



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

June 20, 2019

TO: The Honorable Catherine Payne
Chairperson, Board of Education

FROM: Dr. Christina M. Kishimoto
Superintendent

A handwritten signature in blue ink, appearing to read "Christina M. Kishimoto".

SUBJECT: **Board Action on Draft Amendments to Hawaii Administrative Rules,
Chapter 8-27, Transportation of Students**

1. RECOMMENDATION

The Department of Education (Department) recommends approval of its proposed amendments to Hawaii Administrative Rules (HAR), Chapter 8-27 relating to Transportation of Students (copy attached for reference). A public hearing was conducted on the rule amendments and the Board of Education's (Board) final approval is requested to enable the Department to proceed with obtaining final Governor's approval.

2. RECOMMENDED EFFECTIVE DATE

Upon Governor's final approval, these rule amendments will be filed with the Lieutenant Governor's Office and will take effect ten days thereafter. The Department is endeavoring to effectuate the amended rules for the start of the 2019-2020 school year.

3. RECOMMENDED COMPLIANCE DATE (if different from the effective date)

Not applicable.

4. DISCUSSION

a. Conditions leading to the recommendation:

Chapter 8-27, HAR, entitled "Transportation of Students," is being amended to modify the administrative criterion for students who are eligible to receive free

bus service because of their free lunch status. Pursuant to existing Subsection 8-27-5(a)(4)(B), a student who lives a qualifying distance from school and whose family meets the criteria to receive free school lunch is eligible to receive free bus service.

The Department is amending Chapter 8-27, HAR, to address the situation created when the Department expanded the Federal Community Eligibility Provision (CEP) program. Under the current administrative rules, the expansion of the CEP program inadvertently made bus service free to all students who live a qualifying distance from school and are enrolled at a participating CEP school because all students now qualify for free lunch.

Due to concerns about the financial impacts of the CEP expansion on the bus transportation program, the Department proposes to amend the rules to state that for CEP-participating schools, only students whose parents are eligible under the federal Supplemental Nutrition Assistance Program (SNAP) are eligible for free bus service. This action will prevent over-compensation of fare free school bus ridership at participating CEP schools. The SNAP and free lunch income guidelines are the same (130 percent of federal poverty level).

On November 15, 2018, the Finance and Infrastructure Committee (FIC) and the Board approved the Department's proposed amendments to Chapter 8-27, HAR. Subsequently, the Department obtained Governor's approval to go to public hearing.

As required by law, a public notice of the public hearing was published on April 19, 2019 in the Honolulu Star Advertiser, Hawaii Tribune Herald, West Hawaii Today, Maui News, and The Garden Island newspapers and was posted to the Board's website and Lieutenant Governor's website via link.

Additionally, the complex area superintendents were notified of the public hearing ahead of time and instructed to issue the hearing notice to their principals with a request to share this information with parents and guardians.

The public hearing was conducted on May 23, 2019. No one from the public showed up to testify. Also, no written testimony was received by the Department as of the May 24, 2019 deadline.

As no public comment was received on the proposed rule amendments, the Department has made no changes and recommends the Board give its final approval so that the Governor's approval may be obtained. Upon Governor's approval, the rules will be filed with the Lieutenant Governor's Office and take effect ten days thereafter.

- b. Previous action of the Board on the same or similar matter:

These rule amendments were approved by FIC and Board on November 15, 2018.

- c. Other policies affected:

None.

- d. Arguments in support of the recommendation:

This action will provide greater controls over free bus qualification criteria.

- e. Arguments against the recommendation:

None.

- f. Other agencies or departments of the State of Hawaii involved in the action:

None.

- g. Possible reaction of the public, professional organizations, unions, department of education staff and/or others to the recommendation:

Public notice of the public hearing and the opportunity to submit written testimony was duly published. No public testimony was received.

- h. Educational implications:

None.

- i. Personnel implications:

None.

- j. Facilities implications:

None.

- k. Financial implications:

Implementation and expansion of the CEP program caused an approximate annual reduction of \$116,400 in bus fare collections in school year 2017-2018. This action will restore most of that revenue stream.

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5. OTHER SUPPLEMENTARY RECOMMENDATIONS

None.

