

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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON EDUCATION

DATE: March 12, 2008 **TIME:** 2:00 P.M.

LOCATION: State Capitol, Conference Room 309

Deliver to: Committee Clerk, Room 324, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Holly T. Shikada, Deputy Attorney General
or Elise A. Amemiya, Deputy Attorney General

Chair Takumi and Members of the Committee:

The Department of 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 180 days when the request is for reimbursement of the costs of the child's placement and requires the Department of Education to submit an annual report to the Legislature regarding the total number of requests for due process hearings relating to the reimbursement of costs for a child's placement filed by a parent or guardian of a child with a disability.

Federal law and implementing regulations provide that a student's individualized education program ("IEP") must be reviewed and updated by the IEP team at least annually. This indicates that the appropriateness of a child's program can change fairly quickly, and therefore the program must be reviewed from year to year. Accordingly, enlarging the period of time in which a parent may file a request for an impartial hearing may be detrimental to the child. Even under the current 90 day statute of limitations, the determination of the appropriateness of the student's education may not be made until six months later. It is hard to imagine that waiting longer to resolve an



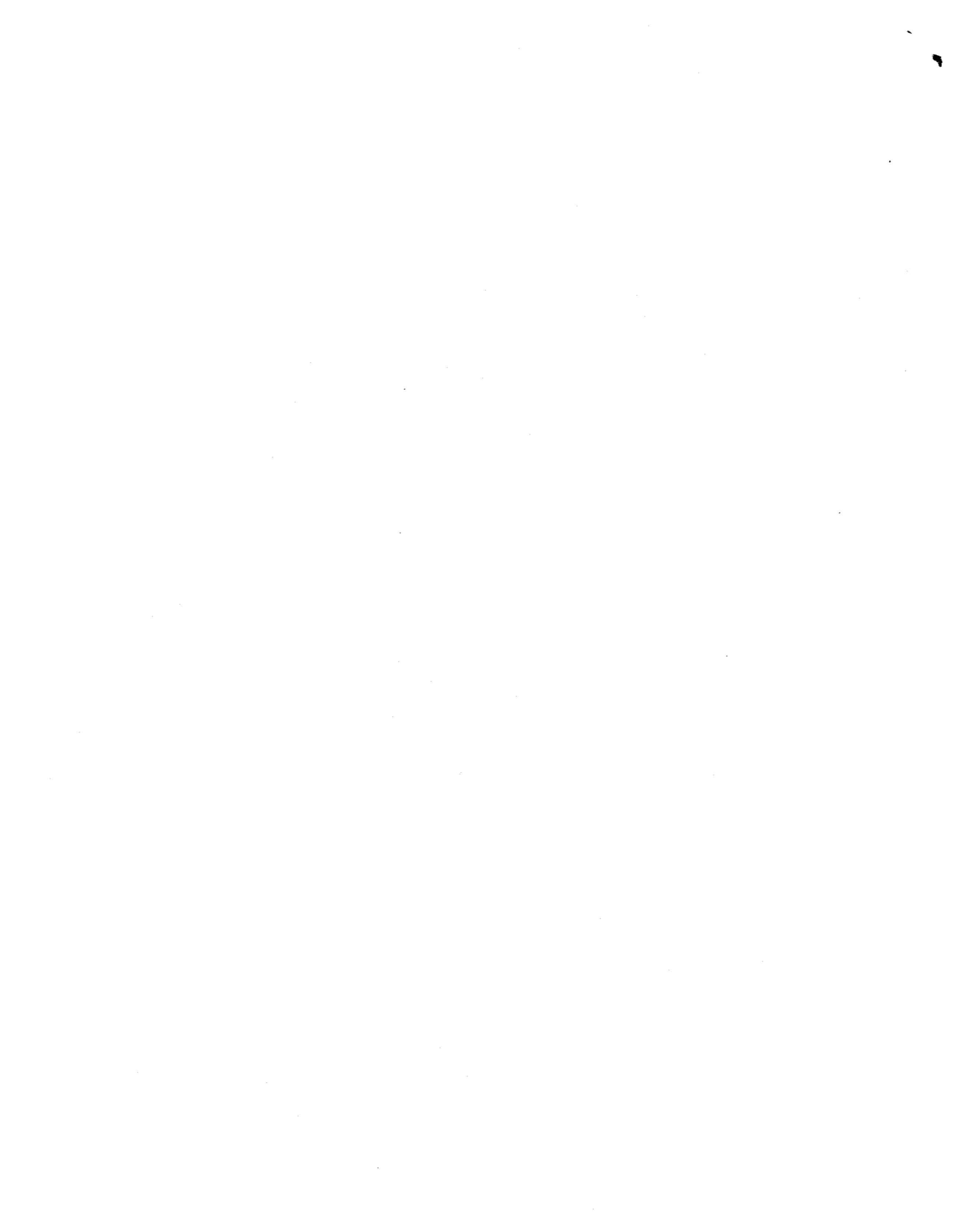
issue relating to a child's education is better than addressing the concerns and problems immediately.

