

Note: This draft is based on the amended version of Chapter 8-39, 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 190 (2010).

Chapter 39, Use of School Buildings, Facilities, and Grounds

HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 2

EDUCATION

PART 1

PUBLIC SCHOOLS

CHAPTER 39

USE OF SCHOOL BUILDINGS, FACILITIES, AND GROUNDS

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Historical Note: This chapter is based substantially upon Department of Education "Rule 6, Relating to the Use of School Buildings, Facilities, and Grounds." [Eff. 9/23/63; am 9/4/70; am 5/16/71; am 3/20/75; R Nov 17, 1984]

§8-39-1 General rule. All public school buildings, facilities, and grounds shall be available for general recreational purposes and for public and community use whenever these activities do not interfere with the normal and usual activities of the school and its pupils as provided by law. This general rule shall be carried out within the policy of the department of education that no available public school building, facility, or grounds shall be denied for use by the public and community on the grounds of race, color, religion, sex, including gender identify or expression, sexual orientation, age, national origin, ancestry, marital status, familial status, [~~or~~ disability[-], or human immunodeficiency virus infection, or any other classes of persons protected under Chapter 489, Hawaii Revised Statutes. The department of education shall not assist any public or community group which discriminates on the basis of race, color, religion, sex, including gender identify or expression, sexual orientation, age, national origin, ancestry, martial status, familial status, disability, or human immunodeficiency virus infection, or any other classes of persons protected under Chapter 489, Hawaii Revised Statutes, by making available for use public school buildings, facilities, and grounds, except for groups specifically exempted by the provisions of 20 U.S.C. 1691, 1682 (Title IX, Education Amendments of 1972), or

exempted by the Secretary of the U.S. Department of Education. [Eff. 11/17/84; am and comp 6/22/96; am] (Auth: HRS §302A-1112) (Imp: 20 U.S.C. 1681 et seq., 901; Title IX, 34 C.F.R. 106; Title VI, 42 U.S.C. 200d et seq., 601-603; 34 C.F.R. 100; 42 U.S.C. 6101, 302; 42 U.S.C. 6102, 303; 45 C.F.R. 90; 29 U.S.C. 794; 34 C.F.R. 104; Hawaii Const. Art. 1, 3; HRS §302A-1101; Hawaii Const. Art. X, 3; HRS §§302A-1112, 302A-1001, 302A-1149, 302A-1147, 302A-1148, 302A-1150)

§8-39-2 Applications. Applications for the use of buildings, facilities, or grounds shall be submitted in writing in accordance with the department's [~~rules~~] standard practice. [Eff. 11/17/84; comp 6/22/96; am] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1128, 302A-1112, 302A-1147, 302A-1148)

§8-39-3 Categories of use. Use of school buildings, facilities, or grounds shall be classified as follows:

(1) Type I. Department of education, school sponsored and school-related activities. Examples of Type I users: school parent-teacher-student organizations, school community based councils, department of education in-service workshops and meetings, all A+ programs, county department of parks and recreation use of facilities per joint-use agreement, primary and general elections including training for election officials, and school directed after school, night, or

weekend activities.

(2) Type II. Governmental agencies, not for profit community educational or recreational activities, youth clubs, athletic teams, labor organizations or service clubs conducting general recreational activities, community affairs, or public hearings for which no admission charge is made, collection taken or offering received during the use of school facilities. Student child-care activities conducted by non-profit organizations who have received tax exemption from the State department of taxation shall be classified as Type II use even if there is a charge. Examples of Type II users: federal, state, and county agencies, nonprofit community organizations, youth athletic teams, private preschool and after school programs endorsed by the department of education, public hearings and meetings, and other educational or recreational activities approved by the school where no fees are assessed or collected.

(3) Type III. Governmental agencies, community groups, churches, business enterprises, labor unions or individuals who:

- (A) Charge participants a fee, tuition, collect donations, contributions or offerings; or
- (B) Conduct fund raising activities, or meetings or services to promote a business, product, or religion; or

(C) Do not meet the criteria as a Type I or Type II user.

Examples of Type III users: churches, private schools, universities, business enterprises, special interest classes, and other individuals, organizations, or activities utilizing school facilities and charging a fee or tuition, or collecting a donation or offering.

