

NEIL ABERCROMBIE
GOVERNOR



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RECOMMENDATION SUBMITTAL

DATE: April 10, 2014

TO: Catherine Payne, Chairperson

FROM: Catherine Payne, Chairperson
Performance and Accountability Committee

AGENDA ITEM: Action on Revisions to the State Public Charter School Contract Template

I. DESCRIPTION

That the Committee recommend approval of staff’s proposed revisions to the State Public Charter School Contract, effective July 1, 2014 (“Charter Contract”).

II. AUTHORITY

Contract Revisions. Pursuant to Hawaii Revised Statutes (“HRS”) §302D-3, “[a]ny charter school holding a charter to operate under Part IV, subpart D, of chapter 302A, as that subpart existed before July 11, 2006, and any charter school holding a charter to operate under chapter 302B as it existed before June 19, 2012, shall be considered a charter school for the purposes of this chapter under a charter contract with the commission unless the charter contract is revoked, transferred to another authorizer, or not renewed, or the charter school voluntarily closes.”

Delegation of Duties. Pursuant to §302D-5(c), Hawaii Revised Statutes, “[a]n authorizer may delegate its duties to officers, employees, and contractors.”

III. BACKGROUND

Staff offered revisions to the 2013-14 State Public Charter School Contract, attached as **Exhibit 1**, and sent them to school directors and governing board chairs on January 24, 2014. Staff initially requested feedback from all interested parties by February 21, 2014, but has continued to accept feedback. Feedback has come through a variety of forms of communication, including telephone calls, e-mails, and in-person meetings.

Staff held three meetings for school personnel and board members to discuss contract revisions. The first was held on February 19, 2014 in Honolulu. On February 20, 2014 staff held a meeting in Kona, and another meeting was held on February 21, 2014 in Hilo. Each meeting lasted about three hours. During the first hour, Doug Muraoka, Academic Performance Manager, presented updates on the Academic Performance Framework, and Stephanie Klupinski, Organizational Performance Manager, went over the suggested revisions to the Charter Contract. Attendees then had the rest of the session to offer feedback and suggestions.

Staff also held a webinar for some Kauai schools on February 26, 2014, and invited other schools that had not attended any other meeting to join that webinar.

An updated list of schools that participated in any of the aforementioned meetings or webinar can be found in **Exhibit 2**.

The meetings were also recorded so that all suggestions could be captured and formally responded to by Commission staff. Interested persons were also encouraged to present feedback on the contract revisions to the Committee at its February 27, 2014 meeting, but no feedback was received at the meeting.

Many of the respondents had expressed discomfort with the proposed earlier deadlines for the unaudited financial statements and the annual audits (under Sections 11.3.3 and 11.3.4 of the Charter Contract). Respondents also have asked for clarity regarding Commission approval of governing board policies (Section 11.4.1). Some have also expressed concern regarding the continued lack of the Commission's administrative rules, which are now going through the approval and public hearing process.

Staff prepared written responses (attached as **Exhibit 3**) to each suggestion received and sent these responses out to schools and governing boards on March 20, 2014.

Staff is now drafting a second revised version of the Charter Contract, incorporating many of the suggestions and addressing the feedback provided by schools, governing boards, and other stakeholders. The changes that will be made in the second revised version are indicated in **Exhibit 4** and discussed in the next section.

At the Commission's March 27, 2014 Performance and Accountability Committee meeting, staff presented its recommendation, as described in the Decision Making Statement below. The Committee discussed staff's recommendation, but it did not have quorum, so it was unable to take action on the motion to make a recommendation to the Commission. Because of this, staff has brought the item to the Commission as a separate agenda item on the Commission's April 10, 2014 General Business Meeting.

IV. **DECISION MAKING STATEMENT**

Contract Revisions. The suggested revisions to the Charter Contract — following discussions with schools and other stakeholders — are listed in **Exhibit 4**. Staff is working on the exact language that will reflect the suggested revisions.

A few of the more significant revisions and the rationale for such revisions are highlighted here:

