



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

March 18, 2014

TO: The Honorable Donald G. Horner
Chairperson
Board of Education

FROM: Liann Ebesugawa, Executive Director
Board of Education

SUBJECT: Post Public Hearing Discussion/Decision-Making Related to Proposed Adoption of Chapter 8-510, Hawaii Administrative Rules, Relating to Appeals, and Repeal of Chapter 8-500, Hawaii Administrative Rules, Relating to Hawaii Public Charter Schools Probation and Revocation Procedures.

1. RECOMMENDATION

The public hearing on the aforementioned proposed rules was held on Tuesday, March 11, 2014, at 9:00 a.m. at the Hawaii State Board of Education, Board Room located in the Queen Liliuokalani Building 1390 Miller Street, Room 404, Honolulu, HI 96813. The State Public Charter School Commission, and the Hawaii Public Charter Schools Network, provided testimony in support of the proposed adoption of Chapter 8-510, HAR, and repeal of Chapter 8-500, HAR. Therefore, there are no changes recommended to the proposed rules and it is recommended that the Board of Education approve the proposed rules for submission to the Governor for final approval.

2. RECOMMENDED EFFECTIVE DATE

HAR, Chapter 8-510, will become effective ten (10) days after the filing with the Office of the Lt. Governor.

HAR, Chapter 5-500, will become ineffective ten (10) days after filing with the Office of the Lt. Governor.

3. SUMMARY OF COMMENTS AND TESTIMONIES FROM THE PUBLIC HEARING

- a. Tom Hutton, Executive Director of the State Public Charter School Commission, stated that they understand the primary reason for the proposal is to comply with the changes in law from repealed Chapter 302B, Hawaii Revised Statutes ("HRS"), to Chapter 302D, HRS.

- b. Lynn Finnegan, Executive Director of the Hawaii Public Charter Schools Network, stated that she generally supports the proposed adoption and repeal. She stated that she wanted to make sure the charter schools have a voice. Therefore, she stated that she informed the schools of the rule changes and asked them to voice their opinions.

4. NEW IMPLICATIONS NOT PREVIOUSLY REPORTED

- a. Educational

None.

- b. Personnel

None.

- c. Facilities

None.

- d. Financial

None.

5. OTHER SUPPLEMENTARY RECOMMENDATIONS

None

Attachments: Repeal of Chapter 8-500 and Adoption of Chapter 8-510 Hawaii Administrative Rules
Transcript for Administrative Rules Public Hearing – Chapter 8-510, HAR, and Chapter 8-500 on Tuesday, March 11, 2014.
Recommendation memo to proceed to public hearing dated December 19, 2013

