

ACT 129

S.B. NO. 1284

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

The purpose of this Act is to:

- (1) Provide the department of education with the authority to monitor students with disabilities who are placed in private schools or placements;
- (2) Require private schools or placements to allow the department of education access to exercise its authority to monitor students;
- (3) Require certain private schools or placements to post itemized rates, fees, and tuition each April;

- (4) Require certain private schools or placements to charge the department of education the same rates, fees, and tuition charged to parents who unilaterally place a student at the school;
- (5) Require the department of education to pay only for private school or placement services that are specified in a student's individualized education program; and
- (6) Require the department of education to withhold payment to any private school or placement that restricts or denies monitoring of students by the department of education under this Act.

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

“§302A-443 Administrative hearing procedures and subpoena power relating to the education of children with a disability. (a) An impartial hearing may be requested by any parent or guardian of a child with a disability, or by the department, on any matter relating to the identification, evaluation, program, or placement of a child with a disability; provided that the hearing is requested:

- (1) Within two years of the date the parent, guardian, or department knew or should have known about the alleged action that formed the basis of the request for a hearing; and
 - (2) Notwithstanding paragraph (1), within one hundred and eighty calendar days of a unilateral special education placement, where the request is for reimbursement of the costs of the placement.
- (b) Subsection (a) shall not apply to a parent or guardian of a child with a disability if the parent or guardian was prevented from requesting the hearing due to:

- (1) Specific misrepresentations by the department that it had resolved the problem that formed the basis of the complaint; or
 - (2) The department's withholding from the parent or guardian information that was required by state or federal laws and regulations to provide a free, appropriate public education to a child with a disability.
- (c) 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 any party may be present at the proceeding, be accompanied and advised by counsel or individuals with special knowledge or training with respect to the problems of children with a disability, may require witnesses to be under oath, cross-examine witnesses, and obtain a written or electronic verbatim record of the proceedings.

(d) Any party to these hearings or the hearings officer shall have the right to compel the attendance of witnesses upon subpoena issued by the hearings officer. The fees for attendance shall be the same as for the fees of witnesses before circuit court. In case of the failure of any person to comply with a subpoena, a circuit court judge of the judicial circuit in which the witness resides, upon application of the hearings officer, shall compel attendance of the person.

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

(f) The department shall ~~[exercise oversight and monitoring of]~~ be authorized to monitor any child eligible to receive special education and related

services who [has undergone unilateral special education placement as soon as practicable after the placement.] is placed, whether as the result of a hearing officer's decision, court order, or programmatic placement, at the department's expense, whether by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, in any private school or placement as defined by federal and state law, including any implementing regulations or rules, relating to students with disabilities. Any private school or placement that receives funding from the department for the placement of a student with a disability, whether the funding is by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, shall allow the department access to exercise its authority under this subsection to monitor any student placed at the private school or placement. Monitoring under this subsection shall include but not be limited to:

- (1) The monitoring of all private schools and placements to ensure compliance with all applicable federal, state, and county laws, rules, regulations, and ordinances pertaining to health and safety;
 - (2) The monitoring of all students with disabilities placed in a private school or placement to ensure that:
 - (A) Each student is receiving academic education, instruction, and programming as required by the student's individualized education program; and
 - (B) The curriculum and instruction are rigorous, based on content standards, and aligned with the Common Core State Standards;
 - (3) The direct observation of a student with a disability placed in a private school or placement, with or without notice to the private school or placement;
 - (4) The review of all records, notes, or documentation related to students with disabilities placed in a private school or placement; and
 - (5) The right of the department to talk to the student's teachers at the private school or placement at reasonable times.
- (g) Any private school or placement that receives funds from the department, whether by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, shall post with the department by April of each year, the itemized rates, fees, and tuition to be charged for the following school year and shall charge the department the same itemized rates, fees, or tuition it charges parents, legal guardians, or legal custodians who unilaterally place a student at its school, program, or facility. The department shall only pay for services that are specified in a student's individualized education program.
- (h) Any private school or placement that receives funds from the department, whether by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, shall provide copies of a student's records to the department within three business days of receipt of a request for such records.
- (i) The department shall withhold payment to any private school or placement that restricts or denies monitoring by the department pursuant to its authority under subsection (f).
- (j) Subsections (f) through (i) shall not apply to those schools that are full and accredited members in good standing of the Hawaii Association of Independent Schools; provided that the department may monitor any child at such schools eligible to receive special education and related services at the department's expense.
- (k) The department may adopt rules pursuant to chapter 91 to effectuate subsection (f)."

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

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

(Approved June 15, 2011.)