

Hawaii Administrative Rule
Chapter 61
Nondiscrimination on the Basis of Disability in
Programs or Activities Receiving Federal Financial Assistance

Chapter 61 Implementation Guidelines

Office of Curriculum, Instruction and Student Support
Comprehensive Student Support Services Section
Hawaii State Department of Education
October 2011

Acknowledgements

The Hawaii State Department of Education acknowledges the following individuals for their invaluable contributions to the development of the Chapter 61 Implementation Guidelines. The Department recognizes their commitment to the provision of equal educational opportunity for all qualified students with a disability:

Deborah Arakaki, Comprehensive Student Support System, Resource Teacher
Jane Bruns, U. S. Army Exceptional Family Member Program, Coordinator
Carlyn Fujimoto, Pearl City High School, Principal
Louise Funasaki, Central District, Resource Teacher
Lorraine Irei, Windward District, Special Education and Section 504 Resource Teacher
Mavis Kawamura, Honolulu District, District Educational Specialist
Kathy Maemori, Honolulu District, Speech/Language Coordinator
Eric Malina, Aikahi Elementary School, Counselor
Janice Rogers, Honolulu District, Resource Teacher
Rosie Row, Learning Disabilities Association of Hawaii
Cheryl Sato, Central District, SBBH Resource Teacher
Ivalee Sinclair, Special Education Advisory Council
Cynthia Tolentino, McKinley High School, Student Services Coordinator
Roberta Williams, Kauai District, Social Worker
Cheryl Yamamoto, Niu Valley Middle School, Parent
Toyie Yonemoto, Central District, Resource Teacher
Lois Toyama, Student Support Section, Former Section 504 Resource Teacher
Diane Iwaoka, Student Support Section, Former Section 504 Educational Specialist
Steven Shiraki, Student Support Section, Administrator
Lyndia Uchimura, Student Support Section, Section 504 Educational Specialist
Paul Ban, Former Student Support Services Branch Director

Table of Contents

Chapter 61 Implementation Guidelines

Acknowledgements	
Table of Contents	
Appendix Table of Contents	
Subchapter 1. General Provisions	
Purpose	1
Discrimination Prohibited Section 104.5 (34 CFR)	1
Rehabilitation Act of 1973, Section 504 Regulations Link	1
Definitions	2
Subchapter 2. Evaluation and Reevaluation	
Identification/Referral	3
Referral	3
The Student-Focused Team	4
Evaluation/Eligibility	4
Timeline	5
Evaluation Process	6
Evaluation Materials	6
Eligibility Determination	6
504 Eligibility	7
Transfer of 504 Students	8
Reevaluation	9
Placement	9

Section 504 Plan Review	10
Exiting the Student from Section 504	11
Subchapter 3. Procedural Safeguards	
Procedural Safeguards Notice	12
Family Educational Rights and Privacy Act (FERPA)	12
Parental Consent	13
Alternative Dispute Resolution	13
Impartial Due Process Hearing	14
Pre-hearing and Hearing	15
Civil Action	15
Surrogate Parent	15
Subchapter 4. Discipline	
Suspensions, Including Crisis Removals, of 10 Days or Fewer	17
Crisis Removals	17
Link to Chapter 19	17
Suspensions of More Than 10 Days	18
Manifestation Determination	18
Special Circumstances	19
Impartial Due Process Hearing (Manifestation Determination)	19
Alternate Education Activities	20

APPENDIX

Table of Contents	A-1
Overview: Section 504 and Chapter 61	A-2
Equal Educational Opportunity for Students Who Are Disabled	A-3
Rights of Parents and Students Under Section 504/Chapter 61	A-4
Definitions	A-5
Everyone has Section 504 Responsibilities	A-6
Consider a Section 504 Referral When (Red Flags)	A-7
504 Process Flowchart	A-8
Conference Announcement	A-9
Prior Written Notice of Department Action	A-10
Consent for Assessment as Part of an Initial Evaluation	A-11
Section 504 Eligibility Determination	A-12
Consent for Initial Provision of Section 504 and Related Services	A-13
Section 504 Plan	
Section 504 Request for Impartial Due Process Hearing	A-14
Section 504 Written Complaint Form	A-15
Anti-harassment, Anti-bullying, and Anti-discrimination Against Students by Employees Form	A-16

<p>HAR Chapter 61 NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE</p>	<p>Tips & Best Practices</p>
<p>§8-61-1 <u>Purpose.</u> (a) As a matter of commitment, policy, and compliance with federal and state laws, the department assures that it will provide an equal educational opportunity to all students with a disability in its jurisdiction, regardless of the nature and severity of the disabilities. (b) Provisions of this chapter shall be construed as supplemental to, and in the context of, 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) and longstanding interpretations of Section 504 issued by the United States Department of Education. [Eff 8/20/09] (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)</p>	<p>Chapter 61, Subchapter 1 General Provisions</p> <p>The Department assures that we will provide equal educational opportunity for all qualified students with a disability who are enrolled in the public schools.</p> <p>This Chapter is supplemental to Section 504 of the Rehabilitation Act of 1973 and the regulations which govern it, 34 CFR, part 104.</p> <p>Sec. 104.5 (34 CFR) Discrimination prohibited. <i>(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.</i></p> <p>Section 504 regulations can be found at the following link: http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html#A</p>