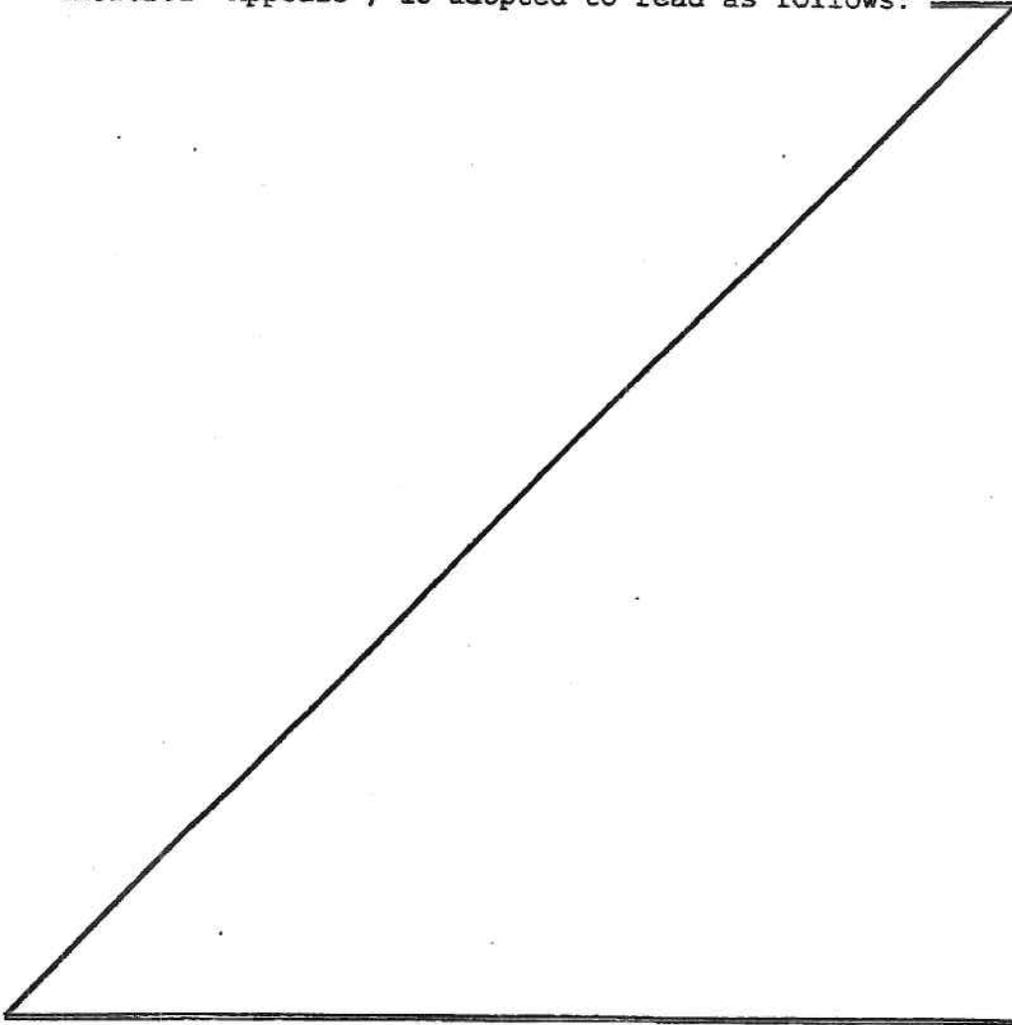
DEPARTMENT OF EDUCATION

Repeal of Chapter 8-500 and Adoption of Chapter 8-510
Hawaii Administrative Rules

[Date of Adoption]

1. Chapter 8-500, Hawaii Administrative Rules, entitled "Hawaii Public Charter Schools Probation and Revocation Procedures", is repealed.

2. Chapter 8-510, Hawaii Administrative Rules, entitled "Appeals", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 510

APPEALS

§8-510-1	Purpose
§8-510-2	Definitions
§8-510-3	When appeal allowed
§8-510-4	When appeal taken
§8-510-5	Notice of appeal
§8-510-6	Record on appeal
§8-510-7	Opening brief
§8-510-8	Answering brief
§8-510-9	Reply brief
§8-510-10	Oral argument
§8-510-11	Decision on appeal
§8-510-12	Page limits for briefs
§8-510-13	Failure to meet deadlines
§8-510-14	Computation of time

§8-510-1 Purpose. This chapter governs appeal procedures before the board of education under chapter 302D, Hawaii Revised Statutes. [Eff]
(Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

§8-510-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Appellant" means the party taking an appeal.

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

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

"Board" means the board of education. [Eff
] (Auth: HRS §302A-1112) (Imp: HRS
§§302D-15, 302D-22)

§8-510-3 When appeal allowed. An appeal may only be taken from a decision by an authorizer as provided by law to:

- (1) Deny approval of a start-up or conversion charter school application;
- (2) Deny renewal of a charter contract; or
- (3) Revoke a charter contract. [Eff
] (Auth: HRS §302A-1112) (Imp:
HRS §§302D-15, 302D-22)

§8-510-4 When appeal taken. An appeal shall be filed with the board within twenty-one days after the applicant's or the charter school's receipt of the notification of the authorizer's decision. For these purposes, an authorizer's notification of decision shall be deemed received three days after the date of mailing to the applicant or charter school as computed in accordance with section 8-510-14. [Eff
] (Auth: HRS §302A-1112) (Imp: HRS
§§302D-15, 302D-22)

