

Date of Hearing: February 4, 2008

Committee: Senate Education/Human
Services and Public Housing

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.B. No. 2004, 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 S.B. 2004. 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. During the 2005 Legislative Session, the Legislature accepted testimony that described the undue

burden of allowing a two-year delay before requesting private school reimbursement.

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. Thus, the Legislature recognized the inequity of the two-year statute of limitations for the filing of the due process hearing for a student's private school tuition reimbursement that began two years prior.

HRS 302A-443 appropriately 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.

The bill proposes to extend the statute of limitations for the filing of a due process hearing request for the reimbursement of private school tuition, which does not distinguish the private school tuition issue from other due process hearing issues. If this bill 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 S.B. 2004.