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PERFORMANCE & ACCOUNTABILITY MEETING

DATE OF POSTED SUBMITTAL: November 4, 2022

DATE OF MEETING: November 10, 2022

TO: Makalapua Alencastre, Chairperson
Performance and Accountability Committee

FROM: Yvonne W.M. Lau, Interim Executive Director
State Public Charter School Commission

AGENDA ITEM: IV. Presentation/Action on the Guidelines for School Admission Policies

I. DESCRIPTION

Presentation/Action on Commission guidance as to Charter School admission policies and procedures.

II. AUTHORITY

Pursuant to Hawaii Revised Statutes (“HRS”) [§302D-5\(a\)\(5\)](#), “Authorizers are responsible for executing the following essential powers and duties . . . [m]onitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools[.]”

Pursuant to [HRS §302D-34](#),

“(a) A public charter school shall not discriminate against any student or limit admission based on race, color, ethnicity, national origin, religion, gender, sexual orientation, income level, disability, level of proficiency in the English language, need for special education services, or academic or athletic ability.

(b) A start-up charter school:

(1) Shall be open to any student residing in the State who is entitled to attend a department school;

(2) Shall enroll all students who submit an application, unless the number of students who submit an application exceeds the capacity of a program, class, grade level, or building; provided that a student who is currently enrolled in a charter school that has been notified of the prospect of revocation in accordance with section 302D-18, or is closing in accordance with section 302D-19, whichever occurs first, may be given first priority to enroll at another charter school to which the student applies, or placed at the top of the waitlist for enrollment;

(3) Shall select students through a public lottery if, as described in paragraph (2), capacity is insufficient to enroll all students who have submitted a timely application;

(4) May give an enrollment preference to students within a given age group or grade level and may be organized around a special emphasis, theme, or concept as stated in the charter school's application and as approved by the charter school's authorizer;

(5) May give an enrollment preference to students enrolled in the charter school during the previous school year and to siblings of students already enrolled at the charter school;

(6) May give an enrollment preference through a weighted lottery to educationally disadvantaged students. For the purposes of this paragraph:

"Educationally disadvantaged students" means students who are economically disadvantaged, students with disabilities, migrant students, limited English proficient students, neglected or delinquent students, and homeless students.

"Weighted lottery" means any lottery that gives additional weight to individual students who are identified as part of a specified set of students but does not reserve or set aside seats for individual students or sets of students; and

(7) May give any other enrollment preference permitted by the charter school's authorizer, on an individual charter school basis, if consistent with law;

provided that nothing in this subsection shall preclude the formation of a start-up charter school whose mission is focused on serving students with disabilities, who are of the same gender, who pose such severe disciplinary problems that they warrant a specific educational program, or who are at a risk of academic failure.

(c) A conversion charter school shall:

(1) Enroll any student who resides within the school's former geographic service area pursuant to section 302A-1143, for the grades that were in place when the department school converted to a charter school; provided that the department may consult with a conversion charter school every three years to determine whether realignment of the charter school's service area is appropriate given population shifts and the department's overall service area reviews; and

(2) Be subject to subsection (b):

(A) For grades that were not in place when the school converted to a public charter school; and

(B) For any seats still available at the charter school after the enrollment of all students desiring to attend the charter school who reside within the school's former geographic service area pursuant to section 302A-1143.”

Pursuant to [HRS §302H-2](#), Attendance and eligibility, “All children of compulsory school age choosing to enroll in the Hawaiian language medium program in families of fluent Hawaiian-speaking persons may be given preference for admittance. Other persons may enroll at the discretion of individual school sites under the conditions described above and in compliance with applicable state and federal laws. All students and their families shall abide by the special rules of the program with respect to family participation.”

Section 7.3 of the State Public Charter School Contract (“Charter Contract”) 3.0 provides, “The School shall comply with its admission policies and procedures as approved by the Commission. If the number of applicants exceeds the School's capacity of a program, class, grade level, or building, the School shall select students to enroll using a public lottery that shall be publicly noticed; provided that if the School is a conversion charter school serving as the home school for the DOE district, then the School shall follow Section 302D-34(c), HRS. These policies and procedures shall be readily accessible from the School’s website, as described in Section 8.9 of this Charter Contract.”

Section 9.3 of Charter Contract 4.0 provides, “The School shall comply with its admission policies and procedures as approved by the Commission. If the number of applicants exceeds the School's capacity of a program, class, grade level, or building, the School shall select students to enroll using a public lottery that shall be publicly noticed; provided that if the School is a conversion charter school serving as the home school for the HIDOE district, then the School shall follow HRS §302D-34(c). The School shall submit a description of its current lottery process to the Commission and shall provide notice to the Commission if there is a material change made to the current lottery process. The School shall provide the Commission with a written notice of any material change to the lottery process at least thirty (30) days prior to the date of the proposed implementation for comment. The admission policies and procedures, including the lottery procedure, must be posted on the School’s official website.”

