

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

November 1, 2016

TO: Board of Education Student Achievement Committee

FROM: Margaret Cox
Student Achievement Committee Chairperson, Board of Education

AGENDA ITEM: Committee Action on public comment received on the administrative rules for multiple charter school authorizers at September 27, 2016 public hearing

I. BACKGROUND

At its January 19, 2016 general business meeting, the Board of Education (“Board”) directed its staff to draft administrative rules for multiple charter school authorizers, pursuant to Hawaii Revised Statutes (“HRS”) §302D-4, entitled “Chartering authority application for eligible entities.”¹

¹ HRS §302D-4 provides as follows:

- (a) The commission created under section 302D-3 may authorize public charter schools anywhere in the State.
- (b) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities may apply to the board, pursuant to this section, for statewide, regional, or local chartering authority, in accordance with each institution's regular operating jurisdiction.
- (c) A county or state agency may apply to the board, pursuant to this section, for chartering authority.
- (d) Governing boards of non-profit or charitable organizations, which are exempt from federal taxes under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, may apply to the board, and may be granted statewide chartering authority. Nonpublic sectarian or religious organizations and any other charitable organization which in their federal Internal Revenue Service Form 1023, Part IV, describe activities indicating a religious purpose, are not eligible to apply to become an authorizer under this chapter.
- (e) The board shall establish, through administrative rules, the annual application and approval process for all entities eligible to apply for chartering authority pursuant to this section; provided that the board shall not approve any application for chartering authority until July 1, 2014, or until the board adopts rules, whichever is later. By June 30 of each year, the board shall make available information and guidelines for all eligible entities concerning the opportunity to apply for chartering authority under this chapter. The application process shall require each interested eligible entity to submit an application that clearly explains or presents the following elements:
 - (1) Written notification of intent to serve as an authorizer in accordance with this chapter;
 - (2) The applicant entity's strategic vision for chartering;
 - (3) A plan to support the vision presented, including explanation and evidence of the applicant entity's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing, in accordance with this chapter;
 - (4) A draft or preliminary outline of the request for proposals that the applicant entity, if approved as an authorizer, would issue to solicit public charter school applicants;

HRS §302D-4(e) provides, in pertinent part, “The [B]oard shall establish, through administrative rules, the annual application and approval process for all entities eligible to apply for chartering authority pursuant to this section; provided that the [B]oard shall not approve any application for chartering authority until July 1, 2014, or until the [B]oard adopts rules, whichever is later[.]”

Included in the development of a process to create multiple authorizers is also consideration of the transfer of oversight of a public charter school from one authorizer to another. These charter transfers are covered by HRS §302D-20, entitled “Charter transfers,” which provides:

- “(a) Transfer of a charter contract, and of oversight of that public charter school, from one authorizer to another before the expiration of the charter term shall not be permitted except by special petition to the [B]oard by a public charter school or its authorizer. The [B]oard shall review such petitions on a case-by-case basis and may grant transfer requests in response to special circumstances and evidence that such a transfer would serve the best interests of the public charter school's students.
- “(b) The [B]oard may adopt rules pursuant to chapter 91 to carry out the purposes of this section.”

Therefore, Board staff drafted two new proposed Hawaii Administrative Rules (“HAR”) chapters: HAR Chapter 8-515, entitled “Establishment and Oversight of Charter School Authorizers,” and HAR Chapter 8-517, entitled “Charter Contract Transfers.”

Subsequently, the Student Achievement Committee (“Committee”) requested that the draft administrative rules be circulated to charter school stakeholders and opened up for preliminary public comments. At its March 15, 2016 meeting, the Committee adopted a recommendation to the Board to approve for public hearing a revised draft of the administrative rules based on public comment and including recommended changes from the Department of the Attorney General (“AG”) and the Legislative Reference Bureau (“LRB”). On that same day, the Board approved the Committee’s recommendation.

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- (5) A draft of the performance framework that the applicant entity, if approved as an authorizer, would use to guide the establishment of a charter contract and for ongoing oversight and evaluation of public charter schools, consistent with the requirements of this chapter;
 - (6) A draft of the applicant entity's renewal, revocation, and nonrenewal processes, consistent with section 302D-18;
 - (7) A statement of assurance that the applicant entity seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of this chapter, and that if approved as an authorizer, the entity will fully participate in any authorizer training provided or required by the State; and
 - (8) A statement of assurance that the applicant will ensure public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures.
 - (f) By June 30 of each year, the board shall decide whether to grant or deny chartering authority to each applicant. The board shall make its decisions on the merits of each applicant's proposal and plans.
 - (g) Within sixty days of the board's decision, the board shall execute a renewable authorizing contract with each entity it has approved for chartering authority. The initial term of each authorizing contract shall be six years. The authorizing contract shall specify each approved entity's agreement to serve as an authorizer in accordance with the expectations of this chapter, and shall specify additional performance terms based on the applicant's proposal and plan for chartering. No approved entity shall commence charter authorizing without an authorizing contract in effect.
 - (h) This section shall not apply to the commission.”

On March 24, 2016, Board staff delivered a memorandum to the Office of the Governor requesting the Governor's approval to hold a public hearing on the proposed rules approved by the Board, pursuant to HRS Chapter 91. On July 1, 2016, the Board received the Governor's approval of the Board's request for a public hearing. At its August 2, 2016 meeting, the Committee approved a recommendation to the Board, which the Board subsequently approved on the same day, to adopt a general timeline as guidance for the promulgation of the administrative rules for multiple charter school authorizers and the development of the multiple charter school authorizer system.

In accordance with the adopted timeline, the Board held an administrative rules public hearing on September 27, 2016. Board Member Jim Williams presided over the public hearing and received oral and written testimony. At its October 18, 2016 general business meeting, the Board approved the record of testimony.²

II. PROCESS

The Committee must consider the record of testimony on the administrative rules, make any necessary adjustments to the proposed rules, and develop a recommendation to the Board for its consideration at its November 15, 2016 general business meeting. After the Board amends and adopts the rules, the AG reviews and approves the adopted rules "as to form." However, if the AG determines substantial changes have been made to the rules, another public hearing will need to be held.

Upon AG approval "as to form," the Board requests final approval of the rules from the Governor. The Governor approves and signs the rules and files copies with the Lieutenant Governor. The approved rules become effective ten days after being filed with the Lieutenant Governor.

III. ANALYSIS OF PUBLIC COMMENTS

The Board received written testimony from 23 organizations and individuals and oral testimony from 17 organizations and individuals. For analysis purposes, this section groups similar comments from testimonies into general comments. A specific comment that best describes the general comment is quoted from a selected testimony, while other related testimonies are referenced. The analysis responds to each general comment and, if necessary, recommends amendments to the proposed administrative rules. A redlined copy of the proposed rules with the suggested amendment is attached as **Exhibit A** and a clean copy is attached as **Exhibit B**.

General Comment #1: Charter transfers should only occur with mutual consent between the charter school and the authorizer.

Specific Comment: The National Association of Charter School Authorizers states, "Transfer should only happen if warranted. If the charter school and another authorizer, including the commission, do not mutually agree to contract terms, the charter school should close. No authorizer should be forced to assume oversight for a failing school." The organization also states that HAR §8-517-6(c) "explicitly contravenes" with HRS §302D-11(e).

² The submittal with the written testimony and a link to a recording of the oral testimony is available here: http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20161018_Board%20Action%20on%20public%20hearing%20testimony.pdf.

Other Related Testimony: State Public Charter School Commission.

Response: How a school is determined to be “failing” can vary between authorizers depending on their own rigorous performance standards, and therefore, it is not reasonable to force any authorizer to accept the transfer of a charter school that it does not deem to be performing at a level that meets that authorizer’s standards.

Recommended Amendments: Amend §8-517-6(c) as follows: “The board shall solicit from the pool of existing authorizers a new authorizer for each charter school overseen by the entity whose chartering authority is terminated. Each proposed charter transfer shall be with the mutual agreement of the proposed new authorizer and governing board; provided that if no other authorizer agrees or is available to accept the transfer of a charter contract overseen by the entity whose chartering authority is terminated, the commission shall be the new authorizer for that charter school.”

General Comment #2: When a charter school transfers to another authorizer, funds owed to that school should transfer with it to the new authorizer.

Specific Comment: Nā Lei Na‘auao Alliance for Native Hawaiian Education states, “Funding following the student in a timely manner is critical to the success of each transferring charter.” The organization requests an amendment to HAR §8-517-5(b)(7) to include new subparagraph that states, “Any and all outstanding funds to which a school is entitled or due, including without limitation funds related to per-pupil allocations, facilities, administrative reimbursements, federal, and grants-in-aid, shall be transferred to the new authorizer within thirty days of approval of the charter transfer or of receipt by the former authorizer.”

Other Related Testimony: Council for Native Hawaiian Advancement, Hawaii Public Charter Schools Network, Institute for Native Pacific Education and Culture, Kamehameha Schools, Kanu o ka ‘Āina Learning ‘Ohana, Kanu o ka ‘Āina New Century Public Charter School, Kanuikapono Public Charter School, Ke Kula ‘o Samuel M. Kamakau Laboratory Public Charter School, Office of Hawaiian Affairs.

Response: It is essential to the success of transferring charter schools that they receive the funding to which they are due, if any, in a timely manner. However, the appropriate timing of the transfer of funds may vary depending on a number of variables, such as the timing of the charter transfer and the type of funds to be transferred. For example, if a charter school is transferring at the end of the school year and its current authorizer is withholding a portion of its third per-pupil general fund allocation for financial reporting compliance purposes (assuming any noncompliance is to a degree that still makes a charter transfer viable), it may be reasonable to require those funds be transferred to the new authorizer immediately upon the effectuation of the charter transfer (at which time the new authorizer will make its own determination on whether or not to continue withholding the funds). On the other hand, there may be other funds, such as certain federal funds, that the current authorizer may need more time to coordinate with the Department of Education or other state agencies or draw down the funds before being able to complete the funds transfer.

Therefore, it is best for the Board to determine, on a case-by-case basis, when funds should be transferred from the current authorizer to the new authorizer. When taking action to approve a charter transfer, the Board should also direct the current authorizer, the new authorizer, and the transferring school and ensure all details necessary to smooth transfer are covered, including the transfer of funds.

Recommended Amendments: Amend HAR §8-517-3 by adding a new subsection (c) that reads as follows: “If a charter transfer is approved, any and all outstanding funds being held by the current authorizer to which the charter school is entitled or due shall be transferred to the new authorizer in a timely manner as determined by the board.”

General Comment #3: Clarify that authorizer duties include receipt and distribution of all applicable funds for students.

Specific Comment: The Office of Hawaiian Affairs states “that an authorizer’s duties relating to the receipt and distribution of funding are further prescribed by HRS §302D-28(e) and (f)[.] These requirements are not reflected in the proposed HAR §8-515-5(b)(7).” The organization requests “amending this paragraph to explicitly reflect the related duties described under HRS §302D-28(e) and (f).”

Other Related Testimony: Kanu o ka ‘Āina Learning ‘Ohana, Kanu o ka ‘Āina New Century Public Charter School, Nā Lei Na’auao Alliance for Native Hawaiian Education.

Response: The list of authorizer duties under HAR §8-515-5(b)(7) is not intended to be an exhaustive list of the statutory responsibilities of authorizers. Rather, it is a reiteration of the general statutory responsibilities of authorizers, as described in HRS §302D-5(b), that are separate and apart from the essential authorizer powers and duties described in HRS §302D-5(a) and HRS §302D-6. Therefore, detailing every duty of authorizers is not appropriate. However, this paragraph can be amended to further clarify that the list of statutory requirements is not exhaustive.

Recommended Amendments: Amend HAR §8-515-5(b)(7) as follows: “Fulfillment of the other statutory duties of an authorizer, including but not limited to . . .”

General Comment #4: Address retaliation by authorizers in charter transfers.

Specific Comment: Nā Lei Na’auao Alliance for Native Hawaiian Education states “that fear of retaliation is a legitimate concern for schools that petition to leave their current authorizer, are denied, and are required to return to the first authorizer or face school closure.”

Other Related Testimony: Council for Native Hawaiian Advancement, Kanu o ka ‘Āina Learning ‘Ohana, Kanu o ka ‘Āina New Century Public Charter School.

Response: While administrative rules are not the appropriate avenue to address current concerns from charter schools regarding alleged authorizer retaliation, these rules may be able to allay some fears by generally requiring authorizers not to retaliate against charter schools seeking to transfer by unduly preventing the charter transfer or by becoming more hostile to the charter school by subjecting it to requirements, conditions, or treatment that is out of the ordinary practice of the authorizer.

