

DEPARTMENT OF EDUCATION

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SUPT'S OFFICE

Amendment and Compilation of Chapter 8-3
Hawaii Administrative Rules
April 16, 2013

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SUMMARY

1. § 8-3-1 is amended.
2. § 8-3-3(b) is amended.
3. § 8-3-4 is amended.
4. § 8-3-5 is amended.

Chapter 3 Rules Applicable to Rulemaking Proceedings

HAWAII ADMINISTRATIVE RULES

TITLE 8 DEPARTMENT OF EDUCATION

SUBTITLE I RULES OF PRACTICE AND PROCEDURE

CHAPTER 3

RULES APPLICABLE TO RULEMAKING PROCEEDINGS

§8-3-1 Notice of proposed rulemaking

§8-3-2 Further notice of rulemaking

§8-3-3 Conduct of hearing

§8-3-4 Board action

§8-3-5 Emergency rulemaking

§8-3-6 Petitions for adoptions, amendment or repeal of rules

Historical Note: This chapter is based substantially upon Department of Education "Part I, Rules of Practice and Procedure, sub-part C, Rules Applicable to Rulemaking Proceedings." [Eff. 3/30/62; R JAN 30, 1984]

§8-3-1 Notice of proposed rulemaking.

(a) When pursuant to a petition therefor, or upon its own motion, the board proposes to adopt, amend or repeal a rule, notice of proposed rulemaking shall be published at least once statewide and posted on the Internet as provided in section 91-2.6, Hawaii Revised Statutes. The notice shall also be mailed to all persons who filed a timely written request with the board for advance notice of the board's rulemaking proceedings. All notices shall be issued at least thirty days prior to the date set for public hearing. Where a written request for advance notice is filed by a person less than thirty days prior to the date set for

public hearing, the notice shall be mailed to the person immediately upon receiving the written request.

(b) A notice of the proposed adoption, amendment or repeal of a rule shall include all information required by statute.

[Eff. JAN 30, 1984; am] ~~JUN 1/5 2013~~ Auth: HRS §302A-1112) (Imp: HRS §§91-2, 302A-1112)

§8-3-2 Further notice of rulemaking. In any rulemaking proceeding where the board deems it warranted, a further notice of proposed rulemaking may be issued by publication thereof in a newspaper of general circulation in the State. [Eff. JAN 30, 1984] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)]

§8-3-3 Conduct of hearing.

(a) Unless otherwise specifically directed by the board, all public hearings shall be held at Honolulu when the entire State or a major portion thereof is affected by the proposed adoption, amendment or repeal of a rule. When a matter affects only an island or district other than Oahu, then the hearing shall be held on that island or in that district.

(b) Each hearing shall be presided over by a presiding officer who shall be a department staff person as determined appropriate by the Superintendent or a member of the board as approved by the board's chairperson. The hearing shall be conducted in a way as to afford interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take other actions which are necessary to the orderly conduct of the hearing.

(c) Each hearing shall be held at the date, time and place set in the notice of hearing, but, thereafter, may be continued by the presiding officer from day to day at the same time and place or to a later date or to a different place without notice other than the announcement at the previous hearing.

(d) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the proposed rulemaking in the order prescribed by the presiding officer.

(e) All interested persons, organizations or agencies shall be given a reasonable opportunity to offer evidence, submit data, views or arguments with respect to the proposed rulemaking. Every witness shall, before proceeding to testify, state the witness' name, address, and whom the witness represents, if any, at the hearing, and shall give other information respecting the witness' appearance as the presiding officer may request. The presiding officer shall confine the evidence to the questions before the hearing but

shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the presiding officer, other board members, or the board's attorney, but cross-examination by private persons shall not be permitted except with the express permission of the presiding officer.

(f) Persons, organizations, or agencies may also file with the board within the time period specified in the notice of proposed rulemaking a written protest or other comments or recommendations in support of or in opposition to the proposed rulemaking. The period for filing may be extended by the board by publishing a notice at least once statewide.

(g) Unless otherwise specifically ordered by the board or the presiding officer, testimony given at the hearing shall be reported verbatim and shall be approved by the board. All supporting written statements and data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, an original and twelve copies of all exhibits shall be submitted. [Eff. JAN 30, 1984, and ~~JUN 1 5 2013~~ Auth: HRS §302A-1112) (Imp: HRS §§91-9, 92-16, 302A-1112)

§8-3-4 Board action. At the final public hearing, the board may make its decision or the presiding officer shall announce the date when the board's decision shall be made. The board shall consider all relevant comments and material of record before taking final action in a rulemaking proceeding.
[Eff. JAN 30, 1984, and ~~JUN 1 5 2013~~ Auth: HRS §302A-1112)(Imp: HRS §302A-1112)

§8-3-5 Emergency rulemaking. Notwithstanding sections 8-3-1 through 8-3-4, if the board finds that an imminent peril to public health, safety, or morals requires adoption, amendment or repeal of a rule upon less than thirty days' notice of hearing, and states in writing its reason for the finding, it may proceed without prior notice or hearing or upon abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal. [Eff. JAN 30, 1984; and ~~JUN 1 5 2013~~ Auth: HRS §302A-1112) (Imp: HRS §§91-3, 302A-1112)

§8-3-6 Petitions for adoption, amendment or repeal of rules.

(a) Any interested person, organization or agency may petition the board for the adoption, amendment, or repeal of any rule, which is designed to implement, interpret, or prescribe law, policy, organization, procedure or practice requirements of the board.

(b) Petitions for rulemaking shall conform to the requirements of section 8-2-2. A petition for rulemaking shall set forth the text of any proposed rule or amendment or specify the rule proposed to be repealed; shall state concisely the nature of petitioner's interest in the subject matter and petitioner's reasons for seeking the adoption, amendment or repeal of the rule; and shall include any facts, views, arguments and data deemed relevant by the

petitioner. A request for the adoption, amendment, or repeal of a rule which does not conform to the requirements set forth in this section may not be considered by the board.

(c) Petitions for rulemaking shall be given a docket number and shall become matter of public record upon filing. The board shall within thirty days following the filing of the petition either deny the Petition in writing or initiate public rulemaking proceedings as set forth in sections 8-3-1 to 8-3-4. No public hearing or other proceedings shall be held with respect to such determination. Where the board determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking proceedings, or where the petition for rulemaking fails, in material respect, to comply with the requirements of these rules, the board shall deny the petition and the petitioner shall be so notified together with the grounds for denial. The provisions of this section, however, shall not operate to prevent the board, on its own motion, from acting on any matter disclosed in any petition. [Eff. JAN 30, 1984] (Auth: HRS §302A-1112) (Imp: HRS §§91-6, 302A-1112)

Amendments to and compilation of Chapter 8-3, Hawaii Administrative Rules, on the Summary Page dated April 16, 2013, were adopted on April 16, 2013, following a public hearing held on March 27, 2013, after public notice was given in the Honolulu Star Advertiser (published February 20, 2013), The Garden Island (published February 21, 2013), The Maui News (published February 22, 2013), West Hawaii Today (published February 22, 2013), and Hawaii Tribune-Herald (published February 22, 2013).


They shall take effect ten days after filing with the Office of the Lieutenant Governor.



DONALD G. HORNER

Chairperson
Board of Education

APPROVED AS TO FORM:



Deputy Attorney General



NEIL ABERCROMBIE

Governor
State of Hawaii

Date:

6.4.13

Filed

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OFFICE

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