

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 2

EDUCATION

PART 1

PUBLIC SCHOOLS

CHAPTER 39

USE OF SCHOOL BUILDINGS, FACILITIES, AND GROUNDS

Historical Note: This chapter is based substantially upon Department of Education "Rule 6, Relating to the Use of School Buildings, Facilities, and Grounds." [Eff. 9/23/63; am 9/4/70; am 5/16/71; am 3/20/75; R Nov 17, 1984]

**§8-39-1 General rule.** All public school buildings, facilities, and grounds shall be available for general recreational purposes and for public and community use whenever these activities do not interfere with the normal and usual activities of the school and its pupils as provided by law. This general rule shall be carried out within the policy of the department of education that no available public school building, facility, or grounds shall be denied for use by the public and community on the grounds of race, color, religion, sex, age, national origin, or disability. The department of education shall not assist any public or community group which discriminates on the basis of sex by making available for use public school buildings, facilities, and grounds, except for groups specifically exempted by the provisions of 20 U.S.C. 1691, 1682 (Title IX, Education Amendments of 1972), or exempted by the Secretary of the U.S. Department of Education. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: 20 U.S.C. 1681 et seq., 901; Title IX, 34 C.F.R. 106; Title VI, 42 U.S.C. 200d et seq., 601-603; 34 C.F.R. 100; 42 U.S.C. 6101, 302; 42 U.S.C. 6102, 303; 45 C.F.R. 90; 29 U.S.C. 794; 34 C.F.R. 104; Hawaii Const. Art. 1, 3; HRS §302A-1101;

Hawaii Const. Art. X, 3; HRS §§302A-1112, 302A-1001, 302A-1149, 302A-1147, 302A-1148, 302A-1150)

**§8-39-2 Applications.** Applications for the use of buildings, facilities, or grounds shall be submitted in writing in accordance with the department's rules. [Eff. 11/17/84; comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1128, 302A-1112, 302A-1147, 302A-1148)

**§8-39-3 Categories of use.** Use of school buildings, facilities, or grounds shall be classified as follows:

- (1) Type I. Department of education, school sponsored and school-related activities.
- (2) Type II. Governmental agencies, not for profit community educational or recreational activities, youth clubs, athletic teams, labor organizations or service clubs conducting general recreational activities, community affairs, or public hearings for which no admission charge is made, collection taken or offering received during the use of school facilities. Student child-care activities conducted by non-profit organizations who have received tax exemption from the State department of taxation shall be classified as Type II use even if there is a charge.
- (3) Type III. Governmental agencies, community groups, churches, business enterprises, labor unions or individuals who:
  - (A) Charge participants a fee, tuition, collect donations, contributions or offerings; or
  - (B) Conduct fund raising activities, or meetings or services to promote a business, product, or religion; or
  - (C) Do not meet the criteria as a Type I or Type II user. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-408, 302A-1147, 302A-1148, 302A-1149, 302A-1150)

**§8-39-4 Approvals.**

(a) For periods of use not exceeding twelve consecutive months:

(1) Applications for Type I, II, and III uses shall be filled out by applicant and shall be approved or disapproved by the school's principal or a designee;

(b) For periods of use exceeding twelve consecutive months, all applications shall be initially processed by the school and final approval given by the land board of the department of land and natural resources. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: HRS §§302A-1112, 302A-1148)

**§8-39-5 Fees and service charges.**

(a) The rental fees and service charges applicable to the use of school facilities shall be determined by the superintendent of education to recover costs.

(b) The fees and charges shall be revised by the superintendent of education when necessary during the odd year of a fiscal biennium based on the following criteria:

(1) The rental fees for the use of school facilities shall be calculated on the basis of current average construction costs for classrooms and support facilities or average cost estimates provided by the department of accounting and general services. The daily charge shall be determined by amortizing the cost over forty years and multiplying by a common factor determined by the department.

(2) The utility charges shall be assessed according to the type of facility and the number of hours the facility is used. The utility charge shall be calculated by the department based on the actual amount charged by the utility company of the appropriate island. The charge shall cover costs which would not have been incurred if the facility was not utilized.

(3) The custodial charges shall be based on the current average negotiated wages at the start of the fiscal biennium.

(c) Fees and charges required by this section shall be determined by type of user.

(1) Type I user:

(A) No rental fee for use of school facilities.

(B) The service charge for custodial services if required beyond the school day shall be for a minimum of two hours. The total service charge shall be the current wages multiplied by the number of hours the custodian(s) is on duty.

(C) No service charge for the use of utilities.

(D) Examples of Type I users: school related activities, school parent-teacher-student organizations, school community based councils, department of education in-service workshops and meetings, all A+ programs, county department of parks and recreation use of facilities per joint-use agreement, primary and general elections including training for election officials, and school directed after school, night, or weekend activities.

(2) Type II user:

(A) No rental fee for use of school facilities.

(B) The service charge for custodial services if required beyond the school day shall be for a minimum of two hours. The total service charge shall be the current wages multiplied by the number of hours the custodian(s) is on duty.

(C) A service charge for the cost of utilities shall be assessed.

(D) Examples of Type II users: federal, state, and county agencies, nonprofit community organizations, youth athletic teams, private preschool and after school programs endorsed by the department of education, public hearings and meetings, and other educational or recreational activities approved by the school where no fees are assessed or collected.

(3) Type III user:

(A) A rental fee shall be assessed.

(B) The service charge for custodial services when required by the school shall be for a minimum of two hours. The total custodial charge shall be the current wages multiplied by the number of hours the custodian(s) is on duty.

