

Report to Student Achievement Committee

Reference Guide to Amendments to Proposed Title 8, Subtitle 2 Chapter 60, Hawaii Administrative Rules, Provision of a Free Appropriate Public Education for a Student with a Disability

Page	Amendment to Chapter 60	Rationale for Amendment
60-9	<p>§8-60-2</p> <p><u>“Certified or licensed private residential facility” means a private residential school or program that has earned licensure, certification, or accreditation according to the requirements and procedures specified by the appropriate state licensure board or department.</u></p>	<p>Hawaii Revised Statutes (HRS) § 302A-443.5</p> <p>Definition in HRS</p>
60-9	<p><u>“Charter school” has the meaning given the term [means a public school as defined]in both federal and state laws.</u></p>	<p>Revised language</p>
60-11	<p><u>“Department” means the state department of education and may include[including] charter schools.</u></p>	<p>Revised language</p>
60-11	<p><u>“Department personnel” means any employee of the department or any individual authorized to act on the department’s behalf, including but not limited to independent contractors.</u></p>	<p>HRS § 302A-443(k) The department may adopt rules pursuant to chapter 91</p> <p>Define terminology</p>
60-11	<p><u>“Education records” (a) The term means those records that are:</u></p> <p>(1) <u>Directly related to a student; and</u></p> <p>(2) <u>Maintained by the department or by a party acting for the department.</u></p> <p>(b) <u>The term does not include:</u></p> <p>(1) <u>Records that are kept in the sole possession of the maker, are used only as a personal memory aid,</u></p>	<p>Family Education Rights and Protection Act (FERPA)</p> <p>HRS § 302A-443(k) The department may adopt rules pursuant to chapter 91</p> <p>Define terminology</p>

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	<p><u>and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.</u></p> <p>(2) <u>Records of the law enforcement unit of the department.</u></p> <p>(3) (A) <u>Records relating to an individual who is employed by the department, that:</u></p> <p style="padding-left: 40px;">(i) <u>Are made and maintained in the normal course of business;</u></p> <p style="padding-left: 40px;">(ii) <u>Relate exclusively to the individual in that individual's capacity as an employee;</u> <u>and</u></p> <p style="padding-left: 40px;">(iii) <u>Are not available for use for any other purpose.</u></p> <p>(B) <u>Records relating to an individual in attendance as a result of the individual status as a student are education records and not excepted under paragraph (b)(3)(A) of this definition.</u></p> <p>(4) <u>Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:</u></p> <p>(A) <u>Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the individual's professional capacity or assisting in a paraprofessional capacity;</u></p> <p>(B) <u>Made, maintained, or used only in connection with treatment of the student;</u> <u>and</u></p> <p>(C) <u>Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction; and</u></p> <p>(5) <u>Records that only contain information about an</u></p>	

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	<p><u>individual after the individual is no longer a student in a public school in the department.</u></p>	
60-12	<p><u>“Eligible student” means a person who meets the criteria of section 8-60-38, aged three to twenty (3-20) who has not attained a high school diploma or its equivalent, who has been determined to have a disability pursuant to the IDEA and this Chapter and requires special education and related services]</u></p>	<p>HRS § 302A-443(k) The department may adopt rules pursuant to chapter 91</p> <p>Define terminology</p>
60-14	<p><u>“Itemized Rates” shall include, but not be limited to, the rate charged for each academic program, nonacademic program, and service, including all related services as defined by law, available to students at the Private School or Facility.</u></p>	<p>HRS § 302A-443</p> <p>HRS § 302A-443(k) The department may adopt rules pursuant to chapter 91</p> <p>Define terminology</p>
60-15	<p><u>“Location” means the setting, such as the general education or special education classroom, in which the student receives special education and related services.</u></p>	<p>Define terminology</p>
60-15	<p>“Native language”. (a) Native language, when used with respect to an individual who is limited English proficient, means the following:</p> <p>(1)(A) The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except as provided in paragraph (b)(2).</p> <p>(2)(B) In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.</p> <p>(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).</p>	<p>Formatting change</p>

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60-16	<p><u>“Nonpublic Special Education School or Program” shall mean any privately owned or operated preschool, school, educational organization or corporation, treatment facility, day program, residential program, or any other placement that maintains, conducts, or provides classes or programming, including related services as defined by federal or state laws, rules, or regulations, for the purpose of offering instruction or treatment to students with disabilities for consideration, profit, tuition, or fees.</u></p>	<p>HRS § 302A-443.5</p> <p>Definition in HRS</p>
60-16	<p>“Parent” means:</p> <ol style="list-style-type: none"> (1) A biological or adoptive parent of a student; (2) A foster parent, unless state law, rules, or contractual obligations with the State prohibit a foster parent from acting as a parent; (3) A guardian, <u>as determined by a court of law</u>, generally authorized to act as the student's parent, or authorized to make educational decisions for the student (but not the State if the student is a ward of the State); 	<p>Language insertion</p>
60-17	<p>“Placement” means <u>the determination of where on the continuum of placement options (e.g., regular classroom with support, special class, special school, etc.) a student’s IEP will be implemented. [an appropriate educational setting for the implementation of the program for a student with a disability based upon the individualized education program. It does not mean the specific location or school but the type of placement on the continuum of placement options (e.g., regular classroom with support, special class, special school, etc.)]</u></p>	<p>Language change to existing definition</p>
60-18	<p><u>“Private School or Facility” shall mean any privately owned or operated preschool, school, educational organization or corporation, treatment program, day program, residential program, or any other facility that maintains, conducts, or provides classes or programming, including related services as defined by federal or state laws, rules, or regulations, for the purpose of offering</u></p>	<p>HRS § 302A-443</p> <p>HRS § 302A-443(k) The department may adopt rules pursuant to chapter 91</p> <p>Define terminology</p>

