

Date of Hearing: March 28, 2008

Committee: House Finance

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.B. No. 2004, S.D. 2, H.D. 2 (HSCR 1334-08), 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 the Department to monitor all children who have undergone unilateral special education placement. 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. 2 (HSCR 1334-08).  
Prior to the 2005 Legislative Session, all due process hearing requests filed under the Individuals with Disabilities Education Improvement Act (IDEA) were limited to a general state statute of limitations of two years. The 2005 Legislation Session enacted Hawaii Revised Statutes (HRS) §302A-443 which distinguished the statute of limitations for a specific kind of due process hearing relating to the reimbursement of private school tuition. 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 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.

S.B. 2004, S.D. 2, H.D. 2 (HSCR 1334-08) 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.

Provision (f) requires the Department to monitor students unilaterally placed in a private school whether or not the parents plan to request reimbursement. This provision does not limit the monitoring to special education students, but all students who leave the Department to attend a private school. In addition, the monitoring continues for the student's entire school career.

The Department is unable to support S.B. 2004, S.D. 2, H.D. 2 (HSCR 1334-08).

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

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

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

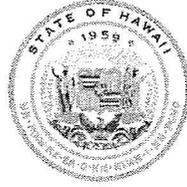
DISTRIBUTION: Complex Area Superintendent  
OCISS, Special Education Services Branch  
Parent  
Principal, DOE School of Attendance

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

**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



**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 28, 2008

The Honorable Marcus R. Oshiro, Chair  
House Committee on Finance  
Twenty-Fourth Legislature  
State Capitol  
State of Hawaii  
Honolulu, Hawaii 96813

Dear Representative Oshiro and Members of the Committee:

**SUBJECT: SB 2004 SD2 HD2 – 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 HD2**. The purpose of the bill is to: 1) extend the deadline within which to file a request for an impartial due process hearing relating to 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 unilateral placement; 2) require 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; and 3) requiring DOE to exercise oversight and monitoring of all children who have undergone unilateral special education placement.

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.

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 Honorable Marcus R. Oshiro  
Page 2  
March 28, 2008

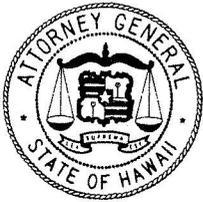
The Council respectfully requests that this Committee consider reinstating the provision for DOE to establish a process to reimburse expert witnesses for hearings when parents are the prevailing party. This provision would provide a level of parity for parents and other relevant persons as expert witnesses 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 HD2.

Sincerely,

A handwritten signature in black ink, appearing to read "Waynette K.Y. Cabral". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Waynette K.Y. Cabral  
Executive Administrator



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2004, S.D. 2, H.D. 2, RELATING TO EDUCATION.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Friday, March 28, 2008      **TIME:** 4:30 P.M.

**LOCATION:** State Capitol, Conference Room 308

*Deliver to: State Capitol, Room 306, 2 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 Oshiro and Members of the Committee:

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 ("DOE") 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 and requires the DOE to exercise oversight and monitoring of any child who has undergone a unilateral special education placement.

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

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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.

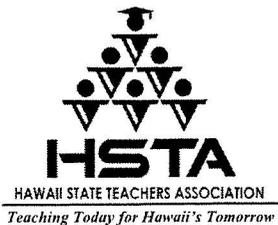
Federal law and implementing regulations also provide that parents who disagree with a school's proposed placement and who unilaterally place their child in a private school must provide the school with notice that: (1) they are rejecting the placement proposed by the school, (2) state their concerns, 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.

The Attorney General respectfully requests that this bill be held by the Committee.



1200 Ala Kapuna Street λ Honolulu, Hawaii 96819  
Tel: (808) 833-2711 λ Fax: (808) 839-7106 λ Web: www.hsta.org

**Roger K. Takabayashi**  
President

**Wil Okabe**  
Vice President

**Karolyn Mossman**  
Secretary-Treasurer

**Mike McCartney**  
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON  
FINANCE

RE: SB 2004, SD2, HD2 – RELATING TO EDUCATION.

March 28, 2008

ROGER TAKABAYASHI, PRESIDENT  
HAWAII STATE TEACHERS ASSOCIATION

Chair Oshiro and Members of the Committee:

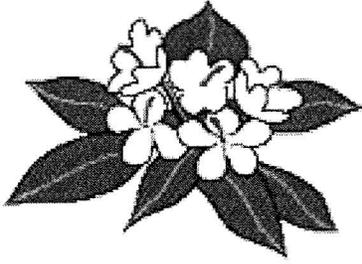
The Hawaii State Teachers Association opposes SB 2004, SD2, HD2.

The Association believes due process is best served when it is not delayed. SB 2004 SD2, HD2, in its present form will allow parents of children with disabilities to apply for a hearing for reimbursement of the cost of placing their child in a private institution.

A child's placement outside of the public school system is a voluntary action on the part of the parents. When parents decide to place their child into a private school, they know they will incur a cost. Because the parent or guardian should know in advance that they will be requesting reimbursement, we believe that three months is a reasonable and sufficient timeframe within which to request a hearing for reimbursement. Therefore, we believe that parents need to make a timely and conscientious decision to pursue reimbursement by the state and not delay their request for the hearing. If the parents need more time to prepare for the hearing they can request the time after they submit their request for reimbursement.

We urge the committee to not pass this bill.

Thank you for the opportunity to testify.



**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

March 28, 2008

**Special Education  
Advisory Council**

**TESTIMONY TO THE HOUSE FINANCE COMMITTEE**  
**SB 2004, HD2 - Relating to Education**

Ms. Ivalee Sinclair, *Chair*  
Mr. Steve Laracuate, *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 Sheehey  
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** portions of the above bill, as amended, that 1) require 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, and 2) 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 180 days.

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.

The Council supports a section in the original bill and in SB2004, HD1, as amended, that allows reimbursement to parents for expert witness and other related fees, when a parent prevails in a due process hearing. Without the prospect of recouping expert witness fees, parents are at a distinct disadvantage in a due process hearing. They are required to prove by a preponderance of the evidence that the Department failed to provide for FAPE for their child, and yet they may not be able to afford the cost of expert witnesses to help prove their case. The Department on the other hand, has deep pockets and free reign to compel its



Testimony re: SB 2004, HD2  
March 28, 2008  
Page 2

own employees to testify as expert witnesses at these hearings. The Council respectfully requests, therefore, that your Committee reinstate the language in SB 2004, HD1 regarding reimbursement of expert witness fees, in order to level the playing field.

