

JUDtestimony

From: Naomi Grossman [naomi_grossman@yahoo.com]
Sent: Tuesday, March 18, 2008 12:56 PM
To: JUDtestimony
Subject: SB2004, SD2, HD1 March 18 Rm 325 3:45pm

LATE TESTIMONY

; 3:45 p.m.

Hawai'i State Legislature
 House Committee on Judiciary

TESTIMONY IN SUPPORT OF SB 2004, SD2, HD1

Chair Waters, Vice Chair Oshiro, and members of the committee, my name is Naomi Grossman. I am the president of the Autism Society of Hawai'i.

The Autism Society of Hawai'i offers its strong support and intent of SB 2004, SD2.

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 (ASH) 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.

First of all, thank you for considering this important need for children eligible for special education under the Individuals with Disabilities Education Act (I.D.E.A.). 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, HD1 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 a due process hearings. (SB2004 HD1).

I.D.E.A. 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.

In addition, I.D.E.A. 2004 requires parents to attend a reconciliation session, also known as the resolution session within 15-days of disagreeing with the Department's offer of a free appropriate public education (FAPE). The Resolution Session is scheduled as an additional requirement under the reauthorization of I.D.E.A. to allow the IEP team members to convene a meeting to resolve differences at the school level. In addition, schools may continue to visit and observe students once they are placed in the private school setting after the fulfillment of the 10-day notice and resolution session.

We respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

Placing yet another requirement upon the parents of having to request a due process hearing within 1-year is extremely burdensome when the process is not always collegial and information is not always straightforward or necessarily accurate.. Parents describe the process as being stressful and difficult to understand interpreting the procedural requirements

It is also unfair to require Hawai'i's families to be limited by a 1-year limitation when other states apply up to a four (4) years statute of limitations, such as Maine does. 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.

Expanding the 90-day limitation to a 1-year statute of limitation with a differentiation by type of claim for private placement/"unilateral placement" is an improvement from the 2005 enactment of the 90-days statute of limitations, but, remains restrictive to families who lack the expertise and experience and wherewithal who also needs to understand the complexities of a federal I.D.E.A. law. Including, understanding the differences between circuit courts of appeals and a state law that may be more restrictive than the federal law.

When school staff disagrees with a current private school placement, they do not file a request for hearing against the parent. The Department changes the IEP document to reflect the changes. If a parent disagrees, the parent must file a request for a due process hearing. Schools/Department can change the IEP document even if the parent disagrees and even if the law requires that parents are equal participants in the decision-making process. As a result of the 2005 U.S. Supreme Court *Schafer v. West* decision, the burden of proof in a due process hearing is placed on the party who files a request for a due process hearing even when it was the Department who gutted the child's program was the party that changed the program placement, and not the child and his family. Educational cases are not traditional court cases, yet, due to a U.S. Supreme Court decision, the parent must prepare to prove the defective IEP devised by the Department.

Even in a federal study, it shows that it is the parents, more so than the Department, who enforces accountability in schools. The National Council on Disability, in its January 2000 report reaffirmed the reality that parents of children with disabilities are the primary enforcers of IDEA. When the burden is placed on the parent, the Department does not have to defend that the IEP document provides FAPE, it is the parent who must prove that the IEP does not.

Parents are disadvantaged. They do not have the funds or readily accessible staff, resources, equipment and the deep pockets to put their case together when considering filing a request for a due process administrative hearing.

When parent consider pursuing filing for such a request, they also need to find an attorney who specialized in this complex area of need and wait to see if their case is accepted. Generally private schools will not accept students unless they are assessed, first. Parents are disadvantaged and put in a

position when they must file, when resources are scarce, and when they are not necessarily equipped or knowledgeable to properly pursue such a complex action as filing a request for a due process.

Please reconsider the 2-year I.D.E.A. default statute of limitations as an option available to families should they need to be in a position to engage in protected activities on behalf of their children. While the SD2 HD1 version increases the timeline from 90 to 1-year, we prefer the original approach of two years. Hawai'i's children deserve a fair and equitable law.

Also, Hawai'i currently enforces a 2005 statute of limitation unlike the other forty-eight states across the nation (including the District of Columbia) when it places an additional burden WITH a differentiation by type of claim (private school placement or "unilateral placement") on its citizens. Only New Hampshire, Vermont and, now, Hawai'i does this. The other forty-eight states do not.