- Staff suggests that the following policies and procedures be consistent with Commission criteria: conflict of interest; student conduct and discipline; complaints; procurement policies and procedures; personnel; accounting policies and procedures; and admission and enrollment policies. The change will help ensure that school policies meet some basic criteria that comply with state and federal law and policy.
- Staff suggests that for admission and enrollment policies now be submitted under a provision in the main body of the Charter Contract, instead of Exhibit A (Educational Program) and that the policies will be subject to Commission approval. Staff suggests that admission and enrollment policies be subject to the additional requirement of Commission approval due to numerous concerns that arose when staff reviewed schools' policies.
- Staff suggests separating Section 7.4 of the Charter Contract, entitled "Relocation or Expansion," into two sections: one for relocation and one for expansion. Staff also suggests that the words "relocation" and "expansion" be defined. Further, approval for expansion should include demonstration of success under the Academic, Financial, and Organizational Performance Frameworks. This change will prevent a low-performing charter school from expanding its program.
- Staff suggests amending the language in Section 8.7 of the Charter Contract, entitled "Additional Funds," to include the requirement that schools provide a report on additional funds not from state or federal sources to the Commission by September 15th of every year. Commission staff has received requests for this information from other state agencies. The detailed information about the additional funds will be maintained at the Commission office, and only aggregate information will be provided to state agencies that request the information.
- The Intervention Protocol, Exhibit D of the Charter Contract, will include a preliminary warning issued before a Notice of Deficiency.

In addition, some changes originally suggested by staff have now been omitted. For example, staff initially wanted to move up deadlines for financial reporting. Because of strong pushback from schools, Financial Performance Manager Leila Shar has been working with staff from the Department of Accounting and General Services and the Department of Education to see if there is an better alternative. For now, the original financial reporting deadlines will remain.

Also, schools expressed concern about needing formal Commission approval for all of the required policies and procedures. This feedback prompted changing Commission approval to "consistent with commission criteria" for all of the required policies and procedures. Only admission and enrollment policies will require Commission approval.

Delegation of Duties. There may be technical, non-substantive corrections that need to be made to the Charter Contract template, so staff recommends that the Commission delegate authority to the Commission Executive Director to make such changes as necessary.

V. RECOMMENDATION

Staff made the following recommendation as a motion to the Committee, but the Committee was unable to take action on it:

“Moved to recommend to the Commission approval of the revisions described in the State Public Charter School Contract as reflected in Exhibit 4 of this submittal, and to approve delegation of authority to the Commission Executive Director to make technical, non-substantive corrections as necessary.”

Exhibit 1
Revisions to 2013-14 Charter Contract

Exhibit A

STATE PUBLIC CHARTER SCHOOL CONTRACT

This Contract is executed by and between the STATE PUBLIC CHARTER SCHOOL COMMISSION (“Commission”), a commission established under the laws of the State of Hawaii, whose mailing address is 1111 Bishop Street, Suite 516, Honolulu, Hawaii, 96813, and (“School”), whose mailing address is XX, singularly “Party” and collectively “Parties.”

RECITALS

WHEREAS, Article X, Section 1 of the Hawaii State Constitution provides for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor;

WHEREAS, the Hawaii State Legislature enacted Act 130, Session Laws of Hawaii 2012, effective June 19, 2012 and codified as Chapter 302D, Hawaii Revised Statutes (HRS), which sets forth the laws under which charter schools are created and governed;

WHEREAS, the Hawaii State Legislature found that this Act will support new approaches to education that accommodate the individual needs of students and provide the State with successful templates that can dramatically improve Hawaii's educational standards for the twenty-first century, and that this Act will create genuine opportunities for communities to implement innovative models of community-based education;

WHEREAS, pursuant to Chapter 302D, HRS, the Commission has statewide chartering jurisdiction and authority and is empowered to authorize public charter schools and enter into a charter contract with approved public charter schools;

WHEREAS, Sec. 302D-1, HRS, defines the “charter contract” as a fixed-term, bilateral, renewable contract between a public charter school and a charter school authorizer that outlines the role, powers, responsibilities and performance expectations for each party to the contract;

WHEREAS, through this Contract, the Parties are desirous of ensuring clear requirements for accountability while preserving the autonomy of the School to support new, innovative approaches to education and contribute to the development of high quality public charter schools throughout the State;

WHEREAS, pursuant to Sec. 302D-2, HRS, any charter school holding a charter to operate under part IV, subpart D, of Chapter 302A, HRS, as that subpart existed before July 11, 2006, and any charter school holding a charter to operate under Chapter 302B, HRS, as it existed before June 19, 2012, shall be considered a charter school for the purposes of this chapter under a charter contract with the Commission unless the charter contract is revoked, transferred to another authorizer, or not renewed, or the charter school voluntarily closes;

WHEREAS, the School was granted a charter on May 17, 2001 which has not been revoked and therefore qualifies as an existing charter school pursuant to Sec. 302D-2, HRS; and

WHEREAS, the School desires to continue operating as a charter school.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained here, the Parties hereby agree as follows:

1. General Terms

1.1. Term. The term of this Contract shall be ~~one (1) year, commencing on July 1, 2013 and terminating on June 30, 2014.~~

Comment [A1]: To be determined.