III. BACKGROUND

Admissions and enrollment are among the key distinguishing features of charter schools in Hawai‘i. Charter schools are “schools of choice” for public school students in the state. With the exception of conversion schools, students are not automatically assigned to charter schools based on residency, and state law (Section 302D-34, Hawaii Revised Statutes (“HRS”)) requires start-up charter schools to be open to any student residing in the state who is entitled to attend a department school and to enroll all students who submit an application, unless the number of students who submit applications exceeds the capacity of the program. Additionally, State law (Section 302H-2, Hawaii Revised Statutes) allows Hawaiian language medium programs to give preference for admittance to students in families of fluent Hawaiian-speaking persons and states that all students and their families shall abide by the special rules of the Hawaiian language medium program with respect to family participation.

The Charter Contract requires the Commission to review and approve the admission policies and procedures for all charter schools. Charter schools annually submit their Admission Policy and Application for Admission to the Kuleana Portal for Commission staff review to ensure adherence to the Commission approved policy. Over the past year, Commission staff has conducted a desk review and analyzed the Admission Policies and Application for Admissions submitted to the Kuleana Portal for all 37 SPCSC charter schools.

In Commission staff's review of the submitted Admission Policy and Application for Admissions, staff became aware of instances which may make some schools non-compliant with the 'open' enrollment requirements and non-discriminatory practices and potentially violate the Charter Contract and Federal/State law. These instances include:

- Use of Admission Policies that have not been approved by the Commission;
- Applications for Admission which include questions that may be potentially discriminatory;
- Admission Policies that are not readily accessible from the School's website; and
- Lack of semantic consistency and clarity around the terms: "admission" and "enrollment".

To address these concerns, Commission staff drafted the SPCSC Admission Policy Guidelines to provide guidance to charter schools (**See Exhibit 1 - Proposed SPCSC Admission Policy Guidelines**). The proposed guidelines offer an overview of Federal and State laws and contractual requirements that govern charter school admission policies and practices, including those regarding enrollment preferences and lottery procedures. It is important to note that the proposed guidelines are not intended to take the place of legal counsel and schools are recommended to consult with their Deputy Attorney General for further guidance.

The proposed guidelines were reviewed by the Commission's Deputy Attorney General on September 6, 2022 and his comments and suggestions have been incorporated into the document.

IV. DECISION-MAKING

The Performance & Accountability Committee should review the proposed "SPCSC Admission Policy Guidelines" and consider a recommendation to the full Commission.

Exhibit 1

Proposed SPCSC Admission Policy Guidelines



SPCSC Admission Policy Guidelines

I. OVERVIEW

This document offers an overview of Federal and State laws and contractual requirements that govern charter school admission policies and practices, including those regarding enrollment preferences and lottery procedures. These guidelines are not intended to take the place of legal counsel and the Commission strongly recommends that schools consult with their Deputy Attorney General to ensure that a school's admission policies and enrollment procedures and forms comply with Federal and State law, contractual requirements, and will not result in a discriminatory effect upon implementation.

Charter schools are public schools and as such they are open to any student who wishes to attend. Hawai'i State Law requires charter schools to enroll all eligible students who apply as long as the school has capacity. As noted in [HRS §302D-34](#), State law prohibits charter schools from discriminating, “against any student or limit admission based on race, color, ethnicity, national origin, religion, gender, sexual orientation, income level, disability, level of proficiency in the English language, need for special education services, or academic or athletic ability.”

However, unlike schools in the Department of Education that have open enrollment, charter schools may limit enrollment due to space and other approved enrollment preferences.¹ For this reason, charter school admissions and enrollment policies are subject to greater scrutiny.

Per a school's Charter Contract, the school shall comply with its admission policies and procedures as approved by the Commission. The current contract requires schools to post its admission policy and procedures on its website so that it is readily accessible to the public (see Charter Contract 4.0, Section 9.3). It is not sufficient to post a summary. Any amendment to a school's admission policy shall be effective only if approved by the Commission at a public meeting.

Schools should develop and implement admission policies and practices that are:

- Consistent with and meet Federal and State Laws;
- Fair to all student populations and are not likely to discourage any student or parent group from seeking enrollment;
- Nondiscriminatory on their face, are implemented in a nondiscriminatory manner, and do not have the effect of excluding students on the basis of race, color, ethnicity, national origin, religion, gender, sexual orientation, income level, disability, level of proficiency in the English language, need for special education services, or academic or athletic ability;
- Designed to contribute to the diverse student population that is reflective of the community and State; and
- Designed to assist the charter school in carrying out its educational mission and vision.

