

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

August 2, 2016

TO: Board of Education Student Achievement Committee

FROM: Jim Williams  
Student Achievement Committee Chairperson, Board of Education

AGENDA ITEM: Update on status of draft administrative rules for multiple charter school authorizers and Committee Action on timeline for adoption of administrative rules for multiple charter school authorizers and development of multiple charter school authorizer system

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I. BACKGROUND

At its January 19, 2016 general business meeting, the Board of Education ("Board") directed its staff to draft administrative rules for multiple charter school authorizers, pursuant to Hawaii Revised Statutes ("HRS") §302D-4, entitled "Chartering authority application for eligible entities."<sup>1</sup>

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<sup>1</sup> HRS §302D-4 provides as follows:

"(a) The commission created under section 302D-3 may authorize public charter schools anywhere in the State.

(b) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities may apply to the board, pursuant to this section, for statewide, regional, or local chartering authority, in accordance with each institution's regular operating jurisdiction.

(c) A county or state agency may apply to the board, pursuant to this section, for chartering authority.

(d) Governing boards of non-profit or charitable organizations, which are exempt from federal taxes under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, may apply to the board, and may be granted statewide chartering authority. Nonpublic sectarian or religious organizations and any other charitable organization which in their federal Internal Revenue Service Form 1023, Part IV, describe activities indicating a religious purpose, are not eligible to apply to become an authorizer under this chapter.

(e) The board shall establish, through administrative rules, the annual application and approval process for all entities eligible to apply for chartering authority pursuant to this section; provided that the board shall not approve any application for chartering authority until July 1, 2014, or until the board adopts rules, whichever is later. By June 30 of each year, the board shall make available information and guidelines for all eligible entities concerning the opportunity to apply for chartering authority under this chapter. The application process shall require each interested eligible entity to submit an application that clearly explains or presents the following elements:

(1) Written notification of intent to serve as an authorizer in accordance with this chapter;

(2) The applicant entity's strategic vision for chartering;

(3) A plan to support the vision presented, including explanation and evidence of the applicant entity's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing, in accordance with this chapter;

(4) A draft or preliminary outline of the request for proposals that the applicant entity, if approved as an authorizer, would issue to solicit public charter school applicants;

HRS §302D-4(e) provides, in pertinent part, “The [B]oard shall establish, through administrative rules, the annual application and approval process for all entities eligible to apply for chartering authority pursuant to this section; provided that the [B]oard shall not approve any application for chartering authority until July 1, 2014, or until the [B]oard adopts rules, whichever is later[.]”

Included in the development of a process to create multiple authorizers is also consideration of the transfer of oversight of a public charter school from one authorizer to another. These charter transfers are covered by HRS §302D-20, entitled “Charter transfers,” which provides:

“(a) Transfer of a charter contract, and of oversight of that public charter school, from one authorizer to another before the expiration of the charter term shall not be permitted except by special petition to the [B]oard by a public charter school or its authorizer. The [B]oard shall review such petitions on a case-by-case basis and may grant transfer requests in response to special circumstances and evidence that such a transfer would serve the best interests of the public charter school's students.

(b) The [B]oard may adopt rules pursuant to chapter 91 to carry out the purposes of this section.”

Therefore, Board staff drafted two new proposed Hawaii Administrative Rules (“HAR”) chapters: HAR Chapter 8-515, entitled “Establishment and Oversight of Charter School Authorizers,” and HAR Chapter 8-517, entitled “Charter Contract Transfers.”

Subsequently, the Student Achievement Committee (“Committee”) requested that the draft administrative rules be circulated to charter school stakeholders and opened up for preliminary public comments. At its March 15, 2016 meeting, the Committee adopted a recommendation to the Board to approve for public hearing a revised draft of the administrative rules based on public comment and including recommended changes from the Department of the Attorney General (“AG”) and the Legislative Reference Bureau (“LRB”). On that same day, the Board approved the Committee’s recommendation.

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(5) A draft of the performance framework that the applicant entity, if approved as an authorizer, would use to guide the establishment of a charter contract and for ongoing oversight and evaluation of public charter schools, consistent with the requirements of this chapter;

(6) A draft of the applicant entity's renewal, revocation, and nonrenewal processes, consistent with section 302D-18;

(7) A statement of assurance that the applicant entity seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of this chapter, and that if approved as an authorizer, the entity will fully participate in any authorizer training provided or required by the State; and

(8) A statement of assurance that the applicant will ensure public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures.

(f) By June 30 of each year, the board shall decide whether to grant or deny chartering authority to each applicant. The board shall make its decisions on the merits of each applicant's proposal and plans.

(g) Within sixty days of the board's decision, the board shall execute a renewable authorizing contract with each entity it has approved for chartering authority. The initial term of each authorizing contract shall be six years. The authorizing contract shall specify each approved entity's agreement to serve as an authorizer in accordance with the expectations of this chapter, and shall specify additional performance terms based on the applicant's proposal and plan for chartering. No approved entity shall commence charter authorizing without an authorizing contract in effect.

(h) This section shall not apply to the commission.”

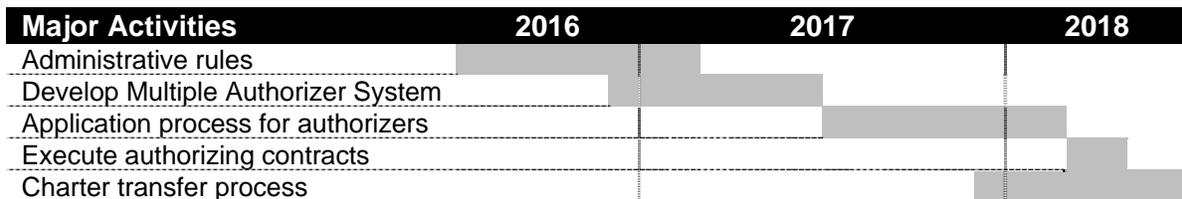
On March 24, 2016, Board staff delivered a memorandum to the Office of the Governor requesting the Governor’s approval to hold a public hearing on the proposed rules approved by the Board, pursuant to HRS Chapter 91.

II. UPDATE

On June 14, 2016, the Governor approved the Board’s request for a public hearing, which the Board received on July 1, 2016. A general timeline that maps out the approximate timeframes of the remaining steps in the administrative rules promulgation process is attached as **Exhibit A**. In addition, the timeline also includes activities and estimated dates for the following major processes related to implementing the administrative rules and establishing multiple charter school authorizers:

- Development of the application for chartering authority, authorizing contract, and authorizer performance evaluation system;
- Implementation of the application process for chartering authority;
- Execution of authorizing contracts with approved entities; and
- Development and implementation of the charter transfer process.

According to this timeline, the earliest an authorizer approved by the Board will begin operating is approximately April 2018. The chart below illustrates the timing of these overlapping activities.



Promulgation of administrative rules.

