SPECIAL EDUCATION ADVISORY COUNCIL

Minutes – February 9, 2018

9:00 a.m. – 1:00 p.m.

**PRESENT:** Brendelyn Ancheta**,** Debbie Cheeseman,Annette Cooper, Motu Finau, Gabriele Finn, Martha Guinan, Scott Hashimoto (for Kurt Humphrey), Amanda Kaahanui (staff), Dale Matsuura, Thomas Moon (for Stacey Oshio), Kaili Murbach, Susan Rocco (staff), Rosie Rowe, Daniel Santos, Tricia Sheehey, Todd Takahashi, Steven Vannatta, Gavin Villar, Amy Wiech, Jasmine Williams, Susan Wood

**EXCUSED**: Sage Goto, Bernadette Lane, Carrie Pisciotto, Kaui Rezentes, Ivalee Sinclair, James Street, Christina Tydeman

**ABSENT:** Bob Campbell, Cathy Kahoohanohano

**GUESTS**: Amy Kunz

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| **TOPIC** | **DISCUSSION** | **ACTION** |
| **Call to Order** | Chair Martha Guinan called the meeting to order at 9:00 a.m. |  |
| **Announcements** | 1. Amanda reminded members who are interested in helping to man a SEAC table at the SPIN Conference to sign up. 2. Martha announced that the next meeting will be held at Puuhale School in the Library. 3. Susan Rocco announced that the E.R.K age-out class action has been settled with the Department agreeing to pay $10,250,000, including legal fees of $1,750,000. The funds will be used to pay for future services for 495 class members or for reimbursement for past services. | A map to Puuhale School will be sent to members. |
| **Introductions** | Members introduced themselves to Senior Assistant Superintendent (AS) Amy Kunz. |  |
| **Review of Minutes for January 12, 2018** | No corrections were offered for the minutes of the January SEAC meeting. | The minutes were approved as circulated. |
| **Department of Education Budget Presentation** | AS Kunz described the seven budget subcategories (EDN 100-EDN 700) and then walked members through the budget item by item. She described how the Department’s proposed operating budget had been significantly reduced by the Governor, and that Budget and Finance identified $4 million dollars for approved items while giving the Department $20 million in discretionary funds to apply to its priorities. These included additional funds for the Weighted Student Formula (WSF), worker’s compensation increases, incentives for hard to staff positions, funding for technology and furniture for new buildings, and early college. In capital improvement requests (new facilities and repair | A copy of the budget as delineated by categories was distributed to members. For more information members were encouraged to go to [www.hawaiipublicschools.org](http://www.hawaiipublicschools.org) and type “budget” in the search window. |

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| **Department of Education Budget Presentation (cont.)** | and maintenance) the Governor included only $150 million of the $784 million request. With the much smaller amount, DOE has prioritized Pohukaina (a new vertical school) and conditional improvements. Representative Woodson of the House Education Committee asked the Department how much new money was needed and what would they do with it. The Superintendent said she would increase teacher salaries to attract more qualified teachers, and BOE member Bruce Voss said $50-100 million is needed for the WSF. Overall, AS Kunz acknowledged huge challenges with the budget and welcomed support from SEAC.  Questions/comments by SEAC members  Q. Are the monies for teacher stipends for special education or general education? A. It’s for all vacancy areas.  Q. What initiatives does the Department undertake to obtain grant monies like the NIH Innovation in Education grants? A. We have applied for Troops to Teachers and other Department of Defense grants. The largest grant we ever received was $75 million for Race to the Top, and that allowed us to train the masses on Charlotte Danielson.  C. Historically, the Special Education Section has often failed to apply for federal State Improvement Grants or Personnel Development Grants citing a busy workload. SEAC would urge the Department to try to capitalize on these sources of additional funding.  C. When someone gets a large grant, the Legislature has been known to offset that money in the budget, saying that the Department doesn’t need it. However, the downside is that these grant monies are not sustainable, and the state is left with the choice to pick it up the initiative at their own cost or drop it.  C. I would encourage you to partner more with the UH Special Education Department and the Center on Disability Studies. A. That is part of the job of the Office of Community Engagement.  Q. Is the budget final? A. No, we are currently educating the House Finance Committee staff. Other departments can only support the  Governor’s budget, but because the BOE budget is public, we can bring |  |

