

| Section | Proposed Modifications |
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| | NOTE: Sections that were affirmed and not listed below will be revised to include section titles following referenced section numbers (e.g. Sec. 8-60-8 below) and to change the term “child/children” to “student/students”. |
| SUBPART A - General | |
| § 8-60-1 | <p>Purposes. The purposes of this part of this chapter are--</p> <ul style="list-style-type: none"> (a) To ensure that all students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (b) To strengthen the role of parents; (c) To ensure that the rights of students with disabilities and their parents are protected; (d) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all students with disabilities; and (e) To assess and ensure the effectiveness of efforts to educate students with disabilities. (f) To encourage the participation of students with a disability in all school improvement efforts; (g) To encourage whole-school approaches and pre-referral intervention to reduce the need to label students as disabled in order to address their learning needs; (h) To encourage high expectations for students with a disability and to improve and increase educational achievement; and (i) To encourage all students with a disability to develop skills needed to lead a self determined life. |
| § 8-60-6 | <p>Assistive technology service. Assistive technology service means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes--</p> <ul style="list-style-type: none"> (a) The evaluation of the needs of a student with a disability, including an assistive technology functional evaluation of the student in the student's customary environment; (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities; (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; (e) Training or technical assistance for a student with a disability or, if appropriate, that student's family; and (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student. |
| § 8-60-7 | <p>Charter school. Charter school has the meaning given the term in section 302A-101 of the Hawaii Revised Statutes.</p> |
| § 8-60-8 | <p>Student with a disability.</p> <ul style="list-style-type: none"> (a) General. (1) Student with a disability means a student evaluated in accordance with Sec. Sec. 8-60-304 (Evaluation procedures) through 8-60-311 (Specific documentation for the eligibility determination) as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. (2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under Sec. Sec. 8-60-304 (Evaluation |

procedures) through 8-60-311 (Specific documentation for the eligibility determination), that a student has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the student is not a student with a disability under this part.

(ii) If, consistent with Sec. 8-60-39(a)(2) (Special education), the related service required by the student is considered special education rather than a related service under State standards, the student would be determined to be a student with a disability under paragraph (a)(1) of this section.

(b) Definitions of disability terms. The terms used in this definition of a student with a disability are defined as follows:

(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

(3) Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a student's educational performance.

(unnumbered) Developmental Delay a developmental delay in a child aged 3 through 8 that includes one or more of the following areas: physical developmental, cognitive development, communication development, social or emotional development, or adaptive development

(4)(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes,

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| | <p>epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and</p> <p>(ii) Adversely affects a student's educational performance.</p> <p>(10) Specific learning disability--(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.</p> <p>(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.</p> <p>(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.</p> <p>(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.</p> <p>(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.</p> |
| <p>§ 8-60-9</p> | <p>Consent</p> <p>Consent means that--</p> <p>(a) The parent or adult student has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;</p> <p>(b) The parent or adult student understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and</p> <p>(c)(1) The parent or adult student understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.</p> <p>(2) If a parent or adult student revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).</p> |
| <p>§ 8-60-15</p> | <p>Evaluation.</p> <p>Evaluation means procedures used in accordance with Sec. Sec. 8-60-304, (Evaluation Procedures) through 8-60-311 (Specific documentation for the eligibility determination), to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.</p> |
| <p>§ 8-60-17</p> | <p>Free appropriate public education.</p> <p>Free appropriate public education or FAPE means special education and related services that--</p> <p>(a) Are provided at public expense, in the least restrictive environment, under public supervision and direction, and without charge;</p> <p>(b) Meet the standards of the SEA, including the requirements of this chapter;</p> <p>(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and</p> <p>(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. Sec. 8-60-320 (Definition of individualized education program) through 8-60-324 (Development, review, and revision of IEP).</p> |
| <p>§ 8-60-22</p> | <p>Individualized education program.</p> <p>Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in</p> |