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

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

**To:** House Committee on Finance  
**From:** Gary L. Smith, President  
Hawaii Disability Rights Center  
**Re:** Senate Bill 2004, SD 2, HD2  
Relating to Education  
  
**Hearing:** Friday, March 28, 2008 4:30 PM  
Conference Room 308 , State Capitol

Members of the Committee on Finance:

Thank you for the opportunity to provide testimony supporting Senate Bill 2004, SD2, HD2, 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 the current HD 2 version increased the timeline from 90 to one year, we prefer the original approach of two years. This would confirm our state law to the applicable federal law. We also support the reinstatement of the provision providing for expert witness costs and other fees for the prevailing party. This provision was contained in the HD1 version and deleted in the HD2 version.

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



COMMUNITY CHILDREN'S COUNCIL OF HAWAII LEGISLATIVE COMMITTEE

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

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

March 27, 2008

The Honorable Marcus R. Oshiro (Chair) and the Honorable Marilyn B. Lee (Vice Chair)  
Committee on Finance

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

Representative Oshiro and Representative Lee 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

**FINTestimony**

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**From:** Naomi Grossman [naomi\_grossman@yahoo.com]  
**Sent:** Thursday, March 27, 2008 10:58 AM  
**To:** FINTestimony  
**Subject:** Feb 28 4:30pTestimony for AGENDA#3 SB2004:Relating to Education, House Finance Conf Rm 308

**Committee On Finance  
The State House of Representatives**

**Friday, March 28, 2008  
(I plan to testify at the 4:30p.m. committee hearing)**

**AGENDA #3  
TESTIMONY IN STRONG SUPPORT OF  
SB 2004, SD2, HD2**

Chair Oshiro, Vice Chair Lee, and members of the Committee, my name is Naomi Grossman. I am the president of the Autism Society of Hawai'i and the parent of a student living with the effects of autism spectrum disorders.

SB 2004, SD2, HD2 would expand 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.

Hawai'i's current 90-day statute of limitations for parents seeking reimbursement for "unilateral placement" does not provide for sufficient time to evaluate the DOE's offer of a free and appropriate educational program (FAPE) or its proposed public school setting. Neither does the current 90-day time period provide parents with adequate time to locate an appropriate private school, evaluate it and enroll their child there. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used and placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. The individualized educational program (IEP) planning meeting process is a very stressful and difficult process, and it is not one which is straightforward or collegial.

It is unfair to require families in Hawai'i to be limited to the 90-day limitation when the majority of states (including Washington, D.C.) apply up to a two (2) year statute of limitations. Hawaii is one of only three states with a 90-day limitation with a differentiation to type of claim. The remaining forty-seven states permit up to a two (2) year time period to file a request for due process where private placement is an issue, and, Maine provides a four (4) year statute of limitations.

While the 1-year statute of limitations is an improvement from the 90-days limitation, we respectfully ask for a 2-year statute of limitations. Doing so, will confirm Hawai'i's limitations together with the majority of states across the nation and the federal Individuals with Disabilities Education Act (I.D.E.A. 2004). Hawai'i has a special place in the hearts and minds of people across the nation and this legislation will demonstrate how Hawai'i cares for its children.

It is equally important to have the DOE develop rules for reimbursement of expert witnesses and other related expenses to the parents. An amendment in line with HB 2186 HD2 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 to the prevailing party is strongly supported.

The intent and the role of parents under the I.D.E.A. procedural safeguards requires parents to be equal participants in the decision-making process. In the Senate Congressional Record of 1985, Senator Simon stated, "The key to assuring appropriate education services for handicapped children was seen to be parental participation in all aspects of educational planning and decision-making for their children.

The act provided in those States which accept Public Law 94-142 funds, an enforceable right to a free and appropriate public education for all handicapped children, and established due process procedures, including the right to judicial review, to protect those rights. Throughout our consideration of the Education of All Handicapped Children Act there was an awareness that all handicapped children must be provided equal protection under the law and this was the clear intent of Public Law 94-142...The provisions of S.415 reaffirm and clarify the original intent of Congress in providing a variety of effective avenues for parents to use in resolving questions concerning the appropriate educational services their handicapped children should receive."

Congress' part in the legislative history of the Handicapped Children's Protection Act of 1986. "Joint Explanatory Statement of the Committee of the Conference," H.R. Conference Report 99-687 (1986) in support of the Handicapped Children's Protection Act said that parents should recover expert witness fees just like attorney's fees.

Very often expert witnesses are needed to testify at the due process hearings to explain a child's special needs and disabilities. Many parents do not have the financial means to pay for expert witnesses. Many of us have to take off from work to attend IEP meetings as well as the due process hearings. The DOE on the other hand can rely on state funds to compensate the expert witnesses who testify on behalf of the Department. In its earlier version, SB 2004 contained a section requiring the DOE to adopt rules providing for the reimbursement of expert witness and other relevant fees to the prevailing party. I ask that this Committee consider the inclusion of a similar provision in the current version of SB 2004, SD2, HD2 with the following language that tracks with HR 4188 which was introduced in the United States Congress on November 20, 2007 as part of the I.D.E.A. Fairness Restoration Act and which clarifies that expert witness fees are intended to be recoverable by the prevailing parents or guardians as opposed to the school district:

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 as the drop-dead date would only cause confusion to the detriment of parents of special needs children.

I strongly support SB 2004, SD2, HD2 which would level the playing field for special needs children

and urge this Committee to pass this measure with the amendments suggested.  
Thank you for the opportunity to provide testimony on this important concern.

Sincerely,

Naomi Grossman  
Autism Society of Hawaii, president

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Kalma K. Wong  
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Kaneohe, Hawaii 96744  
(808) 393-5218  
[flute866@gmail.com](mailto:flute866@gmail.com)

March 28, 2008

Representative Marcus Oshiro  
Chair, House Judiciary Committee  
Hawaii State Capitol, Room 306  
415 South Beretania Street  
Honolulu, Hawaii 96813

Representative Marilyn Lee  
Vice-Chair, House Judiciary Committee  
Hawaii State Capitol, Room 434  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: In support of amending SB2004, March 28, 2008, 4:30 p.m., Room 308

Dear Chair Oshiro, Vice-Chair Lee, and members of the House Finance 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 private placement of a child from 90 days to one year.

Please, however, consider amending this bill by extending the deadline to 2 years, which would realign it with federal law. Hawaii is one of only three states in the country that has a 90-day statute of limitations for private placement reimbursement. This rule 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, and aligns Hawaii with the majority of the states in the nation.

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)

Representative Marcus Oshiro, Chair  
Representative Marilyn Lee, Vice-chair  
Committee on Finance  
Hawaii Centers for Independent Living

Friday, March 28, 2008, 4:30 PM

**Supporting SB 2004, SD2, HD2, Relating to Education**

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

We support SB2004, SD2, HD2, Relating to Education.

