

**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 2186, H.D. 1, RELATING TO EDUCATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 14, 2008, 2008 **TIME:** 2:45 PM

LOCATION: State Capitol, Conference Room 325

Deliver to: State Capitol, Room 302, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Holly T. Shikada, Deputy Attorney General
or Elise A. Amemiya, Deputy Attorney General

Chair Waters and Members of the Committee:

The Attorney General opposes this bill.

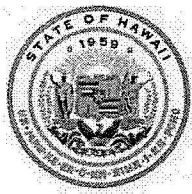
This bill provides for the extension of the deadline to file a request for an impartial due process hearing relating to the education of a child with a disability from ninety-days to two years when the request is for reimbursement of the costs of the child's placement. This bill also requires the Department of Education to adopt rules that allow the recovery of expert witness fees and other relevant fees and expenses associated with a hearing.

Enlarging the period of time in which a parent may file a request for an impartial hearing may be detrimental to the child. This is because the determination of the appropriateness of the student's education potentially may not be made until two years later. From a lay person's perspective, it is hard to imagine that waiting longer to resolve an issue relating to a child's education is better than addressing the concerns and problems immediately. Furthermore, during this time, a child may be in an inappropriate educational setting and the State is unable to monitor the progress of a disabled child when the child is unilaterally placed by parents in a private school. This will also create a greater challenge for the State to present its case because administrators, teachers, and

other service providers working with the student may change from year to year. Accordingly, enlarging the period of time in which a parent may challenge a school's offer of free appropriate public education would prove difficult to defend when school personnel change and memories fade.

The issue regarding whether parents of a disabled student, having prevailed in an Individuals with Disabilities Education Act ("IDEA") administrative hearing, may recover expert consultant fees was addressed by the United States Supreme Court in the case of Arlington Central School District Board of Education v. Murphy, 126 S. Ct. 2455 (2006). In the Murphy case, the Court held that non-attorney expert fees for services rendered to prevailing parents in IDEA cases are not "costs" recoverable from the state. Based upon the Murphy case, IDEA does not provide for the recovery of expert witness fees and therefore federal funds cannot be used. Accordingly, if this bill is passed, an additional provision appropriating state moneys to fund the reimbursement of expert witness fees to prevailing parents must be added.

The Attorney General respectfully requests that this bill be held by the Committee.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
919 ALA MOANA BOULEVARD, ROOM 113
HONOLULU, HAWAII 96814
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543

February 14, 2008

The Honorable Tommy Waters, Chair
House Committee on Judiciary
Twenty-Fourth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Waters and Members of the Committee:

SUBJECT: HB 2186 HD1 – RELATING TO EDUCATION

The position and views expressed in this testimony do not represent nor reflect the position and views of the Departments of Health and Education (DOE).


The State Council on Developmental Disabilities **SUPPORTS HB 2186 HD1**. The purpose of the bill is to: 1) extend the deadline within which to file a request for a due process hearing relating to the education of a child with a disability from 90 days to 2 years when the request is for reimbursement of costs of a child's placement, and 2) require DOE to adopt rules that provide for the reimbursement of expert witnesses and other relevant fees and expenses associated with a hearing.

The Council fully endorses the repeal of the 90 days and replacing it with "two years" in which any parent or guardian of a child with a disability may request for reimbursement of the costs of the placement. This provision would be consistent with Item (1) allowing the parent, guardian or DOE to request for an impartial hearing regarding alleged action that formed the basis of the request for a hearing.

We are pleased that there is a provision for DOE to establish a process to reimburse expert witnesses for hearings. This provision would provide a level of parity for parents and other relevant persons as expert witnesses to be reimbursed for costs associated with hearings. Whereas, DOE personnel involved in hearings are financially covered as part of their position/job responsibility.

Thank you for the opportunity to provide testimony in support of HB 2186 HD1.

Sincerely,


Waynette K.Y. Cabral
Executive Administrator

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Date of Hearing: February 14, 2008

Committee: House Judiciary

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: H.B. No. 2186, H.D. 1, Relating to Education

Purpose: 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.

Department's Position: The Department of Education (Department) does not support H.B. 2186, H.D. 1.

Prior to the 2005 Legislative Session, all due process hearing requests filed under the Individuals with Disabilities Education Act (IDEA) was limited to a general state statute of limitations of two years. The 2005 Legislation Session enacted Hawaii Revised Statutes (HRS) §302A-443 which distinguished the statute of limitations for a specific kind of due process hearing relating to the reimbursement of private school tuition.

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When a parent unilaterally places a student with disabilities in a private school against the proposal of the Department, the Department has no authority to monitor the progress of the student unilaterally placed in the private school. The educational impact on the student's program that waits two years for a parent to file and approximately nine months to conduct the hearing is onerous. It is more beneficial to all parties when disagreements are resolved sooner than later. Thus, the Legislature recognized the inequity of the two-year statute of limitations for the filing of a due process hearing for a student's private school tuition reimbursement and enacted HRS 302A-443 appropriately.

