STAND. COM. REP. NO. 2626

Honolulu, Hawaii

MAR - 2 2006

S.B. No. 2733 RE:

S.D. 2

Honorable Robert Bunda President of the Senate Twenty-Third State Legislature Regular Session of 2006 State of Hawaii

Sir:

Your Committee on Judiciary and Hawaiian Affairs, to which was referred S.B. No. 2733, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO EDUCATION,"

begs leave to report as follows:

The purpose of this measure is to assign the burden of proof to the Department of Education in initial challenges to an IEP in administrative hearings brought under the Individuals with Disabilities Education Act (IDEA) and shifts the burden to the parent or guardian in subsequent challenges following an adverse ruling to the parent or guardian.

Testimony in support of this measure was submitted by the Department of Education, the Disability and Communication Access Board, the Special Education Advisory Council, the Community Children's Council, and the Hawaii Disability Rights Center. Testimony in opposition to this measure was submitted by the Autism Society of Hawaii and nine individuals. Comments on this measure were submitted by the Attorney General, the State Council on Developmental Disabilities, the Learning Disabilities Association of Hawaii, and six individuals.

Your Committee finds that in light of the recent United States Supreme Court decision in Schaffer v. Weast, there is concern about which party has the burden of proof in appealing administrative hearings brought under IDEA. The measure, as currently drafted, places the burden of proof on parents when the parents bring a subsequent challenge. Your Committee finds that

it is more appropriate to place the burden of proof on the appealing party, whether it be the parents or the department. Your Committee further finds that the department should have the burden of presentation since it is in possession of the student's records.

Your Committee also notes that many testifiers had concerns about changing the statute of limitations from two years to ninety days.

Your Committee has amended this measure to:

- (1) Require that in any appeal of an administrative hearing, the department shall have the burden of presentation and the party brining the appeal shall have the burden of proof;
- (2) Insert a defective effective date of July 1, 2050; and
- (3) Make technical, nonsubstantive changes.

As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2733, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2733, S.D. 2.

Respectfully submitted on behalf of the members of the Committee on Judiciary and Hawaiian Affairs,

COLLEEN HANABUSA, Chair

The Senate Twenty-Third Legislature State of Hawaii

Record of Votes of the Committee on Judiciary and Hawaiian Affairs (Bills and Resolutions)

Measure:*	Committee Re	eferral:	Date:	1,27	· / 2 / 18
SB 2733 SD1	EDM, JH	W	- 2	124	106 1
The committee is reconsidering its previous decision on this measure.					
If so, then the previous decision was to:					
The Recommendation is to:					
Pass, unamended (2312)	Pass, with a	amendments	Hol (235	d \square	Recommit (2313)
Members		Ayes	Ayes(W/A)	Ways	Excused
HANABUSA, Colleen (C)		/	X	14	
HEE, Clayton (VC)			///		
CHUN OAKLAND, Suzanne				g 14 %	
ENGLISH, J. Kalani			/	: • • •	
IHARA, Jr., Les					
WHALEN, Paul				<u> </u>	
11 H 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -	. 114.11				
(4) P					
TOTAL		2	3	0	İ
Recommendation: Adopted Not Adopted					
Chair's or Designee's Signature: Distribution: Original Yellow Pink Goldenrod					
File with Committee Report Clerk's Office Drafting Agency Committee File Copy					

^{*}Do not list more than one measure per Record of Votes.