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| **Department of Education Budget Presentation (cont.)** | Questions/comments by SEAC members (cont.)  it up. The budget will cross over to the Senate in mid-March, so we are also educating their staff. The final budget comes out of the conference committee. In July, we start over planning for the new biennium budget for 2020-21.  Q. Can you break down where the monies for the E.R.K. settlement are coming from? A. DOE accumulated $15 million in carry-over funds (primarily from salary savings) over several years in anticipation of the settlement. We have paid $9 million for plaintiff services to be determined by a court appointed administrator and $1.7 million in attorneys’ fees. A bill has been heard in the House Judiciary Committee permitting DOE to pay the attorneys’ fees out of savings rather than another mechanism; however, the bill is also asking that the remainder of the carry-over funds—about $4.5 million—go back into the general fund. These funds have already been spent on services like OT, PT, SLP and support for inclusive practices, and the loss of these funds could impact services.  Q. Weren’t schools supposed to put money on the side in anticipation of the E.R.K.? Shouldn’t that money stay with the Department? A. Yes, but legislators are upset, because normally settlements go through a different route, so they say we went out of their authority.  Q. Can the carry-over money from salary savings be used to fill positions? A. Yes. The Legislature assumes that all departments cannot fill all their positions all of the time, so they take money off the top. We hope we can fill these positions and then we won’t have carry-over money. Last year we transferrred some of the leftover funds to the school nursing contract and preschool special education positions. We’re working on transparency around carry-over funds, trying to get the report into a digestible format for the public.  C. There is a sense with families that there is lots of money left over in special education at the same time that kids go without services. A. Normally our carry-over is $4-5 million and we try to fulfill IEP services. | SEAC’s Legislative Committee will write testimony supporting the Department’s position on carry-over funds for the next hearing in the Finance Committee. |

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| **Department of Education Budget Presentation (cont.)** | Questions/comments by SEAC members (cont.)  Q. How is the federal special education money reflected? A. It is not in this material. On the federal side we get a ceiling of $52 million and about $45 million in actual funds.  Q. Is DOE’s budget spent mostly on salaries? A. Yes, the total budget is $1.98 billion and $1.38 billion is spent on salaries.  Q. Where do we find monies for assistive technology (A.T.)? A. We have pushed out money to the complex areas to address computers and technology. Our new Assistant Superintentent for technology, Brook Connor, is creating a 5-year technology plan that may include infrastructure.  C. What we have seen on the Big Island is that any time there is a problem with a device, it takes so long to get it repaired. Students can’t use it for months. A. When Act 51 was passed, DOE got positions on Oahu to do our own computer maintenance, but the Neighbor Islands (N.I.) are serviced by DAGS. They don’t have a plumber or electrician there.  Q. When a Complex Area Superintendent (CAS) gets money for assistive technology, how do teachers know? When we are doing IEPs, we are not aware of it and have had to take money out of the school’s budget. A. It is up to the CAS to notify the principals. The money is not guaranteed, and you should communicate your need with the District Education Specialist.  C. The formulas for dispersing monies are not transparent. A. I hope the Task Force will come up with better ways to be more transparent on how money goes out. When it is up to the CASs to determine who gets what, you lose transparency.  Q. But is it earmarked for special education A.T. support? A. Yes.  C. We know that if a student needs A.T. and it’s in the IEP, it cannot be denied. The fear is that folks are reluctant to express the need, because they know there are not many funds.  Q. In the event that someone 18-22 is incarcerated, do they have access to these technologies as well? A. If they have received a diploma, they are not eligible. Otherwise, it may be situation specific. I would suggest asking Aiea High school for general guidelines. |  |