HRS 302A-443 properly distinguished a parent's request for reimbursement for private school tuition and limits the filing of a due process hearing request for the reimbursement of private school tuition to 90 days and should not be amended.

The United States Supreme Court determined in Arlington School District v. Murphy, 126 U.S. Sup Ct. 2455 that parents who prevail in due process hearings are not entitled to reimbursement of expert witness fees and other relevant fees and expenses. If this bill is passed, it would contradict the United States Supreme Court decision and would require Hawaii state government to find resources to pay the prohibitive costs for expert witness fees not required by federal law. These fees cannot be reimbursed with federal funds. Therefore,

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the Department would be requesting additional funds if H.B. 2186, H.D. 1 is enacted.

If H.B. 2186, H.D. 1 is enacted, there will be confusion with the other statute of limitations which sets the limit. Section (c)(3) and (e) are contrary to United States Supreme Court precedence and the federal IDEA, respectively. The Department is unable to support H.B. 2186, H.D. 1.

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**TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008
SESSION**

To: House Committee on Judiciary

From: Gary L. Smith, President
Hawaii Disability Rights Center

Re: House Bill 2186, HD1
Relating to Education

Hearing: Thursday, February 14, 2008 2:45 PM
Conference Room 325 , State Capitol

Members of the Committee on Judiciary:

Thank you for the opportunity to provide testimony supporting House Bill 2186, Relating to Education.

I am Gary L. Smith, President of the Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A). As you may know, we are the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We support this bill and speak from a fair amount of experience as we represent a lot of parents and their children with special educational needs. This bill expand the deadline within which to file a request for due process hearing from ninety (90) days to two (2) years when the request is for reimbursement of costs of a child's placement. It would also require the Department of Education to adopt rules that would provide for the reimbursement of expert witnesses and other fees and expenses associated with a hearing. Parents are at a disadvantage at the IEP meetings because they do not always understand the process or the terms used. Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. This bill would confirm our state law to the applicable federal law.

It is equally important to have the Department of Education develop rules for reimbursement of expert witnesses and other expenses. Very often expert witnesses are

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needed as witnesses at the hearing to explain a child's special needs and disabilities. Currently, these kinds of expenses are rejected and reimbursement is not provided. This bill will level the playing field for special needs children and we urge your Committees to pass this measure.

Thank you for the opportunity to provide testimony in support of this bill.

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COMMUNITY CHILDREN'S COUNCIL OFFICE

1177 Alakea Street • B-100 • Honolulu • HI • 96813

TEL: (808) 586-5363 • TOLL FREE: 1-800-437-8641 • FAX: (808) 586-5366

February 13, 2008

The Honorable Tommy Waters
Chair, House Judiciary Committee

RE: HB 2186: Administrative hearing procedures and subpoena power relating to the education of children with a disability:

Representative Waters and members of the committee:

The 17 Community Children's Councils in Hawaii support the bill with amendments of this bill. Our brochure is attached.

We fully support the repeal of the 90 calendar days in which parents must file an appeal in any unilateral placement of a child in a private placement. We strongly endorse the two year timeline for appeal based on the Supreme Court decision allowing a two year time for appeal in due process matters. We also support the subpoena power of the administrative hearing office as well as the reimbursement of expert witnesses. We recommend that this section requiring a state officer to review the findings be deleted.

Our reasons for supporting this bill are:

1. Many parents have not been; informed about the timeline;
2. The start of the timeline is actually before the student starts in the private placement creating difficulty for all parties;
3. Parents are not reimbursed for expert witness fees while department personnel are on the payroll. This practice is not equitable in our opinion.

We will be happy to answer any questions that you may have. Thank you for this opportunity to address HB 2186.

Sincerely,

Charlotte Kamauoha, Parent Co-Chair

Tom Smith, Professional Co-Chair

Signatures on file

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JUDtestimony

From: Kalma Wong [flute866@gmail.com]
Sent: Wednesday, February 13, 2008 5:26 PM
To: JUDtestimony
Subject: HB2186, Hearing February 14, 2008, 2:45 p.m., Room 325

Kalma K. Wong
46-220 Alaloa Place
Kaneohe, Hawaii 96744
flute866@gmail.com
(808) 393-5218

February 14, 2008

Representative Tommy Waters
Chair, Committee on Judiciary
Hawaii State Capitol, Room 302
415 South Beretania Street
Honolulu, HI 96813

Representative Blake Oshiro
Vice-Chair, Committee on Judiciary
Hawaii State Capitol, Room 422
415 South Beretania Street
Honolulu, HI 96813

Re: In support of HB2186, Committees, February 14, 2008, 2:45 p.m., Room 325

Dear Chair Waters and Vice-Chair Oshiro:

