Hawaii Administrative Rules, Chapter 60 Guidelines

(Columns of the side-by-side table are meant to be read together. The right column provides clarification or additional information to the Hawaii Administrative Rules, Chapter 60.)

Subchapter 1 General Provisions

§8-60-1 Purposes and scope
§8-60-2 Definitions

Subchapter 2 FAPE Requirements

§8-60-3 Free appropriate public education ("FAPE")
§8-60-4 Limitation: exception to FAPE for certain ages
§8-60-5 Residential placement
§8-60-6 Assistive technology
§8-60-7 Extended school year services
§8-60-8 Nonacademic services
§8-60-9 Program options
§8-60-10 Child find and referral
§8-60-11 Routine checking of hearing aids and external components of surgically implanted medical devices
§8-60-12 Transition of students from the Part C program to preschool programs
§8-60-13 Students with disabilities who are covered by public benefits or insurance
§8-60-14 Prohibition on mandatory medication

Subchapter 3 Least Restrictive Environment

§8-60-15 Least restrictive environment requirements
§8-60-16 Continuum of alternative placements
§8-60-17 Placements
§8-60-18 Nonacademic settings
§8-60-19 (Reserved)

Subchapter 4 Students in Private Schools

§8-60-20 Definition of parentally-placed private school students with disabilities
§8-60-21 Child find for parentally-placed private school students with disabilities
§8-60-22 Provision of services for parentally-placed private school students with disabilities: basic requirement
§8-60-23 Equitable services determined
§8-60-24 Equitable services provided
§8-60-25 Location of services and transportation
§8-60-26 Due process complaints and state complaints
§8-60-27 Placement of students by parents when FAPE is at issue
§8-60-28 Applicability of sections 8-60-29 through 8-60-30
§8-60-29 Responsibility of the department
§8-60-30 Implementation by the department

Subchapter 5 Evaluations and Eligibility Determinations

§8-60-31 Parental consent
§8-60-32 Evaluation
§8-60-33 Initial evaluations
§8-60-34 Screening for instructional purposes is not evaluation
§8-60-35 Reevaluations
§8-60-36 Evaluation procedures
§8-60-37 Additional requirements for evaluations and reevaluations
§8-60-38 Determination of eligibility
§8-60-39 Eligibility criteria

Subchapter 5 Evaluations and Eligibility Determinations con't.
§8-60-40 Additional group members
§8-60-41 Determining the existence of a specific learning disability
§8-60-42 Observation
§8-60-43 Specific documentation for the eligibility determination

Subchapter 6 Individualized Education Programs and Educational Placements
§8-60-44 Definition of individualized education program
§8-60-45 IEP Team
§8-60-46 Parent participation
§8-60-47 When IEPs shall be in effect
§8-60-48 Development, review, and revision of IEP
§8-60-49 Private school placements by the department
§8-60-50 Educational placements
§8-60-51 Alternative means of meeting participation

Subchapter 7 State Complaint Procedures
§8-60-52 State complaint procedures
§8-60-53 Minimum state complaint
§8-60-54 Filing a complaint

Subchapter 8 Procedural Safeguards
§8-60-55 Procedural safeguards
§8-60-56 Opportunity to examine records; parent participation in meetings
§8-60-57 Independent educational evaluation
§8-60-58 Prior notice by the department; content of notice
§8-60-59 Procedural safeguards notice
§8-60-60 Mediation
§8-60-61 Filing a due process complaint
§8-60-62 Due process complaint
§8-60-63 Model forms
§8-60-64 Resolution process
§8-60-65 Impartial due process hearing
§8-60-66 Hearing rights
§8-60-67 Hearing decisions
§8-60-68 Finality of decision; appeal
§8-60-69 Timelines and convenience of hearings and reviews
§8-60-70 Civil action
§8-60-71 Attorneys' fees
§8-60-72 Student's status during proceedings
§8-60-73 Surrogate parents
§8-60-74 Transfer of parental rights at age of majority

Subchapter 9 Discipline Procedures
§8-60-75 Authority of school personnel
§8-60-76 Determination of setting
§8-60-77 Appeal
§8-60-78 Placement during appeals
§8-60-79 Protections for students not determined eligible for special education and related services
§8-60-80 Referral to and action by law enforcement and judicial authorities
§8-60-81 Change of placement because of disciplinary removals
§8-60-82 (Reserved)
§8-60-83 (Reserved)

Subchapter 10 Confidentiality of Information
§8-60-84 Applicability

Appendices
A Additional Definitions
B Referral, Evaluation and Eligibility
C Part C Transition Memo
D Private School Participation Project
E Monitoring Special Education Students in Private Placements
F Transfer of Educational Rights
G State Complaints Procedures
H Dispute Resolution
I Surrogate Parent
J Discipline Chart
K Confidentiality of Information

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
Subchapter 1 General Provisions **§8-60-1 Purposes and scope.** (a) The purposes of this chapter are: (1) To ensure that all students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (2) To ensure that the rights of students with disabilities and their parents are protected; (3) To assist public schools in the provision of the education of all students with disabilities; (4) To assess and ensure the effectiveness of efforts to educate students with disabilities; (5) To strengthen the role of parents; (6) To encourage whole-school approaches and pre-referral intervention to reduce the need to label students as disabled in order to address their learning needs; (7) To encourage high expectations for students with a disability and to improve and increase educational achievement; and (8) To encourage all students with a disability to develop skills needed to lead a self- determined life. (b) This chapter shall be construed as supplemental to, and in the context of, the Individuals With Disabilities Education Act (20 U.S.C. section 1400 et seq.; 34 C.F.R. sections 300.1 et seq.) and other federal laws and regulations relating to the provision of a free appropriate public education to a student with a disability. [Eff 11/23/09] (Auth: 20 U.S.C. 1412; HRS §302A-1112) Imp: HRS §§302A-1112, 302A-436; 34 C.F.R. §300.2)	Chapter 60 is Hawaii's Administrative Rule relating to the provision of a free appropriate public education (FAPE) to students with disabilities. The Individuals with Disabilities Education Act (IDEA) is the federal law to which the Department must also adhere. When there is a difference between the federal law and Hawaii's Administrative Rules, the requirement that provides the greater protection for the student takes precedence.
§8-60-2 Definitions. As used in this chapter: **"Act"** means the Individuals with Disabilities Education Act, as amended. (20 U.S.C. section 1400(a)) **"Assessment"** means the administration of specific tests, instruments, tools, strategies, and other materials. **"Assistive technology device"** means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or	The terms defined under §8-60-2 are those that are used throughout Chapter 60. Terms specific only to a particular subchapter are defined within the respective subchapters. See Appendix A: Additional definitions.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
improve the functional capabilities of a student with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device. **"Assistive technology service"** means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: (1) The evaluation of the needs of a student with a disability, including an assistive technology functional evaluation of the student in the student's customary environment; (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities; (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; (5) Training or technical assistance for a student with a disability or, if appropriate, that student's family; and (6) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student. **"Charter school"** means a public school as defined in both federal and state laws.	An assistive technology (AT) functional evaluation is an ongoing process of considering AT interventions, which is conducted in the student's customary learning environment by a team of people knowledgeable about the student, and is relevant to the provision of FAPE. An AT intervention is a tool or strategy that allows a student to do an educational task he/she could not do without the tool or strategy at the expected performance level. This includes a broad range of interventions as simple as a pencil grip for writing or as complex as an "eye gaze" system to access a computer. Assistive Technology Guidelines can be found online at: http://doe.k12.hi.us/specialeducation/index_topics.htm
"Consent" means that: (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, or through another mode of communication; (2) The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (3) (A) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.	The parent requirements of consent also apply to adult students (18 years of age or older) who are representing their own educational interests in the IEP process.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(B) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). (C) If a parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the department is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.	A parent whose child is currently receiving special education and related services may revoke consent for continued services, thereby removing the student from special education. If a parent revokes consent for services, schools are not required to amend student records to remove references to the student's receipt of special education. However, • A parent may still request to amend information contained in education records that is inaccurate or misleading, or violates the privacy or other rights of the student. • Upon request, the school must provide a parent with an opportunity for a hearing to challenge information in education records to ensure that it is accurate. This does not affect the school's responsibility in regard to a parent's right to inspect and review any education records relating to his/her children that are collected, maintained, or used by the school under the Individuals with Disabilities Education Act (IDEA) and Chapter 60.
"Day" means calendar day unless otherwise indicated as business day or school day. (1) *"Business day"* means Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day, as in section 8-60-27(d)(1)(B)). (2) (A) *School day* means any day, including a partial day that students are in attendance at school for instructional purposes. (B) School day has the same meaning for all students in school, including students with and without disabilities. **"Department"** means the state department of education, including charter schools. **"Due process complaint"** means a request for an impartial hearing process to resolve an alleged violation relating to the identification, evaluation, or educational placement of a student with a disability or the provision of a FAPE to the student. **"Elementary school"** means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law. **"ESEA"** means the Elementary and Secondary Education Act. **"Evaluation"** means procedures used in accordance with sections 8-60-36 through 8-60-43 to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.	Evaluation refers to the PROCESS, not a specific test or assessment.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
"Free appropriate public education" or **"FAPE"** means special education and related services that: (1) Are provided at public expense, under public supervision and direction, and without charge; (2) Meet the standards of the department, including the requirements of this chapter; (3) Include an appropriate preschool, elementary school, or secondary school education in the state involved; and (4) Are provided in conformity with an individualized education program that meets the requirements of sections 8-60-44 through 8-60-48.	The Individualized Education Program (IEP) and the resulting Prior Written Notice (PWN) documents the Department's offer of FAPE.
"Homeless students" has the meaning given the term homeless students and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq. **"Include"** means that the items named are not all of the possible items that are covered, whether like or unlike the ones named. **"Independent educational evaluation"** or **"IEE"** means an evaluation conducted by a qualified examiner who is not employed by the department. **"Individualized education program"** or **"IEP"** means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with sections 8-60-44 through 8-60-48. **"Individualized education program team"** means a group of individuals described in section 8-60-45 that is responsible for developing, reviewing, or revising an IEP for a student with a disability. **"Individualized family service or support plan"** or **"IFSP"** has the meaning given the term in section 636 of the Act. **"Interim alternative educational setting"** or **"IAES"** means a temporary placement for a student who has been suspended or otherwise removed from his current educational placement for disciplinary reasons in which the student continues to receive educational services to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP.	The IEP is a written document with specific components that need to be included. For more information, see §8-60-44 through 8-60-48. An IFSP is a service plan used for students aged birth to three. For more information, see §8-60-47(b).
"Least restrictive environment" or **"LRE"** means to the maximum extent appropriate, educating students with disabilities, including students in public or private institutions or other care facilities, with students who are non-disabled and removing students with disabilities from the regular educational environment only if the nature or severity of the disability is such that education in regular classes with	The LRE is determined on a continuum of placements (e.g., regular classroom with support, special class, special school, etc.).

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
the use of supplementary aids and services cannot be achieved satisfactorily. **"Limited English proficient"** has the meaning given the term in section 9101(25) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C.6301 et seq. ("ESEA"). **"Manifestation determination"** means a process triggered by a decision to change the placement of a student with a disability because of a violation of a code of student conduct to determine: If the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or If the conduct in question was the direct result of a failure to implement the IEP. **"Mediation"** means a voluntary process in which a neutral third party (mediator) helps parents and education representatives try to resolve issues relating to a student's identification, evaluation, or educational placement or the provision of a FAPE. **"Native language".** Native language, when used with respect to an individual who is limited English proficient, means the following: (A) The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except as provided in paragraph (2). (B) In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).	
"Parent" means: (1) A biological or adoptive parent of a student; (2) A foster parent, unless state law, rules, or contractual obligations with the State prohibit a foster parent from acting as a parent; (3) A guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student (but not the State if the student is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the student lives, or an individual who is legally responsible for the student's welfare; or	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(5) A surrogate parent who has been appointed in accordance with section 8-60-73 or section 639(a)(5) of the Act. The biological or adoptive parent, when attempting to act as the parent and when more than one party is qualified to act as a parent, shall be presumed to be the parent for purposes of this chapter unless the biological or adoptive parent does not have legal authority to make educational decisions for the student; except that if a judicial decree or order identifies a specific person or persons under paragraphs (1) through (4) to act as the "parent" of a student or to make educational decisions on behalf of a student, then that person or persons shall be determined to be the "parent" for purposes of this chapter. **"Placement"** means an appropriate educational setting for the implementation of the program for a student with a disability based upon the individualized education program. It does not mean the specific location or school but the type of placement on the continuum of placement options (e.g., regular classroom with support, special class, special school, etc.). **"Present levels of academic achievement and functional performance"** means an essential part of the IEP that summarizes the student's present levels of academic achievement and functional performance and states how the student's disability affects the student's involvement and progress in the general education curriculum. **"Prior written notice"** or **"PWN"** means written notification given to parents of a student with a disability a reasonable time before the department: (1) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student, or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student. **"Qualified"** means that an individual has met the department-approved or department-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing special education or related services.	For information on the transfer of rights to the adult student, see §§8-60-44(c) and 8-60-74 and Appendix F: Transfer of Rights. The "Present levels of academic achievement and functional performance" is also called the "PLEP".
"Related services." General definition. Related services includes transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling,	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. Related services, with respect to students with surgically implanted devices, including cochlear implants. (1) Do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. (2) Nothing in paragraph (1): (A) Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as defined in the general definition) that are determined by the IEP team to be necessary for the student to receive a FAPE; (B) Limits the responsibility of the department to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or (C) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in section 8-60-11(b).	
Related services terms are defined as follows: (1) *"Audiology"* includes: (A) Identification of students with hearing loss; (B) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; (C) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; (D) Creation and administration of programs for prevention of hearing loss; (E) Counseling and guidance of students, parents, and teachers regarding hearing loss; and	This may include hearing loss prevention activities such as in-services on hearing protection (e.g., preventing hearing loss from exposure to noisy environments/loud sounds [iPods, MP-3 players] etc.).

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(F) Determination of students' needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.	
(2) *"Counseling services"* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.	
(3) *"Early identification and assessment of disabilities in students"* means the implementation of a formal plan for identifying a disability as early as possible in a student's life.	
(4) *"Interpreting services"* includes:	
(A) When used with respect to students who are deaf or hearing impaired: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and	Specific interpreting services are determined based on the individual needs of deaf or hearing impaired students.
(B) Special interpreting services for students who are deaf-blind.	
(5) *"Medical services"* means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.	
(6) *"Occupational therapy"* means services provided by a qualified occupational therapist, including:	Occupational therapy generally addresses fine motor functioning of the student in order to benefit from special education.
(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation	
(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and	
(C) Preventing, through early intervention, initial or further impairment or loss of function.	
(7) *"Orientation and mobility services:"*	
(A) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(B) Includes teaching students the following, as appropriate: (i) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street); (ii) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; (iii) To understand and use remaining vision and distance low vision aids; and (iv) Other concepts, techniques, and tools.	
(8) (A) *"Parent counseling and training"* means assisting parents in understanding the special needs of their child; (B) Providing parents with information about child development; and (C) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.	
(9) *"Physical therapy"* means services provided by a qualified physical therapist.	Physical therapy generally addresses gross motor functioning of the student in order to benefit from special education.
(10) *"Psychological services"* includes: (A) Administering psychological and educational tests, and other assessment procedures; (B) Interpreting assessment results; (C) Obtaining, integrating, and interpreting information about student behavior and conditions relating to learning; (D) Consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; (E) Planning and managing a program of psychological services, including psychological counseling for students and parents; and (F) Assisting in developing positive behavioral intervention strategies.	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(11) *"Recreation"* includes assessment of leisure function; therapeutic recreation services; recreation programs in schools and community agencies; and leisure education.	
(12) *"Rehabilitation counseling services"* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.	
(13) *"School health services"* and *"school nurse services"* means health services that are designed to enable a student with a disability to receive a FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.	The term "skilled nursing" is also used with students with disabilities who require nursing services. Required nursing services should be clearly delineated in the student's IEP.
(14) *"Social work services in schools"* includes: (A) Preparing a social or developmental history on a student with a disability; (B) Group and individual counseling with the student and family; (C) Working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; (D) Mobilizing school and community resources to enable the student to learn as effectively as possible in the student's educational program; and (E) Assisting in developing positive behavioral intervention strategies.	
(15) *"Speech-language pathology services"* includes: (A) Identification of students with speech or language disabilities; (B) Diagnosis and appraisal of specific speech or language disabilities; (C) Referral for medical or other professional attention necessary for the habilitation of speech or language disabilities;	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(D) Provision of speech and language services for the habilitation or prevention of communicative impairments; and (E) Counseling and guidance of parents, students, and teachers regarding speech and language disabilities. (16) *"Transportation"* includes: (A) Travel to and from school and between schools; (B) Travel in and around school buildings; and (C) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.	
"Resolution session" means a meeting convened within fifteen days of a parent filing a due process complaint in which the parent, a representative from the department and the relevant member(s) of the IEP team discuss the complaint and attempt to resolve the dispute that is the basis of the complaint prior to a due process hearing. **"Scientifically based research"** has the meaning given the term in section 9101(37) of the ESEA.	Resolution sessions shall not occur without the parent. Attempts to schedule this meeting should be clearly documented in writing. Scientifically based research— (a) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and (b) Includes research that— (1) Employs systematic, empirical methods that draw on observation or experiment; (2) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (3) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (4) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls; (5) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (6) Has been accepted by a peer-reviewed journal or approved by

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
"Secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade twelve. **"Services plan"** means a written statement that describes the special education and related services the department will provide to a parentally-placed student with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with section 8-60-22, and is developed and implemented in accordance with sections 8-60-23 through 8-60-25. **"Short-term objectives/benchmarks"** means measurable intermediate performance steps that will enable parents, students, and educators to gauge, at intermediate times during the year, how well the student is progressing toward the annual goals by either: (a) Breaking down the skills described in the goal into discrete components; (b) Describing the amount of progress the student is expected to make within specified segments of the year.	a panel of independent experts through a comparably rigorous, objective, and scientific review.
"Special education" (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including: (A) Instruction conducted in the classroom, in the home, in hospitals and institutions, in the community, and in other settings; and (B) Instruction in physical education. (2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (1): (A) Speech-language pathology services, when the speech or language disability is the disabling condition; (B) Travel training; and (C) Vocational education. Individual special education terms defined. The terms in this definition are defined as follows: (1) *"At no cost"* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to	Specially designed instruction may be delivered by an individual under the guidance of or in consultation with a special education teacher. Special education is a service, not a specific person or place.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
nondisabled students or their parents as a part of the *regular education program.* (2) *"Physical education"* means: (A) The development of: (i) Physical and motor fitness; (ii) Fundamental motor skills and patterns; and (iii) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and (B) Includes special physical education, adapted physical education, movement education, and motor development. (3) *"Specially designed instruction"* means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: (A) To address the unique needs of the student that result from the student's disability; and (B) To ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the department that apply to all students. (4) *"Travel training"* means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to: (A) Develop an awareness of the environment in which they live; and (B) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community). (5) *"Vocational education"* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree. **"Special education teacher"** means a person assigned by the department who is highly qualified under state standards to provide the specially designed instruction that meets the definition of special education in this section. The term "highly qualified" has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56. **"State"** means the State of Hawaii. **"State complaint"** means a written complaint filed with the	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
department of education by an organization or individual alleging a violation of a requirement of Part B of the Act.	
"Student with a disability" means a student residing in the State, evaluated in accordance with sections 8-60-36 through 8-60-43 as deaf, hard of hearing, 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, by reason thereof, needs special education and related services. (1) If it is determined, through an appropriate evaluation under sections 8-60-36 through 8-60-43, that a student has one of the identified disabilities, but only needs a related service and not special education, the student is not a student with a disability. (2) If speech-language pathology services are required by the student, the student would be determined to be a student with a disability. **"Supplementary aids and services"** means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate in accordance with sections 8-60-15 through 8-60-17.	
"Transition services" means a coordinated set of activities for a student with a disability that: (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes: (A) Instruction; (B) Related services; (C) Community experiences; (D) The development of employment and other post-school adult living objectives; and	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(E) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a student with a disability to benefit from special education. **"Ward of the State"** means a student who, as determined by the State where the student resides, is: (1) A foster student; (2) A ward of the State; or (3) In the custody of a public student welfare agency. "Ward of the State" does not include a foster student who has a foster parent who meets the definition of a parent in this section. [Eff 11/23/09] (Auth: 20 U.S.C. 1221e-3, 1400(a), 1401(1)-(4), 1401(6), 1401(9), 1401(11), 1401(14)-(15), 1401(18), 1401(20), 1401(23), 1401(26)-(27),1401(29)-(36), 1411(e)(2)(C)(xi), 1412(a)(10)(A), 1413(a)(5) and 7221i(1), 1414(a)-(c), 1414(a)(1)(D), 1414(d)(1)(B); HRS §302A-1112) (Imp: 34 C.F.R. §§300.4-13, 300.15, 300.17, 300.19, 300.22 to 24, 300.27, 300.29 to 30, 300.34 to 35, 300.37, 300.39 to 42, 300.44 to 45, and 300.209)	
Subchapter 2 FAPE Requirements **§8-60-3 Free appropriate public education ("FAPE").** (a) General. A free appropriate public education shall be available to all students with disabilities residing in the State aged three to twenty, including students with disabilities who have been suspended or expelled from school, as provided for in section 8-60-75(d). (b) FAPE for students beginning at age 3. (1) The State shall ensure that: (A) The obligation to make a FAPE available to each eligible student residing in the State begins no later than the student's third birthday; and (B) An IEP is in effect for the student by that date, in accordance with section 8-60-47(b). (2) If a student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the IEP will begin. (c) Students advancing from grade to grade. (1) The State shall ensure that a FAPE is available to any individual student with a disability who needs special education and related services, even	Students must be under the age of 20 on the first instructional day of the State of Hawaii, Department of Education, Official School Calendar.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
though the student has not failed or been retained in a course or grade, and is advancing from grade to grade. (2) The determination that a student described in subsection (a) is eligible, shall be made on an individual basis by the group responsible for making eligibility determinations. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(1)(A); HRS §302A-1112) (Imp: 34 C.F.R. §300.101)	
§8-60-4 <u>Limitation: exception to FAPE for certain ages.</u> General. The obligation to make a FAPE available to all students with disabilities does not apply with respect to the following: (1) Students with disabilities who have graduated from high school with a regular high school diploma. (A) The exception does not apply to students who have graduated from high school but have not been awarded a regular high school diploma. (B) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with section 8-60-58. (C) As used in paragraph (1), the term "regular high school diploma" does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential "GED"; (2) Students with disabilities who are eligible but who receive early intervention services under Part C of the Act. (3) (A) Students with disabilities aged eighteen to twenty, who, in the last educational placement prior to their incarceration in an adult correctional facility: (i) Were not actually identified as being a student with a disability under sections 8-60-2 and 8-60-39; and (ii) Did not have an IEP under this chapter. (B) The exception in paragraph (3)(A) does not apply to students with disabilities, aged eighteen to twenty, who: (i) Had been identified as a student with a disability under sections 8-60-2 and 8-	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
60-39 and had received services in accordance with an IEP, but who left school prior to their incarceration; or (ii) Did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability under sections 8-60-2 and 8-60-39. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(1)(B)-(C); HRS §302A-1112) (Imp: 34 C.F.R. §300.102; HRS 302A-101)	
§8-60-5 <u>Residential placement</u>. If placement in a public or private residential program is necessary to provide special education and related services to a student with a disability, the program, including non-medical care and room and board, shall be at no cost to the parents of the student. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B); HRS §302A-1112) (Imp: 34 C.F.R. §300.104)	
§8-60-6 <u>Assistive technology.</u> (a) The department shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in section 8-60-2, are made available to a student with a disability if required as a part of the student's special education, related services, or supplementary aids and services, under section 8-60-2. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive FAPE. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i); HRS §302A-1112) (Imp: 34 C.F.R. §300.105)	The determination by the IEP team that assistive technology (AT) is required and is based on evidence that the tool or strategy enables the student to receive FAPE. AT includes a broad range of devices from a simple pencil grip to an “eye gaze” system. Evidence is gathered as the IEP is implemented. This ongoing process of evidence-based instruction can be part of an AT functional evaluation. AT Guidelines can be found on the following website: http://doe.k12.hi.us/specialeducation/index_topics.htm
§8-60-7 <u>Extended school year services.</u> (a) General. (1) The department shall ensure that extended school year services are available as necessary to provide a FAPE, consistent with paragraph (2). (2) Extended school year services shall be provided only if a student's IEP team determines, on an individual basis, in accordance with sections 8-60-44 through 8-60-48, that the services are necessary for the provision of a FAPE to the student; (3) In implementing the requirements of this subchapter, the department may not: (A) Limit extended school year services to	The IEP team must determine if a student needs a program of special education and/or related services that extends beyond the regular school year. The critical question is whether the student’s learning in the regular school year will be <u>significantly</u> impacted if extended school year (ESY) services are not provided. In determining a student’s need for ESY services, the IEP team must first consider the amount of regression <u>and</u> rate of recoupment the student experiences following a break in his/her educational program. Will the student’s difficulties with regression <u>and</u> recoupment make it

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
particular categories of disability; or (B) Unilaterally limit the type, amount, or duration of those services. (b) Definition. The term "extended school year services" means special education and related services that: (1) Are provided to a student with a disability: (A) Beyond the normal school year of the department; (B) In accordance with the student's IEP; and (C) At no cost to the parents of the student; and (3) Meet the standards of the department. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(1); HRS §302A-1112) (Imp: 34 C.F.R. §300.106)	unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives? Will the amount of regression and rate of recoupment impact his/her ability to receive FAPE? It is not necessarily required that a student first experience regression during an interruption in educational programming in order to determine that ESY services are necessary for FAPE. Other factors to consider related to the provision of ESY as necessary for FAPE include: • The nature and severity of the student's disability – Does the student's disabling condition require a consistent, highly structured program? Frequent and prolonged repetition of a particular skill in order to maintain adequate levels of progress? • Areas of learning crucial to attaining the goal of self-sufficiency and independence from caregivers – This includes critical self-help and life skills that allow independence from caretakers such as (but not limited to) mobility, toileting, eating, dressing, communication, behavior.
§8-60-8 Nonacademic services. (a) The department shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities. (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the department, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the department and assistance in making outside employment available. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(1), HRS §302A-1112) (Imp: 34 C.F.R. §300.107)	Students with disabilities shall have an equal opportunity to participate in all services and activities available to students without disabilities. Students with disabilities must have the supplementary aids and services determined necessary by the IEP team for the student to participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of that student. Students must be given access to extracurricular activities, however, they must meet the requirements expected of all students (e.g., student may try out for a sports team but may be "cut" if unable to meet basic eligibility requirements).
§8-60-9 Program options. The department shall take steps to ensure that its students with disabilities have available to them the variety of educational programs and services available to nondisabled students, including art, music, industrial arts, consumer and homemaking education, and vocational education. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(2), 1413(a)(1), HRS §302A-1112) (Imp: 34 C.F.R. §300.110)	Special education students may not be excluded from programs offered to general education students such as Comprehensive Student Alienation Program (CSAP), Special Motivation Program (SMP), Primary School Adjustment Program (PSAP).
§8-60-10 Child find and referral. (a) General. The department shall annually identify, locate, and evaluate, all students with disabilities	Operation Search is the State's multi-media campaign to identify all students with a disability residing in Hawaii who are in need of special

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
residing in the State, including students with disabilities who are homeless students or are wards of the State, and students with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services. (b) Other students in child find. Child find also shall include: (1) Students who are suspected of being a student with a disability under section 8-60-2 and in need of special education, even though they are advancing from grade to grade; and (2) Highly mobile students, including migrant students. (c) Construction. Nothing in the Act requires that students be classified by their disability so long as each student who has a disability that is listed in section 8-60-2 and who, by reason of that disability, needs special education and related services is regarded as a student with a disability under Part B of the Act.	education and related services (i.e., including those who are in private schools, homeless, and may be advancing from grade to grade). Although the media campaign is limited in duration, community child find activities are ongoing throughout the year. Students attending private school may be referred for evaluation by their parents or may be evaluated as a result of the child find process. The student must be evaluated in accordance with the requirements in IDEA and Chapter 60.
(d) Referral. (1) All referrals for the evaluation of a student to determine eligibility as a student with a disability under this chapter shall be documented and shall be in accordance with this section. (2) Within fifteen days from the date of receipt of a referral from a parent for an evaluation, the parent shall: (A) Receive a written notice in accordance with section 8-60-58 of the department's proposal to assess the student under this chapter; request for consent to assess in accordance with section 8-60-31; and the procedural safeguards notice in accordance with section 8-60-59; or (B) Receive a written notice in accordance with section 8-60-58 of the department's refusal to assess under this chapter and the procedural safeguards notice in accordance with section 8-60-59. [Eff 11/23/09] (Auth: 20 U.S.C. 1401(3)); 1412(a)(3) HRS §302A-1112)	A referral for special education begins with a request for evaluation for a student suspected of having a disability. A request for an evaluation may be made to the student's home school: • Verbally, in person or by phone; • In a written letter (including fax or e-mail); or • On the State of Hawaii Request for Evaluation Form. For infants and toddlers less than 3 years of age, community agencies and/or preschools should contact the Hawaii Department of Health H-KISS program for identification, evaluation, and early intervention services. The school has 15 calendar days to notify the parent in writing (using the PWN) regarding the school's proposal or refusal to evaluate. The referral timeline begins with the receipt by the Department (not necessarily receipt by the home school) of a Request for Evaluation. The referral timeline ends when the parent is given the following: • Prior Written Notice (PWN) of Department Action (must be given to the parent no later than the 15th day). • Procedural Safeguards Notice (if not already given), and • Consent for Initial Assessment (if assessments will be administered.) Upon receipt of a request for evaluation, the school documents the date it receives the request. The school may: • Convene a meeting to discuss the student's needs or

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(Imp: 34 C.F.R. §§300.111, 300.131)	• Make a decision based on available information without a meeting. While it is not mandatory to convene a meeting, it is highly recommended that one be held, especially if the school is unsure as to whether or not an evaluation should be conducted. See Appendix B: Referral, Evaluation and Eligibility.
§8-60-11 Routine checking of hearing aids and external components of surgically implanted medical devices. (a) Hearing aids. Each public school shall ensure that hearing aids worn in school by students who are hard of hearing, including deaf, are functioning properly. (b) External components of surgically implanted medical devices. (1) Subject to paragraph (2), the department shall ensure that the external components of surgically implanted medical devices are functioning properly. (2) For a student with a surgically implanted medical device who is receiving special education and related services, the department is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device). [Eff 11/23/09] (Auth: 20 U.S.C. 1401(1), 1401(26)(B), HRS §302A-1112) (Imp: 34 C.F.R. §300.113)	Schools that have students who are hard of hearing or deaf must determine the knowledgeable or trained school personnel who will ensure that the students' hearing aids are working and functioning properly.
§8-60-12 Transition of students from the Part C program to preschool programs. The State shall ensure that: (1) Students participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act; (2) By the third birthday of a student described in paragraph (1), an IEP, or if consistent with section 8-60-47(b), an IFSP has been developed and is being implemented for the student; and (3) Each affected district will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.	Part C (Early Intervention) services focus on the family, providing support, information, and services often in the home. Parents select some or all appropriate services to understand their child's disability and to help their child develop and function within the family. Part B (Department) services focus on the student, providing services and support in the educational setting to help the student make educational progress. Services are provided in a school setting, unless otherwise determined by the Individualized Education Program (IEP) team. Parents participate in educational decisions as part of a team but do not choose services based on their preference. Communication and collaboration between Early Intervention (EI) and Department personnel is essential for a smooth transition for eligible children who are eligible for Department services. Transitioning from a

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
[Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(9), HRS §302A-1112) (Imp: 34 C.F.R. §300.124)	focus on the family to the focus on the child can be difficult for parents. The school should consider including a representative from Early Intervention at the evaluation/eligibility and the initial IEP meetings to provide: • Support to the parent by someone familiar and knowledgeable of the child and family; and • Additional information about the child. Both the Department of Health, EI Section and the Department have specific requirements that must be met and procedures that must be coordinated between the agencies. See Appendix C: Part C Transition Memo.
§8-60-13 <u>Students with disabilities who are covered by public benefits or insurance.</u> (a) Students with disabilities who are covered by public benefits or insurance. (1) The department may use the medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required, as permitted under the public benefits or insurance program, except as provided in paragraph (2). (2) With regard to services required to provide a FAPE to an eligible student, the department: (A) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive a FAPE under Part B of the Act; (B) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this chapter, but the department may pay the cost that the parents otherwise would be required to pay; (C) May not use a student's benefits under a public benefits or insurance program if that use would: (i) Decrease available lifetime coverage or any other insured benefit; (ii) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
school; (iii) Increase premiums or lead to the discontinuation of benefits or insurance; or (iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and (D) (i) Shall obtain parental consent, consistent with section 8-60-2, each time that access to public benefits or insurance is sought; and (ii) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the department of its responsibility to ensure that all required services are provided at no cost to the parents. (b) Students with disabilities who are covered by private insurance. (1) With regard to services required to provide a FAPE to an eligible student, the department, may access the parents' private insurance proceeds only if the parents provide consent consistent with section 8-60-2. (2) Each time the department proposes to access the parents' private insurance proceeds, the department shall: (A) Obtain parental consent in accordance with paragraph (1); and (B) Inform the parents that their refusal to permit the department to access their private insurance does not relieve the department of its responsibility to ensure that all required services are provided at no cost to the parents. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(12) and (e); HRS §302A-1112) (Imp: 34 C.F.R. §300.154)	
§8-60-14 <u>Prohibition on mandatory medication</u>. (a) General. The department prohibits state personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a student as a condition of attending school, receiving an evaluation under sections 8-60-31 through 8-60-43, or receiving services.	Department personnel shall not require any student to have medication in order to attend school, receive an evaluation, or to access special education and related services.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(b) Rule of construction. Nothing in subsection (a) shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under section 8-60-10. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(25); HRS §302A-1112) (Imp: 34 C.F.R. §300.174)	
Subchapter 3 Least Restrictive Environment **§8-60-15 <u>Least restrictive environment requirements.</u>** The department shall ensure that: (1) To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are nondisabled; and (2) Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(5); HRS §302A-1112) (Imp: 34 C.F.R. §300.114)	An appropriate placement cannot be determined until decisions are made about the student's needs and the services that the department will provide to meet those needs. The student's placement must be based upon the student's IEP and other relevant factors. Placement does not mean the specific class or school. Placement is where the student's needs can be met in the least restrictive environment on the continuum of placement options. The IDEA requires that the department provide the parent a PWN pertaining to the student's placement, not the specific location of the placement. Although it is not a requirement, the school should keep the parent informed about the location of the placement. The team should consider the following factors which were considered by the U.S. Court of Appeals, 9th Circuit (Sacramento City Unified School District v. Holland): • The educational benefits of placement in a regular class; • The non-academic benefits of such placement; • The effect of the student on the teacher and children in the regular class; and • The costs involved in such placement. (i.e., adversely affect services available to other children or burden the district.).
§8-60-16 <u>Continuum of alternative placements.</u> (a) The department shall ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services. (b) The continuum required in subsection (a) shall: (1) Include the alternative placements listed in the definition of special education under section 8-60-2 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals	The continuum of placement options is as follows: • A general education classroom on a public school campus; • A combination of general education and special education classrooms on a public school campus. • A special education classroom or other location outside the general education classroom on a public school campus; • A special school, not on a public school campus, either o A public special school, or o A private special school;

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
and institutions); and (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(5); HRS §302A-1112) (Imp: 34 C.F.R. §300.115)	• A service provider location for student's ages 3-5 only (i.e., the office for a speech pathologist or occupational therapist); and • A hospital or a residential facility. • The student's home. Homebound or home instruction is a team placement decision based on the needs of the student and is necessary to implement the student's IEP. Home/Hospital Instructional Services must not be confused with homebound or home instruction. Home/Hospital Instructional Services is available to all students including students with disabilities, and requires medical verification of the need for the short-term, temporary provision of instruction in the home or hospital.
§8-60-17 <u>Placements.</u> In determining the educational placement of a student with a disability, including a preschool student with a disability, the department shall ensure that: (1) The placement decision: (A) Is made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and (B) Is made in conformity with the LRE provisions of this subchapter, including sections 8-60-15 through 8-60-18; (2) The student's placement: (A) Is determined at least annually; (B) Is based on the student's IEP; and (C) Is as close as possible to the student's home; (3) Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that the student would attend if nondisabled; (4) In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that the student needs; and (5) A student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(5); HRS §302A-1112) (Imp: 34 C.F.R. §300.116)	The placement decision is made by the IEP team. Less restrictive placement options must always be considered as the team determines the appropriate educational placement for the student. The least restrictive placement on the continuum is the regular education classroom with supplementary aids and services as appropriate. The PWN needs to clearly state why less restrictive options are not appropriate for the student. The home school, including a public charter school, should make every effort to meet the needs of the student. If the home school is not able to meet the needs of the student, then the IEP team will consider the nearest school with appropriate services. The discussion should include personnel from the school being considered for placement, and if appropriate, district personnel. In deciding on the appropriate placement for the student, the team must also consider any "harmful effect on the student" such as social, emotional, or medical factors.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
§8-60-18 <u>Nonacademic settings.</u> In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in section 8-60-8, the department shall ensure that each student with a disability participates with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. The department shall ensure that each student with a disability has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(5), HRS §302A-1112) (Imp: 34 C.F.R. §300.117)	The school must provide the student with appropriate aids, services, and other supports, as determined by the IEP team, if necessary, to ensure the student's participation in nonacademic and extracurricular activities (e.g. school events, clubs or sports).
§8-60-19 (Reserved)	
Subchapter 4 Students in Private Schools **§8-60-20 <u>Definition of parentally-placed private school students with disabilities.</u>** Parentally-placed private school students with disabilities means students with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school in section 8-60-2, other than students with disabilities covered under sections 8-60-28 through 8-60-30. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(A); HRS §302A-1112) (Imp: 34 C.F.R. §300.130)	Home-schooling is not equivalent to attendance at a private school. Services to home-schooled students must be made available in accordance with Chapter 12, §8-12-14.
§8-60-21 <u>Child find for parentally-placed private school students with disabilities.</u> (a) General. The department shall locate, identify, and evaluate all students with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the state, in accordance with section 8-60-10. (b) Completion period. The child find process shall be completed in a time period comparable to that for students attending public schools in the state consistent with section 8-60-33. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(A)(ii); HRS §302A-1112) (Imp: 34 C.F.R. §300.131)	Child find is part of the department's requirement to locate and identify children who are eligible to receive special education and related services. The student must be evaluated in accordance with the requirements in IDEA and Chapter 60. Refer to Child find §8-60-10.
§8-60-22 <u>Provision of services for parentally-placed private school students with disabilities: basic requirement.</u> (a) General. To the extent consistent with the number and location of students with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the state, provision is made for the participation of those students in the	Parentally-placed students with disabilities may receive services through the Private School Participation Project (PSPP). The project is developed annually and is based on consultation with private schools

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with section 8-60-23. (b) Services plan for parentally-placed private school students with disabilities. In accordance with subsection (a) and sections 8-60-23 through 8-60-25, a services plan shall be developed and implemented for each private school student with a disability who has been designated by the department to receive special education and related services. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(A)(i); HRS §302A-1112) (Imp: 34 C.F.R. §300.132)	and parents of parentally-placed private school students with disabilities. See Appendix D: Private School Participation Project.
§8-60-23 <u>Equitable services determined.</u> (a) No individual right to special education and related services. No parentally-placed private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. (b) Decisions. (1) Decisions about the services that will be provided to parentally-placed private school students with disabilities under sections 8-60-20 through 8-60-26 shall be made in accordance with subsection (c). (2) The department shall make the final decisions with respect to the services to be provided to eligible parentally-placed private school students with disabilities. (c) Services plan for each student served under sections 8-60-20 through 8-60-26. If a student with a disability is enrolled in a religious or other private school by the student's parents and will receive special education or related services from the department, the department shall: (1) Initiate and conduct meetings to develop, review, and revise a services plan for the student, in accordance with section 8-60-24(b); and (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the department shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(A), HRS §302A-1112) (Imp: 34 C.F.R. §300.137)	Specific information about the annual PSPP is sent to public schools each year. Schools determine whether or not parentally-placed private school students are eligible for services based on the scope of the project for the year. See Appendix D: Private School Participation Project.
§8-60-24 <u>Equitable services provided.</u> (a) General. (1) The services provided to parentally-placed private	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
school students with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school students with disabilities do not have to meet the highly qualified special education teacher requirements of 34 C.F.R. 300.18. (2) Parentally-placed private school students with disabilities may receive a different amount of services than students with disabilities in public schools. (b) Services provided in accordance with a services plan. (1) Each parentally-placed private school student with a disability who has been designated to receive services under section 8-60-22 shall have a services plan that describes the specific special education and related services that the department will provide to the student in light of the services that the department has determined, through the process described in section 8-60-23, it will make available to parentally-placed private school students with disabilities. (2) The services plan shall, to the extent appropriate: (A) Meet the requirements of section 8-60-44, or for a student ages three through five, meet the requirements of section 8-60-47(b) with respect to the services provided; and (B) Be developed, reviewed, and revised consistent with sections 8-60-45 through 8-60-48. (c) Provision of equitable services. (1) The provision of services pursuant to this section and sections 8-60-25 through 8-60-26 shall be provided: (A) By employees of the department; or (B) Through contract by the department with an individual, association, agency, organization, or other entity. (2) Special education and related services provided to parentally-placed private school students with disabilities, including materials and equipment, shall be secular, neutral, and nonideological. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(A)(vi), HRS §302A-1112) (Imp: 34 C.F.R. §300.138)	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
§8-60-25 Location of services and transportation. (a) Services on private school premises. Services to parentally-placed private school students with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law. (b) Transportation: General. (1) If necessary for the student to benefit from or participate in the services provided, a parentally-placed private school student with a disability shall be provided transportation: (A) From the student's school or the student's home to a site other than the private school; and (B) From the service site to the private school, or to the student's home, depending on the timing of the services. (2) The department is not required to provide transportation from the student's home to the private school. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(A), HRS §302A-1112) (Imp: 34 C.F.R. §300.139)	
§8-60-26 Due process complaints and state complaints. (a) Due process not applicable, except for child find. Except as provided in subsection (b), the procedures in sections 8-60-59 through 8-60-73 do not apply to complaints that the department has failed to meet the requirements of sections 8-60-22 through 8-60-25, including the provision of services indicated on the student's services plan. (b) Child find complaints shall be filed with the department. (1) The procedures in sections 8-60-59 through 8-60-73 apply to complaints that the department has failed to meet the child find requirements in section 8-60-21, including the requirements in sections 8-60-31 through 8-60-43. (2) Any due process complaint regarding the child find requirements, as described in paragraph (1), shall be filed with the department. (c) State complaints. Any complaint that the department has failed to meet the requirements in sections 8-60-22 through 8-60-26 shall be filed in accordance with the procedures described in sections 8-60-52 through 8-60-54. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(A), HRS §302A-1112) (Imp: 34 C.F.R. §300.140)	Since parentally placed students do not have an individual entitlement to services, parents of voluntarily placed students do not have a right to initiate a due process hearing on matters relating to the Private School Participation Project (PSPP), or whether the department should have offered another service or services to the child not covered by the PSPP. However, they do have a right to initiate a hearing on the identification, or evaluation of their child. If a parent or any other interested individual or organization allege the department has violated the requirements of IDEA in the procedural and/or substantive requirements related to the designation of program benefits, including requirements of §8-60-31 through 8-60-43, or has failed to provide a service on the services plan, they can file a complaint of noncompliance with the department in accordance with the State Complaint Procedures, §§8-60-52 through 8-60-54.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
§8-60-27 Placement of students by parents when FAPE is at issue. (a) General. This chapter does not require the department to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if the department made a FAPE available to the student and the parents elected to place the student in a private school or facility. However, the department shall include that student in the population whose needs are addressed consistent with sections 8-60-21 through 8-60-26.	
(b) Disagreements about a FAPE. Disagreements between the parents and the department regarding the availability of a program appropriate for the student, and the question of financial reimbursement, are subject to the due process procedures in sections 8-60-59 through 8-60-74.	Determining whether FAPE is available to the student and whether the department must pay for the student's education at the private school or other remedies, would be subject to a due process hearing.
(c) Reimbursement for private school placement. If the parent of a student with a disability, who previously received special education and related services under the authority of the department, enrolls the student in a private preschool, elementary or secondary school without the consent of or referral by the department, a court or a hearing officer may require the department to reimburse the parent for the cost of that enrollment if the court or hearing officer finds that the department had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate.	See Appendix E: Procedural Guidelines for Monitoring Special Education Students in Private Placements.
(1) A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by the department.	
(2) The private school shall not be deemed appropriate for continued placement by the hearing officer, if the private school does not allow the department to exercise its responsibility to ensure the provision of a FAPE under section 8-60-29.	It is critical for the department to persist in efforts to conduct observations and oversight. These efforts should be documented in writing.
(3) The request for a due process hearing regarding reimbursement of all costs of the unilateral private placement including special education and related services shall be filed in accordance with state statute and section 8-60-61.	
(d) Limitation on reimbursement. The cost of reimbursement described in subsection (c) may be reduced or denied:	
(1) If:	The hearing officer may reduce or deny the reimbursement if the parent did not inform the IEP team that they were rejecting the proposed program and intended to enroll their child in a private school; or they did not give the school a ten-business-day written notice of their intent to remove their child.
(A) At the most recent IEP team meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the IEP team that they were	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
rejecting the placement proposed by the department to provide a FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or (B) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the department of the information described in subparagraph (A); (2) If, prior to the parents' removal of the student from the public school, the department informed the parents, through the notice requirements described in section 8-60-58(a)(1), of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents. (e) Exception. Notwithstanding the notice requirement in subsection (d)(1), the cost of reimbursement: (1) Shall not be reduced or denied for failure to provide the notice if: (A) The school prevented the parents from providing the notice; (B) The parents had not received notice, pursuant to section 8-60-59, of the notice requirement in subsection (d)(1); or (C) Compliance with subsection (d)(1) would likely result in physical harm to the student; and (2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if: (A) The parents are not literate or cannot write in English; or (B) Compliance with subsection (d)(1) would likely result in serious emotional harm to the student. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(C), HRS §302A-1112, §302A-443) (Imp: 34 C.F.R. §300.148	
§8-60-28 <u>Applicability of sections 8-60-29 through 8-60-30.</u> Sections 8-60-29 through 8-60-30 apply only to students with disabilities	In cases where the department is unable to provide a FAPE in a public school and must refer or place the student in a private school, the IEP

