

DEPARTMENT OF EDUCATION

Rules Amending Title 8
Hawaii Administrative Rules

[date]

1. Chapter 27 of Title 8, Hawaii Administrative Rules, entitled
"Transportation of Students", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 2

EDUCATION

PART 1

PUBLIC SCHOOL

CHAPTER 27

TRANSPORTATION OF STUDENTS

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Historical Note: This chapter is based substantially upon Department of Education "Rule 1, Relating to the Transportation of Students". [Eff 10/29/62; am 8/25/67; am 8/17/68; am 9/6/69; am 9/24/70; am 3/31/72; am 10/1/73; R 3/3/84]

§8-27-1 Statement of purpose. The purpose of this chapter is to facilitate compliance with the State compulsory attendance law, and to comply with §302A-406, Hawaii Revised Statutes, and Federal law relating to the provision for a free and appropriate public education, specifically the provision of transportation services to disabled students and to provide access to equal educational opportunity without undue transportation hardships. [Eff 3/3/84; comp 9/5/95; am and comp 3/29/03; comp 6/15/09; am and comp] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112, 302A-1132, 302A-406; P.L. 107-110)

§8-27-2 Definitions. As used in this chapter, unless the context indicates otherwise:

["A mile or more," or any other term of distance shall be measured by the shortest walking distance between the closest public access to the residence to the closest accessible area of the school or the student's bus stop, as measured by the department;]

"A student with physical and/or health problems" means a student with a temporary (ten or more school days) condition who, because of the condition is unable to walk to school as determined by the complex area superintendent;

"Board" means the board of education;

"Bus pass" means a current pass used by all bus riders when riding the school bus;

"Curb-to-curb transportation" means transportation services provided to students who are not able to utilize regular modes of transportation whose pick-up shall be from the closest public access to the student's residence;

"Department" means the department of education;

"Elementary" means grades Kindergarten through 5;

"Fare" means the amount the student pays to ride the school bus each way between home and school;

“Family” means a unit living together under one roof including the father, mother, brothers, or sisters, adopted siblings, either legally or by custom, and the grandparents of the student;

“Geographic exception” means permission to attend a school other than the student's home school as determined by the student's legal residence;

“Homeless” means a student who is eligible under the “McKinney-Vento Homeless Education Assistance Improvements Act of 2001”;

“Mileage transportation reimbursement” means payment which may be made by the department to reimburse parents, guardians, or designees for mileage costs of providing transportation for students who qualify for fixed route transportation or to parents, guardians, or designees of special education students who are eligible for transportation as a related service;

“Public school attendance area” means the area encompassed by boundaries established by the department within which the public school is situated, and is the designated school that students residing in that area must attend;

“Qualifying distance” means the shortest walking distance between the closest public access to the residence and the closest accessible area of the school or the student's bus stop. The qualifying distance for a student in grades K-5 is 1 mile and the qualifying distance for a student in grades 6-12 is 1.5 miles;

“Redistricting” means a redefining of a school attendance area;

“School of origin” means the school that a student eligible under the “McKinney-Vento Homeless Education Assistance Improvements Act of 2001” was attending when permanently housed, or the school in which a student eligible under the “McKinney-Vento Homeless Education Assistance Improvements Act of 2001” was last enrolled[.];

“Secondary” means grades 6 through 12;

“Student” means any student who is attending public school classes in grades kindergarten to twelve, operated by the department[.];

[“Special education student” means a student who has been found eligible for special education by the department.] [Eff 3/3/84; comp 9/5/95; am and comp 3/29/03; am and comp 6/15/09; am and comp

] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112, 302A-406; P.L. 107-110)

§8-27-3 Fare. (a) The fare is [35 cents per ride effective in January 2004. The State shall pay for any cost in excess of the student fare. The department may increase or decrease the fare, upon approval of

the board, provided the fare does not exceed 50% of the cost to provide transportation services (not including the cost of curb-to-curb, mid-day, and after-school transportation services for special education students), rounded to the nearest 5 cents.]

