

TITLE II

DEPARTMENT OF HEALTH

CHAPTER 147

HEALTH SERVICES TO EXCEPTIONAL CHILDREN
UNDER P.L. No. 94-142

§11-147-1	Purpose
§11-147-2	Definitions
§11-147-3	Occupational therapy and physical therapy services
§11-147-4	School health services
§11-147-5	Non-psychiatric medical services
§11-147-6	Mental health services-clinical evaluation and mental health status
§11-147-7	Mental health services treatment
§11-147-8	Audiological services
§11-147-9	Parent counseling and training
§11-147-10	Impartial hearing
§11-147-11	Confidentiality of information
§11-147-12	Services limited by available funding

§11-147-1 Purpose. The purpose of this chapter is to establish rules governing:

- (1) The provision of mental health services, occupational therapy, physical therapy, audiological and medical services for diagnostic or evaluation purposes, and school health services to exceptional children who are handicapped and found eligible to receive a free appropriate public education pursuant to the Education for All Handicapped Children Act of 1975, P.L. No. 94-142, 20 U.S.C. §1401 et seq., by the department of education; and
- (2) The provision of mental health and, audiological and medical services for diagnostic or evaluation purposes to children suspected of being handicapped. It is intended that the provisions of this chapter be implemented in conjunction with the rules of the

department of education relating to the provision of a free appropriate public education for exceptional children who are handicapped. [Eff. April 12, 1984] (Auth: HRS §321-9) (Imp: HRS §301-27)

§11-147-2 Definitions. As used in this chapter:

"Audiological services for diagnostic or evaluation purposes" means services provided by a licensed audiologist to test and measure a child's ability to hear, assess the type, severity and site of any hearing impairment, and identify any communication disorder which may affect the child's speech, language, auditory function, or auditory behavior. Such services may include audiometric testing, impedance testing, central auditory assessment, brain stem evoked response testing, vestibular testing, and hearing aid evaluations.

"Clinical evaluation of mental health status" means a clinical assessment conducted by the mental health division children's staff under the supervision and review of a department psychiatrist or clinical psychologist, or a licensed psychiatrist or clinical psychologist contracted by the department's mental health division, for the purpose of formulating a diagnostic and prognostic impression about a child to be used by the department of education multi-disciplinary evaluation team and school personnel, to determine whether a child is handicapped and therefore eligible to receive special education and related services pursuant to P.L. 94-142, or to contribute to the formulation of an appropriate educational program and placement for an eligible handicapped child.

"Department" means the department of health.

"Direct treatment services" (DTS) means those related services specifically designed to meet the unique needs of a particular handicapped child, which are provided to facilitate the child's achievement of the goals and objectives identified in the child's IEP. It includes individual and group activities, instruction, training, therapy, counseling, or treatment for the child. DTS are provided by personnel other than the child's teacher.

"District" means any of the seven specific geographic school divisions of the State as designated by the department of education.

"Evaluation" means those activities involved in gathering

information about a specific child to determine whether a child is eligible for special education services and the nature and extent of the special education and related services the child needs. An evaluation is made up of separate assessments that cover all areas related to the suspected disability, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (The department shall prepare only those particular assessments more specifically defined and described in this chapter.) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children shall be selected and administered so as not to be racially or culturally discriminatory. Evaluation encompasses the following terms and activities:

- (1) Children who have a speech impairment may not need a complete battery of assessments (such as those for psychological, physical, or adaptive behavior). However, qualified speech and language personnel would:
 - (A) Evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and
 - (B) Where necessary, make referrals for additional assessments needed to make an appropriate placement decision.
- (2) Initial or pre-placement evaluation means the first comprehensive, full and individual evaluation that is conducted for any child suspected of being handicapped;
- (3) Re-evaluation means a comprehensive evaluation of a handicapped child that is conducted every three years or more frequently if conditions warrant, or if the child's parent or teacher requests one;
- (4) Supplemental assessment means an assessment that is deemed necessary in order to obtain additional information about a handicapped child which is conducted after a handicapped child is placed in a special education program; such assessments may be in areas such as mental health services, speech or

- occupational or physical therapy; and
- (5) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by a public agency responsible for the education of the child in question; whenever an independent evaluation is at public expense, criteria for conducting the evaluation shall meet State standards.