The Board, in accordance with HRS Chapter 91, will publish a notice of public hearing and, through the use of a presiding officer, hold a public hearing on the proposed administrative rules, attached as **Exhibit B**. The tentative date of the public hearing is September 27, 2016. This Committee will consider the comments from the public and make a recommendation to the Board. The Board will hold a decision-making meeting at which it makes any necessary changes to the proposed rules and adopts them. The AG reviews and approves the adopted rules “as to form.” However, if the AG determines substantial changes have been made to the rules, another public hearing will need to be held.

Upon AG approval “as to form,” the Board requests final approval of the rules from the Governor. The Governor approves and signs the rules and files copies with the Lieutenant Governor. The approved rules become effective ten days after being filed with the Lieutenant Governor. While it is difficult to determine how long the Governor will review the final rules before approving them, a reasonable estimate is sometime in February or March 2017, assuming the Board adopts the final rules in November 2016.

Development of the application for chartering authority, authorizing contract, and authorizer performance evaluation system.

The proposed administrative rules would require the Board to develop, among other things, the following:

- An application form, process, and processing schedule for eligible entities to apply to become authorizers, including policies, criteria, or guidelines for evaluating applications for chartering authority (HAR §8-515-5);
- An authorizing contract that shall be executed with each entity the Board approves for chartering authority (HAR §8-515-6(c));
- A performance evaluation system to assess the effectiveness of all authorizers (HAR §8-515-10).

The Board will need to adopt these important components of the system for multiple charter school authorizers soon after the effectuation of the administrative rules and before June 30, which is the statutory deadline to release information on the application for chartering authority.<sup>2</sup> Each of these components relate to each other, so their concurrent development is necessary.

Board staff will be able begin work on these components after the Board submits the final administrative rules to the Governor for approval, around December 2016. The development of the initial drafts will likely require a few months of work; therefore, May 31, 2017 is the tentative target date for completion and publication of the draft application for chartering authority, authorizing contract, and authorizer performance evaluation system, with this Committee taking action on June 6, 2017.

#### Implementation of the application process for chartering authority.

As previously mentioned, the Board will need to release information on the application for chartering authority by June 30, 2017, assuming the administrative rules are effectuated before then. The timeline for the application process contains the elements required by the administrative rules and is based on a similar timeline and process run by the State Public Charter School Commission (“Commission”) for applicants interested in starting new charter schools.

Eligible entities interested in becoming authorizers would need to submit applications by mid-September 2017. The evaluation phase, which includes an interview of each applicant, would take place from late September to early November, with applicants receiving recommendation reports around mid-December 2017. This Committee would make its recommendations on each application, based on information from evaluators and applicants, on February 6, 2018, with the full Board making the final decisions on February 20, 2018.

#### Execution of authorizing contracts with approved entities.

If the Board approves any entity to become an authorizer, the Board will need to enter into an authorizing contract with that entity. There may be conditions that need to be met before the Board agrees to enter into a contract, which should be done in the month or two following an approval. In April 2018, this Committee would then recommend whether the pre-contracting conditions have been met. If the Board decides the conditions have been

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<sup>2</sup> HRS §302D-4(e) states, in pertinent part, “By June 30 of each year, the board shall make available information and guidelines for all eligible entities concerning the opportunity to apply for chartering authority under this chapter.”

met, an authorizing contract will be executed. It is important to note that the Board must execute an authorizing contract within 60 days of approving an applicant as an authorizer.<sup>3</sup>

#### Development and implementation of the charter transfer process.

If the Board approves and executes an authorizing contract with a new authorizer, then there becomes the possibility of existing charter schools seeking to transfer to that authorizer, pursuant to HAR Chapter 8-517. Therefore, the Board will need to have a charter transfer application and process in place by that time. Assuming an authorizer begins operating in April 2018, the Board will need to approve a charter transfer application and process in early April and development of the application and process would need to occur several months prior, approximately from December 2017 to March 2018.

With a new authorizer and charter transfer process in place by April 2018, any interested charter schools could apply for a transfer from approximately April through June 2018 to be effective for the 2018-2019 school year.

#### Other actions.

There are several other activities on which proposed HAR Chapters 8-515 and 8-517 require the Board to act, possibly during the timeframe of the attached timeline, including:

- Determine the purpose of charter schools (HAR §8-515-10(a)(1));
- Periodically conduct performance evaluations of authorizers and issue performance reports (HAR §8-515-11);
- As warranted, conduct special reviews of authorizers and issue special review reports (HAR §8-515-12);
- Develop a chartering authority renewal application form, process, and processing schedule, as well as policies, criteria, or guidelines for evaluating chartering authority renewal applications (HAR §8-515-15); and
- Periodically run the renewal process for chartering authority, provided there are authorizers other than the Commission (HAR Chapter 8-515, Subchapter 4).

Of these, the activity that may require the most immediate Board action after (or possibly even before) the effectuation of the administrative rules is determining the purpose of charter schools because the authorizer performance evaluation system must be developed to assess the effectiveness of authorizers in carrying out their duties in a manner consistent with the purpose of charter schools, as determined by the Board. However, it may be in the interest of the Board to determine the purpose of charter schools earlier to ensure it is reflected in and aligned with the Board and Department of Education's Joint Strategic Plan, although this is not related to the administrative rules.

### III. RECOMMENDATION

I recommend this Committee and the Board adopt the attached timeline to communicate to the charter school community and interested stakeholders the date of the public hearing for proposed administrative rules and the general timing of the events to follow. This timeline is not, however, intended to restrict the Board to the timeframes noted but rather serve as

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<sup>3</sup> HRS §302D-4(f) states, in pertinent part, "Within sixty days of the board's decision, the board shall execute a renewable authorizing contract with each entity it has approved for chartering authority. The initial term of each authorizing contract shall be six years."

guidance. Therefore, I also recommend this Committee and the Board authorize the Committee Chairperson to make changes to the timeline as necessary and provide notification as appropriate. I propose the following motion:

**“Moved to recommend the Board adopt the general timeline, as attached as Exhibit A of Board Member Jim Williams’ memorandum dated August 2, 2016, as guidance for the promulgation of the administrative rules for multiple charter school authorizers and the development of the multiple charter school authorizer system; provided that the Student Achievement Committee Chairperson may make adjustments to the timeline as necessary and provide notification as appropriate.”**

**Exhibit A**

**Multiple Charter School Authorizers Estimated Timeline (as of August 2, 2016)**

## Multiple Charter School Authorizers Estimated Timeline

Major Areas
Administrative rules
Development of Multiple Authorizer System
Application process for authorizers
Execution of authorizing contracts
Charter transfer process

