

CHAPTER 56	CHAPTER 60
<p style="text-align: center;">SUBCHAPTER 1</p> <p style="text-align: center;">GENERAL PROVISIONS</p> <p>§8-56-1 <u>Purpose and scope.</u> (a) The purposes of this chapter are:</p> <p>(1) To ensure that all students with a disability 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 post-school activities, including post-secondary education, employment and independent living;</p> <p>(2) To strengthen the role of parents, and to ensure that the rights of students with a disability and their parents are protected;</p> <p>(3) To encourage the participation of students with a disability in all school improvement efforts;</p> <p>(4) 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;</p> <p>(5) To encourage high expectations for students with a disability and to improve and increase educational achievement; and</p> <p>(6) To encourage all students with a disability to develop skills needed to lead a self determined life.</p> <p>(b) Provisions of this chapter shall be construed as supplemental to, and in the context of, federal laws and regulations relating to the provision of a free appropriate public education to a student with a disability. A student with a disability under this chapter shall also be eligible as a student with a disability under chapter 8-53, relating to the Provision of a Free Appropriate Public Education For Students with a Disability Under Section 504, Subpart D. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-436; 34 C.F.R. §300.1)</p>	<p><b>§ 8-60-1 Purposes.</b> The purposes of this part are—</p> <p>(a) To ensure that all children 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 <u>further education</u>, employment, and independent living;</p> <p>(b) To ensure that the rights of children with disabilities and their parents are protected;</p> <p>(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and</p> <p>(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.</p> <p><b>§ 8-60-2 Applicability of this part to State and local agencies.</b></p> <p>(a) <i>States.</i> This part applies to each State that receives payments under Part B of the Act, as defined in § 8-60-4.</p> <p>(b) <i>Public agencies within the State.</i>—The provisions of this part—</p> <p>(1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including:</p> <ul style="list-style-type: none"> <li>(i) The State educational agency (SEA).</li> <li>(ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.</li> <li>(iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness).</li> <li>(iv) State and local juvenile and adult correctional facilities; and</li> </ul> <p>(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.</p> <p>(c) <i>Private schools and facilities.</i> Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities—</p> <p>(1) Referred to or placed in private schools and facilities by that public agency; or</p> <p>(2) Placed in private schools by their parents under the provisions of §8-60-148.</p>
<p>§8-56-2 <u>Definitions.</u> As used in this chapter, unless the context indicates otherwise:</p>	<p><b>Definitions Used in this Part</b></p> <p><b>§ 8-60-4 Act.</b> <i>Act</i> means the Individuals with Disabilities Education Act, as amended.</p>

see §8-56-30

**§ 8-60-5 Assistive technology device.**

*Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

see §8-56-30

**§ 8-60-6 Assistive technology service.**

*Assistive technology service* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children 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 child with a disability or, if appropriate, that child'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 child.

**§ 8-60-7 Charter school.**

*Charter school* has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

see §8-56-15

**§ 8-60-8 Child with a disability.**

(a) *General.*

(1) *Child with a disability* means a child evaluated in accordance with §§ 8-60-304 through 8-60-311 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 §§ 8-60-304 through 8-60-311,

see §8-56-16 Autism  
see §8-56-17 Deaf-blindness  
see §8-56-18 Deafness  
see §8-56-19 Developmental Delay  
see §8-56-20 Emotional disturbance  
see §8-56-21 Hearing impairment  
see §8-56-22 Mental Retardation  
see §8-56-23 Multiple disability  
see §8-56-24 Orthopedic impairment  
see §8-56-25 Other health impairment  
see §8-56-26 Specific learning disability  
see §8-56-27 Speech-language impairment  
see §8-56-28 Traumatic brain injury  
see §8-56-29 Visual impairment including blindness

"Consent" means that:

- (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, or other appropriate mode of communication;
- (2) The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Day" means calendar day unless otherwise indicated as school day or business day.

that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

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

(b) *Children aged three through nine experiencing developmental delays.*

(c) *Definitions of disability terms.* The terms used in this definition of a child with a disability are defined as follows:

(1)(i) *Autism*

(2) *Deaf-blindness*

(3) *Deafness*

(4)(i) *Emotional disturbance*

(5) *Hearing impairment*

(6) *Mental retardation*

(7) *Multiple disabilities*

(8) *Orthopedic impairment*

(9) *Other health impairment*

(10) *Specific learning disability*

(11) *Speech or language impairment*

(12) *Traumatic brain injury*

(13) *Visual impairment including blindness*

#### **§ 8-60-9 Consent.**

*Consent* means that—

(a) The parent 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;

(b) The parent 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

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

#### **§ 8-60-10 Core academic subjects.**

Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government,

- (1) "Business day" means Monday through Friday, except for federal and state holidays unless holidays are specifically included in the designation of business day, as in section 8-56-51 (d)(1).
- (2) "School day" means any day, including a partial day, that students are in attendance at school for instructional purposes. The term has the same meaning for all students in school, including students with and without a disability.

"Department" means the state department of education.

"Education records" means those records that are directly related to the student; maintained by the department or 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 34 C.F.R. Part 99 and chapter 8-34.

economics, arts, history, and geography.

**§ 8-60-11 Day; business day; school day.**

- (a) *Day* means calendar day unless otherwise indicated as business day or school day.
- (b) *Business day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §8-60-148(d)(1)(ii)).
- (c)(1) *School day* means any day, including a partial day that children are in attendance at school for instructional purposes.
- (2) *School day* has the same meaning for all children in school, including children with and without disabilities.

**§ 8-60-611 Definitions.**

As used in §§ 8-60-611 through 8-60-625—

- (a) *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- (b) *Education records* 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)).
- (c) *Participating agency* 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.

**§ 8-60-12 Educational service agency.**

*Educational service agency* means—

- (a) A regional public multiservice agency—
- (1) Authorized by State law to develop, manage, and provide services or programs;
- (2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State;
- (b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and
- (c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

**§ 8-60-13 Elementary school.**

*Elementary school* means a nonprofit institutional day or residential

school, including a public elementary charter school, that provides elementary education, as determined under State law.

**§ 8-60-14 Equipment.**

*Equipment means—*

- (a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and
- (b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

**§ 8-60-15 Evaluation.**

*Evaluation means procedures used in accordance with §§ 8-60-304 through 8-60-311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.*

**§ 8-60-16 Excess costs.**

*Excess costs means those costs that are in excess of the average annual per-student expenditure during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—*

(a) Amounts received—

- (1) Under Part B of the Act;
- (2) Under Part A of title I of the ESEA; and
- (3) Under Parts A and B of title III of the ESEA and;

(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how excess costs must be calculated.)

**§ 8-60-17 Free appropriate public education.**

*Free appropriate public education or FAPE means special education and related services that—*

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 8-60-320 through 8-60-324.

"Evaluation" as used in this chapter, has the meaning given that term in section 8-56-6.

"Free appropriate public education" means special education and related services that are provided at public expense in the least restrictive environment, under public supervision and direction and at no cost to a parent, except for incidental fees which are normally charged to a student without a disability or the parent as a part of the regular education program; meet the standards of the department; include preschool, elementary, or secondary school education; and are provided in conformity with an individualized education program.

"General curriculum", as used in this chapter, means the same curriculum as for students without a disability and relates to the content of the curriculum and not to the setting in which it is used. To the extent applicable to an individual student with a disability and consistent with the least restrictive environment provisions, the general curriculum may be used in any educational environment.

**§ 8-60-18 Highly qualified special education teachers.**

(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term *highly qualified* has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also—

(1) Include the requirements described in paragraph (b) of this section; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) Requirements for special education teachers in general.

(1) When used with respect to any public elementary school or secondary school special education teacher teaching in the State, highly qualified requires that—

(i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) The teacher holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which—

(i) The teacher—

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support

for teachers or a teacher mentoring program;  
(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and  
(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in the State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.

(c) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.

(d) Requirements for special education teachers teaching multiple subjects. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of

employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

(e) *Separate HOUSSE standards for special education teachers.* Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers—

(1) The State may develop a separate HOUSSE for special education teachers; and

(2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.

(f) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§ 8-60-151 through 8-60-153 about staff qualifications with the SEA as provided for under this part.

(g) *Applicability of definition to ESEA; and clarification of new special education teacher.* (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(2) For purposes of § 8-60-18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) *Private school teachers not covered.* The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by the SEA to provide equitable services to parentally-placed private school children with disabilities under §8-60-138.

**§ 8-60-19 Homeless children.**

*Homeless children* has the meaning given the term *homeless children and youths* in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 *et seq.*

**§ 8-60-20 Include.**

*Include* means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

**§ 8-60-22 Individualized education program.**

*Individualized education program* or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in

"Include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

"Individualized education program or "IEP" means a written statement for a student with a disability that is developed, reviewed and revised in



accordance with sections 8-56-30 to 8-56-42.

accordance with §§ 8-60-320 through 8-60-324.

**§ 8-60-23 Individualized education program team.**

*Individualized education program team or IEP Team* means a group of individuals described in § 8-60-321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

**§ 8-60-24 Individualized family service plan.**

*Individualized family service plan or IFSP* has the meaning given the term in section 636 of the Act.

**§ 8-60-25 Infant or toddler with a disability.**

*Infant or toddler with a disability—*

(a) Means an individual under three years of age who needs early intervention services because the individual—

(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, at a State's discretion—

(1) At-risk infants and toddlers; and

(2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children 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 children shall include—

(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.

**§ 8-60-26 Institution of higher education.**

*Institution of higher education—*

(a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and

(b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

**§ 8-60-27 Limited English proficient.**

"Native language", if used with reference to an individual of limited English proficiency, means the following:

- (1) The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except as provided in paragraph (2).
- (2) In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.
- (3) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, Braille, or oral communication.

"Parent" means:

- (1) A natural or adoptive parent of a student;
- (2) A guardian but not the State if the student is a ward of the State;
- (3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives, or a person who is legally responsible for the student's welfare;) or
- (4) A surrogate parent who has been appointed in accordance with section 8-56-80.
- (5) A foster parent may act as a parent under this chapter if the natural parents' authority to make educational decisions on the student's behalf has been extinguished under state law 8-56-2 and it is not otherwise contrary to the relevant court order; and the foster parent:
  - (A) Has a long-term parental relationship with the student;
  - (B) Is willing to make the educational decisions required of parents under this chapter; and
  - (C) Has no interest that would conflict with the interests of the student.

Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

**§ 8-60-29 Native language.**

(a) *Native language*, when used with respect to an individual who is limited English proficient, means the following:

- (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
- (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
- (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

**§ 8-60-30 Parent.**

(a) *Parent* means—

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations, or contractual obligations with the State prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with §8-60-519 or section 639(a)(5) of the Act.

(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

**§ 8-60-31 Parent training and information center.**

Parent training and information center means a center assisted under

"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 restrictive environment in a continuum of educational arrangements.

"Qualified" means that an individual has met the department-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing special education or related services.

"Regular education teacher" means a person assigned by the department who is qualified under state standards to provide instruction in the general curriculum.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

sections 671 or 672 of the Act.

**§ 8-60-32 Personally identifiable.**

*Personally identifiable* means information that contains—

- (a) The name of the child, the child's parent, or other family member;
- (b) The address of the child;
- (c) A personal identifier, such as the child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

**§ 8-60-33 Public agency.**

*Public agency* includes the SEA, ESAs, nonprofit public charter schools and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

**§ 8-60-34 Related services.**

(a) *General. Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, 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 children 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 §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 children 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 children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's 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 children* 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 children 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 children 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 children 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 children 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 children 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 children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children 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 children with speech or language impairments;
- (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, children, and teachers regarding speech and language impairments.

"Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability. Specially designed instruction means adapting, as appropriate to the needs of a student with a disability, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the student to the general curriculum, so that the student can meet the educational standards of the department that apply to all students. The term includes:

- (1) instruction in physical education and
- (2) vocational education.
- (3) Speech-language pathology services when the speech-language impairment is the primary disabling condition;
- (4) Orientation and mobility when the visual impairment is the disabling condition; and
- (5) Travel training, as appropriate, if it is the provision of specially designed instruction to students with significant cognitive disabilities, and any other students with a disability who require this instruction, to enable them to:
  - (A) Develop an awareness of the environment in which they live; and
  - (B) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in

(16) Transportation [see §8-56-39]

**§ 8-60-35 Scientifically based research.**

Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

**§ 8-60-36 Secondary school.**

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

**§ 8-60-37 Services plan.**

Services plan means a written statement that describes the special education and related services the LEA 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 § 8-60-132, and is developed and implemented in accordance with §§ 8-60-137 through 8-60-139.

**§ 8-60-38 Secretary.**

Secretary means the Secretary of Education.

**§ 8-60-39 Special education.**

(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—

- (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- (ii) Instruction in physical education.

(2) *Special education* includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—

- (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.

(b) *Individual special education terms defined.* The terms in this definition are defined as follows:

(1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) *Physical education* means—

the community).

"Special education teacher" means a person assigned by the department who is qualified under state standards to provide the specially designed instruction that meets the definition of special education in this section.

"Student with a disability" or "students with a disability" means a student or students residing in the State, evaluated and identified in accordance with sections 8-56-6 to 8-56-13 on evaluation and reevaluation and who meets or meet the eligibility criteria in sections 8-56-15 to 8-56-29.

"Supplementary aids and services" means aids, services, and other supports, including assistive technology devices and services, as defined in

- (i) The development of—
  - (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.

(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—

- (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 children.

(4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

- (i) Develop an awareness of the environment in which they live; and
- (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).

(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.

**§ 8-60-40 State.**

*State* means the state of Hawaii.

**§ 8-60-41 State educational agency.**

*State educational agency* or *SEA* means the Hawaii State Department of Education including public charter schools.

*See § 8-60-8 Child with a disability above.*

**§ 8-60-42 Supplementary aids and services.**

*Supplementary aids and services* means aids, services, and other supports that are provided in regular education classes, other education-



section 8-56-30 that are provided in regular education classes or other education-related settings to enable a student with a disability to be educated with students without a disability to the maximum extent appropriate in accordance with sections 8-56-43 to 8-56-47 on placement and least restrictive environment.

related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§8-60-114 through 8-60-116.

**§ 8-60-43 Transition services.**

(a) *Transition services* means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

**§ 8-60-44 Universal design.**

Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

**§ 8-60-45 Ward of the State.**

(a) *General.* Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is—

(1) A foster child;

(2) A ward of the State; or

(3) In the custody of a public child welfare agency.

(b) *Exception.* Ward of the State does not include a foster child who has a foster parent who meets the definition of a *parent* in § 8-60-30.

[Eff 3/16/00] (Auth: HRS §302A-1112; am and comp) (Imp: HRS §§302A -101, 302A-439; 34 C.F.R. §§8-60-4 to 8-60-45)

**§8-56-3 Free appropriate public education.**

(a) The department shall ensure that each student with a disability who

**§ 8-60-101 Free appropriate public education (FAPE).**

(a) *General.* A free appropriate public education must be

resides in the State, including a student with a disability who has been suspended for more than ten school days in a given school year or dismissed from school, is provided a free appropriate public education in accordance with this chapter.

(b) The services provided to a student under this chapter shall address all of the student's identified special education and related services needs.

(c) The services and placement needed by each student with a disability to receive a free appropriate public education shall be based on the student's unique needs and not on the disability. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-436; 34 C.F.R. §300.300)

available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 8-60-530(d).

(b) *FAPE for children beginning at age 3*

(1) Each State must ensure that—

(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

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with § 8-60-323(b).

(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.

(c) *Children advancing from grade to grade.* (1) Each State must ensure that FAPE is available to any individual child with a disability who needs 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.

(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.

SUBCHAPTER 2

CHILD FIND AND REFERRAL

§8-56-4 Child find. (a) The department shall annually:

(1) Identify all students with a disability residing in the State, regardless of the severity of the disability, who are in need of special education and related services, including:

(A) Students with a disability attending private schools;

(B) Highly mobile students with a disability (such as homeless students); and

(C) Students who are suspected of being a student with a disability under sections 8-56-15 to 8-56-29, even though they are advancing from grade to grade.

(2) Notify students with a disability and their parents of the department's duty under this chapter, including the procedure to initiate a referral.

(b) The department shall establish identification procedures, that include a systematic method of utilizing referrals from teachers, parents, agencies, professional persons and members of the public, to identify students suspected of having a disability under chapter 8-53 or suspected of having a disability under this chapter 8-56-5

(c) Identification and referral procedures under this chapter to determine if a

**§ 8-60-111 Child find.**

(a) *General.*

(1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) The State does not adopt the term *developmental delay*; schools may not independently use that term as a basis for establishing a child's eligibility under this part.

(c) *Other children in child find.* Child find also must include—

(1) Children who are suspected of being a child with a disability under § 8-60-8 and in need of special education, even though they are advancing from grade to grade; and

student has a disability and is in need of special education and related services shall not be construed to limit those school site activities designed to address learning difficulties in general, including the consideration and utilization of the resources of the regular education program.

(d) Infants and toddlers under 3 years of age suspected of needing early intervention services pursuant to 20 U.S.C. Sections 1431-1445 shall be referred by the department to the state department of health for identification and evaluation. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.125)

(2) Highly mobile children, including migrant children.  
 (d) *Construction.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 8-60-8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

**§8-56-5 Referral.** (a) All referrals for the evaluation of a child to determine eligibility as a student with a disability under chapter 8-53 or this chapter shall be documented and shall be in accordance with this section.

(b) Within twenty days from the date of receipt of a referral for an evaluation, the parent shall:

(1) Receive a written notice in accordance with section 8-56-68 of the department's proposal to assess the student under this chapter; request for consent to assess in accordance with section 8-56-70; and the procedural safeguards notice in accordance with section 8-56-69; or

(2) Receive a written notice in accordance with section 8-56-68 of the department's refusal to assess under this chapter and the procedural safeguards notice in accordance with section 8-56-69; or,

(3) Receive a written notice of the department's proposal or refusal to evaluate under chapter 8-53, including an explanation of the distinctions between an evaluation and determination of eligibility under chapter 8-53 and this chapter.

(c) If a student initially referred for an evaluation under chapter 8-53 is further suspected of being eligible as a student with a disability under this chapter, the parent shall receive notice in accordance with subsection (b)(1) as soon as possible.

(d) During the evaluation process, the department shall continue to implement classroom modifications and modification plans under chapter 8-53 in existence at the time of the initial referral under this chapter, for or on behalf of the student. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.125, 300.530)

**§ 8-60-122 Evaluation.**  
 Children with disabilities must be evaluated in accordance with §§8-60-300 through 8-60-311 of subpart D.

SUBCHAPTER 3

EVALUATION AND REEVALUATION

**§8-56-6 Definitions.** As used in this subchapter, unless the context indicates otherwise:

"Assessment" means the administration of specific tests, instruments, tools, strategies, and other materials used selectively with an individual student in accordance with section 8-56-9 to determine whether a student has a

<p>disability and the nature and extent of the special education and related services the student needs.</p> <p>"Evaluation" means procedures used selectively with an individual student in accordance with sections 8-56-7 to 8-56-14 to determine whether a student has a disability and the nature and extent of the special education and related services the student needs. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. 300.533)</p>	<p><i>[Definition in §8-56-2]</i></p> <p><b>§ 8-60-15 Evaluation.</b>  <i>Evaluation</i> means procedures used in accordance with §§ 8-60-304 through 8-60-311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.</p>
<p>§8-56-7 <u>Determination of needed assessment data.</u> (a) As part of an initial evaluation (if appropriate) and as part of any reevaluation, a group that includes the individuals required for the IEP team, in accordance with section 8-56-34, and other qualified professionals, as appropriate, shall:</p> <p>(1) Review existing assessment data on the student, including:</p> <p>(A) Assessments and information provided by the parent of the student;</p> <p>(B) Current classroom-based assessments and observations; and</p> <p>(C) Observations by teachers and related service providers; and</p> <p>(b) On the basis of that review, and input from the student's parent, identify what additional data, if any, are needed to determine:</p> <p>(1) Whether the student has a disability as described in sections 8-56-15 to 8-56-29 or, in the case of a reevaluation of a student, whether the student continues to have such a disability;</p> <p>(2) The present levels of performance and educational needs of the student;</p> <p>(3) Whether, in accordance with section 8-56-15, the student needs special education and related services because of the disability, or in the case of a reevaluation of a student, whether the student continues to need special education and related services because of the disability; and</p> <p>(4) Whether any additions or modifications to the special education and related services are needed to enable the student to:</p> <p>(A) Meet the measurable annual goals set out in the IEP of the student; and</p> <p>(B) Participate, as appropriate, in the general curriculum.</p> <p>(c) The group described in subsection (a) may conduct its review without a meeting.</p> <p>(d) The department shall administer tests and other assessment materials as may be needed to produce the data identified under subsection (b).</p> <p>(e) If the determination under subsection (a) and subsection (b) is that no additional data are needed to determine whether the student continues to be a student with a disability, the department shall notify the student's parent:</p> <p>(1) Of that determination and the reasons for it; and</p> <p>(2) Of the right of the parent to request an assessment to determine whether, for purposes of services under this chapter, the student continues to be a student with a disability.</p> <p>(f) The department is not required to conduct the assessment described in subsection (e)(2) to determine whether the student continues to be a student</p>	<p><b>§ 8-60-301 Initial evaluations.</b></p> <p>(a) <i>General.</i> Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 8-60-305 and 8-60-306, before the initial provision of special education and related services to a child with a disability under this part.</p> <p><u>(b) Request for initial evaluation.</u> Consistent with the consent requirements in § 8-60-300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.</p> <p><u>(c) Procedures for initial evaluation.</u> The initial evaluation—</p> <p>(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or</p> <p>(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and</p> <p>(2) Must consist of procedures—</p> <p>(i) To determine if the child is a child with a disability under § 8-60-8; and</p> <p>(ii) To determine the educational needs of the child.</p> <p><u>(d) Exception.</u> The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—</p> <p>(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or</p> <p>(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 8-60-8.</p> <p><u>(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.</u></p> <p><b><u>§ 8-60-302 Screening for instructional purposes is not evaluation.</u></b>  <u>The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.</u></p>

