

**§8-56-50 Private school placements.** (a) 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 8-56-37 and 8-56-38.

(b) 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.

(c) 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. If the private school or facility initiates and conducts these meetings, the department shall ensure that the parent and a representative of the department:

- (1) Are involved in any decision about the student's IEP; and
- (2) Agree to any proposed changes in the program before those changes are implemented.

(d) Even if a private school or facility implements a student's IEP, responsibility for compliance with this chapter remains with the department.  
 [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.349)

**§ 8-60-147 Implementation by SEA.**

In implementing § 8-60-146, the SEA must—

- (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
- (b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and
- (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

**§ 8-60-325 Private school placements by public agencies.**

(a) *Developing IEPs.*

(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§8-60-320 and 8-60-324. (2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must 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 child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.  
 (2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative—

- (i) Are involved in any decision about the child's IEP; and
- (ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

**§8-56-51 Placement of students by parents if a free appropriate public education is at issue.** (a) 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 free appropriate public education available to the student and the parent 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 8-56-52 to 8-56-58.

(b) Disagreements between a parent and the department regarding the

**§ 8-60-148 Placement of children by parents when FAPE is at issue.**

(a) *General.* This part does not require the SEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§ 8-60-131 through 8-60-144.

(b) *Disagreements about FAPE.* Disagreements between the parents

availability of a program appropriate for the student, and the question of financial responsibility, are subject to the due process procedures of sections 8-56-64 to 8-56-81.

(c) 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. 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.

(d) The cost of reimbursement described in subsection (c) may be reduced or denied:

(1) If:

(A) At the most recent IEP meeting that the parent attended prior to removal of the student from the public school, the parent did not inform the IEP team that the parent was rejecting the placement proposed by the department to provide a free appropriate public education to the student, including a statement of the concerns and the intent to enroll the student in a private school at public expense; or 8-56-51

(B) At least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parent did not give written notice to the department of the information described in subparagraph (A);

(2) If, prior to the parent's removal of the student from the public school, the department informed the parent, through the notice requirements described in section 8-56-68(a), of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parent.

(e) Notwithstanding the notice requirement in subsection (d)(1), the cost of reimbursement may not be reduced or denied for failure to provide the notice if:

(1) The parent is illiterate or cannot write in English;

(2) Compliance with subsection (d)(1) would likely result in physical or serious emotional harm to the student;

(3) The school prevented the parent from providing the notice; or

(4) The parent had not received notice of the notice requirement in subsection (d)(1). [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.403)

and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§ 8-60-504 through 8-60-520.

(c) *Reimbursement for private school placement.* If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. 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 SEA.

(d) *Limitation on reimbursement.* The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—

(1) If—

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 8-60-503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child 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 paragraph (d)(1) of this section, the cost of reimbursement—

(1) Must not be reduced or denied for failure to provide the notice if—

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to § 8-60-504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced

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|   | <p>or denied for failure to provide this notice if—</p> <ul style="list-style-type: none"> <li>(i) <u>The parents are not literate or cannot write in English; or</u></li> <li>(ii) <u>Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.</u></li> </ul>  |
| <p style="text-align: center;"><b>SUBCHAPTER 8</b></p> <p style="text-align: center;"><b>STUDENTS WITH A DISABILITY ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS</b></p> <p>§8-56-52 <u>Applicability.</u> Sections 8-56-52 to 8-56-58 apply only to students with a disability enrolled by their parents in private schools or facilities other than students with a disability covered under sections 8-56-48 to 8-56-51. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.450)8-56-56</p>   | <p><b>§ 8-60-130 Definition of parentally-placed private school children with disabilities.</b><br/> <i>Parentally-placed private school children with disabilities</i> means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in § 8-60-13 or secondary school in § 8-60-36, other than children with disabilities covered under §§ 8-60-145 through 8-60-147.</p>  |
| <p>§8-56-53 <u>Basic requirement; services.</u> (a) In accordance with 20 U.S.C. Section 1412(a)(10)(A), to the extent consistent with their number and location in the State, the department shall provide for the participation of private school students with a disability in the program assisted or carried out under 20 U.S.C. Sections 1411 - 1419, the Individuals With Disabilities Education Act, Part B.</p> <p>(b) The department shall ensure that, in accordance with subsection (a) and sections 8-56-54 to 8-56-57, a services plan is developed and implemented for each private school student with a disability who has been designated to receive special education and related services under this subchapter. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.452)</p> | <p><b>§ 8-60-132 Provision of services for parentally-placed private school children with disabilities—basic requirement.</b></p> <p>(a) <i>General.</i> To the extent consistent with the number and location of children 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 children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, <u>including direct services determined in accordance with § 8-60-137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§ 8-60-190 through 8-60-198.</u></p> <p>(b) <i>Services plan for parentally-placed private school children with disabilities.</i><br/> In accordance with paragraph (a) of this section and §§ 8-60-137 through 8-60-139, a services plan must be developed and implemented for each private school child with a disability who has been designated <u>by the SEA in which the private school is located</u> to receive special education and related services under this part.</p> <p>(c) <i>Record keeping.</i> Each SEA must maintain in its records the following information related to parentally-placed private school children covered under §§ 8-60-130 through 8-60-144:</p> <ol style="list-style-type: none"> <li>(1) The number of children evaluated;</li> <li>(2) The number of children determined to be children with disabilities; and</li> <li>(3) The number of children served.</li> </ol> |
| <p>§8-56-54 <u>No individual right to special education and related services.</u> No 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 the public school. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.454)</p>  | <p><b>§ 8-60-137 Equitable services determined.</b></p> <p>(a) <i>No individual right to special education and related services.</i> No <u>parentally-placed</u> private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.</p>   |

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|   | <p>(b) <i>Decisions.</i></p> <p>(1) Decisions about the services that will be provided to <u>parentally-placed</u> private school children with disabilities under §§ 8-60-130 through 8-60-144 must be made in accordance with paragraph (c) of this section and § 8-60-134(c).</p> <p>(2) The SEA must make the final decisions with respect to the services to be provided to eligible <u>parentally-placed</u> private school children with disabilities.</p> <p>(c) <i>Services plan for each child served under §§ 8-60-130 through 8-60-144.</i> If a child with a disability is enrolled in a religious or other private school <u>by the child's parents</u> and will receive special education or related services from the SEA, the SEA must—</p> <p>(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 8-60-138(b); and</p> <p>(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the SEA shall use other methods to ensure participation by the <u>religious or other</u> private school, including individual or conference telephone calls.<br/>[see §8-56-55]</p> |
| <p>§8-56-55 <u>Students with a disability in private schools.</u> If a student with a disability is enrolled in a private school pursuant to sections 8-56-52 to 8-56-58 and will receive special education or related services from the department, the department shall:</p> <p>(1) Initiate and conduct meetings to develop, review, and revise a services plan for the student in accordance with section 8-56-56(b);</p> <p>(2) Ensure that a representative of the private school attends each meeting. If the representative cannot attend, the department shall use other methods to ensure participation by the private school, including individual or conference telephone calls. [Eff 3/16/00] (Auth: HRS §296-12) (Imp: 34 C.F.R. §300.454(c))</p>   | <p>See § 8-60-137(c) at §8-56-54</p>  |
| <p>§8-56-56 <u>Services provided.</u> (a) The services provided private school students with a disability shall be provided by personnel meeting the same standards as personnel providing services in the public schools.</p> <p>(b) Private school students with a disability may receive a different amount of services than students with a disability in public schools.</p> <p>(c) No private school student with a disability is entitled to any service or to any amount of a service the student would receive if enrolled in a public school.</p> <p>(d) Each private school student with a disability who has been designated to receive services under section 8-56-53 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 consultation with representatives of private school students with a disability, it will be made available to private school students with a disability.</p> <p>(e) The services plan shall to the extent appropriate:</p> | <p><b>§ 8-60-138 <u>Equitable services provided.</u></b></p> <p>(a) <i>General.</i></p> <p>(1) The services provided to <u>parentally-placed</u> private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, <u>except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of §8-60-18.</u></p> <p>(2) <u>Parentally-placed</u> private school children with disabilities may receive a different amount of services than children with disabilities in public schools.</p> <p>(b) <i>Services provided in accordance with a services plan</i></p> <p>(1) Each <u>parentally-placed</u> private school child with a disability who has been designated to receive services under § 8-60-132 must have a services plan that describes the specific special education and related</p>  |

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| <p>(1) Meet the requirements of section 8-56-38, with respect to the services provided; and</p> <p>(2) Be developed, reviewed, and revised consistent with sections 8-56-31 to 8-56-37. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.455)</p>  | <p>services that the SEA will provide to the child in light of the services that have been determined, through the process described in §§ 8-60-134 and 8-60-137, it will make available to <u>parentally-placed</u> private school children with disabilities.</p> <p>(2) The services plan must, to the extent appropriate—</p> <p>(i) Meet the requirements of § 8-60-320, <u>or for a child ages three through five, meet the requirements of § 8-60-323(b)</u> with respect to the services provided; and</p> <p>(ii) Be developed, reviewed, and revised consistent with §§ 8-60-321 through 8-60-324.</p> <p><u>(c) Provision of equitable services.</u></p> <p><u>(1) The provision of services pursuant to this section and §§ 8-60-139 through 8-60-143 must be provided:</u></p> <p>(i) <u>By employees of a public agency; or</u></p> <p>(ii) <u>Through contract by the public agency with an individual, association, agency, organization, or other entity.</u></p> <p><u>(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.</u></p> |
| <p><u>§8-56-57 Location of services.</u> (a) The department may provide services to a private school student with a disability on-site at the student's private school, to the extent consistent with state law.</p> <p>(b) If necessary for the student to benefit from or participate in the other services provided under this subchapter, a private school student with a disability shall be provided transportation:</p> <p>(1) From the student's school or the student's home, to a site other than the private school; and</p> <p>(2) From the service site to the private school, or to the student's home depending on the timing of the services.</p> <p>(c) The department is not required to provide transportation from the student's home to the private school. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.456)</p> | <p><b><u>§ 8-60-139 Location of services and transportation.</u></b></p> <p>(a) <i>Services on private school premises.</i> Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.</p> <p>(b) <i>Transportation—</i></p> <p>(1) <i>General.</i></p> <p>(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation—</p> <p>(A) From the child's school or the child's home to a site other than the private school; and</p> <p>(B) From the service site to the private school, or to the child's home, depending on the timing of the services.</p> <p>(ii) The SEA is not required to provide transportation from the <u>child's home</u> to the private school.</p> <p>(2) <i>Cost of transportation.</i> The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the SEA has met the requirement of §8-60-133.</p>  |
| <p><u>§8-56-58 Complaints.</u> (a) The procedures in sections 8-56-69 to 8-56-80 on due process hearings do not apply to a complaint that the department has failed to meet the requirements of sections 8-56-53 to 8-56-58, including the provision of services indicated on the student's services plan.</p> <p>(b) The procedures in sections 8-56-69 to 8-56-80 do apply to the department's proposal or refusal to initiate or change the identification or evaluation of a private school student with a disability residing in the State</p>   | <p><b><u>§ 8-60-140 Due process complaints and State complaints.</u></b></p> <p>(a) <i>Due process not applicable, except for child find.</i></p> <p>(1) Except as provided in paragraph (b) of this section, the procedures in §§ 8-60-504 through 8-60-519 do not apply to complaints that the SEA has failed to meet the requirements of §§8-60-132 through 8-60-139, including the provision of services indicated on the child's services plan.</p>  |

