



**STATE OF HAWAII**  
**BOARD OF EDUCATION**  
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February 7, 2019

TO: Student Achievement Committee

FROM: Margaret Cox  
Chairperson, Student Achievement Committee

AGENDA ITEM: Action on documents necessary to implement multiple charter school authorizer system, including application for chartering authority, authorizing contract, and authorizer performance evaluation system

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**I. BACKGROUND**

At its August 2, 2016 general business meeting, the Board of Education (“Board”) adopted a general timeline as guidance for the promulgation of the administrative rules for multiple charter school authorizers and the development of the multiple authorizer system.<sup>1</sup> The Board also authorized the Student Achievement Committee (“Committee”) Chairperson to adjust the timeline as necessary and provide notification as appropriate.

The Board’s administrative rules for a multiple authorizer system—Chapter 8-515, Hawaii Administrative Rules (“HAR”), entitled “Establishment and Oversight of Charter School Authorizers,”<sup>2</sup> and Chapter 8-517, HAR, entitled “Charter Contract Transfers”<sup>3</sup>—became effective on February 18, 2017, on track with the Board’s timeline. The rules require the Board to develop, among other things, the following:

- An application form, process, and processing schedule for eligible entities to apply to become authorizers, including policies, criteria, or guidelines for evaluating applications for chartering authority (HAR §8-515-5);

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<sup>1</sup> The approved timeline is attached as Exhibit A to Board Member Jim Williams’ memorandum dated August 2, 2016, available here: [http://boe.hawaii.gov/Meetings/Notices/Documents/2016-08-02%20SAC/SAC\\_20160802\\_Action%20on%20multiple%20charter%20school%20authorizers%20timeline.pdf](http://boe.hawaii.gov/Meetings/Notices/Documents/2016-08-02%20SAC/SAC_20160802_Action%20on%20multiple%20charter%20school%20authorizers%20timeline.pdf).

<sup>2</sup> Chapter 8-515, HAR, is available here: <http://boe.hawaii.gov/policies/AdminRules/Pages/Chapter515.aspx>.

<sup>3</sup> Chapter 8-517, HAR, is available here: <http://boe.hawaii.gov/policies/AdminRules/Pages/Chapter517.aspx>.

- An authorizing contract that shall be executed with each entity the Board approves for chartering authority (HAR §8-515-6); and
- A performance evaluation system to assess the effectiveness of all authorizers (HAR §8-515-10).

The Board's August 2016 timeline projected that Board staff would develop and bring these important multiple authorizer system documents to the Board for adoption by June 2017, but due to several factors, they had to delay completion. At the Committee's December 6, 2018 meeting, I issued a new timeline in which the Committee would consider approval of the draft multiple authorizer system documents for public comment at today's meeting.<sup>4</sup>

At its December 6, 2018 meeting, the Committee received updates on the following initiatives related to the implementation of a multiple authorizer system, which could affect the contents or application of the multiple authorizer system documents.

Centralized support. Board staff ran into some complications in developing the system for multiple authorizers due to the current structure of the charter school system, specifically the lack of centralized support for charter schools provided by a non-authorizing entity.<sup>5</sup> At its April 5, 2018 meeting, the Committee directed Board staff to research solutions to the centralized support structure issues and propose an organizational structure that provides appropriate centralized support to charter schools.

In May 2018, Board staff gathered initial feedback on a few centralized support structure options from the Superintendent of the Department of Education ("Department") and the Executive Director of the State Public Charter School Commission ("Commission"). While the initial feedback was helpful, Sione Thompson, the Commission's Executive Director, requested a delay in exploring the options until October 2018 because the Commission was in the midst of its strategic planning and restructuring its staff. Board staff agreed that waiting until the Commission completed its restructuring would be beneficial to understanding the separation between the Commission's authorizing functions and support functions.

Request for information. At its April 5, 2018 meeting, the Committee directed Board staff to expedite the solicitation of parties interested in becoming an authorizer. On April 10, 2018, Board staff released a request for information ("RFI") on behalf of the Committee to gauge which parties are interested in becoming new charter school authorizers.<sup>6</sup> Five interested parties, three nonprofit organizations and two postsecondary institutions, submitted responses to the RFI. The interested parties are:

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<sup>4</sup> Student Achievement Committee Chairperson Margaret Cox's memorandum dated April 5, 2018, explains the factors that caused delays in more detail and includes the updated timeline, attached as Exhibit A. The memorandum is available here:

[http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/SAC\\_20181206\\_Update%20on%20multiple%20charter%20school%20authorizer%20system.pdf](http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/SAC_20181206_Update%20on%20multiple%20charter%20school%20authorizer%20system.pdf).

