2. I am a Occupational Therapy service provider as well as an Intensive Instructional Services Coordinator working with children with special education needs in a private school functioning as a placement facility. The disabilities that these children have are varied, i.e. autism, neurological, and behavioral disorders, but the children need to have an environment where they can thrive educationally.

HB 87, HD 2, if passed will authorize and obligate the DOE to monitor and oversee all aspects of the children's education, including conducting interviews and file inspections on demand. The proposal also states that if the placement facility does not provide access to files, and to the children for interviews and observations in a routine and timely manner, that the child will be summarily removed from the placement facility, the placement facility will be deemed inappropriate, and a new placement will be decided upon with no input from the child's team or parents. This violates the due process rights of the child being removed.

Also, there are reasons why a school would be unable to grant access to files on an on-demand basis. First, there are times when the DOE fails to make timely payments to the school, despite the IEP team placing the child at the school, or due to the child being placed as a result of a due process hearing, or federal decision. Second, sometimes the people seeking access to the child's files are not part of the IEP team, and the parents would have no knowledge of someone accessing the child's files. This is in violation of the privacy laws that have been passed. In addition, whether or not a school or facility is appropriate is not up to the DOE, as stated under the IDEA (Individuals with Disabilities Act). This decision can only be made in a due process hearing. By taking the child's doctors, providers and parents out of the decisions, the child's individual needs are not being considered. Again, this violates the child's civil rights.

I am asking that the current measures set forth under the IDEA be upheld, as they are sufficient for keeping the children's rights intact. Thank you again for receiving my testimony.

Marsha Mahelona



Vanessa Andriotti
44-302 Olina Street #3
Kaneohe, HI 96744
(808) 561-0703

LATE

The Senate
The Twenty-Fifth Legislature
Regular Session of 2009
Committee on Education and Housing
HB 87, HD2
Testimony in Opposition

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani, and Members of the Committee:

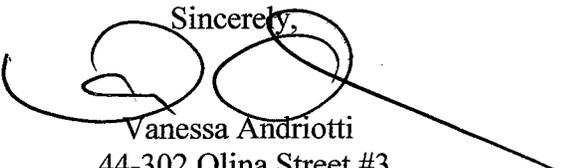
Thank you for receiving my testimony on HB 87, HD 2. My name is Vanessa Andriotti, and I am the Legal Liaison for a private school for children with disabilities. I have the opportunity to assist children with special needs in obtaining the placement that best fits their needs as far as special education, speech, occupational therapy, and psychological therapy are concerned.

HB 87, HD 2 proposes to authorize and obligate the DOE to oversee and monitor students for special education who are placed in private schools. Included is a 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.

There are many reasons behind why some DOE personnel are not permitted access to observe a child or a child's records such as the DOE failing to make payment to the private school or facility although the Individualized Education program (IEP) team agreed to placement of the child at the placement, or through due process decision or decision by the federal court. In other cases, the DOE personnel 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. I believe that the private school reserves the right to protect the civil rights of the special needs child.

Thank You for receiving my testimony on HB 87, HD 2.

Sincerely,



Vanessa Andriotti
44-302 Olina Street #3
Kaneohe, HI 96744

THE SENATE

LATE

THE TWENTY-FIFTH LEGISLATURE

REGULAR SESSION OF 2009

COMMITTEE ON EDUCATION AND HOUSING

HB 87, HD2

TESTIMONY IN OPPOSITION

Monday, March 23, 2009

Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD2. 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, HD2 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, HD2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD2 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, HD2 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, HD2.

Sincerely,

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

Shannon Tsubaki, MA

LATE

Nate Dudoit
2119 Waiola St.
Honolulu, Hi. 96826

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Nate Dudoit, and I have been working with children with disabilities for 5 years in Hawaii. Many of these children need the access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,

A handwritten signature in black ink, appearing to read "Art Durost". The signature is written in a cursive, somewhat stylized font.

Shellnell Sapla
91-612 Makalea St.
Ewa Beach, HI 96706
808-861-2585

LATE

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Shellnell Sapla, and I have been working with children with disabilities for 9 years in Hawaii. Many of these children need the access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,


Shellnell Sapla

LATE

Leslie E. McCullough
1360 a. Palolo av.
Honolulu, HI 96816
808 291 2269

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Leslie E. McCullough, and I have been working with children with disabilities for 3 1/2 years in Hawaii. Many of these children need the access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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, HD 2.

Sincerely,

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

Leslie E. McCullough
1360a Palolo. av.
Honolulu HI 96816

LATE

**THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION**

**Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.**

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Andy Fox, and I have been working with children with disabilities for three years in Hawaii. Many of these children need the access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 is therefore duplicitous.

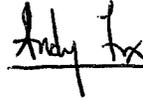
Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) 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, HD 2.

Sincerely, Andy Fox
1212 Nuuanu Ave
Honolulu, HI 96817

A handwritten signature in black ink that reads "Andy Fox". The signature is written in a cursive style and is positioned to the right of the typed name and address.

LATE

**THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION**

**Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.**

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Andy Fox, and I have been working with children with disabilities for three years in Hawaii. Many of these children need the access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 is therefore duplicitous.