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| | accordance with Sec. Sec. 8-60-320 (Definition of individualized education program), through 8-60-324 (Development, review, and revision of IEP). |
| § 8-60-23 | Individualized education program team. Individualized education program team or IEP Team means a group of individuals described in Sec. 8-60-321 (IEP Team) that is responsible for developing, reviewing, or revising an IEP for a child with a disability. |
| § 8-60-24 | Individualized family service or support plan. Individualized family service or support plan or IFSP has the meaning given the term in section 636 of the Act, (Individualized family service plan). |
| § 8-60-25 | Infant or toddler with a disability. Infant or toddler with a disability-- <ul style="list-style-type: none"> (a) Means an individual under three years of age who needs early intervention services because the individual-- <ul style="list-style-type: none"> (1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or (2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and (b) May also include, — <ul style="list-style-type: none"> (1) At risk infants and toddlers Students who are environmentally and biologically at risk; and (2) Students with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such students enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such students shall include-- <ul style="list-style-type: none"> (i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and (ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619. |
| § 8-60-27 | Limited English proficient. Limited English proficient has the meaning given the term in section 9101(25) of the ESEA. The term limited English proficient', when used with respect to an individual, means an individual — <ul style="list-style-type: none"> (a) who is aged 3 to 20; (b) who is enrolled or preparing to enroll in an elementary school or secondary school; (c) (1) who was not born in the United States or whose native language is a language other than English; <ul style="list-style-type: none"> (2)(i) who is a Native American or Alaska Native, or a native resident of the outlying areas; and (ii) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or (3) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and (d) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual — <ul style="list-style-type: none"> (1) the ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3); (2) the ability to successfully achieve in classrooms where the language of instruction is English; or (3) the opportunity to participate fully in society. |
| § 8-60-33 | Public agency. Public agency includes the SEA, ESAs (defined in Sec. 8-60-12), nonprofit public charter schools, and any other political subdivisions of the State that are responsible for providing education to students with disabilities. |

§ 8-60-34

Related services.

(a) General. Related services **includes but is not limited to** transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education; speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in **students**, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) Exception; services that apply to **students** with surgically implanted devices, including cochlear implants.

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section--

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in Sec. 8-60-113(b).

(c) Individual related services terms defined. The terms used in this definition are defined as follows:

(1) Audiology includes--

(i) Identification of **students** with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of **students**, parents, and teachers regarding hearing loss; and

(vi) Determination of **students'** needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) Early identification and assessment of disabilities in **students** means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) Interpreting services includes--

(i) The following, when used with respect to **students** who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for **students** who are deaf-blind.

(5) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) Occupational therapy--

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes--

(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(7) Orientation and mobility services--

(i) Means services provided to blind or visually impaired **students** by qualified personnel to enable those **students** to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching **students** the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for **students** with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8)(i) Parent counseling and training means assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) Physical therapy means services provided by a qualified physical therapist.

(10) Psychological services includes--

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of **students** as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for **students** and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(11) Recreation includes--

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(12) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a **student** with a disability. The term also includes vocational rehabilitation services provided to a **student** with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person

(14) Social work services in schools includes--

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(15) Speech-language pathology services includes--

(i) Identification of **students** with speech or language impairments;

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| | <ul style="list-style-type: none"> (ii) Diagnosis and appraisal of specific speech or language impairments; (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments; (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and (v) Counseling and guidance of parents, students, and teachers regarding speech and language impairments. <p>(16) Transportation includes--</p> <ul style="list-style-type: none"> (i) Travel to and from school and between schools; (ii) Travel in and around school buildings; and (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability. |
| <p>§ 8-60-37</p> | <p>Services plan.</p> <p>Services plan means a written statement that describes the special education and related services the SEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with Sec. 8-60-132 (Provision of services for parentally-placed private school children with disabilities—basic requirement), and is developed and implemented in accordance with Sec. Sec. 8-60-137 (Equitable services determined) through 8-60-139 (Location of services and transportation).</p> |
| <p>§ 8-60-39</p> | <p>Special education.</p> <p>(a) General. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—</p> <ul style="list-style-type: none"> (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, in the community and in other settings; and (ii) Instruction in physical education. <p>(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--</p> <ul style="list-style-type: none"> (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; (ii) Travel training; and (iii) Vocational education. <p>(b) Individual special education terms defined. The terms in this definition are defined as follows:</p> <p>(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.</p> <p>(2) Physical education means--</p> <ul style="list-style-type: none"> (i) The development of-- <ul style="list-style-type: none"> (A) Physical and motor fitness; (B) Fundamental motor skills and patterns; and (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and (ii) Includes special physical education, adapted physical education, movement education, and motor development. <p>(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--</p> <ul style="list-style-type: none"> (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all students. <p>(4) Travel training means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to--</p> |

