



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

OFFICE OF THE SUPERINTENDENT

June 20, 2019

TO: The Honorable Catherine Payne
Chairperson, Board of Education

FROM: Dr. Christina M. Kishimoto 
Superintendent

SUBJECT: **Board Action on Draft Amendments to Hawaii Administrative Rules,
Chapter 8-5, Public Access to Information**

1. RECOMMENDATION

The Department of Education (Department) recommends approval of its proposed amendments to Hawaii Administrative Rules (HAR), Chapter 8-5 relating to Public Access to Information (copy attached for reference). A public hearing was conducted on the rule amendments and the Board's final approval is requested to enable the Department to proceed with obtaining final Governor's approval.

2. RECOMMENDED EFFECTIVE DATE

Upon Governor's final approval, these rule amendments will be filed with the Lieutenant Governor's Office and will take effect 10 days thereafter.

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

Not applicable.

4. DISCUSSION

a: Conditions leading to the recommendation:

Chapter 8-5, HAR, is being amended to clarify the fee charged by the Department for copies of public records. Currently, section 8-5-11, HAR, requires payment of "the reasonable cost of reproducing a copy." The Department has historically established the "reasonable cost" of copying via Superintendent memoranda. The last such memo, dated August 25, 2008,

established the department-wide copying fee at twenty-five cents per page. To ensure clarity and the proper authority to enforce the copy fee amount, the Department is establishing the specific copying fee amount of twenty-five cents per page in its administrative rules.

On November 15, 2018, the Finance and Infrastructure Committee and the full Board of Education (Board) approved the Department's proposed amendments to Chapter 8-5, HAR. Subsequently, the Department obtained Governor's approval to go to public hearing.

As required by law, a public notice of the public hearing was published on April 19, 2019 in the Honolulu Star Advertiser, Hawaii Tribune Herald, West Hawaii Today, Maui News and The Garden Island newspapers and was posted to the Board's website and Lieutenant Governor's via link.

Additionally, the Complex Area Superintendents were notified of the public hearing ahead of time and instructed to issue the hearing notice to their principals with a request to share this information with parents and guardians.

The public hearing was conducted on May 23, 2019. No one from the public showed up to testify. Also, no written testimony was received by the Department as of the May 24, 2019 deadline.

As no public comment was received on the proposed rule amendments, the Department has made no changes and recommends the Board give its final approval so that Governor's approval may be obtained. Upon Governor's approval, the rules will be filed with the Lieutenant Governor's Office and take effect 10 days thereafter.

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

These rule amendments were approved by FIC and BOE on November 15, 2018.

c: Other policies affected:

None.

d: Arguments in support of the recommendation:

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

e: Arguments against the recommendation:

None.

f: Other agencies or departments of the State of Hawaii involved in the action:

None.

g: Possible reaction of the public, professional organizations, unions, DOE staff and/or others to the recommendation:

Public notice of the public hearing and the opportunity to submit written testimony was duly published. No public testimony was received.

h: Educational implications:

None.

i: Personnel implications:

None.

j: Facilities implications:

None.

k: Financial implications:

None.

5. OTHER SUPPLEMENTARY RECOMMENDATIONS

None.

CMK:jt
Attachment

c: Office of Fiscal Services

DEPARTMENT OF EDUCATION

Amendments to Chapter 8-5
Hawaii Administrative Rules

1. 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 furnished a copy upon payment of the reasonable cost of reproducing a copy.]~~ Any person applying for a copy of a public document or record open to inspection by the public shall be charged 25 cents 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 8/22/83; am]
(Auth: HRS §302A-1112) (Imp: HRS §§91-2(1), 92-21, 302A-1112)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments are not underscored.

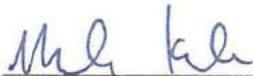
4. These amendments to chapter 8-5, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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 [date] and filed with the Office of the Lieutenant Governor.



CHRISTINA M. KISHIMOTO
Superintendent of Education

APPROVED AS TO FORM:



01-09-19

Deputy Attorney General