

**Administrative Regulation to Accompany
Hawaii's Charter School Law**

Study Commissioned by the Charter School Administrative Office

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EXECUTIVE SUMMARY

These proposed rules have been prepared to comport with the language and intent of Hawaii's new charter school law. The scope of these rules is limited to several important aspects of charter school operations: the application and approval process for new charter schools; the process for amending the detailed implementation plans of existing charter schools; the duties and responsibilities of the charter school administrative office; the evaluation system for ensuring the accountability of charter schools; the process for placing a charter school on probation; and the process for revoking the charter of a charter school. The new charter school law, Act 298, has significantly affected each of these statutory areas.

These rules: (1) set out deadlines for the completion of the charter application and issuance process; (2) establish criteria for the evaluation and prioritization of charter applications; (3) define what constitutes a significant amendment to a detailed implementation plan; (4) provide for the establishment and responsibilities of a dispute resolution and mediation panel; (5) clarify the responsibilities of the charter school administrative office to withhold charter school funding under certain circumstances; (6) detail evaluative criteria and processes for the ongoing oversight of charter schools; (7) establish procedures for placing a charter school on probation and for revocation of a charter; (8) establish procedures for

charter schools to appeal decisions of the charter school review panel to the board of education; (9) set forth guidelines for the orderly closure of a charter school; and (10) establish procedures and procedural safeguards for the board of education to institute an interim restructuring plan at a charter school.

DEFINITIONS

§1 Definitions. Whenever used in this chapter, unless the context otherwise requires:

"Accredited School" means a charter school that has undergone the Western Association of Schools and Colleges' accreditation process, or an equivalent accreditation process as determined by the charter school review panel, and received accreditation for a term of three years or longer.

"Application" means an application for a charter to operate a charter school.

"Board" means the board of education.

"Charter" refers to the official document evidencing approval of the board of education and authorizing a local charter school board to operate a public charter school.

"Charter school" refers to a public school holding a charter to operate as a charter school as defined at H.R.S. §302B-1.

"Conversion charter school" means:

(1) Any existing department school that has converted to a charter school and is managed and operated in accordance with H.R.S. 302B-6;

(2) Any existing department school that has converted to a charter school and is managed and operated by a nonprofit organization in accordance with H.R.S. 302B-6; or

(3) A newly created school, using existing public school facilities and composed of programs or sections of a previously existing public school that may include all or part of a separate Hawaiian language immersion program.

"Department" means the department of education.

"Detailed implementation plan" means the document that details the charter school's purpose, focus, operations, organization, finances, and accountability, and becomes the basis for a performance contract between the board and the charter school. Specifically, the detailed implementation plan shall include a description of employee rights and management issues; a plan for identifying, recruiting and retaining highly-qualified instructional faculty; a policy for student recruitment that is not exclusive, elitist, or segregationist; a description of the school's educational mission and pedagogical approach, and the intended student outcomes; a plan for assessment of student outcomes; a plan for continued professional development of instructional, support and administrative staff; a description of the governance structure; a financial plan and policies to ensure sound financial management; and a facilities plan.

"Emergency health and safety restructuring plan" or **"emergency restructuring plan"** refers to an interim restructuring plan, initiated by the board of education in response to an immediate danger to student or employee health or safety, whereby the principal, the chairperson of

the local charter school board, or the local charter school board in its entirety are replaced.

"Executive director" means the executive director of the charter school administrative office.

"Interim local board" means the interim local school board composed of a group of teachers, administrators, community members, or the board of directors of a non-profit organization that intends to operate a charter school and has (1) submitted a letter of intent to apply for a charter or (2) has been appointed or elected pursuant to an interim restructuring plan.

"Local school board" means the autonomous governing body of a charter school constituted in accordance with the provisions of H.R.S. §302B-6(e) or H.R.S. §302B-7(a). The local school board receives the charter; is responsible for the financial and academic viability of the charter school and implementation of the charter; has the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws; and has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of their employees.

"Mediation panel" means the dispute resolution and mediation panel to be established by the charter school administrative office for the purpose of mediating disputes among charters,

between the office and the charters, and between the department of education and the charters.

"Nonprofit organization" means a private, nonprofit, tax-exempt entity that:

(1) Is recognized as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

(2) Is domiciled in this state.

"Office" means the charter school administrative office.

"Panel" means the charter school review panel established pursuant to section H.R.S. 302B-3 with the powers and duties to advise and make recommendations to the board regarding issuance and revocation of charters, detailed implementation plan revisions, and charter school evaluations.

"Performance Contact" means the document to be signed by authorized representatives of both the board of education and the local charter school board within 30 days after issuance of a charter. The performance contract shall contain mutual assurances required by law and consist of the completed application and the detailed implementation plan as forwarded to the board by the panel.

"Renewed Application" means a completed application to receive a charter, in response to which the charter review panel recommended issuance of a charter, subsequently resubmitted by the interim local school board because no charter was issued.

"Task group" refers to the investigative body appointed by the board of education to conduct health and safety evaluations of charter schools, the members of which are drawn from the members of the board, the panel, and/or the staff of the office.

CHARTER APPLICATION PROCESS

§1 Applicants for charters¹

(a) The panel shall consider all applications for the issuance of charters to establish start up charter schools submitted by

- (1) a group of community members,
- (2) a group of teachers,
- (3) a group of teachers and administrators,
- (4) or an entity recognized as a nonprofit organization.

(b) The panel shall consider all applications for the issuance of charters to establish conversion charter schools submitted by

- (1) a group of teachers,
- (2) a group of teachers and administrators,
- (3) or an entity recognized as a nonprofit organization.

(c) The panel shall determine the form and content of the application, and shall also determine the supporting documents, if any, required to constitute a completed application.

§2 Review of applications for completeness²

¹ Statutory Authority: H.R.S. §302B-5(b); H.R.S. §302B-6(b)

² Statutory Authority: H.R.S. §302B-5(c) & (d); H.R.S. §302B-6(c) & (d)

(a) The panel shall fully review all charter applications and detailed implementation plans in a fair and nondiscriminatory manner.

(b) An application for a start-up charter shall be found complete if the application meets all criteria set forth by the panel, including but not limited to, satisfying the criteria for the detailed implementation plan set forth in H.R.S. §302B-5(d).