SB2004, SD2, HD2, would give parents of children in special education one year to pursue their rights under the due process provisions of IDEA, the Federal Individuals with Disabilities Education Act. At present, Hawai'i, along with only two other states, requires a due process filing within ninety days. The bill would also require the parents to be reimbursed for expenses relating to expert witnesses when their claims are upheld.

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

We urge the committee to pass SB2004, SD2, HD2. Thank you for this opportunity to testify.

## FINTestimony

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**From:** Linda Elento [threestars@hawaii.rr.com]  
**Sent:** Wednesday, March 26, 2008 12:44 PM  
**To:** FINTestimony  
**Cc:** mjones@atrc.org  
**Subject:** SB2004 03-28-08 4:30p House Finance

----- Original Message -----

**From:** Michael Jones  
**Sent:** Wednesday, March 26, 2008 8:00 AM  
**Subject:** I tried to submit but was rejected, could you submit for me? RE: SB2004 (EDN JUD FIN) expected to be heard friday 03-28-08 House Finance

I respectfully write to support the passage of SB2004 and encourage that the Hawaii Legislature provide the maximum protection afforded by law to parents of children with disabilities.

A maximum protection does no harm to the public good, instead it supports the public's good by providing a real opportunity for parents to be heard and for the balancing of inequities.

The Hawaii Legislature should want to give parents and children with disabilities every advantage, during the K-12 process, that will promote learning, growth and independence. The provision of a 2 year SOL for due process hearings will give an opportunity for the child's needs to be heard and ultimately an advantage for the child!

Respectfully submitted.

J. Michael Jones, Executive Director  
Assistive Technology Resource Centers of Hawaii  
414 Kuwili Street, 104  
Honolulu Hawaii 96817  
(808) 532-7110  
E-mail [mjones@atrc.org](mailto:mjones@atrc.org)

*Rep. Marcus Oshiro, Chair  
Rep. Marilyn Lee, Vice Chair  
House Committee on Finance*

*From Stephanie Lu*

*Friday, March 28, 2008*

*Strong Support of **SB2004 SD2 HD2**, Relating to Special Education Due Process Timeline*

I am a 29-year-old older sister of a moderate-functioning female teenager with autism and who receives educational services from the Dept of Education (DOE). I am writing to you about SB 2004 SB2 HD2 relating to Education and the statute of limitations related to special education due process administrative hearing expanding the 90-day timeline to 1 year. I am testifying in **strong favor** of this bill, **with amendments**.

**Personally, anything less than 2 years would strongly negatively affect my family's ability to advocate for my sister's special needs.** In our experience, the DOE has waited quietly for us to forget to file for due process within the 90 days while our small struggling family struggles to understand the DOE's offer of FAPE, and as soon as the 90 days goes by and its too late to file, they email us demanding an answer. Ninety days is just not enough time.

This is an important bill because it would protect the rights of special needs children to receive an appropriate education. Families file for due process because it is the **only recourse left for parents of special needs children** when the Dept of Education does not offer an appropriate education plan for a special needs child. Sometimes parents' concerns get ignored in the process of coming up with the plan. Ninety days is just not enough time.

The federal IDEA law established a 2-year statute of limitations for parents to file for due process and a **strong majority of other states all have 2 years** to make their case to an administrative officer, if they feel that the Dept of Education is not offering an appropriate education plan. I have **seen no compelling evidence or reasons from the Dept of Education why the special needs children of Hawai'i should have a shorter statute of limitations than those of fellow states.** Making it easier on the DOE administration is not a good enough reason to unfairly oppress the rights of special needs children.

I plead with you to set a high bar for the kind of reasons DOE gives you for why you should consider anything less than 2 years for this law. If you set the bar lower than 2 years, you are also setting a precedent that would erode the rights of special needs families across the United States!

Our special needs children deserve to be treated with just as much respect and fairness as other special needs children in terms of access to appropriate education, regardless of how hard a financial challenge it is for the DOE. I understand and empathize with DOE's financial position, but their battle for resources should not erode the rights of a segment of the population that is one of the most challenged. **I urge you to protect the rights of my family and the rest of the 10% of our public school children by approving SB2004 SD2 HD2 , with amendments from 180 days to 2 years.** Mahalo for the opportunity to testify.

## FINTestimony

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**From:** Maui Girl [Eve\_Clute@uiuonline.org]  
**Sent:** Thursday, March 27, 2008 9:15 AM  
**To:** FINTestimony  
**Subject:** SB 2004, SD2, HD2 STRONG SUPPORT

DATE: Friday, March 28, 2008  
TIME: 4:30 P.M.  
PLACE: Conference Room 308  
Agenda 3

### 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.

Eve Clute  
Doctor of Public Health  
Maui

THE STATE HOUSE OF REPRESENTATIVES  
COMMITTEE ON FINANCE  
FRIDAY, MARCH 28, 2008

AGENDA #3  
TESIMONEY IN STRONG SUPPORT OF SB2004, SD2, HD2

Dear Chair Oshiro, Vice Chair Lee and members of the committee, Thank you, my name is Colleen Lindsey mother of Kellen Dougherty who is 6 and autistic.

SB2004, SD2, HD2 would expand the deadline from that of being (90) days to (1) year. Majority of the other states have a (2) year limit except for Hawaii and 2 others.

For 3 years as a single mom I have had to sit in many confusing IEP. Finally with an advocate to understand what was proposed, this was a very long and stress full process that has been very painful and has hurt me physically and financially.

Right now I am going through a process with the DOE that has been very hard. The offer of FAPE is not implemented and my son has been left in a situation that is appalling! If only in your very busy schedule could you spend a day with me. To sort this very confusing and frustrating time parents must endure to learn the outcome. To find out all the test are not in favor of your child because he is not verbal, which is a very complicated part of a autistic persons being, is to communicate.

To tell you, where he hurts, what he wants to eat or if he is tired has a head ache?????

We need to have more time to compensate reason, when test are given and the out come, it takes a lot more then 90 days to pass a FDA funded drug, that is how we as Hawaii parents feel about this bill, it will give us just little more time, I understand there must be guidelines but this is very reasonable!

One note: My son has been placed in a private sector and is doing very well! The DOE has not paid for his tuition for 8 months complaining of my moving him was not "unilateral" this was never mentioned before! When does the time frame begin when "due process" should "kick" in, no one really knows this and I have been told many, many different time lines from the DOE? CONFUSING for one mom and her very wonderful little boy.

Being born and raised here and part Hawaiian I feel the system has well: LEFT MY CHILD BEHIND, mother worried about costs.