<sup>5</sup> Student Achievement Committee Chairperson Margaret Cox's memorandum dated April 5, 2018, explains the structural issues in more detail. The memorandum is available here:

[http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/SAC\\_20180405\\_Action%20on%20charter%20school%20support%20structure.pdf](http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/SAC_20180405_Action%20on%20charter%20school%20support%20structure.pdf).

<sup>6</sup> The RFI is available here: <http://boe.hawaii.gov/Documents/2018%20Request%20for%20Information.pdf>.

- ‘Aha Pūnana Leo, Inc.;
- Kanu o ka ‘Aina Learning ‘Ohana;
- Lei Ho‘olaha Community Development Finance Institution;
- Ka Haka ‘Ula O Ke‘elikōlani, University of Hawai‘i, Hilo; and
- University of Hawai‘i, West O‘ahu.

The interested organizations gave estimated dates of when they would be ready to begin the application process for chartering authority that ranged from December 2018 to Fall 2019. The interested organizations also gave estimated dates of when they would be ready to commence authorizer operations that ranged from December 2019 to Fall 2021.

Charter school purpose policy. The authorizer performance evaluation system must “[a]ssess 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,” pursuant to HAR §8-515-10(a)(1) (emphasis added). At its February 21, 2017 general business meeting, the Board requested—in connection to the outcome of a special review of the Commission<sup>7</sup>—that the Commission work with the charter school community to develop a purpose of charter schools and propose a Board policy codifying the purpose.

At the Board’s March 1, 2018 general business meeting, Mr. Thompson requested that the Board provide guidance regarding the development of a Board policy on the purpose of charter schools. In response, then-Board Chairperson Lance Mizumoto directed Board staff to work with and provide support and guidance to the Commission as to the development of the Board policy and to coordinate efforts with the Superintendent and the Department. Board staff developed and released a survey on April 27, 2018, left it open through May 18, 2018, and received 2,639 responses from various education community members.

Board Chairperson Catherine Payne recently sent the analysis and policy proposal to the Commission for review. The Commission will then consider the Board Chairperson’s proposal and make a recommendation for a Board policy to the full Board. Board Chairperson Payne requested that the Commission make its recommendation to the Board by April 4, 2019.

## II. UPDATE

In developing the multiple authorizer system documents, Board staff analyzed similar documents in a few states, including the Minnesota Department of Education’s (“MDE”) authorizer performance evaluation system and new authorizer application, the Ohio Department of Education’s authorizer quality rubric and sponsor agreement, and the

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<sup>7</sup> More information about the special review findings and recommendations is available here: [http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM\\_20170221\\_Board%20Action%20on%20Special%20Review%20recommendations.pdf](http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20170221_Board%20Action%20on%20Special%20Review%20recommendations.pdf).

Washington State Board of Education's authorizer application and evaluation rubrics. Board staff also aligned, as much as possible, each of the documents to national standards, particularly the National Association of Charter School Authorizers' ("NACSA") *Principles & Standards for Quality Charter School Authorizing, 2018 Edition*.<sup>8</sup>

The main features in any well-functioning charter school system are relatively more autonomy in exchange for greater accountability, often referred to as the "charter bargain." This principle should not only apply to the authorizer-school relationship, but the Board-authorizer relationship as well. Therefore, similar to the responsibilities of a high-quality authorizer, the Board should ensure it:

- Grants chartering authority to only entities that demonstrate capacity to execute satisfactory plans for opening and operating a quality authorizer;
- Sets clear and measurable performance expectations as well as sufficient terms of compliance for authorizers through a renewable performance contract; and
- Holds authorizers accountable to the terms of the contract through regular evaluations and contract renewal processes.

The key documents attached to this memorandum apply the principle of the charter bargain to authorizers. The authorizer performance evaluation system sets the foundation for performance expectations and accountability of authorizers. The application for chartering authority bases its approval criteria on the performance expectations set in the authorizer performance evaluation system, and the authorizing contract holds authorizers accountable to those performance expectations and the specific performance terms described in an authorizer's approved application.