<p>§8-61-2 Definitions. As used in this chapter:</p> <p>“Department” means the Hawaii state department of education.</p> <p>“Parent” means:</p> <p>(1) A natural or adoptive parent of a student with a disability;</p> <p>(2) A guardian appointed by the court but not the State if the student is a ward of the State; or</p> <p>(3) A surrogate parent who has been appointed in accordance with section 8-61-12. [Eff 8/20/09]</p> <p>(Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §705; 34 C.F.R. §104.3)</p>	<p>The brochure, “Equal Educational Opportunity for Students Who Are Disabled,” is distributed annually to all students and can be found at: http://doe.k12.hi.us/specialeducation/spedEEOswad.htm</p> <p>The Office for Civil Rights 504 Q & A can be found at: http://dataserver.lrp.com/DATA/servelet/DataServlet?fname=03272009-Q-A-Protecting_Students_With_Disabilities.doc</p> <p style="text-align: center;">Chapter 61, Subchapter 2 Definitions</p> <p>Chapter 61 defines two terms: “Department” and “parent.”</p> <p>These two definitions supplement the following terms defined in the Section 504 regulations, 34 Code of Federal Regulations (CFR, Subpart A):</p> <p>(a) Act (Rehabilitation Act 1973);</p> <p>(b) Section 504 (part of the Rehab Act);</p> <p>(c) Education of the Handicapped Act (EHA);</p> <p>(d) Department (USDOE);</p> <p>(e) Assistant Secretary (USDOE Civil Rights Assistant Secretary);</p> <p>(f) Recipient (any state, institution, entity that receives federal funds;</p> <p>(g) Applicant for assistance;</p> <p>(h) Federal financial assistance-funds, services, real and personal property;</p> <p>(i) Facility-buildings, structures, equipment, roads, parking lots, real property;</p> <p>(j) Handicapped person (one who has a physical or mental impairment that substantially limits major life activity; has a record of such impairment; or is regarded as having such an impairment;</p> <p>(k) Qualified handicapped person...with respect to public</p>	<p>Tip: Additional definitions can be found in Appendix A-4 for:</p> <ul style="list-style-type: none"> • PWN • FAPE • ADA
---	---	--

preschool, elementary, secondary, or adult educational services, a handicapped person (i) of an age which non-handicapped persons are provided such services (ii) of an age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom state is required to provide a Free and Appropriate Public Education (FAPE) under the Education for the Handicapped Act (EHA).

Chapter 61, Subchapter 3 Evaluation and Reevaluation

§8-61-3 General evaluation requirement. (a) The department shall conduct an evaluation of any student who, because of disability, needs or is believed to need services under this chapter before taking any action with respect to the initial placement of the student.

(b) The department shall establish implementation guidelines for the evaluation of students who may qualify for services under this chapter. An evaluation may consist of the review of existing evaluation data, when no additional data are necessary. [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.35)

Identification/Referral

The department has an obligation to evaluate a student suspected of having a disability that substantially limits a major life activity. The brochure entitled "Equal Opportunity for Students Who Are disabled," that includes information regarding rights under Section 504, is distributed to each student at the beginning of each school year and to those newly enrolled to the Department of Education.

Referral

- Anyone knowledgeable about the student may make a referral (Form 101) to evaluate a student whom they suspect of having a disability.
- Give the referral to the designated single-point-of-entry (for example, the SSC).
- Within 20 days, the school's designated Coordinator (for example, the SSC) must:
 - Send conference notification to parents.
 - Notify other team members who are knowledgeable of the student of the meeting.

Best Practice
Use Continuum of Proactive Student Support for Early Intervention and Prevention before making a referral.

- Best Practice**
Ensure ongoing communication with the parent:
- Inform parent of the referral.
 - Invite parent to the SFT meeting.
 - Record your attempts to involve the parent.
 - Allow 10 days for the parent to respond.



- Hard Copies:**
- Conference Announcement – Appendix A-8.
 - Prior Written Notice (PWN) – Appendix A-9

Student-Focused Team (SFT) [formerly Student Support Team]:

Members should be persons who are knowledgeable about the student, about the resources available at the school, be able to interpret the student's evaluation data, and the learning setting options available including:

- Principal or designee;
 - Parent;
 - Teacher(s) and other staff who are involved with the student; and
 - 504 Coordinator
- At the **Student-Focused Team** meeting:
 - address concerns about student needs;
 - review previous interventions; and
 - determine whether an evaluation is warranted.
 - Send a PWN of the department's proposal or refusal to evaluate

Evaluation/Eligibility

Evaluation Overview:

Evaluation is the process used to determine whether a student:

- has a disability; and if so,
- requires accommodations, modifications and services to meet the student's educational needs.