(c) An application for a conversion charter shall be found complete if the application meets all criteria set forth by the panel, including but not limited to, satisfying the criteria for the detailed implementation plan set forth in (1) H.R.S. §302B-6(d).

§3 Evaluation of charter applications³

(a) The panel shall evaluate each completed application and make a recommendation to the board as to whether a charter should be issued. In determining whether to recommend the issuance of a charter, the panel shall consider, but not be limited to, the following criteria in evaluating the charter application.

³ Statutory Authority: H.R.S. §302B-3(i)(1); H.R.S. §302B-5(c)(6); H.R.S. §302B-6(c)(6)

Regulations relating to evaluation of charter applications vary widely from state to state. This is partly due to the differing levels of oversight delegated to individual charter authorizers. In Hawaii, where the state Board of Education delegates authority directly to the panel, it is preferable to include specific evaluation criteria in the regulations. This will help to ensure a fair and uniform evaluation process.

- (1) the administrative viability of the proposed charter school as represented in the detailed implementation plan;
- (2) the financial viability of the proposed charter school as represented in the detailed implementation plan;
- (3) in the case of an application submitted by a nonprofit organization, the educational expertise of the organization and the organization's history, if any, of providing successful educational services;
- (4) the strength of the academic program proposed;
- (5) the reasonableness of the staffing plan and staff recruitment plan as represented in the detailed implementation plan;
- (6) evidence of community support for the proposed charter;
- (7) the degree to which the proposed educational model can be replicated, and/or the degree to which research data garnered from the school can be disseminated, in a way to benefit Hawaii's student population;
- (8) whether the needs of underserved and disadvantaged groups within Hawaii's student population would be served by the granting of a charter;
- (9) whether a charter school with a similar educational mission or target population already exists in the geographic area from which the proposed charter school would draw the majority of its student body;

(10) whether a charter school serving the same grade levels as the proposed charter already exists in the geographic area from which the proposed charter school would draw the majority of its student body.

(b) The recommendation of the panel shall be transmitted to the board, the office and the interim school board. If the board takes no action on the recommendations, then 60 days after the board receives the recommendations, the recommendations shall become effective.

(c) If the panel, in any given year, recommends approval of applications for start-up or conversion charter schools that exceed in number the limit on start-up or conversion charters as established by §302B-4, then the panel shall also prioritize those applications. If the board takes no further action, charters shall be issued, up to the allowable number of charters for that year, in the order of priority established by the panel. For each year in which the number of recommended applications, including both original applications and renewed applications, exceeds the number of available charters, the panel shall reprioritize the applicant pool.⁴

⁴ The prioritization process set forth in this section recognizes a reality of Hawaii's charter law; there are likely to be less available charters than there are applicants for those charters. Under these circumstances, choices will be made, whether the criteria used to decide are explicit or not. It is in the best interest of all parties to make the criteria explicit and to have an open discussion of how to make these important decisions.

One option would be simply to award charters on a first come, first served basis. This is the approach used in California, where hundreds of charters may be issued in a single year. On a purely practical level, this policy would have the consequence of encouraging applicants to submit less fully developed proposals and force the office and

(d) In prioritizing applications, the panel shall consider, in addition to the criteria for approving applications set forth in part (a) of this section, the length of time the applicant has had an approved application pending.

(e) Under no circumstances shall the panel give preference to one approved applicant over another except through the prioritization process.

(f) The panel shall transmit its prioritization list to the board together with the panel's recommendations related to issuance of charters. At its next meeting for which notice in accordance with H.R.S. §92 can be provided, the board shall vote to either (1) affirm the prioritization decision of the panel; or (2) reprioritize the applications according to the criteria set forth in paragraph (a) of this section.

(g) The board shall issue those charters available in a given year to the interim local boards whose applications were approved, in the order of priority approved by the board.

§4 Action by the board in response to a recommendation by the panel⁵

(a) The board may, within 60 calendar days of receipt of the panel's recommendation, formally consider and vote on the recommendations of the panel related to issuance of charters. The vote shall be held at a public meeting of the

the panel to do more remediation of the applications. From a public policy perspective, if only a limited number of charters are to be granted, then perhaps more consideration should be given to the content of the charter applications, with the public good in mind.

⁵ Statutory Authority: H.R.S. §302B-3(i)(1)

board, conducted in accordance with H.R.S. §92, notice of which shall also be published to the websites of the office, the board, and the department, not less than 10 working days before the meeting.

(b) The interim local board may submit to the board a written response to the recommendations of the panel, and shall be provided an opportunity to present oral testimony at the meeting. The board shall accept public testimony.

(c) The interim local board may appeal a recommendation by the panel to deny the application. If an interim local board wishes to appeal the recommendation of the panel, the interim local board shall, within 20 calendar days of receipt of the panel's recommendation, file notice of appeal with the board, including a written response to the recommendations of the panel. The board shall schedule a vote on the matter at its next general meeting for which the notice requirements of H.R.S. §92 can be satisfied. The interim local board shall be provided an opportunity to present oral testimony at the meeting.

(d) If the board convenes a meeting to consider the recommendations of the panel, or in response to an appeal of the recommendations of the panel, a charter may be issued based on a vote of the majority of those members voting.

(e) If the board takes no action, the recommendations of the panel shall become effective after 60 days unless notice of appeal is filed within 20 days.

(f) When a charter is issued, with or without action by the board, then:

- (1) the staff of the board shall draw up the charter document;
- (2) the staff of the board, in consultation with the office and the interim local board, shall draw up the performance contract;
- (3) authorized representatives of the board and the interim local board shall, within 30 days, sign the charter document and the performance contract.

§5 Timeline for charter application process⁶

(a) Within 60 days of the enactment of these rules the panel shall establish a timeline for the charter application process providing that:

⁶ Statutory Authority: H.R.S. §302B-5(c); H.R.S. §302B-6(c)

Rather than adopting a specific timetable for the application process, these regulations instead leave the process open and subject to evolution. The application schedule must balance the interests of the charter school applicant (1) to have their applications fully and fairly considered, and (2) to learn as quickly as possible whether their application has been approved and whether a charter will be issued. The schedule eventually adopted may favor one of these outcomes over another.

