

HB87

Date of Hearing: March 23, 2009

Committee: Senate Education and Housing

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: H.B. 87, H.D. 2 (HSCR 827) 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 827). Students with disabilities are placed in private schools or facilities as a result of an Individualized Education Program (IEP) team decision, a due process hearing decision, or a settlement agreement. 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.

The Department supports H.B. 87, H.D. 2 (HSCR 827).



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 23, 2009

The Honorable Norman Sakamoto, Chair
Senate Committee on Education and Housing
Twenty-Fifth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Senator Sakamoto 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 DOE to oversee and monitor students eligible for special education who are placed in private schools or facilities at public expense.

The Council appreciates the intent of HB 87 HD2 and supports 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.

Although we appreciate the intent of the bill, we do 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 Norman Sakamoto
Page 2
March 23, 2009

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 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.

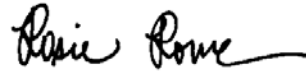
We feel the above-mentioned provision may be a violation of due process and the student's legal rights and education needs to an appropriate placement. As a result, DOE may be vulnerable to unnecessary and costly litigation.

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

Sincerely,



Waynette K.Y. Cabral
Executive Administrator



Rosie Rowe
Chair



March 23, 2009
2:00 p.m.
Conference Room 225

TESTIMONY TO
THE SENATE COMMITTEE ON EDUCATION AND HOUSING

RE: HB 87 HD2 – Relating to Education

Dear Chair Sakamoto, Vice Chair Kidani, 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 students with a wide range of abilities and learning styles.

The Association **opposes** House Bill 87, House Draft 2 – Relating to Education as it is currently written and respectfully requests that the measure be amended to exclude those schools that are members of HAIS and the Hawaii Catholic Schools (HCS).

While HAIS respects the intent of this bill, which would authorize and obligate 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, 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; however, those who are members of our association and/or HCS have the 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 – by amending all references to private schools and facilities in HB 87 HD2 to read “private school or facility, except those that are fully accredited members of the Hawaii Association of Independent Schools or the Hawaii Catholic Schools.” The full members of HAIS and HCS 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 DOE to meet the requirements of FAPE for those DOE students being educated on their campuses. With the inclusion of the abovementioned amendments, HAIS would take no position on the remaining sections of the bill.

Mahalo for the opportunity to testify on this important matter.



A non-profit organization run by and for persons with disabilities

Hawaii Centers for Independent Living
414 Kuwili Street, Suite 102
Honolulu, Hawaii 96817

Phone: (808) 522-5400
Fax: (808) 522-5427
TTY/TDD: (808) 536-3739
Website: <http://www.hawaii-cil.org>

Senator Norman Sakamoto, Chair
Senator Michelle Kidani, Vice Chair
Committee on Education and Housing

Hawaii Centers for Independent Living
Monday, March 23, 2009, 2:00 PM

Opposing HB87 HD2, Relating to Education.

Hawaii Centers for Independent Living is a non-profit organization operated by and for people with disabilities to ensure their rights to live independently and fully integrated in the community of their choice, outside of institutional care settings. As a non-profit, statewide resource, HCIL serves people of any age with any type of disability. HCIL was founded on the historical constitutional beliefs of civil rights and the empowerment of people with disabilities to have equal access, opportunities, and choices in life, no matter how severe their disability.

We **oppose HB87 HD2**, Relating to Education.

We believe that the bill unfairly restricts the ability of private schools and other facilities to serve children with disabilities once it has been determined that such a placement is in the child's best interest. In particular, we object to the provision in the bill that would invalidate a child's educational placement if the school or other facility were found to have violated the oversight and monitoring requirements set out in the bill. The appropriate educational placement for a child with a disability is determined through the Individualized Education Plan (IEP) process, as set out in the Federal Individuals with Disabilities Education Act (IDEA). State legislation such as HB87 HD2 cannot override the IEP process as defined in Federal law and regulations. *Cf.* 34 CFR 300.116(a).

We urge the committee not to pass HB87 HD2. Thank you for this opportunity to testify.

Sincerely,

Mark F. Romoser

Policy and Program Analyst



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: Senate Committee on Education and Housing

From: Hawaii Disability Rights Center

Re: House Bill 87, HD2
Relating to Education

Hearing: Monday, March 23, 2009, 2:00PM
Conference Room 225, State Capitol

Members of the Committee on Education and Housing:

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.