Even if Hawai'i considered a 1-year statute of limitations, it would be in the minority of six or seven states who does this.

Our concern is not just for Hawai'i's children and their families but also how Hawai'i cares for its children and their families, a vulnerable population to special education needs.

We are grateful to the House Committee on Judiciary for hearing this important concern again and consider these important potential amendments for SB 2004, SD2, HD1 that include:

- Amend Hawai'i's general statute of limitations to a two (2) year period which is more in keeping with the rest of the nation and with the I.D.E.A. and federal regulations.
- The rule making requirement of reimbursement of expert witness and other relevant fees to parents who prevail in due process.

The Autism Society of Hawai'i offers its strong support for this bill SB 2004, SD2, HD1 with amendments. Thank you for the opportunity to provide testimony in support of this important bill.

Sincerely,

Naomi Grossman
Autism Society of Hawai'i, president

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From: Wendell & Linda Elento
Members of The Hawaii Down Syndrome Congress

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

Re: JUD March 18, 2008, 3:45pm
**SB2004, In Support
DOE; SPED; DUE PROCESS**



Thank you for the opportunity to present testimony in support of **SB2004**.

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

1. Hawaii Department of Education's Procedural Safeguards outline the current State requirements for a parent to request a due process hearing.

2. WE SUPPORT A 2-YEAR TIMELINE FOR REQUESTING A DUE PROCESS HEARING IN ALL MATTERS.

Individuals with Disabilities Education Improvement Act of 2004

((C) Timeline for requesting hearing.--A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

((D) Exceptions to the timeline.--The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to--

((i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

((ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.

When did Hawaii make the “explicit time limitation for requesting such a hearing”?

Written testimonies by Superintendent of Education given to the Legislature prior to the passage of SB1661 (Act 158) in 2005 were not sufficient to have resulted in a change in HRS 302A-443 creating a 90-day statute of limitations for a parent to file for an impartial due process hearing to recover tuition costs when necessary to unilaterally place a student (not the public school’s decision for the student.) Does that mean the parent has to file again to request for reimbursement for the subsequent 90 days, and so forth?. These written testimonies had no appearance of evidence to conclude that a need for such a time limit existed or that such a time limit would positively affect the education of children with disabilities. The time limit clearly benefits the DOE and extremely limits a child and parent’s civil rights.

3. Public Participation

The IDEA (1997 and 2004) requires public participation to make change to state laws, rules, regulations which doesn’t seem to have been adequately followed.

IDEA: ``SEC. 612. <<NOTE: 20 USC 1412.>> STATE ELIGIBILITY.

...
`` (19) Public participation.--Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

4. Legal Services

Recently the federal district court in Hawaii agreed that **\$50,000** (approx.) was due to attorney of client prevailing with Administrative Hearings Officer’s Decision for an IDEA Case.

Lack of Legal Services and Funding Available to Parents; Consider the Only Opportunity for a Child to Receive Entitled Special Education Services is for a Parent to Fight Due to Lack of Legal Representation and Funding Available.

HB3422_HD2 passed the Senate Judiciary Committee on March 17, 2008. Referenced in this bill is the Access to Justice Hui report (November 2007) which reports on the dire need for legal representation of individuals who simply cannot afford attorneys – **including individuals seeking their entitlements of special education** -- but more importantly noted that attorneys are not available to all clients seeking legal assistance due to lack of funding.

5. Recent Supreme Court Case Determined Parents May Represent Themselves (Supporting Their Special Needs Children) In Court.

6. WE SUPPORT REIMBURSEMENT OF EXPERT FEES TO PARENTS AS THE PREVAILING PARTY (THIS WOULD APPLY WHETHER THE EXPERT WAS SEEKING PAYMENT FOR TESTIFYING OR ADVOCATING).

Parents, including myself, cannot possibly have a due process hearing (similar to a court trial) without expert witnesses. The Department of Education is the expert in the eye of the administrative hearings officer until proven by the preponderance of the evidence by the parents.

7. Who Pays for the Implementation of IDEA's Safeguards?

IDEA: `` (h) Safeguards.--Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded--

`` (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

`` (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

`` (3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

`` (4) the right to written, or, at the option of the parents, electronic findings of fact and decisions...

8. Although Allowed by IDEA, Hawaii Does Not Offer an Administrative Appeal. Instead Appeals (Civil Action) Are Made Directly to State or Federal District Court.

