

NEIL ABERCROMBIE
GOVERNOR



KAREN STREET
CHAIRPERSON

STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: 586-3775 Fax: 586-3776

DATE: May 16, 2013

TO: Liann Ebesugawa, Executive Director
Board of Education

FROM: Tom Hutton, Executive Director
State Public Charter School Commission

AGENDA ITEM: Proposed Promulgation by the State Public Charter School Commission of Chapter 8-505, Hawaii Administrative Rules, Entitled "Applications, Renewals or Non-Renewals, and Revocations"

This memorandum provides a review of the administrative rules being proposed for promulgation by the State Public Charter School Commission (Commission) to ensure the rules do neither conflict with State educational policy as established by the Board of Education (Board) nor encroach on the Board's authority to set such policy.

Background

Act 130, Session Laws of Hawaii (SLH) 2012, repealed Chapter 302B, Hawaii Revised Statutes (HRS), and established a new charter school law codified as Chapter 302D, HRS. To implement the new Chapter 302D, HRS, three sets of administrative rules have been drafted for proposed promulgation:

- Chapter 8-501, HAR, "State Public Charter School Commission Rules of Practice and Procedure" (see attached)
- Chapter 8-505, HAR, "Applications, Renewals or Non-Renewals, and Revocations" (see attached)
- Chapter 8-510, HAR, "Appeals"

Act 130, SLH 2012, did not provide the Commission with the authority to promulgate administrative rules. As such, we, initially, intended to have the Board adopt all three sets of rules using its rule-making authority.

Subsequently, in the 2013 session, the Legislature passed Senate Bill 244, Senate Draft 2, House Draft 1, Conference Draft 1 (SB 244). SB 244 continues to build on the progress made by Act 130, SLH 2012, by making amendments to the charter school law. The Governor is expected to sign SB 244 into law as the Administration has been supportive of the bill.

SB 244 grants the Commission rule-making power as follows:

"§302D-D Rules. Unless otherwise provided for in this chapter or chapter 302A, the commission may adopt rules pursuant to chapter 91 to administer and implement this chapter; provided that the board shall maintain exclusive rule-making authority over state educational policy."

As a result of this change, it is the Commission's intention to promulgate two of the three chapters of proposed rules, Chapters 8-501 (Commission's Rules of Practice and Procedure) and 8-505, HAR (Applications, Renewals or Non-Renewals, and Revocations) since the processes set forth in the rules provide for the direct operations of the Commission. The third set of proposed rules, Chapter 8-510, HAR, pertains to the Board's appeal process and will therefore be adopted by the Board.

We note that the proposed Chapters 8-501 and 8-505, HAR, were presented to the Commission for discussion at its May 9, 2013 meeting. We intend to request approval of these rules at the Commission's June 13, 2013 meeting.

Review

Because SB 244 specifically states that the Board shall maintain exclusive rule-making authority over State educational policy, we conducted a review of any potential intrusion into the Board's policy making jurisdiction.

The following are the series of Board's policies:

- 1100 Series - Department of Education
- 1200 Series - Board of Education
- 1300 Series - Superintendent
- 1400 Series - Assistant Superintendents
- 1500 Series - District Superintendents
- 1700 Series - Principals
- 1800 Series - Grade Level and Department Chair
- 1900 Series - Teachers
- 2000 Series - Educational Premise
- 2100 Series - Curriculum
- 2200 Series - Instruction
- 2400 Series - Organizations

2500 Series - Research and Evaluation
2700 Series - (Accreditation)
4000 Series - (Student Rights)
4100 Series - Admissions and Attendance
4200 Series - Student Welfare
4300 Series - School Service
4400 Series - Youth Gangs
4500 Series - Student Performance and Achievement
4600 Series - Student Information and Confidential Records
4700 Series - After School Plus (A+) Fees
5000 Series - Certificated Personnel
6000 Series - Office of Fiscal Services & Office of School Facilities and Support Services
8000 Series - Charter Schools
9000 Series - Library

The proposed Chapter 8-505, HAR, entitled "Applications, Renewals or Non-Renewals, and Revocations" implements Chapter 302D, HRS, which established a system of accountability to be carried out by charter school authorizers and the establishment of charter contracts and performance frameworks. Chapter 8-505, HAR, therefore encompasses the operating procedures the Commission must follow as a charter school authorizer, including processing new applications to become a charter school, renewing or not renewing charter contracts and revoking charter contracts. As such, the procedures in the rules are not contemplated within any of the Board's policies. Further, as required by Chapter 91, HRS, the rules reflect operating procedures that implement Chapter 302D, HRS, rather than establish educational policy.

Conclusion

Our review shows that the proposed Chapter 8-505, HAR, neither conflicts with State educational policy as established by the Board nor encroaches on the Board's authority to set such policy.

