



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

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**ON THE FOLLOWING MEASURE:**

S.B. 2004, S.D. 2, H.D. 1, RELATING TO EDUCATION.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, March 18, 2008 **TIME:** 3:45 P.M.

**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

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Chair Waters and Members of the Committees:

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 90 days to 1 year 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 prevailing party to recover expert witness fees and other relevant fees and expenses associated with a due process hearing and to submit an annual report to the Legislature regarding the total number of requests for due process hearings relating to the reimbursement of costs for a child's placement filed by a parent or guardian of a child with a disability.

Federal law and implementing regulations provide that a student's individualized education program ("IEP") must be reviewed and updated by the IEP team at least annually. This indicates that the appropriateness of a child's program can change fairly quickly, and therefore the program must be reviewed from year to year. Accordingly, enlarging the period of time in which a parent may file a request for an impartial hearing may be detrimental to the child.

Even with the current 90 day deadline, the determination of the appropriateness of the student's education may not be made until 6 months later. 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.

Federal law and implementing regulations also provide that parents who disagree with a school's proposed placement and who unilaterally place their child in a private school must provide the school with notice that: (1) they are rejecting the placement proposed by the school, (2) state their concerns, and (3) state their intent to enroll their child in a private school at public expense. If this notice is not provided to the school at the most recent IEP meeting prior to the removal of the child from the public school or at least 10 business days prior to the removal of the child from the public school, the impartial hearings officer may reduce the amount of reimbursement awarded to parents through a due process hearing. Accordingly, parents who intend to seek reimbursement for the costs associated with a unilateral special education placement in a private school are supposed to provide the school with a notice of this intent at least 10 business days prior to the removal or at the most recent IEP meeting prior to the removal. Ninety days to then file a request for hearing to seek reimbursement from the State is a reasonable amount of time.

Finally, enlarging the period of time in which a parent may challenge a school's offer of free appropriate public education will make it more difficult for the State to defend against such challenges because memories fade and administrators, teachers, and other service providers working with the student may change from time to time.

It should be noted that Hawaii is not the only state with a 90-day deadline. Texas provides a 1-year deadline to file a request for an impartial due process hearing for all issues relating to a free and appropriate public education. Vermont, like Hawaii,

provides a deadline of 90 days of a unilateral special education placement by the child's parent when the request is for reimbursement of the costs of such placement.

Finally, the United States Supreme Court in Arlington Central School District Board of Education v. Murphy, 126 S. Ct. 2455 (2006), held that non-attorney expert fees for services rendered to prevailing parents in Individuals with Disabilities Education Act cases are not "costs" recoverable from the state. Based upon the Murphy case, it is clear that the 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.

Date of Hearing: March 18, 2008

Committee: House Judiciary

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.B. No. 2004, S.D. 2, H.D. 1, HSCR 1090-08, Relating to  
Education

Purpose: Extends from 90 days to one year of a unilateral special education placement, the time allowed for parents, guardians, or the Department of Education (Department) to request an impartial hearing regarding reimbursement for the costs of a child's placement. Requires that the rules include provisions for the reimbursement of expert witness and other relevant fees and expenses associated with a hearing, limited to the prevailing party. Requires the Department to submit an annual report to the Legislature on the total number of requests for such due process hearings.

Department's Position: The Department does not support S.B. 2004, S.D. 2, H.D. 1, HSCR 1090-08.

Prior to the 2005 Legislative Session, all due process hearing requests filed under the Individuals with Disabilities Education Improvement 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

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the statute of limitations for a specific kind of due process hearing relating to the reimbursement of private school tuition. All other due process hearings continue to be limited to a two-year statute of limitations.

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. It is more beneficial to all parties when disagreements are resolved sooner than later.

Attachment A is the request for hearing form parents may use to file a due process hearing. The form is two pages long and does not require an evidence binder.

HRS §302A-443 properly distinguished a parent's request for reimbursement for private school tuition and limited the filing of a due process hearing request for the reimbursement of private school tuition to 90 days and should not be amended. Hawaii is not the only state with a statute of limitations less than 2 years for private school tuition reimbursement. New Hampshire and Vermont has the same statute of limitations of 90 days for reimbursement of private school tuition. Texas has a one-year statute of limitations for all due process hearing requests.

The United States Supreme Court determined in Arlington Central School District Board of Education v. Murphy, 126 S. Ct. 2455


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that parents who prevail in due process hearings are not entitled to reimbursement of expert witness fees, witness fees and other relevant fees and expenses. Provision (d) is in direct conflict with the United States Supreme Court decision. These fees cannot be reimbursed with federal funds, as proposed by this Act.

Finally, S.B. 2004, S.D. 2, H.D. 1, HSCR 1090-08, provision (e), requires the Department to submit a report to the legislature regarding due process (Attachment B). The Department will be more than willing to provide an annual report to the legislature without the enactment of this provision.

The Department is unable to support S.B. 2004, S.D. 2, H.D. 1, HSCR 1090-08.

