

Date of Hearing: February 27, 2008

Committee: Senate Ways and Means

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.B. No. 2004, S.D. 1, SSCR 2251, Relating to Education

Purpose: Extends the deadline within which to file a request for a due process hearing relating to the education of a child with a disability from ninety days to one hundred and eighty calendar days when the request is for reimbursement of costs of a child's placement. Requires the department to adopt rules that provide for the reimbursement of expert witness and other relevant fees and expenses associated with a hearing. Requires the establishment of an appeals board and process wherein a state review officer shall review the decisions of the impartial hearings officers.

Department's Position: The Department of Education (Department) does not support S.B. 2004, S.D. 1, SSCR 2251.

Prior to the 2005 Legislative Session, all due process hearing requests filed under the Individuals with Disabilities Education Act (IDEA) was limited to a general state statute of limitations of two years. The 2005 Legislation Session enacted Hawaii Revised Statutes (HRS) §302A-443 which distinguished the statute of limitations for a specific kind of due process hearing relating to the

reimbursement of private school tuition. All other due process hearings continue to be limited to a two year statute of limitations. When a parent unilaterally places a student with disabilities in a private school against the proposal of the Department, the Department has no authority to monitor the progress of the student unilaterally placed in the private school. The educational impact on the student's program that waits two years for a parent to file and approximately nine months to conduct the hearing is onerous. It is more beneficial to all parties when disagreements are resolved sooner than later. Thus, the Legislature recognized the inequity of the two-year statute of limitations for the filing of a due process hearing for a student's private school tuition reimbursement and enacted HRS 302A-443 appropriately. To avoid confusion, attached please find a copy of the request for hearing form parents may use to file a due process hearing. The form is two pages long and does not require evidence. And evidence binder is not required until the hearing begins which is scheduled an average of six to nine months from the date of filing. HRS 302A-443 properly distinguished a parent's request for reimbursement for private school tuition and limited the filing of a due process hearing request for the reimbursement of private school tuition to 90 days and should not be amended. Hawaii is not the only state with a statute of limitations less than 2 years for private school tuition reimbursement. Vermont is one state with a statute of limitations of

90 days for reimbursement of private school tuition. Texas has a one-year statute of limitations for all issues.

The United States Supreme Court determined in Arlington Central School District Board of Education v. Murphy, 126 S. Ct. 2455 that parents who prevail in due process hearings are not entitled to reimbursement of expert witness fees and other relevant fees and expenses. S.B. 2004, S.D. 1, SSCR 2251 properly eliminated the expert witness fees. These fees cannot be reimbursed with federal funds.

The Department is unable to support S.B. 2004, S.D. 1, SSCR 2251.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
919 ALA MOANA BOULEVARD, ROOM 113
HONOLULU, HAWAII 96814
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
February 27, 2008

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Ways and Means
Twenty-Fourth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Senator Baker and Members of the Committee:

SUBJECT: SB 2004 SD1– RELATING TO EDUCATION

The position and views expressed in this testimony do not represent nor reflect the position and views of the Departments of Health and Education (DOE).

The State Council on Developmental Disabilities (DD) **SUPPORTS THE INTENT OF SB 2004 SD1**. The purpose of SB 2004 SD1 is to extend the deadline within which to file a request for a due process hearing relating to the education of a child with a disability from 90 days to 180 calendar days when the request is for reimbursement of costs of a child's placement.

The Council initially advocated for the repeal of the 90 days and replacing it with "two years" in which any parent or guardian of a child with a disability may request for reimbursement of the costs of the placement. The current 90-day statute of limitation definitely puts parents in a disadvantageous position to file a request for a due process hearing for reimbursement for the cost of a child's placement. Most parents are not aware of the law, their rights, or the necessary process to proceed within the 90-day statute of limitation.

Although the Committees on Education and Human Services and Public Housing amended the bill from two years to 180 calendar days, the Council continues to advocate for the two years as the deadline. Should the Legislature decide to keep the 180 calendar days, the Council suggests the Legislature consider requiring DOE to submit a report regarding the number of due process hearings for reimbursement of costs of a child's placement.

The Honorable Rosalyn H. Baker
Page 2
February 27, 2008

We ask that this Committee consider reinstating the provision for DOE to establish a process to reimburse expert witnesses for hearings when parents are the prevailing party. This provision would provide a level of parity for parents and other relevant persons as expert witnesses to be reimbursed for costs associated with hearings. Whereas, DOE personnel involved in hearings are financially covered as part of their position/job responsibility. Many times, expert witnesses are needed to explain a child's disabilities and special needs.

Thank you for the opportunity to submit written comments in support of the intent of SB 2004 SD1.

Sincerely,

A handwritten signature in black ink, appearing to read "Waynette K.Y. Cabral", with a stylized, flowing script.