9. Hawaii Administrative Rules' Time Limit For Appeal Is 30 Days; Whereas The IDEA Allows for 90 Days. WE SUPPORT THE ADDITION OF THE TIME LIMIT FOR AN APPEAL TO COURT OF 90 DAYS.

IDEA: `` (i) Administrative Procedures.--

...
`` (B) Limitation.--The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.

10. Hawaii's Dysfunctional Due Process System: Legal Training

When the DOE pays a consultant, who is not a Hawaii-licensed attorney, to train the Administrative Hearings Officers, Board of Education members, DOE personnel, advocates and parents on the federal special education law (the IDEA), one does not have to wonder why our hearings officers and DOE personnel follow the same narrow path to implementing the requirements of the IDEA. Our only recourse is filing a lawsuit at state or federal court within 30

days of a hearing decision per Hawaii Administrative Rules. Court requires hefty filing fees, legal know-how, deadlines. We support an appeals process with the opportunity to present more evidence without a court system. There is room for great error during administrative hearings due to lack of knowledge of the process and requirements of proving by preponderance of the evidence.

11. Number of Due Process Hearings.

Last week, the Special Education Advisory Council (SEAC) reported only on the hearing decisions reviewed by SEAC (note that many due process cases were settled or withdrawn before the hearing commences and not included in these numbers):

School year 2004-05 There were 63 hearing decisions reviewed by SEAC, of which more than half involved private school reimbursement.

2005-06 There were 51 hearing decisions reviewed by SEAC, of which 29 (57%) involved a request for private school tuition reimbursement.

No figures were available for 2006-07 or this school year, as the Due Process Committee is still reading and cataloguing the decisions.

<http://www.doe.k12.hi.us/reports/specialeducation/dueprocess/index.htm>

SEAC does not have any information on appeals. It is an area of information that SEAC has been seeking from either DOE or the Administrative Hearings Office.

12. WE SUPPORT AN EFFECTIVE DATE OF 07/01/2008.

HEARINGS ON DUE PROCESS COMPLAINTS

IMPARTIAL DUE PROCESS HEARING

34 CFR §300.511

General

Whenever a due process complaint is filed, you or the Department must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections on pages 22 and 26.

The Department is responsible for convening hearings under a “one-tier” system. “One-tier” refers to a due process system in which the Department or another State-level agency or entity is responsible for convening due process hearings, and an appeal from a due process hearing decision is directly to a court.

Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the Department or any State agency that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer’s objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA 2004, and Federal and State regulations pertaining to the IDEA 2004, and legal interpretations of the IDEA 2004 by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The Department must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

Subject matter of due process hearing

The party (you or the Department) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Timeline for requesting a hearing

You or the Department must request an impartial hearing on a due process complaint within two years of the date you or the Department knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

1. The Department specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**
2. The Department withheld information from you that it was required to provide to you under Part B of the IDEA 2004.

Statute of Limitations in Claiming Reimbursements for Unilateral Placements in Private Schools

In accordance with Hawaii Revised Statutes, §302A-443 Administrative hearing procedures and subpoena power relating to the education of children with a disability, there is a 90-day statute of limitations in claiming reimbursements for unilateral placements, including special education and related services, in private schools. That is, if you disagree with the availability of a free appropriate education in the public schools, place your child in a private school or facility and have questions regarding the financial responsibility for all costs of education at the private placement, including special education and related services, a hearing for reimbursement for special education and/or related services must be requested **within 90 days of placement**. Please note that placement occurs on the date the student enrolls or has his/her name placed on the private school or facility register, which may be prior to the student’s (physical) attendance.

HEARING RIGHTS

34 CFR §300.512

General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Present evidence and confront, cross-examine, and require the attendance of witnesses;

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

34 CFR §300.535

Part B of the IDEA 2004 does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
2. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

Transmittal of records

If the Department reports a crime committed by a child with a disability, the Department:

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

GENERAL

34 CFR §300.148

Part B of the IDEA 2004 does not require the Department to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the Department made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the Department, if the private school is located in Hawaii, must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

Reimbursement for private school placement

If your child previously received special education and related services under the authority of the Department, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the Department, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment, including special education and related services, if the court or hearing officer finds that the agency had not made FAPE available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the Department.