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| | <p>(i) Develop an awareness of the environment in which they live; and</p> <p>(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).</p> <p>(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.</p> |
| § 8-60-? New Def. | <p>Assessment. Assessment means the administration of specific tests, instruments, tools, strategies and other materials used selectively with an individual student in accordance with § 8-60-304 to determine whether a student has a disability and the nature and extent of the special education and related services the student needs.</p> |
| § 8-60-? New Def. | <p>Department. Department means the Hawaii Department of Education, Hawaii's State Educational Agency (SEA).</p> |
| § 8-60-? formerly 8-60-611 (a). | <p>Destruction. Destruction means the physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.</p> |
| § 8-60-? New Def. | <p>Due process complaint. Due process complaint means a request for an impartial hearing process to resolve an alleged violation relating to the identification, evaluation, or educational placement of a student with a disability or the provision of FAPE to the student</p> |
| § 8-60-? New Def. | <p>Early childhood transition. Early childhood transition means the process of planning and providing supports to young children with disabilities and their families to ensure a smooth move from an early intervention program under Part C to a Part B program.</p> |
| § 8-60-? from § 8-60-226 | <p>Early intervening services Early intervening services means services provided to students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.</p> |
| § 8-60-? New Def. | <p>Education records. Education records means those records that are directly related to the student maintained by the department other individual or agency acting for the department in the identification, evaluation, educational placement, or the provision of a free appropriate public education to the student; and are the type of records covered under such definition in Chapter 8-34 and 34 CFR Part 99 (FERPA).</p> |
| § 8-60-? New Def. | <p>Extended School Year (ESY). Extended School Year means special education and related services provided to a student with a disability beyond the normal school year, in accordance with the student's IEP and at no cost to the parent of the student.</p> |
| § 8-60-? New Def. | <p>Functional Behavioral Assessment (FBA). Functional Behavioral Assessment means a problem solving process that relies on different strategies and techniques to determine the purposes or functions of the behavior by defining the behavior, identifying events that trigger the behavior and the consequences for the behavior, and developing hypotheses regarding the function of the behavior.</p> |
| § 8-60-? New Def. | <p>General curriculum. General curriculum means the same curriculum as for students for students without a disability; relates to the content of the curriculum and not to the setting in which it is used.</p> |
| § 8-60-? New Def | <p>Independent Educational Evaluation (IEE). Independent Educational Evaluation 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.</p> |
| § 8-60-? | <p>Interim Alternate Educational Setting (IAES).</p> |

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| New Def. | Interim Alternate Educational Setting means a temporary placement for a student who has been suspended or otherwise removed from his current educational placement for disciplinary reasons in which the student continues to receive educational services to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP. |
| § 8-60-? New Def. | Least Restrictive Environment (LRE): to the maximum extent appropriate, educating students with disabilities, including students in public or private institutions or other care facilities, with students who are non disabled and removing students with disabilities from the regular educational environment only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily |
| § 8-60-? New Def. | Manifestation Determination: a process triggered by a proposed change in the placement of a student with a disability because of a violation of a code of student conduct to determine: 1) if the conduct was caused by, or had a direct and substantial relationship to the student's disability or 2) if the conduct was the direct result of a failure to implement the IEP |
| § 8-60-? New Def. | Mediation: a voluntary process in which a neutral third party (mediator) helps parents and education representatives try to resolve issues relating to a student's identification, evaluation, or educational placement or the provision of FAPE |
| § 8-60-? from § 8-60-611(c) | Participating agency: any agency or institution that collects, maintains or uses personally identifiable information, or from which information is obtained, under Part B of the Act |
| § 8-60-? New Def. | Placement. Placement means an appropriate educational setting for the implementation of the program for a student with a disability based upon the individualized education program. Placement shall be provided in the least restrict environment in a continuum of educational arrangements. |
| § 8-60-? New Def. | PLAAFP: an essential part of the IEP that summarizes the student's <i>present levels of academic achievement and functional performance</i> and states how the student's disability affects the child's involvement and progress in the general education curriculum |
| § 8-60-? New Def. | Prior Written Notice (PWN): written notification given to parents of a student with a disability a reasonable time before the public agency 1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, or 2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. |
| § 8-60-? New Def. | Resolution Session: a meeting convened within 15 days of a parent filing a due process complaint in which the parent, a representative from the SEA and the relevant member(s) of the IEP Team discuss the complaint and attempt to resolve the dispute that is the basis of the complaint prior to a due process hearing |
| § 8-60-? New Def. | State Complaint: a written complaint filed with the State Educational Agency by an organization or individual alleging a violation of a requirement of Part B of the Act |
| § 8-60-? New Def. | Summary of Performance: a summary of academic achievement and functional performance including recommendations on how to assist the student in meeting postsecondary goals given to a student when the student ages out of school or exceeds the age of eligibility for a free appropriate public education under state Law |
| SUBPART – State Eligibility | |
| § 8-60-101 | <p>Free appropriate public education (FAPE).</p> <p>(a) General. A free appropriate public education must be available to all students residing in the State aged 3 to 20, inclusive, including students with disabilities who have been suspended or expelled from school, as provided for in Sec. 8-60-530(d) (Authority of school personnel).</p> <p>(b) FAPE for students beginning at age 3. (1) Each State must ensure that--</p> <p>(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and</p> <p>(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with Sec. 8-60-323(b) (When IEPs must be in effect).</p> <p>(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.</p> <p>(c) Students advancing from grade to grade. (1) Each State must ensure that FAPE is available to any individual child with a disability who needs</p> |