*Dates are approximate, based on various assumptions, and subject to change.*

Estimated Date	Activity
June/July 2016	Governor signs and approves request for public hearing
July 2016	Board of Education (“Board”) staff receives feedback from deputy attorney general (“AG”) on draft of notice of public hearing and finalizes the draft based on foregoing
August 2016	Board publishes notice for public hearing: <ul style="list-style-type: none"> <li>• In newspapers statewide and each county (Honolulu Advertiser, Maui News, Garden Island, Hawaii Tribune-Herald, and West Hawaii Today);</li> <li>• Via email to list of interested stakeholders;</li> <li>• On the Lieutenant Governor’s (“LG”) website; and</li> <li>• On Board’s website.</li> </ul> Board Chairperson designates a presiding officer for the public hearing
September 27, 2016	Presiding officer conducts public hearing on proposed administrative rules in Boardroom
October 2016	Board staff works with Student Achievement Committee (“SAC”) Chairperson to review public testimony, and SAC Chairperson develops recommendation
November 1, 2016	SAC holds decision-making meeting, makes any necessary adjustments, and recommends the Board adopt the proposed administrative rules and authorizes the Board Chairperson to sign rules on Board’s behalf
November 15, 2016	Board adopts and executes the proposed administrative rules
Early December 2016	Deputy AG approves adopted proposed rules “as to form” <b>(Note: If deputy AG determines substantial changes have been made to the rules, another public hearing will need to be held and the timeline below will be pushed back by approximately 5 months)</b>
Early December 2016	Board sends memo requesting that the Governor sign the rules
Mid-December 2016 to mid-April 2017	Board staff develop initial drafts of chartering authority, authorizing contract, and authorizer performance evaluation system (collectively, “Multiple Authorizer System Documents”)
February 2017	Governor approves and signs rules and rules are filed with LG. Approved rule becomes effective 10 days after being filed with the LG
April through May 2017	Board staff receives feedback from SAC Chairperson and deputy AG on drafts of Multiple Authorizer System Documents and finalize drafts based on the foregoing
Late May, 2017	Drafts of Multiple Authorizer System Documents posted online with SAC agenda
June 6, 2017	SAC recommends approval Multiple Authorizer System Documents

<b>Estimated Date</b>	<b>Activity</b>
June 20, 2017	Board approves Multiple Authorizer System Documents
Late June 2017	Board releases the notice inviting applications for chartering authority
July 2017	Deadline for prospective applicants to submit intent to apply
August 2017	Prospective applicants are notified of their eligibility to submit an application
September 2017	Deadline for eligible applicants to submit application
September through October 2017	Application initial evaluation window
October through November 2017	Evaluation team interviews applicants
November 7, 2017	Board holds meeting for public input on applications for chartering authority
December 2017	Applicants receive recommendation reports
December 2017 through February 2018	Board staff develop drafts of charter transfer application and process, receives feedback from SAC Chairperson and deputy AG on drafts of charter transfer application and process, and finalize the drafts based on the foregoing
February 6, 2018	Student Achievement Committee Meeting on application decisions
February 20, 2018	Board General Business Meeting on application decisions
February 21, 2018	Applicants are notified of the Board's decision
February through March 2018	Pre-contracting phase (anything that needs to be done before the Board will execute a contract with any approved entities would happen during this time)
March 2018	Board receives feedback from SAC Chairperson and deputy AG on drafts of authorizing contracts and finalize the drafts based on the foregoing
Mid-March 2018	Drafts of charter transfer application and process posted online with SAC agenda
March 20, 2018	SAC recommends approval of charter transfer application and process
April 3, 2018	SAC recommends to Board whether to execute authorizing contracts
April 3, 2018	Board approves charter transfer application and process
April 17, 2018	Board decides to execute authorizing contracts
Late April 2018	Deadline to execute authorizing contracts with any approved new authorizers
April to June, 2018	Existing charter schools may transfer to new authorizers effective for the 2018-2019 School Year
2018-2019 School Year	New authorizers initiate first charter school application processes
2019-2020 School Year	Start-up year for any charter school applicants approved by new authorizers
July 2020	Opening of first new charter schools authorized by new authorizers

**Exhibit B**

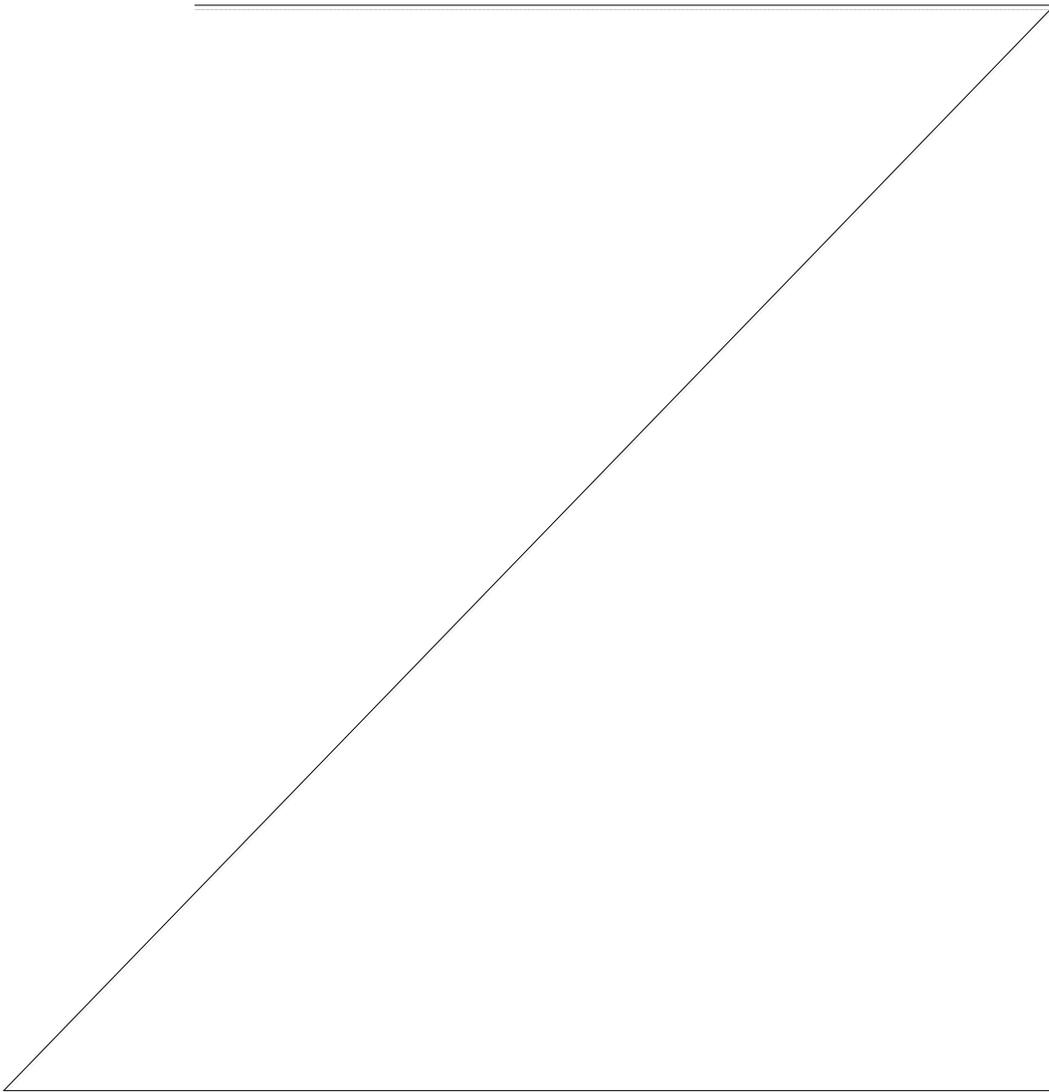
**Proposed Hawaii Administrative Rules Chapter 8-515, entitled “Establishment and Oversight of Charter School Authorizers,” and Chapter 8-517, entitled “Charter Contract Transfers” (Ramseyer format), as approved by the Board on March 15, 2016**

