

AGREEMENT TO EXTEND

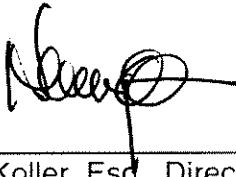
**INTERAGENCY AGREEMENT BETWEEN
HAWAII DEPARTMENT OF EDUCATION
AND HAWAII DEPARTMENT OF HUMAN SERVICES**

We hereby agree to extend the current Interagency Agreement between the Hawaii Department of Education and the Hawaii Department of Human Services from June 30, 2006 until June 30, 2009 or until amended, terminated, or extended in writing by one or both parties.

Signed:


Department of Human Services

By:



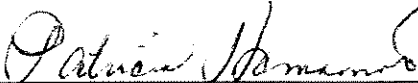
Date:

MAR 16 2006

 Lillian B. Koller, Esc., Director

Department of Education

By:



Date:

4.3.06

Patricia Hamamoto, Superintendent

**INTERAGENCY AGREEMENT
BETWEEN
HAWAII DEPARTMENT OF EDUCATION
AND
HAWAII DEPARTMENT OF HUMAN SERVICES**

Necessity of Interagency Coordination

The Department of Human Services and the Department of Education both have responsibilities to serve students with disabilities.

As a condition of assistance under Part B of the IDEA, the Department of Education, as the state educational agency, ensures:

- (1) All children with disabilities within the eligible age range for services as defined pursuant to Title 8, Chapter 56, Section 8-56-15 residing in the State have the right to a free appropriate public education in accordance with the IDEA and the laws of this State;
- (2) That the requirements of the IDEA, Part B are carried out; and
- (3) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency—
 - i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the Department of Education; and
 - ii) Meets the education standards of the Department of Education, including the requirements of IDEA, Part B. (20 U.S.C. 1412(a)(11); 34 C.F.R. Section 300.110)

As a condition for the receipt of Federal funds under Title I, Part B of the Rehabilitation Act of 1973, as amended, the Department of Human Services, is required to operate and administer the State Vocational Rehabilitation Services Program in accordance with the State Plan for the State Vocational Rehabilitation Services Program, and is required to have information on a formal interagency agreement with the Department of Education as the State educational agency, which agreement must, at a minimum, provide for:

- (1) Consultation and technical assistance to the Hawaii Department of Education in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;
- (2) Transition planning by personnel of the Department of Human Services and the Department of Education for students with disabilities that facilitates the development and completion of their Individualized Education Program under Section 614(d) under IDEA;
- (3) The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and
- (4) Procedures for outreach to and identification of students with disabilities who are in need of transition services.

The Department of Human Services acknowledges that it has the responsibility for providing or paying for some services to children with disabilities living in the State of Hawaii under the enabling State and Federal mandates for the Department of Human Services. This responsibility is not limited by the IDEA, Part B. (20 U.S.C. 1412(a)(11); 34 C.F.R. Section 300.600(c))

The Department of Human Services further acknowledges that the State's policy that ensures all children with disabilities residing in the State have the right to a free appropriate public education applies to the Department of Human Services when the Department provides services identified in the child's IEP. (20 U.S.C. 1412(a)(11); 34 C.F.R. Section 300.600(c); 34 C.F.R. Section 300.121)

In order to satisfy the federal conditions of assistance for IDEA, the Department of Education is required to have an interagency agreement or other mechanism for interagency coordination with each noneducational public agency that is otherwise obligated under Federal or State law to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to children with disabilities under the IDEA, Part B. (20 U.S.C. §1412(a)(12)) The agreement or mechanism must:

- (i) identify the state agency responsible to provide services that are also special education or related services to ensure a free appropriate public education;
- (ii) specify the terms and conditions under which responsible agencies reimburse local educational agencies for providing certain services that are special education or related services;
- (iii) resolve interagency disputes; and
- (iv) coordinate the provision of services which are also special education or related services.

MECHANISM FOR INTERAGENCY COORDINATION

This mechanism for interagency coordination is in effect between the State Department of Education, and State Department of Human Services in order to ensure that all services required to provide a free appropriate public education to students with disabilities residing in the State of Hawaii are provided, including the provision of these services during the pendency of any dispute among these agencies regarding the respective financial responsibility of the agencies. By our signature, this mechanism for interagency coordination binds the State Department of Education, and State Department of Human Services to do the following:

- (1) State Standards: If the Department of Human Services is otherwise obligated by Federal or State law to provide or pay for any services that are also considered special education or related services, the Department of Human Services will fulfill this obligation or responsibility, either directly or through contract or other arrangement with the Department of Education in order to ensure that all required services needed to guarantee a free appropriate public education are provided, including the provision of these service during the pendency of any dispute of financial responsibility.

