LEGISLATIVE REPORT

SUBJECT: Relating to Education

REFERENCE: SB 2004, SD2, HD2, CD1, Act 179 (SLH 2008)

ACTION REQUESTED: Annual report on 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.

DOE REPORT:
Introduction:

Act 179 extended the statute of limitations from 90 days to 180 days for a parent to file a due process hearing request included reimbursement for private school tuition. Provision (e) was added to the statute which required the Department of Education (Department) to report to the Legislature on the number of due process hearings relating to reimbursement of private school tuition. This report satisfies the requirement specified in Act 179, HRS §302A-443(e).

FINDINGS:

During school year 2009-2010, there were 91 due process hearing requests filed requesting private school reimbursement.

RECOMMENDATIONS:

None

Attachment
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 department, 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 this 16 day of JUN, 2008

[Signature]

GOVERNOR OF THE STATE OF HAWAII
LEGISLATIVE REPORT

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None

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RECOMMENDATIONS:

None

Attachment
July 23, 2010

To: Holders of Policies and Regulations  
Student Series 4000

From: Daniel S. Hamada, Assistant Superintendent

Subject: New Regulation 4145.101  
Repealed Regulation 4145.1

Regulation 4145.1 “Admission of Overage Students” has been repealed to reflect the statutory changes in Hawaii Revised Statutes Section 302A-1134(c), also known as Act 163 (SLH 2010).

Effective July 2010, a new Regulation 4145.101 was adopted. Students who are age 20 or older on the first instructional day of the school year are ineligible to attend a Department of Education public school.

Attached for your reference is the new Regulation 4145.101. Please place this regulation into your Policies and Regulations (Curriculum and Instruction Series 2000, Student Series 4000) binder and place this memorandum in the front of the binder to indicate this inclusion. Also, attached for your reference is the repealed Regulation 4145.1.

If there are any questions, please contact Mr. Karl Yoshida, Director, Information Resource Management Branch, at (808)692-7392 or email at karl_yoshida@ntces.k12.hi.us. For questions related to special education, please contact Ms. Debra Farmer, Administrator, Special Education Section, at (808)203-5560 or email at debra_farmer@notes.k12.hi.us.

DSH:DF/KY:so

Attachments: New Regulation 4145.101  
Repealed Regulation 4145.1  
Act 163 (SLH 2010)

c: Superintendent
ADMISSION OF STUDENTS

REGULATIONS

1. Hawaii Revised Statutes §302A-1132 requires all children ages six (6) to 18 to attend a public or private school unless excluded or excepted from attendance. Public schools shall enroll students ages six (6) to 18 unless excluded or excepted.

2. Pursuant to Hawaii Revised Statutes §302A-1134(c), "no person who is twenty years of age or over on the first instructional day of the school year shall be eligible to attend a public school. If a person reaches twenty years of age after the first instructional day of the school year, the person shall be eligible to attend public school for the full school year."

3. Each student enrolled in a public school is enrolled in a specific grade. Students are ineligible to enroll in a specific grade if they exceed the maximum age on the first instructional day of the school year.

   Grade  9 Maximum age on the first instructional day = 16 years old

   Grade 10 Maximum age on the first instructional day = 17 years old

   Grade 11 Maximum age on the first instructional day = 18 years old

   Grade 12 Maximum age on the first instructional day = 19 years old

4. A student, who is eligible for admission on the first instructional day, shall be eligible to remain in that specific grade for the full school year.

5. A student with a disability may be entitled to additional protection under Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and Hawaii Administrative Rules Chapter 60.

Former Regulation: 4145.1
Regulation Adopted: 7/10
ADMISSION OF OVERAGE STUDENTS
REGULATIONS

1. An overage student shall be given an opportunity to enroll in a secondary school when a review of the student's request indicates a seriousness of purpose and the ability to profit from further schooling.

2. A student will be considered to be overage when the student applies to enter:
   
   Grade 9 at age 17
   Grade 10 at age 18
   Grade 11 at age 19
   Grade 12 at age 20

3. Enrolling overage students will be in accordance with departmental procedures.

4. It is not necessary to obtain renewal of approval if the student remains in the same school. When there is a break in school attendance or a transfer to another school is requested, a renewal is required.

Former Code No. 5111.1
Regulation Adopted: 7/61
Amended: 12/61, 10/70, 3/88
Repealed: 7/10
A BILL FOR AN ACT

RELATING TO EDUCATION.

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

SECTION 1. Section 302A-1134, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) [No child who is seventeen years of age or over shall be admitted to the ninth grade of a public four-year high school, and no child who is eighteen years of age or over shall be admitted to the tenth grade of a public senior high school, except upon the written permission of the superintendent when in the superintendent's opinion the facts warrant admission.] No person who is twenty years of age or over on the first instructional day of the school year shall be eligible to attend a public school. If a person reaches twenty years of age after the first instructional day of the school year, the person shall be eligible to attend public school for the full school year."

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

SECTION 3. This Act shall take effect on July 1, 2010.