

Hawai'i Administrative Rules  
TITLE 8  
DEPARTMENT OF EDUCATION  
SUBTITLE 2  
EDUCATION  
CHAPTER 60 PROVISION OF A FREE APPROPRIATE PUBLIC  
EDUCATION FOR A STUDENT WITH A DISABILITY

**§8-60-61 Filing a due process complaint.** (a) General. (1) A parent or the department may file a due process complaint on any of the matters described in sections 8-60-58(a)(1) and (2) (relating to the identification, evaluation or educational placement of a student with a disability, or the provision of FAPE to the student).

(2) The due process complaint shall allege a violation that occurred not more than two years before the date the parent or department knew or should have known about the alleged action that forms the basis of the due process complaint, or, within the timeframe specified in state statute for a unilateral special education placement, where the request is for reimbursement of the costs of the placement, including special education and related services. The unilateral special education placement timeframe begins on the student's first day of attendance.

(b) Information for parents. The department shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the department files a due process complaint under this section. [Eff ] (Auth: 20 U.S.C. 1415(b)(6), HRS §302A-1112) (Imp: 34 C.F.R. §300.507,HRS §302A-443)

**§8-60-62 Due process complaint.** (a) General. (1) The department shall have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which shall remain confidential).

(2) The party filing a due process complaint shall submit a copy of the due process complaint to the department.

(b) Content of complaint. The due process complaint required in paragraph (1) 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) In the case of a homeless student or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending;

- (5) 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
- (6) A proposed resolution of the problem to the extent known and available to the party at the time.
- (c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of subsection (b).
- (d) Sufficiency of complaint. (1) The due process complaint required by this section shall be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in subsection (b).
  - (2) Within five days of receipt of notification under paragraph (1), the hearing officer shall make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of subsection (b), and shall immediately notify the parties in writing of that determination.
  - (3) A party may amend its due process complaint only if:
    - (A) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to section 8-60-64; or (B) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
  - (4) If a party files an amended due process complaint, the timelines for the resolution meeting in section 8-60-64(a) and the time period to resolve in section 8-60-64(b) begin again with the filing of the amended due process complaint.
- (e) Department response to a due process complaint. (1) If the department has not sent a prior written notice under section 8-60-58 to the parent regarding the subject matter contained in the parent's due process complaint, the department shall, within 10 days of receiving the due process complaint, send to the parent a response that includes:
  - (A) An explanation of why the department proposed or refused to take the action raised in the due process complaint;
  - (B) A description of other options that the IEP Team considered and the reasons why those options were rejected;
  - (C) A description of each evaluation procedure, assessment, record, or report the department used as the basis for the proposed or refused action; and

- (D) A description of the other factors that are relevant to the department's proposed or refused action.
- (2) A response by the department under paragraph (1) shall not be construed to preclude the department from asserting that the parent's due process complaint was insufficient, where appropriate.
- (f) Other party response to a due process complaint. Except as provided in subsection (e), the party receiving a due process complaint shall, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint. [Eff ] (Auth: 20 U.S.C. 1415(b)(7), 1415(c)(2), HRS §302A-1112) (Imp: 34 C.F.R. §300.508)

**§8-60-63 Model forms.** (a) The department shall provide a model form to assist parents and public schools in filing a due process complaint in accordance with sections 8-60-61(a) and 8-60-62(a) through (c) and to assist parents and other parties in filing a State complaint under sections 8-60-52 through 8-60-54. However, the department may not require the use of the model forms.

(b) Parents, public schools, and other parties may use the appropriate model form described in subsection (a), or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in section 8-60-62(b) for filing a due process complaint, or the requirements in section 8-60-54(b) for filing a State complaint. [Eff ] (Auth: 20 U.S.C. 1415(b)(8), HRS §302A-1112) (Imp: 34 C.F.R. §300.509)

**§8-60-64 Resolution process.** (a) Resolution meeting. (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under section 8-60-65, the department shall convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that:

- (A) Includes a representative of the department who has decision-making authority on behalf of the department; and
  - (B) May not include an attorney of the department unless the parent is accompanied by an attorney.
- (2) The purpose of the meeting is for the parent of the student to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the department has the opportunity to resolve the dispute that is the basis for the due process complaint.
  - (3) The meeting described in paragraph (1) and (2) need not be held if:
    - (A) The parent and the department agree in writing to waive the meeting; or
    - (B) The parent and the department agree to use the mediation process described in section 8-60-60.

- (4) The parent and the department determine the relevant members of the IEP Team to attend the meeting.
- (b) Resolution period. (1) If the department has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.
  - (2) Except as provided in subsection (c), the timeline for issuing a final decision under section 8-60-69 begins at the expiration of this 30-day period.
  - (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (1) and (2), the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
  - (4) If the department is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in section 8-60-46(d)), the department may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.
  - (5) If the department fails to hold the resolution meeting specified in subsection (a) within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.
- (c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in section 8-60-69(a) starts the day after one of the following events:
  - (1) Both parties agree in writing to waive the resolution meeting;
  - (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
  - (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or department withdraws from the mediation process.
- (d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in subsections (a)(1) and (2), the parties shall execute a legally binding agreement that is:
  - (1) Signed by both the parent and a representative of the department who has the authority to bind the department; and
  - (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States.
- (e) Agreement review period. If the parties execute an agreement pursuant to subsection (d), a party may void the agreement within 3 business days of the agreement's

execution. [Eff ] (Auth: 20 U.S.C. 1415(f)(1)(B), HRS §302A-1112) (Imp: 34 C.F.R. §300.510)

**§8-60-65 Impartial due process hearing.** (a) General. Whenever a due process complaint is received under section 8-60-61 or section 8-60-77, the parents or the department involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the procedures in sections 8-60-61, 8-60-62, and 8-60-64.

