

Date of Hearing: March 2, 2009

Committee: House Finance

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: H.B. 87, H.D. 2 (HSCR 588) Relating to Education

Purpose: Authorizes and obligates the Department of Education to oversee and monitor students eligible for special education who are placed in private schools or facilities at public expense.

Department's Position: The Department of Education (Department) supports H.B. 87, H.D. 2 (HSCR 588). Pursuant to Individuals with Disabilities Education Improvement Act of 2004 (IDEA), the Department is required to provide a free appropriate public education (FAPE) to all students with disabilities, including students placed in a private school or facility at public expense. To fulfill this federal mandate, the Department must monitor every student's progress to ensure the delivery of FAPE. In the past, the Department has been denied timely access to monitor these students and their educational records because they are not educated on a public school campus. This bill allows the Department to fulfill their obligation under IDEA to provide FAPE to all students with disabilities, including those in a private school or facility at public expense.

This bill does not allow the Department the authority to unilaterally remove a student from the private school or facility, nor unilaterally place a student in another private school or facility. The IEP team will maintain the authority to determine the student's program and placement.

The Department supports H.B. 87, H.D. 2 (HSCR 588).



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
919 ALA MOANA BOULEVARD, ROOM 113
HONOLULU, HAWAII 96814
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
March 2, 2009

The Honorable Marcus R. Oshiro, Chair
House Committee on Finance
Twenty-Fifth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Oshiro and Members of the Committee:

SUBJECT: HB 87 HD2– RELATING TO EDUCATION

The position and views expressed in this testimony do not represent nor reflect the position and views of the Department of Education (DOE).

The State Council on Developmental Disabilities **DOES NOT SUPPORT HB 87 HD2**. The purpose of this bill is to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools or facilities at public expense.

The Council appreciated the intent of HB 87 HD2 and supports the DOE having the authority to oversee and monitor students receiving special education services who are placed in private schools or facilities. Under the Individuals with Disabilities Education Act of 2004, DOE is required to provide a free appropriate public education to all students with disabilities. This requirement includes students placed in private schools or at other facilities at public expense. In order to fulfill this mandate, DOE must monitor every student's educational progress.

The Council does not support HB 87 HD2 for the following reasons:

1. Act 179, Session Laws (SLH) of 2008 included the following provision; "The department shall exercise oversight and monitoring of any child who has undergone unilateral special education placement as soon as practical after placement." HB 87 HD2 includes language that addresses the above in addition to describing what the oversight and monitoring shall include. HB 87 HD2 is duplicative of what is already in Act 179, SLH 2008. We feel HB 87 HD2 is not necessary since Act 179 is in place, and the protocols listed under oversight and monitoring can be addressed in administrative rules.

The Honorable Marcus R. Oshiro
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2. The Council is concerned with the language of HB 87 HD2 on page 1, lines 15-18 and page 2, lines 1-5 that allows the DOE to determine an inappropriate placement if the private school or facility does not allow routine and timely access to monitor the delivery of special education and related services. A student's placement in a private school or other facility has either been determined an appropriate placement by the student's Individualized Education Plan (IEP) Team or as a result of a due process hearing. Therefore, the IEP Team and due process hearing would also determine an inappropriate placement.

We feel the above-mentioned provision may be a violation of due process and the student's legal rights and education needs to an appropriate placement. As a result, the DOE may be vulnerable to unnecessary and costly litigation.

Thank you for the opportunity to present testimony on HB 87 HD2.

Sincerely,



Waynette K.Y. Cabral
Executive Administrator



Rosie Rowe
Chair



**LEGISLATIVE COMMITTEE OF THE
COMMUNITY CHILDREN'S COUNCILS OF HAWAII**

c/o Community Children's Council Office

1177 Alakea Street · B-100 · Honolulu · HI · 96813

TEL: (808) 586-5363 · TOLL FREE: 1-800-437-8641 · FAX: (808) 586-5366

February 27, 2009

House Finance Committee

The Honorable Marcus Oshiro, Chair

House Finance Committee and

The Honorable Nanadana Kalupahana, Vice Chair

Re: HB 87: Relating to Education: Monitoring by DOE of special education students placed in private schools,/facilities at public expense.