I am writing to express my support of House Bill 2186, which extends the deadline to file request for a due process hearing for reimbursement for the costs of placement of a child from 90 to 2 years. This bill would realign HRS393 with the federal law. The current 90-day statute of limitations is advantageous to the Department of Education, and extremely unfair to parents of children with disabilities. Most parents do not know their rights or the law enough to be able to make the decision to file for reimbursement within a mere 90 days. Making the decision for private placement one that takes much thought and consideration, and is certainly not taken lightly. It implies that the family has run out of options with the DOE, and therefore must find (on their own) an appropriate placement for their child in order for that child to receive an appropriate education based on his/her unique needs. Trying to find an alternative placement for a child is daunting enough for any family. And to compound that with having to decide to file for reimbursement, plus having to find an attorney and then to actually proceed with the filing – all within a mere 3 months – is more than most families can bear. Extending the deadline to 2 years is reasonable and fair.

Please pass House Bill 2186.

Sincerely,

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Kalma K. Wong
Hawaii Chapter President
Cure Autism Now / Autism Speaks

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Roy P. Yamane
President of the Hawaii Down Syndrome Congress (HDSC)

Committee on Judiciary
Representative Tommy Waters, Chair
Representative Blake Oshiro, Vice Chair

February 14, 2:45pm, 5 copies

HB2186 In support. Relating to Education

Testimony

It is necessary to approve HB 2186 extending the deadline in which a person with disabilities has to file a request for a due process hearing relating relocation cost recovery to the education of a special needs child. Succinctly this piece of legislation amends the current due process timeline for cost reimbursement from ninety-days to two-years. The Hawaii Down Syndrome Congress supports the change to two years for the following reasons.

Parents or individuals caring for the needs of children with disabilities are inundated with a variety of daily challenge that influences their child's quality of life. These challenges include medical imperatives, living necessities, physical constraints and education. These influences affect a caregiver / parent's priorities relating to decision-making, time allocation and resources. Impacts from these factors make the current ninety-day requirement hard at best to achieve for families facing so many obstacles.

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My experiences as a parent with children with special needs have been eye opening and challenging. Upon learning of the disabilities of each of my children, it became obvious that quality life would be the priority. Focusing on physical, medical, financial, and education needs are important to influencing the quality of life facing all children with special needs.

Understanding these priorities necessitates my support of HB 2186. The challenge for parents / caregivers with special needs children is to prioritize by which needs come first. Using this hearing as an example, as a concerned parent with a child with a disability the time of the hearing is 2pm on a Wednesday. The choice before me is to attend the meeting in support of the bill, to miss work, lose income and potentially affecting current service relative to my children's disabilities.

As a manager in the private sector for many years an interesting incident comes to mind that supports the need for this amendment. An employee apparently failed to report a workers compensation injury at the time the mishap occurred. This employee left the organization and just less than two years filed for the injury.

A workers compensation mediation meeting was held with the government mediator, employee and the company representative. A discovery was made at this meeting that the employee had up to two years to file an injury complaint regardless that a report was not initiated at the time of the injury. When questioned about the late reporting the government mediator said that the injured employee had up to two years to report the claim. Comparing the worker compensation situation to HB 2186 it only

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seems fair and appropriate that the same consideration of a two-year filing period for due process to special needs families recovering cost for relocation be given.

By maintaining a short filing period does not afford the parent the appropriate amount of time to discuss the alternatives with all parties and while at the same instance attempt to maintain a stable quality life for the child with disabilities. Once an impasse occurs with the school IEP team, the parent is forced to seek relocation alternatives for their child, and then the bureaucratic shuffle begins. This process seldom provides proactive notification by the Department of Education involving what the next process or step is and what department is responsible. My personal experience over several years working with the DOE allows me to attest to obstacles like misinformation, non-accountability, poorly trained staff and educational lip service causing the bureaucratic shuffle in the DOE.

Now it is left up to the parent / care giver to research and select the process that defines the best solution for their handicapped child. Then a new process starts with the parent appearing or applying to another bureaucratic system for support. The journey is not endless unfortunately it is long. In the case of HB 2186, the two-year timeline provides the parent and child a fighting chance against a system that considers expeditious resolution and cost more important than the quality of life for a child with disabilities.

Parents / caregivers must place at the forefront the medical and basic living necessities of their children with disabilities. The two-year change to the due process filing period affords families with special needs children the necessary time to file an all-inclusive request for relocation cost reimbursement.

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We the members of the Hawaii Down Syndrome Congress sincerely hope that this committee and all other public entities carefully review HB 2186. In closing, support families with children that have disabilities in voting yes on this important initiative.

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From: Linda Elento, Member of The Hawaii Down Syndrome Congress

To: COMMITTEE ON JUDICIARY
Rep. Tommy Waters, Chair
Rep. Blake Oshiro, Vice Chair

Re: JUD February 14, 2008, 2:45pm

HB2186 In Support
Relating to Education.