Timeline: 60-day timeline to determine 504 eligibility:

Best Practice

In the PWN, clearly state your decisions and the reasons for them.



See Appendix A-6 for a list of Red Flags that might indicate that a Section 504 Referral evaluation is warranted.

TIP: Parental Consent (Signature)

Is required before conducting an initial evaluation using individually administered assessments.



See the "Consent for Assessment as Part of an Initial Evaluation" in Appendix A-10.

TIP: Parental Consent (Signature)

- Is not required before reviewing existing data as part of evaluation or reevaluation.

	<ul style="list-style-type: none"> ● 60-day timeline for Eligibility Determination begins when the decision to conduct an evaluation is made. An evaluation consists of a review of <u>existing data</u>. ● However, if the team finds that <u>additional data</u> is needed to determine eligibility or the need for related services, the Department will propose the necessary assessments, and <ul style="list-style-type: none"> ○ Inform the parent through the Prior Written Notice (PWN). ○ Signed parental consent is needed for an evaluation requiring individually administered assessments or observations. ○ In this case, the 60-day timeline for Eligibility Determination begins when the school receives signed parental consent for evaluation (Form 102a and Form 102c). ● Within the 60 day timeline: <ul style="list-style-type: none"> ○ The 504 Eligibility Determination will be made. ○ If the student is eligible, a free and appropriate public education will be made available to the student through the 504 Plan. ○ If the student is eligible but accommodations are <u>not required</u>, the 504 Plan will note, "Continued monitoring will be conducted annually." ○ If the student is found <u>not eligible</u> because a condition does not substantially limit a major life activity, the student should continue to receive supports with strategies, programs, and services within the Continuum of Proactive Student Support for Early Intervention and Prevention. ● If the school is not able to complete the process within the 	<p>TIP: Assessment Should formalized testing be considered by the §504 Committee as evaluation data, ensure the tests:</p> <ol style="list-style-type: none"> 1) have been validated for the specific purpose for which they are used and are administered by trained personnel in accordance with the instructions provided by the tests' creators; 2) include those tailored to assess specific areas of educational need and are not merely designed to provide a single intelligence quotient; 3) are selected and administered to 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.
--	---	--

	<p>60-day timeline, it will inform the parent with a written notice of the delay and the reason for it.</p> <p>Evaluation Process Once the SFT has made a determination to evaluate, team members should look at information from a variety of sources to make the eligibility determination.</p> <p>Evaluation Materials Draw upon information from a variety of sources, such as:</p> <ul style="list-style-type: none"> • aptitude and achievement tests • teacher reports • parent information • teacher-made tests • samples of student work • interventions tried • standardized tests • medical tests • psychological tests • specialty assessments (such as speech/language, physical therapy, psychological) <p>A <u>doctor's diagnosis</u> is not necessary, nor is it sufficient in determining eligibility, but, can be considered an important source of information about the student.</p> <p>Eligibility Determination The Student-Focused Team determines eligibility based on an evaluation.</p>	<p>Should current special education data exist (an evaluation upon which a student was either dismissed from special education or upon which a finding of no IDEA eligibility was made), that data should also be considered.</p>
--	--	---

	<p>504 Eligibility: The student who is 504 eligible:</p> <ul style="list-style-type: none"> • Has a physical or mental impairment that substantially limits a major life activity. <p>Substantial limitation has not been defined by the Office for Civil Rights, but a physical or mental impairment may be considered substantially limiting if the student is unable to perform a major life activity or is significantly restricted in the manner or duration in which they can perform a major life activity compared to a student without a disability.</p> <p>Major life activities include, but are not limited to, functions such as:</p> <ul style="list-style-type: none"> ○ caring for one's self ○ walking ○ seeing ○ speaking ○ learning ○ performing manual tasks ○ hearing ○ breathing ○ working <p>The list of "major life activities" have been expanded to include: lifting, standing, bending, reading, concentrating, thinking, communicating, functions of the immune system, normal cell growth, reproductive function, bowel function, bladder function, digestive function, brain function, neurological function, respiratory function, circulatory function, endocrine function.</p> <ul style="list-style-type: none"> • A record of an impairment, or 	<p>TIP: "Technically eligible" A student may be 504 eligible, but not require an accommodation plan.</p> <p>TIP: Non-accommodation Section 504 protection for "technically eligible" students prevents discriminatory acts and include:</p> <ul style="list-style-type: none"> • The right to be free from actions that discriminate on the basis of disability. • Right to manifestation determinations prior to disciplinary changes in placement. • Right to protection from accumulations of short-term disciplinary removals that, collectively, amount to a pattern of exclusion. • Right to make complaints to the Office of Civil Rights • Right to Section 504 due process hearings. • Right to periodic reevaluations (at least every three years, or more frequently). • Equal right to access.
--	---	---