Unless the term "child" or "student" is used to describe a person who is suspected of being a handicapped child, "exceptional child(ren), who is handicapped," "handicapped child(ren)," "handicapped student," "child" or "student" means a person residing in the State who will be at least three years of age on or before December 31 of the school year and under twenty years of age on the first instructional day of the school year, who has been found eligible for special education and related services by the department of education due to the presence of one or more of the following handicapping conditions: mental retardation, hearing impairment, speech impairment, visual impairment, serious emotional disturbance, orthopedic handicap or other health impairment, deaf-blindness, severe multiple handicaps, or specific learning disability. Any and all rights conferred upon parents by this chapter shall be transferred to any student who reaches eighteen years of age and has not been found incapacitated under section 560:5-101, Hawaii Revised Statutes.

"Individualized education program" (IEP) means a written statement, developed jointly by the handicapped child's parents, department and department of education personnel, which includes a statement of the child's present levels of educational performance, a statement of annual goals, including short-term objectives, a statement of specific special education and related services to be provided to the child and the extent to which the child will be able to participate in regular education programs, the projected dates for initiation of services and the anticipated duration of the services, and appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

"Medical services for diagnostic or evaluation purposes" means services provided by a licensed physician to identify any medically related handicapping condition(s) and the

relationship(s), if any, between that condition(s) and the child's educational activities.

"Mental health division children's staff" means those persons employed or whose services are contracted by the department's mental health division to provide mental health services to children. These persons include the staff of the children's mental health services branch, the adolescent unit of the state hospital branch, the children's teams of children's services units of the various mental health centers, and the courts and corrections branch.

"Mental health services" means psychiatric or psychological services for the purposes of obtaining data to be used in determining whether a child is handicapped and therefore eligible to receive special education and related services pursuant to P.L. 94-142, and providing consultation and training to school personnel, and individualized counseling and therapy to an eligible handicapped child.

"Occupational therapy" means those services including evaluation, problem identification and treatment, provided by a certified, registered occupational therapist or a certified occupational therapy assistant to improve the handicapped child's ability to perform in the areas of self-maintenance, and sensory, motor, and perceptual skills required of a productive member in the community.

"Physical therapy" means those services, including evaluation, program planning, treatment, consultation, and instruction, provided or supervised by a licensed physical therapist, physical therapy assistant, or therapy aide to prevent or minimize the effects of a physical disability or dysfunction and to enhance the student's potential for independent functioning in areas including mobility, self help skills, gross motor development, and health maintenance of the musculo-skeletal system.

"Related services" means mental health services, occupational therapy, physical therapy, audiological and medical services for diagnostic or evaluation purposes, parent counseling and training, and school health services which are required to assist a handicapped child to benefit from special education.

"School health services" means first aid and individualized health care service, preventive health care, and health appraisals and follow-up care which are provided by school

nurses, health aides, and other qualified persons, pursuant to title 11, chapter 146, Administrative Rules.

"School nurse" means the registered professional nurse assigned by the department to the school health complex of which a particular school is a part, who is responsible for providing and/or coordinating the delivery of school health services within that complex.

"Student oriented consultation" (SOC) means conferring with the teacher(s) of a particular handicapped student regarding physical therapy, occupational therapy, or mental health treatment services responsive to the unique needs of that student. Consultation is provided to assist the teacher(s) in the implementation and assessment of the services, and goals and objectives which have been or may appropriately be developed for that student.

