




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

OFFICE OF THE SUPERINTENDENT

November 15, 2018

TO: The Honorable Kenneth Uemura
Chairperson, Finance and Infrastructure Committee

FROM: Dr. Christina M. Kishimoto 
Superintendent

SUBJECT: **Committee Action on Approving for Public Hearing Draft
Amendments to Hawaii Administrative Rules, Chapter 8-5, Public
Access to Information**

1. RECOMMENDATION

It is recommended that the Board of Education (Board) Committee on Finance and Infrastructure (FIC) and Committee on Student Achievement (SAC) approve the proposed amendments to Chapter 8-5-11, Hawaii Administrative Rules (HAR), Public Access to Information – Fees, as enclosed. The current (Attachment A), proposed (Attachment B), and markup (Attachment C) versions of Chapter 8-5-11, HAR, are attached for reference. Board approval is necessary to enable the Department to proceed with public hearings on this matter.

Exact changes to be made:

The amendments to Chapter 8-5-11, HAR, will change the copying fee from a subjective amount of a "reasonable cost" to a specific amount of "\$0.25 per page" for all requests.

2. RECOMMENDED EFFECTIVE DATE

It is recommended that the amendments to Chapter 8-5-11, HAR, become effective when the rule adoption process, pursuant to Chapter 91, Hawaii Revised Statutes (HRS), is completed.

3. RECOMMENDED COMPLIANCE DATE (if different from the effective date)

It is recommended that compliance with the amendments to Chapter 8-5-11, HAR, be effective upon adoption of the rule.

4. DISCUSSION

a. Conditions leading to the recommendation:

The Department is seeking these amendments to Chapter 8-5-11, HAR, to match the rate in the Superintendent's August 25, 2008 memorandum (Attachment D) that increased the copying charge to twenty-five cents per page for requests for copies of public records.

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

Adoption of these amendments to Chapter 8-5-11, HAR, are expected to have little effect on the Department's operations because it will neither increase nor decrease the anticipated workload on staff who are already fulfilling such requests. Rather, it establishes a specific fee amount.

Final result expected by instituting the proposal:

Chapter 8-5-11, HAR provides a specific dollar amount the Department will charge for producing copies of Department records.

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

The subject matter of these amendments is not expected to have program or financial impacts.

Long- and short-term impacts:

The short-term impact will provide the public with a specific amount for the copying charge. Long-term, the Department expects the same impact and notes that currently unknown technological advancements may affect the appropriateness of the amount of the fee in the future.

Other alternatives in lieu of proposed rules:

There appears to be no other way to implement a set copying fee as a memorandum does not provide sufficient authority for charging such fees.

Rules do not affect small business:

The subject matter of these amendments is not foreseen to affect small business covered under Chapter 201M, HRS. The rule applies equally to all members of the public.

- b. Previous action of the Board on the same or similar matter:

Since the adoption of Chapter 8-5-11, HAR, in 1983 that established a “reasonable cost” for the copying charge, the Board has not taken action on this matter.

- c. Other policies affected:

None.

- d. Arguments in support of the recommendation:

Adoption of the recommendation is intended to allow the Department to recapture some of the costs associated with producing copies of Department records.

- e. Arguments against the recommendation:

One possible argument is that specifying the per page copying fee would limit the Department to charging that fixed amount and that any fee increase to reflect inflation or other increased costs would need to be made via future rule making.

- f. Finding and conclusions of the Board Committee:

None.

- g. Other agencies or departments of the State of Hawaii involved in the action:

None.

- h. Possible reaction of the public, professional organizations, unions, Department staff and/or others to the recommendation:

The Department does not anticipate strong objections to the revision because the Department has been assessing this copying charge at twenty-five cents per page since 2008. The Department does note the possibility that a member of the public may object based on the “not less than 5 cents per page” charge specified in Chapter 92-21, HRS. However, this merely established a statutory minimum charge.

Additionally, some members of the public may believe that as taxpayers, they should not have to pay additional amounts for copies of Department records. While the Department receives taxpayer funds to fulfill its core function of providing access to a quality public education, the Department incurs

additional costs in producing copies of Department records. These costs are currently not included in the Department's budget.

i. Educational implications:

None.

j. Personnel implications:

None.

k. Facilities implications:

None.

l. Financial implications:

None.

