

DAVID Y. IGE
GOVERNOR



DR. CHRISTINA M. KISHIMOTO
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2380
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

January 5, 2018

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). In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at: <http://bit.ly/DOELcgReports>.

Sincerely,

A handwritten signature in black ink, appearing to read "Christina M. Kishimoto".

Dr. Christina M. Kishimoto
Superintendent

CMK:itk
Enclosure

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



State of Hawaii
Department of Education

Report on Behavior Analyst and Certification Requirements Implementation

January 5, 2018

Pursuant to Act 107 (2016), the Department of Education (DOE) shall provide a report to the legislature prior to the convening of the regular sessions of 2017 and 2018 on its plans and progress in implementing measures to comply with the licensure and certification requirements of chapter 465D, HRS.

January 2018

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 following report is an update on the research conducted and progress on implementation by the Hawaii State Department of Education (HIDOE).

RESEARCH AND IMPLEMENTATION –

Based on the current interpretation of Chapter 465D, the HIDOE completed its research and analysis. Program planning and implementation are progressing and ongoing.

RESULTS OF RESEARCH AND ANALYSIS--SCHOOL YEAR 2016-2017

1. In 2014, the National Professional Development Center on Autism Spectrum Disorder (NPDC), funded by the U.S. Department of Education, Office of Special Education Programs (OSEP), identified 27 Evidence-Based Practices (EBP) for students with Autism Spectrum Disorder (ASD) from birth to 22 years of age. Functional Behavior Assessment (FBA), Discrete Trial Teaching (DTT) and Antecedent-based Intervention (ABI) are a few examples of the 27 EBPs and also considered behavior analysis practices (<http://autismpdc.fpg.unc.edu/>). The EBPs are routinely used by many teachers and other professionals working with students. Therefore, the recognized scope of practice of teachers and other professionals overlap with the practice of behavior analysis. Licensed teachers and other licensed educational professionals are exempt per HRS§465D-7(a)(1). (http://www.capitol.hawaii.gov/hrscurrent/Vol10_Ch0436-0474/HRS0465D/HRS_0465D-0007.htm)
 - a. Students with severe behavior needs may require an intensive program where a Licensed Behavior Analyst (LBA) is necessary to develop and supervise a behavior program. Typically, these cases involve students who engage in behaviors that are harmful to self and/or others (i.e., physical aggression, property destruction, self-injurious behaviors) and whose behaviors remain unchanged after provided with positive

behavioral interventions. As a result, the Individualized Education Program (IEP) team may determine the need for a comprehensive Applied Behavior Analysis (ABA) program developed and supervised by an LBA.

- b. The HIDOE has identified through the electronic Comprehensive Student Support System database, approximately 1,000 ASD students who require intensive instruction, as indicated by the need for one-to-one support. These students may require ABA as an IEP service provided by an LBA and Registered Behavior Technician (RBT).
2. Health insurance plans pay for medically necessary ABA therapy pursuant to a treatment plan. Hawaii Medical Services Association, Kaiser Permanente and Quest have acknowledged the HIDOE's responsibility for developing and implementing ABA as part of the student's IEP. Health insurance plans do not fund services provided in the IEP which are considered duplicative. Furthermore, the HIDOE's guidance (Attachment), does not allow a parent's private provider on campus during the school day to serve students, as this would interfere with the school's obligation to implement the student's educational program. All educationally relevant services, including ABA, are provided by the HIDOE.
 3. Many states have determined that the ABA licensure standard is consistent with the accepted standards of their respective educational professionals. These states have also recognized that the ABA licensure standard could prohibit public and private school employees from performing their full scope of work. As a result, 14 states have either limited or completely exempted schools and educational professionals from this law.

State	Exemption (Limited or Complete)
North Dakota	Limited
Tennessee	Limited
California	Complete
Florida	Complete
Kansas	Complete
Kentucky	Complete
Massachusetts	Complete
Missouri	Complete
Oklahoma	Complete
Rhode Island	Complete
South Dakota	Complete
Utah	Complete
Virginia	Complete
Washington	Complete

DEVELOPMENT AND IMPLEMENTATION—SCHOOL YEAR 2017-2018

The HIDOE is required to comply with the Individuals with Disabilities Education Act (IDEA) and Hawaii Administrative Rules Chapter 8-60 in order to identify, evaluate, and educate individuals with disabilities. The goal of the IDEA is to provide students with a disability a free appropriate public education through individualized and specialized education and related services. Parent(s)/legal guardian(s) requesting to receive ABA services through a healthcare provider during the school day should bring the treatment plan to the IEP team for review and consideration. It is the IEP team's responsibility to review the treatment plan and determine whether it is educationally relevant. The IEP team will then determine whether and to what extent autism specific methodologies including ABA are to be provided to student; any recommendations and/or services included in the student's IEP will be provided by the HIDOE.