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| <p>who is in need of special education and related services, including the appropriate evaluation of the student in accordance with sections 8-56-6 to 8-56-14.</p> <p>(c) Complaints that the department has failed to meet the requirements of sections 8-56-52 to section 8-56-58 may be filed under sections 8-56-95 to 8-56-98. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.457)</p>   | <p><u>(b) Child find complaints—to be filed with the SEA.</u></p> <p><u>(1) The procedures in §§ 8-60-504 through 8-60-519 apply to complaints that an SEA has failed to meet the child find requirements in § 8-60-131, including the requirements in §§ 8-60-300 through 8-60-311.</u></p> <p><u>(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the SEA.</u></p> <p>(c) <i>State complaints.</i></p> <p>(1) Any complaint that an SEA has failed to meet the requirements in §§ 8-60-132 through 8-60-135 and 8-60-137 through 8-60-144 must be filed in accordance with the procedures described in §§ 8-60-151 through 8-60-153.</p> <p><u>(2) A complaint filed by a private school official under § 8-60-136(a) must be filed with the SEA in accordance with the procedures in §8-60-136(b).</u></p>  |
| <p style="text-align: center;">SUBCHAPTER 9</p> <p style="text-align: center;">CONFIDENTIALITY OF INFORMATION</p> <p>§8-56-59 <u>Applicability.</u> All of the provisions of chapter 8-34, relating to the Protection of Educational Rights and Privacy of Students and Parents, and the Family Educational Rights and Privacy Act (20 U.S.C. Section 1232g; 34 C.F.R. Part 99) apply to students with a disability or students suspected of having a disability and the students' parents. The additional rights provided for students with a disability under the Individuals With Disabilities Education Act (20 U.S.C. Section 1400 et seq.; 34 C.F.R. Sections 300.560 to 300.577) shall also apply. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.560 to 300.577)</p> <p>§8-56-60 - §8-56-63 "Reserved."</p> | <p><b><u>§ 8-60-610 Confidentiality.</u></b><br/> <u>The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by the SEA pursuant to Part B of the Act, and consistent with §§ 8-60-611 through 8-60-627.</u></p> <p><b><u>§ 8-60-611 Definitions.</u></b><br/> As used in §§ 8-60-611 through 8-60-625—</p> <p>(a) <i>Destruction</i> means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.</p> <p>(b) <i>Education records</i> means 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 U.S.C. 1232g (FERPA)).</p> <p>(c) <i>Participating agency</i> means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.</p> <p><b><u>§ 8-60-612 Notice to parents.</u></b></p> <p>(a) The SEA must give notice that is adequate to fully inform parents about the requirements of § 8-60-123, including—</p> <p>(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;</p> <p>(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information</p> |

(including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

**§ 8-60-613 Access rights.**

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 8-60-507 or §§ 8-60-530 through 8-60-532, or resolution session pursuant to § 8-60-510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency 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

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

**§ 8-60-614 Record of access.**

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

**§ 8-60-615 Records on more than one child.**

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

**§ 8-60-616 List of types and locations of information.**

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

**§ 8-60-617 Fees.**

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

**§ 8-60-618 Amendment of records at parent's request.**

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency 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 under §8-60-619.

**§ 8-60-619 Opportunity for a hearing.**

The agency 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 child.

**§ 8-60-620 Result of hearing.**

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information

is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

**§ 8-60-621 Hearing procedures.**

A hearing held under § 8-60-619 must be conducted according to the procedures in 34 CFR 99.22.

**§ 8-60-622 Consent.**

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with § 8-60-321(b)(3).

(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

**§ 8-60-623 Safeguards.**

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information

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|  | <p>must receive training or instruction regarding the State's policies and procedures under § 8-60-123 and 34 CFR part 99.</p> <p>(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.</p> <p><b>§ 8-60-624 Destruction of information.</b></p> <p>(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.</p> <p>(b) 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.</p> <p><b>§ 8-60-625 Children's rights.</b></p> <p>(a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.</p> <p>(b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.</p> <p>(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with § 8-60-520, the rights regarding educational records in §§ 8-60-613 through 8-60-624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.</p> <p><b>§ 8-60-626 Enforcement.</b></p> <p>The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures <u>consistent with §§ 8-60-611 through 8-60-625</u> are followed and that the requirements of the Act and the regulations in this part are met.</p> |
| <p style="text-align: center;">SUBCHAPTER 10</p> <p style="text-align: center;">PROCEDURAL SAFEGUARDS</p> <p>§8-56-64 <u>General responsibility.</u> The department shall provide each student with a disability and the student's parent the procedural safeguards set forth in sections 8-56-64 to 8-56-94. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.500)</p> | <p><b><u>§ 8-60-121 Procedural safeguards.</u></b></p> <p>(a) <i>General.</i> The State must have procedural safeguards <u>in effect</u> to ensure that each public agency in the State meets the requirements of §§ 8-60-500 through 8-60-536.</p> <p>(b) <i>Procedural safeguards identified.</i> Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.</p>   |

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| <p>§8-56-65 <u>Opportunity to examine records.</u> In accordance with section 8-56-59, the department shall afford the parent of a student with a disability an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.501)</p>   | <p>See § 8-60-501 at §8-56-66</p>   |
| <p>§8-56-66 Parent participation in meetings; placement decisions. (a) The department shall afford the parent of a student with a disability the opportunity to participate in meetings with respect to:</p> <p>(1) The identification, evaluation, and educational placement of the student; and</p> <p>(2) The provision of free appropriate public education to the student.</p> <p>(b) The department shall notify the parent of a student with a disability of the meetings described in subsections (a) and (e) in accordance with section 8-56-36 (a) and section 8-56-36 (b) on IEP meetings to ensure that the parent of a student with a disability has the opportunity to participate in the meetings.</p> <p>(c) 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 if those issues are not addressed in the student's IEP. 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 with the parent.</p> <p>(d) The department shall make reasonable efforts to ensure that the parent understands, and is able to participate in, any group discussions at the meetings, including arranging for an interpreter for a parent with deafness, or whose native language is other than English.</p> <p>(e) The department shall ensure that the parent of a student with a disability is a member of any group that makes decisions on the educational placement of the student.</p> <p>(1) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of the student, the department shall use other methods to ensure participation, including individual or conference telephone calls, or video conferencing.</p> <p>(2) A placement decision may be made by a group without the involvement of the 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 involvement, including information that is consistent with the requirements of section 8-56-36(g) on IEP meetings. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.501)</p> | <p><b>§ 8-60-501 Opportunity to examine records; parent participation in meetings.</b></p> <p>(a) <i>Opportunity to examine records.</i> The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 8-60-613 through 8-60-621, an opportunity to inspect and review all education records with respect to—</p> <p>(1) The identification, evaluation, and educational placement of the child; and</p> <p>(2) The provision of FAPE to the child.</p> <p>(b) <i>Parent participation in meetings.</i></p> <p>(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—</p> <p>(i) The identification, evaluation, and educational placement of the child; and</p> <p>(ii) The provision of FAPE to the child.</p> <p>(2) Each public agency must provide notice consistent with § 8-60-322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.</p> <p>(3) A meeting does not include informal or unscheduled conversations involving public agency 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 public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.</p> <p>(c) <i>Parent involvement in placement decisions.</i></p> <p>(1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.</p> <p>(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in § 8-60-322(a) through (b)(1).</p> <p>(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.</p> <p>(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency</p> |

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| <p>§8-56-67 <u>Independent education evaluation.</u> (a) The parent of a student with a disability has the right to obtain an independent educational evaluation of the student, subject to subsections (d) through (h).</p> <p>(b) The department shall provide to a parent, on request, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsections (g) and (h).</p> <p>(c) For the purposes of this section:</p> <p>(1) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the department.</p> <p>(2) "Public expense" means that the department either pays for the full cost of the evaluation or assessment or ensures that the evaluation or assessment is otherwise provided at no cost to the parent.</p> <p>(d) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the department.</p> <p>(1) If a parent requests an independent educational evaluation at public expense, the department shall, without unnecessary delay, either:</p> <p>(A) Initiate a hearing under section 8-56-72 to show that its evaluation or assessment is appropriate; or</p> <p>(B) Ensure an independent educational evaluation is provided at public expense unless the department demonstrates in a hearing under section 8-56-72 that the independent educational evaluation obtained by the parent did not meet department criteria.</p> <p>(2) If the department initiates a hearing and the final decision is that the department's evaluation and assessment are appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.</p> <p>(3) If a parent requests an independent educational evaluation, the department may ask for the parent's reason why the parent objects to the public evaluation or assessment. However, the explanation by the parent may not be required and the department may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation and assessment.</p> <p>(e) If the parent obtains an independent educational evaluation at private expense, the results of the independent educational evaluation:</p> <p>(1) Shall be considered by the department, in any decision made with respect to the provision of a free appropriate public education to the student; and</p> <p>(2) May be presented as evidence at a hearing regarding the student</p> <p>(f) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be at public expense.</p> <p>(g) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the</p> | <p>must have a record of its attempt to ensure their involvement.</p> <p><b>§ 8-60-502 Independent educational evaluation.</b></p> <p>(a) <i>General.</i></p> <p>(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.</p> <p>(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.</p> <p>(3) For the purposes of this subpart—</p> <p>(i) <i>Independent educational evaluation</i> means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and</p> <p>(ii) <i>Public expense</i> means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §8-60-103.</p> <p>(b) <i>Parent right to evaluation at public expense.</i></p> <p>(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, <u>subject to the conditions in paragraphs (b)(2) through (4) of this section.</u></p> <p>(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—</p> <p>(i) <u>File a due process complaint</u> to request a hearing to show that its evaluation is appropriate; or</p> <p>(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 8-60-507 through 8-60-513 that the evaluation obtained by the parent did not meet agency criteria.</p> <p>(3) If the public agency <u>files a due process complaint notice</u> to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.</p> <p>(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or <u>filing a due process complaint</u> to request a due process hearing to defend the public evaluation.</p> |
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| <p>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.</p> <p>(h) Except for the criteria described in subsection (g), the department may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.502)</p>   | <p><u>(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.</u></p> <p>(c) <i>Parent-initiated evaluations.</i> If the parent obtains an independent educational evaluation <u>at public expense or shares with the public agency</u> an evaluation obtained at private expense, the results of the evaluation—</p> <ol style="list-style-type: none"> <li>(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and</li> <li>(2) May be presented by any party as evidence at a hearing <u>on a due process complaint under subpart E</u> of this part regarding that child.</li> </ol> <p>(d) <i>Requests for evaluations by hearing officers.</i> If a hearing officer requests an independent educational evaluation as part of a hearing <u>on a due process complaint</u>, the cost of the evaluation must be at public expense.</p> <p>(e) <i>Agency criteria.</i></p> <ol style="list-style-type: none"> <li>(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, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.</li> <li>(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.</li> </ol> |
| <p><b>§8-56-68 Prior notice by the department; content of notice.</b> (a) Written notice that meets the requirements of subsection (c) shall be given to the parent of a student with a disability a reasonable time before the department:</p> <ol style="list-style-type: none"> <li>(1) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student; or</li> <li>(2) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.</li> </ol> <p>(b) If the notice described under subsection (a) relates to an action proposed by the department that also requires parental consent under section 8-56-70, the department may give notice at the same time it requests parent consent.</p> <p>(c) The notice required under subsection (a) shall include:</p> <ol style="list-style-type: none"> <li>(1) A description of the action proposed or refused by the department;</li> <li>(2) An explanation of why the department proposes or refuses to take the action;</li> <li>(3) A description of any other options that the department considered and the</li> </ol> | <p><b>§ 8-60-503 Prior notice by the public agency; content of notice.</b></p> <p>(a) <i>Notice.</i> Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—</p> <ol style="list-style-type: none"> <li>(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or</li> <li>(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.</li> </ol> <p>(b) <i>Content of notice.</i> The notice required under paragraph (a) of this section must include—</p> <ol style="list-style-type: none"> <li>(1) A description of the action proposed or refused by the agency;</li> <li>(2) An explanation of why the agency proposes or refuses to take the action;</li> </ol>  |