Thank you for the opportunity to present testimony in support of HB2186.

Our strong support for this bill stems from over two years experience with the due process administrative hearings process and federal court proceedings.

When the DOE pays a consultant, who is not a Hawaii-licensed attorney, to train the Administrative Hearings Officers, Board of Education members, DOE personnel, advocates and parents on the federal special education law (the IDEA), one does not have to wonder why our hearings officers and DOE personnel follow the same narrow path to implementing the requirements of the IDEA. Our only recourse is filing a lawsuit at state or federal court within 30 days of a hearing decision per Hawaii Administrative Rules. Court requires hefty filing fees, legal know-how, deadlines. We support an appeals process with the opportunity to present more evidence without a court system. There is room for great error during administrative hearings due to lack of knowledge of the process and requirements of proving by preponderance of the evidence.

We support the extension of time in order for a parent to request private placement reimbursement when a Free Appropriate Public Education is of concern. The IDEA allows up to two years unless state law says otherwise. Hawaii Law says 90 days.

What happens during those 90 days? Not just 90 days, but an entire school year is affected. During the 90 days prior to our filing for a due process administrative hearing in November 2007, we asked the school for IEP meetings before we brought our son back to school, we appealed two geographical exception denials, we submitted a written complaint, we provided documentation: a doctor's letter and peer-reviewed research, we sought and paid for alternative learning programs, we sought legal counsel, we researched the laws, we researched our son's educational and health needs.

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Move expeditiously for the welfare of the child?

There were simply too many aspects to consider, research, in addition to just keeping my child healthy. I had no choice but to go ahead and file, and continue to do the research and follow the hearing procedures. By the way, I found out about the 90-day rule over six months after a previous due process hearing request was filed and delayed by a resolution session and settlement meetings and re-started after I believed the AHO had shown bias in having agreed with the DOE representative on a certain unfounded special education legal matter.

If the school really wanted to move expeditiously, the school would have said yes to our request for mediation, said yes to discuss the basis of the due process request as required during the Resolution Session (instead we were told to discuss those matters with the hearings officer the following week at the pre-hearing conference), said yes to our request for a geographical exception request when they failed to comply with our son's IEP which clearly states pureed foods and thickened liquids are ONLY to be given, and when they refused to place him in one of their four regular kindergarten classes, opting for a fully self contained/resource room for 1st through 3rd graders because they had lost their preK/K teacher that July 2008.

Laws/Rules are unclear.

State Law and Administrative Rules are unclear as to if the reimbursement request is only for reimbursement of private placement expenses up to the day the due process hearing was requested by parent. Does that mean the parent has to file again to request for reimbursement for the subsequent 90 days, and so forth? Due to scheduling conflicts between all parties, witnesses, filing briefs, court reporter transcripts, the AHO's decision is not due until July 2008.

Costly and burdensome.

This due process is costly and burdensome whether we have legal representation or not. If we even want to dream of winning our case, we need expert witnesses and the right evidence to prove our case with the preponderance of the evidence. In the hearing, the DOE is automatically right about everything because they are the "education experts." So how much does an expert witness cost, if you can even find one, and one that will be at the hearing no less? Even attorneys who are willing to not charge a parent if the case is lost will still incur expert witness fees which may be passed on to the parent regardless of winning or losing.

Who trains whom?

During a pre-hearing conference, the administrative hearings officer (AHO) said we could only ask for reimbursement up to that day we filed. However, the AHO commented that we were free to find and provide case law that says the AHO has authority to do otherwise. So how are parents to know what they can ask for? how about DOE personnel? how about the AHO? A hearings officer could not even tell us how to issue a subpoena for a witness in a hearing.

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From: Linda Elento, Member of The Hawaii Down Syndrome Congress

To: COMMITTEE ON JUDICIARY
Rep. Tommy Waters, Chair
Rep. Blake Oshiro, Vice Chair

From: Linda Elento, Member, The Hawaii Down Syndrome Congress

Re: JUD February 14, 2008, 2:45pm

HB2186 In Support
Relating to Education.

Addendum to previous testimony:

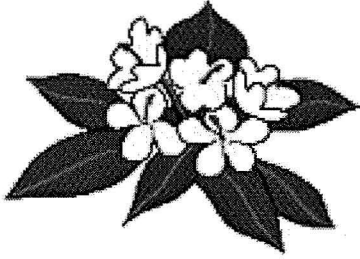
Please consider the impact of the current restriction of 90 days imposed by HRS 302A-... on all parties involved: students and their families, faculty, and the Office of Administrative Hearings (DCCA).

Parents still meet annually to develop the Individualized Education Program so parents are still working with the DOE even during due process and private placement. When the student is in private placement, the DOE sends in observers. Parents need that time to decide whether to file or not, rather than feel forced to do so when a 90-day statute of limitations is hanging over their head. Parents will not just come back two years later and ask for reimbursement for two years of private placement and services.