However, the parameters within which the process can be adjusted are limited. The process as set forth at H.R.S. §302B-5(c) for start-up charters, and H.R.S. §302B-6(c) for conversion charters, provides for six different stages at which a charter applicant may submit, defend or amend application material. At each of these stages the panel or the board must have time to consider the submission and, in the case of consideration by the board, time for a duly noticed public meeting. To shorten any of these stages might also disadvantage a charter applicant that is attempting to present its case to the panel or board.

- (1) the timeline adopted shall provide for the issuance of charters for start-up charter schools no later than January 15;
- (2) the timeline adopted shall provide for the issuance of charters for conversion charter schools no later than March 15;
- (3) the timeline shall be published to the websites of the office, the board, and the department, and any changes to the timeline shall be published to the websites of the office, the board, and the department by September 1 of the calendar year before the change shall go into effect;
- (4) the panel may grant such exceptions as are deemed appropriate, including an accelerated approval process, for those applicants prepared to submit applications at the time these regulations go into effect.

§6 Renewal of application; expiration of approved application⁷

(a) If, in a given year, issuance of a charter was recommended by the panel, but no charter was issued due to an insufficient number of charters being available, the interim local board may renew its application without

⁷ Statutory Authority: H.R.S. §302B-5(c); H.R.S. §302B-6(c)

This section is designed to allow a satisfactory application to be considered for issuance of a charter for three consecutive years without unnecessary procedural hurdles. The intent is to simplify the process for applicants and to reduce the workload for the panel.

undergoing the formal review process set forth in H.R.S. §302B-5(c) or H.R.S. §302B-6(c), provided that the applicant shall comply with all requests of the panel or the board for supplemental information to update the application.

(b) An application for which no charter was issued may be renewed for two consecutive years subsequent to the year issuance was initially recommended. An application that has been renewed twice without a charter being issued shall expire. If an application expires, the applicant may submit a new application pursuant to H.R.S. §302B-5(b) or H.R.S. §302B-6(b).

(c) If an interim local school board wishes to renew its application for a charter, then the interim local board shall notify the panel in writing within 60 days of learning that no charter shall be issued pursuant to their application.

§7 Duration of unexecuted charter⁸

(a) When a charter is issued to an interim local school board, the charter school shall begin operation during the subsequent academic year, or at latest, at the beginning of

⁸ Statutory Authority: H.R.S. §302B-5(c)(11); H.R.S. §302B-6(c)(11)

There are several reasons a charter school might not begin operation in the academic year subsequent to issuance of a charter: natural disaster; unexpected complications in securing facilities; or a decision to extend the planning period prior to opening. However, to ensure that the maximum use is made of the limited number of charters available, these rules limit the delay in opening a school to one year. If the school doesn't begin operation at the beginning of its second year holding a charter, the charter expires and can be issued to an applicant prepared to begin operations.

the second academic year subsequent to the issuance of the charter. If at the beginning of the second academic year subsequent to the issuance of the charter the school has not begun operation, the charter shall expire.

§8 Voting process for school constituencies to approve a conversion charter school application and detailed implementation plan⁹

(a) The office, in consultation with the conversion charter schools, shall within 120 days of the enactment of these regulations devise and publish to the websites of the office, the board, and the department guidelines for the voting process to approve a conversion charter school application and detailed implementation plan. The guidelines shall include: definitions of the different school constituencies identified in H.R.S. §302B-6(c)(3); procedures for the certification and documentation of voting results; and procedures to ensure that the voting is conducted in a fair and non-coercive manner.

(b) If the board of directors of a nonprofit organization chooses to sever its relationship with a conversion charter school, the teachers, administrators, and parents of the

⁹ Statutory Authority: H.R.S. §302B-6(c)(3); H.R.S. §302B-6(e)(5)

The charter law, at H.R.S. §302B-6(c)(3), provides for a voting process for approving the conversion of a public school into a charter. However, the language of the statute as written is subject to varying interpretations. The key question is whether the requirement that 50% of different stakeholder groups support conversion is meant intended to require 50% support from each group separately, or 50% support from the stakeholders as a group. The regulations, as written here, would allow the office, in consultation with the charter community, to clarify the ambiguity currently present in the statute.

students at that school may vote to continue the school as a conversion charter. A vote conducted to decide whether to adopt a new detailed implementation plan and form a new local school board in such a circumstance shall be conducted according to the guidelines to be adopted pursuant to this section.

§9 Actions affecting the number of charters available¹⁰

(a) If the panel recommends issuance of a charter for a school previously operated as a conversion charter school by the board of directors of a nonprofit organization, the new school shall be considered a conversion charter school. The charter issued shall count as one of the 25 conversion charters allowable under H.R.S. §302B-4, and will not count against the number of start-up charters that may be granted in that year.¹¹

(b) If the charter of a charter school is revoked, the charter may be reissued to another approved interim local board. Revocation of a charter shall not decrease the total number of charters that may operate in accordance with the provisions of H.R.S. §302B-4.

¹⁰ Statutory Authority: H.R.S. §302B-4

¹¹ The law at H.R.S. §302B-6(e)(5) provides that if a nonprofit organization chooses to sever its relationship with a conversion school that its board of directors had previously managed, the school may continue as a conversion charter. This regulation clarifies that such a school remains a conversion charter for purposes of the charter cap.

(c) If a charter is issued and no charter school begins operation in the subsequent two academic years, the charter expires as provided in §7 of this chapter. An expired charter does not count against the number of charters that may operate under the provisions of H.R.S. §302B-4.¹²

¹² If a charter holder fails to begin operations within the period set in these rules and the charter expires, that charter shall not count against the cap on charters.

CHANGES TO A SCHOOL'S DETAILED IMPLEMENTATION PLAN

§1 Detailed implementation plan amendment process¹³

(a) A local school board planning significant changes to the detailed implementation plan of a charter school it operates shall submit a written explanation of the proposed changes to the panel. The proposed changes shall not take effect less than four months after the proposal is submitted, provided that the panel may grant exceptions in exceptional circumstances. The panel shall review the proposed changes in light of (1) the best interests of the students and school community and (2) the organizational capacity of the charter school and local school board.

(b) Within 60 days of receipt of the proposed changes, by majority vote the panel shall either approve or reject the proposed changes and issue written findings in support of its decision.