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



Date of Hearing: March 12, 2008

Committee: House Education

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.B. No. 2004, S.D. 2, SSCR 2806, Relating to Education

Purpose: Extends the deadline within which to file a request for a due process hearing relating to the education of a child with a disability from ninety days to one hundred and eighty calendar days when the request is for reimbursement of costs of a child's placement. Requires the department to report to the legislature annually on the number of these requests awaiting hearing.

Department's Position: The Department of Education (Department) does not support S.B. 2004, S.D. 2, SSCR 2806.

Prior to the 2005 Legislative Session, all due process hearing requests filed under the Individuals with Disabilities Education Improvement Act (IDEA) was limited to a general state statute of limitations of two years. The 2005 Legislation Session enacted Hawaii Revised Statutes (HRS) §302A-443 which distinguished 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. 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.

Finally, S.B. 2004, S.D. 2, SSCR 2806, provision (e), requires the Department to submit a report to the legislature regarding due


process (Attachment B). The Department will be more than willing to provide an annual report to the legislature without the enactment of this provision.

The Department is unable to support S.B. 2004, S.D. 2, SSCR 2806.

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

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

Note: Data as of 2/25/08

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

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

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

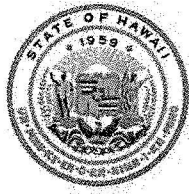
Mailing Address: Street City State Zip Code

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



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 12, 2008

The Honorable Roy M. Takumi, Chair
House Committee on Education
Twenty-Fourth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Takumi and Members of the Committee:

SUBJECT: SB 2004 SD2– 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**. The purpose of SB 2004 SD2 is to: 1) extend the deadline within which to file a request for a due process hearing relating to the education of a child with a disability from 90 days to 180 calendar days when the request is for reimbursement of costs of a child's placement; and 2) require DOE to report annually to the Legislature the total number of requests for a due process hearing relating to the reimbursement of costs for a child's 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.

Although the Senate Committees on Education and Human Services and Public Housing amended the bill from two years to 180 calendar days, the Council continues to advocate for the two years as the deadline.

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

The Honorable Roy M. Takumi
Page 2
March 12, 2008

We ask 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.

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



1200 Ala Kapuna Street • Honolulu, Hawaii 96819
Tel: (808) 833-2711 • Fax: (808) 839-7106 • 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 EDUCATION

RE: SB 2004, SD2 – RELATING TO EDUCATION

March 12, 2008

ROGER TAKABAYASHI, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Takumi and Members of the Committee:

The Hawaii State Teachers Association opposes SB 2004, SD2.

The Association believes due process is best served when it is not delayed. SB 2004 SD2, 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.

