

LATE TESTIMONY

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February 23, 2009

VIA EMAIL

Senator Norman Sakamoto, Chair
Senate Education and Housing Committee

Senator Michelle Kidani, Vice-Chair
Senate Education and Housing Committee

RE: In support of Senate Bill 759, Hearing 2/23/2009, 1:35 p.m., Room 225

Dear Chair Sakamoto, Vice-Chair Kidani, and members of the Senate Education and Housing Committee,

Each child with special needs, including autism, requires an educational program based on that child's unique learning needs. Sometimes, a child's needs are appropriately met within a homeschool setting (in the home, versus the public school in the area where the child lives). Other times, a child's needs are appropriately met in another public or charter school. Forcing any child to attend a particular school simply because the child lives in a certain geographic area, without regard to the child's unique learning needs, neither serves the child's interest nor the State's. Children with special needs should have equal opportunity to school choice (be it homeschooling, charter, or geographic exception) as non-disabled children do.

Whatever choice is made, that child should be able to receive the appropriate special education services based on the child's unique learning needs. Currently, the public charter schools are at the mercy of the DOE District Offices and must offer what the district dictates. However, the IDEA clearly states that the IEP team determines the services for the special education student, and district personnel are not a part of IEP teams. Public charter schools should have the authority to offer appropriate services to any special needs child without being threatened by the DOE that they will not be funded.

Please pass SB759 and help protect the rights of all children in Hawaii.

Sincerely,

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

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

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

Hearing: Monday, February 23, 2009, 1:35 pm

SB759 **Education: Children with Disabilities** **In Support**

This bill provides for children eligible for special education to receive appropriate special education and related services concurrent with their choice to homeschool, to request and receive a geographical exception, and to apply and enroll in a charter school, as if the children were not eligible for special education, in the same manner as a child without disabilities in accordance with civil rights laws and the special education act for the state to receive federal grants by guaranteeing An education act to provide federal financial assistance to State and local education agencies to guarantee special education and related services to eligible children with disabilities. The State of Hawaii is required to ensure the provision of "full educational opportunity" to all children with disabilities

The Minutes of the Board of Education Committee on Special Programs meeting on August 13, 2007, reported that Ms. Ivalee Sinclair (Chairperson of the Special Education Advisory Council) stated “that following the Felix Consent Decree, schools had to provide services for their student’s special needs. She also stated that schools tend to offer the program they have in place, but there may be another program at a different school that parents would prefer.”

Students eligible for special education may be enrolled through the IEP placement process rather than the charter school admissions process or geographical exception process. However, the IEP placement process removes parental choice of school for their children eligible for special education. Parents are allowed to revoke consent for special education altogether. Parents may be forced to revoke consent in order for their children to be enrolled at a school of choice and later repeat the process to request an evaluation for special education eligibility.

No Child Left Behind School Choice 2009 (publication)

Public school choice—letting parents decide which public school is the best place for their child and allowing and enabling the transfer to that school—is a key strategy in current federal legislation aimed at improving educational outcomes.

Local Education Agencies must ensure that students with disabilities are provided a free appropriate public education (FAPE) consistent with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act (ADA Title II) in their schools of choice. A school to which a student transfers may elect to implement the individualized education program (IEP) or Section 504 plan (for students eligible only under Section 504 and ADA Title II) developed by the prior school, or to convene an IEP team meeting and develop a new IEP in consultation with the student’s parents that meets the student’s needs (or, for the Section 504/ADA Title II-only eligible student, determine the regular and special education and related aids and services necessary to meet the student’s needs

An amendment to 302B-15 will enable charter schools to choose between individuals with disabilities and older Americans with equal access to enrollment in a charter school, with a new IEP team review of services and supports, and for other purposes; to designate the Charter School Review Panel the authority, and the State Board of Education in accordance with the Individuals with Disabilities Education Improvement Act of 2004. The school they would otherwise attend if non-disabled would be the parental choice of school via the geographical exception, charter school processes, or the choice to homeschool, and be able to receive the necessary special education and related services in order to be guaranteed these choices.

This bill addresses the need for amendments to the following Hawaii Revised Statutes:

302A-436—locations for the provision of special education services;

302A-1143—requirement for students to attend the school in the of the district in which they reside, and opportunity for public school choice;

302B-15—the Department of Education’s role in the provision of special education in charter schools: to ensure equal opportunity for public school choice for children eligible for special education (not the same as the mandates of the No Child Left Behind Act for students enrolled in Title I schools*), and to ensure a charter school will exercise the flexibility and independent authority as designated in the state’s definition of charter school.