Personally, my family is currently experiencing this very process: We had two meetings with the school this past week, and a teacher observed and tested our son. And my due process hearing we filed for in November 2007 begins on March 12, 2008, with a decision to be issued in July 2008. We need our immediate time now to focus on finding a solution with the school, not trying to prove legal matters, causing more strife and time taken away from the purpose in the first place: educating our child with disabilities.

Thank you for considering passage of HB2186 as it currently is written.

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S E A C
Special Education Advisory Council
919 Ala Moana Blvd., Room 101
Honolulu, HI 96814
Phone: 586-8126 Fax: 586-8129
email: spin@doh.hawaii.gov

February 14, 2008

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

**Special Education
Advisory Council**

RE: HB 2186, HD1 - Relating to Education

Ms. Ivalee Sinclair, *Chair*
Mr. Steve Laracuente, *Vice
Chair*

Ms. Janet Bamford
Dr. Paul Ban, *Liaison
to the Superintendent*
Ms. Sue Brown
Ms. Deborah Cheeseman
Ms. Phyllis DeKok
Mr. Lee Dean
Ms. Mary Ellis
Ms. Debra Farmer
Ms. Gabriele Finn
Ms. Martha Guinan
Mr. Henry Hashimoto
Ms. Tami Ho
Ms. Barbara Ioli
Ms. Valerie Johnson
Ms. Shanelle Lum
Ms. Rachel Matsunobu
Ms. June Motokawa
Ms. Barbara Pretty
Ms. Susan Rocco, *Ex-officio*
Dr. Patricia Sheehey
Mr. August Suehiro
Ms. Jan Tateishi, *Ex-officio*
Ms. Judy Tonda
Dr. John Viesselman
Ms. Cari White
Ms. Jasmine Williams
Mr. Duane Yee
Mr. Wilfred Young

The Special Education Advisory Council, Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), supports the above bill as amended that: 1) extends the timeline to file a due process complaint for reimbursement of the costs of a unilateral private school placement, and 2) allows for the reimbursement of expert witness and other relevant fees and expenses when a parent prevails in a due process hearing.

The most recent amendments to the Individuals with Disabilities Education Act allow a parent up to two years to file a due process complaint on any matter related to a child's identification, evaluation educational placement or the provision of FAPE. These amendments also allow the Department a 10 day period to try to reconcile differences with parents over their child's placement by requiring the parent to give written notice to the Department at least 10 days prior to removing their child from public school, stating their concerns and intent to enroll their child in a private school at public expense. If the parent does not provide this notice or notify the IEP Team at the most recent IEP meeting that they reject the placement proposed by the Department, a hearing officer may reduce or deny the parent's request for reimbursement for the costs of private placement.

SEAC finds the language in IDEA regarding the filing of due process complaints sufficient to provide protections to both parents and schools. The imposition of a 90 day timeline specific to unilateral placements in state statute, however, is potentially unfair to parents who may be unaware of the timeline or have difficulty securing legal counsel to advise them within this short window of opportunity. SEAC has been notified of several parents who were denied access to due process, because they missed the 90 day timeline (in one instance, by one day).

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Testimony re: HB 2186, HD1
February 14, 2008
Page 2

SEAC also supports the second element of this bill--to allow reimbursement to parents for expert witness and other related fees, when a parent prevails in a due process hearing. Two recent Supreme Court decisions have impacted the parent's ability to provide an adequate argument in a due process hearing to show that a student's rights under IDEA have been violated. *Schaffer vs. Weast* established that the party initiating the due process complaint has the burden of proof based on the preponderance of evidence. Shortly thereafter, the Supreme Court, in *Arlington Central School District vs. Murphy*, ruled that IDEA did not allow for the reimbursement of expert witness fees to parents who prevail in a due process hearing.

The result of these two decisions is to put parents at a distinct disadvantage in a due process hearing. They are required to prove by a preponderance of the evidence that the Department failed to provide for FAPE for their child, and yet they may be restricted in providing expert witnesses to help prove their case, due to the unreimbursable costs of these witnesses. The Department on the other hand, has deep pockets and free reign to compel its own employees to testify as expert witnesses at these hearings. SEAC believes, therefore, that it is important to level the playing field by allowing parents to recoup these expenses, when they are the prevailing party in a due process hearing.

Thank you for the opportunity to present testimony on this issue. Should you have any questions regarding our position, you are welcome to contact me by phone or email.

Sincerely,

Ivalee Sinclair, Chair

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1200 Ala Kapuna Street • Honolulu, Hawaii 96819
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Roger K. Takabayashi
President
Wil Okabe
Vice President
Karolyn Mossman
Secretary-Treasurer
Mike McCartney
Executive Director

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
JUDICIARY**

RE: HB 2186, HD1 – RELATING TO EDUCATION.

February 14, 2008

**ROGER TAKABAYASHI, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION**

Chair Waters and Members of the Committee:

The Hawaii State Teachers Association strongly opposes HB 2186, HD1.