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
who are or have been placed in or referred to a private school or facility by the department as a means of providing special education and related services. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(B), HRS §302A-1112) (Imp: 34 C.F.R. §300.145)	will be developed with input from the private school representative and will be implemented at the private school at no expense to the parent.
§8-60-29 <u>Responsibility of the department.</u> The department shall ensure that a student with a disability who is placed in or referred to a private school or facility by the department: (1) Is provided special education and related services: (A) In conformance with an IEP that meets the requirements of sections 8-60-44 through 8-60-49; and (B) At no cost to the parents; (2) Is provided an education that meets the standards that apply to education provided by the department including the department's responsibility to ensure the provision of a FAPE and the requirements of the Act; and (3) Has all of the rights of a student with a disability who is served by the department. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(B); HRS §302A-1112) (Imp: 34 C.F.R. §300.146	Before the department places a student in a private school, a meeting must be conducted to develop an IEP for the student. A representative of the private school should attend the meeting, or at minimum, participate via other means such as telephone conference calls. While the student is attending the private school, meetings held to review and revise the IEP may be initiated by the private school. If the private school initiates a meeting, the parent and a school/district representative must be involved in any decisions about the student's IEP and agree to any proposed changes in the program before they are implemented. See Appendix E: Procedural Guidelines for Monitoring Special Education Students in Private Placements.
§8-60-30 <u>Implementation by the department.</u> In implementing section 8-60-29, the department shall monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(B); HRS §302A-1112, §302A-443) (Imp: 34 C.F.R. §300.147)	Although the private school provides the specialized instruction, the department continues to be responsible for ensuring compliance with Chapter 60. See Appendix E: Procedural Guidelines for Monitoring Special Education Students in Private Placements.
Subchapter 5 Evaluations and Eligibility Determinations **§8-60-31 <u>Parental consent.</u>** (a) Parental consent for initial evaluation. (1) (A) The department shall obtain consent, consistent with section 8-60-2, from the parent of the student before conducting an initial evaluation to determine if a student qualifies as a student with a disability under sections 8-60-2 and 8-60-39, after providing notice consistent with sections 8-60-58 and 8-60-59. (B) Parental consent for initial evaluation shall not	Consent is required in order to conduct an initial evaluation or a reevaluation consisting of more than a review of existing data. Consent means that the parents have been fully informed of all information relevant to the activity being sought, in his/her native language or other mode of communication. Consent also means that the parent understands and agrees in writing that the activity can be carried out.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
be construed as consent for initial provision of special education and related services. (C) The department shall make reasonable efforts to obtain the consent from the parent for an initial evaluation to determine whether the student is a student with a disability. (2) For initial evaluations only, if the student is a ward of the State and is not residing with the student's parent, the department is not required to obtain consent from the parent for an initial evaluation to determine whether the student is a student with a disability if: (A) Despite reasonable efforts to do so, the department cannot discover the whereabouts of the parent of the student; (B) The rights of the parents of the student have been terminated in accordance with State law; or (C) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student. (3) (A) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (1), or the parent fails to respond to a request to provide consent, the department may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards in sections 8-60-56 through 8-60-82. (B) The department does not violate its obligation under section 8-60-10 and sections 8-60-33 through 8-60-43 if it declines to pursue the evaluation.	
(b) Parental consent for services. (1) The department is responsible for making FAPE available to a student with a disability and shall obtain consent from the parent of the student before the initial provision of special education and related services to the student. (2) The department shall make reasonable efforts to obtain consent from the parent for the initial provision of	Consent is required before the initial provision of special education and related services.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
special education and related services to the student.	
(3) If the parent of a student fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the department—	If a parent fails to respond or refuses to give consent for services, the student will be treated as a regular education student and protections under IDEA will not apply.
(A) May not use the procedures in subchapter 8 (including the mediation procedures under § 8-60-60 or the due process procedures under §§ 8-60-61 through 8-60-70) in order to obtain agreement or a ruling that the services may be provided to the student;	
(B) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with the special education and related services for which the parent refuses to or fails to provide consent; and	
(C) Is not required to convene an IEP team meeting or develop an IEP under §§ 8-60-44 and 8-60-48 for the student.	
(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a student revokes consent in writing for the continued provision of special education and related services, the department—	Parents may revoke their consent for special education and related services at any time. They may use the *Revocation of Consent for Provision of Special Education and Related Services* form, however use of this form is voluntary and schools must accept any written revocation of consent that is signed by the parent(s).
(A) May not continue to provide special education and related services to the student, but must provide prior written notice in accordance with 8-60-58 before ceasing the provision of special education and related services;	
(B) May not use the procedures in subchapter 8 (including the mediation procedures under § 8-60-60 or the due process procedures under §§ 8-60-61 through 8-60-70) in order to obtain agreement or a ruling that the services may be provided to the student;	Schools may not challenge the parent's revocation of consent using alternative dispute resolution practices and/or due process procedures to keep the student in special education. A school must comply with the parent's revocation, however services cannot be stopped until a reasonable time after a prior written notice (PWN) is sent to the parent. The required PWN is the school's proposal to discontinue special education and related services based on the receipt of written revocation of consent from the parent(s) and must include the date that services will end.
(C) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and	
(D) Is not required to convene an IEP team meeting or develop an IEP under §§ 8-60-44 and 8-60-48 for the student for further provision	Although parents cannot be required to meet with school personnel, it is highly recommended that school teams discuss with parents: • The benefits of special education and related services; and

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
of special education and related services.	• The possible consequences of removal of services (e.g., academic, behavioral, loss of procedural safeguards, including additional protections in disciplinary matters). A student who is 18 is able to revoke consent for special education and related services. However, a PWN must be provided to both the student and the parent. Revocation of consent releases the Department from the responsibility for providing FAPE from the date that services end as indicated in the PWN. The student will be treated as a regular education student and protections under IDEA will NOT apply nor will they receive benefits under IDEA. If the parent or the school later requests special education and related services for the student, an initial evaluation (rather than a reevaluation) may be conducted.
(c) Parental consent for reevaluations. (1) Subject to paragraph (2), each department: (A) Shall obtain parental consent, in accordance with section 8-60-31(a)(1), prior to conducting any reevaluation of a student with a disability. (B) If the parent refuses to consent to the reevaluation, the department may, but is not required to, pursue the reevaluation by using the consent override procedures described in subsection (a)(3). (C) The department does not violate its obligation under section 8-60-10 and sections 8-60-33 through 8-60-43 if it declines to pursue the evaluation or reevaluation. (2) The parental consent described in paragraph (1) need not be obtained if the department can demonstrate that: (A) It made reasonable efforts to obtain such consent; and (B) The student's parent h as failed to respond. (d) Other consent requirements. (1) Parental consent is not required before: (A) Reviewing existing data as part of an evaluation or a reevaluation; or (B) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.	Consent override procedures refer to the use of alternative dispute resolution practices such as mediation and due process.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(2) The department may not use a parent's refusal to consent to one service or activity under subsection (a) to deny the parent or student any other service, benefit, or activity of the department, except as required by this part. (3) (A) If a parent of a student who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the department may not use the consent override procedures (described in subsections (a)(3) and (c)(1); and (B) The department is not required to consider the student as eligible for services under sections 8-60-22 through 8-60-26. (4) To meet the reasonable efforts requirement in subsections (a)(1)(C), (a)(2)(A), (b)(2), and (c)(2)(A), the department shall document its attempts to obtain parental consent using the procedures in section 8-60-46(d). [Eff 11/23/09] (Auth: 20 U.S.C.1414(a)(1)(D) and 1414(c), HRS §302A-1112) (Imp: 34 C.F.R. §300.300)	If parents refuse to consent to assessments as part of an initial evaluation, the school may not deny the student access to other (general education) activities or services. Documentation of attempts to obtain consent are: • Detailed records of telephone calls made or attempted and results of the call; • Copies of correspondence sent to parent and any responses received; and • Detailed records of visits made to the parent's home and any responses received.
§8-60-32 <u>Evaluation</u>. Students with disabilities shall be evaluated in accordance with sections 8-60-31 through 8-60-43 of this chapter. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(7), HRS §302A-1112) (Imp: 34 C.F.R. §300.122)	See Appendix B: Referral, Evaluation and Eligibility.
§8-60-33 <u>Initial evaluations.</u> (a) General. The department shall conduct a full and individual initial evaluation, in accordance with sections 8-60-36 and 8-60-38, before the initial provision of special education and related services to a student with a disability. (b) Request for initial evaluation. Consistent with the consent requirements in section 8-60-31, either a parent of a student or the department may initiate a request for an initial evaluation to determine if the student is a student with a disability. (c) Procedures for initial evaluation. The initial evaluation: (1) Shall be conducted within 60 days of receiving parental consent for the evaluation; and (2) Shall determine: (A) If the student is a student with a disability under sections 8-60-2 and 8-60-39; and (B) The educational needs of the student.	See Appendix B: Referral, Evaluation and Eligibility. Outside agencies can make a referral, but only the parent or Department can officially request an evaluation. Schools have 60 days to conduct the initial evaluation. The timeline begins on the date: • The school receives the signed consent for assessment; or • It is determined that no assessments are necessary. (Date of the meeting.) The timeline ends on the date:

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(d) Exception. The timeframe described in subsection (c)(1) does not apply to the department if the parent of a student repeatedly fails or refuses to produce the student for the evaluation. [Eff 11/23/09] (Auth: 20 U.S.C. 1414(a), HRS §302A-1112) (Imp: 34 C.F.R. §300.301)	• Eligibility is determined; or • The evaluation is withdrawn.
§8-60-34 Screening for instructional purposes is not evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. [Eff 11/23/09] (Auth: 20 U.S.C. 1414(a)(1)(E), HRS §302A-1112) (Imp: 34 C.F.R. §300.302	• Screening includes basic tests administered to or procedures used for all students in a school, grade, or class. It is a relatively quick and simple process that can be used with groups of students. • Screening of an individual student by another teacher or specialist is permissible when findings are used to provide the teacher with strategies to effectively teach the student. • Parental consent is not necessary for screening.
§8-60-35 Reevaluations. (a) General. The department shall ensure that a reevaluation of each student with a disability is conducted in accordance with sections 8-60-36 through 8-60-43: (1) If the department determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or (2) If the student's parent or teacher requests a reevaluation. (b) Limitation. A reevaluation conducted under subsection (a): (1) May occur not more than once a year, unless the parent and the department agree otherwise; and (2) Shall occur at least once every 3 years, unless the parent and the department agree that a reevaluation is unnecessary. [Eff 11/23/09] (Auth: 20 U.S.C. 1414(a)(2), HRS §302A-1112) (Imp: 34 C.F.R. §300.303)	See Appendix B: Referral, Evaluation and Eligibility (Reevaluation). In deciding whether or not a three-year reevaluation is necessary, the IEP Team should consider, among other factors, the advantages and disadvantages of conducting a reevaluation. If sufficient information is available for program purposes and eligibility is not in question, then a reevaluation may be determined unnecessary by the IEP Team. A reevaluation may be considered or requested at any future time should the situation warrant.
§8-60-36 Evaluation procedures. (a) Notice. The department shall provide notice to the parents of a student with a disability, in accordance with section 8-60-58, that describes any evaluation procedures the department proposes to conduct. (b) Conduct of evaluation. In conducting the evaluation, the department shall: (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in	See Appendix B: Referral, Evaluation and Eligibility. If an evaluation under Chapter 61 is requested and the team determines that a special education evaluation under Chapter 60 is more appropriate, the PWN must include an explanation of the distinctions between an evaluation and determination of eligibility under each Chapter.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
determining: (A) Whether the student is a student with a disability under sections 8-60-2 and 8-60-39; and (B) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or for a preschool student, to participate in appropriate activities); (2) Not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student; and	
(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.	Technically sound instruments generally refer to assessments that have been shown through research to be valid and reliable. Information is provided in the user manual for each assessment tool.
(c) Other evaluation procedures. The department shall ensure that: (1) Assessments and other evaluation materials used to assess a student: (A) Are selected and administered so as not to be discriminatory on a racial or cultural basis; (B) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer; (C) Are used for the purposes for which the assessments or measures are valid and reliable; (D) Are administered by trained and knowledgeable personnel; and (E) Are administered in accordance with any instructions provided by the producer of the assessments. (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). (4) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, visual and auditory processing, and motor abilities; (5) Assessments of students with disabilities who transfer from one public school to another public school in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible to ensure prompt completion of full evaluations. (6) In evaluating each student with a disability under sections 8-60-36 through 8-60-38, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided. [Eff 11/23/09] (Auth: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B), HRS §302A-1112) (Imp: 34 C.F.R. §300.304)	
§8-60-37 <u>Additional requirements for evaluations and reevaluations.</u> (a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, shall: (1) Review existing evaluation data on the student, including: (A) Evaluations and information provided by the parents of the student; (B) Current classroom-based or State assessments, and classroom-based observations; and (C) Observations by teachers and related services providers; and	See Appendix B: Referral, Evaluation and Eligibility. Teams must follow the evaluation process which begins with a review of existing data. In reviewing the information, teams need to consider: • Appropriate instruction; • Interventions tried; • Relevant information; • Sufficiency of data; • Need for additional data; • Observations.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(2) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine: (A) (i) Whether the student is a student with a disability, as defined in sections 8-60-2 and 8-60-39 and the educational needs of the student; or (ii) In case of a reevaluation of a student, whether the student continues to have such a disability, and the educational needs of the student; (B) The present levels of academic achievement and related developmental needs of the student; (C) (i) Whether the student needs special education and related services; or (ii) In the case of a reevaluation of a student, whether the student continues to need special education and related services; and (D) Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum. (b) Conduct of review. The group described in subsection (a) may conduct its review without a meeting. (c) Source of data. The department shall administer such assessments and other evaluation measures as may be needed to produce the data identified under subsection (a). (d) Requirements if additional data are not needed. (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student with a disability, and to determine the student's educational needs, the department shall notify the student's parents of: (A) That determination and the reasons for the determination; and (B) The right of the parents to request an assessment to determine whether the student continues to be a student with a disability, and to determine the student's educational needs.	Both (A) and (B) need to be documented in the PWN.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(2) The department is not required to conduct the assessment described in paragraph (1)(B) unless requested to do so by the student's parents. (e) Evaluations before change in eligibility. (1) Except as provided in paragraph (2), the department shall evaluate a student with a disability in accordance with sections 8-60-36 through 8-60-43 before determining that the student is no longer a student with a disability. (2) The evaluation described in paragraph (1) is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law. (3) For a student whose eligibility terminates under circumstances described in paragraph (2), the department shall provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals. [Eff 11/23/09] (Auth: 20 U.S.C. 1414(c), HRS §302A-1112) (Imp: 34 C.F.R. §300.305)	When a student graduates with a high school diploma, a reevaluation is not required before terminating IDEA services. Since services will be terminated (a change of placement) a PWN must be provided to the parent (and the adult student if rights have transferred). A summary of performance is only required for students who: • graduate with a diploma, or • exceed the age of eligibility o If a student leaves school prior to "aging out", a summary of performance is not required.
§8-60-38 **<u>Determination of eligibility.</u>** (a) General. Upon completion of the administration of assessments and other evaluation measures: (1) A group of qualified professionals and the parent of the student determines whether the student is a student with a disability as defined in sections 8-60-2 and 8-60-39, in accordance with subsection (c) and the educational needs of the student; and (2) The department provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. (b) Special rule for eligibility determination. A student shall not be determined to be a student with a disability: (1) If the determinant factor for that determination is: (A) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA); (B) Lack of appropriate instruction in math; or	See Appendix B: Referral, Evaluation and Eligibility. When determining eligibility for special education the school team must complete the three prong test. Each prong must be met: • Disability: Does the student have a disability? • Adverse effect: Is the disability adversely affecting the student's involvement and progress in general education? • Need: Does the student need special education and related services as a result of his/her disability?

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(C) Limited English proficiency; and (2) If the student does not otherwise meet the eligibility criteria under sections 8-60-2 and 8-60-39. (c) Procedures for determining eligibility and educational need. (1) In interpreting evaluation data for the purpose of determining if a student is a student with a disability under sections 8-60-2 and 8-60-39, and the educational needs of the student, the department shall: (A) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and (B) Ensure that information obtained from all of these sources is documented and carefully considered. (2) If a determination is made that a student has a disability and needs special education and related services, an IEP shall be developed for the student in accordance with sections 8-60-44 through 8-60-48. (d) The student resides in the State and comes within the following age range: (1) Is three years of age; and (2) Under twenty on the first instructional day of the official school year calendar set by the department. A student who is under twenty years of age on the first instructional day of the school year set by the department, but who reaches the age of twenty during the school year, shall be eligible for the full school year, including extended school year when the requirements of section 8-60-7 are met. [Eff 11/23/09] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 34 C.F.R. §§300.7; 300.306	
§8-60-39 <u>Eligibility criteria.</u> (a)(1) Autism spectrum disorder. A student shall be eligible under the category of autism spectrum disorder if the student has a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects the student's educational	See Appendix B: Referral, Evaluation and Eligibility.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
performance. The student may have one or more of the following other characteristics often associated with autism spectrum disorder: (A) Engagement in repetitive activities and stereotyped movements; (B) Resistance to environmental change or change in daily routines; (C) Unusual responses to sensory experiences.	
(2) A student who manifests the characteristics of autism spectrum disorder after age three may be diagnosed as having autism spectrum disorder if the criteria in paragraph (1) are satisfied.	Teams determine eligibility which differs from a diagnosis. The team can identify a student as having an autism spectrum disorder if the criteria listed in subsection (a)(1) are met.
(3) A team of qualified professionals and the parent may not identify a student as having autism spectrum disorder if the student's educational performance is adversely affected primarily because the student has an emotional disability pursuant to subsection (e).	
(b) Deaf. A student shall be eligible under the disability category of deaf if the student has a hearing loss averaging greater than 70 decibels in the speech frequencies (500Hz to 4,000Hz) and:	
(1) The hearing loss impairs the student's auditory processing of linguistic information through hearing, with or without amplification; or	
(2) The hearing loss adversely affects the student's educational performance.	
(c) Deaf-blindness. A student shall be eligible under the category of deaf-blindness:	
(1) If the student meets the criteria under the category of deaf, or the category of hard of hearing, and the category of visual disability; and	
(2) The concomitant hearing and visual disabilities cause severe communication and other developmental and educational needs.	
(d) Developmental delay.	
(1) A student, aged three through five, shall be eligible for any eligibility category in this subchapter if the applicable criteria are met, or for the category of developmental delay if, as measured by appropriate diagnostic instruments and procedures, one or more of the following is met: (A) Cognitive development and adaptive behavior are delayed equivalent to one and one-half standard deviations below the mean when compared with the standard score expected for	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
the chronological age. (B) One of the following areas is delayed one and one-half standard deviations below a standard score for: (i) Motor development, including fine motor, gross motor, sensory motor, and perceptual-motor development; (ii) Communication, including speech and language development; (iii) Academic development; (iv) Adaptive behavior; (2) A student, aged six through eight, shall be eligible for any eligibility category in this subchapter if the applicable criteria are met, or for the category of developmental delay if as measured by appropriate diagnostic instruments and procedures, three of the five areas are delayed one and one-half standard deviations below a standard score for: (A) Motor development, including fine motor, gross motor, sensory motor, and perceptual-motor development; (B) Communication, including speech and language development; (C) Academic development; (D) Adaptive behavior; (E) Cognition. (3) If assessment materials would not conclusively demonstrate eligibility as required under paragraphs (1) or (2), the team of qualified professionals and the parent may find the student eligible under the category of developmental delay if the team determines the student's patterns of learning deviate from age expectations across settings. The documentation of eligibility required by section 8-60-38 shall include a statement of the patterns of learning that deviate from age expectations across settings and the basis and method used in determining eligibility. (e) Emotional disability. (1) A student shall be eligible under the disability category of emotional disability if the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affect the student's educational performance: (A) An inability to learn that cannot be explained by	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
intellectual, sensory, or health factors; (B) An inability to build or maintain satisfactory interpersonal; relationships with peers and teachers; (C) Inappropriate types of behavior or feelings under normal circumstances; (D) A general pervasive mood of unhappiness or depression; (E) A tendency to develop physical symptoms or fears associated with personal or school problems. (2) A student shall not be determined to be a student with a disability under this category, if paragraph (1) is primarily the result of cultural, or language differences, or both. (3) Emotional disability includes schizophrenia. Emotional disability does not apply to a student who is socially maladjusted, unless it is determined that the student has an emotional disability. (f) Hard of hearing. A student shall be eligible under the disability category of hard of hearing if the student has a hearing loss, whether permanent or fluctuating, averaging 26 to 70 decibels in the speech frequencies (500 Hz to 4,000 Hz), and: (1) The hearing loss impairs the student's auditory processing of linguistic information, with or without amplification; or (2) The hearing impairment adversely affects the student's educational performance. (g) Intellectual disability. A student shall be eligible under the disability category of intellectual disability when all of the following are met: (1) The student has subaverage general intellectual functioning, as demonstrated by evidence of intellectual functioning two or more standard deviations below the mean; (2) The subaverage intellectual functioning exists concurrently with deficits in at least two adaptive skill areas; and (3) The subaverage intellectual functioning and deficits in adaptive skill areas were manifested during the developmental period and adversely affect the student's educational performance. (h) Multiple disabilities. (1) A student shall be eligible under the category of	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
multiple disabilities if the student has concomitant impairments, the combination of which causes severe educational needs and all of the following criteria are met: (A) The student has subaverage general intellectual functioning, as demonstrated by evidence of intellectual functioning three or more standard deviations below the mean; (B) The subaverage intellectual functioning exists concurrently with deficits in at least two adaptive skill areas; (C) The subaverage intellectual functioning and deficits in adaptive skill areas were manifested during the developmental period and adversely affect the student's educational performance; and (D) The student is not eligible under the category of deaf-blindness, as set forth in subsection (c), and the student is eligible under one or more of the following disability categories: (i) Autism spectrum disorder, as set forth in subsection (a); (ii) Deaf, as set forth in subsection (b); (iii) Hard of hearing, as set forth in subsection (f); (iv) Orthopedic disability, as set forth in subsection (i); (v) Other health disability, as set forth in subsection (j); or (vi) Visual disability including blindness, as set forth in subsection (n); (2) If assessment materials would not conclusively demonstrate eligibility as required under paragraph(1), the team of qualified professionals and the parent may find the student eligible under the category of multiple disabilities if the criteria in paragraph (1)(A) to (C) are met and the team documents the existence of a concomitant disability in the determination of eligibility. The documentation of eligibility shall include a statement of the concomitant disability and the basis and method used in determining eligibility. (i) Orthopedic disability. A student shall be eligible under the disability category of orthopedic disability if there is medical evidence that a severe orthopedic disability exists that adversely affects the	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
student's educational performance. The term includes disabilities caused by congenital anomaly, disabilities caused by disease (e.g., poliomyelitis, bone tuberculosis), and disabilities from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (j) Other health disability. A student shall be eligible under the category of other health disability if both of the following are met: (1) The student has limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems or a medically fragile condition such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (2) The health disability adversely affects the student's educational performance. (k) Specific learning disability. (1) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia; (2) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disability; or environmental, cultural, or economic disadvantage. (l) Speech or language disability. A student shall be eligible under the category of speech or language disability when a significant problem in the comprehension or production, or both, of an oral communication system, which is not consistent with the student's other developmental or cognitive abilities, or both, adversely affects the student's educational performance and is evident in one or more of the following: (1) Articulation or phonological condition, or both; (2) Voice condition; (3) Fluency condition; (4) Language conditions, as documented by:	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(A) Multiple sources of data; and (B) A discrepancy of one and one-half standard deviations between the student's estimated cognitive level and performance on at least two standardized measures in the areas of semantics or grammar, or both. (m) Traumatic brain injury. (1) A student shall be eligible under the category of traumatic brain injury if both of the following are met: (A) There is medical evidence that the student has an acquired injury to the brain, caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both that adversely affects the student's educational performance; and (B) The traumatic brain injury is either an open or closed head injury, resulting in impairments in one or more areas such as: (i) Cognition; (ii) Language; (iii) Memory; (iv) Attention; (v) Reasoning; (vi) Abstract thinking; (vii) Judgment; (viii) Problem-solving; (ix) Sensory, perceptual and motor abilities; (x) Psychosocial behavior; (xi) Physical functions; (xii) Information processing; (xiii) Speech. (2) The team of qualified professionals and the parent may not identify a student as having a traumatic brain injury if the brain injury is congenital or degenerative, or induced by birth trauma. (n) Visual disability including blindness. A student shall be eligible for the disability category of visual disability, including both partial sight and blindness, if the impairment in vision, even with the best correction, adversely affects the student's educational performance and one or more of the following are met: (1) Partially-sighted. The student's visual acuity is 20/70 to 20/200 in the better eye and with the best correction; (2) Blind. The student's visual acuity is 20/200 in the better	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
eye and with the best correction, or less, or the student has a subtended visual field of less than 20 degrees, regardless of central visual acuity; (3) The student has a progressive visual impairment, such as retinitis pigmentosa, that will lead to eventual visual disability as set forth in paragraphs (1) and (2). [Eff 11/23/09] (Auth: 20 U.S.C. 1414(b)(4) and (5), HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.8, 300.306, and 300.534)	
§8-60-40 <u>Additional group members.</u> The determination of whether a student suspected of having a specific learning disability is a student with a disability as defined in section 8-60-39(k), shall be made by the student's parents and a team of qualified professionals, which shall include: (1) (A) The student's regular teacher; (B) If the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of his or her age; or (C) For a student of less than school age, an individual qualified by the department to teach a student of his or her age; and (2) At least one person qualified to conduct individual diagnostic examinations of students, such as a school psychologist, speech-language pathologist, or remedial reading teacher. [Eff 11/23/09] (Auth: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); HRS §302A-1112) (Imp: 34 C.F.R. §300.308)	
§8-60-41 <u>Determining the existence of a specific learning disability.</u> (a) The group described in section 8-60-38 may determine that a student has a specific learning disability, as defined in section 8-60-39(k), if: (1) (A) The student does not achieve adequately for the student's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards: (i) Oral expression;	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(ii) Listening comprehension; (iii) Written expression; (iv) Basic reading skill (including phonemic awareness, phonics, and/or vocabulary); (v) Reading fluency skills; (vi) Reading comprehension; (vii) Mathematics calculation; (viii) Mathematics problem solving; or (B) The student demonstrates a severe discrepancy between actual achievement and intellectual ability by a difference of at least one and one-half standard deviations in one or more of the areas in subparagraph(A); and (2) (A) The student does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph(1)(A) when using a process based on the student's response to scientific, research-based intervention; or (B) The student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with sections 8-60-36 and 8-60-37; and (3) The group determines that its findings under paragraphs (1)(A) and (2)(A) are not primarily the result of: (A) A visual, hearing, or motor disability; (B) Intellectual disability; (C) Emotional disability; (D) Cultural factors; (E) Environmental or economic disadvantage; or (F) Limited English proficiency. (b) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group shall consider, as part of the evaluation described in sections 8-60-36 through 8-60-38: (1) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
instruction in regular education settings, delivered by qualified personnel; and (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents. (c) The department shall promptly request parental consent to evaluate the student to determine if the student needs special education and related services, and shall adhere to the timeframes described in sections 8-60-33 and 8-60-35, unless extended by mutual written agreement of the student's parents and a group of qualified professionals, as described in section 8-60-38(a)(1): (1) If, prior to a referral, a student has not made adequate progress after an appropriate period of time when provided instruction, as described in subsections (b)(1) and (b)(2);and (2) Whenever a student is referred for an evaluation. [Eff 11/23/09] (Auth: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6), HRS §302A-1112) (Imp: 34 C.F.R. §300.309)	
§8-60-42 <u>Observation.</u> (a) The department shall ensure that the student is observed in the student's learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the areas of difficulty. (b) The group described in section 8-60-38(a)(1), in determining whether a student has a specific learning disability, shall decide to: (1) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or (2) Have at least one member of the group described in section 8-60-38(a)(1) conduct an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and parental consent, consistent with section 8-60-31(a), is obtained. (c) In the case of a student of less than school age or out of school, a group member shall observe the student in an environment appropriate for a student of that age. [Eff 11/23/09] (Auth: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6), HRS §302A-1112) (Imp: 34 C.F.R. §300.310)	The “learning environment” is where the student regularly receives instruction in the area of concern.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
§8-60-43 Specific documentation for the eligibility determination. (a) For a student suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in section 8-60-38(a)(2), shall contain a statement of: (1) Whether the student has a specific learning disability; (2) The basis for making the determination, including an assurance that the determination has been made in accordance with section 8-60-38(c)(1); (3) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning; (4) The educationally relevant medical findings, if any; (5) Whether: (A) The student does not achieve adequately for the student's age or to meet State-approved grade-level standards consistent with section 8-60-41(a)(1)(A) or the student demonstrates a severe discrepancy between actual achievement and intellectual ability consistent with 8-60-41(a)(1)(B); and (B) (i) The student does not make sufficient progress to meet age or State-approved grade-level standards consistent with section 8-60-41(a)(2)(A); or (ii) The student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with section 8-60-41(a)(2)(B); (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and (7) If the student has participated in a process that assesses the student's response to scientific, research-based intervention: (A) The instructional strategies used and the	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
student-centered data collected; and (B) The documentation that the student's parents were notified about: (i) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (ii) Strategies for increasing the student's rate of learning; and (iii) The parents' right to request an evaluation. (b) Each group member shall certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member shall submit a separate statement presenting the member's conclusions. [Eff 11/23/09] (Auth: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6), HRS §302A-1112) (Imp: 34 C.F.R. §300.311)	
Subchapter 6 Individualized Education Programs And Educational Placements **§8-60-44 <u>Definition of individualized education program.</u>** (a) General. As used in this chapter, the term individualized education program or IEP means a written statement for each student with a disability that is developed, reviewed, and revised in a meeting in accordance with sections 8-60-44 through 8-60-48, and that shall include: (1) A statement of the student's present levels of academic achievement and functional performance, including: (A) How the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled students); or (B) For preschool students, as appropriate, how the disability affects the student's participation in appropriate activities;	The IEP team (teachers, parents, school administrators, related services personnel, and student when appropriate) works together to develop an IEP based on the unique needs of students with disabilities. The IEP guides the delivery of special education supports and services for the student with a disability to be involved in, and make progress in, the general education curriculum. Academic achievement refers to a student's performance in academic areas (e.g., reading or language arts, math, science, or history). The information may include: • Recent evaluation results; • Performance on statewide, district, and/or school wide assessments; • Performance and progress in the general curriculum; • Strengths and needs of the student; • Classroom observations and descriptions of student work; and • Classroom and/or curriculum-based assessments. Functional performance refers to skills used in the context of routine activities of everyday living. These may include skills such as: • Social/emotional/behavior: The ability to express needs appropriately; • Physical and motor skills and fitness: The ability to sit, stand,

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
	navigate around the school campus, or participate in individual and group games and sports; • Communication: Mode and level of communication; and • Self-care: Toileting, bathing, dressing, and eating. If a student's functional performance is age appropriate, a general statement to that effect is included in the present levels of academic achievement and functional performance (PLEP). Academic achievement and functional performance are based on data such as adaptive assessment scores, classroom performance, and parent input. The PLEP should provide a foundation for designing a student's educational program and a baseline for measuring future progress. The PLEP should include the following: • Data and information written in observable and measurable terms; • Both strengths and needs; • Information and/or concerns about the student to address any lack of progress toward annual goals, behavior, English proficiency, vision or communication needs, or the need for assistive technology; • A general statement about the student's functional performance based on data such as adaptive assessment scores and observations by teachers and/or parents; • Current academic achievement; • Information to assist the team in determining appropriate supplemental aids and services needed to assist the student in the general education curriculum; • For students age 16-20 (or younger if appropriate) age appropriate formal or informal transition assessments related to training, education, employment and independent living skills; • For preschool children, a description of how the disability affects the child's participation in age appropriate activities. • Information about the impact of the disability on the student's performance in the general education curriculum may be contained within the body of the PLEP or in a separate statement. It is not appropriate to include statements about supports, services, or placement in the PLEP except when the information includes data on the student's performance with the supports and services. If a student's functional performance is age appropriate, a goal to address functional performance is not required.
(2) A statement of measurable annual goals, including academic and functional goals and a description of	Annual goals: • Should be established based on identified needs documented in the

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
short-term objectives or benchmarks designed to: (A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and (B) Meet each of the student's other educational needs that result from the student's disability;	PLEP as an educational need (academic or functional); • Should be aligned with State Standards; • Need to be educationally relevant and necessary; • Must be measurable; • Describe what the student can reasonably be expected to accomplish within a 12-month period in his/her special education program; • Include benchmarks or short-term objectives that describe/address a sub-skill of the annual goal; and • Describe clearly the new behavior/skill that the student is to demonstrate. Objectives/benchmarks: • Are measurable, intermediate steps between the present levels of educational performance and the annual goal; • Provide general benchmarks for determining progress; and • Include conditions, observable behavior, and measurable performance criteria. The methods of measuring progress towards the goals must be described. The methods may include, but are not limited to, observations, records, standardized tests, teacher-made tests, daily work and behavior checklists.
(3) A description of: (A) How the student's progress toward meeting the annual goals described in paragraph (2) will be measured; and (B) When periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;	Generally, progress on the annual goals is reported at the end of each quarter/trimester. The IEP team may decide, however, that a student's program requires more frequent monitoring and adjustment.
(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student: (A) To advance appropriately toward attaining the annual goals; (B) To be involved in and make progress in the	The mandate to base services on peer-reviewed research is a result of Congress' intent to make IDEA consistent with No Child Left Behind. As schools strive to achieve Adequate Yearly Progress (AYP) for all students, including students with disabilities, they must focus on the practices that are in line with peer-reviewed practices. Discuss and document any program modifications or supports for school personnel that must be provided to enable the student to participate in extracurricular and other nonacademic activities such as school events, clubs, or sports.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
general education curriculum in accordance with paragraph (1), and to participate in extracurricular and other nonacademic activities; and (C) To be educated and participate with other students with disabilities and nondisabled students in the activities described in this section;	
(5) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities described in paragraph (4);	This section of the IEP describes when the student will be in a special education setting (not just in the special education classroom). Subject areas/classes should be documented. Student participation in the general education setting could also be included. This statement must be consistent with the services grid of the IEP. In addition to academic participation, this section must address participation in physical education (unless the student's program is implemented entirely at a separate facility), extracurricular, and nonacademic activities. If there is no statement about participation in physical education, extracurricular, and nonacademic activities the assumption is that the student will participate or is eligible to participate in all activities as appropriate for all students.
(6) (A) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on statewide assessments consistent with section 612(a)(16) of the Act; and (B) If the IEP team determines that the student shall take an alternate assessment instead of a particular regular State assessment of student achievement, a statement of why: (i) The student cannot participate in the regular assessment; and (ii) The particular alternate assessment selected is appropriate for the student; and	Accommodations must be based on the student's identified learning needs and provided consistently during classroom instruction. The student's performance on statewide assessments must be considered. If the IEP team decides that the student will not participate in the regular Hawaii State Assessment (HSA), then the student must participate in the Hawaii State Alternate Assessment (HSAA). The IEP must describe why the student cannot take the HSA and why the HSAA is appropriate. Participation criteria for the HSAA are as follows: • The student demonstrates significant cognitive disabilities that may be combined with limited adaptive skills, physical or behavioral limitations, and requires a highly specialized educational program with intensive modifications and accommodations for access to the general academic curriculum. • The student's daily instruction on the chronologically age appropriate academic content standards and the grade-level benchmarks is substantively different from that of peers without disabilities, as evidenced by the intensity of supports necessary to access the general curriculum, the content and/or complexity level of the expectations for performance, and/or the difficulty of the instructional

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
	tasks. (In some cases, students who might participate appropriately in the HSAA might not have historically been involved in the grade level general curriculum based upon academic content standards and benchmarks.) • The student requires intensive direct instruction in multiple contexts to accomplish the acquisition, application, and transfer of knowledge and skills. • The student's difficulty with the general academic curriculum demands is due to his/her significant cognitive disabilities, and not to social, cultural, or environmental factors, expectation of poor performance, or excessive absences.
(7) The projected date for the beginning of the services and modifications described in paragraph (4), and the anticipated frequency, location, and duration of those services and modifications.	The projected beginning date for the services and modifications cannot precede the IEP meeting date or the date the PWN is provided to the parent.
(b) Transition services. (1) For each student beginning at age 14 (or younger if determined appropriate by the IEP team), and updated annually, the IEP shall include a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational educational program).	A number of students reach age 14 before they enter high school. Middle/intermediate schools must remember to address this component by the time the student reaches age 14. They may consult with or invite high school personnel to participate in the IEP in which the course of study is addressed.
(2) Beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP shall include:	
(A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and	Postsecondary goals must be measurable (countable, observable) and address <u>*post high school outcomes*</u> (<u>*after*</u> the student graduates or ages out of school).
(B) The transition services needed to assist the student in reaching those goals, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.	The IEP should include: • Evidence that the postsecondary goals are based on age-appropriate transition assessments; • Annual IEP goal(s) that reasonably enable the student to meet the postsecondary goal(s); • A course of study that aligns with the postsecondary goal(s); • Transition services that focus on improving the academic and functional achievement of the student to facilitate their movement from school to post-school; and • A statement of any interagency responsibilities or needed linkages, such as the Department of Vocational Rehabilitation; Department of Health, Developmental Disabilities Division; Adult Mental Health Division; or a community college.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(c) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of majority under State law, the IEP shall include a statement that the student has been informed of the student's rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority under section 8-60-74. (d) Construction. Nothing in this section shall be construed to require: (1) That additional information be included in a student's IEP beyond what is explicitly required in section 614 of the Act; or (2) The IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP. [Eff 11/23/09] (Auth: 20 U.S.C. 1414(d)(1)(A) and (d)(6), HRS §302A-1112) (Imp: 34 C.F.R. §300.320)	The notification under this section must be completed <u>at least</u> one year before the student turns 18. It may be done more than one year prior. If there are issues regarding a student's competency to make informed decisions or if a student thinks he/she may want to assign educational decision-making to a family member, review the options available to the student and family as described in Appendix F: Transfer of Educational Rights. If the school receives notice that the student is incompetent under state law and no rights will transfer to the student at the age of majority, the IEP need not include this statement.
§8-60-45 <u>IEP team</u>. (a) General. The department shall ensure that the IEP team for each student with a disability includes: (1) The parents of the student; (2) Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);	The parent of the student may be the biological parent, guardian, educational representative (for students age 18-20), or surrogate parent. In situations where the biological parents are either not available or have had their parental rights terminated, the school must determine who will act as the parent. The general education teacher should be a teacher of the student. However, if the student does not have a general education teacher, the team member should be a general education teacher who is knowledgeable about the curriculum. The general education environment is understood to include nonacademic and extracurricular services and activities such as school assemblies, field trips, clubs, sports, lunch and recess. The IEP team is not required to include more than one general education teacher of the student. If the student has more than one general education teacher, the school designates the teacher or teachers who will serve as the IEP member(s). The school is strongly

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
	encouraged to seek input from the teachers who will not be attending the IEP team meeting. See also §8-60-48(a)(3).
(3) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;	The special education teacher or provider who is a member of the student's IEP Team should be the person who is, or will be, responsible for implementing the IEP. For example, if the student's disability is speech impairment, the speech-language pathologist could be the special education teacher or special education provider.
(4) A representative of the department who: (A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities; (B) Is knowledgeable about the general education curriculum; and (C) Is knowledgeable about the availability of and has the authority to commit the resources of the department.	The role of the representative of the department is generally a school administrator, but the school administrator may designate another individual to act in that capacity (designee) as long as they are: • Qualified to provide, or supervise the provision of, special education; • Knowledgeable about the general education curriculum; • Knowledgeable about the availability of, and have the authority to commit the resources of the department. The department representative would also be responsible to offer FAPE when consensus cannot be reached.
(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (2) through (6);	This individual may be the special or general education teacher, representative of the department, related service provider, or an individual with special expertise, such as an eligibility team member who: • Understands the tests, other materials, or strategies utilized; • Is able to explain the assessment/evaluation results to the other team members; and • Has the skills or knowledge to assist the IEP Team in determining the special education, related services, and other supports that are necessary for the student to receive FAPE. It is not required that the IEP team include the individual who conducted a particular assessment.
(6) At the discretion of the parent or the department, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and	The determination of the knowledge or special expertise of any individual is made by the party (parents or school) who invited the individual to participate in the IEP meeting. Although related services personnel are not required members of the IEP Team, it would be appropriate for the related services personnel to attend the IEP meeting or otherwise be involved in developing the IEP if the student has an identified need for related services.
(7) Whenever appropriate, the student with a disability.	Students should be encouraged to participate in the IEP when appropriate, and must be invited to the meeting by age 14 and each subsequent year the student receives services.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(b) Transition services participants. (1) In accordance with subsection(a)(7), the department shall invite a student with a disability to attend the student's IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals under section 8-60-44(b).	Due to the confidentiality of information discussed at an IEP meeting, the school must obtain consent from the parent or adult student before inviting a representative from any outside agency (e.g., Developmental Disabilities or Department of Vocational Rehabilitation) to the IEP meeting if those agencies are not yet involved with the student. It is not necessary to get consent to invite those agencies to subsequent IEP meetings because they are considered an extension of the Department when they provide services to the student. Although a parent does not have a legal right to require other members of the student team to attend an IEP Team meeting, the school should consider the reasons for the parent's request. The provisions of this section ensure that services in an IEP are determined by the IEP team, not any one individual, and that its implementation is not unnecessarily delayed.
(2) If the student does not attend the IEP team meeting, the department shall take other steps to ensure that the student's preferences and interests are considered.	If the student will not be a participant when transition needs and/or services are being discussed, steps must be taken to ensure that the student's interests and preferences are considered. Transition needs and services information is also found through: • Available on-going opportunities to meet with the student; • Classes, such as guidance and vocational education, to learn student interests and preferences; and • Surveys, questionnaires, or other transition assessments. This information should also be reflected in the PLEP.
(3) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, in implementing the requirements of paragraph (1), the department shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.	Due to the confidentiality of information discussed at any IEP meeting, schools are required to obtain consent from the parent or from an adult student (student is 18 years old; refer to 8-60-44(c) and all educational rights have transferred to the student), before inviting a representative from any public agency (e.g., Developmental Disabilities or Department of Vocational Rehabilitation) to attend the IEP team meeting to discuss transition services. These representatives should not have access to any of the student's records unless the parent or adult student gives consent for such a disclosure.
(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in subsection (a)(6) shall be made by the party (parents or department) who invited the individual to be a member of the IEP team. (d) Designating the department representative. The	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
department may designate another department member of the IEP team to also serve as the department representative, if the criteria in subsection (a)(4) are satisfied. (e) IEP team attendance. (1) A member of the IEP team described in subsections (a)(2) through (a)(5) is not required to attend an IEP team meeting, in whole or in part, if the parent of a student with a disability and the department agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.	Allowing IEP team members to be excused from attending an IEP team meeting is intended to provide additional flexibility to parents in scheduling IEP team meetings and to avoid delays in holding an IEP team meeting when an IEP team member cannot attend due to a scheduling conflict. Required members of the IEP team are the general education teacher, special education teacher, administrator, and an individual who can interpret the instructional implications of evaluation results. Related service providers (i.e. speech pathologists, physical therapists, and occupational therapists) are not required members of an IEP team, however, if they will not be participating in the IEP meeting, it is recommended that they submit written input prior to the meeting. This should include information pertinent to the development of the IEP and proposed goals and objectives. For a student whose only special education consists of speech services and the speech pathologist is the sole special education provider, the speech pathologist would be a required member of the IEP team and would need to follow excusal procedures if not able to attend the IEP meeting.
(2) A member of the IEP team described in paragraph (e)(1) may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if: (A) The parent, in writing, and the department consent to the excusal; and (B) The member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.	If the school and parent are asked to excuse a team member whose area will be discussed, they must consider whether the remaining team members would be able to determine appropriate services and supports in that area and commit to providing the resources/time necessary to do so without the excused team member. Although it is advisable to provide the parent as much advance notice as possible, there is no specific requirement regarding how far in advance of an IEP meeting a parent must be notified of a request to excuse an IEP team member's attendance or sign consent for the excusal. • The parent can request an additional IEP Team meeting at any time and does not have to agree to excuse an IEP Team member. • If a parent does not find out until the IEP Team meeting that a required participant will not be at the meeting, the parent has two options. o Agree to the excusal and proceed with the meeting (then request an additional meeting if more information is needed); or o Not agree to the excusal and request that the meeting be

