

HB2077

HD1

Date: 02/24/2010

Committee: Senate Education and Housing

Department: Education

Person Testifying: Kathryn Matayoshi, Interim Superintendent of Education

Title of Bill: HB 2077, HD1(HSCR240) Relating to Education

Purpose of Bill: Changes the age limit for high school admission to 20 years of age.

Department's Position: The Department of Education (Department) supports HB 2077, HD 1 with one substantive amendment. The Department recommends that the age be changed to 20 to conform to the current Hawaii practice of providing special education services for children between the ages of 3 to 20. Currently children can enter school if they are under 20 and finish the school year if they turn 20 during the school year.

With the amendment, this bill will provide the same age standards for both regular education students and special education students.

If the age is not changed from 21 to 20 additional costs will be incurred for special education and related services, the costs associated with the development of IEPs, additional classrooms, teachers, therapists, along with the costs of due process hearings and transcripts. Also regular education students would be able to attend school for another year.



S E A C
Special Education Advisory Council

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February 24, 2010

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Advisory Council**

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Senator Norman Sakamoto, Chair
Senate Committee on Education and Housing
State Capitol
Honolulu, HI 96813

RE: HB 2077 HD 1 - RELATING TO EDUCATION

Dear Chair Sakamoto and Members of the Committee,

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), is in support of the intent of HB 2077 HD1 that changes the age limit for high school admission to 20 years of age. This bill sets a consistent age limit for both special education and general education high school students that will help to correct the inconsistent application of the Department's Overage Student Policy.

In setting a new age limit of twenty on the first instructional day of the school year, this bill as amended would likely extend special education services and supports to a number of students for an additional year. In the 2008-09 IDEA Child Count Data, Hawaii reported serving 149 special education students aged nineteen and 24 students aged twenty. Many of these students and their families would like to extend their entitlement to services under IDEA—currently set at age nineteen on the first instructional day. A major factor behind this sentiment is the shortage of program options in adult services to individuals with disabilities brought about by our current fiscal crisis, including the long waiting list of the Division of Vocational Rehabilitation.

While SEAC understands the wish of some parents and students to extend their educational opportunities through the Individualized Education Program rather than to take their chances with waiting lists for adult services, we are concerned that the current fiscal constraints on the Department of Education would make it difficult to accommodate these students without additional funding.

Thank you for the opportunity to provide testimony on this issue. Should you have questions, I would be happy to answer them.

Sincerely,

Ivalee Sinclair, Chair

*Mandated by the **Individuals with Disabilities Education Act***



HAWAII DISABILITY RIGHTS CENTER

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THE SENATE THE TWENTY-FIFTH LEGISLATURE REGULAR SESSION OF 2010

Committee on Education and Housing

Comments on H.B. 2077, H.D. 1, Relating to Education

**Wednesday, February 24, 2010, 1:15 p.m.
Conference Room 225**

Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

My name is John Deller, Executive Director of the Hawaii Disability Rights Center. I am testifying to offer comments on this bill.

H.B. 2077, H.D. 1 would amend Section 302A-1134(c) of the Hawaii Revised Statutes to provide that no person 21 years of age or older on the first day of a school year shall be eligible to attend a public school. The statute currently provides that no child 17 or over or 18 or over shall be admitted to the ninth or tenth grades, respectively. There are no age limits on admission to the eleventh and twelfth grades. The bill would also repeal the authority of the superintendent of education to waive age limits in individual cases.

The bill is a response to a ruling against the Department of Education ("DOE") in *B.T. v. Department of Education*, 2009 WL 4884447 at *9 (D. Haw., Ezra J., 12/17/2009) holding that special education services must be provided to qualified children in Hawaii until they become 22 years of age. Judge Ezra previously found in the case that excluding disabled



students from school at age 20 while allowing nondisabled students to continue after that age was “blatant discrimination in violation of IDEA and Section 504 of the Rehabilitation Act of 1973.” *B.T. v. Department of Education*, 637 F.Supp.2d 856, 865 (D. Haw. 7/7/2009).