Thank You so very much for you precious time!  
Always Aloha

Colleen Lindsey (Mother of Kellen Dougherty)

**FINTestimony**

**From:** aileen yamashiro [aiyamashiro@gmail.com]  
**Sent:** Thursday, March 27, 2008 6:53 AM  
**To:** FINTestimony  
**Subject:** SB 2004, SD2, HD2

**Committee On Finance  
The State House of Representatives**

**Friday, March 28, 2008  
(I plan to testify at the 4:30p.m. committee hearing)**

**AGENDA #3**

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

Chair Oshiro, Vice Chair Lee, and members of the Committee, my name is Aileen Yamashiro. I am a parent of a child with PDDNOS, Prader-Willi Syndrome, Bi-Polar Disorder, ADHD. He falls under the Autism Spectrum Disorder umbrella.

SB 2004, SD2, HD2 would expand 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 is no one else to protect and speak out for my child. I find that the most difficult task and responsibility is making lifelong decisions for my son and to see that he receives the best education possible. He is not capable to make life decisions for himself. As one who is a contributing member of this state, I will always support parents whose child is disabled for there is nothing more difficult than to make the best decisions for the life of this child. It took 5 years to find a physician to diagnose my son after I had researched his syndrome. It was a painful and frustrating process.**

As a parent of a disabled child, I have been an advocate and member of individualized education program (IEP) meetings for my child for 18 years. 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 we do not always understand the process or the terms used nor are we trained as is the DOE personnel. Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is **extremely burdensome**. Additionally 90 days does not provide for sufficient time to evaluate the DOE's offer of a free and appropriate educational program (FAPE) or its proposed public school setting. Neither does the current 90-day time period provide parents with adequate time to locate an appropriate private school, evaluate it and enroll their child there.

It is unfair to require Hawaii 's families to be limited by the 90-day limitation when the majority of other states (including Washington, D.C.) apply up to a two (2) year statute of limitations. Hawaii is one of only three states with a 90-day limitation period. The remaining forty-eight (48) states permit

either a two or one year time period to file a request for due process where private placement is an issue. While the 1-year statute of limitations or deadline is an improvement from 90-days, I am respectfully asking for a 2-year limitation to be in line with the majority of the states.

It is equally important to have the DOE develop rules for reimbursement of expert witnesses and other related expenses to the parents. Very often expert witnesses are needed to testify at the due process hearings to explain a child's special needs and disabilities. Many parents do not have the financial means to pay for expert witnesses. Many of us have to take off from work to attend IEP meetings as well as the due process hearings. The DOE on the other hand can rely on state funds to compensate the expert witnesses who testify on behalf of the Department. In its earlier version, SB 2004 contained a section requiring the DOE to adopt rules providing for the reimbursement of expert witness and other relevant fees to the prevailing party. I ask that this Committee consider the inclusion of a similar provision in the current version of SB 2004, SD2, HD2 with the following language that tracks with HR 4188 which was introduced in the United States Congress on November 20, 2007 as part of the I.D.E.A. Fairness Restoration Act and which clarifies that expert witness fees are intended to be recoverable by the prevailing parents or guardians as opposed to the school district:

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 as the drop-dead date would only cause confusion to the detriment of parents of special needs children.

I strongly support SB 2004, SD2, HD2 which would level the playing field for special needs children and urge this Committee to pass this measure with the amendments suggested.

Thank you for the opportunity to provide testimony on this matter.

Aileen Yamashiro

Fay Yamamoto  
2832 Kalawao Street  
Honolulu, HI 96822

March 27, 2008

FAXED TO: 808-586-6001

Marcus R. Oshiro, Chair  
Hawaii State Capitol, Room 306  
415 South Beretania Street  
Honolulu, HI 96813

Marilyn B. Lee, Vice Chair  
Hawaii State Capitol, Room 434  
415 South Beretania Street  
Honolulu, HI 96813

RE: Friday, March 28, 2008, AGENDA #3, SUPPORT SB 2004,  
SD2, HD2

Dear Chair Oshiro, Vice Chair Lee and Members of the House Committee on Finance:

I am a parent of a child with autism.

SB 2004, SD2, HD2 expands 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.

As a parent of a disabled child, I have been to many individualized education program (IEP) meetings for my child. This is a very stressful and complex process, and it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used. Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. There is insufficient time to evaluate the DOE's offer of a free and appropriate educational program (FAPE) or its proposed public school setting.

It is unfair to require Hawaii's families to be limited by the 90-day limitation when the majority of other states (including Washington, D.C.) apply up to a two (2) year statute of limitations. I am respectfully asking for a 2-year limitation that is in line with the majority of the states.

It is equally important to have the DOE develop rules for reimbursement of expert witnesses and other related expenses to the parents. Very often expert witnesses are needed to testify at the due process hearings to explain a child's special needs and disabilities. Many parents do not have the financial means to pay for expert witnesses. Many of us have to take off from work to attend IEP meetings as well as the due process hearings. The DOE on the other hand can rely on state funds to compensate the expert witnesses who testify on behalf of the Department. In its earlier version, SB 2004 contained a section requiring the DOE to adopt rules providing for the reimbursement of expert witness and other relevant fees to the prevailing party. I ask that this Committee consider the inclusion of a similar provision in the current version of SB 2004, SD2, HD2 with the following language that tracks with HR 4188 which was introduced in the United States Congress on November 20, 2007 as part of the I.D.E.A. Fairness Restoration Act and which clarifies that expert witness fees are intended to be recoverable by the prevailing parents or guardians as opposed to the school district:

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:

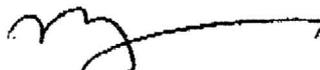
Shall provide that the prevailing party is entitled to the reimbursement of attorneys' fees and expenses associated with a hearing. For the purposes of this subsection, the term 'attorneys' fees' shall include the fees of expert witnesses including the reasonable costs of any test or evaluation necessary 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 as the drop-dead date would only cause confusion to the detriment of parents of special needs children.

I strongly support SB 2004, SD2, HD2 which would level the playing field for special needs children and urge this Committee to pass this measure with the amendments suggested.

Thank you for the opportunity to provide testimony on this matter.

Sincerely,



Fay Yamamoto  
754-8999

## **FINTestimony**

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**From:** mary taylor [marytaylor88@gmail.com]  
**Sent:** Thursday, March 27, 2008 1:56 PM  
**To:** FINTestimony  
**Subject:** SB 2004, SD2, HD2

Dear Chair Oshiro, Vice Chair Lee & Committee Members,

My name is Mary Taylor and I am a parent of a 19 year old son who has Autism. I am also a teacher for the DOE. The IEP process is very complex and stressful. I was extremely confused about several issues following the completion of my son's last IEP. Therefore, I was literally forced to file Due Process within 90 days because there was insufficient time to evaluate the issues surrounding the offer of FAPE or to even consult with an Attorney.

