

Date of Hearing: March 16, 2011

Committee: House Education

Department: Education

Person Testifying: Lea E. Albert, Complex Area Superintendent, Castle-Kahuku Complex

Title: S.B. No. 1284, Relating to Education

Purpose: To allow the Department of Education (1) ability to exercise its authority to monitor students with disabilities who are placed, at the Department's expense, at private special education schools or placements; (2) to ensure that the Department is charged reasonable rates for the placement of students at private special education schools or placements; and (3) to allow the Department to withhold payment if a private placement denies monitoring of students by the Department.

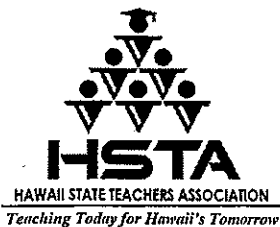
Department's Position: The Department of Education (DOE) supports this Bill in its ability to help the DOE monitor students who are placed in private special education "schools" or placements at the DOE's expense, either through a decision made by a hearing officer or a court decision. As it is written, the current statute does not allow the department to monitor students. Furthermore the law, in current form, does not regulate the conduct of the private special education "schools" or placements. As a result, private special education "schools" and placements: (1) are not in compliance with state and federal laws and regulations pertaining to health and safety; and (2) obstruct the

attempts by DOE's personnel to monitor students with disabilities who are placed at these facilities at the expense of the DOE. Many of these private special education "schools" and placements are not accredited by the Western Association of Schools and Colleges (WASC), the Hawaii Association of Independent Schools (HAIS), any HAIS Hawaii affiliate, the National Association for the Education of Young Children (NAEYC) or the National Early Childhood Program for Accreditation (NECPA). These accreditation organizations are the "gold standard" in accreditation. Accreditation is important because it is a self assessment by an academic school or institution. Because many of these private special education "schools" and placements are not accredited by WASC or HAIS, there is no assurance regarding the quality of instruction provided to our students at the Department's expense. As a result, in a recent case, the Honorable David Ezra stated that a student's placement in a private special education facility was a "step backwards" for the student because the facility was too restrictive "*with a less than vital academic curriculum...*" This statute would resolve quality concerns by allowing the DOE to monitor students in private special education "schools" and placements for quality of curriculum, compliance with safety rules and regulations. This would better ensure that specialized education is delivered so that students with disabilities are afforded

rigorous curriculum and instruction. Moreover, this statute would mean that private special education "schools" would be accountable for private school placements at the DOE's expense. That is these "schools" or placements would have to provide those related services as required by Individualized Education Programs. At this time, the DOE is charged exorbitant fees and tuition for the attendance of students with disabilities at these facilities without real knowledge of progress or services. The Windward District spent approximately \$6.2 million in the last five years for payment for 19 students in two private special education placements without knowing what services were being paid for and provided to students. The current version of S.B. 1284, as amended in S.D. 2 would require these private special education "schools" and placements to post their tuition, fees, and rates thereby giving the Department notice of the expected costs. It also requires these placements to charge the Department the rates, tuition, and fees it would charge to parents. And last, and of equal importance, is that this bill as amended would allow the Department to withhold payment in the event that a private special education "school" or placement denies the Department access to students in these placements for the purpose of monitoring their progress. I want to be very clear that under the Individuals with Disabilities Education Improvement Act, money is not the issue when it comes to

providing educational services to students with special needs.

What is at issue and what is the reason for the support of this legislation is the stewardship of federal and state taxpayers' dollars and ensuring that those dollars are spent effectively, efficiently on quality services and education for students in the least restrictive environment. Again, the DOE is prevented in many cases by private special education "schools" and placements from monitoring whether or not quality education and services, which result in true progress, are being provided. This is at the expense of taxpayers but most of all it is at the expense of children. This constitutes what I believe to be a violation of the public's trust. Please consider and pass this bill to become law so that Hawaii can properly care and educate our most *vulnerable* keiki.



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## TESTIMONY BEFORE THE HOUSE COMMITTEE ON EDUCATION

RE: SB 1284, SD2 – RELATING TO EDUCATION

March 16, 2011

WIL OKABE, PRESIDENT  
HAWAII STATE TEACHERS ASSOCIATION

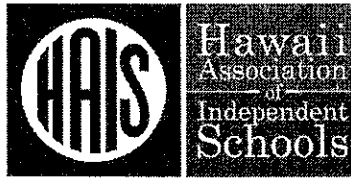
Chair Takumi and Members of the Committee:

The Hawaii State Teachers Association supports SB 1284, SD2, to amend section 302A-443, Hawaii Revised Statutes.

Many of our special education teachers are made responsible for writing the Individualized Education Plan (IEP) for students with disabilities in private schools. This is often done without having the ability to monitor, assess, evaluate or interact with the child and their private education teacher. There is no accountability to see if the IEP is being properly implemented to meet the rigorous standard based instruction that align to the common core state standards.