Recommended Amendments: Amend HAR §8-517-3(b) as follows: “The following requirements shall apply to any and all charter transfers:

- (1) No charter school shall be allowed to transfer its charter contract to another authorizer in an attempt to reduce the level of oversight or accountability to which the charter school is currently subject or to avoid possible revocation or nonrenewal of its charter contract;

- (2) No authorizer shall be allowed to transfer a charter contract to another authorizer in an attempt to improve the overall performance of its own portfolio of charter schools or to avoid possible revocation or nonrenewal of the charter contract;
- (3) An authorizer shall not agree to accept a charter transfer nor shall it deny a charter transfer based on any financial incentives a larger portfolio of schools may provide to that authorizer;
- (4) A charter school whose authorizer has initiated a closure of the school shall not be allowed to secure a charter contract from another authorizer;
- (5) Existing charter schools shall not be allowed to apply for a charter school under another authorizer as a way of de facto transferring oversight of the school from one authorizer to another and circumventing the charter transfer process; provided that nothing in this chapter shall be construed to prevent existing charter schools from applying to another authorizer for replication or expansion purposes;
- (6) An authorizer shall not retaliate against any charter school within its portfolio of schools that seeks to transfer to another authorizer by unduly preventing or interfering with the charter transfer or subjecting the charter school to requirements, conditions, or treatment that is out of the ordinary practice of the authorizer;
- ~~(6 7) Authorizers shall share among themselves information on charter schools that are transferring between them; and~~
- ~~(7 8) All charter transfers shall be in the best interest of students.”~~

General Comment #5: Remove provisions that may limit or prohibit schools from practically transferring to another authorizer.

Specific Comment: Nā Lei Na'auao Alliance for Native Hawaiian Education requests “that provisions that may tend to limit or prohibit schools from practically transferring from the purview of the Commission be removed. This would include schools that are currently under any form of ‘monitoring’ by the Commission . . .” The Hawaii Public Charter Schools Network requests that “[p]roposed language to §8-517-3 be omitted as this language is too subjective and onerous to administer. The other requirements listed provide adequate rigor for addressing concerns over ‘authorizer hopping.’”

Other Related Testimony: Kamehameha Schools, Kanu o ka ‘Āina Learning ‘Ohana, Kanu o ka ‘Āina New Century Public Charter School.

Response: The provisions of HAR §8-517-3 provide a general set of standards applicable to any charter transfers. These standards will guide the Board in its decision making and ensure all charter transfers are in the best interests of students and the public. Further, because they are intended to be higher level standards, none of these provisions should prevent charter schools from “practically transferring” to another authorizer. Even a charter school that is, for example, being closely monitored by its current authorizer but desires an authorizer that is more supportive and communicative in its monitoring could qualify for a charter transfer, provided that the charter school is not attempting to reduce its oversight or accountability or avoid possible charter contract revocation or nonrenewal. Lastly, there is nothing in these rules that prevents a charter school from submitting a charter transfer application to the Board for consideration.

Recommended Amendments: No changes.

General Comment #6: Allow charter transfers to occur mid-charter contract for an initial period through 2020.

Specific Comment: Nā Lei Na'auao Alliance for Native Hawaiian Education states, "Alternatively [to removing provisions limiting charter transfers], please allow an initial period through 2020 for schools to apply for acceptance by a new authorizer notwithstanding the provisions of: HAR §8-517-3(b)(1), (4), §8-517-4(a), §8-517-5(a)." Kanu o ka 'Āina Learning 'Ohana states, "Many charter schools will be in the middle of a contract period when the first opportunity to apply for transfer will take place. Please amend HAR §8-517-5 to allow an exemption for these schools to be able to apply for transfer mid-contract, "The transfer of a charter contract that is not in its final contract year shall only be allowed if it occurs within the first 2 years of the effective date of the first new authorizer or under special circumstances..."

Other Related Testimony: Institute for Native Pacific Education and Culture, Kamehameha Schools, Kanu o ka 'Āina New Century Public Charter School, Kanuikapono Public Charter School, Kua o ka La PCS.

Response: Most of the comments requesting that charter transfers be allowed until 2020 notwithstanding HAR §8-517-5(a) appear be concerned that most charter schools under contract with the Commission will be in the middle of their contract term if and when a new authorizer is approved by the Board and will not be allowed to transfer to the new authorizer. However, the provision states that a mid-contract term transfer is only allowable under "special circumstances." If it occurs, the establishment of a new authorizer will mark the first time Hawaii has ever had more than one authorizer, and it will be the first time any charter school will have an opportunity to transfer from its current authorizer. This in itself is very clearly a "special circumstance," thus warranting the consideration by the Board of any resulting charter transfer requests from schools in the middle of their charter contract terms. Provided that charter transfer requests meet the provisions of HAR §8-517-3 and are in the best interests of students and the public, existing charter schools will be able to transfer to another authorizer (upon mutual agreement) once a new authorizer is established.

Recommended Amendments: No change.

General Comment #7: Ensure accessibility to the chartering authority application process.

Specific Comment: Nā Lei Na'auao Alliance for Native Hawaiian Education requests HAR §8-515-5(c) be amended to state, "The Board shall make publicly available..."

Other Related Testimony: Kanu o ka 'Āina Learning 'Ohana, Kanu o ka 'Āina New Century Public Charter School.

Response: The charter authority application form and the policies, criteria, or guidelines for evaluating chartering authority applications are intended to be publicly accessible. Therefore, clarification is appropriate.

Recommended Amendments: Amend HAR §8-515-5(c) as follows: "The board shall make publicly available the application form and the policies, criteria, or guidelines for evaluating applications to any person interested in establishing an authorizer."

General Comment #8: Allow and acknowledge local expertise.

Specific Comment: Nā Lei Na'auao Alliance for Native Hawaiian Education requests HAR §8-515-10(a)(2) be amended to state, “Apply local and nationally recognized principles...”

Other Related Testimony: Kanu o ka ‘Āina Learning ‘Ohana, Kanu o ka ‘Āina New Century Public Charter School.

Response: During the preliminary comment period on the draft administrative rules, ‘Aha Pūnana Leo made this exact amendment request, and at its March 1, 2016 meeting, the Committee directly responded to this request by amending the rules to recognize that national principles and standards for quality charter authorizing should only be applied understanding the local conditions. Therefore, the Board has already considered and addressed this comment, and the proposed rules now acknowledge the importance of conducting authorizing in a manner appropriate to Hawaii.

HAR §8-515-10(a)(2) states that the authorizer performance evaluation system must “apply nationally recognized principles and standards for quality charter authorizing, as applicable to local conditions, in assessing performance.” Some testimony comments request applying “local” principles and standards for quality charter authorizing. However, with only one authorizer in the state and state law mandating that authorizers follow “nationally recognized” principles and standards, there does not appear to be any “local” principles and standards. Further, if there were to be a special set of Hawaii-specific principles and standards, the Board should be the entity to establish them as the oversight body of authorizers. The Board can include any standards, criteria, or requirements it deems appropriate in the authorizer performance evaluation system and/or authorizing contract without the need for amending the proposed rules.

Recommended Amendments: No change.

General Comment #9: Ensure charter transfers are also in the best interest of the charter school’s mission and vision.

Specific Comment: Nā Lei Na'auao Alliance for Native Hawaiian Education requests HAR §8-517-5(b) be amended to state, “The letter shall explain the reason for the request, provide evidence that the transfer is in the best interest of the charter school’s students as well as the school’s mission and vision and identify the proposed new authorizer[.]”

Other Related Testimony: Council for Native Hawaiian Advancement, Kanu o ka ‘Āina Learning ‘Ohana, Kanu o ka ‘Āina New Century Public Charter School, Ke Ana La‘ahana Public Charter School.

Response: Most would agree that it would be ideal if an authorizer believed in the missions and visions of the charter schools within its portfolio. However, it is inappropriate for the Board to ensure that a charter transfer is in the best interest of a charter school’s mission and vision. That is best determined by the charter school and its governing board, in consultation with its current and proposed new authorizers. The charter school and proposed new authorizer should mutually agree that a charter transfer is in the best interest of the school’s mission and vision. Further, it is unnecessary and an additional administrative burden to a charter school wishing to transfer to require it to provide evidence as to how the transfer is in the best interest of its mission and vision.

Recommended Amendments: No change.

General Comment #10: Allow transferring schools ample time for planning.

Specific Comment: Nā Lei Na‘auao Alliance for Native Hawaiian Education requests HAR §8-517-3(a)(3) be amended to state, “A timely decision by the Board on whether to allow the transfer, not to exceed 60 days from transfer application receipt date[.]”

Other Related Testimony: Kanu o ka ‘Āina Learning ‘Ohana, Kanu o ka ‘Āina New Century Public Charter School.

Response: The proposed rules already set timeframes for the Board to make decisions on charter transfer that allow transferring schools ample time for planning. HAR §8-517-4(c) requires the Board to “make a final determination on the charter transfer application no later than sixty days before the expiration of the current charter contract” for transfers occurring at the end of a charter contract term. For transfers occurring mid-charter contract term, HAR §8-517-5(d) requires the Board to “make a final determination on the charter transfer application no later than May 1” provided that “the letter requesting the transfer and the charter transfer application are submitted by February 1 of the same school year.” For transfers occurring due to the termination of an authorizer’s chartering authority, HAR §8-517-6(d) requires the Board to “make a final determination on each charter transfer application within forty-five days of the termination of the former authorizer’s chartering authority but no later than sixty days before the start of the next school year.”

Recommended Amendments: No change.

General Comment #11: Extend the chartering authority application process to be no longer than 18 months.

Specific Comment: The Native Hawaiian Education Council states, “We recommend a chartering authority process no longer than 18 months ([versus] 12 months), primarily to provide the Board of Education with the time needed to thoughtfully and carefully assess applicants for this important initial task; the language of ‘no longer than 18 months’ still allows a process to be completed within the 12 months proposed.”

Response: By June 30 of each year, HRS §302D-4 requires the Board to “make available information and guidelines for all eligible entities concerning the opportunity to apply for chartering authority” as well as to “decide whether to grant or deny chartering authority to each applicant.” Since this must be done by June 30 of each year, it appears statute requires that the chartering authority application process be no longer than 12 months so that the information can be released annually and the Board can decide whether to grant or deny chartering authority to each applicant.

Recommended Amendments: No change.

General Comment #12: Use the term “response” instead of “rebuttal” in reference to the chartering authority application process.

Specific Comment: The Native Hawaiian Education Council states, “The term ‘rebuttal’ invokes a debate rather than a process that seeks clarity and understanding; we recommend ‘response’ vs. ‘rebuttal.’”

Response: The term “response” is used in reference to the applicant’s written response to the written report from the evaluators. The term “reply” can be used instead to differentiate between the documents.

Recommended Amendments: Amend HAR §8-515-6(b)(9) as follows: “An opportunity for the applicant to submit a written response to the written report from the evaluators, and an opportunity for the evaluators to [rebut] reply, in writing, to the applicant’s written response, if applicable[.]”

Amend HAR §8-515-6(b)(10) as follows: “Following the written report, response, and [rebuttal] reply, as applicable, approval or denial of the application by the board in a meeting open to the public.”

General Comment #13: Use email as a means of notification.

Specific Comment: The Native Hawaiian Education Council states, “We recommend the Board utilize the immediacy of e-mail to a point of contact on record instead of the outdated practice of registered or certified mail with return receipt requested.”

Response: Email can be used in conjunction with (but not as a replacement of) registered or certified mail for serving official documents.

Recommended Amendments: Amend HAR §§8-515-6(d), 8-515-13(a), 8-515-16(a), 8-515-16(d), 8-515-17(b), 8-515-20, and 8-515-21(b) to also require that written notification be served by “electronic mail” in addition to registered or certified mail.

General Comment #14: Clarify the appeals process, if any, for applicants for chartering authority that are denied.

Specific Comment: The Native Hawaiian Education Council states, “We also recommend that an appeal process, if any, be articulated to make it clear on the front end what options are available to the entity post Board decision.”

Response: Statute does not contemplate any special appeals process for charter school authorizer decisions made by the Board.

Recommended Amendments: No change.

General Comment #15: Address charter applicants applying to multiple authorizers.

Specific Comment: The Native Hawaiian Education Council requests “[c]onsideration of applicants applying to multiple authorizers simultaneously.”

Response: This request goes beyond the scope of these administrative rules. These rules address the application process for eligible entities seeking to become authorizers, not the application process from eligible groups to authorizers seeking to start new charter schools.

Recommended Amendments: No change.

General Comment #16: Allow authorizers to complete the operating year before performance evaluations.

