
A BILL FOR AN ACT

RELATING TO EDUCATION.

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

1 SECTION 1. The department of education is required to pay
2 for the private placement of students with disabilities in
3 private special education schools and placements as a result of
4 hearing officers' decisions, court orders, or programmatic
5 placement. When a student with a disability is placed in a
6 private school or placement, the department of education is
7 often not allowed to monitor each student's progress and
8 educational programming to ensure that each student is afforded
9 the same opportunity to receive rigorous, standards-based
10 instruction and curriculum that are aligned with the Common Core
11 State Standards that are provided to their peers in public
12 schools. Some private placements are not in compliance with
13 federal, state, and county health and safety laws, rules,
14 regulations, and requirements.

15 The department of education is also charged high cost
16 tuition and fees for services by private placements. The
17 department of education should pay reasonable tuition and fees
18 for services.



1 The purpose of this Act is to:

2 (1) Provide the department of education with the authority
3 to monitor students with disabilities who are placed
4 in private schools or placements;

5 (2) Require private schools or placements to allow the
6 department of education access to exercise its
7 authority to monitor students;

8 (3) Require certain private schools or placements to post
9 itemized rates, fees, and tuition each April;

10 (4) Require certain private schools or placements to
11 charge the department of education the same rates,
12 fees, and tuition charged to parents who unilaterally
13 place a student at the school;

14 (5) Require the department of education to pay only for
15 private school or placement services that are
16 specified in a student's individualized education
17 program; and

18 (6) Authorize the department of education to withhold
19 payment to any private school or placement that
20 restricts or denies monitoring of students by the
21 department of education under this Act.



1 SECTION 2. Section 302A-443, Hawaii Revised Statutes, is
2 amended to read 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 one hundred and
15 eighty calendar days of a unilateral special education
16 placement, where the request is for reimbursement of
17 the costs of the placement.

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



1 (1) Specific misrepresentations by the department that it
2 had resolved the problem that formed the basis of the
3 complaint; or

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

9 (c) The department shall adopt rules that conform to the
10 requirements of any applicable federal statutes or regulations
11 pertaining to the impartial hearing based on the education of a
12 child with a disability. The rules shall provide that any party
13 may be present at the proceeding, be accompanied and advised by
14 counsel or individuals with special knowledge or training with
15 respect to the problems of children with a disability, may
16 require witnesses to be under oath, cross-examine witnesses, and
17 obtain a written or electronic verbatim record of the
18 proceedings.

19 (d) Any party to these hearings or the hearings officer
20 shall have the right to compel the attendance of witnesses upon
21 subpoena issued by the hearings officer. The fees for
22 attendance shall be the same as for the fees of witnesses before



1 circuit court. In case of the failure of any person to comply
2 with a subpoena, a circuit court judge of the judicial circuit
3 in which the witness resides, upon application of the hearings
4 officer, shall compel attendance of the person.

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

11 (f) The department shall [~~exercise oversight and~~
12 ~~monitoring of~~] be authorized to monitor any child eligible to
13 receive special education and related services who [has
14 undergone unilateral] is placed, whether as the result of a
15 hearing officer's decision, court order, or programmatic
16 placement, at the department's expense, whether by direct
17 payment or through reimbursement to the student's parent, legal
18 guardian, or legal custodian, in any private school or placement
19 as defined by federal and state law, including any implementing
20 regulations or rules, relating to students with disabilities.
21 Any private school or placement that receives funding from the
22 department for the placement of a student with a disability,



1 whether such funding is by direct payment or through
2 reimbursement to the student's parent, legal guardian, or legal
3 custodian, shall allow the department access to exercise its
4 authority under this subsection to monitor any student placed at
5 the private school or placement. Monitoring under this
6 subsection shall include but not be limited to:

7 (1) The monitoring of all private schools and placements
8 to ensure compliance with all applicable federal,
9 state, and county laws, rules, regulations, and
10 ordinances pertaining to health and safety;

11 (2) The monitoring of all students with disabilities
12 placed in a private school or placement to ensure
13 that:

14 (A) Each student is receiving academic education,
15 instruction, and programming as required by the
16 student's individualized education program; and

17 (B) The curriculum and instruction are rigorous,
18 based on content standards, and aligned with the
19 Common Core State Standards;

20 (3) The direct observation of a student with a disability
21 placed in a private school or placement, with or
22 without notice to the private school or placement;



1 (4) The review of all records, notes, or documentation
2 related to students with disabilities placed in
3 private school or placement; and

4 (5) The right of the department to talk to the student's
5 teachers at the private school or placement at
6 reasonable times.

7 (g) Any private school or placement that receives funds
8 from the department, whether by direct payment or through
9 reimbursement to the student's parent, legal guardian, or legal
10 custodian, shall post with the department by April of each year,
11 the itemized rates, fees, and tuition to be charged for the
12 following school year and shall charge the department the same
13 itemized rates, fees, or tuition it charges parents, legal
14 guardians, or legal custodians who unilaterally place a student
15 at its school, program, or facility. The department shall only
16 pay for services that are specified in a student's
17 individualized education program.

18 (h) Any private school or placement that receives funds
19 from the department, whether by direct payment or through
20 reimbursement to the student's parent, legal guardian, or legal
21 custodian, shall provide copies of a student's records to the



1 department within three business days of receipt of a request
2 for such records.

3 (i) The department shall withhold payment to any private
4 school or placement that restricts or denies monitoring by the
5 department pursuant to its authority under subsection (f).

6 (j) The department may adopt rules pursuant to chapter 91
7 to effectuate subsection (f)."

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

10 SECTION 4. This Act shall take effect on July 1, 2011.

11



Report Title:

Relating to Education

Description:

Amends section 302A-443, Hawaii Revised Statutes, to authorize the department of education to monitor students with disabilities who are placed, at the department's expense, at private schools or placements. Requires private schools or placements to post its rates, fees, and tuition by April of each year. Requires the department of education to pay only for private school or placement services that are specified in a student's individualized education program. Requires the department of education to withhold payment to private schools or placements that restrict or deny monitoring by the department. (SD1)

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