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	<u>instruction or treatment to students with disabilities for consideration, profit, tuition, or fees.</u>	
60-18	<p>Related services, with respect to students with surgically implanted devices, including cochlear implants.</p> <p>(1) Do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.</p> <p>(2) Nothing in paragraph (1) [(A): Limits] <u>limits</u> the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as defined in the general definition) that are determined by the IEP team to be necessary for the student to receive a FAPE;</p> <p>[(B) Limits the responsibility of the department to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or</p> <p>(C) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in section 8-60-11(b)]</p> <p>(3) <u>The department is responsible for appropriately monitoring and maintaining medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school;</u></p> <p>(4) <u>The department shall ensure that the external components of surgically implanted devices are functioning properly, as required in section 8-60-11(b).</u></p>	Formatting change

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60-33	<p>§8-60-4 <u>Limitation: exception to FAPE for certain ages.</u> General. The obligation to make a FAPE available to all students with disabilities does not apply with respect to the following:</p> <p>(1) Students with disabilities who have graduated from high school with a regular high school diploma.</p> <p>(A) The exception does not apply to students who have graduated from high school but have not been awarded a regular high school diploma.</p> <p>(B) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with section 8-60-58.</p> <p>(C) As used in paragraph (1), the term “regular high school diploma” does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate <u>or an adult school diploma such as a general educational development credential (“GED”) or a Competency Based High School diploma;</u></p> <p>(D)</p>	<p>US District Court, Hawaii March 2012 decision</p> <p>Language insertion</p>
60-37	<p>§8-60-16 <u>Continuum of alternative placements.</u> (a) The department shall ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services.</p> <p>(b) The continuum required in subsection (a) shall</p> <p>[(1) Include<u>include</u> the alternative placements listed in the definition of special education under section 8-60-2 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions)];<u>and]</u></p> <p>[(2)c) <u>The department shall</u> [Make<u>make</u> provisions for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.</p>	<p>Format change</p>

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60-52	<p>§8-60-27</p> <p>(c) Reimbursement for private school placement. If the parent of a student with a disability, who previously received special education and related services under the authority of the department, enrolls the student in a private preschool, elementary or secondary school without the consent of or referral by the department, a court or a hearing officer may require the department to reimburse the parent for the cost of that enrollment if the court or hearing officer finds that the department had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate.</p> <p>(1) A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by the department.</p> <p>(2) The private school shall not be deemed <u>an</u> appropriate [for continued] placement by the hearing officer, if the private school does not allow the department to exercise its responsibility [to ensure the provision of a FAPE] under sections 8-60-29 and 8-60-30.</p> <p>(3) The request for a due process hearing regarding reimbursement of all costs of the unilateral private placement including special education and related services shall be filed in accordance with state statute and section 8-60-61.</p> <p>(d) Limitation on reimbursement. The cost of reimbursement described in subsection (c) may be reduced or denied:</p> <p>(1) If:</p> <p>(A) At the most recent IEP team meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the department to provide a FAPE to their</p>	Language change

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	<p>student, including stating their concerns and their intent to enroll their student in a private school at public expense; or</p> <p>(B) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the department of the information described in subparagraph (A);</p> <p>(2) If, prior to the parents' removal of the student from the public school, the department informed the parents, through the notice requirements described in section 8-60-58(a)(1), of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or</p> <p>(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.</p> <p>(4) <u>If the reimbursement sought by the parents is unreasonable or excessive.</u></p>	
60-55	<p>§8-60-28 <u>Applicability of sections 8-60-29 through 8-60-30. Sections 8-60-29 through 8-60-30 apply [only]to students who are eligible to receive special education and related services and [with disabilities]who [are or]have been placed, whether as a result of a hearing officer's decision, court order, or programmatic placement at the department's expense, whether by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, in [or referred to a]any Private School or Facility,[private school or facility by the department as a means of providing special education and related services] as defined by federal and state law relating to students with disabilities.</u></p>	<p>HRS §302A-443(f)</p> <p>Language change--taken from HRS</p>