§8-510-5 Notice of appeal. An appeal shall commence by the filing of a notice of appeal which shall clearly identify the appellant, contact information for the appellant, and the decision being appealed. The appellant shall file the notice of appeal with the board in accordance with section 8-2-2, and shall serve a copy upon the authorizer at the office of the authorizer. [Eff
] (Auth:
HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

§8-510-6 Record on appeal. Within seven days of the filing of the notice of appeal, the authorizer shall transmit to the board the entire record relating to the decision being appealed, and shall transmit to the appellant an index of the record which was transmitted to the board. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

§8-510-7 Opening brief. Within ten days after the filing of the notice of appeal, the appellant shall file with the board and serve upon the authorizer an opening brief, which shall contain the following:

- (1) A concise statement of the case, setting forth the nature of the case, the course and disposition of the proceedings by the authorizer, and the facts material to consideration of the questions and points presented. In presenting those material facts, the appellant shall clearly set forth all supporting and contradictory evidence that was presented to, or considered by, the authorizer;
- (2) The argument, containing contentions of the appellant on the points presented and the reasons therefor, with citations to the authorities, rules, statutes, and parts of the record relied upon; and
- (3) A conclusion, stating with particularity the relief sought. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

§8-510-8 Answering brief. Within ten days of being served with appellant's opening brief, the authorizer shall file with the board and serve upon the appellant an answering brief in response to the opening brief. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

§8-510-9 Reply brief. (a) Within seven days of being served with the authorizer's answering brief, the appellant may, but is not required to, file with the board and serve upon the authorizer a reply brief in response to the answering brief.

(b) The reply brief shall respond only to arguments raised in the answering brief. Any argument raised for the first time in the reply brief shall be disregarded. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

§8-510-10 Oral argument. The board, in its discretion, may hold oral argument on the appeal. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

§8-510-11 Decision on appeal. (a) Upon review of the record, the board may affirm the decision of the authorizer, remand the case with instructions for further proceedings, or reverse or modify the decision if the substantial rights of the appellant may have been prejudiced because the authorizer's decision is:

- (1) In violation of statutory or regulatory provisions;
- (2) In excess of the authority or jurisdiction of the authorizer;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(b) The board shall review an appeal and issue a final decision within sixty calendar days of the filing of the notice of appeal. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

§8-510-12 Page limits for briefs. (a) An opening or answering brief shall not exceed thirty double-spaced pages, and a reply brief shall not exceed fifteen double-spaced pages, exclusive of indexes and appendices.

(b) An authorizer or appellant may request an increase in the number of pages beyond the limits defined in subsection (a) which may be granted by the board at its discretion, provided that any such request shall not toll the time for filing of the brief. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

§8-510-13 Failure to meet deadlines. The board shall have full discretion to dismiss an appeal where the appellant fails to meet any of the deadlines in this chapter. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

§8-510-14 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 holiday and then it is also excluded. 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 _____] (Auth: HRS §302A-1112) (Imp: HRS §§91-2)

STATE OF HAWAII
Department of Education
Administrative Rules – Public Hearing
Board of Education Conference Room
Tuesday, March 11, 2014

Present:

Donald G. Horner, Chairperson, Board of Education
Liann Ebesugawa, Esq.
Melissa Kolonie
Regina Pascua

I. Call to Order

Donald G. Horner, Chairperson of the Hawaii State Board of Education welcomed everyone as the presiding officer to the public hearing and noted for the record that today's date is Tuesday, March 11, 2014, and the time is 9:05 a.m. The public hearing is being conducted in the Hawaii State Board of Education, Board Room located in the Queen Liliuokalani Building at 1390 Miller Street.