The CCCs are local community based organizations situated state wide in both rural and urban communities focused on children with special needs. Under the leadership of an elected parent and professional co-chair, CCCs provide local resources, workshops, participate in quality assurance activities and strive to provide a community voice.

The seventeen Community children's councils of Hawaii appreciate the intent of HB 87, but are opposed to its passage.

The Community Children's Councils of Hawaii oppose the passage of HB 87 because we understand that the Department of Education already has these responsibilities and obligations under the Federal Individuals With Disabilities Act of 2004, State laws and rules implementing IDEA.

It is our understanding that "at public expense" means that the DOE is paying for the services stated in the child's Individual Education Plan (IEP). Case law, both here and on the mainland has required parents/facilities to allow the DOE to carry out their obligations and responsibilities of monitoring and preparing for the development of the next IEP. DOE is required to offer a new IEP annually including a discussion of placement. Parental consent for these types of obligations is not required.

However, if the parents are paying for the costs of the child's program and placement in the private school/facility, DOE must obtain written parental consent for the DOE to access to the child or his/her records.

We have received anecdotal comments that the primary problems in meeting their obligations as outlined in the bill are really matters of implementation. We are aware that other states have

criteria for private school placement which includes access to the child and their records. We recommend that this course of action be considered instead of passing a law that already gives the DOE these responsibilities. Mahalo Nui Loa for this opportunity to express our concerns. If there are any questions, please contact the Community Children's Council; Office @ 586-5363.

Respectfully submitted:

Tom Smith, Chair, CCC Legislative committee

(Signature on file at CCCO)



HAWAII DISABILITY RIGHTS CENTER

900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: info@hawaiidisabilityrights.org Website: www.hawaiidisabilityrights.org

TESTIMONY TO THE TWENTY-FIFTH STATE LEGISLATURE, 2009 SESSION

To: House Committee on Finance

From: Hawaii Disability Rights Center

Re: House Bill 87, HD2
Relating to Education

Hearing: Monday, March 2, 2009, 3:30PM
Conference Room 308, State Capitol

Members of the Committee on Finance:

Thank you for the opportunity to provide testimony opposing House Bill 87, HD2, Relating to Education.

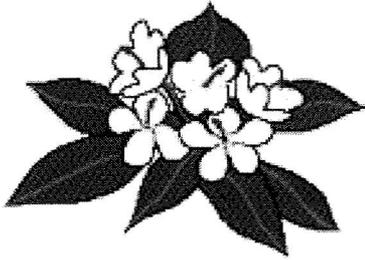
The Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A) is the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We oppose this bill because it is an overly extreme solution to a very questionable problem. In order for a child to be placed in a private setting, very rigorous, clear criteria must be met first. Often, it is after a formal adjudication before a Hearing Officer in a Due Process hearing. The Hearing Officer needs to find that the private placement is what is appropriate for the student. Under federal law, (the IDEA) the child has legal rights to the appropriate placement.

For those reasons, if subsequent issues arise between the DOE and the private facility, the appropriate remedy should not come at the expense of the child's legal rights or educational needs. We do not quarrel with the right of the state to monitor facilities or the educational progress of the child. In fact, we believe that is appropriate. However, if there are disputes between the DOE and the facilities as to protocols for observations or issues of that nature, then those matters should be resolved directly between those parties in a straightforward, direct way. The approach of this bill, which is to undercut a formal adjudication and nullify a finding by an administrative agency, represents an

extreme overreaction and inappropriate solution. Undoubtedly, there is a more direct way to address that issue in such a manner that it does not violate the IDEA or the educational rights of the student.

For those reasons, we strongly oppose this bill. Thank you for the opportunity to testify.



