

Representative Tommy Waters, Chair
Representative Blake Oshiro, Vice-chair
Committee on Judiciary
Hawaii Centers for Independent Living

Thursday, February 14, 2008

Supporting HB 2186, HD1, Relating to Education

Hawaii Centers for Independent Living is a non-profit organization operated by and for people with disabilities to ensure their rights to live independently and fully integrated in the community of their choice, outside of institutional care settings. As a non-profit, statewide resource, HCIL serves people of any age with any type of disability. HCIL was founded on the historical constitutional beliefs of civil rights and the empowerment of people with disabilities to have equal access, opportunities, and choices in life, no matter how severe their disability.

We support HB2186, HD1, Relating to Education.

HB2186, HD1, would give parents of children in special education two years to pursue their rights under the due process provisions of IDEA, the Federal Individuals with Disabilities Education Act. At present, Hawai'i requires a due process filing within ninety days. It would also require the parents to be reimbursed for expenses relating to expert witnesses when their claims are upheld.

We feel that parents should be granted the maximum amount of time allowed under IDEA to exercise their due process rights. Nearly all special needs parents are new to the special education system, whereas the Department of Education is intimately familiar with every nuance of it. The 90-day provision and lack of reimbursement for expert witnesses give DOE unfair advantages that it can use against parents who are often overwhelmed by the challenges of raising a child with a disability. In many instances, they also have issues, such as language access, that can keep them from even knowing that the stringent 90-day deadline has passed, until it is too late. We believe this is patently unfair to the one in six Hawai'i public school students who receive special education services from DOE.

We urge the committee to pass HB2186, HD1. Thank you for this opportunity to testify.

Committee On Judiciary
The House
February 14, 2008
TESTIMONY IN SUPPORT OF
HOUSE BILL 2186

Chair Waters, Vice Chair Oshiro and members of the Committee on Judiciary,

Thank you for receiving my testimony on this important bill that impacts Hawaii's special needs children a great deal. I am the parent of a special needs child, and would like to provide some input from this perspective regarding House Bill 2186. HB 2186 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 process for obtaining an appropriate placement for a special needs child is a daunting one. I have attended a myriad of individualized education program (IEP) meetings for my child, none of which were straightforward or collegial. Additionally, parents are often at a real disadvantage in these meetings. Once parents find an appropriate placement that is safe for their child, the process of filing for a due process hearing is a stressful and confusing one even for the most educated. Further, navigating the paperwork and finding an attorney who will take your child's case could easily extend beyond 90 days. Placing this 90-day requirement on the parents is extremely burdensome. The number of due process claims that can be filed successfully will likely decrease if the 90 day statute remains in effect, giving the appearance of a more streamlined process. The truth, however, is that the door is being shut on these children at the 90-day mark. Our special needs children are not being afforded reasonable access to their right to a due process hearing because of this 90-day constraint imposed on them. This requirement is much less of a procedural "safeguard," and in practice is an unfair procedural trap which ultimately ends up hurting the child.

Hawaii is the only state in the U.S. that has this burdensome restriction. Even under federal law, a parent can request an impartial due process hearing up to 2 years from the time a free and appropriate public education was denied. All of the special needs children in Hawaii should be afforded the same protections under the law afforded to their counterparts in every other state. I urge you to pass HB 2186 and level the playing field for Hawaii's special needs children, and allow them real meaningful access to the due process they deserve.

Mahalo,



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February 14, 2008

Representative Tommy Waters
Chair, House Committee on Judiciary
51st Representative District: Lanikai, Waimanalo
Hawaii State Capitol, Room 302
415 South Beretania Street
Honolulu, HI 96813

Representative Blake K. Oshiro
Vice Chair, House Committee on Judiciary
33rd Representative District: Aiea, Halawa Valley, Halawa Heights, Aiea Heights
Hawaii State Capitol, Room 422
415 South Beretania Street
Honolulu, HI 96813

RE: House Bill 2186 HD1: Relating to Education

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

Dear Committee Members,

For the past six years, I have been representing special needs students who have not been provided with the services and educational plans that they are entitled to under the Individuals with Disabilities Education Act. It has come to my attention today that there is a bill that impacts directly on my clients (parents of disabled children) that will be heard before your committee on Judiciary very shortly. I am writing to ask you to please support HB 2186, and restore the statute of limitations for requesting a tuition reimbursement back to the two year statute it had been prior to July 2005.