The following hearing is being conducted and was properly noticed in accordance with Hawaii Revised Statutes, Chapter 91 for the purpose of receiving testimony and comments relating to the proposed adoption of Hawaii Administrative Rules (HAR), Title 8, Chapter 8-510, and repeal of Hawaii Administrative Rules (HAR), Title 8, Chapter 8-500. At the conclusion of this hearing the record of this proceeding with any and all testimony received will be forwarded to the Hawaii State Board of Education for their review and approval at the March 18, 2014, General Business board meeting.

Mr. Horner stated the ground rules and asked staff to present the proposed amendments and then allow those who wish to testify on these amendments to come up to the table and provide their testimony.

Ms. Liann Ebesugawa, Executive Director for the Board of Education presented the proposed amendments to the rules. She noted that the rules were available for the public along with the notice of public hearing. She stated that Act 130, SLH 2012, codified as Chapter 302D, HRS, adopted the recommendations of the Charter School Governance, Accountability and Authority Task Force by repealing Chapter 302B, HRS, pursuant to Section 302D-15, HRS. The Board is required to promulgate appeal rules which are proposed here as Chapter 8-510, HAR.

She stated that Since Chapter 8-500, HAR, entitled "Hawaii Public Charter Schools Probation and Revocation Procedures," was adopted by the Board in 2010 to implement Chapter 302B, HRS and Act 130, SLH 2012, repealed by Chapter 302B, HRS, likewise, the administrative rules must be repealed. Moreover, Act 159 (SLH 2013) provided that the Charter School Commission may adopt rules pursuant to chapter 91 to administer and implement the chapter; provided that the board of education shall maintain exclusive rule-making authority over state educational policy. Accordingly, the Charter School

Commission is in the process of promulgating application, probation and revocation procedures under chapter 91 and under its authority granted in Act 159 (SLH 2013).

During her presentation it was noted that the proposed rules have been reviewed by the Department of the Attorney General and approved for public hearings by Governor Neil Abercrombie.

Mr. Horner called for any public testimony. The following individuals provided oral testimony:

1. Tom Hutton, Executive Director of the State Public Charter School Commission, stated that he stands by his written testimony, which was submitted to the BOE office on March 4, 2014 via email. (Attachment A)
2. Lynn Finnegan, Executive Director of the Hawaii Public Charter Schools Network, stated that she generally supports the proposed adoption and repeal. She stated that she wanted to make sure the charter schools have a voice. Therefore, she stated that she informed the schools of the rule changes and asked them to voice their opinions.

The following individuals submitted written testimony:

1. Tom Hutton, Executive Director of the State Public Charter School Commission, stated that they understand the primary reason for the proposal is to comply with the changes in law from repealed Chapter 302B, Hawaii Revised Statutes (“HRS”), to Chapter 302D, HRS.

Mr. Horner asked if there was anyone wishing to testify on the proposed amendments. There was no further testimony provided. Mr. Horner thanked everyone for their participation in the hearing process.

II. Adjournment

The public hearing was closed as of 9:14 a.m. which related to the adoption of Hawaii Administrative Rules (HAR), Title 8, Chapter 8-510, and repeal of Hawaii Administrative Rules (HAR), Title 8, Chapter 8-500.

NEIL ABERCROMBIE
GOVERNOR



CATHERINE PAYNE
CHAIRPERSON

STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
(‘AHA KULA HO‘ĀMANA)
<http://CharterCommission.Hawaii.Gov>
1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: 586-3775 Fax: 586-3776

DATE: March 11, 2014

TO: Donald Horner, Chairperson
State Board of Education

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

SUBJECT: Proposed Administrative Rules Relating to Appeals

The State Public Charter School Commission ("Commission") appreciates the opportunity to provide testimony in support of the proposal to promulgate a new Chapter 8-510, Hawaii Administrative Rules ("HAR"), relating to charter school appeals, and the repeal of Chapter 8-500, HAR.

We understand that the primary reason for the proposal is to comply with the change in law from repealed Chapter 302B, Hawaii Revised Statutes ("HRS"), to Chapter 302D, HRS.

Thank you for the opportunity to provide this testimony.