Specific Comment: The Native Hawaiian Education Council states, “Authorizers should be allowed to complete the operating year before the performance evaluation is provided by the Board; a [90-day] period (post operational year) is reasonable to complete the evaluation.”

Response: Performance evaluations are not necessarily conducted annually. HAR §8-515-11(e) states that the Board “shall conduct a performance evaluation of each authorizer no less than every five years.” Therefore, it is not necessary to wait until an authorizer completes its most current operating year before conducting a performance evaluation because there will most likely already be a record of past performance on which to base the evaluation.

Recommended Amendments: No change.

General Comment #17: Conduct mid-year interim evaluations for new authorizers.

Specific Comment: The Native Hawaiian Education Council states, “Similar to new charter schools, we recommend the Board create a mid-year interim evaluation for the newly approved authorizer to ensure support in being successful as a new authorizer.”

Response: While it is not required by law, monitoring new authorizers may be a reasonable practice for the Board to consider. However, monitoring of a new authorizer should not be required by these rules and can be addressed through the authorizing contract with any entity granted chartering authority.

Recommended Amendments: No change.

General Comment #18: Ensure an evaluation of an authorizer includes feedback from charter schools within its portfolio of schools.

Specific Comment: The Native Hawaiian Education Council states, “Support the 360 degree element, including feedback from the authorizer’s portfolio of charter schools.”

Response: These rules already require that feedback be collected from an authorizer’s portfolio of charter schools as part of its performance evaluation. HAR §8-515-11(c)(5) states that a “survey or interview of representatives from charter schools within the authorizer’s portfolio of charter schools” be part of any performance evaluation.

Recommended Amendments: No change.

General Comment #19: Guarantee that schools have appropriate and adequate legal representation in charter contract negotiations.

Specific Comment: Nā Lei Na‘auao Alliance for Native Hawaiian Education states, “Appropriate and adequate legal representation has been an ongoing concern for charter schools. Please insert language to guarantee schools have individual representation for contract negotiation purposes and to ensure the mitigation of future liabilities that could be avoided.”

Other Related Testimony: Kanu o ka ‘Āina Learning ‘Ohana, Kanu o ka ‘Āina New Century Public Charter School.

Response: This request goes beyond the scope and authority of these administrative rules.

Recommended Amendments: No change.

General Comment #20: Require authorizers to negotiate charter contracts with individual schools.

Specific Comment: Ke Kula 'o Samuel M. Kamakau Laboratory Public Charter School states, "Individual charter schools vary greatly amongst themselves from operations to academics. Negotiations with individual schools would ensure that the contract is applicable."

Response: This request goes beyond the scope and authority of these administrative rules. The purpose of these rules is not to dictate how authorizers conduct their business. Rather, these rules establish systems and procedures for evaluating chartering authority applicants and authorizers, set standards for such evaluations, and establish procedures for dealing with authorizers that do not meet those standards.

Recommended Amendments: No change.

General Comment #21: Create another entity or mechanism for the disbursement of funds to charter schools.

Specific Comment: Kanuikapono Public Charter School states, "Create another office and/or mechanism for the disbursement of all funds."

Response: This request goes beyond the scope and authority of these administrative rules. State statute sets the current method for the distribution of funds, and if another office were to be created for this purpose, it would need to be authorized by statute.

Recommended Amendments: No change.

General Comment #22: Clarify "technical assistance" and how it can be provided.

Specific Comment: Kanuikapono Public Charter School states, "Settle the issue of technical assistance - who and how will it be provided."

Response: This request goes beyond the scope and authority of these administrative rules. State statute places certain limitations on authorizers with regard to technical assistance, and the purpose of these rules is not to define the boundaries of those limitations.

Recommended Amendments: No change.

General Comment #23: Clarify that all authorizers have the same rights and responsibilities.

Specific Comment: Kanuikapono Public Charter School states, "Clarify the new authorizers are equal to the current commission under the [Board]."

Response: This request goes beyond the authority of these administrative rules. Clarifying powers, duties, and responsibilities in administrative rules is inappropriate because they are granted through statute.

Recommended Amendments: No change.

There are many more comments contained within the testimonies; however, these comments either do not directly relate to these administrative rules, are too general in nature, or address the implementation of the rules rather than the substance.

IV. RECOMMENDATION

I recommend this Committee and the Board adopt the amended administrative rules, as attached as **Exhibit B**. However, to ensure these rules are enacted expeditiously, I recommend that the rules be reviewed by the AG prior to Board action, and if the AG determines that any of the proposed amendments are to a degree requiring another public hearing, I recommend that those amendments not be included in the amended administrative rules for Board adoption. I propose the following motion:

“Moved to recommend the Board 1) adopt the amended Hawaii Administrative Rules Chapters 8-515 and 8-517, as attached as Exhibit B of Board Member Margaret Cox’s memorandum dated November 1, 2016, provided that any amendments that would require another public hearing, as determined by the Department of the Attorney General, not be included in the amended administrative rules to be adopted by the Board; and 2) to authorize Board Chairperson Lance Mizumoto to sign the rules on behalf of the Board.”

Exhibit A

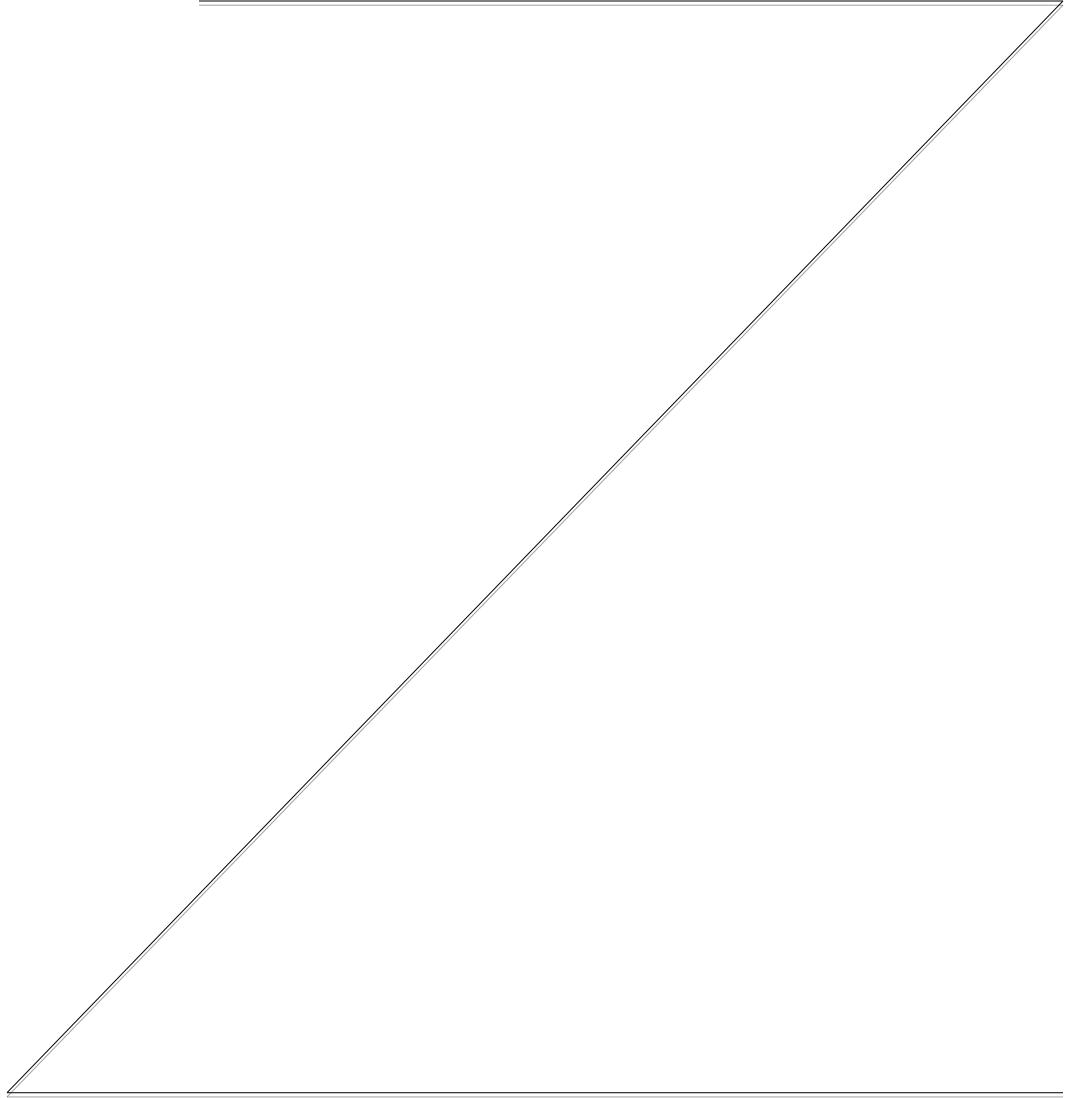
**Redline showing proposed amendments to proposed Hawaii Administrative Rules
Chapter 8-515, entitled “Establishment and Oversight of Charter School
Authorizers,” and Chapter 8-517, entitled “Charter Contract Transfers,”
(Ramseyer format) as previously approved by the Board**

DEPARTMENT OF EDUCATION

Adoption of Chapters 8-515 and 8-517
Hawaii Administrative Rules

[adoption date]

1. Chapter 8-515, Hawaii Administrative Rules,
entitled "Establishment and Oversight of Charter School
Authorizers", is adopted to read as follows:



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"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 515

ESTABLISHMENT AND OVERSIGHT OF CHARTER SCHOOL
AUTHORIZERS

Subchapter 1 General Provisions

- §8-515-1 Purpose
- §8-515-2 Definitions
- §8-515-3 Computation of time
- §8-515-4 (Reserved)

Subchapter 2 Applications for Chartering
Authority

- §8-515-5 Applications, generally
- §8-515-6 Application and approval procedure
- §8-515-7 Eligible entities
- §§8-515-8 to 8-515-9 (Reserved)

Subchapter 3 Oversight and Evaluation of
Authorizers

- §8-515-10 Performance evaluation system
- §8-515-11 Performance evaluations
- §8-515-12 Special reviews
- §8-515-13 Noncompliance

Subchapter 4 Renewal or Nonrenewal of
Chartering Authority

- §8-515-14 Reasons for nonrenewal
- §8-515-15 Application for chartering authority
renewal
- §8-515-16 Performance report; notification of the
prospect of nonrenewal
- §8-515-17 Nonrenewal decision by the board
- §8-515-18 (Reserved)

Subchapter 5 Revocation of Chartering Authority

- §8-515-19 Reasons for revocation
- §8-515-20 Notification of prospect of revocation
- §8-515-21 Revocation decision by the board

SUBCHAPTER 1

GENERAL PROVISIONS

§8-515-1 Purpose. This chapter governs the application process to become a charter school authorizer, oversight and evaluation of authorizers and the commission, renewal or nonrenewal of chartering authority, and revocation of chartering authority pursuant to chapter 302D, Hawaii Revised Statutes. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-6, 302D-11)

§8-515-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Applicant" means the applicant who submits an application for chartering authority to the board.

"Authorizer" means an entity with chartering authority established pursuant to section 302D-4,

Hawaii Revised Statutes. For purposes of this chapter, this term does not include the commission.

"Authorizing contract" means a fixed-term, renewable contract between an authorizer and the board that outlines the performance expectations of the authorizer and the roles, powers, and responsibilities for each party to the contract.

"Board" means the board of education.

"Commission" means the state public charter school commission established pursuant to section 302D-3, Hawaii Revised Statutes, with statewide chartering authority.

"Chartering authority" means the authority to review charter applications, decide whether to approve or deny charter applications, enter into charter contracts with charter applicants, oversee public charter schools, and decide whether to authorize, renew, deny renewal of, or revoke charter contracts in accordance with chapter 302D, Hawaii Revised Statutes.

[Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-1, 302D-4, 302D-11)

§8-515-3 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 state holiday and then it is also excluded. When the prescribed period of time is less than seven days, Saturdays, Sundays, or state holidays within the designated period shall be excluded in the computation. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §91-2)

§8-515-4 (Reserved).

SUBCHAPTER 2

APPLICATIONS FOR CHARTERING AUTHORITY

§8-515-5 Applications, generally. (a) The board shall develop an application form, process, and processing schedule for applying to become an authorizer pursuant to section 302D-4, Hawaii Revised Statutes. The application form shall include a description of the application process and the application processing schedule.