DEPARTMENT OF EDUCATION

Adoption of Chapters 8-515 and 8-517  
Hawaii Administrative Rules

[adoption date]

1. Chapter 8-515, Hawaii Administrative Rules, entitled "Establishment and Oversight of Charter School Authorizers", is adopted to read as follows:



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"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 515

ESTABLISHMENT AND OVERSIGHT OF CHARTER SCHOOL  
AUTHORIZERS

Subchapter 1 General Provisions

- §8-515-1 Purpose
- §8-515-2 Definitions
- §8-515-3 Computation of time
- §8-515-4 (Reserved)

Subchapter 2 Applications for Chartering  
Authority

- §8-515-5 Applications, generally
- §8-515-6 Application and approval procedure
- §8-515-7 Eligible entities
- §§8-515-8 to 8-515-9 (Reserved)

Subchapter 3 Oversight and Evaluation of  
Authorizers

- §8-515-10 Performance evaluation system
- §8-515-11 Performance evaluations
- §8-515-12 Special reviews
- §8-515-13 Noncompliance

Subchapter 4 Renewal or Nonrenewal of  
Chartering Authority

- §8-515-14 Reasons for nonrenewal
- §8-515-15 Application for chartering authority  
renewal
- §8-515-16 Performance report; notification of the  
prospect of nonrenewal
- §8-515-17 Nonrenewal decision by the board
- §8-515-18 (Reserved)

Subchapter 5 Revocation of Chartering Authority

- §8-515-19 Reasons for revocation
- §8-515-20 Notification of prospect of revocation
- §8-515-21 Revocation decision by the board

SUBCHAPTER 1

GENERAL PROVISIONS

§8-515-1 Purpose. This chapter governs the application process to become a charter school authorizer, oversight and evaluation of authorizers and the commission, renewal or nonrenewal of chartering authority, and revocation of chartering authority pursuant to chapter 302D, Hawaii Revised Statutes. [Eff ] (Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-6, 302D-11)

§8-515-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Applicant" means the applicant who submits an application for chartering authority to the board.

"Authorizer" means an entity with chartering authority established pursuant to section 302D-4,

Hawaii Revised Statutes. For purposes of this chapter, this term does not include the commission.

"Authorizing contract" means a fixed-term, renewable contract between an authorizer and the board that outlines the performance expectations of the authorizer and the roles, powers, and responsibilities for each party to the contract.

"Board" means the board of education.

"Commission" means the state public charter school commission established pursuant to section 302D-3, Hawaii Revised Statutes, with statewide chartering authority.

"Chartering authority" means the authority to review charter applications, decide whether to approve or deny charter applications, enter into charter contracts with charter applicants, oversee public charter schools, and decide whether to authorize, renew, deny renewal of, or revoke charter contracts in accordance with chapter 302D, Hawaii Revised Statutes. [Eff \_\_\_\_\_] (Auth: HRS §302A-1112) (Imp: HRS §§302D-1, 302D-4, 302D-11)

§8-515-3 Computation of time. The time in which any act provided in this chapter is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or state holiday and then it is also excluded. When the prescribed period of time is less than seven days, Saturdays, Sundays, or state holidays within the designated period shall be excluded in the computation. [Eff \_\_\_\_\_] (Auth: HRS §302A-1112) (Imp: HRS §91-2)

§8-515-4 (Reserved).

SUBCHAPTER 2

APPLICATIONS FOR CHARTERING AUTHORITY

§8-515-5 Applications, generally. (a) The board shall develop an application form, process, and processing schedule for applying to become an authorizer pursuant to section 302D-4, Hawaii Revised Statutes. The application form shall include a description of the application process and the application processing schedule.

(b) The board shall develop policies, criteria, or guidelines for evaluating applications for chartering authority based on nationally recognized principles and standards for quality charter authorizing, as applicable to local conditions. At a minimum, the policies, criteria, or guidelines included in the application form shall be evaluated in the following areas:

- (1) Satisfactory responses to elements of the application for chartering authority, including responses that clearly explain or present:
  - (A) The applicant's strategic vision for chartering;
  - (B) A plan to support the vision presented, including an explanation and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of a quality authorizer, in accordance with chapter 302D, Hawaii Revised Statutes;
  - (C) A draft or preliminary outline of the request for proposals that the applicant, if approved as an authorizer, would issue to solicit charter school applicants;
  - (D) A draft of the performance framework that the applicant, if approved as an

- authorizer, would use to guide the establishment of a charter contract and for ongoing oversight and evaluation of charter schools, consistent with the requirements of chapter 302D, Hawaii Revised Statutes;
- (E) A draft of the applicant's renewal, revocation, and nonrenewal processes, consistent with section 302D-18, Hawaii Revised Statutes;
  - (F) A statement of assurance that the applicant seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 302D, Hawaii Revised Statutes, and that if approved as an authorizer, the applicant will fully participate in any authorizer training provided or required by the State; and
  - (G) A statement of assurance that the applicant will ensure public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;
- (2) Organizational capacity and infrastructure;
  - (3) Financial capacity to fulfill the responsibilities of a quality authorizer;
  - (4) Authorizer responsibilities relating to charter applications, including:
    - (A) Soliciting and evaluating charter applications;
    - (B) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices; and
    - (C) Declining to approve weak or inadequate charter applications;
  - (5) Performance contracting, including negotiating and executing sound charter contracts with each approved charter applicant and with existing charter schools;

- (6) Ongoing charter school oversight, evaluation, renewal processes, including:
  - (A) Monitoring, in accordance with charter contract terms, the performance and legal compliance of charter schools; and
  - (B) Determining whether each charter contract merits renewal, nonrenewal, or revocation; and
- (7) Fulfillment of the duties of an authorizer, including:
  - (A) Acting as a point of contact between the department of education and the authorizer's charter schools;
  - (B) Being responsible for and ensuring the compliance of the authorizer's charter schools with all applicable state and federal laws, including reporting requirements;
  - (C) Being responsible for the receipt of applicable federal funds from the department of education and the distribution of funds to the authorizer's charter schools; and
  - (D) Being responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the authorizer's charter schools.

(c) The board shall make available the application form and the policies, criteria, or guidelines for evaluating applications to any person interested in establishing an authorizer. [Eff  
] (Auth: HRS §302A-1112) (Imp: HRS §302D-4)

§8-515-6 Application and approval procedure.

(a) The annual application and approval cycle for chartering authority shall be no longer than twelve months.

