

Attention: Rep. Roy Takumi, Chair, and Rep. Lyla Berg, Vice Chair
Members of the Committee on Education

Testimony of: Linda Elento, Board director of the Hawaii Down Syndrome Congress

Hearing: Wednesday, February 11, 2009, 2:00 pm

HB1648 Education: Children with Disabilities
Support Public School Choice for all children,
Including children eligible for special education

This bill addresses the need for amendments to the following Hawaii Revised Statutes:

302A-436—locations for the provision of special education services;

302A-1143—requirement for students to attend the school in the of the district in which they reside, and opportunity for public school choice;

302B-15—the Department of Education’s role in the provision of special education in charter schools: to ensure equal opportunity for public school choice for children eligible for special education (not the same as the mandates of the No Child Left Behind Act for students enrolled in Title I schools*), and to ensure a charter school will exercise the flexibility and independent authority as designated in the state’s definition of charter school.

As a parent of an eight-year-old boy, Jason, who was born with Down syndrome, I have spent the past five years seeking--no, fighting for--a regular school program that is developmentally appropriate for his expected growth pattern based on his disability and not on his chronological age. Only this past week, my son Jason was enrolled at a Hawaii public charter school in order to begin his education with typically-developing children in kindergarten classes, with special education services to give him the opportunity to succeed. I support amending IDEA-mandated special education services be fully provided specifically for homeschooled children, as the Department of Education recently proposed to eliminate special education services for homeschooled children.

Highlights:

Add to the end of each of the following, Description of HB1648, Section 1 and Section 3: in the same manner provided to non-disabled children.

Add a subsection in Section 3: 302A- Public school choice program; establishment. A public school choice program is hereby established to enable any student to attend a school in a district in which the student does not reside.

Add a subsection in Section 5 to delete the portion of 302B-15 related to the provision of special education services.

Add a subsection in Section 6 to include amendments to 302B-15 (Special Education funding) based on federal law: The department shall allow charter schools to choose between receiving special education services in the same manner provided to other schools, and other options including receiving funds or a combination of funds and services. Regardless of the choice that the public charter schools make, the State Board of Education must ensure that students with disabilities attending public charter schools and their parents retain all their rights under federal and state laws.

Many parents of children with disabilities, including Down syndrome, have faced unfair public school policies when attempting to exercise a student's right to request a geographical exception for a non-resident/home district school or right to apply and be enrolled in a charter school.

Even though the Hawaii Administrative Rules specify that children who are eligible for special education under chapter 56 and the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) may receive a placement made by a child's Individualized Education Program (IEP) team, this process is not a parental choice. The Department of Education's practices and policies are not clear or consistent when the parents of these children seek a public school choice as if the child were non-disabled. Civil rights laws are being broken and these children do not receive an equal opportunity for public school choice as is afforded children who are non-special education eligible.

In the fall of 2007, the Superintendent's office suggested I contact KHON2's Action Line when my son was denied a geographical exception because he already had an IEP written to be implemented only at the home-district school. We were featured on the television in an Action Line report shortly after. When my son was denied the opportunity to be in a regular kindergarten program once he did receive a geographical exception, we were featured on the KHNL8 evening report. I am grateful my son now has the opportunity to succeed in a school that will include him in regular kindergarten classes with special education services as needed with the goal to meet educational standards and independence.

In line with Hawaii's definition of charter school (HRS302B-01)--

"Charter school" refers to those public schools holding charters to operate as charter schools under this chapter, including start-up and conversion charter schools, and that have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management.

I ask the Committee on Education to consider the attached amendments to HB1648, including to establish and clarify public school choice for children eligible for special education and, in regards to special education for students at charter schools, to clarify funding, and the authority of the charter schools and of the Board of Education.

These amendments would help to reduce the risk of students dropping out of school, including children eligible for special education. Just as important, these amendments will clarify a process for schools to understand in order for all of our children, including children who are eligible for special education, to be able to apply and enroll in and enjoy the benefits of public school choice and homeschooling as if they were non-special education eligible. In addition, charter schools will meet their definition of having the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management.

