



DEPT. COMM. NO. 206

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

December 18, 2017

The Honorable Ronald D. Kouchi, President
and Members of the Senate
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of Representatives
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Department's report on implementing measures to comply with the behavior analyst licensure and certification requirements pursuant to Act 107 (2016). Recently, I was informed that the report to the 2017 Legislature had not been transmitted. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at:

<http://www.hawaiipublicschools.org/VisionForSuccess/SchoolDataAndReports/StateReports/Pages/Lege-2017.aspx>

Sincerely,

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

Dr. Christina M. Kishimoto
Superintendent

CMK:itk
Enclosure

c: Legislative Reference Bureau
Office of Curriculum, Instruction and Student Support

Status Report on Act 107, 2016 (SB 1311, CD1)

Implementation of Measures to comply with the Behavior Analyst Licensure and Certification Requirements in Hawaii Public Schools

INTRODUCTION

Act 199, Session Laws of Hawaii 2015 codified as chapter 465D, Hawaii Revised Statutes (HRS), established standards for the licensing of behavior analysts to address the present and critical need to ensure that persons requiring diagnosis and treatment for autism receive the care they need. Act 199 recognized that behavior analysts and the practice of behavior analysis should be subject to regulation and control to protect the public from unqualified practitioners and from unprofessional conduct.

The behavior analyst licensure law passed as a complement law to Luke's Law to ensure Medicaid billing for behavior analysts practicing in the community.

BACKGROUND

Prior to the passage of Luke's law, the state auditor conducted an analysis in 2009. At that time, the Hawaii State Department of Education (Department) opined and responded that the proposed law was outside the purview of education. Link to the Auditor's report here: <http://files.hawaii.gov/auditor/Reports/2009/09-09.pdf>

Luke's law then passed with the corresponding behavior analyst licensure licensing law. Unfortunately, the Behavior Licensing law passed without a State Auditor's sunrise analysis which could have provided insight into the financial, operational, educational, and staffing impact on the Department. Nevertheless, it was determined that Department personnel would also require licensure/certification.

Enacted on June 22, 2016, Act 107, among other things, requires Department personnel who directly implement applied behavior analysis (ABA) services to students with Autism Spectrum Disorders (ASD) who have ABA written in their Individualized Educational Program, to be credentialed as Registered Behavior Technicians (RBTs) by the Behavior Analyst Certification Board (BACB), and under the direction of a behavior analyst licensed in the State of Hawaii by January 1, 2019.

Currently, the Department is addressing the operational, financial, education requirements, professional development and potential collective bargaining components necessary to implement this measure with fidelity.

IMPLEMENTATION/RESEARCH SCHOOL YEAR 2016-2017

The Department is researching and developing a plan to implement measures to comply with the licensure and certification requirements of Chapter 465D, HRS. Research and refinement of the plan is ongoing as more information is obtained.

These actions include:

1. Contacting other states to inquire how they assure compliance under their law(s), including what services are covered, behavior analysts licensure requirements, service provider requirements, licensure exemptions, implementation barriers, how services are documented in a students' Individualized Educational Program, and the department of education's role in the process;
2. Conducting research to estimate the people and operation resources deemed necessary to train, hire, certify and license Department personnel to provide services to students. Personnel supports are integral to the Department's efforts to comply with Act 107 by January 1, 2019, as stipulated by law;
3. Developing an infrastructure and planning financial, operational, and educational as well as staffing needs to enable the State to successfully provide access to services for students and comply with the licensure and certification requirements of Chapter 465D, HRS; and,
4. Conferring with the Unions regarding collective bargaining issues. It is important to note that negotiations with the Unions may result in salary reclassification and possibly an upward movement in the salary scale, leading to a subsequent operating budgetary request by the Department.

The Department acknowledges failure to implement the law in a timely manner may result in:

Non-compliance with state and federal law

If Department personnel are not certified by January 1, 2019 as required by state law and proceed to implement a student's behavior implementation plan, the Department will be subject to a fine for each separate offense, due to non-compliance with Act 107.

Further, if behavior implementation plans are not executed and delivered, the Department will be non-compliant with the federal mandates of IDEA and Section 504. This situation will also increase the Department's exposure to litigation.

Exponential increase in contracted service costs

Should there be a lack of qualified personnel to service students, the Department may need to increase its contracted services. The qualified and certified contracted personnel would implement and deliver services per behavior intervention plans to identified students with disabilities who require these services.

Dedicated personnel supports are integral to the Department's efforts to comply with Act 107 in a timely manner. Without dedicated personnel, current special education personnel would be challenged to address the compliance mandates of the Act while continuing to execute and deliver their current program duties.

The Department does not support contracting a vendor to start up, operationalize, and manage this program to ensure compliance with the licensure and certification requirements of chapter 465D, HRS. Contracting services is not conducive to program implementation.

CONCLUSION

The Department is dedicated and committed to providing the necessary supports and services to students who have been identified as needing applied behavior analysis in the educational setting, by the student's IEP team. Ensuring the provision of quality services with fidelity by certified providers is of the utmost importance.