As a parent of an eight-year-old boy, Jason, who was born with Down syndrome, I have spent the past five years seeking--no, fighting for--a regular school program that is developmentally appropriate for his expected growth pattern based on his disability and not on his chronological age. Only this past week, my son Jason was enrolled at a Hawaii public charter school in order to begin his education with typically-developing children in kindergarten classes, with special education services to give him the opportunity to succeed. I support amending IDEA-mandated special education services be fully provided specifically for homeschooled children, as the Department of Education recently proposed to eliminate special education services for homeschooled children. Many parents of children with disabilities, including Down syndrome, have faced unfair public school policies when attempting to exercise a student’s right to request a geographical exception for a non-resident/home district school or right to apply and be enrolled in a charter school.

Even though the Hawaii Administrative Rules specify that children who are eligible for special education under chapter 56 and the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) may receive a placement made by a child’s Individualized Education Program (IEP) team, this process is not a parental choice. The Department of Education’s practices and policies are not clear or consistent when the parents of these children seek a public school choice as if the child were non-disabled. Civil rights laws are being broken and these children do not receive an equal opportunity for public school choice as is afforded children who are non-special education eligible.

In the fall of 2007, the Superintendent’s office suggested I contact KHON2’s Action Line when my son was denied a geographical exception because he already had an IEP written to be implemented only at the home-district school. We were featured on the television in an Action Line report shortly after. When my son was denied the opportunity to be in a regular kindergarten program once he did receive a geographical exception, we were featured on the KHNL8 evening report. I am grateful my son now has the opportunity to succeed in a school that will include him in regular kindergarten classes with special education services as needed with the goal to meet educational standards and independence.

In line with Hawaii's definition of charter school (HRS302B-01)--

"Charter school" refers to those public schools holding charters to operate as charter schools under this chapter, including start-up and conversion charter schools, and that have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management.

I ask the Committee on Education to consider the attached amendments to SB759, including to establish and clarify public school choice for children eligible for special education and, in regards to special education for students at charter schools, to clarify funding, and the authority of the charter schools and of the Board of Education.

These amendments would help to reduce the risk of students dropping out of school, including children eligible for special education. Just as important, these amendments will clarify a process for schools to understand in order for all of our children, including children who are eligible for special education, to be able to apply and enroll in and enjoy the benefits of public school choice and homeschooling as if they were non-special education eligible. In addition, charter schools will meet their definition of having the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management.

Public school choice is also critical because private schools often do not accept our children with Down syndrome in particular.

Thank you for the opportunity to present testimony.

* Reference: <http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc>

Attachment A

Thank you for considering the following incorporated suggestions for SB759:

SECTION 1. The purpose of this Act is to provide parents of children with disabilities with additional flexibility in choices relating to education in the same manner provided to children without disabilities.

SECTION 2. Section 302A-436, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This program shall include boarding facilities, when necessary, special classes in schools or homes, including homes where the child is home schooled, and [such] other facilities as shall be required to render appropriate services to the exceptional child. Existing facilities, buildings, and equipment belonging to, or operated by, the State shall be made available for these purposes when use thereof does not conflict with the primary use of the facilities." (Note: or a provision elsewhere for eligible homeschoolers to receive special education according to an IEP.)

SECTION 3. Section 302A-1143, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1143 Attend school in what district. All persons of school age shall be required to attend the school of the district in which they reside, unless enrolled in a Hawaiian language medium education program, or unless it appears to the department to be desirable to allow the attendance of pupils at a school in some other district, in which case the department may grant this permission[.]; provided that a child with a disability shall be granted permission to attend a school outside of the district in which they reside or charter school, upon request by the parent or guardian of the child with a disability, in the same manner of the admissions process made available to children without disabilities, or the Individualized Education Program (IEP) placement process.

For additional consideration:

302A-__ . Public school choice program; establishment. A public school choice program is hereby established to enable any student to attend a school in a district in which the student does not reside.

302A- . Admissions process. The admissions process shall be made available to all students in the same manner, provided that children eligible for special education and related services may choose to follow the Individualized Education Program (IEP) placement process, provided that student eligibility for enrollment in charter schools is in accordance with charter school laws and individual charters.

SECTION 4. Section 302B-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) ~~The department shall collaborate with~~ The Charter School Review Panel and office shall collaborate with the department to develop a system of technical assistance related to compliance with federal and state laws and access to federal and state funds. The department and the office shall collaborate to develop a list of central services [~~that the department may offer for purchase by a charter school at an annual cost to be negotiated~~

~~between an individual charter school and the department. The] and the department [shall] may enter into a contract with [a] the charter school to provide these services [~~, which shall be renegotiated on an annual basis.]~~~~

SECTION 5. Section 302B-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) ~~The department~~ Charter School Review Panel shall be responsible for the provision of a free appropriate public education. Any charter school that enrolls special education students or identifies one of its students as eligible for special education shall be responsible for providing the educational and related services required by a student's individualized education program. The programs and services for the student shall be determined collaboratively by the student's individualized education program team which shall include the charter school and the student's parents or legal guardians.