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| | <p>special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.</p> <p>(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.</p> |
| <p>§ 8-60-102</p> | <p>Limitation--exception to FAPE for certain ages.</p> <p>(a) General. The obligation to make FAPE available to all students with disabilities does not apply with respect to the following:</p> <p>(1) Students aged 3, 4, 5, 18, 19, or 20 in the State to the extent that its application to those students would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to students of those ages.</p> <p>(2)(i) Students aged 18 to 20 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--</p> <p>(A) Were not actually identified as being a child with a disability under Sec. 8-60-8 (Child with a disability); and</p> <p>(B) Did not have an IEP under Part B of the Act.</p> <p>(ii) The exception in paragraph (a)(2)(i) of this section does not apply to students with disabilities, aged 18 to 20, who--</p> <p>(A) Had been identified as a child with a disability under Sec. 8-60-8 (Child with a disability) and had received services in accordance with an IEP, but who left school prior to their incarceration; or</p> <p>(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under Sec. 8-60-8 (Child with a disability).</p> <p>(3)(i) Students with disabilities who have graduated from high school with a regular high school diploma.</p> <p>(ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated from high school but have not been awarded a regular high school diploma.</p> <p>(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with Sec. 8-60-503 (Prior notice by the public agency; content of notice).</p> <p>(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).</p> <p>(4) Students with disabilities who are eligible under subpart H of this chapter, but who receive early intervention services under Part C of the Act.</p> <p>(b) Documents relating to exceptions. The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by Sec. 8-60-700 (Grants to states) (for purposes of making grants to States under this part), is current and accurate.</p> |
| <p>§ 8-60-106</p> | <p>Extended school year services.</p> <p>(a) General. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.</p> <p>(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with Sec. Sec. 8-60-320 (Definition of individualized education program) through 8-60-324 (Development, review, and revision of IEP), that the services are necessary for the provision of FAPE to the child.</p> <p>(3) In implementing the requirements of this section, a public agency may not--</p> <p>(i) Limit extended school year services to particular categories of disability; or</p> <p>(ii) Unilaterally limit the type, amount, or duration of those services.</p> <p>(b) Definition. As used in this section, the term extended school year services means special education and related services that--</p> <p>(1) Are provided to a child with a disability--</p> <p>(i) Beyond the normal school year of the public agency;</p> <p>(ii) In accordance with the child's IEP; and</p> <p>(iii) At no cost to the parents of the child; and</p> |