(b) The application and approval procedure shall provide for and include the following:

- (1) The submission of a notice of intent to apply for chartering authority to the board from each interested eligible entity;
- (2) The timely review of the notice of intent to apply by the board to determine eligibility, and notification by the board to the interested entity of its eligibility to submit an application for chartering authority;
- (3) The timely submission of a completed application for chartering authority to the board;
- (4) The timely review of the application by the board for completeness, and notification by the board to the applicant that the application is complete or incomplete;
- (5) If board deems the application incomplete, an opportunity for the applicant to make corrections and submit a completed applications; provided that corrections are made expeditiously and no wholesale changes to the application are made;
- (6) Upon receipt of a completed application, the review and evaluation of the application by qualified persons, including but not limited to an in-person interview with representatives from the applicant to assess the capacity of the applicant;
- (7) An opportunity in a public forum for the public, including the applicant, to provide input on each application for chartering authority;
- (8) Following the review and evaluation of an application for chartering authority by qualified persons, issuance of a written report by the evaluators with a recommendation to either approve or deny the application;
- (9) An opportunity for the applicant to submit a written response to the written report from

- the evaluators, and an opportunity for the evaluators to rebut, in writing, the applicant's written response, if applicable;
- (10) Following the written report, response, and rebuttal, as applicable, approval or denial of the application by the board in a meeting open to the public.

(c) The board shall execute an authorizing contract with each entity it has approved for chartering authority pursuant to section 302D-4(g), Hawaii Revised Statutes.

(d) If an application is denied, the board shall notify the applicant in writing, served by registered or certified mail with return receipt requested, stating the reason therefor, with specific references to the adopted policies, criteria, or guidelines for evaluating applications for chartering authority.

[Eff ] (Auth: HRS §302A-1112) (Imp: HRS §302D-4)

§8-515-7 Eligible entities. (a) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities shall be eligible to submit an application to the board for statewide, regional, or local chartering authority, in accordance with each institution's regular operating jurisdiction; provided that any private postsecondary institution is registered to do business in this State in accordance with state law.

(b) A state or county agency shall be eligible to submit an application to the board for statewide, regional, or local chartering authority.

(c) Governing boards of nonprofit or charitable organizations, which are exempt from federal taxes under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, shall be eligible to submit an application to the board for statewide chartering authority; provided that the organization is registered to do business in this State in accordance with state law. Nonpublic sectarian or religious

organizations and any other charitable organization which in their federal Internal Revenue Service Form 1023, Part IV, describe activities indicating a religious purpose, are not eligible to apply to become an authorizer pursuant to section 302D-4(d), Hawaii Revised Statutes.

(d) For purposes of this subchapter:

"Local chartering authority" means chartering authority within one or more designated department of education complex areas.

"Regional chartering authority" means chartering authority within a county or an island-wide geographic area.

(e) The board may disqualify any application as provided by law. [Eff \_\_\_\_\_ ] (Auth: HRS §302A-1112) (Imp: HRS §302D-4)

§§8-515-8 to 8-515-9 (Reserved).

### SUBCHAPTER 3

#### OVERSIGHT AND EVALUATION OF AUTHORIZERS

§8-515-10 Performance evaluation system. (a) The board shall develop a performance evaluation system to assess the effectiveness of all authorizers and the commission using the procedures described in section 8-515-11 and 8-515-12. The performance evaluation system shall, at a minimum:

- (1) Assess the effectiveness of an authorizer or the commission in carrying out its duties in a manner consistent with the purpose of charter schools, as determined by the board, and the spirit and intent of chapter 302D, Hawaii Revised Statutes;
- (2) Apply nationally recognized principles and standards for quality charter authorizing, as applicable to local conditions, in assessing performance; and

- (3) Assess the compliance of each authorizer and the commission with existing charter contracts, its authorizing contract, board policies, rules, and laws, as applicable.

(b) The performance evaluation system shall clearly set forth performance indicators, measures, and metrics that will guide the board's evaluations and reviews of each authorizer and the commission. At a minimum, the performance indicators, measures, and metrics included in the performance evaluation system shall evaluate the following areas:

- (1) Organizational capacity and infrastructure;
- (2) Financial capacity to fulfill the responsibilities of a quality authorizer;
- (3) Authorizer responsibilities relating to charter applications, including:
  - (A) Soliciting and evaluating charter applications;
  - (B) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices; and
  - (C) Declining to approve weak or inadequate charter applications;
- (4) Performance contracting, including negotiating and executing sound charter contracts with each approved charter applicant and with existing charter schools;
- (5) Ongoing charter school oversight, evaluation, renewal processes, including:
  - (A) Monitoring, in accordance with charter contract terms, the performance and legal compliance of charter schools; and
  - (B) Determining whether each charter contract merits renewal, nonrenewal, or revocation; and
- (6) Fulfillment of the duties of an authorizer, including:
  - (A) Acting as a point of contact between the department of education and the authorizer's charter schools;

- (B) Being responsible for and ensuring the compliance of the authorizer's charter schools with all applicable state and federal laws, including reporting requirements;
- (C) Being responsible for the receipt of applicable federal funds from the department of education and the distribution of funds to the authorizer's charter schools; and
- (D) Being responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the authorizer's charter schools.

(c) The performance provisions within each authorizing contract shall be based on the performance evaluation system. [Eff \_\_\_\_\_] (Auth: HRS §302A-1112) (Imp: HRS §§302D-6, 302D-11)

§8-515-11 Performance evaluations. (a) Any performance evaluation of an authorizer shall use all performance indicators, measures, and metrics set forth in the performance evaluation system pursuant to section 8-515-10.

(b) The board shall develop a response form for performance evaluations, which shall be made available to each authorizer who will be evaluated at least ninety days prior to the performance evaluation response being due. The performance evaluation response form shall also include a description of the performance evaluation process, the performance evaluation processing schedule, and the performance indicators, measures, and metrics set forth in the performance evaluation system pursuant to section 8-515-10.

(c) The performance evaluation shall provide for and include the following:

- (1) At least ninety days prior to the performance evaluation response being due, a written notice from the board notifying the

authorizer a performance evaluation will be conducted;

- (2) The timely submission of a completed performance evaluation response to the board;
  - (3) Upon receipt of a completed performance evaluation response, the review and evaluation of the authorizer by qualified persons;
  - (4) An in-person interview with representatives from the authorizer;
  - (5) A survey or interview of representatives from charter schools within the authorizer's portfolio of charter schools;
  - (6) An opportunity in a public forum for the public, including the authorizer, to provide input on each authorizer being evaluated;
  - (7) Following the review and evaluation of the authorizer by qualified persons, issuance of a draft of the written report by the evaluators to the authorizer, and an opportunity for the authorizer to provide written comments on the draft of the written performance evaluation report; and
  - (8) Approval of the final draft of the written performance evaluation report by the board, and transmittal of the report to the authorizer.
- (d) The performance evaluation report shall include an overall rating of the authorizer, and shall be published on the board's website. The performance evaluation report may be used as the performance report, pursuant to section 8-515-16, or may serve as a notice of noncompliance pursuant to section 8-515-13.