(4) Type IV. School staff, visitors, and other users of parking facilities. (Eff. 11/17/84; am and comp 6/22/96; am]
(Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-408, 302A-1147, 302A-1148, 302A-1149, 302A-1150)

§8-39-4 Approvals.

(a) For periods of use not exceeding twelve consecutive months:

(1) Applications for Type I, II, and III uses shall be filled out by applicant and shall be approved or disapproved by the school's principal or a designee;

(b) For renewals for periods of use not exceeding twelve consecutive months:

(1) Applications for Type I, II, and III uses shall be filled out by applicant and shall be approved or disapproved by the school's principal or a designee;

(2) Applications shall be approved for more than five consecutive years, or for more than five cumulative years in the most recent ten-year period, only if there are no other users requesting the use

of the facility for the same time.

[~~(b)~~] (c) For periods of use exceeding twelve consecutive months, all applications shall be initially processed by the school and final approval given by the land board of the department of land and natural resources. [Eff. 11/17/84; am and comp 6/22/96; am] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1148)

§8-39-5 Fees and service charges.

(a) The rental fees and service charges applicable to the use of school facilities shall be determined by the superintendent of education to recover costs.

(b) The fees and charges shall be revised by the superintendent of education when necessary [~~during the odd year of a fiscal biennium~~] based on the following criteria:

(1) The rental fees for the use of school facilities shall be calculated on the basis of current statewide average construction costs for [classrooms and support facilities or average cost estimates provided by the department of accounting and general services] the facilities being used, as determined by the department of education. [~~The daily charge shall be determined by amortizing the cost over forty years and multiplying by a common factor determined by the department~~] The hourly rental fee shall be determined by dividing the construction cost as determined

above by 57,600 (40 years x 180 days per year x 8 hours per day).

(2) The utility and refuse disposal charges shall be assessed according to the type of facility, [and] the number of hours the facility is used, and the extent to which the use generates refuse requiring disposal. The utility [charge] and refuse disposal charges shall be calculated by the department of education based on the actual amount charged by [the utility company of the appropriate island] those providing utility and refuse disposal services to the school. The [charge] charges shall cover costs which would not have been incurred if the facility was not utilized.

(3) The custodial charges shall be based on the current average negotiated wages [at the start of the fiscal biennium] including fringe benefits, and the cost, estimated by the school, of restroom and custodial supplies incurred because of the use of the school facilities. If the use of facilities requires the payment of overtime or other wage differential to the custodian(s), or requires a call-back of the custodian(s), then the custodial charge shall be based on overtime or other wage differential incurred for not less than the minimum call-back period, if any.

(4) The service charge for the administrative time to manage the use of facilities program.

(c) Fees and charges required by this section shall be determined by type of user.

(1) Type I user:

(A) No rental fee for use of school facilities.

~~[(B) The service charge for custodial services if required beyond the school day shall be for a minimum of two hours. The total service charge shall be the current wages multiplied by the number of hours the custodian(s) is on duty.~~

~~-(C) No service charge for the use of utilities.]~~

(B) No charges for utilities or refuse disposal.

(C) Custodial charges are applicable if custodial services are required beyond the school day.

~~[(D) Examples of Type I users: school related activities, school parent teacher student organizations, school community based councils, department of education in service workshops and meetings, all A+ programs, county department of parks and recreation use of facilities per joint use agreement, primary and general elections including training for election officials, and school directed after school, night, or weekend activities.]~~

(D) No service charge for administrative time.

(2) Type II user:

(A) No rental fee for use of school facilities.

~~[(B) The service charge for custodial services if required beyond the school day shall be for a minimum of two hours. The total service charge shall be the current wages multiplied by the number of hours the custodian(s) is on duty.]~~

~~[(C) A service charge for the cost of utilities shall be assessed.]~~

(B) Charges for utilities and refuse disposal, if the user generates refuse, are applicable.

(C) Custodial charges are applicable if custodial services are required beyond the school day.

~~[(D) Examples of Type II users: federal, state, and county agencies, nonprofit community organizations, youth athletic teams, private preschool and after school programs endorsed by the department of education, public hearings and meetings, and other educational or recreational activities approved by the school where no fees are assessed or collected.]~~

(D) A service charge for the administrative time to manage the use of facilities program.