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| | (2) Meet the standards of the SEA. |
| § 8-60-112 | <p>Individualized education programs (IEP).</p> <p>The State must ensure that an IEP, or an IFSP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with Sec. Sec. 8-60-320 (Definition of individualized education program) through 8-60-324 (Development, review and revision of IEP), except as provided in Sec. 8-60-300(b)(3)(ii) (Parental Consent).</p> |
| § 8-60-116 | <p>Placements.</p> <p>In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that parents are informed of the continuum of alternative placements, and--</p> <p>(a) The placement options are discussed and the placement decision--</p> <p>(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and</p> <p>(2) Is made in conformity with the LRE provisions of this subpart, including Sec. Sec. 8-60-114 (LRE requirements) through 8-60-118 (Children in public or private institutions);</p> <p>(b) The child's placement--</p> <p>(1) Is determined at least annually;</p> <p>(2) Is based on the child's IEP; and</p> <p>(3) Is as close as possible to the child's home;</p> <p>(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;</p> <p>(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and</p> <p>(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.</p> |
| § 8-60-119 | <p>Technical assistance and training activities.</p> <p>Each SEA must carry out activities to ensure that teachers and administrators in all public agencies--</p> <p>(a) Are fully informed about their responsibilities for implementing Sec. 8-60-114 (LRE requirements); and</p> <p>(b) Are provided with technical assistance and training necessary to assist them in this effort.</p> |
| § 8-60-133 | <p>Expenditures.</p> <p>(a) Formula. To meet the requirement of Sec. 8-60-132(a) (Provision of services for parentally-placed private school children with disabilities—basic requirement), the SEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school students with disabilities:</p> <p>(1) For students aged 3 to 20, an amount that is the same proportion of the SEA's total grant under section 611(f) of the Act as the number of private school students with disabilities aged 3 to 20 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the SEA, is to the total number of students with disabilities in its jurisdiction aged 3 to 20.</p> <p>(2)(i) For students aged three through five, an amount that is the same proportion of the SEA's total grant under section 619(g) of the Act as the number of parentally-placed private school students with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the SEA, is to the total number of students with disabilities in its jurisdiction aged three through five.</p> <p>(ii) As described in paragraph (a)(2)(i) of this section, students aged three through five are considered to be parentally-placed private school students with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in Sec. 8-60-13.</p> |

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| | <p>(3) If the SEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the SEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school students with disabilities during a carry-over period of one additional year.</p> <p>(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school students with disabilities, the SEA, after timely and meaningful consultation with representatives of private schools under Sec. 8-60-134, must conduct a thorough and complete child find process to determine the number of parentally-placed students with disabilities attending private schools located in the SEA. (See Appendix B for an example of how proportionate share is calculated).</p> <p>(c) Annual count of the number of parentally-placed private school students with disabilities. (1) The SEA must--</p> <p>(i) After timely and meaningful consultation with representatives of parentally-placed private school students with disabilities (consistent with Sec. 8-60-134), determine the number of parentally-placed private school students with disabilities attending private schools located in the SEA; and</p> <p>(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.</p> <p>(2) The count must be used to determine the amount that the SEA must spend on providing special education and related services to parentally-placed private school students with disabilities in the next subsequent fiscal year.</p> <p>(d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school students with disabilities under this part.</p> |
| <p>§ 8-60-153</p> | <p>Filing a complaint.</p> <p>(a) An organization or individual may file a signed written complaint under the procedures described in Sec. Sec. 8-60-151 (Adoption of State complaint procedures) through 8-60-152 (Minimum State complaint procedures).</p> <p>(b) The complaint must include--</p> <p>(1) A statement that a public agency has violated a requirement of Part B of the Act or of this chapter;</p> <p>(2) The facts on which the statement is based;</p> <p>(3) The signature and contact information for the complainant; and</p> <p>(4) If alleging violations with respect to a specific child--</p> <p>(i) The name and address of the residence of the child;</p> <p>(ii) The name of the school the child is attending;</p> <p>(iii) 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;</p> <p>(iv) A description of the nature of the problem of the child, including facts relating to the problem; and</p> <p>(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.</p> <p>(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 with Sec. 8-60-151 (Adoption of State complaint procedures).</p> <p>(d) The party filing the complaint must forward a copy of the complaint to the public agency serving the child at the same time the party files the complaint with the SEA.</p> |
| <p>SUBPART C</p> | <p>- Local Educational Agency Eligibility</p> |
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| <p>SUBPART D</p> | <p>- Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements</p> |
| <p>§ 8-60-303</p> | <p>Reevaluations.</p> <p>(a) General. The Department must ensure that a reevaluation of each child with a disability is conducted in accordance with Sec. Sec. 8-60-304 through 8-60-311--</p> <p>(1) If the Department determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or</p> |

