

STAND. COM. REP. NO.

2626

Honolulu, Hawaii

MAR - 2 2006

RE: S.B. No. 2733
S.D. 2

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Judiciary and Hawaiian Affairs, to which was referred S.B. No. 2733, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO EDUCATION,"

begs leave to report as follows:

The purpose of this measure is to assign the burden of proof to the Department of Education in initial challenges to an IEP in administrative hearings brought under the Individuals with Disabilities Education Act (IDEA) and shifts the burden to the parent or guardian in subsequent challenges following an adverse ruling to the parent or guardian.

Testimony in support of this measure was submitted by the Department of Education, the Disability and Communication Access Board, the Special Education Advisory Council, the Community Children's Council, and the Hawaii Disability Rights Center. Testimony in opposition to this measure was submitted by the Autism Society of Hawaii and nine individuals. Comments on this measure were submitted by the Attorney General, the State Council on Developmental Disabilities, the Learning Disabilities Association of Hawaii, and six individuals.

Your Committee finds that in light of the recent United States Supreme Court decision in *Schaffer v. Weast*, there is concern about which party has the burden of proof in appealing administrative hearings brought under IDEA. The measure, as currently drafted, places the burden of proof on parents when the parents bring a subsequent challenge. Your Committee finds that



it is more appropriate to place the burden of proof on the appealing party, whether it be the parents or the department. Your Committee further finds that the department should have the burden of presentation since it is in possession of the student's records.

Your Committee also notes that many testifiers had concerns about changing the statute of limitations from two years to ninety days.

Your Committee has amended this measure to:

- (1) Require that in any appeal of an administrative hearing, the department shall have the burden of presentation and the party bringing the appeal shall have the burden of proof;
- (2) Insert a defective effective date of July 1, 2050; and
- (3) Make technical, nonsubstantive changes.

As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2733, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2733, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Hawaiian Affairs,


COLLEEN HANABUSA, Chair