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| **Superintendent’s Task Force Member Report** | The three SEAC members who have been serving on the Task Force—Martha, Dale Matsuura, and Kaili Murbach—reported on the following:  Finding a replacement for Kaili  Martha reported that she has submitted four names to the Superintendent to fill the Task Force slot held by Kaili Murbach who recently resigned for family reasons, and she is waiting on a reply.  Dale’s Input  Dale said that the full task force meets twice a month while the three committees—Building Capacity/Professional Development, Resource Allocation, and Continuum of Supports/LRE—meet another two times a month. The entire group has been educated through a number of presentations. The final product due in May will be recommendations to the Superintendent about the most critical next steps. It is difficult to do a really deep dive within such a short timeline. Dale’s committee will be making recommendations regarding professional development and retaining teachers.  Martha’s Input  There are a lot of Complex Area Superintendents, principals and district educational specialists on the task force but few teachers and now only one special education parent. While the principals and CASs feel it is a safe place to air their concerns, Martha has had to listen to a lot of perspectives that she doesn’t agree with on the Resource Allocation Committee where she serves.  Kaili’s Input  Kaili thanked members for the opportunity to serve on the Task Force and the Continuum of Supports/LRE Committee. In the two months she attended she tried to figure out her role and how families are being represented. It is not clear how effective one can be in such a short timeframe.  Questions/comments by SEAC members  C. One of the overriding recommendations that I hope emerges is that DOE intentionally engages families. The Office of Community Engagement focuses more on the community and not on parents. |  |

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| **Superintendent’s Task Force Member Report (cont.)** | Questions/comments by SEAC members (cont.)  Q. What is the purpose of the Task Force? A. (Dale) I’m not sure of the purpose. The Superintendent intends to review the results and has the decision making power on whether to proceed with recommended actions. A. (Kaili) I found a description of the purpose: “to provide a structure for systemic study to advance positive outcomes with goals that align with HĀ.” |  |
| **Discussion of Legislative Priorities (Including ABA in School Settings)** | Susan R. reported that SEAC’s Legislative Committee has testified on a number of bills this session. The Committee articulates positions and beliefs previously expressed in SEAC discussions. She asked for assistance in articulating a SEAC position on a series of bills introduced this session that attempt to further define the scope of the practice of behavior analysis or Applied Behavior Analysis in a school setting. There are also several bills that apply to ABA for adults receiving Medicaid Waiver services. The discussion included the following comments:  • HB 2271 was passed yesterday allowing the Department two additional years to build capacity, create positions, or have staff in place who are Licensed Behavior Analysts (LBA) or Registered Behavior Technicians (RBT).  • Even when trying to obtain ABA services on the medical side, the Big Island doesn’t have enough providers, and it is upsetting families even more.  • I have trained RBTs in 3 days, 5 hours a day, with an additional 27.5 hours online. Then I provide intensive supervision for 3 months.  • I heard through the SPED HSTA committee that some of the RBTs are not passing the test; even though there are many in the DOE training cohort, only a few have passed. It is not easy to get certification.  • Looking at the DOE chart in their ABA report to the legislature, it only has one LBA for Honolulu. When you build capacity, don’t you have to know your need?  • LBAs are not likely to work with the student. They go out to schools to do observations, assessments, and develop a plan that a parapro | A legislative update and a table showing various positions on ABA were distributed. |

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| **Discussion of Legislative Priorities (Including ABA in School Settings) cont.** | Comments re: behavior analysis in a school setting (cont.)  implements.  • Not all special education teachers have a background in ABA but those who have gone through the Severe program at UH have received coursework specific to behavior analysis and have developed implementation plans under the supervision of BCBAs; however 60% of the teachers who sit for the BCBA exam don’t pass, and those who repeat the exam often don’t pass it a second time.  • I have gotten calls from SPED teachers with ten years’ experience who have been totally intimidated by outside LBAs who told them they don’t know what they are doing. It is almost like a hierarchy with teachers being treated like an educational assistant. Special education teachers are trained to handle a classroom of kids rather than providing one-on-one therapy in a clinical setting. They know how to do Functional Behavioral Assessments. I think what is needed is more collaboration and for LBAs and teachers to communicate as equals.  • One of the solutions for the Department would be to have a position for a BCBA that is not a teacher. That person could supervise teachers who also hold a certification.  • DOE’s report to the Legislature said that they are adding two state level LBAs to coordinate the training and supervision of LBA candidates and RBTs. At least one of the two positions are filled.  • If a teacher in the classroom had to wait for an LBA to come in and serve a student, it would be frustrating.  • A lot of people are mad because of how outside LBAs are treating teachers and Speech Language Pathologists. Some kids who go on vacation with ABA provided outside of the school come back with lost skills.  • I would like to see a better description of ABA in the law. The law says teachers are direct support workers and puts them down to the level of an EA or a RBT. It makes teachers scared to do even basic interventions, like token economies. |  |