S E A C
Special Education Advisory Council

919 Ala Moana Blvd., Room 101

Honolulu, HI 96814

Phone: 586-8126 Fax: 586-8129

email: spin@doh.hawaii.gov

March 2, 2009

**Special Education
Advisory Council**

Ms. Ivalee Sinclair, *Chair*
Mr. Steve Laracunte, *Vice
Chair*

Ms. Brendelyn Ancheta
Dr. Paul Ban, *Liaison
to the Superintendent*
Ms. Sue Brown
Ms. Deborah Cheeseman
Ms. Phyllis DeKok
Ms. Mary Ellis
Ms. Debra Farmer
Ms. Gabriele Finn
Ms. Martha Guinan
Mr. Henry Hashimoto
Mr. John Hinkle
Ms. Tami Ho
Ms. Barbara Ioli
Ms. Shanelle Lum
Ms. Rachel Matsunobu
Ms. June Motokawa
Ms. Kristy Nishimura
Ms. Connie Perry
Ms. Barbara Pretty
Ms. Kau'i Rezendes
Dr. Patricia Sheehey
Mr. August Suehiro
Ms. Judy Tonda
Ms. Cari White
Ms. Jasmine Williams
Mr. Duane Yee
Mr. Shawn Yoshimoto

Jan Tateishi, Staff
Susan Rocco, Staff

Representative Marcus Oshiro, Chair
House Finance Committee
State Capitol
Honolulu, HI 96813

RE: HB 87, HD2 – Relating to Education

Dear Chair Oshiro and Members of the Committee,

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), **supports the intent** of HB 87, HD2. However, we question the necessity of new legislation, as we understand that private schools and facilities who receive public funding for students eligible under the Individuals with Disabilities Education Act (IDEA) are already obligated to provide access to the Department to allow them the opportunity to monitor student progress and collect data necessary for the development of an appropriate Individual Education Program (IEP).

SEAC has made a concerted effort over the past seven years to assist the Department in reducing the number of special education due process hearings by identifying opportunities for schools to prevent or intervene earlier and more effectively in disagreements over the identification, evaluation, program and placement, and the provision of a free appropriate public education to students with disabilities. We acknowledge that private school placement is one of the most common issues cited in due process hearing requests. During the 2007-08 school year, for example, seventy-four (74) of the 114 requests filed involved reimbursement for the costs of private placement and related services.

Anecdotal information we have received narrows the problem of access to the private school student whose tuition and related costs are paid for by the Department to only a few schools or facilities. An alternative to legislation might be the development of clear criteria



Representative Oshiro
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which private schools and facilities must meet in order to be eligible for receipt of public funds under IDEA. These criteria could include the right of the Department to reasonable access to the student and his/her records.

Thank you for the opportunity to provide testimony on this issue. Should you have any questions, I would be happy to answer them.

Sincerely,

Ivalee Sinclair, Chair

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

HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCE

HB 87, HD2

TESTIMONY IN OPPOSITION

Tuesday, March 2, 2009

Dear Chair Oshiro, Vice Chair Lee and Members of the Committee:

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

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

The Autism Society of Hawai'i appreciates the opportunity to comment on the proposed HB 87, HD 2. As parents and friends of children with autism and other related disorders, we know that our children have the potential and hunger to learn. Research shows that parents involvement in their child's individualized educational program promote positive outcomes.

HB 87, HD 2 within which proposes to authorize and obligate the DOE to oversee and monitor students eligible for special education who are placed in private schools. The measure also contains the provision that should the private school or facility not allow the DOE routine and timely access to monitor the delivery of special education and related services, the placement of the student shall be deemed an inappropriate placement for the student. We believe HB 87, 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 federal Individuals with Disabilities Education Act (IDEA), whether or not a private school or facility is an appropriate placement is a question of fact that must be decided through a due process hearing. The child's unique and individual needs must be considered in rendering a decision as to the appropriateness of a private placement. Mandating that a private school be automatically deemed inappropriate because the DOE is not permitted access to a child violates the child's due process rights. Passage of such a law would only lead to unnecessary litigation.

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

Therefore, I respectfully ask that this measure be held.

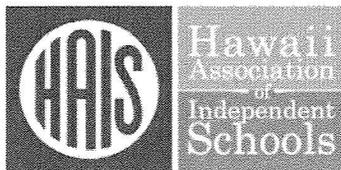
Thank you for the opportunity to testify on HB 87, HD 2.

