**SPECIAL EDUCATION ADVISORY COUNCIL**

**February 14, 2025**

**Draft Minutes**

**PRESENT:** Kathie Awaya, Will Carlson, Annette Cooper, Mark Disher, Nancy Gorman, Martha Guinan, Mai Hall, Melissa Johnson, Helen “Kupu” Kaniho (liaison to the Superintendent), Amanda Kaahanui (staﬀ), Tina King, Cheryl Matthews, Paul Meng, Siena Molina, Trish Moniz, Christopher Pelayo, Kiele Pennington, Kaui Rezentes, Susan Rocco (staﬀ), Rosie Rowe, Scott Shimabukuro, Herbert Taitingfong, Steven Vannatta, Lisa Vegas, Jasmine Williams, Susan Wood

**EXCUSED**: Mark Disher, Wendy Nakasone-Kalani

**ABSENT**: Virginia Beringer, Mary Brogan

**GUESTS:** Heidi Aceret, Dominique Anders, Verna Chinen, Linda Elento, Wing Hui, Jackie Jackson, Sandy Jessmon, Ken Kakesako, Joy Kawachika, Stan Kubota, Felicia Friend-Linton, Michael McGushin, Deusdedi Merced, Melanie Mora, Cherine Pai, Lynn Romero, Wendy Sekiya, Che Silvert, Nikki Smitz, Inger Stonehill, Albert Vargus, Brikena White

**Welcome/Introductions**

Steven Vannatta opened the meeting at 9:10 a.m. for Martha Guinan who was having technical difficulty connecting to Zoom. Members and guests introduced themselves and the oﬃce or stakeholder group they are representing.

**Announcements**

Amanda Kaahanui announced that SPIN has a new date and venue for the 2025 SPIN Conference. It is scheduled for May 10th at the Koolau Ballrooms in Kaneohe. Airfare scholarships are still available for Neighbor Island parents and agency registrations for the resource fair are being accepted.

**Presentation on the Department of Education Legislative Priorities and the Visitor Code of Conduct**

Ken Kakesako from the Policy, Innovation, Planning and Evaluation Branch began by sharing the nine bills in Department’s legislative package for the session. Bills that may be of interest to SEAC included:

* HB 629 which would change the scope of practice for occupational therapists (OT), physical therapists (PT) and speech language pathologists (SLP) to allow them to refer students for some of the treatments they are already receiving. That referral would allow the Department to claim as much as $2.7 million in Medicaid reimbursement for services to Medicaid eligible students.
* SB 1394 which amends the law to reduce the amount that schools are required to charge for school meals in order to make it possible for ALICE (Asset Limited, Income Constrained, Employed) families to afford to buy school lunches for their children.
* HB 637 which requires the Department to require universal screening for dyslexia and training for teachers in literacy instruction.

Visitor Code of Conduct

HB 616 asks the Department to make a more proactive stance in addressing harassment of educational workers. When the bill was heard last session in Senator Kidani’s committee, she asked the Department to work with the Attorney General’s Office to address the issue which resulted in the creation of the Visitor Code of Conduct. It includes guidelines and expectations for how parents and community members engage professionally and responsibly with school staff. The Code was sent to all schools in October and all families in November to let all parties know the expectation for behavior.

Questions/comments from members and guests

Q. Does the bill about providing Workman’s Compensation for recent grads include students with disabilities? A. Yes, it could be for any senior who is in a work-based learning program.

Q. Regarding the Medicaid bill, which Department of Commerce and Consumer Affairs (DCCA) statute is changing? A. For the statutes related to PTs, OTs and SLPs, the scope of work will include a carve out for those who work in DOE settings to refer students. There would still need to be rules made by the Department of Human Services to allow for DOE to collect the Medicaid reimbursement.

Q. When we had the discussion about harassment last year and the year before, SEAC asked if you have data as to how many parents are represented in incidents of harassment. Do you have that data? A. There is actually not a high number of harassment complaints, although there are a large number from a small group of individuals who are very harmful and dangerous to staff.

Q. Do you also have an Employee’s Code of Conduct describing the expectation for communicating and working with parents? A. Yes, we do have a code of conduct and employee standards given out at the beginning of each school year. I understand, as well, that the Department needs to improve, and we are open to hearing how we can best do that. Perhaps Steven Vannatta is the best conduit for that.