To give you a brief background, when the IDEA was reauthorized by Congress in 2004, they left it up to the States to define the applicable statute of limitations on some of the provisions. In 2005, the Department of Education attached as a rider to another (unrelated) Education bill a provision to our HRS Chapter 56 that reduced the SOL for a parent requesting DOE reimbursement for private placement tuition in a due process hearing from 2 years to 90 days(!) Needless to say, it flew below the radar as no public hearings were held, and no interested parties notified, until *after* the Governor had signed it into law. Since

then, the DOE has used this brief period of SOL as a club against parents who otherwise would be entitled to reimbursement, but were unaware of the provision, or unable to find an attorney who would advise them of it. (As you may know, there are only a handful of Hawaii licensed attorneys who handle these cases, and we cannot advise a parent unless we have accepted them as clients, which requires an exhaustive and time-consuming review of all of the student's past educational records.) Very often this cannot occur within the 90-day allotted time.

Even the parents who feel confident enough to file for reimbursement pro se have a difficult time meeting this deadline as parents with special needs children are often overwhelmed with the basic day-to-day caretaking of their disabled child.

We are the ONLY state in the country who has such a limited period in which to file their request for hearing on this issue. As far as I can ascertain, all other states follow the same SOL for tuition reimbursement requests as established for torts in that individual state. The federal law allows for two years, unless the state decides to legislate differently. HB 2186 HD1 would restore the two year SOL and allow parents of disabled children the needed window of time in which to decide on their course of action. Please support it.

Thank you for your attention to this matter.

Sincerely,

Irene E. Vasey

Evelyn Akamine

281 Puiwa road
Honolulu, Hawaii 96822

February 13, 2008

Representative Tommy Waters

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Representative Blake K. Oshiro

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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 for this important bill. I am a parent of a child with special needs (borderline/mildly retarded daughter with bipolar disorder). 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

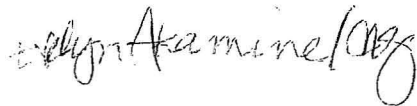
does not provide sufficient time to permit parents to locate an appropriate placement for their child or to find legal counsel.

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.

The 90 day timeline is absolutely unfair. It took us many many years to know that an injustice had been done to my daughter by the DOE. It took many many years to become brave enough to go through due process. It took many many years to find someone (that someone fortunately was Naomi Grossman) to help us, the desperate parents. We also went up to the federal level on the basis of deliberate indifference. The 90 day limitation will only work to the DOE's advantage essentially leaving the parents powerless, not to mention the travesty done to the child.

Therefore, I urge you to pass HB 2186. Thank you for your kind attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Evelyn Akamine".

Evelyn Akamine
Phone 282-3676

*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 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.

**AUTISM SOCIETY OF HAWAI'I
P.O. BOX 2995
HONOLULU, HAWAI'I 96802
808 228-0122**

February 14, 2008

Representative Tommy Waters
Chair, Judiciary Committee
Representative Blake Oshiro
Vice Chair, Judiciary Committee
Hawai'i State Capitol, Conference Room 325
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: House Bill 2186 HD1: Relating to Education

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

The Autism Society of Hawai'i offers its strong support for HB 2186 HD1 - Relating to Education. 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 Autism Society of Hawai'i is an affiliate chapter of the Autism Society of America. Its members are composed of families who deal with living with the effects of autism spectrum disorders and the professionals and paraprofessionals who serve them. The Autism Society of Hawai'i will provide leadership in the field of autism spectrum disorders dedicated to supporting families who advocate on behalf of their children and are committed to reducing the consequences of autism through education, research, and advocacy.

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. Unfortunately, parents are also not experts and lack experience in understanding the process or language of the law.

Additionally, the 90-day limitation has been used against parents to preclude them from bringing a due process case. Even in the Individual Educational Program (IEP) Meetings, parent experience stress and difficulties understanding a process that is not always

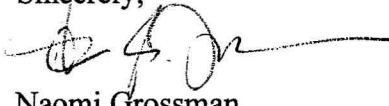
collegial or facilitative.

The amendment to the law would make Hawai'i law consistent with the 2-year 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 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.

We urge you to pass HB 2186 HD1 to bring back fairness to Hawai'i's special education law. Thank you for your kind attention on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Naomi Grossman', with a long horizontal flourish extending to the right.

Naomi Grossman
Autism Society of Hawai'i, president