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| <p>reasons why those options were rejected;</p> <p>(4) A description of each evaluation procedure, test, record, or report the department used as a basis for the proposed or refused action;</p> <p>(5) A description of any other factors that are relevant to the department's proposal or refusal;</p> <p>(6) A statement that the parent of a student with a disability has protection under the procedural safeguards of this chapter; and</p> <p>(7) Sources for the parent to contact to obtain assistance in understanding the provisions of this chapter.</p> <p>(d) The notice required under subsection (a) shall be:</p> <p>(1) Written in language understandable to the general public; and</p> <p>(2) 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.</p> <p>(e) If the native language or other mode of communication of the parent is not a written language or when the written native language translation is not available, the department shall take steps to ensure:</p> <p>(1) That the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;</p> <p>(2) That the parent understands the content of the notice; and</p> <p>(3) That there is written evidence that the requirements in this subsection have been met. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.503)</p> | <p>(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;</p> <p>(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part 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;</p> <p>(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;</p> <p>(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and</p> <p>(7) A description of other factors that are relevant to the agency's proposal or refusal.</p> <p>(c) <i>Notice in understandable language.</i></p> <p>(1) The notice required under paragraph (a) of this section must be—</p> <p>(i) Written in language understandable to the general public; and</p> <p>(ii) 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.</p> <p>(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—</p> <p>(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;</p> <p>(ii) That the parent understands the content of the notice; and</p> <p>(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.</p> |
| <p>§8-56-69 <u>Procedural safeguards notice.</u> (a) A copy of the procedural safeguards available to the parent of a student with a disability shall be given to the parent, at a minimum:</p> <p>(1) Upon initial referral for evaluation;</p> <p>(2) Upon each notification of an IEP meeting;</p> <p>(3) Upon giving the parent a written notice for any purpose under section 8-56-68 (a) and</p> <p>(4) Upon receipt of a request for due process under section 8-56-72.</p> <p>(b) The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available under sections 8-56-51, 8-56-59, and 8-56-64 to 8-56-94 and the department's complaint procedures under sections 8-56-95 to 8-56-98 relating to:</p> <p>(1) Independent educational evaluation;</p> <p>(2) Prior written notice;</p> <p>(3) Parental consent;</p> <p>(4) Access to educational records;</p>   | <p><b>§ 8-60-504 Procedural safeguards notice.</b></p> <p>(a) <i>General.</i> A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents <u>only one time a school year, except that a copy also must be given to the parents—</u></p> <p>(1) Upon initial referral or parent request for evaluation;</p> <p>(2) Upon receipt of the first State complaint under §§ 8-60-151 through 8-60-153 and upon receipt of the first due process complaint under § 8-60-507 in a school year;</p> <p>(3) <u>In accordance with the discipline procedures in § 8-60-530(h); and</u></p> <p>(4) <u>Upon request by a parent.</u></p> <p>(b) <u>Internet Web site.</u> A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.</p> <p>(c) <i>Contents.</i> The procedural safeguards notice must include a full</p>  |

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| <p>(5) Opportunity to initiate due process hearings;</p> <p>(6) The student's placement during pendency of due process proceedings;</p> <p>(7) Procedures for a student with a disability who is subject to placement in an interim alternative educational setting;</p> <p>(8) Requirements for unilateral placement by parents of students in private schools at public expense;</p> <p>(9) Mediation;</p> <p>(10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;</p> <p>(11) Civil actions;</p> <p>(12) Attorneys' fees; and</p> <p>(13) The department's complaint procedures under sections 8-56-95 to 8-56-98, including a description of how to file a complaint and the timelines under those procedures.</p> <p>(c) The notice required under subsection (a) shall be:</p> <p>(1) Written in language understandable to the general public; and</p> <p>(2) 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.</p> <p>(3) If the native language or other mode of communication of the parent is not a written language or when the written native language translation is not available, the department shall take steps to ensure:</p> <p>(A) That the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;</p> <p>(B) That the parent understands the content of the notice; and</p> <p>(C) That there is written evidence that the requirements in this subsection have been met. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.504)</p> | <p>explanation of all of the procedural safeguards available under § 8-60-148, §§ 8-60-151 through 8-60-153, § 8-60-300, §§ 8-60-502 through 8-60-503, §§ 8-60-505 through 8-60-518, § 8-60-520, §§ 8-60-530 through 8-60-536 and §§ 8-60-610 through 8-60-625 relating to—</p> <p>(1) Independent educational evaluations;</p> <p>(2) Prior written notice;</p> <p>(3) Parental consent;</p> <p>(4) Access to education records;</p> <p>(5) Opportunity to present <u>and resolve</u> complaints through the due process <u>complaint and State complaint procedures, including—</u></p> <p style="padding-left: 20px;">(i) The time period in which to file a complaint;</p> <p style="padding-left: 20px;">(ii) <u>The opportunity for the agency to resolve the complaint; and</u></p> <p style="padding-left: 20px;">(iii) <u>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;</u></p> <p>(6) <u>The availability</u> of mediation;</p> <p>(7) The child's placement during the pendency of any due process complaint;</p> <p>(8) Procedures for students who are subject to placement in an interim alternative educational setting;</p> <p>(9) Requirements for unilateral placement by parents of children in private schools at public expense;</p> <p>(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;</p> <p>(11) <u>State-level appeals (if applicable in the State);</u></p> <p>(12) Civil actions, <u>including the time period in which to file those actions; and</u></p> <p>(13) Attorneys' fees.</p> <p>(d) <i>Notice in understandable language.</i> The notice required under paragraph (a) of this section must meet the requirements of §8-60-503(c).</p> |
| <p>§8-56-70 <u>Parental consent.</u> (a) Subject to subsections (b), (d) and (e), informed parental consent shall be obtained before:</p> <p>(1) Conducting an initial evaluation or reevaluation involving the administration of tests or other assessment materials pursuant to section 8-56-9; and 8-56-70</p> <p>(2) The initial provision of special education and related services to a student with a disability.</p> <p>(b) Parental consent is not required before:</p> <p>(1) Reviewing existing data as part of an evaluation or a reevaluation; or</p> <p>(2) 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.</p> <p>(c) Consent for initial evaluation under subsection (a)(1) may not be</p>  | <p><b>§ 8-60-300 Parental consent.</b></p> <p>(a) <i>Parental consent for initial evaluation.</i></p> <p>(1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under § 8-60-8 must, after providing notice consistent with §§ 8-60-503 and 8-60-504, obtain informed consent, consistent with § 8-60-9, from the parent of the child before conducting the evaluation.</p> <p style="padding-left: 20px;">(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.</p> <p style="padding-left: 20px;">(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.</p>   |

construed as consent for initial placement under subsection (a)(2).

(d) If the parent of a student with a disability refuses consent for initial evaluation or a reevaluation as described in subsection (a), the department may continue to pursue those evaluations by using the due process procedures under sections 8-56-72 to 8-56-75, or the mediation procedures under section 8-56-71.

(e) Informed parental consent need not be obtained for reevaluation if the department can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent has failed to respond.

(1) To meet the reasonable measures requirement in this subsection, the department shall use procedures consistent with those in section 8-56-36(g) on IEP meetings.

(f) If a parent revokes consent, the revocation of consent shall be effective on the date the department receives notice of the revocation, and does not negate an action that occurred after consent was given, but before receipt of the notice of revocation.

(g) The department may not use a parent's refusal to consent to evaluation or placement under subsection (a) to deny the parent or the student any other service, benefit, or activity of the department, except as required in this chapter. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.505)

(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if—

(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with State law; or

(iii) 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 child.

(3)(i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under § 8-60-506 or the due process procedures under §§ 8-60-507 through 8-60-516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(ii) The public agency does not violate its obligation under § 8-60-111 and §§ 8-60-301 through 8-60-311 if it declines to pursue the evaluation.

(b) Parental consent for services.

(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in subpart E of this part (including the mediation procedures under § 8-60-506 or the due process procedures under §§ 8-60-507 through 8-60-516) in order to obtain agreement or a ruling that the services may be provided to the child.

(4) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency—

(i) Will not be considered to be in violation of the requirement to make

available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and

(ii) Is not required to convene an IEP Team meeting or develop an IEP under §§ 8-60-320 and 8-60-324 for the child for the special education and related services for which the public agency requests such consent.

*(c) Parental consent for reevaluations.*

(1) Subject to paragraph (c)(2) of this section, each public agency—

(i) Must obtain informed parental consent, in accordance with §8-60-300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.