Waynette K.Y. Cabral
Executive Administrator

**HAWAII DISABILITY RIGHTS CENTER**

900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: info@hawaiidisabilityrights.org Website: www.hawaiidisabilityrights.org**TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION**

To: Senate Committee on Ways and Means
From: Gary L. Smith, President
Hawaii Disability Rights Center
Re: Senate Bill 2004, SD 1
Relating to Education

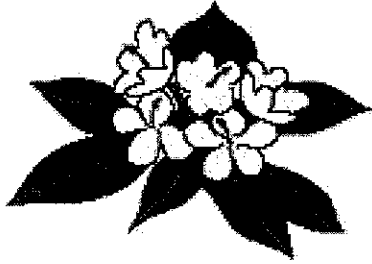
Hearing: Wednesday, February 27, 2008 10:30 PM
Conference Room 211, State Capitol

Members of the Committee on Ways and Means:

Thank you for the opportunity to provide testimony supporting Senate Bill 2004, SD1 Relating to Education.

I am Gary L. Smith, President of the Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A). As you may know, we are the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We support this bill and speak from a fair amount of experience as we represent a lot of parents and their children with special educational needs. SB 2004 in its original version would expand the deadline within which to file a request for due process hearing from ninety (90) days to two (2) years when the request is for reimbursement of costs of a child's placement. It would also require the Department of Education to adopt rules that would provide for the reimbursement of expert witnesses and other fees and expenses associated with a hearing. Parents are at a disadvantage at the IEP meetings because they do not always understand the process or the terms used. Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of



S E A C
Special Education Advisory Council
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Honolulu, HI 96814
Phone: 586-8126 Fax: 586-8129
email: spin@doh.hawaii.gov

February 27, 2008

**Special Education
Advisory Council**

**TESTIMONY TO THE SENATE COMMITTEE ON
WAYS AND MEANS**

RE: SB 2004, SD1 - Relating to Education

Ms. Ivalee Sinclair, *Chair*
Mr. Steve Laracuenta, *Vice
Chair*

Ms. Janet Bamford
Dr. Paul Ban, *Liaison
to the Superintendent*
Ms. Sue Brown
Ms. Deborah Cheeseman
Ms. Phyllis DeKok
Mr. Lee Dean
Ms. Mary Ellis
Ms. Debra Farmer
Ms. Gabriele Finn
Ms. Martha Guinan
Mr. Henry Hashimoto
Ms. Tami Ho
Ms. Barbara Ioli
Ms. Valerie Johnson
Ms. Shanelle Lum
Ms. Rachel Matsunobu
Ms. June Motokawa
Ms. Barbara Pretty
Ms. Susan Rocco, *Ex-officio*
Dr. Patricia Sheehy
Mr. August Suehiro
Ms. Jan Tateishi, *Ex-officio*
Ms. Judy Tonda
Dr. John Viesselman
Ms. Cari White
Ms. Jasmine Williams
Mr. Duane Yee
Mr. Wilfred Young

The Special Education Advisory Council, Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), supports the above bill as amended that: 1) extends the timeline to file a due process complaint for reimbursement of the costs of a unilateral private school placement, and 2) allows for the reimbursement of expert witness and other relevant fees and expenses when a parent prevails in a due process hearing.

The most recent amendments to the Individuals with Disabilities Education Act allow a parent up to two years to file a due process complaint on any matter related to a child's identification, evaluation educational placement or the provision of FAPE. These amendments also allow the Department a 10 day period to try to reconcile differences with parents over their child's placement by requiring the parent to give written notice to the Department at least 10 days prior to removing their child from public school, stating their concerns and intent to enroll their child in a private school at public expense. If the parent does not provide this notice or notify the IEP Team at the most recent IEP meeting that they reject the placement proposed by the Department, a hearing officer may reduce or deny the parent's request for reimbursement for the costs of private placement.

SEAC finds the language in IDEA regarding the filing of due process complaints sufficient to provide protections to both parents and schools. The imposition of a 90 day timeline specific to unilateral placements in state statute, however, is potentially unfair to parents who may be unaware of the timeline or have difficulty securing legal counsel to advise them within this short window of opportunity. SEAC has been notified of several parents who were denied access to due process, because they missed the 90 day timeline (in one instance, by one day).



SEAC also supports the second element of this bill--to allow reimbursement to parents for expert witness and other related fees, when a parent prevails in a due process hearing. Two recent Supreme Court decisions have impacted the parent's ability to provide an adequate argument in a due process hearing to show that a student's rights under IDEA have been violated. *Schaffer vs. Weast* established that the party initiating the due process complaint has the burden of proof based on the preponderance of evidence. Shortly thereafter, the Supreme Court, in *Arlington Central School District vs. Murphy*, ruled that IDEA did not allow for the reimbursement of expert witness fees to parents who prevail in a due process hearing.

The result of these two decisions is to put parents at a distinct disadvantage in a due process hearing. They are required to prove by a preponderance of the evidence that the Department failed to provide for FAPE for their child, and yet they may be restricted in providing expert witnesses to help prove their case, due to the unreimbursable costs of these witnesses. The Department on the other hand, has deep pockets and free reign to compel its own employees to testify as expert witnesses at these hearings. SEAC believes, therefore, that it is important to level the playing field by allowing parents to recoup these expenses, when they are the prevailing party in a due process hearing.