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
	rescheduled. It should **NOT** be standard practice to excuse members of the IEP team from meetings, nor is it a way to get around the requirement to have certain role groups attend IEP meetings. A school that routinely excuses IEP Team members from attending IEP Team meetings would not be in compliance with the requirements of IDEA, and would be subject to the state's monitoring and enforcement provisions. It is critical for school teams to keep the best interests of the student in mind when designating IEP team members or inviting other persons with special expertise to participate in IEP Team meetings. All participants should have the knowledge to assist the IEP Team in determining the special education, related services, and other supports that are necessary in order for the student to receive FAPE.
(f) Initial IEP team meeting for student under Part C. In the case of a student who was previously served under Part C of the Act, an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. [Eff 11/23/09] (Auth: 20 U.S.C. 1414(d)(1)(B)-(d)(1)(D), HRS §302A-1112) (Imp: 34 C.F.R. §300.321)	The school must inform parents that they may request the Early Intervention (EI) Care Coordinator or service provider be invited to the initial IEP meeting. The school is responsible for inviting the EI Care Coordinator or service provider to the initial IEP meeting if the parent requests. If the parent does not make such a request, but the school wants to have a Part C representative attend the initial IEP to assist with the smooth transition of services, the school must first get consent from the parent to include Part C.
§8-60-46 <u>Parent participation.</u> (a) Department responsibility: general. The department shall take steps to ensure that one or both of the parents of a student with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place.	Schools should contact parents well in advance by telephone, in writing, or in person to schedule an IEP meeting at a mutually convenient time. All efforts should be documented in writing. Informal discussions among teachers and administrators, which may or may not be pre-arranged, are <u>not</u> meetings for which parents must receive notice or be afforded the opportunity to attend. Parent participation is required when the meeting is to discuss and potentially resolve one or more of the issues involving the identification, evaluation, program, placement or the provision of FAPE. Although not required, it is strongly recommended that a draft PLEP and goals and objectives be prepared in advance of the meeting. A good practice is for all members of the IEP team, including the parents, to have a copy of the draft PLEP/goals/objectives prior to the meeting. Drafts need to be clearly labeled accordingly and cannot include placement, services or dates.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(b) Information provided to parents. (1) The notice required under subsection (a)(1) shall: (A) Indicate the purpose, time, and location of the meeting and who will be in attendance; and	The school is not required to identify department individuals by name. According to the U.S. Department of Education, Office of Special Education Programs (OSEP), a school is in compliance with the law if it identifies attendees by position, i.e., special education teacher or occupational therapist.
(B) Inform the parents of the provisions in sections 8-60-45(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student), and section 8-60-45(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP team meeting for a student previously served under Part C of the Act). (2) For a student with a disability beginning at age 14, or younger if appropriate, the notice shall also; (A) Indicate that a purpose of the meeting will be the development of a statement of the transition service needs of the student required in section 8-60-44(b)(1) and (B) Indicate that the department will invite the student. (3) For a student with a disability beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP team, the notice also shall: (A) Indicate: (i) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student, in accordance with section 8-60-44(b); and (ii) That the department will invite the student; and (B) Identify any other agency that will be invited to send a representative.	Parents have the right to invite any person(s) with knowledge or special expertise about the student that they feel might be of assistance. The parent should inform the school who they have invited.
(c) Other methods to ensure parent participation. If neither parent can attend an IEP team meeting, the department shall use other methods to ensure parent participation, including individual or conference telephone calls, consistent with section 8-60-51 (related to alternative means of meeting participation).	Teleconferencing, video-conferencing, or other methods may be used to enable full participation in meetings. Accommodations for persons other than the parent are not required.
(d) Conducting an IEP team meeting without a parent in	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
attendance. A meeting may be conducted without a parent in attendance if the department is unable to convince the parents that they should attend. In this case, the department shall keep a record of its attempts to arrange a mutually agreed on time and place, such as: (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.	
(e) Use of interpreters or other action, as appropriate. The department shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.	If needed, the school should make arrangements for an interpreter's services, e.g., American Sign Language or a parent's native language other than English. If unable to locate an interpreter, contact the district for assistance.
(f) Parent copy of student's IEP. The department shall give the parent a copy of the student's IEP at no cost to the parent. [Eff 11/23/09] (Auth: 20 U.S.C. 1414(d)(1)(B)(i), HRS §302A-1112) (Imp: 34 C.F.R. §300.322)	Parents must be given a copy of the finalized IEP at no cost. The finalized IEP should be sent to the parent as soon as possible, but no later than ten days after the IEP meeting. The school is expected to input and "activate" the finalized IEP in eCSSS within five business days of the IEP meeting. Neither the IDEA nor Chapter 60 require parent or participant signatures on the IEP. Some states do require a parent signature on the IEP which can create some confusion for parents of students who have transferred from out-of-state. It is important, therefore, to explain the difference in procedures to the parent.
§8-60-47 <u>When IEPs shall be in effect.</u> (a) General. At the beginning of each school year, the department shall have in effect, for each student with a disability within its jurisdiction, an IEP, as defined in section 8-60-44.	The "beginning of each school year" in this section refers to the beginning of the school year for the school the student is or will be attending. The IEP in effect at the beginning of the school year should accurately reflect the program and services being delivered. This becomes particularly important at the beginning of the school year when students move from grade to grade or transition from elementary to middle school or middle to high school.
(b) IEP for students aged three through five. In the case of a student with a disability aged three through five, in the development of an IEP, the IEP team shall consider the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for students with IFSPs under this section who are at least three years of age).	For children with disabilities age three through five who received services from Part C (Early Intervention) prior to becoming eligible for Department services, Chapter 60 requires IEP teams to consider the content of the Individualized Family Support Plan (IFSP) when developing the IEP. This is intended to smooth the transition from family-centered Part C services to student-centered Part B services and provide the IEP team with information about the child from the perspective of the Early Intervention team. The school will need to request a copy of the IFSP from the parent or Part C representative (after obtaining parent

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
	consent). If the IFSP is not made available to the school, the parent and/or Part C representative at the initial IEP meeting may provide information about the IFSP to the IEP team. The IFSP includes: • The child's present levels of development based on objective criteria; • Measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child; • Services based on peer-reviewed research, to the extent practicable; and • A statement of the frequency, intensity, length, duration, and method of delivery of services. If a particular early intervention service cannot be provided satisfactorily in a natural environment, a justification that describes the setting in which the service will be provided and an explanation that supports the decision as to how the setting will assist the infant or toddler achieve the IFSP outcomes is required on the IFSP. The evaluation timeline begins: • Upon receipt of parental consent, if an assessment must be conducted; or • The date the determination that no additional assessment data is needed. The evaluation timeline ends upon determination of eligibility.
(c) Initial IEPs; provision of services. The department shall ensure that: (1) A meeting to develop an IEP for a student is conducted within 15 days after the receipt of parental consent for the initial provision of special education and related services by the department; and	If a student is eligible, the IEP must be developed within 15 days of the receipt of parental consent for initial provision of services, but no longer than 30 days after the eligibility determination was made. Schools should make every effort in a variety of ways to encourage parent attendance and facilitate their participation in the development of the IEP. If they are not successful in getting the parents to respond after reasonable documented efforts, then the school may hold the IEP meeting without the parent(s) in attendance in order to provide timely services for the student. A PWN describing the program and placement and a copy of the finalized IEP must be given to the parents. The school must keep a detailed record of: • Phone calls made or attempted and the results of those calls; • Copies of correspondence sent and any responses received; and • Any visits made to the parent's home or place of employment and the results of those visits. There is no specific timeframe for "as soon as possible." If the initial

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(2) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.	IEP is developed when school is in session, then services should begin without undue delay. If the initial IEP is developed prior to a school break, however, services may not begin until school is back in session (unless it is determined that the student requires ESY services (see §8-60-7)). If an IEP is developed for a preschool child prior to the child's third birthday, then services will not begin until the child turns three and is eligible to enter school.
(d) Accessibility of student's IEP to teachers and others. The department shall ensure that: (1) The student's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and (2) Each teacher and provider described in paragraph (1) is informed of: (A) His or her specific responsibilities related to implementing the student's IEP; and (B) The specific accommodations, modifications, and supports that shall be provided for the student in accordance with the IEP.	Accessibility to the IEP is especially critical if: • A teacher/provider is not an IEP team member; • A team member is excused from an IEP meeting; or • An IEP is amended without holding a meeting. The IEP coordinator must ensure that everyone knows his/her specific responsibilities and the specific accommodations, modifications and supports that are to be provided to the student.
(e) IEPs for students who transfer from another state. If a student with a disability (who had an IEP that was in effect in a previous public school in another state) transfers and enrolls in a Hawaii public school, within the same school year, the new public school (in consultation with the parents) shall provide the student with a FAPE (including services comparable to those described in the student's IEP from the previous public school), until the new public school: (1) Conducts an evaluation pursuant to sections 8-60-36 through 8-60-38 (if determined to be necessary); and (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in sections 8-60-44 through 8-60-48.	While schools must provide comparable services (in consultation with the parent) upon enrollment to students with IEPs from out of state, they are not required to deliver the exact same services as those described in the student's IEP from the previous state. The school must begin an initial evaluation (if the student was not previously determined to be eligible in the state of Hawaii) immediately to determine if the student meets Hawaii's eligibility criteria. Unless the school has adequate current data to establish eligibility and develop the content of the IEP, it is not advisable to do an evaluation with no assessments.
(f) Transmittal of records. To facilitate the transition for a student described in subsection (e), the new public school in which the student enrolls shall take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous public school in which the student was enrolled, pursuant to 34 CFR 99.31(a)(2). [Eff 11/23/09] (Auth: 20 U.S.C. 1414(d)(2)(A)-(C), HRS §302A-1112) (Imp: 34 C.F.R. §300.323)	For students who transfer to another school within the state, the receiving school should immediately familiarize themselves with the IEP to ensure the immediate provision of FAPE as described in the current IEP. Convening an IEP meeting is a good practice to enable the parent and new school team members to get acquainted and to discuss the information in the IEP reflecting the student's current performance, possible transition needs, parental concerns or questions the school team may have regarding the student or the IEP.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
§8-60-48 <u>Development, review, and revision of IEP.</u> (a) Development of IEP: (1) General. In developing each student's IEP, the IEP team shall consider: (A) The strengths of the student; (B) The concerns of the parents for enhancing the education of their student; (C) The results of the initial or most recent evaluation of the student; and (D) The academic, developmental, and functional needs of the student. (2) Consideration of special factors. The IEP team shall: (A) In the case of a student whose behavior impedes the student's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior; (B) In the case of a student with limited English proficiency, consider the language needs of the student as those needs relate to the student's IEP; (C) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student; (D) Consider the communication needs of the student including students who are deaf or hearing impaired. This consideration includes a review of the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and (E) Consider whether the student needs assistive technology devices and services.	Documentation of the consideration of any appropriate areas should be described in the PLEP and other relevant sections of the IEP. IEP team members must have an opportunity to discuss and participate in all aspects of the IEP. IEP decisions are NOT reached by "majority rules" or voting. The IEP team should work toward consensus. If the team cannot reach consensus, the department representative: • Has the responsibility to offer and ensure the provision of an appropriate program for the student. • Must provide the parents with PWN of their proposals and/or refusals regarding the student's educational program. Only the IEP team has the authority to change IEP services. Communication needs of all students need to be considered.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(3) Requirement with respect to regular education teacher. A regular education teacher of a student with a disability, as a member of the IEP team, shall, to the extent appropriate, participate in the development of the IEP of the student, including the determination of: (A) Appropriate positive behavioral interventions and supports and other strategies for the student; and (B) Supplementary aids and services, program modifications, and support for school personnel consistent with section 8-60-44(a)(4).	
(4) Agreement. (A) In making changes to a student's IEP after the annual IEP team meeting for a school year, the parent of a student with a disability and the department may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP.	After the annual IEP meeting, the parent and the school principal may agree to amend or modify the IEP without a meeting. The agreement must be in writing. This process may be used only to revise an annual IEP. The IEP Team must convene a meeting to develop the annual IEP.
(B) If changes are made to the student's IEP in accordance with subparagraph (A), the department shall ensure that the student's IEP team is informed of those changes.	Although the IDEA does not place any restrictions on the types of changes that may be made, it is strongly recommended that amending an IEP without a meeting be utilized only to make minor adjustments to the IEP, such as adding an objective, a supplementary aid or modification, or minimally changing the duration and frequency of a service. It is recommended that IEP teams not amend the IEP without holding a meeting when making placement decisions or when controversial amendments are proposed, or if there are any concerns from the parent or other IEP team members.
(5) Consolidation of IEP team meetings. To the extent possible, the department shall encourage the consolidation of reevaluation meetings for the student and other IEP team meetings for the student.	
(6) Amendments. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in paragraph (4), by amending the IEP rather than by redrafting the entire IEP. A parent shall be provided with a revised copy of the IEP with the amendments incorporated.	The process and documentation for amending an IEP without holding a meeting are as follows: • All team members, particularly the parent, should review/discuss the proposed amendments and provide feedback (orally or in writing) to the IEP coordinator. Proposed amendments are then documented on a PWN. The PWN serves as the "written document to amend or modify the student's current IEP," and as such, is developed prior to writing any amendment in the IEP document itself. DO NOT make any changes to the current IEP until after the entire amendment process has been completed. • The PWN must be given to the parent along with the form

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
	Consent to Amend the Annual IEP. • Upon receipt of the parent's signature agreeing to amend the IEP without a meeting, incorporate the amendments into the IEP and give a copy of the revised IEP to the parent. • All IEP team members must be informed of the changes to the IEP. If the parent does not provide their written agreement to amend the IEP, do not proceed to implement the proposed revisions. Convene an IEP meeting. Upon agreement at the IEP meeting, proposed changes must be documented on the IEP and a PWN must be issued. It is not necessary to follow these procedures simply to correct clerical errors or "typos."
(b) Review and revision of IEPs: (1) General. The department shall ensure that, subject to paragraphs (2) and (3), the IEP team: (A) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and (B) Revises the IEP, as appropriate, to address: (i) Any lack of expected progress toward the annual goals described in section 8-60-44(a)(2), and in the general education curriculum, if appropriate; (ii) The results of any reevaluation conducted under section 8-60-35; (iii) Information about the student provided to, or by, the parents, as described under section 8-60-37(a)(2); (iv) The student's anticipated needs; or (v) Other matters. (2) Consideration of special factors. In conducting a review of the student's IEP, the IEP team shall consider the special factors described in subsection (a)(2). (3) Requirement with respect to regular education teacher. A regular education teacher of the student, as a member of the IEP team, shall, consistent with subsection (a)(3), participate in the review and revision of the IEP of the student. (c) Failure to meet transition objectives: (1) Participating agency failure. If a participating agency, other than the department, fails to provide the transition services described in the IEP in accordance with	The IDEA and Chapter 60 require an IEP review at least once a year, however, the team may review and revise the IEP more often. The parents or the school can ask to hold an IEP meeting to review and/or revise the student's IEP. For example, the student may have met most or all of the goals in the IEP, and new ones need to be written. On the other hand, the student may not be making progress toward his/her IEP goals, and his/her teacher or parents may be concerned. In either case, the IEP team would meet to revise the IEP.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
section 8-60-44(b), the department shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP. (2) Construction. Nothing in this chapter relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency. (d) Students with disabilities in adult prisons: (1) Requirements that do not apply. The following requirements do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons: (A) The requirements contained in section 612(a)(16) of the Act and section 8-60-44(a)(6) (relating to participation of students with disabilities in general assessments). (B) The requirements in section 8-60-44(b) (relating to transition planning and transition services) do not apply with respect to the students whose eligibility under this chapter will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release. (2) Modifications of IEP or placement. (A) Subject to subsection (d)(2)(B), the IEP team of a student with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. (B) The requirements of sections 8-60-44 (relating to IEPs), and 8-60-15, do not apply with respect to the modifications described in subsection (d)(2)(A). [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e), HRS §302A-1112) (Imp: 34 C.F.R. §300.324)	If a student with a disability was enrolled in school (not graduated at the time of incarceration in an adult prison), the right to FAPE continues, except the following do not apply: • The requirements relating to participation of students with disabilities in general assessments. • The requirements relating to transition planning and transition services with respect to the students who will reach age 20 before they will be eligible to be released from prison. The responsibility for the IEP of the incarcerated student transfers to the school within whose boundaries the adult prison is located. The prison becomes the student's 'residence'. Communication between the releasing school and the receiving school and the timely transfer of records at the time of incarceration is the key to providing FAPE for the incarcerated student.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
§8-60-49 Private school placements by the department. (a) Developing IEPs. (1) Before the department places a student with a disability in, or refers a student to, a private school or facility, the department shall initiate and conduct a meeting to develop an IEP for the student in accordance with sections 8-60-44 and 8-60-48. (2) The department shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the department shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. (b) Reviewing and revising IEPs. (1) After a student with a disability enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the department. (2) If the private school or facility initiates and conducts these meetings, the department shall ensure that the parents and a department representative: (A) Are involved in any decision about the student's IEP; and (B) Agree to any proposed changes in the IEP before those changes are implemented. (c) Responsibility. Even if a private school or facility implements a student's IEP, responsibility for compliance with Part B of the Act remains with the department. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(10)(B), HRS §302A-1112) (Imp: 34 C.F.R. §300.325)	All attempts to invite the private school should be documented. In the event that the private school is unable to participate in the meeting, input should be received prior to the meeting. See Appendix E: Procedural Guidelines for Monitoring Special Education Students in Private Placements.
§8-60-50 Educational placements. Consistent with section 8-60-56(c), the department shall ensure that the parents of each student with a disability are members of any group that makes decisions on the educational placement of their student. [Eff 11/23/09] (Auth: 20 U.S.C. 1414(e), HRS §302A-1112) (Imp: 34 C.F.R. §300.327)	
§8-60-51 Alternative means of meeting participation. When conducting IEP team meetings and placement meetings pursuant to this chapter, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a student with a disability and the department may agree to use alternative means of meeting participation, such as video conferences and conference calls. [Eff 11/23/09] (Auth: 20 U.S.C. 1414(f), HRS §302A-1112) (Imp: 34 C.F.R. §300.328)	Such alternatives are not required for individuals other than the parent.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
Subchapter 7 State Complaint Procedures **§8-60-52 <u>State complaint procedures</u>.** (a) Applicability. This subchapter applies to the filing, investigation, and resolution of a complaint, including a complaint filed by an organization or individual from another state regarding an alleged violation by the department of one or more requirements of any of the following: (1) Provisions of the Hawaii Revised Statutes relating to the education of students with a disability or this chapter; or (2) Part B of the Act or the implementing regulations (34 C.F.R. Part 300). (b) The department shall widely disseminate to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under sections 8-60-52 through 8-60-54. (c) Remedies for denial of appropriate services. In resolving a complaint in which the department has found a failure to provide appropriate services, the department, pursuant to its general supervisory authority under Part B of the Act, shall address: (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the student (such as compensatory services or monetary reimbursement); and (2) Appropriate future provision of services for all students with disabilities. [Eff 11/23/09] (Auth: 20 U.S.C. 1221e-3, HRS §302A-1112) (Imp: 34 C.F.R. §300.151)	See Appendix G: State Complaint Procedures.
§8-60-53 <u>Minimum State complaint procedures.</u> (a) Time limit; minimum procedures. Within 60 days after a complaint is filed under section 8-60-54. The department shall: (1) Carry out an independent on-site investigation, if the department determines that an investigation is necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Provide the public school with the opportunity to respond to the complaint, including, at a minimum: (A) At the discretion of the public school, a proposal to resolve the complaint and (B) An opportunity for a parent who has filed a	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
complaint and the public school, to voluntarily engage in mediation consistent with section 8-60-60; (4) Review all relevant information and make an independent determination as to whether the public school, is violating a requirement of Part B of the Act or of this chapter; and (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (A) Findings of fact and conclusions; and (B) The reasons for the department's final decision. (b) Time extension; final decision; implementation. The department's procedures described in subsection (a) also shall: (1) Permit an extension of the time limit under subsection (a) only if: (A) Exceptional circumstances exist with respect to a particular complaint; or (B) The parent and the public school, agree to extend the time to engage in mediation pursuant to subsection (a)(3)(B), or to engage in other alternative means of dispute resolution; and (2) Include procedures for effective implementation of the department's final decision, if needed, including: (A) Technical assistance activities; (B) Negotiations; and (C) Corrective actions to achieve compliance. (c) Complaints filed under this section and due process hearings under section 8-60-61 and sections 8-60-75 through 8-60-77. (1) If a written complaint is received that is also the subject of a due process hearing under section 8-60-61 or sections 8-60-75 through 8-60-77, or contains multiple issues of which one or more are part of that hearing, the department shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action shall be resolved using the time limit and procedures described in subsections (a) and (b). (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties: (A) The due process hearing decision is binding on	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
that issue; and (B) The department shall inform the complainant to that effect. (3) A complaint alleging a school's failure to implement a due process hearing decision shall be resolved by the department. [Eff 11/23/09] (Auth: 20 U.S.C. 1221e-3, HRS §302A-1112) (Imp: 34 C.F.R. §300.152)	
§8-60-54 <u>Filing a complaint</u>. (a) An organization or individual may file a signed written complaint under the procedures described in sections 8-60-52 through 8-60-53. (b) The complaint shall include: (1) A statement that the department has violated a requirement of Part B of the Act or of this chapter; (2) The facts on which the statement is based; (3) The signature and contact information for the complainant; and (4) If alleging violations with respect to a specific student: (A) The name and address of the residence of the student; (B) The name of the school the student is attending; (C) In the case of a homeless student or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending; (D) A description of the nature of the problem of the student, including facts relating to the problem; and (E) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed. (c) The complaint shall allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with section 8-60-52. (d) The party filing the complaint shall submit the complaint to the department. [Eff 11/23/09] (Auth: 20 U.S.C. 1221e-3, HRS §302A-1112) (Imp: 34 C.F.R. §300.153)	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
Subchapter 8 Procedural Safeguards **§8-60-55 <u>Procedural safeguards</u>.** General. Procedural safeguards identified. Students with disabilities and their parents shall be afforded the procedural safeguards, that meet the requirements of sections 8-60-56 through 8-60-81. [Eff 11/23/09] (Auth: 20 U.S.C. 1412(a)(6)(A), HRS §302A-1112) (Imp: 34 C.F.R. §300.121)	
§8-60-56 <u>Opportunity to examine records; parent participation in meetings.</u> (a) Opportunity to examine records. The parents of a student with a disability shall be afforded an opportunity to inspect and review all education records with respect to: (1) The identification, evaluation, and educational placement of the student; and (2) The provision of a FAPE to the student. (b) Parent participation in meetings. (1) The parents of a student with a disability shall be afforded an opportunity to participate in meetings with respect to: (A) The identification, evaluation, and educational placement of the student; and (B) The provision of a FAPE to the student. (2) The department shall provide notice consistent with	Procedures for granting access: • When an eligible student or parent requests to review educational records, the records are to be made available without unnecessary delay and at least within 30 working or school days or 45 calendar days of the request, whichever comes first. • The principal or designee shall notify the eligible student or parent in writing of the time, date, and place for the review of the records. Note: When a parent makes a request to inspect and review the student's records before any meeting regarding an IEP or before a hearing relating to the identification, evaluation, program or placement (including issues relating to discipline under Chapter 60), of the student, the principal or designee must make the records available in a timely manner prior to the meeting or hearing. When reviewing official school documents, a representative of the Department needs to be present to address any questions that may arise and to ensure the security of the documents. The principal or designee must delete the information regarding the other students before providing a parent with any education record containing information on more than one student. In accordance with Section 92-21, Hawaii Revised Statutes, Copies of records; other costs and fees, the Department may charge the allowable charge for copies of public records.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
sections 8-60-46(a)(1) and (b)(1) to ensure that parents of students with disabilities have the opportunity to participate in meetings described in paragraph (1). (3) A meeting does not include informal or unscheduled conversations involving department personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that department personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. (c) Parent involvement in placement decisions. (1) The department shall ensure that a parent of each student with a disability is a member of any group that makes decisions on the educational placement of the parent's student. (2) In implementing the requirements of paragraph (1), the department shall use procedures consistent with the procedures described in section 8-60-46(a) through (b)(1). (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their student, the department shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. (4) A placement decision may be made by a group without the involvement of a parent, if the department is unable to obtain the parent's participation in the decision. In this case, the department shall have a record of its attempt to ensure their involvement. [Eff 11/23/09] (Auth: 20 U.S.C. 1414(e), 1415(b)(1), HRS §302A-1112) (Imp: 34 C.F.R. §300.501)	
§8-60-57 Independent educational evaluation. (a) General. (1) The parents of a student with a disability have the right to obtain an independent educational evaluation of the student, subject to subsections (b) through (e). (2) The department shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the department criteria applicable for independent educational evaluations as set forth in subsection (e). (3) For the purposes of this chapter:	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(A) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the department; and (B) Public expense means that the department either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. (b) Parent right to evaluation at public expense. (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the department, subject to the conditions in paragraphs (2) through (4). (2) If a parent requests an independent educational evaluation at public expense, the department shall, without unnecessary delay, either: (A) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (B) Ensure that an independent educational evaluation is provided at public expense, unless the department demonstrates in a hearing pursuant to sections 8-60-61 through 8-60-67 that the evaluation obtained by the parent did not meet department criteria. (3) If the department files a due process complaint notice to request a hearing and the final decision is that the department's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. (4) If a parent requests an independent educational evaluation, the department may ask for the parent's reason why he or she objects to the public evaluation. However, the department may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.	If a parent requests payment for an independent educational evaluation at public expense, the principal or designee may request an impartial hearing if it is felt that the department's evaluation and assessment were appropriate, or that the independent evaluation/assessment obtained by the parent did not meet department criteria. *Request for Impartial Hearing* will be used to initiate the hearing request.
(5) A parent is entitled to only one independent educational evaluation at public expense each time the department conducts an evaluation with which the parent disagrees. (c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with	A parent is entitled to one independent educational evaluation (IEE) at public expense each time the parent disagrees with an evaluation conducted by the school. The IEE may include more than one assessment. The IEE needs to be conducted by a qualified provider who is not employed by the school and who is qualified to administer educational assessments.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
the department an evaluation obtained at private expense, the results of the evaluation: (1) Shall be considered by the department, if it meets department criteria, in any decision made with respect to the provision of a FAPE to the student; and (2) May be presented by any party as evidence at a hearing on a due process complaint under this chapter regarding that student. (d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation shall be at public expense. (e) Department criteria. (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the department uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (2) Except for the criteria described in paragraph (1), the department may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(b)(1) and (d)(2)(A), HRS section 302A-1112) (Imp: 34 C.F.R. section 300.502)	State criteria for IEE: • Evaluator is qualified to administer tests. • Evaluator meets minimum requirements set by the State. • IEE follows an acceptable format for reporting results. • IEE addresses student's educational needs. Selecting a private provider to conduct an IEE: • An evaluator must be first sought within the complex area, district or island, then the state, and then if necessary, out of state. • A list of private providers and minimum qualifications can be found on the State Procurement Office website at: http://www4.hawaii.gov/spoh/Treatment/treatmentList.htm Parents may ask the school or district for the private provider criteria. A list of providers based on the assessment requirement and the geographic area should be provided. The IEE does not include medical assessments or subcategories of eligibility (i.e., central auditory processing disorder, dyslexia, Tourette syndrome). The private provider list from the website is **one** source of information that schools or parents may utilize. Any licensed private provider who meets the state's criteria for conducting an IEE may be selected.
§8-60-58 <u>Prior notice by the department; content of notice.</u> (a) Notice. Written notice that meets the requirements of subsection (b) shall be given to the parents of a student with a disability a reasonable time before the department: (1) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the student or	The principal or designee must provide written notice to the parent: • Before the department implements a proposal to initiate or change the student's: o Identification/eligibility; o Evaluation; or o FAPE (program or placement) • When the department refuses a parent request to initiate an action related to the student's: o Identification/eligibility;

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
the provision of a FAPE to the student. (b) Content of notice. The notice required under subsection (a) shall include: (1) A description of the action proposed or refused by the department; (2) An explanation of why the department proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the department used as a basis for the proposed or refused action; (4) A statement that the parents of a student with a disability have protection under the procedural safeguards of this chapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this chapter; (6) A description of other options that the IEP team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the department's proposal or refusal. (c) Notice in understandable language. (1) The notice required under subsection (a) shall be: (A) Written in language understandable to the general public; and (B) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (2) If the native language or other mode of communication of the parent is not a written language, the department shall take steps to ensure: (A) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (B) That the parent understands the content of the notice; and (C) That there is written evidence that the requirements in subparagraphs (A) and (B) have been met. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1), HRS §302A-1112) (Imp: 34 C.F.R. §300.503)	o Evaluation; or o FAPE (program or placement) • When a parent files a due process complaint, the department is required to submit a response or a PWN (if a PWN was not submitted earlier). See §8-60-62(e). The PWN is given to the parent "within a reasonable time" before the department takes action or refuses to take action. Although not specific about the length of time, schools should send the PWN within ten days, the same timeline as the response to a request for due process. *Exception: Upon receipt of a request for initial evaluation, a PWN must be given to the parent no later than the 15th day.*

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
§8-60-59 <u>Procedural safeguards notice.</u> (a) General. A copy of the procedural safeguards available to the parents of a student with a disability shall be given to the parents only one time a school year, except that a copy also shall be given to the parents: (1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under sections 8-60-52 through 8-60-54 and upon receipt of the first due process complaint under section 8-60-61 in a school year; (3) In accordance with the discipline procedures in section 8-60-75(h); and (4) Upon request by a parent. (b) Contents. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available under section 8-60-27, sections 8-60-52 through 8-60-54, section 8-60-31, sections 8-60-57 through 8-60-58, sections 8-60-60 through 8-60-72, sections 8-60-75 through 8-60-81, and section 8-60-84 relating to: (1) Independent educational evaluations; (2) Prior written notice; (3) Parental consent; (4) Access to education records; (5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including: (A) The time period in which to file a complaint; (B) The opportunity for the department to resolve the complaint; and (C) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures; (6) The availability of mediation; (7) The student's placement during the pendency of any due process complaint; (8) Procedures for students who are subject to placement in an interim alternative educational setting; (9) Requirements for unilateral placement by parents of students in private schools at public expense; (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations; (11) Civil actions, including the time period in which to file	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
those actions; and (12) Attorneys' fees. (c) Notice in understandable language. The notice required under subsection (a) shall meet the requirements of section 8-60-58(c). [Eff 11/23/09] (Auth: 20 U.S.C. 1415(d), HRS §302A-1112) (Imp: 34 C.F.R. §300.504)	
§8-60-60 <u>Mediation.</u> (a) General. The department shall offer mediation to allow parties to disputes involving any matter, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. (b) Requirements. The department shall ensure the mediation process: (1) Is voluntary on the part of the parties; (2) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and (3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques, and (4) The State shall bear the cost of the mediation process, including the costs of meetings (5) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute. (6) If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth that resolution and that: (A) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and (B) Is signed by both the parent and a representative of the department who has the authority to bind the department. (7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. (8) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a	See Appendix H: Dispute Resolution.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
State receiving assistance. (c) Impartiality of mediator. (1) An individual who serves as a mediator under this chapter: (A) May not be an employee of the department that is involved in the education or care of the student; and (B) Shall not have a personal or professional interest that conflicts with the person's objectivity. (2) A person who otherwise qualifies as a mediator is not an employee of the department solely because he or she is paid by the department to serve as a mediator. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(e), HRS §302A-1112) (Imp: 34 C.F.R. §300.506)	
§8-60-61 Filing a due process complaint. (a) General. (1) A parent or the department may file a due process complaint on any of the matters described in sections 8-60-58(a)(1) and (2) (relating to the identification, evaluation or educational placement of a student with a disability, or the provision of a FAPE to the student). (2) The due process complaint shall allege a violation that occurred not more than two years before the date the parent or department knew or should have known about the alleged action that forms the basis of the due process complaint, or, within the timeframe specified in state statute for a unilateral special education placement, where the request is for reimbursement of the costs of the placement, including special education and related services. The unilateral special education placement timeframe begins on the student's first day of attendance. (b) Information for parents. The department shall inform the parent of any free or low-cost legal and other relevant services available in the area if: (1) The parent requests the information; or (2) The parent or the department files a due process complaint under this section. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(b)(6), HRS §302A-1112) (Imp: 34 C.F.R. §300.507,HRS §302A-443)	See Appendix H: Dispute Resolution.
§8-60-62 Due process complaint. (a) General. (1) The department shall have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which shall remain confidential).	See Appendix H: Dispute Resolution.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(2) The party filing a due process complaint shall submit a copy of the due process complaint to the department. (b) Content of complaint. The due process complaint required in paragraph (1) shall include: (1) The name of the student; (2) The address of the residence of the student; (3) The name of the school the student is attending; (4) In the case of a homeless student or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending; (5) A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and (6) A proposed resolution of the problem to the extent known and available to the party at the time. (c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of subsection (b). (d) Sufficiency of complaint. (1) The due process complaint required by this section shall be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in subsection (b). (2) Within five days of receipt of notification under paragraph (1), the hearing officer shall make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of subsection (b), and shall immediately notify the parties in writing of that determination. (3) A party may amend its due process complaint only if: (A) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to section 8-60-64; or (B) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins. (4) If a party files an amended due process complaint, the	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
timelines for the resolution meeting in section 8-60-64(a) and the time period to resolve in section 8-60-64(b) begin again with the filing of the amended due process complaint. (e) Department response to a due process complaint. (1) If the department has not sent a prior written notice under section 8-60-58 to the parent regarding the subject matter contained in the parent's due process complaint, the department shall, within 10 days of receiving the due process complaint, send to the parent a response that includes: (A) An explanation of why the department proposed or refused to take the action raised in the due process complaint; (B) A description of other options that the IEP team considered and the reasons why those options were rejected; (C) A description of each evaluation procedure, assessment, record, or report the department used as the basis for the proposed or refused action; and (D) A description of the other factors that are relevant to the department's proposed or refused action. (2) A response by the department under paragraph (1) shall not be construed to preclude the department from asserting that the parent's due process complaint was insufficient, where appropriate. (f) Other party response to a due process complaint. Except as provided in subsection (e), the party receiving a due process complaint shall, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(b)(7), 1415(c)(2), HRS §302A-1112) (Imp: 34 C.F.R. §300.508)	
§8-60-63 Model forms. (a) The department shall provide a model form to assist parents and public schools in filing a due process complaint in accordance with sections 8-60-61(a) and 8-60-62(a) through (c) and to assist parents and other parties in filing a State complaint under sections 8-60-52 through 8-60-54. However, the department may not require the use of the model forms. (b) Parents, public schools, and other parties may use the appropriate model form described in subsection (a), or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in section 8-60-62(b) for filing a	See Appendix H: Dispute Resolution.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
due process complaint, or the requirements in section 8-60-54(b) for filing a State complaint. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(b)(8), HRS §302A-1112) (Imp: 34 C.F.R. §300.509)	
§8-60-64 <u>Resolution process.</u> (a) Resolution meeting. (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under section 8-60-65, the department shall convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that: (A) Includes a representative of the department who has decision-making authority on behalf of the department; and (B) May not include an attorney of the department unless the parent is accompanied by an attorney. (2) The purpose of the meeting is for the parent of the student to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the department has the opportunity to resolve the dispute that is the basis for the due process complaint. (3) The meeting described in paragraph (1) and (2) need not be held if: (A) The parent and the department agree in writing to waive the meeting; or (B) The parent and the department agree to use the mediation process described in section 8-60-60. (4) The parent and the department determine the relevant members of the IEP team to attend the meeting. (b) Resolution period. (1) If the department has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. (2) Except as provided in subsection (c), the timeline for issuing a final decision under section 8-60-69 begins at the expiration of this 30-day period. (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (1) and (2), the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the	See Appendix H: Dispute Resolution.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
meeting is held. (4) If the department is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in section 8-60-46(d)), the department may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. (5) If the department fails to hold the resolution meeting specified in subsection (a) within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in section 8-60-69(a) starts the day after one of the following events: (1) Both parties agree in writing to waive the resolution meeting; (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or department withdraws from the mediation process. (d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in subsections (a)(1) and (2), the parties shall execute a legally binding agreement that is: (1) Signed by both the parent and a representative of the department who has the authority to bind the department; and (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States. (e) Agreement review period. If the parties execute an agreement pursuant to subsection (d), a party may void the agreement within 3 business days of the agreement's execution. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(f)(1)(B), HRS §302A-1112) (Imp: 34 C.F.R. §300.510)	A resolution meeting is required unless waived by both parties. Mediation can be used in lieu of the resolution meeting but is voluntary and must be agreed to by both parties.
§8-60-65 <u>Impartial due process hearing.</u> (a) General. Whenever a due process complaint is received under section 8-60-61 or section 8-60-77, the parents or the department involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the	See Appendix H: Dispute Resolution.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
procedures in sections 8-60-61, 8-60-62, and 8-60-64. (b) The hearing described in subsection (a) shall be conducted by the department. (c) Impartial hearing officer. (1) At a minimum, a hearing officer: (A) Shall not be: (i) An employee of the department that is involved in the education or care of the student; or (ii) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing; (B) Shall possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts; (C) Shall possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and (D) Shall possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. (2) A person who otherwise qualifies to conduct a hearing under paragraph (1) is not an employee of the department solely because he or she is paid by the department to serve as a hearing officer. (3) The department shall keep a list of the persons who serve as hearing officers. The list shall include a statement of the qualifications of each of those persons. (d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under section 8-60-62(b), unless the other party agrees otherwise. (e) The hearing officer shall conduct a pre-hearing conference. The hearing officer may conduct all or part of the pre-hearing conference by telephone if both parties or party representatives have an opportunity to participate in and hear the entire proceeding while it is taking place. The pre-hearing conference shall include the identification of the precise issues to be heard under section 8-60-61(a). (f) Timeline for requesting a hearing. A parent or the department shall request an impartial hearing on their due process complaint within two years of the date the parent or the department	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
knew or should have known about the alleged action that forms the basis of the due process complaint. The request for a due process hearing regarding reimbursement of all costs of the private placement including special education and related services shall be filed within the timeframe specified by state statute. (g) Exceptions to the timeline. The timeline described in subsection (f) does not apply to a parent if the parent was prevented from filing a due process complaint due to: (1) Specific misrepresentations by the department that it had resolved the problem forming the basis of the due process complaint; or (2) The department's withholding of information from the parent that was required to be provided to the parent. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)-(D), HRS §302A-1112) (Imp: 34 C.F.R. §300.511)	
§8-60-66 Hearing rights. (a) General. Any party to a hearing conducted pursuant to sections 8-60-61 through 8-60-67 or sections 8-60-75 through 8-60-79, or an appeal conducted pursuant to section 8-60-68, has the right to: (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (A) The party initiating the due process complaint has the burden of proof. (B) The burden of proof is the responsibility of the party initiating and seeking relief in an administrative hearing under the IDEA or this chapter is to prove, by a preponderance of the evidence, the allegations of the complaint. (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions. (b) Additional disclosure of information. (1) At least five business days prior to a hearing conducted pursuant to section 8-60-65(a), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
party's evaluations that the party intends to use at the hearing. (2) A hearing officer may bar any party that fails to comply with paragraph (1) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party. (c) Parental rights at hearings. Parents involved in hearings shall be given the right to: (1) Have the student who is the subject of the hearing present; (2) Open the hearing to the public; and (3) Have the record of the hearing and the findings of fact and decisions described in subsections (a)(4) and (5) provided at no cost to parents. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(f)(2), 1415(h), HRS §302A-1112) (Imp: 34 C.F.R. §300.512)	
§8-60-67 <u>Hearing decisions.</u> (a) Decision of hearing officer on the provision of a FAPE. (1) Subject to paragraph (2), a hearing officer's determination of whether a student received a FAPE shall be based on substantive grounds. (2) In matters alleging a procedural violation, a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies: (A) Impeded the student's right to a FAPE; (B) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's student; or (C) Caused a deprivation of educational benefit. (3) Nothing in subsection (a) shall be construed to preclude a hearing officer from ordering the department to comply with procedural requirements under sections 8-60-56 through 8-60-81. (4) Following the placement of a student in a private school, for continued placement, the private school cannot be deemed an appropriate placement by the hearing officer unless the private school allows the department to exercise its responsibility to ensure the provision of a FAPE under sections 8-60-29 and 30. (b) Separate request for a due process hearing. Nothing in sections 8-60-56 through 8-60-81 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (c) Findings and decision to advisory panel and general	"Substantive" means relating to the essential legal principles administered by the courts, as opposed to the rules of practice and procedure.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
public. The department, after deleting any personally identifiable information, shall: (1) Transmit the findings and decisions referred to in section 8-60-66(a)(5) to the State advisory panel; and (2) Make those findings and decisions available to the public. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o), HRS §302A-1112) (Imp: 34 C.F.R. §300.513)	
§8-60-68 Finality of decision; appeal. A decision made in a hearing conducted pursuant to sections 8-60-61 through 8-60-67 or sections 8-60-75 through 8-60-79 is final, except that any party involved in the hearing may appeal the decision under the provisions of section 8-60-70. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2), HRS §302A-1112) (Imp: 34 C.F.R. §300.514)	
§8-60-69 Timelines and convenience of hearings and reviews. (a) The department shall ensure that not later than 45 days after the expiration of the 30 day period under section 8-60-64(b), or the adjusted time periods described in section 8-60-64(c): (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties. (b) A hearing officer may, for good cause, grant specific extensions of time beyond the period set out in subsection (a) at the request of either party. Each extension shall be no more than 45 days. (1) The hearing officer shall consider the following factors before an extension is granted: (A) The negative effects of extending the time in which a student's education is in abeyance; (B) The requesting party's ability to have avoided the necessity for an extension; (C) If the requesting party is the petitioner, whether the requesting party had an opportunity to adequately prepare before filing a hearing request; (D) The negative effects denying the request for an extension; (E) The intent of this chapter and federal laws to expedite an informal administrative proceeding; and (F) Whether granting the extension will override the intent of the law in favor of the convenience of the parties.	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(2) Absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted. Agreement of the parties is not a sufficient basis for granting an extension. (3) The impartial hearing officer shall respond in writing to each request for an extension. The response shall include findings of fact and conclusions as to why good cause exists. The response shall become part of the record. The impartial hearing officer shall set a new date for rendering his or her decision, and notify the parties in writing of such date. (c) Each hearing and each review involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parents and student involved. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1), HRS §302A-1112) (Imp: 34 C.F.R. §300.515)	
§8-60-70 Civil action. (a) General. Any party aggrieved by the findings and decision made under sections 8-60-61 through 8-60-67 or sections 8-60-75 through 8-60-79 has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under section 8-60-61 or sections 8-60-75 through 8-60-77. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. (b) Time limitation. The party bringing the action shall have 30 days from the date of the decision of the hearing officer to file a civil action, or, in the time allowed by State law. (c) Additional requirements. In any action brought under subsection (a), the court: (1) Receives the records of the administrative proceedings; (2) Hears additional evidence at the request of a party; and (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate. (d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy. (e) Rule of construction. Nothing in this chapter restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615	To obtain relief through the remedies available under other laws that

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
of the Act, the procedures under sections 8-60-61 and 8-60-68 shall be exhausted to the same extent as would be required had the action been brought under section 615 of the Act. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(l), HRS §302A-1112) (Imp: 34 C.F.R. §300.516)	overlap under the IDEA, the available IDEA administrative remedies, in general, need to be exhausted.
§8-60-71 <u>Attorneys' fees.</u> (a) In general. In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to: (1) The prevailing party who is the parent of a student with a disability; (2) To a prevailing party who is the department against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or (3) To the department prevailing against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (b) Prohibition on use of funds. (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and sections 8-60-56 through 8-60-81. (2) Paragraph (1) does not preclude the department from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act. (c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following: (1) Fees awarded under section 615(i)(3) of the Act shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph. (2) (A) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of	If the parent is the prevailing party, the court may award reasonable attorneys' fees as part of the costs to the parent. If the prevailing party is the department, the court may award reasonable attorneys' fees as part of the costs to the Department, to be paid by the parent or the parent's attorney if the action is frivolous or for improper purpose.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
settlement to a parent if: (i) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins; (ii) The offer is not accepted within 10 days; and (iii) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.	If a settlement offer is rejected by the parent and the final decision is not more favorable, the parent may not be entitled to attorney's fees.
(B) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in section 8-60-60.	A resolution meeting is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.
(C) A meeting conducted pursuant to section 8-60-64 shall not be considered: (i) A meeting convened as a result of an administrative hearing or judicial action; or (ii) An administrative hearing or judicial action for purposes of this subchapter.	
(3) Notwithstanding paragraph (2), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.	
(4) Except as provided in paragraph (5), the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that: (A) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; (B) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(C) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or (D) The attorney representing the parent did not provide to the department the appropriate information in the due process request notice in accordance with section 8-60-62. (5) The provisions of paragraph (4) do not apply in any action or proceeding if the court finds that the department unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(i)(3)(B)-(G), HRS §302A-1112) (Imp: 34 C.F.R. §300.517)	The court may not reduce fees if the court finds that the department unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA 2004.
§8-60-72 <u>Student's status during proceedings.</u> (a) Except as provided in section 8-60-78, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under section 8-60-61, unless the department and the parents of the student agree otherwise, the student involved in the complaint shall remain in his or her current educational placement. (b) If the complaint involves an application for initial admission to public school, the student, with the consent of the parents, shall be placed in the public school until the completion of all the proceedings. (c) If the complaint involves an application for initial services from a student who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the student has turned three, the department is not required to provide the Part C services that the student had been receiving. If the student is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under section 8-60-31(b), then the department shall provide those special education and related services that are not in dispute between the parent and the department. (d) If the hearing officer in a due process hearing conducted by the department agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the State and the parents for purposes of subsection (a). [Eff 11/23/09] (Auth: 20 U.S.C. 1415(j), HRS §302A-1112) (Imp: 34 C.F.R. §300.518)	Except in the case of placement in an interim alternative educational setting or when the parties agree otherwise, the student remains in the current educational placement while awaiting the outcome of the hearing. This is sometimes referred to as the “stay put” provision.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
§8-60-73 <u>Surrogate parents.</u> (a) General. The department shall ensure that the rights of a student are protected when: (1) No parent (as defined in section 8-60-2 can be identified; (2) The department, after reasonable efforts, cannot locate a parent; (3) The student is a ward of the State under the laws of that State; or (4) The student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)). (b) Duties of the department. The duties of the department under subsection (a) include the assignment of an individual to act as a surrogate for the parents. This shall include a method: (1) For determining whether a student needs a surrogate parent; and (2) For assigning a surrogate parent to the student. (c) Wards of the State. In the case of a student who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided that the surrogate meets the requirements in subsections (d)(2)(A) and (e). (d) Criteria for selection of surrogate parents. (1) The department may select a surrogate parent in any way permitted under State law. (2) The department shall ensure that a person selected as a surrogate parent: (A) Is not an employee of the department or any other agency that is involved in the education or care of the student; (B) Has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and (C) Has knowledge and skills that ensure adequate representation of the student. (e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under subsection (d) is not an employee of the department solely because he or she is paid by the department to serve as a surrogate parent. (f) Unaccompanied homeless youth. In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to subsection (d)(2)(A), until a surrogate parent can be appointed that meets all of the requirements of	See Appendix I: Surrogate Parent.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
subsection (d). (g) Surrogate parent responsibilities. The surrogate parent may represent the student in all matters relating to: (1) The identification, evaluation, and educational placement of the student; and (2) The provision of a FAPE to the student. (h) Department responsibility. The department shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after the department determines that the student needs a surrogate parent. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(b)(2), HRS §302A-1112) (Imp: 34 C.F.R. §300.519)	
§8-60-74 Transfer of parental rights at age of majority. General. A State may provide that, when a student with a disability reaches the age of majority under State law that applies to all students (except for a student with a disability who has been determined to be incompetent under State law): (a)(1) The department shall provide any notice required by this chapter to both the student and the parents; and (2) All rights accorded to parents under Part B of the Act transfer to the student; (b) All rights accorded to parents under Part B of the Act transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution; and (c) Whenever the State provides for the transfer of rights pursuant to subsection (a), the department shall notify the student and the parents of the transfer of rights. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(m), HRS §302A-1112) (Imp: 34 C.F.R. §300.520)	Prior to the student's 17th birthday, it must be documented in the IEP that the student and the parent were informed that the rights accorded to parents under Chapter 60 and the IDEA will transfer to the student at age 18. When the student reaches age 18, both the student and the parent must be given notice that all rights formerly accorded to the parents under Chapter 60 and the IDEA have transferred to the student. If the school receives notice that the student is incompetent under state law and no rights will transfer to the student at the age of majority, the IEP need not include this statement required under §8-60-44(c). See Appendix F: Transfer of Educational Rights.
Subchapter 9 Discipline Procedures **§8-60-75 Authority of school personnel.** (a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this subchapter, is appropriate for a student with a disability who violates chapter 8-19. (b) General. (1) School personnel under this subchapter may remove a student with a disability who violates school rules from the student's current placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than 10 cumulative school	See Appendix J: Discipline Chart.