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60-56	<p>§8-60-29 <u>Responsibility of the department.</u> The department shall ensure that a student <u>who is eligible to receive special education and related services and who has been placed, whether as a result of a hearing officer's decision, court order, or programmatic placement at the department's expense, whether by direct payment or through reimbursement to the student's parent, legal guardian, or legal custodian, in any Private School or Facility, as defined by federal and state law relating to students with disabilities</u>[with a disability who is placed in or referred to a private school or facility by the department]:</p> <p>(1) <u>Is placed in a private school or facility, certified or licensed private residential facility, or nonpublic special education school or program, that provides education and related services to students with disabilities who are eligible to receive special education and related services pursuant to federal or state laws, rules, or regulations and receives public funding from the department, either directly or through parental reimbursement and provides[d] special education and related services:</u></p> <p>(A) In conformance with an IEP that meets the requirements of sections 8-60-44 through 8-60-49; and</p> <p>(B) At no cost to the parents;</p>	<p>HRS § 302A-443(k) The department may adopt rules pursuant to chapter 91</p> <p>Language change</p>
60-57	<p>§8-60-30 <u>Monitoring by the department.</u></p> <p><u>[Implementation by the department. In implementing section 8-60-29, the department shall monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires.]</u></p> <p>(a) <u>In implementing section 8-60-29, the private school or facility shall assist the department, and the department shall be authorized, with or without consent, to monitor any eligible student. Monitoring shall include but not be limited to the following:</u></p> <p>1. <u>Direct in-person observation by Department Personnel within the student's learning</u></p>	<p>HRS § 302A-443</p> <p>HRS § 302A-443(k) The department may adopt rules pursuant to chapter 91</p> <p>Implementation of statute</p>

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	<p style="text-align: center;"><u>environment, with or without notice;</u></p> <ol style="list-style-type: none"> 2. <u>Review of all Records relating to the Eligible Student;</u> 3. <u>Receipt of copies of all Records relating to the Eligible Student within three business days of receipt of the department's request; and</u> 4. <u>Communication, which may include but is not limited to, in-person, telephonic, electronic, written (including email), or video-conferencing, directly with Eligible Student's teachers, services providers, or other facility personnel, at the sole discretion of the department.</u> <p>(b) <u>Any Private School or Facility being monitored in furtherance of section 8-60-29 shall:</u></p> <ol style="list-style-type: none"> 1. <u>Comply with all applicable federal, state, and county laws, rules, regulations, and ordinances pertaining to health and safety;</u> 2. <u>Provide Eligible Students with academic education, instruction, and Programming as required by the Eligible Student's IEP;</u> 3. <u>Provide rigorous curriculum and instruction based on content standards, and aligned with the Common Core State Standards;</u> 4. <u>Facilitate the department's monitoring efforts set forth in subsection (a) above;</u> <p>(c) <u>In monitoring of rates, fees, and tuition in</u></p>	

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	<p><u>furtherance of section 8-60-29, any Private School or Facility shall:</u></p> <ol style="list-style-type: none"> 1. <u>Provide the department monthly itemized invoices, which shall include:</u> <ol style="list-style-type: none"> (A) <u>A detailed description of each program and service provided to the student;</u> (B) <u>The date, duration, rate, and charge for each program and service provided; and</u> (C) <u>The name and title of the individual(s) providing each program and service provided to the student.</u> 2. <u>Provide, along with the monthly itemized invoice, an attendance log for the student.</u> 3. <u>Charge the department the same amount it charges Parents who unilaterally place a student at its Private School or Facility. The department's financial responsibility shall not exceed:</u> <ol style="list-style-type: none"> (A) <u>The amount a Private School or Facility receives from a Parent of a unilaterally placed student; or</u> (B) <u>The Private School or Facility's posted Itemized Rates, fees, and tuition for the school year.</u> 4. <u>Post with the department by April of each year, the Itemized Rates, fees, and tuition to be</u> 	

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	<p style="text-align: center;"><u>charged for the following school year.</u></p> <p>5. <u>Only charge the department for services that are specified in an Eligible Student's IEP.</u></p> <p>(d) <u>The department shall withhold payment to any Private School or Facility that restricts or denies monitoring as outlined above in subsections (a), (b), and (c) by the department pursuant to section 8-60-29. Payments withheld pursuant to this section shall be deemed waived by the Private School or Facility. [Eff _____] (Auth: 20 U.S.C. 1412(a)(10)(B), 1416(a), HRS §302A-1112, §302A-443) (Imp: 34 C.F.R. §300.147, 34 C.F.R. §300.600)</u></p>	

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60-124	<p>§8-60-61 <u>Filing a due process complaint.</u> (a) General.</p> <p>(1) A parent or the department may file a due process complaint on any of the matters described in sections 8-60-58(a)(1) and (2) (relating to the identification, evaluation or educational placement of a student with a disability, or the provision of a FAPE to the student).</p> <p>(2) The due process complaint shall allege a violation that occurred not more than two years before the date the parent or department knew or should have known about the alleged action that forms the basis of the due process complaint, or, within the timeframe specified in state statute for a unilateral special education placement, where the request is for reimbursement of the costs of the placement, including special education and related services. The unilateral special education placement timeframe <u>for purposes of reimbursement</u> begins on the student's first <u>last day of attendance at the private public school or the day after the department's obligation to pay for private placement in a settlement agreement, hearing decision or court order ends.</u></p>	Language change