(3) Type III user:

(A) ~~[A rental]~~ Rental fee ~~[shall be assessed].~~

~~[(B) The service charge for custodial services when required by the school shall be for a minimum of two hours. The~~

~~total custodial charge shall be the current wages multiplied by the number of hours the custodian(s) is on duty.~~

~~(C) A service charge for the cost of utilities shall be assessed.]~~

(B) Charges for utilities and refuse disposal, if the user generates refuse, are applicable.

(C) Custodial charges are applicable if custodial services are required beyond the school day.

~~[(D) Examples of Type III users: organizations, groups, or individuals who do not belong to Type I or Type II category; churches, private schools, universities, business enterprises, special interest classes, and other individuals, organizations, or activities utilizing school facilities and charging a fee or tuition, or collecting a donation or offering.]~~

(D) A service charge for the administrative time to manage the use of facilities program.

(4) Type IV user:

(A) Daily and monthly parking fees may be assessed for parking on roadways and parking areas under department of education jurisdiction.

(B) The parking rate for school staff shall be assessed on a monthly basis and shall not exceed the monthly parking rate established by the department

of accounting and general services for state employees parking in state parking facilities in the relevant geographic location.

(C) The daily and monthly parking rates for other users shall be established by the principal, if the parking is on a school campus, or by the superintendent, if the parking is not on a school campus.

[Eff. 11/17/84; am and comp 6/22/96; am]

(Auth: HRS §296-12) (Imp: HRS §§296-12, 298-23)

§8-39-6 Collection, disposition, and use of fees and charges.

(a) The school principal or designee shall be responsible for the collection of fees and charges from the users of school buildings, facilities, or grounds. The moneys collected shall be deposited into a special fund. Statutory special fund assessments shall first be deducted from rental fees collected. ~~[Seventy per cent of the rental fees collected shall then be credited to the school and thirty per cent shall be credited to the district. One hundred per cent of charges for custodial services and utilities shall be deposited to reimburse the custodial and the utilities account of the school.]~~ The apportionment between the school and state offices of (i) the remainder of the rental fees, (ii) the charges for refuse disposal and utilities, (iii) the charges for custodial services, and (iv) the service charge for the administrative time to manage the use of facilities program shall be determined by

the superintendent to reimburse the entity incurring the cost of the use of facilities program. After deduction of statutory special fund assessments from the collection of parking fees, the remainder shall be expended by the school as set forth in subparagraph (b) below.

(b) Each school [~~and district~~] may expend the net proceeds of [~~rental~~] use of facilities fees [collected] apportioned to them for any operational school purpose.

~~[The expenditures shall not be limited to:~~

~~(1) Replacement of custodial and janitorial supplies; and~~

~~(2) Repairs, maintenance and replacement of equipment.] [Eff.~~

~~11/17/84; am and comp 6/22/96; am]~~

~~(Auth: HRS §302A-1148) (Imp: HRS §302A-1148)~~

§8-39-7 Other requirements.

(a) Applicants shall comply with state laws and county ordinances and state and county rules including, but not limited to:

(1) Fire code;

(2) Fieldhouse and gym rules;

(3) Police protection rules; and

(4) Rules of the state department of health, including sanitation and regulations governing sanitation and the use of commercial kitchens, if applicable.

(b) Applicant agrees to assume cost of clean-up and repairs for damages incurred to buildings, grounds, and equipment whether accidental or otherwise at the time of use. The cost(s) and the quality and extent of the repair works shall be determined by the

department of education.

(c) Applicants shall be required to execute a release form as provided by the department of education releasing the State of Hawaii from any responsibility or claim arising out of injuries or damages, or both, incurred during the use of buildings, facilities, or grounds to conduct applicant's activities.

(d) Carnivals and fairs, and non-department of education sponsored athletic events which involve large crowds or greater risk, or both, for personal injury to participants due to the type of activity shall be required to carry general liability coverage in the amount of \$1,000,000 per incident of personal injury with the State of Hawaii named as the additional insured. A fair organizer or promoter who charges participants for the use of parts of a facility or tables in a facility shall assure that each of the participants carries adequate liability insurance for an amount determined by the State of Hawaii.

