

~~HAWAII ADMINISTRATIVE RULES~~

~~TITLE 8~~

~~DEPARTMENT OF EDUCATION~~

~~SUBTITLE 2~~

~~EDUCATION~~

~~PART 1~~

~~PUBLIC SCHOOL~~

~~CHAPTER 53~~

~~PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION FOR STUDENTS WITH A  
DISABILITY UNDER SECTION 504, SUBPART D~~

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#### ~~SUBCHAPTER 1~~

#### ~~GENERAL PROVISIONS~~

~~§8-53-1 Purpose. (a) As a matter of commitment, policy, and compliance with federal and state laws, the Hawaii state department of education assures that it will provide equal educational~~

~~opportunity to all students with a disability in its jurisdiction, regardless of the nature and severity of the disabilities.~~

~~(b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§705, 794; 34 C.F.R. Part 104) and the Americans with Disabilities Act (42 U.S.C. Sections 12101 et seq.; 28 C.F.R. Part 35), protect all~~

~~students with a disability from discrimination on the basis of disability. Section 504, Subpart D, requires the provision of a free appropriate public education to all students with a disability whether or not they are eligible for special education and related services under the Individuals with Disabilities Education Act (20 U.S.C. §1400 et seq.). [Eff 4/17/95; am and comp 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 29 U.S.C. §794; 42 U.S.C. §12132; 34 C.F.R. §104.4)~~

~~§8-53-2 Applicability. In public schools operated by the department, students with a disability who are protected by Section 504 shall be provided a free appropriate public education as required by Section 504, Subpart D, as follows:~~

~~(1) Students with a disability who are eligible for special education and related services under the Individuals with Disabilities Education Act (20 U.S.C. §1400 et seq.) shall be provided a free appropriate public education under chapter 8-56; and~~

~~(2) All other students with a disability shall be provided a free appropriate public education under chapter 8-53. [Eff 4/17/95; am and comp 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 42 U.S.C. §12132; 34 C.F.R. §§104.31, 104.32)~~

~~§8-53-3 Discrimination prohibited. (a) No student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity operated by the department.~~

~~(b) The department, in providing any aid, benefit or service, may not, directly or through contractual, licensing or other arrangements, on the basis of disability:~~

~~(1) Deny a student with a disability the opportunity to participate in or benefit from the aid, benefit, or service;~~

~~(2) Afford a student with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that provided to others;~~

~~(3) Provide a student with a disability with an aid, benefit, or service that is not as effective as that provided to others;~~

~~(4) Provide different or separate aid, benefits, or services to a student with a disability or to any class of students with a disability unless such action is necessary to provide a student with a disability with aid, benefits, or services that are as effective as those provided to others;~~

~~(5) Aid or perpetuate discrimination against a student with a disability by providing significant assistance to an agency,~~

~~organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the department's program;~~

~~(6) Deny a student with a disability the opportunity to participate as a member of planning or advisory boards; or~~

~~(7) Otherwise limit a student with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. (c) Aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for students with a disability and students without a disability, but must afford students with a disability equal opportunity to obtain the same result, gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the student's needs. [Eff 4/17/95; am and comp 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1101, 302A-1112; 29 U.S.C. §794; 42 U.S.C. §12132; 34 C.F.R. §104.4))~~

~~§8-53-4 Definitions. As used in this chapter:~~

~~"Day" means calendar day unless otherwise indicated as school day.~~

~~"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 Hawaii state department of education.~~

~~"Evaluation", as used in this chapter, has the meaning given that term in section 8-53-7. "Free appropriate public education" means regular or special education and related aids and services that are:~~

~~(1) Designed to meet the individual educational needs of a student with a disability as adequately as the needs of students without a disability are met;~~

~~(2) Based upon adherence to procedures that satisfy the evaluation, placement, educational setting, and procedural safeguards requirements of Section 504, Subpart D; and~~

~~(3) Provided without cost to the student with a disability or the student's parent, other than costs that are imposed on students without a disability or the students' parents.~~

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

~~"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);~~

~~(4) A surrogate parent who has been appointed in accordance with section 8-53-34; or~~

~~(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 and it is not otherwise contrary to the relevant court order; and~~

~~(A) The foster parent:~~

~~(i) Has an ongoing, long term parental relationship with the student;~~

~~(ii) Is willing to make the educational decisions required of parents under this chapter; and~~

~~(iii) Has no interest that would conflict with the interests of the student.~~

~~"Related services" means transportation and such developmental, corrective, and other supportive services as are required to meet the individual educational needs of a student with a disability as adequately as students without a disability, 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.~~

~~"Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability as adequately as students without a disability.~~

~~"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 8-53-7 to 8-53-11 on evaluation and reevaluation and who meets or meet the eligibility criteria in sections 8-53-12 to 8-53-14. [Eff 4/17/95; am and comp 4/22/2000] (Auth: HRS §302A 1112) (Imp: 8-53-6 HRS §302A 1112; 29 U.S.C. §705; 34 C.F.R. §§104.3, 104.33, 104.35, 104.36)~~

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SUBCHAPTER 2  
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~~IDENTIFICATION AND REFERRAL~~

~~§8-53-5 Child find. (a) The department shall annually:~~

~~(1) Identify, locate, and evaluate all students with a disability, residing in the State, regardless of the severity of the disability who are in need of services under chapter 8-53; and~~

~~(2) Notify students with a disability and their parents of the duty of the department 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 8-56 or suspected of having a disability under this chapter.~~

~~(c) Identification and referral procedures under this chapter to determine if a student has a disability 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 three 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 4/17/95; am and comp 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.32)~~