It is important to note that the multiple authorizer system documents assume that some non-authorizer entity provides support to charter schools, as the documents do not focus on nor require authorizer-provided support to charter schools. As previously mentioned, there are issues with a structure that lacks centralized support to charter schools from a non-authorizer entity, so the Board will continue to work on solutions and proceed in building a multiple authorizer system that assumes the existence of such a centralized support structure. In addition, once the Board adopts a policy on the purpose of charter schools, it will affect how the Board evaluates applicants for chartering authority and authorizers, although the policy will not necessarily require changes to the content of the multiple authorizer system documents.

### **Authorizer Performance Evaluation System**

When Board staff first initiated this work, Minnesota was one of less than a handful of states with authorizer performance evaluation systems. Board staff chose to heavily model the Board's system after MDE's authorizer performance evaluation system because of its

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<sup>8</sup> NACSA's *Principles & Standards for Quality Charter School Authorizing, 2018 Edition* is available here: <https://www.qualitycharters.org/wp-content/uploads/2018/10/NACSA-Principles-and-Standards-2018-Edition.pdf>.

comprehensiveness, focus on continuous improvement, and alignment with NACSA standards. The Board is fortunate to have such an example off which to base its own system, and I extend our gratitude to MDE for developing an innovative and comprehensive system for evaluating authorizers after which other state may model their systems.

In addition to setting performance expectations for authorizers, the draft of the Board's system, the Hawaii Authorizer Performance Evaluation System ("HAPES"), sets the general performance evaluation process. In brief, an evaluation team is responsible for the in-depth evaluation of an authorizer's performance and making a recommendation to the Board based on its analysis. In turn, the Board is responsible for considering the evaluation team's recommendation and deciding on the final performance ratings, which have associated outcomes for the authorizer, such as renewal of its authorizing contract or additional reporting requirements. Note that because the Commission is a statutorily established authorizer, the Board will need to modify how it applies the outcomes to the Commission based on its performance, possibly through a supplemental policy or procedure.

Pursuant to Section 8-515-11(e), HAR, the Board must conduct a performance evaluation of each authorizer no less than every five years. The Board can also conduct a special review of an authorizer's performance as needed in accordance with Section 302D-11, Hawaii Revised Statutes ("HRS"), and Section 8-515-12, HAR. HAPES serves as the evaluation framework for both regular evaluations and special reviews. The performance report produced by HAPES informs the Board in its decision whether to renew the authorizer's chartering authority in accordance with Section 8-515-16, HAR. It is important to note that state law does not provide the Board with the authority or responsibility to monitor authorizers on a continual basis, only to evaluate authorizers at regular periods or due to specific conditions.

HAPES has five performance areas:

1. Organizational capacity and infrastructure;
2. Application process and decision-making;
3. Performance contracting;
4. Ongoing oversight and evaluation; and
5. Revocation and renewal decision-making.

The first area of organizational capacity and infrastructure focuses on the authorizer's ability to achieve its vision and organizational goals for charter schooling. The other four areas focus on the authorizer's implementation of essential authorizing functions as described under Section 302D-5, HRS. There are 21 performance measures across the five performance areas, which address and align to NACSA's standards and the requirements under Section 8-515-10, HAR.

For the details on the evaluation process and performance measures, see HAPES attached as **Attachment A**.

### **Application for Chartering Authority**

The application for chartering authority provides the information necessary for eligible entities to apply to the Board to become new authorizers, pursuant to Section 302D-4, HRS, and Chapter 8-515, Subchapter 2, HAR.

The application for chartering authority document sets the application process and general timeline in accordance with Section 8-515-6, HAR, but it gives the Board Chairperson discretion in determining the specific process timing on a year-to-year basis and executing certain administrative functions.

The timeframes are reasonably achievable, and the process spans approximately nine months from the release of the notice inviting applications to the Board's final decisions. The timeline has the Board releasing a notice inviting applications for chartering authority around mid-May of each year. State statute requires the Board to release information on the application for chartering authority by June 30 of each year.<sup>9</sup> Eligible applicants have approximately three months to develop and submit an application from the release of the notice. Importantly, the evaluation team has a little over three months to thoroughly vet applicants and their plans, which should be enough time to ensure it recommends approval of only high-quality proposals that meet the approval criteria.

As previously mentioned, the performance measures and indicators within HAPES set the foundation for the approval criteria in the application for chartering authority. The application organizes the approval criteria into 21 standards aligned with the HAPES performance measures and compliant with Section 8-515-5, HAR. The application organizes the standards into four parts: organizational plan, financial plan, authorizing plan, and applicant capacity. Through the organizational plan, an applicant describes its proposed mission, vision, and organizational goals for charter schooling and its proposed organizational structure and staffing to achieve its vision and goals. The financial plan illustrates how the applicant ensures it has enough resources to implement its plans and meet its authorizing obligations. The authorizing plan provides the details of how the applicant will execute its essential authorizing responsibilities. Finally, an applicant needs to demonstrate it has the capacity to execute its proposed plans and be a high-quality authorizer.