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
days (to the extent those alternatives are applied to students without disabilities) in that same school year for one or separate incidents of misconduct; (2) After a student with a disability has been removed from the student's current placement for ten school days in the same school year, during any subsequent days of removal the department shall provide services to the extent required under subsection (d); (3) "Current educational placement" means the type of educational placement of the student as described in the student's annual IEP. It does not mean the specific location or school, but the type of placement on the continuum of placement options (e.g., regular classroom with support; regular classroom with resource room support; special class; special school; home, etc.). (c) Additional authority. For disciplinary changes in placement that would exceed ten consecutive or cumulative school days, if the behavior that gave rise to the violation of chapter 8-19 is determined not to be a manifestation of the student's disability pursuant to subsection (e), school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except as provided in subsection (d). (d) Services. (1) A student with a disability who is removed from the student's current placement pursuant to subsection (c) or (g), shall: (A) Continue to receive educational services, as provided in section 8-60-3(a), so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and (B) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur; (2) The services required by paragraphs (1), (3), and (4) may be provided in an interim alternative educational setting. (3) When a student with a disability has been removed	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
from his or her current placement for 10 school days or less in the same school year, that student may be provided with an alternate educational option (such as homework, projects, class assignments) in the same manner as a student without a disability who is similarly removed, in accordance with chapter 8-19. (4) If the removal is a change of placement under section 8-60-81, the student's IEP team determines appropriate services under paragraph (1), except as stated in paragraph (5). (5) For crisis removals that exceed the ten cumulative school days in a school year, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed so as to enable the student to continue to participate in the general education curriculum although in another setting, and to progress in meeting the goals set out in the student's IEP. (e) Manifestation determination. (1) Excluding subparagraph (g)(2)(A), within ten school days of any decision to change the placement of a student with a disability because of a violation of Chapter 19, the department, the parent, and relevant members of the student's IEP team (as determined by the parent and the department) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine: (A) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or (B) If the conduct in question was the direct result of the department's failure to implement the IEP; (2) The conduct shall be determined to be a manifestation of the student's disability if the department, the parent, and relevant members of the student's IEP team determine that a condition in either paragraph (1)(A) or (B) was met; (3) If the department, the parent, and relevant members of the student's IEP team determine the condition described in paragraph (1)(B) was met, the department shall take immediate steps to remedy those deficiencies.	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(f) Determination that behavior was a manifestation. If the department, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the student's disability, the IEP team shall: (1) Either: (A) Conduct a functional behavioral assessment, unless the department had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or (B) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and (2) Except as provided in subsection (g), return the student to the placement from which the student was removed, unless the parent and the department agree to a change of placement as part of the modification of the behavioral intervention plan. (g) Special circumstances. (1) School personnel may remove a student to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student: (A) Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the department; (B) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the department; or (C) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the department. (2) (A) If the basis for a crisis removal exists pursuant to chapter 8-19-7, school personnel may order the removal of a student with a disability from the student's current educational placement, for up to ten consecutive school days. If the	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
crisis removal, together with any previous days of disciplinary suspensions or removals, exceeds ten school days, the crisis removal would constitute a change of placement only if the removals constitute a pattern: (i) because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals. (ii) because of such additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals one to another. (B) If school personnel determine the authority for a crisis removal exists pursuant to paragraph [(1)](2)(A): (i) The crisis removal shall be in accordance with chapter 8-19-7, including the student's right to resume attendance at school as soon as the exclusion pursuant to chapter 8-19-7(a) is no longer necessary; (ii) The student with a disability shall be provided a free appropriate public education in accordance with subsection (d) during the period of the crisis removal; (iii) The IEP team shall conduct the functional behavioral assessment in accordance with subparagraph (d)(1)(b); (iv) If the student's parent disagrees with the determination under paragraph (2), the parent may request a hearing pursuant to section 8-60-77. For purposes of section 8-60-72 on the student's status during the proceedings, the current placement is the free appropriate public education provided in accordance with subsection (d) until the end of the crisis removal, at which time the student shall resume attendance at school; and	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(v) For purposes of subsequent disciplinary action, the school days of crisis removal shall be included as days of removal in this section. Nothing in this paragraph prohibits a student from being the subject of a subsequent crisis removal in a given school year if the requirements of chapter 8-19-7, and this subparagraph are met. (h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the department shall notify the parents of that decision, and provide the parents the procedural safeguards notice described in section 8-60-59. (i) Definitions. For purposes of this subchapter, the following definitions apply: (1) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)); (2) "Illegal drug" means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law; (3) "Serious bodily injury" has the meaning given the term "serious bodily injury" under section 1365(h)(3) of title 18, United States Code. (4) "Weapon" has the meaning given the term "dangerous weapon" under 18 U.S.C. section 930(g)(2). [Eff 11/23/09] (Auth: 20 U.S.C. 1415(k)(1) and (7); HRS §302A-1112) (Imp: 34 C.F.R. §300.530)	
§8-60-76 Determination of setting. The student's IEP team determines the interim alternative educational setting for services under section 8-60-75(c), (d)(4), and (g). [Eff 11/23/09] (Auth: 20 U.S.C. 1415(k)(2); HRS §302A-1112) (Imp: 34 C.F.R. §300.531)	
§8-60-77 Appeal. (a) General. The parent of a student with a disability who disagrees with any decision regarding placement under sections 8-60-75 and 8-60-76, or the manifestation determination under section 8-60-75(e), or the department believes that maintaining the current placement of the student is substantially likely to result in injury to the	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to sections 8-60-61 and 8-60-62(a) and (b). (c) Authority of hearing officer. (1) A hearing officer under section 8-60-65 hears, and makes a determination regarding an appeal under subsection (a). (2) In making the determination under paragraph (1), the hearing officer may: (A) Return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of section 8-60-75 or that the student's behavior was a manifestation of the student's disability; or (B) Order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than forty-five school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others. (3) The procedures under subsection (a) and paragraphs (1) and (2) may be repeated, if the department believes that returning the student to the original placement is substantially likely to result in injury to the student or to others. (c) Expedited due process hearing. (1) Whenever a hearing is requested under subsection (a), the parents involved in the dispute or the department shall have an opportunity for an impartial due process hearing consistent with the requirements of sections 8-60-61 and 8-60-62(a) through (c) and sections 8-60-64 through 8-60-68, except as provided in paragraphs (2) through (4). (2) The department is responsible for arranging the expedited due process hearing, which shall occur within twenty school days of the date the complaint requesting the hearing is filed. The hearing officer shall make a determination within ten school days after the hearing; (3) Unless the parents and department agree in writing to waive the resolution meeting described in subparagraph (A), or agree to use the mediation	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
process described in section 8-60-60: (A) A resolution meeting shall occur within seven days of receiving notice of the due process complaint; and (B) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the receipt of the due process complaint; (4) The State shall ensure that the requirements in sections 8-60-64 through 8-60-68 are met; (5) The decisions on expedited due process hearings are appealable consistent with section 8-60-68. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A); HRS §302A-1112) (Imp: 34 C.F.R. §300.532)	
§8-60-78 Placement during appeals. When an appeal under section 8-60-77 has been made by either the parent or the department, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in section 8-60-75(c) or (g), whichever occurs first, unless the parent and the department agree otherwise. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(k)(4)(A), HRS §302A-1112) (Imp: 34 C.F.R. §300.533)	
§8-60-79 Protections for students not determined eligible for special education and related services. (a) General. A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated chapter 8-19, may assert any of the protections provided for in this chapter if the department had knowledge (as determined in accordance with subsection (b)) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. (b) Basis of knowledge. The department shall be deemed to have knowledge that a student is a student with a disability if before the behavior that precipitated the disciplinary action occurred: (1) The parent of the student expressed concern in writing to supervisory or administrative personnel of the department, or a teacher of the student, that the student is in need of special education and related services; (2) The parent of the student requested an evaluation of the student pursuant to sections 8-60-31 through 8-60-43; or	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
(3) The teacher of the student, or other personnel of the department, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the department. (c) Exception. The department would not be deemed to have knowledge under subsection (b) if: (1) The parent of the student: (A) Has not allowed an evaluation of the student pursuant to sections 8-60-31 through 8-60-43; or (B) Has refused services; or (2) The student has been evaluated in accordance with sections 8-60-31 through 8-60-43 and determined to not be a student with a disability. (d) Conditions that apply if no basis of knowledge. (1) If the department does not have knowledge that a student is a student with a disability (in accordance with subsections (b) and (c)) prior to taking disciplinary measures against the student, the student may be subjected to the disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with paragraph (2). (2) (A) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under section 8-60-75, the evaluation shall be conducted in an expedited manner; (B) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services; (C) If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the department and information provided by the parents, the department shall provide special education and related services in accordance with this chapter, including the requirements of sections 8-60-75 through 8-60-81 and section 612(a)(1)(A) of the Act. [Eff 11/23/09] (Auth: 20 U.S.C. 1415(k)(5), HRS §302A-1112) (Imp: 34 C.F.R. §300.534)	

HAR Chapter 60	This column must be read in conjunction with HAR Chapter 60
§8-60-80 Referral to and action by law enforcement and judicial authorities. (a) Rule of construction. Nothing in this chapter prohibits the department from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability. (b) Transmittal of records. (1) When reporting a crime committed by a student with a disability, the department shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the department reports the crime. (2) The department may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act(20 U.S.C. 1232g). [Eff 11/23/09] (Auth: 20 U.S.C. 1415(k)(6); HRS §302A-1112) (Imp: 34 C.F.R. §300.535)	
§8-60-81 Change of placement because of disciplinary removals. For purposes of removals of a student with a disability from the student's current educational placement under sections 8-60-75 through 8-60-80, a change of placement occurs if the removal is for more than ten cumulative school days in the same school year, unless the basis for a crisis removal exists in accordance with sections 8-60-75(d)(5) and 8-60-75(g)(2). [Eff 11/23/09] (Auth: 20 U.S.C. 1415(k), HRS §302A-1112) (Imp: 34 C.F.R. §300.536)	
§§8-60-82 to 8-60-83 (Reserved)	
Subchapter 10 Confidentiality of Information **§8-60-84 Applicability.** All of the provisions of the Hawaii administrative rule relating to the Protection of Educational Rights and Privacy of Students and Parents, the Individuals with Disabilities Education Act, and the Family Educational Rights and Privacy Act (20 U.S.C. section 1400 et seq.; 34 C.F.R. sections 300.610 – 627, 20 U.S.C. 1232g)) shall also apply. [Eff 11/23/09] (Auth: 20 U.S.C. 1212e-3,1412(a)(8), 1417(c); HRS §302A-1112) (Imp: 34 C.F.R. §§300.610 to 627)	See Appendix K: Confidentiality of Information.

Appendix A
Additional Definitions

Accommodations - Adjustments made to enable a student to participate in the regular education activity (e.g., wider aisles for a student in a wheelchair, highlighted text, additional time to complete assignments, etc.).

Behavior intervention plan (BIP) - An individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.

Compensatory services - Educational services awarded to a student with a disability for the Hawaii Department of Education's failure to provide a free appropriate public education.

Destruction of records - The process of destroying personally identifiable information (collected, maintained, or used) that is no longer needed to provide educational services to a student. This does not include a permanent record of a student's name, address, phone number, grades, attendance records, classes attended, grade level completed, and year completed. This information may be maintained without time limitation.

Dynamic assessment - The variety of procedures that use a "test-intervene-retest" format and embed interaction with a student as part of the assessment process.

Education records - The type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g (FERPA).

Functional activities - Activities that students engage in independently (e.g., getting to class on time, writing one's name, stating one's name, selecting a book to read, running errands, etc.).

Functional behavioral assessment (FBA) - An individualized assessment of the student that results in a hypothesis about the function of a student's behavior and includes, as appropriate, recommendations for a behavior intervention plan.

General curriculum - The curriculum used for all students. It relates to the content of the curriculum and not to the setting in which it is used.

Modifications - Changing content, rules, performance expectations.

Personally identifiable - Information that contains the name of the student, the student's parents, other family members, the address of the student, a personal identifier such as the student's social security number or student identification number, a list of personal characteristics, or other information that would make it possible to identify the student with reasonable certainty.

Reasonable efforts - Attempts made via phone calls, correspondence, and personal visits to the home to reach parents/guardians.

Response to intervention (RTI) - The practice of providing high-quality, scientifically research-based instruction and interventions to address student needs and to monitor progress frequently.

Specially designed instruction - Organized and planned instructional activities that adapt the content, methodology, or delivery of instruction to address the unique educational needs of an eligible student.

Summary of performance - A summary of academic achievement and functional performance including recommendations to assist the student in meeting postsecondary goals. It is given to a student when the student graduates with a diploma, ages out of school, or exceeds the age of eligibility for a free appropriate public education.

Suspension - A disciplinary exclusion from school for a specified period of time during a school year; refer to HAR Chapter 19 for more information.

INTRODUCTION

Special education is for students who have **disabilities that cause difficulty in learning and need specialized instruction**. Special education is not intended to provide support services for all struggling students; rather, the intention is to provide students with disabilities access to the same educational opportunities as their nondisabled peers.

When making a determination of disability for the purpose of special education, teams must conduct an evaluation and complete the three-prong test (see below). There must be consideration of the educational progress of the student and the interaction between the disability, the educational impact of that disability, and the need for special education. This important distinction highlights that the disability label alone does not prompt a determination of eligibility for special education. In the context of special education eligibility, the disability label has no standing alone without reference to impaired educational progress as a result of the disability.

THREE-PRONG TEST
Determination of eligibility and educational need

EACH PRONG MUST BE MET BEFORE THE TEAM CAN DETERMINE THAT THE STUDENT IS ELIGIBLE FOR SPECIAL EDUCATION.

- **Prong 1**: **DISABILITY**
  Is the student a student with a disability?
- **Prong 2**: **ADVERSE EFFECT**
  Is the disability adversely affecting the student's involvement and progress in general education?
- **Prong 3**: **NEED**
  Does the student **need** special education and related services as a result of his/her disability?

SUPPORT FOR STUDENTS

Anytime a student concern is raised, school teams must problem solve and plan accordingly to ensure that:

- Instructional practices meet the needs of diverse learners, and
- Adaptations to teaching and/or classroom climate are implemented as appropriate.

Schools must have strong instructional support practices in place for all students. (See Student Support Process)

Most referrals are appropriate. However, there are times when they are not. Referrals submitted for the following reasons are not appropriate:

- Teams (including parents) referring a student who is doing poorly in class without exploring general education supportive services.
- Teams agreeing to conduct a special education evaluation due to a teacher's lack of knowledge on techniques or strategies to meet the needs of the student.
- School personnel, parents or other interested parties referring a student for special education because it is the only program available to provide a student with "extra" services.

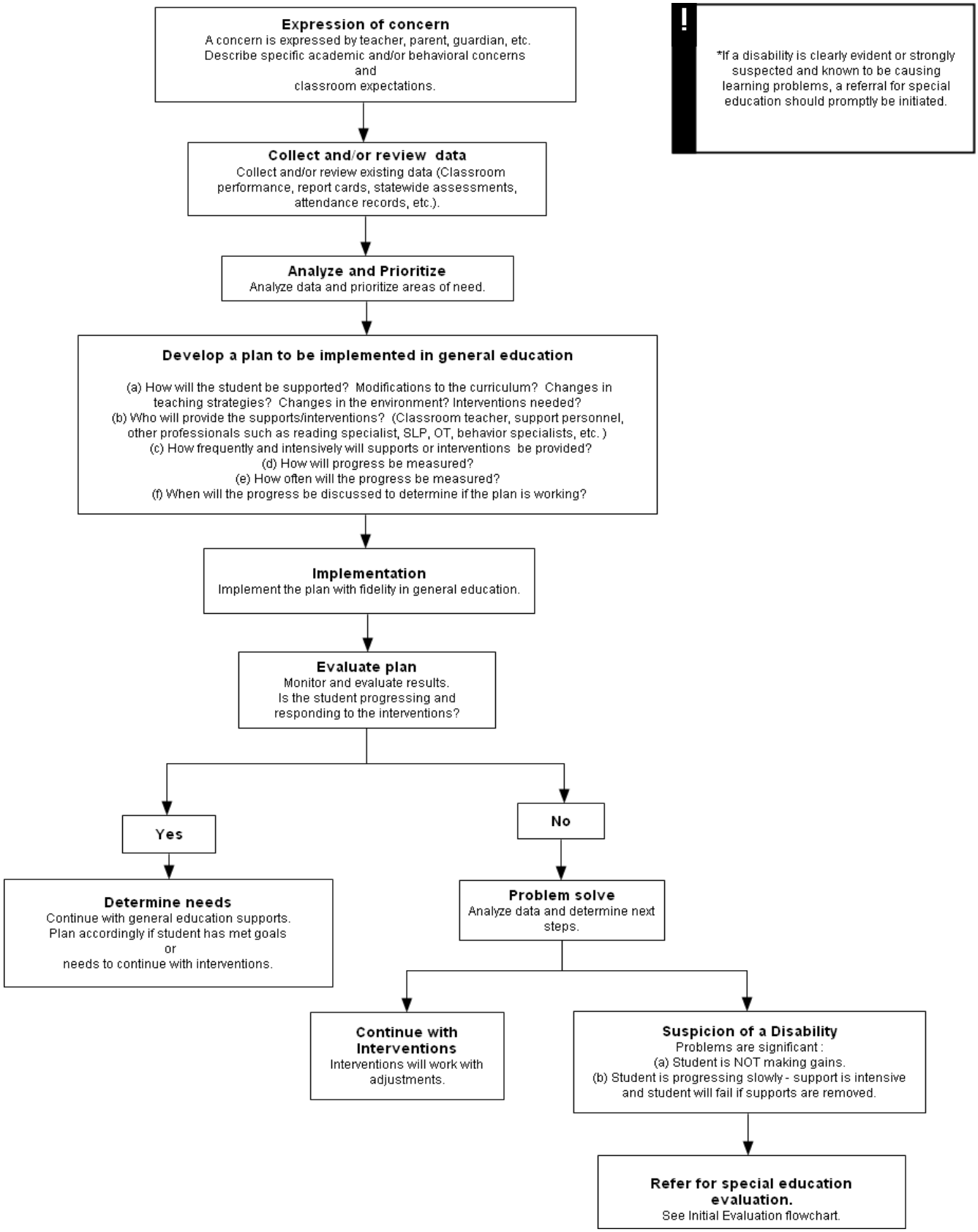
Appropriate referrals for special education begins after supportive instructional practices have occurred and the student needs far more than the classroom teacher can provide through general education supports. This would be a student who has significant academic and/or behavioral challenges and continues to display a lack of progress despite increasing levels of intervention.

OR

A student has a disability that is clearly evident or it is strongly suspected and known to be causing learning or behavioral problems which prevent progress in the general education curriculum.

Reminder: Special education is intended for students who have **disabilities that cause difficulty in learning** and **need specialized instruction.**

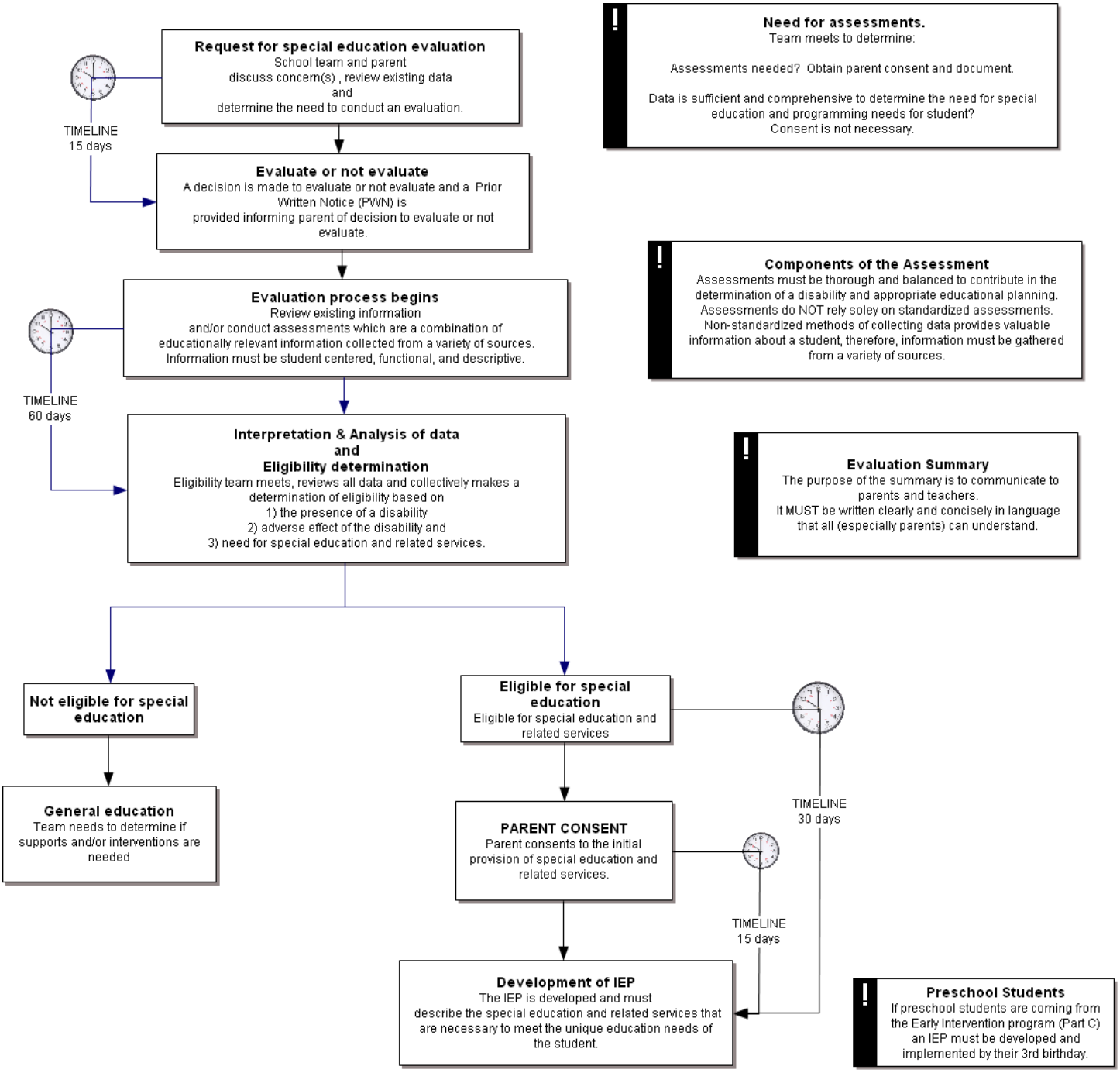
Student Support Process



When a disability is suspected, a referral is made and the evaluation** process begins.

Initial Evaluation Process

Evaluation is defined as the procedures used to determine if a student has a disability and the nature and extent of the need for special education and related services.
Purpose: To identify learners who are eligible for special education and related services by determining the presence of a disability and the need for special education.
There are specific timelines that teams must follow for the evaluation process.



Referral Process

TIMELINE Within 15 days of the receipt of the request, the school must complete the referral process. This process should be well organized. The teacher meets with the team to discuss student concerns. During this time period, schools gather information to assist in making the decision to evaluate or not evaluate.

Step 1: School receives a request for an evaluation.

Requests may come from a variety of sources such as:

- General education teachers.
- Parents.
- Early Intervention Program.

Step 2: Obtain and review pertinent information.

Whenever a referral is made, there must be a clear and precise explanation of the concern. In addition, prior to any referral for school aged students it is expected that the student received appropriate instruction and that the referring teacher has attempted to resolve problems in the general education setting. There should be evidence that interventions have been tried and documented. See "Interventions". Pertinent information includes:

- **Reason for Referral:** The reason is clearly expressed.

- **Educationally relevant information:** Pertinent information related to the area of concern is reviewed (i.e. school history, summary of previous test results, summary of parent conferences, work samples indicative of problem, interview data from teacher, observations or screening information from service providers, reports from other agencies, etc.) See "Educationally Relevant Information"

- **Appropriate Instruction:** For school aged students – Was appropriate instruction provided? (See "Appropriate Instruction")

- **Limited English Proficiency:** When students communicate using another language, teams must obtain information on what the student knows and can do within their own culture. This would involve comparing the student's abilities to other children who come from the same community with similar cultural and linguistic experiences. A parent interview regarding these issues is critical. See "Limited English Proficiency" for additional information regarding this topic, "Parent Questionnaire (ELL)", "Interpreter/Teacher Questionnaire (ELL)". [See page 7.]

- **Interventions tried:** Attempts to resolve problems and results of intervention should be documented. See "Effectiveness of Interventions"

Step 3: Discuss the request for a special education evaluation with the parent.

In this discussion the school should:

- Determine whether parent's proficiency in English is limited. School must provide an interpreter in the parent's primary language when a need is suspected. Parent may waive the use of an interpreter, but the offer for an interpreter must be made.
- Explain what is meant by disability and the difference between special education and related services vs. general education supports for student.

Step 4: Determination to evaluate or not evaluate

- Review all information See "Review of Information Checklist"
- Determine with parent if there is a suspicion of a disability and if the intention is to proceed with a special education evaluation (vs. obtaining general education assistance).
- Explain the decision (to evaluate or not evaluate) to the parent.
- If the decision is to conduct an evaluation with additional assessments
  - determine the additional data needed See "Sufficiency of Data" and "Planning for additional assessments"
  - obtain parental consent*

- Provide the parent(s) with a Prior Written Notice (PWN) informing them of this decision and the reasons in their primary language.
- Provide parents with the procedural safeguards notice (PSN) in their primary language.

*If a parent refuses to give consent for an initial evaluation for special education and related services, the school **may** utilize mediation or impartial due process hearing procedures to pursue the evaluation; however, the school is NOT required to pursue the evaluation using due process procedures.

Evaluation

Appropriate Instruction

Before moving forward with a special education evaluation this information should be discussed, as it is inappropriate to refer a student for a special education evaluation if the primary cause of their learning problems are due to a lack of instruction in reading or math or limited English proficiency.

Appropriate Instruction* Appropriate instruction means that the instruction and interventions provided were scientifically research based and practiced in the manner that was developed so as to ensure high learning rates for most students.	
A student **must not** be found to be a student with a disability if the determinant factor for their learning difficulty is:	Things to consider in the determination of appropriate instruction. A critical hallmark of appropriate instruction is that progress is systematically monitored and analyzed to determine effectiveness of instruction and responsiveness to interventions.
Lack of appropriate instruction in reading.	Reading instruction must have consisted of instruction in: • Phonemic awareness. • Phonics. • Vocabulary development. • Reading fluency, including oral reading skills. • Reading comprehension. If attendance records indicate that the student was not present during the majority of the instructional time, this would factor into a "lack of appropriate instruction."
Lack of appropriate instruction in math.	Math instruction and curriculum must have consisted of: • Math calculation. • Math problem solving. • Conceptual understanding. If attendance records indicate that the student was not present during the majority of the instructional time, this would factor into a "lack of appropriate instruction."
Limited English proficiency.	Consider proficiency in English and in the student's native language, amount of time in the country, level of education in the student's native country, etc. If, in spite of appropriate accommodations and interventions, the student's learning difficulties persist, then this factor is ruled out.

***Preschool aged students –** Appropriate instruction may not be applicable since the child may NOT have attended any program(s) outside of the home. In these situations, teams should ask parents and/or caregivers about the child's exposure to developmentally appropriate activities. These activities may include but are not limited to "reading books," singing songs, reciting nursery rhymes, playing with manipulative, counting aloud, etc.

Limited English Proficiency

Prior to referring a student for a special education evaluation, the team must determine whether the student has had a reasonable opportunity to learn or adjust to school. In order for a student to become proficient in a second language both basic interpersonal communication skills (BICS) and cognitive academic language proficiency (CALP) skills need to be developed.

Basic Interpersonal Communication Skills (BICS) are usually superficial oral language skills and take about two years to develop from the time of exposure to the second language. (e.g. “How are you?”, “What did you do today?”, “Let’s go to the movies”, etc.).

Cognitive Academic Language Proficiency (CALP) is the language the student needs to acquire for academic success and it usually take about five to seven years or longer to master.

In addition, students with Limited English Proficiency may be more comfortable speaking with other second language learners in a social setting, yet remain silent in the general education classroom. This silent period is a part of the learning process as the student attempts to make the needed connections between the first language and their newly acquired language.

Difference vs. Disability

It is critical to differentiate between a student who is not achieving in the classroom due to limited English proficiency, and a student who is not achieving due to a language disability. Whenever there is a question about a language difference vs. disability a speech-language pathologist should be included in the evaluation process.

Specific ELL considerations to be addressed prior to a referral for special education

A student can only be found to have a disability if the learning problems are present in **both** English and the individual’s primary language. When eligibility for special education is being considered for these students, the team must rule out cultural differences and English proficiency as the **primary** reason for performance deficits.
It is important for school teams to obtain relevant information about a student’s background, language development, school history and health. See “Parent Questionnaire (ELL)”.

Concern

- Are problems evident in the student’s first (primary) language?
    - Do native speakers of the student’s language have difficulty understanding the student?
    - Does the student have difficulty following instructions in his/her native language as well as English?
- In addition to the general education teacher, do others have similar concerns? (e.g. parents, extended family members, ELL teacher, other support personnel)
- Is the student’s progress in acquiring English significantly different from that of peers who started at or about the same level of English language proficiency and have had comparable instruction? See “Teacher Concern Questionnaire” and “Teacher Questionnaire (ELL)”.

Interpreters

An interpreter is the link between the school culture and the culture of the student’s family. The following practices should guide use of interpreters in the evaluation process.

- Interpreters should be used when school personnel are not fluent in the student’s primary language.
- When assessing students, it is preferable to use a trained interpreter rather than a family member.
- Use interpreters when interviewing family or talking with the student in a language other than English.
- Ask interpreters to provide school personnel with knowledge about the student’s culture, this is especially important when team members are unfamiliar with the culture of the student. See “Interpreter Questionnaire (ELL)”
- Use interpreters in parent meetings unless waived by parent.

Teachers

- Discuss with the ELL and/or general education teacher the student’s acquisition of English in comparison to students who come from similar backgrounds and/or cultures. See “Teacher Questionnaire (ELL)”.

Use of standardized measures

- Use standardized tests with caution. If the normative sample for the test did not include a comparable group or if the testing procedure was modified scores should NOT be reported.

Interventions

To address the student's difficulties, school personnel should identify the needs of the student and adjust accordingly. Below are some questions that can be asked of general education teachers to determine if appropriate steps were taken to support the student's area of concern. The interventions below may not be appropriate for some students (particularly preschoolers).

Instructional practices

Was the student provided supportive instructional practices such as:

- Clear learning objectives.
- Active and varied learning activities across subject areas.
- Oral and visual directions for assignments, along with visual, auditory, and tactile prompts.
- Immediate and specific feedback about performance.

Did the teacher use:

- A variety of teaching approaches (e.g., teacher-directed instruction and practice, group discussion, problem solving, cooperative learning, etc.).
- Formal and informal assessment data and progress monitoring to guide instruction.
- Co-teaching or team teaching.
- Homework assignments to promote and reinforce student learning.

Curriculum and materials

Was the student provided with curriculum and materials that were supportive of a variety of learning styles?

- Use of a wide variety of curricular and instructional materials (e.g., taped books, large print, computer based programs, manipulatives, etc.).
- Choices in assigned reading materials matched to student's interest.
- Developmentally appropriate, culturally and linguistically sensitive teaching materials.

Classroom environment

Was the student provided with a supportive classroom environment?

- Contracts (such as student/teacher) to encourage on task behaviors.
- Provision of clear structure for class activities.
- Allowing additional time to complete tasks.
- Arranging physical space/materials to minimize distractions.

Educationally Relevant Information

Educationally relevant information (from parents, caregivers or school staff) related to the area(s) of concern is useful when used to determine if the problems are due to a disability and the impact on education. Sometimes school teams are inundated with lots of information, the key question to ask:

Is this information related to the student's education? Why?

Information from the areas listed below should be documented and shared with team members early on in the evaluation process as it can assist with the determination of areas that need to be assessed of further explored.

Type of information	Why is the information needed
Developmental, health, and educational history	May be used to determine long lasting or pervasive concerns.
Medical information	Necessary to ensure the student's health and safety while attending school.
Functional skills related to education and in consideration of activities same age peers are engaged in. e.g. writing one's name, transferring to toilet, feeding self, using electronic devices, etc.	Helps in the determination of meaningful goals which are relevant to education and activities a student will encounter on a daily basis.
Physical abilities related to education and in consideration of activities same age peers are engaged in. e.g. walking up the stairs, moving from one place to another, sitting in a chair, running, reaching for books etc.	Helps in the determination of accommodations needed for the student to access education and engage in educational activities similar to same age peers. Brings to everyone's attention the safety needs of the student.
Social and cultural background e.g. different attitudes toward schooling, different approaches to teaching based on one's culture or learning styles, etc.	What unique social and/or cultural characteristics does the school team need be aware of to ensure that the student is not mistakenly identified as having a disability.
Observations related to the area of concern e.g. observations must be objective and focused on student behavior or ability. It should not include descriptions of the student's appearance, subjective statements or the observer's opinion.	To obtain information about a student's observable behaviors in various educational contexts and situations. Especially when there is a difference between what parents, teachers and/or assessors report.
Data from screenings for instructional purposes	Helps assessors understand the focus of the concern. Strengths and needs of student.
Attendance records, discipline reports, report cards, retentions, etc.	Helps with the determination of appropriate instruction, access to education, real time in instructional activities.
Information provided by parent and evaluation reports from other agencies or professionals.	Provides parent perspective regarding the area of concern and information from a different perspective.

Sufficiency of Data or Additional Assessments Needed

Once the team decides to proceed with a special education evaluation, they need to determine if:

- they have a sufficient amount of information to determine the need for special education and related services, **or**
- additional information is needed. This involves some planning and discussion by the team. Based on information the team already has they need to determine the additional information needed so that sound decisions can be made about the students. They must determine what information is needed, why it is needed, and how the information will be obtained. This should be discussed with the parent and consent obtained. (See planning for additional assessments p. 22)

Sufficiency of Data

Occasionally teams will have a sufficient amount of data to determine eligibility. (See "Sufficiency of Data")

- If the team has sufficient data, they may use the data provided without administering specific assessments and determine eligibility.
- Caution: Even if teams determine that they have a sufficient amount of data, it is best practice for at least one team member to observe the student in the educational setting or their natural environment to validate information.

Sufficiency of data		
Use the existing data to answer the following questions.	Yes	No
The team has documentation to determine that the student is a student with a disability.		
The team has enough data to determine that the disability is adversely affecting education.		
The team has enough data to determine that the student does or does not need special education and related services.		
The team can use the available information to plan and develop a program for the student.		
The present levels of academic achievement and functional performance can be identified and described.		

Variety of Assessment Tools

The team must gather relevant functional, developmental and academic information about the student using a variety of assessment tools and strategies.

Assessments should be much more than the administration of standardized tests. One piece of data from a formal measure, while interesting, only provides a brief glance at the student's skills and abilities . . . it is critical to have several "looks" at the student and this includes what is typically referred to as informal assessments. Going beyond standardized tests allows one to obtain information on a student that will optimize the match between the student needs and services that are provided.

There are many ways to gather information on a student. To identify/confirm student needs, assessors should use a variety of assessment methods. This would involve a multi-modal, multi-informant and a multi-setting component.

Multi-modal component focuses on the methods used to gather information. It involves the use of both formal (standardized) and informal measures. There must be a balance between the two measures, without an over-reliance on one or the other.

Formal (standardized) measures provide a sample of a student's performance and behavior
Informal (authentic observations) measures document a student's performance over a period of time and across settings and should support the findings of the formal test results.

Multi-informant component focuses on gathering information from various sources. Sources may include but are not limited to:

- Teachers
- Parents
- Student
- School personnel (counselors, speech-language pathologists, occupational therapists, physical therapists, behavioral health specialists, etc.)
- Input from other non-DOE professionals (pediatricians, psychiatrists, etc.)

Multi-setting component focuses on gathering information on the student in different settings. These may include (as appropriate)

- Classroom
- Lanai or hallway
- Playground
- Cafeteria
- Isolated testing room
- Home

AUTISM SPECTRUM DISORDER (ASD)

Clarifications for Autism Spectrum Disorder
• The student cannot be identified as having autism if the student's primary disabling condition is emotional disability.

Evidence of a disability	Descriptors of Evidence	Data sources (suggested ways of gathering data from a variety of sources)	Documentation: Use jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
(Required Evidence) **Verbal and nonverbal communication is significantly affected.** **Generally evident before the age of three.**	Delay in or total lack of spoken language with no attempts to compensate through gestures or mime. Inability to initiate or sustain a conversation. Stereotyped and repetitive use of language.	Observation of communication skills (particularly pragmatic language skills) in natural/educational environment. Medical, developmental, and social history. Parent/caregiver interview. Assessment of language competency. Measures of self-help skills.	Clearly state how **ALL** data supports the findings of a significant communication disability. Provide relevant historical evidence of communication delays.
(Required Evidence) **Social interaction significantly affected.** **Generally evident before the age of three.**	Delayed, absent, or atypical ability to relate to people or the environment. Behaviors such as: Inability to use nonverbal behaviors such as eye-to-eye gaze, facial expression, body language, etc. Failure to develop peer relationships appropriate to developmental level. Lack of spontaneous seeking to share enjoyment/interests. Lack of social reciprocity.	Observation of student interacting with parent, siblings, or peers in various environments. Medical, developmental, and social history. Parent interview. Assessment of social competency (social maturity and skills).	Clearly state how **ALL** data supports the findings of significant delays in social interaction. Provide relevant historical evidence of communication delays.
(The existence of one or more behaviors may be present.) **Characteristics** **Repetitive activities and Stereotyped movements** **Resistance to change**	Engagement in **repetitive activities and stereotyped movements** (e.g., hand or finger flapping or twisting, or complex whole body movements, self-stimulating or self-injurious behavior). **Resistance to** environmental **change** or change in daily routines (i.e., inflexible adherence to specific nonfunctional routines).	Observation or video recordings of student's behavior in various environments and at different time periods. Medical, developmental, and social history. Parent/caregiver interview.	Clearly state how **ALL** data supports the findings of significant behaviors* associated with ASD. *****Pervasiveness of behaviors MUST be documented – these behaviors should be occurring frequently across various settings – not occasional behaviors.

Unusual responses to sensory experiences	**Unusual responses** to sensory experiences (difficulty regulating and integrating input of sensory experiences).		
(*Required)* **Adversely affects educational performance.	All findings should lead to the conclusion that the unique behaviors/challenges the student is experiencing are associated with the disability and are occurring frequently and at a level of intensity that adversely affects performance in the PRESENT educational setting or natural environment.		Explain how the ASD is adversely affecting the student's performance in the educational setting or natural environment. (see * Identifying the adverse effect …")
ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION			
(Required) **Exclusionary Factors**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards-based instruction, targeted interventions tried and results of interventions, etc) *(Preschool students: "appropriate Instruction" means exposure to appropriate developmental and early literacy /numeracy activities.)* o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty? • Does the student have an "Emotional Disability"? If yes, the student cannot be identified as ASD.		
(*Required)* **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.	

***Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education**			
Challenges because of the disability	**Area(s) affected**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the ASD? • Communication factors • Social interaction factors • Other characteristics associated with ASD	• Is **academic learning** affected? • Is **communication** affected? • Is **independent functioning** affected? • Are **social/emotional** interactions affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

DEAF (DF)

Evidence of a disability	**Descriptors of Evidence**	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
(Required Evidence) **Identified hearing loss in the speech frequencies.**	A hearing loss averaging greater than 70 dB in the speech frequencies (500Hz-4000Hz).	Audiological exam by an audiologist.	Document audiological information that provides evidence of the hearing loss. Provide relevant historical evidence of the hearing loss.
(Required Evidence) Evidence of either descriptor must be selected. **Processing delays** **OR**	The hearing loss impairs auditory processing of linguistic information. Affected areas should include: • listening, • speaking, • reading, and • writing The areas affected are with or without amplification. There must be evidence that the student's performance is significantly lower than peers **OR**	Observation of listening skills in educational setting or natural environment. Medical and developmental history. Parent interview. Teacher reports/review of student work. Rating scales. Checklists. Multiple assessment approaches: • Standardized testing. • Language samples. • Performance assessments. Measures of self-help skills.	Clearly state how **ALL** data supports the findings of significantly lowered performance in the processing of linguistic information. **OR**
Adverse Effect	The hearing loss adversely affects educational performance. All findings should lead to the conclusion that the unique behaviors/challenges the student is experiencing are associated with the disability and are occurring frequently and at a level of intensity that adversely affects performance in the PRESENT educational setting or natural environment.		Explain how the hearing loss is adversely affecting the student's performance in the educational setting or natural environment. (see * Identifying the adverse effect …")

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(Required) **Exclusionary Factors**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards-based instruction, targeted interventions tried and results of interventions, etc.) *(Preschool students: "appropriate Instruction" means exposure to appropriate developmental and early literacy /numeracy activities.)* o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty?	
(*Required)* **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

***Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education**			
Challenges because of the disability	**Areas affected**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the hearing loss?	• Is **academic learning** affected? • Is **communication** affected? • Is **independent functioning** affected? • Are **social/emotional** interactions affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

DEAF-BLINDNESS (DB)

Clarifications for Deaf-Blindness
Student must meet the criteria of deafness or hard of hearing **and** visual disability including blindness.

Evidence of a disability	**Descriptors of Evidence**	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
(Required Evidence) **Identified as deaf or hard of hearing.**	See criteria for **deaf or hard of hearing.**	Audiological exam by an audiologist.	Document audiological information that provides evidence of the hearing loss. Provide relevant historical evidence of the hearing loss.
(Required Evidence) **Partially sighted, blind, or progressive visual impairment.**	See criteria for **partially sighted, blind**, or **progressive visual impairment.**	Visual acuity exam by optometrist or ophthalmologist.	Document information that provides evidence of the vision loss. Provide relevant historical evidence of the vision loss.
(*Required Evidence)* **Adverse effect**	Concomitant hearing and visual disabilities cause severe communication and other developmental and educational needs. All findings should lead to the conclusion that the unique behaviors/challenges the student is experiencing are associated with the disability and are occurring frequently and at a level of intensity that adversely affects performance in the PRESENT educational setting or natural environment.	Observation of student in educational setting or natural environment. Performance data. Medical and developmental history. Parent interview. Teacher reports/review of student work. Multiple assessment approaches: • Rating scales. • Checklists. • Standardized testing. • Language samples.	Explain how the deaf-blindness is adversely affecting the student's performance in the educational setting or natural environment. (see * Identifying the adverse effect …")

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION	
(Required) **Exclusionary Factors**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc.) *(Preschool students: "appropriate Instruction" means exposure to appropriate developmental and early literacy /numeracy activities.)* o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty?

(*Required)* **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

***Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education**			
Challenges because of the disability	**Areas affected**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the deaf-blindness? • Significant hearing loss and • Significant loss of vision	• Is **academic learning** affected? • Is **communication** affected? • Is **independent functioning** affected? • Are **social/emotional** interactions affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

DEVELOPMENTAL DELAY (DD) (age three through five)

Clarifications for Developmental Delay
• A cognitive assessment must be completed to help differentiate between global (overall) delays and specific developmental problems. • Academic development – emergent literacy skills must be assessed. • If communication is delayed, both speech and language must be delayed. • If motor development is delayed, ALL aspects of motor development must be delayed. • Standardized assessments must not be used in isolation; there must be validation between measurements, observations, parent reports, developmental milestones, etc.