~~§8-53-6 Referral. (a) All referrals for the evaluation of a child to determine eligibility as a student with a disability under chapter 8-56 or this chapter initiates the referral process and shall be documented. (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 8-53-23 of the department's proposal to assess the student under this chapter; request for consent to assess in accordance with section 8-53-25(a)(1); and procedural safeguards notice in accordance with section 8-53-24; or~~

~~(2) Receive a written notice in accordance with section 8-53-23 of the department's refusal to assess under this chapter and the procedural~~

~~safeguards notice in accordance with section 8-53-24; or~~

~~(3) Receive a written notice of the department's proposal or refusal to evaluate under chapter 8-56, including an explanation of the distinctions between an evaluation and determination of eligibility under chapter 8-56 and this chapter.~~

~~(c) If a student initially referred for an evaluation under chapter 8-56 is 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 in existence at the time of the initial referral under this chapter, for or on behalf of the student. [Eff 4/17/95, am and comp 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §§104.32, 204.33, 104.35, 104.36)~~

### ~~SUBCHAPTER 3~~

#### ~~EVALUATION AND REEVALUATION~~

~~§8-53-7 Definitions. As used in this subchapter:~~

~~"Assessment" means the administration of specific tests, instruments, tools, strategies, and other materials used selectively with an individual student in accordance with section 8-53-10 to determine whether:~~

~~(1) A student has a disability; and~~

~~(2) The nature and extent of the regular or special education and related aids and services that the student needs to meet the student's educational needs as adequately as the needs of students without a disability are met.~~

~~"Evaluation" means procedures used selectively with an individual student in accordance with sections 8-53-7 to 8-53-11 to determine whether:~~

~~(1) A student has a disability; and~~

~~(2) The nature and extent of the regular or special education and related aids and services that the student needs to meet the student's educational needs as adequately as the needs of students without a disability are met. [Eff 4/17/95, am and comp 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112, 29 U.S.C. §794; 34 C.F.R. §104.35)~~

~~§8-53-8 General evaluation requirement. In interpreting evaluation data and making placement decisions, the department shall:~~

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

~~(b) Ensure the information includes information that competent professionals would require and is recent enough to afford an understanding of the current individual educational needs of the student; and~~

~~(c) Ensure that information obtained from all sources meets the requirements of this subchapter and is documented and carefully considered. [Eff 4/17/95; am and comp 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.35(c))~~

~~§8-53-9 Determination of needed assessment data. (a) As part of an initial evaluation (if appropriate) and as part of any reevaluation, a team that includes the individuals required for the Section 504 team, in accordance with section 8-53-15, and other qualified professionals, as appropriate, shall review existing assessment data on the student, including:~~

~~(1) Assessments and information provided by the parent of the student;~~

~~(2) Current classroom based assessments and observations; and~~

~~(3) Observations by teachers and related service providers; and~~

~~(b) On the basis of that review, and input from the student's parent, identify what additional data, if any, are needed to determine:~~

~~(1) Whether the student has a disability as described in section 8-53-13(a)(1) or, in case of a reevaluation of a student, whether the student continues to have such a disability;~~

~~(2) The present levels of performance and educational needs of the student;~~

~~(3) Whether, in accordance with section 8-53-13 (a)(2) and (a)(3), the student needs the provision of regular or special education and related aids and services because of the disability to meet the student's educational 8-53-9~~

~~needs as adequately as the needs of students without a disability are met, or in the case of a reevaluation of a student, whether the student continues to meet the eligibility criteria in section 8-53-13(a)(1) to (a)(3);~~

~~(4) Whether any additions or changes are needed to enable the student to:~~

~~(A) Access an education, including, if appropriate, to meet the measurable annual goals set out in the student's Section 504 modification plan; and~~

~~(B) Participate, as appropriate, in the general curriculum (i.e., the same curriculum as for students without a disability).~~

~~(c) The group described in subsection (a) may conduct its review without a meeting.~~

~~(d) The department shall administer tests and other assessment materials as may be needed to produce the data identified under subsection (b).~~

~~(e) If the determination under subsection (b)(1) 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:~~

~~(1) Of that determination and the reasons for it; and~~

~~(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.~~

~~(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 with a disability unless requested to do so by the student's parent.~~

~~(g) If the determination under subsection (b) is that no additional data are needed and the student's parent does not request an assessment under subsection (e)(2), nothing in this section shall be construed to prohibit the Section 504 team from proceeding to:~~

~~(1) Determine eligibility in accordance with sections 8-53-12 to 8-53-14 if the requirement of notice under sections 8-53-16 and 8-53-23 are met and the participants required under section 8-53-13 are present; or~~

~~(2) Develop the student's Section 504 modification plan if the requirements of notice under sections 8-53-16 and 8-53-23 are met and if the participation requirements under sections 8-53-15 and 8-53-17 are met; or~~

~~(3) Determine the placement of the student if the requirements of notice under sections 8-53-16 and 8-53-23 are met and the~~

~~participants under section 8-53-21 are present. [Eff 4/17/95; am and comp 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.35)~~

~~§8-53-10 Assessment. The department shall ensure that:~~

~~(1) Tests and other materials used to assess a student have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by the producer;~~

~~(2) Tests and other materials used to assess a student include those tailored to assess specific areas of educational need and not merely those which are designed to provide a general intelligence quotient; and~~

~~(3) Tests are selected and administered so as to best ensure that when 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 factor the test purports to measure rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). [Eff 4/17/95; am and comp 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.35(b))~~