(iii) The public agency does not violate its obligation under § 8-60-111 and §§ 8-60-301 through 8-60-311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

*(d) Other consent requirements.*

(1) Parental consent is not required before—

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(4)(i) If a parent of a child 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 public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1)

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|   | <p>of this section); and</p> <p><u>(ii) The public agency is not required to consider the child as eligible for services under §§ 8-60-132 through 8-60-144.</u></p> <p><u>(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in §8-60-322(d).</u></p>  |
| <p>§8-56-71 <u>Mediation.</u> (a) Parties to special education disputes are encouraged to seek resolution through mediation. The mediation process is intended to be an informal process conducted in a nonadversarial atmosphere to resolve issues relating to the identification, evaluation, or educational placement of a student with a disability or the provision of a free appropriate public education to the student.</p> <p>(b) The department shall offer mediation to parties to disputes involving any matter described in section 8-56-68(a) to allow the parties to resolve the disputes whenever a hearing is requested under sections 8-56-72 or 8-56-93.</p> <p>(c) The department shall ensure the mediation process:</p> <p>(1) Is voluntary on the part of the parties;</p> <p>(2) Is not used to deny or delay a parent's right to a due process hearing under sections 8-56-72 or 8-56-93 to deny any other right afforded under this chapter; and</p> <p>(3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.</p> <p>(d) A party's participation in a mediation conference shall not be a prerequisite to the right to a due process hearing under sections 8-56-72 or 8-56-93.</p> <p>(e) Each session in the mediation process shall include the party or party representative with the authority to resolve the issues that are the basis for the request for a hearing under sections 8-56-72 or 8-56-93.</p> <p>(f) 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.</p> <p>(g) An agreement by the parties to the dispute in the mediation process shall:</p> <p>(1) Be to the satisfaction of both parties;</p> <p>(2) Not conflict with state or federal law; and</p> <p>(3) Be set forth in a written mediation agreement.</p> <p>(h) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process shall be required to sign a confidentiality pledge prior to the commencement of the process.</p> <p>(i) If the mediation process fails to resolve the issue or issues to the satisfaction of the parties, the mediator may assist the party requesting the hearing to identify the precise issue or issues to be heard in the due process</p> | <p><b>§ 8-60-506 Mediation.</b></p> <p>(a) <i>General.</i> Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, <u>including matters arising prior to the filing of a due process complaint</u>, to resolve disputes through a mediation process.</p> <p>(b) <i>Requirements.</i> The procedures must meet the following requirements:</p> <p>(1) The procedures must ensure that the mediation process—</p> <p>(i) Is voluntary on the part of the parties;</p> <p>(ii) Is not used to deny or delay a parent's right to a hearing <u>on the parent's due process complaint</u>, or to deny any other rights afforded under Part B of the Act; and</p> <p>(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.</p> <p><u>(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—</u></p> <p><u>(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and</u></p> <p><u>(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.</u></p> <p>(3)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.</p> <p>(ii) The SEA must select mediators on a random, rotational, <u>or other impartial basis.</u></p> <p>(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.</p> <p>(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.</p> <p>(6) If the parties resolve a dispute through the mediation process, <u>the parties must execute a legally binding agreement that sets forth that resolution and that—</u></p> <p><u>(i) States that all discussions that occurred during the mediation</u></p> |

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| <p>hearing and the relief the party is seeking.</p> <p>(j) An individual who serves as a mediator under this section:</p> <p>(1) May not be an employee of the department; and</p> <p>(2) Shall not have a personal or professional conflict of interest.</p> <p>(3) Is not an employee of the department solely because the mediator is paid by the department to serve in that capacity.</p> <p>(k) The department shall:</p> <p>(1) Maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services;</p> <p>(2) Assume the cost of the mediation process; and</p> <p>(3) Select the mediator on a random (e.g., a rotation) basis from the list described in paragraph (1).</p> <p>(l) Notwithstanding the procedures for mediation set forth in this section, the department and the parent may meet informally at any time to resolve any issue or issues through facilitation or conciliation.</p> <p>(1) Such facilitation or conciliation:</p> <p>(A) Shall be voluntary, and may not deny or delay a parent's right to a due process hearing under sections 8-56-72 or 8-56-93, or deny any other right afforded under this chapter; and</p> <p>(B) Shall be at no cost to the parent.</p> <p>(2) An agreement reached by the parties through facilitation or conciliation shall be to the satisfaction of both parties, meet the standards and include the participants required to make the decision in accordance with sections 8-56-6 to 8-56-29; 8-56-30 to 8-56-42; and 8-56-43 to 8-56-47. [Eff 3/16/00]<br/>(Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.506)</p> | <p>process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and</p> <p>(ii) <u>Is</u> signed by both the parent and a representative of the agency who has the authority to bind such agency.</p> <p>(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. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding <u>of any Federal court or State court of a State receiving assistance under this part.</u></p> <p>(c) <i>Impartiality of mediator.</i></p> <p>(1) An individual who serves as a mediator under this part—</p> <p>(i) May not be an employee of the SEA or the LEA that <u>is involved in the education or care of the child</u>; and</p> <p>(ii) Must not have a personal or professional interest that conflicts with the person's <u>objectivity.</u></p> <p>(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under § 8-60-228 solely because he or she is paid by the agency to serve as a mediator.</p> |
| <p><b>§8-56-72 <u>Impartial due process hearing.</u></b> (a) A parent or the department may initiate a hearing on any of the matters described in section 8-56-68(a)(relating to the identification, evaluation or educational placement of a student with a disability, or the provision of a free appropriate public education to the student).</p> <p>(b) The hearing officer may allow other issues outside the scope of this chapter to be joined in the hearing, if the hearing officer determines the issue(s) raised by the party substantively impact(s) on the allowable issues under subsection (a).</p> <p>(c) When a hearing is initiated under subsection (a), the department shall inform the parents of the availability of mediation described in section 8-56-71.</p> <p>(d) The department shall inform the parent of any free or low-cost legal and other relevant services available in the area.</p> <p>(e) Upon receipt of a request for a due process hearing, the department shall:</p> <p>(1) Notify the parties of:</p> <p>(A) The receipt of the request for a hearing;</p> <p>(B) The date by which the decision must be rendered and mailed to meet the</p>  | <p><b>§ 8-60-507 <u>Filing a due process complaint.</u></b></p> <p>(a) <i>General.</i></p> <p>(1) A parent or a public agency may <u>file a due process complaint</u> on any of the matters described in § 8-60-503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).</p> <p><u>(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, within 90 days of a unilateral special education placement where the request is for reimbursement of the costs of the placement, including special education and related services. Placement occurs on the day the student registers or the student's name is placed on the private school's or facility's register which may be prior to the student's (physical) attendance.</u></p> <p>(b) <i>Information for parents.</i> The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—</p> <p>(1) The parent requests the information; or</p>                               |

timelines set forth in section 8-56-77; and  
(C) The selection process for the impartial hearing officer and contact information.  
(2) Provide the notice of procedural safeguards to the parents in accordance with section 8-56-69; and  
(3) Inform the parent of the availability of an interpreter, if needed.  
(f) The department shall be responsible for the conduct of the hearing described in subsection (a). [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.507)

(2) The parent or the agency files a due process complaint under this section.

**§ 8-60-510 Resolution process.**

**(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 § 8-60-511, the SEA 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 due process complaint that—

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the SEA unless the parent is accompanied by an attorney.

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

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if—

(i) The parent and the SEA agree in writing to waive the meeting; or

(ii) The parent and the SEA agree to use the mediation process described in §8-60-506.

(4) The parent and the SEA determine the relevant members of the IEP Team to attend the meeting.

**(b) Resolution period.**

(1) If the SEA 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 paragraph (c) of this section, the timeline for issuing a final decision under § 8-60-515 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 (b)(1) and (2) of this section, 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 meeting is held.

(4) If the SEA 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 § 8-60-322(d)), the SEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

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|   | <p><u>(5) If the SEA fails to hold the resolution meeting specified in paragraph (a) of this section 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.</u></p> <p><u>(c) Adjustments to 30-day resolution period.</u> The 45-day timeline for the due process hearing in § 8-60-515(a) starts the day after one of the following events:</p> <ul style="list-style-type: none"> <li><u>(1) Both parties agree in writing to waive the resolution meeting;</u></li> <li><u>(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;</u></li> <li><u>(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 public agency withdraws from the mediation process.</u></li> </ul> <p><u>(d) Written settlement agreement.</u> If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is—</p> <ul style="list-style-type: none"> <li><u>(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and</u></li> <li><u>(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to § 8-60-537.</u></li> </ul> <p><u>(e) Agreement review period.</u> If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.</p> |
| <p><b>§8-56-73 Notice of request for a hearing.</b> (a) All requests for a due process hearing shall be filed in writing with the district superintendent of the student's district of enrollment. The party initiating a due process hearing shall provide the other party to the hearing with a copy of the request at the same time as the request is filed with the district superintendent.</p> <p>(b) The party, or party representative, initiating a due process hearing shall provide notice (which shall remain confidential) in the request for a hearing under subsection (a).</p> <p>(1) The notice required in this subsection shall include:</p> <ul style="list-style-type: none"> <li>(A) The name of the student;</li> <li>(B) The address of the residence of the student;</li> <li>(C) The name of the school the student is attending;</li> <li>(D) 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</li> <li>(E) A proposed resolution of the problem except, for the parent, the proposed resolution to the extent known and available to the parent at the time.</li> </ul> | <p><b>§ 8-60-508 Due process complaint.</b></p> <p>(a) <i>General.</i></p> <ul style="list-style-type: none"> <li>(1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).</li> <li><u>(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.</u></li> </ul> <p>(b) <i>Content of complaint.</i> The due process complaint required in paragraph (a)(1) of this section must include—</p> <ul style="list-style-type: none"> <li>(1) The name of the child;</li> <li>(2) The address of the residence of the child;</li> <li>(3) The name of the school the child is attending;</li> <li><u>(4) In the case of a homeless child 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 child, and the name of the school the child is attending;</u></li> <li>(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating</li> </ul>  |

(c) The department shall provide a model form, upon request, to the parent to assist the parent in filing a request for a due process hearing that includes the information required in subsection (b)(1).

(d) The department may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in subsection (b)(1). [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.500, 300.507)

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 paragraph (b) of this section.

(d) *Sufficiency of complaint.*

(1) The due process complaint required by this section must 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 paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if—

(i) 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 § 8-60-510;

or

(ii) 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 timelines for the resolution meeting in § 8-60-510(a) and the time period to resolve in § 8-60-510(b) begin again with the filing of the amended due process complaint.