¹³ Statutory Authority: H.R.S. §302B-3(i)(2)

This regulatory language clarifies the distinction between significant and non-significant changes to a school's detailed implementation plan. All changes must be submitted, so that the panel has the most current version of each school's detailed implementation plan, however, only major changes to the detailed implementations plan must be officially approved.

Under this framework, similar to the regulatory structure used in Massachusetts, most changes to the educational program would require no approval. However, a change in the school's mission an overall pedagogical focus would require approval. For example, a school shifting from a performing arts focus to a Japanese language immersion school would need approval. A change to the school schedule would require notice only. However, adopting a new math curriculum would require neither notice nor approval.

(c) If the panel rejects a proposed change to a school's detailed implementation plan, the school may appeal the decision of the panel to the board. In order to appeal a decision by the panel rejecting a change to the school's detailed implementation plan, the local school board must file a written notice of appeal with the board within 15 days of receipt of notice of the panel's decision. Upon receipt of notice of appeal, the board shall review the proposed change to the detailed implementation plan at the next board meeting for which notice can be given in accordance with H.R.S. §92. The board shall accept oral and written testimony from a representative of the local school board. The board may, by the vote of the majority of the members voting, (1) approve the proposed change to the school's detailed implementation plan, or (2) reject the proposed changes to the detailed implementation plan. If the board takes no action, the recommendation of the panel shall become effective 60 days after receipt by the board of the panel's recommendation.

§2 Significant changes to the detailed implementation plan¹⁴

(a) All significant changes to a charter school's detailed implementation plan are subject to approval by the panel. Significant changes are defined as those that fundamentally affect a school's mission, organizational structure, or educational program.

¹⁴ Statutory Authority: H.R.S. §302B-3(i)(2)

(b) Significant changes are limited to those changes affecting:

- (1) educational philosophy or mission;
- (2) governance or leadership structure;
- (3) pedagogical approach or whole-school designs that are inconsistent with those specified in the school's current approved detailed implementation plan;
- (4) location of, or nature of, facilities; or
- (5) enrollment in grade levels not specified in the school's approved detailed implementation plan.

(c) Minor changes to a school's detailed implementation plan do not require panel or board approval. A local school board wishing to make minor changes to a school's detailed implementation plan shall submit a written notice to the panel and the office 60 days before the proposed changes would take effect.

(d) Minor changes to a detailed implementation plan include, but are not limited to:

- (1) bylaws;
- (2) schedule (length of school year, school week, or school day);
- (3) enrollment process;
- (4) code of conduct;
- (5) corrections and clarifications involving the mission statement or other sections of the charter;
- (6) school name; or
- (7) membership of the local school board.

REPORTING REQUIREMENTS FOR CHARTER SCHOOLS

§1 Reporting schedule and format¹⁵

(a) The office shall establish a reporting schedule for all data to be collected from the charter schools. The office shall give the charter schools reasonable notice of any changes or additions to this reporting schedule. The office shall determine what data schools are required to report and the format for submitting data to the office.

(b) Organizational viability data that charter schools are responsible for reporting to the office shall include but are not limited to:

- (1) annual self-evaluations as provided in H.R.S. §302B-14(a);
- (2) all data and documents required by state and federal law;
- (3) documentation of student achievement and well-being;
- (4) evidence of financial health and sound financial management; and
- (5) other data required by the office, the board, or the panel in order to effectively oversee individual

¹⁵ Statutory Authority: H.R.S. §302B-8(b)(11); H.R.S. §302B-14(a)

This section is designed to provide the office with authority and flexibility to establish reporting requirements for charter schools and to adapt to changing reporting needs.

charter schools and promote the health and growth of the charter school system.

§2 Failure to report required data¹⁶

(a) If a charter school fails to meet the established deadlines for reporting data, provided that they are given notice and a reasonable time to provide the data, the office may recommend that the panel conduct a special evaluation of the school.

(b) Failure to provide data related to student performance creates, for the purposes of a special or multiyear evaluation, a rebuttable presumption of deficiencies related to student performance; failure to provide financial data creates, for the purposes of a special or multiyear evaluation, a rebuttable presumption of deficiencies related to financial viability.

¹⁶ Statutory Authority: H.R.S. §302B-8(b)(11)

This section places the onus on individual schools to comply with reporting requirements. First, if required data is not reported, a special investigation may be recommended. Second, if a charter school fails to provide data, then in the course of any evaluation of the school, the school must prove that the missing data itself is not evidence of deficiencies.

EVALUATIONS OF EXISTING CHARTER SCHOOLS

§1 Organizational viability¹⁷

(a) The organizational viability of a school includes the academic, administrative and financial viability of the school. The weight to be given to different factors in evaluating a charter school shall be determined by the panel based on the best interests of the students at the school and the terms of the school's performance contract and detailed implementation plan.

§2 Factors to be considered in determining academic viability¹⁸

(a) The following factors are among those that may be considered evidence of academic viability:

- (1) the students are performing at or above the average level of student performance in comparable

¹⁷ Statutory Authority: H.R.S. §302B-1

The purpose of this section is to clearly divide the operations of charter schools into three categories of viability: academic, administrative, and financial. By detailing these categories and providing benchmarks for each category, the intent is to give the charter school community and the panel clear guidance for assessing charter school performance.

¹⁸ Statutory Authority: H.R.S. §302B-3(i)(4)

This section defines academic viability to allow the charter schools to use alternate assessment methods and address the development of the whole child instead of being judged solely on standardized test scores. In addition, the rules as written consider other factors including: the terms of the school's performance contract; the well-being of the school's target population; and support from the parents of the school's students.

- department schools as measured by statewide standardized assessments;
- (2) the target student populations identified in the school's performance contract and detailed implementation contract are performing at or above the average level of student performance for these populations in comparable department schools as measured by statewide standardized assessments;
 - (3) there is evidence provided that the school's educational mission is promoting student achievement and well-being in the manner contemplated in the school's detailed implementation plan;
 - (4) a majority of the parents, guardians, and primary caregivers of the students at the school believe that the school's educational plan is leading to tangible improvements in student academic achievement and well-being;
 - (5) a sufficient number of qualified teaching and support staff are employed by the school;
 - (6) the school's educational program is sound as determined by accepted best educational practices;
 - (7) the school uses innovative pedagogical approaches or practices appropriate for, and likely to benefit the student population of the school;
 - (8) the school supports or provides sufficient opportunities for professional development for the teaching and support staff employed at the school;

- (9) there is evidence provided that the school collects, manages and analyzes student performance data to maximize student achievement;
- (10) the administration and staff of the school are actively engaged in educational research that may lead to the dissemination of pedagogical models and practices to benefit Hawaii's student population.