~~§8-53-11 Reevaluation. (a) The department shall ensure that a reevaluation of each student, in accordance with section 8-53-9 on the determination of needed assessment data and section 8-53-10 on assessment is conducted if conditions warrant a reevaluation, including prior to a significant change in placement, or if the student's parent or teacher requests a reevaluation, but at least once every three years:~~

~~(b) The results of any reevaluations shall be addressed by the student's Section 504 team in reviewing, and, as appropriate, revising the student's Section 504 modification plan. [Eff 4/17/95; am and comp 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.35(d))~~

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#### ~~SUBCHAPTER 4~~

#### ~~ELIGIBILITY CRITERIA~~

~~§8-53-12 Definitions. As used in this subchapter:~~

~~"Major life activity" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~

~~"Physical or mental impairment" means:~~

~~(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito urinary; hemic and lymphatic; skin and endocrine; or~~

~~(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §705(20); 34 C.F.R. §104.3)~~

~~§8-53-13 Eligibility. (a) The determination of whether a student qualifies as a student with a disability shall be made on the basis of an evaluation that meets the requirements of sections 8-53-7 to 8-53-11, by a team of qualified professionals and the parent, and the student shall meet all of the following criteria:~~

~~(1) The student has:~~

~~(A) A physical or mental impairment which substantially limits one or more major life activities;~~

~~(B) A record of such an impairment; or~~

~~(C) Is regarded as having such an impairment.~~

~~(2) Because of the disability described in paragraph (1), the student needs the provision of regular or special education and related~~

~~aids and services that are designed to meet the student's educational needs as adequately~~

~~as the needs of students without a disability are met; and~~

~~(3) The student comes within the following age ranges:~~

~~(A) At least five years of age in accordance with HRS Sections 302A 411 and 302A 1131 to eighteen years of age in accordance with HRS Section 302A 1132; and~~

~~(B) For students in the age ranges three to five and eighteen to twenty, those students with a disability who are also eligible as students with a disability in accordance with chapter 8 56 15.~~

~~(b) For a student with a disability eligible under subsection (a) (1) (B) or subsection (a) (1) (C) as having only a record of or being regarded as having a disability, the department shall not be required to identify, evaluate or provide a free appropriate public education in accordance with this chapter. The student shall be protected against discrimination on the basis of the perceived disability as set forth in section 8 53 3.~~

~~(c) For a student with a disability eligible under subsection (a) (1) (A) who because of the disability needs the provision of special education, the department shall provide written notice to the parent pursuant to section 8 53 6(b) (3) of the proposal to further evaluate and/or determine eligibility under chapter 8 56 if the student is suspected of being eligible as a student with a disability under that chapter. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §§302A 411, 302A 1131, 302A 1132; 29 U.S.C. §705(20); 34 C.F.R. §§104.3, 104.35(a))~~

~~§8 53 14 Exclusions. (a) For purposes of this chapter, a student with a disability shall not include an individual excluded under Section 504 (29 U.S.C. Section 705), including a student who is currently engaging in the illegal use of drugs, when the department acts on the basis of such use.~~

~~(b) Nothing in subsection (a) shall be construed to exclude a student who:~~

~~(1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;~~

~~(2) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or~~

~~(3) Is erroneously regarded as engaging in such use, but is not engaging in such use.~~

~~(c) Notwithstanding subsection (a), a student who is otherwise eligible as a student with a disability under sections 8-53-12 and 8-53-13 shall be covered under this chapter when the department acts on the basis of the covered disability. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §705(20); 34 C.F.R. §104.3)~~

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~~SUBCHAPTER 5~~

~~SECTION 504 MODIFICATION PLAN~~

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~~§8-53-15 Section 504 team. The department shall ensure that the Section 504 team for each student with a disability is a group of persons including:~~

~~(1) Persons knowledgeable about the student, the meaning of the student's evaluation data, and the placement options;~~

~~(2) The parent of the student; and~~

~~(3) The student, if appropriate. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.33(c))~~

~~§8-53-16 Parent participation. (a) The department shall take steps to ensure that one or both of the parents of a student with a disability are afforded the opportunity to participate in developing, reviewing and revising the student's Section 504 modification plan, including contacting the parent to inform the parent of the opportunity to participate in developing, reviewing and revising the student's Section 504 modification plan early enough to ensure that the parent will have an opportunity to participate.~~

~~(b) If a meeting is conducted pursuant to section 8-53-17(c) to develop, review and revise the student's Section 504 modification plan, the department shall:~~

~~(1) Notify the parent of the meeting and the purpose of the meeting early enough to ensure that the parent will have an opportunity to attend;~~

~~(2) Provide the parent with a notice before the meeting indicating the purpose, time, and location of the meeting and who will be in attendance; and~~

~~(3) Schedule the meeting at a mutually agreed upon time and place.~~

~~(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) If neither parent can attend a meeting conducted pursuant to section 8-53-17(c), the department shall use other methods to ensure parent participation, including individual or conference telephone calls.~~

~~(e) A meeting to develop, review and revise the student's Section 504 modification plan 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.~~

~~(f) 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.~~

~~(g) The department shall give the parent a copy of the Section 504 modification plan at no cost to the parent and, upon request, a copy of the record of notice required under subsections (a), (b), and (c). [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~



~~§8-53-17 Section 504 modification plan meetings and timelines. (a) As used in this section, the phrase "within a reasonable period of time" means within 60 days, except when exceptional circumstances cause a delay.~~

~~(b) The Section 504 team may develop, review and revise the Section 504 modification plan for a student with a disability without a meeting if:~~

~~(1) The Section 504 team members provide written recommendations concerning the contents of the plan in accordance with section 8-53-18; and~~