Hawaii needs to be in line with the majority of states that allows a reasonable amount of time (ie, up to a two (2) year statute of limitations) to request due process when private placement is an issue. I respectfully ask that a 2-year limitation be implemented as is the case with most states.

In addition, it is extremely important for the DOE to develop rules for reimbursement of expert witnesses, as well as for other related expenses to parents. One's financial means should never hinder the right of a disabled child to have an impartial hearing. This is about equality for all.

Finally, I respectfully suggest 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.

As a strong supporter of SB 2004, SD2. HD2 which address fairness in an educational system for special needs students, I urge this Committee to pass this measure with the included amendments.

Thank you for the opportunity to provide testimony on this matter.

Sincerely,

Mary Taylor

## FINTestimony

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**From:** hppr@hawaii.rr.com  
**Jent:** Thursday, March 27, 2008 11:58 PM  
**To:** FINTestimony  
**Subject:** Testimony in support of SB 2004 SD 2 HD2

TO: House Committee on Finance

FROM: Yvonne de Luna

RE: Senate Bill # 2004 SD2 HD2  
RELATING TO EDUCATION; DOE; SPED; DUE PROCESS; HEARINGS  
Extends from 90 days to one year of a unilateral special  
education placement...

HEARING DATE: March 28, 2008, Friday, 4:30 pm.  
Conference Room 308

Dear Members of the House Finance Committee:

As a concerned citizen, I submit this testimony in support of SB 2004 for your consideration. It seems to me that those who are most impacted by the IDEA have spoken loudly through their testimonies. It is important that the implementation of these federal laws should remain focused on the outcomes to the lives and education of children with disabilities. Parents/guardians of children with disabilities, generally want to do all they can for their child with disability and they need a lot of meaningful support and assistance. It is the unique nature and variety of needs and services of people with disabilities which pose a challenge to families and to those providing the services. Maybe, our system as it is now, is not able to fully address the need of families to understand and access the system so the needs of these children are taken care of on a timely manner.

To me, this bill's intent seems to simply ask for a system that would be much more responsive to the expressed needs of the people these laws were created for so that children with disabilities receive the services they need in a meaningful way and as intended by the federal law. When issues about due process and hearings are being brought forth, it seems to me something went wrong and the root to the problem should be looked at as well.

Please support this bill. Mahalo!

##

**Committee On Finance  
The State House of Representatives**

**Friday, March 28, 2008**

**AGENDA #3**

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

Chair Oshiro, Vice Chair Lee, and members of the Committee, my name is Rida Ching.. I am a parent of a child with autism.

SB 2004, SD2, HD2 would expand 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.

*My son is Matthew Ching. Matthew has Autism. 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 the last several years NOT agreeing with the DOE's proposed IEP, however, as parents, we are not experts in the State's education system 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, attending conferences, doing our own research, gathering our own information about educational options, consulting with doctors, educators, psychologist, other experts, etc.*

*Please understand, we do not have anything against the "public school" system, and we have not always disagreed with everyone in the DOE system. 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 fully comprehend and gather the necessary information to make the most appropriate decisions, 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.*

*It is my opinion that the 90-day limitation gives the DOE an excuse for not "working with" the parent to address questions and unresolved issues, and to develop an IEP that is appropriate for the child. It is a "rushed and impersonal process." And the DOE basically says "take it or leave it," meaning "take it the way it is or file for due process." At that point, Due Process becomes the only true option because of the 90-day rule and unfortunately it causes the school's staff and parents like us to "STOP WORKING TOGETHER" for the most appropriate result, but instead everything (every phone call, every conversation with a teacher, every questions or discussion)*

*becomes part of a legal process in which parents and the DOE start "building their case" rather than focus on the student. I believe this only limits the variety of options and resolutions that could be developed, causes more negativity, less trust, and probably more law suits in the end.*

As a parent of a disabled child, I have been to a number of individualized education program (IEP) meetings for my child. 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 we do not always understand the process or the terms used. Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. Additionally 90 days does not provide for sufficient time to evaluate the DOE's offer of a free and appropriate educational program (FAPE) or its proposed public school setting. Neither does the current 90-day time period provide parents with adequate time to locate an appropriate private school, evaluate it and enroll their child there.

It is unfair to require Hawaii 's families to be limited by the 90-day limitation when the majority of other states apply up to a two (2) year statute of limitations. Hawaii is one of only three states with a 90-day limitation period. The remaining forty-eight (48) states permit either a two or one year time period to file a request for due process where private placement is an issue. While the 1-year statute of limitations or deadline is an improvement from 90-days, I am respectfully asking for a 2-year limitation to be in line with the majority of the states.

It is equally important to have the DOE develop rules for reimbursement of expert witnesses and other related expenses to the parents. Very often expert witnesses are needed to testify at the due process hearings to explain a child's special needs and disabilities. Many parents do not have the financial means to pay for expert witnesses. Many of us have to take off from work to attend IEP meetings as well as the due process hearings. The DOE on the other hand can rely on state funds to compensate the expert witnesses who testify on behalf of the Department. In its earlier version, SB 2004 contained a section requiring the DOE to adopt rules providing for the reimbursement of expert witness and other relevant fees to the prevailing party. I ask that this Committee consider the inclusion of a similar provision in the current version of SB 2004, SD2, HD2 with the following language that tracks with HR 4188 which was introduced in the United States Congress on November 20, 2007 as part of the I.D.E.A. Fairness Restoration Act and which clarifies that expert witness fees are intended to be recoverable by the prevailing parents or guardians as opposed to the school district:

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 as the drop-dead date would only cause confusion to the detriment of parents of special needs children.

I strongly support SB 2004, SD2, HD2 which would level the playing field for special needs children and urge this Committee to pass this measure with the amendments suggested.

Thank you for the opportunity to provide testimony on this matter.

Rida N. Ching, parent  
92-1284 Palahia Street  
Kapolei, HI 96707  
(808) 224-1612

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

March 26, 2008

Representative Marcus Oshiro, Chair  
Representative Marilyn Lee, Vice-Chair  
House Committee on Finance  
State Capitol  
415 S. Beretania Street  
Honolulu, HI 96813

Testimony for SB 2004 SD2 HD2 Relating to Education on March 28, 2008, Room 308 at 4:30pm  
Agenda 3 (I plan to testify at the 4:30pm committee hearing.)

Dear Representatives Oshiro, Lee, and Finance Committee,

I am a parent of a Special Needs child. Since I have gone through 2 due process hearings related to private placement, I would like to offer my STRONG SUPPORT for the intent of SB 2004 SD2 HD2. However, I support a 2 year statute of limitations when parents seek reimbursement of private placement. In addition, I recommend that expert witness and related fees from a due process hearing be reimbursed to parents as the prevailing party. Lastly, I respectfully ask that this 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.