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

To: House Committee on Education
From: Gary L. Smith, President
Hawaii Disability Rights Center
Re: Senate Bill 2004, SD 2
Relating to Education

Hearing: Wednesday, March 12, 2008 2:00 PM
Conference Room 309, State Capitol

Members of the Committee on Education:

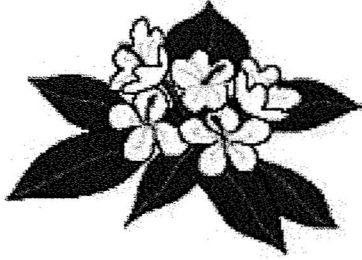
Thank you for the opportunity to provide testimony supporting Senate Bill 2004, SD 2 Relating to Education.

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 Senate version increased the timeline from 90 to 180 days, we prefer the original approach of two years. This bill would confirm our state law to the applicable federal law.

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



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 12, 2008

**Special Education
Advisory Council**

Ms. Ivalee Sinclair, *Chair*
Mr. Steve Laracuente, *Vice
Chair*

Ms. Janet Bamford
Dr. Paul Ban, *Liaison
to the Superintendent*
Ms. Sue Brown
Ms. Deborah Cheeseman
Ms. Phyllis DeKok
Mr. Lee Dean
Ms. Mary Ellis
Ms. Debra Farmer
Ms. Gabriele Finn
Ms. Martha Guinan
Mr. Henry Hashimoto
Ms. Tami Ho
Ms. Barbara Ioli
Ms. Valerie Johnson
Ms. Shanelle Lum
Ms. Rachel Matsunobu
Ms. June Motokawa
Ms. Barbara Pretty
Ms. Susan Rocco, *Ex-officio*
Dr. Patricia Sheehy
Mr. August Suehiro
Ms. Jan Tateishi, *Ex-officio*
Ms. Judy Tonda
Dr. John Viesselman
Ms. Cari White
Ms. Jasmine Williams
Mr. Duane Yee
Mr. Wilfred Young

TESTIMONY TO THE HOUSE EDUCATION COMMITTEE
SB 2004, SD2 - Relating to Education

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 supported a section in the original bill that allowed 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 own



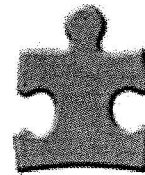
Testimony re: SB 2004, SD2
March 12, 2008
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employees to testify as expert witnesses at these hearings. The Council respectfully requests, therefore, that your Committee reinstate the language in the original SB 2004 regarding reimbursement of expert 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



AUTISM SPEAKS™
It's time to listen.

Kalma K. Wong
46-220 Alaloa Place
Kaneohe, Hawaii 96744
(808) 393-5218
flute866@gmail.com

March 11, 2008

Representative Roy Takumi
Chair, House Education Committee
Hawaii State Capitol, Room 444
415 South Beretania Street
Honolulu, Hawaii 96813

Representative Lyla Berg, Ph.D.
Vice-Chair, House Education Committee
Hawaii State Capitol, Room 324
415 South Beretania Street
Honolulu, Hawaii 96813

Re: In support of amending SB2004, March 12, 2008, 2:00 p.m., Room 309

Dear Chair Takumi, Vice-Chair Berg, and members of the House Education Committee:

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

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

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)

berg1-Liz

From: Naomi Grossman [naomi_grossman@yahoo.com]
Sent: Wednesday, March 12, 2008 7:58 AM
To: EDNtestimony; Rep. Roy Takumi; Rep. Lyla B. Berg
Subject: House Committee on Education hearing on SB2004 2:00p Wed 3-12-08 Hearing Notice EDN 03-12-08

March 12, 2008; 2:00 p.m.
Hawai'i State Legislature
House Committee on Education

TESTIMONY IN SUPPORT OF SB 2004, HD2

Chair Takumi, Vice Chair Berg, and members of the committees, my name is Naomi Grossman. I am the president of the Autism Society of Hawai'i.