(e) *SEA response to a due process complaint.*

(1) If the SEA has not sent a prior written notice under § 8-60-503 to the parent regarding the subject matter contained in the parent's due process complaint, the SEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—

(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the

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|  | <p><u>agency's proposed or refused action.</u></p> <p><u>(2) A response by the SEA under paragraph (e)(1) of this section shall not be construed to preclude the SEA from asserting that the parent's due process complaint was insufficient, where appropriate.</u></p> <p><u>(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, 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.</u></p> <p><b>§ 8-60-509 Model forms.</b></p> <p><u>(a) The SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§ 8-60-507(a) and 8-60-508(a) through (c) and to assist parents and other parties in filing a State complaint under §§ 8-60-151 through 8-60-153. However, the SEA may not require the use of the model forms.</u></p> <p><u>(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in § 8-60-508(b) for filing a due process complaint, or the requirements in § 8-60-153(b) for filing a State complaint.</u></p> |
| <p><b>§8-56-74 Impartial hearing officer.</b> (a) A hearing may not be conducted:</p> <p>(1) By a person who is an employee of the department or any state agency that is involved in the education or care of the student; or</p> <p>(2) By any person having a personal or professional interest that would conflict with the person's objectivity in the hearing.</p> <p>(b) A person who otherwise qualifies to conduct a hearing under subsection (a) is not an employee of the department solely because the person is paid by the department to serve as the hearing officer.</p> <p>(c) 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. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.508)</p> | <p><b>§ 8-60-511 Impartial due process hearing.</b></p> <p><u>(a) General. Whenever a due process complaint is received under § 8-60-507 or § 8-60-532, the parents or the SEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§ 8-60-507, 8-60-508, and 8-60-510.</u></p> <p><u>(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA. see 8-56-72(f)</u></p> <p><u>(c) Impartial hearing officer.</u></p> <p>(1) At a minimum, a hearing officer—</p> <p>(i) Must not be—</p> <p>(A) An employee of the SEA that is involved in the education or care of the child; or</p> <p>(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;</p> <p><u>(ii) Must 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;</u></p> <p><u>(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and</u></p>          |

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|  | <p><u>(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.</u></p> <p>(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.</p> <p>(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.</p> <p><u>(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 § 8-60-508(b), unless the other party agrees otherwise.</u></p> <p><u>(e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, within 90 days of a unilateral special education placement where the request is for reimbursement of the costs of the placement, including special education and related services. Placement occurs on the day the student registers or the student's name is placed on the private school's or facility's register which may be prior to the student's (physical) attendance.</u></p> <p><u>(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—</u></p> <p><u>(1) Specific misrepresentations by the SEA that it had resolved the problem forming the basis of the due process complaint; or</u></p> <p><u>(2) The SEA's withholding of information from the parent that was required under this part to be provided to the parent.</u></p> |
| <p><u>§8-56-75 Pre-hearing and hearing.</u> (a) 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 to 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 8-56-72 (a).</p> <p>(b) Hearings conducted pursuant to section 8-56-72 shall not be conducted according to the technical rules of evidence and those related to witnesses. All testimony shall be under oath or affirmation which the hearing officer is empowered to administer.</p> <p>(c) Any party to a hearing conducted pursuant to section 8-56-72 has the right to:</p> <p>(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with a</p> | <p><b>§ 8-60-512 Hearing rights.</b></p> <p>(a) <i>General.</i> Any party to a hearing conducted pursuant to §§ 8-60-507 through 8-60-513 or §§ 8-60-530 through 8-60-534, or an appeal conducted pursuant to § 8-60-514, has the right to—</p> <p>(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;</p> <p>(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;</p> <p>(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;</p> <p>(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and</p>   |

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| <p>disability;</p> <p>(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;</p> <p>(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;</p> <p>(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and</p> <p>(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.</p> <p>(d) At least five business days prior to a hearing conducted pursuant to section 8-56-72, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing</p> <p>(e) A hearing officer may bar any party that fails to comply with subsection (d) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.</p> <p>(f) The parent involved in the hearings shall be given the right to:</p> <p>(1) Have the student who is the subject of the hearing present;</p> <p>(2) Open the hearing to the public; and</p> <p>(3) Receive the record of the hearing and the findings of fact and decisions described in subsections (c)(4) and (c)(5) at no cost to the parent. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.500, 300.509)</p> | <p>(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.</p> <p>(b) <i>Additional disclosure of information.</i></p> <p>(1) At least five business days prior to a hearing conducted pursuant to § 8-60-511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.</p> <p>(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.</p> <p>(c) <i>Parental rights at hearings.</i> Parents involved in hearings must be given the right to—</p> <p>(1) Have the child who is the subject of the hearing present;</p> <p>(2) Open the hearing to the public; and</p> <p>(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.</p>   |
| <p><u>§8-56-76 Hearing decision; finality.</u> (a) Except as provided in sections 8-56-85 and 8-56-90(d), the hearing decision shall be based on the preponderance of the evidence.</p> <p>(b) A decision made in a hearing conducted pursuant to section 8-56-72 is final, except that any party involved in such hearing may appeal such decision under section 8-56-78. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.510, 300.512)</p>  | <p><b><u>§ 8-60-513 Hearing decisions.</u></b></p> <p><u>(a) Decision of hearing officer on the provision of FAPE.</u></p> <p><u>(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.</u></p> <p><u>(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—</u></p> <p><u>(i) Impeded the child's right to a FAPE;</u></p> <p><u>(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or</u></p> <p><u>(iii) Caused a deprivation of educational benefit.</u></p> <p><u>(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§ 8-60-500 through 8-60-536.</u></p> <p><u>(b) Construction clause.</u> Nothing in §§ 8-60-507 through 8-60-513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under § 8-60-514(b), if a State level appeal is available.</p> <p><u>(c) Separate request for a due process hearing.</u> Nothing in §§ 8-60-500 through 8-60-536 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.</p> <p><u>(d) Findings and decision to advisory panel and general public.</u> The</p> |

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|   | <p>public agency, after deleting any personally identifiable information, must—</p> <p>(1) Transmit the findings and decisions referred to in § 8-60-512(a)(5) to the State advisory panel established under § 8-60-167; and</p> <p>(2) Make those findings and decisions available to the public.</p> <p><b>§ 8-60-514 Finality of decision; appeal; impartial review.</b></p> <p>(a) <i>Finality of hearing decision.</i> A decision made in a hearing conducted pursuant to §§ 8-60-507 through 8-60-513 or §§ 8-60-530 through 8-60-534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and § 8-60-516.</p> <p>(b) <i>Appeal of decisions; impartial review.</i></p> <p>(1) If the hearing required by § 8-60-511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.</p> <p>(2) If there is an appeal, the SEA must conduct an impartial review of the <u>findings and decision appealed</u>. The official conducting the review must—</p> <ul style="list-style-type: none"> <li>(i) Examine the entire hearing record;</li> <li>(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;</li> <li>(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 8-60-512 apply;</li> <li>(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;</li> <li>(v) Make an independent decision on completion of the review; and</li> <li>(vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.</li> </ul> <p>(c) <i>Findings and decision to advisory panel and general public.</i> The SEA, after deleting any personally identifiable information, must—</p> <p>(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under § 8-60-167; and</p> <p>(2) Make those findings and decisions available to the public.</p> <p>(d) <i>Finality of review decision.</i> The decision made by the reviewing official is final unless a party brings a civil action under § 8-60-516.</p> |
| <p>§8-56-77 <u>Timelines and convenience of hearings.</u></p> <p>(a) The department shall ensure that not later than forty-five days after the receipt of a request for a hearing:</p> <p>(1) A final decision is reached in the hearing; and</p> <p>(2) A copy of the decision is mailed to each of the parties.</p> <p>(b) Except as provided in section 8-56-93(a)(2), a hearing officer may grant for good cause specific extensions of time beyond the period set out in</p> | <p><b>§ 8-60-515 Timelines and convenience of hearings and reviews.</b></p> <p>(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under § 8-60-510(b), or the adjusted time periods described in § 8-60-510(c)—</p> <p>(1) A final decision is reached in the hearing; and</p> <p>(2) A copy of the decision is mailed to each of the parties.</p> <p>(b) The SEA must ensure that not later than 30 days after the receipt of</p>  |

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| <p>subsection (a) at the request of either party. Any extension shall be documented in writing and extend the time for rendering a final decision for a period only equal to the length of the extension.</p> <p>(c) Each hearing shall be conducted at a time and place that is reasonably convenient to the parent and the student involved. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.511)</p>  | <p>a request for a review—</p> <p>(1) A final decision is reached in the review; and</p> <p>(2) A copy of the decision is mailed to each of the parties.</p> <p>(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.</p> <p>(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.</p>  |
| <p><u>§8-56-78 Civil action.</u> Any party aggrieved by the findings and decision made under sections 8-56-72 and 8-56-93 has the right to bring a civil action within thirty days of the receipt of the findings and decision with respect to the complaint presented pursuant to sections 8-56-72 or 8-56-93. The action may be brought in any state court of competent jurisdiction or in the district court of the United States without regard to the amount in controversy. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.512)</p> | <p><b>§ 8-60-516 Civil action.</b></p> <p>(a) <i>General.</i> Any party aggrieved by the findings and decision made under §§ 8-60-507 through 8-60-513 or §§ 8-60-530 through 8-60-534 who does not have the right to an appeal under § 8-60-514(b), and any party aggrieved by the findings and decision under § 8-60-514(b), has the right to bring a civil action with respect to the <u>due process complaint notice requesting a due process hearing under § 8-60-507 or §§ 8-60-530 through 8-60-532.</u> 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.</p> <p><u>(b) Time limitation.</u> The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.</p> <p>(c) <i>Additional requirements.</i> In any action brought under paragraph (a) of this section, the court—</p> <ol style="list-style-type: none"> <li>(1) Receives the records of the administrative proceedings;</li> <li>(2) Hears additional evidence at the request of a party; and</li> <li>(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.</li> </ol> <p>(d) <i>Jurisdiction of district courts.</i> 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.</p> <p>(e) <i>Rule of construction.</i> Nothing in this part 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 children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§ 8-60-507 and 8-60-514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.</p> |
| <p><u>§8-56-79 Student's status during proceedings.</u> (a) Except as provided in</p>  | <p><b>§ 8-60-518 Child's status during proceedings.</b></p>  |

section 8-56-91 on discipline, during the pendency of any administrative or judicial proceeding regarding a complaint under section 8-56-72, unless the department and the parent of the student agree otherwise, the student involved in the complaint shall remain in the current educational placement.

(b) If the complaint involves an application for initial admission to public school, the student, with the consent of the parent, shall be placed in the public school until the completion of all of the proceedings.

(c) If the decision of a hearing officer in a due process hearing agrees with the student's parent that a change of placement is appropriate, that placement shall be treated as an agreement between the department and the parent for purposes of subsection (a). [Eff 3/16/00]  
 (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.514)

(a) Except as provided in § 8-60-533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 8-60-507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child 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 § 8-60-300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

**§8-56-80 Surrogate parents.** (a) The department shall ensure that the rights of a student are protected when:

- (1) No parent can be identified;
- (2) The department, after reasonable efforts, cannot discover the whereabouts of a parent; or
- (3) The student is a ward of the State under the laws of the State.