The Association believes due process is best served when it is not delayed. HB 2186, HD1, in its present form will allow parents of children with disabilities to extend a decision to find the proper form of education for the betterment of their child's success. We agree that children deserve to receive the best public school education. However, we also believe that parents need to make a conscience decision to ensure the continuity for their child and not to delay any special education for two years. Secondly, delay of two years additional costs could be incurred by the state.

Furthermore, the association recognizes that school level leaders, who make the recommendations, will need to wait two years to report on how the child is progressing or to know whether the child will be returning to their present school. This may impose a hardship on the school and teacher to properly fulfill their obligation to ensure that every child, even children with disabilities, is given an equal public school education and ensure their success.

We strongly urge the committee to not pass this bill.

Thank you for the opportunity to testify.

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LAW OFFICE OF LINDA C.R. JAMESON
Attorney at Law

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February 14, 2008

Representative Tommy Waters
Chair, House Committee on Judiciary
Hawaii State Capitol, Room 302
415 South Beretania Street
Honolulu, Hawaii 96813

Re: House Bill 2186 HD1: Relating to Education

Dear Representative Waters, Vice Chair Oshiro and Members of the House Committee,

We are the parents of Sara K.R. Jameson, a child with special needs since birth. We strongly support HB 2186 HD1. All children, especially Sara and others like her, deserve access to education.

HB 2186HD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to two (2) years when the request is for reimbursement of costs of a child's placement.

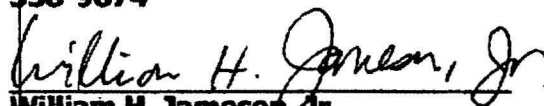
The current 90-day time period is potentially unfair and burdensome to parents who may be unaware of the time restrictions and because it does not provide sufficient time to permit parents to locate appropriate placement for their child or to find legal counsel. Placement is very difficult especially as the child grows older. And the last point regarding legal counsel is quite important since there are very few attorneys who do these types of cases.

In addition, the 90-day limitation has been used against parents to preclude them from bringing a due process case. The amendment before you would make Hawaii law consistent with federal law.

Based on the points above, I urge you to hear SB2004 (HB2186) as soon as possible. Thank you for your kind attention to his matter.

Sincerely,


Linda C.R. Jameson
Attorney-at-Law
358-9874


William H. Jameson, Jr.
Attorney-at-Law
358-9875

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Dear Senator/Representative

Tommy Waters,

RE: [HB 2186 or SB 2004] Relating to Education

I am a parent of a child with special needs/autism/etc. [HB 2186 or SB 2004] would expand the deadline within which to file a request for due process hearing from ninety (90) days to two (2) years when the request is for reimbursement of costs of a child's placement.

The current 90-day time period is potentially unfair and burdensome to parents who may be unaware of the time restrictions, and because it does not provide sufficient time to permit parents to locate an appropriate placement for their child or to find legal counsel.

Additionally, the 90-day limitation has been used against parents to preclude them from bringing a due process case. The amendment to the law would make Hawaii law consistent with the federal law.

Therefore, I urge you to hear SB 2004 [HB 2186] as soon as possible. Thank you for your kind attention to this matter.

Sincerely,

April H. Kimura

April H. Kimura
mother of Faith Kimura

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2/12/2008

*Representative Tommy Waters, Chair
Representative Blake Oshiro, Vice-Chair
House Committee on Judiciary*

Stephanie Lu (████████████████████)

Thursday, February 14, 2008

Support of HB2186 HD1, Relating to Special Education Due Process Timeline

I am a 29-year-old older sister of Margaret Lu, a moderate-functioning female teenager with autism and who receives educational services from the Dept of Education (DOE). I am writing to you about **HB 2186 HD1** relating to Education and the statute of limitations related to special education due process administrative hearing expanding the 90-day timeline to 2-years. I am testifying **in strong favor** of this bill.

This is an important bill because it would **protect the rights of special needs children to receive an appropriate education. Ten percent of children in public school in Hawai'i fall into the category of special education.** Right now, the rights of special needs children are lacking appropriate protection because 90 days is just not enough time for parents to prepare to file for due process. Families file for due process because **it is the only recourse for parents when the Dept of Education does not offer an appropriate education plan for a special needs child.** Sometimes parents' concerns get ignored in the process of coming up with the plan.

To file for due process, families need to find a lawyer who understands special needs administrative rules and law, figure out how to pay for the lawyer, communicate to the lawyer what the issue is, and prepare the documents needed for the administrative hearing. From personal experience and from talking to the large community of special needs families we have met, these documents fill up at least two 4-inch binders for each hearing! The document preparation required for a due process administrative hearing is very challenging. **To be asked to find a lawyer, figure out finances, and prepare two 4-inch binders within 90 days is almost logistically impossible for families of special needs children due to the many challenges they face in just taking care of the kid.**

Most special needs families are highly stressed by the extra daily caretaking challenges, medical challenges, financial challenges of special needs children. Asking them to attend regular DOE meetings to come up with an educational plan on weekdays during workhours is challenging but some parents can do it, while others cannot. For those who can't make it to these meetings, oftentimes their educational plan offer is very limited in services that may or may not address the kid's actual needs. Then, asking parents to also defend their children's educational needs within 90 days is just next to impossible.

