

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

January 10, 2017

TO: Board of Education

FROM: Lance A. Mizumoto
Chairperson, Board of Education

AGENDA ITEM: Board Action on administrative rules for multiple charter school authorizers

I. BACKGROUND

At its November 15, 2016 general business meeting, the Board of Education ("Board") adopted Hawaii Administrative Rules ("HAR") Chapter 8-515, entitled "Establishment and Oversight of Charter School Authorizers," and Chapter 8-517, entitled "Charter Contract Transfers." The Board adopted these rules after holding a public hearing, receiving recommended amendments to the rules from the Student Achievement Committee ("Committee") based on the public hearing testimony, and being notified by the Department of the Attorney General ("AG") that none of the Committee's amendments would warrant another public hearing. The Board authorized me to sign the rules on behalf of the Board.

However, in seeking final approval, the AG has informed the Board that it has reconsidered its previous opinion and now advises that several of the amendments will require another public hearing. The AG has determined the following changes to the rules are substantial enough to warrant an additional hearing:

1. Amendment to HAR §8-517-3(b) adding a new paragraph (6) that reads as follows: "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 . . ."
2. Amendment to HAR §8-517-3 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."
3. Amendment to HAR §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.”~~

II. DISCUSSION

All of the testimony received relating to the first two amendments above places the expedient enactment of these rules as a higher priority than any proposed change to the rules. Further, removal of HAR §8-517-3(b)(6) and HAR §8-517-3(c) will not affect the immediate implementation of these rules. It is a likely possibility that there will be necessary changes needed to the rules as they are implemented, and it is at that time that these amendments can be reconsidered.

The third amendment above was proposed by the National Association of Charter School Authorizers and echoed by the State Public Charter School Commission. Unlike the various testimonies related to the first two amendments, neither of these organizations mentioned expedient enactment of the rules as a priority. While the Committee and Board agreed with the proposed amendment, it is clear the Committee considered expedient enactment of the rules as important, which is why it recommended that any amendments that would require another public hearing, as determined by the AG, not be included in the rules. Furthermore, including the original language in HAR §8-517-6(c) will not affect the immediate implementation of these rules, and like the previous two amendments, this amendment can be reconsidered at a later time.

III. RECOMMENDATION

Therefore, I recommend the Board approve the changes to the administrative rules as shown in the redline attached as **Exhibit A**.

Exhibit A

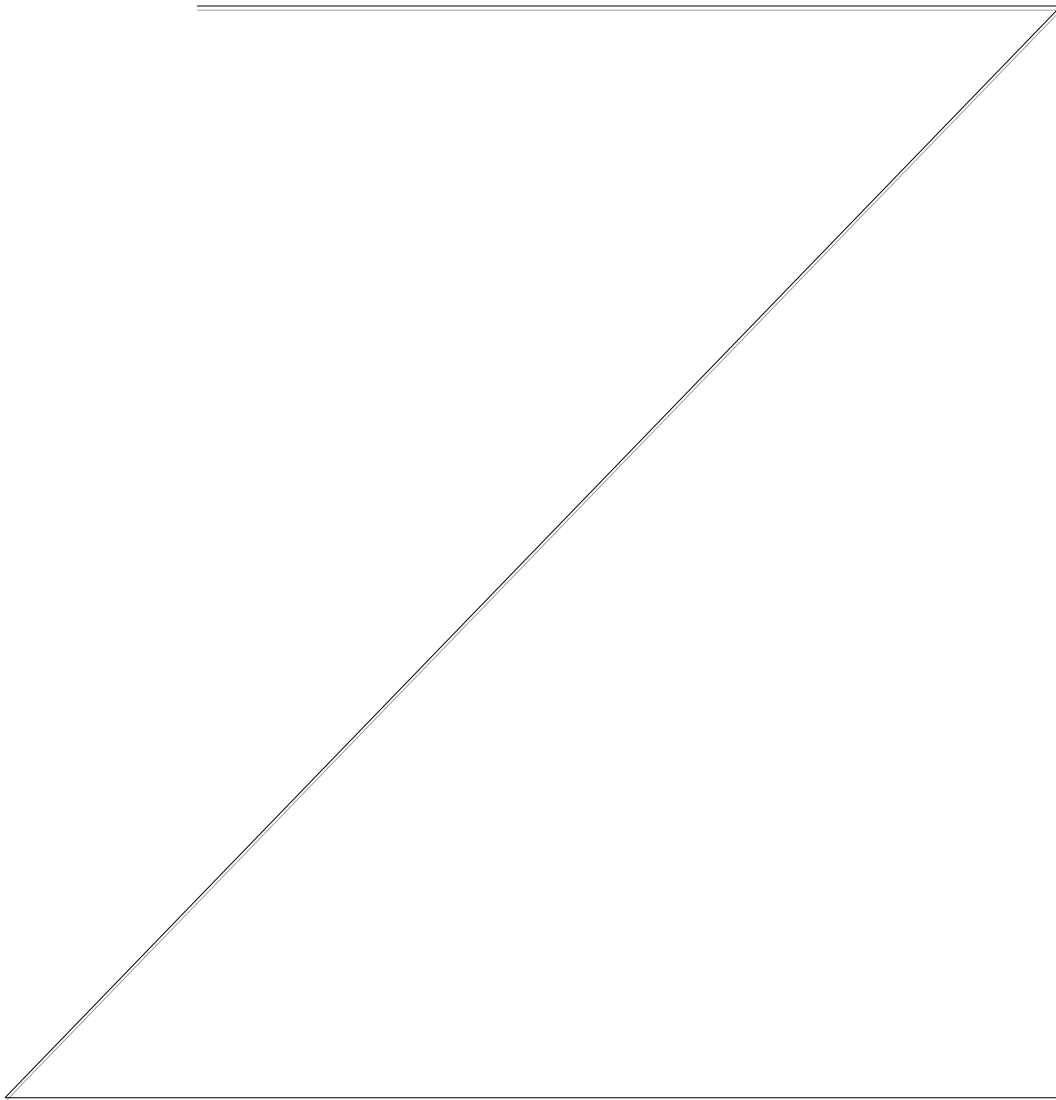
**Redline showing Board Chairperson Lance Mizumoto's recommended changes to
Hawaii Administrative Rules Chapters 8-515 and 8-517**