For the details on the application process and approval criteria, see the application for chartering authority attached as **Attachment B**.

### **Authorizing Contract**

After the Board approves an applicant, it does not become an authorizer until it executes an authorizing contract with the Board, pursuant to Section 302D-4(g), HRS.<sup>10</sup> The authorizing

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<sup>9</sup> HRS §302D-4(e) states, in pertinent part, "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."

<sup>10</sup> HRS §302D-4(g) states, "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

contract provides the basis for the entity’s chartering authority, sets the expectations for the authorizer, and establishes the responsibilities, duties, and powers of the authorizer and Board as parties to the contract.

Section 3 of the contract refers to “specific terms,” which serve as the “additional performance terms” pursuant to Section 302D-4(g), HRS. Exhibit A to the contract defines the specific terms, and these terms are unique to each authorizer and the only material elements of the contract that an authorizer can amend with appropriate Board approval. Specific terms include the authorizer’s chartering authority jurisdiction, mission, vision, organizational goals, and maximum school portfolio size.

For the details on the contract provision, see the authorizing contract attached as **Attachment C**.

The Board will still need to consult its attorney on several legal questions, which could affect the authorizing contract and the other multiple authorizer system documents. Board staff will be consulting with the Board’s attorney concurrently during the public comment period. Some of the points of clarification the Board needs from its legal counsel follow.

Authorizer status. Section 302D-25(e), HRS, makes it clear that charter schools are public schools and entities of the State.<sup>11</sup> However, the statutory provision is less clear on whether authorizers are also entities of the State. The Board needs clarification because state entities have certain rights and obligations that non-state entities do not.

Public assets. Section 15 of the authorizing contract covers the transfer of chartering authority. If either party terminates the authorizing contract for any reason, the entity loses its chartering authority. In such a scenario, Section 15 of the contract describes the authorizer’s responsibilities to ensure an orderly transfer of its charter schools to other authorizers. It also requires the authorizer to distribute and dispose of its assets in accordance with applicable law, which is why legal clarification is necessary.

Authorizers charging fees. Our current understanding is that it is not lawful for authorizers to charge charter schools fees for anything other than services because statute does not expressly provide such authority. Section 16.3 of the authorizing contract clarifies this by prohibiting an authorizer from receiving payments from the charter schools within its portfolio of schools other than those for services purchased by charter schools at their own discretion in accordance with state law. However, in the event it is determined that it is permissible for

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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.”

<sup>11</sup> HRS §302D-25(e) states, “Notwithstanding any law to the contrary, as public schools and entities of the State, a charter school, including its governing board, the commission, and any authorizer may not bring suit against any other entity or agency of the State.”

authorizers to charge fees, the Board needs to clarify whether it is legally permissible for the Board to contractually prohibit the charging of fees.

### **III. RECOMMENDATION**

I recommend the Committee approve opening up a public comment period from tomorrow until March 8, 2019 on the draft application for chartering authority, authorizing contract, and authorizer performance evaluation system attached to this memorandum.

In addition to publishing the draft documents on the Board's website, I recommend soliciting feedback from the following stakeholders:

- Charter school leaders, including governing boards and heads of school;
- Charter school support organizations, including the Hawaii Public Charter Schools Network, Kamehameha Schools, and the Office of Hawaiian Affairs;
- Commission;
- Department leadership;
- Each organization whom responded to the Committee's RFI; and
- NACSA.

I will work with Board staff on the consideration of the public comments and subsequent revisions to the multiple authorizer system documents. We will also seek legal review of the revised drafts of these documents from the Board's deputy attorney general. Pursuant to the timeline I released, I should have the final drafts of the documents ready for Committee consideration and approval at its May 2, 2019 meeting.

**Proposed Motion: Moved to approve the drafts of the application for chartering authority, authorizing contract, and authorizer performance evaluation system, as attached this memorandum, for public comment and direct Board staff to solicit feedback from selected stakeholders.**



**Attachment A**

**Hawaii Authorizer Performance Evaluation System (draft)**

**Attachment B**

**Application for Chartering Authority (draft)**

**Attachment C**

**Authorizing Contract Template (draft)**