A BILL FOR AN ACT

RELATING TO SPECIAL EDUCATION.

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

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§302A- Educational interpreting services; students with a disability. (a) Persons who provide interpreting services for children who are deaf or hard of hearing shall comply with all state laws and rules governing sign language interpreters and shall have:

(1) Certification pursuant to the educational interpreter performance assessment;

(2) National interpreter certification from the registry of interpreters for the deaf; or

(3) Credentials through the Hawaii quality assurance system;

provided that the certification pursuant to the educational interpreter performance assessment shall be the preferred qualification."
(b) Persons who provide sign language services for a child who is not deaf or hard of hearing but for whom sign language services are specified in an individualized education program to address expressive or receptive language needs shall meet the requirements determined to be appropriate by the department.

§302A—Special education preschool programs; students with a disability. The department shall provide a statewide, flexible system of educational placement and programs to address the unique needs of students with a disability beginning at the age of three years until the student is ready for kindergarten in accordance with parental preferences."

SECTION 2. Section 302A-101, Hawaii Revised Statutes, is amended to read as follows:

1. By adding two new definitions to read:

"Related services" means transportation and the developmental, corrective, and other supportive services that are required to assist a student with a disability to benefit from special education including speech-language pathology and audiology services; educational interpreting services; psychological services; physical, occupational, music, and art therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities; counseling
services, including rehabilitative counseling; orientation and
mobility services; medical services for diagnostic or evaluation
purposes; school health and school nurse services; social work
services; and parent counseling and training.

"Student with a disability" means a student residing in the
State who has been evaluated in accordance with Hawaii
administrative rules 8-60-36 through 8-60-43 and has been
identified as deaf or hard of hearing or as having an
intellectual disability, a developmental delay, a speech or
language disability, a visual disability including blindness, an
emotional disability, an orthopedic disability, autism spectrum
disorder, traumatic brain injury, a specific learning
disability, deaf-blindness, multiple disabilities, or other
health disability and who, therefore, needs special education;
provided that a student affected by an identified condition who
does not require special education, but only requires related
services other than speech-language pathology services shall not
be deemed a student with a disability."

2. By amending the definitions of "charter schools" and
"special facilities" to read:

"Charter schools" means public schools holding charters to
operate as charter schools under chapter 302B, including start-
up and conversion charter schools, that have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, special education, length of the school day, week, or year, and personnel management.

"Special facilities" includes buildings, equipment, and materials; transportation; boarding homes; and personnel qualified to work with [exceptional children] students with a disability."

3. By deleting the definitions of "exceptional children" and "special services":

[""Exceptional-children" includes:"

(1) Persons under twenty years of age who deviate from the so-called normal person in physical, mental, social, or emotional characteristics or abilities to such an extent that specialized training, techniques, and equipment are required to enable these persons to attain the maximum of their abilities or capacities; provided that "exceptional children" shall not include "gifted and talented children";]
(2) Persons under twenty years of age who by reason of physical defects cannot attend the regular public school classes with normal children; and

(3) Persons under twenty years of age who are certified by a licensed physician eligible for membership in the state medical society as being emotionally maladjusted or intellectually incapable of profiting from ordinary instructional methods.

"Special services" means physiotherapy, or any form of muscle training, speech training, occupational therapy, vocational training, psychological evaluation, or any of them.

SECTION 3. Section 302A-436, Hawaii Revised Statutes, is amended to read as follows:

"[§302A-436] Departmental duty toward [exceptional children] students with a disability. (a) It is hereby declared to be of vital concern to the State that all [exceptional children] students with a disability residing in the State be provided with instruction, special facilities, and [special] related services for education, therapy, and training to enable them to live normal competitive lives. In order to effectively accomplish this purpose, the department shall establish and administer instruction, special facilities, and
[special] related services for the education, therapy, and training of [exceptional children] students with a disability, and provide in connection therewith corrective therapy, together with academic, occupational, and related training. The department shall cooperate with other agencies of the State charged with the administration of laws providing any type of service or aid to the [exceptional child] student with a disability and with the United States government through any appropriate agency or instrumentality in developing, extending, and improving the foregoing instruction, special facilities, and [special] related services.