~~(2) The department provides the Section 504 team members a copy of the proposed plan developed or revised based on the team member's recommendations, and an opportunity to agree or disagree with the proposed plan;~~

~~(c) If one or more of the Section 504 team members believe a meeting is necessary for the purpose of developing, reviewing and revising the Section 504 modification plan of a student with a disability, the department shall initiate and conduct the meeting.~~

~~(d) The department shall ensure that within a reasonable period of time following the receipt of parental consent to the initial assessment or, within a reasonable period of time following the date of a determination under section 8-53-9 that no additional assessment data is needed:~~

~~(1) The student is assessed, as necessary; and~~

~~(2) If determined eligible under section 8-53-13, a free appropriate public education is made available to the student in accordance with a Section 504 modification plan.~~

~~(e) The Section 504 modification plan shall be reviewed periodically as conditions warrant, but not less than annually.~~

~~(f) If for an individual student, exceptional circumstances cause a delay in meeting the requirements of subsection (d), the parent of the student with a disability shall be given a written notice:~~

~~(1) Informing the parent of the delay;~~

~~(2) Describing the reason for the delay; and~~

~~(3) Informing the parent of the date for a free appropriate public education being made available to the student in accordance with a Section 504 modification plan.~~

~~(g) A copy of the written notice required in subsection (f) shall be maintained in the student's educational records.~~

~~(h) The parent may file a complaint in accordance with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§705, 794; 34 C.F.R. Part 35) regarding an alleged violation of the requirements of this section. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §§104.33 to 104.36)~~

~~§8 53 18 Section 504 modification plan. (a) In developing each student's Section 504 modification plan, the team shall consider:~~

~~(1) The strengths of the student and the concerns of the parent for enhancing the education of the student; and~~

~~(2) The results of the initial or most recent evaluation of the student.~~

~~(b) The Section 504 modification plan for a student with a disability who requires only modifications to or accommodations in regular education to ensure access to an education shall include:~~

~~(1) A statement of the evaluation data that establishes the student's present level of educational need;~~

~~(2) A statement of the modifications or accommodations to be provided on behalf of the student; and~~

~~(3) The projected date for the beginning of the services and the anticipated frequency, location, and duration of those services.~~

~~(c) The Section 504 modification plan for a student with a disability who requires special education and/or related services shall include:~~

~~(1) A statement of the student's present levels of educational performance;~~

~~(2) A statement of measurable annual goals, including benchmarks or short-term objectives;~~

~~(3) A statement of the special education and/or related services to be provided to the student;~~

~~(4) The projected date for the beginning of the services and the anticipated frequency, location, and duration of those services; and~~

~~(5) A statement of how the student's progress toward the annual goals will be measured. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §§104.33 to 104.35)~~

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~~SUBCHAPTER 6~~

~~EDUCATIONAL SETTING AND PLACEMENT~~

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~~§8-53-19 Educational setting. (a) The department shall ensure that a continuum of alternative placements is available to meet the needs of students with a disability under this chapter. (b) The department shall:~~

~~(1) Provide for the education of a student with a disability with students without a disability to the maximum extent appropriate to the needs of the student with a disability; and~~

~~(2) Place a student with a disability in the regular educational environment unless it is demonstrated by the department that the education including special education if necessary, of the student with a disability in the regular educational environment with the use of supplementary aids and services cannot be achieved satisfactorily.~~

~~(c) Whenever the department places a student with a disability in a setting other than the regular educational environment pursuant to subsection (b), the department shall take into account the proximity of the alternate setting to the student's home.~~

~~(d) In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services set forth in section 8-53-20(b), the department shall ensure that students with a disability participate with students without a disability to the maximum extent appropriate to the needs of the student with a disability. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §§104.34, 104.35(c), 104.37)~~

~~§8-53-20 Nonacademic and extracurricular services. (a) The department shall provide nonacademic and extracurricular services and activities~~

~~in such a manner as is necessary to afford students with a disability an equal opportunity to participate in such services and activities.~~

~~(b) Nonacademic and extracurricular services and activities may include:~~

~~(1) Counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the department,~~

~~(2) Referrals to agencies which provide assistance to students with a disability; and~~

~~(3) Employment of students, including both employment by the department and assistance in making available outside employment. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.37)~~

~~§8 53 21 Placement. (a) The department shall ensure that:~~

~~(1) The placement decision 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;~~

~~(2) The placement decision is made in conformity with section 8 53 8 on evaluation;~~

~~(3) The student with a disability is educated with students without a disability to the maximum extent appropriate to the needs of the student with a disability, and consistent with the requirements of section 8 53 19 on educational setting; and~~

~~(4) The placement of the student with a disability is made as soon as possible after the development of the Section 504 modification plan.~~

~~(b) This chapter does not require the department to pay for the cost of education, including regular education or special education and related aids and services, of a student with a disability at a private school or facility if the department made a free appropriate public education available to the student and the parent elected to place the student in a private school. Disagreements between a parent and the department regarding the availability of a program appropriate for the student, and the question of financial responsibility, are subject to the due process procedures of sections 8 53 22 to 8 53 34. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §§104.34, 104.35)~~

~~SUBCHAPTER 7~~

~~PROCEDURAL SAFEGUARDS~~

~~§8-53-22 General responsibility. The department shall provide each student with a disability and the student's parent the procedural safeguards set forth in sections 8-53-23 to 8-53-40. [Eff 4/22/2000] (Auth: 8-53-23 HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-23 Prior notice by the department; content of notice. (a) Written notice shall be given to the parent of a student with a disability a reasonable time before the department:~~

