

**AUTISM SOCIETY OF HAWAII
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LATE TESTIMONY

**HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION
HB 2077**

TESTIMONY IN OPPOSITION

Tuesday, January 27, 2010

Conference Room #309 at 2 p.m.

Dear Chair Takumi, Vice Chair Berg and Members of the Committee:

My name is Naomi Grossman, and I am the vice president of the Autism Society of Hawaii. The Autism Society of Hawai'i is an affiliate chapter of the Autism Society of America. Its membership is composed of families who deal with living with the effects of autism and the professionals and paraprofessionals who serve them.

The Autism Society of Hawai'i provides leadership in the field of autism dedicated to supporting families who advocate on behalf of their children and are committed to reducing the consequences of autism through education, research, and advocacy.

The Autism Society of Hawai'i appreciates the opportunity to comment on the proposed HB 2077. As parents and friends of children with autism and other related disorders, we know that our children have the potential and hunger to learn. Research shows that parents' involvement in their children's individualized educational program promotes positive outcomes and produces contributing members of society.

HB 2077 would amend Section 302A-1134(c) of the Hawaii Revised Statutes by adding age limits for public school students entering grades eleven and twelve. It misleads the Legislature by pretending it would provide consistent age limits for both general education and special education students, but, in practice the measure would perpetuate what Federal District Court Judge Ezra recently found to be "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).

This bill is an attempt to reverse a judgment entered against the Department of Education ("DOE") in the *B.T.* case on January 13, 2010. That judgment requires the DOE to treat students with disabilities the same as those without disabilities and to end discrimination against disabled students who wish to continue their education after they reach 20 years of age.

As Judge Ezra wrote in granting summary judgment:

The Court commends the State of Hawai'i...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.

This bill is an attempt to reverse a federal court civil rights decision that protects disabled students from "blatant discrimination" practiced in the past.

We believe HB 2077 is both unnecessary and violates the due process rights, as well as civil rights, of children who need special education past age 20.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services.

Therefore, I respectfully ask that this measure be held.

Thank you for the opportunity to testify on HB 2077.

Sincerely,

Signature on file

Naomi Grossman

Autism Society of Hawai'i, vice president

EDN Hearing January 27, 2010, 2:00 PM HB 2077 Overage limits for students
Testimony by: Linda Elento, Parent of children in public, charter and private schools, and
board member of the Hawaii Down Syndrome Congress

Dear Chair Roy Takumi, Vice Chair Lyla Berg and EDN Committee members:

I disagree with the proposed overage limits in HB2077 and justification of the Department of Education that “no child either general education or special education who is twenty years of age or over shall be admitted to the twelfth grade of a public senior high school.” It may be that the IDEA federal special education law referred to existing state laws when the IDEA was written, not that a state may add a statute now that would decrease the age covered under IDEA. I urge the Committee to verify such statements in this bill and to allow students to receive special education as necessary, such as with 000greater age limits allowed by New Mexico, Pennsylvania or Michigan. I also ask that the Education committee consider this as an opportunity to delete 302A-1134 and clarify age limits and specifically for children who qualify for special education.

All students and schools, including Charter Schools, need flexibility, especially when grade level placement is determined. Board of Education policy does not support grade level placement based on age. See “Student Promotion Policy #4500”: “Grade placement of students shall be based upon developmental assessment and academic performance as specified in the Hawaii Content and Performance Standards.” For this reason I do not agree that age restrictions should be placed on particular grade levels.

In addition, other states recognize that special education students have different timelines for different reasons and needs with age limits of 23 or 26 years. Individuals with Down syndrome who may continue to learn, in particular through age 25, will benefit from an extended high school special education when given the opportunity to learn a complete high school curriculum with the services and protection under IDEA which would not transfer to a post-high school program or university (only Sec. 504 disability related accommodations are applicable).

NEW MEXICO: NMAC 6.31.2: “Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, that student shall be allowed to complete the school year and shall continue to receive special education and related services during that school year. If the student turns 22 prior to the first day of the school year, the student is no longer eligible to receive special education and related services.”

PENNSYLVANIA: “§ 4.42. Grade structure. This chapter does not require educational programs to be organized in traditional grades according to students’ chronological ages or academic achievement levels. § 11.12. School age. School age is the period of a child’s life from the earliest admission age to a school district’s kindergarten program until graduation from high school or the end of the school term in which a student reaches the age of 21 years, whichever occurs first. § 14.146. Age range restrictions. (a) The maximum age range in specialized settings shall be 3 years in elementary school (grades K—6) and 4 years in secondary school (grades 7—12). (b) A student with a disability may not be placed in a class in which the chronological age from the youngest to the oldest student exceeds these limits unless an exception is determined to be appropriate by the IEP team of that student and is justified in the IEP.

Thank you for the opportunity to present these facts and testimony for your consideration to provide flexibility to our students and schools, including charter schools.