(b) This program shall include boarding facilities, when necessary, special classes in schools or homes, and such other facilities as shall be required to render appropriate services to the [exceptional child] student with a disability. Existing facilities, buildings, and equipment belonging to, or operated by, the State shall be made available for these purposes when use thereof does not conflict with the primary use of the facilities."

SECTION 4. Section 302A-438, Hawaii Revised Statutes, is amended to read as follows:
"§302A-438 Facilities, service, when required. Where one or more exceptional children students with a disability are found in any one complex area superintendent's district, the superintendent of education shall provide instruction, special facilities, and related services according to the specifications of sections 302A-436 to 302A-443 in a manner most expedient and economical."

SECTION 5. Section 302A-439, Hawaii Revised Statutes, is amended to read as follows:

"[§]§302A-439[] Eligibility standards. The eligibility of exceptional children students with a disability for instruction, special facilities, and related services shall be determined in accordance with those standards established by the department[; provided that in the transition of eligible students with a disability from the department of health's early intervention services to special education preschool programs, the department shall enter into an agreement with the department of health no less frequently than annually to extend the student's eligibility for department of health services to at least the first day of the next school year, at the option of the parent and consistent with federal laws and regulations."
SECTION 6. Section 302A-440, Hawaii Revised Statutes, is amended to read as follows:

"§302A-440 Coverage for workers' compensation of [an exceptional child] a student with a disability. Whenever [an exceptional child] a student with a disability as defined in section 302A-101 undertakes to perform work for a private employer as part of a school-approved work-based learning program, whether paid or unpaid, the State shall be deemed to be the responsible employer for the purposes of workers' compensation coverage."

SECTION 7. Section 302A-442, Hawaii Revised Statutes, is amended to read as follows:

"§302A-442 Occupational therapy services, physical therapy services, speech-language pathology services, audiology services, school health services, mental health services, psychological services, and medical services for diagnostic or evaluative purposes. (a) The department of health, within the funds available, shall be responsible for the related services of school health, mental health, psychological, and medical services for evaluation or diagnostic purposes, and, within the funds available, shall provide for those [exceptional children]
students with a disability who need these services and who attend public school in the State.

(b) The department of education, within the funds available, shall be responsible for the related services of occupational therapy and physical therapy for evaluation or diagnostic purposes, and, within the funds available, shall provide for those [exceptional children] students with a disability who need these services and who attend public school in the State.

(c) The department of health shall work in cooperation with the department of education to implement this section. The procedures to implement this section shall be in accordance with the rules of the department of health and the department of education."

SECTION 8. Section 302A-442.5, Hawaii Revised Statutes, is amended by amending its title to read as follows: "§302A-442.5 Instructional materials; [exceptional children.] students with a disability."

SECTION 9. Section 302B-1, Hawaii Revised Statutes, is amended by amending the definition of "charter school" to read as follows:
"Charter school" means a public school holding a charter to operate as a charter school under this chapter, including start-up and conversion charter schools, with the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, special education, length of the school day, week, or year, and personnel management."

SECTION 10. Section 302B-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall be responsible for the provision of a free appropriate public education. Any charter school that enrolls special education students or identifies one of its students as eligible for special education shall be responsible for providing the educational and related services required by a student's individualized education program. The programs and services for the student shall be determined collaboratively by the student's individualized education program team, which shall include the charter school, and the student's parents or legal guardians.
If the charter school is unable to provide all of the required services, then special education and related services to the student shall be provided by the department according to services determined by the student's individualized educational program team. The department shall collaborate with the office to develop guidelines related to the provision of special education services and resources to each charter school. The department shall review all of the current individualized education programs of special education students enrolled in a charter school and may offer staff, funding, or both, to the charter school based upon a per-pupil weighted formula implemented by the department and used to allocate resources for special education students in the public schools."

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2011.

INTRODUCED BY: [Signature]

JAN 26 2011
Report Title:
Department of Education; Charter Schools; Special Education

Description:
Changes terminology from "exceptional child" to "student with a disability" and clarifies criteria for designation; clarifies definition of services auxiliary to education required to be provided to students with a disability; clarifies eligibility standards for preschool students with a disability; clarifies charter school duties toward children with a disability; establishes certification criteria for persons who provide interpreting services for children who are deaf or hard of hearing and certain students with a disability.

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