	<ul style="list-style-type: none"> • Is regarded as having impairment, but not require any accommodations, modifications or services. <ul style="list-style-type: none"> ◦ These 504-eligible students are guaranteed protection from discrimination only. <p>When a condition does not substantially limit a major life activity, the individual does not qualify for a Section 504 Plan.</p> <p>Exclusions: A student currently engaging in the illegal use of drugs is not eligible for eligibility under Section 504 on the basis of drug use. However, former users or those participating in a drug rehabilitation program may qualify as a student with a disability if the impairment limits a major life activity.</p> <p>Transfer students with 504 Plan</p> <ul style="list-style-type: none"> • If a 504 student transfers into a school from another DOE school, the school should implement the existing plan, and a team should hold a 504 Plan review conference. • If a 504 student transfers into a Hawaii public school from another state, the school should: <ul style="list-style-type: none"> ◦ Implement the existing 504 plan as closely and appropriately as possible until eligibility is determined. ◦ Schedule a Student Focused Team (SFT) meeting to document the intent to evaluate and intent to implement current plan in Prior Written Notice (PWN) for evaluation ◦ Schedule a 504 eligibility meeting as soon as possible to determine the student's eligibility. 	<p>Tip: Signed parent consent for the Initial Provision of Services should be obtained once the student has been deemed eligible for 504 services and before the development of the 504 Plan. Without the consent, the parent has not agreed to avail themselves of the protections of Section 504.</p> <p>Tip: Consent for initial provision of Section 504 and related services is recorded on the Consent for Initial Provision of Section 504 and Related Services form. See Appendix A-12.</p>
--	---	---

<p>§8-61-4 Reevaluation. A student with a disability shall be reevaluated periodically in accordance with the implementation guidelines, section 8-61-5 and 34 C.F.R. section 104.35, including before a significant change in placement. [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.35)</p>	<p>Reevaluation Reevaluate the 504 student as needed but at least every three years and before a change in placement.</p> <p>When to do a reevaluation:</p> <ul style="list-style-type: none"> • Before a change in placement • If the teacher requests it • If the parent requests it • If conditions warrant it, but • At least every three years <p>If the student continues to be eligible, the results of the reevaluation should be used to develop a new Section 504 Plan.</p> <p>Placement - 504 Access to Learning There is no placement section in a 504 Plan. Accommodations and access to learning for the Section 504 student is generally provided in the general education setting. Where and how the accommodations and access will be provided is determined by the student's Student Focused Team.</p> <p>Note: The Office for Civil Rights defines a significant change in placement as a significant change in services and programs rather than a change in physical location. Examples of a significant change in placement are:</p> <ul style="list-style-type: none"> • Suspending a student for more than ten days • Disciplinary transfers or dismissals <ul style="list-style-type: none"> ○ Transferring a student to home instruction ○ Transferring a student to an alternative learning center. ○ Returning from a more restrictive placement or residential setting. 	
---	---	--

Section 504 Plan

The Section 504 team develops the Section 504 Plan which is the offer of FAPE for the eligible student. The plan includes:

- Accommodations
- Related Services, if necessary

The 504 Plan affords **equal educational opportunity** and ensures that the qualified student with a disability receives an education comparable to that of his/her non-disabled peers.

Accommodations and related services are provided based on the needs of the individual student in the general education setting.

- Document the needs of the student
- Develop the accommodations to address those needs
- If necessary, provide related services to address the needs.

Implementation of the Section 504 Services Plan.

The 504 Plan, including a behavioral support plan if such plan has been developed to meet a student's disability-related needs, must be fully implemented. The designated campus 504 Coordinator should ensure that the student's 504 Plan is delivered to each teacher, campus administration, and any other employee or third-party contractor who has responsibility to implement the plan. Monitoring implementation of the 504 Plan should be accomplished through the teacher appraisal process, through walkthroughs, and informal checks by the 504 Coordinator and other appropriate personnel of the student's academic, behavioral and social progress.

Best Practice
 Be sure that the accommodations and related services are appropriate to meet the needs of the student.

Tip: If the plan is very involved or includes multiple related services, the team may want to consider IDEA eligibility

Section 504 Plan:
 Formerly known as the Modification Plan (MP)
eCSSS note:
Print form: 504 Plan with accommodations
Database: MP with modifications vocabulary remains

Review the 504 Plan as needed but at least once a year.


Note: Records

Section 504 records, including any evaluation data, shall be kept in a separate §504 folder that is under the control of the 504 Coordinator, or in a location determined to be appropriate by the school. Where §504 records are kept separately from the cumulative folder, a reference to the records and their location will be placed in the cumulative folder to ensure that the campus with responsibility for the student is aware of its §504 obligations to the eligible student and that personnel and third-party contractors who have a duty to implement the plan have access to necessary records including the plan itself.