The Autism Society of Hawai'i offers its strong support for SB 2004, SD2. The Autism Society of Hawai'i is an affiliate chapter of the Autism Society of America. Its members are composed of families who deal with living with the effects of autism spectrum disorders and the professionals and paraprofessionals who serve them. The Autism Society of Hawai'i (ASH) will provide leadership in the field of autism spectrum disorders dedicated to supporting families who advocate on behalf of their children and are committed to reducing the consequences of autism through education, research, and advocacy.

First of all, thank you for considering this important need for children eligible for special education under the Individuals with Disabilities Education Act (I.D.E.A.). SB 2004, SD2 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.

I.D.E.A. 2004 currently allows for a reconciliation period between parents and the DOE to resolve differences by requiring the parents to give written notice to the DOE 10 days before removing their child from the public school. If the parents fail to notify the IEP team or the school, the Hearings Officer may reduce or deny the parent's request for reimbursement for the costs of private placement in a due process hearing.

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

Extending this statute of limitations from 90 days to two (2) years will most likely not affect the costs associated with a due process hearing as parents are still required to prove their case before a hearing officer. We respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before

3/12/2008

being awarded any reimbursement.

Again, this is a very stressful and difficult process, and it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because they do not always understand the process or the terms used. Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawai'i'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 SD2 version increases the timeline from 90 to 180 days, we prefer the original approach of two years.

When Hawai'i, in the minority, passes a 2004 statute of limitation, unlike the rest of the forty-seven states across the nation, it places an additional burden WITH a differentiation by type of claim (private school placement or "unilateral placement") on its citizens. Only New Hampshire, Vermont besides Hawai'i does this. Doing so, our concern is not just for the vulnerable population of the special education children of Hawai'i, but also for the message it sends to all 50 states of how Hawai'i cares for its children and their families.

We are grateful to this House Committee on Education for passing important and potential provisions in HB 2186, HD1 and requests that this Committee place these provisions as an amendment into SB2004, SD2 which includes:

- The statute of limitations of two (2) year period which is more in keeping with the rest of the nation and with the I.D.E.A. and federal regulations.
- The rule making requirement of reimbursement of expert witness and other relevant fees.

The Autism Society of Hawai'i offers its strong support for SB 2004, SD2 with amendments.

Thank you for the opportunity to provide testimony in support of this important bill. We look forward to the passage of SB2004 with amendments.

Sincerely,

Naomi Grossman
Autism Society of Hawai'i, president

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Roy P. Yamane
President of the Hawaii Down Syndrome Congress (HDSC)
(808) 368-1060

Committee on Education
Representative Roy Takumi, Chair
Representative Lyla Berg, Ph.D., Vice Chair

March 12, 2008, 2:00pm, 5 copies
Conference Room 309
State Capitol
415 South Beretania Street

SB 2004 SD2

RELATING TO EDUCATION.

Extends the deadline within which to file a request for a due process hearing relating to the education of a child with a disability from 90 days to 180 calendar days when the request is for reimbursement of costs of a child's placement. Requires the department to report to the legislature annually on the number of these requests awaiting hearing. (SB2004 SD2)

Testimony

It is necessary to approve SB 2004 in the original submission without the amendment of SD2, extending the deadline in which a person with disabilities has to file a request for a due process hearing relating to the education of a special needs child. Succinctly this piece of legislation amends the current due process timeline for cost reimbursement from ninety days to 180 days instead of the proposed two years. By rejecting the modification of 180 days, the Hawaii Down Syndrome Congress supports the original proposal of two years for the following reasons.

My experiences as a parent with children with special needs have been eye opening and challenging. Upon learning of the disabilities of each of my children it became obvious that quality life would be the priority. Focus on physical, medical, financial, and education needs are important to creating quality of life.

Understanding these priorities necessitates my support of SB 2004. The challenge for parents / care givers with special need children is to prioritize which needs come first. Using this hearing as an example; as a concerned parent with a child that has a disability the time of the hearing is 2pm on a Wednesday. The choice before me is to attend the meeting in support of the bill or to miss work, lose income and potentially lessen advancement due to missed days of work.