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

December 19, 2013

14 JAN 29 PM 2:52
BOARD OF EDUCATION

MEMORANDUM

TO: The Honorable Neil Abercrombie
Governor

FROM: Donald G. Horner
Chairperson, Hawaii State Board of Education

SUBJECT: Request for Approval to Conduct a Public Hearing on (1) the Promulgation of a New Chapter 8-510, Hawaii Administrative Rules, Relating to Appeals and (2) Repeal of Chapter 8-500, Hawaii Administrative Rules, Relating to Hawaii Public Charter Schools Probation and Revocation Procedures

In accordance with Governor's Administrative Directive 09-01, we respectfully request your approval for the Board of Education to proceed to public hearing on the attached proposal to promulgate a new Chapter 8-510 and repeal Chapter 8-500, HAR. The Board of Education approved the proposed rules and the repeal at its May 21, 2013 general business meeting.

- I. Exact changes to be made:
- A. Promulgation of a New Chapter 8-510, Hawaii Administrative Rules, Relating to Appeals

Act 130, SLH 2012, codified as Chapter 302D, HRS, adopted the recommendations of the Charter School Governance, Accountability and Authority Task Force by repealing Ch. 302B, HRS, and establishing a new charter school law that creates a solid governance structure for Hawaii's charter school system with clear lines of authority and accountability that will foster improved student outcomes.

Section 302D-15, HRS, reads as follows:

"§302D-15 Appeals; charter applications, renewals, or revocations. (a)
The board shall have the power to decide appeals of decisions by an

authorizer to deny the approval of a charter application, deny renewal of a charter contract, or revoke a charter school's charter contract. An appeal shall be filed with the board within twenty-one calendar days of the receipt of the notification of denial or revocation. Only a party whose charter application has been denied, whose charter contract renewal has been denied, or whose charter contract has been revoked may initiate an appeal under this section for cause. The board shall review an appeal and issue a final decision within sixty calendar days of the filing of the appeal.

(b) The board shall serve as the final arbitrator of appeals authorized by subsection (a).

(c) A party shall not be entitled to a hearing before the board under this section until it has exhausted all available administrative remedies.

(d) The board shall adopt rules pursuant to chapter 91 to implement this section."

In accordance with subsection (d), the Board is required to promulgate rules which are proposed here as Chapter 8-510, HAR, to implement appeals to the Board.

B. Repeal of Chapter 8-500, Hawaii Administrative Rules, Relating to Hawaii Public Charter Schools Probation and Revocation Procedures

Since Chapter 8-500, HAR, entitled "Hawaii Public Charter Schools Probation and Revocation Procedures," was adopted by the Board in 2010 to implement Chapter 302B, HRS and Act 130, SLH 2012, repealed Chapter 302B, HRS, likewise, the administrative rules must be repealed. Moreover, Act 159 (SLH 2013) provided that the Charter School Commission may adopt rules pursuant to chapter 91 to administer and implement the chapter; provided that the board of education shall maintain exclusive rule-making authority over state educational policy. Accordingly, the Charter School Commission is in the process of promulgating application, probation and revocation procedures under chapter 91 and under its authority granted in Act 159 (SLH 2013).

II. Affect on the agency's internal and external responsibilities, programs, functions, operations, activities, and inter-relationships:

The proposed appeals rules will enable the fair, transparent, and efficient implementation of appeals to the Board thus ensuring oversight to the high stakes decision being made by the authorizer and ensuring the mission of high-quality public charter schools and quality education is carried out. There are no other impacts that we are aware of at this time.

III. Final result expected by instituting the proposal:

With regard to the promulgation of chapter 8-510, Section 302D-15, HRS, states that administrative rules shall be adopted for appeals to the Board. Therefore, it is a legal requirement to promulgate these rules.

With regard to the repeal of Chapter 8-500, because Act 130, SLH 2012, repealed Chapter 302B, HRS, likewise, the administrative rules must be repealed.