§3 Factors to be considered in determining administrative viability¹⁹

(a) The following factors are among those that may be considered evidence of administrative viability:

- (1) the school is operating in accordance with the provisions of its approved detailed implementation plan and performance contract;
- (2) the school is governed by a duly constituted local school board that adequately performs its duties of governance as defined by law and the provisions of the school's detailed implementation plan and performance contract;
- (3) the local school board convenes for a sufficient number of meetings to perform its governance functions;

¹⁹ Statutory Authority: H.R.S. §302B-3(i)(4)

Administrative viability encompasses the overall management of the charter school in a successful and efficient manner, including cooperation with the panel, board and office.

- (4) notice of local school board meetings and the results of such meetings are made public in accordance with H.R.S. §302B-7(e);
- (5) a sufficient number of qualified administrative staff are employed at the school;
- (6) the school maintains accurate and comprehensive records regarding students and staff;
- (7) the school complies with all state and federal reporting requirements, and all reporting requirements of the board, the panel and the office;
- (8) the school and local school board comply with all applicable federal, state, and county laws and regulation, especially those concerning health and safety;
- (9) the school and local school board cooperate with all reasonable requests of the board, the panel, and the office.

§4 Factors in determining financial viability²⁰

(a) The following factors are among those that may be considered evidence of financial viability:

- (1) the school adopts and maintains an annual school-wide budget;

²⁰ Statutory Authority: H.R.S. §302B-3(i)(4)

This section is intended to serve not only to provide benchmarks for the assessment of charter schools' financial practices, but also to provide guidance to charter operators for sound financial management.

- (2) the school maintains accurate and comprehensive financial records;
- (3) the school and local school board conduct their financial operations in accordance with generally accepted accounting principles;
- (4) the school adopts and maintains sound internal accounting control procedure over its financial practices;
- (5) the school meets all foreseeable financial obligations in a timely fashion;
- (6) the school makes sufficient, regular financial reports to the local school board that include (A) year-to-date budget data; (B) budget projections through the end of the fiscal year; and (C) revisions to the school-wide budget as necessary;
- (7) a school staff's includes persons with business expertise sufficient to ensure the sound financial management of the school;
- (8) there is evidence provided of long range financial planning;
- (9) there is evidence provided of planning and provisions for financial contingencies.

RESPONSIBILITIES AND DUTIES OF THE OFFICE

§1 Budget²¹

(a) The office shall prepare an annual budget for the charter schools including the funds necessary to cover the estimated costs of: vacation and sick leave; substitute teachers; adjustments to enrollment; and arbitration in the grievance process.

§2 Establishment of dispute resolution and mediation panel

(a) Within 120 days of the enactment of these regulations, the office, in consultation with the charter schools, shall establish a mediation panel. Within 30 days of establishment of the mediation panel, the office shall publish guidelines for the operation and function of the mediation panel to the websites of the office, the board, and the department guidelines for the operation and function of the panel.

(b) If a dispute arises among charter schools, between the office and a charter, or between the department and a charter, the executive director may refer the dispute to the mediation panel.

§3 Withholding funding for inconsistent enrollment²²

(a) The office shall withhold funds for enrollments that are inconsistent with a charter school's approved detailed

²¹ Statutory Authority: H.R.S. §302B-8(b)(1)

²² Statutory Authority: H.R.S. §302B-8(h)

implementation plan, provided that if the charter school disputes the inconsistent enrollment, the matter shall be referred to the mediation panel.

(b) Student enrollment is inconsistent with the detailed implementation plan if students are enrolled at grade levels not set forth in the school's detailed implementation plan as approved by the panel.

(c) If funds for the inconsistent enrollment have been disbursed, the office may withhold the funds from any subsequent disbursement to the school, provided that the best interests of the students guide all decisions.

§4 Withholding for overpayments²³

(a) The office shall withhold funds to repay overpayments received by charter schools, provided that if the charter school disputes the withholding, the matter shall be referred to the mediation panel.

(b) The office shall withhold funds for overpayment in the following circumstances: (1) if a charter school fails to pay the 2% allotment due to the office; (2) if a charter school fails to pay for services purchased by the school from the office; (3) if a charter school fails to pay for services purchased from the department; or (4) if the disbursement based on projected enrollment was greater than

²³Statutory Authority: H.R.S. §302B-8(g)

the funds due to the school based on actual student enrollment.

(c) The office may withhold the funds from any subsequent disbursement to the school, provided that the best interests of the students guide all decisions.

(d) If the office disburses funds based on projected student enrollment and the charter school either (1) does not begin operation for that academic year, or (2) begins operation with actual student enrollment of less than half the projected enrollment, then the office may request immediate repayment of the disbursed funds.

MULTIYEAR EVALUATIONS

§1 Intent²⁴

(a) The intent of the multiyear evaluation process is to ensure continuing formative evaluation and improvement of the academic, administrative, and financial operation of Hawaii's charter schools.

§2 Notice of multiyear evaluation²⁵

(a) Every new charter school shall be evaluated during the fifth year of its operation. Beginning from the time of the enactment of these regulations, multiyear evaluations of existing charter schools shall be conducted, at a minimum, every five years.

(b) On or before April 1 of the calendar year in which a multiyear evaluation shall be initiated, the panel shall notify the charter school and local school board of an upcoming evaluation.

²⁴ Statutory Authority: H.R.S. §302B-14(b)

Unlike other states, Hawaii grants charters for an unlimited period. Therefore, the multiyear evaluation process may be considered to play the role that the charter renewal process plays in other states. These regulations are written to allow the panel's multiyear evaluation process to be tailored to the unique nature of the individual charter schools themselves. By including multiple measures of success, these rules intend to allow a multifaceted assessment of the charter schools based primarily on the terms of their own detailed implementation plans and the data drawn from their annual and multiyear self-evaluations.