Evidence of a disability	**Descriptors of Evidence**	**Data sources** : suggested ways of gathering data from a variety of sources	**Documentation:** Use jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
(Required Evidence) Evidence of either descriptor must be selected. **Global delay.** **OR**	Cognitive development and adaptive behaviors are delayed 1.5 standard deviations (SD) below the mean when compared with the standard score expected for chronological age (CA) (e.g., 22 points below the mean of 100). **OR**	Observation of student focused on area of concern in natural environment. Medical and developmental history. Parent interview. Teacher reports/review of student work. Rating scales. Developmental checklists. Multiple assessment approaches: • Standardized testing. • Play assessment. • Parent/child interaction (e.g. Book reading and play). • Language sample. • Copying/drawing. • Dynamic assessment. Adaptive behavior skills.	Clearly state how **ALL** data leads to the conclusion of significant global delays in all areas of development. Provide relevant historical evidence of global delays. **OR**
Delay compared to a standard score in one or more of the following areas: • Motor development • Communication • Academic skills or • Adaptive Behavior **OR**	Delays of 1.5 SD below a standard score (e.g., 22 points below the mean of 100) in one or more of the following areas: **Motor development** - must include all: Fine, gross, sensory, and perceptual motor skills. **Communication –** must include both: Speech and language. **Academic development** – means emergent or pre-literacy skills **Adaptive behavior** **OR**		Clearly state how **ALL** data leads to the conclusion that the area(s) identified is significantly delayed when compared to average developmental expectations. Provide relevant historical evidence of delays. **OR**
Deviation from age expectations across settings, but data is inconclusive.	Describe the pattern(s) of learning that is significantly different from peers or age expectations. *See "When formal measures using norm-referenced tests are not appropriate."		**Clearly state how ALL data leads to the conclusion** that the student's learning patterns are significantly different from age expectations affecting the student's performance across various environments.

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(Required) **Exclusionary Factors**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction – Did the student have exposure to developmentally appropriate early literacy and numeracy activities? o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty?	
(*Required)* **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in developmentally appropriate activities. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum. Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education.

*Identifying the need for special education			
Challenges because of the disability	**Areas affected**	**How ?areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the developmental delay?	• Is **motor development** affected? • Is **communication** affected? • Is **academic development** affected? • Is **adaptive behavior** affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

*** When formal measures (using norm-referenced) tests are not appropriate or feasible.**		
When formal measures (norm-referenced) tests are not appropriate or feasible, the Team must have evidence that the student's patterns of learning deviate from age expectations across settings and information is gathered from multiple sources. (See table entitled "Variety of assessment tools and strategies.")		
Descriptors of Evidence (Significant deviation from average development in one or more areas.)	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Identify the sources of information and explain evidence.
Patterns of learning deviate from age expectancy in one or more areas. Patterns are pervasive across various settings. Rate of skill acquisition is significantly below that of peers or developmental expectations. **Motor development**: Fine, gross, sensory, and perceptual motor. Significant difficulty with **ALL** motor skills across various activities. **Communication**: Speech and language. Significant challenges understanding age appropriate information, reasoning, and solving problems. **AND** Significant challenges expressing self – all listeners find student extremely difficult to understand. Student is unable to clearly express needs or ideas or participate in a communicative exchange using appropriate words or sentence structures. **Academic development** Significant difficulty acquiring emergent literacy skills (e.g., book and print awareness, repeating rhymes and songs, "reading environmental signs," scribbling, etc.). **Adaptive behavior** Significant delays in acquisition of developmentally appropriate self-care, home living, community use, self direction, health, and safety. Inconsistent display of developmentally appropriate behavioral expectations (e.g., following rules, directions, and routines). **Cognition** Significant challenges understanding age appropriate information; reasoning and solving problems.	Observation of student in the natural environment. (Observation must be focused on area of concern) focused on area of concern Medical and developmental history. Parent interview. Teacher reports/review of student work Data from outside sources (e.g. early intervention, private therapy, etc.) Rating scales. Developmental checklists. Multiple assessment approaches: • Standardized testing. • Play assessment. • Parent/child interaction (e.g., book reading and play). • Language sample. • Copying/drawing. • Dynamic assessment.* • Adaptive behavior skills. *Dynamic assessment refers to a variety of procedures that use a test-intervene-retest format and embed interaction with a child as part of the assessment process. Brassard & Boehm (2007)	Clearly state how **ALL** data leads to the conclusion that the student's learning patterns are significantly different from age expectations affecting the student's performance across many settings and activities. Documentation must include the frequency and intensity of the deviation in patterns of learning across settings.

DEVELOPMENTAL DELAY (DD6) (age six through eight)

Clarifications for Developmental Delay
• A cognitive assessment must be completed to help differentiate between global (overall) delays and specific developmental problems. • Three of the five areas must be delayed. • If communication is delayed, both speech and language must be delayed. • If motor development is delayed, ALL aspects of motor development must be delayed. • The disability must impact the student in his/her educational setting. • Standardized assessments must not be used in isolation; there must be validation between measurements, observations, parent reports, developmental milestones, etc. • A reevaluation must be completed prior to the student's 9th birthday.

Evidence of a disability	**Descriptors of Evidence**	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
(Required Evidence) Evidence of either descriptor must be selected. **Global delay.** **OR**	Cognitive development and adaptive behaviors are delayed 1.5 standard deviations (SD) below the mean when compared with the standard score expected for chronological age (CA) (e.g., 22 points below the mean of 100). **OR**	Observation of student which is focused on area of concern in educational environment Medical and developmental history. Parent interview. Teacher reports/ review of student work. Rating scales. Checklists. Multiple assessment approaches: Standardized testing. Language sample. Performance assessment. Dynamic assessment/trial teaching. Adaptive behavior skills.	Clearly state how **ALL** data leads to the conclusion of significant global delays in all areas of development. Provide **relevant** historical evidence of global delays. **OR**
Delay compared to a standard score in three or more areas. **OR**	Delays of 1.5 SD below a standard score (e.g., 22 points below the mean of 100) in three or more of the following areas: **Motor development** - must include all: Fine, gross, sensory, and perceptual motor skills. **Communication –** must include both: Speech and language. **Academic development.** **Adaptive behavior.** **Cognition.** **OR**		Clearly state how **ALL** data leads to the conclusion that the three or more areas identified are significantly delayed when compared to average developmental expectations. Provide **relevant** historical evidence of delays. **OR**

Deviation from age expectations across settings, but data is inconclusive.	Describe the pattern(s) of learning that is significantly different from peers or age expectations. *See "When formal measures using norm-referenced tests are not appropriate.	Document the manner in which the student's learning patterns are affecting the student's performance across various environments.

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(Required) **Exclusionary Factors**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc.) o Limited English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty?	
(*Required)* **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

***Identifying the need for special education**			
Challenges because of the disability	**Areas affected**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the developmental delay?	• Is **motor development** affected? • Is **communication** affected? • Is **academic development** affected? • Is **adaptive behavior** affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

*** When formal measures (using norm-referenced) tests are not appropriate or feasible.**		
When formal measures (using norm-referenced) tests are not appropriate or feasible, teams must have evidence that the student's patterns of learning significantly deviate from expectations in three out of five areas across educational settings from multiple sources. (See table entitled "Variety of assessment tools and strategies".)		
Descriptors of evidence (Significant deviation from average development in three or more areas.)	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Using jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
Significant deviation from average development in three or more areas. Resistance to targeted supplemental, intensive interventions. Rate of skill acquisition is significantly below that of peers or developmental expectations. Patterns of learning which deviate from age expectancy in three out of five areas in various settings. **Motor development**: Significant difficulty/delay with **ALL** (fine, gross, sensory and perceptual) motor skills. **Communication**: Speech and Language. Significant challenges understanding age appropriate information, reasoning, and solving problems. **AND** Significant challenges expressing self – all listeners find student extremely difficult to understand. Student is unable to clearly express needs or ideas or participate in a communicative exchange using appropriate words or sentence structures. **Academic development:** Insufficient progress to meet age or state approved standards in academic areas despite modifications of instruction, curriculum, and environment. **Adaptive behavior:** Inconsistent display of developmentally appropriate self-care, home living, community use, self-direction, health, and safety. Inconsistent display of developmentally appropriate behaviors (e.g., following rules, directions, and routines). **Cognition:** Significant challenges understanding age appropriate information, reasoning, and solving problems.	Progress monitoring data. Observation which is focused on the area of concern in an educational environment. Medical and developmental history. Parent interview. Teacher/service provider reports. Rating scales & checklists. Multiple assessment approaches: • Standardized testing. • Play assessment/observation. • Language sample. • Copying/drawing samples. • Dynamic assessment*/trial teaching. • Adaptive behavior skills. *Dynamic assessment refers to a variety of procedures that use a test-intervene-retest format and embed interaction with a child as part of the assessment process. Brassard & Boehm (2007)	Clearly state how **ALL** data supports the finding of specific patterns of learning that prevent a student from performing at an age or developmentally appropriate level. Patterns must be pervasive and evident across many settings and activities. Documentation must include the frequency and intensity of the deviation in patterns of learning across settings.

EMOTIONAL DISABILITY (ED)

Clarifications for Emotional Disability
• Best practice would be to involve a clinical and/or school psychologist to assist with the decision regarding emotional disability. • A diagnosis alone does not qualify a student for special education under IDEA or Ch. 60 • If there is no adverse impact on educational performance, a student's out of-school behavior is not a basis for eligibility, no matter how disordered. • A student who is socially maladjusted (i.e., continued misbehavior outside acceptable norms; see *Social maladjustment for further clarification) is **not** emotionally disabled, unless it is determined that he/she has an emotional disability.

Evidence of a disability	**Descriptors of Evidence**	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
(Required Evidence) Evidence of at least one descriptor must be selected. **Emotional conditions that interfere with learning.** Must be in existence for a long period of time *or to a marked degree*. **OR**	**An inability to learn that cannot be explained by intellectual, sensory, or health factors.** Examples: Exhibits significantly limited self-control, including an impaired ability to pay attention **not** due to ADD/ADHD). Out of touch with reality; presence of auditory and visual hallucinations, thought disorders, disorientation, or delusions. **OR**	Developmental/Educational history. Observation in natural environment Standardized achievement and ability tests: • Standardized testing. • Criterion referenced tests. • Curriculum-based measures. • Dynamic assessment. • Rating scales or checklists. • Work samples. Standardized behavior measurement instruments. Clinical/social/emotional assessment	Clearly state how **ALL** data leads to the conclusion that the emotional difficulties are significant and interfering with the ability to learn. Documentation must include evidence that behaviors have been in existence over a long period of time and to a marked degree. **OR**
Emotional conditions that significantly interfere with social development. Must be in existence for a long period of time* or to a marked degree*. **OR**	**An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.** Social development involves those adaptive behaviors and social skills that enable a student to meet environmental demands in an educational setting. Examples: Withdrawal, avoidance of social interaction and/or lack of personal care to an extent that maintenance of satisfactory interpersonal relationships is prevented. Displays consistent pattern of aggression toward objects or persons to an extent that development or maintenance of satisfactory relationships is prevented. **OR**	Developmental/Educational history. Observation in natural environment. Standardized achievement and ability tests: • Standardized testing. • Criterion referenced tests. • Curriculum based measures. • Dynamic assessment. • Rating scales or checklists. • Work samples. Standardized behavior measurement instruments. Clinical/social/ emotional assessment	Clearly state how **ALL** data leads to the finding that the emotional condition significantly impacts the student's ability to build or maintain social relationships. Documentation must include evidence that behaviors have been in existence over a long period of time and to a marked degree. **OR**

Displays of unexpected and atypical affect for the situation. Must be in existence for a long period of time*or to a marked degree*. **OR**	**Inappropriate types of behavior or feelings under normal circumstances.** Examples: Out of touch with reality; presence of auditory and visual hallucinations, thought disorders, disorientation or delusions. Cannot get mind off certain thoughts or ideas; cannot keep self from engaging in repetitive and/or useless actions. Pervasive oppositional, defiant, or noncompliant responses. Persistent patterns of bizarre and/or exaggerated behavior reactions to routine environments. **OR**	Developmental/Educational history. Emotional and behavioral status of student. Functional behavior assessment. Behavior rating scales. Checklists. Observations in natural environment Standardized assessments. Social/emotional assessments.	Clearly state how **ALL** data leads to the finding of inappropriate types of behaviors or feelings in normal situations. Documentation must include evidence that behaviors have been in existence over a long period of time and to a marked degree. **OR**
Unhappiness or depression. Must be in existence for a long period of time* or to a marked degree. Must be pervasive. **OR**	**A general pervasive mood of unhappiness or depression.** Examples: Exhibits pervasive sad affect, depression, and feelings of worthlessness; cries suddenly or frequently. **OR**	Developmental/Educational history. Emotional and behavioral status/Functional behavior assessment. Behavior rating scales. Checklists. Observations. Standardized assessments. Social/emotional assessments.	Clearly state how **ALL** data leads to the finding of a general mood of unhappiness or depression across various settings and situations. Documentation must include evidence that behaviors are pervasive and have been in existence over a long period of time and to a marked degree. **OR**
Physical symptoms or fears Must be in existence for a long period of time* or to a marked degree*.	**A tendency to develop physical symptoms or fears associated with personal or school problems.** Examples: Persistent physical complaints not due to a medical condition. Excessive fear and anxiety.	Educational, medical history. Emotional and behavioral status/Functional behavior assessment. Behavior rating scale. Checklists. Observations. Standardized assessments. Social/emotional assessments.	Clearly state how **ALL** data leads to the finding of a tendency to develop physical symptoms or fears associated with personal or school problems. Documentation must include evidence that behaviors have been in existence over a long period of time and to a marked degree.
(Required Evidence) ***Long period of time.**	A range of time from two to nine months, assuming preliminary interventions have been implemented and proven ineffective	Record review of developmental, medical, and social history. Cumulative school records.	Include documentation of time period along with description of behaviors.

	during that period. (OSEP,1989)	Information from parents. Results of interventions.	
(Required Evidence) ***Marked degree.**	The frequency, duration, or intensity of a student's behavior in comparison to the behavior of his peers. This can be indicative of either degree of acuity or pervasiveness. (OSEP,1989)	Record review of developmental, medical, educational, and social/behavioral history. Observation of behaviors in comparison to peers.	Documentation that behaviors are pervasive and occurring beyond what is typically expected when compared to peers should be included with description of behaviors.
(*Required)* **Adversely affects educational performance.**	All findings should lead to the conclusion that the unique behaviors/challenges the student is experiencing is associated with the disability and are occurring frequently and at a level of intensity that adversely affects performance in the PRESENT educational setting or natural environment.		Explain how the Emotional Disability is adversely affecting the student's performance in the educational setting or natural environment. (see * Identifying the adverse effect …")

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(Required) **Exclusionary Factors**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc) *(Preschool students: "appropriate Instruction" means exposure to appropriate developmental and early literacy /numeracy activities.)* o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty? • Is the student socially maladjusted? (*See Social Maladjustment below.) If yes, the student cannot be identified as ED.	
(*Required)* **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

***Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education**			
Challenges because of the disability	**Area(s) affected**	**How areas are affected**	**Need for specially designed instruction**
What are the unique challenges the student is experiencing because of the Emotional Disability?	• Is **academic learning** affected? • Is **communication** affected? • Is **independent functioning** affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place?

	• Are **social/emotional** interactions affected?		Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

***Social maladjustment:** A social maladjustment is a persistent pattern of violating societal norms, such as multiple acts of truancy, substance abuse, or sex abuse, and is marked by struggle with authority, low frustration threshold, impulsivity, or manipulative behaviors. A social maladjustment unaccompanied by an emotional disability is often indicated by some or all of the following:

- Unhappiness or depression that is not pervasive.
- Problem behaviors that are goal-directed, self-serving, and manipulative.
- Actions that are based on perceived self-interest even though others may consider the behavior to be self defeating.
- General social conventions and behavioral standards are understood, but are not accepted.
- Negative counter-cultural standards or peers are accepted and followed.
- Problem behaviors have escalated during preadolescence or adolescence.
- Inappropriate behaviors are displayed in selected settings or situations (e.g., only at home, in school, or in selected classes), while other behavior is appropriately controlled.
- Problem behaviors are frequently the result of encouragement by a peer group, are intentional, and the student understands the consequences of such behaviors.

HARD of HEARING (HH)

Evidence of a disability	**Descriptors of Evidence**	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
(Required Evidence) **Identified hearing loss in the speech frequencies.**	A hearing loss whether permanent or fluctuating, averaging 26-70 dB in the speech frequencies (500Hz-4000Hz).	Audiological exam by an audiologist.	Document audiological information that provides evidence of the hearing loss. Provide relevant historical evidence of the hearing loss.
(Required Evidence) Evidence of either descriptor must be selected. **Processing delays**	The hearing loss impairs auditory processing of linguistic information. Affected areas should include • listening, • speaking, • reading, and • writing The areas affected are with or without amplification. There must be evidence that the student's performance is significantly lower than peers.	Observation of listening skills in educational setting or natural environment. Medical and developmental history. Parent interview. Teacher reports/review of student work. Rating scales. Checklists. Multiple assessment approaches: • Standardized testing. • Language samples. • Performance assessments. Measures of self-help skills.	Clearly state how **ALL** data supports the findings of significantly lowered performance in the processing of linguistic information.
OR	**OR**		**OR**
Adverse Effect	The hearing loss adversely affects educational performance. All findings should lead to the conclusion that the unique behaviors/challenges the student is experiencing are associated with the disability and are occurring frequently and at a level of intensity that adversely affects performance in the PRESENT educational setting or natural environment.		Explain how the hearing loss is adversely affecting the student's performance in the educational setting or natural environment. (see * Identifying the adverse effect …")

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(Required) **Exclusionary Factors**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc.) *(Preschool students: "appropriate Instruction" means exposure to appropriate developmental and early literacy /numeracy activities.)* o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty?	
(*Required)* **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

*Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education			
Challenges because of the disability	**Areas affected**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the hearing loss?	• Is **academic learning** affected? • Is **communication** affected? • Is **independent functioning** affected? • Are **social/emotional** interactions affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

INTELLECTUAL DISABILITY (ID)

Clarifications for Intellectual Disability
• Intellectual disability is characterized by significant and permanent limited capacity for cognitive tasks and adaptive behavior skills, not just slower learning. • Rate of learning, patterns of learning, and understanding of abstract concepts must be assessed. • There should be a history of limited performance when compared to peers or age group. • Standardized IQ tests may be used as one measure for consideration, but it is not sufficient in isolation for the finding of an intellectual disability.

Evidence of a disability	**Descriptors of Evidence**	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
(Required Evidence) **Identified subaverage general intellectual functioning.** **Must be manifested during the developmental period.**	Intellectual functioning that is two or more standard deviations (2+ SD) below the mean. The developmental period is generally birth through age eight. Developmental milestones, rate and patterns of learning, understanding of abstract concepts are significantly below age expectations.	Standardized tests of intelligence/cognitive ability. Observations in natural environment.	**Clearly state how ALL data** leads to the conclusion of significant intellectual/cognitive limitation. Document evidence of permanent limitations of capacity currently and historically.
(Required Evidence) **Deficits in at least two adaptive skill areas.** **Must be manifested during the developmental period.**	Deficits in at least two adaptive behavior areas (behaviors that involve carrying out activities of daily living and social competence): • Communication. • Daily living. • Socialization. • Motor skills. The developmental period is generally birth through age eight.	Multiple assessment approaches: • Standardized testing. • Dynamic assessment. • Rating scales. • Checklists. • Criterion referenced tests. • Curriculum-based measures. Observation of student's behavior and typical performance in various environments. Medical, developmental, and educational history. Parent interview. Teacher reports/review of student work.	**Clearly state how ALL data** leads to the conclusion of significant limitations in adaptive behavior (skills that affect daily life and ability to respond to life changes and environmental demands). Adaptive behavior skills must be considered in light of intellectual functioning. Document evidence of permanent limitations of capacity currently and historically.

(Required) **Adversely affects educational performance.**	All findings should lead to the conclusion that the unique behaviors/challenges the student is experiencing is associated with the disability and are occurring frequently and at a level of intensity that adversely affects performance in the PRESENT educational setting or natural environment.	Explain how the Intellectual Disability is adversely affecting the student's performance in the educational setting or natural environment. (see * Identifying the adverse effect …")
(Required) **Exclusionary factors.**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc.) *(Preschool students: "appropriate Instruction" means exposure to appropriate developmental and early literacy /numeracy activities.)* o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty?	

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(*Required)* **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

***Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education**			
Challenges because of the disability	**Areas affected.**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the intellectual disability?	• Is **academic learning** affected? • Is **communication** affected? • Is **independent functioning** affected? • Are **social/emotional** interactions affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

MULTIPLE DISABILITIES (MD)

Evidence of a disability	Descriptors of Evidence	Data sources (suggested ways of gathering data from a variety of sources)	Documentation: Use jargon free language. Documentation must be from a variety of sources. Identify the sources of information and explain evidence.
(Required) **Identified subaverage general intellectual functioning.**	Intellectual functioning that is three or more standard deviations (3+ SD) below the mean.	Observation of student's actual behavior and typical performance in the educational/natural environment. Medical and developmental history. Parent interview. Teacher reports/review of student work. Multiple assessment approaches: • Standardized testing. • Dynamic assessment. • Rating scales. • Checklists. • Criterion referenced tests. • Curriculum-based measures.	Clearly state how **ALL** data leads to the conclusion of significant intellectual/cognitive limitation.
Must be manifested during the developmental period.	The developmental period is generally birth through age eight. Developmental milestones, rate and patterns of learning, understanding of abstract concepts are significantly below age expectations.		Document that intellectual/cognitive and adaptive behavior limitations were evident during the developmental period.
(Required) **Deficits in at least two adaptive skill areas.**	Deficits in at least two other adaptive behavior areas (behaviors which involve carrying out activities of daily living and social competence): • Communication. • Daily Living. • Socialization. • Motor skills.		Clearly state how **ALL** data leads to the conclusion of limitations in adaptive behavior (skills which affect daily life and ability to respond to life changes and environmental demands). Adaptive behavior skills must be considered in light of intellectual functioning.
Must be manifested during the developmental period.	The developmental period is generally birth through age eight.		Document that intellectual/cognitive and adaptive behavior limitations were evident during the developmental period.
(Required) **Concomitant (co-existing) impairments in combination cause severe educational needs.**	Determine eligibility under one or more of the following disability categories: Autism Spectrum Disorder Deaf Hearing Disability Orthopedic Disability Other Health Disability Visual Disability including Blindness		Clearly state how **ALL** data leads to the conclusion that there is a co-existing disability and the adverse effect of both on education. (see * Identifying adverse effect …")
Inconclusive evidence of concomitant impairments.	Review the indicators of other eligibility categories. If eligibility criteria for other categories are NOT met, the team and parent must have evidence that concomitant impairments exist. Identify the significant deficits and behaviors that the student exhibits over time and across various settings.		Clearly state how **ALL** data points to evidence of concomitant impairments and the method used to determine that the multiple disability exists.

(Required) **Adversely affects educational performance.**	All findings should lead to the conclusion that the unique behaviors/challenges the student is experiencing is associated with the disability and are occurring frequently and at a level of intensity that adversely affects performance in the PRESENT educational setting or natural environment.	Explain how the Multiple Disabilities are adversely affecting the student's performance in the educational setting or natural environment. (see * Identifying adverse effect …")
(Required) **Exclusionary factors.**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc.) *(Preschool students: "appropriate Instruction" means exposure to appropriate developmental and early literacy /numeracy activities.)* o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty? • The student does NOT have Multiple Disabilities if the **primary** factor for the disability is due to Deaf-Blindness.	

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(Required) **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

***Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education**			
Challenges because of the disability	**Area(s) affected.**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the multiple disabilities?	• Is **academic learning** affected? • Is **communication** affected? • Is **independent functioning** affected? • Are **social/emotional** interactions affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

ORTHOPEDIC DISABILITY (OD)

Clarifications for Orthopedic Disability
• A medical diagnosis alone does not qualify a student for special education under IDEA or Ch. 60 • A student who has a disability but only needs a related service not special education would not be considered a student with a disability under IDEA or Ch. 60

Evidence of a disability	**Descriptors of Evidence**	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
(Required) **Identified orthopedic disability.**	Medical evidence that a severe orthopedic disability exists. Congenital anomaly or disabilities caused by disease or other causes are to be considered. Examples: • Poliomyelitis. • Bone Tuberculosis. • Cerebral palsy. • Amputations. • Fractures or burns that cause contractures.	Medical report identifying orthopedic disability.	Document medical information that provides evidence of an orthopedic disability and the limitations of such a disability. A diagnosis of an orthopedic disability alone DOES NOT qualify a student for special education under IDEA or Ch. 60.
(Required) **Adverse effect of the orthopedic disability on educational performance.**	Information to link the orthopedic disability and the adverse effect it has on educational performance. All findings should lead to the conclusion that the student's orthopedic disability is pervasive and affects educational performance in the PRESENT educational setting or natural environment is adversely affected.	Observation of behavior and performance in natural/educational environment. Medical and developmental history. Parent interview. Teacher reports/ review of student work. Multiple assessment approaches: • Standardized testing. • Dynamic assessment. • Rating scales. • Checklists. • Criterion referenced tests. • Curriculum-based measures.	**Clearly state how ALL data** leads to the conclusion of the orthopedic disability adversely affecting the student's performance in the educational setting or natural environment. (see * Identifying the adverse effect …")

(Required) **Exclusionary factors.**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc.) Preschool students: "appropriate Instruction" means exposure to developmentally appropriate early literacy and numeracy activities. o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty?

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(Required) **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

***Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education**			
Challenges because of the disability	**Area(s) affected.**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the orthopedic disability?	• Is **academic learning** affected? • Is **communication** affected? • Is **independent functioning** affected? • Are **social/emotional** interactions affected?	In what ways are the defined areas affected? *(Must be unique to the student*.)	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

OTHER HEALTH DISABILITY (OHD)

Clarifications for Other Health Disability
• When considering a disability based on health, there must be a chronic, acute health problem, or medically fragile condition. • A medical diagnosis alone does not qualify a student for special education under IDEA or Ch. 60 • A student who has a disability but only needs a related service not special education would not be considered a student with a disability under IDEA or Ch. 60 • It is highly recommended that a health care provider review student records. • When teams are considering other health disability for students identified with ADD or ADHD there must be: • Clear documentation of a behavior plan with specific strategies to address behaviors within the general education classroom. • Data that demonstrates the effectiveness or ineffectiveness of the interventions attempted. • Interventions to address the documented problem.

Evidence of a disability	**Descriptors of Evidence**	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Documentation must be from a variety of sources. Identify the sources of information and explain evidence.
(Required Evidence) **A chronic, acute health condition or a medically fragile condition.**	Chronic health condition: The condition is long term and either not curable, has residual features, or the disease develops slowly and persists for a long period of time. Acute health condition: The condition is of quick onset or begins abruptly and with marked intensity, then subsides after a short period of time.	Review medical records that document a chronic, acute, or medically fragile condition. Example of acute health condition: Student received an injury of quick onset – e.g. a stroke which began abruptly and with marked intensity, but subsided after a short period of time.	Document and describe the chronic, acute, or medically fragile health condition.
(Required Evidence) **Limited strength, vitality resulting in limited alertness in the educational environment.** **OR** **Limited alertness including a heightened alertness to environmental stimuli which results in limited alertness in the educational environment.**	The health condition leads to limited strength, vitality: Lack of durability, energy, or vigor resulting in decreased capacity to perform school activities. Inability to maintain effort caused by a lack of resilience or stamina. **OR** Limited or heightened alertness: Inability to maintain awareness, vigilance, mindfulness, or attentiveness that may be caused by environmental stimuli or an internal ability to maintain focus. Examples: Discrepancy from peers in: Focus/sustaining effort. Organization skills (materials, written work, thoughts).	Observation in educational or natural environment. Health history (specialized health care procedures, medication, level of pain). Attendance records (absences). Social and developmental history. Parent interview. Teacher interview/review of student work. Results of behavior interventions. Multiple assessment approaches: • Standardized testing. • Dynamic assessment. • Rating scales or checklists (for ADD or ADHD). • Checklists.	Clearly state how **ALL** data leads to the conclusion of limited strength or vitality resulting in limited alertness in the educational environment. **OR** Clearly state how **ALL** data leads to the conclusion of limited or heightened alertness resulting in limited alertness in the educational environment. Performance should be much below that of peers.

	Work completion (following directions, on task behavior, homework, self-initiation, independence).	• Criterion referenced tests. • Curriculum-based measures.	
(Required) **Adverse effect of the health impairment.**	All findings should lead to the conclusion that the unique behaviors/challenges the student is experiencing is associated with the disability and are occurring frequently and at a level of intensity that adversely affects performance in the PRESENT educational setting or natural environment.		Clearly state how **ALL** data leads to the conclusion of the health disability adversely affecting the student's performance in the educational setting or natural environment. (see * Identifying the adverse effect …")
(Required) **Exclusionary factors.**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc.) English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty? *Preschool students: "appropriate Instruction" means exposure to developmentally appropriate early literacy and numeracy activities),* o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty?		
ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION			
(Required) **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.	

***Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education**			
Challenges because of the disability	**Area(s) affected.**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the health disability?	• Is **academic learning** affected? • Is **communication** affected? • Is **independent functioning** affected? • Are **social/emotional** interactions affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

SPECIFIC LEARNING DISABILITY (SLD)

Clarifications for Specific Learning Disabilities
• Prior to the identification of a student with learning disabilities, there must be evidence of continued performance below expectations in relation to peers.
• There must be evidence that the individual received appropriate instruction and targeted intervention to address the area(s) of concern.
• Delayed classroom achievement by itself does NOT mean the student has SLD.
• The existence of a severe discrepancy alone does **NOT** automatically mean SLD exists.

Prior to referring a student for a special education evaluation ensure that the student:
• **Received scientific, research based instruction.**
• **Received scientific, research based interventions focused on the area of concern.**
• **Not made adequate progress after an appropriate period of time.**

AREA(S) OF CONCERN

Description of concern: Area(s) of concern must be identified. The following descriptors are to help teams identify areas of concern.	**Data Sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Identify the sources of information and explain evidence.
(Required Evidence) **Listening Comprehension**: Difficulty perceiving or understanding what is heard. **Notes:** If a student understands language but has difficulty on a standardized listening comprehension test (due to behavior etc.) there must be sufficient data to support the validity of the low test score. **Oral Expression**: Difficulty using meaningful language for the purpose of communication. **Basic Reading Skills:** Student has difficulty with: Decoding: • Unable to use the relationship between printed text and sounds to say or understand words (i.e. sound symbol association or blending letter sounds) • Sight Word Reading Vocabulary Structural analysis: Difficulty using knowledge of prefixes, suffixes, root words, syllabication	Classroom teacher, service providers, parent input. Observations by teachers, other school personnel. Parent reports of school history. Longitudinal data Expected level of classroom performance	Clearly describe the student's current academic performance (concerns and behaviors associated with the concern MUST be described in observable terms). A concern should be noted when a student's academic achievement is inadequate in comparison to peers. The concern should be raised after: • Scientific, research based instruction was delivered with fidelity. • Scientific, research based intervention was provided with fidelity, and • Student continues to struggle.

Reading Fluency: Difficulty with accurate and rapid expressive oral reading. **Reading Comprehension:** Difficulty understanding literal, inferential, or critical passages read orally or silently. **Written Expression:** Difficulty using language to clearly communicate ideas, thoughts, and feelings in a written format. **Notes**: Fine motor or cutting skills are NOT assessed as a part of written expression. If a student can produce an adequate writing sample with the aid of technology, the student does NOT have a severe delay in written expression. Spelling, handwriting, capitalization, and punctuation alone do NOT constitute a severe delay or discrepancy. Written expression requires the integration all modes of learning to produce a product in an organized manner. Developmentally it is difficult to reliably assess a student's written expression prior to the development of basic reading skills or below the second grade. **Math Calculation:** Difficulty working out problems given preset rules where only one answer is acceptable. **Math Reasoning**: Difficulty using math reasoning and problem solving skills.		Concerns must be evident from a variety of sources. Assessments **MUST** be targeted to the specific academic area of concern.

DATA REVIEW

Evidence of a disability	**Descriptors of Evidence**	**Data Review** (suggested ways of reviewing data from a variety of sources)	**Documentation:** Using jargon free language. Documentation must be from a variety of sources. Identify the sources of information and explain evidence.
(Required Evidence) **Appropriate instruction was provided in the area of concern**	Identify the scientific research based core instruction provided in the area of concern.	Review provision of general education instruction. Was the instruction: • delivered with fidelity? • differentiated to meet student needs? • interactive and engaging?	Document that the student: • received research based instruction • consistently attended school • received assistance to address areas of concern in a timely manner
(Required Evidence) **Educationally Relevant Medical Findings**	Review and determine medical information that is directly related to education.	Review any medical information and determine educational relevance.	Briefly explain the educational relevance of the medical information.

ASSESSMENT INFORMATION

Evidence of a disability	**Descriptors of Evidence**	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
(Required Evidence) **Observation of student with focus on area of concern.**	Observe specific behaviors that are directly connected to the academic performance of the student.	Observe student during routine classroom instruction completing tasks in the area of academic concern. Running records, time on task would be appropriate measures.	Summarize and describe the relevant behaviors that support the finding that the student cannot meet the instructional demands that apply to all students.
(Required Evidence) **Cognitive/intellectual functioning**	Measures of general intellectual abilities and observations demonstrating at least average abilities. Data on information processing that supports findings in the area(s) of concern.	Sources of information may include: Standardized testing Observation	Summarize and clearly explain the student's cognitive abilities and learning style.

(Required Evidence) At least one skill area must be selected **Listening Comprehension** **Oral Expression** **Basic Reading** **Reading Fluency** **Reading Comprehension** **Written Expression** **Math Calculation** **Math Reasoning**	In the area selected: Is the student NOT achieving adequately for his/her age or meeting grade level standards despite having had appropriate instruction? OR Does the student have a 1.5 standard deviation discrepancy between actual achievement and intellectual ability?	Use multiple approaches to measure student's academic performance. These may include: • Standardized testing. • Criterion referenced tests. • Curriculum-based measures. • Dynamic assessment. • Rating scales or checklists. • Report cards • Performance data (e.g. inventories, classroom quizzes • Work samples in the areas of student need • Teacher interviews/questionnaires • School records/report cards • Observations	Clearly state how **ALL** data leads to the conclusion of a severe delay in the area of concern such that the student is NOT meeting age or grade level standards OR Clearly state that how all data supports the finding of a significant discrepancy between the student's actual achievement and intellectual ability in the area of concern.
(Required Evidence) **Intervention provided** **OR**	Intervention Summary: What interventions were provided? Frequency/Duration/ Length of intervention (e.g. twice a week for 30 minutes for a nine week period)	Use progress monitoring data to identify the • results of the intervention. • rate of progress. • progress in relationships to peers.	Clearly summarize the • individualized interventions provided, • specific area targeted, • intensity of the interventions and • results of the interventions.
(Required Evidence) **Patterns of Strengths and weaknesses relevant to SLD using appropriate assessments.**	The student exhibits a pattern of strengths and weaknesses in performance, achievement or both relative to age, grade- level standards, or intellectual development that is determined to be relevant to the identification of SLD using appropriate assessments.	Comparison across norm referenced tests to support and validate academic performance.	Clearly summarize the patterns that emerged across the norm referenced test. These patterns must be related to achievement difficulties and assist with the development of interventions. *(e.g. For reading comprehension assessors would look for patterns of weakness in areas of vocabulary, receptive language, working memory and attention. Patterns of strength would be in the area of phonological processing/decoding.)*

(Required) **Exclusionary factors.**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. • Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc.) • English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty? • Was a visual, hearing, or motor disability ruled out as the primary cause of the learning difficulty? • Was intellectual disability ruled out as the primary cause of the learning difficulty? • Was emotional disability ruled out as the primary cause of the learning difficulty? • Were cultural factors ruled out as the primary cause of the learning difficulty? • Were environmental factors or economic disadvantage ruled out as the primary cause of the learning difficulty?

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(Required) **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

*Identifying the need for special education			
Challenges because of the disability	**Areas affected**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the specific learning disability?	• Is **oral expression** affected?* • Is **listening comprehension** affected?* • Are **basic reading skills** affected? • Are **reading fluency skills** affected? • Is **reading comprehension** affected? • Are **written expression skills** affected? • Are **math calculation skills** affected? • Are **math reasoning skills** affected? *If only oral expression and listening comprehension skills are affected without an impact on academics, Speech or Language criteria should be reviewed.	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

SPEECH or LANGUAGE DISABILITY (SoL)

Clarifications for Speech or Language Disability
• A speech-language pathologist (SLP) must be a part of the team making the decision regarding speech or language disability. • This eligibility category pertains to students who have significant difficulties with the oral communication system. • Multiple sources of data (see "Variety of assessment tools and strategies") must be considered in addition to performance on formal tests. Determination of a disability should not be based solely on results gathered from the SLP. • In order for a speech or language impairment to be considered a disability, it MUST have an adverse effect on progress in the general education curriculum. • Speech or language skills that are dialectal, cultural, or ethnic in nature are NOT a disability.

Evidence of a disability	**Descriptors of Evidence**	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Documentation must be from a variety of sources Identify the sources of information and explain evidence.
(Required) **Developmental or cognitive abilities.**	Developmental level or cognitive abilities.	Multiple assessment approaches: • Standardized testing. • Play assessment/observation. • Language sample. • Dynamic assessment. • Narrative retell. • Criterion referenced tests. • Curriculum-based measures. Rating scales or checklists. Medical, developmental, or social history. Parent or teacher interview/reports.	Clearly state how ALL data leads to the determination of student's ability level. Cognitive abilities do not need to be a "test." Ability level may be inferred from everyday behaviors (e.g., ability to problem-solve, process information, etc.). However, there must be input from multiple informants and sources.
(Required) Evidence of at least one descriptor of the student's oral communication system must be selected. **Articulation.**	Significant problem in the comprehension or production or both of an oral communication system that is NOT consistent with other developmental or cognitive abilities. **Articulation:** Atypical production of speech sounds characterized by: substitutions distortions additions or omissions that interfere with intelligibility of speech.	Articulation test. Test of phonological skills. Objective analysis of intelligibility. Input and interview of other listeners (e.g., teachers, parents, peers, etc.). Observation in the natural setting.	Clearly state how **ALL** data leads to the conclusion of a significant speech disability (articulation or phonological disorder) that is NOT commensurate with the student's other developmental or cognitive abilities.

	Phonological disorder: An impairment in the student's communication system to orally sequence sounds in words, phrases and sentences.		
Voice.	**Voice disorder:** The absence of voice or presence of abnormal quality, pitch, resonance, loudness, or duration of phonation.	Rating scales or checklists. Record review. Observation in the natural setting. Interviews. Medical history.	Clearly state how **ALL** data leads to the conclusion of a significant speech (voice disorder) disability that is NOT commensurate with the student's other developmental or cognitive abilities.
Fluency.	**Fluency disorder:** Deviations in the continuity smoothness rhythm or effort in spoken communication. These patterns may also be accompanied by excessive tension and or secondary behaviors such as avoidance or struggle.	Rating scales or checklists. Record review. Speech sample. Observation in the natural setting. Interviews. Developmental history.	Clearly state how **ALL** data leads to the conclusion of a significant speech (fluency disorder) disability that is NOT commensurate with the student's other developmental or cognitive abilities.
Oral Language.	A discrepancy of 1.5 standard deviations between the student's estimated cognitive level and performance on at least two standardized measures in the areas of semantics, grammar, or both. Language conditions: The breakdown in communication as characterized by problems in understanding or in using spoken language. These include: Morphology – The system that governs the internal structure of words and construction of word forms. Syntax – The system governing the order and combination of words to form sentences and the relationships among the elements in a sentence. Semantics – The system that governs the meanings of words and sentences.	Standardized tests. Rating scales or checklists. Record review. Language sample. Observation in the natural setting. Interviews. Developmental history.	Clearly state how **ALL** data leads to the conclusion of a significant oral language disability that is NOT commensurate with the student's other developmental or cognitive abilities. Documentation from a variety of sources indicating that language skills are not commensurate with developmental level (age expectations) or are significantly below that of cognitive abilities.

(Required) **Adverse effect of the speech or language impairment.**	All findings should lead to the conclusion that the unique behaviors/challenges the student is experiencing is associated with the disability and are occurring frequently and at a level of intensity that adversely affects performance in the PRESENT educational setting or natural environment.	Clearly state how **ALL** data leads to the conclusion of the speech or language disability adversely affecting the student's performance in the educational setting or natural environment. (see * Identifying the adverse effect …")
(Required) **Exclusionary factors.**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc.) *Preschool students: "appropriate Instruction" means exposure to developmentally appropriate early literacy and numeracy activities),* o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty?	
ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(Required) **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

***Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education**			
Challenges because of the disability	**Area(s) affected.**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the speech or language disability?	• Is **academic learning** affected? • Is **independent functioning** affected? • Are **social/emotional** interactions affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

TRAUMATIC BRAIN INJURY (TBI)

Clarifications for Traumatic Brain Injury
• A medical report to indicate that the brain injury was sustained must be provided. • Pre- and post- information should be collected as a part of the TBI assessment. • Optimal results are usually obtained in a quiet, one-on-one setting; however, these do not always accurately predict a student's performance in a real-life situation; a student's performance in a variety of settings should occur. • A student cannot be identified as having a traumatic brain injury if the brain injury is congenital or degenerative or induced by birth trauma.

Evidence of a disability	**Descriptors of Evidence**	**Data sources** (suggested ways of gathering data from a variety of sources)	**Documentation:** Use jargon free language. Documentation must be from a variety of sources. Identify the sources of information and explain evidence.
(Required) **Identified medical evidence of injury to the brain.**	Medical evidence of an acquired injury to the brain, caused by an external physical force.	Medical report from a physician. Medical and developmental history.	Document medical information that provides evidence of a TBI and the limitations (total or partial functional disability or psychosocial impairment) of such a disability.
(Required) **Impairment in one or more areas as a result of the open or closed injury.**	Cognition. Language. Memory. Attention. Reasoning. Abstract thinking. Judgment. Problem-solving. Sensory, perceptual, and motor abilities. Psychosocial behavior. Physical functions. Information processing. Speech.	Compare observation in classroom setting vs. social/non-classroom setting. Record review: Pre-injury performance. Parent interview: Pre- and post-behavior. Teacher reports/student work (pre- and post-injury). Multiple assessment approaches: • Standardized testing. • Dynamic assessment. • Criterion referenced tests. • Curriculum-based measures. • Rating scales. • Checklists.	Clearly state how ALL evidence supports the findings of the specific skill area(s) that is impaired.
(Required) **Description of student performance (academic or behavioral).**	Total or partial functional disability or psychosocial impairment		Clearly state how ALL data supports the findings that the student's behavior is significantly below that of peers.
(Required) **Adverse effect of the traumatic brain injury.**	All findings should lead to the conclusion that the unique behaviors/challenges the student is experiencing is associated with the disability and are occurring frequently and at a level of intensity that adversely affects performance in the PRESENT educational setting or natural environment.		Clearly state how **ALL** data leads to the conclusion of the traumatic brain injury adversely affecting the student's performance in the educational setting or natural environment. ((see * Identifying the adverse effect …")

(Required) **Exclusionary factors.**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc.) *Preschool students: "appropriate Instruction" means exposure to developmentally appropriate early literacy and numeracy activities),* o English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty? • The student cannot be identified as having a traumatic brain injury if the brain injury is congenital or degenerative or induced by birth trauma.

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(Required) **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

***Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education**			
Challenges because of the disability	**Area(s) affected.**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the traumatic brain injury?	• Is **academic learning** affected? • Is **communication** affected? • Is **independent functioning** affected? • Are **social/emotional** interactions affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

VISUAL DISABILITY including BLINDNESS (VDB)

Evidence of a disability	Descriptors of Evidence	Data sources (suggested ways of gathering data from a variety of sources)	Documentation: Use jargon free language. Documentation must be from a variety of sources. Identify the sources of information and explain evidence.
(Required) **Identified loss of vision.**	Partially sighted: Visual acuity is 20/70 to 20/200 in the better eye with the best correction. **OR** Blind: Visual acuity is 20/200 in the better eye and with the best correction, or less, or the student has a subtended visual field of less than 20 degrees, regardless of central visual acuity. **OR** The student has a progressive visual impairment, such as retinitis pigmentosa, that will lead to eventual visual impairment.	Vision exam by optometrist or ophthalmologist. Medical and developmental history.	Document ophthalmologic information that provides evidence of a vision loss.
(Required) **There is an adverse effect on educational performance even with correction.**	The loss of vision even with best correction adversely affects educational performance.	Observation (in natural or educational environment). Parent interview. Teacher reports/student work. Multiple assessment approaches: • Standardized testing. • Dynamic assessment. • Criterion referenced tests. • Curriculum-based measures. • Rating scales. • Checklists.	Explain how the vision loss is adversely affecting the student's performance in the educational setting or natural environment. (see * Identifying adverse effect …")

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION	
(Required) **Exclusionary Factors**	All questions must be answered and considered when determining the primary cause for the student's learning difficulties. • Was the information gathered from a variety of informants and measured using various tools? One test or one source of information must not be used in the determination of special education eligibility. • Appropriate instruction and English proficiency – Both must be ruled out as the **primary** cause of the learning difficulty. o Appropriate Instruction - Did the student receive appropriate instruction in reading and math? (Consider attendance, standards based instruction, targeted interventions tried and results of interventions, etc.) *(Preschool students: "appropriate Instruction" means exposure to appropriate developmental and early literacy /numeracy activities.)* • English Proficiency - Was English proficiency addressed and ruled out as the primary cause of the learning difficulty?

ESSENTIAL CONDITIONS and NEED FOR SPECIAL EDUCATION		
(Required) **Need for special education and related services.**	Connect the student's performance and needs to the eligibility category selected. Determine and identify the specially designed instruction needed to make progress in the general education curriculum. (Specially designed instruction means that the student must have adapted content, methodology or delivery of instruction.)	Summarize findings with a concluding statement that connects the disability with the impact on education and the need for special education. Describe the nature and extent of the student's need for specially designed instruction. What does the student need in the areas of instruction, curriculum, and/or environment? Identify the instructional strategies, accommodations, and modifications that the student needs to be involved in and progress in the general education curriculum.