The department is responsible for paying tuition and fees that accompany attendance at various private schools. HSTA believes because the Department of Education is responsible for tuition payments to private institutions and because SPED teachers are responsible for writing the IEP the department should have access to monitoring and evaluating the educational progress of students with disabilities in private schools. HSTA further believes it is reasonable for the department to set rates of payment for students at private schools.

Thank you for the opportunity to testify.



Wednesday, March 16, 2011, 2:00 p.m. - Conference Room 309

TESTIMONY TO THE HOUSE COMMITTEE ON EDUCATION

RE: SB 1284, SD 2 – Relating to Education

Dear Chair Takumi, Vice Chair Belatti, 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 99 private and independent schools in Hawaii and educates over 33,000 students statewide.

SB 1284 SD 2 – Relating to Education authorizes and obligates the Department of Education (DOE) to oversee and monitor the instruction of special education students who are placed in private schools or facilities at public expense. **The Association opposes this measure as written and respectfully requests an amendment to exclude those schools that are “full and accredited members in good standing of the Hawaii Association of Independent Schools (HAIS) and the Hawaii Catholic Schools (HCS).”**

The full and accredited members of HAIS and HCS have protocols in place via regionally and nationally recognized accreditation standards to ensure the provision of a high-quality education in a safe environment. These schools have a history of effectively collaborating with one another and the Department of Education to meet the requirements of FAPE for those DOE students being educated on their campuses. HAIS recognizes the intent of this bill and believes that this amendment will address the concerns which likely prompted this initiative while preserving the educational environments and true independence of participative non-public schools. By excluding full and accredited members of HAIS and HCS, the Committee will distinguish between these accredited schools and those without such assurances and supports – to which the oversight measures outlined by this bill are more directly applicable.

Finally, HAIS believes that the compliance details in SB 1284 SD 2 should not be in statute, but rather addressed through administrative rules drafted jointly by the DOE and fully accredited private schools. In particular, the definition of “access to exercise its authority to monitor students” is one that HAIS would hope to provide input on to balance the independence of its member schools, while simultaneously supporting the DOE’s efforts to meet federal obligations.

HAIS appreciates the opportunity to comment on this measure. With the inclusion of the requested amendment, HAIS would take no position on SB 1284 SD 2.



## **HAWAII DISABILITY RIGHTS CENTER**

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### **THE HOUSE OF REPRESENTATIVES THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2011**

#### **Committee on Education Testimony in Opposition to S.B. 1284 Relating to Education**

**Wednesday, March 16, 2011, 2:00 P.M.  
Conference Room 309**

Chair Takumi and Members of the Committee:

I am Louis Erteschik, Staff Attorney at the Hawaii Disability Rights Center, and am testifying in opposition to this bill.

The purpose of the bill is to give the DOE the ability to monitor students placed in private facilities under the IDEA and to set the rates the schools can receive for the education of the child.

The Legislature repealed the DOE's authority to monitor private schools in Act 188, SLH 1995. This bill would reinstate such authority, but only for monitoring private schools that educate children with disabilities. The limitation is discriminatory and particularly inappropriate, in view of the fact that children placed in private facilities under the IDEA have been placed there because the DOE has failed or refused to provide a free appropriate public education. There is no legitimate reason for the DOE to monitor a private school's delivery of services that the DOE has refused to provide itself.

School districts are required to provide a FAPE -- a free and appropriate education to children who qualify for special education services under the IDEA. If they fail to do so, placement at a private facility is an option which the law allows. The DOE resists paying for these private placements because it incurs the expense of paying for teachers and staff who are properly trained to educate a very difficult population. By accepting IDEA funds, however, the DOE agreed to provide FAPE and thus brings upon itself the obligation to reimburse private school tuition by its unwillingness to do so in the public schools or in private schools the DOE selects.

Despite the desire to save money, we believe this bill violates federal law (IDEA) and the court opinions that have interpreted it. As announced by the U.S. Supreme Court in *Florence County School District v. Carter*, 510 U.S. 7, 114 S. Ct. 361 (1993) a school district's authority to control the cost of a private placement is limited to situations where the school district on its own decided to provide the child a FAPE by placing the child in the private setting. In the context of a unilateral placement, however, where the parent places the child in a school and then files a due process request for reimbursement, it is up to the Court to decide if the placement and the cost were reasonable. Inasmuch as many due process hearings involve unilateral placements, this bill would not only violate federal law under the IDEA, which says that the Courts are the arbiter of that issue, but also violate the separation of powers clause of the US Constitution because it is up to the Court, not the legislature or the Executive to decide if the cost of the private placement is reasonable. With all due respect, the state legislature does not have the constitutional authority to delegate that power to the Department of Education.

We would strongly recommend that the bill be held and that the DOE, if it truly seeks to save expenditures under the IDEA, develop the capacity and the will to comply with the IDEA, so that fewer private placements will be necessary.

Thank you for the opportunity to testify in opposition to this matter.