(b) The duty of the department under subsection (a) includes the assignment of an individual to act as a surrogate parent. 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) The department shall ensure that a person selected as a surrogate:

- (1) Is not an employee of the department, or any other agency that is involved in the education or care of the student, except that an individual who is an employee of a private agency that only provides non-educational care for the student and who meets the standards in this subsection may be selected;
- (2) Has no interest that conflicts with the interest of the student the surrogate parent represents; and
- (3) Has knowledge and skills that ensure adequate representation of the student.

(d) An individual who otherwise qualifies to be a surrogate parent under subsection (c) is not an employee of the agency solely because the

**§ Surrogate parents.**

(a) *General.* Each public agency must ensure that the rights of a child are protected when—

- (1) No parent (as defined in § 8-60-30) can be identified;
- (2) The public agency, after reasonable efforts, cannot locate a parent;
- (3) The child is a ward of the State under the laws of that State; or
- (4) The child 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 public agency.* The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

- (1) For determining whether a child needs a surrogate parent; and
- (2) For assigning a surrogate parent to the child.

(c) *Wards of the State.* In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) *Criteria for selection of surrogate parents.*

- (1) The public agency may select a surrogate parent in any way permitted under State law.
- (2) Public agencies must ensure that a person selected as a surrogate

individual is paid by the agency to serve as a surrogate parent.8-56-81  
(e) 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 free appropriate public education to the student. [Eff  
3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.515)

parent—  
(i) Is not an employee of the SEA or any other agency that is involved in the education or care of the child;  
(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and  
(iii) Has knowledge and skills that ensure adequate representation of the child.  
(e) *Non-employee requirement; compensation.* A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.  
(f) *Unaccompanied homeless youth.* In the case of a child 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 paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.  
(g) *Surrogate parent responsibilities.* The surrogate parent may represent the child in all matters relating to—  
(1) The identification, evaluation, and educational placement of the child; and  
(2) The provision of FAPE to the child.  
(h) *SEA responsibility.* The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

§8-56-81 Transfer of parental rights at age of majority. (a) When a student with a disability reaches eighteen years of age, the rights accorded to the parent transfer to the student, except for a student with a disability who has been determined to be incompetent under state law. The department shall provide any notice required by this chapter to both the student with a disability and the parent. All other rights accorded to the parent under this chapter transfer to the student with a disability.  
(b) Whenever there is a transfer of rights pursuant to subsection (a), the department shall notify the student with a disability and the parent of the transfer of rights. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.517)

**§ 8-60-520 Transfer of parental rights at age of majority.**  
(a) *General.* A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—  
(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and  
(ii) All rights accorded to parents under Part B of the Act transfer to the child;  
(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and  
(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.  
(b) *Special rule.* A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the

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|   | <p>Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.</p>   |
| <p style="text-align: center;">SUBCHAPTER 11</p> <p style="text-align: center;">DISCIPLINE PROCEDURES</p> <p>§8-56-82 Definitions. As used in this subchapter:<br/> "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. Section 812(c)).<br/> "Illegal drug":<br/> (1) Means a controlled substance; but<br/> (2) Does not include such a 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 the Controlled Substances Act (21 U.S.C. 812(c)) or under any other provision of federal law.<br/> "Substantial evidence" means beyond a preponderance of the evidence.<br/> "Weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length, as defined in paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.519)</p> | <p><i>from §8-60-530 (§8-56-84)</i></p> <p><u>(i) Definitions. For purposes of this section, the following definitions apply:</u><br/> <u>(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)).</u><br/> <u>(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.</u><br/> <u>(3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.</u><br/> <u>(4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.</u></p>  |
| <p>§8-56-83 Change of placement for disciplinary removals. For purposes of removals of a student with a disability from the student's current educational placement under sections 8-56-82 to 8-56-94, the following general requirements apply to the disciplinary action.<br/> (a) Disciplinary action that results in the suspension, including crisis suspension, or other removal of a student with a disability from the student's current educational placement for ten consecutive school days or fewer at a time or for each series of short-term suspensions, including crisis suspensions, or removals for ten cumulative school days or fewer in a given school year:<br/> (1) Is not considered a change in placement and subject to the requirements of this subchapter or section 8-56-45.<br/> (2) Shall be in accordance with chapter 8-19.<br/> (b) Disciplinary action that results in the suspension, including crisis suspension, or other removal of a student with a disability from the student's current educational placement for more than ten consecutive school days at a time or for each series of short-term suspensions, including crisis suspensions, or removals for more than ten cumulative school days in a</p>                                   | <p><b>§ 8-60-536 Change of placement because of disciplinary removals.</b><br/> (a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 8-60-530 through 8-60-535, a change of placement occurs if—<br/> (1) The removal is for more than 10 consecutive school days; or<br/> (2) The child has been subjected to a series of removals that constitute a pattern—<br/> (i) Because <u>the series of removals total</u> more than 10 school days in a school year;<br/> (ii) Because <u>the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and</u><br/> (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.<br/> <u>(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.</u><br/> <u>(2) This determination is subject to review through due process and</u></p> |

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| <p>given school year:</p> <p>(1) Is a change of placement, and shall be in accordance with section 8-56-45; or</p> <p>(2) Shall be in accordance with this subchapter and chapter 8-19, including the procedures and standards for regular school discipline if the student is referred for discipline after the requirements of this subchapter are met. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.519)8-56-84</p>  | <p><u>judicial proceedings.</u></p>  |
| <p>§8-56-84 Authority of school personnel. (a) School personnel may order:</p> <p>(1) Disciplinary action that results in the suspension, including crisis suspension, or other removal of a student with a disability from the student's current educational placement for not more than ten consecutive school days at a time or for not more than ten cumulative school days for each series of short-term suspensions, including crisis suspensions, or removals in a given school year for any violation of school rules:</p> <p>(A) To the extent the suspension or other removal would be applied to students without a disability under chapter 8-19; and</p> <p>(B) Consistent with the authority and procedures in chapter 8-19; and</p> <p>(2) A change in placement of a student with a disability to an appropriate interim alternative educational setting pursuant to section 8-56-86(e) and (f) for the same amount of time that a student without a disability would be subject to discipline, but for not more than forty-five days, if:</p> <p>(A) The student 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; or</p> <p>(B) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the department.</p> <p>(b) School personnel shall not order disciplinary action that results in the suspension, including crisis suspension, or other removal of a student with a disability from the student's current educational placement if that suspension or removal is for more than ten consecutive school days at a time or for more than ten cumulative school days for each series of short-term suspensions, including crisis suspensions, or removals in a given school year unless:</p> <p>(1) The removal to an interim alternative educational setting is authorized under subsection (a)(2) on the removal of a student with a disability for weapon, drug and controlled substance offenses.</p> <p>(A) Nothing in this section prohibits a student from being placed in a forty-five day interim alternative education setting for subsequent misconduct that meets the standards in subsection (a)(2) and a free appropriate public education is provided in accordance with section 8-56-86 (e) and (f); or</p> <p>(2) The IEP team determines, for suspensions or removals for more than ten consecutive school days at a time or for each series of short-term suspensions for more than ten cumulative school days in a given school year that the behavior is not a manifestation of the disability in accordance with</p> | <p><b>§ 8-60-530 Authority of school personnel.</b></p> <p><u>(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 section, is appropriate for a child with a disability who violates a code of student conduct.</u></p> <p><u>(b) General.</u></p> <p>(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to <u>an appropriate interim alternative educational setting, another setting, or suspension</u>, for not more than 10 consecutive school days <u>(to the extent those alternatives are applied to children without disabilities)</u>, and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 8-60-536).</p> <p>(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.</p> <p><u>(c) Additional authority. [see §8-56-89]</u></p> <p><u>(d) Services. [see § 8-56-86]</u></p> <p><u>(e) Manifestation determination. [see §8-56-88]</u></p> <p><u>(f) Determination that behavior was a manifestation. [see §8-56-87]</u></p> <p><u>(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—</u></p> <p><u>(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA;</u></p> <p><u>(2) 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 an SEA ; or</u></p> <p><u>(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA .</u></p> <p><u>(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the SEA</u></p> |

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| <p>section 8-56-88; or</p> <p>(3) The change in placement:</p> <p>(A) Is made by a group of persons, including the parent and other persons knowledgeable about the student, the evaluation data and the placement options in accordance with section 8-56-45;</p> <p>(B) Is in accordance with the procedural safeguards in sections 8-56-64 to 8-56-81, and includes the provision of a prior written notice to the parent of the student with a disability under section 8-56-68(a) of the proposed or refused change of placement and the parent does not request a hearing pursuant to section 8-56-72; and</p> <p>(C) Provides a free appropriate public education to the student; or</p> <p>(4) The basis for a crisis suspension pursuant to chapter 8-19 exists, and school personnel determine that the crisis suspension, together with the previous days of suspension and disciplinary removal, does not subject the student with a disability to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of 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.</p> <p>(c) If school personnel determine the authority for a crisis suspension exists pursuant to paragraph (b) (4):</p> <p>(1) The crisis suspension 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;</p> <p>(2) The student with a disability shall be provided a free appropriate public education in accordance with section 8-56-86 (d) during the period of the crisis suspension;</p> <p>(3) The IEP team shall be convened immediately after the initiation of the crisis suspension to conduct the functional behavioral assessment in accordance with section 8-56-87;</p> <p>(4) If the student's parent disagrees with the determination under subsection (b) (4), the parent may request a hearing pursuant to section 8-56-90. For purposes of section 8-56-79 on the student's status during the proceedings, the current placement is the free appropriate public education provided in accordance with subsection (c) (2) until the end of the crisis suspension, at which time the student shall resume attendance at school; and</p> <p>(5) For purposes of subsequent disciplinary action, the school days of crisis suspension shall be included as days of suspension under section 8-56-83 (b). Nothing in this paragraph prohibits a student from being the subject of a subsequent crisis suspension in a given school year if the requirements of chapter 8-19, subsection (b)(4), and this subsection are met. [Eff 3/16/00]</p> <p>(Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.500, 300.520)</p> | <p><u>must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 8-60-504.</u></p> |
| <p>§8-56-85 Authority of hearing officer. (a) A hearing officer may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than forty-five days if the</p>   | <p><i>From §8-60-532 at §8-56-90</i></p> <p><i>(b) Authority of hearing officer.</i></p>  |