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| | <p>(2) If the child's parent or teacher requests a reevaluation.</p> <p>(b) The results of any reevaluations shall be addressed by the student's IEP team under section 8-60-324 (Development, review, and revision of IEP) on reviewing and, as appropriate, revising the student's IEP.</p> <p>(c) Limitation. A reevaluation conducted under paragraph (a) of this section--</p> <ol style="list-style-type: none"> (1) May occur not more than once a year, unless the parent and the Department agree otherwise; and (2) Must occur at least once every 3 years, unless the parent and the Department agree that a reevaluation is unnecessary. |
| <p>§ 8-60-304</p> | <p>Sec. 8-60-304 Evaluation procedures.</p> <p>(a) Notice. The Department must provide notice to the parents of a child with a disability, in accordance with Sec. 8-60-503, that describes any evaluation procedures the agency proposes to conduct.</p> <p>(b) Conduct of evaluation. In conducting the evaluation, the public agency must--</p> <ol style="list-style-type: none"> (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining-- <ol style="list-style-type: none"> (i) Whether the child is a child with a disability under Sec. 8-60-8; and (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities); (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. <p>(c) Other evaluation procedures. Each public agency must ensure that--</p> <ol style="list-style-type: none"> (1) Assessments and other evaluation materials used to assess a child under this part-- <ol style="list-style-type: none"> (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer; (iii) Are used for the purposes for which the assessments or measures are valid and reliable; (iv) Are administered by trained and knowledgeable personnel; and (v) Are administered in accordance with any instructions provided by the producer of the assessments. (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, visual and auditory processing, and motor abilities, and is assessed by at least one teacher or other specialist with knowledge in the area of suspected disability; (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with Sec. 8-60-301(d)(2) and (e), to ensure prompt completion of full evaluations. (6) In evaluating each child with a disability under Sec. Sec. 8-60-304 through 8-60-306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been |

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| | <p>classified.</p> <p>(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p> |
| <p>§ 8-60-305</p> | <p>8-60-305 Additional requirements for evaluations and reevaluations.</p> <p>(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--</p> <p>(1) Review existing evaluation data on the child, including--</p> <p>(i) Evaluations and information provided by the parents of the child;</p> <p>(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and</p> <p>(iii) Observations by teachers and related services providers; and</p> <p>(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--</p> <p>(i)(A) Whether the child is a child with a disability, as defined in Sec. 8-60-8, and the educational needs of the child; or</p> <p>(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;</p> <p>(ii) The present levels of academic achievement and related developmental needs of the child;</p> <p>(iii)(A) Whether the child needs special education and related services; or</p> <p>(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and</p> <p>(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals and objectives set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.</p> <p>(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.</p> <p>(c) Source of data. The Department must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.</p> <p>(d) Requirements if additional data are not needed. (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the Department must notify the child's parents of--</p> <p>(i) That determination and the reasons for the determination; and</p> <p>(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.</p> <p>(2) The Department is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.</p> <p>(e) Evaluations before change in eligibility. (1) Except as provided in paragraph (e)(2) of this section, the Department must evaluate a child with a disability in accordance with Sec. Sec. 8-60-304 through 8-60-311 before determining that the child is no longer a child with a disability.</p> <p>(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.</p> <p>(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, the Department must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.</p> |
| <p>§ 8-60-310</p> | <p>Observation.</p> <p>(a) The Department must ensure that the student is observed in the student's learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the areas of difficulty.</p> <p>(b) The group described in Sec. 8-60-306(a)(1) (Determination of eligibility), in determining whether a student has a specific learning disability, must</p> |

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| | <p>decide to--</p> <ul style="list-style-type: none"> (1) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or (2) Have at least one member of the group described in Sec. 8-60-306(a)(1) (Determination of eligibility) other than the student's regular education teacher, shall conduct an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and parental consent, consistent with Sec. 8-60-300(a) (Parental consent), is obtained. <p>(c) In the case of a student of less than school age or out of school, a group member must observe the student in an environment appropriate for a student of that age.</p> |
| <p>§8-60-324</p> | <p>Development, review, and revision of IEP.</p> <ul style="list-style-type: none"> (a) Development of IEP--(1) General. In developing each student's IEP, the IEP Team must consider- <ul style="list-style-type: none"> (i) The strengths of the student; (ii) The concerns of the parents for enhancing the education of their student; (iii) The results of the initial or most recent evaluation of the student; and (iv) The academic, developmental, and functional needs of the student. (2) Consideration of special factors. The IEP Team must-- <ul style="list-style-type: none"> (i) In the case of a student whose behavior impedes the student's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior; (ii) In the case of a student with limited English proficiency, consider the language needs of the student as those needs relate to the student's IEP; (iii) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student; (iv) Consider the communication needs of all students including students who are deaf or hard of hearing. , This consideration includes review of the student's language; ,opportunities for direct communications with peers and professional personnel in the student's language and communication mode; academic level; full range of needs; and opportunities for direct instruction in the student's language and communication mode; and (v) Consider whether the student needs assistive technology devices and services. (3) Requirement with respect to regular education teacher. A regular education teacher of a student with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the student, including the determination of-- <ul style="list-style-type: none"> (i) Appropriate positive behavioral interventions and supports and other strategies for the student; and (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with Sec. 8-60-320(a)(4) (Definition of individualized education program). (4) Agreement. (i) In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent of a student with a disability and the Department may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP. <ul style="list-style-type: none"> (ii) If changes are made to the student's IEP in accordance with paragraph (a)(4)(i) of this section, the Department must ensure that the student's IEP Team is informed of those changes. (5) Consolidation of IEP Team meetings. To the extent possible, the Department must encourage the consolidation of reevaluation meetings for the student and other IEP Team meetings for the student. (6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP., The parent must be provided with a revised copy of the IEP with the |