IV. Program and financial impacts on the State that will arise upon the implementation of the proposal:

A. Long and short range program impacts:

No significant financial impacts either long or short term to the State are anticipated since the management of charter school appeals have been ongoing but have been conducted pursuant to board policy rather than administrative rule. Accordingly, the administrative cost for managing the appeals process is already incorporated in the operation of the Board of Education office.

The repeal of chapter 8-500 should have no financial impact on the State.

B. Anticipated program funding required for the present biennium, including a statement as to whether funds are currently budgeted to permit the implementation and enforcement of the proposed rule, and estimates for anticipated savings or funding shortfalls projected over the subsequent four-year planning period and the assumptions used to arrive at the estimates:

No additional funding is required, costs will be absorbed by the Board of Education's current budget. No anticipated savings or shortfall is expected.

V. Long and Short-Term Impacts:

A. On the Public:

The proposed rules should have a positive impact on the public because it will provide greater clarity around the charter school appeals process.

The repeal of chapter 8-500 should have no long or short-term impact on the public.

B. On the Economy of the State:

The proposed rules will not impede economic growth in any way.

VI. Other Alternatives in Lieu of Proposed Rules:

There appears to be no other way to implement and clarify statutory requirements.

VII. Rules Do Not Affect Small Business:

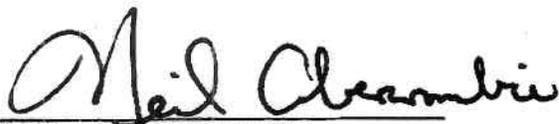
The subject matter of the rules is not foreseen to affect small businesses covered under Chapter 201M, HRS.

The Department of the Attorney General has approved the proposed rules as to form. Also, the proposed rules have been reviewed by the Legislative Reference Bureau.

The Board of Education, plans to hold a public hearing on the proposed promulgation of Chapter 8-510, HAR and repeal of Chapter 8-500, HAR, upon your approval.

Approved

Disapproved


NEIL ABERCROMBIE
Governor, State of Hawaii

Date

1.27.14

Attachment: Chapter 8-510, HAR

cc: Liann Ebesugawa, Executive Director, Board of Education
Kalbert H. Young, Director, Department of Budget and Finance
Richard Lim, Director, Department of Business, Economic Development & Tourism