with a disability unless requested to do so by the student's parent. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. 300.533)

§8-56-8 Initial evaluation. (a) The department shall conduct a full and individual initial evaluation, in accordance with section 8-56-7 on the determination of needed assessment data and section 8-56-9 on assessment, before the initial provision of special education and related services under this chapter.

(b) The initial evaluation shall consist of procedures:

- (1) To determine if the student is a student with a disability; and
- (2) To determine the educational needs of the student.

(c) For the initial evaluation only, at least one member of the team of qualified professionals required by section 8-56-10 on the determination of eligibility, other than the student's teacher, shall observe the student during an activity relevant to the area of suspected disability.

(1) In the case of a student of less than school age or out of school, the observation shall take place in an environment appropriate to a student of that age.

(2) If recent observation data is available that meets the requirements of this subsection, then an additional observation is not required. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.320, 300.531)

§8-56-9 Assessment. The department shall ensure that:

(1) Tests and other materials used to assess a student under this chapter:

- (A) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and
- (B) Are provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so; and
- (C) Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills.

(2) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the student, including information provided by the parent, information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool student to participate in appropriate activities) that may assist in determining:

- (A) Whether the student is a student with a disability under sections 8-56-15 to 8-56-29; and
- (B) The content of the student's IEP.

(3) Any standardized tests that are given to a student shall:

- (A) Have been validated for the specific purpose for which they are used; and

### **§ 8-60-303** Reevaluations.

(a) *General*. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 8-60-304 through 8-60-311—

- (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (2) If the child's parent or teacher requests a reevaluation.

(b) *Limitation*. A reevaluation conducted under paragraph (a) of this section—

- (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and
- (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

### **§ 8-60-304** Evaluation procedures.

(a) *Notice*. The public agency must provide notice to the parents of a child with a disability, in accordance with § 8-60-503, that describes any evaluation procedures the agency proposes to conduct.

(b) *Conduct of evaluation*. In conducting the evaluation, the public agency must—

(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—

- (i) Whether the child is a child with a disability under § 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.

(c) *Other evaluation procedures*. Each public agency must ensure that—

- (1) Assessments and other evaluation materials used to assess a child under this part—
  - (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

(B) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

(4) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) shall be included in the evaluation report.

(5) Tests and other assessment materials shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(6) Tests are selected and administered so as best to ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(7) No single procedure is used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student.

(8) A student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, visual and auditory processing, and motor abilities, and is assessed by at least one teacher or other specialist with knowledge in the area of suspected disability.

(9) The assessment of the student is sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not linked to the suspected disability or disability in which the student may be or has been determined to be eligible under section 8-56-15.

(10) Technically sound instruments are used to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(11) Assessment tools and strategies are used to provide relevant information that directly assists persons in determining the educational needs of the student.

(12) An accurate assessment of a student who may be limited English proficient includes:

(A) A determination of the student's proficiency in English and the student's native language, including an objective assessment of reading, writing, speaking, and understanding;

(B) Consideration of information about the student's language proficiency in the determination of the assessment of the student to prevent misclassification; and

(C) The selection and administration of tests to ensure a student with limited English proficiency is not assessed on the basis of criteria that essentially measure English language skills. [Eff 3/16/00]

(Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.532)

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, and motor abilities;

(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 § 8-60-301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§ 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 classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

#### **§ 8-60-305 Additional requirements for evaluations and reevaluations.**

(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—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and

§8-56-10 Determination of eligibility. (a) Upon completing the administration of tests and other assessment materials in accordance with section 8-56-7 on the determination of needed assessment data and section 8-56-9 on assessment:

(1) A team of qualified professionals and the parent of the student shall determine whether the student is a student with a disability in accordance with sections 8-56-15 to 8-56-29; and

(2) The department shall provide a copy of the evaluation report and the documentation of the determination of eligibility to the parent.

(b) A student shall not be determined to be a student with a disability if:

(1) The determinant factor for that determination is:

(A) Lack of instruction in reading or math; or

(B) Limited English proficiency; and

(2) The student does not otherwise meet the eligibility criteria in sections 8-56-15 to 8-56-29. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §302A-439; 34 C.F.R. §300.534)

§8-56-11 Procedures for determining eligibility and placement. (a) In interpreting evaluation data for the purpose of determining if a student is a student with a disability in accordance with sections 8-56-15 to 8-56-29, and the educational needs of the student, the department shall:

(1) Draw upon information from a variety of sources, including, as appropriate, aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

(b) If a determination is made that a student has a disability and needs special education and related services, the department shall develop an IEP for the student in accordance with sections 8-56-30 to 8-56-42.

(c) The department shall ensure that the special education and related services and supplementary aids and services provided to the student with a disability and the student's placement are determined based on the student's educational needs in accordance with sections 8-56-11 8-56-30 to 8-56-47, and not by the student's eligibility category. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §302A-439; 34 C.F.R. §300.535)

§8-56-12 Additional procedures for evaluating students with specific learning disabilities and determining eligibility. (a) For a student suspected of having a specific learning disability, at least one team member other than the student's regular education teacher shall observe the student's academic performance in the regular classroom setting.

(b) In the case of a student of less than school age or out of school who is suspected of having a specific learning disability, a team member shall observe the student in an environment appropriate for a student of that age.

classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i)(A) Whether the child is a child with a disability, as defined in §8-60-8, and the educational needs of the child; or

(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;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii)(A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(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 set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) *Conduct of review.* The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(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 public agency must notify the child's parents of—

(i) That determination and the reasons for the determination; and

(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.

(2) The public agency 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.

(e) *Evaluations before change in eligibility.*

(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 8-60-304 through 8-60-311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not

(c) The determination of whether a student suspected of having a specific learning disability is a student with a disability shall be made by the student's parent and a team of qualified professionals which shall include:

- (1) The student's regular education teacher; or
  - (2) If the student does not have a regular education teacher, a regular education teacher qualified to teach a student of that age; or
  - (3) For a student of less than school age, an individual qualified to teach a student of that age; and
  - (4) At least one person qualified to conduct individual diagnostic examinations of students, such as a school psychologist, speech-language pathologist, or remedial reading teacher.
- (d) For a student suspected of having a specific learning disability, the documentation of eligibility as required by section 8-56-10(a)(2), shall include a statement of:

- (1) Whether the student has a specific learning disability;
  - (2) The basis for making the determination;
  - (3) The relevant behavior noted during the observation of the student;
  - (4) The relationship of that behavior to the student's academic functioning;
  - (5) The educationally relevant medical findings, if any; 8-56-14
- (6) Whether there is a severe discrepancy between achievement and ability pursuant to 8-56-26(b) that is not correctable without special education and related services; and
- (7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.
- Each team member shall certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member shall submit a separate statement presenting the member's conclusion. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.540 to 300.543)

§8-56-13 Reevaluation. The department shall ensure that:

- (1) A reevaluation of each student, in accordance with section 8-56-7 on the determination of needed assessment data, section 8-56-9 on assessment and sections 8-56-10 and 8-56-11 on eligibility and placement, is conducted if conditions warrant a reevaluation, or if the student's parent or teacher requests a reevaluation, but at least once every three years.
- (2) The results of any reevaluations shall be addressed by the student's IEP team under sections 8-56-30 to 8-56-41 in reviewing and, as appropriate, revising the student's IEP. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.321, 300.536)

§8-56-14 Rescission of eligibility. (a) Before a determination may be made that a student currently identified as a student with a disability is no longer a

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.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency 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.

#### **§ 8-60-306 Determination of eligibility.**

(a) *General*. Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 8-60-8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) *Special rule for eligibility determination*. A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §8-60-8(a).

(c) *Procedures for determining eligibility and educational need*.

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 8-60-8, and the educational needs of the child, each public agency must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 8-60-320 through 8-60-324.

