

DEPARTMENT OF EDUCATION

Repeal of Chapter 8-210.1 and Adoption of Chapter

8-210.2

Hawaii Administrative Rules

April 15, 2010

SUMMARY

1. Chapter 8-210.1 is repealed.
2. Chapter 210.2 of Title 8, Hawaii Administrative Rules, entitled "Administrative Review Process", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 3

PUBLIC LIBRARIES

CHAPTER 210.2

ADMINISTRATIVE REVIEW PROCESS

Historical Note: This chapter is based substantially upon Chapter 8-210.1, "Administrative Practice and Procedure." [Eff 1/2/96; R 05/24/2010]

SUBCHAPTER 1

GENERAL PROVISIONS

§8-210.2-1 Purpose and scope. The purpose of this chapter is to obtain from the state librarian:

- (1) A determination of any contested matter within the state librarian's jurisdiction that is not otherwise resolvable;
- (2) A declaration as to the applicability of any rule or order enforced by a library manager, a library administrator, or the problem resolution officer, cited in the problem resolution process; or
- (3) A declaration to support a petition for the modification, repeal, or adoption of any administrative rule.

Information about complaints regarding discrimination is contained in chapter 8-205. [Eff 05/24/2010] (Auth: HRS §§91-2, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-2 Applicability. This chapter provides a complainant who has gone through the problem resolution process, including filling out the form substantially similar to the form located at the end of this chapter as Exhibit 1, entitled "Request For Problem Resolution", dated June 2008, an opportunity to contest the determination or declaration. [Eff 05/24/2010] (Auth: HRS §§91-2, 296-19, 312-1) (Imp: HRS §312-1)

SUBCHAPTER 2

HEARING RELIEF

§8-210.2-3 Action by the state librarian. (a) The state librarian shall determine that a contested matter should be reviewed or a problem resolution decision warrants reconsideration.

(b) If the state librarian supports the decision from the contested matter or problem resolution process, the state librarian shall provide the complainant with a written notice declaring the reasons the decision shall be upheld.

(c) If the state librarian determines that a contested matter should be reviewed or that reconsideration of a decision resulting from the problem resolution process is warranted, the state librarian shall initiate a hearing.

(1) The state librarian shall designate a chairperson who shall form a hearing relief committee;

(2) The committee shall review the contested matter or problem resolution process and decision and provide the state librarian with a recommendation;

(3) The state librarian shall declare a final decision based on a review of the hearing relief documents and the hearing relief committee's recommendation; and

(4) The state librarian shall inform the complainant of the decision and of the complainant's right to a judicial review. [Eff 05/24/2010] (Auth: HRS §§91-2, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-4 Judicial review of contested cases. (a) Any party aggrieved by a final decision or order §8-210.2-4

of the state librarian in a contested case or by a preliminary ruling or order of the state librarian of such a nature that deferral of review pending the entry of a subsequent final order would deprive that party of adequate relief is entitled to judicial review in conformance with section 91-14, HRS.

(b) Any party requesting judicial review in writing, shall serve a copy of the request upon the state librarian and all other parties to the proceeding in accordance with the Hawaii rules of civil procedure. [Eff 05/24/2010] (Auth: HRS §§91-2, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-5 Time limit to contest a preliminary decision. (a) When issuing a decision on a contested matter the library manager, library

administrator, problem resolution officer, or appropriate designee shall provide in writing a final date for the complainant to request a review of the matter.

(b) The final date should be not less than ninety days from the date of the written decision issued to the complainant.

(c) The state librarian may deny review of any matter not contested by the final date for review as established in subsection (a). [Eff 05/24/2010] (Auth: HRS §§91-2, 296-19, 312-1) (Imp: HRS §312-1)

SUBCHAPTER 3

RULE RELIEF

§8-210.2-6 Petition for rule relief. Any interested person may petition the state librarian for the amendment, adoption, or repeal of a rule. The petition for rule relief shall identify the text of the rule to be repealed, or the text of any proposed rule, or the text of any existing rule, together with the proposed amendment. The petition shall state concisely the facts and circumstances for the §8-210.2-9

petition, including the petitioner's interest and reasons for filing the petition, the necessity for the relief and the anticipated effect or impact of the relief, the questions or issues raised, and the petitioner's position or contentions. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-7 Time. (a) The state librarian, within the time permitted by chapter 91, HRS, shall either deny the petition or initiate public rulemaking procedures in accordance with this subchapter and chapter 91, HRS.

