

Note: This draft is based on the amended version of Chapter 8-38, HAR previously approved by the BOE for public hearing; underlined black text are amendments approved for public hearing; underlined **bold** text are newly-proposed amendments to implement Act 144 (2010).

HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 2

EDUCATION

PART 1

PUBLIC SCHOOLS

CHAPTER 38

CONSOLIDATION OF PUBLIC SCHOOLS

§8-38-1 Purpose

§8-38-2 Definitions

§8-38-3 Conditions under which a study is required

§8-38-4 Procedures and guidelines

Historical Note: This chapter is based substantially upon Department of Education "Rule 45, Relating to the Consolidation of Public Schools."  
[Eff. 12/11/65; R 8/23/84]

**§8-38-1 Purpose.** The purpose of this chapter is to:

- (1) State the conditions which indicate the need to consider the consolidation of schools to achieve significant reductions in operating or capital expenditures or to ensure equal educational opportunity for students;
- (2) Provide procedures and guidelines to determine whether a school should be consolidated; and

(3) Ensure that parents and other parties are informed of proposed consolidations and are given the opportunity to express their views at a public hearing.

**(4) Provide procedures and guidelines under which charter schools would be considered for the use of school facilities made surplus by consolidation.** [Eff. 8/23/84; comp 2/1/01; am and comp 6/15/09; am \_\_\_\_\_] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1129)§8-38-4

§8-38-2 Definitions. As used in this chapter:

"Board" means the board of education.

"Consolidation" means the closing of one or more existing schools and the transfer of all the students enrolled at the closed school to another school. It shall not mean the transfer of one or more grade levels to another school.

"Days" means calendar days.

"Department" means the department of education.

**"Panel" means the charter school review panel.**

"Superintendent" means the superintendent of the department. [Eff. 8/23/84; am and comp 2/1/01; am and comp 6/15/09; am \_\_\_\_\_] (Auth: HRS §302A-1112) (Imp: HRS §§302A-101, 302A-1107, 302A-1112, 302A-1129)

§8-38-3 Conditions under which a study is required. The superintendent shall initiate a study to determine whether a school should be consolidated if:

- (1) One third or more of the square footage in the existing facilities requires replacement or improvements to meet prescribed standards; or
- (2) One third or more of the available classrooms are in excess of the teaching station and educational program needs of the school; or
- (3) Significant reductions in operating or capital expenditures could be achieved even if neither of the immediately preceding conditions are met; or
- (4) Enrollment decline and staff reductions have or will reduce the capability of the school to provide the range of educational opportunities offered at adjoining schools with larger enrollments; provided, preliminary data indicate that adjoining schools can accommodate any relocated students

without substantial capital improvement expenditures for additional facilities. [Eff. 8/23/84; comp 2/1/01; am and comp 6/15/09; am and comp \_\_\_\_\_] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1129, 302A-1148, 302A-1151.6)

**§8-38-4 Procedures and guidelines for consolidation.** (a) When a consolidation study must be initiated in accordance with section 8-38-3, the superintendent shall submit a written report to the board that the department will initiate a consolidation study and the reasons why a consolidation study is being conducted. Following the submission of such report to the board, the department may conduct the consolidation study.

(b) Based upon findings of the consolidation study, the superintendent shall then render a written report to the board, which shall include, but not be limited to, the following considerations:

- (1) The advantages and disadvantages of consolidation in respect to efficient school administration and providing equal educational opportunity;
- (2) The adequacy of facilities, equipment, programs, transportation service, and other support services at the school which may be closed and the school to which students may be transferred;
- (3) Social impact on the children, schools, community and those involved in the consolidation;
- (4) The net financial savings that may be realized from consolidation, including projections of additional expenditures at the school which may receive transferred students;
- (5) Potential new residential developments, projected changes in enrollment, and other relevant demographic considerations;
- (6) Suitability of using portions of the school facilities to accommodate space requirements of other department or state activities; and
- (7) A suggested timetable for implementation if consolidation is recommended.