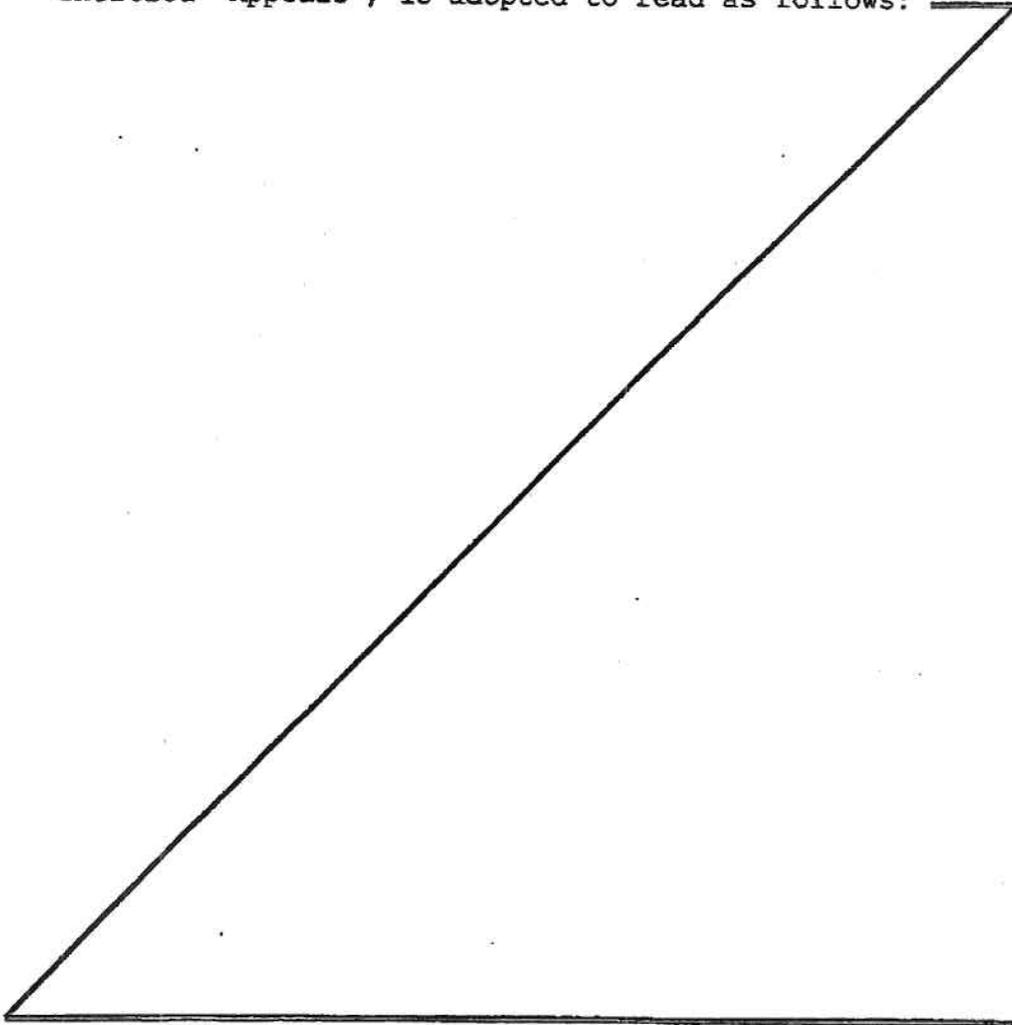
DEPARTMENT OF EDUCATION

Repeal of Chapter 8-500 and Adoption of Chapter 8-510
Hawaii Administrative Rules

[Date of Adoption]

1. Chapter 8-500, Hawaii Administrative Rules, entitled "Hawaii Public Charter Schools Probation and Revocation Procedures", is repealed.

2. Chapter 8-510, Hawaii Administrative Rules, entitled "Appeals", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 510

APPEALS

§8-510-1	Purpose
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(Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

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

"Board" means the board of education. [Eff
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§§302D-15, 302D-22)

§8-510-3 When appeal allowed. An appeal may only be taken from a decision by an authorizer as provided by law to:

- (1) Deny approval of a start-up or conversion charter school application;
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- (1) A concise statement of the case, setting forth the nature of the case, the course and disposition of the proceedings by the authorizer, and the facts material to consideration of the questions and points presented. In presenting those material facts, the appellant shall clearly set forth all supporting and contradictory evidence that was presented to, or considered by, the authorizer;
- (2) The argument, containing contentions of the appellant on the points presented and the reasons therefor, with citations to the authorities, rules, statutes, and parts of the record relied upon; and
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(b) The reply brief shall respond only to arguments raised in the answering brief. Any argument raised for the first time in the reply brief shall be disregarded. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

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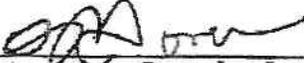
§8-510-11 Decision on appeal. (a) Upon review of the record, the board may affirm the decision of the authorizer, remand the case with instructions for further proceedings, or reverse or modify the decision if the substantial rights of the appellant may have been prejudiced because the authorizer's decision is:

- (1) In violation of statutory or regulatory provisions;
- (2) In excess of the authority or jurisdiction of the authorizer;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(b) The board shall review an appeal and issue a final decision within sixty calendar days of the filing of the notice of appeal. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-15, 302D-22)

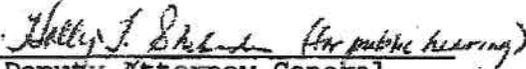
3. The repeal of chapter 8-500, and the adoption of chapter 8-510, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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 _____, and filed with the Office of the Lieutenant Governor.



Chairperson, Board of
Education

APPROVED AS TO FORM:



Deputy Attorney General