
A BILL FOR AN ACT

RELATING TO EDUCATION.

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

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

3 "**§302A-443 Administrative hearing procedures and subpoena**
4 **power relating to the education of children with a disability.**

5 (a) An impartial hearing may be requested by any parent or
6 guardian of a child with a disability, or by the department, on
7 any matter relating to the identification, evaluation, program,
8 or placement of a child with a disability; provided that the
9 hearing is requested:

10 (1) Within two years of the date the parent, guardian, or
11 department knew or should have known about the alleged
12 action that formed the basis of the request for a
13 hearing; and

14 (2) Notwithstanding paragraph (1), within [~~ninety days~~]
15 one year of a unilateral special education placement,
16 where the request is for reimbursement of the costs of
17 the placement.



1 (b) Subsection (a) shall not apply to a parent or guardian
2 of a child with a disability if the parent or guardian was
3 prevented from requesting the hearing due to:

4 (1) Specific misrepresentations by the department that it
5 had resolved the problem that formed the basis of the
6 complaint; or

7 (2) The department's withholding from the parent or
8 guardian information that was required by state or
9 federal laws and regulations to provide a free,
10 appropriate public education to a child with a
11 disability.

12 (c) The department shall adopt rules that conform to the
13 requirements of any applicable federal statutes or regulations
14 pertaining to the impartial hearing based on the education of a
15 child with a disability. The rules shall [~~require~~] provide that
16 any party may [~~be~~]:

17 (1) Be present at the proceeding[~~;~~];

18 (2) Be accompanied and advised by counsel or individuals
19 with special knowledge or training with respect to the
20 problems of children with a disability[~~;~~];

21 (3) Require witnesses to be under oath[~~;~~];

22 (4) Cross-examine witnesses[~~;~~]; and [~~obtain~~]



1 (5) Obtain a written or electronic verbatim record of the
2 proceedings.

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

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

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

20 SECTION 2. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 3. This Act shall take effect on July 1, 2050;
2 provided that the amendments made to section 302A-443 under
3 section 1 of this Act shall be repealed on July 1, 2010, and
4 section 302A-443 shall be reenacted in the form in which it read
5 on the day prior to the effective date of this Act.



Report Title:

DOE; SPED; Due Process; Hearings

Description:

Extends from 90 days to one year of a unilateral special education placement, the time allowed for parents, guardians, or the Department of Education to request an impartial hearing regarding reimbursement for the costs of a child's placement. Requires DOE to monitor all children who have undergone unilateral special education placement. Requires DOE to submit an annual report to the Legislature on the total number of requests for such due process hearings. (SB2004 HD2)