Healthcare providers such as HMSA will pay for medically necessary ABA "therapy" pursuant to a treatment plan developed outside of the IEP process. The treatment team does not decide whether a student requires ABA services for educational purposes which is a decision reserved for the IEP team. In other words, it is the IEP team's responsibility to determine whether a particular student requires a specific methodology (e.g., ABA) in order to make progress on his/her IEP goals and objectives. In addition, the HIDOE is not required to implement a student's medically-related treatment plan. It is a HIDOE policy not to allow private providers on campus as it would interfere with the school's obligation to implement a student's IEP and to provide special education and related services under the IDEA.

The HIDOE's implementation plan is focused on ensuring that all students in need of ABA are served by qualified professionals. This plan includes:

1. District level best practices capacity building model – Each district in consultation of the Autism State Educational Specialist is developing a personalized training plan to build district and school level capacity. The plan includes focused and intensive training to build staff expertise and knowledge of EBPs.
2. Two (2) new State-level (Office of Curriculum, Instruction and Student Support) Behavior Intervention Educational Specialist II positions – The primary job responsibility for these positions is the coordination of training and supervision of LBA candidates and RBTs. Positions are currently in the recruitment process for these two positions appropriated by the 2017 Legislature.
3. Partnerships with Institutions of Higher Education – Leeward Community College offers a one-credit RBT course available to educational assistants. In anticipation of more employees needing to become LBAs, the University of Hawaii and the HIDOE is expanding the current Memorandum of Understanding

(MOU) to include BCBA program scholarships for qualifying employees to begin in the 2018- 2019 school year.

4. Contracting LBAs and RBTs when needed – To address shortages in geographic areas, the HIDEOE is considering a request for proposal that would require providers to hold BACB credentials.
5. Increased HIDEOE LBA and RBT personnel – The HIDEOE employs 154 RBTs (credentialed and in training) and 54 LBAs (licensed and in training). Below is a table of the HIDEOE’s BACB credentialed and in training staff by district as reported by the Autism District Educational Specialists as of October 2017.

HIDEOE BACB Credentialed Personnel				
District/ Complex Area	# of LBAs	# of LBA Candidates	# of RBTs	# of RBT Candidates
Honolulu District	1	0	0	10
Central District	1	4	1	21
Leeward District	0	15	0	44
Windward District	4	8	5	29
Hawaii District	0	4	0	30
Maui District	5	7	2	3
Kauai District	1	0	0	5
STATE	3	1	1	3
Total	15	39	9	145

The cost of obtaining a Board Certified Behavior Analyst (BCBA) certification has been estimated at \$20,000 per individual and includes both the graduate level coursework and required hours of supervision. The cost of obtaining an RBT certification has been estimated to be \$1,100 per individual which includes both didactic and performance training. It should be noted that RBT must receive LBA supervision (approximately \$12,600 annually) to retain their credential.

6. Compensation of LBA/RBT credentials – The HIDEOE’s Office of Human Resources is researching the possibilities of creating and/or revising existing job classes, compensation options and union negotiations requirements.

CONCLUSION

Under the authority of the Individuals with Disabilities Education Act (IDEA) and Hawaii Administrative Rules (HAR) Chapter 8-60, the HIDOE requires the use of peer reviewed and EBPs when serving all students with disabilities. Consequently, the HIDOE's intent has always been to increase expertise of professionals serving students with ASD and other developmental disabilities and remains dedicated to this effort. As HIDOE builds staff capacity, contracts for services may be required. HIDOE will contract until internal capacity is accomplished. HIDOE goal is to have an internal team of experts that are known to parents and maintain trusting relationships with families.

Many discussions have resulted in numerous interpretations. A literal or broad interpretation of Chapter 465D would require Behavior Analyst Certification Board (BACB) credentials when using behavior analysis for all students and not limited to student's with ASD. This interpretation impacts a larger number of professionals and limits their ability to perform essential duties specifically those serving students requiring school-based behavior health (SBBH). Further clarification is needed before the HIDOE can accurately determine the impact of this broader interpretation. The HIDOE continues to work with other state agencies (i.e., Department of Health, Department of Human Services) to understand the broader interpretation of Chapter 465D.

RECOMMENDATION

The HIDOE will continue to focus attention and resources on building capacity. However, an amendment to this law would allow all HIDOE personnel to provide services consistent with the accepted standards of their respective professions, to students with disabilities as outlined in their IEPs under IDEA and HAR 8-60.

GLOSSARY OF TERMS

Applied Behavior Analysis (ABA) – The application of the principles of learning theory to change behavior of social significance.