Exiting the Student from Section 504

The student may be exited from Section 504 for the following reasons:

- When a reevaluation finds that the student is no longer eligible.
- When the student is found eligible for Special Education (IDEA).
- When the student leaves the public school system.
- When the student graduates.

<p>§8-61-5 <u>General responsibility.</u> The department shall provide each student with a disability and the student's parent with procedural safeguards. [Eff 8/20/09] (Auth: 8-61-23 HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)</p> <p>§8-61-6 <u>Procedural safeguards.</u> (a) The department shall establish and implement a system of procedural safeguards that includes:</p> <ol style="list-style-type: none"> (1) Notice of the department's duty under section 504 of the Rehabilitation Act of 1973, as amended; (2) An opportunity for the parents to examine relevant records; (3) An impartial hearing in accordance with chapter 91.9, Hawaii Revised Statutes; and (4) A review procedure. <p>(b) The department shall establish implementation guidelines for the system of procedural safeguards. [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)</p> <p>§8-61-7 <u>Parental consent.</u></p> <p>(a) Parental consent shall be obtained before:</p> <ol style="list-style-type: none"> (1) Conducting an initial evaluation involving individually administered assessments pursuant to section 8-61-5; and (2) The initial provision of special education, within the meaning of Section 504, or related services to a student with a disability. 	<h2 style="text-align: center;">CHAPTER 61, SUBCHAPTER 3 PROCEDURAL SAFEGUARDS</h2> <h3 style="text-align: center;">Procedural Safeguards Notice</h3> <p>The brochure, "Rights of Parents and Students Under Section 504, Subpart D and Hawaii Law and Regulations," shall include an explanation of the procedural safeguards guaranteed under sections 8-61-5 to 8-61-12:</p> <ul style="list-style-type: none"> • Notice of the department's duty under Section 504 • Opportunity for parents to examine relevant records • Impartial hearing • Review procedure <h3 style="text-align: center;">Notice of the department's duty under Section 504</h3> <p>A copy of the procedural safeguards notice should be given to parents of a student with a disability:</p> <ul style="list-style-type: none"> • Upon an initial referral for evaluation • Upon receiving any written notice • Upon receiving a request for due process • Upon request <h3 style="text-align: center;">Opportunity for parents to examine relevant records</h3> <p>Family Educational Rights and Privacy Act (FERPA) is a federal privacy law that protects the privacy of student education records. It gives parents certain rights with respect to their children's records. When a student turns 18 years old or enters a postsecondary institution at any age, all rights afforded parents under FERPA transfers to the student ("eligible student").</p> <p>See federal law at: http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html</p>	 <p>Procedural Safeguards brochure – Appendix A-3 “Rights of Parents and Students Under Section 504, Subpart D and Hawaii Law and Regulations” is available from the DOE website at: http://doe.k12.hi.us/</p> <p>FERPA – Right to:</p> <ul style="list-style-type: none"> • Inspect and review student's education records maintained by school. <p>Request school correct records which they believe to be inaccurate or misleading. If school disagrees, parent has right to formal hearing.</p> <p>Generally, schools must have written permission from parent to release any information from student's education record.</p>
--	--	---

(b) Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation. [Eff 8/20/09]

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

§8-61-8 Alternative dispute resolution. The department and students with a disability and their parents are encouraged to seek resolution of disputes under this chapter through alternative dispute resolution, including mediation. Alternative dispute resolution is intended to be an informal process conducted in a non-adversarial 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. [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)

§8-61-9 Impartial due process hearing. (a) Within the time specified in state law, a parent may initiate an impartial hearing regarding the department's proposal or refusal to initiate or change 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) All requests for an impartial due process hearing shall be filed in writing with the complex area superintendent of

See H.A.R. Chapter 34 at:

<http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html#A>

Review Procedure

Notice of request for a hearing

The Request for Impartial Hearing form shall be filed with the Complex Area Superintendent.

Parental Consent (Signature)

- Is required
 - Before conducting an initial evaluation using individually administered assessments.
 - **Upon determination of eligibility and initial implementation of the Section 504 Plan.**
- Is not required
 - Before reviewing existing data as part of evaluation or reevaluation

Alternative Dispute Resolution (ADR)

ADR is intended to be an informal process conducted in a non-adversarial 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. It is:

- Voluntary to both parties.
- Not used to deny a parent's right to a due process hearing or to deny any other right.
- Conducted by an impartial mediator.
- Not a prerequisite to the right to a due process hearing.
- Is at no cost to the parent.



Form available on the DOE website at:

<http://doe.k12.nj.us/>


- (under "Printable Forms") Form 105, "Request for Impartial Due Process Hearing" See Appendix A-15.