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| <p>hearing officer, in an expedited due process hearing:</p> <p>(1) Determines that the department has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;</p> <p>(2) Considers the appropriateness of the student's current placement;</p> <p>(3) Considers whether the department has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and</p> <p>(4) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements of section 8-56-86 (f). [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.521)</p>   | <p><u>(1) A hearing officer under § 8-60-511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.</u></p> <p><u>(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—</u></p> <p style="padding-left: 40px;"><u>(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 8-60-530 or that the child's behavior was a manifestation of the child's disability; or</u></p> <p style="padding-left: 40px;"><u>(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.</u></p> <p><u>(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the SEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.</u></p>  |
| <p>§8-56-86 Free appropriate public education for students suspended or dismissed from school. (a) The department need not provide services during periods of suspension or removal under section 8-56-84(a)(1) to a student with a disability who has been removed from the student's current placement for not more than ten consecutive or cumulative school days in a given school year.</p> <p>(b) In the case of a student with a disability who has been suspended or otherwise removed for disciplinary reasons from the student's current placement for more than ten consecutive or cumulative school days in the same school year, the department shall provide services to the extent required under subsections (c) to (f), as appropriate.</p> <p>(c) More than ten school days. In the case of a student with a disability who has been suspended, or otherwise removed for disciplinary reasons, from the student's current placement for more than ten consecutive or cumulative school days in a given school year, the services shall, beginning on the eleventh school day of the suspension or other removal and for the remainder of the suspension or other removal and for any subsequent suspension or other removal for more than ten consecutive school days or for any subsequent series of short-term suspensions for more than ten cumulative school days in a given school year:</p> <p>(1) Be determined by the student's IEP team; and</p> <p>(2) Be provided to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.</p> <p>(d) <u>Subsequent suspension of ten school days or fewer.</u> In the case of a student with a disability who has been suspended from the student's current placement for more than ten consecutive or cumulative school days in a</p> | <p><i>from §8-60-530 at §8-56-84</i></p> <p>(d) <i>Services.</i></p> <p>(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must—</p> <p style="padding-left: 40px;">(i) Continue to receive educational services, as provided in § 8-60-101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and</p> <p style="padding-left: 40px;">(ii) 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.</p> <p>(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.</p> <p>(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.</p> <p>(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 8-60-536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 8-60-101(a), so as</p> |

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| <p>given school year, the services shall, for any subsequent suspensions for ten consecutive school days or fewer or for any subsequent series of short-term suspensions for ten cumulative school days or fewer in a given school year:</p> <p>(1) Be determined by school personnel, in consultation with the student's special education teacher; and</p> <p>(2) Be provided to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.</p> <p>(e) Determination of interim alternative educational setting. In the case of a student with a disability who has been removed from the student's current placement for weapon, drug or controlled substance offenses under section 8-56-84 (a)(2) the interim alternative educational setting in which a student may be placed shall be determined by the IEP team.</p> <p>(f) Standards for interim alternative educational setting. The interim alternative educational setting under subsection (e) and the setting in which the student is placed based on a hearing officer's determination that maintaining the current placement of the student is substantially likely to result in injury to the student or others under section 8-56-85 shall:</p> <p>(1) Be selected so as to enable the student to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP; and</p> <p>8-56-87</p> <p>(2) Include services and modifications to address the behavior described in sections 8-56-84 (a)(2) or 8-56-85, that are designed to prevent the behavior from recurring. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.121(d), 300.522)</p> | <p>to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.</p> <p>(5) If the removal is a change of placement under § 8-60-536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.</p> <p><b>§ 8-60-531 Determination of setting.</b><br/>The child's IEP Team determines the interim alternative educational setting for services under § 8-60-530(c), (d)(5), and (g).</p>   |
| <p>§8-56-87 Functional behavioral assessment. (a) If a student with a disability is suspended or otherwise removed for disciplinary reasons from the student's current educational placement for more than ten consecutive or cumulative school days in a given school year, either before or not later than ten business days after taking such action, including the action described in section 8-56-84 (a)(2) for weapon, drug or controlled substance offenses:</p> <p>(1) If the department did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the removal, the department shall convene an IEP meeting to determine how to conduct the functional behavioral assessment and develop an assessment plan. As soon as practicable after developing the assessment plan and conducting the functional behavioral assessment, the department shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.</p> <p>(2) If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation, as necessary, to address the behavior.</p> <p>(b) If a student with a disability who has a behavioral intervention plan and</p>  | <p>from §8-60-530 at §8-56-84</p> <p><u>(f) Determination that behavior was a manifestation. If the SEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—</u></p> <p><u>(1) Either—</u></p> <p><u>(i) Conduct a functional behavioral assessment, unless the SEA 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 child; or</u></p> <p><u>(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and</u></p> <p><u>(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the SEA agree to a change of placement as part of the modification of the behavioral intervention plan.</u></p> |

who has been suspended or otherwise removed for disciplinary reasons from the student's current educational placement for more than ten school days in a given school year is subsequently suspended or removed for disciplinary reasons for ten consecutive school days or fewer, or for any subsequent series of short-term suspensions or other removals for disciplinary reasons for ten cumulative school days or fewer in a given school year, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

(c) If one or more of the IEP team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

(d) If the student with a disability is suspended or removed for disciplinary reasons from the student's current educational placement for ten consecutive or cumulative school days or fewer in a given school year, the activities in this section need not be conducted. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.520)

§8-56-88 Manifestation determination review. (a) If an action is contemplated involving the removal of a student with a disability from the student's current educational placement under section 8-56-84 (a)(2) for weapons, drug or controlled substance offenses or section 8-56-85 under the authority of a hearing officer or involving the suspension or other removal of a student with a disability from the student's current educational placement for disciplinary reasons for more than ten consecutive school days at a time or for each series of short-term suspensions for more than ten cumulative school days in a given school year for engaging in other behavior that violated any rule or code of conduct of the department that applies to all students:

(1) Not later than the date on which the decision to take that action is made, the parent shall be notified of that decision and provided the procedural safeguards notice described in section 8-56-69; and

(2) Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.

(b) If the student is suspended or removed for disciplinary reasons from the student's current educational placement for ten consecutive school days or fewer at a time or for each series of short-term suspensions for ten cumulative school days or fewer in a given school year the review in subsection (a) need not be conducted.

(c) The review described in subsection (a) shall be conducted by the IEP team as set forth in section 8-56-34 and other qualified personnel in a meeting.

(d) In carrying out a review described in subsection (a), the IEP team and other qualified personnel may determine that the behavior of the student was not a manifestation of the student's disability only if the IEP team:

from §8-60-530 at §8-56-84

(e) *Manifestation determination.*

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the SEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the SEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the SEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the SEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the SEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the SEA must take immediate steps to remedy those deficiencies.

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:

- (A) Evaluation and diagnostic results, including the results or other relevant information supplied by the parent of the student;
- (B) Observations of the student; and
- (C) The student's IEP and placement; and

(2) Then determine that:

- (A) In relationship to the behavior subject to disciplinary action, the student's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;
- (B) The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and
- (C) The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

(e) If the IEP team and other qualified personnel determine that any of the standards in subsection (d)(2) were not met, the behavior shall be considered a manifestation of the student's disability.

(f) The review described in subsection (a) may be conducted at the same IEP meeting that is convened under section 8-56-87.

(g) If in the review in subsections (c) and (d), the IEP team identify deficiencies in the student's IEP or placement or in their implementation, the department shall take immediate steps to remedy those deficiencies. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.523)

§8-56-89 Determination that behavior was not manifestation of disability. (a) If the result of the review described in section 8-56-88 is a determination, consistent with section 8-56-88(e), that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without a disability under chapter 8-19 may be applied to the student in the same manner in which they would be applied to students without a disability, except that the student with a disability shall be provided a free appropriate public education pursuant to section 8-56-86.

(b) If the department initiates disciplinary procedures under chapter 8-19, the department shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) Except as provided in section 8-56-91, section 8-56-79 on the student's status during the pendency of administrative or judicial proceedings applies if a parent requests a hearing to challenge a determination, made through the review described in section 8-56-88, that the behavior of the student was not a manifestation of the student's disability. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.524)

*from §8-60-530 at §8-56-84*

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

§8-56-90 Parent appeal. (a) If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under this subchapter, the parent may request a due process hearing.

(b) The department shall arrange for an expedited hearing in any case described in this section when requested by a parent.

(c) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the department has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of section 8-56-88(e).

(d) In reviewing a decision under section 8-56-84(a)(2) to place the student in an interim alternative educational setting for weapon, drug and controlled substance offenses, the hearing officer shall apply the standards in section 8-56-85 used to determine whether maintaining the current placement is substantially likely to result in injury to the student or to others. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.525)

**§8-60-532 Appeal**

(a) *General.* The parent of a child with a disability who disagrees with any decision regarding placement under §§ 8-60-530 and 8-60-531, or the manifestation determination under § 8-60-530(e), or the SEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 8-60-507 and 8-60-508(a) and (b).

(b) *Authority of hearing officer.* [See §8-56-85]

(c) *Expedited due process hearing.* [See §8-56-93]

§8-56-91 Placement in interim alternative educational setting during appeals. (a) If a parent requests a hearing regarding a disciplinary action described in section 8-56-84 (a)(2) or section 8-56-85 to challenge the interim alternative educational setting or the manifestation determination, 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 provided for in sections 8-56-84(a)(2) or 8-56-85, whichever occurs first, unless the parent and the department agree otherwise.

(b) If a student is placed in an interim alternative educational setting pursuant to sections 8-56-84(a)(2) or 8-56-85 and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the student shall remain in the current placement (the student's placement prior to the interim alternative educational setting), except as provided in subsection (c).

(c) If school personnel maintain that it is dangerous for the student to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the department may request an expedited due process hearing.

(1) In determining whether the student may be placed in the interim alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in section 8-56-85.

(2) A placement ordered pursuant to this subsection may not be longer than forty-five days. If, at the expiration of the forty-five days, school personnel maintain that the student is still dangerous, the procedure in this subsection may be repeated, as necessary.8-56-92

[Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.526)

**§ 8-60-533 Placement during appeals.**

When an appeal under § 8-60-532 has been made by either the parent or the SEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §A8-60-530(c) or (g), whichever occurs first, unless the parent and the SEA agree otherwise.

§8-56-92 Protections for students not yet eligible for special education and related services. (a) A student who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated any rule or code of conduct of the department including any behavior described in sections 8-56-84 and 8-56-85, 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) The department shall be deemed to have knowledge that a student is a student with a disability if:

- (1) The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the student is in need of special education and related services;
- (2) The behavior or performance of the student demonstrates the need for these services in accordance with section 8-56-15 on eligibility;
- (3) The parent of the student has requested an evaluation of the student pursuant to sections 8-56-6 to 8-56-13; or
- (4) The teacher of the student, or other personnel of the department, has expressed concern about the behavior or performance of the student to personnel of the department in accordance with sections 8-56-4 and 8-56-5 on child find and referral.