1.2. Legal Status of School. Pursuant to Sec. 302D-25(e), HRS, the School is a public school and entity of the State and may not bring suit against any other entity or agency of the State. The School shall be nonsectarian in its operations.

1.3. Compliance with Laws. The School shall comply with all applicable federal, State and county laws, ordinances, codes, rules and regulations, as the same may be amended from time to time.

2. Governance of School

2.1. The School's Governing Board is the independent board of the School that is responsible for the financial, organizational and academic viability of the School; possesses the independent authority to determine the organization and management of the School, the curriculum and the instructional methods; has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of their employees and is considered the employer of School employees for purposes of chapters 76, 78 and 89; and ensures compliance with applicable laws.

2.2. The School's Governing Board shall comply with the Code of Ethics (Ch. 84, HRS) and shall adopt and adhere to a conflict of interest policy which is consistent with Ch. 84, HRS, and which includes provisions related to nepotism.

Comment [A2]: Suggest adding that Conflict of Interest policy will be subject to Commission's approval

3. Educational Program

3.1. School's Control. Subject to the terms and conditions of this Contract, the School shall have control over and responsibility for the design and delivery of the educational program and for attaining the academic performance standards and targets established in the Performance Frameworks attached as Exhibit B and, subject to par. 3.2, shall have the discretion to modify, amend, adapt and otherwise change its educational program as it deems necessary to achieve the academic performance standards and targets.

3.2. Material Elements of Educational Program. The material elements of the School's Educational Program, including but not limited to the School's mission and vision statements, are as set forth in Exhibit A to this Contract. The School shall, at all times, operate in a manner consistent with its Educational Program as defined in Exhibit A. Revisions to any of the elements in Exhibit A shall be considered a material change to the Contract and shall require prior written approval by the Commission; provided that such approval shall not be unreasonably withheld, particularly to the extent that such changes are intended to improve educational outcomes.

3.3. Academic Standards.

- 3.3.1. Consistent with State law, the School shall implement the Common Core or other State academic standards as may hereafter be approved by the State Board of Education (BOE).
- 3.3.2. The School shall retain the autonomy to select a particular curricular and/or instructional approach consistent with the Common Core or other State academic standards.
- 3.4. Graduation Requirements for High Schools. The School shall comply with BOE Policy 4540, as the same may be amended from time to time, which shall apply starting with the incoming ninth graders for the school year 2013-2014, and shall provide evidence of such compliance; provided that the School may request a waiver of this Policy from the BOE.
- 3.5. Education of Students with Disabilities.
- 3.5.1. The State Department of Education (DOE) is statutorily responsible for the provision of a free appropriate public education. If the School enrolls special education students or identifies one of its students as eligible for special education, the School shall be responsible for providing the educational and related services required by a student's individualized education program. The programs and services for the student shall be determined collaboratively by the student's individualized education program team, which includes the student's parents or legal guardians.
- 3.5.2. If the School is unable to provide all of the required services, then the DOE is responsible for providing the student with services as determined by the student's individualized education program team. The Commission shall collaborate with the DOE to develop guidelines related to the provision of special education services and resources to each charter school. The DOE is responsible for reviewing all of the current individualized education programs of special education students enrolled in a charter school and may offer staff, funding or both, to the charter school based upon a per-pupil weighted formula implemented by the DOE and used to allocate resources for special education students in the public schools.
- 3.5.3. The DOE is the State of Hawaii's "local education agency" (LEA) for purposes of compliance with the Individuals with Disabilities Education Act (IDEA). All public schools, including charter schools, are part of and fall under the LEA. As such, the School shall comply with all applicable federal and State laws, rules, policies, procedures and directives regarding the education of students with disabilities, including but not limited to Ch. 8-60, Hawaii Administrative Rules (HAR).
- 3.6. Section 504 and ADA. The School shall comply with Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act Amendments Act and all related DOE rules, policies and procedures in its general curriculum, including but not limited to implementation of any formal Section 504 plan that has been developed for a student, all as may be amended from time to time. The Commission and/or the DOE will provide training, consultation and advice to the School as needed with regard to Section 504 compliance, including legal interpretations, recommendations for intervention strategies and assistance in conducting Section 504 plan and review meetings.
- 3.7. English Language Learners. The School shall provide services to students with limited English proficiency in compliance with all federal and State laws, regulations, rules, court orders, policies, procedures and guidance, all as may be amended from time to time, to ensure linguistic accessibility to the School's educational program. The Commission shall provide the School with technical assistance similar to those services provided by the DOE complex areas

Comment [A3]: Suggest replacing "consistent" with "aligned"

Comment [A4]: This language may be revised to reflect BOE's position on 4540 (but Commission is committed to ensuring there is alignment).