Sincerely,



Naomi Grossman

Autism Society of Hawai'i, president



March 2, 2009
3:30 p.m.
Conference Room 308

TESTIMONY TO
THE HOUSE COMMITTEE ON FINANCE

RE: HB 87 HD2 – Relating to Education

Dear Chair Oshiro, Vice Chair Lee, and Members of the Committee:

My name is Robert Witt, and I am executive director of the Hawaii Association of Independent Schools (HAIS), which represents 97 private and independent schools statewide that educate over 30,000 elementary and secondary students with a wide range of abilities and learning styles.

The Association does not support the intent of House Bill 87, House Draft 2 – Relating to Education, which authorizes and obligates the Department of Education (DOE) to oversee and monitor the education of students eligible for special education services who are placed in private schools or facilities at public expense.

With respect to this matter, while HAIS respects the Department's concerns, we submit for consideration our view of the varied landscape of private educational institutions in our state. There are a number of non-public entities in Hawaii who provide students from DOE schools with special education services, and we recognize that some of these institutions lack affiliation with other non-public schools and professional associations, as well as requisite accreditation by a recognized body; however, those who are members of our association and are accredited by HAIS and/or the Western Association of Schools and Colleges have means and mechanisms in place to ensure that they provide each of their students with a high-quality education.

We strongly urge the members of the Committee to distinguish between these schools and those without such assurances and supports, to which the oversight measures outlined by this bill are more directly applicable. One strategy for achieving this objective would be to exempt from the scope of this legislation the fully accredited members of HAIS that are pre-kindergarten through twelfth grade institutions with academic missions and purposes. The full members of the Association possess the values, standards and protocols necessary to deliver an excellent education to all of their students, and these same schools also have a history of positively and effectively collaborating with one another and with educators at the Department to meet the requirements of FAPE for those DOE students being educated on their campuses.

Mahalo for the opportunity to testify on this important matter.

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

March 2, 2009

Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice-Chair
House Committee on Finance
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: Testimony for HB 87 HD2 to be heard by FIN on Monday, 3-2-09 at 3:30pm, Agenda 7 in House Conference Room 308.

As a parent of a special needs child, 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 in that there is an 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 an indicator as to how well the DOE complies 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 timelines involving 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 for 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 of the public school system are provided the same basic rights under IDEA as their public school peers or is it meant to reduce or eliminate their 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 the child from any current school and placing the child into another school during the course of the school year without any regard for the mental and physical well-being of the child 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. However, I do not agree that the DOE should be permitted 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 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, 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 undermines the intended purpose of the Procedural Safeguards as

expressed in the federal law, IDEA 2004 and it defeats the purpose of an Impartial Due Process Hearing:

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

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

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

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

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

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

Given the strict requirements 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.

Starting on line 17 of HB 87 HD2 it states "the placement of the student in the private school or facility shall be deemed an inappropriate placement for the student and shall not be considered the last agreed-upon placement. The Individualized Education program team shall reconvene to determine a new placement for the student, and shall not consider the private school or facility in which the student was inappropriately placed."

Whatever challenges the DOE may face in acquiring observations, interviews or access to educational records for a child placed in a private placement, it was the DOE's INITIAL failure to provide FAPE as required by federal and state laws that resulted in 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. 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 would automatically allow a Hearing Officer to lean in favor of parents as HB 87 HD2 would allow this **PREDETERMINATION to be made**, therefore directly violating 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. Do not let this bill pass.

Sincerely,
Teresa Chao Ocampo 

March 1, 2009

Testimony to the
Committee on Finance
For Hearing on Monday, March 2, 2009
3:30 p.m., Conference Room 308

RE: HB87, H2 RELATING TO EDUCATION

Chair Marcus Oshiro and Members of the Committee:

HB87, HD2 establishes and clarifies the monitoring obligation and authority that the Department of Education ("DOE") has for a student eligible for special education who is placed in a private school or facility at public expense. In addition, the current draft version of the bill also requires a change in placement when it is determined that "routine and timely access to monitor the delivery of special education and related services" is not provided to the DOE.

