

LATE TESTIMONY

Teresa Chao Ocampo
215 N. King Street, Apt. 207
Honolulu, HI 96817

February 4, 2008

Senator Norman Sakamoto, Chair
Senator Jill Tokuda, Vice Chair
The Senate Education Committee
State Capitol
Conference Room 225
415 South Beretania Street
Honolulu, HI 96814

Senator Suzanne Chun-Oakland, Chair
Senator Les Ihara, Jr., Vice Chair
The Human Services and Public Housing Committee
State Capitol
Conference Room 225
415 South Beretania Street
Honolulu, HI 96814

RE: SB 2004 Relating to Education

Meeting to be held at Conference Room 225, Monday, February 4, 2008 at 3pm

A. RELATING TO THE EXTENSION OF THE 90-DAY TIMELINE TO 2 YEARS IN ACCORDANCE WITH THE CURRENT IDEA LAW.

I am writing to express my support for the SECTION of SB 2004 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.

IDEA is a federal law that is meant to preserve the educational rights of children with disabilities. The reauthorization of IDEA 2004 states that the purpose of this law includes the following:

- 1) to ensure that 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 and prepare them for further education, employment and independent living;
- 2) to ensure that the rights of children with disabilities and parents of such children are protected;
- 3) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities.

As a parent of a Special Needs child, I am extremely concerned as to the reasons why Hawaii is the ONLY state among the entire FIFTY states that requires parents of special needs children to file a due process hearing request within 90 days of private placement when parents seek reimbursement for this placement instead of the 2 years as allowed by the federal IDEA law.

Consider the following fact 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. The Official Enrollment for SY 2005-2006 was 181,355 children.
2. Out 181,355 public school children, 19,714 children were classified as Special Education.
3. Out of the 19,714 special education children, approximately 188 Due Process Hearing requests were filed between July 1, 2005 and June 30, 2006.
4. **The 188 Due Process requests is equivalent to 0.95% of the Special Education population and 0.10% of the entire population of public school children, both of which are LESS THAN 1 PERCENT.**
5. Out of 188 due process hearing requests, 66 resulted in a settlement agreement.
6. Out of 188 due process hearing requests, 45 resulted in a decision. (The other 76 cases were either withdrawn, dismissed without hearing or undecided in this time frame).
7. **Out of the 45 cases resulting in a decision, 34 cases or 76 percent were FAVORABLE FOR THE PARENTS.**
8. Out of the 45 cases resulting in a decision, only 11 cases or 24 percent were favorable for the DOE.
9. 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 SB 2004).

The 90-day statute of limitations as written in the current law DISCRIMINATES against the SMALLEST subset of special education children. In this case, 34 (total of those issues relating to Private Placement and the 90-day timeline above) out of an approximate 19,714 special education children would be affected by the current 90-day statute of limitations. This is equivalent to ONLY 0.17% of the special education population. Is this what the provision of special education has come down to?

This current section of law is intended to take away the ONLY recourse parents have when the ISSUE is FAPE and parents disagree with the DOE's decision of placement for their child. If parents disagree with the school's offer of FAPE, what conscientious, responsible parents who are concerned about their child's education will send their child to the public school DESPITE their concerns? Why must parents be PUNISHED in this manner when they disagree with the DOE's placement decision? **Where are the parents supposed to send their children if the issue is FAPE with the public school?**

The purpose of the current 90-day statute of limitations is clear. It is NOT INTENDED FOR THE BENEFIT OF THE CHILD but FOR THE BENEFIT OF THE DEPARTMENT OF EDUCATION. This short 90-day time is designed to:

1. Limit the dollar amount of reimbursement to parents;
2. Discourage parents from requesting a Due Process Hearing by making the process formidable and intimidating;
3. Put pressure on parents to find an immediate placement that is appropriate for the child;
4. Put pressure on parents to find immediate counsel, making it difficult to file within the 90-day time frame;
5. Limit the options for parents including placement and education choices;
6. Save the DOE money.

During the SY 2005-2006, Section 302A-443 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 this time. I am certain that the DOE believes that the Due Process "process" "costs" too much in terms of reimbursement of tuition for private placement, provision of services, court costs, attorney's fees, and the time spent by various DOE personnel in preparation of these

hearings and other hidden costs. However, the DOE has NEVER provided any evidence including a cost analysis to prove that this is truly the case.