~~(1) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student; or~~

~~(2) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.~~

~~(b) If the notice described under subsection (a) relates to an action proposed by the department that also requires parental consent under section 8-53-25, the department may give notice at the same time it requests parent consent. [Eff 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-24 Procedural safeguards notice. (a) A copy of the procedural safeguards available to the parent of a student with a disability shall be given to the parent, at a minimum:~~

~~(1) Upon initial referral for evaluation;~~

~~(2) Upon giving the parent a written notice for any purpose under section 8-53-23(a); and~~

~~(3) Upon receipt of a request for due process under section 8-53-27.~~

~~(b) The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available under sections 8-53-23 to 8-53-40 relating to:~~

~~(1) Prior written notice;~~

~~(2) Parental consent;~~

~~(3) The parent's right to examine relevant records in accordance with chapter 8-34;~~

~~(4) The student's placement during pendency of due process proceedings;~~

~~(5) Discipline;~~

~~(6) Mediation;~~

~~(7) Due process hearings; and~~

~~(8) Civil actions. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-25 Parental consent. (a) Parental consent shall be obtained before:~~

~~(1) Conducting an initial evaluation involving the administration of tests or other assessment materials pursuant to section 8-53-10; and~~

~~(2) The initial provision of special education or related services to a student with a disability.~~

~~(b) Consent for initial evaluation under subsection (a) (1) may not be construed as consent for initial placement under subsection (a) (2).~~

~~(c) Parental consent is not required before:~~

~~(1) Reviewing existing data as part of an evaluation;~~

~~(2) Reevaluation;~~

~~(3) The provision of only modifications to or accommodations in regular education for a student with a disability to ensure access to an education; or~~

~~(4) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.~~

~~(d) If a parent revokes consent, the revocation of consent shall be effective on the date the department receives notice of the~~

~~revocation, and does not negate an action that occurred after consent was given, but before receipt of the notice of revocation.~~

~~(e) The department may not use a parent's refusal to consent to an initial evaluation or placement under subsection (a) to deny the parent or the student any other service, benefit, or activity of the department, except as required in this chapter. [Eff 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112, 29 U.S.C. §794, 34 C.F.R. §104.36)~~

~~§8-53-26 Mediation. (a) Parties to disputes are encouraged to seek resolution through mediation. The mediation process is intended to be an informal process conducted in a nonadversarial atmosphere to resolve issues relating to the identification, evaluation, or educational placement of a student with a disability or the provision of a free appropriate public education to the student. (b) The department shall offer mediation to parties to disputes involving any matter described in section 8-53-23(a) to allow the parties to resolve the disputes whenever a hearing is requested under sections 8-53-27 or 8-53-39.~~

~~(c) The department shall ensure the mediation process:~~

~~(1) Is voluntary on the part of the parties;~~

~~(2) Is not used to deny or delay a parent's right to a due process hearing under section 8-53-27 or to deny any other right afforded under this chapter or section 8-53-39; and~~

~~(3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.~~

~~(d) A party's participation in a mediation conference shall not be a prerequisite to the right to a due process hearing under sections 8-53-27 or 8-53-39.~~

~~(e) Each session in the mediation process shall include the party or party representative with the authority to resolve the issues which are the basis for the request for a hearing under sections 8-53-27 or 8-53-39. (f) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.~~

~~(g) An agreement by the parties to the dispute in the mediation process shall:~~

~~(1) Be to the satisfaction of both parties;~~

~~(2) Not conflict with state or federal law; and~~

~~(3) Be set forth in a written mediation agreement.~~

~~(h) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process shall be required to sign a confidentiality pledge prior to the commencement of the process.~~

~~(i) If the mediation process fails to resolve the issue or issues to the satisfaction of the parties, the mediator may assist the party requesting the hearing to identify the precise issue or issues to be heard in the due process hearing and the relief the party is seeking.~~

~~(j) An individual who serves as a mediator under this section:~~

~~(1) May not be an employee of the department;~~

~~(2) Shall not have a personal or professional conflict of interest;~~

~~and(3) Is not an employee of the department solely because the mediator is paid by the department to serve in that capacity. (k) The department shall:~~

~~(1) Maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of services under Section 504 and this chapter;~~

~~(2) Ensure the mediation process is at no cost to the parent; and~~

~~(3) Select the mediator on a random (e.g., a rotation) basis from the list described in paragraph (1).~~

~~(1) Notwithstanding the procedures for mediation set forth in this section, the department and the parent may meet informally at any time to resolve any issue or issues through facilitation or conciliation. Such facilitation or conciliation:(1) Shall be voluntary, and may not deny or delay a parent's right to a due process hearing under sections 8-53-27 or 8-53-39 or deny any other right afforded under this chapter or section 8-53-39; and~~

~~(2) Shall be at no cost to the parent. An agreement reached by the parties through facilitation or conciliation shall be to~~



~~the satisfaction of both parties, meet the standards and include the participants required to make the decision in accordance with sections 8-53-7 to 8-53-14; 8-53-15 to 8-53-18; and 8-53-19 to 8-53-21. [Eff 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-27 Impartial due process hearing. (a) A parent or the department may initiate a hearing on any of the matters described in section 8-53-23(a) (relating to the identification, evaluation or educational placement of a student with a disability, or the provision of a free appropriate public education to the student).~~

~~(b) The department shall inform the parent of any free or low cost legal and other relevant services available in the area.~~

~~(c) Upon receipt of a request for a due process hearing, the department shall:~~(1) ~~Notify the parties of:~~

~~(A) The receipt of the request for a hearing;~~

~~(B) The date by which the decision must be rendered and mailed to meet the timelines set forth in section 8-53-31; and~~