Maintaining a short filing period does not afford the time for the parent to discuss the matter with all parties and still provide a stable quality life. Once an impasse is reached with the IEP team and the parent seeks to relocate their child to another school, the bureaucratic shuffle begins. This process seldom provides proactive notification by the Department of Education of what the next process is and what department is responsible.

At this juncture it is left up to the parent / care giver to research and select the process that will hopefully be the best solution for their child. Then a new process starts with the parent appearing or applying to another bureaucratic system for support. The journey is not endless, unfortunately it is long. In the case SB 2004 the two year timeline provides the parent and child a fighting chance against a system that considers expeditious resolution and cost more important than the quality of life that a child.

Parents or individuals caring for the needs of children with disabilities are inundated with a variety of daily challenge that influences their child's quality of life. These challenges include medical imperatives, living necessities, physical constraints and education. These influences affect a care giver / parent's priorities relating to decision making, time allocation and resources. Impacts from these factors make the current ninety day requirement hard at best to achieve for families facing so many obstacles.

Parents / care givers must place at the forefront the medical and basic living necessities of their children with disabilities. The two year change to the due process filing period affords families with special needs children the necessary time to file an all-inclusive request for placement cost reimbursement.

We the members of the Hawaii Down Syndrome Congress sincerely hope that this committee carefully reviews SB 2004. In closing, the Hawaii Down Syndrome Congress supports the original proposal of two years and rejects the last recommendation that the length of time amended be to 180 days. We humbly request that the Senate review SB 2004 and ratify the change from 90 days to two years as a necessity and the right thing to do in support of families with children with disabilities.

From: Linda Elento, Member of The Hawaii Down Syndrome Congress

To: EDUCATION COMMITTEE
Rep. Roy Takumi, Chair
Rep. Lyla Berg, Ph.D., Vice Chair

Re: EDN March 12, 2008, 2pm
SB2004, SD2 ~ In Support Special Education, Due Process

Thank you for the opportunity to present testimony in strong support of SB2004. The Department of Education's Procedural Safeguards outline the current State requirements for a parent to request a due process hearing. The specific guidelines SB2004 would affect are attached to this testimony.

Written testimonies by Superintendent of Education given to the Legislature prior to the passage of SB1661 (Act 158) in 2005 were not sufficient to have resulted in a change in HRS 302A-443 creating a 90-day statute of limitations for a parent to file for an impartial due process hearing to recover tuition costs when necessary to unilaterally place a student (not the public school's decision for the student). The federal IDEA 2004 law defaults with a two year statute of limitations.

SB2004 seeks to reverse this 90-day limit as well as to have the mandated public participation provision in the IDEA 2004 followed.

I believe the public participation requirement to make change to state laws, rules, regulations as described below was not applied to the process of making such changes in Act 158 in 2005, nor do I believe the DOE's testimony in 2005 was sufficient in determining the need for such a limit that clearly benefits the DOE and extremely limits a child and parent's civil rights.

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

A strongly supported addition to SB2004 SD2 is to address the current 30-day statute of limitations (per Hawaii Administrative Rules chapter 56) for any party to **appeal an administrative hearings officer's decision to court. Most states have a 90-day Statute of Limitations.**

When the DOE pays a consultant, who is not a Hawaii-licensed attorney, to train the Administrative Hearings Officers, Board of Education members, DOE personnel, advocates and parents on the federal special education law (the IDEA), one does not have to wonder why our hearings officers and DOE personnel follow the same narrow path to implementing the requirements of the IDEA. Our only recourse is filing a lawsuit at state or federal court within 30 days of a hearing decision per Hawaii Administrative Rules. Court requires hefty filing fees, legal know-how, deadlines. We support an appeals process with the opportunity to present more evidence without a court system. There is room for great error during administrative hearings due to lack of knowledge of the process and requirements of proving by preponderance of the evidence.