C. Schools should come from a place of customer service, where parents are welcomed and asked to engage.

Q. What is the Department doing to train their staff in engagement with the community and parents who visit the school? Does the training include de-escalation techniques? A. Regarding training, Steven Vannatta’s office has been putting out a series of workshops on how to deescalate situations and handle conflict better. (Steven) Yes, we have been partnering with the Mediation Center of the Pacific on a workshop called “The Art of Conflict Resolution and Finding Agreement.” The workshop is designed to train school staff and is also available to the community as one piece of the ongoing solution.

C. Because this training is not mandated, schools can opt out, so there is inconsistency between schools.

C. When you are dealing with parents, they are not always college graduates. Some local parents use swear word as a normal, everyday occurrence. Q. If a staff member takes offence, will that parent be banned from campus and checking up on their child?

C. There are employees on school campuses who give ‘stink eye’ and attitude to parents and take on the role of the authority. With the Visitor Code of Conduct, you are giving them more power over parents. There needs to be a balance.

C. While I share the concern about the past versions of the harassment bill, HB 619 reads differently and is in response to the concerns of teachers that the Department support them better through the Temporary Restraining Order (TRO) process and create a safe workspace for all teachers.

C. I worry that HB 616 might be applied to special education students who may engage in dangerous behaviors, because their IEPs have not adequately been addressing appropriate behavioral interventions.

Q. Is HB 616 in line with the existing harassment statute, which I think is very broad and subjective? I understand that you’re trying to protect or advocate for staff, but who then is advocating for the parent? Parents will be upset when their calls are not returned, or their issues are not being addressed. A. This bill which did not originate in the Department does not affect the current harassment statute. It is talking about processes to support staff who are being harassed.

C. We received [testimony from Inger Stonehill](http://seac-hawaii.org/wp-content/uploads/2025/03/Testimony-to-SEAC-from-Inger-Stonehill-on-February-13.docx), one of the authors of HB 616, that helps to clarify the intent.

C. (Inger Stonehill) I’m a teacher and a parent. I’ve been on both sides. This bill just came from wanting to help us all be very clear on the guidelines. I suffered from many threats from one parent who has 30 TROs against him. In my experience the existing laws were not enough to help and hard to navigate. I want to thank Ken for being receptive to listening and trying to help everyone on both sides. I also want everyone’s voice to be heard and that is why I still am trying to include this Council and its voice. Both parents and educational workers are important to this process. Lastly, please read our adjustments and amendments as we move to the Finance Committee.

C. LDAH has been at several districts, complexes and schools where we have had difficulty communicating with administrators, some of whom were very rude. So, I agree that the expectations of behavior need to go both ways. LDAH wants administrators to be in charge but also sensitive to parents of children with IEPs. When an administrator is an authoritarian, it is not communicative at all.

**Presentation on the Department of Education Biennium Budget**

Albert Vargas, Stan Kubota and Wendy Sekiya from the Budget Office shared a brief [presentation on the status of the Department’s operating budget](http://seac-hawaii.org/wp-content/uploads/2025/02/SEAC-2_14_2025-DOE-Budget1.pdf) for next school year and the year after that—Fiscal Biennium 2025-2027.

General overview

Work on the budget began in April 2024 when a Budget Review Group formed as a response to legislators asking the Department to review its expenditures and find monies within. The result is a flat budget (not exceeding the total of almost $2.2 billion from this school year) that aligns with the strategic plan and budget restraints, gives schools some reliable funding, and reflects a declining enrollment. A big challenge is that this year’s budget has $100 million in non-recurring funds not available in the next two years. Other challenges include continued high inflation, lingering effects of the pandemic, issues with recruiting and retaining staff, and uncertainty about our federal partnership.

Major funding priorities

These include the following:

* recurring funding for summer school, Hawaiian language immersion, and workforce development,
* intensive middle school support,
* covering the costs of inflation increases to athletic transportation, gender equity and sabbatical leave for teachers, and
* other operating needs like mental health intervention and athletic trainers.

Office of Student Support Services Budget Requests

OSSS has three general fund requests for additional monies:

* $10 million per year for contracted skilled nursing services,
* $1.8 million in FY 27 for 20 school based behavioral health interventionists for students with the highest mental health needs, and
* $1.7 million per year for an electronic platform (Panorama) that includes social-emotional surveys and records attendance, behavior and mental health needs, plus a mobile app (Trust Circle) to support student mental health.

Questions/comments from members and guests

Q. Has DOE been contacted by the US DOE regarding current funding from the federal government? A. (Albert) Not to our knowledge. I would defer to the MAC Branch.