~~(C) The selection process for the impartial hearing officer and contact information.~~

~~(2) Inform the parent of the availability of mediation described in section 8-53-26;~~

~~(3) Provide the notice of procedural safeguards to the parents in accordance with section 8-53-24; and~~

~~(4) Inform the parent of the availability of an interpreter, if needed. (d) The department shall be responsible for the conduct of the hearing described in subsection (a). [Eff 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-28 Notice of request for a hearing. (a) All requests for a due process hearing shall be filed in writing with the district superintendent of the student's district of enrollment. The party initiating a due process hearing shall provide the other party to the hearing with a copy of the request at the same time as the request is filed with the district superintendent.~~

~~(b) The party or party representative initiating the due process hearing shall provide notice (which shall remain confidential) in the~~

~~request for a hearing under subsection (a). The notice required in this subsection shall include:~~

~~(1) The name of the student;~~

~~(2) The address of the residence of the student;~~

~~(3) The name of the school the student is attending;~~

~~(4) A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and~~

~~(5) A proposed resolution of the problem except, for the parent, the proposed resolution to the extent known and available to the parent at the time.~~

~~(c) The department shall provide a model form, upon request, to the parent to assist the parent in filing a request for a due process hearing that includes the information required in subsection (b).~~

~~(d) The department may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in subsection (b). [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-29 Impartial hearing officer. (a) A hearing may not be conducted:~~

~~(1) By a person who is an employee of the department or any state agency that is involved in the education or care of the student; or~~

~~(2) By any person having a personal or professional interest that would conflict with the person's objectivity in the hearing.~~

~~(b) A person who otherwise qualifies to conduct a hearing under subsection (a) is not an employee of the department solely because the person is paid by the department to serve as the hearing officer.~~

~~(c) The department shall keep a list of the persons who serve as hearing officers. The list shall include a statement of the qualifications of each of those persons. [Eff 4/22/2000] (Auth: HRS 8-53-30~~

~~§302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-30 Pre-hearing and hearing. (a) The hearing officer shall conduct a pre hearing conference. The hearing officer may conduct all or part of the pre hearing conference by telephone if both parties or party representatives have an opportunity to participate in and to hear the entire proceeding while it is taking place. The pre hearing conference shall include the identification of the precise issues to be heard under section 8-53-27(a).~~

~~(b) Hearings conducted pursuant to section 8-53-27 shall not be conducted according to the technical rules of evidence and those related to witnesses. All testimony shall be under oath or affirmation which the hearing officer is empowered to administer.~~

~~(c) Any party to a hearing conducted pursuant to section 8-53-27 has the right to:~~

~~(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with a disability;~~

~~(2) Present evidence and confront, cross examine, and compel the attendance of witnesses;~~

~~(3) Obtain a written or electronic verbatim record of the hearing; and (4) Obtain written findings of fact and decision.~~

~~(d) Prior to a hearing conducted pursuant to section 8-53-27, each party shall disclose to all other parties all evidence that the party intends to introduce at the hearing within a reasonable period of time prior to the hearing.~~

~~(e) A hearing officer may bar any party that fails to comply with subsection (d) from introducing the relevant evidence at the hearing without the consent of the other party.~~

~~(f) The parent involved in the hearings shall be given the right to:~~

~~(1) Have the student who is the subject of the hearing present;~~

~~(2) Open the hearing to the public; and.~~

~~(3) Receive the record of the hearing and the findings of fact and decision described in subsection (c) (3) and subsection (c) (4) at no cost to the parent. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-31 Timelines and convenience of hearings. (a) The department shall ensure that not later than forty five days after the receipt of a request for a hearing:~~

~~(1) A final decision is reached in the hearing; and~~

~~(2) A copy of the decision is mailed to each of the parties.~~

~~(b) A hearing officer may grant for good cause specific extensions of time beyond the period set out in subsection (a) at the request of either party. Any extension shall be documented in writing and extend the time for rendering a final decision for a period only equal to the length of the extension.~~

~~(c) Each hearing shall be conducted at a time and place that is reasonably convenient to the parent and the student involved. [Eff 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-32 Civil action. (a) A decision made in a hearing conducted pursuant to sections 8-53-27 or 8-53-39 is final, except that any party involved in such hearing may appeal such decision under subsection (b).~~

~~(b) Any party aggrieved by the findings and decision made under sections 8-53-27 or 8-53-39 has the right to bring a civil action within thirty days of the receipt of the findings and decision with respect to the complaint presented pursuant to sections 8-53-27 or 8-53-39. [Eff 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-33 Student's status during proceedings. (a) Except as provided in section 8-53-39(g) on discipline, during the pendency of any administrative or judicial proceeding regarding a complaint under section 8-53-27, unless the department and the parent of the student agree otherwise, the student involved in the complaint shall remain in the current educational placement.~~

~~(b) If the complaint involves an application for initial admission to public school, the student, with the consent of the parent, shall be placed in the public school until the completion of all of the proceedings. [Eff 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-34 Surrogate parents. (a) The department shall ensure that the rights of a student are protected when:~~

~~(1) No parent can be identified;~~

~~(2) The department, after reasonable efforts, cannot discover the whereabouts of a parent; or~~

~~(3) The student is a ward of the State under the laws of the State.~~

~~(b) The department shall ensure that a person selected as a surrogate:~~

~~(1) Is not an employee of the department, or any other agency that is involved in the education or care of the student, except that an individual who is an employee of a private agency that only provides non-educational care for the student and who meets the standards in this subsection may be selected; (2) Has no interest that conflicts with the interest of the student the surrogate parent represents; and (3) Has knowledge and skills that ensure adequate representation of the student.~~