Comment [A5]: This entire section needs work, and the Commission is working with DOE to clarify the roles and responsibilities. We also suggest moving section 3.5.3 to the start of this section.

Comment [A6]: Change to "policies"

Comment [A7]: Delete this sentence.

to the DOE-operated public schools. The School shall also assist Immigrant Children and Youth, as defined in Section 3301(6), Title III, Elementary and Secondary Education Act, as the same may be amended from time to time, in meeting the State academic content and student academic achievement standards that all public school students are expected to meet.

4. School Performance

4.1. Performance Frameworks.

4.1.1. Consistent with the requirements of Sec. 302D-16(a), HRS, the School's academic performance under this Contract shall be evaluated based on the School's record of performance according to the State accountability system as may be amended from time to time consistent with State and federal requirements and shall give due consideration to the School's performance based on any Commission-approved school-specific indicators adopted by the School.

4.1.2. The School's organizational and financial performance under this Contract shall be evaluated using the Organizational and Financial Performance Frameworks, respectively, attached as Exhibit B to this Contract. These Performance Frameworks shall supersede and replace any and all financial operation metrics and organizational performance metrics established prior to the execution of this Contract and not explicitly incorporated into the Performance Frameworks. The specific terms, forms and requirements of the Performance Frameworks, including any required indicators, measures, metrics and targets, are maintained and disseminated by the Commission and shall be binding on the School. Material amendments to the Performance Frameworks shall require approval by the Commission.

Comment [A8]: Once the Academic FW is approved, we suggest deleting 4.1 and adding the academic framework to 4.1.2., so that 4.1.2 reads, "The school's organization, financial, and academic performance...."

4.2. Modification to Performance Frameworks. The Parties acknowledge that specific terms, forms and requirements of the Performance Frameworks may be modified to the extent required to align with changes to applicable State or federal accountability requirements as set forth in law or policies or based on other circumstances that make assessment based on the existing Performance Framework requirements impracticable. In the event that such modifications are required, the Commission will make its best effort to apply expectations for school performance in a manner as reasonably consistent with those set forth in the Performance Frameworks and the School's Educational Program as set forth in Exhibit A to this Contract.

4.3. State Accountability System. The School shall be subject to and comply with all requirements related to the State assessment and accountability system for all public schools. The School shall administer all student testing as required by federal and State law, rule, policies and procedures. The School may elect to administer assessments in addition to the State's summative test. These additional assessments will not be factored into the School's index score for the purposes of the State school accountability system but the School may use them for the School's Commission-approved school-specific goals and measures, if any, and the Commission shall factor them into the overall accountability assessments in accordance with the Performance Frameworks.

4.4. Board of Education Authority. Pursuant to its duties under Article X, Section 3, of the Hawaii State Constitution, the BOE has the power to formulate statewide educational policy. The School shall only be subject to BOE policies that are specified in this Contract or are expressly identified by the BOE as applying to charter schools. If there is any conflict between an applicable BOE policy and a provision in this Contract, the BOE policy shall control.

5. Student Admission, Enrollment, & Dismissal

Comment [A9]: Suggest adding “withdrawal”

5.1. Non-Discrimination. The School shall make all student recruitment, admissions, enrollment and retention decisions in a nondiscriminatory manner and without regard to race, color, ethnicity, national origin, religion, sex, sexual orientation, marital status, income level, academic or athletic ability, disability, need for special education services, lack of proficiency in the English language.

Comment [A10]: Suggest expanding to languages other than English.

5.2. Admissions. The School shall comply with its Admission Policies and Procedures as approved by the Commission, and provided in Exhibit A (Educational Program). If the number of applicants exceeds the School's capacity of a program, class, grade level or building, the School shall select students to attend using a random selection process that shall be publicly noticed and open to the public; provided that if the School is a conversion charter school serving as the home school for the DOE district, then the School shall follow DOE policies and procedures regarding admissions and shall not be subject to the random selection requirements.

Comment [A11]: We suggest removing admissions policies from Exhibit A; instead they will be submitted to the Commission under the contract and subject to approval. Admissions policies should also address any enrollment preferences.

5.3. Enrollment. The School shall maintain accurate and complete enrollment data and daily records of student attendance.

Comment [A12]: Note that 302D-C does state that a conversion is subject to same admissions procedures for any grade in the conversion that was not in place when the school converted. We recommend adding this language in to make that clear and consistent with the law.

5.4. Joint Enrollment. Only for the purpose of calculating funding based on enrollment, no student may be jointly enrolled in the School and another public or private school.

5.5. Enrollment Preferences. The School shall not impose enrollment preferences, except as provided for in Exhibit A (Educational Program) or otherwise approved by the Commission.