(b) The board shall develop policies, criteria, or guidelines for evaluating applications for chartering authority based on nationally recognized principles and standards for quality charter authorizing, as applicable to local conditions. At a minimum, the policies, criteria, or guidelines included in the application form shall be evaluated in the following areas:

- (1) Satisfactory responses to elements of the application for chartering authority, including responses that clearly explain or present:
 - (A) The applicant's strategic vision for chartering;
 - (B) A plan to support the vision presented, including an explanation and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of a quality authorizer, in accordance with chapter 302D, Hawaii Revised Statutes;
 - (C) A draft or preliminary outline of the request for proposals that the applicant, if approved as an authorizer, would issue to solicit charter school applicants;
 - (D) A draft of the performance framework that the applicant, if approved as an

- authorizer, would use to guide the establishment of a charter contract and for ongoing oversight and evaluation of charter schools, consistent with the requirements of chapter 302D, Hawaii Revised Statutes;
- (E) A draft of the applicant's renewal, revocation, and nonrenewal processes, consistent with section 302D-18, Hawaii Revised Statutes;
- (F) A statement of assurance that the applicant seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 302D, Hawaii Revised Statutes, and that if approved as an authorizer, the applicant will fully participate in any authorizer training provided or required by the State; and
- (G) A statement of assurance that the applicant will ensure public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;
- (2) ~~Organizational capacity and infrastructure;~~ |
- (3) Financial capacity to fulfill the responsibilities of a quality authorizer;
- (4) Authorizer responsibilities relating to charter applications, including:
- (A) Soliciting and evaluating charter applications;
- (B) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices; and
- (C) Declining to approve weak or inadequate charter applications;
- (5) Performance contracting, including negotiating and executing sound charter contracts with each approved charter applicant and with existing charter schools;

- (6) Ongoing charter school oversight, evaluation, renewal processes, including:
 - (A) Monitoring, in accordance with charter contract terms, the performance and legal compliance of charter schools; and
 - (B) Determining whether each charter contract merits renewal, nonrenewal, or revocation; and
 - (7) Fulfillment of the other statutory duties of an authorizer, including but not limited to:
 - (A) Acting as a point of contact between the department of education and the authorizer's charter schools;
 - (B) Being responsible for and ensuring the compliance of the authorizer's charter schools with all applicable state and federal laws, including reporting requirements;
 - (C) Being responsible for the receipt of applicable federal funds from the department of education and the distribution of funds to the authorizer's charter schools; and
 - (D) Being responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the authorizer's charter schools.
- | (c) The board shall make publicly available the application form and the policies, criteria, or guidelines for evaluating applications to any person interested in establishing an authorizer. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §302D-4)

§8-515-6 Application and approval procedure.

- (a) The annual application and approval cycle for chartering authority shall be no longer than twelve months.

- (b) The application and approval procedure shall provide for and include the following:
- (1) The submission of a notice of intent to apply for chartering authority to the board from each interested eligible entity;
 - (2) The timely review of the notice of intent to apply by the board to determine eligibility, and notification by the board to the interested entity of its eligibility to submit an application for chartering authority;
 - (3) The timely submission of a completed application for chartering authority to the board;
 - (4) The timely review of the application by the board for completeness, and notification by the board to the applicant that the application is complete or incomplete;
 - (5) If board deems the application incomplete, an opportunity for the applicant to make corrections and submit a completed applications; provided that corrections are made expeditiously and no wholesale changes to the application are made;
 - (6) Upon receipt of a completed application, the review and evaluation of the application by qualified persons, including but not limited to an in-person interview with representatives from the applicant to assess the capacity of the applicant;
 - (7) An opportunity in a public forum for the public, including the applicant, to provide input on each application for chartering authority;
 - (8) Following the review and evaluation of an application for chartering authority by qualified persons, issuance of a written report by the evaluators with a recommendation to either approve or deny the application;
 - (9) An opportunity for the applicant to submit a written response to the written report from

the evaluators, and an opportunity for the evaluators to ~~rebut~~reply, in writing, to the applicant's written response, if applicable;

- (10) Following the written report, response, and ~~rebuttal~~reply, as applicable, approval or denial of the application by the board in a meeting open to the public.

(c) The board shall execute an authorizing contract with each entity it has approved for chartering authority pursuant to section 302D-4(g), Hawaii Revised Statutes.

(d) If an application is denied, the board shall notify the applicant in writing, served by registered or certified mail with return receipt requested and electronic mail, stating the reason therefor, with specific references to the adopted policies, criteria, or guidelines for evaluating applications for chartering authority. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §302D-4)

§8-515-7 Eligible entities. (a) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities shall be eligible to submit an application to the board for statewide, regional, or local chartering authority, in accordance with each institution's regular operating jurisdiction; provided that any private postsecondary institution is registered to do business in this State in accordance with state law.

(b) A state or county agency shall be eligible to submit an application to the board for statewide, regional, or local chartering authority.

(c) Governing boards of nonprofit or charitable organizations, which are exempt from federal taxes under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, shall be eligible to submit an application to the board for statewide chartering authority; provided that the organization is registered to do business in this State in accordance with state law. Nonpublic sectarian or religious

organizations and any other charitable organization which in their federal Internal Revenue Service Form 1023, Part IV, describe activities indicating a religious purpose, are not eligible to apply to become an authorizer pursuant to section 302D-4(d), Hawaii Revised Statutes.

(d) For purposes of this subchapter:

"Local chartering authority" means chartering authority within one or more designated department of education complex areas.

"Regional chartering authority" means chartering authority within a county or an island-wide geographic area.

(e) The board may disqualify any application as provided by law. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §302D-4)

§§8-515-8 to 8-515-9 (Reserved).

SUBCHAPTER 3

OVERSIGHT AND EVALUATION OF AUTHORIZERS

§8-515-10 Performance evaluation system. (a) The board shall develop a performance evaluation system to assess the effectiveness of all authorizers and the commission using the procedures described in section 8-515-11 and 8-515-12. The performance evaluation system shall, at a minimum:

- (1) Assess the effectiveness of an authorizer or the commission in carrying out its duties in a manner consistent with the purpose of charter schools, as determined by the board, and the spirit and intent of chapter 302D, Hawaii Revised Statutes;
- (2) Apply nationally recognized principles and standards for quality charter authorizing, as applicable to local conditions, in assessing performance; and

- (3) Assess the compliance of each authorizer and the commission with existing charter contracts, its authorizing contract, board policies, rules, and laws, as applicable.
- (b) The performance evaluation system shall clearly set forth performance indicators, measures, and metrics that will guide the board's evaluations and reviews of each authorizer and the commission. At a minimum, the performance indicators, measures, and metrics included in the performance evaluation system shall evaluate the following areas:
 - (1) Organizational capacity and infrastructure;
 - (2) Financial capacity to fulfill the responsibilities of a quality authorizer;
 - (3) Authorizer responsibilities relating to charter applications, including:
 - (A) Soliciting and evaluating charter applications;
 - (B) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices; and
 - (C) Declining to approve weak or inadequate charter applications;
 - (4) Performance contracting, including negotiating and executing sound charter contracts with each approved charter applicant and with existing charter schools;
 - (5) Ongoing charter school oversight, evaluation, renewal processes, including:
 - (A) Monitoring, in accordance with charter contract terms, the performance and legal compliance of charter schools; and
 - (B) Determining whether each charter contract merits renewal, nonrenewal, or revocation; and
 - (6) Fulfillment of the duties of an authorizer, including:
 - (A) Acting as a point of contact between the department of education and the authorizer's charter schools;

- (B) Being responsible for and ensuring the compliance of the authorizer's charter schools with all applicable state and federal laws, including reporting requirements;
 - (C) Being responsible for the receipt of applicable federal funds from the department of education and the distribution of funds to the authorizer's charter schools; and
 - (D) Being responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the authorizer's charter schools.
- (c) The performance provisions within each authorizing contract shall be based on the performance evaluation system. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-6, 302D-11)

§8-515-11 Performance evaluations. (a) Any performance evaluation of an authorizer shall use all performance indicators, measures, and metrics set forth in the performance evaluation system pursuant to section 8-515-10.

(b) The board shall develop a response form for performance evaluations, which shall be made available to each authorizer who will be evaluated at least ninety days prior to the performance evaluation response being due. The performance evaluation response form shall also include a description of the performance evaluation process, the performance evaluation processing schedule, and the performance indicators, measures, and metrics set forth in the performance evaluation system pursuant to section 8-515-10.

(c) The performance evaluation shall provide for and include the following:

- (1) At least ninety days prior to the performance evaluation response being due, a written notice from the board notifying the

- authorizer a performance evaluation will be conducted;
- (2) The timely submission of a completed performance evaluation response to the board;
 - (3) Upon receipt of a completed performance evaluation response, the review and evaluation of the authorizer by qualified persons;
 - (4) An in-person interview with representatives from the authorizer;
 - (5) A survey or interview of representatives from charter schools within the authorizer's portfolio of charter schools;
 - (6) An opportunity in a public forum for the public, including the authorizer, to provide input on each authorizer being evaluated;
 - (7) Following the review and evaluation of the authorizer by qualified persons, issuance of a draft of the written report by the evaluators to the authorizer, and an opportunity for the authorizer to provide written comments on the draft of the written performance evaluation report; and
 - (8) Approval of the final draft of the written performance evaluation report by the board, and transmittal of the report to the authorizer.
- (d) The performance evaluation report shall include an overall rating of the authorizer, and shall be published on the board's website. The performance evaluation report may be used as the performance report, pursuant to section 8-515-16, or may serve as a notice of noncompliance pursuant to section 8-515-13.
- (e) The board shall conduct a performance evaluation of each authorizer no less than every five years.
- (f) For the purposes of this section, "authorizer" also means the commission.

[Eff] (Auth: HRS §302A-1112) (Imp:
HRS §302D-11)

§8-515-12 Special reviews. (a) The board may conduct a special review of an authorizer using some or all of the performance indicators, measures, and metrics set forth in the performance evaluation system pursuant to section 8-515-10 for the following reasons:

- (1) Persistently unsatisfactory performance of the authorizer's portfolio of charter schools;
 - (2) A pattern of well-founded complaints about the authorizer or its charter schools; or
 - (3) Other objective circumstances.
- (b) The board shall determine whether a special review of an authorizer is warranted on a case-by-case basis. If the board determines a special review is warranted, the board may opt to conduct a performance evaluation pursuant to section 8-515-11 instead of a special review pursuant to subsection (c).

(c) The special review shall provide for and include the following:

- (1) At least thirty days prior to the any requested documentation being due, a written notice from the board notifying the authorizer a special review will be conducted, describing the reason for the review, and identifying the areas to be reviewed;
- (2) The timely submission of any documentation requested by the board which may include responses to parts of the performance evaluation response form pursuant to section 8-515-11(b);
- (3) Upon receipt of the requested documentation, the review and evaluation of the identified areas by qualified persons;
- (4) Following the review and evaluation of the identified areas by qualified persons, issuance of a draft of the written report by

the reviewers to the authorizer, and an opportunity for the authorizer to provide written comments on the draft of the written special review report; and

(5) Approval of the final draft of the written special review report by the board, and transmittal of the report to the authorizer.

(d) The special review may also provide for and include the following:

(1) An in-person interview with representatives from the authorizer;

(2) Surveys or interviews of representatives from charter schools within the authorizer's portfolio of charter schools;

(3) An opportunity in a public forum for the public, including the authorizer, to provide input on the authorizer being reviewed;

(e) The special review report shall be published on the board's website, and may serve as a notice of noncompliance pursuant to section 8-515-13.

(f) For the purposes of this section, "authorizer" also means the commission.

[Eff] (Auth: HRS §302A-1112) (Imp:
HRS §302D-11)

§8-515-13 Noncompliance. (a) If at any time the board finds that an authorizer or the commission is not in compliance with a material provision of existing charter contracts, its authorizing contract, board policies, rules, and laws, as applicable, the board shall notify the authorizer or commission in writing of the identified problems. The notice shall be served upon the authorizer or commission by registered or certified mail and electronic mail.

(b) The authorizer or commission shall have thirty days from the date of mailing of the notice to respond to the identified problems and submit to the board for approval a corrective action plan for remedying the problems in a reasonable time.

(c) If the authorizer fails to submit a corrective action plan or does not make significant

progress in remedying the identified problems in a reasonable time, the board shall notify the authorizer that it intends to revoke the authorizer's chartering authority pursuant to section 302D-11(d), Hawaii Revised Statutes, and in accordance with subchapter 5.