A recent article in the Honolulu Advertiser dated March 23, 2008, entitled "Spending on schools outgrowing results" publicly raises many questions that parents have asked for many years. Special Needs children have always been negatively portrayed as one of the main reasons why the DOE budget continues to balloon every year. Educating our special needs children is not easy and it is not cheap but it is a reality. However, there are MANY reasons why the DOE's budget continues to balloon every year and it is not due to our Special Needs children.

Consider the following facts taken from the Honolulu Advertiser article and DOE documents as posted on their website:

1. **The DOE budget has increased by over 152% over the past 10 years.** (This is an approximate average of **15.2% per year** per DOE's Info Exchange March 6, 2008.)
2. **DOE enrollment has declined from 183,520 in 2000 to 178,369 in 2007.** (This includes both Special Education children and Regular Education children per the Trend Reports for SY 2006-2007 and SY 2005-2006.)
3. The **Special Education population has decreased for the last 5 CONSECUTIVE years** according to the DOE Trend Report for SY 2006-2007 and SY 2005-2006.
4. The "per pupil spending has almost doubled from \$6,560 in FY 1998 to \$11,004 in FY 2006." (This results in an increase of \$4,444 or 67.74% per student since 1998 or an average **increase of 8.47% per year per student** over an 8 year period.)
5. The "average teacher's salary has increased from \$29,208 in FY 2000 to \$41,496 in FY 2008." (This is equivalent to a total increase of \$12,288 since FY 2000 or a 42.07% increase from 2000 which is an average of **5.26 % increase per year for teachers** over an 8 year period.)

6. Spending on Special Education AND other Special Needs Programs have increased by more than \$400 million since 1994 compared to today's spending of \$523 million dollars. (This is equivalent to an increase of \$123 million over a 14 year period which on average equates to **2.2% increase in special education costs per year** over a 14 year period.)

Special Education and Special Needs children ARE NOT the same children. **According to the Superintendent's 18<sup>th</sup> Annual Report for SY 2006-2007, the category of Special Needs Children is comprised of several subsets that INCLUDES the Economically Disadvantaged (29%), Special Education (5%), Section 504 (1%), English as a Second Language Learners (3%) and Multiple Needs Children (12%) for a total of 51% of Special Needs children in the DOE.**

**If the DOE is spending only 25% of their budget on the Special Needs children as stated in the article, it just doesn't seem enough especially since Special Needs children make up 51% of the student population in our public schools.** If the DOE is spending \$523 million on only 5% of the Special Education children, this seems unbelievable. These "fuzzy" numbers and terms should be defined for greater transparency and accuracy in this type of financial reporting.

According to a DOE report provided to the Joint Education Committee on January 1, 2007, it was reported that \$0.65 out of every dollar was spent on Salaries and Fringe Benefits. This \$0.65 is equivalent to SIXTY-FIVE PERCENT OF THE DOE BUDGET.

In the last 2-3 years, the DOE has created hundreds of positions with multiple pay scales including Clinical Psychologists V, VI, VII and VIII, School Psychologists with a Masters Degree and School Psychologists with a Doctoral Degree, Educational Assistants I, II, and III, Behavioral Specialists III, IV and V among the few. All the while asking for increases in their budget every year. Even positions such as SSC's (Student Service Coordinators) which have no relevance in IDEA but resulted from the Felix Consent Decree, add additional unnecessary personnel costs. Every privately held company downsizes when faced with financial challenges. However, the DOE continues to hire more personnel who provide duplicative tasks AND asks for more money. Is this type of strategy appropriate and responsible to our children and us as taxpayers?

It seems that our Special Needs children are always the SCAPEGOAT for the DOE's monetary woes. The DOE's budgetary increases in part seem to lay blame on the costs of educating our Special Needs children. Given that the Special Education Population has decreased for 5 consecutive years while the DOE budget has increased for at least that many years, this should result in either FEWER costs in providing special education or MORE services to these children. Monies collected as per Act 141 are supposed to be used in part to support the DOE's special education services as well and yet parents still have challenges in acquiring initial services for their children.

**As I have pointed out, spending \$523 million over 14 years for special education AND other special needs programs have averaged a paltry 2.2% increase per year compared to the increase in the average yearly per pupil spending (8.47%) and the average yearly teacher's wages (5.26%). This 2.2% is the smallest increase among these groups yet is supposed to serve the LARGEST group of children in our public school system. Again, Special Needs children make up 51% of the student population.**

As a taxpayer, I am unable to follow the DOE's math, simply because there are too many unexplained variables, too many categorizations, too many inconsistencies, too many methods of calculation, and not enough definitions or clarifications in their reports. Money will always be an issue when it comes to the DOE but with regards to SB 2004 SB2 HD2, do not allow the educational rights of special needs children become intertwined and muddled with the complicated and confusing financial issues the DOE currently experiences. Do not allow the

DOE to use "a lack of funds" to affect the progress of this bill when their own numbers don't add up.

The purpose of this bill is to provide equity for Hawaii's special needs children when their education and future are at stake. The purpose of this bill is to ensure that parents have the right to exercise their rights as parents in the advocacy of their special needs children. Our special needs children are not to blame, nor are the parents to blame for the DOE's financial status. Parents are only interested in having their children educated as intended by IDEA so that their children may grow up to be independent adults. That is all.

When parents place their child into a private placement, usually it is because they believe that FAPE was not offered by the DOE as required by IDEA law. The decision to place a child into private placement is an agonizing one and a strict time limitation such as the 90 day and even the 1 year statute of limitations is purposefully designed to make it difficult for parents to prepare a case of their own. Ironically, the AG's office supports the shorter timeline so that THEY can better prepare their OWN case. If the majority of the other 50 states do not have an issue with the 2 year statute of limitations, then why does Hawaii's AG claim such difficulty in preparing for such cases? Again, I urge this Committee to support changing the 1 year statute of limitations for parents who seek reimbursement for private placement to 2 years to follow in line with the MAJORITY of the other 50 states. Do not carve out a shorter timeline for those parents who seek private placement. It is both unnecessary and discriminatory

Opponents to this bill have also argued that the DOE would have to ask the legislature for additional funds to pay for expert witness and related fees related to a due process hearing should the parents prevail because it has been implied that the costs of due process hearings and related expert witness fees are costly. Given the numerous variables related to a due process hearing and the "confusing math" as already eluded to, this may prove to be too difficult a task to determine. Even if an estimate is provided, the accuracy would surely come in question. As a result of these unfounded concerns, this section of SB 2004 SD2 HD2 has been unfairly removed from the bill.

The costs of expert witness and related fees related to a due process hearing should be reimbursed to parents because parents undergo much financial stress during this time. Expert witnesses help parents present their case. The DOE also offers expert witnesses to present their case. Won't their witnesses expect to be paid for their time as well? Again, this is a matter of equity and fairness to the special needs children.