²⁵ Statutory Authority: H.R.S. §302B-14(b)

(c) In the calendar year in which a multiyear evaluation shall be initiated, the charter school evaluatee shall prepare a multiyear self-evaluation report to be submitted to the office and the panel instead of an annual self-evaluation report. The multiyear self-evaluation shall include a compilation of the data from the annual self-evaluations submitted by the charter school since the school began operation, or since the charter school's last multiyear evaluation.

(d) The panel, in consultation with the office, shall determine the required format and content of the multiyear self-evaluation. The charter school may also include proposed benchmarks for evaluating the school's success, based on the terms of the school's detailed implementation plan.

(e) Within 120 days of the enactment of these rules, the panel shall publish to the websites of the office and the department guidelines for the creation and submission of multiyear self-evaluations. The panel shall publish, to the websites of the office and the department, any changes to these guidelines on or before January 31 of the calendar year the changes would become effective.

§3 Criteria and procedures for multiyear evaluation²⁶

²⁶ H.R.S. §302B-14(b)

(a) Criteria for conducting multiyear evaluations shall be based on the schools' detailed implementation plans and performance contracts.

(b) The multiyear evaluation process may include, but not be limited to, the following components:

- (1) review of the school's annual self assessment reports since the granting of the charter, or since the last multiyear evaluation of the school;
- (2) review of the school's multiyear self-evaluation report;
- (3) review of student performance data since the granting of the charter, or since the last multiyear evaluation of the school;
- (4) review of retention rates, transfer rates, and if applicable, graduation rates of students;
- (5) an analysis of staffing level in relation to programmatic staffing needs;
- (6) a review of school financial records, financial accounting procedures, budgeting procedures, and long range financial planning;
- (7) one or more site visits;
- (8) a review of data related to parent, student and staff satisfaction with the charter school's operation;
- (9) one or more public meetings to solicit testimony from the community;
- (10) one or more meetings with the local school board.

§4 Probation resulting from multiyear evaluation²⁷

(a) Within 30 day of the conclusion of a multiyear evaluation, the panel shall provide copies of its findings to the board, to the office, and to the charter school evaluatee. The evaluatee may provide the panel, the board, and the office with a written response to panel's findings.

Within 90 day of the completion of an evaluation, the panel shall publish the findings of the evaluation, including any response by the evaluatee, to the websites of the department, the board, and the office.

(b) If the panel finds that the school is deficient in its academic, administrative or financial operation, the panel may, by majority vote, recommend a fixed term of probation. The panel shall transmit its written recommendation to the board. The board shall notify the school within ten days of receiving a recommendation of probation.

(c) If the panel recommends that a school be placed on probation, the school may appeal the findings of the panel to the board. If, within 30 days of receiving notice of a recommendation of probation, the school files notice of appeal with the board, the probation shall not take effect without board action. After receiving notice of appeal, the board shall consider the appeal at its next scheduled meeting, provided that the board has time before its next meeting to give public notice as required by H.R.S. §92. Representatives of the local school board shall be given the

²⁷ Statutory Authority: H.R.S. §302B-14(d)

opportunity to present oral and written testimony at the board meeting at which the appeal shall be considered. The board shall accept written public testimony related to the panel's recommendation of probation. By the vote of a majority of the members voting, the board shall vote to either (1) place the charter school on probation for a fixed term, or (2) reject the panel's recommendation and allow the school to continue normal operation.

SPECIAL EVALUATIONS

§1 Evaluations for cause²⁸

(a) If the panel has reason to believe that significant academic, administrative, or financial deficiencies exist at a charter school, the panel may initiate a special evaluation of the school in accordance with H.R.S. §302B-14(c). If the panel determines that a special evaluation is appropriate, the panel shall immediately give notice to the charter school of the commencement of the evaluation and the reason for the evaluation. No site visit of a charter school shall be conducted pursuant to a special evaluation without five days prior notice. The evaluation may be confined to the specific area of suspected deficiency, or may be a comprehensive evaluation of the school.

(b) The special evaluation shall be conducted by the panel over a period of three months to one year and must result in a finding of deficiency or viability.

§2 Evidence of deficiencies²⁹

(a) The occurrence of the following events may be considered evidence of operational deficiencies and may trigger a special evaluation by the panel.

²⁸ Statutory Authority: H.R.S. §302B-14(c)

²⁹ Statutory Authority: H.R.S. §302B-14(d)

The section clarifies that special evaluations should be limited to situations where specific evidence of deficiencies exists.

- (1) Evidence of academic deficiencies includes:
 - (A) initiation of the restructuring of the school in accordance with the provisions of the No Child Left Behind Act;
 - (B) a non-frivolous complaint to the board or panel by a parent, staff member or community member alleging academic deficiencies;
 - (C) changes to the school's academic structure or operation outside the scope of the current, approved detailed implementation plan;
 - (D) failure to report required student academic data to the office, panel or board;
 - (E) failure to maintain student academic records;
 - (F) a request by the local school board based on academic concerns.

- (2) Evidence of administrative deficiencies includes:
 - (A) failure to maintain staffing levels sufficient to perform the school's academic, administrative or financial functions;
 - (B) a non-frivolous complaint to the board or panel by a parent, staff member or community member alleging administrative deficiencies;
 - (C) changes to the school's administrative structure or operation outside the scope of the current, approved detailed implementation plan;
 - (D) failure to report required data to the office, panel or board;

- (E) failure to maintain student, staff or financial records as required by state and federal law;
 - (F) a pattern of failure to comply with reasonable requests of the office, board or panel;
 - (G) failure to pay monies owed to the department or office, provided that (1) the non-payment is not due to insolvency, but due to unresolved financial disputes; and (2) the charter school has the opportunity to pursue mediation of the dispute through the resolution and mediation panel.
- (3) Evidence of financial deficiencies includes:
- (A) a non-frivolous complaint to the board or panel by a parent, staff member or community member alleging financial deficiencies;
 - (B) a request by the local school board;
 - (C) changes to the school's financial structure or operation outside the scope of the current, approved detailed implementation plan;
 - (D) failure to report required financial data to the office, panel or board;
 - (E) failure to maintain financial records;
 - (F) evidence of misuse of public funds;
 - (G) an adverse audit report, or the disclaiming of an audit;

- (H) failure to meet financial obligation due to insolvency;
- (I) negligent failure to maintain a reserve fund sufficient to meet reasonably foreseeable financial contingencies.