CMK:jk
Attachment

c: Office of School Facilities and Support Services
Student Transportation Services Branch

DEPARTMENT OF EDUCATION

Amendment and Compilation of Chapter 8-27
Hawaii Administrative Rules

{Date}

1. Chapter 8-27, 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

- §8-27-1 Statement of purpose
- §8-27-2 Definitions
- §8-27-3 Fare
- §8-27-4 Limitations
- §8-27-5 Eligibility
- §8-27-6 Application procedures
- §8-27-7 Curb-to-curb transportation procedures
- §8-27-8 Exemption from the one-mile and 1.5-mile
qualifying distances
- §8-27-9 Transportation as "related service" or

"related aids and service"
§8-27-10 Appeals

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] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-406, 302A-1101, 302A-1112, 302A-1132; P.L. 107-110)

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

"A mile or more [7]" or any other term of distance shall be measured by the shortest walking distance between the closest public access to the student's residence to the closest accessible area of the school or the student's bus stop, as measured by the department [7].

"Assistant superintendent" means the assistant superintendent of the office of school facilities and support services.

"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,]~~ department.

"Board" means the board of education [7].

"Bus pass" means a current pass used by all bus riders when riding the school bus [7].

"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 [7].

"Department" means the department of education [7].

"Elementary" means grades Kindergarten through 5 [7].

~~"Fare" means the amount the student pays to ride the school bus each way between home and school [7].~~

"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 [7].

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

~~"Geographic exception" [means permission to attend a school other than the student's home school as determined by the student's legal residence.] has the same meaning as defined in section 8-13-2.~~

"Homeless" means a student who is eligible under the "McKinney-Vento Homeless Education Assistance Improvements Act of 2001" [7].

"Home school" has the same meaning as defined in section 8-13-2.

"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 [7].

"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 [7].

"Redistricting" means a redefining of a public 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-406, 302A-1101, 302A-1112; 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.

(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; comp]

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

§8-27-4 Limitations. (a) This chapter is conditioned upon the amount of funds made available to the department to provide transportation to students.

(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] education 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.

(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~~] public 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. [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-406, 302A-1101, 302A-1112; 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[-]; or
- (4) Elementary students who reside a mile or more from school, and secondary students who reside 1.5 miles or more from school, attend the school in their public school attendance area, and are:

- (A) A member of a family receiving ~~[welfare]~~ financial assistance ~~[, or]~~ pursuant to department of human services administrative rules;
- (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, for schools that participate in the federal Community Eligibility Provision program or other program that provides all students with free lunch regardless of each individual family's income, a family which has been certified eligible by the department of human services to participate in the Supplemental Nutrition Assistance Program;
- (C) The fourth or more student of a family and the first three students are paying the fare to and from school; ~~[or]~~
- (D) 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) 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) 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"; [ex]

(G) Directed by the district to attend another school because the student's public 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; 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; 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 ~~[rate of thirty two and one half cents per mile for motor vehicles and fifteen cents per mile for two-wheeled vehicles used in the transport of students. The mileage reimbursement rate is based on 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]~~ "No Child Left Behind" Act of 2001 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-406, 302A-1101, 302A-1112; 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 section 8-27-4(b) shall be communicated to the school by the parent, guardian, or person authorized by a student's ~~[IEP]~~ individualized education program or ~~[Modification Plan-]~~ modification plan. The school shall, under procedures established by the department, initiate the

process to request such transportation[7];
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 with physical and/or health problems, or students who [ex] are on geographic exception under section 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-406, 302A-1101, 302A-1112)

§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-406, 302A-1101, 302A-1112)

§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 distances required under section 8-27-5 may be granted by the assistant superintendent on a year to year basis if an exemption is necessary for the health and safety of students if other options that will mitigate hazards are not available or are not cost effective.

(b) Applications for exemptions shall be submitted to the assistant 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 assistant 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-406, 302A-1101, 302A-1112)

§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 section 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-406, 302A-1112)
(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 §§301-
22, 301-25, 302A-406)

§8-27-10 Appeals. (a) Any person aggrieved by a decision made pursuant to this chapter may appeal that decision to the superintendent 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.

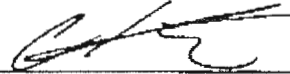
(b) The written decision of the superintendent or the superintendent's designee shall be mailed by certified mail, return receipt requested, to the person appealing not later than thirty calendar days after receipt of the appeal." [Eff 3/3/84; comp 9/5/95; comp 3/29/03; am and comp 6/15/09; comp
] (Auth: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

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

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

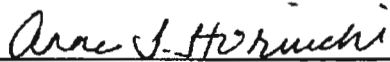
4. These amendments to and compilation of chapter 8-27, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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.



Christina M. Kishimoto
Superintendent of Education

APPROVED AS TO FORM:



Deputy Attorney General