Antecedent-based Intervention (ABI) – Arrangement of events or circumstances that precede the occurrence of an interfering behavior and designed to lead to the reduction of the behavior.

Autism Spectrum Disorder (ASD) – A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects the student's educational performance. The student may have one or more of the following other characteristics often associated with autism spectrum disorder:

- (A) Engagement in repetitive activities and stereotyped movements;
- (B) Resistance to environmental change or change in daily routines; and
- (C) Unusual responses to sensory experiences.

Behavior Analyst Certification Board (BACB) – A nonprofit 501(c)(3) corporation established in 1998 to meet professional credentialing needs identified by behavior analysts, governments, and consumers of behavior analysis services.

Discrete Trial Teaching (DTT) – Instructional process usually involving one teacher/service provider and one student/client and designed to teach appropriate behavior or skills. Instruction usually involves massed trials. Each trial consists of the teacher's instruction/presentation, the child's response, a carefully planned consequence, and a pause prior to presenting the next instruction.

Evidence-Based Practices (EBP) – Interventions that researchers have shown to be effective.

Functional Behavior Assessment (FBA) – Systematic collection of information about an interfering behavior designed to identify functional contingencies that support the behavior. FBA consists of describing the interfering or problem behavior, identifying antecedent or consequent events that control the behavior, developing a hypothesis of the function of the behavior, and/or testing the hypothesis.

Hawaii Administrative Rules (HAR) – State of Hawaii's regulations

Individuals with Disabilities Education Act (IDEA) – Legislation ensuring services to children with disabilities throughout the nation receive early intervention, special education and related services resulting in a free appropriate public education.

Individualized Education Program (IEP) – A written program for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 CFR 300.320 through 300.324.

Licensed Behavior Analyst (LBA) – A Board Certified Behavior Analyst with a state license to practice behavior analysis.

Memorandum of Understanding (MOU) – A written arrangement that expresses mutual agreement on a matter between two or more parties.

National Professional Development Center on Autism Spectrum Disorder (NPDC) – Funded by OSEP to work in collaboration with the University of North Carolina at Chapel Hill, the University of Wisconsin at Madison, and the MIND Institute, University of California-Davis to promote the use of evidence-based practices for children and youth with ASD from 2007-2014.

Office of Special Education Program (OSEP) – An office under the Office of Special Education and Rehabilitative Services in the United States Department of Education.

Registered Behavior Technician (RBT) – A paraprofessional, meeting the BACB RBT training standards, who provides direct services under the supervision of a LBA.

School-Based Behavioral Health (SBBH) – Provides variety of school based behavioral health and educational support services to students, identified through their Student Focus Teams at the school, as being in need of such services (e.g. individual counseling, parent/family intervention, etc.)



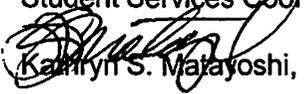
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Information

OFFICE OF THE SUPERINTENDENT

July 31, 2012

To: Complex Area Superintendents, Principals, Charter School Administrative Office Director, Charter School Directors, District Educational Specialists, Special and General Education Teachers, Early Childhood Special Education Teachers, and Student Services Coordinators

From:  Kathryn S. Matayoshi, Superintendent

Subject: Private/Parent Contracted Services for Students with Disabilities

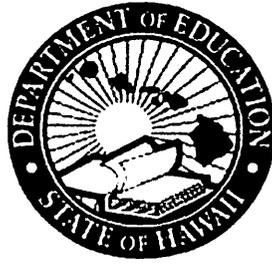
The Department of Education (Department), under the Individuals with Disabilities Education Act (IDEA), is required "To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs..." [§300.1 Purposes.] The IDEA goes on to state "Free appropriate public education or FAPE means special education and related services that (a) Are provided at public expense, under public supervision and direction, and without charge..." [§300.17 Free appropriate public education.] The Department provides FAPE to eligible students through the development of an Individualized Education Program (IEP) based on each student's unique needs. The IEP is implemented by Department employees and/or Department contracted providers.

The Department is required to provide the services delineated in the IEP during the school day and/or extended school day/year. As such, services provided by anyone other than a Department employee or Department contracted provider may not be delivered during the school day on a school campus or at a site where the Department is implementing a student's IEP as this would interfere with the Department's obligation to implement the student's IEP and to provide special education and related services under the IDEA.

If you have any questions, please call Ms. Marilyn Jakeway, Educational Specialist, Special Education Section, at (808) 203-5560.

KSM:MJ:tk

c: Assistant Superintendents
Superintendent's Office Directors
Special Projects Office
Charter School Office Administrative Director
Office of Curriculum, Instruction and Student Support



Find current and past DOE Reports online at:
<http://HawaiiPublicSchools.org>