§3 Probation resulting from special evaluation³⁰

(a) If the panel, after a special evaluation, finds that the school is deficient in academic, administrative or financial operations, the panel will announce these finding and may, by a majority vote, recommend probation. The panel shall transmit its written findings and its recommendation to the board, the office and the evaluatee.

(b) Within 30 days of the conclusion of a special evaluation, the local school board of the charter evaluatee may file with the board a written response to the panel's findings. If the panel recommends that a school be placed on probation, the school may appeal the findings of the panel to the board. If, within 30 days of a recommendation of probation, the school files a written notice of appeal with the board, then the probation shall not take effect without board action. After receiving notice of appeal, the board shall consider the appeal at its next scheduled meeting, provided that the board has time before its next meeting to give public notice as required by H.R.S. §92.

Representatives of the local school board shall be given the

³⁰ Statutory Authority: H.R.S. §302B-14(d)

opportunity to present oral and written testimony at the board meeting at which the appeal shall be considered. The board shall accept public testimony related to the panel's recommendation of probation. By the vote of a majority of the members voting, the board shall vote to either (1) place the charter school on probation for a fixed term, or (2) reject the panel's recommendation and allow the school to continue normal operation.

PROBATION AND REVOCATION PROCEDURES

§1 Probation³¹

(a) If, after an evaluation, the panel or the board determine that the school has academic, administrative, or financial deficiencies, then the panel shall set a fixed, definite term of probation not less than the minimum terms set forth in H.R.S. §302B-14(d). The term of probation for administrative deficiencies shall be for a term not less than one year.

(b) Within 60 days of a charter school being placed on probation, the local school board shall, in collaboration with the office, devise a recovery plan for the school. This plan shall address those deficiencies in the areas of academic, administrative or financial operation identified by the panel as the reason for probation. During the probation period, the office may require additional data reporting, conduct site visits, and otherwise monitor the school for compliance with the terms of the recovery plan. Between 60 and 30 days before the completion of the

³¹ Statutory Authority: H.R.S. §302B-14(d)

This section clarifies that revocation for deficiencies other than health and safety can occur only after probation. The procedures set forth for both probation and revocation seek to balance the interests of charter school operators to maintain autonomy against the interests of the board and the general public in ensuring charter school accountability. The requirements for notice and hearing provided ensure that local school boards have an opportunity to present their case before the board. The panel is not required hold public meetings, although the panel has that option, because the panel may not have the resources or expertise to conduct such meetings.

probation period, the office shall report to the panel as to the compliance of the charter school with the terms of the recovery plan.

§2 Revocation after probation³²

(a) Between 60 and 30 days before the end of a charter school's probation period, the panel shall convene a meeting for the purpose of determining whether the deficiencies have been resolved and whether the school is organizationally viable. Representatives of the charter school and the local school board shall have an opportunity to present oral and written testimony. The panel may hold a public meeting, and allow the public to submit testimony.

(b) On or before the end of the probation period, and subsequent to the meeting provided for in paragraph (a) of this section, the panel shall transmit its written findings and recommendation to the board, office, and the local school board of the charter school on probation. The panel shall recommend that the board (1) revoke the charter, (2) remove the school from probationary status, or (3) extend the probation period for an additional fixed term that the panel deems appropriate.

(e) If within 30 days of notice that the panel has recommended revocation the local school board files notice of appeal with the board, then the recommendation of the panel shall not become effective without board action.

³² Statutory Authority: H.R.S. §302B-14(e)

(f) Upon receiving the recommendation of the panel, the board shall give notice to the local school board. The board shall vote on the recommendation at the next general meeting of the board that is more than 30 days from the day notice is given to the local school board. The board shall publish notice of the meeting to the websites of the office, the board, and the department and provide an opportunity to submit written testimony at least 15 days before the meeting. The local school board shall be given an opportunity to provide oral and written testimony at the meeting.

(g) Acting on the recommendation of the panel, the board may revoke a charter by the vote of a two-thirds of the votes to which the board is entitled. If the board does not vote for revocation of the charter, the board may, by the vote of a majority of the votes to which the board is entitled, extend the period of the probation for an additional fixed term. If the board does not vote to revoke the charter or to extend the term of the probation, then the probation period shall end at the conclusion of the meeting.

§2 Evaluation and revocation for significant health and safety risks³³

(a) If the board believes that significant risks to the health and safety of the students or staff of a charter

³³ Statutory Authority: H.R.S. §302B-14(f)

school exist, the board shall initiate a health and safety evaluation of the charter school.

(b) If the board determines that a health and safety evaluation is appropriate, the board shall immediately give notice to the charter school of the commencement of the evaluation and the reason for the evaluation. At its next meeting for which the public notice requirements of H.R.S. §92 can be satisfied, the board shall appoint a task group to conduct the evaluation.

(c) The evaluation shall be confined to the specific question of health and safety risks. The evaluation of health and safety risks shall be conducted over a period of no longer than six months. The evaluation shall include one or more site visits, and meetings and input from the local school board and the community.

(d) At the conclusion of its evaluation, the task group shall report its findings and recommendations to the board and the office. Based on its findings, the task group shall recommend either (1) probation for a fixed term sufficient to remedy the health or safety risk, (2) revocation of the charter, or (3) that no action be taken.

(e) Within 20 days of receipt of the task group's findings and recommendations, the board shall convene a public meeting to vote on the recommendations of the task group. Upon receipt of the panel's recommendations, the board shall provide notice of the meeting on the websites of the board, the office, and the department in addition to providing

notice in accordance with H.R.S. §92. Representatives of the charter school and the local school board shall be given an opportunity to present oral and written testimony at the meeting.

(f) The vote of two-thirds of all the members to which the board is entitled shall be required to revoke a charter for health and safety deficiencies. The vote of a majority of the members to which the board is entitled shall be required to place a charter school on probation for health and safety deficiencies. Under no circumstances shall the recommendation of the task group in relation to probation or revocation for health and safety deficiencies become effective without action by the board.³⁴

(g) If the board determines that probation is appropriate to remediate health and safety deficiencies at a charter school, the board shall set a fixed period for the probation. The school shall work in consultation with the office to develop a remediation plan. The office shall request such information and conduct such investigation as is necessary to determine the success of the remediation plan. At the end of the probation period, the office shall report to the board on the success of the remediation plan.