~~(c) A person who otherwise qualifies to be a surrogate parent under subsection (b) is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.~~

~~(d) The surrogate parent may represent the student in all matters relating to:~~

~~(1) The identification, evaluation, and educational placement of the student; and~~

~~(2) The provision of a free appropriate public education to the student. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: HRS §302A 1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

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## ~~SUBCHAPTER 8~~

### ~~DISCIPLINE~~

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~~§8-53-35 General requirements. (a) The following general requirements apply in disciplinary action that results in or could result in the removal of a student with a disability from the student's current educational placement.~~

~~(b) Disciplinary action that results in the suspension, including crisis suspension, or other removal of a student with a disability from the student's current educational placement for ten consecutive school days or fewer at a time or for each series of short-term suspensions, including crisis suspension, or removals for ten cumulative school days or fewer in a given school year:~~

~~(1) Is not considered a change in placement and subject to the requirements of this subchapter or sections 8-53-11 and 8-53-21.~~

~~(2) Shall be in accordance with chapter 8-19.~~

~~(c) Disciplinary action that results in the suspension, including crisis suspension, or other removal of a student with a disability from the student's current educational placement for more than ten consecutive school days at a time or for each series of short-term suspensions, including crisis suspension, or removals for more than ten cumulative school days in a given school year:~~

~~(1) Is a change of placement, and shall be in accordance with sections 8-53-11 and 8-53-21; or~~

~~(2) Shall be in accordance with this subchapter and chapter 8-19, including the procedures and standards for regular school discipline if the student is referred for discipline after the requirements of this subchapter are met. [Eff 4/22/2000] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §302A-1101; 29 U.S.C. §794; 34 C.F.R. §§104.35(a) to 104.36)~~

~~§8-53-36 Authority of school personnel. (a) School personnel may order: (1) Disciplinary action that results in the suspension, including crisis suspension, or other removal of a student with a disability from the student's current educational placement for not more than ten consecutive school days at a time or for not more than ten cumulative school days for each series of short-term suspensions, including crisis suspension, or removals in a given school year for any violation of school rules:~~

~~(A) To the extent the suspension or other removal would be applied to students without a disability under chapter 8-19; and~~

~~(B) Consistent with the authority and procedures in chapter 8-19; and~~

~~(2) A change in placement of a student with a disability to an appropriate interim alternative educational setting, if authorized~~

~~under Section 504. The interim alternative educational setting shall be determined by the Section 504 team.~~

~~(b) School personnel shall not order the suspension, including crisis suspension, or other removal of a student with a disability from the student's current educational placement for disciplinary reasons if that suspension or removal is for more than ten consecutive school days at a time or for more than ten cumulative school days for each series of short term suspensions, including crisis suspension, or removals in a given school year unless:~~

~~(1) The disciplinary action pertains to the use or possession of illegal drugs or alcohol against any student with a disability who currently is engaging in the illegal use of drugs or in the~~

~~use of alcohol. Such disciplinary action may be taken to the same extent that disciplinary action is taken against students without a disability pursuant to chapter 8-19. The 8-53-36~~

~~procedural safeguards set forth in subchapter 7 and sections 8-53-37 to 8-53-39 shall not apply to such disciplinary action; except that students with a disability who are also eligible as students with a disability in accordance with chapter 8-56-15 shall be afforded all of the procedural safeguards under chapter 8-56; or~~

~~(2) The removal to an interim alternative educational setting is authorized under subsection (a) (2) or section 8-53-39(b); or~~

~~(3) The Section 504 modification plan team determines, for suspensions or disciplinary removals for more than ten consecutive school days at a time or for each series of short-term suspensions for more than ten cumulative school days in a given school year that the behavior is not a manifestation of the disability in accordance with section 8-53-37;~~

~~(4) The change in placement:~~

~~(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 in accordance with section 8-53-21;~~

~~(B) Is in accordance with the procedural safeguards in sections 8-53-22 to 8-53-34 and includes the provision of a prior written notice to the parent of the student with a disability under section 8-53-23 of the proposed or refused change of placement and the parent~~

~~does not request a hearing pursuant to section 8-53-27(a); and (C) Provides a free appropriate public education to the student; or (5) The basis for a crisis suspension pursuant to chapter 8-19 exists, and school personnel determine that the crisis suspension, together with the previous days of suspension and disciplinary removal, does not subject the student with a disability to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals one to another.~~

~~(c) If school personnel determine the authority for a crisis suspension exists pursuant to paragraph (b) (5):~~

~~(1) The crisis suspension shall be in accordance with chapter 8-19-7, including the student's right to resume attendance at school as soon as the exclusion pursuant to chapter 8-19-7(a) is no longer necessary;~~

~~(2) The student with a disability shall be provided substitute educational activities in accordance with chapter 8-19-11 during the period of the crisis suspension except as provided under section 8-56-84(c) (2) for students with a disability under chapter 8-56;~~

~~(3) If the student's parent disagrees with the determination under subsection (b) (5), the parent may request a hearing pursuant to section 8-53-39. For purposes of section 8-53-33 on the student's status during the proceedings, the current placement is the substitute educational activities provided in accordance with subsection (c) (2) until the end of the crisis suspension, at which time the student shall resume attendance at school; and~~

~~(4) For purposes of subsequent disciplinary action, the school days of crisis suspension shall be included as days of suspension under section 8-53-35(c). Nothing in this paragraph prohibits a student from being the subject of a subsequent crisis suspension in a given school year if the requirements of chapter 8-19, subsection (b) (5), and this subsection are met. [Eff 4/22/2000] (Auth: HRS §302A 1112) (Imp: Hawaii Const. Art. X, §3; HRS §302A 1101; 29 U.S.C. §794; 34 C.F.R. §§104.35(a) to 104.36)~~

