

HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 515

ESTABLISHMENT AND OVERSIGHT OF CHARTER SCHOOL AUTHORIZERS

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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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-11)

§8-515-18 (Reserved).

SUBCHAPTER 5

REVOCAION 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 FEB 18, 2017] (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 FEB 18, 2017] (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 FEB 18, 2017] (Auth: HRS §302A-1112) (Imp: HRS §§91-2, 302D-11)