



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

OFFICE OF THE SUPERINTENDENT

June 18, 2020

TO: The Honorable Catherine Payne  
Chairperson, Board of Education

FROM: Dr. Christina M. Kishimoto  
Superintendent

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

1. RECOMMENDATION

The Hawaii State Department of Education (HIDOE) recommends approval of its revised proposed draft amendments to Hawaii Administrative Rules (HAR), Chapter 8-27 relating to Transportation of Students (copy attached for reference). Approval by the Board of Education (Board) is needed to enable HIDOE to proceed with public hearings on the matter.

2. RECOMMENDED EFFECTIVE DATE

To ensure compliance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and HAR, Chapters 60 and 61, HIDOE will be implementing the applicable revised requirements while pending approval.

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

Immediately.

4. DISCUSSION

a. Conditions leading to the recommendation:

On February 5, 2020, the Superintendent of Education received a letter from the United States Department of Education, Office of Special Education Programs (OSEP), requiring HIDOE to revise HAR, Chapter 8-27, to ensure that all students with disabilities who are eligible for transportation as a related service are provided

with transportation in order to receive a free appropriate public education (FAPE), including students with disabilities attending charter schools.

Under 34 C.F.R. §300-209(a), students with disabilities who attend charter schools and their parents retain all rights under IDEA. Further, states must have in effect policies and procedures to ensure that FAPE is available to all students with disabilities residing in the state (20 U.S.C. §1412(a)(1) and 34 C.F.R. §300.101). FAPE includes the provision of special education and related services at no cost to the parents in conformity with an Individualized Education Program (IEP) developed in accordance with 20 U.S.C. §1414(d) and 34 C.F.R. §§300.320 – 300.324, 20 U.S.C. Section 1401(9) and 34 C.F.R. §300.17. IDEA's definition of related services includes such transportation as may be required to assist a student with a disability to benefit from special education. 20 U.S.C. §1401(26)(A) and 34 C.F.R. §300.34(a); see also 34 C.F.R. §300.34(c)(16) (defining transportation as a related service).

Pursuant to the above federal provisions, HIDOE is required to amend HAR, Chapter 8-27, to clarify that transportation for students with disabilities shall be provided in accordance with a student's IEP or Section 504 plan.

Additionally, in Section 8-27-5(c), HIDOE is revising the effective month from July to January for consistency with the Internal Revenue Service effective dates. Typically, the annual IRS mileage rate change occurs on January 1 of each year.

HIDOE has made other housekeeping amendments throughout the document for consistency and clarity.

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

Other HAR, Chapter 8-27, amendments were approved by this Committee and the Full Board at the June 20, 2019 meeting.

- c. Other policies affected:

None.

- d. Arguments in support of the recommendation:

HIDOE is committed to serving all students and will amend its administrative rules and guidance to ensure that FAPE is available to eligible students with disabilities, including those students with disabilities attending charter schools.

- 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, HIDOE staff and/or others to the recommendation:

All stakeholders are expected to be in support of HIDOE's compliance with the requirements of IDEA, Section 504, and HAR, Chapters 60 and 61, for students with disabilities.

- h. Educational implications:

Revising HIDOE's administrative rules will ensure that FAPE is available to all eligible students with disabilities residing in the State.

- i. Personnel implications:

None.

- j. Facilities implications:

None.

- k. Financial implications:

Overall, HIDOE does not anticipate a significant fiscal impact due to clarifying the language in the administrative rules and other guidance.

## 5. OTHER SUPPLEMENTARY RECOMMENDATIONS

None.

CMK:ct

Attachment: 1. Amendment and Compilation of Chapter 8-27 Hawaii Administrative Rules

- c: Office of the Deputy Superintendent  
Office of Facilities and Operations  
Office of Student Support Services

DEPARTMENT OF EDUCATION

Amendment and Compilation of Chapter 8-27  
Hawaii Administrative Rules

March 13, 2020

SUMMARY

1. §8-27-1 through §8-27-6 are amended.
2. §8-27-9 is amended.
3. Chapter 8-27 is compiled.

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 with disabilities 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; and comp 8/23/19] (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" 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.

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

"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 department;

"Board" means the board of education.

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

"Charter school" means a public school holding a charter to operate as a charter school under chapter 302D, including start-up and conversion charter schools, that have the flexibility to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, length of the school day, week, or year, and personnel management (HAR, §8-54-3).

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

"Department" means the department of education.

"Elementary" means grades Kindergarten through 5.

"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.

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

"Geographic exception" 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".

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

"Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with §§8-60-44 through 8-60-48.

"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 with disabilities who are eligible for transportation as a related service.

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

"Redistricting" means a redefining of a school attendance area.

"Related service" or "related aids and service" means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education (34 CFR §300.34(a) and §300.34(c)(16)); 34 CFR §104.33(b)(1)).

"Transportation" includes:

- (A) Travel to and from school and between schools;
- (B) Travel in and around school buildings; and
- (C) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

"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.

"Section 504" means Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§705, 794; 34 C.F.R. Part 104). [Eff 08/20/09] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §705; 34 C.F.R. §104.4)

"Section 504 Plan" means a written statement for a qualified student with a disability who has been found, by the department, in need of special services under Section 504.

"Student" means any student who is attending public school classes in grades kindergarten to twelve, operated by the department.

~~"Special education student"~~ "Students with disabilities" means students who have been found eligible, by the department, for special education under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) or Section 504 of the Rehabilitation Act of 1973 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 8/23/19] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-406, 302A-1110, 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 with disabilities), 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 8/23/19] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-406, 302A-1101, 302A-1112)

**S8-27-4 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 education program~~ IEP or Section 504 Plan.

(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 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:

- 1) Students with disabilities who attend a public school if transportation is required as a related service pursuant to the students' IEP or Section 504 Plan;

- 2) Students with disabilities who are programmatically placed by the IEP team at a public school, private school, or facility outside of the student's home school attendance area, as determined by the student's legal residence, if transportation is required as a related service pursuant to the student's IEP or Section 504 Plan; and
- 3) students ~~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 8/23/19] (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 financial assistance pursuant to department of human services administrative rules; or
  - (B) A member of a family which meets current income poverty guidelines of the U.S. Department of Agriculture criteria to receive free school lunch, or 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;
- (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;
- (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;
- (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";~~
- (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 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~~ January 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 "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 8/23/19] (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 ~~individualized education program or modification plan~~ IEP or Section 504 Plan. The school shall, under procedures established by the department, initiate the process to request such transportation; and

- (3) Application for elementary students who reside less than one mile from school, secondary students who reside less than 1.5 miles from school, students with physical and/or health problems, or students who 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 8/23/19] (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 8/23/19] (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 8/23/19] (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). Students with disabilities who attend a public school, or are programmatically placed by the IEP team at a public school, private school, or facility outside of the student's home school attendance area as determined by the student's legal residence and require transportation as a related service shall be provided transportation in accordance with the student's IEP or Section 504 Plan. 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; am and comp 8/23/19] (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); 34 CFR §300.34(c)(16); HRS §§301A-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; am and comp 8/23/19] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §§302A-406, 302A-1101, 302A-1112)