Thank you for the opportunity to present testimony on this issue. Should you have any questions regarding our position, you are welcome to contact me by phone or email.

Sincerely,

Ivalee Sinclair, Chair

*

Teresa Chao Ocampo
215 N. King Street, Apt. 207
Honolulu, HI 96817

February 26, 2008

Senator Rosalyn H. Baker, Chair
Senator Shan S. Tsutsui, Vice-Chair
Senate Committee on Ways and Means
Hawaii State Capitol, Room 211
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony for SB 2004 HD1 Relating to Education

Wednesday, February 27, 2008, Room 211, 10:30am

I would like to express my SUPPORT for this bill to extend the 90 day statute of limitations to 180 calendar days for those parents requesting a due process hearing who seek reimbursement costs for private placement. However, in the original draft of this bill, a 2 year timeline was provided to follow along with the federal IDEA 2004 law.

I am a parent of a special needs child. I have experienced due process under the current 90 day statute of limitations and I believe this statute places an unfair burden and undue stress on parents. SB2004 HD1 is a very important bill for all parents trying to help their children who are already in a very difficult situation.

IDEA 2004 currently allows for a reconciliation period between parents and the DOE to resolve differences by requiring the parents to give written notice to the DOE 10 days before removing their child from the public school. If the parents fail to notify the IEP team or the school, the Hearings Officer may reduce or deny the parent's request for reimbursement for the costs of private placement in a due process hearing. Therefore Hawaii's 90 day statute of limitations is unnecessary. Adding a timeline in this situation places additional stress on parents who may already have difficulties in securing counsel, documentation, expert witnesses, and evaluations in preparation for their due process case.

When parents have a legitimate disagreement with the public school, parents do not have the luxury of retaining counsel in legal matters. However, the public school has the option of referring to the District Office who will in turn, may refer to the AG's office for legal advice at any time throughout the year.

Since Hawaii's Department of Education is both the SEA and LEA (state and local educational agency, respectively) parents really have LIMITED RECOURSE when they disagree with the school's offer of a free appropriate public education related to their special needs child. Commonly, the school's offer of FAPE is inappropriate because the school does not have the resources, funding, personnel or appropriate type of classroom placement available to support the child's needs. Ironically, the child's needs are usually identified by the DOE's own assessments and evaluations.

Parents should not be CORNERED into accepting the DOE's offer of placement when they have legitimate concerns. **Parents, as equal members of their child's Individualized Educational Program Team, have the right to disagree with ANY proposal that the DOE may offer regarding educational issues for their child.** The failure to provide FAPE is not the fault of the school; however, the best interests of the child should be the main priority. Placing a child into a classroom situation in which he/she is unable to receive some kind of educational benefit will ultimately harm the child in the long run and end up being a waste of DOE and taxpayer money.

I strongly support SB2004 HD1; however, I'd like to recommend that your committee pass this measure with the suggested amendment to reestablish the 2 year timeline in line with the current federal law. IDEA 2004 allows parents a 2 year statute of limitation to file for due process and therefore, in a sense, this law recognizes that parents may need the extra time to resolve issues with the public school relating to placement and other issues relating to the provision of FAPE to their special needs child.

Lengthening this statute of limitations from 90 days will most likely unaffected the costs associated with a due process hearing. As a matter of fact, it may decrease these costs because parents will not be **PRESSURED** into making an immediate decision to proceed in a due process hearing under the 90 day timeline. With a longer timeline, there is a greater opportunity for the parents to resolve issues with the DOE especially since most parents prefer avoid due process in the first place.

Thank you for providing this opportunity to offer testimony for SB 2004 HD1. Give our children a fair chance at receiving an education that is a right of ALL children living in Hawaii, including special needs children.

Sincerely,
Teresa Chao Ocampo
Parent of a Special Needs Child
808-585-8641
Javanut418@aol.com

**Committee Ways and Means
The Senate
February 27, 2008**

**TESTIMONY IN SUPPORT OF
SENATE BILL 2004, SD1**

Chair Baker and members of the Committees,

Thank you for receiving my testimony on this important bill that impacts Hawaii's special needs children a great deal. I am the parent of a special needs child, and would like to provide some input from this perspective regarding SB 2004, SD1. This bill would expand the deadline within which to file a request for due process hearing from ninety (90) days to two (2) years when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

The process for obtaining an appropriate placement for a special needs child is a daunting one. I have attended a myriad of individualized education program (IEP) meetings for my child, none of which were straightforward or collegial. Additionally, parents are often at a real disadvantage in these meetings. Once parents find an appropriate placement that is safe for their child, the process of filing for a due process hearing is a stressful and confusing one even for the most educated. Further, navigating the paperwork and finding an attorney who will take your child's case could easily extend beyond 90 days. Placing this 90-day requirement on the parents is extremely burdensome. The number of due process claims that can be filed successfully will likely decrease if the 90 day statute remains in effect, giving the appearance of a more streamlined process. The truth, however, is that the door is being shut on these children at the 90-day mark. Our special needs children are not being afforded reasonable access to their right to a due process hearing because of this 90-day constraint imposed on them. This requirement is much less of a procedural "safeguard," and in practice is an unfair procedural trap which ultimately ends up hurting the child.