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	<p align="center"><b>State of Hawaii DEPARTMENT OF EDUCATION</b></p>	<p align="center"><b>REQUEST FOR IMPARTIAL DUE PROCESS HEARING</b></p>
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For DOE use only:	
Date Received by CAS	Initials

<b>TO:</b> _____ Complex Area Superintendent	<b>RE:</b> _____ Name of Student
_____	_____
Complex Area or District	Date of Birth                      Phone
<b>FROM:</b> _____ Print Name	_____
Check one: <input type="checkbox"/> Parent/Legal Guardian <input type="checkbox"/> Department Representative <input type="checkbox"/> Attorney for Parent	Student's Mailing Address* (*If none, please provide available contact information)
_____	_____
Name of School (that student currently attends)	City                      State                      Zip Code
_____	_____
	DOE Home School (if different)

This is a request for an impartial due process hearing concerning the education of the above-named student. In the spaces below, or on attached sheet(s), please describe the nature of the problem, including related facts and a proposed resolution of the problem as you see it, to the extent known to you. Be specific.

**IDENTIFICATION:** (Referral process prior to evaluation or determination of eligibility)

Description of problem and related facts:

Proposed Resolution:

**EVALUATION:** (Activities involved in information gathering to determine special education/ Section 504 eligibility and/or the extent of special education/modifications and related service needed by the student)

Description of problem and related facts:

Proposed Resolution:

**PLACEMENT:** (The educational setting for the implementation of the IEP/MP)

Description of problem and related facts:

Proposed Resolution:

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**DISTRIBUTION:**    Complex Area Superintendent  
                                 OCISS, Special Education Services Branch  
                                 Parent  
                                 Principal, DOE School of Attendance

OCISS Form 105 (rev. 7/6/05)  
Request for Impartial Due Process Hearing

**PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION:** (Activities/services related to the IEP/MP)

Description of problem and related facts:

Proposed Resolution:

In accordance with Individuals with Disabilities Education Act (IDEA) 2004, before a due process hearing can be held, the school must convene a resolution session (meeting) with the parents and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in this request within 15 days of its receipt by the Department of Education. The resolution session provides an opportunity for parents and the school to discuss and resolve the problem prior to a hearing. The school may not include an attorney at this session unless the parent is accompanied by an attorney. The resolution session will take place unless **both** parties agree to waive the meeting, **or** agree to mediation.

Please initial one of the following:

\_\_\_\_ I would like a resolution session.

\_\_\_\_ I would like to waive the resolution session. (Note: The resolution session will be scheduled unless it is also waived by the other party.)

\_\_\_\_ I would like to request a mediation session.

\_\_\_\_ I do not wish to use the mediation process.

Additional Information (Please check box and fill-in as applicable.)

I will need the services of an interpreter. Please specify: \_\_\_\_\_

I will be accompanied by an attorney at the hearing. If the attorney is known at this time, please provide the following information:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_

Street City State Zip Code Email

I will be accompanied and advised by a parent advocate. If the advocate is known at this time, please provide the following information:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Signature of Requester

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mailing Address: Street City State Zip Code

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax, if available

DISTRIBUTION: Complex Area Superintendent  
OCISS, Special Education Services Branch  
Parent  
Principal, DOE School of Attendance

OCISS Form 105 (rev. 7/6/05)  
Request for Impartial Due Process Hearing

600108

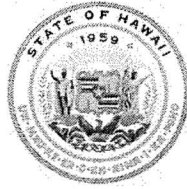


**Department of Education  
Special Education  
Request for Due Process Hearing  
Parent Request for Private School Reimbursement**

<b>School Year</b>	<b># of Requests for Due Process Hearing (RDPH)</b>	<b>RDPH Requesting Private School Tuition Reimbursement</b>	<b>% of RDPH Requesting Private School Tuition Reimbursement</b>	<b># of Pending RDPH Requesting Private School Tuition Reimbursement</b>	<b>% of Pending RDPH Requesting Private School Tuition Reimbursement</b>	<b>Average Number of Days to Resolution for RDPH Requesting Private School Tuition Reimbursement</b>
<b>2005-2006</b>	187	102	55%	0	0%	166
<b>2006-2007</b>	140	93	66%	11	12%	202
<b>2007-2008</b>	86	57	66%	43	75%	

Note: Data as of 2/25/08

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**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  
March 18, 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: SB 2004 SD2 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 (DD) **SUPPORTS THE INTENT OF SB 2004 SD2 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 1 year when the request is for reimbursement of costs of a child's placement; 2) requires DOE to adopt rules to provide that the prevailing party is entitled to the reimbursement of expert witnesses and other relevant fees and expenses associated with a hearing; and 3) requires DOE to submit a report to the Legislature prior to each Regular session on the total number of requests for a due process hearing relating to the reimbursement of costs filed by a parent or guardian of a child with a disability.