(d) If the commission fails to submit a corrective action plan or does not make significant progress in remedying the identified problems in a reasonable time, the board may terminate the terms of some or all of the members of the commission pursuant to section 302D-3(h), Hawaii Revised Statutes. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-3, 302D-11)

SUBCHAPTER 4

RENEWAL OR NONRENEWAL OF CHARTERING AUTHORITY

§8-515-14 Reasons for nonrenewal. An authorizing contract may not be renewed for any of the following reasons:

- (1) Persistently unsatisfactory performance of the authorizer's portfolio of public charter schools;
- (2) Persistent, regular, or substantial violations of material provisions of a charter contract or the authorizer's authorizing contract;
- (3) Failure to meet or make sufficient progress toward performance expectations set forth in the authorizing contract; or
- (4) Failure to remedy other authorizing problems identified by the board. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-11)

§8-515-15 Application for chartering authority renewal. (a) The board shall develop a chartering authority renewal application form, which shall be

made available to each authorizer whose authorizing contract will expire the following calendar 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 board shall develop policies, criteria, or guidelines for evaluating chartering authority renewal applications; provided that an authorizer's performance shall be determined by a performance evaluation using the performance evaluation system, pursuant to section 8-515-11.

(c) An authorizer seeking renewal shall submit a renewal application to the board pursuant to the renewal procedures in sections 8-515-16 and 8-515-17, and the renewal policies, criteria, or guidelines adopted by the board. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-11]

§8-515-16 Performance report; notification of the prospect of nonrenewal. (a) The board shall prepare a performance report for each authorizer whose authorizing contract will expire the following calendar year. The performance report shall summarize the authorizer's performance record to date, shall be in writing, and shall be served upon the authorizing contract holder by registered or certified mail and electronic mail.

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

- (1) A clear and specific statement of the authorizer'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 board will make its final decision on whether or not to renew

the authorizing contract at a public meeting, including the date, time, and place of the meeting, following the opportunity for public comment.

(c) The authorizer shall have thirty 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 authorizing contract holder disputes the board's assessment or claim of weaknesses or deficiencies, the board, after considering the authorizing contract holder's response, shall reaffirm, modify, or retract its earlier notification of weaknesses or deficiencies, and shall so notify the authorizing contract holder in writing served by registered or certified mail and electronic mail.

[Eff] (Auth: HRS §302A-1112) (Imp:
HRS §§302D-4, 302D-11)

§8-515-17 Nonrenewal decision by the board. (a) The board shall make a final decision on whether or not to renew the authorizing contract within sixty days following receipt of the application for contract renewal.

(b) Within fifteen days of making its decision to renew or not renew the authorizing contract, the board shall issue its decision in writing, served upon the authorizing contract holder by registered or certified mail with return receipt requested and electronic mail. The decision shall set forth, with reasonable specificity, the reason for its decision.

[Eff] (Auth: HRS §302A-1112) (Imp:
HRS §§302D-4, 302D-11)

§8-515-18 (Reserved).

SUBCHAPTER 5

REVOCATION OF CHARTERING AUTHORITY

§8-515-19 Reasons for revocation. Chartering authority may be revoked if an authorizer persists, after due notice from the board pursuant to section 302D-11(c), Hawaii Revised Statutes, and section 8-515-13 in violating a material provision of a charter contract or its authorizing contract with the board, or fails to remedy other authorizing problems identified by the board. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §302D-11)

§8-515-20 Notification of prospect of revocation. Whenever the board has reason to believe that chartering authority should be revoked, the board shall notify the authorizing contract holder in writing of the prospect of revocation. The notification shall be served by registered or certified mail with return receipt requested and electronic mail and shall include the following:

- (1) The reason why revocation is contemplated;
- (2) The date by which the authorizing contract holder shall respond, which date shall be not less than thirty days from the date of notification; and
- (3) A statement that the board will make its final decision on whether or not to revoke chartering authority at a public meeting, including the date, time, and place of the meeting, following the opportunity for public comment. [Eff]
(Auth: HRS §302A-1112) (Imp: HRS §302D-11)

§8-515-21 Revocation decision by the board. (a) The board shall make a final decision on whether or not to revoke chartering authority within thirty days following receipt of the response from the authorizing contract holder of the notice of prospect of revocation.

(b) Within fifteen days of making its decision on whether or not to revoke chartering authority, the board shall issue a report notifying the authorizing contract holder in writing, served by registered or certified mail with return receipt requested and electronic mail, of its final decision. The report shall set forth, with reasonable specificity, the reason for its decision." [Eff]
(Auth: HRS §302A-1112) (Imp: HRS §§91-2, 302D-11)

2. Chapter 8-517, Hawaii Administrative Rules, entitled "Charter Contract Transfers", is adopted to read as follows:

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"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 517

CHARTER CONTRACT TRANSFERS

| | |
|----------|---|
| §8-517-1 | Purpose |
| §8-517-2 | Definitions |
| §8-517-3 | Transfer application and process |
| §8-517-4 | Transfers at the end of a charter contract term |
| §8-517-5 | Transfer before the end of a charter contract term |
| §8-517-6 | Transfers due to termination of authorizer's chartering authority |
| §8-517-7 | Computation of time |

§8-517-1 Purpose. This chapter governs the transfer of charter contracts between authorizers.
[Eff] (Auth: HRS §302A-1112) (Imp:
HRS §§302D-11, 302D-20)

§8-517-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Authorizer" means an authorizer as defined in section 302D-1, Hawaii Revised Statutes, and includes the state public charter school commission.

"Board" means the board of education.

"Charter contract" means a charter contract as defined in section 302D-1, Hawaii Revised Statutes.

"Chartering authority" means the authority to review charter applications, decide whether to approve or deny charter applications, enter into charter contracts with charter applicants, oversee public charter schools, and decide whether to authorize, renew, deny renewal of, or revoke charter contracts in accordance with chapter 302D, Hawaii Revised Statutes.

"Charter school" means a charter school as defined in section 302D-1, Hawaii Revised Statutes.

"Charter transfer" means the transfer of a charter contract and the oversight of the charter school whose governing board holds that contract from one authorizer to another.

~~"Commission" means the state public charter school commission established pursuant to section 302D-3, Hawaii Revised Statutes.~~

"Governing board" means a governing board as defined in section 302D-1, Hawaii Revised Statutes.

[Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-1, 302D-11, 302D-20)

§8-517-3 Transfer application and process. (a) The board shall develop an application form and process for charter transfers in accordance with this chapter. The charter transfer application and approval process shall provide for and include, at a minimum, the following elements:

- (1) The submission of a charter transfer application to the board;
 - (2) An opportunity for the public to comment on any proposed charter transfer; and
 - (3) A timely decision by the board on whether to allow the transfer.
- (b) The following requirements shall apply to any and all charter transfers:
- (1) No charter school shall be allowed to transfer its charter contract to another authorizer in an attempt to reduce the level of oversight or accountability to which the charter school is currently subject or to

- avoid possible revocation or nonrenewal of its charter contract;
- (2) No authorizer shall be allowed to transfer a charter contract to another authorizer in an attempt to improve the overall performance of its own portfolio of charter schools or to avoid possible revocation or nonrenewal of the charter contract;
- (3) An authorizer shall not agree to accept a charter transfer nor shall it deny a charter transfer based on any financial incentives a larger portfolio of schools may provide to that authorizer;
- (4) A charter school whose authorizer has initiated a closure of the school shall not be allowed to secure a charter contract from another authorizer;
- (5) Existing charter schools shall not be allowed to apply for a charter school under another authorizer as a way of de facto transferring oversight of the school from one authorizer to another and circumventing the charter transfer process; provided that nothing in this chapter shall be construed to prevent existing charter schools from applying to another authorizer for replication or expansion purposes;
- (6) An authorizer shall not retaliate against any charter school within its portfolio of schools that seeks to transfer to another authorizer by unduly preventing or interfering with the charter transfer or subjecting the charter school to requirements, conditions, or treatment that is out of the ordinary practice of the authorizer;
- (67) Authorizers shall share among themselves information on charter schools that are transferring between them; and
- (78) All charter transfers shall be in the best interest of students.

(c) If a charter transfer is approved, any and all outstanding funds being held by the current authorizer to which the charter school is entitled or due shall be transferred to the new authorizer in a timely manner as determined by the board. [Eff

] (Auth: HRS §302A-1112) (Imp: HRS §§302D-11, 302D-20)

§8-517-4 Transfers at the end of a charter contract term. (a) The transfer of a charter contract that is in its final contract year shall only be allowed if the governing board has met the terms of its expiring charter contract with its current authorizer, including any performance requirements, to a degree that would have otherwise resulted in charter contract renewal with the current authorizer, and the proposed new authorizer agrees to accept the charter transfer; provided that the requirements in section 8-517-3(b) are met. The authorizer that is a party to the existing charter contract shall inform the proposed authorizer about the academic, financial, organizational, and operational performance status of the charter school, as well as any outstanding contractual obligations that exist.

(b) The governing board shall submit to the board and its current authorizer a written and signed letter of its intent to not renew the charter contract. The proposed authorizer and the governing board shall jointly submit to the board a charter transfer application. A proposed charter contract between the proposed authorizer and the governing board shall be submitted as part of the charter transfer application and shall identify and provide a plan to address any outstanding obligations from the existing charter contract.

(c) The charter transfer application shall be submitted and reviewed in accordance with the form and process establish pursuant to section 8-517-3(a); provided that the board shall make a final determination on the charter transfer application no

later than sixty days before the expiration of the current charter contract.

(d) If the charter transfer is approved, the new authorizer and the governing board shall enter into a new charter contract effective upon the expiration of the charter contract between the current authorizer and governing board.

(e) If the charter transfer is not approved, the governing board may withdraw its letter of nonrenewal and proceed with its current authorizer's charter contract renewal process. If the charter transfer is not approved and the governing board does not withdraw its letter or enter into a new charter contract with its current authorizer, the charter contract shall be considered nonrenewed, and the charter school shall close in accordance with applicable law and the terms of the charter contract, unless the board requires a temporary extension of the charter contract, upon such terms and conditions it deems appropriate, for unique or extenuating circumstances. [Eff]

(Auth: HRS §302A-1112) (Imp: HRS §§302D-18, 302D-20)

§8-517-5 Transfers before the end of a charter contract term. (a) The transfer of a charter contract that is not in its final contract year shall only be allowed under special circumstances pursuant to section 302D-20, Hawaii Revised Statutes; provided that the requirements in section 8-517-3(b) are met.

(b) An authorizer or a governing board may submit to the board a written and signed letter requesting the transfer of a charter contract to another authorizer; provided that an authorizer may submit a letter only with the mutual consent of the governing board. The letter shall explain the reason for the request, provide evidence that the transfer is in the best interest of the charter school's students, and identify the proposed new authorizer that has agreed to the proposed transfer. The authorizer that is a party to the existing charter contract shall inform the proposed authorizer about the academic, financial, organizational, and operational performance

status of the charter school, as well as any outstanding contractual obligations that exist.

(c) The proposed authorizer and the governing board shall jointly submit to the board a charter transfer application. A proposed charter contract between the proposed authorizer and the governing board shall be submitted as part of the charter transfer application and shall identify and provide a plan to address any outstanding obligations from the existing charter contract.

(d) The charter transfer application shall be submitted and reviewed in accordance with the form and process established pursuant to section 8-517-3(a); provided that the board shall make a final determination on the charter transfer application no later than May 1; provided further that the letter requesting the transfer and the charter transfer application are submitted by February 1 of the same school year.

(e) If the charter transfer is approved, the new authorizer and the governing board shall enter into a new charter contract effective July 1 of the next school year. The effectuation of the new charter contract shall terminate the previous charter contract. [Eff

] (Auth: HRS §302A-1112) (Imp: HRS
§302D-20)

§8-517-6 Transfers due to termination of authorizer's chartering authority. (a) If an authorizer's chartering authority is terminated due to the revocation, nonrenewal, or voluntary surrender of its authorizing contract, the transfer of any charter contracts overseen by that entity shall be allowed; provided that the requirements in section 8-517-3(b) are met. The entity whose chartering authority is terminated shall inform the board about the academic, financial, organizational, and operational performance status of each charter school in its portfolio, as well as any outstanding contractual obligations that exist.

(b) Each governing board overseen by the entity whose chartering authority is terminated shall submit to the board a charter transfer application.

(c) The board shall solicit from the pool of existing authorizers a new authorizer for each charter school overseen by the entity whose chartering authority is terminated. Each proposed charter transfer shall be with the mutual agreement of the proposed new authorizer and governing board:~~provided that if no other authorizer agrees or is available to accept the transfer of a charter contract overseen by the entity whose chartering authority is terminated, the commission shall be the new authorizer for that charter school.~~

(d) Each charter transfer application shall be submitted and reviewed in accordance with the form and process establish pursuant to section 8-517-3(a) or a special expedited process developed and adopted by the board notwithstanding section 8-517-3(a); provided that the board shall make a final determination on each charter transfer application within forty-five days of the termination of the former authorizer's chartering authority but no later than sixty days before the start of the next school year.