TIP: Be sure that all documents are current and in order.

Tip: When an impartial due process request is filed, the student's educational services in question continue.

ADR processes include:

- Facilitation – facilitators can help 504 teams work productively, minimizing conflict, to address the needs of the student.
- Mediation – mediators can promote collaboration and open communication to resolve disputes. Information on ADR available from: Mediation Center of the Pacific.

<p>the student's complex of enrollment.</p> <p>(c) Upon receipt of a request for a due process hearing, the department shall:</p> <p>(1) Notify the parties of the receipt of the contact information for the impartial hearing officer;</p> <p>(2) Inform the parent of the availability of alternative dispute resolution, including mediation; and</p> <p>(3) Inform the parent of the availability of an interpreter, if requested.</p> <p>(d) The department shall be responsible for the conduct of the hearing described in subsection (a). [Eff 8/20/09](Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)</p> <p>§8-61-10 <u>Pre-hearing and hearing.</u></p> <p>(a) The hearing officer shall conduct a pre-hearing conference. The pre-hearing conference shall include the identification of the precise issues to be heard under section 8-61-9, the time and location of the hearing, and the date by which the decision will be rendered and mailed.</p> <p>(b) Hearings will be conducted in accordance with chapter 91, Hawaii Revised Statutes. [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)</p> <p>§8-61-11 <u>Civil action.</u> A decision made in a hearing conducted pursuant to sections 8-61-9 or 8-61-16 is final, except that any party aggrieved by the decision</p>	<p>Impartial Hearing</p> <p><u>Impartial due process hearing</u></p> <ul style="list-style-type: none"> • Applies only to disagreements between the parent and the school with respect to actions regarding the identification, evaluation, and placement of a student with a disability and the nature of FAPE under this chapter. • Hearings may be requested by the parent or the department. • When a parent files a request for hearing, the brochure, "Rights of Parents and Students Under Section 504, Subpart D and Hawaii Law and Regulations" brochure must be provided and explained. • The school shall contact its respective district office for guidance. • The Request for Impartial Hearing (Form 105) must be filed with the Complex Area Superintendent. <p>Complaints, as opposed to a request for impartial hearing, regarding failure of a school to remove architectural barriers or to provide program accessibility (or other complaints alleging the violation of Section 504) shall be resolved under Chapter 8-41, Civil Rights Policy and Complaint Procedure.</p> <p>A separate complaint form may be filed with the Department's Civil Rights Compliance Office (CRCO) if a student believes he/she was discriminated against by an employee of the Department because of a protected class, such as but not limited to sex, race, disability, and national origin.</p> <p>Student's status during proceedings</p> <p>While awaiting the determination of a request for hearing, and</p>	<p>TIP: Parents are encouraged to:</p> <ul style="list-style-type: none"> • Gather available information • Organize documents <p>TIP: Contact information regarding impartial hearing officer is available at: Comprehensive Student Support Services Section 475 22nd Avenue Honolulu, HI 96816 Phone: (808) 203-5515</p>  <p>Form available at:</p> <p>http://doe.k12.hi.us/ (under "Printable Forms")</p> <ul style="list-style-type: none"> ▪ "Section 504 Written Complaint Form" See Appendix A-15 <p>Form available at:</p> <p>http://doe.k12.hi.us/civilrights/students_parents_guarantians.htm</p> <ul style="list-style-type: none"> ▪ "Anti-harassment, Anti-bullying, and Anti-Discrimination Against Student(s) by Employees Policy Complaint Form" See Appendix A-16
--	--	--

<p>has the right to bring a civil action in a court of competent jurisdiction within thirty days of the receipt of the decision. [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)</p> <p>§8-61-12 Surrogate Parent:</p> <p>(a) The department shall ensure the assignment of an individual to act as a surrogate parent for a student with a disability, when necessary.</p> <p>(b) The individual assigned to act as a surrogate parent shall not be an employee of the department. [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112; 29 U.S.C. §794; 34 C.F.R. §104.36)</p>	<p>unless both parties decide otherwise, the student remains in the current educational setting (i.e., continues to receive the services and program in the student's 504 plan) – a “stay put” is in place.</p> <p>Pre-hearing and hearing</p> <p>The hearing officer conducts the pre-hearing conference which includes:</p> <ul style="list-style-type: none"> • identification of the issues to be heard • time of the hearing • location of the hearing • date by which the hearing decision will be made and sent <p>Civil Action</p> <p>An impartial hearing decision may be appealed to either state or federal court by the parent or the department.</p> <p>Surrogate Parent</p> <p>A surrogate parent is appointed for a student up to age 18 if:</p> <ul style="list-style-type: none"> • Parent cannot be identified • Parent cannot be located • Child is a ward of the state <p>A surrogate parent is appointed by:</p> <ul style="list-style-type: none"> • District, or • State, if the District is unable to do so <p>A surrogate parent cannot be an employee of a public agency that is involved in the education or care of the child.</p>	<p>What is a surrogate parent?</p> <p>A surrogate parent is an individual who:</p> <ul style="list-style-type: none"> • Acts in place of the legal parent to make decisions about the student's education when no parent can be located or identified; • Makes decisions in all matters relating to the identification, evaluation and educational placement of the student and the provision of a FAPE. HAR §8-60-73, §8-61-12. <p><u>Surrogate Parent Guide</u> available at: http://doe.k12.hi.us/specialeducation/SurrogateParentGuide.2007.pdf</p> <p>To request a surrogate parent, the principal or designee submits form 051, Request for Assignment of a surrogate Parent for a Child</p>
---	--	--