(e) Police protection shall be provided as follows:

(1) Except as determined by the principal or the [~~district~~] complex area superintendent, a minimum of one police officer shall be on duty for events using the gymnasium, auditorium, cafetorium or for swimming meets, carnivals, and fairs;

(2) Applicant shall arrange to hire and to pay for police protection and shall submit the names of officers hired to the school prior to the event.

(f) Electrical service lines and meters for carnivals, fairs, and other large activities shall be dealt with as follows:

(1) Applicants shall provide and pay for the installation of necessary electrical service lines and meters;

(2) Connection of electrical lines to a school's system shall be prohibited.

(g) Swimming pool use requirement:

(1) A certified lifeguard shall be on duty at all times that the pool is in use;

(2) The organization using the pool shall provide one responsible adult for every twenty-five swimmers:

(h) Alterations, modifications, and renovations: all alterations to school facilities made by or for the benefit of users of school facilities shall be approved by ~~[the department of accounting and general services and]~~ the department of education~~[-]~~ and shall, at the department of education's determination, either become the property of the department of education or be removed by the user at the user's expense at the termination of the user's use. During the period of such use of equipment, such as air conditioning equipment, installed by or on behalf of the user, the user shall either pay for its operation (including utility cost of operation), repair and maintenance or reimburse the department of education for the cost of such operation, repair and maintenance, as determined by the department of education. [Eff. 11/17/84; am and comp 6/22/96; am] (Auth:

HRS §302A-1112) (Imp: HRS §302A-1112)

§8-39-8 Use of auditorium by groups

employing union [~~worker~~] workers. When school auditoriums or similar facilities are made available to public or community groups and the groups employ union stage workers or machine operators, or both, one or more school staff selected and assigned by the principal or the principal's designated assistant shall be present at each performance to run school-owned equipment and shall be paid going rates for the type of service performed. Payments shall be made by those renting the auditorium. In addition, skilled stage workers such as operators of projectors, stage lights, sound equipment, and spotlights shall be employed by the sponsor as needed. [Eff. 11/17/84; am and comp 6/22/96; am]
(Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

§8-39-9 Alcoholic beverages and tobacco

[~~substance~~] substances. Alcoholic beverages and tobacco substances shall not be sold, consumed or used on school grounds or in school buildings or facilities. [Eff. 11/17/84; am and comp 6/22/96; am]
(Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

§8-39-10 Use of buildings as sleeping quarters.

In the event of a public emergency, the superintendent or a designated representative may authorize school facilities to be used as sleeping quarters. Under any other circumstances, the [~~district~~] complex area superintendent may entertain and approve applications for use of school facilities as sleeping quarters by

Types I, II, and III users. [Eff. 11/17/84;
comp 6/22/96; am] (Auth:
HRS §296-12) (Imp: HRS §§27-9, 296-12)

§8-39-11 Use of buildings by organizations for political purposes. When school facilities are used for [~~campaign~~] political purposes, organizations shall pay the appropriate fees as a Type III user. [Eff. 11/17/84; am and comp 6/22/96; am] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

§8-39-12 Subleasing. Users of school buildings, facilities, and grounds shall not sublease the property to other individuals, groups, or organizations, provided that this restriction shall not apply to craft fair promoters or organizations who rent school facilities for a fair and, in turn, charge participating vendors or sellers a fee for the use of sections or tables as long as the fair promoters or organizations maintain adequate liability insurance coverage which includes the liabilities of each of the individuals or organizations licensed by the fair promoters or organizations. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

§8-39-13 Loss of rental privileges.

Applicants who have outstanding accounts with the school or department of education, or both, have fraudulently subscribed to erroneous information on the use of facilities application form, or have previously misused the [~~department's~~] department of education's property, grounds or facilities may be denied the use of school facilities. [Eff. 11/17/84; am and

comp 6/22/96; am] (Auth: HRS
§302A-1112) (Imp: HRS §302A-1112)

§8-39-14 Appeal process. Applicants who have been denied the use of school buildings, facilities, and grounds may appeal the decision with the [~~district~~] complex area superintendent. The [~~district~~] complex area superintendent's decision shall be final. [Eff. 11/17/84; am and comp 6/22/96; am] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)