I respectfully ask that this Committee consider the inclusion of a similar provision in the current version of SB 2004 SD2 HD2 with the following language that tracks with HR 4188. It was introduced in the United States Congress on November 20, 2007 as part of the IDEA Fairness Restoration Act. **IT CLARIFIES THAT EXPERT WITNESS FEES ARE INTENDED TO BE RECOVERABLE BY THE PREVAILING PARENTS OR GUARDIANS AS OPPOSED TO THE SCHOOL DISTRICT:**

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."

Lastly, I would respectfully ask that this bill become effective upon approval without the drop-dead date of July 1, 2010 as this will create greater confusion to the detriment of all special needs children.

Please support SB 2004 SD2 HD2.

Thank you for this opportunity to provide testimony on this very important matter.

Sincerely,

Teresa Chao Ocampo  
Parent of a Special Needs Child

**FINTestimony**

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**From:** Kiele Pennington [kielepennington@yahoo.com]  
**Sent:** Friday, March 28, 2008 8:30 AM  
**To:** FINTestimony  
**Subject:** SB 2004,SD2,HD2 - Hearing Friday, March 28, 2008 @ 4:30 pm - Agenda Item 3

Committee On Finance  
The State House of Representatives  
Friday, March 28, 2008

**TESTIMONY IN STRONG SUPPORT OF SB 2004, SD2, HD2**  
**Agenda Item #3**

Chair Oshiro, Vice Chair Lee, and members of the Committee, my name is Kiele Pennington. I am parent of a child with pervasive developmental delay – not otherwise specified (PDD-NOS), an autism spectrum disorder.

SB 2004, SD2, HD2 would expand 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.

My daughter is 4 years old and was diagnosed with PDD-NOS almost two years ago. She began therapy at 7 months with Early Intervention on Oahu and then with IMUA on Maui until we transferred to the DOE. She has global delays and has no language at this time. This is her second year in a Special Education preschool class. Although we are happy with her placement, it has been a challenging experience trying to develop an IEP that we feel meets all her needs. Already she has been denied physical therapy and had her occupational therapy minutes cut by one third. She has been denied these services and yet she is unable to function during the day without a skills trainer present. She cannot feed herself independently, write, follow two-step directions, or use the bathroom. In order to educate myself on the IEP process, I have attended trainings, researched Federal and State laws, and talked with countless professionals and other special needs parents. But this is not all we have to do as special needs parents. I fight this disability on all “fronts.” Parents of special needs children not only help plan our children’s education. We research and learn new therapies, push medical doctors to help with continuing treatments, deal with medical insurance programs who disqualify services for our children; all this amongst many other things. We must also care for our special needs child and other children while trying to juggle a home and work life that resembles normalcy for our families.

As a parent of a disabled child, I have been to a number of individualized education program (IEP) meetings for my child. 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 we do not always understand the process or the terms used. Personally, we have had multiple meetings over half a school year to clarify problems with her educational plan. Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. Additionally 90 days does not provide for sufficient time to evaluate the DOE's offer of a free and appropriate educational program (FAPE) or its proposed public school setting. Neither does the current 90-day time period provide parents with adequate time to locate an appropriate private school, evaluate it and enroll their child there. The current 90-day time period is unfair for parents but also for our children who need stability and a continuum of services. Adding stress on the family adds stress to the life of our children.

3/28/2008

It is unfair to require Hawaii 's families to be limited by the 90-day limitation when the majority of other states (including Washington, D.C.) apply up to a two (2) year statute of limitations. Hawaii is one of only three states with a 90-day limitation period. The remaining forty-eight (48) states permit either a two or one year time period to file a request for due process where private placement is an issue. While the 1-year statute of limitations or deadline is an improvement from 90-days, I am respectfully asking for a 2-year limitation to be in line with the majority of the states.

It is equally important to have the DOE develop rules for reimbursement of expert witnesses and other related expenses to the parents. Very often expert witnesses are needed to testify at the due process hearings to explain a child's special needs and disabilities. Many parents do not have the financial means to pay for expert witnesses. Many of us have to take off from work to attend IEP meetings as well as the due process hearings. The DOE on the other hand can rely on state funds to compensate the expert witnesses who testify on behalf of the Department. In its earlier version, SB 2004 contained a section requiring the DOE to adopt rules providing for the reimbursement of expert witness and other relevant fees to the prevailing party. I ask that this Committee consider the inclusion of a similar provision in the current version of SB 2004, SD2, HD2 with the following language that tracks with HR 4188 which was introduced in the United States Congress on November 20, 2007 as part of the I.D.E.A. Fairness Restoration Act and which clarifies that expert witness fees are intended to be recoverable by the prevailing parents or guardians as opposed to the school district:

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 as the drop-dead date would only cause confusion to the detriment of parents of special needs children.

I strongly support SB 2004, SD2, HD2 which would level the playing field for special needs children and urge this Committee to pass this measure with the amendments suggested.

Thank you for the opportunity to provide testimony on this matter.  
Kiele Pennington  
Mother

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**Committee On Finance  
The State House of Representatives**

**Friday, March 28, 2008**

**AGENDA #3**

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

Chair Oshiro, Vice Chair Lee, and members of the Committee:

My name is Sing Vista from upcountry Maui. I am a parent of a child with autism.

SB 2004, SD2, HD2 would expand 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.

From what I understand, studies show in families with special needs children, eighty percent (80%) of marriages are in trouble. Anything you can kokua to help alleviate pressures are very much welcome.

I have been to a number of individualized education program (IEP) meetings for my child. This is a very stressful and difficult process, and it is not one which is straightforward or mutually respectful. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used. Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. Additionally 90 days does not provide for sufficient time to evaluate the DOE's offer of a free and appropriate educational program (FAPE) or its proposed public school setting. Neither does the current 90-day time period provide parents with adequate time to locate an appropriate private school or other adequate public school evaluate it and enroll their child there.

It is unfair to require Hawaii 's families to be limited by the 90-day limitation when the majority of other states (including Washington, D.C.) apply up to a two (2) year statute of limitations. Hawaii is one of only three states with a 90-day limitation period.

The remaining forty-eight (48) states permit either a two- or one-year time period to file a request for due process where private placement is an issue. While the 1-year statute of limitations or deadline is an improvement from 90-days, I am respectfully asking for a 2-year limitation to be in line with the majority of the states.