#### **§ 8-60-102 Limitation—exception to FAPE for certain ages.**

(a) *General*. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:



<p>student with a disability:</p> <p>(1) The department shall evaluate the student pursuant to section 8-56-7 on the determination of needed assessment data and section 8-56-9 on assessment; and</p> <p>(2) In accordance with section 8-56-10, a team of qualified professionals and the parent shall determine the student does not meet the required eligibility criteria in sections 8-56-15 to 8-56-29.</p> <p>(b) The evaluation described in subsection (a) is not required before the termination of a student's eligibility under this chapter due to graduation with a regular high school diploma or exceeding the age eligibility for a free appropriate public education under section 8-56-15. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §302A-439; 34 C.F.R. §300.534)</p>	<p>(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.</p> <p>(2)(i) Children aged 18 through 21 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 style="padding-left: 40px;">(A) Were not actually identified as being a child with a disability under § 8-60-8; and</p> <p style="padding-left: 40px;">(B) Did not have an IEP under Part B of the Act.</p> <p style="padding-left: 20px;">(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who—</p> <p style="padding-left: 40px;">(A) Had been identified as a child with a disability under § 8-60-8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or</p> <p style="padding-left: 40px;">(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under § 8-60-8.</p> <p>(3)(i) Children with disabilities who have graduated from high school with a regular high school diploma.</p> <p style="padding-left: 20px;">(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.</p> <p style="padding-left: 20px;">(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with § 8-60-503.</p> <p style="padding-left: 20px;"><u>(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term <i>regular high school diploma</i> 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).</u></p> <p><u>(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.</u></p> <p>(b) <i>Documents relating to exceptions.</i> 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 § 8-60-700 (for purposes of making grants to States under this part), is current and accurate.</p>
<p style="text-align: center;">SUBCHAPTER 4</p> <p style="text-align: center;">ELIGIBILITY CRITERIA</p> <p>§8-56-15 <u>General requirement.</u> The determination of whether a student qualifies as a student with a disability shall be made on the basis of an</p>	<p><b>§ 8-60-306 Determination of eligibility.</b></p> <p>(a) <i>General.</i> Upon completion of the administration of assessments and other evaluation measures—</p> <p>(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §</p>

<p>evaluation that meets the requirements of sections 8-56-6 to 8-56-13 by a team of qualified professionals and the parent pursuant to section 8-56-10, and the student shall meet all of the following criteria:</p> <p>(1) The student has a disability described in sections 8-56-16 to section 8-56-29 including, for a student aged three through eight, a student who is experiencing developmental delays as set forth in section 8-56-19; and</p> <p>(2) The student needs special education and related services because of the disability described in paragraph (1). If it is determined that a student has a disability described in sections 8-56-16 to section 8-56-29, but only needs a related service and not special education as defined in section 8-56-2, the student is not a student with a disability; and</p> <p>(3) The student resides in the State and comes within the following age range:</p> <p>(A) At least three years of age. A student:</p> <p>(i) Whose birthday falls between January 1 and August 31 may enter school upon reaching the age of three, on the first instructional day for the school the student would attend, except that if a student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the IEP shall begin;</p> <p>(ii) Whose third birthday falls between September 1 and December 31 may enter school on the first instructional day of the school year for the school the student would attend; and</p> <p>(B) Under twenty on the first instructional day of the school year set by the department. A student who is under twenty years of age on the first instructional day of the school year set by the department, but who reaches the age of twenty during the school year, shall be eligible for the full school year, including extended school year when the requirements of section 8-56-40 are met. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	<p>8-60-8, in accordance with paragraph (b) of this section and the educational needs of the child; and</p> <p>(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility <u>at no cost</u> to the parent.</p> <p>(b) <i>Special rule for eligibility determination.</i> A child <u>must</u> not be determined to be a child with a disability under this part—</p> <p>(1) If the determinant factor for that determination is—</p> <p>(i) Lack of <u>appropriate</u> instruction in reading, <u>including the essential components of reading instruction (as defined in section 1208(3) of the ESEA)</u>;</p> <p>(ii) Lack of <u>appropriate</u> instruction in math; or</p> <p>(iii) Limited English proficiency; and</p> <p>(2) If the child does not otherwise meet the eligibility criteria under §8-60-8(a).</p> <p>(c) <i>Procedures for determining eligibility and educational need.</i>(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 8-60-8, and the educational needs of the child, each public agency must—</p> <p>(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and</p> <p>(ii) Ensure that information obtained from all of these sources is documented and carefully considered.</p> <p>(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 8-60-320 through 8-60-324.</p> <p><i>See also § 8-60-8 Child with a disability in §8-56-2.</i></p>
<p>§8-56-16 <u>Autism.</u> (a) A student shall be eligible under the category of autism if the student has a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects the student's educational performance. The student may have one or more of the following other characteristics often associated with autism:</p> <p>(1) Engagement in repetitive activities and stereotyped movements.</p> <p>(2) Resistance to environmental change or change in daily routines.</p> <p>(3) Unusual responses to sensory experiences.</p> <p>(b) A student who manifests the characteristics of "autism" after age three may be diagnosed as having "autism" if the criteria in subsection (a) are satisfied.</p> <p>(c) A team of qualified professionals and the parent may not identify a student as having autism if the student's educational performance is adversely affected primarily because the student has an emotional</p>	<p><i>From § 8-60-8 Child with a disability in §8-56-2.</i></p> <p>(1)(i) <i>Autism</i> means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child'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.</p> <p>(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.</p> <p>(iii) A child 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.</p>

<p>disturbance pursuant to section 8-56-20. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	
<p>§8-56-17 <u>Deaf-blindness</u>. A student shall be eligible under the category of deaf-blindness:</p> <p>(1) If the student meets the criteria under either section 8-56-18, the category of deafness, or section 8-56-21, the category of hearing impairment, and section 8-56-29, the category of visual impairment; and</p> <p>(2) The concomitant hearing and visual impairments cause severe communication and other developmental and educational needs. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	<p><i>From § 8-60-8 Child with a disability in §8-56-2.</i></p> <p>(2) <i>Deaf-blindness</i> 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 children with deafness or children with blindness.</p>
<p>§8-56-18 <u>Deafness</u>. A student shall be eligible under the disability category of deafness if the student has a hearing loss averaging greater than 70 decibels in the speech frequencies (500Hz to 4,000Hz) and:</p> <p>(1) The hearing loss impairs the student's auditory processing of linguistic information through hearing, with or without amplification; or</p> <p>(2) The hearing loss adversely affects the student's educational performance. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	<p><i>From § 8-60-8 Child with a disability in §8-56-2.</i></p> <p>(3) <i>Deafness</i> means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.</p>
<p>§8-56-19 <u>Developmental delay</u>. (a) A student, aged three through five, shall be eligible for any eligibility category in this subchapter if the applicable criteria are met, or for the category of developmental delay if, as measured by appropriate diagnostic instruments and procedures, one or more of the following is met:</p> <p>(1) Cognitive development and adaptive behavior are delayed equivalent to one and one-half standard deviations below the mean when compared with the standard score expected for the chronological age.</p> <p>(2) One of the following areas is delayed one and one-half standard deviations below a standard score for:</p> <p>(A) Motor development, including fine motor, gross motor, sensory motor, and perceptual-motor development.</p> <p>(B) Communication, including speech and language development.</p> <p>(C) Academic development.</p> <p>(D) Adaptive behavior.</p> <p>(b) A student, aged six through eight, shall be eligible for any eligibility category in this subchapter if the applicable criteria are met, or for the category of developmental delay if as measured by appropriate diagnostic instruments and procedures, three of the five areas are delayed one and one-half standard deviations below a standard score for:</p> <p>(1) Motor development, including fine motor, gross motor, sensory motor, and perceptual-motor development.</p> <p>(2) Communication, including speech and language development.</p> <p>(3) Academic development.</p> <p>(4) Adaptive behavior.</p> <p>(5) Cognition.</p>	

<p>(c) If assessment materials would not conclusively demonstrate eligibility as required under subsections (a) or (b), the team of qualified professionals and the parent may find the student eligible under the category of developmental delay if the team determines the student's patterns of learning deviate from age expectations across settings. The documentation of eligibility required by section 8-56-10 shall include a statement of the patterns of learning that deviate from age expectations across settings and the basis and method used in determining eligibility. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	
<p>§8-56-20 <u>Emotional disturbance.</u> (a) A student shall be eligible under the disability category of emotional disturbance if the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affect the student's educational performance:  (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors  (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.  (3) Inappropriate types of behavior or feelings under normal circumstances.  (4) A general pervasive mood of unhappiness or depression.  (5) A tendency to develop physical symptoms or fears associated with personal or school problems.  (b) Emotional disturbance includes schizophrenia. Emotional disturbance does not apply to a student who is socially maladjusted, unless it is determined that the student has an emotional disturbance. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	<p><i>From § 8-60-8 Child with a disability in §8-56-2.</i>  (4)(i) <i>Emotional disturbance</i> 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 child'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 children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.</p>
<p>§8-56-21 <u>Hearing impairment.</u> A student shall be eligible under the disability category of hearing impairment if the student has a hearing loss, whether permanent or fluctuating, averaging 26 to 70 decibels in the speech frequencies (500 Hz to 4,000 Hz), and:  (1) The hearing loss impairs the student's auditory processing of linguistic information, with or without amplification; or  (2) The hearing impairment adversely affects the student's educational performance. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	<p><i>From § 8-60-8 Child with a disability in §8-56-2.</i>  (5) <i>Hearing impairment</i> means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.</p>
<p>§8-56-22 <u>Mental retardation.</u> A student shall be eligible under the disability category of mental retardation when all of the following are met:  (1) The student has subaverage general intellectual functioning, as demonstrated by evidence of intellectual functioning two or more standard deviations below the mean;  (2) The subaverage intellectual functioning exists concurrently with deficits in at least two adaptive skill areas; and</p>	<p><i>From § 8-60-8 Child with a disability in §8-56-2.</i>  (6) <i>Mental retardation</i> means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.</p>

<p>(3) The subaverage intellectual functioning and deficits in adaptive skill areas were manifested during the developmental period and adversely affect the student's educational performance. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	
<p>§8-56-23 <u>Multiple disability</u>. (a) A student shall be eligible under the category of multiple disability if the student has concomitant impairments, the combination of which causes severe educational needs and all of the following criteria are met:8-56-24</p> <p>(1) The student has subaverage general intellectual functioning, as demonstrated by evidence of intellectual functioning three or more standard deviations below the mean;</p> <p>(2) The subaverage intellectual functioning exists concurrently with deficits in at least two adaptive skill areas;</p> <p>(3) The subaverage intellectual functioning and deficits in adaptive skill areas were manifested during the developmental period and adversely affect the student's educational performance; and</p> <p>(4) The student is not eligible under the category of deaf-blindness, as set forth in section 8-56-17, and the student is eligible under one or more of the following disability categories:</p> <p>(A) Autism, as set forth in section 8-56-16;</p> <p>(B) Deafness, as set forth in section 8-56-18;</p> <p>(C) Hearing impairment, as set forth in section 8-56-21;</p> <p>(D) Orthopedic impairment, as set forth in section 8-56-24;</p> <p>(E) Other health impairment, as set forth in section 8-56-25; or</p> <p>(F) Visual impairment including blindness, as set forth in section 8-56-29.</p> <p>(b) If assessment materials would not conclusively demonstrate eligibility as required under subsection (a)(4), the team of qualified professionals and the parent may find the student eligible under the category of multiple disability if the criteria in subsection (a)(1) to (3) are met and the team documents the existence of a concomitant impairment in the determination of eligibility required by section 8-56-10. The documentation of eligibility shall include a statement of the concomitant impairment and the basis and method used in determining eligibility. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	<p><i>From § 8-60-8 Child with a disability in §8-56-2.</i></p> <p>(7) <i>Multiple disabilities</i> 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.</p>
<p>§8-56-24 <u>Orthopedic impairment</u>. A student shall be eligible under the disability category of orthopedic impairment if there is medical evidence that a severe orthopedic impairment exists that adversely affects the student's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member), 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). [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	<p><i>From § 8-60-8 Child with a disability in §8-56-2.</i></p> <p>(8) <i>Orthopedic impairment</i> means a severe orthopedic impairment that adversely affects a child'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).</p>
<p>§8-56-25 <u>Other health impairment</u>. A student shall be eligible under the category of other health impairment if both of the following are met:</p>	<p><i>From § 8-60-8 Child with a disability in §8-56-2.</i></p> <p>(9) <i>Other health impairment</i> means having limited strength, vitality, or</p>