Even under federal law, a parent can request an impartial due process hearing up to 2 years from the time a free and appropriate public education was denied. All of the special needs children in Hawaii should be afforded the same protections under the law afforded to their counterparts in other states. I urge you to pass SB 2004, SD1 and level the playing field for Hawaii's special needs children, and allow them real meaningful access to the due process they deserve.

Mahalo,

Erin J. Ritz
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(808) 429-7489

testimony

From: Irene Newhouse [e anew@hotmail.com]
Sent: Tuesday, February 26, 2008 10:58 AM
To: Sen. Roz Baker; testimony
Subject: SENATE BILL 2004, SD1

Committee Ways and Means
The Senate
February 67, 2008

TESTIMONY IN SUPPORT OF SENATE BILL 2004, SD1

I am the parent of a special needs child.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

Reimbursement is, in part, based on whether the parentally-originated placement or therapy has been effective. This cannot always be determined within 180 days. Certainly it could rarely be determined within 90 days, and it's a travesty that this became law at all.

Most other states allow 2 years.

My husband and I both have advanced degrees in a physical science. Our child is learning disabled because she spent her first 4 years in Romanian orphanages. The local public schools on Maui were not at all equipped to deal with her various disabilities, and she finished third grade at Kamali'i School reading & doing arithmetic at less than first grade level. At that point, we placed her at Horizons Academy & filed for reimbursement. By then we had a special education attorney to help us.

The process was complicated and time-consuming. Even finding a sp ed attorney isn't easy when you're on a Neighbor Island. I was only able to navigate the system because my advanced training has taught me how to read educational-ese, legal-ese, and how to do research. Further, my husband's advanced training meant he had a salary that permitted me to work part-time or not at all. While our daughter was at Kamali'i, the staff tried to intimidate us at every turn. The staff at Lokelani Intermediate was far less adversarial, & agreed that our daughter's best placement was Horizons. By then, however, I had a track record as a parent who was pro-active and knew the system. I'm sure that that did not go unnoticed.

I have no idea how single-parent families or families in which both parents work manage to cope. I have no idea how parents who don't have my background manage to cope.

This process would be difficult enough if one were parenting a normal child. However, a special needs child demands much more time than a normal child. Our daughter's piano teacher, who had successfully raised two normal children himself, once asked me how I managed to cope with being our daughter's primary caregiver with no outside help, because she was like 3 children rolled into one.

When parents have to navigate the sp ed process, they are doing so on their own time, while DoE personnel are being paid from tax funds to obstruct the very taxpayers who pay their salaries. It was only a small point in the process, but when our case went to hearing, I greatly resented having to take time off from work at no pay, while the DoE personnel who didn't even read our daughter's case materials very carefully were being paid by my & my husband's hard-earned taxes to try to tell me that putting her back into an environment in which she

learned neither reading nor arithmetic was in her best interest.

The Senate would do well to remember that this is far from a level playing field. We parents have one crack at getting an education for our special needs children which will permit them to live independently as adults. DoE personnel have hundreds of victims on which to hone their denial-of-services skills. [By the way, a student who leaves school at age 18 or so, reading at 3rd grade level or less is going to cost society tens of thousands of dollars ANNUALLY over the course of his/her life. Compared to that, the educational bill that would have turned this person into a self-sufficient individual is peanuts, because it only lasts 12 years]. Parents should be given every reasonable break by law, because DoE wouldn't give us a break over their dead bodies. Giving parents a break is not charity; it will net society millions over the long-term. Denial of services doesn't save money in the long run, because the victims will be a burden to society for the rest of their lives.

Irene Newhouse
129 Walua Place
Kihei HI
808-891-2252

Need to know the score, the latest news, or you need your Hotmail@-get your "fix". Check it out.

testimony

From: vista [vista]001@hawaii.rr.com]
Sent: Tuesday, February 26, 2008 5:34 AM
To: testimony
Subject: Re: SB 2004, SD1

Committee Ways and Means

The Senate

February 27, 2008

TESTIMONY IN SUPPORT OF

SENATE BILL 2004, SD1

Chair Baker and members of the Committee, my name is Sing Vista. I am a parent of a child with autism.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

I'm not one to file for due process hearing willy-nilly because it takes a toll mentally and physically. Parents are so disadvantaged in this process. On top of that, having to monitor my child's program and everyday needs can be exhausting. We endure as humanly possible. We are our children's voices and just ask for fairness.

As a parent of a disabled child, I have been to numerous individualized education program (IEP) meetings for my child. This is a very stressful and difficult process, and it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used. Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

I strongly support SB 2004, which would level the playing field for special needs children and urge your Committee to pass this measure with the suggested amendment of reestablishing

the two (2) year time period within which to file a request for an impartial hearing.