*Identifying the ADVERSE EFFECT of the disability on education and the connection to the need for special education			
Challenges because of the disability	**Areas affected**	**How areas are affected**	**Need for specially designed instruction**
What are the unique difficulties or challenges the student is experiencing because of the vision loss?	• Is **academic learning** affected? • Is **communication** affected? • Is **independent functioning** affected? • Are **social/emotional** interactions affected?	In what ways are the defined areas affected? *(Must be unique to the student.)*	Does the student need interventions that significantly differ in intensity & duration from what can be provided solely through general education resources and services currently in place? Is the need for specially designed instruction connected to the category for which the student was found eligible? What specially designed instruction does the student need?

Eligibility Determination Process

Summarize and integrate assessment data using the Evaluation Summary Report. Provide a concise summary* of key findings and document in the appropriate sections.

- Discuss and review all information obtained on student.
- Compare findings to determine if the data collected meets the required elements of an eligibility category.
- Document team findings.

*This summary should not provide the level of detail included in the assessment information provided by individual assessors. It should be a succinct summary which integrates and validates all information obtained through the review of data and information collected by the individual assessors. Individual assessors should describe student needs and strengths in specific areas as this information can also be used to assist in the development of effective interventions and support the student's success within the general education environment.

Determine adverse effect. Based on all data describe the adverse effect the disability is having on the student's involvement and progress in the general education curriculum. Which area/skill(s) is adversely affecting the student's education and how is it being affected?

Considerations in determining adverse effect
• There is evidence that the disability is preventing the student from accessing and progressing in general education (consider the frequency and intensity of the behaviors). • Exposure or increased practice did not alleviate limitations in adaptive skill areas. • Skills/behaviors were resistant to accommodations of instruction, curriculum, and/or environment. • When interventions were provided (over a reasonable amount of time), there was no change in skill level(s) or no positive trend in rate of skill(s) development. • Generalization of skills to other situations/tasks did not occur with intervention. • Despite interventions, instructional and/or curricular accommodations did not sufficiently alleviate educational or behavioral concerns.

Determine the student's educational need for special education and related services as a result of his/her disability. Use the data to determine if the student's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided without the support of special education (i.e., specially designed instruction*). The team must identify the areas of educational need.

***Specially designed instruction** is organized and planned instructional activities that adapt, as appropriate, to address the unique educational needs of an eligible student, the content, methodology, or delivery of instruction. Review the comparison between specially designed instruction and accommodations to help determine if student is in need of specially designed instruction.

Specially designed instruction vs. accommodations	
Specially designed instruction	**Accommodations**
Student is provided direct instruction in reading texts.	Text is highlighted for the student.
Student is taught vocabulary strategies using content texts.	Student is given additional time to complete assignment.
Student is taught specific anger management strategies.	Student is given three opportunities prior to removal from class.

Consistency between evaluation and IEP
The IEP should address the unique educational needs of the student which were identified in the evaluation process.

Re-Evaluation

Definition: An evaluation that is conducted at any time after a student has undergone an initial evaluation and is currently eligible for special education services.

Frequency of the reevaluation:

- Shall not occur more than once a year, unless mutually agreed upon by the school and parent.
- Shall occur at least once every three years, unless parent and school mutually agree that a reevaluation is unnecessary.

Most components of the reevaluation process are identical to those required for initial evaluation (see "Initial Evaluation and Eligibility"). There are some differences between the initial and reevaluation. For example:

- Specific individuals on the reevaluation team may be different than they were for the initial evaluation.
- Under certain circumstances, the reevaluation may be conducted without parent consent.

Despite these differences, the three-prong test still applies to reevaluations.

THREE-PRONG TEST

Determination of continued eligibility and educational need

EACH PRONG MUST BE MET BEFORE THE TEAM CAN DETERMINE THAT THE STUDENT CONTINUES TO BE ELIGIBLE FOR SPECIAL EDUCATION.

- **Prong 1**: **DISABILITY**
  Does the student continue to have a disability?

- **Prong 2**: **ADVERSE EFFECT**
  Is the disability adversely affecting the student's involvement and progress in general education?

- **Prong 3**: **NEED**
  Does the student continue to **need** special education and related services as a result of his/her disability?
  Have these educational needs been identified?

Purpose of the reevaluation: In addition to the three-prong test, the team needs to determine if effective interventions are in place for the student. A reevaluation will help teams and parents identify and determine the following:

- Does the student continue to have a disability?
- Have the educational needs of the student been identified?
- What are the present levels of academic achievement and related developmental needs (i.e., functional performance) of the student?
- Are any additions or modifications to the special education and related services needed to enable the student to meet the measurable and annual goals set out in the Individualized Education Program (IEP) and to participate (as appropriate) in the general education curriculum?

Reevaluation process:

Step 1: Discuss and determine the necessity of a reevaluation. Team and parent discuss if a reevaluation is necessary (see below "Determining the need for a reevaluation").

- If the team and parent decide that the program and eligibility are not in question, and a reevaluation will NOT be conducted, proceed to **Step 2: Reevaluation is unnecessary.**
- If the team and parent agree that a reevaluation is needed, proceed to **Step 3: Reevaluation will be completed.**

Determining the need for a reevaluation

A reevaluation must be conducted if:

- The student's educational or related service needs have changed.
    - The student has improved academic achievement and functional performance.
    - The student is not progressing, and a reevaluation is needed to address more specific or detailed information for educational programming.
- A change in eligibility is being considered (including a student who may no longer need special education and related services).
- The student's parent or teacher requests a reevaluation.

A reevaluation is NOT required:

- Before termination of a student's eligibility due to graduation with a regular diploma.
- When a student has exceeded, or will be exceeding, the age of eligibility of a free appropriate public education (FAPE), which would be 20 years of age by the end of the school year.
- When the team and parent decide that the student's eligibility is not in question and needs are known (see "Questions to ask when determining the necessity of a reevaluation").

Questions to ask when determining the necessity of a reevaluation

- Is the student's current eligibility in question?
- What are the advantages and disadvantages of conducting a reevaluation?
- What effect will the reevaluation have on the student's educational program?
- Can the team identify the needs of the student?
- Is additional data needed to determine if the student continues to have a disability?

Step 2: Reevaluation is unnecessary. Provide parent with a Prior Written Notice (PWN) of the team's decision that a reevaluation is unnecessary. The school must:

- Notify parents of the determination and the reasons for the determination.
- Explain the rights of the parent to request an assessment to determine if the student continues to be a student with a disability and to determine the student's educational needs.

Step 3: Reevaluation will be completed. Provide parent with a PWN of the team's decision that a reevaluation will be completed.

Step 4: Review existing data. (See "Review of existing data" and "Sufficiency of data.") Is the team able to determine that the student continues to be a student with a disability? Can programming and planning be completed?

- If the team has sufficient data, document the information and proceed to **Step 8**.
- If the team does not have sufficient data and additional data needs to be obtained, proceed to **Step 5.**

Review of existing data Review of existing data refers to the process of collecting information that is relevant to the evaluation.

Data to be collected may include:
 	
• Information on developmental, medical, and educational history (also used to determine if concerns are long lasting or pervasive).
• Information relative to family composition and experiences (as appropriate and relevant to education) volunteered by parent.
• Information on performance and rate of learning.
  ◦ Daily work, grade level content mastered, classroom-based assessments and/or observations.
  ◦ Test scores, assessments (i.e., statewide assessments, norm-referenced assessments, etc.).
  ◦ Intervention(s) attempted and effects of the intervention(s), e.g., teacher and/or service provider information, information on instructional level that is significantly different from the content and skills of the regular education curriculum.
• Report cards and IEP progress reports.
• Attendance records, discipline reports, retentions, etc.
• Evaluations and information provided by parent.
 	
The information should sufficiently identify the area of disability and assist with programming for educational needs.

Sufficiency of data		
Using the existing data, the following questions can be answered with documentation:	Yes	No
• Is there documentation to determine that the student continues to be a student with a disability?		
• Is there data to determine that the student needs special education and related services?		
• Can the team identify the specially designed instruction that the student needs?		
• Can the present levels of academic achievement and functional performance be identified?		
• Have additions or modifications to the special education and related services been identified and will they enable the student to meet the measurable goals set out in the IEP and participate, as appropriate in the general education curriculum?		

Step 5: If the answer is “no” to any of the questions in ”Sufficiency of data, use “Additional data needed” to identify the critical data required to assist with programming and planning, and determine the data needed and who will obtain the data.

Additional data needed		
Select the area that additional information is needed?	**What critical data is needed to address the student’s educational program?**	**Who will collect the data?**
☐ Achievement		
☐ Adaptive Skills		
☐ Cognitive Ability		
☐ Social/Emotional/Behavior		
☐ Speech/Language/Communication		
☐ Other		

Step 6: Obtain parental consent. Consent must be obtained prior to the administration of specific tests.

- If parent provided consent for assessment(s), proceed to **Step 7.**
- If parent does not respond and reasonable efforts have been made to obtain the consent, document multiple attempts made to contact parents and continue with the reevaluation process, proceed to **Step 8.**
- If parent does not provide consent the school may, but is not required to, use consent override procedures which are mediation or due process.

Step 7: Conduct assessments.*

* **Assessments**

Definition: The specific tests, observations, tools, etc. used to gather relevant and meaningful information that will assist in the determination of current levels of academic achievement and functional performance.

Purpose: To identify areas of strength and weakness, provide information which will aid in the development of educational plans, and establish baseline functioning.

Step 8: Summarize and integrate assessment data using Evaluation Summary. Provide a concise summary* of key findings and document in the appropriate sections.

- Discuss and review all information obtained on student.
- Compare findings to determine if the data collected meets the required elements of an eligibility category.
- Document team findings.

*This summary should not provide the level of detail included in the assessment information provided by individual evaluators. It should be a succinct summary which integrates and validates of all information obtained through the review of data and information collected by the individual evaluators. Individual evaluators should describe student needs and strengths in specific areas as this information can also be used to assist in the development of effective interventions and support the student’s success within the general education environment.

Step 9: Determine adverse effect. Based on all data describe the adverse effect the disability is having on the student's involvement and progress in the general education curriculum. Which area/skill(s) is adversely affecting the student's education and how is it being affected?

Considerations in determining adverse effect
• There is evidence that the disability is preventing the student from accessing and progressing in general education (consider the frequency and intensity of the behaviors). • Exposure or increased practice did not alleviate limitations in adaptive skill areas. • Skills/behaviors were resistant to accommodations of instruction, curriculum, and/or environment. • When interventions were provided (over a reasonable amount of time) there was no change in skill level(s) or no positive trend in rate of skill(s) development. • Generalization of skills to other situations/tasks did not occur with intervention. • Despite interventions, instructional and/or curricular accommodations did not sufficiently alleviate educational or behavioral concerns.

Step 10: Determine the student's educational need for special education and related services as a result of his/her disability. Use the data to determine if the student's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided without the support of special education (i.e., specially designed instruction*). The team must identify the areas of educational need.

***Specially designed instruction** is organized and planned instructional activities that adapt, as appropriate, to address the unique educational needs of an eligible student, the content, methodology, or delivery of instruction. Review the comparison between specially designed instruction and accommodations to help determine if student is in need of specially designed instruction.

Specially designed instruction vs. accommodations	
Specially designed instruction	**Accommodations**
Student is provided direct instruction in reading texts.	Text is highlighted for the student.
Student is taught vocabulary strategies using content texts.	Student is given additional time to complete assignment.
Student is taught specific anger management strategies.	Student is given three opportunities prior to removal from class.

Consistency between evaluation and IEP
The IEP should address the unique educational needs of the student which were identified in the evaluation process.

Appendix C
Part C Transition Memo

NEIL ABERCROMBIE
GOVERNOR

KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAI'I
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAI'I 96804

OFFICE OF THE SUPERINTENDENT

July 1, 2011

To: Complex Area Superintendents, District Educational Specialists, Charter School Administrative Office Executive Director, Elementary School Principals, Student Services Coordinators, and Early Childhood Special Education Teachers

From: Kathryn S. Matayoshi, Superintendent

Subject: Early Childhood Transition: Requirements and Procedures to Ensure Compliance with the Individuals with Disabilities Education Act

The Hawaii Department of Education (DOE) provides special education and related services to children with disabilities beginning at age three under Part B of the Individuals with Disabilities Education Act (IDEA) and Hawaii Administrative Rules (HAR) Chapter 60. The Hawaii Department of Health (DOH), Early Intervention (EI) Section, provides services to infants and toddlers and their families under Part C of the IDEA. IDEA and HAR Chapter 60 include specific requirements related to the transition of children from Part C to Part B at age three.

The state is required to have in effect policies and procedures to ensure that children participating in EI programs, and who are potentially eligible to receive special education and related services from the DOE, experience a smooth and effective transition to DOE preschool programs. Both agencies have specific requirements that must be met and procedures that must be coordinated between the agencies.

- EI must convene a transition conference, unless the parent opts out, and must invite a DOE representative if the child is potentially eligible for DOE services.
- **A DOE representative must participate in the transition conference if invited.**
- EI must provide a written notification to the school for any child who is potentially eligible to receive services at least 90 days prior to the child's third birthday.
- **The DOE must ensure that, for children referred by EI, the child's eligibility must be determined and, if eligible, services provided by the child's third birthday.**

The DOE and DOH have revised procedures, documents and data collection to be consistent with updated information and reporting requirements from the U.S. Department of Education, Office of Special Education Programs (OSEP) pertaining to these transitions.

One change of practice of note is that EI programs will no longer be filling out and submitting the DOE Form 101, Request for Evaluation. Although completing the DOE Form 101 has always been the school's responsibility to complete, many EI programs have traditionally used the DOE

Form 101 to begin a child's transition to the DOE. Beginning July 1, 2011, the DOH, Early Intervention Form EI-8b, Part C Transition Notice to DOE (Attachment D), will serve as a referral or request for evaluation. This form includes the information necessary for DOE personnel to complete the DOE Form 101.

Upon receipt of a Form EI-8b, Part C Transition Notice to DOE, the school must:

- Date-stamp the transition notice.
- Provide the parents of the child a copy of the Procedural Safeguards Notice.
- Complete the DOE Form 101
    - The receipt date stamped on the transition notice becomes the "Date the DOE first received this request" at the bottom of the DOE Form 101.
    - The date of the parent signature on the EI-8b becomes the date of the "Signature of Requester" on the DOE Form 101.
- Within 15 days of the date of receipt of the transition notice, convene and/or consult with the parent and required team members to review existing information to determine what additional data, if any, are needed to determine if the child is a child with a disability and requires special education and related services.
- Within 15 days of the date of receipt of the transition notice, provide a prior written notice to the parents documenting the proposal or refusal to evaluate the child.

Further details regarding relevant timelines and the responsibilities of both agencies are included in Attachments A, B, and C.

Collaboration between EI providers and DOE staff in adhering to the purposes and requirements of IDEA Parts B and C is essential to achieving smooth and effective transitions for children and families. The attached documents and procedures are an effort to facilitate this collaboration and ensure compliance with IDEA requirements.

For further information about transition requirements and procedures, please contact the following District 619 Coordinator for your complex area.

District	619 Coordinator	Contact Number
Honolulu	Sheri Arima	735-6200
Central	Joanne Miyasato	421-4263 x231
Leeward	Kerry Shiroma	675-0384 x235
Windward	Judy Mailheau	233-5718 x268
Hawaii	Lynn Holman	323-0015
Maui	Bobbie-Jo Moniz-Tadeo	873-3520
Kauai	Jeannie Odo	274-3504

If additional clarification is needed, please contact Ms. Anne Kokubun, Educational Specialist, Special Education Section, at 808-203-5562 or email at anne_kokubun@notes.k12.hi.us.

KSM:AK:nd

Attachments

c: Assistant Superintendents
Superintendent's Office Directors
Ms. Loretta Fuddy, Director, Department of Health
Ms. Sue Brown, Supervisor, Department of Health Early Intervention Section
Office of Curriculum, Instruction and Student Support

Transition from Early Intervention (EI) to Department of Education (DOE) Procedures and Timelines

Timeline	Agency Responsible	Procedure
90-270 days prior to child's third birthday	EI	With the approval of the child's parent(s), convene a Transition Conference which includes an EI representative, the family, DOE representative (if the child is potentially eligible for DOE services) and other agency representatives, as appropriate.
When invited	DOE	A DOE representative must participate in the Part C Transition Conference. Provide the parent with information about the DOE evaluation process and educational services. (Participation may be in person or by other means, i.e. by phone, if agreeable to the parent and EI.)
90-120 days prior to child's third birthday	EI	EI must submit the form "Part C Transition Notice to DOE" to the child's DOE home school. If the Part C Transition Conference is scheduled within 90-120 days prior to the child's third birthday, the form may be given to the DOE representative at the Part C Transition Conference.
Upon receipt of the "Part C Transition Notice to DOE"	DOE	Upon receipt of the "Part C Transition Notice to DOE," provide the parents of the child a copy of the Procedural Safeguards Notice. EI programs will no longer be submitting a DOE Form 101. The Transition Notice serves as a referral for evaluation. School personnel should date-stamp the Notice upon receipt.
Within 15 days from receipt of the Part C Transition Notice	DOE	Document receipt of the Part C Transition Notice as a referral for evaluation on DOE Form 101 beginning a 15-day timeline in which the school must: • Convene and/or consult with the parent and required team members to review existing information and determine what additional data, if any, are needed to determine if the child is a child with a disability and requires special education and related services. • Provide a prior written notice to the parents documenting the proposal/refusal to evaluate.
No required timeline	DOE	The school must obtain consent from the parent(s) to conduct the evaluation using DOE Form 102a.

Transition from Early Intervention (EI) to Department of Education (DOE) Procedures and Timelines

Timeline	Agency Responsible	Procedure
Within 60 days of receipt of parent consent on Form 102a	DOE	• Conduct evaluation. • Meet with parents and other required team members to determine eligibility. • Provide to the parent a copy of the evaluation report and the documentation of determination of eligibility. • Provide written notice to the parents.
Less than 30 days from the eligibility determination date	DOE	• Obtain consent from parents for initial provision of special education and related services using DOE Form 102b. • Inform parents of their right to invite a representative from EI to attend the initial Individualized Education Program (IEP) meeting.
Within 15 days of receipt of parent consent on Form 102b, but no more than 30 days from the eligibility date	DOE	• Invite the EI Care Coordinator or other EI representative, upon parent request or at the discretion of the school, to participate in the IEP team meeting. • Meet with parents and other required IEP team members to develop the initial IEP.

By the child's third birthday	DOE	• Determine eligibility.
		• If eligible, develop and implement the IEP.
		• If the child's third birthday occurs during the summer, the IEP team must consider the date when services under the IEP will begin.
		  o The IEP team must determine if extended school year (ESY) services are necessary for the provision of a free appropriate public education (FAPE) to the child.
		  o If the child does not need ESY services, the date of initiation of services maybe the beginning of the school year and the IEP is considered "implemented" by the child's third birthday.

Transition from Early Intervention (EI) to Department of Education (DOE)
Frequently Asked Questions*

	Question	Response
EARLY INTERVENTION	What are the responsibilities of EI for transitioning children who are potentially eligible for DOE special education and related services?	For children who are potentially eligible for DOE services, EI must: • Hold a transition conference (with parent consent) at least 90 days prior to the child's third birthday and must invite a DOE representative to the conference. • Notify the DOE (school) of children who are potentially eligible for special education and services.
	What is the responsibility of EI if a child is referred to EI less than 90 days prior to the child's third birthday?	If a child is referred to EI **between 45 and 90 days** prior to the child's third birthday, then EI: • Must conduct the initial evaluation and Individual Family Support Plan (IFSP) meeting and, if the child is determined eligible and is receiving services from EI, EI must submit the form "Part C Transition Notice to DOE" to the child's home school. • May, but is not required to, conduct a transition conference with a DOE representative.
	What is the responsibility of EI if a child is referred to EI less than 45 days prior to the child's third birthday?	If a child is referred to EI **fewer than 45 days** prior to the child's third birthday, EI may, but is not required to, conduct an initial evaluation and IFSP meeting for that child. EI <u>is not required</u> to submit the form "Part C Transition Notice to DOE" to the child's home school.
	Must an EI Care Coordinator or service provider attend the initial IEP meeting if invited by the school at the request of the parent?	An EI Care Coordinator or service provider must make every effort to participate in the initial IEP meeting if invited by the school at the request of the parent, but is not a required IEP team member.
DEPARTMENT OF EDUCATION	Must a DOE representative attend the Part C transition conference?	A DOE representative is required to <u>participate</u> in the Part C transition conference. Participation may be by attending the meeting or by phone, if agreeable, to EI and the parent.
	What is the school's responsibility under IDEA when they receive a Part C Transition Notice for a child?	If a child has been served in EI and is referred to DOE via the Part C Transition Notice: • The school is responsible for giving the parents of the child a copy of the Procedural Safeguards Notice (PSN). • Chapter 60 requires that within 15 days of receiving a referral (Part C Transition Notice to DOE), the school must provide the parent with a prior written notice (PWN) informing them whether an evaluation will be conducted. Prior to conducting an initial evaluation under Part B, the school must obtain written consent from the parent.
	What is the school's responsibility under IDEA when they receive a Part C Transition Notice for a child and the parent does not	If the parent of a child who has been served in EI and referred to the DOE does not respond to multiple attempts by the school to meet or discuss the referral, the school must document the attempts to contact the parent and provide the PSN and a PWN to the parents documenting

*Questions and responses are derived from the OSEP Early Childhood Transition FAQs, 12-01-2009. 06/2011

Transition from Early Intervention (EI) to Department of Education (DOE)
Frequently Asked Questions*

	Question	Response
	respond to multiple attempts by the school to meet or discuss the referral, or refuses to sign consent for an initial evaluation?	that the child will not be evaluated for possible eligibility under Part B of the IDEA. A parent may ask for an evaluation at any time.
DEPARTMENT OF EDUCATION	What is the school's responsibility if a child was referred to EI less than 90 days prior to the child's third birthday and was therefore referred to DOE less than 90 days prior to the child's third birthday?	If a child was referred to EI less than 90 days prior to the child's third birthday the school must conduct the initial evaluation under Part B adhering to all evaluation, eligibility and IEP timelines and requirements per Chapter 60 and IDEA. Schools are encouraged to complete the evaluation and eligibility processes and develop and implement the IEP by the child's third birthday or as soon after the third birthday as possible.
	What is the school's responsibility if a child was referred to Part C at least 90 days prior to the third birthday, but was referred to Part B less than 90 days prior to the third birthday?	If a child was referred to Part C at least 90 days prior to the third birthday, but was referred to Part B less than 90 days prior to the third birthday, the school must ensure that the evaluation and eligibility are completed and the IEP developed and implemented by the child's third birthday even if the evaluation/eligibility timeline expires after the child's third birthday.
	If a referral from EI (Part C Transition Notice) is received more than 120 days prior to the child's third birthday must the school begin an initial evaluation immediately?	If a referral from EI is received more than 120 days prior to the child's third birthday, the school and the parent may decide to postpone the initial evaluation under Part B until closer to the child's third birthday. This decision must be documented on a prior written notice. It is imperative that the school initiate evaluation procedures for the child with sufficient time to complete the process and, if eligible, have services in place by the child's third birthday.
	What if the school and the parent decide to conduct the evaluation far in advance of a child's third birthday? When is the school required to implement the IEP?	Even if the school and the parent complete the evaluation, eligibility and IEP for a child far in advance of the child's third birthday, the school is not required to implement the IEP prior to the third birthday, but must do so by the third birthday.
	What happens if a child's third birthday occurs during summer?	If a child's third birthday occurs during the summer, the IEP team must consider the date when services under the IEP will begin. If the child requires extended school year (ESY) services in order to receive a free appropriate public education, the IEP team may initiate services before school resumes. If the child does not require ESY services, the "projected implementation date" on the IEP may be the first instructional day of the next school year.
	What responsibilities does the school have to invite the EI care coordinator to the initial IEP meeting?	The school must inform parents that they may request the EI Care Coordinator or service provider be invited to the initial IEP meeting. The school is responsible for inviting the EI Care Coordinator or service provider to the initial IEP meeting if the parent requests.

*Questions and responses are derived from the OSEP Early Childhood Transition FAQs, 12-01-2009.

Transition from Part C Early Intervention Services to Part B Department of Education Services

Part C (Early Intervention) Begins the Transition Process

90-120 days prior to child's third birthday, Part C submits a Transition Notice (1) to child's DOE home school.

Part C schedules a transition conference and invites DOE home school.

At Part C transition conference, DOE representative informs parent about evaluation process and educational services.

Parent decision

If "no" for referral to DOE, then give Operation Search brochure.

Receipt of the Part C Transition Notice (1) triggers a 15-day timeline for the DOE. Contact parent to schedule team meeting, or gather data and information from parent and Part C to share with other DOE personnel involved in the evaluation decision. Provide PSN (2) to parent.

If yes for referral to DOE, Part C submits Transition Notice to DOE (1). This triggers the 15-day timeline. Give PSN (2) to parent. Schedule team meeting, or gather data and information from parent and Part C to share with other DOE personnel involved in the evaluation

If Part C Transition Conference is held more than 120 days prior to third birthday, the Transition Notice will not be given at that time.

Within 15 days of receipt of Part C Transition Notice to DOE (1), provide PWN for evaluation (3) to parents.

Within 60 days of receipt of parent consent for evaluation (4):

- conduct evaluation, and
- meet with parent and other required team members to determine eligibility (5)

If 102b=NO, child is considered ineligible.

Upon receipt of parent consent for initial provision of special education and related services (6):

- Schedule a meeting to develop the initial IEP (7)
- At parent request, invite a Part C representative
- Convene the meeting to develop the IEP within 15 days of receipt of consent (6), but no more than 30 days from the eligibility determination date.

Upon completion of the IEP, provide parent with the PWN for program and placement. (8)
Begin providing IEP services on the child's third birthday.

Required Documentation

1) Part C Transition Notice to DOE

2) Procedural Safeguards Notice (PSN)

3) Prior Written Notice for Evaluation

4) Parent Consent for Evaluation (102a)

5) Evaluation Report & Eligibility PWN

6) Parent Consent for Initial Provision (102b)

7) Individualized Education Program

8) PWN for Program and Placement

Department of Health
Early Intervention

Attachment D

PART C
TRANSITION NOTICE TO DOE

In order to support a smooth transition from Hawai'i's Early Intervention Program to the Department of Education's (DOE) Preschool Special Education Program, and to be consistent with Part C of the Individuals with Disabilities Education Act (IDEA), P.L. 108-446 transition requirements, each child's early intervention program is required to notify the local educational agency for the area in which the child lives that the child will shortly reach the age of eligibility and may be eligible for preschool services under Part B of the Act. **This notification is considered a referral to Part B but it is not a consent for a Part B, DOE evaluation.**

The following required directory information will be faxed to the DOE Representative in the district where the child currently lives at least 90 days but no more than 120 days prior to the child turning age 3, unless the family chooses not to have any information sent to DOE. Optional information will be provided to the DOE only with family's consent.

REQUIRED DIRECTORY INFORMATION:

Child's Name: _____ Birth Date: _____

Parent's/Legal Guardian's Name: _____

Mailing Address: _____

City/State/Zip: _____ Phone: _____

Part C Referral Date: _____

I consent that the Optional Information listed below can be provided to the DOE.

Initial

Yes	No	
☐	☐	Child's Diagnosis/Area of Concern: _____
☐	☐	Language spoken in the home: _____ Interpreter Needed: ☐ Yes ☐ No
☐	☐	IFSP: Date:
☐	☐	Evaluation Report: Date: _____
☐	☐	Other: _____

I do not consent to any information being provided to the DOE.

Initial

I received DOE's "Operation Search" brochure.

Initial

_____ _____

Print Name Relationship to Child

_____ _____

Signature of Parent/Legal Guardian Date

Parent/Legal Guardian was given this form on _____ and understands if not returned by _____ (10 calendar days), this form, with "Required Directory Information" will be automatically faxed to the DOE.

Home School: _____ District: _____

EI Care Coordinator: _____ Phone: _____

Date Sent to DOE: _____ If late (<90 days), reason why: _____

STATE OF HAWAI`I
DEPARTMENT OF EDUCATION

REQUEST FOR EVALUATION
(For Educational and Related Services from Age 3 to 20)

Name of Child (Last, First, Middle):				
Date of Birth:	Age:	Male ___ Female ___	Grade:	Student's ID number:
Current School or Program:				
Child's Home Address:				
Name of Father or Legal Guardian:		Home Phone:	Message Phone:	Emergency Phone:
Name of Mother or Legal Guardian:		Home Phone:	Message Phone:	Emergency Phone:
Name of Requester:		Relationship to this Child:		
Mailing Address of Requester:		Home Phone:	Business Phone:	Fax Number:
Language Most Often Used by Child:		Language Most Often Used at Home:		

Reason for Request: Please check area(s) of concern and attach any additional information.

___ Academic ___ Behavior ___ Fine Motor ___ Gross Motor
___ Health ___ Hearing ___ Speech/Language ___ Vision
___ Other:

Comments:

If parent/guardian requires special accommodations (e.g. language interpretation) to attend/participate in meetings, please describe:

_____ _____
Signature of Requester Date

***NOTE:** Please submit this request to a public school or Department of Education office.*

FOR AGENCY USE ONLY:

Date the Department of Education first received this request: _____ _____
Initials

ATTACHMENT: Procedural Safeguards Notice (Parent & Student Rights in Special Education and Rights of Parents and Students, Section 504/Chapter 53)

DISTRIBUTION: School, Parent, District

OCISS Form 101 Rev. 03/02
Request for Evaluation

NEIL ABERCROMBIE
GOVERNOR

KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAI'I
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAI'I 96804

OFFICE OF THE SUPERINTENDENT

September 11, 2012

TO: Complex Area Superintendents, Principals, Public Charter School Directors, District Educational Specialists, and Special Education Teachers

FROM: Kathryn S. Matayoshi, Superintendent

SUBJECT: **Students with Disabilities in Private School/Placement Placed by the Department of Education (Due Process Hearing Decision, Settlement Agreement, Court Order or Individualized Education Program)**

Monitoring Special Education Students in Private School/Placement

This memo replaces the memo dated April 14, 2009; Special Education: Recent Changes to the Hawaii Revised Statutes §302A-443.

The Department of Education (Department) must ensure that the requirements under the Individuals with Disabilities Education Act (IDEA) are carried out for all students with disabilities, including those placed by the Department in a private school/placement. [34 CFR §§300.149(a) and 300.325(c)] In addition, Act 129, effective on June 15, 2011, authorized the Department to monitor any child eligible to receive special education and related services placed as the result of a due process hearing decision, settlement agreement, court order, or an individualized education program (IEP) placement at the Department's expense in any private school/placement. Any private school/placement that receives funding from the Department for the placement of a student with a disability, whether the funding is by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian must allow the Department access to monitor any student placed at the private school/placement.

At the beginning of each school year, the district/complex area will send a letter regarding the Department's monitoring requirement to each private school/placement that received a student with a disability at the district/complex area's expense (placed by the Department). If a placement is made later in the school year to a private school/placement that was not sent a letter, the district/complex area must send the letter as soon as possible, but no later than 30 days, after the placement decision. The letter template is included in Attachment B: "Private School/Placement Monitoring of Student Letter to Parent(s)."

The public school (School) must send the letter template in Attachments B and C: "Private School/Placement Monitoring of Student Letter to Parent(s)" and "Private School/Placement Monitoring of Student Letter to Private School/Placement" within ten (10) business days of the first private school/placement of a student with a disability at a private school/placement as the result of a due process hearing officer's decision, settlement agreement, court order, or IEP team decision.

When scheduling a monitoring visit, the School sends the scheduling letter in Attachment D: "Oversight and Monitoring Requirement of Student Letter to Private School/Placement". For the visit, the monitoring team must consist of at least two (2) representatives from the School or complex who are knowledgeable about the student. The School will document contact information and observation using Attachment E: "Monitoring Log: Contact Information" and Attachment E1: "Student Observation Form".

For more detailed information on the monitoring requirements, Attachment A: "Procedural Guidelines for Monitoring Special Education Students in In-State Private School/Placement" and Attachment F: "Oversight and Monitoring of Student – Request for Student's Records Letter to Private School/Placement" are included as tools to document monitoring.

Graduation Requirements

As with all students enrolled in a School, special education students placed in private school/placement by the Department must meet the Department's requirements for a diploma or a certificate. The School's administrator will determine whether the private school/placement meets the standards of the Department for School's High School Diploma. The "Procedural Guidelines for Monitoring Special Education Students in In-State Private School/Placement" (Attachment A) should be considered in that determination. The student with a disability attending a private school at the Department's expense will be issued the School's High School Diploma or Certificate of Completion.

Graduating Class of 2010, 2011, 2012 (Refer to Attachment G for complete information)

Board of Education (BOE) Recognition Diploma
The BOE Recognition Diploma is awarded to students with grade point averages (GPA) of 3.0 and above who successfully complete the Senior Project.

To students who meet the requirements, the BOE Recognition Diploma is awarded:

- *Cum Laude* with a GPA of 3.0 to 3.5;
- *Magna Cum Laude* with a GPA of 3.5+ to 3.8; or
- *Summa Cum Laude* with a GPA of 3.8+ and above.

High School Diploma
The High School Diploma shall be issued to students who have met all graduation requirements in the required courses by demonstrating proficiency in the Hawaii Content and Performance Standards and General Learner Outcomes.

Certificate of Completion
The Certificate of Completion of an Individually Prescribed Program shall be issued to a student with a disability who completes all the requirements set by the student's IEP.

Graduating Class of 2013 (Refer to Attachment H)

Should you have any questions, please contact Ms. Debra Farmer, Administrator, or Ms. Karen Sato, Educational Specialist, Special Education Section, at (808) 203-5560.

KSM:KS:tk

Attachments

c: Assistant Superintendents
Superintendent's Office Directors
Charter School Administrative Office
Office of Curriculum, Instruction and Student Support

ATTACHMENT A
Special Education Section
Office of Curriculum, Instruction and Student Support
Department of Education

Procedural Guidelines for Monitoring Special Education Students in In-State Private School/Placement

Applicable Law

1. IDEA: 20 U.S.C. §§ 1412(a)(11) and 1416
2. 34 C.F.R. §§ 300.114 through 300.120; 300.129 through 300.149
3. HRS §302A-443(f) through (j)

Students Placed in Private School/Placement

These procedures are applicable to all students who are eligible for special education and related services and are placed in an in-state private school/placement as a result of a due process hearing decision, settlement agreement, court order or individualized education program (IEP) placement and receiving funding from the Department of Education (Department) for the cost of the private school/placement. Receiving funding from the Department (Department's expense) means direct payment to the private school/placement or reimbursement to the student's parent, legal guardian, or legal custodian.

Act 129, effective June 15, 2011, amended HRS 302A-443, authorizing the Department to monitor any child eligible to receive special education and related services, placed in any private school/placement receiving funding from the Department.

Monitoring is to ensure that:

- Each student is receiving academic education, instruction, and programming as required by the student's Individualized Education Program (IEP).
- The curriculum and instruction are rigorous, based on content standards aligned with the Common Core State Standards (CCSS) or Hawaii Content & Performance Standards (HCPS) III.

Monitoring shall include, but is not limited to:

- Review of records (i.e., attendance, grade, discipline, schedule of classes, data sheets, private school administered assessments), notes, or documentation related to a student with a disability, **at least quarterly**.
- Direct observation of a student with a disability with or without notice to the private school, **at least annually**.
- Interviews with the student's teachers at the private school at reasonable times, **at least annually**.
- Receipt of student's records from the private school/placement within three (3) business days of receipt of a request for such records.

Monitoring Team

A student with a disability placed in a private school/placement at Department's expense must be provided a free appropriate public education. The Department must:

1) Ensure a current IEP is in place.

2) Attach the due processing hearing decision, settlement agreement, court order, or IEP placement, to the IEP.

3) Conduct a reevaluation at least once every three (3) years or more frequently if conditions warrant, or if the parent requests a reevaluation.

4) Send **within ten (10) business days** of the IEP team placement, the due process hearing decision, settlement agreement, or court order, via delivery confirmation or return receipt requested and documentation of the electronic Comprehensive Student Support Systems (eCSSS) event log.

   To the Parents
   a) Attachment B: Private School/Placement Monitoring of Student Letter to Parent(s).
   b) Attachment D: Oversight and Monitoring Requirement of Student Letter to Private School/Placement.

   To the Private School/Placement
   a) Attachment C: Private School/Placement Monitoring of Student Letter to Private School/Placement.
   b) Attachment D: Oversight and Monitoring Requirement of Student Letter to Private School/Placement.
   c) Attachment F: Oversight and Monitoring of Student Letter to Private School/Placement - Request for Records.

5) Contact the private school/placement to confirm the visit to monitor the student, three (3) to five (5) business days after the scheduling letter is sent and document in the eCSSS event log. If unable to contact the private school/placement or the private school/placement fails to respond, send another scheduling letter and follow-up. If unable to contact or no response to second letter, conduct the monitoring visit at the school or facility as scheduled and document the results of the visit.

6) Document contact information on Attachment E: Monitoring Log: Contact Information.

7) Document the observation on Attachment E1: Student Observation Form.

8) Monitor the student in the private school/placement at least quarterly and document in eCSSS in the event log.
    a) Request student records from the private school.

The monitoring team shall consist of the following:

- At least two (2) representatives from the school, complex, complex area, or district knowledgeable about the student.

District/Complex Area

The District/Complex Area must:

1. Send Attachment C: "Private School/Placement Monitoring of Student Letter to Private School/Placement" at the beginning of each school year to each private school/placement that receives a special education student at the Department's expense.

2. Check the posting every April for the itemized rates, fees, and tuition for the following school year of the private school/placement that have students with disabilities at district/complex area's expense.

3. Review billing information received from private school/placement to ensure that:
    a. The same itemized rates, fees, or tuition are the same as those posted in #2, and
    b. Services are limited to those specified in each student's IEP.

4. Ensure that every public school that has a student placed at a private school/placement monitors their students' progress quarterly and conducts an on-site visit at least annually.

5. The district/complex area **must withhold payment** to any private school/placement that restricts or denies monitoring by the Department as authorized by Act 129.

(School Letterhead)

ATTACHMENT B
Private School/Placement Monitoring of Student
Letter to Parent(s)

(DATE)

(PARENT'S NAME)
(PARENT'S ADDRESS)
(PARENT'S CITY/STATE/ZIP CODE)

Subject: Oversight and Monitoring Requirement of Students Eligible for Special Education in Private School/Placement at Department's Expense

Dear (Parents):

Your child, (STUDENT'S FIRST AND LAST NAME), (DOB), is currently enrolled at (name of private school/placement) at the Department of Education's (Department) expense.

Pursuant to the Individuals with Disabilities Education Act (IDEA) and Hawaii Revised Statutes (HRS) §302A-443, the Department is required to exercise oversight and monitoring of any child eligible to receive special education and related services who has been placed in a private school/placement. Act 129, which took effect on June 15, 2011, authorizes the Department to monitor any student eligible to receive special education and related services, and who has been placed at the private school/placement at the Department's expense as a result of a due processing hearing decision, settlement agreement, court order or an individualized education program (IEP) placement with or without notice to the private school/placement. The Department's expense is defined as providing direct payment to the private school/placement or providing reimbursement to the student's parent, legal guardian, or legal custodian.

The Department is authorized to monitor your child who is at (NAME of Private School/Placement). Monitoring includes, but is not limited, to the following:

- Direct observations of the student at the private school/placement.
- Interviews with teachers/staff at the private school/placement.
- Records review (which includes: attendance records, grades, discipline referrals, schedule of classes, data sheets, formal/informal assessments conducted by independent evaluators or evaluators at your private school/placement, work samples, treatment plans, Functional Behaviorial Assessments/Behaviorial Support Plans/Crisis Plans, treatment plans, parent

training progress reports, and or any other current information relevant to the student's program).

The Department will contact the private school/placement to schedule a date for observation/review of records.

The Department appreciates your cooperation with this very important responsibility. If you should have any questions, please feel free to contact me at (PHONE NUMBER AND/OR EMAIL ADDRESS).

Sincerely,

(PRINCIPAL NAME)
Principal

SIGNER'S INITIAL:TYPIST'S INITIAL

Attachment: Procedural Safeguards Notice with addendum

c: (PRIVATE SCHOOL NAME)
(CAS NAME), Complex Area Superintendent
(DES NAME), District Educational Specialist
Debra Farmer, Education Specialist, Special Education Section
Office of Curriculum, Instruction and Student Support

(District/Complex Area Letterhead)

ATTACHMENT C
Private School/Placement Monitoring of Student
Letter to Private School/Placement

(DATE)

(NAME OF PRIVATE SCHOOL ADMINISTRATOR)
(TITLE OF PRIVATE SCHOOL ADMINISTRATOR)
(PRIVATE SCHOOL NAME)
(PRIVATE SCHOOL ADDRESS)
(PRIVATE SCHOOL CITY/STATE/ZIP CODE)

Subject: Oversight and Monitoring Requirements of Students Eligible for Special Education in Private Schools/Placements at the Department's Expense

Dear (NAME OF PRIVATE SCHOOL ADMINISTRATOR):

Pursuant to the Individuals with Disabilities Education Act (IDEA) and Hawaii Revised Statutes (HRS) §302A-443, the Department of Education (Department) is required to exercise oversight and monitoring of any child eligible to receive special education and related services who has been placed in a private school/placement.

Act 129, which took effect on June 15, 2011, authorizes the Department to monitor any student eligible to receive special education and related services who has been placed at the Department's expense in any private school/placement as a result of a due process hearing decision, settlement agreement, court order, or an individualized education program (IEP) placement with or without notice to the private school/placement. The Department's expense is defined as providing direct payment to the private school/placement or providing reimbursement to the student's parent, legal guardian, or legal custodian.

There is at least one student at (NAME OF PRIVATE SCHOOL/PLACEMENT) whose tuition is being paid for at the Department's expense. The Department is authorized to monitor the student who is at (NAME OF PRIVATE SCHOOL/PLACEMENT). Monitoring includes, but is not limited, to the following:

- Direct observations of the student.
- Interviews with teachers/staff at the private school/placement.
- Records review (which includes: attendance records, grades, discipline referrals, schedule of classes, data sheets, formal/informal assessments conducted by independent evaluators

or evaluators at your school/placement, work samples, treatment plans, Functional Behaviorial Assessments/Behaviorial Support Plans/Crisis Plans, treatment plans, parent training progress reports, and or any other current information relevant to the student's program).

The Department will contact your private school/placement to arrange a date for monitoring.

The Department appreciates your cooperation with this vey important responsibility. If you should have any questions, please feel free to contact (DISTRICT/COMPLEX AREA CONTACT) at (PHONE NUMBER AND/OR EMAIL ADDRESS).

Sincerely,

(COMPLEX AREA SUPERINTENDENT'S NAME)
Complex Area Superintendent

SIGNER'S INITIAL:TYPIST'S INITIAL

c: (DES NAME), District Educational Specialist
Debra Farmer, Educational Specialist, Special Education Section
Office of Curriculum, Instruction and Student Support

(School Letterhead)

ATTACHMENT D
Oversight and Monitoring Requirement of Student
Letter to Private School/Placement

(DATE)

(PRIVATE SCHOOL ADMINISTRATOR'S NAME)
(PRIVATE SCHOOL'S ADDRESS)
(PRIVATE SCHOOL'S CITY/STATE/ZIP CODE)

Subject: Oversight and Monitoring Requirement of Students Eligible for Special Education in Private School/Placement at Department's Expense

Dear (Private School Administrator):

The Department of Education (Department) received information that (NAME OF STUDENT'S FIRST AND LAST NAME), (DOB) is enrolled at your private school/placement and that tuition is being paid for at the Department's expense.

The Department is required to monitor (STUDENT'S NAME)'s progress through activities such as direct observation, interviews with teachers at the private school/placement records reviews (attendance, grades, discipline referrals, schedule of classes, data sheets, and or private school administered assessments).

Pursuant to the IDEA and Hawaii Revised Statutes (HRS) §302A-443, the Department is required to exercise oversight and monitoring of any child eligible to receive special education and related services who has been placed in a private school/placement.

Act 129, which took effect on June 15, 2011, authorizes the Department to monitor any student eligible to receive special education and related services who has been placed at the Department's expense in any private school/placement as a result of a due process hearing decision, settlement agreement, court order, or an IEP placement with or without notice to the private school/placement. The Department's expense is defined as providing direct payment to the private school/placement or providing reimbursement to the student's parent, legal guardian, or legal custodian.

The Department is authorized to monitor the student who is at (NAME OF PRIVATE SCHOOL/PLACEMENT). Monitoring includes, but is not limited, to the following:

- Direct observations of the student.
- Interviews with teachers/staff at the private school/placement.
- Records review (which includes: attendance records, grades, discipline referrals, schedule of classes, data sheets, formal/informal assessments conducted by independent evaluators or evaluators at your private school/placement, work samples, treatment plans, Functional

Behaviorial Assessments/Behaviorial Support Plans/Crisis Plans, treatment plans, parent training progress reports, and or any other current information relevant to the student's program).

Act 129 also authorizes the Department to conduct direct observations of a student who has been found eligible to receive special education and related services and has been placed in a private school/placement as a result of a due process hearing decision, settlement agreement, court order, or an IEP placement with or without notice to the private school/placement.

The Department will be conducting a site visit on the following day:

_____
(day, month, date, year, time)

The Department will be conducting the following monitoring activities:

_____ Observing the student receiving special education and related services

_____ Interviewing providers (i.e., teachers, paraprofessionals, staff, service providers)

_____ Reviewing records

_____ Conducting Department-administered assessment(s)

The Department appreciates your cooperation with this very important responsibility. If you should have any questions, please feel free to contact me at (PHONE NUMBER AND/OR EMAIL ADDRESS).