(C) A service charge for the cost of utilities shall be assessed.

(D) Examples of Type III users: organizations, groups, or individuals who do not belong to Type I or Type II category; churches, private schools, universities, business enterprises, special interest classes, and other individuals, organizations, or activities utilizing school facilities and charging a fee or tuition, or collecting a donation or offering. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §296-12) (Imp: HRS §§296-12, 298-23)

**§8-39-6 Collection, disposition, and use of fees and charges.**

(a) The school principal or designee shall be responsible for the collection of fees and charges from the users of school buildings, facilities, or grounds. The moneys collected shall be deposited into a special fund. Statutory special fund assessments shall first be deducted from rental fees collected. Seventy per cent of the rental fees collected shall then be credited to the school and thirty per cent shall be credited to the district. One hundred per cent of charges for custodial services and utilities shall be deposited to reimburse the custodial and the utilities account of the school.

(b) Each school and district may expend the net proceeds of rental fees collected. The expenditures shall not be limited to:

- (1) Replacement of custodial and janitorial supplies; and
- (2) Repairs, maintenance and replacement of equipment. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1148) (Imp: HRS §302A-1148)

**§8-39-7 Other requirements.**

(a) Applicants shall comply with state laws and county ordinances and state and county rules including, but not limited to:

- (1) Fire code;
- (2) Fieldhouse and gym rules;
- (3) Police protection rules; and

(4) Rules of the state department of health.

(b) Applicant agrees to assume cost of repairs for damages incurred to buildings, grounds, and equipment whether accidental or otherwise at the time of use.

(c) Applicants shall be required to execute a release form as provided by the department releasing the State of Hawaii from any responsibility or claim arising out of injuries or damages, or both, incurred during the use of buildings, facilities, or grounds to conduct applicant's activities.

(d) Carnivals and fairs, and non-department sponsored athletic events which involve large crowds or greater risk, or both, for personal injury to participants due to the type of activity shall be required to carry general liability coverage in the amount of \$1,000,000 per incident of personal injury with the State of Hawaii named as the additional insured. A fair organizer or promoter who charges participants for the use of parts of a facility or tables in a facility shall assure that each of the participants carries adequate liability insurance for an amount determined by the State of Hawaii.

(e) Police protection shall be provided as follows:

(1) Except as determined by the principal or the district superintendent, a minimum of one police officer shall be on duty for events using the gymnasium, auditorium, cafetorium or for swimming meets, carnivals, and fairs;

(2) Applicant shall arrange to hire and to pay for police protection and shall submit the names of officers hired to the school prior to the event.

(f) Electrical service lines and meters for carnivals, fairs, and other large activities shall be dealt with as follows:

(1) Applicants shall provide and pay for the installation of necessary electrical service lines and meters;

(2) Connection of electrical lines to a school's system shall be prohibited.

(g) Swimming pool use requirement:

(1) A certified lifeguard shall be on duty at all times that the pool is in use;

(2) The organization using the pool shall provide one responsible adult for every twenty-five swimmers:

(h) Alterations, modifications, and renovations: all alterations to school facilities shall be approved by the department of accounting and general services and the department of education. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

**§8-39-8 Use of auditorium by groups employing union workers.** When school auditoriums or similar facilities are made available to public or community groups and the groups employ union stage workers or machine operators, or both, one or more school staff selected and assigned by the principal or the principal's designated assistant shall be present at each performance to run school-owned equipment and shall be paid going rates for the type of service performed. Payments shall be made by those renting the auditorium. In addition, skilled stage workers such as operators of projectors, stage lights, sound equipment, and spotlights shall be employed by the sponsor as needed. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

**§8-39-9 Alcoholic beverages and tobacco substances.** Alcoholic beverages and tobacco substances shall not be sold, consumed or used on school grounds or in school buildings or facilities. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

**§8-39-10 Use of buildings as sleeping quarters.** In the event of a public emergency, the superintendent or a designated representative may authorize school facilities to be used as sleeping quarters. Under any other circumstances, the district superintendent may entertain and approve applications for use of school facilities as sleeping quarters by Types I, II, and III users. [Eff. 11/17/84; comp JUN 22, 1996] (Auth: HRS §296-12) (Imp: HRS §§27-9, 296-12)

**§8-39-11 Use of buildings by organizations for political purposes.** When school facilities are used for campaign purposes, organizations

shall pay the appropriate fees as a Type III user. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

**§8-39-12 Subleasing.** Users of school buildings, facilities, and grounds shall not sublease the property to other individuals, groups, or organizations, provided that this restriction shall not apply to craft fair promoters or organizations who rent school facilities for a fair and, in turn, charge participating vendors or sellers a fee for the use of sections or tables as long as the fair promoters or organizations maintain adequate liability insurance coverage which includes the liabilities of each of the individuals or organizations licensed by the fair promoters or organizations. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

**§8-39-13 Loss of rental privileges.** Applicants who have outstanding accounts with the school or department, or both, have fraudulently subscribed to erroneous information on the use of facilities application form, or have previously misused the department's property, grounds or facilities may be denied the use of school facilities. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)

**§8-39-14 Appeal process.** Applicants who have been denied the use of school buildings, facilities, and grounds may appeal the decision with the district superintendent. The district superintendent's decision shall be final. [Eff. 11/17/84; am and comp JUN 22, 1996] (Auth: HRS §302A-1112) (Imp: HRS §302A-1112)