We kindly request your assistance in obtaining Board review of our determination.

Attachment: Chapter 8-505, HAR

HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 505

APPLICATIONS, RENEWALS OR NON-RENEWALS,
AND REVOCATIONS

Subchapter 1 General Provisions

- §8-505-1 Purpose
- §8-505-2 Definitions

Subchapter 2 Applications

- §8-505-5 Applications for start-up charter schools
- §8-505-6 Applications for conversion charter schools
- §8-505-7 Application fee

Subchapter 3 Renewal or Non-Renewal of Charter Contract

- §8-505-10 Reasons for non-renewal
- §8-505-11 Application for contract renewal
- §8-505-12 Performance report; notification of the prospect of non-renewal
- §8-505-13 Non-renewal decision by commission

Subchapter 4 Revocation of Charter Contract

- §8-505-15 Reasons for revocation
- §8-505-16 Notification of prospect of revocation
- §8-505-17 Revocation decision by commission

Subchapter 5 Hearings

§8-505-20 Hearing
§8-505-21 Hearing officer or panel

SUBCHAPTER 1

GENERAL PROVISIONS

§8-505-1 Purpose. This chapter governs the application process to become a charter school, renewal or nonrenewal of charter contracts, and revocation of charter contracts pursuant to chapter 302D, HRS. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-13, 302D-14, 302D-15, 302D-18)

§8-505-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Applicant" means the applicant who submits a charter application to the commission.

"Board" means the board of education.

"Commission" means the state public charter school commission established pursuant to section 302D-3, HRS, as a statewide authorizer. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-1, 302D-13, 302D-14)

SUBCHAPTER 2

APPLICATIONS

§8-505-5 Applications for start-up charter schools. (a) The commission shall develop an application form, process, and processing schedule for applying to become a start-up charter school pursuant to section 302D-13, HRS. The application form shall be made available to any person(s) interested in establishing a start-up charter school. The application form shall also include a description of the application process and the application processing schedule.

(b) The commission shall develop policies, criteria, or guidelines for evaluating applications for start-up charter schools. Such policies, criteria, or guidelines shall be adopted, and may be amended from time to time, by a majority vote of the commission at a meeting held in accordance with chapter 92, HRS.

(c) In the event an application is denied, the commission shall notify the applicant in writing, served by registered or certified mail with return receipt requested, stating the reason(s) therefor, with specific references to the adopted policies, criteria, or guidelines. The notification of denial shall also include a statement that the applicant may file an appeal with the board within twenty-one calendar days of receipt of the written notification of denial. [Eff]
(Auth: §302A-1112) (Imp: §§302D-13,302D-15)

§8-505-6 Applications for conversion charter schools. (a) The commission shall develop an application form, process, and processing schedule for applying to become a conversion charter school pursuant to section 302D-14, HRS. The application form shall be made available to any person(s) interested in establishing a conversion charter school. The application form shall also include a description of the application process and the application processing schedule.

(b) The commission shall develop policies, criteria, or guidelines for evaluating applications for conversion charter schools. Such policies, criteria, or guidelines shall be adopted, and may be amended from time to time, by a majority vote of the commission at a meeting held in accordance with chapter 92, HRS.

(c) In the event an application is denied, the commission shall notify the applicant in writing, served by registered or certified mail with return receipt requested, stating the reason(s) therefor, with specific references to the adopted policies, criteria, or guidelines. The notification of denial shall also include a statement that the applicant may file an appeal with the board within twenty-one calendar days of receipt of the written notification of denial. [Eff]
(Auth: §302A-1112) (Imp: §§302D-14, 302D-15)

SUBCHAPTER 3

RENEWAL OR NON-RENEWAL OF CHARTER CONTRACT

§8-505-10 Reasons for non-renewal. A charter contract may be not renewed for any of the reasons set forth in subsection 302D-18(g), HRS. [Eff] (Auth: §302A-1112) (Imp: §302D-18)

§8-505-11 Application for contract renewal. (a) The commission shall develop a charter school contract renewal form, which form shall be made available to each charter school whose charter contract will expire the following 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 commission shall develop policies, criteria, or guidelines for evaluating charter renewal applications; provided evaluation criteria shall be based on the charter contract and be consistent with chapter 302D, HRS. Such policies, criteria, or guidelines shall be adopted, and may be amended from time to time, by a majority vote of the commission at a meeting held in accordance with chapter 92, HRS.

(c) A charter school seeking renewal shall submit a renewal application to the commission pursuant to the renewal policies, criteria, or guidelines adopted by the commission.

