



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

Thursday, March 31, 2022; 3:00 p.m.
Conference Room 225 &
Videoconference

To: The Honorable Joy A. San Buenaventura, Chair
The Honorable Les Ihara, Jr., Vice Chair
Members of the Senate Committee on Human Services

The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Members of the Senate Committee Judiciary

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.C.R. No. 129

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

S.C.R. 129 requests the HCRC to clarify claims within the scope of the Individuals with Disabilities Education Act, known as IDEA. The HCRC offers these comments on S.CR. 129, and asks for clarification regarding the purpose of the resolution and what is being sought.

Act 164, L. 2021 amended H.R.S. 368-1.5, over which HCR has jurisdiction. Act 164 restored jurisdiction over state and state-funded agencies regarding disability discrimination by clarifying the definition of “program or activity receiving state financial assistance” to include

programs which may also receive federal funds. The definition exempted the HCRC's jurisdiction over claims within the scope of the IDEA. Act 164 goes into effect on July 1, 2022.

Based on the amendment, HCRC will have jurisdiction over complaints by students of discrimination by the Department of Education, and the University of Hawai'i system, based on disability if those claims do not fall within the scope of IDEA. The resolution asks HCRC to identify or clarify claims within the IDEA over which we will have jurisdiction. However, HCRC will reject claims covered by the IDEA as outside of our jurisdiction, pursuant to statute.

IDEA is an educational benefit law affecting children ages 3 to 21 who need special education and related services. It mandates that a child receive a free, appropriate public education. IDEA offers services to students with disabilities that are not offered to those without disabilities. A child with learning disabilities will receive an individualized education plan, known as an IEP. The IDEA provides specific due process procedures to provide hearings for parents regarding alleged violations of the IDEA.

Section 504 of the Rehabilitation Act is a civil rights law that ensures that individuals with disabilities have the same access to programs and activities receiving federal monies that individuals without disabilities have. A student needing access to school programs may receive a 504 plan. H.R.S. 368-1.5 is analogous to Section 504, and not related to IDEA.

Act 164 will go into effect on July 1, 2022. The statute, which prohibits discrimination based on disability in state and state funded services, will include complaints regarding physical access to websites, buildings and other types of discrimination, and applies to all, not just students. At this time, we do not know what types of complaints will be received from students.

The HCRC is willing to submit a report pursuant to S.C.R. 129 if requested.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/31/2022

Time: 03:00 PM

Location: CR 225 & Videoconference

Committee: Senate Judiciary
Senate Human Services

Department: Education

Person Testifying: Keith T. Hayashi, Interim Superintendent of Education

Title of Resolution: SCR 0129 REQUESTING THE HAWAII CIVIL RIGHTS COMMISSION TO CLARIFY CLAIMS WITHIN THE SCOPE OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Department's Position:

The Hawaii State Department of Education (Department) would like to offer comments on SCR 129, which requests that the Hawaii Civil Rights Commission clarify claims within the scope of the Individuals with Disabilities Education Act of 2004 (IDEA).

The Department believes a complaint related to special education services under the IDEA Part B (ages 3 through 21) does not fall within the jurisdiction of the Hawaii Civil Rights Commission under Section 368-1.5, Hawaii Revised Statutes. The IDEA and its implementing regulations provide specific processes for resolving disagreements relating to any alleged violations of IDEA between parents and public agencies. In accordance with IDEA, the Department has in place an effective dispute resolution process for resolving disputes related to special education. The Department offers mediation, impartial due process hearing requests, and state written complaints. These processes are used in a manner consistent with IDEA's shared goals of improving educational results and functional outcomes for students with disabilities. Any individual or organization that believes a school has violated a requirement of IDEA can file a state written complaint with the Department's Monitoring and Compliance Branch. In addition, under IDEA, students and families have the option of filing a complaint externally with the U.S. Department of Education Office of Special Education Programs.

Further, parents of students who qualify for special education and related services under the IDEA who believe that their child has been discriminated against on the basis

of his/her disability may file a complaint with the Civil Rights Compliance Branch of the Department's Office of Talent Management. The Civil Rights Compliance Branch conducts internal investigations of complaints arising from alleged protected class discrimination, harassment, or bullying based upon a protected class, such as disability.

Students who qualify for special education and related services under the IDEA may also file complaints of discrimination, harassment, or bullying with the U.S. Department of Education Office for Civil Rights. The Office for Civil Rights will investigate and/or work with the school and family to resolve the complaint.

Thank you for this opportunity to provide testimony on this measure.

LATE

SCR-129

Submitted on: 3/30/2022 3:01:08 PM

Testimony for JDC on 3/31/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Linda Elento	Individual	Support	In Person

Comments:

Aloha, I am a parent of a student with a disability and support SCR129.

I experienced a denial of my complaint regarding my son and a public charter school to the Hawaii Civil Rights Commission approximately ten years ago. The matter was a civil rights matter under Sec. 504 and ADA, not IDEA. The DOE argued it was an IDEA matter, yet my student wasn't even eligible under IDEA because I had the parental right to revoke continued special education and related services, yet my student was eligible under Sec. 504 and ADA. The Hawaii Civil Rights Commission agreed that my complaint should have been accepted as a valid complaint, although for twenty years had been denying assistance only to students. The Hawaii Supreme Court decided that no state funded agency was covered under HRS368-1.5 if the agency was subject to Sec. 504. Therefore, Act 164 of 2021 Regular Session was the result. A clarification in the original Hawaii Revised Statute may have prevented many years of denials and disability discrimination against students from schools. That is a reason I support SCR129, especially as Hawaii Administrative Rules may be written and best require further guidance from the Legislature.

I would like to provide further testimony during the hearing. Mahalo for the opportunity to provide testimony that would provide discussion of special education and disabled students seeking a remedy for disability discrimination, enforcement of civil rights laws, and providing education to students and parents of their civil rights, separate from special education and IDEA law.

LATE

SCR-129

Submitted on: 3/30/2022 10:14:03 PM

Testimony for JDC on 3/31/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jason	Individual	Support	Written Testimony Only

Comments:

Aloha, When I feel treated unfairly at school, I need help from the HCRC. The school told my mom that I could not go on a field trip to the Capitol. My mom met a lawyer who helped me. Then I was able to go on the field trip with an RBT (registered behavior technician).

Thank you for the opportunity to provide testimony.