C. Thank you to the Budget Office for your presentation. It is very helpful that you come and fill us in every year. SEAC will be supporting the EDN 150 requests for additional funds.

**Report from the SEAC Legislative Committee**

Mai Hall reported from SEAC’s Legislative Committee on seven additional bills that were identified as being of potential interest to members:

1. HB 1499 - Relating to the Department of Education - Expands the Department of Education's authority to allow more trained staff to volunteer to assist students with the administration of medication.
2. HB 903 HDI - Relating to Student Health - Authorizes a school to maintain a stock supply of bronchodilators to be administered under certain conditions. Authorizes certain employees of a school and department personnel to administer certain medication in emergency situations, under certain conditions.
3. HB 620/SB 530 - Relating to Education - Establishes state policy to promote braille literacy for eligible blind students. Requires the individualized education programs and section 504 plans of eligible blind students to include the assessment and evaluation of eligible blind students' reading and writing abilities, instruction of braille, and provision of braille instructional materials under certain circumstances.
4. HB 320 – Related to Supported Decision Making Agreements - Allows qualified adults, including adults with a disability, mentally ill adults, and adults sixty-five years of age or older, to enter into supported decision-making agreements with one or members of a supportive community.
5. HB 429 - Related to Early Learning - Appropriates funds to hire teachers and teacher assistants and for equipment and services for public preschools.
6. SB 479 – Related to the Hawaii ABLE Savings Program - Provides incentives for HIDOE students to open ABLE accounts; expands contribution source for the Hawaii ABLE Savings Program Trust Fund.
7. HB 616 - Relating to the Safety of Educational Workers - Requires the Department of Education and public charter schools to take certain steps to report incidents of harassment and implement procedures for handling harassment of educational workers.

She clarified that the agenda shows most bills with a House Bill number followed by a “/” and a Senate Bill number. This indicates companion bills with the exact language; however, some of the bills listed are similar, but not exact. They should have an “and” between the House and Senate bills. Mai used an Excel tracking document to explain the current progress of each bill, committee acronyms and how to look up each bill’s text.

Member Polling

Steven asked members to weigh in on each of the ten bills using the Zoom poll which asks members to select the option of supporting, monitoring, or opposing. Guests were invited to put their opinions or votes in the chat, so that SEAC members can benefit from their input. Susan Rocco will send the poll to members who were not present along with the bill information to collect a more complete response on action to be taken.

Questions/comments from members and guests

Q. You mentioned a bill related to the funding of public preschool staff and equipment, but my understanding is that DOE has no regular preschool classrooms, just the self-contained special education classrooms. A. There are public pre-kindergarten classrooms that are under the Executive Office of Early Learning, and the Legislature has committed to increase the number of these classrooms each year to move toward universal preschool.

Q. Does HB 629 relate to contracted therapists? (Susan) It could be either DOE therapists or contracted therapists who provide a related service in the IEP to a Medicaid-eligible student.

Q. Can a family of a student who is receiving OT at school and the school is getting reimbursed through Medicaid still receive OT out of school if their doctor recommends it? It is not going to hinder the family from getting additional private services through their medical, right?

C. It may hinder it, because Medicaid generally doesn’t want to cover additional services that are already provided through the IEP.

Q. Are families being informed that consenting to Medicaid reimbursement may affect their child’s service outside of the school environment?

Q. Does the bill account for say an Occupational Therapist doing the evaluation, but the OT Assistant is the one providing the therapy? A. This bill is saying that the therapist (OT, PT, or SLP) should be allowed to diagnose within their scope of practice. Currently it is written that only a physician can diagnose. The caution is that we have to look at MedQuest, because there are other things within their regulations that still require a physician’s referral or diagnosis.

Q. So, alternatively, if DOE allows therapists to do this medical diagnosis, are you going to accept those private medical diagnoses from outside and threat them equally within the IEP process? I’m asking more from the IEP perspective, because parents are told that private evals don’t count. A. When the diagnosis comes in from a medical physician the IEP team absolutely needs to consider what that diagnosis is and what its impact is in the educational setting, in terms of academics, behavior, and how the student is functioning in the school environment.

**Training on the Individuals with Disabilities Education Act (IDEA) by Deusdedi Merced**

Brikena White introduced Mr. Merced from Special Education Solutions, LLC, who is considered one of the leading national experts in IDEA compliance and dispute resolution. Mr. Merced described his training agenda for the week culminating with SEAC that included sessions targeting parents, district educational specialists and administrative hearing officers. He will be summarizing the information presented at those meetings, sharing feedback and concerns expressed, and answer any questions SEAC members may have.