(e) Upon the approval of each charter transfer, the new authorizer and the governing board shall enter into a new charter contract effective immediately. Any new charter contract shall be effective for the remainder of the contract term under the previous charter contract with the previous authorizer. Notwithstanding section 8-517-4, if the remaining term of the charter contract with the previous authorizer is less than a year, the new authorizer and governing board shall enter into a new charter contract with a contract term no less than a year. [Eff

] (Auth: HRS §302A-1112) (Imp: HRS §§302D-11, 302D-20)

§8-517-7 Computation of time. (a) 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 state holiday and then it is also excluded. When the prescribed period of time is less than seven days, Saturdays, Sundays, or state holidays within the designated period shall be excluded in the computation.

(b) For the purposes of this chapter, "school year" means a year that begins on July 1 and ends on June 30 of the following calendar year." [Eff] (Auth: HRS §302A-1112) (Imp: HRS §91-2)

3. The adoption of chapters 8-515 and 8-517, 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 _____, 20____, and filed with the Office of the Lieutenant Governor.

Chairperson, Board of
Education

APPROVED AS TO FORM:

Deputy Attorney General

Exhibit B

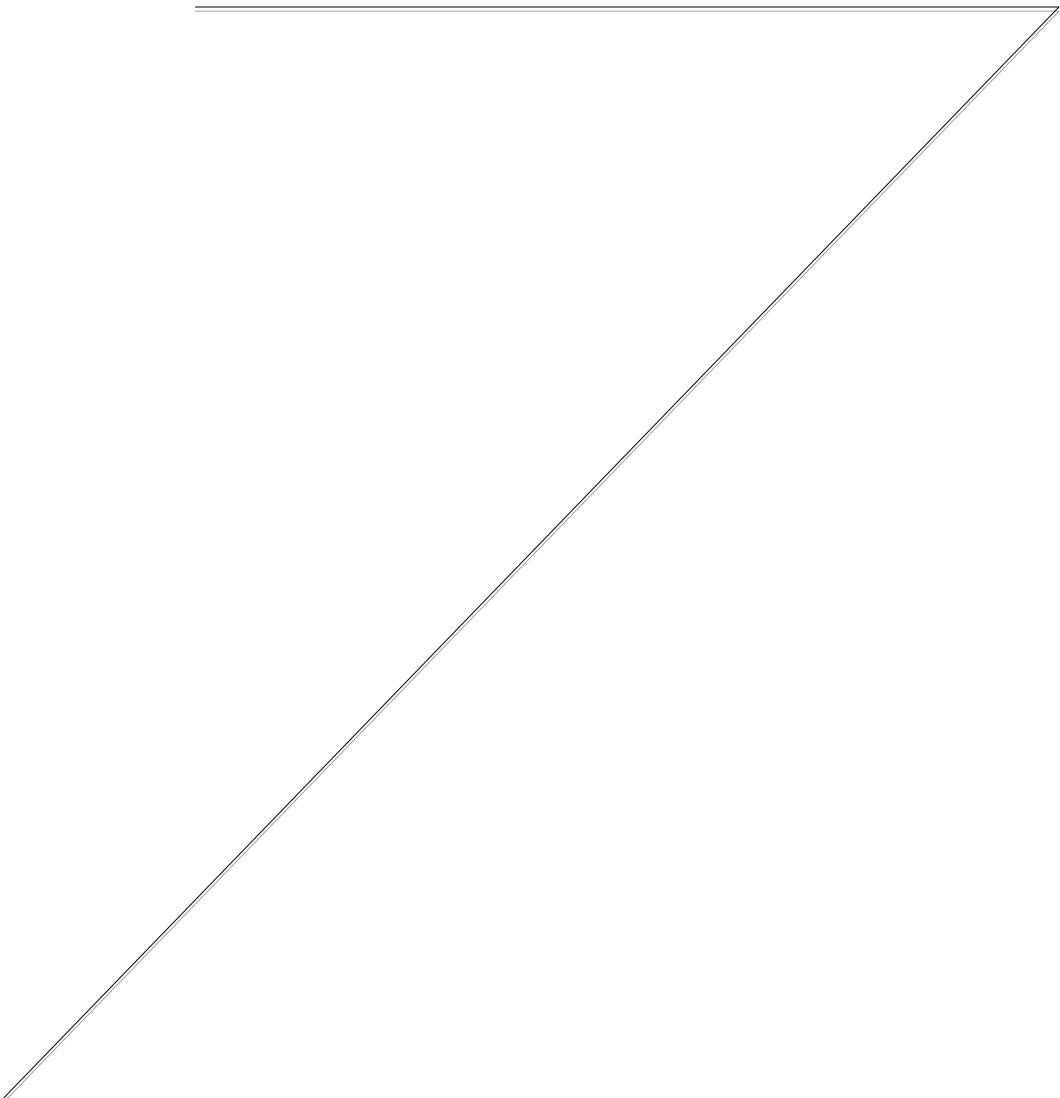
**Clean copy incorporating proposed amendments to proposed Hawaii
Administrative Rules Chapter 8-515, entitled “Establishment and Oversight of
Charter School Authorizers,” and Chapter 8-517, entitled “Charter Contract
Transfers” (Ramseyer format)**

DEPARTMENT OF EDUCATION

Adoption of Chapters 8-515 and 8-517
Hawaii Administrative Rules

[adoption date]

1. Chapter 8-515, Hawaii Administrative Rules,
entitled "Establishment and Oversight of Charter School
Authorizers", is adopted to read as follows:



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"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 515

ESTABLISHMENT AND OVERSIGHT OF CHARTER SCHOOL
AUTHORIZERS

Subchapter 1 General Provisions

- §8-515-1 Purpose
- §8-515-2 Definitions
- §8-515-3 Computation of time
- §8-515-4 (Reserved)

Subchapter 2 Applications for Chartering
Authority

- §8-515-5 Applications, generally
- §8-515-6 Application and approval procedure
- §8-515-7 Eligible entities
- §§8-515-8 to 8-515-9 (Reserved)

Subchapter 3 Oversight and Evaluation of
Authorizers

- §8-515-10 Performance evaluation system
- §8-515-11 Performance evaluations
- §8-515-12 Special reviews
- §8-515-13 Noncompliance

Subchapter 4 Renewal or Nonrenewal of
Chartering Authority

- §8-515-14 Reasons for nonrenewal
- §8-515-15 Application for chartering authority
renewal
- §8-515-16 Performance report; notification of the
prospect of nonrenewal
- §8-515-17 Nonrenewal decision by the board
- §8-515-18 (Reserved)

Subchapter 5 Revocation of Chartering Authority

- §8-515-19 Reasons for revocation
- §8-515-20 Notification of prospect of revocation
- §8-515-21 Revocation decision by the board

SUBCHAPTER 1

GENERAL PROVISIONS

§8-515-1 Purpose. This chapter governs the application process to become a charter school authorizer, oversight and evaluation of authorizers and the commission, renewal or nonrenewal of chartering authority, and revocation of chartering authority pursuant to chapter 302D, Hawaii Revised Statutes. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-6, 302D-11)

§8-515-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Applicant" means the applicant who submits an application for chartering authority to the board.

"Authorizer" means an entity with chartering authority established pursuant to section 302D-4,

Hawaii Revised Statutes. For purposes of this chapter, this term does not include the commission.

"Authorizing contract" means a fixed-term, renewable contract between an authorizer and the board that outlines the performance expectations of the authorizer and the roles, powers, and responsibilities for each party to the contract.

"Board" means the board of education.

"Commission" means the state public charter school commission established pursuant to section 302D-3, Hawaii Revised Statutes, with statewide chartering authority.

"Chartering authority" means the authority to review charter applications, decide whether to approve or deny charter applications, enter into charter contracts with charter applicants, oversee public charter schools, and decide whether to authorize, renew, deny renewal of, or revoke charter contracts in accordance with chapter 302D, Hawaii Revised Statutes.

[Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-1, 302D-4, 302D-11)

§8-515-3 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 state holiday and then it is also excluded. When the prescribed period of time is less than seven days, Saturdays, Sundays, or state holidays within the designated period shall be excluded in the computation. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §91-2)

§8-515-4 (Reserved).

SUBCHAPTER 2

APPLICATIONS FOR CHARTERING AUTHORITY

§8-515-5 Applications, generally. (a) The board shall develop an application form, process, and processing schedule for applying to become an authorizer pursuant to section 302D-4, Hawaii Revised Statutes. The application form shall include a description of the application process and the application processing schedule.

(b) The board shall develop policies, criteria, or guidelines for evaluating applications for chartering authority based on nationally recognized principles and standards for quality charter authorizing, as applicable to local conditions. At a minimum, the policies, criteria, or guidelines included in the application form shall be evaluated in the following areas:

- (1) Satisfactory responses to elements of the application for chartering authority, including responses that clearly explain or present:
 - (A) The applicant's strategic vision for chartering;
 - (B) A plan to support the vision presented, including an explanation and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of a quality authorizer, in accordance with chapter 302D, Hawaii Revised Statutes;
 - (C) A draft or preliminary outline of the request for proposals that the applicant, if approved as an authorizer, would issue to solicit charter school applicants;
 - (D) A draft of the performance framework that the applicant, if approved as an

- authorizer, would use to guide the establishment of a charter contract and for ongoing oversight and evaluation of charter schools, consistent with the requirements of chapter 302D, Hawaii Revised Statutes;
- (E) A draft of the applicant's renewal, revocation, and nonrenewal processes, consistent with section 302D-18, Hawaii Revised Statutes;
- (F) A statement of assurance that the applicant seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 302D, Hawaii Revised Statutes, and that if approved as an authorizer, the applicant will fully participate in any authorizer training provided or required by the State; and
- (G) A statement of assurance that the applicant will ensure public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;
- (2) Organizational capacity and infrastructure;
- (3) Financial capacity to fulfill the responsibilities of a quality authorizer;
- (4) Authorizer responsibilities relating to charter applications, including:
- (A) Soliciting and evaluating charter applications;
- (B) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices; and
- (C) Declining to approve weak or inadequate charter applications;
- (5) Performance contracting, including negotiating and executing sound charter contracts with each approved charter applicant and with existing charter schools;

- (6) Ongoing charter school oversight, evaluation, renewal processes, including:
 - (A) Monitoring, in accordance with charter contract terms, the performance and legal compliance of charter schools; and
 - (B) Determining whether each charter contract merits renewal, nonrenewal, or revocation; and
 - (7) Fulfillment of the other statutory duties of an authorizer, including but not limited to:
 - (A) Acting as a point of contact between the department of education and the authorizer's charter schools;
 - (B) Being responsible for and ensuring the compliance of the authorizer's charter schools with all applicable state and federal laws, including reporting requirements;
 - (C) Being responsible for the receipt of applicable federal funds from the department of education and the distribution of funds to the authorizer's charter schools; and
 - (D) Being responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the authorizer's charter schools.
- (c) The board shall make publicly available the application form and the policies, criteria, or guidelines for evaluating applications to any person interested in establishing an authorizer. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §302D-4)

§8-515-6 Application and approval procedure.

- (a) The annual application and approval cycle for chartering authority shall be no longer than twelve months.

- (b) The application and approval procedure shall provide for and include the following:
- (1) The submission of a notice of intent to apply for chartering authority to the board from each interested eligible entity;
 - (2) The timely review of the notice of intent to apply by the board to determine eligibility, and notification by the board to the interested entity of its eligibility to submit an application for chartering authority;
 - (3) The timely submission of a completed application for chartering authority to the board;
 - (4) The timely review of the application by the board for completeness, and notification by the board to the applicant that the application is complete or incomplete;
 - (5) If board deems the application incomplete, an opportunity for the applicant to make corrections and submit a completed applications; provided that corrections are made expeditiously and no wholesale changes to the application are made;
 - (6) Upon receipt of a completed application, the review and evaluation of the application by qualified persons, including but not limited to an in-person interview with representatives from the applicant to assess the capacity of the applicant;
 - (7) An opportunity in a public forum for the public, including the applicant, to provide input on each application for chartering authority;
 - (8) Following the review and evaluation of an application for chartering authority by qualified persons, issuance of a written report by the evaluators with a recommendation to either approve or deny the application;
 - (9) An opportunity for the applicant to submit a written response to the written report from

the evaluators, and an opportunity for the evaluators to reply, in writing, to the applicant's written response, if applicable;

- (10) Following the written report, response, and reply, as applicable, approval or denial of the application by the board in a meeting open to the public.