The original version of HB 87, included language giving the DOE "the authority to withhold tuition payment for failure of the private school or parent to afford reasonable access to individuals, including the student, and records necessary to provide the free, appropriate public education." After proposed by the DOE, the current language of requiring a change in private school or facility placement was accepted and inserted.

If the true purpose of this bill is to provide DOE leveraging power toward a parent, private school or facility, when, from the DOE's perspective, they feel they are not being granted "reasonable" or "routine and timely access", this law should not be the means to provide such power. DOE has the full ability to address such situations and matters through other measures.

If it is the Committee's will to pass the bill, I then ask that the Committee consider the following:

1) The phrase "routine and timely access" is far too vague. If left to individual interpretation, it will inevitably lead to conflicting interpretations.

2) It is not clear who is to determine that the private school or facility placement is not appropriate if DOE is not provided "routine and timely access." It is the student's Individualized Education Plan ("IEP") team that determines that the student's private school or facility placement is appropriate; therefore, it should be the IEP team to determine that such placement is inappropriate, as well. To give any one party of the IEP team the individual ability to make the determination inappropriateness is unfair.

Respectfully submitted,

Tracy L. Kiyabu

Kalma K. Wong
46-220 Alaloa Place
Kaneohe, Hawaii 96744
(808) 393-5218/ flute866@gmail.com

March 1, 2009

Representative Marcus Oshiro
Chair, House Finance Committee

Representative Marilyn Lee
Vice-Chair, House Finance Committee

RE: OPPOSED to HB87HD2, 3-02-09, 3:30 p.m., Room 308

Dear Chair Oshiro, Vice-Chair Lee, and members of the House Finance Committee,

House Bill 87 HD 2 is a bill designed to deny children with special needs in Hawaii the rights they are entitled to under IDEA. When a child is placed at a private school at the public's expense, it oftentimes means that the state (DOE) has not complied with procedures set forth in IDEA, and/or the IEP is procedurally or substantively deficient, and the **private placement has been deemed appropriate** to the child's needs by a hearing officer in a due process hearing.

Why then, would you give the DOE the authority to deem a private placement (which has ALREADY been deemed appropriate) as inappropriate simply because they are denied access to the student for observation, irregardless of the reasons for the denial? Whatever the reason for the delay in the DOE's access to the student for observation, it in no way affects the appropriateness of that placement and any sanctions should not come at the child's expense.

A less extreme and more mature way of solving any communication problems that may exist between the DOE and any private placement should be discussed. Allowing the DOE to deem any placement as inappropriate simply because they are denied access to the student for observation, without due consideration for the reasons for denying access, severely violates a child's civil rights.

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

Sincerely,

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

Hearing: FIN, March 2, 2009, 3:30 pm

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

Dear Rep. M. Oshiro, Chair, Rep. M. Lee, and Members of the Committee on Finance:

Thank you for the opportunity to provide comments of why this bill **HB87** should not be passed.

The *Individuals with Disabilities Education Improvement Act of 2004* and federal information privacy laws specify requirements for the State to comply with in regards to a child eligible for special education under this Act and his/her private placement. In addition, the state may specify who has the authority, but has our Legislature considered the Board of Education, or creating another oversight and monitoring body, such as an office at the State's Office of the Ombudsman, that would hold the Department accountable for its own classrooms as well as the function as the mandated State Complaints process for complaints regarding special education, including special education services for children attending private schools?

The added requirements as detailed in this bill do not support these special education eligible students and their parents and may unfairly require an extra burden to the schools and parents beyond federal requirements as compared to what's required of students receiving FAPE while placed at a public school. To my understanding, Act 179 (2008) added section (f) to support children only when FAPE (free appropriate public education) is at issue between the school and parents.