"Teacher oriented consultation" (TOC) means conferring with teacher(s) of handicapped children to assist them in the development and maintenance of a therapeutic learning environment for handicapped children. [Eff. April 12, 1984] (Auth: HRS §321-9) (Imp: HRS §301-27; 34 C.F.R. §§300.4, 300.5., 300.13, 300.14, 300.346, 300.503, 300.532, 300.534, 300.540-.543)

§11-147-3 Occupational therapy and physical therapy services. (a) An occupational therapist or physical therapist shall respond to a request for evaluation from a district by:

- (1) Determining whether the child requires occupational or physical therapy to benefit from special education, and identifying those needs;
- (2) Submitting a written report to the multi-disciplinary evaluation team outlining the child's identified need for occupational or physical therapy services; and
- (3) Participating as a multi-disciplinary evaluation team member in meetings convened by the district for the purpose of completing such evaluation.

(b) An occupational therapist or physical therapist, or a designee familiar with the student's needs, shall participate in all meetings in which occupational or physical therapy may be considered as an appropriate related service for a handicapped child. (One of the multi-disciplinary evaluation team members or the child's special education teachers may serve as the

therapist's designee, if the therapist has furnished the designee with all necessary information prior to the meeting.) The therapist or designee shall be responsible for specifying the nature, intensity, and duration of physical or occupational therapy proposed for inclusion in the child's IEP.

(c) Occupational and physical therapy include teacher oriented consultation (TOC), student oriented consultation (SOC), and direct treatment services (DTS).

- (1) When TOC services are required, the physical or occupational therapist shall provide resource consultation including sharing information or demonstrations to assist the teacher(s) of handicapped children in dealing with situations and programs common to special education students with physical or learning disabilities or dysfunctions.
- (2) When SOC services are required, the physical or occupational therapist shall provide direct consultation relating to physical or occupational therapy to assist the teacher in managing a particular child. It may include assistance in the programming of goals and objectives for the child, assessing the child's progress toward these goals and objectives, and providing program suggestions including information or demonstrations.
- (3) When direct treatment services are required, occupational and physical therapy in individual or group situations will be provided to the handicapped student to assist the student to benefit from special education. [Eff. April 12, 1984] (Auth: HRS §321-9) (Imp: HRS §301-27; 34 C.F.R. §§300.4, 300.13, 300.344-.346, 300.503, 300.532, 300.534, 300.540-.543, 300.552)

§11-147-4 School health services. (a) School health services which are available to regular education students should be available to handicapped students, provided that the limitations as to the amount of time spent by the school nurse and the number of school visits made daily by the school nurse specified in section 11-146-6 (c) shall not apply to handicapped students. In addition, the school nurse shall prepare a nursing evaluation for a particular handicapped child when the child is

referred to the school nurse by a district.

(b) In preparing the nursing evaluation, the school nurse shall assess the health of the handicapped child, identify the kinds of school health services which the handicapped child requires to meet the child's unique needs, and develop, coordinate or provide those school health services which are required to allow the child to benefit from special education. The school nurse shall obtain and review any and all information, including the written results of a physical examination from the student's physician and family, in preparing the nursing evaluation.

(c) The school nurse shall furnish a copy of a student's nursing evaluation to the school and attend, or designate a person familiar with the student's school health services needs to attend, all meetings in which school health services may be considered for inclusion as a related service in the student's IEP. [Eff. April 12, 1984] (Auth: HRS §321-9) (Imp: HRS §301-27; 34 C.F.R. §§300.4, 300.13, 300.344-.346, 300.503, 300.532, 300.534, 300.552)

§11-147-5 Non-psychiatric medical services. (a) Medical services for diagnostic or evaluation purposes other than for psychiatric evaluations shall be provided by the department:

- (1) When the department of education has not been able to obtain a written report of a current medical examination for a handicapped child or a child suspected of being a handicapped child; or
- (2) When the physician of a handicapped child or a child suspected of being a handicapped child recommends that another medical evaluation or diagnosis be made.