[Eff] (Auth: HRS §302A-1112) (Imp: HRS §302D-18]

§8-505-12 Performance report; notification of the prospect of non-renewal. (a) The commission shall prepare a charter school performance report for each charter school whose charter contract will expire the following year. The performance report shall summarize the charter school's performance record to date, shall be in writing, and shall be served upon the charter contract holder by registered or certified mail.

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

- (1) A clear and specific statement of the charter school'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 charter contract holder, in its response, may request a hearing conducted in accordance with section 8-505-20 and may request legal representation subject to section 28-8.3, HRS.

(c) The charter school shall have thirty (30) 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 charter contract holder disputes the commission's assessment or claim of weaknesses or deficiencies, the commission, after considering the charter contract holder's response, shall reaffirm, modify, or retract its earlier notification of weaknesses or deficiencies, and shall so notify the charter contract holder in writing served by registered or certified mail. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §302D-18)

§8-505-13 Non-renewal decision by commission. (a) The commission shall make a final decision on whether or not to renew the charter contract within forty-five (45) days following receipt of the application for contract renewal and after the hearing, if held by the commission, or after the issuance of the hearing officer report, if conducted by a hearing officer.

(b) Within fifteen (15) days of making its decision to renew or not renew, the commission shall issue its decision in writing, served upon the applicant by registered or certified mail with return receipt requested. The decision shall set forth with reasonable specificity the reason(s) for its decision. The decision shall also include a statement that the applicant may file an appeal with the board within twenty-one calendar days of receipt of the written decision of non-renewal. The written decision shall be simultaneously transmitted to the board. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-18)

SUBCHAPTER 4

REVOCATION OF CHARTER CONTRACT

§8-505-15 Reasons for revocation. A charter contract may be revoked at any time for any of the reasons set forth in subsection 302D-18(g), HRS. [Eff _____] (Auth: §302A-1112) (Imp: §302D-18)

§8-505-16 Notification of prospect of revocation. Whenever the commission has reason to believe that a charter school contract should be revoked, the commission shall notify the charter 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(s) why revocation is contemplated.
- (2) The date by which the charter contract holder shall respond, which date shall be not less than thirty (30) days from the date of notification.
- (3) A statement that the charter contract holder may, in its response, request a hearing conducted in accordance with section 8-505-20.
- (4) A statement that the charter contract holder may request legal representation subject to section 28-8.3, HRS. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §302D-18]

§8-505-17 Revocation decision by commission. (a) The commission shall make a final decision on whether or not to revoke the charter contract:

- (1) Within thirty (30) days following receipt of the response from the charter school of the notice of prospect of revocation if no hearing is held;
- (2) Within thirty (30) days of the close of the hearing, if a hearing is held before the commission; or
- (3) Within forty (40) days after issuance of the report described in section 8-505-21(b), if a hearing is conducted by a hearing officer or panel.

(b) Within fifteen (15) days of making its decision to revoke, the commission shall issue a report notifying the charter 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(s) for its decision. If the decision is to revoke the charter contract, the report shall also include a statement that the charter contract holder may file an appeal with the board within twenty-one calendar days of receipt of the written notification of revocation. The report shall be simultaneously transmitted to the board. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§91-2, 302D-15, 302D-18]

SUBCHAPTER 5

HEARINGS

§8-505-20 Hearing. (a) If requested by the charter contract holder pursuant to 8-505-12(b)(2) or 8-505-16(3), or if deemed advisable by the commission, a hearing shall be held prior to the commission taking action on the revocation or non-

renewal of a charter contract. The commission shall notify the charter contract holder in writing, served by registered or certified mail with return receipt requested, of the date, time and place of a hearing; provided that the hearing shall take place no less than fifteen (15) days from the date of such written notification.

(b) At such hearing:

- (1) The charter contract holder shall have the opportunity to submit documents and give testimony challenging the rationale for revocation or non-renewal and supporting the continuation of the school;
- (2) The charter contract holder may be represented by counsel in accordance with section 28-8.3, HRS;
- (3) The charter contract holder may present evidence and call witnesses on its behalf; provided, however, that the commission may exclude irrelevant or unduly repetitious evidence.
- (4) The hearing shall be recorded. [Eff _____]
(Auth: HRS §302A-1112) (Imp: HRS §302D-18)

§8-505-21 Hearing officer or panel. (a) At the discretion of the commission chair, a revocation or non-renewal hearing may be conducted by:

- (1) A hearing officer appointed by the commission chair;
- (2) A panel of commissioners appointed by the commission chair; or
- (3) The commission.

(b) If the hearing is conducted by a hearing officer or a panel of commissioners, upon completion of the hearing, the hearing officer or panel shall prepare a report to the commission setting forth the evidence presented with a recommended order. Such report shall also be served by mail upon the charter contract holder. The charter contract holder shall have ten (10) days from the date of mailing of such report to submit to the commission a response or exceptions to the report. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§91-2)