

STAND. COM. REP. NO. 1472

Honolulu, Hawaii

April 8, 2011

RE: S.B. No. 1284
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Finance, to which was referred S.B. No. 1284, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO EDUCATION,"

begs leave to report as follows:

The purpose of this bill is to ensure that students with disabilities in private special education schools and placements as a result of hearing officers' decisions, court orders, or programmatic placement receive a quality education by, among other things:

- (1) Authorizing the Department of Education (DOE) to monitor students with disabilities who are placed in private schools or placements at DOE's expense, and requiring DOE to withhold payment if student monitoring is restricted or denied;
- (2) Requiring private schools and placements that receive DOE funds to annually post itemized rates, fees, and tuition and to charge DOE the same rates, fees, and tuition as that charged to parents and guardians who unilaterally place a student at the private school or placement;

SB1284 HD1 HSCR FIN HMS 2011-3493



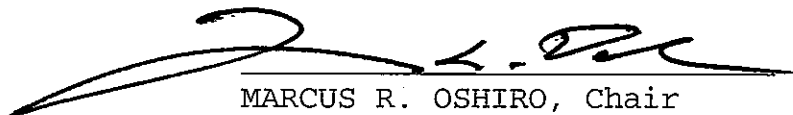
- (3) Requiring DOE to pay only for private school or placement services that are specified in a student's individualized education program; and
- (4) Providing certain exemptions for full and accredited members in good standing of the Hawaii Association of Independent Schools and the Hawaii Catholic Schools while allowing DOE to monitor students eligible for special education and related services at such schools at DOE's expense.

DOE, the Special Education Advisory Council, Hawaii Association of Independent Schools, Community Children's Council of Hawaii, and a concerned individual supported this bill. The Hawaii State Teachers Association, Hawaii Disability Rights Center, Autism Society of Hawaii, and several concerned individuals opposed this measure.

Your Committee notes the concerns raised by the Hawaii Disability Rights Center that this measure may violate the Individuals with Disabilities Education Act (IDEA) and the court opinions that have interpreted IDEA, as the United States Supreme Court has ruled that a school district's authority to control the cost of a private placement is limited to situations in which the school district on its own decided to provide a child a Free and Appropriate Public Education, or FAPE, by placing the child in the private setting (*Florence County School District v. Carter*, 510 U.S. 7, 114 S. Ct. 361 (1993)). As such, your Committee urges the Attorney General to review the current measure to determine its compliance with federal law and previous court rulings on this matter, including any rulings by the Supreme Court.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1284, S.D. 2, H.D. 1, and recommends that it pass Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Finance,



MARCUS R. OSHIRO, Chair



