

ACT 179

S.B. NO. 2004

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 302A-443, Hawaii Revised Statutes, is amended as follows:

**“§302A-443 Administrative hearing procedures and subpoena power relating to the education of children with a disability.** (a) An impartial hearing may be requested by any parent or guardian of a child with a disability, or by the de-

partment, on any matter relating to the identification, evaluation, program, or placement of a child with a disability; provided that the hearing is requested:

- (1) Within two years of the date the parent, guardian, or department knew or should have known about the alleged action that formed the basis of the request for a hearing; and
  - (2) Notwithstanding paragraph (1), within ~~[ninety days]~~ one hundred and eighty calendar days of a unilateral special education placement, where the request is for reimbursement of the costs of the placement.
- (b) Subsection (a) shall not apply to a parent or guardian of a child with a disability if the parent or guardian was prevented from requesting the hearing due to:
- (1) Specific misrepresentations by the department that it had resolved the problem that formed the basis of the complaint; or
  - (2) The department's withholding from the parent or guardian information that was required by state or federal laws and regulations to provide a free, appropriate public education to a child with a disability.
- (c) The department shall adopt rules that conform to the requirements of any applicable federal statutes or regulations pertaining to the impartial hearing based on the education of a child with a disability. The rules shall ~~[require]~~ provide that any party may be present at the proceeding, be accompanied and advised by counsel or individuals with special knowledge or training with respect to the problems of children with a disability, may require witnesses to be under oath, cross-examine witnesses, and obtain a written or electronic verbatim record of the proceedings.

(d) Any party to these hearings or the hearings officer shall have the right to compel the attendance of witnesses upon subpoena issued by the hearings officer. The fees for attendance shall be the same as for the fees of witnesses before circuit court. In case of the failure of any person to comply with a subpoena, a circuit court judge of the judicial circuit in which the witness resides, upon application of the hearings officer, shall compel attendance of the person.

(e) No later than twenty days prior to the convening of each regular session of the legislature, the department shall submit a report that provides the total number of requests for a due process hearing relating to the reimbursement of costs for a child's placement filed by a parent or guardian of a child with a disability.

(f) The department shall exercise oversight and monitoring of any child who has undergone unilateral special education placement as soon as practicable after the placement."

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved June 16, 2008.)