Community Children's Councils of Hawaii, Legislative Committee

1177 Alakea Street B-100, Honolulu, HI 96813

Phone: 808-586-5363 Fax: 808-586-5366

MARCH 23, 2009

The Honorable Norman Sakamoto, Chair
Senate Education and Housing Committee

And

The Honorable Michelle Kidani, Vice-Chair

Re: HB 87: HD 2: Relating to Education: Monitoring by DOE of special education students placed in private schools and facilities at public expense.

The seventeen Community children's councils of Hawaii support the intent of HB 87, HD 2, but are **opposed** to its passage.

The Community Children's Councils of Hawaii oppose the passage of HB 87, HD 2 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 the student's 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.

If the DOE developed eligibility criteria which included appropriate access to the student and their records, the DOE would not have to go to hearing in order to provide private school placement if agreed upon.

Hawaii's rules governing services to children with disabilities are going through the public hearing process in April. Training around the new changes could include these implementation factors as well.

We are open to working with the DOE on these matters at any time.

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)



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 23, 2009

**Special Education
Advisory Council**

Ms. Ivalee Sinclair, *Chair*
Mr. Steve Laracuente, *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 Rezentes
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

Senator Norman Sakamoto, Chair
Senate Committee on Education and Housing
State Capitol
Honolulu, HI 96813

RE: HB 87, HD2 – Relating to Education

Dear Chair Sakamoto 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 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 which private schools and facilities must meet in order to be eligible



Senator Sakamoto
HB 87, HD2
March 23, 2009
Page 2

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.

SEAC would welcome the opportunity to participate with the Department in addressing barriers related to accessing students in private school placements and assisting in the development of eligibility criteria for DOE to use in identifying appropriate private school placements. For some students with disabilities, it is appropriate for the Department to place the student in a private school or facility where the program is a match for the student's unique needs. Having a list of schools that meet eligibility criteria, including the provision of reasonable access to the student and his/her records, could reduce the need for a due process hearing and the additional costs of litigation.

Chapter 60, Hawaii's proposed administrative rules for the provision of special education services, will be going out to hearing in the next month. SEAC anticipates that the training required to bring schools current with the changes after public review process, could also address the issue of private placements where the Department makes the placement or referral to the private school or facility.

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**

**THE SENATE
COMMITTEE ON EDUCATION AND HOUSING**

HB 87, HD2

TESTIMONY IN **OPPOSITION**

March 22, 2009

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

My name is Naomi Grossman, and I am the president of the Autism Society of Hawai'i. The Autism Society of Hawai'i 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 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 1. 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, HD2 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, HD2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87, HD2 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, HD2 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. It also violates the stay put provision of the IDEA. Passage of such a law would only lead to unnecessary litigation.

Therefore, I respectfully ask that this measure be held. In the alternative, should you believe HB 87, HD2 ought to be passed, amendments to the bill as follows are suggested:

On page 1, line 9: change the word "shall" to "may";

On page 1, lines 15-18 and page 2, lines 1-5: deleting the entire section.

These suggested amendments are reflected on the attached.

Additionally, a Senate Concurrent Resolution (SCR) 150 was offered on March 18 Urging the Superintendent of Education to Establish and Facilitate a Special Education Private School Task Force to Advise the Department of Education on Policies or Procedures for Oversight and Monitoring of Private School or Facility Placements. In light of the introduction of SCR 150, HB 87 SD 2 is not needed at this time.

Thank you for the opportunity to testify on HB 87, HD2.

Sincerely,

Naomi Grossman
Autism Society of Hawai'i, president

The Honorable Senator Norman Sakamoto, Chair
Committee on Education and Housing
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

March 22, 2009

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

Thank you for receiving our testimony on HB 87 HD2 relating to Special Education; Oversight and Monitoring. The Ko'olauloa Community Children's Council (KCCC) Parent Support Group is **opposed** to HB 87. HB 87 HD2 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 HD2 is both unnecessary and violates the due process rights as well as civil rights of children who need special education.

HB 87 HD2 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 HD2 is therefore duplicitous. Secondly, the issue of oversight and monitoring of special education services for children with disabilities in private schools that are placed or referred by public agencies (such as the DOE) are already a part of the Individuals with Disabilities Education Improvement Act of 2004. The Federal Register (34 CFR Parts 300 and 301) has procedures in place that spell out the DOE's responsibilities towards children with disabilities in private schools placed or referred by public agencies (34 CFR 300.145-147).

Also, 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 child with special needs.