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| | <p>amendments incorporated within 14 days of the revision.</p> <p>(b) Review and revision of IEPs--(1) General. The Department must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team--</p> <p>(i) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and</p> <p>(ii) Revises the IEP, as appropriate, to address--</p> <p>(A) Any lack of expected progress toward the annual goals described in Sec. 8-60-320(a)(2) (Definition of individualized education program), and in the general education curriculum, if appropriate;</p> <p>(B) The results of any reevaluation conducted under Sec. 8-60-303 (Reevaluation);</p> <p>(C) Information about the student provided to, or by, the parents, as described under Sec. 8-60-305(a)(2) (Additional requirements for evaluations and reevaluations);</p> <p>(D) The student's anticipated needs; or</p> <p>(E) Other matters.</p> <p>(2) Consideration of special factors. In conducting a review of the student's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.</p> <p>(3) Requirement with respect to regular education teacher. A regular education teacher of the student, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the student.</p> <p>(c) Failure to meet transition objectives--(1) Participating agency failure. If a participating agency, other than the Department, fails to provide the transition services described in the IEP in accordance with Sec. 8-60-320(b), (Definition of individualized education program) the Department must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.</p> <p>(2) Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.</p> <p>(d) Students with disabilities in adult prisons--(1) Requirements that do not apply. The following requirements do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons:</p> <p>(i) The requirements contained in section 612(a)(16) of the Act (State eligibility) and Sec. 8-60-320(a)(6) (relating to participation of students with disabilities in general assessments).</p> <p>(ii) The requirements in Sec. 8-60-320(b) (relating to transition planning and transition services) do not apply with respect to the students whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.</p> <p>(2) Modifications of IEP or placement. (i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a student with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.</p> <p>(ii) The requirements of Sec. Sec. 8-60-320 (relating to IEPs), and 8-60-112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.</p> |
| <p>§ 8-60-501</p> | <p>Opportunity to examine records; parent participation in meetings.</p> <p>(a) Opportunity to examine records. The parents of a student with a disability must be afforded, in accordance with the procedures of Sec. Sec. 8-60-613 (Access rights) through 8-60-621 (Hearing procedures), an opportunity to inspect and review all education records with respect to--</p> <p>(1) The identification, evaluation, and educational placement of the student; and</p> <p>(2) The provision of FAPE to the student.</p> <p>(b) Parent participation in meetings. (1) The parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to--</p> |

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| | <p>(i) The identification, evaluation, and educational placement of the student; and</p> <p>(ii) The provision of FAPE to the student.</p> <p>(2) The Department must provide written notice consistent with Sec. 8-60-322(a)(1) and (b)(1) (Parent participation) to ensure that parents of students 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 Department personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that Department personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.</p> <p>(4) 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>(c) Parent involvement in placement decisions. (1) The Department must ensure that a parent of each student with a disability is a member of any group that makes decisions on the educational placement of the parent's student.</p> <p>(2) In implementing the requirements of paragraph (c)(1) of this section, the Department must use procedures consistent with the procedures described in Sec. 8-60-322(a) through (b)(1) (Parent participation).</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 student, the Department 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 Department is unable to obtain the parent's participation in the decision. In this case, the Department must have a record consistent with Sec. Sec. 8-60-322(d)(1) through 8-60-322(d)(3) of its attempt to ensure their involvement.</p> |
| <p>§ 8-60-508</p> | <p>Due process complaint.</p> <p>(a) General. (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).</p> <p>(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.</p> <p>(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include--</p> <p>(1) The name of the student;</p> <p>(2) The address of the residence of the student;</p> <p>(3) The name of the school the student is attending;</p> <p>(4) In the case of a homeless student or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending;</p> <p>(5) A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and</p> <p>(6) A proposed resolution of the problem to the extent known and available to the party at the time.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(3) A party may amend its due process complaint only if--</p> <p>(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</p> |