- (b) The hearing described in subsection (a) shall be conducted by the department.
- (c) Impartial hearing officer. (1) At a minimum, a hearing officer:
  - (A) Shall not be:
    - (i) An employee of the department that is involved in the education or care of the student; or
    - (ii) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
  - (B) Shall possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;
  - (C) Shall possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
  - (D) Shall possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
- (2) A person who otherwise qualifies to conduct a hearing under paragraph (1) is not an employee of the department solely because he or she is paid by the department to serve as a hearing officer.
- (3) 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.
- (d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under section 8-60-62(b), unless the other party agrees otherwise.
- (e) 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 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 8-60-61(a).
- (f) Timeline for requesting a hearing. A parent or the department shall request an impartial hearing on their due process complaint within two years of the date the parent or the department knew or should have known about the alleged action that forms the basis of the due process complaint. The request for a due process hearing regarding reimbursement of

all costs of the private placement including special education and related services shall be filed within the timeframe specified by state statute.

(g) Exceptions to the timeline. The timeline described in subsection (f) does not apply to a parent if the parent was prevented from filing a due process complaint due to:

- (1) Specific misrepresentations by the department that it had resolved the problem forming the basis of the due process complaint; or
- (2) The department's withholding of information from the parent that was required to be provided to the parent. [Eff ] (Auth: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)-(D), HRS §302A-1112) (Imp: 34 C.F.R. §300.511)

**§8-60-66 Hearing rights.** (a) General. Any party to a hearing conducted pursuant to sections 8-60-61 through 8-60-67 or sections 8-60-75 through 8-60-79, or an appeal conducted pursuant to section 8-60-68, 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 disabilities;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
  - (A) The party initiating the due process complaint has the burden of proof.
  - (B) The burden of proof is the responsibility of the party initiating and seeking relief in an administrative hearing under the IDEA or this chapter is to prove, by a preponderance of the evidence, the allegations of the complaint.
- (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
- (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information. (1) At least five business days prior to a hearing conducted pursuant to section 8-60-65(a), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

- (2) A hearing officer may bar any party that fails to comply with paragraph (1) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in 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) Have the record of the hearing and the findings of fact and decisions described in subsections (a)(4) and (5) provided at no cost to parents. [Eff ] (Auth: 20 U.S.C. 1415(f)(2), 1415(h), HRS §302A-1112) (Imp: 34 C.F.R. §300.512)

**§8-60-67 Hearing decisions.** (a) Decision of hearing officer on the provision of FAPE. (1) Subject to paragraph (2), a hearing officer's determination of whether a student received FAPE shall be based on substantive grounds.

- (2) In matters alleging a procedural violation, a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies:
  - (A) Impeded the student's right to a FAPE;
  - (B) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's student; or
  - (C) Caused a deprivation of educational benefit.
- (3) Nothing in subsection (a) shall be construed to preclude a hearing officer from ordering the department to comply with procedural requirements under sections 8-60-56 through 8-60-81.
- (4) Following the placement of a student in a private school, for continued placement, the private school cannot be deemed an appropriate placement by the hearing officer unless the private school allows the department to exercise its responsibility to ensure the provision of a FAPE under sections 8-60-29 and 30.

(b) Separate request for a due process hearing. Nothing in sections 8-60-56 through 8-60-81 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(c) Findings and decision to advisory panel and general public. The department, after deleting any personally identifiable information, shall:

- (1) Transmit the findings and decisions referred to in section 8-60-66(a)(5) to the State advisory panel; and
- (2) Make those findings and decisions available to the public. [Eff ] (Auth: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o), HRS §302A-1112) (Imp: 34 C.F.R. §300.513)

**§8-60-68 Finality of decision; appeal.** A decision made in a hearing conducted pursuant to sections 8-60-61 through 8-60-67 or sections 8-60-75 through 8-60-79 is final, except that any party involved in the hearing may appeal the decision under the provisions of

section 8-60-70. [Eff ] (Auth: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2), HRS §302A-1112) (Imp: 34 C.F.R. §300.514)

**§8-60-69 Timelines and convenience of hearings and reviews.** (a) The department shall ensure that not later than 45 days after the expiration of the 30 day period under section 8-60-64(b), or the adjusted time periods described in section 8-60-64(c):

- (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, for good cause, grant specific extensions of time beyond the period set out in subsection (a) at the request of either party. Each extension shall be no more than 45 days.

- (1) The hearing officer shall consider the following factors before an extension is granted:
  - (A) The negative effects of extending the time in which a student's education is in abeyance;
  - (B) The requesting party's ability to have avoided the necessity for an extension;
  - (C) If the requesting party is the petitioner, whether the requesting party had an opportunity to adequately prepare before filing a hearing request;
  - (D) The negative effects denying the request for an extension;
  - (E) The intent of this chapter and federal laws to expedite an informal administrative proceeding; and
  - (F) Whether granting the extension will override the intent of the law in favor of the convenience of the parties.

- (2) Absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted. Agreement of the parties is not a sufficient basis for granting an extension.
- (3) The impartial hearing officer shall respond in writing to each request for an extension. The response shall include findings of fact and conclusions as to why good cause exists. The response shall become part of the record. The impartial hearing officer shall set a new date for rendering his or her decision, and notify the parties in writing of such date.

(c) Each hearing and each review involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parents and student involved. [Eff ] (Auth: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1), HRS §302A-1112) (Imp: 34 C.F.R. §300.515)