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# A BILL FOR AN ACT

RELATING TO EDUCATION.

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

1           SECTION 1. Section 302A-443, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§302A-443 Administrative hearing procedures and subpoena**  
4 **power relating to the education of children with a disability.**

5           (a) An impartial hearing may be requested by any parent or  
6 guardian of a child with a disability, or by the department, on  
7 any matter relating to the identification, evaluation, program,  
8 or placement of a child with a disability; provided that the  
9 hearing is requested:

10           (1) Within two years of the date the parent, guardian, or  
11 department knew or should have known about the alleged  
12 action that formed the basis of the request for a  
13 hearing; and

14           (2) Notwithstanding paragraph (1), within [~~ninety days~~]  
15 two years of a unilateral special education placement,  
16 where the request is for reimbursement of the costs of  
17 the placement.



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

4 (1) Specific misrepresentations by the department that it  
5 had resolved the problem that formed the basis of the  
6 complaint; or

7 (2) The department's withholding from the parent or  
8 guardian information that was required by state or  
9 federal laws and regulations to provide a free,  
10 appropriate public education to a child with a  
11 disability.

12 (c) The department shall adopt rules that conform to the  
13 requirements of any applicable federal statutes or regulations  
14 pertaining to the impartial hearing based on the education of a  
15 child with a disability. The rules [~~shall require~~]:

16 (1) Shall provide that any party may be present at the  
17 proceeding[~~7~~] and may be accompanied and advised by  
18 counsel or individuals with special knowledge or  
19 training with respect to the problems of children with  
20 a disability[~~7 may require~~];

21 (2) Shall require witnesses to be under oath[~~7~~]; and



1       (3) Shall provide that any party may cross-examine  
2           witnesses, [and] obtain a written or electronic  
3           verbatim record of the proceedings[-], and be entitled  
4           to the reimbursement of expert witness and other  
5           relevant fees and expenses associated with a hearing.

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

14       (e) The department shall establish and adopt, in  
15 conformance with applicable federal statutes and legislations,  
16 applicable rules for an appeals board and process wherein a  
17 state review officer shall review the decisions of the impartial  
18 hearings officers concerning the identification, evaluation,  
19 program, or placement of children who have, or are suspected of  
20 having, an educational disability."

21       SECTION 2. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

*John M. Pappas*

JAN 15 2008



**Report Title:**

DOE; SPED; Due Process; Hearings and Appeals

**Description:**

Extends the deadline within which to file a request for a due process hearing relating to the education of a child with a disability from ninety days to two years when the request is for reimbursement of costs of a child's placement. Requires the department to adopt rules that provide for the reimbursement of expert witness and other relevant fees and expenses associated with a hearing. Requires the establishment of an appeals board and process wherein a state review officer shall review the decisions of the impartial hearings officers.