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| | <p>pursuant to Sec. 8-60-510 (Resolution process); or</p> <p>(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.</p> <p>(4) If a party files an amended due process complaint, the timelines for the resolution meeting in Sec. 8-60-510(a) (Resolution process) and the time period to resolve in Sec. 8-60-510(b) (Resolution process) begin again with the filing of the amended due process complaint.</p> <p>(e) SEA response to a due process complaint. (1) If the SEA has not sent a prior written notice under Sec. 8-60-503 (Prior notice by the public agency; content of notice) 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--</p> <p>(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;</p> <p>(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;</p> <p>(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and</p> <p>(iv) A description of the other factors that are relevant to the agency's proposed or refused action.</p> <p>(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.</p> <p>(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.</p> |
| <p>§ 8-60-511</p> | <p>Impartial due process hearing.</p> <p>(a) General. Whenever a due process complaint is received under Sec. 8-60-507 (Filing a due process hearing) or Sec. 8-60-532 (Appeal), the parents or the SEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in Sec. 8-60-50 (Filing a due process hearing), 8-60-508 (Due process complaint), and 8-60-510 (Resolution process).</p> <p>(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 student, as determined under State statute, State regulation, or a written policy of the SEA Department.</p> <p>(c) Impartial hearing officer. (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 student; or</p> <p>(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;</p> <p>(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;</p> <p>(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and</p> <p>(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.</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>(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 Sec. 8-60-508(b) (Due process complaint), unless the other party agrees otherwise.</p> <p>(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 ninety days of a unilateral special education placement, where the request is for reimbursement of the costs of the placement, including special education</p> |

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| | <p>and related services. Placement occurs on the date 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.</p> <p>(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--</p> <ol style="list-style-type: none"> (1) Specific misrepresentations by the SEA that it had resolved the problem forming the basis of the due process complaint; or (2) The SEA's withholding of information from the parent that was required under this part to be provided to the parent. |
| <p>§ 8-60-512</p> | <p>Hearing rights.</p> <p>(a) General. Any party to a hearing conducted pursuant to Sec. Sec. 8-60-507 (Filing a due process complaint) through 8-60-513 (Hearing decision) or Sec. Sec. 8-60-530 (Authority of school personnel) through 8-60-534 (Protections for children not determined eligible for special education and related services), or an appeal conducted pursuant to Sec. 8-60-514 (Finality of decisions; appeal; impartial review), has the right to--</p> <ol style="list-style-type: none"> (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; <ol style="list-style-type: none"> (A) The party initiating the due process complaint has the burden of proof based on the preponderance of evidence. (B) The Department must present its case first. (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions. <p>(b) Additional disclosure of information. (1) At least five business days prior to a hearing conducted pursuant to Sec. 8-60-511(a) (Impartial due process hearing), 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) Parental rights at hearings. Parents involved in hearings must be given the right to--</p> <ol style="list-style-type: none"> (1) Have the student who is the subject of the hearing present; (2) Open the hearing to the public; and (3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents. |
| <p>§ 8-60-514</p> | <p>Finality of decision; appeal; impartial review.</p> <p>(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to Sec. Sec. 8-60-507 (Filing a due process complaint) through 8-60-513 (Hearing decisions) or Sec. Sec. 8-60-530 (Authority of school personnel) through 8-60-534 (Protections for children not determined eligible for special education and related services) is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and Sec. 8-60-516 (Civil action).</p> <p>(b) Appeal of decisions; impartial review. (1) If the hearing required by Sec. 8-60-511 (Impartial due process hearing) 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. (2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must--</p> <p>(i) Examine the entire hearing record;</p> <p>(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;</p> |

- ~~—(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in Sec. 8-60-512 (Hearing rights) apply;~~
- ~~—(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;~~
- ~~—(v) Make an independent decision on completion of the review; and~~
- ~~—(vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.~~
 - (b) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must--
 - (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under Sec. 8-60-167 (State advisory panel); and
 - (2) Make those findings and decisions available to the public.
 - (c) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under Sec. 8-60-516 (Civil action).