The Council initially advocated for 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. The current 90-day statute of limitation definitely puts parents in a disadvantageous position to file a request for a due process hearing for reimbursement for the cost of a child's placement. Most parents are not aware of the law, their rights, or the necessary process to proceed within the 90-day statute of limitation.

The Council continues to advocate for the two years as the deadline.

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The Honorable Tommy Waters  
Page 2  
March 18, 2008

The Council supports the requirement that DOE submit a report to the Legislature regarding the number of requests for due process hearings for reimbursement of costs of a child's placement.

The Council also supports the provision for DOE to establish a process and rules to reimburse expert witnesses for hearings when parents are the prevailing party. 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. Many times, expert witnesses are needed to explain a child's disabilities and special needs.

Thank you for the opportunity to submit written comments in support of the intent of SB 2004 SD2 HD1.

Sincerely,



Waynette K.Y. Cabral  
Executive Administrator

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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:** Senate Bill 2004, SD 2, HD1  
Relating to Education

**Hearing:** Tuesday, March 18, 2008 3:45 PM  
Conference Room 325 , State Capitol

Members of the Committee on Judiciary:

Thank you for the opportunity to provide testimony supporting Senate Bill 2004, SD 2, HD1, 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 in its original version 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. While we acknowledge that

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the HD1 version which increased the timeline from 90 days to one year is an improvement, we continue to prefer the original approach of two years. This bill would confirm our state law to the applicable federal law.

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

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COMMUNITY CHILDREN'S COUNCIL OF HAWAII

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

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

March 17, 2008

The Honorable Tommy Waters (Chair) and the Honorable Blake Oshiro (Vice Chair)  
Committee on Judiciary

RE: SB 2004: Administrative hearing procedures and subpoena power relating to the education of children with a disability:

Representative Waters and Representative Oshiro 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 oppose the review of hearing decision by a state review officer because the state law only allows 30 calendar days for an appeal to be filed in either state or federal court. The review would greatly hinder the appeal process and is unnecessary. We respectfully request that this section of the bill be deleted.

We will be happy to answer any questions that you may have. Thank you for this opportunity to address SB 2004.

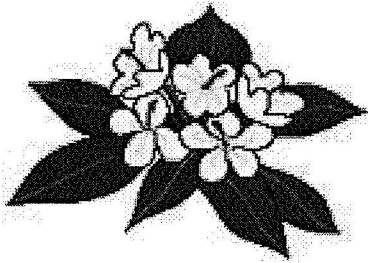
Sincerely,

Charlotte Kamauoha, Parent Co-Chair

Tom Smith, Professional Co-Chair

Signatures on file

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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](mailto:spin@doh.hawaii.gov)

March 18, 2008

TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE  
SB 2004, SD1 - Relating to Education

**Special Education  
Advisory Council**

Ms. Ivalee Sinclair, *Chair*  
Mr. Steve Laracuent, *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 Sheehy  
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) requires the Department of Education to report annually to the Legislature on the number of requests for hearings that relate to a parental request for reimbursement for the costs of a unilateral placement, 2) allows for reimbursement of expert witness and other relevant fees to parties prevailing in a due process hearing, and 3) extends the current 90 day timeline to file a due process complaint for reimbursement of the costs of a unilateral private school placement. However, the Council believes this timeline should be two years, rather than one year.

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. Parents who do not provide notice may have their request for reimbursement costs reduced or denied by the hearing officer. The Council finds the language in IDEA regarding the filing of due process complaints sufficient to provide protections to both parents and schools.

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

March 18, 2008; 3:45 p.m.  
Hawaii State Legislature  
House Committee on Judiciary  
Conference Room 325

**TESTIMONY IN SUPPORT OF SB 2004, SD2, HD1**

Chair Waters, Vice Chair Oshiro, and members of the committees, my name is Rida Ching. I am a parent of a 17 year old boy with Autism.

I offer my strong support for SB 2004, SD2, HD1.

SB 2004, SD2, HD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one year when the request is for reimbursement of costs of a child's placement. SB 2004, SD2, HD 1 requires that the rules include provisions for the reimbursement of expert witness and other relevant fees and expenses associated with a hearing, limited to the prevailing party. SB 2004, SD2, HD1 requires the DOE to submit an annual report to the Legislature on the total number of requests for such due process hearings. (SB2004 HD1)

Again, this is a very stressful and difficult process, and it is not one which is straightforward or collegial. 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 1-year is extremely burdensome. It is also unfair to require Hawaii's families to be limited by a 1-year limitation when other states apply up to a four (4) year statute of limitations (Maine). 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.

While the SD2, HD1 version increases the timeline from 90 to 1-year, however, I prefer the originating bill's approach of two years. Our children deserve a fair and equitable law.

When Hawaii enforces a 2005 statute of limitation unlike the majority of the other forty-seven states, it places an additional burden WITH a differentiation by type of claim (private school placement/"unilateral placement") on its citizens. Only three states does this (New Hampshire, Vermont and Hawaii), the rest of the 47 states do not.

Our concern is not just for Hawaii's children and their families but also the message of how Hawaii cares for its children and their families, a vulnerable population dealing with the effects of special education needs.