One-way	\$ 1.25
One way quarterly pass	\$ 36.00
One way annual pass	\$135.00

For students who are members of a family which meets current income poverty guidelines of the U.S. Department of Agriculture criteria to receive free school lunch, the fare is:

One-way	\$ 1.25
One way quarterly pass	\$ 12.00
One way annual pass	\$ 45.00

Round trips and round trip passes are double the one-way amounts.

(b) [When fares are pre-paid, the fare for a period greater than a school academic quarter shall be the number of trips for the period multiplied by the fare less five percent of the cost.] The department may provide reimbursement to schools for the cost to schools of the school bus program. Funds to provide reimbursement to schools shall come from collection of fares. [Eff 3/3/84; am and comp 9/5/95; am and comp 3/29/03; am and comp 6/15/09; am and comp

] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112, 302A-406) §8-27-4)

§8-27-4 Limitations. (a) This chapter is conditioned upon the amount of funds made available to the department to provide transportation to students. When funds are insufficient to provide service to all students eligible for transportation services who desire such services, the department shall consider the following factors in determining which services to continue:

- (1) The school district;
- (2) The school attendance area in which a school child normally resides;
- (3) The distance the school child lives from the school;
- (4) The availability of public carriers or other means of transportation;

- (5) The frequency, regularity, and availability of public transportation;
- (6) The grade level, physical handicap, or special learning disability of a school child.
- (7) Such conditions and circumstances unique or peculiar to a county or area.

(b) Transportation shall be limited to transportation of students from the home to school and return. Transportation from home to school and return shall be from a designated school bus stop unless curb-to-curb transportation services are provided pursuant to a student's individualized educational program.

(c) When transportation other than to and from school and a location other than a student's home is requested, it shall be referred to the department. The department may provide transportation if there are no additional costs involved.

(d) The transportation may be provided to students during the school year, as determined by the department.

(e) Any [elementary] student capable of walking may be required to [walk or] provide the student's own transportation to and from school or to and from a bus stop [located more than one mile from the nearest public access to the student's residence. Any secondary student capable of walking may be required to walk or provide the student's own transportation to and from school or to and from a bus stop located more than 1.5 miles from the nearest public access to the student's residence.], if the distance from home to school, or the distance from home to bus stop does not exceed the qualifying distance or if public transportation, in the department's determination, is reasonably available.

(f) [Elementary students who are required by the department to attend a school out of their public school attendance area shall not be eligible for transportation if their school is less than one mile from their residence and provided that they are capable of walking. Secondary students who are required by the department to attend a school out of their public school attendance area shall not be eligible for transportation if their school is less than 1.5 miles from their residence and provided that they are capable of walking

(g) Students who attend schools or programs of choice, such as charter schools, magnet schools, or learning centers or schools outside of their home school attendance area, as determined by the students' legal residence, shall not be eligible for transportation subsidy, provided that this section shall not apply to the "No Child Left Behind" Act of 2001 "public school choice" provisions. This subsection also does not apply to

students who are homeless and are attending their school of origin based upon a feasibility determination made by a school administrator, or are awaiting the outcome of the department's dispute resolution process for [McKinney-Vento eligible] students eligible for transportation under the "McKinney-Vento Homeless Education Assistance Improvements Act of 2001. [Eff 3/3/84; comp 9/5/95; am and comp §8-27-4 3/29/03; am and comp 6/15/09; am and comp]
(Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112, 302A-406, HAR chapter 8-13; P.L. 107-110)