<p>(1) The student has limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems or a medically fragile condition such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and</p> <p>(2) The health impairment adversely affects the student's educational performance. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	<p>alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—</p> <p>(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and <u>Tourette syndrome</u>; and</p> <p>(ii) Adversely affects a child's educational performance.</p>
<p><u>§8-56-26 Specific learning disability.</u> (a) <u>General.</u> 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 an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including such conditions as perceptual disabilities, such as visual and auditory processing, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.</p> <p>(b) <u>Eligibility.</u> A student shall be eligible under the disability category of specific learning disability if, provided with learning experiences appropriate for the student's age and ability levels, the student does not achieve commensurate with the student's age and ability levels; and the student has a severe discrepancy between actual achievement and intellectual ability as demonstrated by one of the following:</p> <p>(1) The student shall have a severe discrepancy between actual achievement and intellectual ability by a difference of at least one and one-half standard deviations in one or more of the following areas:</p> <p>(A) Oral expression;</p> <p>(B) Listening comprehension;</p> <p>(C) Written expression;</p> <p>(D) Basic reading skill;</p> <p>(E) Reading comprehension;</p> <p>(F) Mathematics calculation;</p> <p>(G) Mathematics reasoning; or</p> <p>(2) When standardized tests are considered to be invalid for a specific student, the severe discrepancy shall be measured by alternative means. The alternative means and severe discrepancy shall be documented in the determination of eligibility required by sections 8-56-10 and 8-56-12; or</p> <p>(3) If the standardized tests do not reveal a severe discrepancy as defined in paragraph (1) or (2), the team of qualified professionals and the parent required by section 8-56-12 may find that a severe discrepancy between ability and achievement exist, provided the team documents in the determination of eligibility required by sections 8-56-10 and 8-56-12 that the severe discrepancy between ability and achievement exists in one or more basic psychological processes. The documentation of eligibility shall include a statement of the area, the degree, the basis and method used in determining the discrepancy and shall contain information considered by the</p>	<p><i>From § 8-60-8 Child with a disability in §8-56-2.</i></p> <p>(10) <i>Specific learning disability—</i>(i) <i>General.</i> 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) <i>Disorders not included.</i> 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><b>Additional Procedures for Identifying Children With Specific Learning Disabilities</b></p> <p><b><u>§ 8-60-307 Specific learning disabilities.</u></b>  <u>(a) General.</u> The State adopts criteria as described in § 8-60-309, for determining whether a child has a specific learning disability as defined in § 8-60-8(c)(10).</p> <p><b><u>§ 8-60-308 Additional group members.</u></b>  The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in § 8-60-8, must be made by the child's parents and a team of qualified professionals, which must include— (a)(1) The child's regular teacher; or  (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or  (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and  (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.</p> <p><b><u>§ 8-60-309 Determining the existence of a specific learning disability.</u></b></p>

team which shall include:

- (A) Data obtained from standardized assessment instruments;
  - (B) Information provided by the parent;
  - (C) Information provided by the student's current teacher;
  - (D) Evidence of the student's performance in the classroom obtained from observations and work samples;
  - (E) Consideration of the student's age, particularly for young students; and
  - (F) Any additional relevant information, such as the student's performance on group test scores.
- (c) The team of qualified professionals and the parent required by section 8-56-12 may not identify a student as having a specific learning disability if the severe discrepancy between the student's ability and achievement is primarily the result of:
- (1) A visual impairment;
  - (2) A hearing impairment;
  - (3) A motor impairment;
  - (4) Mental retardation;
  - (5) Emotional disturbance; or
  - (6) Environmental, cultural or economic disadvantage. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534, 300.541)

(a) The group described in § 8-60-306 may determine that a child has a specific learning disability, as defined in § 8-60-8(c)(10), if—

(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.

(2)(i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 8-60-304 and 8-60-305; and

(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—

- (i) A visual, hearing, or motor disability;
- (ii) Mental retardation;
- (iii) Emotional disturbance;
- (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or
- (vi) Limited English proficiency.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§ 8-60-304 through 8-60-306—

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§ 8-60-301 and 8-60-303, unless extended by mutual written agreement of

the child's parents and a group of qualified professionals, as described in § 8-60-306(a)(1)—

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation.

**§ 8-60-310 Observation.**

(a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in § 8-60-306(a)(1), in determining whether a child has a specific learning disability, must decide to—

(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(2) Have at least one member of the group described in § 8-60-306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 8-60-300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

**§ 8-60-311 Specific documentation for the eligibility determination.**

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 8-60-306(a)(2), must contain a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 8-60-306(c)(1);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether—

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 8-60-309(a)(1); and

(ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 8-60-309(a)(2)(i); or

(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative



	<p style="text-align: center;"><u>to age, State-approved grade level standards or intellectual development consistent with §8-60-309(a)(2)(ii):</u></p> <p>(6) <u>The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and</u></p> <p>(7) <u>If the child has participated in a process that assesses the child's response to scientific, research-based intervention—</u></p> <p style="padding-left: 40px;">(i) <u>The instructional strategies used and the student-centered data collected; and</u></p> <p style="padding-left: 40px;">(ii) <u>The documentation that the child's parents were notified about—</u></p> <p style="padding-left: 80px;">(A) <u>The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;</u></p> <p style="padding-left: 80px;">(B) <u>Strategies for increasing the child's rate of learning; and</u></p> <p style="padding-left: 80px;">(C) <u>The parents' right to request an evaluation.</u></p> <p>(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.</p>
<p>§8-56-27 <u>Speech-language impairment.</u> A student shall be eligible under the category of speech-language impairment when a significant problem in the comprehension or production, or both, of an oral communication system, which is not consistent with the student's other developmental or cognitive abilities, or both, adversely affects the student's educational performance and is evident in one or more of the following:</p> <p>(1) Articulation or phonological condition, or both.</p> <p>(2) Voice condition.</p> <p>(3) Fluency condition.</p> <p>(4) Language conditions, as documented by:</p> <p>(A) Multiple sources of data; and</p> <p>(B) A discrepancy of one and one-half standard deviations between the student's estimated cognitive level and performance on at least two standardized measures in the areas of semantics or grammar, or both. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	<p>See § 8-60-8 <i>Child with a disability in §8-56-2.</i></p> <p>(11) <i>Speech or language impairment</i> means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.</p>
<p>§8-56-28 <u>Traumatic brain injury.</u> (a) A student shall be eligible under the category of traumatic brain injury if both of the following are met:</p> <p>(1) There is medical evidence that the student has an acquired injury to the brain, caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both that adversely affects the student's educational performance; and</p>	<p>See § 8-60-8 <i>Child with a disability in §8-56-2.</i></p> <p>(12) <i>Traumatic brain injury</i> 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 child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas,</p>

<p>(2) The traumatic brain injury is either an open or closed head injury, resulting in impairments in one or more areas such as:</p> <p>(A) Cognition.          (B) Language.          (C) Memory.          (D) Attention.          (E) Reasoning.          (F) Abstract thinking.          (G) Judgment.          (H) Problem-solving.          (I) Sensory, perceptual and motor abilities.          (J) Psychosocial behavior.          (K) Physical functions.          (L) Information processing.          (M) Speech.</p> <p>(b) The team of qualified professionals and the parent may not identify a student as having a traumatic brain injury if the brain injury is congenital or degenerative, or induced by birth trauma. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	<p>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>§8-56-29 <u>Visual impairment including blindness.</u> A student shall be eligible for the disability category of visual impairment, including both partial sight and blindness, if the impairment in vision, even with the best correction, adversely affects the student's educational performance and one or more of the following are met:</p> <p>(1) <u>Partially-sighted.</u> The student's visual acuity is 20/70 to 20/200 in the better eye and with the best correction.</p> <p>(2) <u>Blind.</u> The student's visual acuity is 20/200 in the better eye and with the best correction, or less, or the student has a subtended visual field of less than 20 degrees, regardless of central visual acuity.</p> <p>(3) The student has a significant functional visual impairment such as nystagmus, so severe that it interferes with functions such as visual fixation, focus and tracking.</p> <p>(4) The student has a progressive visual impairment, such as retinitis pigmentosa, that will lead to eventual visual impairment as set forth in paragraphs (1) and(2). [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101; 302A-439; 34 C.F.R. §§300.7; 300.534)</p>	<p>See § 8-60-8 <i>Child with a disability in §8-56-2.</i></p> <p>(13) <i>Visual impairment including blindness</i> means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.</p>
<p style="text-align: center;">SUBCHAPTER 5</p> <p style="text-align: center;">INDIVIDUALIZED EDUCATION PROGRAM</p> <p>§8-56-30 <u>Definitions.</u> As used in this subchapter:          "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or</p>	<p><i>[Definitions in §8-56-2]</i></p> <p><b>§ 8-60-5 Assistive technology device.</b>  <i>Assistive technology device</i> means any item, piece of equipment, or</p>

customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability.

"Assistive technology service" means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

- (1) The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with a disability;
- (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for a student with a disability or, if appropriate, that student's family; and
- (6) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

"Individualized family service plan" or "IFSP" means a written plan developed in accordance with 20 U.S.C. Section 1436, to address the needs of an infant or toddler with a disability and the family.