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, we respectfully ask that this measure not pass.

Thank you for receiving our testimony on HB 87 HD2.

Sincerely,
(signatures on file)

Donna Brown, KCCC Parent Co-Chair
Dacey Kagawa, KCCC Parent Co-Chair
Charlotte H. Kamauoha, Parent Co-Chair
Community Children's Council Office
1177 Alakea Street, B-100
Honolulu, HI 96813

March 22, 2009

Testimony to the
Committee on Education and Housing
For Hearing on Monday, March 23, 2009
2:00 p.m., Conference Room 225

RE: HB87, H2 RELATING TO EDUCATION

Chair Norman Sakamoto 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.

As a concerned parent of a child with special needs, I strongly oppose this bill.

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 resulting in costly litigation to the State.

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 that a placement is inappropriate is unfair.

Respectfully submitted,

Tracy L. Kiyabu

From: mailinglist@capitol.hawaii.gov
To: [EDH Testimony](#)
Cc: lbrauer@hawaii.edu
Subject: Testimony for HB87 on 3/23/2009 2:00:00 PM
Date: Tuesday, March 17, 2009 8:25:45 PM

Testimony for EDH 3/23/2009 2:00:00 PM HB87

Conference room: 225
Testifier position: **oppose**
Testifier will be present: No
Submitted by: Lynne Brauer
Organization: Individual
Address: P.O. Box 1721 Kea'au, HI
Phone: 808-938-4393
E-mail: lbrauer@hawaii.edu
Submitted on: 3/17/2009

Comments:

From: [Irene Newhouse](#)
To: [EDH Testimony](#)
Subject: HB 87 HD2
Date: Thursday, March 19, 2009 3:15:53 PM

Dear Chairman Sakamoto & Committee Members,

As the parent of a special needs child formerly placed at public expense at a private school on Maui,
I remain as adamantly **opposed** to this bill as I was the first of the now 3 times I have testified against it.

Our daughter, now a home-schooled 10th grader, was at Horizons Academy from 4th grade through 8th grade. She entered 4th grade reading not even at first grade level, and she left Horizons reading at grade level. During that time, Horizons always sent her grade & attendance reports to her home school. Her home school sent observers to Horizons. The elementary school was extremely adversarial & their observers were very disruptive to DD's education, as she feared they were going to concoct an excuse to drag her back. This was not an unreasonable fear, as Kamali'i Elementary required us to file Due Process 4 times in 2 years. So there is already enough oversight to affect the children adversely.

However, this entirely begs the question: Horizons taught our daughter 8 grade levels of reading in 5 years. The Department of Education, as represented by Kamali'i, which prides itself on being a superior school, could not even manage to teach her ANY reading at all - she went to Kihei Elementary for Kindergarten, and her reading ability entering grade 1 was essentially what she had at the end of grade 3. How on earth can any rational person expect that an organization with so little skill at teaching reading-challenged children to read can have any expertise whatsoever to "oversee" the schools which are successfully teaching these children to read????? Is't oversight supposed to have an element of competence?

Also, there are only a handful of children in this situation. Who was charged with overseeing the total incompetence of Kamali'i Elementary? Why aren't you people worried about THAT? I tutor at a private tutoring center on Maui. Our continued existence is due entirely to the fact that so many children are falling through the cracks in public school, and too many parents don't know what their rights are in this regard. This one center, one of several on Maui, serves more students annually than are enrolled in all of Horizons Academy - including those students whose tuition is paid by their families. And these are only the children in families affluent enough to pay about \$40-\$50/hour.

HB87 HD2 is completely unnecessary. Considering it has been a colossal waste of my

taxes, not only because
this bill is unnecessary, but because it has consumed time far better spent on the many
far more pressing issues
facing education in Hawaii.

Irene Newhouse
129 Walua Place
Kihei HI 96753

Windows Live™ Groups: Create an online spot for your favorite groups to meet. [Check it out.](#)

From: [charlotte](#)
To: [EDH Testimony](#)
Subject: Testimony in Opposition to HB87 HD2 Relating to Education
Date: Sunday, March 22, 2009 2:02:55 PM

The Honorable Senator Norman Sakamoto, Chair
The Honorable Senator Michelle Kidani, Vice Chair
Senate Committee on Education and Housing
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

March 22, 2009

Subject: Testimony in Opposition to HB87 HD2, Relating to Education
Monday, March 23, 2009, 2:00 p.m.
Conference Room 308