Mahalo for the opportunity to provide testimony on SB 2004, SD1.

<!--[if !supportLineBreakNewLine]-->

Sing Vista

P. O. Box 880136

Pukalani HI 96788

Phone: (808) 572-8070

E-mail: vistaj001@hawaii.rr.com

testimony

From: Cecilia Walters [cwalters@janikinghi.com]
Sent: Tuesday, February 26, 2008 7:30 AM
To: Sen. Roz Baker; testimony
Subject: SENATE BILL 2004, SD1

Committee Ways and Means

The Senate

February 27, 2008

TESTIMONY IN SUPPORT OF

SENATE BILL 2004, SD1

Chair Baker and members of the Committees, my name is . I am a parent of a child with autism (or special needs)/educator/advocate/etc.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

I have a 9 year old son named EJ. He is funny, loving and extremely in need of services that will do the best for him.

His IEP's are a necessary part of getting him what he needs and is at least a 2 hour sit down meeting every time. Just as important as the reasoning behind this bill.

This bill is important to all who are affected and are trying to get their child what they need when they need it. Making the process longer or shorter, in some cases does not make the process more efficient.

I believe you should stand by all of us. Especially those who cannot stand themselves.

As a parent of a disabled child, I have been to individualized education program (IEP) meetings for my child. This is a very stressful and difficult process, and it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used.

Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

I strongly support SB 2004 which would level the playing field for special needs children and urge your Committees to pass this measure with the suggested amendment of reestablishing the two (2) year time period within which to file a request for an impartial hearing.

Thank you for the opportunity to provide testimony on SB 2004, SD1.

Sincerely,

Cecilia I. Walters

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testimony

From: Yamamoto, Fay A. (DHR) [fyamamoto@honolulu.gov]

Sent: Tuesday, February 26, 2008 8:03 AM

To: Sen. Roz Baker; testimony

Subject: Committee Ways and Means

**TESTIMONY IN SUPPORT OF
SENATE BILL 2004, SD1**

Chair Baker and members of the Committees, my name is Fay Yamamoto. I am a parent of a child with autism. I have had the unfortunate but necessary experience in filing a due process hearing.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

As a parent of a disabled child, I have been to numerous individualized education program (IEP) meetings for my child. This is a very stressful and difficult process, and it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used.

Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

I strongly support SB 2004 which would level the playing field for special needs children and urge your Committees to pass this measure with the suggested amendment of reestablishing the two (2) year time period within which to file a request for an impartial hearing.

Thank you for the opportunity to provide testimony on SB 2004, SD1.

Committee Ways and Means
The Senate
February 27, 2008

TESTIMONY IN SUPPORT OF
SENATE BILL 2004, SD1

Chair Baker and members of the Committees, my name is Myra Lodge. I am a parent of a child with sever low functioning Autism.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

We are a local Military Family, to which my husband gets deployed to Iraq (two deployments) each a little over a year long within the past 4 years. These years has been the hardest for our family due to single parenting for that long, and loosing services from DOE. My son has gone from Medium/Sever Autism to Low/Sever. His regression has made our life much harder as he is also older in age. Families such as mine needs your help.

As a parent of a disabled child, I have been to individualized education program (IEP) meetings alone for my child. This is a very stressful and difficult process, that has brought me to a state of depression. It's like playing mind games because it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used.

Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

I strongly support SB 2004 which would level the playing field for special needs children and urge your Committees to pass this measure with the suggested amendment of reestablishing the two (2) year time period within which to file a request for an impartial hearing.

Thank you,

Myra Lodge

testimony

From: rtoasthula@aol.com
Sent: Tuesday, February 26, 2008 8:43 AM
To: testimony; Sen. Roz Baker
Subject: SB 2004. SD1

Committee Ways and Means
The Senate
February 27, 2008
TESTIMONY IN SUPPORT OF
SENATE BILL 2004, SD1

Chair Baker and members of the Committees, my name is Dr. Linda Smith. I am a parent of a child with autism, a 6 year old who attends public school on Oahu.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

As a parent of a disabled child, I have been to individualized education program (IEP) meetings for my child. This is a very stressful and difficult process, and it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used.

Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

I strongly support SB 2004 which would level the playing field for special needs children and urge your Committees to pass this measure with the suggested amendment of reestablishing the two (2) year time period within which to file a request for an impartial hearing.

Thank you for the opportunity to provide testimony on SB 2004, SD1.

2/26/2008

Sincerely,

Linda Patricia Smith MD
1851 Hoolehua Street
Pearl City, HI 96782

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2/26/2008

testimony

From: keikicare@hawaii.rr.com
Sent: Tuesday, February 26, 2008 10:05 AM
To: Sen. Roz Baker; testimony
Subject: Senate Bill 2004, SD1

**TESTIMONY IN SUPPORT OF
SENATE BILL 2004, SD1**

Chair Baker and members of the Committees, my name is Vera Marie Asato . I am a parent of a child with autism (Asperger syndrome.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

My son was diagnose with Asperger's six years ago. 90 days is not enough time to place him in an environment that will nurture his learning style. Also to get a lawyer and a psychologist of help us with our case isn't that easy. Hawaii has a storage of qualified professional to work with children with special needs. It took us months to get a lawyer and psychologist to work with us. Because of the shortage we had to wait. Parent go through so much frustration to put us in a very short time line to me isn't fair. We do not have the recourse that D.O.E. have. We need to go out and get it our self. Your help in supporting this bill would really help the families with special needs children.