(b) The department shall assist in interpreting the results of any physical or medical examination furnished by a handicapped child's physician when requests for such assistance are referred to the department by the department of education.

(c) The licensed physician to whom a handicapped child has been referred for medical services described in this section shall prepare and submit written findings or interpretations to the multidisciplinary evaluation team assigned to evaluate the child. [Eff. April 12, 1984] (Auth: HRS §321-9) (Imp: HRS §301-27; 34 C.F.R. §§300.4, 300.13, 300.503, 300.532, 300.534)

§11-147-6 Mental health services--clinical evaluation of mental health status. (a) A student referred by the district for clinical evaluation of mental health status shall be evaluated by the mental health division children's staff. A written report documenting the evaluation shall be prepared and submitted to the district. It shall include diagnostic and prognostic impressions of the student which are based upon clinical observations of the child, a review of the child's medical, psychological, or psychiatric history and records, and interviews with the child and any other persons able to furnish relevant information. It shall also contain descriptions of the student's mental health needs and recommendations for meeting those identified needs. Evaluations will not specify a particular educational disability category, nor include recommendations for placement in a specific site.

(b) A member of the mental health division children's staff who was involved in evaluating a particular student shall participate as a member of the department of education multi-disciplinary evaluation team in all meetings relating to the evaluation and recommendation(s) for services for that student. [Eff. April 12, 1984] (Auth: HRS §321-9) (Imp: HRS §301-27; 34 C.F.R. §§300.4, 300.13, 300.344, 300.503, 300.532, 300.534, 300.540-.543)

§11-147-7 Mental health services--treatment. (a) Mental health treatment services include teacher oriented consultation (TOC), student oriented consultation (SOC), and direct treatment services (DTS). The mental health division children's staff shall provide any or all of the types of mental health treatment services described in this section to a handicapped child identified as requiring mental health services in order to benefit from special education.

(b) TOC mental health services shall be provided by a member of the mental health division children's staff when consultation with the teacher(s) of handicapped children will assist the teacher(s) in identifying and managing developmental, social, and emotional adjustment problems which handicapped students in a particular classroom may be encountering. The designated mental health division children's staff member shall also maintain communications with district special education staff whenever necessary or appropriate.

(c) SOC mental health services shall be provided as a related service when mental health consultation(s) provided by a member of the mental health division children's staff to the teacher(s) of a particular handicapped student will facilitate the teacher's ability to provide a therapeutic learning environment for the student in furtherance of specific social, emotional, and behavioral goals included in the child's IEP. When SOC services are to be or have been included in a student's IEP, a member of the mental health division children's staff shall participate in meetings conducted by the department of education concerning that student's mental health needs. A written report regarding the student's progress toward the mental health related goals specified in the student's IEP shall be transmitted to the student's teacher on a quarterly basis for inclusion in any reports to parents regarding the student's progress toward all IEP goals.

(d) DTS mental health services shall be provided when behavioral, social, or emotional problems, or psychiatric disorders prevent a child from benefitting or limit the child's ability to benefit from specially designed instruction developed to meet the unique needs of the handicapped child. DTS mental health services include individual therapy, parent counseling and training, group psycho-therapy, behavior therapy, and substance abuse counseling.

- (1) Direct treatment mental health services will be provided at the student's school during the regular hours of the school day, unless the unique needs of the student require another arrangement. The mental health division children's staff member assigned to provide the services shall maintain ongoing communication with the student's teacher(s) and any other persons providing related services to the student in order to align therapy and counseling goals with educational goals.
- (2) Written information regarding the student's progress toward all mental health related goals included in the student's IEP will be transmitted by the assigned mental health division children's staff member to the student's teacher on at least a quarterly basis for inclusion in reports to parents regarding the student's progress toward all IEP goals.