Also, in regards to reimbursement provision, parents only are awarded reimbursement of witness fees when they prevail in a due process hearing. This bill would 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 and do not have

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the funds, resources, staff nor deep pockets to readily access independent evaluation when they disagree with the evaluations they are provided for their child(ren). It is only fair that if parents prevail, they should receive reimbursement fees.

Hawai'i's children and families should not have yet another burden to bear when they deal with living with disabilities 24/7 and a stressful IEP process. Children and their families should not be disadvantaged when they are put in a position that they must engage in protected activities on behalf of their children.

*My son is Matthew Ching. He is 17 years old and has been in the DOE system since he was 4 years old. His father and I have gone through many, many IEP meetings and have interacted with a large number of teachers, aides, specialists, coordinators, and administrators in the DOE system. We have gone through several years of not agreeing with the DOE's proposed IEP, and as parents, we are not experts in education or in Autism. We have spent countless hours understanding the IEP process as it relates to Matthew's individual performance and diagnosis, understanding how autistic children like Matthew can be appropriately educated, meeting with teachers and other DOE experts, doing our own research, gathering our own information about educational options, consulting with doctors, educators, psychologist, and other experts, etc.. We are not saying that this has always been the case. In elementary school, Matthew attended an excellent public school, however middle and high school fell quite short. The bottom line is that as parents, we deserve the same rights and opportunities as most other states. It is almost impossible to understand and gather the best information to take the most appropriate action, in just 90-days. It is too much pressure and even causes some impulsive decisions because there is barely enough time to think through all the issues and spend the necessary time with the school and others involved. And it is my opinion that the 90-day limitation gives the DOE and excuse for not "working with" the parent. A parent feels forced to "take it or leave it," meaning "take it or file for due process." At that point the DOE and parents like us are not really working together for the most appropriate result, but instead working against each other (because every step thereafter is part of a legal process), and I believe that only cause more negativity, less trust, and probably more law suits in the end.*

In regards to the effective date of this bill, I respectfully ask that the Judiciary Committee delete the defective effective date of 2050, and make this measure effective upon approval.

Thank you for this opportunity to testify on this important bill.

Sincerely,

Rida N. Ching, parent

[REDACTED]  
Kapolei, Hawaii 96707  
[REDACTED]

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- > March 18, 2008; 3:45 p.m.
- > Hawaii State Legislature
- > House Committee on Judiciary
- > Conference Room 325
- >
- > TESTIMONY IN SUPPORT OF SB 2004, SD2, HD1
- >
- Chair Waters, Vice Chair Oshiro, and members of the committees,

I am a parent. I offer my support for SB 2004, SD2, HD1.

- >
- > SB 2004, SD2, HD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one year when the request is for reimbursement of costs of a child's placement. SB 2004, SD2, HD 1 requires that the rules include provisions for the reimbursement of expert witness and other relevant fees and expenses associated with a hearing, limited to the prevailing party. SB 2004, SD2, HD1 requires the DOE to submit an annual report to the Legislature on the total number of requests for such due process hearings. (SB2004 HD1)
- >

Parents are at a disadvantage at the IEP meetings because they do not always understand the process or the terms used. Filing a due process hearing within 1-year is extremely burdensome. It is also unfair to require Hawaii's families to be limited by a 1-year limitation when other states apply up to a four (4) year statute of limitations (Maine). 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.

- >
- > While the SD2, HD1 version increases the timeline from 90 to 1-year, however, I prefer the originating bill's approach of two years. Our children deserve a fair and equitable law.
- >

Also, in regards to reimbursement provision, parents only are awarded reimbursement of witness fees when they prevail in a due process hearing. This bill would 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 and do not have the funds, resources, staff nor deep pockets to readily access independent evaluation when they disagree with the evaluations they are provided for their children. It is only fair that if parents prevail, they should receive reimbursement fees.

- >
- > In regards to the effective date of this bill, I respectfully ask that the Judiciary Committee delete the defective effective date of 2050, and make this measure effective upon approval.
- >

> Thank you for this opportunity to testify on this important bill.

>  
Deborah Tasato-Kodama 

000118

March 18, 2008; 3:45 p.m.  
Hawaii State Legislature  
House Committee on Judiciary  
Conference Room 325

**TESTIMONY IN SUPPORT OF SB 2004, SD2, HD1**

Chair Waters, Vice Chair Oshiro, and members of the committees. My name is Nino Murray and I am a parent of a child with a autism spectrum disorder.

I offer my strong support for SB 2004, SD2, HD1.

SB 2004, SD2, HD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one year when the request is for reimbursement of costs of a child's placement. SB 2004, SD2, HD 1 requires that the rules include provisions for the reimbursement of expert witness and other relevant fees and expenses associated with a hearing, limited to the prevailing party.