HEARINGS ON DUE PROCESS COMPLAINTS

IMPARTIAL DUE PROCESS HEARING

34 CFR §300.511

General

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

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

Impartial hearing officer

At a minimum, a hearing officer:

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

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

Subject matter of due process hearing

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

Timeline for requesting a hearing

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

Exceptions to the timeline

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

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

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

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

HEARING RIGHTS

34 CFR §300.512

General

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

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

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

34 CFR §300.535

Part B of the IDEA 2004 does not:

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

Transmittal of records

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

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

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

GENERAL

34 CFR §300.148

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

Reimbursement for private school placement

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

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

Limitation on reimbursement

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

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

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

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

However, the cost of reimbursement:

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

FREE AND LOW-COST LEGAL AND OTHER SUPPORT SERVICES

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

*

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

March 12, 2008

Representative Roy Takumi, Chair
Representative Lyla Berg, Vice-Chair
The House Education Committee
State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony for SB 2004 HD2 Relating to Education

Wednesday, March 12, 2008, Room 309, 2:00 pm

I would like to express my SUPPORT for this bill to extend the current 90 day statute of limitations to 180 calendar days for those parents requesting a due process hearing who seek reimbursement costs for private placement. However, I hope that this committee WILL SERIOUSLY CONSIDER a revision of this bill to change the proposed 180 day timeline into a 2 year timeline in line with the federal IDEA 2004 law.

Currently, 47 states follow the recommended 2 year statute of limitations. Hawaii is NOT one of these states. The 2 year timeline gives parents the time they need to make difficult decisions for their child relating to their education. It gives parents time to decide whether or not to pursue due process. The 90 day timeline in essence forces parents to make a decision under duress to proceed to due process when in all probability these parents would not do so otherwise under less pressure. Why must Hawaii be aligned with only TWO other states out of FIFTY that diminish a child's rights under IDEA? Although this state gives the appearance of being Keiki friendly, ARE we being Keiki friendly with our 90 day statute of limitations or even the proposed 180 day statute of limitations? I realize that money is the biggest factor in most issues related to education but we are talking about Special Needs Children, children who need the GREATEST amount of assistance out of all of the children in the public school system. A TWO year statute of limitations has been accepted by 47 of the United States. How must it appear when the state of Hawaii places its OWN needs ahead of its OWN Special Needs Children? Some things should just be left alone. In this instance, the 2 year time line should never have been changed.

I am a parent of a special needs child. I have experienced due process under the current 90 day statute of limitations and I believe this statute places an unfair burden and undue stress on parents. SB2004 HD2 is a very important bill for all parents trying to help their children who are already in a very difficult situation.

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

When parents have a legitimate disagreement with the public school, parents do not have the luxury of retaining counsel in legal matters. However, the public school has the option of referring to the District Office who will in turn refer to the AG's office for legal advice usually at any time throughout the year.

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

Parents should not be CORNERED into accepting the DOE's offer of placement when they have legitimate concerns. **Parents, as equal members of their child's Individualized Educational Program Team, have the right to disagree with ANY proposal that the DOE may offer regarding educational issues for their child.** The failure to provide FAPE is not the fault of the school; however, the best interests of the child should be the main priority. Placing a child into a classroom situation in which he/she is unable to receive some kind of educational benefit will ultimately harm the child in the long run and end up being a waste of DOE and taxpayer money.

I support SB2004 HD2; however, I'd like to recommend that your committee pass this measure with the suggested amendment to reestablish the 2 year timeline in line with the current federal law. IDEA 2004 allows parents a 2 year statute of limitation to file for due process and therefore, in a sense, recognizes that parents may need the extra time to resolve issues with the public school relating to placement and other issues relating to the provision of FAPE to their special needs child.

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

Thank you for giving me this opportunity to offer testimony for SB 2004 HD2. Give our children a fair chance at receiving an education that is a right of ALL children living in Hawaii, including OUR special needs children.