Dear Chair Sakamoto, Vice Chair Kidani and members of the Committee,

Thank you for receiving my testimony in opposition to HB87 HD2. I am a parent of two children with special needs, both on the Autism Spectrum, and I am also a graduate student at the University of Hawaii at Manoa Master's of Social Work program. While I can appreciate the intent of HB87 HD2 to give the Department of Education (DOE) authority to oversee and monitor students with special education services who are placed in private schools/facilities at public expense, I **strongly oppose** this measure due to the following:

- The language on page 1, lines 15-18 and page 2, lines 1-5 authorizes the DOE to deem a private school/facility as an inappropriate placement if it does not allow the DOE "routine and timely access to monitor the delivery of special education and related services." It goes on further to authorize the DOE to strike out the private school/facility as a placement for the child's Individualized Education Plan (IEP) team to consider.

To allow the DOE authorization to deem a private school/facility as an inappropriate placement and to remove it entirely as a consideration of placement due to "routine and timely access" issues rather than the "appropriateness" of the education the child is receiving is very questionable and quite concerning. Under the IDEA, whether or not a private school or facility is an appropriate placement is determined by the child's IEP team or as a result of a due process hearing.

The parents and child are an important part of the child's IEP team. For the DOE to deem the private school/facility as an inappropriate placement due to access issues between the two agencies and to remove the private school/facility as a placement for consideration tramples on parents and children with special needs' ability to participate in the IEP team as full and equal partners in decision-making. Additionally, mandating that a private school be automatically deemed inappropriate because the DOE is not permitted routine and timely access violates the child's due process rights under federal law.

One of the core values of Social Work is social justice. The ethical principle behind this core value is that social workers are to challenge social injustice wherever it exists (NASW Code of Ethics). Children with special needs and their families should not be made to pay for access issues that need to be resolved between the DOE and the private school/facility. To do so, and by sanction of the law is an injustice to children with special needs and their families.

I therefore oppose HB87 HD2 and ask that the afore-mentioned provision be stricken out entirely from the bill.

Respectfully,

Charlotte H. Kamauoha

56-132 Huehu Place
Kahuku, HI 96731

This message, including any attachments, is intended solely for the use of the named recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution of this communication is expressly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy any and all copies of the original message. Thank you.

Kiele Pennington
817 Malulani St.
Kihei, Hawaii 96753
(808) 879-3825

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
COMMITTEE ON EDUCATION AND HOUSING
HB 87, HD2
TESTIMONY IN **OPPOSITION**

Monday, March 23, 2009
Conference Room 225 at 2:00 p.m.

Dear Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

My daughter, Kili, is five and diagnosed with autism. Autism is stressful due to the many areas of need. Trying to find appropriate therapies is difficult as each child has individual strengths and needs. This has made it challenging for us and other parents when trying to collaborate with the DOE to create an appropriate educational program for our children. Many of these children need access to the positive outcomes they are afforded through special education under the Individuals with Disabilities Education Act (IDEA) in order to experience educational success.

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.

I am writing today to show my **strong opposition** to HB 87 HD 2. IDEA provides for the educational rights of children with special needs. It creates legal guidelines that protect those rights. IDEA requires parents and professionals to adhere to these laws in order to protect the rights to an appropriate education for these children. HB 87 HD 2 would jeopardize those rights. 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.

In the case, that parents do not feel the DOE has created an appropriate program, the parent must file due process. The parent must abide by the law and prove that the school cannot or is not providing an appropriate program. In the case that the school feels that the private placement is inappropriate, it must adhere to the same set of laws and file due process.

IDEA requires that each child be treated as an individual and a program created to fit that individual's need. Due process gives all parties the chance to prove that an individualized program is or is not appropriate. HB 87 HD 2 would take away that individualization, by giving the DOE the authority to take away the rights of a child without reason. An act such as this cannot be enacted that would not require the individual attention to the facts behind a private placement not allowing observation of a program by the DOE.

Opposing HB 87 HD 2 would leave in place a system that protects the educational rights of a child with special needs. Opposing HB 87 HD 2 would require that the DOE have a substantiated case against a private placement before they could remove the child.

Therefore, I respectfully ask that this measure, HB 87 HD 2, will be opposed. I ask that IDEA remain in tact to protect the rights of children with special needs as it was intended by Congress.

Thank you for receiving my testimony on HB 87 HD 2.

Sincerely,
Kiele Pennington
817 Malulani St.
Kihei, Hawaii 96753