"Transition services" means a coordinated set of activities for a student with a disability that:

- (1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, self-determination, supported living, independent living, or community participation;
- (2) Is based on the individual student's needs, taking into account the student's preferences and interests;
- (3) Includes:
  - (A) Instruction;
  - (B) Related services;
  - (C) Community experiences;
  - (D) The development of employment and other

product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

**§ 8-60-6 Assistive technology service.**

*Assistive technology service* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children 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 child with a disability or, if appropriate, that child'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 child

**§ 8-60-24 Individualized family service plan.**

*Individualized family service plan* or *IFSP* has the meaning given the term in section 636 of the Act.

**§ 8-60-43 Transition services.**

(a) *Transition services* means a coordinated set of activities for a child with a disability that—

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—
  - (i) Instruction;
  - (ii) Related services;
  - (iii) Community experiences;

<p>post-school adult living objectives; and  (E) If appropriate, acquisition of daily living skills and functional vocational evaluation; and  (4) May be special education, if provided as specially designed instruction, or related services if required to assist a student with a disability to benefit from special education. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. 300.342)</p>	<p>(iv) The development of employment and other post-school adult living objectives; and  (v) If appropriate, acquisition of daily living skills and <u>provision of a functional vocational evaluation.</u>  (b) <i>Transition services</i> for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.</p>
<p><b>§8-56-31 When IEPs must be in effect.</b> (a) At the beginning of each school year, the department shall have an IEP in effect, for each student with a disability within its jurisdiction.  (b) The department shall ensure that:  (1) An IEP is in effect before special education and related services are provided to a student;  (2) An IEP is implemented as soon as possible following the meetings described under section 8-56-32, including any case in which the payment source for providing or paying for special education and related services to the student is being determined;  (3) The student's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and  (4) Each teacher and provider described in paragraph (3) is informed of:  (A) The teacher's or provider's specific responsibilities related to implementing the student's IEP; and  (B) The specific accommodations, modifications, and supports that shall be provided for the student in accordance with the IEP.  (c) In the case of a student with a disability aged three through five, an IFSP that contains the content described in 20 U.S.C. Section 1436 and that is developed in accordance with this subchapter, except for sections 8-56-35 and 8-56-41 on transition services and 8-50-38 on the content of an IEP, an IFSP may serve as the IEP of the student if using that plan as the IEP is agreed to by the department and the student's parent.  (d) In implementing the requirements of subsection (c), the department shall:  (1) Provide to the student's parent a detailed explanation of the differences between an IFSP and an IEP; and  (2) If the parent chooses an IFSP, obtain consent from the parent. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. 300.342)</p>	<p><b>§ 8-60-323 When IEPs must be in effect.</b>  (a) <i>General.</i> At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 8-60-320.  (b) <i>IEP or IFSP for children aged three through five.</i>  (1) In the case of a child with a disability aged three through five, <u>the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—</u>  (i) Consistent with State policy; and  (ii) Agreed to by the agency and the child's parents.  (2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must—  (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and  (ii) If the parents choose an IFSP, obtain written informed consent from the parents.  (c) <i>Initial IEPs; provision of services.</i> Each public agency must ensure that—  (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and  <u>(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.</u>  (d) <i>Accessibility of child's IEP to teachers and others.</i> Each public agency must ensure that—  (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and  (2) Each teacher and provider described in paragraph (d)(1) of this</p>

	<p><u>section is informed of—</u></p> <p><u>(i) His or her specific responsibilities related to implementing the child’s IEP; and</u></p> <p><u>(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.</u></p> <p><u>(e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child’s IEP from the previous public agency), until the new public agency either—</u></p> <p><u>(1) Adopts the child’s IEP from the previous public agency; or</u></p> <p><u>(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§ 8-60-320 through 8-60-324.</u></p> <p><u>(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child’s IEP from the previous public agency), until the new public agency—</u></p> <p><u>(1) Conducts an evaluation pursuant to §§ 8-60-304 through 8-60-306 (if determined to be necessary by the new public agency); and</u></p> <p><u>(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 8-60-320 through 8-60-324.</u></p> <p><u>(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section—</u></p> <p><u>(1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child’s records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and</u></p> <p><u>(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.</u></p>
<p>§8-56-32 <u>IEP meetings and timelines.</u> (a) As used in this section, the phrase <i>within a reasonable period of time</i> means within 60 days, except when exceptional circumstances cause a delay.</p> <p>(b) The department shall initiate and conduct meetings for the purpose of developing, reviewing and revising the IEP of a student with a disability, or an IFSP for each student with a disability aged three through five, if the requirements of section 8-56-31 are met.</p>	<p>See § 8-60-301 <i>Initial evaluations. at § 8-56-7 and</i></p> <p>§ 8-60-323 <i>When IEPs must be in effect. at § 8-56-31</i></p>

<p>(c) The department shall ensure that within a reasonable period of time following the receipt of parental consent to the initial assessment under section 8-56-70(a)(1) or, within a reasonable period of time following the date of a determination under section 8-56-7 that no additional assessment data is needed:</p> <ol style="list-style-type: none"> <li>(1) The student is assessed, as necessary; and</li> <li>(2) If determined eligible under section 8-56-15, special education and related services are made available to the student in accordance with an IEP.</li> </ol> <p>(d) In meeting the timeline in subsection (c), a meeting to develop an IEP for the student shall be conducted within thirty days of a determination, in accordance with sections 8-56-10 to 8-56-12, that the student needs special education and related services.</p> <p>(e) The department shall ensure that within a reasonable period of time following the receipt of parental consent to reevaluation under section 8-56-70(a)(1) or the commencement of an assessment in accordance with section 8-56-70(e) or within a reasonable period of time following the date of a determination under section 8-56-7 that no additional assessment data is needed:</p> <ol style="list-style-type: none"> <li>(1) The student is assessed, as necessary; and</li> <li>(2) If the student continues to be eligible under section 8-56-15, special education and related services are made available to the student in accordance with an IEP.</li> </ol> <p>(f) If for an individual student, exceptional circumstances cause a delay in meeting the requirements of subsections (c) or (e), the parent of the student with a disability shall be given a written notice:</p> <ol style="list-style-type: none"> <li>(1) Informing the parent of the delay;</li> <li>(2) Describing the reason for the delay; and</li> <li>(3) Informing the parent of the date for special education and related services to be made available to the student in accordance with an IEP.</li> </ol> <p>(g) A copy of the written notice required in subsection (f) shall be maintained in the student's educational records.</p> <p>(h) The parent may file a complaint in accordance with sections 8-56-95 to 8-56-98 regarding an alleged violation of the requirements of this section. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.343, 300.505, 300.533)</p>	
<p>§8-56-33 <b>Review and revision of the IEP.</b> The department shall ensure that the IEP team reviews the student's IEP periodically, but not less than annually, and upon the request of a member of the IEP team, to determine whether the annual goals for the student are being achieved, and revises the IEP as appropriate to address:</p> <ol style="list-style-type: none"> <li>(1) Any lack of expected progress toward the annual goals, related to the general curriculum, if appropriate, and meeting each of the student's other needs that result from the student's disability;</li> <li>(2) The results of any reevaluation conducted;</li> <li>(3) Information about the student provided to, or by, the parent as described</li> </ol>	<p><b>§ 8-60-112 Individualized education programs (IEP).</b>  The State must <u>ensure</u> 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 §§ 8-60-320 through 8-60-324, except as provided in § 8-60-300(b)(3)(ii).</p> <p><i>See § 8-60-324 (b) Review and revision of IEPs at §8-56-37</i></p>

<p>in section 8-56-7(a)(1)(A) on existing assessment data;  (4) The student's anticipated needs; or  (5) Other matters. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.343)</p>	
<p>§8-56-34 <u>IEP team.</u> (a) The department shall ensure that the IEP team for each student with a disability includes:  (1) The parent of the student;  (2) At least one regular education teacher of the student (if the student is, or may be participating in the regular education environment). As a member of the IEP team, the regular education teacher of a student with a disability shall, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in:  (A) The determination of appropriate positive behavioral interventions and strategies for the student; and  (B) The determination of supplementary aids and services, program modifications, or supports for school personnel consistent with section 8-56-38(a)(3);  (3) At least one special education teacher, or if appropriate, at least one of the student's qualified special education provider(s);  (4) A representative of the department who is:  (A) Qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with a disability;  (B) Knowledgeable about the general curriculum; and  (C) Knowledgeable about the availability of resources of the department;  (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (2) through (6);  (6) At the discretion of the parent or the department, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and  (7) If appropriate, the student.  (b) The representative of the department under subsection (a)(4) shall be able to commit resources. Representatives from other agencies who attend the IEP meeting on behalf of that agency shall also be able to commit resources.  (c) The determination of the knowledge or special expertise of any individual described in subsection (a)(6) shall be made by the party (parents or department) who invited the individual to be a member of the IEP team.  (d) The department may designate another department member of the IEP team to also serve as the agency representative, if the criteria in subsections (a)(4) and (b) are satisfied. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.344)</p>	<p><b>§ 8-60-321 IEP Team.</b>  (a) <i>General.</i> The public agency must ensure that the IEP Team for each child with a disability includes—  (1) The parents of the child;  (2) <u>Not less than</u> one regular education teacher** of the child (if the child is, or may be, participating in the regular education environment);  (3) <u>Not less than</u> one special education teacher of the child, or where appropriate, <u>not less than</u> one special education provider of the child;  (4) A representative of the public agency who—  (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;  (ii) Is knowledgeable about the general <u>education</u> curriculum; and  (iii) Is knowledgeable about the availability of resources of the public agency.  (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;  (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and  (7) <u>Whenever</u> appropriate, the child with a disability.  (b) <i>Transition services participants.</i> [see §8-56-35]  (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the <u>postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under § 8-60-320(b).</u>  (2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.  (3) <u>To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section,</u> the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.  (c) <i>Determination of knowledge and special expertise.</i> The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.  (d) <i>Designating a public agency representative.</i> A public agency may</p>

	<p>designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.</p> <p><u>(e) IEP Team attendance.</u> (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.</p> <p>(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—</p> <p>(i) The parent, in writing, and the public agency consent to the excusal; and</p> <p>(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.</p> <p><u>(f) Initial IEP Team meeting for child under Part C.</u> In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.</p> <p><i>**See also §8-60-324(a)(3) and (b)(3) at §8-56-37 (Requirement with respect to regular education teacher)</i></p> <p><i>See §8-60-321(b) at §8-56-34</i></p>
<p><u>§8-56-35 Transition services participants.</u></p> <p>(a) Under section 8-56-34 (a)(7), the department shall invite a student with a disability of any age if a purpose of the meeting will be the consideration of the statement of transition service needs or transition services for the student under section 8-56-38 (b) or section 8-56-38 (c).</p> <p>(b) If the student does not attend the IEP meeting, the department shall take other steps to ensure that the student's preferences and interests are considered.</p> <p>(c) In implementing the requirements of subsection (a), the department also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.</p> <p>(d) If an agency invited to send a representative to a meeting does not do so, the department shall take other steps to obtain participation of the other agency in the planning of any transition services. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.344)</p>	
<p><u>§8-56-36 Parent participation.</u> (a) The department shall take steps to ensure that one or both of the parents of a student with a disability are present at each IEP meeting or are afforded the opportunity to participate, including contacting the parent to schedule the meeting at a mutually agreed</p>	<p><b>§ 8-60-322 Parent participation.</b></p> <p>(a) <i>Public agency responsibility— general.</i> Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the</p>



upon time and place early enough to ensure the parent will have an opportunity to attend.