(c) The board shall execute an authorizing contract with each entity it has approved for chartering authority pursuant to section 302D-4(g), Hawaii Revised Statutes.

(d) If an application is denied, the board shall notify the applicant in writing, served by registered or certified mail with return receipt requested and electronic mail, stating the reason therefor, with specific references to the adopted policies, criteria, or guidelines for evaluating applications for chartering authority. [Eff] (Auth:
HRS §302A-1112) (Imp: HRS §302D-4)

§8-515-7 Eligible entities. (a) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities shall be eligible to submit an application to the board for statewide, regional, or local chartering authority, in accordance with each institution's regular operating jurisdiction; provided that any private postsecondary institution is registered to do business in this State in accordance with state law.

(b) A state or county agency shall be eligible to submit an application to the board for statewide, regional, or local chartering authority.

(c) Governing boards of nonprofit or charitable organizations, which are exempt from federal taxes under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, shall be eligible to submit an application to the board for statewide chartering authority; provided that the organization is registered to do business in this State in accordance with state law. Nonpublic sectarian or religious

organizations and any other charitable organization which in their federal Internal Revenue Service Form 1023, Part IV, describe activities indicating a religious purpose, are not eligible to apply to become an authorizer pursuant to section 302D-4(d), Hawaii Revised Statutes.

(d) For purposes of this subchapter:

"Local chartering authority" means chartering authority within one or more designated department of education complex areas.

"Regional chartering authority" means chartering authority within a county or an island-wide geographic area.

(e) The board may disqualify any application as provided by law. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §302D-4)

§§8-515-8 to 8-515-9 (Reserved).

SUBCHAPTER 3

OVERSIGHT AND EVALUATION OF AUTHORIZERS

§8-515-10 Performance evaluation system. (a) The board shall develop a performance evaluation system to assess the effectiveness of all authorizers and the commission using the procedures described in section 8-515-11 and 8-515-12. The performance evaluation system shall, at a minimum:

- (1) Assess the effectiveness of an authorizer or the commission in carrying out its duties in a manner consistent with the purpose of charter schools, as determined by the board, and the spirit and intent of chapter 302D, Hawaii Revised Statutes;
- (2) Apply nationally recognized principles and standards for quality charter authorizing, as applicable to local conditions, in assessing performance; and

- (3) Assess the compliance of each authorizer and the commission with existing charter contracts, its authorizing contract, board policies, rules, and laws, as applicable.
- (b) The performance evaluation system shall clearly set forth performance indicators, measures, and metrics that will guide the board's evaluations and reviews of each authorizer and the commission. At a minimum, the performance indicators, measures, and metrics included in the performance evaluation system shall evaluate the following areas:
 - (1) Organizational capacity and infrastructure;
 - (2) Financial capacity to fulfill the responsibilities of a quality authorizer;
 - (3) Authorizer responsibilities relating to charter applications, including:
 - (A) Soliciting and evaluating charter applications;
 - (B) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices; and
 - (C) Declining to approve weak or inadequate charter applications;
 - (4) Performance contracting, including negotiating and executing sound charter contracts with each approved charter applicant and with existing charter schools;
 - (5) Ongoing charter school oversight, evaluation, renewal processes, including:
 - (A) Monitoring, in accordance with charter contract terms, the performance and legal compliance of charter schools; and
 - (B) Determining whether each charter contract merits renewal, nonrenewal, or revocation; and
 - (6) Fulfillment of the duties of an authorizer, including:
 - (A) Acting as a point of contact between the department of education and the authorizer's charter schools;

- (B) Being responsible for and ensuring the compliance of the authorizer's charter schools with all applicable state and federal laws, including reporting requirements;
 - (C) Being responsible for the receipt of applicable federal funds from the department of education and the distribution of funds to the authorizer's charter schools; and
 - (D) Being responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the authorizer's charter schools.
- (c) The performance provisions within each authorizing contract shall be based on the performance evaluation system. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-6, 302D-11)

§8-515-11 Performance evaluations. (a) Any performance evaluation of an authorizer shall use all performance indicators, measures, and metrics set forth in the performance evaluation system pursuant to section 8-515-10.

(b) The board shall develop a response form for performance evaluations, which shall be made available to each authorizer who will be evaluated at least ninety days prior to the performance evaluation response being due. The performance evaluation response form shall also include a description of the performance evaluation process, the performance evaluation processing schedule, and the performance indicators, measures, and metrics set forth in the performance evaluation system pursuant to section 8-515-10.

(c) The performance evaluation shall provide for and include the following:

- (1) At least ninety days prior to the performance evaluation response being due, a written notice from the board notifying the

- authorizer a performance evaluation will be conducted;
- (2) The timely submission of a completed performance evaluation response to the board;
 - (3) Upon receipt of a completed performance evaluation response, the review and evaluation of the authorizer by qualified persons;
 - (4) An in-person interview with representatives from the authorizer;
 - (5) A survey or interview of representatives from charter schools within the authorizer's portfolio of charter schools;
 - (6) An opportunity in a public forum for the public, including the authorizer, to provide input on each authorizer being evaluated;
 - (7) Following the review and evaluation of the authorizer by qualified persons, issuance of a draft of the written report by the evaluators to the authorizer, and an opportunity for the authorizer to provide written comments on the draft of the written performance evaluation report; and
 - (8) Approval of the final draft of the written performance evaluation report by the board, and transmittal of the report to the authorizer.
- (d) The performance evaluation report shall include an overall rating of the authorizer, and shall be published on the board's website. The performance evaluation report may be used as the performance report, pursuant to section 8-515-16, or may serve as a notice of noncompliance pursuant to section 8-515-13.
- (e) The board shall conduct a performance evaluation of each authorizer no less than every five years.
- (f) For the purposes of this section, "authorizer" also means the commission.

[Eff] (Auth: HRS §302A-1112) (Imp:
HRS §302D-11)

§8-515-12 Special reviews. (a) The board may conduct a special review of an authorizer using some or all of the performance indicators, measures, and metrics set forth in the performance evaluation system pursuant to section 8-515-10 for the following reasons:

- (1) Persistently unsatisfactory performance of the authorizer's portfolio of charter schools;
 - (2) A pattern of well-founded complaints about the authorizer or its charter schools; or
 - (3) Other objective circumstances.
- (b) The board shall determine whether a special review of an authorizer is warranted on a case-by-case basis. If the board determines a special review is warranted, the board may opt to conduct a performance evaluation pursuant to section 8-515-11 instead of a special review pursuant to subsection (c).

(c) The special review shall provide for and include the following:

- (1) At least thirty days prior to the any requested documentation being due, a written notice from the board notifying the authorizer a special review will be conducted, describing the reason for the review, and identifying the areas to be reviewed;
- (2) The timely submission of any documentation requested by the board which may include responses to parts of the performance evaluation response form pursuant to section 8-515-11(b);
- (3) Upon receipt of the requested documentation, the review and evaluation of the identified areas by qualified persons;
- (4) Following the review and evaluation of the identified areas by qualified persons, issuance of a draft of the written report by

the reviewers to the authorizer, and an opportunity for the authorizer to provide written comments on the draft of the written special review report; and

(5) Approval of the final draft of the written special review report by the board, and transmittal of the report to the authorizer.

(d) The special review may also provide for and include the following:

(1) An in-person interview with representatives from the authorizer;

(2) Surveys or interviews of representatives from charter schools within the authorizer's portfolio of charter schools;

(3) An opportunity in a public forum for the public, including the authorizer, to provide input on the authorizer being reviewed;

(e) The special review report shall be published on the board's website, and may serve as a notice of noncompliance pursuant to section 8-515-13.

(f) For the purposes of this section, "authorizer" also means the commission.

[Eff] (Auth: HRS §302A-1112) (Imp:
HRS §302D-11)

§8-515-13 Noncompliance. (a) If at any time the board finds that an authorizer or the commission is not in compliance with a material provision of existing charter contracts, its authorizing contract, board policies, rules, and laws, as applicable, the board shall notify the authorizer or commission in writing of the identified problems. The notice shall be served upon the authorizer or commission by registered or certified mail and electronic mail.

(b) The authorizer or commission shall have thirty days from the date of mailing of the notice to respond to the identified problems and submit to the board for approval a corrective action plan for remedying the problems in a reasonable time.

(c) If the authorizer fails to submit a corrective action plan or does not make significant

progress in remedying the identified problems in a reasonable time, the board shall notify the authorizer that it intends to revoke the authorizer's chartering authority pursuant to section 302D-11(d), Hawaii Revised Statutes, and in accordance with subchapter 5.

(d) If the commission fails to submit a corrective action plan or does not make significant progress in remedying the identified problems in a reasonable time, the board may terminate the terms of some or all of the members of the commission pursuant to section 302D-3(h), Hawaii Revised Statutes. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-3, 302D-11)

SUBCHAPTER 4

RENEWAL OR NONRENEWAL OF CHARTERING AUTHORITY

§8-515-14 Reasons for nonrenewal. An authorizing contract may not be renewed for any of the following reasons:

- (1) Persistently unsatisfactory performance of the authorizer's portfolio of public charter schools;
- (2) Persistent, regular, or substantial violations of material provisions of a charter contract or the authorizer's authorizing contract;
- (3) Failure to meet or make sufficient progress toward performance expectations set forth in the authorizing contract; or
- (4) Failure to remedy other authorizing problems identified by the board. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-11)

§8-515-15 Application for chartering authority renewal. (a) The board shall develop a chartering authority renewal application form, which shall be

made available to each authorizer whose authorizing contract will expire the following calendar 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 board shall develop policies, criteria, or guidelines for evaluating chartering authority renewal applications; provided that an authorizer's performance shall be determined by a performance evaluation using the performance evaluation system, pursuant to section 8-515-11.

(c) An authorizer seeking renewal shall submit a renewal application to the board pursuant to the renewal procedures in sections 8-515-16 and 8-515-17, and the renewal policies, criteria, or guidelines adopted by the board. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-11]

§8-515-16 Performance report; notification of the prospect of nonrenewal. (a) The board shall prepare a performance report for each authorizer whose authorizing contract will expire the following calendar year. The performance report shall summarize the authorizer's performance record to date, shall be in writing, and shall be served upon the authorizing contract holder by registered or certified mail and electronic mail.

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

- (1) A clear and specific statement of the authorizer'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 board will make its final decision on whether or not to renew

the authorizing contract at a public meeting, including the date, time, and place of the meeting, following the opportunity for public comment.

(c) The authorizer shall have thirty 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 authorizing contract holder disputes the board's assessment or claim of weaknesses or deficiencies, the board, after considering the authorizing contract holder's response, shall reaffirm, modify, or retract its earlier notification of weaknesses or deficiencies, and shall so notify the authorizing contract holder in writing served by registered or certified mail and electronic mail.

[Eff] (Auth: HRS §302A-1112) (Imp:
HRS §§302D-4, 302D-11)

§8-515-17 Nonrenewal decision by the board. (a) The board shall make a final decision on whether or not to renew the authorizing contract within sixty days following receipt of the application for contract renewal.

(b) Within fifteen days of making its decision to renew or not renew the authorizing contract, the board shall issue its decision in writing, served upon the authorizing contract holder by registered or certified mail with return receipt requested and electronic mail. The decision shall set forth, with reasonable specificity, the reason for its decision.

[Eff] (Auth: HRS §302A-1112) (Imp:
HRS §§302D-4, 302D-11)

§8-515-18 (Reserved).