(h) Within 30 days of the end of the probation period, the board shall convene a public meeting in accordance with the provisions of paragraph (e) of this section. The vote of

³⁴ This part clarifies that, even if the task group is composed of the panel, the recommendation of the task group cannot take effect without action by the board.

two-thirds of all the members to which the board is entitled shall be required to revoke a charter for health and safety deficiencies. The vote of a majority of the members to which the board is entitled shall be required to place a charter school on probation. If the board does not vote to revoke the charter or to extend the term of probation, then the probation period shall end at the conclusion of the meeting.

ORDERLY CLOSURE OF CHARTER SCHOOLS

§1 Delay of closure³⁵

(a) Except in cases of (1) an immediate threat to student or staff health or safety; (2) profound academic deficiencies that impact student wellbeing; or (3) evidence of administrative or financial deficiencies that make delay infeasible, the closure of a charter school shall be delayed until the conclusion of the current academic year.

§2 Notice of closure³⁶

(a) If the board approves the revocation of the charter of a charter school, the board shall within 10 days publish notice of the revocation to the websites of the office, the board, and the department. Notice of the revocation shall also be posted at the office of the charter school. The information posted shall include: (1) the name of the charter; (2) the date of the closure action; (3) the effective date of the closure; (4) the reason for the closure; and, (5) in the case of a conversion school, whether the school shall be reopened as a non-charter school.

³⁵ Statutory Authority: H.R.S. §302B-14(h)

This chapter draws from the non-regulatory guidelines on charter school closure published by the California Department of Education.

³⁶ Statutory Authority: H.R.S. §302B-14(h)

(b) If the local school board of a charter school decides to voluntarily cease operations, the local school board shall immediately notify the office, the board, and the board. Within 10 days of receiving notice of a voluntary closure of a charter school, the board shall publish notice of the revocation to the websites of the office, the board, and the department. Notice of the revocation shall also be posted at the office of the charter school. The information posted shall include: (1) the name of the charter; (2) the date of the closure action; (3) the effective date of the closure; (4) the reason for the closure; and, (5) in the case of a conversion school, whether the school shall be reopened as a non-charter school.

(c) Within 15 days of (1) notice of the revocation of a charter school, or (2) notice of the voluntary closure of a charter school, the office shall notify the board of any outstanding liabilities owed by the charter of which the office is aware.

(d) Within 60 days of (1) approving the revocation of a charter school, or (2) receiving notice of the voluntary closure of a charter school, the board shall hold a public meeting, the agenda of which shall include issues related to the revocation or closure.

(e) Upon notice of the closure of a charter school, the board shall notify the department. If the charter school is not a conversion that shall reopen as a non-charter school,

the department will begin making preparations to absorb the students previously attending the charter school.

§3 Handling of student records during closure process³⁷

(a) The local school board, in consultation with the office, shall establish a process for maintenance and transfer of student records, provided that the office shall assume responsibility if the local school board is unable to meet this responsibility. The plan shall include a provision for the office to maintain certain student, administrative, and financial records for a reasonable time after closure.

(b) The office, with the assistance of the department, shall assist parents in the process of transferring students to other appropriate schools.

§4 Distribution of charter school assets following the revocation or dissolution of a charter that leads to the closing of the school³⁸

(a) Assets that were obtained with public funds shall be returned to the board. The board, at its discretion may disburse these assets to other charter schools or to the department.

³⁷ Statutory Authority: H.R.S. §302B-14(h)

³⁸ Statutory Authority: H.R.S. §302B-14(i)

This section is similar to the provisions for disbursement of assets in Oregon's charter school regulations.

(b) Assets that were obtained with grant funds shall be disbursed according to the terms of the grant. If the grant is absent any reference to ownership or distribution of assets, assets shall be disbursed in accordance with section (a) of this rule.

PROCEDURES FOR EMERGENCY HEALTH & SAFETY RESTRUCTURING PLAN

1§ Adoption of emergency health and safety restructuring plan³⁹

(a) If the board determines that there is an actual and immediate danger to student or employee health or safety at a charter school, the board may adopt an emergency restructuring plan. Adoption of an emergency restructuring plan is appropriate only if the board, in consultation with the office, determines that it is impossible to remedy the danger to student or employee health with the current local school board, chairperson of the local school board, and principal.

(b) The vote of two-thirds of all the members to which the board is entitled is required to adopt an emergency restructuring plan.

(c) Within 30 days of adopting an emergency restructuring plan, in accordance with the provisions of H.R.S. §92, the board shall convene a public meeting at the charter school or at an appropriate location nearby. Upon determining the time and location for the meeting, the board shall publish notice of the meeting to the websites of the office, the

³⁹ Statutory Authority: H.R.S. §302B-14(g)

The provision of the statute providing authority for the board to initiate an emergency restructuring of the governance of a charter school is unique in the country. These regulations have tried to provide strong procedural safeguards to balance the potential for this process to undermine the charter school autonomy. Part (a) provides that this approach can be used only if no other options are available to remedy the health or safety risk. Part (b) requires a two-thirds vote by the board to institute a restructuring plan.

board, and the department, and also in a newspaper of general circulation convenient to the charter school community. The agenda for the meeting shall include the election of a new local school board.⁴⁰

(d) If possible without risk to the health and safety of students and employees, the board shall not appoint an interim board or principal until after the public meeting is held.

(e) Within 120 days of the enactment of these rules, the office, in consultation with the charter school community, shall adopt guidelines for how elections following emergency restructuring shall be conducted, provided that, whenever possible, the bylaws and procedures of the local school board shall continue to operate.

⁴⁰ In most instances this meeting, and the election of a new board, would be held before the restructuring plan was implemented.

SEVERABILITY

§1 Severability

(a) If any section or portion of a section of these regulations, or the applicability of these regulations to any person, entity or circumstance is held invalid by a court, the remainder of these regulations or the applicability of such provisions to other persons, entities or circumstances shall not be affected thereby.