Review of case law pertaining to Hawaii (9th Circuit Court of Appeals)

1. There is a trend by the 9th Circuit to explore what the parent shares with the school district when the parent is considering removing their child and placing in a private school. They make a distinction between parents choosing to leave the school district voluntarily and indicating they do not want a FAPE for their child, and parents who believe the public school is not providing FAPE, found a private placement to provide an appropriate education, and sought reimbursement for the costs of the private school. In the first instance, the 9th Circuit has ruled that the obligation of the school district to continue to pursue the child to offer FAPE ends, and the school must provide a prior written notice to that effect It is important for parents in the second instance to make clear that they are not waiving their child’s right to FAPE.
2. The 2017 *Endrew F.* decision clarified that the IEP must be reasonably calculated to enable the child to make progress in light of their circumstances. Many parents viewed this decision as setting a higher standard; however, it has not led to more parents prevailing in court. The 9th Circuit looks at the IEP as a whole rather than in segments when it determines whether it is meeting the needs of the child and also looks at the child’s “circumstances.” In one decision where the child could only tolerate 90 minutes of instruction at a time, it found the lack of progress had to do with the child’s disability and not how well the IEP was written or implemented.
3. In a case where a Hawaii parent was challenging FAPE, the parent also challenged the Hawaii administrative hearing system citing a lack of impartiality, because the attorneys representing schools, and the hearing officers that hear cases are both under the Attorney General’s auspices. The Court decided against the parent saying that being under the A.G.’s auspices alone was insufficient to demonstrate a lack of impartiality.
4. In a case where the parent prevailed before a Hawaii hearing officer, the reimbursement of tuition for private school services was reduced by 25% because the parent contributed to some of the delays that resulted in a denial of FAPE. The courts upheld the hearing officer’s discretionary authority to reduce the tuition under the circumstances.

Review of national cases that set precedents and reveal trending concerns

1. One trend is about parents seeking to extend special education services, because their children were negatively impact from COVID. One case from Washington was a class action to have children receive services up to the age of 22. Non-disabled children were able to receive GED programs up to age of 22, so the case is proceeding as a class action. In a similar case in Connecticut, the court told the state that that they had an obligation to serve children with disabilities up to age 21 + 364 days, since non-disabled students could access services up to age 22. In a 6th Circuit dual enrollment case where the parents wanted IDEA services to extend to the college campus, the parents did not prevail, because they pulled their child out of high school, and the college campus was not making itself accessible to high school staff.
2. A parent in New York disagreed with a school district’s decision not to extend services until the student’s 22nd birthday, but rather to end services at the end of the school year the student turned 21. The parent filed a state written complaint, and the state DOE agreed with the parent. However, the district appealed the state complaint to State Court which agreed with the district. The case is on appeal. IDEA does not provide for an appeal process in the state written complaint process, so folks are waiting to see what ultimately comes of this New York case.
3. A parent in the 3rd Circuit challenged the services the child was receiving during Covid citing a lack of progress. The 3rd Circuit found against the parent as well as the District Court saying the services provided were in the best circumstance at the time. Compensatory education was offered and the parent declined it. In its decision it acknowledged that Covid was a “circumstance” that would have impacted the child’s progress (as in the *Endrew F.* standard). In that respect it did not follow other courts in equating the word “circumstance” with “disability.”
4. A child in Kentucky was provided home instruction during evening hours because the child had epilepsy and could only be alert for instruction between noon and 6 p.m. When the family moved to Minnesota, the child received fewer hours of special education services, because the district would only provide services during the normal school day. The parent won a due process hearing for evening instructional hours, but the school district has appealed the decision all the way to the Supreme Court. In the meantime, there is case law that suggests schools must individualize the student’s program depending on the needs and the child’s disability.

Review of discipline under IDEA

Mr. Deusdedi reviewed elements of the discipline regulations in IDEA including the following:

* If a child is disciplined for more than 10 consecutive school days, it is considered a long-term removal.
* Long term removals require a manifestation determination.
* To determine if the child’s disability has a substantial relationship to the misconduct requires understanding how the disability manifests itself over a period of time and in different settings.
* In Hawaii, the behavior intervention plan is not part of the IEP, but behavioral interventions and strategies are required for any child whose behavior is impeding their educational performance.