As a parent of a disabled child, I have been to individualized education program (IEP) meetings for my child. This is a very stressful and difficult process, and it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used.

Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

I strongly support SB 2004 which would level the playing field for special needs children

and urge your Committees to pass this measure with the suggested amendment of reestablishing the two (2) year time period within which to file a request for an impartial hearing.

Thank you for the opportunity to provide testimony on SB 2004, SD1.

Sincerely,

Vera Marie Asato

94-1023 Mawaho Street

Waipahu, HI 96797

Phone: 688-2525

testimony

From: Darlene M. Fink [darfink@hotmail.com]
Sent: Tuesday, February 26, 2008 10:56 AM
To: Sen. Roz Baker; testimony
Subject: Senate Bill 2004, SD1

Committee Ways and Means
The Senate
February 26, 2008
TESTIMONY IN SUPPORT OF
SENATE BILL 2004, SD1

Chair Baker and members of the Committees, my name is Darlene Fink. I am a parent of a child with special needs.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

I have recently gone through the process whereby my child was qualified as special needs. As a parent of a special needs child, I have recently been to one individualized education program (IEP) meeting for my child. This was a very stressful and difficult process, and it is not one which is straightforward or collegial. I was at a disadvantage at the IEP meeting because I did not understand the process or the terms used, even though I was provided with pamphlets of information. I am a Certified Public Accountant, and am familiar with the United States tax code. The rules and regulations for the IEP process seem as complex as the tax code to me at this point, being unfamiliar with the entire process.

Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

I strongly support SB 2004 which would level the playing field for special needs children and urge your Committees to pass this measure with the suggested amendment of reestablishing the two (2) year time period within which to file a request for an impartial hearing.

Thank you for the opportunity to provide testimony on SB 2004, SD1.

2/26/2008

Sincerely,

Darlene M Fink
808-699-6561
47-386 Mawaena St
Kaneohe, HI 96744

2/26/2008

testimony

From: Kahukama@aol.com
Sent: Tuesday, February 26, 2008 12:59 PM
To: Sen. Roz Baker; estimony@Capitol.hawaii.gov
Cc: bellardj001@hawaii.rr.com; christina@lokelaniohana.org; naomi_grossman@yahoo.com
Subject: support of sb 2004 sd1

Committee Ways and Means
The Senate
February 27, 2008

TESTIMONY IN SUPPORT OF SENATE BILL 2004, SD1

Chair Baker and members of the Committees, my name is Tasha Kama and I am a parent of a child with down's syndrome who will be exiting the DOE system in June.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

As a parent of a disabled child, I have been to individualized education program (IEP) meetings for my child since she started attending public school at age 4. She is 20 years old now.

This meeting is attended by the parent, the special education teacher, the principal or its appointee, a regular education teacher and others who may be associated with the child of whom the parent as well as the school may invite. The special education teacher begins with handing the parents a "Rights" handout and reviews it if the parent does not know their rights and if it is a veteran parent they follow up with updates of the handout.

Following that are the different teachers and or specialist who have been working with your child on goals that have been established with this team a year ago and today's meeting is to update the plan. Parents go through these annually and each time new goals or current goals are extended. The school has a timeline in which to ensure that IEP meetings are held on the anniversary dates as required; Parents do not have secretaries or clerks to assist them in the education of their special needs child. Caring for a child with special needs is tiring work and having to take time out to attend these meetings and then having to file for reimbursements because services were not provided is frustrating and demeaning to parents who have opted to care for their children **in their home as well as their home state.**

Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

I strongly support SB 2004 which would level the playing field for special needs children and urge your Committees to pass this measure with the suggested amendment of reestablishing the two (2) year time period within which to file a request for an impartial hearing.

Thank you for the opportunity to provide testimony on SB 2004, SD1.

Tasha Kama

PS

2/26/2008

My daughter is a registered democrat and a voter for the 8th district precinct 4.

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testimony

From: Jacqueline Hopkins [oceanpua@hotmail.com]
Sent: Tuesday, February 26, 2008 12:34 PM
To: Sen. Roz Baker
Cc: testimony
Subject: TESTIMONY - BILL 2004, SD1

Committee Ways and Means
The Senate
February 27, 2008
TESTIMONY IN SUPPORT OF
SENATE BILL 2004, SD1

Chair Baker and members of the Committees, my name is . I am a parent of a child with autism (or special needs)/educator/advocate/etc.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

My daughter, Zoe, is four years old and has autism. While at Kanoelani Elementary SPED pre-school. We had a very bad experience. The first two semesters her first skills trainer was terrible. She was a different child; lots of crying, kicking, screaming, and even some regression. They kept this skills trainer until he quit. The following we semester we got a miracle of a skills trainer. I called her "our Helen Keller", and she was exactly that. Zoe was, again, a different child, and making progress. When we returned the following semester, this skills trainer had been fired, with no prior notice, not even a complaint. I ran their explanation by many experts; her doctor, our family doctor, a psychologist, and many other authorities on autism. They all said the same. This skills trainer was doing all the right things. I never took her back to that school.