It is equally important to have the DOE develop rules for reimbursement of expert witnesses and other related expenses to the parents. Very often expert witnesses are needed to testify at the due process hearings to explain a child's special needs and disabilities. Many parents do not have the financial means to pay for expert witnesses. Many of us have to take off from work to attend IEP meetings as well as the due process hearings (additional stressors). The DOE on the other hand can rely on state funds to compensate the expert witnesses who testify on behalf of the Department. In its earlier version, SB 2004 contained a section requiring the DOE to adopt rules providing for the reimbursement of expert witness and other relevant fees to the prevailing party. I ask that this Committee consider the inclusion of a similar provision in the current version of SB 2004, SD2, HD2 with the following language that tracks with HR 4188 which was introduced in the United States Congress on November 20, 2007 as part of the I.D.E.A. Fairness Restoration Act and which clarifies that expert witness fees are intended to be recoverable by the prevailing parents or guardians as opposed to the school district:

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 as the drop-dead date would only cause confusion to the detriment of parents of special needs children.

I strongly support SB 2004, SD2, and HD2, which would level the playing field for special needs children and urge this Committee to pass this measure with the amendments suggested.

Thank you for the opportunity to provide testimony on this matter.

Mahalo a nui loa,



Sing Vista

**FINTestimony**

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**From:** Kerri Wong [kltwong@yahoo.com]  
**Sent:** Friday, March 28, 2008 10:07 AM  
**To:** FINTestimony  
**Subject:** SB2004, SD2, HD2

**Committee On Finance  
The State House of Representatives**

**Friday, March 28, 2008  
4:30 p.m.**

**AGENDA #3**

**Testimony in Support of  
SB 2004, SD2, HD2**

Chair Oshiro, Vice Chair Lee, and members of the Committees, my name is Kerri Wong. I am the parent of a child with autism.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days 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.

My 4 year old son Billy is on the autism spectrum. Billy was diagnosed with autism days before his third birthday. He was receiving services from the Department of Health including Speech Therapy, Occupational Therapy, and Applied Behavior Analysis (ABA). We were happy with the services we were given by Department of Health as well as the intensity level. However, when Billy turned 3, he entered a DOE Special Education preschool and an IEP was developed for him. As it turns out, I as Billy's parent, did all that I could to get him the services that I felt were appropriate for him from the DOE. I was not successful and my husband and I and the other members of Billy's IEP Team could not come to an agreement. I was forced to make the difficult decision to take my son out of the DOE school and put into place the therapy and educational program that I felt was appropriate for his unique needs. In doing so we also initiated an impartial due process hearing in an attempt to get the DOE to pay for Billy's costly ABA therapy.

As a parent of a disabled child, I have been to individualized education program (IEP) meetings for my child. 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 we do not always understand the process, the law, or our rights.

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 when a free and appropriate public education was denied. I 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.

It is equally important to have the DOE develop rules for reimbursement of expert witnesses and other related expenses to the parents. Very often expert witnesses are needed to testify at the due process hearings to explain a child's special needs and disabilities. Many parents do not have the financial means to pay for expert witnesses. Many of us have to take off from work to attend IEP meetings as well as the due process hearings. The DOE on the other hand can rely on state funds to compensate the expert witnesses who testify on behalf of the Department. In its earlier version, SB 2004 contained a section requiring the DOE to adopt rules providing for the reimbursement of expert witness and other relevant fees to the prevailing party. I ask that this Committee consider the inclusion of a similar provision in the current version of SB 2004, SD2, HD2 with the following language that tracks with HR 4188 which was introduced in the United States Congress on November 20, 2007 as part of the I.D.E.A. Fairness Restoration Act and which clarifies that expert witness fees are intended to be recoverable by the prevailing parents or guardians as opposed to the school district:

*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 as the drop-dead date would only cause confusion to the detriment of parents of special needs children.

I strongly support SB 2004, SD2, HD2 which would level the playing field for special needs children and urge this Committee to pass this measure with the amendments suggested.

Thank you for the opportunity to provide testimony on SB 2004, SD2, HD2.

Sincerely,

Kerri Wong

**FINTestimony**

**From:** lanikaik4@aol.com  
**Sent:** Friday, March 28, 2008 10:03 AM  
**To:** FINTestimony; lanikaik4@aol.com  
**Subject:** Strong support SB 2004, SD 2, HD2

**Committee On Finance  
The State House of Representatives**

**Friday, March 28, 2008**

**AGENDA #3**

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

Chair Oshiro, Vice Chair Lee, and members of the Committee, our names are Richard Thomas and Kathleen Thomas. We are parents of a child with autism.

SB 2004, SD2, HD2 would expand 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.

As parents of a child with autism and a seizure disorder, we know that 90 days can be taken up very quickly. We are dealing with the complicated life of our child as well as insurance companies, emergency room visits, hospitalizations and daily family life. To cut a family off after 90 days is unfair and not in the interest of children.

As parents of a disabled child, we have been to a number of individualized education program (IEP) meetings for my child. 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 we do not always understand the process or the terms used. Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. Additionally 90 days does not provide for sufficient time to evaluate the DOE's offer of a free and appropriate educational program (FAPE) or its proposed public school setting. Neither does the current 90-day time period provide parents with adequate time to locate an appropriate private school, evaluate it and enroll their child there.

It is unfair to require Hawaii's families to be limited by the 90-day limitation when the majority of other states (including Washington, D.C.) apply up to a two (2) year statute of limitations. Hawaii is one of only three states with a 90-day limitation period. The remaining forty-eight (48) states permit either a two or one year time period to file a request for due process where private placement is an issue. While the 1-year statute of limitations or deadline is an improvement from 90-days, I am respectfully asking for a 2-year limitation to be in line with the majority of the states.

It is equally important to have the DOE develop rules for reimbursement of expert witnesses and other related expenses to the parents. Very often expert witnesses are needed to testify at the due process hearings to explain a child's special needs and disabilities. Many parents do not have the financial means to pay for expert witnesses. Many of us have to take off from work to attend IEP meetings as well as the due process hearings. The DOE on the other hand can rely on state funds to compensate the expert witnesses who testify on behalf of the Department. In its earlier version, SB 2004 contained a section requiring the DOE to adopt rules providing for the reimbursement of expert witness and other relevant fees to the prevailing party. We ask that this Committee consider the inclusion of a similar provision in the current version of SB 2004, SD2, HD2 with the following language that tracks with HR 4188 which was introduced in the United States Congress on November 20, 2007 as part of the I.D.E.A. Fairness Restoration Act and which clarifies that expert witness fees are intended to be recoverable by the prevailing parents or guardians as opposed to the school district:

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, we 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 as the drop-dead date would only cause confusion to the detriment of parents of special needs children.

We strongly support SB 2004, SD2, HD2 which would level the playing field for special needs children and urge this Committee to pass this measure with the amendments suggested.

Thank you for the opportunity to provide testimony on this matter.

Richard Thomas  
Kathleen Thomas  
1446 Aalapapa Dr.  
Kailua, HI 96734

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