While the SD2, HD1 version increases the timeline from 90 to 1-year, I prefer the originating bill's approach of two years. It has been our experience that even a one year timeline is difficult to keep for parents. Our families who have children with disabilities face an uphill battle everyday to care for our special children. Losing any more legal and legislative supports would place an extraordinary amount of pressure on our already delicate family system. If families cannot support their special children because of any more unfair judicial or legislative actions, the burden of caring for these children will lay heavier on the public system in the end.

The reimbursement for expert witnesses and other fees and expenses associated with a hearing are important issues for us because we lack the resources to adequately access certain services. Reimbursement is also important in securing independent evaluations to properly monitor the quality of educational services.

We are a vulnerable population that are often at the mercy of the educational and other governmental agencies for support. We have so much stress in dealing with our child's educational program and home care services. I hope that you will consider our plea for help and I respectfully ask that the Judiciary Committee delete the defective effective date of 2050, and make this measure effective upon approval.

Thank you for this opportunity to testify on this important bill.

Sincerely,

Nino L. Murray

, Hilo, HI, 96720

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March 18, 2008

Hawaii State Legislature  
House Committee on Judiciary  
Conference Room 325

**TESTIMONY IN SUPPORT OF SB 2004, SD2, HD1**

Chair Waters, Vice Chair Oshiro, and members of the committees, my name is Marlene Nakamoto. I am a parent of a child with autism; her name is Rachel and she is 16 years old.

I offer my strong support for SB 2004, SD2, HD1.

SB 2004, SD2, HD1 would expand the deadline within which to file a request for due process hearing from 90 days to one year when the request is for reimbursement of costs of a child's placement. SB 2004, SD2, HD 1 requires that the rules include provisions for the reimbursement of expert witness and other relevant fees and expenses associated with a hearing, limited to the prevailing party. SB 2004, SD2, HD1 requires the DOE to submit an annual report to the Legislature on the total number of requests for such due process hearings (SB2004 HD1).

This is a very stressful and difficult process, and it is not straightforward. 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 on us to request a due process hearing within one year is extremely burdensome. It is also unfair to require Hawaii's families to be limited by a one year when other states, such as Maine, have up to a four-year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two years of the time a free and appropriate public education was denied.

While the SD2, HD1 version increases the timeline from 90 days to one year, I prefer the original bill's approach of two years.

When Hawaii enforces a 2005 statute of limitation unlike the majority of the other 47 states, it places an additional burden WITH a differentiation by type of claim (private school placement/"unilateral placement") on its citizens. Only three states do this (New Hampshire, Vermont and Hawaii); the other 47 states do not.

Our concern is not just for Hawaii's children and their families, but also the message of how Hawaii cares for its children and their families, a vulnerable population dealing with the effects of special education needs.

Also, in regards to reimbursement provision, parents are awarded reimbursement of witness fees only when they prevail in a due process hearing. This bill would require the

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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 and do not have the funds, resources, staff, nor deep pockets to readily access independent evaluation when they disagree with the evaluations they are provided for their child. It is only fair that if parents prevail, they should receive reimbursement fees.

Hawaii's children and families should not have another burden to bear in addition to living with disabilities 24/7 and a stressful, time-consuming IEP process. Children and their families should not be disadvantaged when they are put in a position that requires protecting activities on behalf of their children.

I work a full-time, professional job, as does Rachel's father, Ryan. He is an Army reservist who was deployed to Iraq in August 2006 for one year. In his absence, I was required to attend IEP meetings during work hours. I used nearly all my vacation and sick leave hours to attend such meetings; my wages were even garnished at one point to make up for my time off from work.

In regards to the effective date of this bill, I respectfully ask that the Judiciary Committee delete the defective effective date of 2050 and make this measure effective upon approval.

Thank you for this opportunity to testify on this important bill.

Sincerely,

Sincerely,

Marlene Nakamoto

[REDACTED]  
Honolulu, HI 96813

[REDACTED]

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Teresa Chao Ocampo

Honolulu, HI 96817

March 18, 2008

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

RE: Testimony for SB 2004 SD2 Relating to Education

Tuesday, March 18, 2008, Room 325, 3:45 pm

I would like to express my SUPPORT for the intent of this bill to extend the current 90 day statute of limitations to 1 year for those parents requesting a due process hearing who seek reimbursement costs for private placement. However, I hope that this committee WILL SERIOUSLY CONSIDER a revision of this bill to change the proposed 1 year timeline into a 2 year timeline in line with the federal IDEA 2004 law.

**Currently, 47 states follow the recommended 2 year statute of limitations. Hawaii is NOT one of these states.** The 2 year timeline gives parents the time they need to make difficult decisions for their child relating to their education. It gives parents time to decide whether or not to pursue due process. The 90 day timeline in essence forces parents to make a decision under duress to proceed to due process when in all probability these parents would not do so otherwise under less pressure. Why must Hawaii be aligned with only TWO other states out of FIFTY that diminish a child's rights under IDEA? Although Hawaii often touts itself as being Keiki friendly, ARE we REALLY being Keiki friendly with our 90 day statute of limitations or even the proposed 1 year statute of limitations? Money is always the major deciding factor in most issues especially those related to education. However, we are talking about human beings, children, specifically, Special Needs Children, children who need the GREATEST amount of assistance out of all of the children in the public school system. A TWO year statute of limitations has been accepted by 47 of the United States. **How must it appear when the state of Hawaii rejects the norm and places its OWN needs ahead of its OWN Special Needs Children?** Some things should just be left alone. In this instance, the 2 year time line should never have been changed.