(b) The state librarian may deny any petition which:

(1) Discloses insufficient reasons or unreasonable lapse of time justifying the institution of public rulemaking procedures; or

(2) Concerns a matter not within the jurisdiction of the state librarian. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-8 Additional facts or supplemental memorandum. The state librarian may require the petitioner to submit a statement of additional facts or a memorandum, the purpose of which is to clarify a specific factual issue, position, or contention which will reasonably aid the state librarian. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-9 Notice of determination. The state librarian shall promptly notify the petitioner in writing of a determination either to deny the petition or to initiate rulemaking procedures. If the state librarian denies the petition, the state librarian shall state the reasons for the denial in the notice to the petitioner. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-10 Determination final. Unless otherwise provided by law, the petitioner shall have no right to move the state librarian for reconsideration or to seek judicial review of any determination. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-11 Public hearing. A public hearing shall be held for a petition for rule relief considered by the state librarian. The hearing shall be at the time and place set forth in the notice of public hearing but at that time and place the hearing may be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement at the hearing. The state librarian shall afford all interested persons an opportunity to present data, their views, or arguments, orally or in writing. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-12 Notice of public hearing. Notice of the public hearing shall be made in accordance with the provisions of chapters 91 and

92, HRS. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-13 Procedure at public hearing. At the commencement of the public hearing the state librarian or a representative of the state librarian shall read the notice of hearing and shall then briefly prescribe the procedure to be followed at the public hearing. All witnesses testifying at the public hearing shall state their name, address, and who, if anyone, the witness represents. Every witness shall be subject to questioning by the state librarian or by any other representative of the state librarian. Questioning of witnesses by other persons shall not be permitted except when the state librarian expressly permits that questioning. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-14 Record of public hearing. (a) A record shall be made of all oral testimony in the form of written minutes or verbatim taken at the hearing. All written testimony shall be received and made part of the public record.

(b) Testimony given at the public hearing may be electronically recorded verbatim by the state librarian or designee or upon request of any interested party. It shall not be necessary to transcribe the electronic recording.

(c) The written minutes or electronic record of the proceeding shall constitute the official record of the testimony taken at the hearing, and shall remain in the possession of the state librarian. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-15 Decision. The state librarian shall render a decision at the public hearing or at a time, date, and place announced at the public hearing. The state librarian, upon request of any interested person, shall issue a concise statement of the principal reasons for and against the decision. In making a decision, the state librarian shall consider all written and oral submissions for the proposed rule relief. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-16 Waiver. The requirements for public hearing and for notice may be waived by the governor when the state librarian, as a condition to receiving federal funds, is required by federal provisions to adopt rules and the state librarian is allowed no discretion in interpreting the federal provisions as to the rules required to be adopted. The state librarian shall make known to the public the proposed adoption, amendment, or repeal of any rule by publishing a statement as to the substance of the proposed rule change in a newspaper of general circulation in this State, at least once prior to the waiver of the governor. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-17 Emergency rulemaking. (a) The state librarian may adopt emergency rules pursuant to the requirements of sections 91-3 and 91-4, HRS.

(b) The state librarian's determination that there is imminent peril and the reasons shall be stated in, and as a part of, the emergency rule.

(c) The state librarian shall make the emergency rule known to the public by publishing the rule, at least once, in a newspaper of general circulation in the State, within five days from the date the rule is filed with the lieutenant governor. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-18 Approval. The adoption, amendment, or repeal of any rule resulting from the review process of this chapter shall be subject to approval of the governor as provided for in section 91-3, HRS. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-19 Filing and review. Upon approval of the governor, certified copies of any rules being adopted, amended, or repealed shall be filed with the lieutenant governor and legislative reference bureau as provided in sections 91-4, 91-4.1, and 91-4.2, HRS. All rules being adopted, amended, or repealed shall take effect as provided in section 91-4, HRS, and shall be subject to review as provided in section 91-4.1, HRS. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

§8-210.2-20 No restriction on state librarian. Nothing contained in this subchapter shall be construed to prohibit or to restrict the right of the state librarian from initiating the rulemaking proceeding on any matter, whether disclosed in any petition or not. [Eff 05/24/2010] (Auth: HRS §§91-6, 296-19, 312-1) (Imp: HRS §312-1)

DEPARTMENT OF EDUCATION

The repeal of chapter 8-210.1, Hawaii Administrative Rules and the adoption of chapter 8-210.2, Hawaii Administrative Rules, on the Summary Page dated April 15, 2010, were adopted on April 15, 2010, following public hearing held on March 18, 2010 after public notice was given in The Honolulu Star Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on February 12, 2010.

The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

GARRETT TOGUCHI

Chairperson
Board of Education

LINDA LINGLE

Governor
State of Hawaii

Dated: _____

Filed

APPROVED AS TO FORM:

Deputy Attorney General

[Standard 8-210.2 promulgate EXHIBIT 1 Problem Resolution.pdf](#)