The **federal IDEA law** established a **2-year statute of limitations** for parents to file for due process and the **49 other states all have 2 years** to make their case to an administrative officer, if they feel that the Dept of Education is not offering an appropriate education plan. I have seen no compelling evidence or reasons from the Dept of Education why the special needs children of Hawai'i should have a shorter statute of limitations than those of fellow states. Making it easier on the DOE administration is not a good enough reason to limit the rights of special needs children.

*Representative Tommy Waters, Chair
Representative Blake Oshiro, Vice-Chair
House Committee on Judiciary*

Stephanie Lu (stephlu@gmail.com)

Thursday, February 14, 2008

Support of HB2186 HD1, Relating to Special Education Due Process Timeline

I support the amendments to HD2186 made by the Education Committee since the amendments exclude yet another level of DOE oversight that can be perceived as extremely unfair to parents who win administrative hearings. The proposed amendment would allow DOE to review the hearing officer's decision and can reverse the decision, if they don't like it. It just doesn't make any sense at all, and is perceived as bullying the parents into not filing for an administrative hearing at all. **I'm glad that the Education Committee excluded the oversight section. I ask you to keep it that way.**

Our special needs children deserve to be treated with just as much respect and fairness as other special needs children in terms of access to appropriate education. **I urge you to protect the rights of 10% of our public school children by approving HB2186 HD1 and submit a committee report to the house floor for a vote immediately after this hearing today.** Mahalo for the opportunity to testify.

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Teresa Chao Ocampo
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February 13, 2008

Representative Tommy Waters, Chair
Representative Blake Oshiro, Vice-Chair
House Judiciary Committee
State Capitol
Conference Room 302
415 South Beretania Street
Honolulu, HI 96813

RE: HB 2186HD1 Relating to Education

Meeting to be held at Conference Room 325, Thursday, February 14, 2008 at 2:45pm

A. RELATING TO THE 2 YEAR TIMELINE WHEN SEEKING REIMBURSEMENT FOR UNILATERAL PRIVATE PLACEMENT.

I am writing to express my support for the SECTION of HB 2186HD1 which proposes to give parents the right to file for a due process hearing request within 2 years instead of 90 days of a unilateral special education placement where the request is for reimbursement of the costs of the placement and related services.

Consider the following facts taken from Hawaii's State Advisory Panel, SEAC (Special Education Agency Council) in their June 8, 2007 report and the DOE's official website.

1. Out 181,355 public school children for the SY 2005-2006, 19,714 children were classified as Special Education.
2. Out of the 19,714 special education children, approximately 188 Due Process Hearing requests were filed between July 1, 2005 and June 30, 2006.
3. Out of 188 due process hearing requests, 45 resulted in a decision. (The other 143 cases were either settled, withdrawn, dismissed without hearing or undecided in this time frame).
4. Out of the 45 cases that resulted in a decision, 29 cases had Private School Placement as an issue and 5 cases had an issue with the 90-day timeline (for a total of 34 cases involving the 90-day timeline and reimbursement of private placement as described in HB 2186).

Currently, HRS 302A-443 as written DISCRIMINATES against the SMALLEST subset of special education children. HRS 302A-443 went into effect on June 24, 2005. It affected literally LESS than two-tenths of one percent of the special needs population out of the 181,355 students enrolled in public school during the school year 2005-2006, (34 out of 181,355).

Therefore, "what was the REAL purpose of HRS 302A-443?" From my perspective, it is intended to decrease the number of due process cases involving private placement where COSTS of the private placement is an issue for the DOE. It is based on the assumption that the DOE fulfills its responsibility to these children and the provision of FAPE (Free Appropriate Public Education). If this was REALLY true among the due process cases, then why did SEAC find that independent Hearing Officers agreed with over two-thirds of the parents for School Year 2005-2006? Doesn't this show that parents' concerns are NOT exaggerated BUT justified?

The Department of Education will argue that "when a parent places a special needs student into a private school AGAINST the DOE's proposal, the DOE has no authority to monitor the student's progress in the private school." However, when the issue is the non-provision of FAPE and the parents DO NOT AGREE with the DOE's proposal of placement, placing limitations on ANY type of placement whether it is Private or Public is a denial of FAPE and therefore a violation of IDEA law. When seeking reimbursement, parents are not required to show that their private placement is perfect, only that it is appropriate for the child.