(e) The board shall conduct a performance evaluation of each authorizer no less than every five years.

(f) For the purposes of this section, "authorizer" also means the commission.

[Eff ] (Auth: HRS §302A-1112) (Imp: HRS §302D-11)

§8-515-12 Special reviews. (a) The board may conduct a special review of an authorizer using some or all of the performance indicators, measures, and metrics set forth in the performance evaluation system pursuant to section 8-515-10 for the following reasons:

- (1) Persistently unsatisfactory performance of the authorizer's portfolio of charter schools;
- (2) A pattern of well-founded complaints about the authorizer or its charter schools; or
- (3) Other objective circumstances.

(b) The board shall determine whether a special review of an authorizer is warranted on a case-by-case basis. If the board determines a special review is warranted, the board may opt to conduct a performance evaluation pursuant to section 8-515-11 instead of a special review pursuant to subsection (c).

(c) The special review shall provide for and include the following:

- (1) At least thirty days prior to the any requested documentation being due, a written notice from the board notifying the authorizer a special review will be conducted, describing the reason for the review, and identifying the areas to be reviewed;
- (2) The timely submission of any documentation requested by the board which may include responses to parts of the performance evaluation response form pursuant to section 8-515-11(b);
- (3) Upon receipt of the requested documentation, the review and evaluation of the identified areas by qualified persons;
- (4) Following the review and evaluation of the identified areas by qualified persons, issuance of a draft of the written report by

- the reviewers to the authorizer, and an opportunity for the authorizer to provide written comments on the draft of the written special review report; and
- (5) Approval of the final draft of the written special review report by the board, and transmittal of the report to the authorizer.
  - (d) The special review may also provide for and include the following:
    - (1) An in-person interview with representatives from the authorizer;
    - (2) Surveys or interviews of representatives from charter schools within the authorizer's portfolio of charter schools;
    - (3) An opportunity in a public forum for the public, including the authorizer, to provide input on the authorizer being reviewed;
  - (e) The special review report shall be published on the board's website, and may serve as a notice of noncompliance pursuant to section 8-515-13.
  - (f) For the purposes of this section, "authorizer" also means the commission.
- [Eff ] (Auth: HRS §302A-1112) (Imp: HRS §302D-11)

§8-515-13 Noncompliance. (a) If at any time the board finds that an authorizer or the commission is not in compliance with a material provision of existing charter contracts, its authorizing contract, board policies, rules, and laws, as applicable, the board shall notify the authorizer or commission in writing of the identified problems. The notice shall be served upon the authorizer or commission by registered or certified mail.

(b) The authorizer or commission shall have thirty days from the date of mailing of the notice to respond to the identified problems and submit to the board for approval a corrective action plan for remedying the problems in a reasonable time.

(c) If the authorizer fails to submit a corrective action plan or does not make significant

progress in remedying the identified problems in a reasonable time, the board shall notify the authorizer that it intends to revoke the authorizer's chartering authority pursuant to section 302D-11(d), Hawaii Revised Statutes, and in accordance with subchapter 5.

(d) If the commission fails to submit a corrective action plan or does not make significant progress in remedying the identified problems in a reasonable time, the board may terminate the terms of some or all of the members of the commission pursuant to section 302D-3(h), Hawaii Revised Statutes. [Eff ] (Auth: HRS §302A-1112) (Imp: HRS §§302D-3, 302D-11)

#### SUBCHAPTER 4

##### RENEWAL OR NONRENEWAL OF CHARTERING AUTHORITY

§8-515-14 Reasons for nonrenewal. An authorizing contract may not be renewed for any of the following reasons:

- (1) Persistently unsatisfactory performance of the authorizer's portfolio of public charter schools;
- (2) Persistent, regular, or substantial violations of material provisions of a charter contract or the authorizer's authorizing contract;
- (3) Failure to meet or make sufficient progress toward performance expectations set forth in the authorizing contract; or
- (4) Failure to remedy other authorizing problems identified by the board. [Eff ] (Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-11)

§8-515-15 Application for chartering authority renewal. (a) The board shall develop a chartering authority renewal application form, which shall be

made available to each authorizer whose authorizing contract will expire the following calendar year. The renewal application form shall also include a description of the renewal application process, the renewal application processing schedule, and the policies, criteria, or guidelines described in subsection (b).

(b) The board shall develop policies, criteria, or guidelines for evaluating chartering authority renewal applications; provided that an authorizer's performance shall be determined by a performance evaluation using the performance evaluation system, pursuant to section 8-515-11.

(c) An authorizer seeking renewal shall submit a renewal application to the board pursuant to the renewal procedures in sections 8-515-16 and 8-515-17, and the renewal policies, criteria, or guidelines adopted by the board. [Eff \_\_\_\_\_] (Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-11]

§8-515-16 Performance report; notification of the prospect of nonrenewal. (a) The board shall prepare a performance report for each authorizer whose authorizing contract will expire the following calendar year. The performance report shall summarize the authorizer's performance record to date, shall be in writing, and shall be served upon the authorizing contract holder by registered or certified mail.

(b) If applicable, the performance report shall notify the authorizing contract holder of any weaknesses, deficiencies, or concerns which may result in nonrenewal of the contract and shall include but not be limited to the following:

- (1) A clear and specific statement of the authorizer's weaknesses or deficiencies, with references to the applicable contract terms or performance standards that have not been met; and
- (2) A statement that the board will make its final decision on whether or not to renew the authorizing contract at a public

meeting, including the date, time, and place of the meeting, following the opportunity for public comment.

(c) The authorizer shall have thirty days from the date of mailing of the performance report to submit a renewal application, to respond to the performance report and any identified weaknesses, deficiencies, or concerns, to submit any corrections or clarifications for the report, and to request a hearing.

(d) If the authorizing contract holder disputes the board's assessment or claim of weaknesses or deficiencies, the board, after considering the authorizing contract holder's response, shall reaffirm, modify, or retract its earlier notification of weaknesses or deficiencies, and shall so notify the authorizing contract holder in writing served by registered or certified mail. [Eff ]  
(Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-11)

§8-515-17 Nonrenewal decision by the board. (a) The board shall make a final decision on whether or not to renew the authorizing contract within sixty days following receipt of the application for contract renewal.

(b) Within fifteen days of making its decision to renew or not renew the authorizing contract, the board shall issue its decision in writing, served upon the authorizing contract holder by registered or certified mail with return receipt requested. The decision shall set forth, with reasonable specificity, the reason for its decision. [Eff ]  
(Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-11)

§8-515-18 (Reserved).