Consider the following facts taken from both Hawaii's State Advisory Panel website, 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 between the DOE and the parents (more than likely including reimbursement of private placement in several cases).
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 188 due process hearing requests, Private school was a hearing issue in 29 cases and 5 cases included issues with the 90-day timeline for a maximum of 34 cases that

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potentially sought reimbursement of private placement. Many due process hearing requests had multiple issues

8. **Out of the 45 cases resulting in a decision, 34 cases or 76 percent were FAVORABLE FOR THE PARENTS.**
9. Out of the 45 cases resulting in a decision, only 11 cases or 24 percent were favorable for the DOE.

According to the DOE, \$700,000 has been allocated each year for attorney and related fees that result from due process hearings and/or out of court settlements. This amount has remained the same since SY 2002-2003 through 2006-2007 with the exception of SY 2004-2005 just prior to the enactment of the new IDEA law in July 2005. However, given that the Special education population has continued to DECLINE for the past 6 years as well as the average number of due process hearing requests overall in the past 6 years, again with the exception of SY 2004-2005, it is difficult to understand why the 90 day statute of limitations for those handful of parents who seek reimbursement for private placement even exists.

The number of due process hearing requests that seek reimbursement of private placement is not an indication of the actual costs incurred by the DOE. The costs are far less than those suggested by the DOE because most cases raise more than one issue in the hearing and may not win on all issues including reimbursement. Also, the majority of due process cases do not proceed to an actual hearing and a great many are settled between the DOE and the Parents. The settled cases more than likely incur the bulk of the costs related to private placement but the terms of these agreements are not publicly known.

It should be noted that in the SEAC report, 66 cases were settled between the DOE and the Parents. It is also highly likely that these cases were considered "un-winnable" therefore leading to a settlement agreement INITIATED by the DOE. The inclusion of a 90 day statute of limitations for private placement is meant to capture the remaining cases that DO go to hearing thereby potentially decreasing the amount of reimbursements the DOE pays for private placements in all. **The irony here is that settlement agreements can also include reimbursement of private placement. Hypothetically, if 66 SETTLED cases included reimbursement of private placement compared to the 34 cases that probably received a decision including private school and placement, then perhaps the 90 day statute of limitations is addressing the wrong issues.** Nevertheless, how is this situation even minutely equitable for parents?

This current 90 day statute 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 would 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?**

IDEA 2004 currently allows for a reconciliation period between parents and the DOE to resolve differences by requiring the parents to give written notice to the DOE 10 days before removing their child from the public school. If the parents fail to notify the IEP team or the school, the Hearings Officer may reduce or deny the parent's request for reimbursement for the costs of private placement in a due process hearing. Therefore Hawaii's 90 day statute of limitations is unnecessary. Adding a timeline in this situation places additional stress on parents who may already have difficulties in securing counsel, documentation, expert witnesses, and evaluations in preparation for their due process case.

When parents have a legitimate disagreement with the public school, parents do not have the luxury of retaining counsel in legal matters. However, the public school has the option of referring

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to the District Office who will in turn refer to the AG's office for legal advice usually at any time throughout the school year.

Since Hawaii's Department of Education is both the SEA and LEA (state and local educational agency, respectively) parents really have LIMITED RECOURSE when they disagree with the school's offer of a free appropriate public education related to their special needs child. Commonly, the school's offer of FAPE is inappropriate because the school does not have the resources, funding, personnel or appropriate type of classroom placement available to support the child's needs. Ironically, the child's needs are usually identified by the DOE's own assessments and evaluations.

Parents should not be CORNERED into accepting the DOE's offer of 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 failure to provide FAPE is not the fault of the school; however, the best interests of the child should be the main priority. Placing a child into a classroom situation in which he/she is unable to receive some kind of educational benefit will ultimately harm the child in the long run and end up being a waste of DOE and taxpayer money.

I support the intent of SB 2004 SD2; however, I'd like to recommend that your committee pass this measure with the suggested amendment to reestablish the 2 year timeline in line with the current federal law. IDEA 2004 allows parents a 2 year statute of limitation to file for due process and therefore, in a sense, recognizes that parents may need the extra time to resolve issues with the public school relating to placement and other issues relating to the provision of FAPE to their special needs child.

Lengthening this statute of limitations from 90 days will most likely unaffected the costs associated with a due process hearing. As a matter of fact, it may decrease these costs because parents will not be PRESSURED into making an immediate decision to proceed in a due process hearing under the 90 day timeline. With a longer timeline, there is a greater opportunity for the parents to resolve issues with the DOE especially since most parents prefer to avoid due process in the first place.