When the Department of Human Services is the service provider in accordance with a student with a disability's IEP, it hereby assures the requirements of the IDEA, Part B and Title 8, Chapter 56 will be carried out, including the state standards for the provision of services during a dispute of financial responsibility. (20 U.S.C. 1412(a)(12)(A), (B), and (C); 1401(8)); 34 C.F.R. Section 300.142)

Compliance with Medicaid and MedQUEST laws and rules: The ability of DHS to provide assistance through Medicaid or other public insurance benefits programs depends on the compliance with the laws and rules relevant to Medicaid and MedQUEST by the entities and individuals involved, and/or their parents, guardians or other persons with appropriate authority. This includes, but is not limited to, providers and recipients. Without such compliance, DHS may not be able to extend assistance under the terms of this agreement. Such inability to assist under these circumstances shall absolve MedQUEST of any responsibility for financial assistance under this agreement.

The Department of Human Services and the Department of Education will develop joint procedures to implement this Interagency Agreement:

- Describing how to identify, or a method for defining, the financial responsibility of each agency for providing services for which the Departments of Human Services and the Department of Education have shared responsibilities under Federal and/or State law. These procedures will include the conditions, terms, and procedures, as appropriate, under which a Department would be reimbursed for the provision of services;
- Describing the coordination of services to determine and identify the responsibilities of each department to promote the coordination and timely and appropriate delivery of services. (34 C.F.R. 300.142(a)(4))

(2) Financial Responsibility. The financial responsibility of the Department Human Services, in accordance with the requirements and constraints of Federal and State law, will precede the financial responsibility of the Department of Education, the agency responsible for developing an IEP for a child with a disability. (34 C.F.R. Section 300.142(a)(1))

(3) Interagency disputes. If the Department of Human Services fails to provide or pay for the special education or related services for which they allegedly have financial or legal responsibility, the Department of Education shall provide or pay for these services to the child in a timely manner.

The dispute shall be referred to the respective Director of the Department of Human Services and the Superintendent of the Department of Education. The Director and the Superintendent, or their designees, will meet to resolve the interagency dispute. If the heads of agencies cannot resolve the interagency dispute; then the issue should be taken to the Governor for resolution.

If the decision of the heads of agencies or the Governor is that the Department of Human Services failed to provide or pay for these services, then the Department of Education may claim reimbursement for the services from the Department of Human Services and that agency shall reimburse the Department of Education in a timely manner and in accordance with the joint procedures described above.

(4) Medicaid reimbursement The Department of Human Services may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context. (34 C.F.R. 300.142(b)(1)(ii))

(5) Children with disabilities who are covered by public insurance. The Department of Human Services may use the Medicaid or other public insurance benefits programs in which a child

participates to provide or pay for services required under IDEA, Part B, as permitted under the public insurance program, except as provided in paragraph (a).

(a) With regard to services required to provide a free appropriate public education under the IDEA, Part B to a student with disabilities in the State of Hawaii, the Department of Human Services and the Department of Education—

(i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to the IDEA, Part B. The responsible public agency may, however, pay the cost that the parent otherwise would be required to pay; and

(iii) May not use a child's benefits under a public insurance program if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(6) Children with disabilities who are covered by private insurance. With regard to services required to provide a free appropriate public education to an eligible child under the IDEA, Part B, the Departments of Human Services and Education may access a parent's private insurance proceeds only if the parent provides informed consent consistent with the IDEA

(a) Each time any of the agencies propose to access the parent's private insurance proceeds, it must—

(i) Obtain informed parental consent; and

(ii) Inform the parents that their refusal to permit the agencies to access their private insurance does not relieve the agencies of their responsibility to ensure that all required services are provided at no cost to the parents.

(7) Use of IDEA, Part B funds. If the Departments of Human Services and/or Education are unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part to ensure a free appropriate public education, the Department of Education may use its IDEA, Part B funds to pay for the service. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the Department of Education may use its IDEA, Part B funds to pay the cost the parent otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(8) Proceeds from public or private insurance.

(a) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR Section 80.25.


(b) If the Departments of Human Services, and/or Education spend reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 34 C.F.R. Sections 300.154 and 300.231.


(9) Construction. Nothing in this mechanism should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.

This Agreement shall begin on the date of signatures and continue in effect until June 30, 2006 or until amended, terminated, or extended in writing by one or both parties.

Signed:

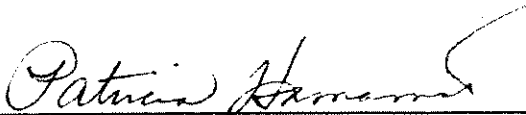
Department of Human Services
By:



 Lillian B. Koller, Esq., Director

Date: 12/08/03

Department of Education
By:



Patricia Hamamoto, Superintendent

Date: 11 25.03