As a parent of a disabled child, I have been to individualized education program (IEP) meetings for my child. This is a very stressful and difficult process, and it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used.

Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would

2/26/2008

still be required to prevail at an impartial hearing before being awarded any reimbursement.

I strongly support SB 2004 which would level the playing field for special needs children and urge your Committees to pass this measure with the suggested amendment of reestablishing the two (2) year time period within which to file a request for an impartial hearing.

Thank you for the opportunity to provide testimony on SB 2004, SD1.

Sincerely,

Jacqueline P. Hopkins
94-1159 Mopua Loop P-5
Waipahu, HI 96797
(808)352-9084

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testimony

From: Stephanie Lu [stephlu@gmail.com]
Sent: Tuesday, February 26, 2008 2:35 PM
To: Sen. Roz Baker; testimony
Subject: SUPPORTING SB 2004 SD1

Committee Ways and Means
The Senate
February 27, 2008

TESTIMONY IN SUPPORT OF SENATE BILL 2004, SD1

Chair Baker and members of the Committees, my name is Stephanie Lu. I am an older sister of a high functioning teenage girl with autism.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

This is an important bill because it would protect the rights of special needs children to receive an appropriate education. Ten percent of children in public school in Hawai'i fall into the category of special education. Right now, the rights of special needs children are lacking appropriate protection because 90 days is just not enough time for parents to prepare to file for due process. Families file for due process because it is the only recourse for parents when the Dept of Education does not offer an appropriate education plan for a special needs child. Sometimes parents' concerns get ignored in the process of coming up with the plan.

As a sister of a disabled teen, I have been to individualized education program (IEP) meetings with my single mother for my sister. This is a very stressful and difficult process, and it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used.

Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

I strongly support SB 2004 which would level the playing field for special needs children and urge your Committees to pass this measure with the suggested amendment of reestablishing the two (2) year time period within which to file a request for an impartial hearing.

Thank you for the opportunity to provide testimony on SB 2004, SD1.

2/26/2008

February 26, 2008

Hawaii State Legislature
Senate Ways and Means Committee

TESTIMONY IN SUPPORT OF SENATE BILL 2004, SD1

Sen. Rosalyn Baker and members of the committees, my name is Marlene Nakamoto. I am a parent of a child who has autism. Her name is Rachel; she's 16 years old.

SB 2004, SD1, would expand the deadline in which to file a request for due process hearing from 90 days to 180 calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two-year deadline was provided.

I work a full-time, professional job, as does Rachel's father, Ryan. He is an Army reservist who was deployed to Iraq in August 2006 for one year. In his absence, I was required to attend IEP meetings during work hours. I used nearly all my vacation and sick leave hours to attend such meetings; my wages were even garnished at one point to make up for my time off from work.

As a parent of a child with autism, I have been to countless individualized education program (IEP) meetings for my child. This is a very complicated, stressful, and time-consuming process, and I often feel at a disadvantage for those reasons.

Placing yet another requirement upon the parents to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two-year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two-year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

I strongly support SB 2004 that would level the playing field for special needs children and urge your Committees to pass this measure with the suggested amendment of reestablishing the two-year time period in which to file a request for an impartial hearing.

Thank you for the opportunity to provide testimony on SB 2004, SD1.

Sincerely,

Marlene Nakamoto
1615-A Emerson St., Apt. A
Honolulu, HI 96813

b. 948-5370

testimony

From: aileen yamashiro [aiyamashiro@gmail.com]

Sent: Tuesday, February 26, 2008 4:45 PM

To: Sen. Roz Baker; testimony

Committee Ways and Means
The Senate
February 27, 2008

TESTIMONY IN SUPPORT OF SENATE BILL 2004, SD1

Chair Baker and members of the Committees, my name is Aileen Yamashiro. I am a parent of a child with who falls under the Autism Spectrum Disorder. He is diagnosed with Prader-Willi Syndrome/Bi-Polar disorder.

SB 2004, SD1 would expand the deadline within which to file a request for due process hearing from ninety (90) days to one hundred and eighty (180) calendar days when the request is for reimbursement of costs of a child's placement. In the original draft of the bill, a two (2) year deadline was provided.

Ever since Daniel was born, I have had to fight for him. With no knowledge of medical terms, symptoms, diagnosis, I have had to do the research and then find a physician who would give him a diagnosis. This took five years. He was enrolled in the 0 - 3 program at Easter Seals and then graduated to attend pre-school in the public school system. With NO knowledge of what this meant, I just went along with whatever was proposed. The only input from my side was the research I did on his diagnosis and how to teach him what he needed to learn in school. Perhaps there was more I could have done for him to get him the education he needed but I did not know of rights and procedures and IEPs, etc. Now I know! After 19 years of yearly IEPs I finally know what to do and how to get the services he needs in order to succeed. There was a time when I was close to calling for due process. I cannot imagine what I would have had to do in order to have my son's rights implemented. Fortunately, we did not go through due process and came to terms agreeably.