(b) The notice required in subsection (a) shall:

(1) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(2) Inform the parent of the provisions in section 8-56-34 (a)(6) and section 8-56-34 (c), relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.

(c) In meeting the requirements of subsections (a) and (b), the department shall have:

(1) A detailed record of telephone calls made or attempted and the results of those calls; and

(2) Copies of correspondence sent to the parent and any responses received.

(d) For a student with a disability beginning at age fourteen, or younger, if appropriate, the notice shall also:

(1) Indicate that a purpose of the meeting will be the development of a statement of the transition service needs of the student required in section 8-56-38 (b); and

(2) Indicate that the department will invite the student.

(e) For a student with a disability beginning at age sixteen, or younger, if appropriate, the notice shall:

(1) Indicate that a purpose of the meeting is the consideration of needed transition services for the student required in section 8-56-38 (c);

(2) Indicate that the department will invite the student; and

(3) Identify any other agency that will be invited to send a representative.

(f) If neither parent can attend, the department shall use other methods to ensure parent participation, including individual or conference telephone calls.

(g) A meeting may be conducted without a parent in attendance if the department is unable to convince the parents that they should attend. In this case the department shall have a record of its attempts to arrange a mutually agreed upon time and place, such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parent and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(h) The department shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for a parent with deafness or whose native language is other than English.

(i) The department shall give the parent a copy of the IEP at no cost to the parent and, upon request, a copy of the record of notice required under subsections (a), (b), and (g). [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp:

opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) *Information provided to parents.*

(1) The notice required under paragraph (a)(1) of this section must—

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in § 8-60-321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and § 8-60-321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must—

(i) Indicate—

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 8-60-320(b); and

(B) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

(c) *Other methods to ensure parent participation.* If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 8-60-328 (related to alternative means of meeting participation).

(d) *Conducting an IEP Team meeting without a parent in attendance.* A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) *Use of interpreters or other action, as appropriate.* The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

34 C.F.R. §300.345)

(f) *Parent copy of child's IEP.* The public agency must give the parent a copy of the child's IEP at no cost to the parent.  
[§8-56-66]

**§ 8-60-328 Alternative means of meeting participation.**

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

§8-56-37 Development, review, and revision of IEP. (a) In developing each student's IEP, the IEP team shall consider:

- (1) The strengths of the student and the concerns of the parent for enhancing the education of the student;
- (2) The results of the initial or most recent evaluation of the student; and
- (3) As appropriate, the results of the student's performance on any general statewide assessment programs.

(b) The IEP team shall also:

- (1) In the case of a student whose behavior impedes the student's learning or that of others, consider strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
- (2) In the case of a student with limited English proficiency, consider the language needs of the student as these needs relate to the student's IEP;
- (3) 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;
- (4) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
- (5) Consider whether the student requires assistive technology devices and services as a part of the student's special education, related services or supplementary aids and services.

(c) In conducting a meeting to review, and, if appropriate, revise a student's IEP, the IEP team shall consider the factors described in subsections (a) and (b).

(d) If, in considering the special factors described in subsections (a) and (b), the IEP team determines that a student needs a particular device or service (including an intervention, accommodation, or other program modification) in

**§ 8-60-324 Development, review, and revision of IEP**

(a) *Development of IEP—*

(1) *General.* In developing each child's IEP, the IEP Team must consider—

- (i) The strengths of the child;
- (ii) The concerns of the parents for enhancing the education of their child;
- (iii) The results of the initial or most recent evaluation of the child; and
- (iv) The academic, developmental, and functional needs of the child.

(2) *Consideration of special factors.* The IEP Team must—

- (i) In the case of a child whose behavior impedes the child'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 child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- (iii) In the case of a child 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 child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child'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 child;
- (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

order for the student to receive a free appropriate public education, the IEP team shall include a statement to that effect in the student's IEP.

(e) Nothing in this section shall be construed to require the IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP. [Eff 3/16/00]

(Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.346)8-56-38

(v) Consider whether the child needs assistive technology devices and services.

(3) Requirement with respect to regular education teacher. [see §8-56-34(a)(2)] A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—

- (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and
- (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §8-60-320(a)(4).

(4) Agreement. (i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency 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 child's current IEP.

- (ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(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. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEPs— [see §8-56-33]

(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

- (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
- (ii) Revises the IEP, as appropriate, to address—
  - (A) Any lack of expected progress toward the annual goals described in § 8-60-320(a)(2), and in the general education curriculum, if appropriate;
  - (B) The results of any reevaluation conducted under § 8-60-303;
  - (C) Information about the child provided to, or by, the parents, as described under § 8-60-305(a)(2);
  - (D) The child's anticipated needs; or
  - (E) Other matters.

	<p>(2) <i>Consideration of special factors.</i> In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.</p> <p>(3) <i>Requirement with respect to regular education teacher.</i> A regular education teacher of the child, 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 child.</p> <p><u>(c) Failure to meet transition objectives— [see §8-56-41]</u></p> <p>(1) <i>Participating agency failure.</i> If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with § 8-60-320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.</p> <p>(2) <i>Construction.</i> 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 children with disabilities who meet the eligibility criteria of that agency.</p> <p>(d) <i>Children with disabilities in adult prisons—</i></p> <p>(1) <i>Requirements that do not apply.</i> The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:</p> <ul style="list-style-type: none"> <li>(i) The requirements contained in section 612(a)(16) of the Act and § 8-60-320(a)(6) (relating to participation of children with disabilities in general assessments).</li> <li>(ii) The requirements in § 8-60-320(b) (relating to transition planning and transition services) do not apply with respect to the children 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.</li> </ul> <p>(2) <i>Modifications of IEP or placement.</i></p> <ul style="list-style-type: none"> <li>(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.</li> <li>(ii) The requirements of §§ 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.</li> </ul>
<p>§8-56-38 <u>Content of IEP.</u> (a) The IEP for each student shall include:</p> <p>(1) A statement of the student's present levels of educational performance, including:</p> <p>(A) How the student's disability affects the student's involvement and</p>	<p><b>§ 8-60-320 Definition of individualized education program.</b></p> <p>(a) <i>General.</i> As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with</p>

progress in the general curriculum; or

(B) For preschool students, as appropriate, how the disability affects the student's participation in appropriate activities;

(2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to:

(A) Meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum, or for preschool students, as appropriate, to participate in appropriate activities; and

(B) Meeting each of the student's other educational needs that result from the student's disability;

(3) A statement of the special education and related services and supplementary aids and services to be provided to the student, or on behalf of the student and a statement of the program modifications or supports for school personnel that will be provided for the student:

(A) To advance appropriately toward attaining the annual goals;

(B) To be involved and progress in the general curriculum in accordance with paragraph (1) and to participate in extracurricular and other nonacademic activities; and

(C) To be educated and participate with other students with a disability and students without a disability in the activities described in this section;

(4) An explanation of the extent, if any, to which the student will not participate with students without a disability in the regular class and in the activities described in paragraph (3);

(5) A statement of:

(A) Any individual modifications in the administration of statewide assessments of student achievement that are needed in order for the student to participate in the assessment; or

(B) If the IEP team determines that the student will not participate in a particular statewide assessment of student achievement (or part of an assessment), a statement of:

(i) Why that assessment is not appropriate for the student; and

(ii) How the student will be assessed;

(6) The projected date for the beginning of the services and modifications described in paragraph (3), and the anticipated frequency, location, and duration of those services and modifications; and

(7) A statement of:

(A) How the student's progress toward the annual goals described in paragraph (2) will be measured; and

(B) How the student's parent will be regularly informed (through such means as periodic report cards), at least as often as parents of students without a disability are informed of the student's progress, of:

(i) The student's progress toward the annual goals; and

(ii) The extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year.

(b) For each student beginning at age fourteen (or younger, if determined

§§ 8-60-320 through 8-60-324, and that must include—

(1) A statement of the child's present levels of academic achievement and functional performance, including—

(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2)(i) A statement of measurable annual goals, including academic and functional goals designed to—

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A description of—

(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and

(ii) If the IEP Team determines that the child must take an

<p>appropriate by the IEP team), and updated annually, the IEP shall include a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program).</p> <p>(c) For each student beginning at age sixteen (or younger, if determined appropriate by the IEP team), the IEP shall include a statement of needed transition services for the student as defined in section 8-56-30, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.</p> <p>(d) Beginning at least one year before a student reaches age eighteen, the student's IEP shall include a statement that the student has been informed of the rights under this chapter that will transfer to the student with a disability on reaching age eighteen, consistent with section 8-56-81. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.347)</p>	<p><u>alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—</u></p> <p><u>(A) The child cannot participate in the regular assessment; and</u></p> <p><u>(B) The particular alternate assessment selected is appropriate for the child; and</u></p> <p>(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.</p> <p>(b) <i>Transition services.</i> Beginning <u>not later than the first IEP to be in effect when the child turns 16</u>, or younger if determined appropriate by the IEP Team, <u>and updated annually, thereafter</u>, the IEP must include—</p> <p><u>(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and</u></p> <p><u>(2) The transition services (including courses of study) needed to assist the child in reaching those goals.</u></p> <p>(c) <i>Transfer of rights at age of majority.</i> Beginning <u>not later than one year before the child reaches the age of majority under State law</u>, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 8-60-520.</p> <p>(d) <i>Construction.</i> Nothing in this section shall be construed to require—</p> <p><u>(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or</u></p> <p><u>(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.</u></p>
<p>§8-56-39 <u>Transportation.</u> (a) The provision of transportation as a related service includes:</p> <p>(1) Travel to and from school when the student is unable to utilize the regular modes of transportation;</p> <p>(2) Travel between the student with a disability's school and other sites where services specified in the IEP are provided;</p> <p>(3) Travel in and around the student with a disability's school and other sites where services specified in the IEP are provided; and</p> <p>(4) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.</p> <p>(b) Notwithstanding chapter 8-27-9, transportation is a related service if it meets the standards of a related service. If, pursuant to sections 8-56-30 to 8-56-42, a student with a disability is determined not to require transportation as a related service, the parent may apply for transportation as provided in</p>	<p><i>From §8-60-34 at §8-56-2</i></p> <p>(16) <i>Transportation</i> includes—</p> <p>(i) Travel to and from school and between schools;</p> <p>(ii) Travel in and around school buildings; and</p> <p>(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>