SUBCHAPTER 5

REVOCATION OF CHARTERING AUTHORITY

§8-515-19 Reasons for revocation. Chartering authority may be revoked if an authorizer persists, after due notice from the board pursuant to section 302D-11(c), Hawaii Revised Statutes, and section 8-515-13 in violating a material provision of a charter contract or its authorizing contract with the board, or fails to remedy other authorizing problems identified by the board. [Eff \_\_\_\_\_] (Auth: HRS §302A-1112) (Imp: HRS §302D-11)

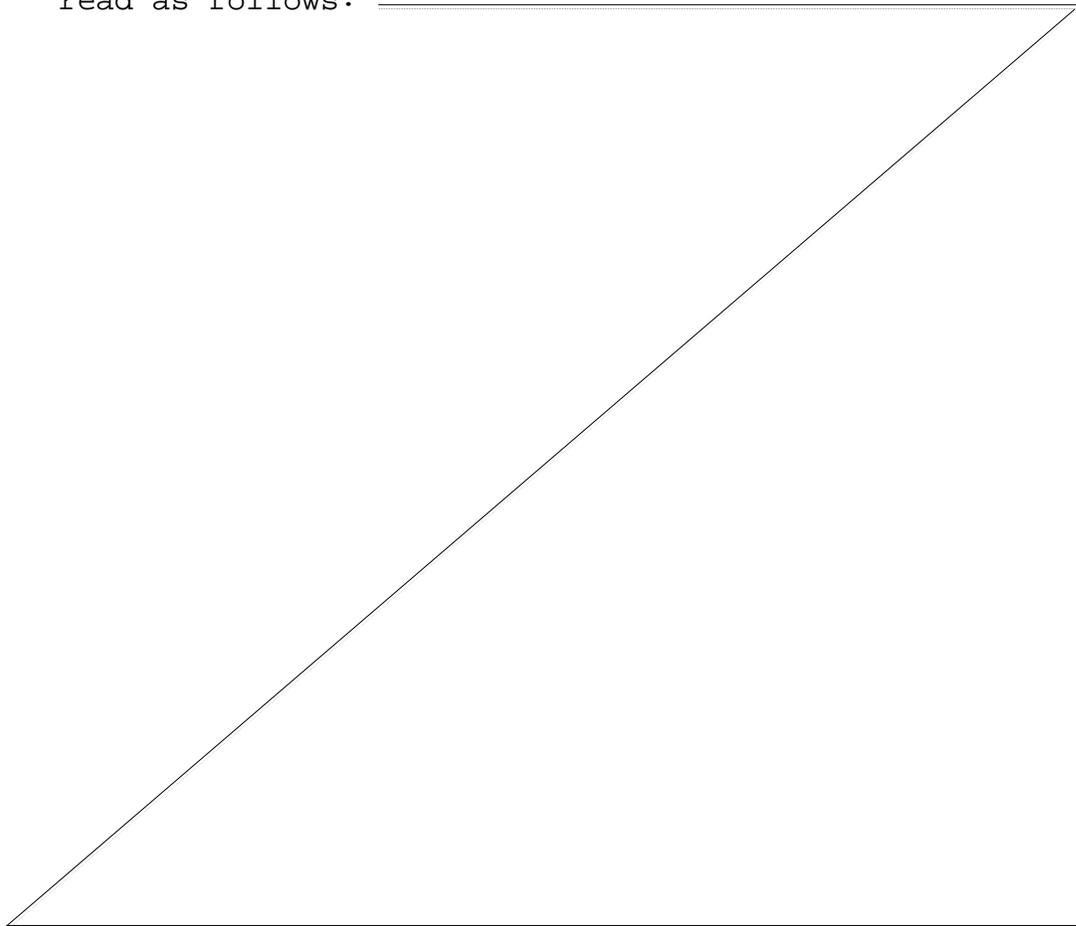
§8-515-20 Notification of prospect of revocation. Whenever the board has reason to believe that chartering authority should be revoked, the board shall notify the authorizing contract holder in writing of the prospect of revocation. The notification shall be served by registered or certified mail with return receipt requested and shall include the following:

- (1) The reason why revocation is contemplated;
- (2) The date by which the authorizing contract holder shall respond, which date shall be not less than thirty days from the date of notification; and
- (3) A statement that the board will make its final decision on whether or not to revoke chartering authority at a public meeting, including the date, time, and place of the meeting, following the opportunity for public comment. [Eff \_\_\_\_\_] (Auth: HRS §302A-1112) (Imp: HRS §302D-11)

§8-515-21 Revocation decision by the board. (a) The board shall make a final decision on whether or not to revoke chartering authority within thirty days following receipt of the response from the authorizing contract holder of the notice of prospect of revocation.

(b) Within fifteen days of making its decision on whether or not to revoke chartering authority, the board shall issue a report notifying the authorizing contract holder in writing, served by registered or certified mail with return receipt requested, of its final decision. The report shall set forth, with reasonable specificity, the reason for its decision." [Eff \_\_\_\_\_ ] (Auth: HRS §302A-1112) (Imp: HRS §§91-2, 302D-11)

2. Chapter 8-517, Hawaii Administrative Rules, entitled "Charter Contract Transfers", is adopted to read as follows: \_\_\_\_\_



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"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 517

CHARTER CONTRACT TRANSFERS

§8-517-1	Purpose
§8-517-2	Definitions
§8-517-3	Transfer application and process
§8-517-4	Transfers at the end of a charter contract term
§8-517-5	Transfer before the end of a charter contract term
§8-517-6	Transfers due to termination of authorizer's chartering authority
§8-517-7	Computation of time

§8-517-1 Purpose. This chapter governs the transfer of charter contracts between authorizers. [Eff ] (Auth: HRS §302A-1112) (Imp: HRS §§302D-11, 302D-20)

§8-517-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Authorizer" means an authorizer as defined in section 302D-1, Hawaii Revised Statutes, and includes the commission.

"Board" means the board of education.

"Charter contract" means a charter contract as defined in section 302D-1, Hawaii Revised Statutes.

"Chartering authority" means the authority to review charter applications, decide whether to approve or deny charter applications, enter into charter contracts with charter applicants, oversee public charter schools, and decide whether to authorize, renew, deny renewal of, or revoke charter contracts in accordance with chapter 302D, Hawaii Revised Statutes.

"Charter school" means a charter school as defined in section 302D-1, Hawaii Revised Statutes.

"Charter transfer" means the transfer of a charter contract and the oversight of the charter school whose governing board holds that contract from one authorizer to another.

"Commission" means the state public charter school commission established pursuant to section 302D-3, Hawaii Revised Statutes.

"Governing board" means a governing board as defined in section 302D-1, Hawaii Revised Statutes.

[Eff ] (Auth: HRS §302A-1112) (Imp: HRS §§302D-1, 302D-11, 302D-20)

§8-517-3 Transfer application and process. (a) The board shall develop an application form and process for charter transfers in accordance with this chapter. The charter transfer application and approval process shall provide for and include, at a minimum, the following elements:

- (1) The submission of a charter transfer application to the board;
- (2) An opportunity for the public to comment on any proposed charter transfer; and
- (3) A timely decision by the board on whether to allow the transfer.