Sincerely,

(PRINCIPAL NAME)
Principal

SIGNER'S INITIAL:TYPIST'S INITIAL

c: Parent
(CAS NAME), Complex Area Superintendent
(DES NAME), District Educational Specialist
Debra Farmer, Educational Specialist, Special Education Section
Office of Curriculum, Instruction and Student Support

ATTACHMENT E

Special Education Section
Office of Curriculum, Instruction and Student Support
Department of Education

Monitoring Log: Contact Information

Documentation of contacts or attempts made to visit the private placement for observation, interview, review of educational records, etc.

Student Name _____ DOB _____

Home School _____ Complex _____

Private Facility _____ Address _____

Private Facility Phone _____ Private Facility Fax _____

Date	Time	Type of contact (ph. call, letter, in-person)	Name of DOE Personnel who made contact	Contact info. (ph. no., address)	First and last name of contact person at the private facility and title	Visit scheduled			If no, when rescheduled? If no response after 2 confirming attempts (5 and 8 days after scheduling letter), what was result of visit?
						Yes	No	No Response	

STUDENT OBSERVATION FORM

Student: _____ **Date:** _____

Classroom Teacher: _____ **Grade/Period:** _____

Observation Time: _____ **to** _____ **Subject:** _____

Number of Students in Class: _____

I. Classroom Organization and Environment

Sketch of Classroom

II. Instruction

III. Student

STUDENT OBSERVATION FORM – Page ___

Student: _____ **Date:** _____

Time	Task	Student Behavior	Teacher Response

IV. Summary/Follow-up

(School Letterhead)

ATTACHMENT F
Oversight and Monitoring of Student – Request for Student Records
Letter to Private School/Placement

(DATE)

(NAME OF PRIVATE SCHOOL/PLACEMENT ADMINISTRATOR)
(TITLE OF PRIVATE SCHOOL/PLACEMENT ADMINISTRATOR)
(PRIVATE SCHOOL/PLACEMENT NAME)
(PRIVATE CHOOL/PLACEMENT ADDRESS)
(PRIVATE SCHOOL/PLACEMENT CITY/STATE/ZIP CODE)

Subject: Oversight and Monitoring of Students Eligible Placed in Private School/Placement at Department's Expense - Request for Student's Records

Dear (NAME OF PRIVATE SCHOOL/PLACEMENT ADMINISTRATOR):

The Department of Education (Department) received information that (NAME OF STUDENT'S FIRST AND LAST NAME), (DOB) is enrolled at your private school/placement and that tuition is being paid for at the Department's expense.

Pursuant to the Individuals with Disabilities Education Act (IDEA) and Hawaii Revised Statutes (HRS) §302A-443, the Department is required to exercise oversight and monitoring of any child eligible to receive special education and related services who has been placed in a private school/placement.

Act 129, which took effect on June 15, 2011, authorizes the Department to monitor any student eligible to receive special education and related services who has been placed at the Department's expense in any private school/placement as a result of a due process hearing decision, settlement agreement, court order, or an individualized education program (IEP) placement with or without notice to the private school/placement. The Department's expense is defined as providing direct payment to the private school/placement, or providing reimbursement to the student's parent, legal guardian, or legal custodian.

Act 129 also requires that the student(s) enrolled at the private school/placement at the Department's expense to provide copies of a student's records to the Department within three (3) business days of receipt of a request for such records.

This letter serves as the request to receive (NAME OF STUDENT: FIRST AND LAST NAME) and (DOB) records. The records being requested, include but are not limited, to the following:

- Attendance records
- Grades
- Discipline referrals

- Schedule of classes
- Data sheets
- Informal/Formal assessments within the past year conducted by independent evaluators
- Informal/Formal assessments within the past year conducted by staff at your private school/placement
- Behavior rating scales within the past year by independent evaluators/staff members at your private school/placement
- Progress reports by staff members at your private school/placement
- Progress reports from related service providers
- Work samples
- Functional Behavior Assessments
- Behavior Support Plans
- Crisis Plans
- Medical Records
- Treatment Plans
- Parent Training Progress Reports
- Incident Reports
- Any other current information relevant to the student's program

Please provide (NAME OF STUDENT: FIRST AND LAST NAME) and (DOB) records within three (3) business days of receipt of this request.

The Department appreciates your cooperation with this very important responsibility. If you should have any questions, please feel free to contact me at (PHONE NUMBER AND/OR EMAIL ADDRESS).

Sincerely,

(NAME OF PRINCIPAL)
Principal

SIGNER'S INITIAL:TYPIST'S INITIAL

c: Parent
(CAS NAME), Complex Area Superintendent
(DES NAME), District Educational Specialist
Debra Farmer, Educational Specialist, Special Education Section
Office of Curriculum, Instruction and Student Support

GRADUATION REQUIREMENTS

For Classes graduating in 2010, 2011, 2012

High school graduation requirements of the Hawaii public schools, grades 9-12 include:

25 credits for the Board of Education Recognition Diploma or
24 credits for the High School Diploma.

If you have any questions regarding these graduation requirements, please see your school counselor or principal.

Superintendent

Office of Curriculum, Instruction and Student Support
Department of Education • State of Hawaii • RS 09-0043 • July 2008

The Honorable Linda Lingle
Governor, State of Hawaii

BOARD OF EDUCATION

Donna R. Ikeda, Chairperson
Karen Knudsen, First Vice Chairperson
Herbert S. Watanabe, Second Vice Chairperson

Lei Ahu Isa, Ph.D.
Jonathan Allen
Eileen Clarke, Ed.D.
Mary J. Cochran, Esq.
Margaret A. Cox
Breene Y. Harimoto
Cec Heftel
Kim Coco Iwamoto, Esq.
Denise Matsumoto
John R. Penebacker
Garrett Toguchi

Patricia Hamamoto, Superintendent of Education
Clayton J. Fujie, Deputy Superintendent

Daniel S. Hamada, Assistant Superintendent
Office of Curriculum, Instruction and Student Support

James M. Brese, Assistant Superintendent
Office of Fiscal Services

Sheri Lee, Assistant Superintendent
Office of Human Resources

Rodney S. Moriyama, Assistant Superintendent
Office of Information Technology Services

Randolph G. Moore, Assistant Superintendent
Office of School Facilities and Support Services

CREDITS	BOE DIPLOMA	HS DIPLOMA
Requirements	**16 credits**	**16 credits**
English[1]	4	4
Social Studies	4	4
Mathematics	3[2]	3
Science	3[3]	3
Physical Education (P.E)[4]	1	1
Health	1/2	1/2
Personal Transition Plan	1/2	1/2
Two credits in one of the following:	**2 credits**	**2 credits**
World Language (same language)[5]		
Fine Arts		
Career and Technical Education		
Electives (Any Subject Area)	**6 credits**	**6 credits**
Senior Project	**1 credit**	**not required**
TOTAL:	25 credits	24 credits

1 English shall include English Language Arts 1 (1 credit) and English Language Arts 2 (1 credit).
2 No more than one math credit can be lower than Algebra 1.
3 No substitution courses are allowed for the three science credits.
4 P.E. includes a required 1/2 credit course, P.E. Lifetime Fitness, and a second 1/2 credit P.E. basic elective.
5 Credits earned must be in the same language, e.g., 2 credits in French, NOT 1 credit in French and 1 credit in Japanese.

Board of Education (BOE) Recognition Diploma

The Board of Education Recognition Diploma is awarded to students with grade point averages of 3.0 and above who successfully complete the Senior Project.

To students who meet the requirements, the BOE Recognition Diploma is awarded:

- *Cum Laude* with a GPA of 3.0 to 3.5;
- *Magna Cum Laude* with a GPA of 3.5+ to 3.8; or
- *Summa Cum Laude* with a GPA of 3.8+ and above.

High School Diploma

The High School Diploma shall be issued to students who have met all graduation requirements in the required courses by demonstrating proficiency in the Hawaii Content and Performance Standards and General Learner Outcomes.

Certificate of Completion

The Certificate of Completion of an Individually Prescribed Program (IPP) shall be issued to a student with a disability who completes all the requirements set by the student's Individualized Education Program (IEP).

Commencement Exercises

Students shall be permitted to participate in commencement exercises if they:

1) meet the requirements for a diploma or a certificate;
2) have fulfilled their financial obligations; and
3) satisfy other conditions that meet the standards of clarity, reasonableness, and justifiability, as established by the Department of Education.

NOTE: *There are new graduation requirements for students graduating in 2013 and beyond. Please see your counselor for more information or visit http://graduation.k12.hi.us.*

6/30/08

Board of Education (BOE) Recognition Diploma with Honors
The Board of Education Recognition Diploma with Honors is awarded to students with grade point averages of 3.0 and above who successfully complete course and other requirements.

To students who meet the requirements, the BOE Recognition Diploma with Honors is awarded:

- *Cum Laude* with a GPA of 3.0 to 3.5;
- *Magna Cum Laude* with a GPA of 3.5+ to 3.8; or
- *Summa Cum Laude* with a GPA of 3.8+ and above.

Board of Education (BOE) Recognition Diploma
The Board of Education Recognition Diploma is awarded to students who successfully complete course and other requirements.

High School Diploma
The High School Diploma shall be issued to students who have met all graduation requirements in the required courses by demonstrating proficiency in the Hawaii Content and Performance Standards and General Learner Outcomes.

Certificate of Completion
The Certificate of Completion of an Individually Prescribed Program (IPP) shall be issued to a student with a disability who completes all the requirements set by the student's Individualized Education Program (IEP).

Commencement Exercises
Students shall be permitted to participate in commencement exercises if they:

1) meet the requirements for a diploma or a certificate;
2) have fulfilled their financial obligations; and
3) satisfy other conditions that meet the standards of clarity, reasonableness, and justifiability, as established by the Department of Education.

GRADUATION REQUIREMENTS

Beginning with the Class of 2013

High school graduation requirements of the Hawaii public schools, grades 9-12 include:

25 credits for the Board of Education Recognition Diploma or
24 credits for the High School Diploma.

If you have any questions regarding these graduation requirements, please see your school counselor or principal.

Patricia Hamamoto
Superintendent

Office of Curriculum, Instruction and Student Support
Department of Education • State of Hawaii • RS 09-0044 • July 2008

The Honorable Linda Lingle
Governor, State of Hawaii

BOARD OF EDUCATION

Donna R. Ikeda, Chairperson
Karen Knudsen, First Vice Chairperson
Herbert S. Watanabe, Second Vice Chairperson

Lei Ahu Isa, Ph.D.	Breene Y. Harimoto
Jonathan Allen	Cec Heftel
Eileen Clarke, Ed.D.	Kim Coco Iwamoto, Esq.
Mary J. Cochran, Esq.	Denise Matsumoto
Margaret A. Cox	John R. Penebacker

Garrett Toguchi

Patricia Hamamoto, Superintendent of Education
Clayton J. Fujie, Deputy Superintendent

Daniel S. Hamada, Assistant Superintendent
Office of Curriculum, Instruction and Student Support

James M. Brese, Assistant Superintendent
Office of Fiscal Services

Sheri Lee, Assistant Superintendent
Office of Human Resources

Rodney S. Moriyama, Assistant Superintendent
Office of Information Technology Services

Randolph G. Moore, Assistant Superintendent
Office of School Facilities and Support Services

In March 2008, the Hawaii State Board of Education (BOE) increased the rigor of the BOE Recognition Diploma for the Class of 2013. The upgraded diploma requirements will help students to be better prepared for careers, college, and civic responsibility.

National research and local data show that the types of courses required by the BOE Recognition Diploma will prepare students to advance in living wage jobs and achieve success in college-level courses.

For additional information, please see your counselor or visit http://graduation.k12.hi.us.

6/30/08

CLASS OF 2013 DIPLOMA REQUIREMENTS

COURSE REQUIREMENTS	BOE RECOGNITION DIPLOMA*	HIGH SCHOOL DIPLOMA
English	4.0 credits including: • English Language Arts 1 (1 credit); • English Language Arts 2 (1 credit); and • Expository Writing (0.5 credit)	4.0 credits including: • English Language Arts 1 (1 credit); and • English Language Arts 2 (1 credit)
Social Studies	4.0 credits including: • Modern History of Hawaii (0.5 credit); and • Participation in a Democracy (0.5 credit)	4.0 credits including: • Modern History of Hawaii (0.5 credit); and • Participation in a Democracy (0.5 credit)
Mathematics**	4.0 credits including: Algebra I, Geometry, and Algebra II or the equivalent	3.0 credits
Science	3.0 credits including: 2.0 credits in Chemistry, Biology, and/or Physics	3.0 credits
World Language Fine Arts Career and Technical Education	2.0 credits in one of the specified courses	2.0 credits in one of the specified courses
Senior Project	1.0 credit	Not Required
Physical Education	1.0 credit	1.0 credit
Health	0.5 credit	0.5 credit
Personal Transition Plan	0.5 credit	0.5 credit
Electives	5.0 credits	6.0 credits
Total	**25.0 credits**	**24.0 credits**
Other	Meet standard on Algebra II End of Course Exam	

*Graduates with a GPA of 3.0 or better will be awarded the BOE Recognition Diploma with Honors.
**Mathematics requirements for a BOE Recognition Diploma with Honors is 4.0 credits, including as a minimum, Algebra I, Geometry, and Algebra II or the equivalent.

Appendix F
Transfer of Educational Rights

LINDA LINGLE
GOVERNOR

PATRICIA HAMAMOTO
SUPERINTENDENT

STATE OF HAWAI'I
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

January 14, 2009

To: Complex Area Superintendents, District Educational Specialists, Principals, Public Charter School Administrators, Student Services Coordinators and Special Education Department Chairpersons

From: Patricia Hamamoto, Superintendent

Subject: Transfer of Educational Rights for Adult Students – Act 182

Act 182, "Transfer of Educational Rights for Adult Students", was signed by the Governor, and as such, is in effect. Act 182 addresses the following:

- Provides decision-making options to adult students with disabilities, enrolled in a public school;
- Establishes a (limited) power of attorney for special education by appointing an agent to make educational decisions on behalf of the adult student;
- Establishes a process to appoint an educational representative for an adult student who lacks the capacity to make educational decisions for him/herself; and
- Clarifies the authority of a guardian of an adult student.

To help clarify Act 182 a Question and Answer handout with an accompanying flowchart was developed to assist the public schools with the implementation of Act 182 and is attached.

Your continued and dedicated efforts to provide a free appropriate public education for all students with disabilities in Hawaii are appreciated. Should you have any questions, please contact Ms. Patricia Dong, Educational Specialist, Special Education Section, at 733-4404.

DH:PD:nd

Attachment

c: Assistant Superintendents
Superintendent's Office Directors
Public Charter Schools Administrative Office
Ms. Holly Shikada, Deputy Attorney General, Department of the Attorney General, Education Division
Department of Health Developmental Disabilities Division
Office of Curriculum, Instruction and Student Support

TRANSFER OF RIGHTS FOR AN ADULT STUDENT WITH A DISABILITY
ENROLLED IN A PUBLIC SCHOOL
Questions and Answers
Revised August 2011

AGE OF MAJORITY

What does the phrase "age of majority" or "adult student" mean?

According to Hawaii Revised Statutes (HRS) §577-1, the "age of majority" is when all persons residing in the State, who have attained the age of 18 years, shall be regarded as of legal age and their period of minority to have ceased. An "adult student" is a student who has reached the age of majority.

What is the significance of a student with a disability reaching the age of majority?

When a student with a disability reaches the age of majority, the educational rights to make decisions accorded to the parent, under ***Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and HAR Chapter 60,*** transfers to the adult student, except for a student with a disability who has been determined to be incompetent/lacking decisional capacity under state law.

ACT 182 – TRANSFER OF RIGHTS

What is the purpose of Act 182, the Transfer of Rights, of the HRS?

Effective July 1, 2008, the purpose of Act 182 is to provide educational decision-making options to an adult student with a disability enrolled in a public school.

What are the educational decision-making options for an adult student mentioned in Act 182?

There are three educational decision-making options available to an adult student:

- Appointment of an agent through a (limited) power of attorney for special education (POA SPED) to make educational decisions on behalf of an adult student;
- Appointment of an educational representative for an adult student who lacks decisional-making capacity to make educational decisions for him/herself; or
- Appointment of a guardian, established through court, for an adult student who lacks decisional capacity to make educational decisions for him/herself.

Presumption: An adult student is presumed to have decisional capacity to make educational decisions for him/herself. No documentation is required.

DECISIONAL CAPACITY

What does having "decisional capacity" mean?

Having decisional capacity refers to an adult student being able to understand, reason, and act on his/her own behalf. An adult student who has decisional capacity is able to provide informed consent with respect to educational decisions or program.

What does "lack of decisional capacity" mean?

As noted in Act 182, the adult student has an inability to:

- Understand the nature, extent, and probable consequences of a proposed educational program or option on a continuing or consistent basis;
- Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or
- Communicate such understanding in any meaningful way.

Who determines if an adult student has a lack of decisional capacity to provide informed consent?

The determination that an adult student has a lack of decisional capacity, as noted in Act 182, shall be made by a qualified professional such as the student's primary physician, psychologist, psychiatrist, or the Hawaii Department of Health, Developmental Disabilities Division.

Why is it important to know if an adult student has a lack of decisional capacity?

The decisional capacity of the adult student will help determine which of the three transfer of rights option(s) may be appropriate for consideration. Remember, the adult student is presumed to be capable of making his/her own educational decisions, unless there is documentation supporting otherwise.

Can an adult student, who has decisional capacity, make educational decisions for him/herself?

Yes, an adult student is presumed to make educational decisions for him/herself. An adult student can also opt to appoint an agent to make educational decisions on his/her behalf by completing a POA SPED.

If an adult student lacks decisional capacity, as determined by a qualified professional, who would make educational decisions on the adult student's behalf?

An adult acknowledged by the Department of Education (DOE) as an educational representative or a guardian assigned by the court can make educational decisions on the adult student's behalf.

NOTIFICATION AND DOCUMENTATION

Does the public school notify the student and his/her parent(s) of Act 182 (Adult Special Education Transfer of Rights for Students with Disabilities Upon Reaching the Age of Majority) in Hawaii?

Yes. Beginning at least one year before the student reaches the age of majority, the student and his/her parent(s) are to be informed that the rights under IDEA, 34 CFR §300.520(a)(1)(ii) and HAR §8-60-74 will transfer to the student on reaching 18 years old. The school is to additionally inform the student and his/her parent(s) that upon the student reaching 18 years old, the adult student has options relating to the transfer of educational rights in accordance with Act 182. To facilitate this, schools may share this Questions and Answers document with interested individuals.

Does the public school only invite the adult student to Individualized Education Program (IEP) meetings?

No. The public school, in accordance with 34 CFR §300.520(a)(1)(i) and HAR §8-60-74, must provide notice to the parents, which includes parents of an adult student. If the public school has received documentation noting educational decisions will be made by another individual (i.e., POA SPED, educational representative, or court appointed guardian), then the school is to also invite that individual who can make educational decisions on behalf of the adult student.

Where should transfer of rights documentation be placed?

All documentation relating to the transfer of rights, such as a copy of a POA SPED, etc., is to be kept in the student's confidential file and notated in the electronic Comprehensive Student Support System.

Does a copy of documentation relating to the revocation of a POA SPED have the same effect as the original?

Yes. A copy of the POA SPED revocation document has the same effect as the original.

Can the agent or the educational representative have access to student records?

Yes. The agent or the educational representative has the same rights as the adult student to request, receive, examine, copy, and consent to the disclosure of the IEP or any other educational records.

APPOINTMENT OF AN AGENT – POWER OF ATTORNEY FOR SPECIAL EDUCATION

What is a POA SPED?

A POA SPED is a written document executed in the State of Hawaii by an adult student, which appoints an agent to make educational decisions on behalf of the adult student.

Is there a restriction on who the adult student can appoint as an agent in the POA SPED?

Yes. Unless related to the adult student by blood, marriage, or adoption, the (adult) agent cannot be an owner, operator, or employee of the public school/institution at which the adult student is receiving special education services.

What are the duties and responsibilities of an agent?

The agent shall have the opportunity to participate in meetings with respect to:

- The identification, evaluation, and educational placement of the adult student;
- The provision of free appropriate public education to the adult student; and
- The provision of input in accordance with the adult student's individual instructions or other wishes, if any, to the extent known.

The agent shall participate in accordance with the determination of the student's best interest. In determining the student's best interests, the student's personal values, to the extent known, shall be taken into consideration.

Can the POA SPED be revoked by the adult student?

Yes. The adult student can revoke the appointed agent by submitting written documentation to his/her supervising teacher (i.e., care coordinator, IEP teacher). Educational rights revert back to the adult student. A teacher (i.e., general education teacher, student services coordinator), agent, or guardian who is notified of the revocation shall promptly communicate the fact of revocation to the supervising teacher and to any educational institution (i.e., public school) at which the student is receiving special education services.

Are there any other circumstances when the appointed agent may be revoked?

Yes. A decree of annulment, divorce, dissolution of marriage, or legal separation shall revoke the previous designation of a spouse as an agent, unless otherwise specified in the POA SPED.

The school has a POA SPED. At a meeting, a POA SPED with a later effective date and with different instructions is presented. Which POA SPED is to be followed?

A POA SPED that conflicts with an earlier dated POA SPED revokes the earlier power of attorney to the extent of the conflict. The method of revocation must be specified in the document.

What information is required in the POA SPED?

The POA SPED is to include the following information to be valid. The POA SPED will not be in effect if the required information is missing.

Statement of Conditions & Acknowledgement

- Date of execution in the State of Hawaii.
- A statement indicating whether the adult student retains the power to make educational decisions while the POA SPED is in effect.
- A statement with the method of revocation.
- Adult student's signature.

Agent Information

- Printed first and last name of the individual to be the agent.
- Relationship to the adult student.

Witness Information **or** Notary Public Information

Witness Information
- Document is to be either signed by two individuals who witnessed the signing of the POA SPED **or** received the adult student's acknowledgement of the authenticity of the adult student's signature.

Notary Public Information
- Printed name of the notary public, accompanied with a signature and the date signed.
- Printed address of the notary public.
- Seal from the notary public.

Although not stated in Act 182, the following information is needed:

Adult Student Information
- Printed first and last name of the adult student.
- Contact information (i.e., address, phone number).

Agent Information
- Contact information (i.e., address, phone number).

What are the differences between a "power of attorney" and a "power of attorney for special education"?

According to HRS §560:5-105, a "power of attorney" may delegate to another person for a period not exceeding one year, any power regarding the care, custody, or property of a minor or ward. Care of a minor or ward may include educational matters, even if not explicitly specified. A power of attorney, under HRS §560:5-105, is used solely to delegate an individual to make decisions for a minor, an individual who has not attained 18 years of age.

In Act 182, the "power of attorney for special education" specifically applies to adult students with a disability who choose to delegate another individual to make educational decisions on the adult student's behalf; it is valid for the length of time the adult student remains eligible for special education in a public school, unless otherwise specified in the POA SPED or upon revocation by the adult student.

It is important to remember that securing a power of attorney is a family matter. Families who do not have an attorney and are in need of assistance may contact the Legal Aid Society of Hawaii at (808) 536-4302 or the Hawaii State Bar Association at (808) 537-1868.

APPOINTMENT OF AN EDUCATIONAL REPRESENTATIVE

Who appoints the educational representative?

The public school may appoint an educational representative upon receipt of the educational representative information, adult student's information, and a statement from a qualified professional noting the student's lack of decisional capacity.

By means of Act 182, the law allows for the parent(s) or the adult spouse of an adult student with a disability who lacks capacity, to act as the educational representative on behalf of the adult student. If the parent(s) or adult spouse is not available or able, the public school shall appoint an educational representative from the following: a competent brother or sister, adult aunt or uncle, or grandparent. If these relatives are not willing or able to serve as the adult student's educational representative, the public school must then submit a request for a surrogate parent to serve in this capacity.

What are the duties and responsibilities of the educational representative?

The educational representative shall have the opportunity to participate in meetings with respect to:
- The identification, evaluation, and educational placement of the adult student;
- The provision of free appropriate public education to the adult student; and
- The provision of input in accordance with the adult student's individual instructions or other wishes, if any, to the extent known.

The educational representative shall participate in accordance with the determination of the student's best interest. In determining the student's best interests, the student's personal values, to the extent known, shall be taken into consideration.

What documentation is required to be an educational representative?

While there is no specific form to be completed for an individual to be designated as an educational representative, written documentation by a qualified professional (i.e., student's primary physician, psychologist, psychiatrist, or the Hawaii Department of Health, Developmental Disabilities Division) acknowledging the adult student lacks decisional capacity is required.

What information is required to be an educational representative?

The following information is required:

Certification Statement

- Statement of determination of the adult student's lack of capacity by a qualified professional (student's primary physician, psychologist, psychiatrist, or the Hawaii Department of Health, Developmental Disabilities Division).

Although not stated in Act 182, the following information is needed:

Adult Student Information

- Printed first and last name of the adult student.
- Contact information (i.e., address, phone number).

Educational Representative Information

- Printed first and last name of the individual to be educational representative.
- Contact information (i.e., address, phone number).
- Relationship to the adult student.

What is the length of time an educational representative can represent a student?

The educational representative can represent the adult student for the length of time the adult student remains eligible for special education in the DOE, except when the adult student has been reassessed by qualified personnel and found to have regained decisional capacity. For additional information see the next question.

Does the educational representative continue to represent an adult student if the adult student has regained capacity?

No. Should an adult student be reassessed by a qualified professional and found to have regained decisional capacity, the findings of the decision by the qualified professional is to be in writing and entered into the student's educational record. The adult student, now having decisional capacity, regains his/her educational rights to make educational decisions. No additional documentation is required.

GUARDIAN

What is guardianship?

Guardianship, according to HRS §560:5-301, is when a person becomes a guardian of an incapacitated person by an appointment by a parent, spouse, reciprocal beneficiary, or upon appointment by the court. The guardianship continues until terminated without regard to the location of the guardian or ward. The appointment, powers, etc., of the guardian is to be in accordance with HRS §560:5-301 through §560:5-318.

An adult student who lacks capacity has an educational representative. The courts have now appointed a guardian. Who makes the educational decisions for the adult student?

Decisions made by a court appointed guardian takes precedence over that of an agent or educational representative, unless a court order states otherwise.

Transfer of Rights for Adult Students with Disabilities upon Reaching the Age of Majority

At least one year before a student with a disability reaches the age of majority (18 years old), the public school is to inform the student and his/her parent(s)/guardian(s) that when the student reaches 18 years old, the student has options relating to the transfer of educational rights, in accordance with Act 182 of the Hawaii Revised Statutes.

Has the student reached the age of majority?

NO → Transfer of rights information can still be shared with interested individual(s)

YES

The adult student is presumed to be able to make educational decisions for him/herself unless the school receives documentation noting otherwise. Has the school received documentation (i.e., power of attorney for special education [POA SPED], educational representative or guardian) noting educational decisions will be made by another individual other than the adult student?

NO

Self - Representation

The adult student retains his/her educational rights and makes educational decisions for him/herself. No documentation is required.

YES

Guardianship

Parent(s)/guardian(s) have opted to obtain guardianship through the court. Educational decisions made by a guardian take precedence over decisions of an agent or educational representative.

Power of Attorney

Per Act 182, the adult student may opt to appoint an agent to make educational decisions by obtaining a POA SPED.

Educational Representative

In accordance with Act 182, a parent/adult spouse or relative may act as the educational representative to make educational decisions for an adult student when supporting documentation is submitted to the school, including a written statement from a qualified licensed professional (i.e., primary physician, psychologist, psychiatrist, or the Department of Health, Developmental Disabilities Division) stating the adult student lacks decisional capacity. Should no relative be willing/able to serve as the educational representative, a surrogate parent will be appointed to serve in this capacity.

The school is to acknowledge that:

- The individual stated in the notification of representation (guardianship, POA SPED, educational representative) can make educational decision(s) on behalf of the adult student.
- The authority of the agent or educational representative is effective throughout the adult student's eligibility for special education.
- A copy of the transfer of the student's rights, revocation of a POA SPED, finding of lack of capacity, or the reconsideration of the appointment of an educational representative has the same effect as the original.

Revocation of an Agent or Educational Representative

- The individual formerly acting on behalf of the student will no longer be able to make educational decisions on the adult student's behalf or have access to the adult student's educational records.
- The method of revocation must be specified in the document.

Agent:

- The supervising teacher (i.e., care coordinator, individualized education program teacher) receives written documentation from the adult student revoking the designated agent.
- A teacher (i.e., general education teacher, student services coordinator), agent, or guardian who is informed of the adult student's revocation of an agent shall communicate the fact of the revocation to the supervising teacher and to the educational institution (i.e., public school) where the student is receiving special education services.
- A decree of annulment, divorce, dissolution of marriage, or legal separation shall revoke a previous designation of a spouse as an agent, unless otherwise specified in the POA SPED.
- A POA SPED that conflicts with the prior POA SPED revokes the earlier one to the extent of the conflict.

Educational Representative:

- The school receives written documentation from a qualified professional attesting the adult student has regained decisional capacity and the basis for the decision.
- Documentation from the qualified professional is to be entered into the adult student's educational record.

Appendix G
State Complaint Procedures

Overview
The Hawaii Department of Education (Department) exercises general supervision over all public education programs for students with disabilities. The State Special Education Section, Complaints Management Program (CMP) will investigate written complaints that allege violations of Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), its implementing regulations (34 CFR Part 300), the Hawaii Revised Statutes relating to the education of students with a disability and/or Hawaii Administrative Rules (HAR), Chapter 60. After a written complaint is received by the CMP, a written report will be issued within 60 days or allowable extensions.

Applicable law
IDEA 2004 Part B, Regulations
http://idea.ed.gov

HAR Chapter 60
http://doe.k12.hi.us/specialeducation/index_references.htm

If the school receives a written complaint, the school is required to immediately (within one business day) forward it to:

Ms. Taren Taguchi
Special Projects
Office of the Deputy Superintendent
1777 Alakea Street, B-100
Honolulu, HI 96813

The CMP will conduct all investigations and notify district/complex and school if follow-up is necessary.

Written complaint procedures and timeline
Upon receipt of a written complaint, the CMP will:

- Carry out an independent on-site investigation, if the CMP determines that an investigation is necessary.
- Give the complainant the opportunity to submit additional oral or written information about the allegations in the complaint.
- Provide the appropriate Department personnel the opportunity to respond to the complaint and submit a proposal to resolve the complaint.
- Provide an opportunity for the parent who has filed a written complaint and the appropriate Department parties to voluntarily engage in mediation.
- Review all relevant information and make an independent determination as to whether the Department violated a requirement of Part B of IDEA, its implementing regulations, or HAR Chapter 60 in relation to the complaint.
- Within 60 days of receipt of the written complaint, issue a written decision to the complainant that addresses each allegation in the written complaint and contains:

    a) Findings of fact and conclusions; and
    b) The reasons for the final decision.

Following the receipt of a written complaint, additional information, either orally or in writing, should be directed to the CMP.

Written complaint procedures and timeline
Extensions to the 60-day timeline are permissible, if exceptional circumstances exist, or if the parties agree to extend the timeline to utilize dispute resolution.

Mediation and other methods of alternative dispute resolution
The parties to a written complaint may voluntarily engage in alternative dispute resolution to include, but is not limited to, mediation, facilitation, and conciliation. Mediation information is posted at:

http://doe.k12.hi.us/specialeducation/index_rights.htm

Implementation of the decision and corrective action
The Department may direct corrective action to address violations. Corrective action may include, but is not limited to, technical assistance, negotiations, or remedies to the denial of appropriate services to address the needs of the student and appropriate future provision of services for all students with disabilities.

Written complaints and due process hearings
If a written complaint and due process hearing are filed simultaneously, the Department will set aside any part of the written complaint being addressed in the due process hearing. The Department will enforce the implementation of a due process hearing decision.

Who may file
Any individual or organization may file a written complaint. Due to confidentiality reasons, complainants who are not the legal parent or guardian will not receive the decision of a written complaint. The decision will be sent to the parent, school, and district/complex.

Filing a written complaint
A complaint must be in writing and include:

1. A statement that the Department violated a requirement regarding the provision of special education services;
2. The facts on which the statement was based;
3. The signature and contact information for the complainant;
4. If alleging violations with respect to a specific student:
    a) The name and address of the residence of the student;
    b) The name of the school the student is attending;
    c) In the case of the homeless student or youth (as applicable to the McKinney-Vento Homeless Assistance Act), the available contact information for the student, and the name of the school the student is attending;
    d) A description of the nature of the problem of the student, including facts relating to the problem;
    e) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed; and
5. Allegations that occurred not more than <u>one</u> year prior to the date that the complaint is received.

Written complaints should be sent to:

Ms. Taren Taguchi
Special Projects
Office of the Deputy Superintendent
1777 Alakea Street, B-100
Honolulu, HI 96813

Written complaint form
Complainants may file a written complaint using the Special Education Written Complaint Form posted at:
http://doe.k12.hi.us/specialeducation/index_rights.htm

Contact information
For further information, contact the CMP. The CMP's contact information is posted at:
http://doe.k12.hi.us/specialeducation/index_rights.htm

Appendix H
Dispute Resolution

Mediation

Mediation
Mediation will promote better communication between parents and school personnel and will encourage the early resolution of differences. The use of mediation will prevent concerns from entering into the more formal, costly, and time-consuming due process hearing arena.

Mediation is:
- Voluntary; and
- Not to be used to deny or delay the parent's right to a due process hearing.

Qualified, trained, and impartial mediators for parties wishing to utilize mediation are provided by the following:

Location	Phone	Fax
Oahu: The Mediation Center of the Pacific	(808) 521-6767	(808) 538-1454
Maui, Molokai, Lanai: Mediation Services of Maui	(808) 244-5744	(808) 249-0905
West Hawaii: West Hawaii Mediation Services	(808) 885-5525	(808) 887-0525
East Hawaii: Ku`ikahi Mediation Center	(808) 935-7844	(808) 961-9727
Kauai: Kauai Mediation Program	(808) 245-4077	(808) 245-7476

Mediation shall be offered:
- When a dispute arises.
- Whenever parents request a due process hearing to resolve disputes related to the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) to a student with disabilities.

Any dispute resolution practice may be offered at any time.

Mediation is provided at no cost to the parent, school, or district/complex

District/complex/school responsibilities:

- Provide the informational flyer (*Special Education Mediation, Preventing and Resolving Conflicts Involving the Education of Students with Special Needs*) at minimum, whenever a dispute arises or when a parent files a due process hearing request. The flyer describes the mediation process and explains the benefits of utilizing this alternative dispute resolution option. The flyer is available at: http://doe.k12.hi.us/specialeducation/index_rights.htm.

- When a parent requests an impartial due process hearing, the district/complex/school shall inform the parents of the availability of mediation. The District Due Process Managers, or their designees, must determine whether parents wish to attempt mediation. (This information should be documented on page 2 of the *Request for Impartial Due Process Hearing, OCISS Form 105*.) This form is available at: http://doe.k12.hi.us/specialeducation/index_rights.htm.

If mediation is desired, districts/complexes are to immediately complete and fax the Alternate Dispute Resolution Intake Form to the appropriate Mediation Center. The Mediation Center Case Manager will contact the parties to coordinate the date, time, and location for the mediation session. Sessions will be held at a location that is convenient to the parties in the dispute. This form is available at: http://doe.k12.hi.us/specialeducation/index_rights.htm.

If the Mediation Centers are providing mediators for sessions other than those stemming from a due process hearing request, schools should complete the Alternate Dispute Resolution Intake Form and fax it directly to the appropriate Mediation Center.

General
The Hawaii Department of Education (Department) must make mediation available to allow the parent and the Department to resolve disagreements involving any matter under Part B of the Individuals with Disabilities Education Improvement Act (IDEA) including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of the IDEA, whether or not the parent has filed a due process complaint to request a due process hearing.

Requirements
The procedures must ensure that the mediation process:

- Is voluntary on the parent's part and the Department's part;
- Is not used to deny or delay the parent's right to a due process hearing or to deny any other rights the parent has under Part B of the IDEA; and
- Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The Department must have a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The Department must select mediators on a random, rotational, or other impartial basis.

The Department is responsible for the cost of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for the parent and the Department.

If the parent and the Department resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

- States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- Is signed by both the parent and a representative of the Department who has the authority to bind the Department.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States. Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part B of IDEA. (Parties are no longer required to sign a confidentiality pledge before mediation begins.)

Impartiality of mediator
The mediator:

- May not be an employee of the Department that is involved in the education or care of the student; and
- Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of the Department solely because he or she is paid by the Department to serve as a mediator.

Due Process Hearing

A parent or the school may initiate a due process hearing on any disagreements relating to the identification, evaluation, placement, or provision of FAPE.

Neither the school nor district/complex can delay or deny the filing of a due process hearing request. Therefore, regardless of the time period, the parent has a right to file a due process hearing request. Only the hearings officer makes the determination on whether the complaint is within the statute of limitations.

Pursuant to HRS §302A-443, a parent may file an impartial hearing within 180 calendar days of a unilateral special education placement, where the request is for reimbursement of the cost of the placement. The timeline begins on the first day of attendance. For exceptions to the timeline, see HAR §8-60-65(g).

General
The parent or the Department may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

The due process complaint must allege a violation that happened not more than two years before the parent or the Department knew, or should have known, about the alleged action that forms the basis of the due process complaint, except as specified by HRS §302A-443.

The above timeline does not apply if the parent could not file a due process complaint within the timeline because:
- The Department specifically misrepresented that it had resolved the issues identified in the complaint; or
- The Department withheld information from the parent that it was required to provide the parent under Part B of the IDEA.

If the parent disagrees with the availability of a free appropriate education in the public schools, and places the student in a private school or facility and has questions regarding the financial responsibility for all costs of education at the private placement, including special education and related services, a hearing for reimbursement must be requested within 180 days of placement, as described under the sub-heading "Statute of Limitations in Claiming Reimbursements for Unilateral Placements in Private Schools." Placement occurs on the student's first day of attendance at the private school.

The Department must inform the parent of any free or low-cost legal and other relevant services available in the area if requested **or** if the Department files a due process complaint. The information is referenced in the Procedural Safeguards Notice and is available at: http://doe.k12.hi.us/specialeducation/index_rights.htm.

Requesting a hearing
A hearing request may be made by submitting either a letter or "Request for Impartial Due Process Hearing" (*OCISS Form 105*) to the district/complex area superintendent. This form is available at: http://doe.k12.hi.us/specialeducation/index_rights.htm.

If a request is sent directly to the school, or if the school is requesting the hearing, the school must send the request to the complex area superintendent without delay.

The district/complex must fax the request for hearing to the State Special Education Section, the Department of Commerce and Consumer Affairs (DCCA), and the Attorney General's Office. The fax must include the following information:
- Student's name; and
- First date any Department personnel received the request for hearing.

General
In order to request a hearing, the parent or the Department (or parent's attorney or the Department's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

The Department is responsible for the conduct and costs of the hearing. A request for a hearing can be made to the appropriate district/complex area superintendent of the district/complex in which the student is enrolled.

Content of the complaint

The due process complaint must include:

- The name of the student;
- The address of the student's residence;
- The name of the student's school;
- If the student is a homeless student or youth (as applicable to the McKinney-Vento Homeless Assistance Act), the student's contact information and the name of the student's school;
- A description of the nature of the problem of the student relating to the proposed or refused action, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the parent or the Department at the time.

Notice required before a hearing on a due process complaint

The parent or the Department may not have a due process hearing until the parent or the Department (or the parent's attorney or the Department's attorney), files a due process complaint that includes the information listed above.

Sufficiency of complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (the parent or the Department) notifies the hearings officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (the parent or the Department) considers a due process complaint insufficient, the hearings officer must decide if the due process complaint meets the requirements listed above, and notify the parent and the Department in writing immediately.

Complaint amendment

The parent or the Department may make changes to the complaint only if:

- The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; or
- By no later than five days before the due process hearing begins, the hearings officer grants permission for the changes. If the complaining party (the parent or the Department) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for the resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed unless agreed upon by parties.

Department's response to a due process complaint

If the Department has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint, the Department must, within ten calendar days of receiving the due process complaint, send to the parent a response that includes:

- An explanation of why the Department proposed or refused to take the action raised in the due process complaint;
- A description of other options that the student's individualized education program (IEP) Team considered and the reasons why those options were rejected;
- A description of each evaluation procedure, assessment, record, or report the Department used as the basis for the proposed or refused action; and
- A description of the other factors that are relevant to the Department's proposed or refused action.

Providing the above information does not prevent the Department from asserting that the parent's due process complaint was insufficient.

Other party response to a due process complaint
Except as stated under the sub-heading immediately above, the Department's response to a due process complaint, the party receiving a due process complaint must, within ten calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

The Department must develop model forms to help the parent file a due process complaint and a State complaint. However, the Department may not require the parent to use these model forms. In fact, the parent can use this form or another appropriate model form, as long as it contains the required information for filing a due process complaint or a State complaint.

Resolution meeting
Within 15 calendar days of receiving notice of the parent's due process complaint and before the due process hearing begins, the Department must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the parent's due process complaint. The meeting:

- Must include a representative of the Department who has decision-making authority on behalf of the Department; and
- May not include an attorney of the Department unless the parents are accompanied by an attorney.

The parent and the Department determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for the parent to discuss the due process complaint, and the facts that form the basis of the complaint, so that the Department has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

- The parent and the Department agree in writing to waive the meeting; or
- The parent and the Department agree to use the mediation process, as described under the heading **Mediation**.

Resolution period
If the Department has not resolved the due process complaint to the parent's satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45 calendar day timeline for issuing a final decision begins at the expiration of the 30 calendar day resolution period, with certain exceptions for adjustments made to the 30 calendar day resolution period, as described below.

Except where the parent and the Department have both agreed to waive the resolution process or to use mediation, the parent's failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the parent agrees to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the Department is not able to obtain the parent's participation in the resolution meeting, the Department may, at the end of the 30 calendar day resolution period, request that a hearings officer dismiss the parent's due process complaint. Documentation of such efforts must include a record of the Department's attempts to arrange a mutually agreed upon time and place, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parent and any responses received; and
- Detailed records of visits made to the parent's home or place of employment (with discretion) and the results of those visits.

If the Department fails to hold the resolution meeting within 15 calendar days of receiving notice of the parent's due process complaint **or** fails to participate in the resolution meeting, the parent may ask a hearings officer to order that the 45 calendar day due process hearing timeline begin.

Adjustments to the 30 calendar day resolution period
If the parent and the Department agree in writing to waive the resolution meeting, then the 45 calendar day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30 calendar day resolution period, if the parent and the Department agree in writing that no agreement is possible, then the 45 calendar day timeline for the due process hearing starts the next day.

If the parent and the Department agree to use the mediation process, at the end of the 30 calendar day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached.

However, if either the parent or the Department withdraws from the mediation process, then the 45 calendar day timeline for the due process hearing starts the next day.

Written settlement agreement
If a resolution to the dispute is reached at the resolution meeting, the parent and the Department must enter into a legally binding written agreement that is:

- Signed by the parent and a representative of the Department who has the authority to bind the Department; and
- Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States.

Agreement review period
If the parent and the Department enter into an agreement as a result of a resolution meeting, either party (the parent or the Department) may void the agreement within three business days of the time that both the parent and the Department signed the agreement.

General
Whenever a due process complaint is filed, the parent or the Department must have an opportunity for an impartial due process hearing, as described in the **Dispute Process** and **Resolution Process** sections. The Department is responsible for convening hearings under a "one-tier" system. "One-tier" refers to a due process system in which the Department or another State-level agency or entity is responsible for convening due process hearings, and an appeal from a due process hearing decision is sent directly to a court.

Impartial hearings officer
At a minimum, a hearings officer:

- Must not be an employee of the Department or any State agency that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearings officer;
- Must not have a personal or professional interest that conflicts with the hearings officer's objectivity in the hearing;
- Must be knowledgeable and understand the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and HAR Chapter 8-60 and legal interpretations of the IDEA by Federal and State courts; and
- Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The Department must keep a list of those persons who serve as hearings officers that includes a statement of the qualifications of each hearings officer.

Subject matter of due process hearing
The party (the parent or the Department) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Timeline for requesting a hearing
The parent or the Department must request an impartial hearing on a due process complaint within two years of the date the parent or the Department knew, or should have known, about the issue addressed in the complaint, except as specified by HRS §302A-443.

Exceptions to the timeline
The above timeline does not apply to the parent if the parent could not file a due process complaint because:

- The Department specifically misrepresented that it had resolved the problem or issue that the parent is raising in the parent's complaint; or
- The Department withheld information from the parent that it was required to provide to the parent under Part B of the IDEA.

Statute of limitations in claiming reimbursements for unilateral placements in private schools
In accordance with Hawaii Revised Statutes, §302A-443 Administrative hearing procedures and subpoena power relating to the education of children with a disability, there is a 180-day statute of limitations in claiming reimbursement for unilateral placements, including special education and related services, in private schools. That is, if the parent disagrees with the availability of a free appropriate education in the public schools, places the student in a private school or facility and has questions regarding the financial responsibility for all costs of education at the private placement, including special education and related services, a hearing for reimbursement for special education and/or related services must be requested within 180 calendar days of placement. Please note that placement occurs on the student's first day of attendance at the private school.

Appendix I
Surrogate Parent

NEIL ABERCROMBIE
GOVERNOR

KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAI'I
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAI'I 96804

OFFICE OF THE SUPERINTENDENT

February 13, 2012

To: Complex Area Superintendents, Principals, Charter School Directors, District Educational Specialist for Special Education and Special Services, Student Services Coordinators, Special Education Teachers

From: Kathryn S. Matayoshi, Superintendent

Subject: Surrogate Parent Guide

According to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), Section 504 of the Rehabilitation Act of 1973 and Hawaii Administrative Rules, Chapters 60/61, a student with disabilities must be provided a surrogate parent to make educational decisions on behalf of the student in the following circumstances:

- the parent cannot be identified;
- the Department of Education (DOE), after reasonable efforts, cannot discover the "whereabouts" of a parent; or
- the student is a "ward of the state."

It is the duty of the DOE to have a method to determine whether a student needs a surrogate parent. To provide public schools a resource relating to surrogate parents, the Surrogate Parent Guide was developed. The attached guide gives general information about a surrogate parent, the inter-relationship with other agencies and the assignment process of a surrogate parent for a student with disabilities.