<p>chapters 8-27 and 8-28. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.24)</p>	
<p>§8-56-40 <u>Extended school year services.</u> (a) As used in this section, the term "extended school year services" means special education and related services:</p> <p>(1) Are provided to a student with a disability:</p> <p>(A) Beyond the normal school year of the school the student attends or will attend;</p> <p>(B) In accordance with the student's IEP; and</p> <p>(C) At no cost to the parent of the student; and</p> <p>(2) Meet the standards of the department.</p> <p>(b) The department shall ensure that extended school year services are available as necessary to provide a free appropriate public education, consistent with subsection (c).</p> <p>(c) Extended school year services shall be provided only if the student's IEP team determines, on an individual basis, in accordance with sections 8-56-30 to 8-56-42, that the services are necessary for the provision of a free appropriate public education to the student.</p> <p>(d) The IEP team shall consider factors that include the following in determining whether a student with a disability needs extended school year services:</p> <p>(1) The nature of the student's disabling condition;</p> <p>(2) The severity of the disabling condition;</p> <p>(3) The areas of learning crucial to attaining the goal of self-sufficiency and independence from caretakers;</p> <p>(4) The extent of regression caused by the interruption of educational programming; and</p> <p>(5) The rate of recoupment following interruption of educational programming.</p> <p>(e) In implementing the requirements of this section, the department may not:</p> <p>(1) Limit extended school year services to particular categories of disability; or</p> <p>(2) Unilaterally limit the type, amount, or duration of those services. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.309)</p>	<p><b>§ 8-60-106 Extended school year services.</b></p> <p>(a) <i>General.</i></p> <p>(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 §§ 8-60-320 through 8-60-324, 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) <i>Definition.</i> 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> <p>(2) Meet the standards of the SEA.</p>
<p>§8-56-41 <u>Agency responsibilities for transition services.</u> (a) If a participating agency, other than the department, fails to provide the transition services described in the IEP in accordance with section 8-56-38(c), the department shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.</p> <p>(b) Nothing in this chapter relieves any participating agency, including the state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with a disability who meet the eligibility criteria of that agency. [Eff 3/16/00]</p>	<p>See §8-60-324(c) at §8-56-37</p>

<p>(Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.348)</p> <p>§8-56-42 <u>Individualized education program; accountability.</u> (a) Subject to subsection (b), the department shall:</p> <p>(1) Provide special education and related services to a student with a disability in accordance with the student's IEP; and</p> <p>(2) Make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the IEP.</p> <p>(b) This chapter does not require that any agency, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives.</p> <p>(c) Nothing in this section limits a parent's right to ask for revisions of the student's IEP or to invoke procedural safeguards if the parent feels the efforts required in subsection (a) are not being made. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.350)</p>	
<p style="text-align: center;">SUBCHAPTER 6</p> <p style="text-align: center;">PLACEMENT AND LEAST RESTRICTIVE ENVIRONMENT</p> <p>§8-56-43 <u>Least restrictive environment.</u> The department shall ensure:</p> <p>(1) That to the maximum extent appropriate, all students with a disability eligible pursuant to section 8-56-15, including students in public or private institutions or other care facilities, are educated with students without a disability; and</p> <p>(2) That special classes, separate schooling or other removal of students with a disability from the regular educational environment occurs only if the nature or severity of the disability is such that education, including special education, in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [Eff 3/16/00]</p> <p>(Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.550)</p>	<p><b>§ 8-60-114 LRE requirements.</b></p> <p>(a) <i>General.</i></p> <p>(1) Except as provided in § 8-60-324(d)(2) (regarding children with disabilities in adult prisons), the State <u>must have in effect</u> policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§ 8-60-115 through 8-60-120.</p> <p>(2) <u>Each public agency must ensure that—</u></p> <p style="padding-left: 20px;">(i) <u>To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and</u></p> <p style="padding-left: 20px;">(ii) <u>Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</u></p> <p>(b) <i>Additional requirement—State funding mechanism—</i></p> <p>(1) <i>General.</i> (i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and</p> <p style="padding-left: 20px;">(ii) <u>A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.</u></p> <p>(2) <i>Assurance.</i> If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.</p>



<p><b>§8-56-44 Continuum of alternative placements.</b> (a) The department shall ensure that a continuum of alternative placements is available to meet the needs of students with a disability for special education and related services. (b) The continuum required in subsection (a) shall make provision for:</p> <ol style="list-style-type: none"> <li>(1) Alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions;</li> <li>(2) Supplementary services to be provided in conjunction with regular class placement; and</li> <li>(3) Special Education and related services in the classroom, in the home, in hospitals, institutions, and in other settings, as appropriate to meet the needs of a student with a disability. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.551)</li> </ol>	<p><b>§ 8-60-115 Continuum of alternative placements.</b></p> <p>(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.</p> <p>(b) The continuum required in paragraph (a) of this section must—</p> <ol style="list-style-type: none"> <li>(1) Include the alternative placements listed in the definition of special education under § 8-60-38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and</li> <li>(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.</li> </ol>
<p><b>§8-56-45 Placements.</b> In determining the educational placement of a student with a disability, including a preschool student with a disability, the department shall ensure that:</p> <ol style="list-style-type: none"> <li>(1) The placement decision: <ol style="list-style-type: none"> <li>(A) Is made by a group of persons, including the parent, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and</li> <li>(B) Is made in conformity with sections 8-56-43 to 8-56-47;</li> </ol> </li> <li>(2) The student's placement: <ol style="list-style-type: none"> <li>(A) Is determined at least annually;</li> <li>(B) Is based on the student's IEP; and</li> <li>(C) Is as close as possible to the student's home;</li> </ol> </li> <li>(3) Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that the student would attend if nondisabled;</li> <li>(4) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the student or on the quality of services that the student needs; and</li> <li>(5) A student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.552)</li> </ol>	<p><b>§ 8-60-116 Placements.</b></p> <p>In determining the educational placement of a <u>child</u> with a disability, including a preschool <u>child</u> with a disability, each public agency must ensure that—</p> <ol style="list-style-type: none"> <li>(a) The placement decision— <ol style="list-style-type: none"> <li>(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the <u>child</u>, the meaning of the evaluation data, and the placement options; and</li> <li>(2) Is made in conformity with the LRE provisions of this subpart, including §§ 8-60-114 through 8-60-118;</li> </ol> </li> <li>(b) The child's placement— <ol style="list-style-type: none"> <li>(1) Is determined at least annually;</li> <li>(2) Is based on the child's IEP; and</li> <li>(3) Is as close as possible to the child's home;</li> </ol> </li> <li>(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;</li> <li>(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</li> <li>(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.</li> </ol> <p><b>§ 8-60-327 Educational placements.</b></p> <p><u>Consistent with § 8-60-501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.</u></p>
<p><b>§8-56-46 Nonacademic settings.</b> In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the department, referrals to agencies that provide assistance to</p>	<p><b>§ 8-60-117 Nonacademic settings.</b></p> <p>In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 8-60-107, each public agency must ensure that each child with a disability participates with</p>

<p>individuals with disabilities, and employment of students in and out of school, the department shall ensure that each student with a disability participates with students without a disability in those services and activities to the maximum extent appropriate to the needs of that student. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §§300.306, 300.553)</p>	<p>nondisabled children <u>in the extracurricular services and activities</u> to the maximum extent appropriate to the needs of that child. <u>The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.</u></p>
<p>§8-56-47 <u>Residential placement.</u> If placement in a public or private residential program is necessary to provide special education and related services to a student with a disability, the program, including non-medical care and room and board, shall be at no cost to the parent of the student. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.302)</p>	<p><b>§ 8-60-118 Children in public or private institutions.</b>          Except as provided in § 8-60-149(d) (<u>regarding agency responsibility for general supervision for some individuals in adult prisons</u>), the SEA must ensure that § 8-60-114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).</p>
<p style="text-align: center;">SUBCHAPTER 7</p> <p style="text-align: center;">STUDENTS WITH DISABILITIES IN PRIVATE SCHOOLS          PLACED OR REFERRED BY THE DEPARTMENT</p> <p>§8-56-48 <u>Applicability.</u> Sections 8-56-48 to 8-56-51 apply only to students with a disability who are or have been placed in or referred to a private school or facility by the department as a means of providing special education and related services. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.400)</p>	<p><b>§ 8-60-145 Applicability of §§ 8-60-146 through 8-60-147.</b>          Sections 8-60-146 through 8-60-147 apply only to <u>children with disabilities</u> who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.</p>
<p>§8-56-49 <u>Responsibility of the department.</u> The department shall ensure that a student with a disability who is placed in or referred to a private school or facility:</p> <p>(1) Is provided special education and related services:</p> <p>(A) In conformance with an IEP that meets the requirements of sections 8-56-30 to 8-56-42;</p> <p>(B) At no cost to the parent;</p> <p>(2) Is provided an education that meets the standards that apply to education provided by the department, including the requirements of this chapter; and</p> <p>(3) Has all of the rights of a student with a disability who is served by the department. [Eff 3/16/00] (Auth: HRS §302A-1112) (Imp: 34 C.F.R. §300.401)</p>	<p><b>§ 8-60-146 Responsibility of SEA.</b>          Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—</p> <p>(a) Is provided special education and related services—</p> <p>(1) In conformance with an IEP that meets the requirements of §§ 8-60-320 through 8-60-325; and</p> <p>(2) At no cost to the parents;</p> <p>(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for § 8-60-18 and § 8-60-156(c); and</p> <p>(c) Has all of the rights of a child with a disability who is served by a public agency.</p>