¹ *Public schools are obligated to enroll all students and may only limit what school they attend based upon their place of residence.*

In order to ensure that charter schools are in compliance with State and Federal law and open to all eligible students, the Hawai‘i State Public Charter School Commission (“The Commission”) will review each school’s admission policy and procedures as adopted by the school’s Governing Board. Material changes to a school’s Admission Policy must be approved by the Commission at a General Business meeting.

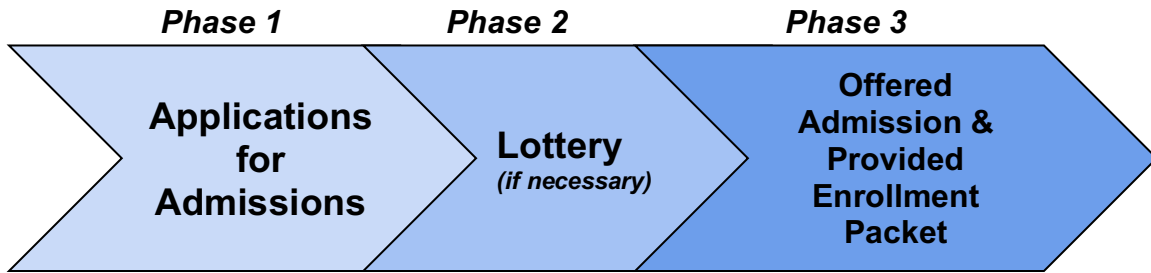
II. DEFINITIONS

- Admission Policy: A Charter School’s policy regarding the student admission process and procedure. This policy must be approved by the school’s governing board and the Commission, align with State and Federal law, fair to all student populations, nondiscriminatory, designed to contribute to the diverse student population that is reflective of the community and State, and may be designed to assist the charter school in carrying out its educational mission and vision (Charter Contract 4.0 Section 9.3). This policy must be publically accessible through the school’s website.
- Enrollment Preference For Admission: Commission-approved condition which gives certain students priority in the process for admission (§302D-34(b)(4)).
- Weighted Lottery: Any lottery that gives additional weight to individual students who are identified as part of a specified set of students but does not reserve or set aside seats for individual students or sets of students (§302D-34(b)(6)).
- Educationally Disadvantaged Students: Students who are economically disadvantaged, students with disabilities, migrant students, limited English proficient students, neglected or delinquent students, and homeless students (§302D-34(b)(6)).
- Application for Admission: Form to be completed and submitted by prospective students and their families **prior** to admission and enrollment.
- Enrollment Packet: Forms and information to be completed after the student has been offered admission to the school via the school’s approved Admission policy.
- Student Admission Packet: Includes the School’s Commission approved Admission Policy, School’s Lottery Procedure, and the School’s Application form. This needs to be uploaded to the Kuleana Portal annually.
- School’s Enrollment Checklist. A list of all documents the school must have before enrolling the student into the Student Information System.

Exceptions: HRS §§[302D-34\(c\)](#) and [302H-2](#).

III. ADMISSION PROCESS

As public schools receiving public funding, Charter Schools **shall** admit students at any time during the school year until the school has met its maximum capacity for brick and mortar learning programs or enrollment limits for virtual and/or blended learning programs as approved by the Commission in their Charter Contract. If the number of students who submit an application exceeds the school’s capacity, the school shall select students through a public lottery process.



The admission process is three fold:

1. Application for admission forms are submitted by prospective applicants and their families;
2. (If necessary) If a school receives more applications than it has seats, the school must institute a public, random lottery process to determine admissions as outlined in a school’s Admission Policy; and
3. If there is a sufficient number of seats and all applicants have been offered admission or if a student is selected by lottery, the students and parents/legal guardians are notified and the school then sends the applicant families an enrollment packet to officially enroll a student in their school. Schools should provide a deadline to complete the enrollment packet especially if they have a waitlist of students wanting to enroll.

****The application for admission form and the enrollment form are different forms. On your website, forms, and other printed material, please be sure to distinguish between the “application for admission” and “enrollment form” or “enrollment packet”.***

Exceptions: *HRS §§[302D-34\(c\)](#) and [302H-2](#).*

IV. POLICIES, PROCEDURES, AND PREFERENCES

It is vital for the Governing Board and the Commission to ensure that charter schools are meeting their statutory and contractual obligations, are fair to all student populations, and non-discriminatory, by annually reviewing the following steps taken by applicants to gain entrance into a charter school.

A. Admission Policy

A charter school’s Admission Policy should address the following:

- Description of the application for admission process;
- Description of the public lottery process;
- Timeline of the application for admission, lottery, and enrollment processes;
- List Commission-approved enrollment preference(s) and how they are determined (if applicable);
- Description of the waiting list process and how students are chosen from the waiting list if openings occur during the school year;
- Date approved by the school governing board which needs to include the agenda, motion and second (including vote), and the approved minutes from the meeting;
- Date approved by the Commission; and
- Posted and readily accessible on the school’s official website (Charter Contract 4.0 Section 9.3).

