



GOV. MSG. NO. 1232

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 15, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

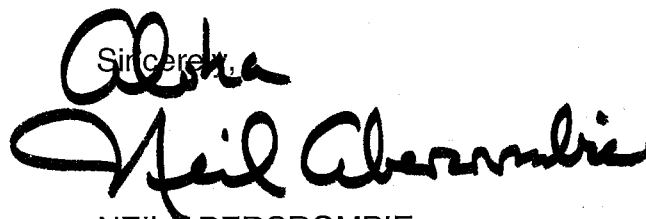
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 15, 2011, the following bill was signed into law:

SB1284 SD2 HD1 CD1

RELATING TO EDUCATION
Act 129 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO EDUCATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The department of education is required to pay
2 for the private placement of students with disabilities in
3 private special education schools and placements as a result of
4 hearing officers' decisions, court orders, or programmatic
5 placement. When a student with a disability is placed in a
6 private school or placement, the department of education is
7 often not allowed to monitor each student's progress and
8 educational programming to ensure that each student is afforded
9 the same opportunity to receive rigorous, standards-based
10 instruction and curriculum that are aligned with the Common Core
11 State Standards that are provided to their peers in public
12 schools. Some private placements are not in compliance with
13 federal, state, and county health and safety laws, rules,
14 regulations, and requirements.

15 The department of education is also charged high-cost
16 tuition and fees for services by private placements. The
17 department of education should pay reasonable tuition and fees
18 for services.



1 The purpose of this Act is to:

2 (1) Provide the department of education with the authority
3 to monitor students with disabilities who are placed
4 in private schools or placements;

5 (2) Require private schools or placements to allow the
6 department of education access to exercise its
7 authority to monitor students;

8 (3) Require certain private schools or placements to post
9 itemized rates, fees, and tuition each April;

10 (4) Require certain private schools or placements to
11 charge the department of education the same rates,
12 fees, and tuition charged to parents who unilaterally
13 place a student at the school;

14 (5) Require the department of education to pay only for
15 private school or placement services that are
16 specified in a student's individualized education
17 program; and

18 (6) Require the department of education to withhold
19 payment to any private school or placement that
20 restricts or denies monitoring of students by the
21 department of education under this Act.



1 SECTION 2. Section 302A-443, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§302A-443 Administrative hearing procedures and subpoena
4 power relating to the education of children with a disability.

5 (a) An impartial hearing may be requested by any parent or
6 guardian of a child with a disability, or by the department, on
7 any matter relating to the identification, evaluation, program,
8 or placement of a child with a disability; provided that the
9 hearing is requested:

10 (1) Within two years of the date the parent, guardian, or
11 department knew or should have known about the alleged
12 action that formed the basis of the request for a
13 hearing; and

14 (2) Notwithstanding paragraph (1), within one hundred and
15 eighty calendar days of a unilateral special education
16 placement, where the request is for reimbursement of
17 the costs of the placement.

18 (b) Subsection (a) shall not apply to a parent or guardian
19 of a child with a disability if the parent or guardian was
20 prevented from requesting the hearing due to:



1 (1) Specific misrepresentations by the department that it
2 had resolved the problem that formed the basis of the
3 complaint; or

4 (2) The department's withholding from the parent or
5 guardian information that was required by state or
6 federal laws and regulations to provide a free,
7 appropriate public education to a child with a
8 disability.

9 (c) The department shall adopt rules that conform to the
10 requirements of any applicable federal statutes or regulations
11 pertaining to the impartial hearing based on the education of a
12 child with a disability. The rules shall provide that any party
13 may be present at the proceeding, be accompanied and advised by
14 counsel or individuals with special knowledge or training with
15 respect to the problems of children with a disability, may
16 require witnesses to be under oath, cross-examine witnesses, and
17 obtain a written or electronic verbatim record of the
18 proceedings.

19 (d) Any party to these hearings or the hearings officer
20 shall have the right to compel the attendance of witnesses upon
21 subpoena issued by the hearings officer. The fees for
22 attendance shall be the same as for the fees of witnesses before



1 circuit court. In case of the failure of any person to comply
2 with a subpoena, a circuit court judge of the judicial circuit
3 in which the witness resides, upon application of the hearings
4 officer, shall compel attendance of the person.

5 (e) No later than twenty days prior to the convening of
6 each regular session of the legislature, the department shall
7 submit a report that provides the total number of requests for a
8 due process hearing relating to the reimbursement of costs for a
9 child's placement filed by a parent or guardian of a child with
10 a disability.

11 (f) The department shall ~~[exercise oversight and~~
12 ~~monitoring of]~~ be authorized to monitor any child eligible to
13 receive special education and related services who ~~[has~~
14 ~~undergone unilateral special education placement as soon as~~
15 ~~practicable after the placement.]~~ is placed, whether as the
16 result of a hearing officer's decision, court order, or
17 programmatic placement, at the department's expense, whether by
18 direct payment or through reimbursement to the student's parent,
19 legal guardian, or legal custodian, in any private school or
20 placement as defined by federal and state law, including any
21 implementing regulations or rules, relating to students with
22 disabilities. Any private school or placement that receives



1 funding from the department for the placement of a student with
2 a disability, whether the funding is by direct payment or
3 through reimbursement to the student's parent, legal guardian,
4 or legal custodian, shall allow the department access to
5 exercise its authority under this subsection to monitor any
6 student placed at the private school or placement. Monitoring
7 under this subsection shall include but not be limited to:

8 (1) The monitoring of all private schools and placements
9 to ensure compliance with all applicable federal,
10 state, and county laws, rules, regulations, and
11 ordinances pertaining to health and safety;

12 (2) The monitoring of all students with disabilities
13 placed in a private school or placement to ensure
14 that:

15 (A) Each student is receiving academic education,
16 instruction, and programming as required by the
17 student's individualized education program; and

18 (B) The curriculum and instruction are rigorous,
19 based on content standards, and aligned with the
20 Common Core State Standards;



1 (3) The direct observation of a student with a disability
2 placed in a private school or placement, with or
3 without notice to the private school or placement;

4 (4) The review of all records, notes, or documentation
5 related to students with disabilities placed in a
6 private school or placement; and

7 (5) The right of the department to talk to the student's
8 teachers at the private school or placement at
9 reasonable times.

10 (g) Any private school or placement that receives funds
11 from the department, whether by direct payment or through
12 reimbursement to the student's parent, legal guardian, or legal
13 custodian, shall post with the department by April of each year,
14 the itemized rates, fees, and tuition to be charged for the
15 following school year and shall charge the department the same
16 itemized rates, fees, or tuition it charges parents, legal
17 guardians, or legal custodians who unilaterally place a student
18 at its school, program, or facility. The department shall only
19 pay for services that are specified in a student's
20 individualized education program.

21 (h) Any private school or placement that receives funds
22 from the department, whether by direct payment or through



1 reimbursement to the student's parent, legal guardian, or legal
2 custodian, shall provide copies of a student's records to the
3 department within three business days of receipt of a request
4 for such records.

5 (i) The department shall withhold payment to any private
6 school or placement that restricts or denies monitoring by the
7 department pursuant to its authority under subsection (f).

8 (j) Subsections (f) through (i) shall not apply to those
9 schools that are full and accredited members in good standing of
10 the Hawaii Association of Independent Schools; provided that the
11 department may monitor any child at such schools eligible to
12 receive special education and related services at the
13 department's expense.

14 (k) The department may adopt rules pursuant to chapter 91
15 to effectuate subsection (f)."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on July 1, 2011.

APPROVED this 15 day of JUN, 2011



GOVERNOR OF THE STATE OF HAWAII