Of high concern to me, there is an unusual pattern of the Department's "authority" to put a student in a particular location, to the extreme of moving the child at a moment's notice and without an IEP team meeting. Special education is just that, special to the child and determined on a case-by-case basis. And, an IEP team or administrative personnel cannot remove a child from a school that was determined by an administrative hearings officer (currently from the Dept. of Commerce & Consumer Affairs), settlement agreement between the parent and the school, or even a Special Education Complaints office's decision. What will happen? Can you envision the Special Education office and the hearings officers alike being instructed by the DOE to never award a specific school placement (instead, just describing a placement as "general ed or special ed"-- as the Department currently practices by telling IEP teams to not indicate a school or location in an IEP or Prior Written Notice because the Department believes they have the sole discretion in determining where a child with an IEP may go to school. The Legislature must consider the parents and children's lives, considering school life is their life until these students become adults.

The reason for SB759 and HB1648/1656 regarding parental public school choice for parents of children with disabilities to have equal access to the same processes to apply for an out-of-district school were initiated and discussed by the current Legislature. In essence, a child with disabilities can only go to a school and change schools on the whim of a DOE administrative staff person. This may seem facetious, but it is not acceptable for a Department to totally oversee a situation that they presumably had not handled well by the Department in the first place, which determined the need for the child to attend a particular school in the first place.

My son who has Down syndrome has a right to call a school home, and my family not be in fear ever again to walk in the door of his school and be told that he is being transferred THAT VERY SAME DAY back to the home district school that has consistently failed to meet adequate yearly progress.

Thank you for considering this information.

**HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009**

Committee on Finance

**Testimony in opposition to H.B. No. 87, Relating to Education
Monday, March 02, 2009, 3:00 p.m.
Conference Room 308**

Chair Oshiro and Members of the Committee:

My name is John P. Deller. I have helped to care for a 20 year-old man with autism for the past nineteen years, and as an attorney, I have had substantial experience in administrative and judicial proceedings involving special education. I am testifying against this bill.

I support this bill to the extent it would require the Department of Education ("DOE") to monitor private schools that provide special education services funded by the State. The DOE is responsible for the education of students with disabilities, and even though children are usually placed in private schools because the DOE has failed to provide a meaningful educational opportunity for them, the State should nevertheless monitor the use of public funds.

I strongly oppose this measure, however, to the extent it would mandate a change of placement without a due process hearing as required by federal law. That provision was added by House Draft 1.

Under procedural safeguards included in the Individuals With Disabilities Education Act ("IDEA"), placement in a private school may not be changed without the parent's consent or the decision of a hearings officer appointed by the Department of

Commerce and Consumer Affairs. During the pendency of hearings and judicial review, the child is entitled to “stay put” in the prior placement. 20 U.S.C. § 1412(f).

The language added by House Draft 1 would violate federal law by requiring a change of placement without a due process hearing in the event that the DOE unilaterally decides that a private school has failed to provide “routine and timely” access to DOE personnel.

The objective of monitoring private schools can be achieved in a way that protects the civil rights of disabled students by providing that “private schools must provide the department of education with reasonable access for monitoring purposes that does not interfere with the education of students or impose an undue financial burden on the private school.” If a private school fails to comply with reasonable requests, the DOE could bring suit to compel its compliance.

I respectfully request that the committee amend this bill by deleting the language added by House Draft 1 and adding the language quoted in the preceding paragraph.

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



JOHN P. DELLERA

Derek L.Kang

1510 Ohialoke Street

Honolulu, Hawaii, 96821

808 285-3340

HOUSE
COMMITTEE ON FINANCE
HB 87, HD 2
TESTIMONY IN OPPOSITION
Monday, March 2, 2009
Conference Room 308 at 3:30p.m.

Dear Chair Oshiro, Vice Chair Lee and Members of the Committee:

Thank you for receiving my testimony on HB 87, HD 2. My name is Susan Callahan, and I am the parent of a child with multiple 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, as, for example, with my son; 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,

Derek L. Kang



1510 Ohialoke Street

Honolulu, Hawaii

96821

Susan Callahan
1510 Ohialoke Street
Honolulu, Hawaii, 96821

808 295-1333

HOUSE
COMMITTEE ON FINANCE
HB 87, HD 2
TESTIMONY IN OPPOSITION
Monday, March 2, 2009
Conference Room 308 at 3:30p.m.

Dear Chair Oshiro, Vice Chair Lee and Members of the Committee:

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

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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,
Susan Callahan



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