B. Application for Admission Form

A charter school Application for Admission Form should be limited to gathering the following data:

- Student Name
- Student Birthdate
- Grade Level Applying For (*only grade levels identified in the Charter Contract*)
- Parent/Legal Guardian Name and Contact Information for notification
- Proof of State of Hawai'i Residency; conversion charter schools also need proof of geographic residency (see below)
- Questions pertaining to Commission-approved enrollment preferences (if applicable)

**An application for admission form requiring or collecting more than the basic information needed to admit a student, may be a violation of Federal and State law.*

Exceptions:

○ **Conversion Schools**

- Pursuant to [HRS §§302A-1143](#) and 302D-34(c), a conversion charter school must enroll any student who resides within the school's former geographic service area for the grades that were in place when the department school converted to a charter school. All other applicants, including applicants for grades that were not in place when the school converted to a public charter school, must follow the application process noted in the school's Admission Policy.

○ **Hawaiian Language Medium Education**

- Pursuant to [HRS §302H-2](#), all children of compulsory school age choosing to enroll in the Hawaiian language medium program in families of fluent Hawaiian-speaking persons may be given preference for admittance. Other persons may enroll at the discretion of individual school sites under the conditions described above and in compliance with applicable state and federal laws. All students and their families shall abide by the special rules of the program with respect to family participation.

C. Lottery

Pursuant to HRS §302D-34(b), if the number of students who submit a timely application for admission exceeds the capacity of a program, class, grade level, or building:

- The school shall select students through a public lottery process, a double blind process, where neither the participants nor the person(s) administering the lottery are aware of the identities of the participants, is recommended; and
- The process is non-discriminatory and clearly and comprehensively described in a school's Admission Policy.

D. Enrollment Preferences

Enrollment preferences must be approved by the School's Governing Board and then brought before the Commission for final approval before implementation.

Pursuant to HRS §302D-34(b), charter schools may give enrollment preference to:

- Students currently enrolled in a charter school that has been notified of the prospect of revocation;
- Students enrolled in the previous year;

- Siblings of already enrolled students;
- Educationally disadvantaged students through a weighted lottery; and
- Other students as approved by the Commission if consistent with law (refer to table below in Section V regarding examples of Commission-approved Enrollment Preferences)

E. Waitlist

A charter school’s Admission Policy should clearly address:

- How students are placed on the waitlist;
- How students are chosen from the waitlist if openings occur during the school year; and
- Whether the waitlist will carry over from year to year or is used only for a particular school year.

V. EXAMPLES OF ENROLLMENT PREFERENCES

Examples of Enrollment Preferences	Hawai‘i State Law (HRS §302D)
Current students	Yes
Student currently enrolled in a charter school that has been notified of the prospect of revocation	Yes, “the student may be given first priority to enroll at another charter school to which the student applies, or placed at the top of the waitlist for enrollment” (<i>HRS 302D-34(b)(2)</i>)
Conversion Charter school: Geographic attendance area	Yes (<i>HRS 302D-34(c)(1)</i>)
Siblings of current students	Yes (<i>HRS 302D-34(b)(5)</i>)
Children of full-time employees	Yes, provided that the number of students utilizing this preference, combined with the preference for children of Governing Board members, does not exceed 10% of the total student population. Situations in which the combined percentage could exceed 10% of the total student population require Commission approval (<i>Commission General Business Meeting motion passed on November 18, 2014</i>)
Children of board members	Yes, provided that the number of students utilizing this preference, combined with the preference for children of full-time employees, does not exceed 10% of the total student population. Situations in which the combined percentage could exceed 10% of the total student population require Commission approval (<i>Commission General Business Meeting motion passed on November 18, 2014</i>)
Economically disadvantaged students <i>HRS 302D-34(b)(6)</i>	Yes, through a weighted lottery with Commission approval.
Students with disabilities	Yes, through a weighted lottery with Commission approval.

Examples of Enrollment Preferences	Hawai'i State Law (HRS §302D)
<i>HRS 302D-34(b)(6)</i>	
Migrant students <i>HRS 302D-34(b)(6)</i>	Yes, through a weighted lottery with Commission approval.
Limited English proficient students <i>HRS 302D-34(b)(6)</i>	Yes, through a weighted lottery with Commission approval.
Neglected or delinquent students <i>HRS 302D-34(b)(6)</i>	Yes, through a weighted lottery with Commission approval.
Homeless students <i>HRS 302D-34(b)(6)</i>	Yes, through a weighted lottery with Commission approval.
Other Enrollment Preferences	Consult with your Deputy Attorney General prior to requesting Commission approval.