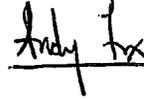
Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) 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, HD 2.

Sincerely, Andy Fox
1212 Nuuanu Ave
Honolulu, HI 96817

A handwritten signature in black ink that reads "Andy Fox". The signature is written in a cursive style and is positioned to the right of the typed name and address.

LATE

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Jacqueline Kedrowski, and I have been working with children with disabilities for 8 months in Hawaii. Many of these children need the access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 is therefore duplicitous.

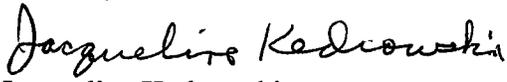
Secondly, there are many compelling reasons why a private school would not permit DOE personnel to access to observe a child or to the child's records. In some cases, the DOE has failed to make payment to the private school or facility despite the fact that the Individualized Education Program (IEP) 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, HD 2.

Sincerely,


Jacqueline Kedrowski,

LATE

Tim Crawford
1405 Dominis St Apt#202
Honolulu, HI 96822
(808)398-7314

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Tim Crawford, and I have been working with children with disabilities for 1 year in Hawaii. Many of these children need the access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 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

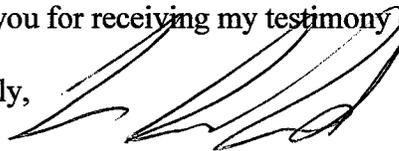
their child's educational needs. Under such circumstances, the private school is obligated to protect the civil rights of the special needs child.

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, HD 2.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Crawford', written over the word 'Sincerely,'.

Tim Crawford
1405 Dominis ST Apt 202
Honolulu, HI 96822
(808)398-7314

Amber Lee
5242 Oio Dr.
Honolulu, HI 96821

LATE

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN OPPOSITION

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Amber Lee, and I have been working with children with disabilities for five years in Hawaii. Many of these children need the access to positive outcomes through special education under the Individuals with Disabilities Education Act (IDEA) in order to achieve educational success.

HB 87, HD 2 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, HD 2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD 2 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, HD 2 is therefore duplicitous.

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Additionally, under the IDEA, whether or not a private school or facility is an

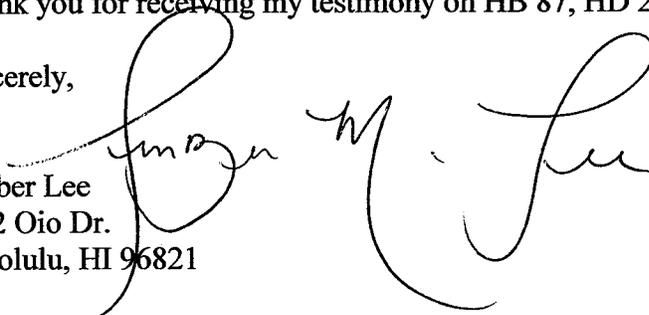
appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because 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, HD 2.

Sincerely,

Amber Lee
5242 Oio Dr.
Honolulu, HI 96821

A handwritten signature in black ink, appearing to read 'Amber Lee', written over the typed name and address.

Karen Gurtiza
3567 Puuku Makai Drive
Honolulu, HI 96818

LATE

The Senate
The Twenty-Fifth Legislature
Regular Session of 2009
Committee on Education and Housing
HB 87, HD 2
Testimony in Opposition

Monday March 23, 2009 Conference Room 225 at 2:00pm

Thank you for receiving my testimony on HB 87, HD 2. My name is Karen Gurtiza. I am writing in opposition to HB 87, HD 2. I am a Biller working with children with special education needs in a private school functioning as a placement facility. The disabilities that these children have are varied, i.e. autism, neurological, and behavioral disorders, but the children need to have an environment where they can thrive educationally.

HB 87, HD 2, if passed will authorize and obligate the DOE to monitor and oversee all aspects of the children's education, including conducting interviews and file inspections on demand. The proposal also states that if the placement facility does not provide access to files, and to the children for interviews and observations in a routine and timely manner, that the child will be summarily removed from the placement facility, the placement facility will be deemed inappropriate, and a new placement will be decided upon with no input from the child's team or parents. This violates the due process rights of the child being removed.

Also, there are reasons why a school would be unable to grant access to files on an on-demand basis. First, there are times when the DOE fails to make timely payments to the school, despite the IEP team placing the child at the school, or due to the child being placed as a result of a due process hearing, or federal decision. Second, sometimes the people seeking access to the child's files are not part of the IEP team, and the parents would have no knowledge of someone accessing the child's files. This is in violation of the privacy laws that have been passed. In addition, whether or not a school or facility is appropriate is not up to the DOE, as stated under the IDEA (Individuals with Disabilities Act). This decision can only be made in a due process hearing. By taking the child's doctors, providers and parents out of the decisions, the child's individual needs are not being considered. Again, this violates the child's civil rights.

I am asking that the current measures set forth under the IDEA be upheld, as they are sufficient for keeping the children's rights intact. Thank you again for receiving my testimony.



Karen Gurtiza