Comment [A13]: Suggest changing to read “except as set forth in its Admissions Policies and Procedures” as approved by the Commission.

5.6. Dismissal. The School shall not dismiss or transfer a student involuntarily, unless the dismissal or transfer is accomplished through established administrative procedures provided for by this Contract, or by administrative procedures in the Commission’s rules or policies; provided that any dismissal of a student with a disability shall comply with the requirements of Ch. 8-60, HAR.

Comment [A14]: The procedures are not in place yet. We suggest Ch. 19 procedures as applicable until the time when Authorizer develops administrative procedures

~~5-6,5.7.~~ Withdrawal and Release.

Comment [A15]: We suggest adding language regarding withdrawal and release—what is required when students are transferring to/from schools. Add something on withdrawal and release.

6. Operation of School

6.1. Student Conduct and Discipline. The School shall adopt, update, and adhere to written policies concerning standards of student conduct and discipline which shall comply with federal and State laws. The policies are subject to Commission approval. The School shall provide copies to the School's parents and students at the start of each school year.

Comment [A16]: Suggest adding language here indicating that policy is subject to Commission approval—for example, policy should address due process rights.

6.2. Punishment of Pupils Limited. No physical punishment of any kind may be inflicted upon any pupil, but reasonable force may be used by a principal, principal's agent, teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor in order to restrain a pupil in attendance at school from hurting oneself or any other person or property, and reasonable force may be used as delineated in Sec. 703-309(2), HRS.

6.3. Conflict Resolution Policy. The School shall adopt, update and adhere to a Conflict Resolution Policy to provide parents and students due process in the event that a conflict arises; provided that where a dispute resolution process is defined for a particular program area (e.g., IDEA, Section 504, etc.), the School shall comply with the process for that particular program area which shall control. The Commission shall not intervene in the School’s Conflict and Resolution procedures except where the dispute pertains to a possible violation of any law or term under this Contract.

Comment [A17]: We suggest removing 6.3 altogether.

- 6.4. Complaints Process. The School shall establish and adhere to a process for resolving public complaints which shall include an opportunity for complainants to be heard. The final administrative appeal shall be heard by the School's Governing Board, except where the complaint pertains to a possible violation of any law or term under this Contract.
- 6.5. Contracting for Educational Services. The School shall not enter into a contract or subcontract for comprehensive management or administration services of its core educational program or services, unless otherwise agreed to in writing by the Commission or identified in Exhibit A (Educational Program). Such contracting is conditioned upon the School developing a management agreement with the educational service provider that meets the conditions in Exhibit C to this Contract; provided requirements of a School Improvement Grant or other federal grant shall control.
- 6.6. Health and Safety
- 6.6.1. Safe Environment. The School shall maintain a safe learning environment at all times. The School shall file a safety plan with the Commission.
- 6.6.2. Health Clearances. The School shall comply with Secs. 302A-1154 to 302A-1163, HRS, and Ch. 11-157, HAR, requiring documentation that each student has received immunizations against communicable diseases, is free from tuberculosis in a communicable form and has received a physical examination. Pursuant to Sec. 302A-1161, HRS, if a child does not complete the immunizations or physical examination required within the period provided by Sec. 302A-1155, HRS, after provisional entry into school, the School shall notify the parent or guardian of the child that if the required immunizations or physical examination is not completed within thirty days of the date of the notice, the child shall not be admitted to the School.
- 6.6.3. School Employees Afflicted with Tuberculosis. The School shall not allow any person who has contracted tuberculosis, while afflicted with the disease, to teach or work at the School.
- 6.6.4. Student Health Services. The School shall provide appropriate student health services and safety protections including providing first aid care for ill and injured students. The school may recommend that parents seek the help of a medical professional or appropriate health agencies for cases beyond its scope of responsibility.
- 6.7. Insurance. The School shall be covered under the Statewide Risk Management Program pursuant to Ch. 41D, HRS, for liability, property, crime and automobile insurance. The School shall comply with all laws, rules, policies, procedures and directives of the Department of Accounting and General Services' Risk Management Office. The School may purchase additional insurance coverage if so desired.
- 6.8. Procurement. Pursuant to Secs. 302D-25(b) and 302D-12(d), HRS, the School and its Governing Board shall be exempt from Ch. 103D, HRS. The School's Governing Board shall develop policies and procedures for the procurement of goods, services and construction consistent with the goals of public accountability and public procurement practices.
- 6.9. Records
- 6.9.1. Student Records. The School shall maintain student records for current and former students in accordance with the requirements of State and federal law, including the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g, as may be amended from time

Comment [A18]: May need some revision to ensure alignment with Commission complaint procedure.