The DOE may believe that its responsibilities are constrained when a student is placed into a private placement, but what about THEIR responsibility TO the special needs children? HRS 302A-443 is currently designed to TAKE AWAY THE ONLY recourse parents have when the ISSUE involves the lack of FAPE and when parents disagree with the DOE's decision of placement for their child. Parents should not be CORNERED into accepting the DOE's placement when they have legitimate concerns. Parents, as equal members of their child's Individualized Educational Program Team, have the right to disagree with ANY proposal that the DOE may offer regarding educational issues for their child.

The AG's office will argue among other things, that it would be difficult for the State to present its case in any due process hearing if the time frame was as long as 2 years. However, Hawaii's AG wrote an Amicus Brief IN SUPPORT of parents having the Burden of Proof in due process hearings when Schaffer v. Weast was being heard in the Supreme Court in 2005. Hawaii was among only two other states and a territory that was IN FAVOR of this position.

With the Burden of Proof shifted onto the parents combined with an unfair 90-day statute of limitation in HRS 302A-443, parents are effectively stripped of the last remaining avenues of advocacy for their children. These changes were clearly not meant to further the educational needs of our special needs children but to give the DOE and AG an "advantage" when these cases went to due process, or so it seems. Instead of pursuing these TYPES of legal maneuvers, wouldn't it be much easier for the DOE to just TRY to provide FAPE to our children?

I support the proposed 2 year statute of limitation in this bill because a) the change from 2 years to 90 days should never have taken place; b) currently, HRS 302A-443 punishes those children whose parents disagree with the DOE and c) it discriminates against those students whose parents who seek reimbursement for private placement, and d) it does not benefit the student. This amendment would make Hawaii's law consistent with Federal law, as it should be.

HB 2186HD1 gives these children the chance to acquire an education that they deserve and are entitled by IDEA 2005 by following the purposes of IDEA 2005 as it was intended, such that:

- a. the rights of children with disabilities and parents of such children are protected,
- b. all children with disabilities have available to them a FREE APPROPRIATE PUBLIC EDUCATION THAT EMPHASIZES SPECIAL EDUCATION AND RELATED SERVICES DESIGNED TO MEET THEIR UNIQUE NEEDS,
- c. States, localities, educational service agencies, and Federal agencies to PROVIDE FOR the education of all children with disabilities.

B. RELATING TO THE REIMBURSEMENT OF EXPERT WITNESSES AND RELATED FEES FROM A DUE PROCESS HEARING.

I support the section of HB 2186HD1 referring to the reimbursement of expert witnesses and other relevant fees and expenses associated with a hearing.

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PRIOR to a due process hearing, parents usually incur out of pocket expenses including independent assessments, related services that were not paid by the DOE, tuition at private schools, attorney's retainer fees, earnings lost due to time taken off from work either by one or both parents, provision of child care during the hearing and other hidden costs that have an undetermined value.

The DOE has a 2.4 billion dollar budget. They can easily afford to spend TAXPAYER dollars to theoretically fly witnesses to Hawaii, to testify for a fee, to provide free room and board at a luxury hotel and a car for 3 to 5 days for the duration of the hearing, if they choose. However, most parents in Hawaii, living on a tight budget, who now have the Burden of Proof, do not have this luxury.

As I wait for a decision on my child's due process case, I have spent approximately \$17,000 in four months in the interim, money that I really don't have. Having parents pay for any additional expenses including expert witness fees and other relevant fees would be an unfair financial burden to the parents who may be forced to choose between their family and their Special Needs child. When the DOE goes to due process, they are using TAXPAYER dollars against the very parents who in part, paid those taxes. Please don't punish parents who are only trying to do the right thing for their special needs child. Support the reimbursement of these witness fees and other relevant expenses related to a due process hearing to parents.

Thank you for allowing me to provide this testimony.

Sincerely,
Teresa Chao Ocampo
Parent of a Special Needs Child
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Fay Yamamoto
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February 14, 2008

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RE: House Bill 2186 HD1: Relating to Education

Dear Chair Waters, Vice Chair Oshiro and Members of the House Committee on Judiciary:

Thank you for receiving my testimony on this important bill. I am a parent of a child with autism. I support HB 2186 HD1. All children deserve to access education, even children and their families in Hawai'i who deal with special education programming needs.

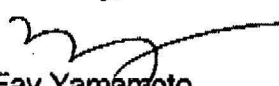
HB2186 HD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to two (2) years when the request is for reimbursement of costs of a child's placement.

The current 90-day time period is potentially unfair and burdensome to parents who may be unaware of the time restrictions, and because it does not provide sufficient time to permit parents to locate an appropriate placement for their child or to find legal counsel.

Additionally, the 90-day limitation has been used against parents to preclude them from bringing a due process case. The amendment to the law would make Hawaii law consistent with the federal law.

Therefore, I urge you to hear HB 2186 as soon as possible. Thank you for your attention to this matter.

Sincerely,


Fay Yamamoto
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