- (3) The assigned member of the mental health division children's staff shall participate in meetings, including any IEP conferences, conducted by the department of education concerning a student's mental health needs whenever direct treatment mental health services have been recommended and included in the student's IEP. [Eff. April 12, 1984] (Auth: HRS §321-9) (Imp: HRS §301-27; 34 C.F.R. §§300.4, 300.13, 300.345, 300.346, 300.503, 300.532, 300.540-543, 300.552)

§11-147-8 Audiological services. (a) The department shall provide audiological services for diagnostic or evaluation purposes in order to determine whether a child is handicapped and therefore eligible to receive special education and related services pursuant to P.L. 94-142, or to contribute to the formulation of an appropriate educational program and placement for an eligible handicapped child.

(b) The audiologist assigned to evaluate a student shall submit a written report to the multi-disciplinary evaluation team identifying any auditory or hearing disorder discovered, outlining the extent of each disorder, and recommending services appropriate for dealing with each disorder so as to allow the child to benefit from special education. Audiological evaluations will not specify a particular educational disability nor include any placement recommendations at a specific site. [Eff. April 12, 1984] (Auth: HRS §321-9) (Imp: HRS §301-27; 34 C.F.R. §§300.4, 300.13, 300.503, 300.532, 300.534, 300.540-543)

§11-147-9 Parent counseling and training. Counseling or training shall be provided to parents or persons with whom a handicapped child lives, whenever the child requires physical therapy, occupational therapy, or mental health treatment services, and it appears that counseling or training would assist the parents or persons with whom the child lives to understand the special needs of the child and further the child's attainment of the therapy or treatment goals and objectives specified in the child's IEP. [Eff. April 12, 1984] (Auth: HRS §321-9) (Imp: HRS §301-27; 34 C.F.R. §§300.4, 300.13, 300.346)

§11-147-10 Impartial hearing. A parent, the department of education or the department may request an impartial hearing on any matter relating to the provision of mental health services, occupational therapy, physical therapy, audiological and medical services for diagnostic or evaluation purposes, or school health services, pursuant to the rules of the department of education relating to the provision of a free appropriate public education for exceptional children who are handicapped. All requests shall be made to and processed by the department of education in accordance with the procedures for such hearings outlined in the rules of the department of education. [Eff. April 12, 1984] (Auth: HRS §321-9) (Imp: HRS §301-37; 34 C.F.R. §§300.500-.514)

§11-147-11 Confidentiality of information. The provisions for ensuring the confidentiality of educational records and matters relating to the provision of a free appropriate public education for exceptional children who are handicapped which are contained in the rules of the department of education shall apply to any actions undertaken by the department and any information secured or prepared pursuant to the provisions of this chapter. [Eff. April 12, 1984] (Auth: HRS §321-9) (Imp; HRS §301-27; 34 C.F.R. §§300.500, 300.560-.576)

§11-147-12 Services limited by available funding. The department shall be required to provide the related services of occupational and physical therapy services, school health services, non-psychiatric medical services, clinical evaluation of mental health status, mental health treatment services, audiological services, and parent counseling and training, as described and defined in this chapter, to handicapped children only so long as sufficient appropriations by the State legislature for such purposes are available to, and have not been exhausted by the department. [Eff. April 12, 1984] (Auth: HRS §301-27) (Imp: HRS §301-27)

The Department of Health authorized the adoption of Chapter 147 of Title 11, Administrative Rules on March 28, 1984 following public hearings held on Oahu on November 9, 1983, on Hawaii on November 4, 1983, on Maui on November 10, 1983, and Kauai on November 3, 1984 after public notice was given in the Honolulu Advertiser on October 14, 1983, in the Garden Isle on October 14, 1983 and in the Maui News on October 20, 1983.

Chapter 147 of Title 11, Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

CHARLES G. CLARK
Director
Department of Health

Dated: March 28, 1984

APPROVED:

GEORGE R. ARIYOSHI
GOVERNOR
STATE OF HAWAII
Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

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