Comment [A19]: Suggest adding "subject to Commission approval." Also add language to indicate school shall file and "adhere to" the plan.

Comment [A20]: Suggest adding "subject to Commission approval." Also add language to indicate school shall adopt, update, and adhere to the plan.

to time. Should a student transfer to another school, the School shall transfer the student's records to the new school in a timely manner and may maintain copies of the departing student's academic records created during the student's attendance at the School.

Comment [A21]: We suggest cross-referencing this section to the withdrawal section suggested in 5.7.

6.9.2. **Records Retention.** The School shall comply with all federal and State record keeping requirements. As a State entity, the School shall comply with the policies and guidelines of the Department of Accounting and General Services, Archives Division, Records Management Branch, with regard to the retention and disposal of government records.

6.9.3. **Open Records Law.** The School shall comply with Ch. 92F, HRS, the Uniform Information Practices Act.

6.10. **Reporting of Crime-Related Incidents.** The School shall adopt policies and procedures to:

- (a) Require a report to appropriate authorities from a teacher, official or other employee of the School who knows or has reason to believe that an act has been committed or will be committed, which:
 - (1) Occurred or will occur on School property during School hours or during activities supervised by the School; and
 - (2) Involves crimes relating to arson, assault, burglary, disorderly conduct, dangerous weapons, dangerous drugs, harmful drugs, extortion, firearms, gambling, harassment, intoxicating drugs, marijuana or marijuana concentrate, murder, attempted murder, sexual offenses, rendering a false alarm, criminal property damage, robbery, terroristic threatening, theft or trespass;
- (b) Establish procedures for disposing of any incident reported; and
- (c) Impose appropriate disciplinary action for failure to report these incidents, including probation, suspension, demotion and discharge of School officials.

6.11. **Smoking Prohibited.** As a public school, the School shall prohibit the use of tobacco at its school or at School functions.

6.12. **Transportation.** The School may provide transportation through an agreement or contract with a private provider. The School shall ensure the safety of students in any transportation arrangement and shall comply with state and county requirements pertaining to drivers that transport students.

Comment [A22]: Suggest that this is changed to read, "A school that provides transportation shall ensure the safety of students and shall comply with state and county requirements..."

7. **Facilities**

7.1. **Location.** The School shall provide educational services, including the delivery of instruction, at the location(s) identified in Exhibit A (Educational Program); provided that the School may conduct class site visits to temporary locations not identified in Exhibit A and may provide instruction at such temporary locations not to exceed 30 days. The School shall not operate in any other location without the prior written approval of the Commission.

Comment [A23]: Suggest revising this section to make it more clear. Also suggest changing to 20 consecutive days.

7.2. **Occupancy Rights.** The School shall possess the lawful right to occupy and use the premises on which the School operates. The School shall provide the Commission a copy of the School's lease, deed or other occupancy agreement for all locations identified in Exhibit A (Educational Program), except if the School occupies DOE school facilities.

7.3. **Compliance with Codes.** The School shall be located in facilities that comply with all applicable State and county building, zoning, fire, health and safety code requirements.

7.3.1.If the School is located in facilities other than DOE facilities, the School shall obtain and maintain any necessary certificates or permits required for use and occupancy of the School's facilities from the applicable building, zoning, fire, health and safety authorities. The School shall immediately notify the Commission in the event that any such certificate or permit is jeopardized, suspended or revoked.

7.3.2.The School shall comply at all times with the occupancy capacity limits set by zoning, building, fire and other applicable regulations.

7.3.3.Any other law to the contrary notwithstanding, any exemptions from building, zoning, fire, health and safety laws, regulations, codes, standards and requirements shall not be applicable to the School except as ~~approved~~ ~~authorized~~ by the Commission, which ~~approval~~ shall not be unreasonably withheld. Where necessary, the School shall be responsible for requesting permits and approvals from appropriate governmental agencies in compliance with this subparagraph.

Comment [A24]: Minor language changes

7.4. Relocation or Expansion. The School's ~~relocation or expansion~~ to different facilities shall constitute a material change in the Contract and shall require prior written approval by the Commission. Approval shall be subject to the following conditions:

Comment [A25]: Suggest separating these into two: 7.4.1 Relocation and 7.4.2. Expansion. Relocation should be a different process than expansion. Approval for expansion should also include some demonstration of success on the Performance Frameworks.

- (a) Prior written request to the Commission for approval of such relocation or expansion;
- (b) Submission to the Commission of a Certificate of Occupancy for the new facilities at least 30 days prior to the first day of occupancy;
- (c) Submission to the Commission of a lease, deed or other document showing the School possesses the right to occupy the new premises;
- (d) Documentation that the new facilities meet applicable health, safety, fire, building and zoning code requirements; and
- (e) Documentation that the new facilities are of sufficient size to safely house anticipated enrollment.