(c) The department would not be deemed to have knowledge under subsection (a) if as a result of receiving the information specified in that subsection, the department:

- (1) Either:
  - (A) Conducted an evaluation under sections 8-56-6 to 8-56-14, and determined that the student was not a student with a disability under this chapter; or
  - (B) Determined that an evaluation was not necessary; and
- (2) Provided notice to the student's parent of its determination under paragraph (1), consistent with section 8-56-68 on prior notice.
- (d) If the department does not have knowledge that a student is a student with a disability in accordance with subsection (b) prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without a disability who engaged in comparable behaviors consistent with subsection (d).
- (e) 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 sections 8-56-84 or 8-56-85, the evaluation shall be conducted in an expedited manner.
  - (1) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or dismissal without educational services.
  - (2) If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the department

**§ 8-60-534 Protections for children not determined eligible for special education and related services.**

(a) *General.* A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) *Basis of knowledge.* A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

- (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- (2) The parent of the child requested an evaluation of the child pursuant to §§ 8-60-300 through 8-60-311; or
- (3) The teacher of the child, or other personnel of the SEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if—

- (1) The parent of the child—
  - (i) Has not allowed an evaluation of the child pursuant to §§ 8-60-300 through 8-60-311; or
  - (ii) Has refused services under this part; or
- (2) The child has been evaluated in accordance with §§ 8-60-300 through 8-60-311 and determined to not be a child with a disability under this part.

(d) *Conditions that apply if no basis of knowledge.*

- (1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.
- (2)(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 8-60-530, the evaluation must be conducted in an expedited manner.
  - (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
  - (iii) If the child is determined to be a child with a disability, taking

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| <p>and information provided by the parent, the department shall provide special education and related services in accordance with the provisions of this chapter, including requirements of this subchapter and section 8-56-3. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.527)</p>   | <p>into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§ 8-60-530 through 8-60-536 and section 612(a)(1)(A) of the Act.</p>  |
| <p>§8-56-93 Expedited due process hearing. (a) An expedited due process hearing under this subchapter shall be requested in accordance with section 8-56-73 and shall:</p> <p>(1) Meet the requirements of sections 8-56-72 (c) to (f), 8-56-75, 8-56-76 (a) and 8-56-77 (c), except that the time periods identified in section 8-56-75 (c)(3) and section 8-56-75 (d) for disclosure of evidence and evaluations may be less than five business days and shall be set by the hearing officer at the pre-hearing conference;</p> <p>(2) Result in a written decision being mailed to the parties within forty-five days of the department's receipt of the request for the hearing, without exceptions or extensions. The hearing officer may set a shorter timeline for the issuance of the decision at the pre-hearing conference at the request of either party; and</p> <p>(3) Be conducted by a due process hearing officer who satisfies the requirements of section 8-56-74;</p> <p>(b) Mediation, in accordance with section 8-56-71, shall be available to the parties to an expedited due process hearing, so long as the requirement of subsection (a)(2) is met.</p> <p>(c) The department shall be responsible for the conduct of an expedited due process hearing. The timeline under subsection (a)(2) shall be the same for hearings requested by parents or the department.</p> <p>(d) A decision made in a hearing conducted pursuant to this section is final, except that any party involved in such hearing may appeal such decision under section 8-56-78. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.528)</p> | <p><i>From §8-60-532 at §8-56-90</i></p> <p>(c) Expedited due process hearing.</p> <p><u>(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the SEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§ 8-60-507 and 8-60-508(a) through (c) and §§ 8-60-510 through 8-60-514, except as provided in paragraph (c)(2) through (4) of this section.</u></p> <p><u>(2) The SEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.</u></p> <p><u>(3) Unless the parents and SEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §8-60-506—</u></p> <p style="padding-left: 40px;"><u>(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and</u></p> <p style="padding-left: 40px;"><u>(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.</u></p> <p>(4) A State may establish different State-imposed procedural rules for expedited <u>due process</u> hearings conducted under this section than it has established for other due process hearings, but, <u>except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§ 8-60-510 through 8-60-514 are met.</u></p> <p>(5) The decisions on expedited due process hearings are appealable consistent with § 8-60-514.</p> |
| <p>§8-56-94 Referral to and action by law enforcement and judicial authorities.</p> <p>(a) Nothing in this subchapter 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.</p> <p>(b) When reporting a crime committed by a student with a disability, the department may transmit copies of the student's special education and disciplinary records for consideration by the appropriate authorities to whom the department reports a crime only to the extent that the transmission is</p>   | <p><b>§ 8-60-535 Referral to and action by law enforcement and judicial authorities.</b></p> <p>(a) <i>Rule of construction.</i> Nothing in this part prohibits an agency from reporting a crime committed by a child 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 child with a disability.</p> <p>(b) <i>Transmittal of records.</i></p> <p>(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary</p>   |

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| <p>consistent with section 8-56-59 on the confidentiality of information. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.529)</p>   | <p>records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.<br/> (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.</p>  |
| <p style="text-align: center;">SUBCHAPTER 12</p> <p style="text-align: center;">COMPLAINT PROCEDURES</p> <p>§8-56-95 <u>Complaint procedures; applicability.</u> (a) 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:<br/> (1) Provisions of the Hawaii Revised Statutes relating to the education of students with a disability or this chapter; or<br/> (2) Part B of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) or the implementing regulations (34 C.F.R. Part 300).<br/> (b) The department shall widely disseminate the complaint procedures established by this subchapter to parents, and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.660)</p> | <p><b>§ 8-60-151 Adoption of State complaint procedures.</b><br/> (a) <i>General.</i> Each SEA must adopt written procedures for—<br/> (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 8-60-153 by providing for the filing of a complaint with the SEA; and<br/> (2) Widely disseminating 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 §§ 8-60-151 through 8-60-153.<br/><br/> (b) <i>Remedies for denial of appropriate services.</i> [see §8-56-97]</p>   |
| <p>§8-56-96 <u>Filing a complaint.</u> (a) An organization or individual may file a signed written complaint under the procedures described in this subchapter with the department.<br/> (b) Nothing in this subchapter precludes the department from attempting to resolve a complaint voluntarily.<br/> (c) The complaint shall include:<br/> (1) A statement that the department has violated a requirement of state or federal law in accordance with section 8-56-95(a); and<br/> (2) The facts on which the statement is based.<br/> (d) The complaint shall allege a violation that occurred not more than one year before the date that the complaint is received in accordance with subsection (a) unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years before the date the complaint is received under subsection (a). [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.662)</p>   | <p><b>§ 8-60-153 Filing a complaint.</b><br/> (a) An organization or individual may file a signed written complaint under the procedures described in §§ 8-60-151 through 8-60-152.<br/> (b) The complaint must include—<br/> (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;<br/> (2) The facts on which the statement is based;<br/> (3) <u>The signature and contact information for the complainant; and</u><br/> (4) <u>If alleging violations with respect to a specific child—</u><br/>     (i) <u>The name and address of the residence of the child;</u><br/>     (ii) <u>The name of the school the child is attending;</u><br/>     (iii) <u>In the case of a homeless child 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 child, and the name of the school the child is attending;</u><br/>     (iv) <u>A description of the nature of the problem of the child, including facts relating to the problem; and</u><br/>     (v) <u>A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.</u><br/> (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance</p> |

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|  | <p>with § 8-60-151.</p> <p>(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.</p>  |
| <p>§8-56-97 <u>Requirements</u>. The investigation and resolution of a complaint filed under section 8-56-96 shall meet the following requirements:</p> <p>(a) Within sixty days after a complaint is filed:</p> <p>(1) An independent on-site investigation shall be completed, if such an investigation is necessary;</p> <p>(2) The complainant shall be given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;</p> <p>(3) All relevant information shall be reviewed and an independent decision shall be made as to whether the department is violating a requirement of federal or state law as set forth in section 8-56-95(a); and</p> <p>(4) A written decision shall be issued to the complainant that addresses each allegation in the complaint and contains:</p> <p>(A) Findings of fact and conclusions; and</p> <p>(B) The reasons for the department's final decision.</p> <p>(b) The time limit under subsection (a) may be extended only if exceptional circumstances exist with respect to a particular complaint.</p> <p>(c) The department shall ensure effective implementation of the decision by any means authorized by law to effect compliance, including technical assistance activities, negotiations, and corrective actions to achieve compliance. In resolving a complaint in which it has found a failure to provide appropriate services, the department shall address:</p> <p>(1) How to remediate the denial of those services, including, as appropriate the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student; and</p> <p>(2) Appropriate future provision of services for all students with a disability.</p> <p>(d) If a written complaint is received that is also the subject of a due process hearing under section 8-56-72 or section 8-56-93, 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 part of the due process action shall be resolved using the time limit and procedures described in this section.</p> <p>(e) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:</p> <p>(1) The hearing decision is binding; and</p> <p>(2) The department shall inform the complainant to that effect.</p> <p>(f) A complaint alleging a public agency's failure to implement a due process decision shall be resolved by the department. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.661)</p> | <p><b>§ 8-60-152 Minimum State complaint procedures.</b></p> <p>(a) <i>Time limit; minimum procedures</i>. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 8-60-153 to—</p> <p>(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;</p> <p>(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;</p> <p><u>(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—</u></p> <p>(i) <u>At the discretion of the public agency, a proposal to resolve the complaint; and</u></p> <p>(ii) <u>An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 8-60-506;</u></p> <p>(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and</p> <p>(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—</p> <p>(i) Findings of fact and conclusions; and</p> <p>(ii) The reasons for the SEA's final decision.</p> <p>(b) <i>Time extension; final decision; implementation</i>. The SEA's procedures described in paragraph (a) of this section also must—</p> <p>(1) Permit an extension of the time limit under paragraph (a) of this section only if—</p> <p>(i) Exceptional circumstances exist with respect to a particular complaint; or</p> <p><u>(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and</u></p> <p>(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—</p> <p>(i) Technical assistance activities;</p> <p>(ii) Negotiations; and</p> <p>(iii) Corrective actions to achieve compliance.</p> |

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|   | <p>(c) <i>Complaints filed under this section and due process hearings under § 8-60-507 and §§ 8-60-530 through 8-60-532.</i></p> <p>(1) If a written complaint is received that is also the subject of a due process hearing under § 8-60-507 or §§ 8-60-530 through 8-60-532, or contains multiple issues of which one or more are part of that hearing, the State must 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 must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.</p> <p>(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—</p> <ul style="list-style-type: none"> <li>(i) The <u>due process</u> hearing decision is <u>binding on that issue</u>; and</li> <li>(ii) The SEA must inform the complainant to that effect.</li> </ul> <p>(3) A complaint alleging a public agency’s failure to implement a due process hearing decision must be resolved by the SEA.</p> <p><i>From §330.151 at §8-56-95</i></p> <p>(b) <i>Remedies for denial of appropriate services.</i> In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—</p> <ul style="list-style-type: none"> <li>(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and</li> <li>(2) Appropriate future provision of services for all children with disabilities.</li> </ul> |
| <p>§8-56-98 <u>Alternative Complaint Resolution.</u> Nothing in this subchapter shall be construed to restrict or limit an individual or organization from filing a complaint through alternative complaint resolution processes available under state or federal law. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.500, 300.660)</p> |  |