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| **Discussion of Legislative Priorities (Including ABA in School Settings) cont.** | Comments re: behavior analysis in a school setting (cont.)  • As a private provider, I need to come up with a justification for medically necessary ABA that shows that the DOE is not duplicating that service. I pull apart the student’s IEP to look for evidence of an ABA program occurring at school with all 7 components of ABA.  • You don’t have to use all 7 dimensions of ABA to work with a student.  • In their testimony, DOE says there are 300+ students who have ABA in their IEPs. Maybe they are using ABA strategies.  • Before, teachers were told not to write ABA into the IEP unless it is absolutely necessary. Now I have seen three or four student IEPs containing ABA, so the DOE is evolving slowly. I would like to see more BCBAs come into schools to implement programs. Some schools offer 10-15 hours of ABA after school.  • Kids with more severe communication and behavioral needs would definitely need contracted services while the DOE is getting things in place.  • HB 2271 was written to impose a ‘fail first’ approach to outsourcing ABA services.  • That’s how IDEA is written. It requires the IEP team to identify student needs and put strategies in place to address those needs. If the student fails to make progress, then the plan is adjusted.  • My son is a senior in high school, and I was taught ABA strategies from a HAB worker years ago. However in high school, even though my son struggles with peer interactions and bullying, his teachers don’t see behavioral issues and don’t provide services to meet those socialization needs.  • My son with autism is also a senior and his preschool teacher told us about ABA. His experience at Mililani schools has been great. He went from being non-verbal to speaking with the support of his SLP, OT and teachers.  • Going for licensing isn’t always the answer, but how do we look at who is providing the service and whether the child is benefitting. My |  |

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| **Discussion of Legislative Priorities (Including ABA in School Settings) cont.** | Comments re: behavior analysis in a school setting (cont.)  grandson didn’t receive the autism label and failed when the school couldn’t come up with a solution for his behavior. Finally after the police were called, he was given an FBA and ABA by a BCBA and skills trainer. Now he is in two inclusion classes.  • For some students the behavior is caused by a medical problem—like an ear infection. As parents we have to rule out medical reasons.  Consensus points for future testimony  Given the diversity of opinion and experience, Susan asked for areas where the group had consensus. The following points were agreed upon:  1) ABA is an evidence-based intervention shown to improve behavior, socialization, communication and learning outcomes for students with autism and other developmental disabilities.  2) The definition and scope of practice of *behavior analysis* as it appears in Chapter 465D needs to be clarified.  3) Special education teachers share the responsibility for designing and delivering behavioral services to the student which fall within their realm of expertise and scope of practice and should not be intimidated or made to feel inadequate by private providers.  4) It would be beneficial for DOE to provide additional training to teachers and support staff to empower them to deliver quality behavioral supports to students.  5) Contracted services will be needed to adequately support the learning of students with complex behavioral needs.  6) SEAC would like the Department to involve the Council and other key special education stakeholders in planning, developing, implementing and evaluating its response to Chapter 465D. It could take the form of a Building Capacity Work Group. |  |
| **Agenda Setting for the March 9th Meeting** | As discussed previously at the January meeting, March’s SEAC meeting will include an overview of Leading by Convening by Joanne Cashman and additional data on Significant Disportionality (SD). An afternoon work session will further develop SEAC’s recommendations on SD. |  |