8. Funding

8.1. Per-Pupil Funding. The School's non-facility general fund per-pupil funding shall be as defined in Sec. 302D-28, HRS. The Commission shall distribute the School's per-pupil allocation each fiscal year pursuant to Sec. 302D-28(f), HRS, and shall provide the School with the calculations used to determine the per-pupil amount each year. All funds distributed to the School from the Commission shall be used solely for the School's educational purposes as appropriated by the Legislature, and the School shall have discretion to determine how such funding shall be allocated at the school level to serve those purposes subject to applicable laws and this Contract.

8.2. Funding Subject to Appropriation. The general fund per-pupil funding is contingent upon legislative appropriation and allocation of funds. If the Legislature fails to appropriate sufficient monies or if the appropriation is reduced by the Governor or by any other means and the effect of such non-appropriation or reduction is to provide insufficient monies for the continuation of the School, this Contract shall terminate on the last day of the fiscal year for which sufficient funds are available.

8.3. Adjustments to Funding. The Commission's disbursement of per-pupil funds may be adjusted for the following reasons: (a) To reconcile projected versus actual enrollment counts; (b) To adjust the per-pupil amount due to restriction by the Governor or other reduction action; (c) To adjust the actual enrollment count based on an audit of pupil counts and per pupil revenue

that impact the funding received by the School; or (d) To withhold funds due to non-compliance in accordance with Sec. 302D-28(f), HRS. The Commission shall have the discretion to determine whether to make an adjustment by: (i) Reconciling the adjusted amount in a subsequent disbursement to the School; or (ii) Either making payment to the School or requiring reimbursement from the School with at least thirty (30) days' written notice by the Commission.

Comment [A26]: Suggest deleting "f" from here and just keeping 302D

- 8.4. **Facility Funds.** In each year in which funds are appropriated for charter school facility purposes, the Commission shall allocate the funds among eligible charter schools. All funds distributed to the School shall be restricted to the purposes of the appropriation.
- 8.5. **Federal Funding.** Pursuant to Sec. 302D-28, HRS, the School shall be eligible for all federal financial support to the same extent as all other public schools. The Commission shall timely distribute federal funds to the School based on the same methodology used by the DOE to distribute the funds to DOE-operated public schools; provided that the Commission may, by a majority vote at a public meeting, elect to employ an alternative distribution method where such discretion is allowed. The Commission shall make the DOE allocation methods publicly available and shall work with the DOE and the School where questions of equity may arise.
- 8.6. **Title I Funding.** The Commission shall furnish the School with a Title I, Part A of the Elementary and Secondary Education Act eligibility measure and shall provide Title I, Part A funds to the School based on that information. The School, if eligible, shall use Title I, Part A funds in accordance with applicable federal law and regulations including programmatic and fiscal requirements, and the Commission shall provide information to assist the School in understanding Title I, Part A requirements. The School shall provide a school plan that includes the components and school improvement elements required under Title I, Part A, and the Commission shall approve school plans within a reasonable timeframe. The Commission shall allocate set-aside funds in accordance with the intent and purpose of Title I, Part A to support academic progress in the School.
- 8.7. **Additional Funds.** The School may accept gifts, donations or grants and shall comply with all applicable State or federal laws regarding such gifts, donations or grants. The School shall keep separate accounting records of all gifts, donations and grants.
- 8.8. **No Tuition.** The School shall not assess tuition, contribution or attendance fees of any kind as a condition of enrollment.
- 8.9. **Fees.** The School may charge reasonable fees, to the extent permitted by law, for summer school programs, after school programs, student activities and any other service, materials or equipment for which the DOE-operated public schools may charge a fee.

Comment [A27]: Suggest adding that school shall provide a report on this accounting and any other funds not from state or federal sources to the Commission by Sept. 15

9. **Financial Matters**

- 9.1. The School shall maintain accurate and comprehensive financial records, operate in accordance with Generally Accepted Accounting Principles and use public funds in a fiscally responsible manner.
- 9.2. **Fiscal Year.** The fiscal year for the School shall begin on July 1 and end on June 30 of the subsequent calendar year.
- 9.3. **Management and Financial Controls.** At all times, the School shall maintain appropriate governance and management procedures and financial controls which shall include, but not be limited to: (a) budgets, (b) accounting methods, (c) payroll procedures, (d) financial reporting

Comment [A28]: Suggest a financial control policy, also subject to Commission approval.

and (e) internal control procedures for receipts, disbursements, purchases, payroll and fixed assets.