DEPARTMENT OF EDUCATION

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

November 15, 2016

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 (Reserved)
- to 8-515-9

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 application; 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, stating the reason therefor, with specific references to the adopted policies, criteria, or guidelines for evaluating applications for chartering authority. In addition, the board may also notify the applicant by electronic mail. [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 sections 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 that 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 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; and
 - (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. In addition, the board may also notify the authorizer or commission by 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. In addition, the board may also notify the authorizing contract holder by 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. In addition, the board may also notify the authorizing contract holder by 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. In addition, the board may also notify the authorizing contract holder by 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 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.

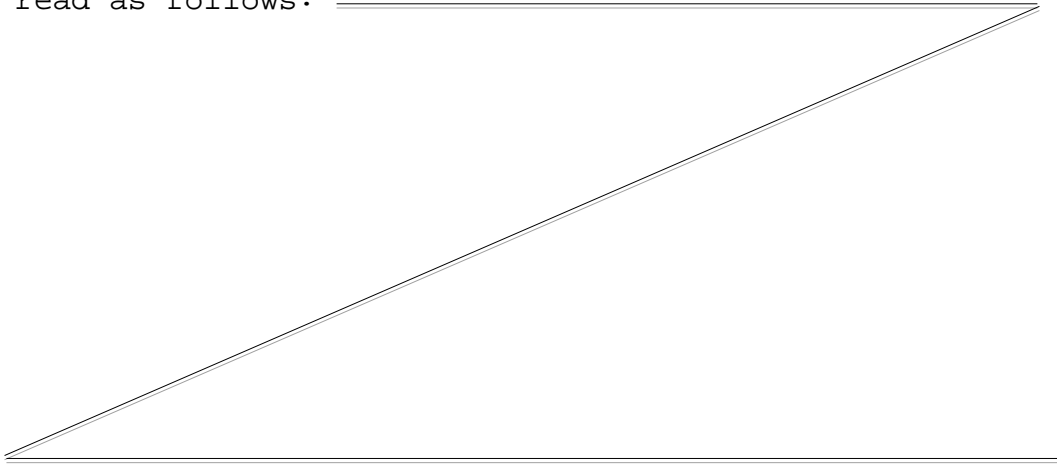
In addition, the board may also notify the authorizing contract holder by electronic mail. [Eff _____]

] (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, of its final decision. In addition, the board may also notify the authorizing contract holder by electronic mail. 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.

"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~~6) Authorizers shall share among themselves information on charter schools that are transferring between them; and
- (~~8~~7) 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 state public charter school 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 established 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 November 15, 2016, and filed with the Office of the Lieutenant Governor.

LANCE A. MIZUMOTO
Chairperson, Board of
Education

APPROVED AS TO FORM:

Deputy Attorney General