~~[If the charter school is unable to provide all of the required services, then services to the student shall be provided by the department according to services determined by the student's individualized educational program team. The department shall collaborate with the office to develop guidelines related to the provision of special education services and resources to each charter school. The department shall review all of the current individualized education programs of special education students enrolled in a charter school and may offer staff, funding, or both, to the charter school based upon a per pupil weighted formula implemented by the department and used to allocate resources for special education students in the public schools.]~~

"The department shall collaborate directly with the charter school and Charter School Review Panel and the office to develop guidelines related to the provision of special education services, funding, and resources to each charter school."

SECTION 6. Section 302B-15, Hawaii Revised Statutes, is amended by adding subsections (c) and (d) to read as follows:

For additional consideration:

"(c) A charter school shall conduct an individualized educational program (IEP) team meeting within thirty (30) days of enrolling a student identified as eligible for special education to review and revise the individualized educational program as necessary for the student to receive a free appropriate public education (FAPE) at the charter school which includes sites of virtual charter schools such as the child's home. The charter school shall be designated as the student's home school.

"(d) The department shall allow public charter schools to choose between receiving special education services in the same manner provided to other schools, and other options including receiving funds or a combination of funds and services, based upon a per-pupil weighted formula implemented by the department and used to allocate resources for special education students in the public schools. Regardless of the choice that the public charter schools make, the State Board of Education must ensure that students with disabilities attending public charter schools and their parents retain all

their rights under federal and state laws. The department shall review all of the current individualized education programs of special education students enrolled in a charter school."

[L 2006, c 298, pt of §2]

SECTION 5 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6 8. This Act shall take effect upon its approval.

Attachment B

Reference: Individuals with Disabilities Education Improvement Act (IDEA)

Sec. 613(a)(5) Treatment of charter schools and their students.--In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency--

``(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

``(B) provides funds under this part to those charter schools--

``(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

``(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.

Janet Takushi
1380 Aupula Place
Kailua, Hawaii 96734

Testimony in strong support of: SB 183 Special Education; State Advisory Panel
SB 759 Education: Children with Disabilities (EDH)
Monday Feb 20, 2009 @ 1:30pm

Dear Senator Kidani,

SB 183 and SB 759 addresses a sorely needed improvement in the way Special Education is provided in the State of Hawaii.

As a parent of a 14 year old student with Down Syndrome, I have experienced many difficulties in finding appropriate placement for my son. He has been denied several placements in appropriate programs either because of arbitrary geographic boundaries or unconstitutional DOE policies. We live in Kailua; were referred to a program in another school in Kailua by our home school; and were denied entrance to that appropriate program because we were not "in the district." Two years later we were admitted on a technical exception. I own a rental home closer to the school where we were applying; and so we were finally admitted. The whole system based on very arbitrary rules.

Geographical exception is very necessary when students with disabilities are involved. I would like to speak of a wonderful program that used to be at Kainalu Elementary School in the 80's and early 90's. It serviced the most severely disabled students. It had the latest in all the equipment at that time. The well trained staff had developed a successful program. Because the DOE did not refer students, who were out of district, to this program it was closed. All the equipment was parceled out to other schools. There has not been a program like it available on Windward Oahu since then. At the same time students in Kaneohe were not given the opportunity to attend this program. Some were sent to the mainland, with great expense to the State, because there was not an appropriate program for them. The only way to develop good programs in SPED is to have a commitment and then support them for the long run by referring students. Even from out of district.

The DOE has a ONE SIZE FITS ALL policy. The DOE has mandated that every school must service every special need. That is not practical or possible. Many other states have magnet programs for certain areas of need.

The benefits of having a choice for students with special needs are many.

The DOE has a policy which basically puts SPED students in a box.

Students, who qualify for SPED services from the DOE, are disqualified for all other state programs. For example: The Scottish Rite Speech Therapy Pre-School; DDD services during school hours; Speech, Occupational Therapy & Physical Therapy unless enrolled in a DOE school; Charter Schools are denied funds for SPED students. This policy needs to be changed. It is not only discriminatory but totally illegal. Each student has his or her own unique needs and strengths. Each teacher, program and school, has its strengths also.

These bills address flexibility of learning environments. They will also allow for some appropriate programs that are at present not provided by the DOE.

I strongly favor these bills.

Thank you,

Janet Takushi