

NEIL ABERCROMBIE
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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 8-501, Hawaii Administrative Rules, entitled "State Public Charter School Commission Rules of Practice and Procedure "

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Act 130, Session Laws of Hawaii (SLH) 2012, repealed Chapter 302B, Hawaii Revised Statutes (HRS), and established a new charter school law codified as Chapter 302D, HRS.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 8-501, HAR, entitled "State Public Charter School Commission Rules of Practice and Procedure" addresses requirements pursuant to Section 91-2, HRS, wherein each agency must adopt rules setting forth the agency's procedures that are available to the public by which a person may obtain information, make requests, inspect records, etc. Because these proposed rules pertain to such routine procedural matters, there is neither conflict with the Board's policies, nor do any of these rules pertain to educational policy.

Conclusion

Our review shows that the proposed Chapter 8-501, 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 8-501, HAR

HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 501

STATE PUBLIC CHARTER SCHOOL COMMISSION

RULES OF PRACTICE AND PROCEDURE

- §8-501-1 Purpose
- §8-501-2 Definitions
- §8-501-3 Office and office hours
- §8-501-4 Meetings, generally; conduct of meetings
- §8-501-5 Government records
- §8-501-6 Computation of time

§8-501-1 Purpose. This chapter governs the practice and procedure before the state public charter school commission under chapter 302D, HRS, and shall be construed to effectuate the purposes of that chapter and to secure the just and efficient determination of every proceeding. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §91-2)

§8-501-2 Definitions. As used in this chapter:
"Board" means the board of education.
"Chairperson" means the chairperson of the state public charter school commission.

"Commission" means the state public charter school commission established pursuant to section 302D-3, HRS, as a statewide authorizer.

"Government record" shall be as defined in section 92F-3, HRS. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§91-2, 92F-3)

§8-501-3 Office and office hours. (a) The office of the commission is in Honolulu, Hawaii. All communications to the

commission shall be addressed to the commission's office unless otherwise directed by the commission.

(b) The office of the commission shall be open from 7:45 a.m. to 4:30 p.m., each day of the week except Saturdays, Sundays, and holidays unless otherwise provided by statute or executive order. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §91-2)

§8-501-4 Meetings, generally; conduct of meetings. (a) The commission may meet and exercise its power in any part of the State of Hawaii. All meetings shall be conducted in accordance with chapter 92, HRS.

(b) The commission shall afford all interested persons an opportunity to submit data, views, arguments or present oral testimony on any agenda item in an open meeting. The commission may provide for the recordation of oral testimony presented.

(c) The commission may reasonably administer oral testimony so as to limit testimony of excessive duration or limit or prohibit any redundant, immaterial, impertinent, or scandalous testimony or to limit the amount of time for testimony per individual or per issue.

(d) The chairperson may remove any person who willfully disrupts a meeting. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§91-2, 92-3, 92-7)

§8-501-5 Government records. (a) All government records of the commission shall be available for inspection in the office of the commission during established office hours, unless public inspection of these records is prohibited by law.

(b) Government records printed or reproduced by the commission shall be given to any person requesting the same by paying twenty-five cents per page whether transmitted by hard copy or by electronic means. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§91-2, 92F-11)

§8-501-6 Computation of time. The time in which any act provided in this chapter or any rule, policy, or procedure of the commission is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded. Unless otherwise specified in these rules, when the prescribed period of time is less than seven days, Saturdays, Sundays, or legal holidays within the designated period shall be excluded in the

computation. [Eff
HRS §§91-2)

] (Auth: HRS §302A-1112) (Imp:

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