Sincerely,
Teresa Chao Ocampo
Parent of a Special Needs Child
808-585-8641
Javanut418@aol.com

Committee On Education
The House
March 12, 2008
TESTIMONY IN SUPPORT OF
SB 2004

Chairs Takumi, Berg and members of the Committees,

I am a parent of a child with special needs. SB 2004 would expand the deadline within which to file a request for due process hearing from ninety (90) days to 180 days 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. I further urge this bill to be passed reflecting a two (2) year statute of limitations instead of a 180 day limit to mirror most of the other states in the U.S.

The process for obtaining an appropriate placement for a special needs child is a daunting one. I have attended a myriad of individualized education program (IEP) meetings for my child, none of which were straightforward or collegial. Further, parents are usually at a disadvantage at the IEP meetings because we do not always understand the process or terms used. Once parents find an appropriate placement that is safe for their child, the process of filing for a due process hearing is a stressful and confusing one even for the most educated. Further, finding an attorney who will your child's case could take beyond 90 days. Placing this 90 day requirement on the parents is extremely burdensome. This requirement seems much less of a procedural "safeguard," and more of a procedural trap which ultimately ends up hurting the child.

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

I strongly support SB 2004 which would level the playing field for special needs children and urge your Committee to pass this measure.

Thank you for the opportunity to provide testimony on SB2004.
Sincerely,

Erin Ritz
381B Kaelepulu Dr.
Kailua, HI 96734
(808) 429-7489

berg1-Liz

From: aileen yamashiro [aiyamashiro@gmail.com]
Sent: Monday, March 10, 2008 5:48 PM
To: EDNtestimony
Subject: SB2004 SD2 A Bill for an Act

House Education Committee
March 10, 2008

TESTIMONY IN SUPPORT OF
SENATE BILL 2004, SD2

Members of the Committee, my name is Aileen Yamashiro. I am a parent of a child who falls under the Autism Spectrum Disorder. He is diagnosed with Prader-Willi Syndrome/Bi-Polar disorder.

SB 2004, SD2 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.

Ever since Daniel was born, I have had to fight for him. With no knowledge of medical terms, symptoms, diagnosis, I have had to do the research and then find a physician who would give him a diagnosis. This took five years. He was enrolled in the 0 - 3 program at Easter Seals and then graduated to attend pre-school in the public school system. With NO knowledge of what this meant, I just went along with whatever was proposed. The only input from my side was the research I did on his diagnosis and how to teach him what he needed to learn in school. Perhaps there was more I could have done for him to get him the education he needed but I did not know of rights and procedures and IEPs, etc. Now I know! After 19 years of yearly IEPs, sometimes, twice yearly and sometimes thrice yearly, I finally know what to do and how to get the services he needs in order to succeed. There was a time when I was close to calling for due process. I cannot imagine what I would have had to do in order to have my son's rights implemented. Fortunately, we did not go through due process and came to terms agreeably.

Why do parents have to fight so hard to see that their children receive the services they so deserve? Is it not enough that they must raise their children with so many challenges for all their lives? Always fighting for their child, making decisions, finding the best medical and mental health care, meetings after meetings, butting heads with "Educators" at schools, butting heads with school administrators, butting heads with district office personnel. Why are we paying these people to cause parents to have to call for due process to receive services their child needs in order to succeed? Is it not the DOE's role to prepare our children for life after school by teaching them how to succeed just as we as parents do our part in raising our children to the best of their abilities?

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 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

3/11/2008

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. 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.

I strongly support SB 2004 which would level the playing field for special needs children and urge your Committees to pass this measure with the suggested amendment of reestablishing the two (2) year time period within which to file a request for an impartial hearing.

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

Sincerely,
Aileen Yamashiro
45-553 Huawaina Place
Kaneohe, Hawaii 96744
(808) 358-0873
aiyamashiro@gmail.com

Senator Roy Takumi, Chair
Senator Lyla Berg, Vice-Chair
House Committee on Education

From Patricia Dukes, Ph.D.
Wednesday, March 12, 2008
Support of SB2004 SD2, Relating to Special Education Due Process Timeline

Aloha. I am a 62-year-old special education teacher and director of a program for children with autism, who receive educational services through the Dept of Education (DOE). I am writing to you about **SB 2004 SD2** relating to Education and the statute of limitations related to special education due process administrative hearing expanding the 90-day timeline to 180 days. I am testifying **in favor** of this bill, **with amendments**.