5. OTHER SUPPLEMENTARY RECOMMENDATIONS

None.

CMK:jt

Attachment A: Chapter 8-5-11, HAR (current)

Attachment B: Chapter 8-5-11, HAR (proposed)

Attachment C: Chapter 8-5-11, HAR (markup)

Attachment D: Superintendent's August 25, 2008 Memorandum re Copying Charges

cc: The Honorable Catherine Payne, Chairperson, Board of Education
Office of Fiscal Services

§8-5-11 Fees.

(a) Any person applying for a copy of a public document or record open to inspection by the public shall be furnished a copy upon payment of the reasonable cost of reproducing a copy.

(b) In the case of general informational materials that are produced for distribution to the public at no charge, certain fees designated by State law shall be waived. [Eff. AUG 22, 1983] (Auth: HRS §302A-1112) (Imp: HRS §§91-2(1), 92-21, 302A-1112)

Section 8-5-11, Hawaii Administrative Rules, is amended to read as follows:

"§8-5-11 Fees.

- (a) Any person applying for a copy of a public document or record open to inspection by the public shall be charged \$0.25 per page.
- (b) In the case of general informational materials that are produced for distribution to the public at no charge, certain fees designated by State law shall be waived.

[Eff. AUG 22, 1983; am and comp] (Auth: HRS §302A-1112)
(Imp: HRS §§91-2(1), 92-21, 302A-1112)

Section 8-5-11, Hawaii Administrative Rules, is amended to read as follows:

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- (b) In the case of general informational materials that are produced for distribution to the public at no charge, certain fees designated by State law shall be waived.

[Eff. AUG 22, 1983; am and comp] (Auth: HRS §302A-1112)
(Imp: HRS §§91-2(1), 92-21, 302A-1112)

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GOVERNOR

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DEPT OF EDUCATION
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SUPERINTENDENT

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

OFFICE OF THE SUPERINTENDENT

August 25, 2008

REVISED

TO: All Schools and Offices
FROM: Patricia Hamamoto, Superintendent
SUBJECT: Copying Charges

Effective immediately, the Department of Education has increased the copying charge to twenty-five cents (\$.25) per page for requests for copies of public records, in accordance with Section 92-21, Hawaii Revised Statutes, Copies of records; other costs and fees. This memo supersedes the memo dated July 15, 1999 on copying charges distributed by Superintendent Paul LeMahieu.

The requester may also incur additional charges as outlined by the Office of Information Practices (OIP). For more detailed information, please refer to the following website:

<http://www.state.hi.us/oip/rules.html>

The following are excerpts from the rules for your reference.

FEEES FOR PROCESSING RECORD REQUEST

You may be charged fees for the services that the agency must perform when processing your request. INITIAL \$30 FREE: The first \$30 of fees for searching for a record, reviewing, and segregating will not be charged to you. Any amount after this first \$30 will be charged to you, in addition to any other fees authorized by law. These fees are as follows:

<i>Search for a Record</i>	<i>\$2.50 for 15 minutes</i>
<i>Review and Segregation of a Record</i>	<i>\$5 for 15 minutes</i>
<i>Any other fees authorized by law</i>	<i>Agency shall notify you.</i>

Memo to All Schools and Offices
August 25, 2008
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WAIVER OF FEES IN THE PUBLIC INTEREST

Up to \$60 of fees that may be charged only for searching for, segregating and reviewing records may be waived when the waiver would serve the public interest as described in Section 2-71-32, Hawaii Administrative Rules. If you wish to apply for a fee waiver in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver may be found in Section 2-71-32, Hawaii Administrative Rules:

- 1. The requested record pertains to the operations or activities of an agency;*
- 2. The record is not readily available in the public domain; and*
- 3. The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.*

AGENCY RESPONSE TO YOUR REQUEST FOR ACCESS

The Agency to whom you addressed your request must respond within a set period of time. The Agency will normally respond to you within 10 business days from the date of your request; however, in extenuating circumstances the agency must respond within 20 business days from the date of your request. If you are not satisfied with the Agency's response, you may call the Office of Information Practices at 586-1400.

Thank you for your cooperation. Should you have any questions, please call Mr. Edwin Koyama, Accounting Director at 586-3450.

PH:AS:dk

c: Office of Fiscal Services