		<p>with a Disability to the Surrogate Parent contractor: EPIC 2535 S. King Street, Rm 304 Honolulu, HI 96826</p> <p>The Surrogate Parent contractor assigns a trained surrogate parent to the child.</p> <p>Questions regarding the responsibilities of specific surrogate parents are to be referred to the Contractor at (808) 955-6100.</p> <p>DOE Form 051, Request for Assignment available at: http://doe.k12.hi.us/specialeducation/SurrogateParentGuide.2007.pdf</p>
--	--	---

§8-61-13 General requirements:
 (a) No student with a disability shall be discriminated against on the basis of disability in the determination of prohibited conduct and disciplinary action, including all standards and procedures under the Hawaii administrative rule governing student discipline.
 (b) Disciplinary action that results in the suspension, including crisis removal, or other removal of a student with a disability from the student's current educational placement for ten consecutive or cumulative school days or fewer shall not be considered a change in placement and shall be in accordance with the Hawaii administrative rule governing student discipline.
 © Disciplinary action that results in the suspension, including crisis removal, or other removal of a student with a disability from the student's current educational placement for more than ten consecutive or cumulative school days in a given school year shall be considered a change in placement and shall be in accordance with the provisions of this subchapter. (29 U.S.C. §§705, 794; 34 C.F.R. Part 104). [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §302A-1101; 29 U.S.C. §794; 34 C.F.R. §§104.35, 104.36)
 §8-61-14 Preliminary disciplinary procedures:
 (a) When a disciplinary removal of a student with a disability results in a

**Chapter 61 Subchapter 4
Discipline**

Suspensions, including crisis removals, of consecutive 10 days or less:

- are not considered a change in placement
- do not require a manifestation determination
- do not require alternate educational activities

Section 504 students are treated the same as students without disabilities in accordance with Chapter 19 or the Hawaii administrative rule governing student discipline.

Crisis removals of 10 days or fewer are also in accordance with Chapter 19 or the current rule governing student discipline.

Link to Chapter 19:
[Policy – Student Misconduct, Discipline, School Searches and Seizures, Reporting Offenses, Police Interviews and Arrests, and Restitution for Vandalism and Negligence](#)

Best Practice
 If a 504 student has escalating behavior or a pattern of suspensions (5 or 6 days), don't wait! Convene the team to assess whether the plan is appropriate:

- **Conduct Record Review**
- **Review 504 Plan**
- **Review BSP**
- **Make adjustments in plan as warranted.**
- **Consider whether an IDEA referral is warranted.**

TIP: Consider alternatives to suspension:

- alternative learning environment
- other disciplinary measures

<p>significant change of placement, the department shall:</p> <p>(1) Conduct a reevaluation in accordance with section 8-61-4;</p> <p>(2) Convene the relevant members of the Section 504 team, including the parent, to review all relevant information in the student's file and any relevant information provided by the parent to determine:</p> <p>(A) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or</p> <p>(B) If the conduct in question was the direct result of the department's failure to implement the Section 504 plan; and</p> <p>(3) Provide the parent of the student with a disability a notice of the department's manifestation determination and the right to request a due process hearing in accordance with section 8-61-16.</p> <p>(b) If the determination under subsection (a)(2) is that the misconduct is not a manifestation of the student's disability, the student may be suspended or dismissed in accordance with the Hawaii administrative rule governing student discipline, except as provided in section 8-61-16.</p> <p>(c) Should the Individuals with Disabilities Education Improvement Act ("IDEIA"), commonly known as the Individuals with Disabilities Education</p>	<p>Suspensions of more than 10 days:</p> <ul style="list-style-type: none"> • Considered a change in placement • A manifestation determination must be conducted by the 504 team. <p>Manifestation Determination</p> <ul style="list-style-type: none"> ○ Is a reevaluation ○ Conducted by the 504 team ○ Review all relevant information to determine if the conduct: <ul style="list-style-type: none"> ▪ was caused by or had a direct and substantial relationship to the student's disability <u>or</u> ▪ was the direct result of the department's failure to implement the plan <ul style="list-style-type: none"> • Provide the parent with a copy of: <ul style="list-style-type: none"> ○ Notice of the department's Manifestation Determination, and ○ The brochure, "Rights of Parents and Students Under Section 504, Subpart D and Hawaii Law and Regulations" 	<p>Manifestation Determination Questions</p> <ul style="list-style-type: none"> • Was the student's 504 Plan appropriate? • Were the services and strategies stated in the 504 Plan provided to the student? • Was the conduct caused by the student's disability?
<p>If the team determines that the student's misconduct is caused by or substantially related to the student's disability:</p> <ul style="list-style-type: none"> • Administrator may initiate a change in placement but may not suspend the student. (See "Placement" on page 9, and "Tip: Consider alternatives to suspension" on page 16.) • The Section 504 team and other qualified personnel will review the student's 504 Plan and make appropriate changes. 	<p>TIP:</p> <p>Removal for less than 10 days can be effected without a §504 Committee approval, subject to the pattern of exclusion rules.</p> <p>A series of short removals over the course of the school year that exceeds 10 total days may constitute a pattern of exclusion that triggers applicable safeguards—a manifestation determination evaluation and a right to due process.</p>	