Public school choice is also critical because private schools often do not accept our children with Down syndrome in particular.

Thank you for the opportunity to present testimony.

* Reference: <http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc>

Attachment A

HB1648

Report Title: Education; Children with Disabilities

Description: Provides parents of children with disabilities with additional flexibility in choices relating to education in the same manner provided to non-disabled children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to provide parents of children with disabilities with additional flexibility in choices relating to education in the same manner provided to non-disabled children.

SECTION 2. Section 302A-436, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This program shall include boarding facilities, when necessary, special classes in schools or homes, including homes where the child is home schooled, and [such] other facilities as shall be required to render appropriate services to the exceptional child. Existing facilities, buildings, and equipment belonging to, or operated by, the State shall be made available for these purposes when use thereof does not conflict with the primary use of the facilities."

SECTION 3. Section 302A-1143, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1143 Attend school in what district. All persons of school age shall be required to attend the school of the district in which they reside, unless enrolled in a Hawaiian language medium education program, or unless it appears to the department to be desirable to allow the attendance of pupils at a school in some other district, in which case the department may grant this permission[.]; provided that a child with a disability shall be granted permission to attend a school outside of the district in which they reside, upon request by the parent or guardian of the child with a disability, in the same manner provided to non-disabled children."

302A- . Public school choice program; establishment. A public school choice program is hereby established to enable any student to attend a school in a district in which the student does not reside.

SECTION 4. Section 302B-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department shall collaborate with the office to develop a system of technical assistance related to compliance with federal and state laws and access to federal and state funds. The department and the office shall collaborate to develop a list of

central services [~~that the department may offer for purchase by a charter school at an annual cost to be negotiated between an individual charter school and the department. The~~] and the department shall enter into a contract with [a] the charter school to provide these services [~~, which shall be renegotiated on an annual basis.~~]

SECTION 5. Section 302B-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall be responsible for the provision of a free appropriate public education. A charter school's admissions practices must comply with Part B of the Individuals with Disabilities Education Act and Federal civil rights laws. Any charter school that enrolls special education students or identifies one of its students as eligible for special education shall be responsible for providing the educational and related services required by a student's individualized education program. The programs and services for the student shall be determined collaboratively by the student's individualized education program team which shall include the charter school and the student's parents or legal guardians.

~~[If the charter school is unable to provide all of the required services, then services to the student shall be provided by the department according to services determined by the student's individualized educational program team. The department shall collaborate with the office to develop guidelines related to the provision of special education services and resources to each charter school. The department shall review all of the current individualized education programs of special education students enrolled in a charter school and may offer staff, funding, or both, to the charter school based upon a per-pupil weighted formula implemented by the department and used to allocate resources for special education students in the public schools.]~~

"The department shall collaborate directly with the charter school and the office to develop guidelines related to the provision of special education services, funding, and resources to each charter school."

SECTION 6. Section 302B-15, Hawaii Revised Statutes, is amended by adding subsections (c) and (d) to read as follows:

"(c) A charter school shall conduct an individualized educational program (IEP) team meeting within thirty (30) days of enrolling a student identified as eligible for special education to review and revise the individualized educational program as necessary for the student to receive a free appropriate public education (FAPE) at the charter school which includes sites of virtual charter schools such as the child's home. The charter school shall be designated as the student's home school.

"(d) The department shall allow public charter schools to choose between receiving special education services in the same manner provided to other schools, and other options including receiving funds or a combination of funds and services, based upon a per-pupil weighted formula implemented by the department and used to allocate resources for special education students in the public schools. Regardless of the choice that the public charter schools make, the State Board of Education must ensure that students with disabilities attending public charter schools and their parents retain all their rights under federal and state laws. The department shall review all of the current individualized education programs of special education students enrolled in a charter school."

[L 2006, c 298, pt of §2]

SECTION ~~5~~ 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION ~~6~~ 7. This Act shall take effect upon its approval.