(c) Upon receiving the report, the board shall review the report and direct the superintendent, who shall designate a department official as the hearing officer, to conduct a public hearing within sixty days of the

board's receipt of the report to receive community input on the report. Said report shall be posted on the department's website and hard copies shall be made available for review at the affected school(s). The superintendent shall notify members of the community of the public hearing by placing a notice in a newspaper of general or area circulation in the State and by such other means as the [district] superintendent determines appropriate.

(d) The superintendent shall submit a summary of the public hearing and the superintendent's recommendations to the board within thirty days of the close of the public hearing.

(e) The board shall conduct such proceedings as it deems appropriate to reach a decision on the consolidation proposal. The decision of the board shall be final." [Eff. 8/23/84; am and comp 2/1/01; §8-38-4 am and comp 6/15/09; am \_\_\_\_\_] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1129)

**§8-38-4 Procedures and guidelines for making school facilities available to charter schools. (a) Within 30 days of the board's determination to consolidate schools, it shall notify the panel of its decision and provide the panel a description of school facilities that will become vacant because of the consolidation and the date(s) when the facilities may be available to a charter school.**

**(b) Within 30 days of receipt by the department of a prioritized list of charter schools interested in using some or all of the to-be-vacated school facilities, the department shall determine and communicate to the panel and the charter schools on the panel's prioritized list which, if any, of the to-be-vacated school facilities may be used by one or more of the charter schools on the panel's prioritized list. In making such determination, the department's consideration shall include, but not be limited to, the following:**

**(1) Its need for all or a portion of the to-be-vacated school facilities for instructional purposes and/or noninstructional purposes;**

**(2) The compatibility of the charter schools with whatever use the department will make of the to-be-vacated school facilities, if the department's use will be less than the whole of the to-be-vacated school facilities;**

**(3) If more than one charter school could be accommodated within the to-be-vacated school facilities, the compatibility of the charter schools with each other; and**

**(4) The current and projected enrollment of the charter school(s) vis-à-vis the capacity of the to-be-vacated school facilities.**

**(c) Within 90 days of the department's notification of its decision on which, if any charter school(s) may use all or portions of the to-be-vacated school facilities, the department shall enter into a lease or license agreement with the selected charter school(s) of a portion or the entirety of the to-be-vacated school facilities. The lease or license terms shall include, but not be limited to, the following:**

**(1) No license fee or lease rent;**

**(2) Charter school to be responsible for all operations and maintenance costs, including major repairs and maintenance and capital improvements.**

**(3) License or lease to be renewable until the earlier of its surrender by the charter school, failure of the charter school to use the demised facilities for 12 consecutive months, or revocation of the charter school's charter.**

**(4) Charter school to carry fire insurance for the replacement cost of the improvements on the demised premises and general liability insurance (minimum \$2,000,000) naming the department as additional insured if Licensee is not covered by insurance obtained by the State of Hawaii's risk management program.**

**(5) Charter school to indemnify the department against any claim for wrongful injury, death and property damage which is alleged to have occurred as a consequence of any negligent or intentional act or omission of the Licensee, its employees, agents, or anyone acting on its behalf, in connection with the charter school's use of the demised premises.**

**(6) Charter school not to construct improvements on the demised premises without first submitting plans and specifications to the department for review and approval, obtaining an applicable permit, and furnishing copies of the permit(s) to the department. All improvements to be made by a licensed contractor in accordance with the plans and specifications. Charter school to furnish as-built plans and specifications within 60 days of the completion of construction.**

**(7) Charter school to make the demised premises or any portion thereof available for general recreational purposes and for public community use whenever these activities do not interfere with the normal and usual activities of the school and its pupils as**

**provided by law. Charter school to follow the procedures set forth in Chapter 8-39 of the Hawaii Administrative Rules, Department of Education (“Use of School Buildings, Facilities, and Grounds”), as said rules change from time to time. Charter school to determine the charges for the use of facilities based on its costs. [Eff. \_\_\_\_\_] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1148, 302A-1151.6)**