<p>Act ("IDEA), manifestation determination change in the future, the standard in this section shall also change to the most current manifestation standard. [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §302A-1101; 29 U.S.C. §794; 34 C.F.R. §§104.35, 104.36) §8-61-15 <u>Special circumstances</u>: Notwithstanding section 8-61-14, if the disciplinary action pertains to the use or possession of illegal drugs or alcohol, and the student with a disability is currently engaging in the illegal use of drugs or alcohol, the disciplinary action may be taken to the same extent that disciplinary action is taken against students without a disability pursuant to the Hawaii administrative rules governing student discipline. The procedural safeguards set forth in subchapter 3 and section 8-61-14 shall not apply to the disciplinary action; except that students with a disability who are also eligible as students with a disability in accordance with Hawaii administrative rules for students with disabilities shall be afforded all of the procedural safeguards under those rules. [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §302A-1101; 29 U.S.C. §794; 34 C.F.R. §§104.35, 104.36)</p> <p>§8-61-16 <u>Impartial due process hearing</u>. The parent of a student with a disability who disagrees with the manifestation determination under section 8-61-14 may</p>	<p>If the 504 team determines that the conduct was not caused by or did not have a direct and substantial relationship to the student's disability:</p> <ul style="list-style-type: none"> • The student shall be treated the same as students without a disability. • Alternate educational activities are required from the 11th day of suspension (8-61-17, p. 26). • Follow procedures outlined in Chapter 19 or the rule governing student discipline. <p>Special Circumstances If the disciplinary action pertains to the use or possession of drugs or alcohol, <u>and</u> if the student with a disability is a current drug or alcohol user:</p> <ul style="list-style-type: none"> • The school will treat the 504 student the same as students without disabilities. • Chapter 19 or the Hawaii administrative rule governing student discipline will apply. • Manifestation determination not required • Alternate educational activities are required for suspensions of more than ten days (8-61-17, p. 26) • Due process rights under Section 504 and Chapter 61 no longer apply. • Administer the Adolescent Screening Interview Tool <p>Impartial Due Process Hearing A parent who disagrees with a manifestation determination may request a due process hearing.</p>	<p>Tip: There is no appeal for suspensions of 10 days or less. The only due process the parent and student is entitled to is a meeting with the principal wherein the principal is required to inform the parent and student what Chapter 19 violations the student is being cited with, provide the parent and student with information on the evidence the principal has and is relying on, and give the parent and student an opportunity to tell the principal their side of the story. An appeal to the Complex Area Superintendent is the due process afforded to parents and students when suspensions exceed 10 days, cumulative or consecutive.</p> <p>Tip: The Adolescent Screening Interview Tool must be administered by trained personnel. See Act 205. Link: http://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch02</p>
--	--	--

request a hearing in accordance with section 8-61-8. [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §302A-1101; 29 U.S.C. §794; 34 C.F.R. §§104.35, 104.36)

§8-61-17 Alternate educational activities: During periods of suspension exceeding 10 school days or dismissal in a school year, a student with a disability shall be provided alternate educational activities in accordance with the Hawaii administrative rule governing student discipline. [Eff 8/20/09] (Auth: HRS §302A-1112) (Imp: Hawaii Const. Art. X, §3; HRS §302A-1101; 29 U.S.C. §794; 34 C.F.R. §§104.35, 104.36)

[61-0319 /HRS0302A/HRS0302A-1134_0006.htm](https://www.hawaii.gov/dhs/61-0319/HRS0302A/HRS0302A-1134_0006.htm)

Alternate Educational Activities
Alternate Educational Activities shall be provided to 504 students who are suspended for more than 10 days or who are dismissed.

Refer to Chapter 19 Implementation Guidelines for further information regarding Alternate Educational Activities.