(b) The following requirements shall apply to any and all charter transfers:

- (1) No charter school shall be allowed to transfer its charter contract to another authorizer in an attempt to reduce the level of oversight or accountability to which the charter school is currently subject or to

- avoid possible revocation or nonrenewal of its charter contract;
- (2) No authorizer shall be allowed to transfer a charter contract to another authorizer in an attempt to improve the overall performance of its own portfolio of charter schools or to avoid possible revocation or nonrenewal of the charter contract;
  - (3) An authorizer shall not agree to accept a charter transfer nor shall it deny a charter transfer based on any financial incentives a larger portfolio of schools may provide to that authorizer;
  - (4) A charter school whose authorizer has initiated a closure of the school shall not be allowed to secure a charter contract from another authorizer;
  - (5) Existing charter schools shall not be allowed to apply for a charter school under another authorizer as a way of de facto transferring oversight of the school from one authorizer to another and circumventing the charter transfer process; provided that nothing in this chapter shall be construed to prevent existing charter schools from applying to another authorizer for replication or expansion purposes;
  - (6) Authorizers shall share among themselves information on charter schools that are transferring between them; and
  - (7) All charter transfers shall be in the best interest of students. [Eff \_\_\_\_\_ ]  
(Auth: HRS §302A-1112) (Imp: HRS §§302D-11, 302D-20)

§8-517-4 Transfers at the end of a charter contract term. (a) The transfer of a charter contract that is in its final contract year shall only be allowed if the governing board has met the terms of its expiring charter contract with its current authorizer, including any performance requirements, to

a degree that would have otherwise resulted in charter contract renewal with the current authorizer, and the proposed new authorizer agrees to accept the charter transfer; provided that the requirements in section 8-517-3(b) are met. The authorizer that is a party to the existing charter contract shall inform the proposed authorizer about the academic, financial, organizational, and operational performance status of the charter school, as well as any outstanding contractual obligations that exist.

(b) The governing board shall submit to the board and its current authorizer a written and signed letter of its intent to not renew the charter contract. The proposed authorizer and the governing board shall jointly submit to the board a charter transfer application. A proposed charter contract between the proposed authorizer and the governing board shall be submitted as part of the charter transfer application and shall identify and provide a plan to address any outstanding obligations from the existing charter contract.

(c) The charter transfer application shall be submitted and reviewed in accordance with the form and process establish pursuant to section 8-517-3(a); provided that the board shall make a final determination on the charter transfer application no later than sixty days before the expiration of the current charter contract.

(d) If the charter transfer is approved, the new authorizer and the governing board shall enter into a new charter contract effective upon the expiration of the charter contract between the current authorizer and governing board.

(e) If the charter transfer is not approved, the governing board may withdraw its letter of nonrenewal and proceed with its current authorizer's charter contract renewal process. If the charter transfer is not approved and the governing board does not withdraw its letter or enter into a new charter contract with its current authorizer, the charter contract shall be considered nonrenewed, and the charter school shall close in accordance with applicable law and the terms

of the charter contract, unless the board requires a temporary extension of the charter contract, upon such terms and conditions it deems appropriate, for unique or extenuating circumstances. [Eff ]  
 (Auth: HRS §302A-1112) (Imp: HRS §§302D-18, 302D-20)

§8-517-5 Transfers before the end of a charter contract term. (a) The transfer of a charter contract that is not in its final contract year shall only be allowed under special circumstances pursuant to section 302D-20, Hawaii Revised Statutes; provided that the requirements in section 8-517-3(b) are met.

(b) An authorizer or a governing board may submit to the board a written and signed letter requesting the transfer of a charter contract to another authorizer; provided that an authorizer may submit a letter only with the mutual consent of the governing board. The letter shall explain the reason for the request, provide evidence that the transfer is in the best interest of the charter school's students, and identify the proposed new authorizer that has agreed to the proposed transfer. The authorizer that is a party to the existing charter contract shall inform the proposed authorizer about the academic, financial, organizational, and operational performance status of the charter school, as well as any outstanding contractual obligations that exist.

(c) The proposed authorizer and the governing board shall jointly submit to the board a charter transfer application. A proposed charter contract between the proposed authorizer and the governing board shall be submitted as part of the charter transfer application and shall identify and provide a plan to address any outstanding obligations from the existing charter contract.

(d) The charter transfer application shall be submitted and reviewed in accordance with the form and process established pursuant to section 8-517-3(a); provided that the board shall make a final determination on the charter transfer application no later than May 1; provided further that the letter

requesting the transfer and the charter transfer application are submitted by February 1 of the same school year.

(e) If the charter transfer is approved, the new authorizer and the governing board shall enter into a new charter contract effective July 1 of the next school year. The effectuation of the new charter contract shall terminate the previous charter contract. [Eff

] (Auth: HRS §302A-1112) (Imp: HRS §302D-20)

§8-517-6 Transfers due to termination of authorizer's chartering authority. (a) If an authorizer's chartering authority is terminated due to the revocation, nonrenewal, or voluntary surrender of its authorizing contract, the transfer of any charter contracts overseen by that entity shall be allowed; provided that the requirements in section 8-517-3(b) are met. The entity whose chartering authority is terminated shall inform the board about the academic, financial, organizational, and operational performance status of each charter school in its portfolio, as well as any outstanding contractual obligations that exist.

(b) Each governing board overseen by the entity whose chartering authority is terminated shall submit to the board a charter transfer application.

(c) The board shall solicit from the pool of existing authorizers a new authorizer for each charter school overseen by the entity whose chartering authority is terminated. Each proposed charter transfer shall be with the mutual agreement of the proposed new authorizer and governing board; provided that if no other authorizer agrees or is available to accept the transfer of a charter contract overseen by the entity whose chartering authority is terminated, the commission shall be the new authorizer for that charter school.

(d) Each charter transfer application shall be submitted and reviewed in accordance with the form and

process establish pursuant to section 8-517-3(a) or a special expedited process developed and adopted by the board notwithstanding section 8-517-3(a); provided that the board shall make a final determination on each charter transfer application within forty-five days of the termination the former authorizer's chartering authority but no later than sixty days before the start of the next school year.

(e) Upon the approval of each charter transfer, the new authorizer and the governing board shall enter into a new charter contract effective immediately. Any new charter contract shall be effective for the remainder of the contract term under the previous charter contract with previous authorizer. Notwithstanding section 8-517-4, if the remaining term of the charter contract with the previous authorizer is less than a year, the new authorizer and governing board shall enter into a new charter contract with a contract term no less than a year. [Eff ] (Auth: HRS §302A-1112) (Imp: HRS §§302D-11, 302D-20)

§8-517-7 Computation of time. (a) The time in which any act provided in this chapter is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or state holiday and then it is also excluded. When the prescribed period of time is less than seven days, Saturdays, Sundays, or state holidays within the designated period shall be excluded in the computation.

(b) For the purposes of this chapter, "school year" means a year that begins on July 1 and ends on June 30 of the following calendar year." [Eff ] (Auth: HRS §302A-1112) (Imp: HRS §91-2)

3. The adoption of chapters 8-515 and 8-517, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_, 20\_\_\_\_, and filed with the Office of the Lieutenant Governor.

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Chairperson, Board of  
Education

APPROVED AS TO FORM:

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Deputy Attorney General