A hearing must be requested for reimbursement of all costs of education at the private placement, including special education and related services, within 90 days of your unilateral special education placement of your child in the private school or facility. (See further discussion under the sub-heading *Statute of Limitations in Claiming Reimbursements for Unilateral Placements in Private Schools* on page 30.)

Limitation on reimbursement

The cost of reimbursement described in the paragraph above may be reduced or denied:

1. If: (a) At the most recent individualized education program (IEP) meeting that you attended prior to your removal of your child

from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the Department to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the Department of that information;

2. If, prior to your removal of your child from the public school, the Department provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; or
3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

- Must not be reduced or denied for failure to provide the notice if: (a) The school prevented you from providing the notice; (b) You had not received notice of your responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; and
- May, in the discretion of the court or a hearing officer, not be reduced or denied for the parents' failure to provide the required notice if: (a) The parent is not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to the child.

FREE AND LOW-COST LEGAL AND OTHER SUPPORT SERVICES

<p>Aloha United Way 200 N. Vineyard Blvd, Suite 415 Honolulu, HI 96817 Call 211 directly from any island for any resource information on health and human services, including legal assistance in special education.</p>	<p>Children's Community Council Office 1177 Alakea Street, B-100 Honolulu, HI 96813 Telephone: 586-5363 Toll Free: (800) 437-8641</p>
<p>Hawaii Disability Rights Center 900 Fort Street Mall, Suite 1040 Honolulu, HI 96813 Telephone: 949-2922 (Offices on all islands: (800) 882-1057)</p>	<p>Hawaii Families as Allies 99-209 Moanalua Rd. Suite 305 Aiea, HI 96701 Telephone: 487-8785 Toll Free: (866) 361-8825</p>
<p>Lawyer Referral Services 1136 Union mall, Penthouse #1 Honolulu, HI 96813 Telephone: 537-9140</p>	<p>Learning Disabilities Association of Hawaii 200 N. Vineyard Blvd. Suite 310 Honolulu, HI 96817 Telephone: 536-9684</p>
<p>Maximum Legal Service Corporation/Disabled Rights Legal Project 200 N. Vineyard Blvd. Suite 300 Honolulu, HI 96817 Telephone: 585-0920</p>	<p>Special Parent Information Network 919 Ala Moana Blvd., Room 101 Honolulu, Hawaii 96814 Telephone: (808) 586-8126 Email: accesshi@aloha.net</p>



AUTISM SPEAKS
It's time to listen.

Kalma K. Wong
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March 18, 2008

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

LATE TESTIMONY

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

Re: In support of amending SB2004, March 18, 2008, 3:45 p.m., Room 325

Dear Chair Waters, Vice-Chair Oshiro, and members of the House Judiciary Committee:

I am writing to express my support for Senate Bill 2004, which extends the deadline to file a request for a due process hearing for reimbursement for the costs of placement of a child from 90 days to 180 days.

However, please consider amending this bill by extending the deadline to 2 years which would realign it with federal law. The current 90-day statute of limitations is extremely unfair to parents of children with disabilities. Most parents do not know their rights or the law enough to be able to make the decision to file for reimbursement within a mere 90 days. Making the decision for private placement is one that takes much thought and consideration, and is certainly not taken lightly. It implies that the family has run out of options with the DOE, and therefore must find, on their own, an appropriate placement for their child in order for that child to receive an appropriate education based on his/her unique needs. Trying to find an alternative placement for a child is daunting enough for any family. And to compound that with having to decide to file for reimbursement, plus having to find an attorney, and then to actually proceed with the filing – all within a mere 3 months – is more than most families can bear. Extending the deadline to 2 years is reasonable and fair.

Also, please amend the bill to include the reimbursement of fees for expert witnesses and other relevant fees and expenses associated with a hearing. Specifically, please amend the bill to entitle the reimbursement of expert witness fees and expenses for the **family or guardian(s)** if family or guardian(s) prevail in a fair hearing. The Department of Education always has the advantage in a due process hearing, as they have easy access to important information and expert witnesses, not to mention legal counsel from the Attorney General's office.

Please amend and pass Senate Bill 2004. Thank you for your consideration.

Sincerely,

Kalma K. Wong
Hawaii Chapter President &
Advocacy Chair for Hawaii,
Autism Speaks
(Formerly Cure Autism Now)

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

LATE TESTIMONY

TESTIMONY IN SUPPORT OF SB 2004, SD2, HD1

Chair Waters, Vice Chair Oshiro, and members of the committees, my name is Ann Holloway Van Natta. I am the parent of a child with special needs and also a special education teacher for the State of Hawaii Department of Education.