Review of initial evaluations under IDEA

Key points discussed included:

* Evaluation is a process. It is not specific assessments or tests. Hawaii is to be credited for making this distinction in Chapter 60.
* The primary focus in evaluation should be obtaining as much information as necessary to determine whether there is a disability.
* Eligibility requires a finding that the student has one of 13 IDEA disabilities which has an adverse effect on his or her educational performance and requires special education and related services.
* The 9th Circuit takes a broader view of educational performance to include academics, developmental needs, social skills and emotional status.

Link to presentation materials

The materials used in Mr. Merced’s presentation to parents and community members can be found at: <https://drive.google.com/drive/folders/1lOEbgo29HL9xqOCtZA80S4c2CJZCqEuC?usp=sharing>.

Questions/comments from members and guests

Q. Was the parent meeting with Mr. Deusdedi announced or were select parents invited? A. It was advertised statewide through SPIN and the CCCs, including postings on Facebook, e-blasts and SPIN calendar posts. It was also announced at the January 10th SEAC meeting.

Q. Will this process include parents who decide to pull their child out of a special education placement at a public school and homeschool, so that the DOE continues to contact the homeschooler, or provide a PWN to say they won't contact the family?

A. The parent of a child with a disability always has the right to come back to the school district, whether they are in the home or a private school and ask for FAPE.

Q. What was the criteria used to determine that there was no bias by having the Hawaii hearing officers within the Attorney General’s Office? A. My recollection is that simply an allegation by association was not enough to show bias to the court. IDEA says, for example, that simply because a hearing officer may be paid for by the State Educational Agency does not in itself make him not impartial.

Q. In what court would that have been presented? A. This was before the Hawaii District Court and was appealed to the 9th Circuit in 2024, so the 9th Circuit will have an opportunity to weigh in.

Q. If a parent cannot appeal a due process decision within 30 days, is there a way to get an extension? A. While I can’t answer the question directly, I know of courts who grant the parent leave to spruce up a petition as it is not adequate. Federal district court clerk’s offices are also helpful at times with *pro se* litigants. IDEA says that an appeal has to be completed in Federal or State court within 90 calendar days, but it allows states to set their own timeline.

**Review of the Minutes from January 10, 2025**

No corrections or additions were made to the draft minutes from the January meeting.

**Action: The minutes were approved as disseminated.**

**Agenda Setting for the March 14, 2025 Meeting**

Members and guests suggested the following agenda items for the March meeting:

* Legislative update
* DVR/DOE agreement
* Transition for Medically Fragile students from high school to adult life
* SEA agreement with Early Intervention and Covid make up services still needed
* Follow up to DOE budget
* What is the role of District in monitoring and supporting a collaborative/appropriate effort by the school/administrator?
* What types of training being providing to DOE personnel and who is giving the training?
* Discipline and revised rules
* Work Based Learning
* Proposal to add homeschool parent to SEAC membership
* Follow up with attorneys for due process.

A guest also asked about the current mechanisms in our state used to disseminate modifications to IDEA to parents and the timeframes for the release of this information to ensure compliance with due process and parental notification requirements to allow for informed parental participation. Brik White clarified that she would notify SEAC, parents, community and staff if amendments or modifications to IDEA occur.

**Input from the Public**

504 and ADA appeals to federal court

Guest Linda Elento spoke up about cases that are brought to federal court that include IDEA that may or might not continue with a FAPE claim. They would continue as a 504 or ADA claim. 504 is covered under Chapter 61 which has very good procedural safeguards regarding the rights of students. Typically, IDEA students are automatically covered under Section 504 of the Rehab Act. A 9th Circuit case cited in Mr. Merced’s handouts that says that the success or failure of an IDEA claim does not dictate its success or failure under an ADA claim.

Challenges of parents filing pro se cases

Amanda Kaahanui read a statement from Melissa Johnson regarding her recent experiences in a pro se due process hearing. She had attended a previous presentation by Mr. Merced regarding issues parents who file *pro se* may experience but was unprepared for the difficulties encountered in the actual hearing where she believed the hearing officer was biased in favor of the Department. She also reported that her son who has autism and PTSD was so negatively impacted by the hearing and hearing decision that her family has decided to home school him. She urged SEAC to advocate for more plaintiff attorney representation and legal resources to make the hearing fairer to parents. Jasmine Williams asked a follow up question about what actions Judge Rectenwald and the Judiciary have taken since SEAC contracted him in the summer of 2023. Susan Rocco reported that she knows of no new developments but can look into the issue again.