SUBCHAPTER 5

REVOCATION OF CHARTERING AUTHORITY

§8-515-19 Reasons for revocation. Chartering authority may be revoked if an authorizer persists, after due notice from the board pursuant to section 302D-11(c), Hawaii Revised Statutes, and section 8-515-13 in violating a material provision of a charter contract or its authorizing contract with the board, or fails to remedy other authorizing problems identified by the board. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §302D-11)

§8-515-20 Notification of prospect of revocation. Whenever the board has reason to believe that chartering authority should be revoked, the board shall notify the authorizing contract holder in writing of the prospect of revocation. The notification shall be served by registered or certified mail with return receipt requested and electronic mail and shall include the following:

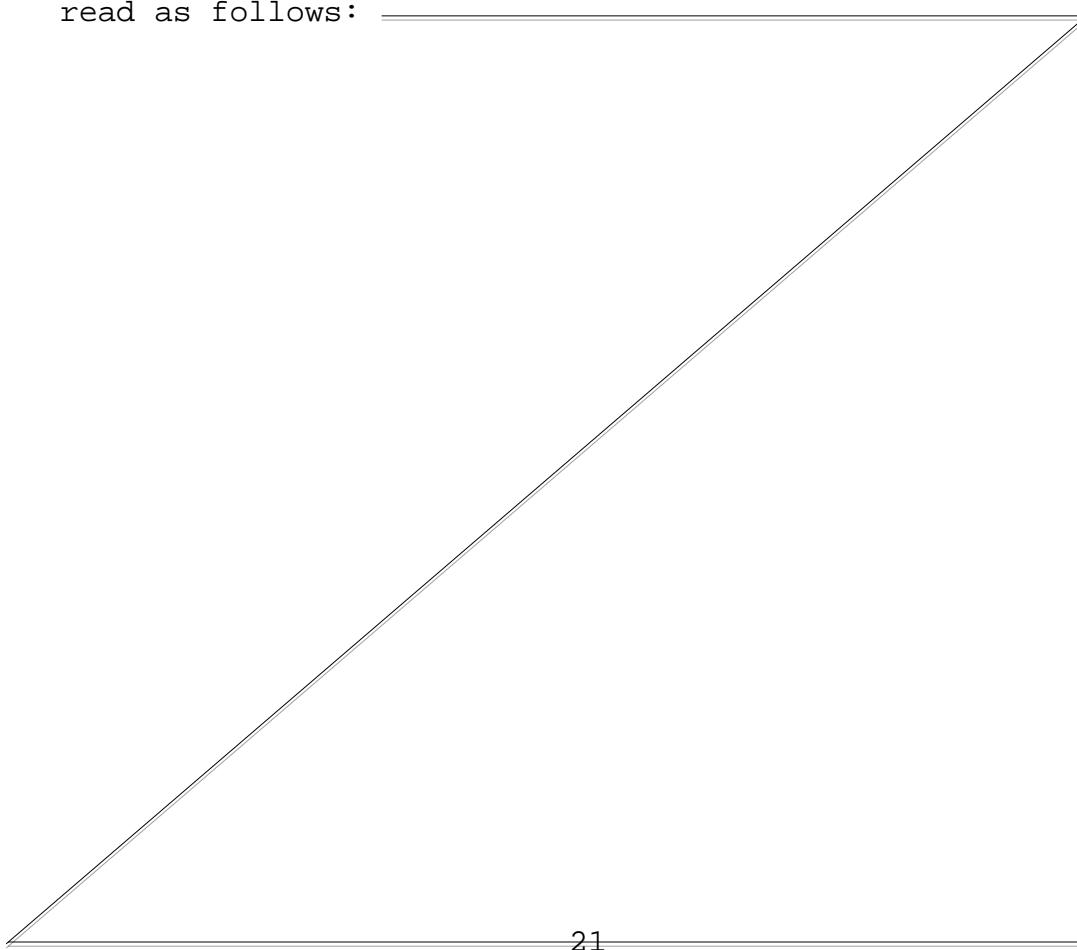
- (1) The reason why revocation is contemplated;
- (2) The date by which the authorizing contract holder shall respond, which date shall be not less than thirty days from the date of notification; and
- (3) A statement that the board will make its final decision on whether or not to revoke chartering authority at a public meeting, including the date, time, and place of the meeting, following the opportunity for public comment. [Eff]
(Auth: HRS §302A-1112) (Imp: HRS §302D-11)

§8-515-21 Revocation decision by the board. (a) The board shall make a final decision on whether or not to revoke chartering authority within thirty days following receipt of the response from the authorizing contract holder of the notice of prospect of revocation.

(b) Within fifteen days of making its decision on whether or not to revoke chartering authority, the board shall issue a report notifying the authorizing contract holder in writing, served by registered or certified mail with return receipt requested and electronic mail, of its final decision. The report shall set forth, with reasonable specificity, the reason for its decision." [Eff]

(Auth: HRS §302A-1112) (Imp: HRS §§91-2, 302D-11)

2. Chapter 8-517, Hawaii Administrative Rules, entitled "Charter Contract Transfers", is adopted to read as follows:



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"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 517

CHARTER CONTRACT TRANSFERS

| | |
|----------|---|
| §8-517-1 | Purpose |
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§8-517-1 Purpose. This chapter governs the transfer of charter contracts between authorizers.
[Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-11, 302D-20)

§8-517-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Authorizer" means an authorizer as defined in section 302D-1, Hawaii Revised Statutes, and includes the state public charter school commission.

"Board" means the board of education.

"Charter contract" means a charter contract as defined in section 302D-1, Hawaii Revised Statutes.

"Chartering authority" means the authority to review charter applications, decide whether to approve or deny charter applications, enter into charter contracts with charter applicants, oversee public charter schools, and decide whether to authorize, renew, deny renewal of, or revoke charter contracts in accordance with chapter 302D, Hawaii Revised Statutes.

"Charter school" means a charter school as defined in section 302D-1, Hawaii Revised Statutes.

"Charter transfer" means the transfer of a charter contract and the oversight of the charter school whose governing board holds that contract from one authorizer to another.

"Governing board" means a governing board as defined in section 302D-1, Hawaii Revised Statutes.

[Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-1, 302D-11, 302D-20)

§8-517-3 Transfer application and process. (a) The board shall develop an application form and process for charter transfers in accordance with this chapter. The charter transfer application and approval process shall provide for and include, at a minimum, the following elements:

- (1) The submission of a charter transfer application to the board;
 - (2) An opportunity for the public to comment on any proposed charter transfer; and
 - (3) A timely decision by the board on whether to allow the transfer.
- (b) The following requirements shall apply to any and all charter transfers:
- (1) No charter school shall be allowed to transfer its charter contract to another authorizer in an attempt to reduce the level of oversight or accountability to which the charter school is currently subject or to avoid possible revocation or nonrenewal of its charter contract;
 - (2) No authorizer shall be allowed to transfer a charter contract to another authorizer in an

- attempt to improve the overall performance of its own portfolio of charter schools or to avoid possible revocation or nonrenewal of the charter contract;
- (3) An authorizer shall not agree to accept a charter transfer nor shall it deny a charter transfer based on any financial incentives a larger portfolio of schools may provide to that authorizer;
 - (4) A charter school whose authorizer has initiated a closure of the school shall not be allowed to secure a charter contract from another authorizer;
 - (5) Existing charter schools shall not be allowed to apply for a charter school under another authorizer as a way of de facto transferring oversight of the school from one authorizer to another and circumventing the charter transfer process; provided that nothing in this chapter shall be construed to prevent existing charter schools from applying to another authorizer for replication or expansion purposes;
 - (6) An authorizer shall not retaliate against any charter school within its portfolio of schools that seeks to transfer to another authorizer by unduly preventing or interfering with the charter transfer or subjecting the charter school to requirements, conditions, or treatment that is out of the ordinary practice of the authorizer;
 - (7) Authorizers shall share among themselves information on charter schools that are transferring between them; and
 - (8) All charter transfers shall be in the best interest of students.
- (c) If a charter transfer is approved, any and all outstanding funds being held by the current authorizer to which the charter school is entitled or due shall be transferred to the new authorizer in a timely manner as determined by the board. [Eff

] (Auth: HRS §302A-1112) (Imp: HRS §§302D-11, 302D-20)

§8-517-4 Transfers at the end of a charter contract term. (a) The transfer of a charter contract that is in its final contract year shall only be allowed if the governing board has met the terms of its expiring charter contract with its current authorizer, including any performance requirements, to a degree that would have otherwise resulted in charter contract renewal with the current authorizer, and the proposed new authorizer agrees to accept the charter transfer; provided that the requirements in section 8-517-3(b) are met. The authorizer that is a party to the existing charter contract shall inform the proposed authorizer about the academic, financial, organizational, and operational performance status of the charter school, as well as any outstanding contractual obligations that exist.

(b) The governing board shall submit to the board and its current authorizer a written and signed letter of its intent to not renew the charter contract. The proposed authorizer and the governing board shall jointly submit to the board a charter transfer application. A proposed charter contract between the proposed authorizer and the governing board shall be submitted as part of the charter transfer application and shall identify and provide a plan to address any outstanding obligations from the existing charter contract.

(c) The charter transfer application shall be submitted and reviewed in accordance with the form and process establish pursuant to section 8-517-3(a); provided that the board shall make a final determination on the charter transfer application no later than sixty days before the expiration of the current charter contract.

(d) If the charter transfer is approved, the new authorizer and the governing board shall enter into a new charter contract effective upon the expiration of

the charter contract between the current authorizer and governing board.

(e) If the charter transfer is not approved, the governing board may withdraw its letter of nonrenewal and proceed with its current authorizer's charter contract renewal process. If the charter transfer is not approved and the governing board does not withdraw its letter or enter into a new charter contract with its current authorizer, the charter contract shall be considered nonrenewed, and the charter school shall close in accordance with applicable law and the terms of the charter contract, unless the board requires a temporary extension of the charter contract, upon such terms and conditions it deems appropriate, for unique or extenuating circumstances. [Eff]

(Auth: HRS §302A-1112) (Imp: HRS §§302D-18, 302D-20)

§8-517-5 Transfers before the end of a charter contract term. (a) The transfer of a charter contract that is not in its final contract year shall only be allowed under special circumstances pursuant to section 302D-20, Hawaii Revised Statutes; provided that the requirements in section 8-517-3(b) are met.

(b) An authorizer or a governing board may submit to the board a written and signed letter requesting the transfer of a charter contract to another authorizer; provided that an authorizer may submit a letter only with the mutual consent of the governing board. The letter shall explain the reason for the request, provide evidence that the transfer is in the best interest of the charter school's students, and identify the proposed new authorizer that has agreed to the proposed transfer. The authorizer that is a party to the existing charter contract shall inform the proposed authorizer about the academic, financial, organizational, and operational performance status of the charter school, as well as any outstanding contractual obligations that exist.

(c) The proposed authorizer and the governing board shall jointly submit to the board a charter transfer application. A proposed charter contract

between the proposed authorizer and the governing board shall be submitted as part of the charter transfer application and shall identify and provide a plan to address any outstanding obligations from the existing charter contract.

(d) The charter transfer application shall be submitted and reviewed in accordance with the form and process established pursuant to section 8-517-3(a); provided that the board shall make a final determination on the charter transfer application no later than May 1; provided further that the letter requesting the transfer and the charter transfer application are submitted by February 1 of the same school year.

(e) If the charter transfer is approved, the new authorizer and the governing board shall enter into a new charter contract effective July 1 of the next school year. The effectuation of the new charter contract shall terminate the previous charter contract. [Eff

] (Auth: HRS §302A-1112) (Imp: HRS
§302D-20)

§8-517-6 Transfers due to termination of authorizer's chartering authority. (a) If an authorizer's chartering authority is terminated due to the revocation, nonrenewal, or voluntary surrender of its authorizing contract, the transfer of any charter contracts overseen by that entity shall be allowed; provided that the requirements in section 8-517-3(b) are met. The entity whose chartering authority is terminated shall inform the board about the academic, financial, organizational, and operational performance status of each charter school in its portfolio, as well as any outstanding contractual obligations that exist.

(b) Each governing board overseen by the entity whose chartering authority is terminated shall submit to the board a charter transfer application.

(c) The board shall solicit from the pool of existing authorizers a new authorizer for each charter

school overseen by the entity whose chartering authority is terminated. Each proposed charter transfer shall be with the mutual agreement of the proposed new authorizer and governing board.

(d) Each charter transfer application shall be submitted and reviewed in accordance with the form and process establish pursuant to section 8-517-3(a) or a special expedited process developed and adopted by the board notwithstanding section 8-517-3(a); provided that the board shall make a final determination on each charter transfer application within forty-five days of the termination of the former authorizer's chartering authority but no later than sixty days before the start of the next school year.

(e) Upon the approval of each charter transfer, the new authorizer and the governing board shall enter into a new charter contract effective immediately. Any new charter contract shall be effective for the remainder of the contract term under the previous charter contract with the previous authorizer. Notwithstanding section 8-517-4, if the remaining term of the charter contract with the previous authorizer is less than a year, the new authorizer and governing board shall enter into a new charter contract with a contract term no less than a year. [Eff

] (Auth: HRS §302A-1112) (Imp: HRS §§302D-11, 302D-20)

§8-517-7 Computation of time. (a) 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 state holiday and then it is also excluded. When the prescribed period of time is less than seven days, Saturdays, Sundays, or state holidays within the designated period shall be excluded in the computation.

(b) For the purposes of this chapter, "school year" means a year that begins on July 1 and ends on June 30 of the following calendar year." [Eff
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(Auth: HRS §302A-1112) (Imp: HRS §91-2)

3. The adoption of chapters 8-515 and 8-517, 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 _____, 20____, and filed with the Office of the Lieutenant Governor.

Chairperson, Board of
Education

APPROVED AS TO FORM:

Deputy Attorney General