- §8-27-5 Eligibility. (a) Fare free riders shall include:
- (1) Students who receive transportation under the provisions of Hawaii administrative rules for students with disabilities.
 - (2) Students who have been identified on their application for transportation services as homeless.
 - (3) Students who have been identified on their application for transportation services as a foster child. The foster parent shall provide a copy of a Family Court order or a letter from a case worker on official department of human services letterhead for verification purposes.
 - (4) [Elementary students who reside a mile or more from school, and secondary students who reside 1.5 miles or more from school, attend] A student who resides farther from school than the qualifying distance for the student's grade level, attends the school in [their] his or her public school attendance area, and [are] is:
 - (A) A member of a family receiving welfare assistance, as certified by the department of human services; or
 - [(B) A member of a family which meets current income poverty guidelines of the U.S. Department of Agriculture criteria to receive free school lunch; or
 - (C) The fourth or more student of a family and the first three students are paying the fare to and from school; or]
 - [(D)] (B) Transferred to another school because of a grade transfer from one school to another, but the student shall receive transportation only for the time that the student would have been in the grade which was transferred; or is

[(E)] (C) Transferred to another school because the school was consolidated, but the student shall receive transportation only for the remaining number of years that the student would have been in attendance at the school which was consolidated; or

[(F)] (D) Required by the department to attend a school other than the school in the student's public school attendance area, or required by the provisions of the "No Child Left Behind" Act of 2001 in which the department must provide transportation services to a student who transfers from a school identified by the department as "in need of improvement," "corrective action," "preparing for restructuring," or "restructuring" to another public school or public charter school that is not similarly identified as long as the student's home school remains identified by the department as "in need of improvement," "corrective action," "preparing for restructuring," or "restructuring"; or

[(G)] (E) Directed by the [district] department to attend another school because the student's school attendance area was redefined (redistricted), but the student shall be eligible to receive fare free transportation for only the time the student would have been attending the school that was redistricted.

(b) Fare riders shall include:

(1) [Elementary students who reside a mile or more from school, and secondary students who reside 1.5 miles or more from school in their public school attendance area;] Students attending school in their public school attendance area who reside farther from home than the qualifying distance for the students' grade level; or

(2) [Elementary students not eligible for transportation because they reside less than one mile from school or are on geographic exception and secondary students not eligible for transportation because they reside less than 1.5 miles from school or are on geographic exception;] Students not eligible for transportation because they live nearer to school than the qualifying distance for their grade level or are on geographic exception, provided there are unused seats on the bus and accommodation will not result in additional cost to the State as determined by the department.

(c) A mileage transportation reimbursement may be made available to parents, guardians or designees at the Internal Revenue Service's (IRS) standard mileage reimbursement rate for Hawaii used in computing the value of business use of an automobile. Future increases or decreases in the mileage reimbursement amount shall be effective the first day of July after an IRS rate change. Procedures relating to mileage transportation reimbursement have been developed by the department. Parents, guardians, or designees of students attending a school outside the student's home school district pursuant to the transfer provisions of the NCLB may apply for mileage transportation reimbursement. Instead of providing mileage reimbursement, the department may provide alternative transportation at no cost to the students or their parents, guardians, or designees. [Eff 3/3/84; am and comp 9/5/95; am and comp 3/29/03; am and comp 6/15/09; am and comp] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112, 302A-406, HAR §8-37-4; P.L. 107-110)

§8-27-6 Application procedures. Any parent, legal guardian, or adult person with whom the student resides, or any student eighteen years or older may apply for transportation in accordance with the following procedures:

- (1) Application forms for transportation shall be available from the bus company or the school the student attends. The application must be completed and returned to the student's school.
- (2) Application for alternate drop off and/or pick up to or from locations other than the student's home under §8-27-4(b) shall be communicated to the school by the parent, guardian or person authorized by a student's IEP or Modification Plan. The school shall, under procedures established by the department, initiate the process to request such transportation, and
- (3) Application for [elementary students who reside less than one mile from school, secondary students who reside less than 1.5 miles from school,] students who live closer to school than the qualifying distance for their grade level, students with physical and/or health problems, or students who or are on geographic exception under §8-27-5(b)(2) shall be made by submitting a written request to the school the student attends. [Eff 3/3/84; comp 9/5/95; am and comp