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, 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, and also requires the DOE to submit an annual report to the Legislature on the total number of requests for such due process hearings. (SB2004 HD1)

As a teacher of special needs teens on the Leeward Coast, I have been to a large number of individualized education program (IEP) meetings for students from all types of families. This is a very stressful and difficult process for parents, and (although it should be) 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. Some of these parents are actually grandparents, foster parents, or parents with very limited English. If the school is refusing to provide reasonable and needed services and an appropriate education for their child, these families may need to move the child quickly to an appropriate educational setting so that the child does not lose crucial years where learning and brain development can occur (instead of waiting and fighting for years like I did). It is extremely unreasonable to give the parents only 90 days to figure out the process and comply with the deadlines of filing for due process when they have had to find an appropriate placement for their child because the DOE did not provide one.

While those opposing the bill will tell you of one or two states in the Union that have 90-day requirements for filing, the majority (47 states) still allow two years for parents to file for due process. 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 other states do this (New Hampshire, Vermont and Hawaii), the rest of the 47 states do not.

An amendment requiring 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 is strongly supported. In many cases the DOE personnel or those contracted by the DOE to provide the 'assessments' to determine eligibility for services or placement are not always competent or qualified to be making some of the decisions regarding a child's eligibility, diagnosis and educational needs. Parents, especially new parents, still trust school administrators as people who are only there to help their children. It takes more than 90 days to find out that this is, unfortunately, not always the case.

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

In my own son's case, I kept trying to work things out the way the DOE requested and allowed their assessments and so-called professionals to guide my son's education. Meanwhile, in meeting after meeting I pleaded for a higher level of services, only to be refused time and again by non-medically-trained school administrators telling me my son did not need such services when it was painfully obvious that he did.

I did not have funds to pay for independent doctors to prove they were wrong. By the time I had learned the rules and how I could fight the school's refusal to provide a FAPE, my son had lost precious years of his life and his education. He still had not been correctly diagnosed and by then needed services that were not even available in Hawaii. He is now still 6,000 miles away in a mainland placement to which the State must fly me every three months and has been there for three years. I miss him terribly and can tell you first hand how unfair the system can be to families.

The last thing these families of special needs kids need is the extra burden of having to file a case quickly or lose the chance to be reimbursed, or the burden of having to pay for the "expert" witnesses that the State SHOULD have been using THEMSELVES in the first place to assess the children to make the correct diagnoses and write and implement appropriate effective IEP's which provide the child with the correct educational program and placement and the necessary services to benefit from his education!

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,

Ann Holloway Van Natta
91-351 A Ewa Beach Rd.
Ewa Beach, HI 96706
808.689.6282
annsongs2@aol.com

Amoreena Rabago

From: christina [REDACTED]
Sent: Thursday, March 27, 2008 10:18 AM
To: All Senators
Cc: All Reps
Subject: TESTIMONY IN STRONG SUPPORT OF SB 2004, SD2, HD2.

Dear Legislators,

**TESTIMONY IN STRONG SUPPORT OF
SB 2004, SD2, HD2**

I strongly support the deadline within which to file a request for due process hearing from ninety (90) days to one (1) year when the request includes reimbursement of costs of a child's private placement. It also requires the Department of Education (DOE) to submit a report to the Legislature on the number of requests for due process relating to reimbursement for a child's placement and to exercise oversight of a child who has undergone unilateral special education placement. There are an insufficient number of adequate placements for a child with special needs in Hawaii, and it can take at least one year to find the right fit for the child.

In addition I ask that new wording be added to SB 2004, SD2, HD2.

The department shall adopt rules that conform to the requirements of any applicable federal statutes or regulations pertaining to the impartial hearing based on the education of a child with a disability. The rules:

Shall provide that the prevailing party is entitled to the reimbursement of attorneys' fees and expenses associated with a hearing. For the purposes of this subsection, the term 'attorneys' fees' shall include the fees of expert witnesses including the reasonable costs of any test or evaluation necessary for the parent's or guardian's case in the action or proceeding.

Finally, I respectfully ask that the measure become effective upon approval, and that the amendments contained in Section 1 of the bill remain in effect without the drop-dead date of July 1, 2010.

Mahalo for your support,
Christina Chang
Waihe'e, Maui