

SUBCHAPTER 7

STATE COMPLAINT PROCEDURES

§8-60-52 State complaint procedures. (a) Applicability. This subchapter applies to the filing, investigation, and resolution of a complaint, including a complaint filed by an organization or individual from another state regarding an alleged violation by the department of one or more requirements of any of the following:

(1) Provisions of the Hawaii Revised Statutes relating to the education of students with a disability or this chapter; or

(2) Part B of the Act or the implementing regulations (34 C.F.R. Part 300).

(b) The department shall widely disseminate to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under sections 8-60-52 through 8-60-54.

(c) Remedies for denial of appropriate services. In resolving a complaint in which the department has found a failure to provide appropriate services, the department, pursuant to its general supervisory authority under Part B of the Act, shall address:

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the student (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all students with disabilities. [Eff 11/23/09] (Auth: 20 U.S.C. 1221e-3, §8-60-52 HRS §302A-1112) (Imp: 34 C.F.R. §300.151)

§8-60-53 Minimum State complaint procedures. (a) Time limit; minimum procedures. Within 60 days after a complaint is filed under section 8-60-54.

The department shall:

(1) Carry out an independent on-site investigation, if the department determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the public school with the opportunity to respond to the complaint,

including, at a minimum:

(A) At the discretion of the public school, a proposal to resolve the complaint and

(B) An opportunity for a parent who has filed a complaint and the public school, to voluntarily engage in mediation consistent with section 8-60-60;

(4) Review all relevant information and make an independent determination as to whether the public school, is violating a requirement of Part B of the Act or of this chapter; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

(A) Findings of fact and conclusions; and

(B) The reasons for the department's final decision.

(b) Time extension; final decision; implementation. The department's procedures described in subsection (a) also shall:

(1) Permit an extension of the time limit under subsection (a) only if:§8-60-53

(A) Exceptional circumstances exist with respect to a particular complaint; or

(B) The parent and the public school, agree to extend the time to engage in mediation pursuant to subsection (a)(3)(B), or to engage in other alternative means of dispute resolution; and

(2) Include procedures for effective implementation of the department's final decision, if needed, including:

(A) Technical assistance activities;

(B) Negotiations; and

(C) Corrective actions to achieve compliance.

(c) Complaints filed under this section and due process hearings under section 8-60-61 and sections 8-60-75 through 8-60-77.

(1) If a written complaint is received that is also the subject of a due process hearing under section 8-60-61 or sections 8-60-75 through 8-60-77, or contains multiple issues of which one or more are part of that hearing, the department shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action shall be resolved using the time limit and procedures described in subsections (a) and (b).

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties:

- (A) The due process hearing decision is binding on that issue; and
 - (B) The department shall inform the complainant to that effect.
- (3) A complaint alleging a school's failure to implement a due process hearing decision shall be resolved by the department. [Eff §8-60-53 11/23/09] (Auth: 20 U.S.C. 1221e-3, HRS §302A-1112) (Imp: 34 C.F.R. §300.152)

§8-60-54 Filing a complaint. (a) An organization or individual may file a signed written complaint under the procedures described in sections 8-60-52 through 8-60-53.

(b) The complaint shall include:

(1) A statement that the department has violated a requirement of Part B of the Act or of this chapter;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific student:

(A) The name and address of the residence of the student;

(B) The name of the school the student is attending;

(C) 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;

(D) A description of the nature of the problem of the student, including facts relating to the problem; and

(E) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint shall allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with section 8-60-52.

(d) The party filing the complaint shall submit the complaint to the department. [Eff 11/23/09] (Auth: 20 U.S.C. 1221e-3, HRS §302A-1112) (Imp: 34 §8-60-56 C.F.R. §300.153)