3/29/03; am and comp 6/15/09; am and comp
] (Auth: HRS §302A-1112) (Imp:
Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112,
302A-406)

§8-27-7 Curb-to-curb transportation procedures. Students and parents or guardians who do not comply with the procedures in this section may be denied transportation. For students receiving curb-to-curb transportation, parents or guardians shall:

- (1) Provide emergency information pertaining to the safety of the child prior to receiving transportation;
- (2) Provide supervision or designate a responsible alternate to provide supervision during the time the bus arrives to pick up and drop off the child. Any exception to this requirement shall be made only with the written consent of the principal; and
- (3) Observe procedures relating to student absences, disaster, illness, and carrying of articles on the bus. [Eff 3/3/84; comp 9/5/95; am and comp 3/29/03; am and comp 6/15/09; comp
] (Auth: HRS §302A-1112) (Imp:
Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112,
302A-406)

§8-27-8 Exemption from the [one-mile and 1.5-mile] qualifying distances. (a) An exemption from the [one-mile and 1.5-mile] qualifying distances required under §8-27-5 may be granted by the superintendent on a year to year basis if an exemption is necessary for the health and safety of students and if other options that will mitigate hazards are not available or are not cost effective.

(b) Applications for exemptions shall be submitted to the superintendent and shall state the specific exemption requested, the reasons why the exemption should be granted, the duration of the exemption, and any other pertinent information.

(c) The superintendent shall advise the applicant of the decision within thirty calendar days after receiving an application.

(d) Exemptions granted under this section shall terminate when the hazardous conditions are corrected or otherwise cease to exist. [Eff 3/3/84; comp 9/5/95; am and comp 3/29/03; am and comp 6/15/09; am

and comp] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112, 302A-406)

§8-27-9 Transportation as "related service" or "related aids and service". Any transportation which a student with a disability may receive under this chapter may be considered a "related aids and service" if transportation is provided in accordance with Hawaii administrative rules for students with disabilities as that term is defined and used in Hawaii administrative rules for students with disabilities, or as a "related service" if transportation is provided in accordance with Hawaii administrative rules for students with disabilities. Limitations to this provision are established in §8-27-4(g). Parents, guardians, or designees of students receiving transportation services who do not comply with applicable procedural requirements as established by the department may have transportation services suspended or denied. Complex area superintendents shall review, approve, and be responsible for transportation requests other than home to school and return. [Eff 3/3/84; comp 9/5/95; am and comp 3/29/03; am and comp 6/15/09; comp] (Auth: HRS §§302A-1112, 302A-406) (Imp: 20 C.F.R. §§300.1(a), 300.4, 300.13(a), 300.13(b)(13), 300.550(b)(2), 300.522(d); HRS §§302A-406, 301-22, 301-25)

§8-27-10 Appeals. (a) Any person aggrieved by a decision made pursuant to this chapter may appeal that decision to the superintendent or the superintendent's designee within thirty calendar days after that decision. The appeal shall be in writing and shall state the:

- (1) Pertinent facts of the case;
 - (2) Decision of the department;
 - (3) Reason or reasons why the person appealing feels that the decision was incorrect;
 - (4) Reasons why the person is aggrieved; and
 - (5) Remedy the person seeks.
- (b) The written decision of the superintendent or the

superintendent's designee shall be mailed by certified mail, return receipt requested, to the person appealing not later than thirty calendar days after receipt of the appeal. [Eff 3/3/84; comp 9/5/95; comp 3/29/03; am and comp 6/15/09; comp] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-1101, 302A-1112, 302A-406)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. The amendments and compilation of to chapter 8-27, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on [date], and filed with the Office of the Lieutenant Governor.

Donald G. Horner
Chairperson
Board of Education

APPROVED AS TO FORM:

Deputy Attorney General