This bill is critical to the **protection of the rights of special needs children to receive an appropriate education**. Typically, families file for due process because it is the **only recourse left for them when the Dept of Education does not offer an appropriate educational plan for their child**. Ninety days is simply not enough time for them to get outside evaluations and second opinions, not to mention acquiring an attorney to take their case if it needs to go to a due process hearing. Hawaii is resource poor in terms of the number of private providers who can take on assessments at the spur of the moment. This is simply not enough time for families to get this accomplished. This causes stress on the family, which is then transferred to the child. It is an additional burden put on a family, who already is burdened with the care of a special needs child. This family often needs all the energy and resources it can muster in order to just simply function.

The federal IDEA law established a 2-year statute of limitations for parents to file for due process. Hawaii (along with Vermont and New Hampshire) are the only states who do not give their families the 2 years to make their case to an administrative officer, if they feel that the Dept of Education is not offering an appropriate educational plan. The Hawaii DOE has given no compelling evidence why the special needs children of Hawai'i should have a shorter statute of limitations than those of other states. This is certainly not what our Hawaiian culture and legacy is about (legacy of Queen Lilioukalanani and the Hawaii Monarchy and Constitution). I am asking that you, and others who are in position to do so, bring back fairness and *Aloha* to our Hawaiian Islands and again preserve the culture and legacy for our most vulnerable children. That is the Hawaiian way.

I am asking you to insist that the DOE gives you compelling reasons why you should consider anything less than 2 years for this law. Any decision to deviate from the standard of 2 years, set by the Federal government, should be made only after hearing such compelling arguments. So far, there have been none. Hawaii has long been in the national limelight for its disservice to children with special needs. Why add to this negative reputation? It is time to try to clear up that image and take the initiative to put children and families first. This is the Hawaiian way.

The DOE's current challenge to provide appropriate programs should not erode the rights of a segment of the population who cannot speak for themselves. **I urge you to protect the rights of the 10% of our public school children, who cannot testify on their own behalf, and count on others, such as you, to do so for them, by approving SB2004 SD2, with amendments from 180 days to 2 years.** Mahalo.

*Senator Roy Takumi, Chair
Senator Lyla Berg, Vice-Chair
House Committee on Education*

*From Patricia Dukes, Ph.D.
Wednesday, March 12, 2008
Support of SB2004 SD2, Relating to Special Education Due Process Timeline*

*Senator Roy Takumi, Chair
Senator Lyla Berg, Vice-Chair
House Committee on Education*

*From Stephanie Lu
Wednesday, March 12, 2008
Support of SB2004 SD2, 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** relating to Education and the statute of limitations related to special education due process administrative hearing expanding the 90-day timeline to 180 days. I am testifying **in favor** of this bill, **with amendments**.

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 for parents 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 the **49 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 strangle 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 in all other parts of the country!

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 challenge it is for the DOE. 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 10% of our public school children by approving SB2004 SD2, with amendments from 180 days to 2 years.** Mahalo for the opportunity to testify.

berg1-Liz

From: Lori Eller [lori-eller@hawaii.rr.com]
Sent: Monday, March 10, 2008 7:36 PM
To: EDNtestimony
Subject: Wed. 3-12-08 @ 2p. House Education Committee.

To: House Education Committee:

Please Support: Special Education/due process SB2004,
The current version SB2004 SD2 provides for 6 months Please support a change from our state's current law of 90 days back to 2 years (as allowed for by the federal law IDEA 2004) for a parent to ask for reimbursement of private tuition and also support a parent to be reimbursed for expert witness fees/expenses necessary for a due process hearing.

*Thank You,
Lori Eller*

3/11/2008