Additionally, I would like to recommend that this bill require the DOE to establish procedures to reimburse expert witness and relevant fees related to a due process hearing to parents when they are deemed the prevailing party. Most if not all due process hearings include at least one expert witness and many hearings have several expert witnesses. These witnesses not only testify on behalf of the student but for the DOE as well. Parents experience much financial hardship when they go through a due process hearing. Usually, they incur many expenses in preparation of a due process hearing and although the DOE may also have the same argument, parents are doubly penalized. Parents must pay up front costs for tuition, attorney retainer fees, independent assessments and evaluations, documents, child care, time taken off from work to participate in the hearing and many other hidden costs. In addition, parents spend a great deal of time preparing for their case most of which takes time away from their family, including their special needs child. Because parents pay thousands of dollars out of pocket to prepare for due process in addition to paying their taxes to have their child educated in the public school system, many parents just barely survive. For them to have to go to due process under these circumstances just so that their child can receive an appropriate education that they are entitled is the equivalent to David meeting Goliath.

I hope this committee will empathize with parents of special needs children. Please support the reimbursement of expert witness and other relevant fees and expenses associated with a due process hearing as stated in this bill.

Lastly, I would like to recommend that this Committee change the current effective date of this bill under Section 3 from July 1, 2050 to "effective upon approval."

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Thank you for giving me this opportunity to offer testimony for SB 2004 SD2. Give our children a fair chance at receiving an education that is a right of ALL children living in Hawaii, including the special needs children.

Sincerely,

Teresa Chao Ocampo  
Parent of a Special Needs Child

A thick black horizontal bar redacting the signature of Teresa Chao Ocampo.

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Committee On Judiciary  
The House  
March 18, 2008  
TESTIMONY IN SUPPORT OF  
SB 2004, SD2, HD1

ChairWaters, 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 SB 2004, SD1, HD1. This Bill 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. In the original draft of the bill, a two (2) year deadline was provided.

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.

We are sending a dangerous message to our special needs community by limiting the chance for children with disabilities to an appropriate education beyond what is required by law and beyond what is in practice in most other states. Our legacy in Hawaii is one of caring, fairness, and aloha, and I believe that all of Hawaii's special needs children deserve to feel this.

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 other states. I urge you to pass SB 2004, SD2, HD1 and level the playing field for Hawaii's special needs children, and allow them real meaningful access to the due process they deserve. Furthermore, I respectfully ask that the Judiciary Committee delete the effective date of 2050 and make this measure effective upon approval.

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Mahalo,

Erin J. Ritz

[REDACTED]  
Kailua, HI 96734  
[REDACTED]

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March 18, 2008; 3:45 p.m.  
Hawaii State Legislature  
House Committee on Judiciary  
Conference Room 325

TESTIMONY IN SUPPORT OF SB 2004, SD2, HD1

Chair Waters, Vice Chair Oshiro, and members of the committees, my name is Serena Tzeng . I am a parent.

I offer my strong support for SB 2004, SD2, HD1.

SB 2004, SD2, HD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one year when the request is for reimbursement of costs of a child's placement. SB 2004, SD2, HD 1 requires that the rules include provisions for the reimbursement of expert witness and other relevant fees and expenses associated with a hearing, limited to the prevailing party. SB 2004, SD2, HD1 requires the DOE to submit an annual report to the Legislature on the total number of requests for such due process hearings. (SB2004 HD1)

Again, this is a very stressful and difficult process, and it is not one which is straightforward or collegial. 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 1-year is extremely burdensome. It is also unfair to require Hawaii's families to be limited by a 1-year limitation when other states apply up to a four (4) year statute of limitations (Maine). 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.

While the SD2, HD1 version increases the timeline from 90 to 1-year, however, I prefer the originating bill's approach of two years. Our children deserve a fair and equitable law.

When Hawaii enforces a 2005 statute of limitation unlike the majority of the other forty-seven states, it places an additional burden WITH a differentiation by type of claim (private school placement/"unilateral placement") on its citizens. Only three states does this (New Hampshire, Vermont and Hawaii), the rest of the 47 states do not.

Our concern is not just for Hawai'i's children and their families but also the message of how Hawai'i cares for its children and their families, a vulnerable population dealing with the effects of special education needs.

Also, in regards to reimbursement provision, parents only are awarded reimbursement of witness fees when they prevail in a due process hearing. This bill would 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 and do not have the funds, resources, staff nor deep pockets to readily access independent evaluation when they disagree with the evaluations they are provided for their child(ren). It is only fair that if parents prevail, they should receive reimbursement fees.

Hawai'i's children and families should not have yet another burden to bear when they deal with living with disabilities 24/7 and a stressful IEP process. Children and their families should not be

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disadvantaged when they are put in a position that they must engage in protected activities on behalf of their children.