~~§8-53-37 Manifestation determination review. (a) If an action is contemplated involving the removal of a student with a disability from the student's current educational placement under section 8-53-36(a) (2) or involving the suspension or other removal of a student with a disability from the student's current educational~~



~~placement for disciplinary reasons for more than ten consecutive school days at a time or for each series of short term suspensions for more than ten cumulative school days in a given school year for engaging in other behavior that violated any rule or code of conduct of the department that applies to all students:~~

~~(1) Not later than the date on which the decision to take that action is made, the parent shall be notified of that decision and provided the procedural safeguards notice described in section 8-53-24;~~

~~(2) Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.~~

~~(b) If a student with a disability is suspended or removed for disciplinary reasons from the student's current educational placement for ten consecutive days or fewer at a time or for each series of short term suspensions for ten cumulative school days or fewer in a given school year, the review in subsection (a) need not be conducted.~~

~~(c) The review described in subsection (a) shall be conducted by the Section 504 team as set forth in section 8-53-15 and other qualified personnel in a meeting.~~

~~(d) In carrying out a review described in subsection (a), the Section 504 team and other qualified personnel may determine that the behavior of the student was not a manifestation of the student's disability only if the team:~~

~~(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:~~

~~(A) Evaluation and diagnostic results, including the results or other relevant information supplied by the parent of the student;~~

~~(B) Observations of the student; and~~

~~(C) The student's Section 504 modification plan and placement; and~~

~~(2) Then determine that:~~

~~(A) In relationship to the behavior subject to disciplinary action, the student's modification plan and placement were appropriate and the services and~~

~~strategies were provided consistent with the student's modification plan and placement;~~

~~(B) The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and~~

~~(C) The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.~~

~~(e) If the Section 504 team and other qualified personnel determine that any of the standards in subsection (d) (2) were not met, the behavior shall be considered a manifestation of the student's disability.~~

~~(f) If in the review in subsections (c) and (d), the Section 504 team identify deficiencies in the student's Section 504 modification plan or placement or in their implementation, the department shall take immediate steps to remedy those deficiencies. [Eff 4/22/2000] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §302A-1101; 29 U.S.C. §794; 34 C.F.R. §§104.35(a) to 104.36)~~

~~§8-53-38 Determination that behavior was not manifestation of disability. If the result of the review described in section 8-53-37 is a determination, consistent with section 8-53-37(c), that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without a disability under chapter 8-19 may be applied to the student in the same manner in which they would be applied to students without a disability except as provided in section 8-56-3 for students with a disability who are also eligible as a student with a disability under chapter 8-56. [Eff 4/22/2000] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)~~

~~§8-53-39 Expedited due process hearing. (a) If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under this subchapter, the parent may request a hearing pursuant to section 8-53-27.~~

~~(b) If maintaining the current placement of the student with a disability is substantially likely to~~

~~result in injury to the student or others, the department may request a hearing pursuant to section 8-53-27 to seek an order to change the~~

~~placement of a student with a disability to an interim alternative educational setting, if authorized under Section 504.~~

~~(c) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the department has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of section 8-53-37(e).~~

~~(d) The department shall arrange for an expedited hearing in any case described in this section. The expedited hearing shall:~~

~~(1) Be requested in accordance with section 8-53-28;~~

~~(2) Meet the requirements of sections 8-53-27(b) to (d), 8-53-30 and 8-53-31(e);~~

~~(3) Result in a written decision being mailed to the parties within forty five days of the department's receipt of the request for the hearing, without exceptions or extensions. The hearing officer may set a shorter timeline for the issuance of the decision at the pre hearing conference at the request of either party; and~~

~~(4) Be conducted by a hearing officer who satisfies the requirements of section 8-53-29.~~

~~(e) The department shall be responsible for the conduct of an expedited due process hearing. The timeline under subsection (d) (3) shall be the same for hearings requested by parents or the department.~~

~~(f) A decision made in a hearing conducted pursuant to this section is final, except that any party involved in such hearing may appeal such decision under section 8-53-32.~~

~~(g) If a parent requests a hearing pursuant to subsection (a) and the student has been placed in an interim alternative educational setting in accordance with section 8-53-36(a)(2) or subsection (b):~~

~~(1) The student shall remain in the interim alternative educational setting pending the decision of the hearing officer; or~~

~~(2) Until the expiration of the authorized time period, whichever occurs first, unless the parent and the department agree otherwise or the hearing officer orders continued placement in the interim alternative educational setting in accordance with Section 504. [Eff~~

~~4/22/2000] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §302A-1101; 29 U.S.C. §794; 34 C.F.R. §§104.35(a) to 104.36)~~

~~§8-53-40 Protections for students not yet eligible for services under Section 504 and this chapter. (a) A student who has not been determined to be eligible under this chapter and who has engaged in behavior that violated any rule or code of conduct of the department may assert any of the protections provided for in this chapter if the department had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.~~

~~(b) If the department did not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without a disability who engaged in comparable behaviors consistent with subsection (c).~~

~~(c) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under sections 8-53-36, the evaluation shall be conducted in an expedited manner except as required in section 8-19-11 on substitute educational services.~~

~~(1) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or dismissal without educational services. (2) If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the department and information provided by the parent, the department shall provide a free appropriate public education in accordance with the provisions of this chapter. [Eff 4/22/2000] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §302A-1101; 29 U.S.C. §794; 34 C.F.R. §§104.35(a) to 104.36)~~