Two important items in the Surrogate Parent Guide are outlined below:

1. Assignment of a Surrogate Parent:
   - The School must make reasonable efforts to request and ensure the appointment of a surrogate parent within a 30-day timeline; and
2. Foster Parents:
   - The natural or adoptive parent is presumed to be the parent when more than one party is qualified to act as a parent unless the biological or adoptive parent does not have legal authority to make educational decisions.

The process to determine an individual as a parent for a student with a disability for purposes of Chapters 60/61 should be made at the school level and, if appropriate, be made in consultation with the assigned social worker from the Department of Human Services, Child Protective Services. The attached Surrogate Parent Guide, Determination of an Individual as the Parent Checklist, Revised February 2012 may be used in this process.

If the need for a surrogate parent is found to be warranted, the attached OCISS Form 051, Revised February 2012, Request for Assignment of a Surrogate Parent for a Student Identified under Chapters 60/61, is to be used. The current surrogate parent provider is the Epic Foundation. Contact information for the Epic Foundation is included in the Surrogate Parent Guide.

Your dedicated efforts to provide a free appropriate public education for all DOE students with disabilities are appreciated. Should you have any questions, please contact Ms. Marilyn Jakeway, Educational Specialist, Special Education Section, at (808) 203-5560 or via Lotus Notes.

KSM:MJ:tk

Attachments

c: Assistant Superintendents
Superintendent's Branch Directors
Ms. Holly Shikada, Department of Attorney General, Education Division
Ms. Patricia McManaman, Director, Department of Human Services
Mr. John Walters, Acting Administrator, Department of Human Services, Social Services Division
Ms. Katherine Awaya, Epic Foundation
Charter School Administrative Office Executive Director
Office of Curriculum, Instruction and Student Support

SURROGATE PARENT GUIDE

Hawaii Department of Education
Office of Curriculum, Instruction and Student Support
Special Education Section
Revised February 2012

In accordance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and Hawaii Administrative Rules, (HAR) Chapters 60/61, in certain circumstances, a surrogate parent is assigned to protect a student's right to a free appropriate public education (FAPE). HAR §8-60-73, §8-61-12

SURROGATE PARENT

What is a surrogate parent?

A surrogate parent is an individual who:

- Acts in place of the legal parent to make decisions about the student's education when no parent can be located or identified;
- Makes decisions in all matters relating to the identification, evaluation and educational placement of the student and the provision of a FAPE. HAR §8-60-73, §8-61-12

When is a surrogate parent needed?

Whether or not a student needs a surrogate parent is determined by the following: *Does the student have a "parent"?*

As defined by Chapters 60/61 "parent" means:

- A natural or adoptive parent of the student;
- A guardian, but not the State if the student is a ward of the State;
- A person acting in place of a parent (such as a grandparent or step-parent with whom the student lives, or a person legally responsible for the student's welfare);
- A surrogate parent who has been assigned in accordance with Chapters 60/61; or
- A foster parent (under certain conditions).

However, the natural or adoptive parent is presumed to be the parent when more than one party is qualified to act as a parent unless the biological or adoptive parent does not have legal authority to make educational decisions. IDEA 2004 §300.30(a)(5)

When a student reaches the age of majority, age 18 in Hawaii, the rights which were accorded to the surrogate parent are transferred to the student, except when the student has a disability and is determined to be incompetent under state law. HAR §8-60-74

If the student does not have a parent, as defined by Chapters 60/61, a surrogate parent must be assigned.

The Department of Education (DOE) must ensure that the rights of a student are protected when:

- No parent can be identified;
- The DOE, after reasonable efforts, cannot discover the whereabouts of a parent; or
- The student is a ward of the State under the laws of Hawaii. HAR §8-60-73, §8-61-12

Who is a ward of the State, and how long is a surrogate parent assigned to the ward of the State?

- A ward of the State is a child in the temporary, foster or permanent custody of a state agency--usually the Department of Human Services (DHS).
- A surrogate parent is assigned as long as a state agency retains foster or permanent custody of the child.

What is the most important factor for a school to consider in requesting a surrogate parent?

- The student's legal status, rather than living arrangements, is the first and most important factor in the decision to appoint a surrogate parent.
- The public school which is considering a surrogate parent appointment must first learn whether the student is a ward of the State or is in the process of becoming a ward of the State.

A surrogate parent is not needed if the student is residing with a person considered to be a parent under Chapters 60/61 (e.g., is willing to make educational decisions) **and** is not in the process of becoming or is not a ward of the State.

The school may use the Determination of An Individual As the Parent checklist, which states specific criteria (e.g., a long term parental relationship of at least six months), for the team to use in determining an individual as a parent.

What steps must the school take to request a surrogate parent?

- Utilize the Determination of An Individual As the Parent checklist to assist in the decision to request a surrogate parent.
- The school submits the OCISS Form 051, Request for Assignment of a Surrogate Parent, to the surrogate parent provider, currently the Epic Foundation (Epic).
- The Epic assigns a trained surrogate parent to the student.

What is the time limit for a surrogate parent to be assigned?

The school shall make reasonable efforts to request and ensure the assignment of a surrogate parent not more than 30 days after the determination by the school that the student needs a surrogate parent. IDEA 2004 §300.519(h)

If the parent of a student is unresponsive to meetings related to educational decisions, may a surrogate parent be assigned?

No. Public schools should make efforts to collaborate and communicate with parents of special needs students and emphasize the importance of parental participation.

Who can NOT be a surrogate parent?

- Adults with a conflict of interest; or
- Adults employed by an agency involved in the education or care of the student. IDEA 2004 §300.519(d)(2)(i)

What rights does a surrogate parent have?

The surrogate parent has the same rights as those of a legal parent with respect to the educational decision-making process.

These include the right to:

- Inspect, review, and obtain copies of all records relating to the student's education and to seek changes with respect to the content in accordance with the chapter of the HAR relating to the Protections of Educational Rights and Privacy of Students and Parents;
- Give written consent for the initial evaluation, three year re-evaluation, and/or placement of the student in a program providing special education and/or related services;
- Receive written notice prior to any evaluation or change in the student's placement or program;
- Receive notice of and participate in any Individualized Education Program (IEP), Modification Plan (MP) or Individualized Family Service Plan meeting or other conferences which pertain to the student's education, e.g., manifestation determination;
- Be informed of the special education policies, programs and services of the educational agency and all procedural safeguards;
- Exercise parental rights as defined by the procedural safeguards notice; and
- Receive documentation related to the student's progress (e.g., quarterly IEP/MP progress reports or notices of disciplinary actions).

What is the role of a surrogate parent at an educational meeting?

The surrogate parent, acting in place of the legal parent, is part of the IEP/MP team and represents the interests of the student in the educational decision-making process.

Does the surrogate parent provide any direct care of the student?

No. The surrogate parent participates only in decisions regarding the education of the student.

Is the surrogate parent responsible to follow the laws regarding confidentiality of student information?

Yes. Under the regulations of the Family Educational Rights and Privacy Act , it is the responsibility of the surrogate parent to keep confidential any information that is gathered from the student's records, teachers, and others involved with the student's education. 20 U.S.C. 1232g

What happens if a surrogate parent does not agree with the provision of FAPE?

- Consensus is the goal, but in the absence of team consensus, the principal is required to make an offer for the provision of FAPE.
- If the surrogate parent disagrees with the DOE's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student, the surrogate parent, as well as the team members, should continue to communicate and work collaboratively with each other on this matter (e.g., monitor the student's educational progress with measurable data and re-assess the issue if needed). The surrogate parent may opt to exercise parental rights as stated in the procedural safeguards notice (i.e., mediation, due process).

What happens if there is a concern or a complaint regarding a surrogate parent?

- The principal of the public school and the surrogate parent should collaborate and dialogue towards reaching a mutual solution. Epic or the state office may be contacted for additional assistance.
- The surrogate parent may be liable for actions that are deemed by a court to be gross misconduct and/or willful negligence.

FOSTER PARENTS

What is the main difference between a foster parent and a surrogate parent?

- Both the foster and surrogate parent are involved in the student's education, and both may participate in the IEP/MP meeting.
- Educational decisions, such as the option to accept or reject the services being proposed and the right to initiate mediation or due process, **are** the responsibility of the surrogate parent. HAR §8-60-73, §8-61-12
- The surrogate parent is authorized to make educational decisions on behalf of the student. The surrogate parent can also sign a consent for the release of educational records, i.e., IEP/MP, as well as information pertaining to mental health as a related service.

What is the role of a foster parent?

Upon the first day of placement, foster parents may provide consent for the routine educational and recreational needs and activities of the foster children placed in their care, except for purposes regulated under Title 8, Chapters 60/61, of the HAR.

An important role of the foster parent is to assure that the child is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities. Hawaii Revised Statutes (HRS) §587-82.5

Can a foster parent be a surrogate parent to his/her child?

No. Currently, in the State of Hawaii, by contract with the DOE, only the Epic may designate an individual as a surrogate parent.

Can an individual, such as a foster parent, act as the parent?

Yes. An individual, such as a foster parent, may act as a parent of the child if the specific conditions under IDEA and Chapters 60/61 are met. A public school should refer to the form, titled Determination of an Individual as the Parent, for the specific criteria. HAR §8-60-73, §8-61-12

What kind of assistance can a foster parent receive from a DHS social worker?

A foster parent can expect the DHS social worker to assist the family in developing a case plan for needed services. This may also include assisting the foster parent with the enrollment or withdrawal of the student from school.

Does the DHS notify the school of foster care involvement?

Yes. The DHS informs the school of a student's foster care placement and, if applicable, the student's special education status via DHS form 1607.

GUARDIAN AD LITEM

Must there be a guardian ad litem in order to have a surrogate parent assigned?

No. A surrogate parent may be assigned without a guardian ad litem. A guardian ad litem is appointed by the court to protect and promote the needs and interests of the child or party in legal proceedings. Thus, a guardian ad litem is an advocate who speaks for the child, a reporter who presents, in written form, information to the court, and one who ensures that court orders are carried out, all in the best interests of the child. HRS §587-34

A guardian ad litem is not authorized to make educational decisions. However, in order to assure that the student receives the educational and legal supports that allow the student to succeed, ongoing communication among the school, surrogate parent and guardian ad litem is vital.

HOMELESS YOUTH

What is the surrogate parent requirement for unaccompanied homeless youth?

According to the McKinney Vento Act, if an unaccompanied homeless youth enrolls in a school, the state education agency must make reasonable efforts to ensure that a surrogate parent is appointed within a 30-day timeline. IDEA 2004 §300.519(h)

Contact Information

Public schools may contact their respective district offices:

OAHU		HAWAII	
Central	622-6432	East	974-4535
Honolulu	733-4977	West	323-0015
Leeward	675-0384	North	775-8895
Windward	233-5710	South	982-4252

KAUAI
274-3504

MAUI
873-3527

MOLOKAI / LANAI
553-1724

All interested parties may contact:

Epic Foundation
2535 South King Street. Room 304
Honolulu, Hawaii, 96826
(808) 941-7070 FAX (808) 941-7077

or

Hawaii Department of Education - Special Education Section
475 22nd Avenue, Room 104
Honolulu, Hawaii 96816
(808) 203-5560 FAX (808) 733-4475

SURROGATE PARENT FRAMEWORK TERMS

Family Supervision

This is a legal status created in accordance with a court order or DHS authorization (HRS §587-21) after it has been determined that the child is presently in the legal or permanent custody of a family which is willing and able to provide a safe family home.

Foster Custody

This is a legal status created in accordance with a court order or DHS authorization (HRS §587-21) after it has been determined that the child's family is not presently willing and able to provide a safe family home, even with the assistance of a service plan. The responsibilities of the foster custodian include: monitoring the provision of an appropriate education, providing consents which are required for the child's health or welfare, including but not limited to, ordinary medical, dental, psychiatric, psychological, educational, employment, recreational or social needs.

Joint Permanent Custody

In cases of joint permanent custody, a caregiver and DHS have custody. The joint permanent custodians are vested with the duties and rights of a legal custodian.

Permanent Custody

This is a legal status created in accordance with a court order after the court has determined by clear and convincing evidence that it is in the best interests of the child to order an appropriate permanent plan concerning the child. Parental rights are terminated.

Temporary Foster Custody

Under Chapter 587, with or without order of the court, DHS assumes the duties and rights of a foster custodian over a child. Custody is temporary, usually until the next jurisdictional hearing.

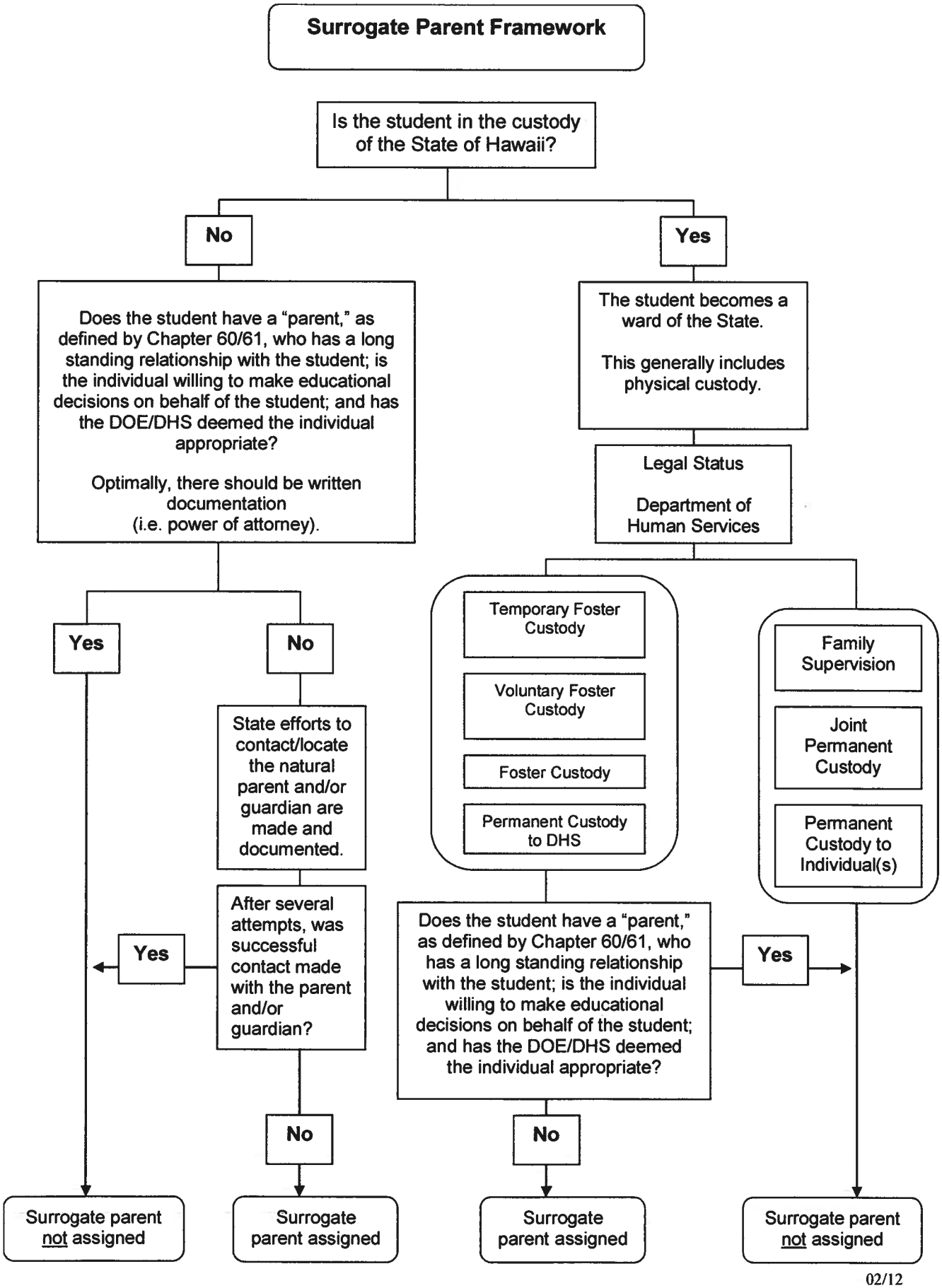
In cases of temporary foster custody, DHS is given custody although parental rights may not have been terminated. When given custody, DHS is vested with the duty and right to determine where the child is to be placed, see to the adequate provision of food and shelter, monitor the education, and provide consents which are required for the child's physical or psychological health or welfare.

Voluntary Foster Custody

Voluntary foster custody is a legal status in which a child's parents or legal guardian sign an agreement to transfer the care and custody of their child to DHS. DHS works with the parents to identify the services needed in order to ensure the safety of the home before the child is returned. Intended to be a temporary safety measure, parents do not give up rights to their child in this situation.

Additional special education information may be found at the following website:

http://doe.k12.hi.us/specialeducation/index.htm


Surrogate Parent Framework
Is the student in the custody of the State of Hawaii?
No
Yes
Does the student have a "parent," as defined by Chapter 60/61, who has a long standing relationship with the student; is the individual willing to make educational decisions on behalf of the student; and has the DOE/DHS deemed the individual appropriate?
Optimally, there should be written documentation (i.e. power of attorney).
The student becomes a ward of the State.
This generally includes physical custody.
Legal Status
Department of Human Services
Temporary Foster Custody
Voluntary Foster Custody
Foster Custody
Permanent Custody to DHS
Family Supervision
Joint Permanent Custody
Permanent Custody to Individual(s)
Yes
No
State efforts to contact/locate the natural parent and/or guardian are made and documented.
After several attempts, was successful contact made with the parent and/or guardian?
Yes
No
Does the student have a "parent," as defined by Chapter 60/61, who has a long standing relationship with the student; is the individual willing to make educational decisions on behalf of the student; and has the DOE/DHS deemed the individual appropriate?
Yes
No
Surrogate parent not assigned
Surrogate parent assigned
Surrogate parent assigned
Surrogate parent not assigned

02/12

STATE OF HAWAII

DEPARTMENT OF EDUCATION

REQUEST FOR ASSIGNMENT OF A SURROGATE PARENT

FOR A STUDENT IDENTIFIED UNDER CHAPTERS 60/61

Follow the steps below only after a careful review of the Determination of An Individual As the Parent checklist:

1. The school completes Part A and B and sends the form to the surrogate parent provider.
2. The Surrogate Parent Director/Designee completes Part C and D, retains a copy and returns the original form to the referring school.
3. The school keeps the original in the student's confidential folder.

A. STUDENT DATA

Name of Student: _____ Student I.D. Number: _____

School: _____ Date of Birth: _____

B. NEED CRITERION

The above-named student who is (check one) ☐ suspected of having a disability or ☐ a student with a disability is in need of a Surrogate Parent for the following reason:

☐ No parent can be identified. IDEA 2004 §300.30
A referral to Child Protective Services is being made because of suspected neglect.

☐ After reasonable efforts, the whereabouts of the parent cannot be discovered.
A referral to Child Protective Services is being made because of suspected neglect.

☐ Although a caregiver consent affidavit has been received by the school, the caregiver consent affidavit does not apply to the programs and services of the IDEA 2004 or Section 504 student. HRS §302A-482(12)(g)

☐ The student is a ward of the State.

_____ _____
Principal's Signature Date

C. RESPONSE BY THE SURROGATE PARENT DIRECTOR

Principal: _____

_____, a DOE appointed Surrogate Parent, is assigned to the above-named
Name of Surrogate Parent (Please Print)

student. The Surrogate Parent may be contacted at _____
Street Address

_____ _____
City State Zip Code Phone Number

_____ _____
Surrogate Parent Director/Designee Signature Date

D. SURROGATE PARENT AFFIRMATION

I affirm that I have no interests that conflict with the interests of the above-named student while I perform my services as the student's Surrogate Parent.

_____ _____
Surrogate Parent's Signature Date

DISTRIBUTION: School, Surrogate Parent Director

DETERMINATION OF AN INDIVIDUAL AS THE PARENT CHECKLIST
(For Purposes of Chapters 60/61)

Instructions:
1. Use this checklist as part of the school's assessment process to determine the need to request assignment of a surrogate parent.
2. Retain the checklist in the student's confidential folder.

A. STUDENT DATA

Student Name: _____ School: _____

B. INDIVIDUAL DATA

Name of Individual: _____ Relationship: _____

C. PARTICIPANTS

_____	_____	_____	_____
Name	Position	Name	Position
_____	_____	_____	_____
Name	Position	Name	Position
_____	_____	_____	_____
Name	Position	Name	Position

Date of Meeting: _____

D. CIRCLE TO INDICATE WHAT IS APPLICABLE:

Yes No 1. The biological parent's authority to make educational decisions on the child's behalf has been extinguished under State law. (CPS can substantiate the existence of this status.)

Yes No 2. The child has been residing with the individual for at least six months, and the individual has expressed a desire for continuation/permanency of the placement.

Yes No 3. The individual acts in a manner that demonstrates that the child is considered to be part of the family.

Yes No 4. There is evidence of the individual's day-to-day involvement in the life of the child and demonstrated personal concern for the child's interests and well-being.

Yes No 5. The individual exercises the authority to provide consent for the routine educational and recreational needs and activities of the child.

Yes No 6. The individual has participated in meetings to discuss evaluation, eligibility, placement of the child, and/or the provision of a free appropriate public education to the child; provided information on the educational needs of the child and concerns for enhancing the education of the child; has communicated regularly with school personnel.

Yes No 7. The individual does not have any of the conflicts of interests listed below:
- Existence of an institutional bias--is not an employee of an agency that is involved in the education or care of the child (e.g., employed by the DOE, DOH, etc.);
- Compensation for the care of the child is the family's sole source of income; and
- Possibility of administrative retaliation from any public agency for exercising the duties of a parent under IDEA 2004, Chapters 60/61.

An individual may act as the parent of the child for all purposes under IDEA 2004 and Chapters 60/61. If all the answers to questions 1 to 7 above are "yes," and the DOE/DHS has deemed the individual appropriate, the individual may act as a parent. If the answer to question 1 is "no," and the answers to questions 2 to 7 are "yes," a surrogate parent, if appropriate, may be appointed upon team decision. If one or more answers from questions 2 to 7 are "no," then a surrogate parent needs to be assigned to represent the child's interests.

Appendix J
Discipline Chart

Regular Education Student	Complex Area Superintendent Approval	Required Chapter 19 Notification	Other Requirements	Alternate Educational Activities Required	FAPE Required	Manifestation Determination Required
Cumulative suspension of 1-10 school days per semester	No	Investigation Notice Investigation Findings & Discipline		May be provided		
Cumulative suspension of **>10** school days per semester	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal		Shall be provided		
Cumulative crisis removal of 1-10 school days per semester	No	Investigation Notice Investigation Findings & Discipline		May be provided		
Cumulative suspension, including crisis removals of **>10** days per semester	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal		Shall be provided		

IDEA Eligible Student	Complex Area Superintendent Approval	Required Chapter 19 Notification	Other Requirements	Alternate Educational Activities Required	FAPE Required	Manifestation Determination Required
Cumulative suspension, including crisis and/or other removals of 1-10 school days per year	No	Investigation Notice Investigation Findings & Discipline		May be provided	No	No
Cumulative suspension, including crisis and/or other removals of **>10** school days per year	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal	Parent Notification on the date the decision to remove is made Procedural Safeguards Notice	(FAPE Required)	Yes	Yes No for crisis removal

Section 504 Eligible Student	Complex Area Superintendent Approval	Required Chapter 19 Notification	Other Requirements	Alternate Educational Activities Required	FAPE Required	Manifestation Determination Required
Cumulative suspension of 1-10 school days per year	No	Investigation Notice Investigation Findings & Discipline		May be provided		No
Cumulative suspension, including crisis and/or other removals of **>10** school days per year	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal	Parent Notification on the date the decision to remove is made Procedural Safeguards Notice	Shall be provided		Yes (No for use, possession or current engagement in illegal drugs or alcohol.)

NOTE: All suspensions or removals in the school year prior to student's Section 504 or IDEA eligibility are included in the cumulative days per year.

From Regular Education to IDEA Eligible	Complex Area Superintendent Approval	Required Chapter 19 Notification	Other Requirements	Alternate Educational Activities Required	FAPE Required	Manifestation Determination Required
Cumulative suspension, including crisis and/or other removals of 1-10 school days per year	No	Investigation Notice Investigation Findings & Discipline		May be provided	No	No
Cumulative suspension, including crisis and/or other removals **>10** school days per year	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal	Parent Notification on the date the decision to remove is made Procedural Safeguards Notice	(FAPE Required)	Yes	Yes No for crisis removal

From Regular Education to Section 504 Eligible	Complex Area Superintendent Approval	Required Chapter 19 Notification	Other Requirements	Alternate Educational Activities Required	FAPE Required	Manifestation Determination Required
Cumulative suspension 1-10 school days per year	No	Investigation Notice Investigation Findings & Discipline		May be provided		No
Cumulative suspensions, including crisis and/or other removals of **>10** school days per year	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal	Parent Notification on the date the decision to remove is made Procedural Safeguards Notice	Shall be provided		Yes (No for use, possession or current engagement in illegal drugs or alcohol.)

NOTE: All suspensions or removals in the school year prior to student's Section 504 or IDEA eligibility are included in the cumulative days per year.

From IDEA Eligible to Regular Education Student	Complex Area Superintendent Approval	Required Chapter 19 Notification	Other Requirements	Alternate Educational Activities Required	FAPE Required	Manifestation Determination Required
Cumulative suspension of 1-10 school days per semester	No	Investigation Notice Investigation Findings & Discipline		May be provided		
Cumulative suspension of **>10** school days per semester	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal		Shall be provided		
Cumulative crisis removal of 1-10 school days per semester	No	Investigation Notice Investigation Findings & Discipline		May be provided		
Cumulative suspension, including crisis removals of **>10** days per semester	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal		Shall be provided		

From IDEA Eligible to Section 504 Eligible	Complex Area Superintendent Approval	Required Chapter 19 Notification	Other Requirements	Alternate Educational Activities Required	FAPE Required	Manifestation Determination Required
Cumulative suspension of 1-10 school days per year	No	Investigation Notice Investigation Findings & Discipline		May be provided		No
Cumulative suspension, including crisis and/or other removals of **>10** school days per year	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal	Parent Notification on the date the decision to remove is made Procedural Safeguards Notice	Shall be provided		Yes (No for use, possession of current engagement in illegal drugs or alcohol.)

NOTE: All suspensions or removals in the school year prior to student's Section 504 or IDEA eligibility are included in the cumulative days per year.

From Section 504 Eligible to Regular Education Student	Complex Area Superintendent Approval	Required Chapter 19 Notification	Other Requirements	Alternate Educational Activities Required	FAPE Required	Manifestation Determination Required
Cumulative suspension of 1-10 school days per semester	No	Investigation Notice Investigation Findings & Discipline		May be provided		
Cumulative suspension of **>10** school days per semester	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal		Shall be provided		
Cumulative crisis removal of 1-10 school days per semester	No	Investigation Notice Investigation Findings & Discipline		May be provided		
Cumulative suspension, including crisis removals of **>10** days per semester	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal		Shall be provided		

From Section 504 Eligible to IDEA Eligible Student	Complex Area Superintendent Approval	Required Chapter 19 Notification	Other Requirements	Alternate Educational Activities Required	FAPE Required	Manifestation Determination Required
Cumulative suspension, including crisis and/or other removals of 1-10 school days per year	No	Investigation Notice Investigation Findings & Discipline		May be provided	No	No
Cumulative suspension, including crisis and/or other removals of **>10** school days per year	Yes	Investigation Notice Investigation Findings & Discipline Request for Appeal	Parent Notification on the date the decision to remove is made Procedural Safeguards Notice		Yes	Yes No for crisis removal

NOTE: All suspensions or removals in the school year prior to student's Section 504 or IDEA eligibility are included in the cumulative days per year.

DISCIPLINE CONSIDERATIONS

Individuals with Disabilities Education Act (IDEA) and Chapter 60

INTRODUCTION

It is established in the Individuals with Disabilities Education Act (IDEA) Hawai`i Administrative Rules, Title 8, Chapter 60 (Chapter 60) that students with a disability may be disciplined in the same manner as students without a disability, as long as students with a disability:

- Are not penalized for behavior that is a manifestation of their disability; and
- Are provided educational services when the discipline constitutes an educational change of placement.

The IDEA and Chapter 60 provide procedural and substantive protections to a student with a disability that must be followed along with Hawai`i Administrative Rules, Title 8, Chapter 19 (Chapter 19).

It is highly recommended that school personnel take steps to address misconduct when it first appears. Such steps could, in many instances, eliminate the need for future disciplinary action. Proactive measures may be facilitated through the Individualized Education Program (IEP) and placement processes required by IDEA. For example, when misconduct occurs, a functional behavioral assessment could be conducted, and determinations could be made as to whether the student's current program is appropriate and whether the student could benefit from the provision of more specialized instructional and/or related services, such as counseling, psychological services, or social-work services in schools. In addition, teacher training in effective use of conflict management and/or behavior management strategies could also be effective.

In the best of circumstances:

- Existing behavioral factors are identified in the evaluation of the student with a disability;
- The IEP team carefully considers whether the student's behavior impedes or would impede his/her learning or the learning of other students;
- Positive behavioral interventions, strategies and supports to address the behavior are included in the student's IEP; and
- As a result of these interventions, the student benefits educationally and conforms to school rules.

However, even in the best of circumstances, with committed and trained personnel who carefully follow the law and use appropriate behavior management strategies, a student with a disability may violate school rules. If misconduct does occur, disciplinary actions that do not result in the removal of a student with a disability from his / her current placement, such as reprimands, warnings, and parent conferences are authorized under the IDEA and Chapter 60. For suspensions of ten or fewer cumulative school days in the same school year, the student with a disability is subject to the same rules of conduct as a student without a disability and may be suspended in accordance with Chapter 19 without further procedural or substantive requirements under the IDEA or Chapter 60. Suspensions for more than ten cumulative school days in the same school year are permissible for separate incidences of misconduct; however, there are procedural requirements under the IDEA and Chapter 60 that apply to these disciplinary exclusions.

WORKING TOGETHER WITH PARENTS

When a decision has been made to suspend a student because of a violation of a code of student conduct, the school shall inform the parent of the decision and document the contact. In the matter of discipline, as in all aspects of education, communication and relationships are key. Ideally, school personnel and parents should discuss how to respond to a student's behavior before it becomes an issue.

The limitations in IDEA and Chapter 60 on the amount of time that students with disabilities who violate school rules can be removed from their current placements apply only when school personnel are not able to work out appropriate placements with their parents. The protections come into play when the student with a disability's placement will be changed by the disciplinary action and the student's parent objects to the change of placement and requests a due process hearing.

For any agreed upon change of placement, the student must be provided a free appropriate public education (FAPE). In addition, school personnel and the parent should discuss whether assessment(s), including a functional behavioral assessment, should be conducted to determine the relationship of cognitive and behavioral factors and/or whether the IEP team should develop or modify the student's behavioral intervention plan.

When a change of placement for disciplinary purposes occurs, the student's parent must be provided with a prior written notice of the change of placement and a copy of the procedural safeguards ("Procedural Safeguards Notice").

DISCIPLINE AND PROCEDURAL SAFEGUARDS

The IDEA and Chapter 60 protections are easier to understand if they are viewed as preliminary procedures for school personnel to determine whether Chapter 19 rules of misconduct apply to the student with a disability in the same manner as a student without a disability.
The requirements under the IDEA and Chapter 60 are designed to ensure that a student with a disability is not removed from the student's current placement for an educationally significant period of time (more than ten (10) cumulative school days in the same school year) because of conduct related to the student's disability.

Clearly, students with a disability may not be held to a higher standard of conduct than students without a disability and they must have the same procedural protections as students without a disability. For example, if the total numbers of days in any single semester for suspensions exceed ten (10) school days, Chapter 19 requires additional protections to impose this serious discipline (§§ 8-19-8(c) and 8-19-9). Likewise, students with a disability would be afforded these same rights.

The interventions school personnel have available when the conduct of a student with a disability presents a clear threat to the physical safety of self or others include:

- Suspension;
- Placement in an interim alternative educational setting (IAES) for up to forty-five (45) school days; and
- Crisis removal.

CHANGE OF PLACEMENT

If school personnel exclude any special education student from school for more than ten (10) school days in the same school year, it is considered a significant interference with the student's right to attend school and requires heightened procedural safeguards. (Goss v. Lopez, 419 U.S. 565; 95 S.Ct. 729 (1975)) Chapter 60, § 8-60-81, considers any exclusion of a student with a disability for more than ten (10) cumulative school days in the same school year to be a change in placement.

If a parent challenges a change in placement through a due process hearing, the student will remain in the disciplinary setting during the pendency of the administrative and judicial proceedings or until the expiration of the time period of removal, whichever occurs first (§ 8-60-78).
When a disciplinary change of placement occurs, school personnel must follow additional requirements. For any removal which results in the student being excluded for more than ten (10) cumulative days in the same school year, school personnel must:

- Conduct a manifestation determination;
- Provide services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP; and
- Conduct, as appropriate, a functional behavioral assessment and provide behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur.

Manifestation Determination
Immediately if possible, but no later than ten (10) school days after the decision to either suspend the student with a disability for more than ten (10) consecutive or cumulative school days, the student's IEP team must conduct a manifestation determination (§ 8-60-75(e)) to determine if:

1. The conduct in question was caused by, or had a direct and substantial relationship to the student's disability;
    a. Consideration may be given to whether the student's disability impaired either his/her ability to understand the impact and consequences of the behavior subject to disciplinary action or the ability to control the behavior subject to disciplinary action.

OR

2. The conduct in question was the direct result of the department's failure to implement the IEP.

If **either** of the above conditions is met, the conduct in question shall be determined to be a manifestation of the student's disability.

If the misconduct is NOT a manifestation of the disability:

- The student may be disciplined in the same manner as a student without a disability under Chapter 19, except that the student's IEP team must determine the appropriate services in order for the student to progress in the general curriculum and appropriately advance toward achieving the IEP goals;
- The services must begin on the eleventh (11) day of cumulative suspension in the same school year; and
- School personnel shall conduct/review the FBA and the BIP as appropriate.

If the misconduct IS a manifestation of the disability:

- The student may not be suspended;
- School personnel must take immediate steps to remedy any deficiencies in the IEP (if the IEP team determined that the behavior was a result of the department's failure to implement the IEP); and
- School personnel shall conduct/review the FBA and the BIP.

Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP)

What is a Functional Behavioral Assessment?
IEP teams need to be able to address the various situational, environmental and behavioral circumstances raised in individual cases. A functional behavioral assessment is a problem-solving process that relies on different strategies and techniques to determine the purposes or functions of

the behavior by defining the behavior, identifying events that trigger the behavior and the consequences for the behavior, and developing hypotheses regarding the function of the behavior.

The functional behavioral assessment encompasses a variety of techniques and includes the direct and indirect collection of information through strategies such as the review of records and student work products, the questioning of parents and school personnel regarding the behavior, and the direct observation of the behavior to collect information on the conditions that surround the behavior. The direct observation is designed to determine the pattern of behaviors in the context of what happened right before the behavior occurred (the antecedent event) and what happened right after the behavior occurred (consequence).

What is a Behavioral Intervention Plan?
Practically all behavior occurs within a particular context and serves a particular purpose. Identifying the purpose of problem behaviors or more specifically, what the student "gets" or avoids" through those behaviors can provide information that is essential to developing instructional strategies and supports to reduce or eliminate behaviors that interfere with successful classroom performance.

Manifestation Determination

	Manifestation Determination required?
Total Number of Current and/or Previous Suspension(s) Days (within a given school year)	
Ten (10) days or less	No
More than ten (10) days	Yes

SUSPENSION OF TEN (10) or FEWER CUMULATIVE SCHOOL DAYS
If a student with a disability is suspended for ten (10) or fewer cumulative school days (including crisis suspensions), the manifestation determination requirements of IDEA and Chapter 60 do not come into play. School personnel have the authority to suspend a student with a disability for ten (10) cumulative school days or fewer in the same manner as students without a disability. For purposes of determining whether the misconduct violates the rules of the school, the student would be subject to the same standards and protections as other students under Chapter 19.

If a student with a disability is suspended for less than ten (10) cumulative school days in a given school year, FAPE need not be provided during the period of suspension and the functional behavioral assessment/ behavioral intervention plan requirements are not triggered. The student may be provided with an alternate educational option (such as homework, projects, class assignments). (§ 8-60-75(d)(3))

Suspension of Ten (10) or Fewer Cumulative School Days
Within a given school year:

Manifestation Determination?	No
FBA?	No

BIP?	No
FAPE?	No
Alternate Educational Option?	Same as for regular education students

A major misconception is that students with a disability may only be suspended for up to ten (10) school days in a given school year. The federal and state requirements are not a limit on the number of days a student with a disability may be suspended in a given school year. For suspensions of more than ten (10) cumulative school days, school personnel must follow the procedures in IDEA and Chapter 60. A student with a disability may be suspended under Chapter 19 for more than ten (10) cumulative school days in a given school year or even dismissed for separate incidences of misconduct if the IEP team determines the misconduct was not a manifestation of the student's disability.

SUSPENSIONS OF MORE THAN TEN (10) CUMULATIVE SCHOOL DAYS

Suspensions for more than ten (10) cumulative school days or placement in an (IAES) are always considered a change in placement under Chapter 60. Therefore, the IDEA and Chapter 60 require heightened procedural safeguards. For any suspension of a student with a disability for more than ten (10) cumulative school days or any placement in an IAES:

- Notify the parent of the decision and provide the procedural safeguards notice no later than the day the decision to suspend the student or seek placement in an IAES, (§ 8-60-75(h));
- Conduct a manifestation determination within ten (10) school days (§ 8-60-75(e)); and
- Provide FAPE as determined by the IEP team.

Suspensions of More Than Ten (10) Cumulative School Days

Within a given school year:

When contemplating suspension, notify parent (not a prior written notice) and provide procedural safeguards notice no later than the day the decision to take action is made. *Provide prior written notice if decision is made to suspend.*	
Manifestation Determination within ten (10) school days?	Yes
FBA/BIP? FBA/BIP?	If conduct is a manifestation of the disability - yes If conduct is NOT a manifestation of the disability – as appropriate
FAPE?	Yes, determined by the IEP team

INTERIM ALTERNATIVE EDUCATIONAL SETTINGS (IAES)

School personnel have the authority to temporarily change the placement of a student with a disability to an IAES for forty-five (45) school days for:

- Carrying or possessing a dangerous weapon to or at school, on school premises, or to or at a school function;
- Possessing or using illegal drugs or selling or soliciting the sale of a controlled substance while at school or at a school function; or

- Causing serious bodily injury at school, on school premises, or at a school function.

Definitions of the above-mentioned misconducts follow:

- Dangerous weapons: dirk, dagger, butterfly knife, switchblade knife, blackjack, slug shot, billy, metal knuckles, or other instrument whose sole design and purpose is to inflict bodily injury or death. Also included are firearms and dangerous instruments.
- Illegal (illicit) drugs: substances, the possession, distribution, ingestion, manufacture, sale, or delivery of which are prohibited under chapter 329 and chapter 712, part IV, and are illegal to possess, use, promote or sell according to any other Hawaii statute or federal law
- Controlled substance: a drug or substance as defined in Schedules I through V in chapter 329, Hawaii Revised Statutes.
- Serious bodily injury: Injury with risk of death, causing extreme physical pain, obvious disfigurement, or loss/impairment of the function of a body part of mental function.

Placement in an IAES is always considered a change in placement under Chapter 60. Therefore IDEA and Chapter 60 require heightened procedural safeguards. For any placement of a student with a disability into an IAES for more than ten consecutive or cumulative school days:

- Notify the parent of the decision and provide the procedural safeguards notice no later than the day of the decision to seek placement in an IAES; and
- Follow the manifestation determination, functional behavioral assessment/behavioral intervention plan and FAPE requirements. The student may remain in the IAES for up to forty-five (45) school days regardless of the outcome of the manifestation determination.

The IAES is determined by the IEP team. It is important to note that school personnel are not required to place or request a placement of a student in an IAES for engaging in these dangerous behaviors. It is an available option for which they have the authority to utilize. Placement in an IAES is not a disciplinary consequence.

This change of placement to an IAES setting can occur even over the objection of the parent. If the parent disagrees with the school's decision on the setting, the student remains in the IAES pending the decision of the hearing officer or until the expiration of the forty-five (45) school days, whichever occurs first, unless the parent and the school agree otherwise (§ 8-60-78).

If the misconduct is not a manifestation of the disability, then (a) the discipline set forth in Chapter 19 for the misconduct applies and (b) if suspended, FAPE must be provided from the eleventh (11) cumulative day of suspension in a given school year.

If the misconduct is a manifestation of the student's disability, it is possible, although not required, to return the student to the current placement prior to the expiration of the forty-five (45) school days (§ 8-60-75(g)(1)).

The forty-five (45) day period is not a limitation on the number of days a student can be suspended for a violent act of misconduct. If the student's misconduct is not related to the student's disability, the student may be suspended for more than forty-five (45) days if that is the disciplinary action taken for students without a disability.

Options for the location of the IAES that may be considered include (but are not limited to) the school (at alternate times of the day when all students are not in school), and community and home settings.

The IAES placement is for up to forty-five (45) school days. If necessary, the IDEA and Chapter 60 would allow a student to be placed more than once in a given school year for separate incidences of misconduct involving drugs, controlled substances and dangerous weapons. For example, a student might be placed up to forty-five (45) school days in an IAES for possessing a weapon at school in the fall and for up to forty-five (45) school days for using illegal drugs at school in the spring.

If school personnel recommend a change of placement for the student after the expiration of the IAES, and the parents disagree and file for a hearing, the student would return to the placement where the misconduct occurred. In the case of such disagreement or when the IAES expires and the return of the student to the previous placement could cause injury to the student or others, school personnel may seek an order from a hearing officer to continue the interim setting or change the "stay-put" to another appropriate placement.

Interim Alternative Education Setting (IAES)

Notify parent and provide procedural safeguards notice, no later than the day the decision to seek IAES placement is made.	
Manifestation Determination?	Yes
FBA/BIP? FBA/BIP?	If conduct is a manifestation of the disability - yes If conduct is NOT a manifestation of the disability - as appropriate
FAPE?	Yes, determined by the IEP team
Setting: May include the school, community, home (e.g. twilight after school program)	Yes, determined by IEP team

CRISIS SUSPENSION

Previous Suspensions and Crisis Suspension - Ten (10) Cumulative School Days or Fewer

In an emergency, the school principal has the authority to immediately exclude a student with a disability from school through Chapter 19's crisis suspension procedures (§ 8-19-7) or through the regular suspension authority in §§ 8-19-5(a) and 8-19-8 for ten (10) consecutive or cumulative school days or fewer for the prohibited school conduct. If the total number of days of crisis suspension in any single semester exceed ten (10) school days, Chapter 19, §§ 8-19-7(a) and 8-19-9, require additional procedures for all students.

School personnel must ensure the student resumes attendance at school as soon as the "crisis" is over, that is, the exclusion is no longer necessary.

Previous Suspensions and Crisis Suspension - More Than Ten (10) Cumulative School Days

If the total number of days of suspension, both crisis and regular, exceed ten (10) cumulative school days in the same school year, school personnel have the authority to crisis suspend only if the removals do NOT constitute a change of placement.

The removals would be a change of placement only if the removals constitute a pattern:

1. Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in a series of removals, **and**
2. Because of such additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals one to another.

The student must be provided a FAPE from the eleventh (11) day of removal as determined by school personnel in consultation with the student's special education teacher. The IEP team must also be convened immediately after the crisis suspension to meet the functional behavioral assessment/ behavioral intervention plan requirements. These days of crisis suspension will be counted for purposes of any subsequent suspension.

Crisis Suspension

Notify parent and provide procedural safeguards notice	
Manifestation Determination?	No
Functional Behavioral Assessment/Behavioral Intervention Plan?	Yes
FAPE?	Yes, determined by school personnel in consultation with Special Education Teacher

Appendix K
Confidentiality of Information

Access rights
The Hawaii Department of Education (Department) must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the Department. The Department must comply with a request without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP), or any hearing pursuant to 34 C.F.R. §300.507 or §§ 300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.

The right to inspect and review education records under this section includes:

- The right to a response from the Department to reasonable requests for explanations and interpretations of the records;
- The right to request that the Department provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- The rights to have a representative of the parent inspect and review the records.

The Department may presume that a parent has authority to inspect and review records relating to his/her child unless the Department has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

Record of access
The Department must keep a record of parties obtaining access to education records collected, maintained, or used (except access by parents and authorized employees of the Department), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Records on more than one student
If any education record includes information on more than one student, the parents of those students have the right to inspect and review only the information relating to their child or to be informed of that specific information.

Fees
The Department may charge a fee for copies of records that are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. The Department may not charge a fee to search for or to retrieve information.

Amendment of records at parent's request
A parent who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request the Department to amend the information.

The Department must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the Department decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

Opportunity for a hearing
The Department must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

Result of hearing
If, as a result of the hearing, the Department decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must amend the information accordingly and so inform the parent in writing. If, as a result of the hearing, the Department decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must inform the parent of the parent's right to place in the records the Department maintains on

the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the Department.

Any explanation placed in the records of the student must:

- Be maintained by the Department as part of the records of the student as long as the record or contested portion is maintained by the Department; and
- If the record of the student or the contested portion is disclosed by the Department to any party, the explanation must also be disclosed to the party.

Hearing procedures
A hearing must be conducted according to the procedures in the Family Educational Rights and Privacy Act (FERPA) and Hawaii Administrative Rules (HAR) regarding the Protection of Educational Rights and Privacy of Students and Parents.

Consent
Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of the Department, unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA and HAR regarding the Protection of Educational Rights and Privacy of Students and Parents. Except as provided in the following paragraph, parental consent is not required before personally identifiable information is released to officials of the Department for purposes of meeting a requirement under the IDEA and Chapter 60.

Parental consent, or the consent of an eligible student who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of agencies providing or paying for transition services.

Safeguards
The Department must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. The Department must maintain, for public inspection, a current listing of the names and positions of those employees within the Department who may have access to personally identifiable information.

Destruction of information
The Department must inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.