Margaret Lu is my 16 years old daughter; she was diagnosis with Autism Spectrum Disorder and minor Cereal Palsy. Margaret had made tremendous progress since she started in Loveland Academy 2004. However, time is getting short for her to catch up. As a single parent, I not only have to work hard to support family financially, but also need to find the time to take care of Margaret's special needs. Day in and day out, paper work after paper work, meeting after meeting, often, I found out I have not much time for myself to sleep.

In regards to the effective date of this bill, I respectfully ask that the Judiciary Committee delete the defective effective date of 2050, and make this measure effective upon approval.

Thank you for this opportunity to testify on this important bill.

Sincerely,

Serena Tzeng

[REDACTED]  
Honolulu, Hawaii 96817

[REDACTED]

000129

# CARL M. VARADY

ATTORNEY AT LAW

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American Savings Bank Tower  
1001 Bishop Street, Suite 2870  
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Facsimile 808/523-8448

March 17, 2008

Via e-mail

Rep. Tommy Waters, Chair  
Rep. Blake K. Oshiro, Vice Chair  
Committee on Judiciary  
Conference Room 325  
State Capitol  
415 South Beretania Street  
Honolulu HI 96813

Re: TESTIMONY IN SUPPORT OF SB 2004, SD2, HD1  
Hearing: March 18, 2008; 3:45 p.m.

Chair Waters, Vice Chair Oshiro, and members of the committees:

I am an attorney representing parents and their disabled children in Hawai'i. I offer my strong support for SB 2004, SD2, HD1, which amends the current statute in such a manner as to avoid extreme hardships on parents of Hawaii's most significantly disabled children.

SB 2004, SD2, HD1, partially restores the prior two-year deadline applicable to requests for due process hearing. The bill extends from ninety (90) days to one year the period in which parents must file requests for reimbursement of costs of a child's placement in a private school. SB 2004, SD2, HD 1 also restores the ability for parents to seek reimbursement of expert witness and other relevant fees and expenses associated with a hearing, when the are prevailing parties. Finally, SB 2004, SD2, HD1 also requires the DOE to submit an annual report to the Legislature on the total number of requests for such due process hearings. This is information that the Legislature should have to exercise appropriate oversight over the DOE.

Due process hearings are stressful and difficult, no different than any trial. They attempt to resolve disputes from IEP meetings, where parents are often at a disadvantage because they do not understand the process or the terms used. Placing this additional burden of a 90-day statute of limitations on the parents is unfair, as it

does not give them adequate time to evaluate the DOE's proposal and often forces them to file a request for due process before evaluations of their child's needs can be concluded. Under current law, a parent can request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. The exception imposing the 90-day statute of limitations applies only to the parents of children seeking placement in special schools, which consistently involve education of the most severely disabled children.

It is important to note that such reimbursement only occurs when two conditions are met: (1) the parents prove the DOE did not offer a free appropriate public education; and (2) the parents establish that the program they have procured meets the child's unique and individual needs. It is only in circumstances when parents prove these conditions are met, that reimbursement will be ordered.

I can assure you, withdrawing children from the DOE system is not a decision parents make lightly. It is often only after protracted and sometimes contentious deliberations with DOE that such decisions are made. Ninety days simply is not enough time to evaluate the effectiveness of a new program after placement, or obtain data that can be used to support the parents' request. A year of participation in a program will provide the parents and their experts with data that can support their request for reimbursement.

While the SD2, HD1 version increases the timeline from 90 to 1-year, however, originating bill's approach of two years would be more fair. Why the most severely disabled children, those needing special schools, would be subjected to a shorter time period should be considered by the Committee in making its final decisions.

Hawaii's dual limitation period has been adopted by only two other states: New Hampshire and Vermont; the rest of the 47 states do not. What message does this send about how Hawai'i cares for its children and their families?

This bill also would 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, when parents prove that DOE denied their children free appropriate public education. Most parents I represent do not have funds to pay for independent evaluations when they disagree with the evaluations they are provided for their child(ren). Without such evaluations and supporting testimony they face substantial obstacles proving their cases. Children and their families should not be put at such a disadvantage, when they are engaged protected activities on behalf of their children.

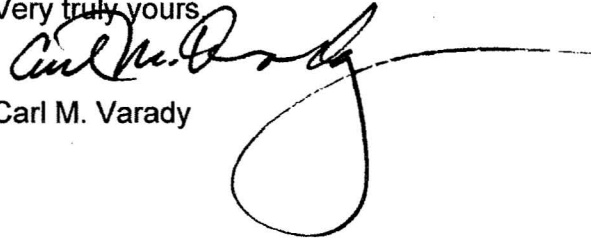
Because of numerous instances in which parents have been denied reimbursement because of the manner in which the 90-day statute of limitations operates, I respectfully ask that the Judiciary Committee delete the defective effective

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date of 2050, and make this measure effective upon approval.

Thank you for this opportunity to testify on this important bill.

Very truly yours

A handwritten signature in black ink, appearing to read "Carl M. Varady". The signature is written in a cursive style with a large, looping flourish at the end that extends to the right.

Carl M. Varady

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