The 90-day statute of limitations is UNWARRANTED, UNFAIR and DISCRIMINATORY to those special needs children whose parents seek reimbursement for an appropriate placement for their child. **The 2 year statute of limitations MUST be reinstated to follow IDEA law so that the treatment of special education children will be more equitable with any other child in the DOE system as well as the REST of the other 49 States.**

If left unchanged, this 90-day provision directly conflicts with the intent and purpose of IDEA, which is to “ensure that the rights of children with disabilities and parents of such children are protected, to ensure that all children with disabilities have available to them a FREE APPROPRIATE PUBLIC EDUCATION THAT EMPHASISES SPECIAL EDUCATION AND RELATED SERVICES DESIGNED TO MEET THEIR UNIQUE NEEDS, and to assist 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 would consider supporting section (3) of SB 2004 referring to the reimbursement of expert witnesses and other relevant fees and expenses associated with a hearing PROVIDED that this applies ONLY to the Parents as the Prevailing Party. I do not support this portion of the bill if it applies to the Department of Education simply because the funds that the DOE will be using for any due process hearing are in part, MY hard-earned taxpayer dollars. 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 are have an undetermined value.

The DOE has over a 2 billion dollar budget. They can easily afford to spend our 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. However, to have parents to pay for such extravagant expenditures for a due process case hardly demonstrates accountability and responsibility for such expenses. For two working parents living in Hawaii with an adjusted gross income of \$150,000, costs could easily range from \$15,000 on up or easily 10% of their take home pay after taxes. What about the rest of the family and their basic needs? Having parents pay for any additional expenses including expert witness fees 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 issue is FAPE and the responsibility for the DOE to provide this FAPE, parents should not have to make this choice.

The ONLY way to make this an equitable provision for our special needs children is to have the reimbursement of expert witnesses and other relevant fees associated with a due process hearing offered to the Parents should they be deemed the Prevailing Party in a Due Process Hearing. I urge you to take this into consideration in reviewing this bill.

C. RELATING TO THE ESTABLISHMENT OF A STATE APPEALS BOARD FOR THE PURPOSES OF REVIEWING DECISIONS RENDERED BY HEARING OFFICERS.

I do not support the last provision under section (e) of SB 2004 relating to the establishment of an appeals board which would give a state review officer the ability to review the decisions of hearings officers. This section offers no explanation relating to whom, how or what the duties and powers of the proposed appeals board or the state review officer would be. Usually, when due process decisions are appealed, they are referred to Federal court

and not State Court since IDEA is a federal law. Without further clarification, this section reads as though it would allow the DOE to have each unfavorable due process decision reviewed by a state review officer. Therefore, on the surface, it appears that the intent of this section is another attempt to DIMINISH the rights of special needs children and their parents by circumventing the appropriate legal channels. THIS PROPOSED SECTION OF SB 2004 SHOULD BE REMOVED ALTOGETHER.

Thank you for allowing me to provide this testimony.

Sincerely,
Teresa Chao Ocampo
Parent of a Special Needs Child

10-20-11
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10-20-11

L A T E

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

To: Senate Committee on Education
Senate Committee on Human Services and Public Housing

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

Re: Senate Bill 2004
Relating to Education

Hearing: Monday, February 4, 2008 3:00 PM
Conference Room 225 , State Capitol

Members of the Committee on Education:

Members of the Committee on Human Services and Public Housing:

Thank you for the opportunity to provide testimony supporting Senate Bill 2004 ,
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. 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. 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 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/opposition to this

AUTISM SOCIETY OF HAWAII
P.O. BOX 2995
HONOLULU, HAWAII 96802
808 228-0122

L A T E

February 4, 2008

The Honorable Senator Norman Sakamoto
Chair of the Committee on Education
The Honorable Senator Suzanne Chun Oakland
Chair of the Committee on Human Service and Public Housing
Conference Room 225
State Capitol
415 South Beretania Street
Honolulu, Hawaii

Re: **SB 2004 Relating to Education**

Dear Chairs Norman Sakamoto and Suzanne Chun Oakland and members of the Senate Committee on Education and Human Service and Public Housing:

Thank you for receiving our testimony on SB 2004. The Autism Society of Hawaii strongly supports SB 2004. The Autism Society of Hawaii 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 Hawaii 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.

As parents and members of the Individualized Educational Program (IEP) team, we know that these meetings are very stressful and a difficult process, and it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because we 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.

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.

The Autism Society of Hawaii strongly supports SB 2004 which would level the playing field for special needs children and urge your Committees to pass this measure. Thank you for the opportunity to provide testimony on SB 2004.

Sincerely,



Naomi Grossman

Autism Society of Hawaii, president