Why do parents have to fight so hard to see that their children receive the services they so deserve? Is it not enough that they must raise their children with so many challenges for all their lives?

As a parent of a disabled child, I have been to individualized education program (IEP) meetings for my child. This is a very stressful and difficult process, and it is not one which is straightforward or collegial. Parents are at a disadvantage at the IEP meetings because we do not always understand the process or the terms used.

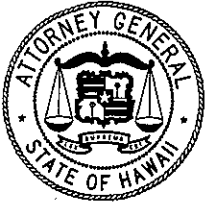
Placing yet another requirement upon the parents of having to request a due process hearing within 90 days is extremely burdensome. It is also unfair to require Hawaii's families to be limited by the 90-day limitation when other states apply up to a two (2) year statute of limitations. Even under federal law, a parent could request an impartial due process hearing up to two (2) years of the time a free and appropriate public education was denied. I respectfully ask that the Committee consider revising the measure to include the originally provided two (2) year deadline. Budgetary implications are minimal because a parent seeking reimbursement for a private placement would still be required to prevail at an impartial hearing before being awarded any reimbursement.

2/26/2008

I strongly support SB 2004 which would level the playing field for special needs children and urge your Committees to pass this measure with the suggested amendment of reestablishing the two (2) year time period within which to file a request for an impartial hearing.

Thank you for the opportunity to provide testimony on SB 2004, SD1.

Sincerely,
Aileen Yamashiro
45-553 Huawaina Place
Kaneohe, Hawaii 96744
(808) 358-0873



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

S.B. NO. 2004, S.D. 1, RELATING TO EDUCATION.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: February 27, 2008 TIME: 10:30 A.M.

LOCATION: State Capitol, Conference Room 211

Deliver to: Committee Clerk, Room 210, 1 copy

TESTIFIER(S): WRITTEN TESTIMONY ONLY. (For more information, contact
Elise Amemiya, Deputy Attorney General, at 586-1260.)

Chair Baker and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill provides for the extension of the deadline to file a request for an impartial due process hearing relating to the education of a child with a disability from 90 days to 180 days when the request is for reimbursement of the costs of the child's placement.

Enlarging the period of time in which a parent may file a request for an impartial hearing may be detrimental to the child. This is because the determination of the appropriateness of the student's education may not be made until six months later. It is hard to imagine that waiting longer to resolve an issue relating to a child's education is better than addressing the concerns and problems immediately.

Additionally, during this time, a child may be in an inappropriate educational setting. The State is unable to monitor the progress of a disabled child when the child is unilaterally placed by parents in a private school.

Furthermore, enlarging the period of time in which a parent may challenge a school's offer of free appropriate public education will make it more difficult for the State to defend against such challenges because memories fade and administrators, teachers, and other service providers working with the student may change from time to time.

The Department of the Attorney General respectfully requests that this bill be held by the Committee.



COMMUNITY CHILDREN'S COUNCIL OFFICE

1177 Alakea Street · B-100 · Honolulu · HI · 96813

TEL: (808) 586-5363 · TOLL FREE: 1-800-437-8641 · FAX: (808) 586-5366

February 26, 2008

The Honorable Rosalyn H. Baker (Chair) and the Honorable Shan S. Tsutsui (Vice Chair)
Ways and Means (WAM)

RE: SB 2004: Administrative hearing procedures and subpoena power relating to the education of children with a disability:

Senator Baker and Senator Tsutsui and members of the committee:

The 17 Community Children's Councils in Hawaii support the bill with amendments of this bill. Our brochure is attached.

We fully support the repeal of the 90 calendar days in which parents must file an appeal in any unilateral placement of a child in a private placement. We strongly endorse the two year timeline for appeal based on the Supreme Court decision allowing a two year time for appeal in due process matters. We also support the subpoena power of the administrative hearing office as well as the reimbursement of expert witnesses. We recommend that this section requiring a state officer to review the findings be deleted.

Our reasons for supporting this bill are:

1. Many parents have not been; informed about the timeline;
2. The start of the timeline is actually before the student starts in the private placement creating difficulty for all parties;
3. Parents are not reimbursed for expert witness fees while department personnel are on the payroll. This practice is not equitable in our opinion.

We oppose the review of hearing decision by a state review officer because the state law only allows 30 calendar days for an appeal to be filed in either state or federal court. The review would greatly hinder the appeal process and is unnecessary. We respectfully request that this section of the bill be deleted.

We will be happy to answer any questions that you may have. Thank you for this opportunity to address SB 2004.

Sincerely,

Charlotte Kamauoha, Parent Co-Chair

Tom Smith, Professional Co-Chair

Signatures on file