The *B.T.* case was filed on behalf of a young man with autism when the DOE refused to provide special education services solely because he had turned 20 years of age. Since the Individuals With Disabilities Education Act (“IDEA”) was enacted by Congress in the early 1970’s, Hawaii and Maine – together constituting less than 1% of the population of the United States – have been the ONLY States to end special education for students who turned 20 years of age before the first day of the school year. Most States continue services to 22, some to 21, and some even longer. In Michigan, disabled students receive special education until they are 26, and in Iowa until age 24. New Mexico, one of the poorest states, continues special education until age 22.

Under the IDEA, States are required to provide special education and related services to students with disabilities between the ages of 18 and 22, UNLESS they have, by law or practice, reduced eligibility for public education for all students in that age range. In the *B.T.* case, the plaintiff proved that nondisabled students in Hawaii over 20 may continue their high school education in a number of ways:

1. They may show they were under 17 at the beginning of grade 9 or under 18 at the beginning of grade 10;
2. They may ask the school principal to allow them to continue attending classes by showing “seriousness of purpose and an ability to profit from further education” (School Code Section 4145.1);
3. They may pursue an alternate high school diploma (either a General Education Development diploma or a Competency-Based diploma) in the adult education program.

The plaintiff proved that the DOE had NEVER rejected the application of a non-disabled student over 20 to continue in high school, but HALF of the disabled students that age were denied admission and had to sue the DOE to continue their education. Obviously, it doesn't cost much to allow the occasional non-disabled student aged 20 or 21 to attend regular high school classes, but special education can be expensive. Principals, pressed to limit expenses, admitted students without disabilities but denied admission to disabled students.

This bill would end discrimination in regular high school admissions by excluding everyone aged 21 or over at the beginning of the school year and eliminating the DOE's discretion to waive the age limit in individual cases. It would also extend special education services for an additional year, from 20 to 21, bringing Hawaii in line with many other states. The bill would allow the DOE to discriminate against older students, however, by offering high school equivalency diplomas to non-disabled students over 21 while ending special education to disabled students when they reach 21.

The numbers seeking admission to regular high school are small. Since 1999, a total of 52 regular education and 59 special education students over 20 have been allowed to continue in high school. The DOE steers a much larger number of students over 20 to high school equivalency classes in adult education so they can be with their own age group. During the last five years, 3,444 students aged 20 and 21 have enrolled in the G.E.D. and Competency-Based high school diploma programs. Disabled students are for the most part excluded, however, because no special education is provided in adult education.

Cost is obviously a concern for the State, especially during the current fiscal crisis, but it cannot justify discrimination against Hawaii students with disabilities. As Judge Ezra wrote:


The Court commends the State of Hawaii ... for recognizing there are instances where it is necessary to allow a student age 20 or above the opportunity to complete his or her public education. Under the IDEA, the State is obligated to do as much for special education students.

B.T. v. Department of Education, 2009 WL 4884447 at *9 (D. Haw., Ezra J., 12/17/2009).

We appreciate the extension of special education to age 21 that House Draft 1 to H.B. 2077 provides. The most likely beneficiaries will be 20 year-olds who are severely affected by developmental disabilities. An additional year of education (funded by the federal government under IDEA) can make a substantial difference, increasing independent living chances and teaching vocational skills that can improve the quality of life and reduce the need for a lifetime of Medicaid waiver and vocational rehabilitation services funded by the State.

However, this bill would continue to deny educational services to disabled students who are between 21 and 22 years of age while allowing non-disabled students that age to pursue high school equivalency diplomas in the adult education program. As a result, we believe a court would likely find that the federal age limit of 22 still applies in Hawaii because extending a free appropriate public education to disabled students between 21 and 22 would be consistent with the State's provision of a public education to non-disabled students of the same age.

We respectfully submit that this bill should be amended to replace "twenty-one" with "twenty-two" in both places it appears.



John P. Deller
Executive Director
February 22, 2010