
A BILL FOR AN ACT

RELATING TO THE EDUCATION OF CHILDREN WITH DISABILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that, in 2004, Congress
2 enacted sweeping changes to the Individuals with Disabilities in
3 Education Act, now known as the Individuals with Disabilities
4 Education Improvement Act. Among the most significant changes,
5 Congress brought the Individuals with Disabilities Education
6 Improvement Act into close alignment with the No Child Left
7 Behind Act and in the process raised the standards for
8 educational and functional achievement of disabled children. In
9 the Individuals with Disabilities Education Improvement Act,
10 Congress specifically found that the education of disabled
11 children has been impeded by "low expectations" as well as
12 "insufficient focus" on applying replicable research and proven
13 methods for teaching children with disabilities. Under the
14 Individuals with Disabilities Education Improvement Act,
15 education agencies are required to develop Individualized
16 Education Programs, including special education and related
17 services and supplementary aids and services, based upon peer-
18 reviewed, research-based intervention strategies and



1 incorporating scientifically-based instruction practices to the
2 extent practicable. In addition, special education programs
3 must be crafted to prepare the disabled child for further
4 education, employment, and independent living.

5 The legislature further finds that erroneous denial of
6 special education services may be expected to cause serious harm
7 to a child's long-term development. The department of
8 education, with its superior access to and control over experts
9 and witnesses who work with the child on a daily basis, and with
10 its superior access to relevant information, including
11 scientifically-based instruction and intervention strategies,
12 observation data, and child study team data, is in the better
13 position to demonstrate that a disabled child's individualized
14 education program is appropriate and meets both the child's
15 unique developmental and educational needs, as well as the
16 heightened requirements of the Individuals with Disabilities
17 Education Improvement Act. In addition, many parents of
18 disabled children lack the financial resources, education, and
19 access to comparative data involving other similarly situated
20 children, with which to effectively challenge the Individualized
21 Education Program being proposed by the school. Placing the
22 burden of proof on the department of education will help avoid



1 disputes by ensuring that the initial determination to provide
2 special education and related services and supplementary aids
3 and services will be based upon sound review of the child's
4 unique developmental, educational, psychosocial, academic, and
5 functional learning needs, incorporating empirically validated,
6 peer-reviewed intervention strategies to the maximum extent
7 practicable.

8 The purpose of this Act is to restore the burden of proof
9 on the department of education in impartial hearing proceedings.
10 It is also the purpose of this Act, consistent with the
11 provisions of the Individuals with Disabilities Education
12 Improvement Act, to establish a two-year limitations period for
13 bringing any complaint relating to the identification,
14 evaluation, or educational placement of a disabled child, or the
15 provision of a free appropriate public education to the child.

16 SECTION 2. Section 302A-443, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§302A-443 Administrative hearing procedures and subpoena**
19 **power relating to the education of children with a disability.**

20 (a) An impartial hearing may be requested by any parent or
21 guardian of a child with a disability, as defined by 20 U.S.C.
22 Section 1401(3), or by the department, on any matter relating to



1 the identification, evaluation, program, or placement of a child
2 with a disability; provided that the hearing is requested[÷

3 ~~(1) Within]~~ within two years of the date the parent,
4 guardian, or department knew or should have known
5 about the alleged action that formed the basis of the
6 request for a hearing[; ~~and~~

7 ~~(2) Notwithstanding paragraph (1), within ninety days of a~~
8 ~~unilateral special education placement, where the~~
9 ~~request is for reimbursement of the costs of the~~
10 ~~placement].~~

11 (b) Subsection (a) shall not apply to a parent or guardian
12 of a child with a disability if the parent or guardian was
13 prevented from requesting the hearing due to:

14 (1) Specific misrepresentations by the department that it
15 had resolved the problem that formed the basis of the
16 complaint; or

17 (2) The department's withholding from the parent or
18 guardian information that was required by state or
19 federal laws and regulations to provide a free,
20 appropriate public education to a child with a
21 disability.



1 (c) The department shall adopt rules that conform to the
2 requirements of any applicable federal statutes or regulations
3 pertaining to the impartial hearing based on the education of a
4 child with a disability. The rules shall require that any party
5 may be present at the proceeding, be accompanied and advised by
6 counsel or individuals with special knowledge or training with
7 respect to the problems of children with a disability, may
8 require witnesses to be under oath, cross-examine witnesses, and
9 obtain a written or electronic verbatim record of the
10 proceedings.

11 (d) Any party to these hearings or the hearings officer
12 shall have the right to compel the attendance of witnesses upon
13 subpoena issued by the hearings officer. The fees for
14 attendance shall be the same as for the fees of witnesses before
15 circuit court. In case of the failure of any person to comply
16 with a subpoena, a circuit court judge of the judicial circuit
17 in which the witness resides, upon application of the hearings
18 officer, shall compel attendance of the person.

19 (e) At any impartial hearing held under this section where
20 the issue is whether the department has complied with the
21 procedural requirements of federal and state law, or whether the
22 department has complied with its obligation to offer a free



1 appropriate public education in the least restrictive
 2 environment, or both, the burden of proof shall be on the
 3 department to demonstrate compliance by a preponderance of the
 4 evidence. If the hearings officer finds that the department has
 5 failed to prove compliance and if the parent seeks payment from
 6 the department for private placement, the burden of proof shall
 7 be on the parent to demonstrate by a preponderance of the
 8 evidence that the private placement is appropriate."

9 SECTION 3. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

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Report Title:

Special Education; Administrative Hearings

Description:

Requires the department of education to prove at administrative hearings regarding the education of a child with a disability that, by a preponderance of the evidence, it has complied with federal and state procedural law, or that it has complied with the requirement of a free appropriate public education in the least restrictive environment, or both. Repeals the requirement that an administrative hearing be requested within 90 days after a unilateral special education placement.