- 9.4. Assets. The School shall maintain a complete and current inventory of all of its property and shall update the inventory annually. The School shall take all necessary precautions to safeguard assets acquired with public funds.
- 9.5. Chart of Accounts. The Commission may require the School to follow a uniform chart of accounts; provided that the Commission shall provide a reasonable time period for the School to convert to such chart of accounts.
- 9.6. Transfer of Funds to Nonprofits. The School shall not transfer funds provided to it by the Commission to any affiliated nonprofit organization except for legitimate and reasonable payments from the School to the nonprofit pursuant to a written agreement.
- 9.7. Financing Agreements. The School shall comply with Ch. 37D, HRS, relating to financing agreements. "Financing agreement" means any lease purchase agreement, installment sale agreement, loan agreement, line of credit or other agreement of the department or, with the approval of the director, and any agency, to finance the improvement, use or acquisition of real or personal property that is or will be owned or operated by one or more agencies of the State, the department or any agency, or to refinance previously executed financing agreements including certificates of participation relating thereto. The School shall not act as a guarantor of any such financing agreement.

10. Personnel

- 10.1. Collective Bargaining. The School shall be subject to collective bargaining under Ch. 89, HRS, and shall comply with the master agreements as negotiated by the State; provided that the School may enter into supplemental collective bargaining agreements that contain cost and non-cost items to facilitate decentralized decision-making. The School shall provide a copy of any supplemental collective bargaining agreement to the Commission within 14 days of full execution.
- 10.2. Nondiscrimination. No person performing work under this Contract, including any employees or agents of the School, shall engage in any discrimination that is prohibited by any applicable federal, State or county law, including but not limited to Sec. 378-2, HRS.
- 10.3. Teacher Credentials. The School's teachers shall comply with applicable State licensing requirements consistent with the Elementary and Secondary Education Act and collective bargaining agreement, as such requirements may be amended. Teachers shall be licensed by the Hawaii Teachers Standards Board and shall meet the federal designation of "Highly Qualified" as adopted by the DOE and defined in the "Title IIA Highly Qualified Teacher Guidelines," updated May 2012, as may be amended. If the School receives Title I funding, the School shall ensure that 100% of teachers in core academic subjects are Highly Qualified, and federal funds shall not be used to pay for teachers who do not meet this requirement.
- 10.4. Evaluations. Pursuant to Board of Education Policy 2055, the School is responsible for implementing principal and teacher evaluation systems that are based on efficiency, ability, contribution to student learning and growth. The School may elect to implement the State-developed educator evaluation system or to develop and implement its own educator evaluation system that meets the criteria outlined in BOE Policy 2055, as may be amended from time to time.

Comment [A29]: Suggested change: "Pursuant to federal and state law and policy..."

Comment [A30]: Add "By the Commission"

10.5. Non-Instructional Employees. The School shall ensure that the School's non-instructional employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, State or county laws, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

10.6. Criminal History Checks. The School shall conduct criminal history checks in accordance with Sec. 846-2.7, HRS, to determine whether a prospective employee or agent is suitable for working in close proximity to children. Information obtained pursuant to this provision shall be used exclusively by the School for the purposes of determining whether a person is suitable for working in close proximity to children. All such decisions shall be subject to applicable federal laws and regulations currently or hereafter in effect. The School may terminate the employment of any employee or deny employment to an applicant if the person has been convicted of a crime, and if the School finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety or well-being of children.

10.7. Personnel Policies. The School shall adopt, update and adhere to personnel policies.

Comment [A31]: Suggest adding that these policies are subject to Commission approval

11. Reporting & Data

11.1. Reports, Generally.

11.1.1. The School shall provide to the Commission, in the format and timeframe prescribed by the Commission, any reports necessary and reasonably required by the Commission to meet its oversight and reporting obligations. The Commission shall annually update the list of required reports and due dates and provide this information to the School.

Comment [A32]: Suggest using "data" or "information" instead of reports

Comment [A33]: Also change to "data" or "information"

11.1.2. The Commission shall endeavor to reduce the reporting burden it places on the School by providing reasonable notice for requests, providing timely notification when due dates are changed, avoiding duplicate requests and limiting requests to what is reasonably required by the Commission and other State entities.

~~11.1.2-11.1.3.~~

Comment [A34]: Suggest adding new provision that reads something like, "School shall submit to the appropriate state agencies, including but not limited to the Department of Education, Department of Health, and Office of Information Practices, any data required to meet its obligations as a public school and entity of the state."

11.2. Enrollment Count Reports. The School shall provide to the Commission actual and projected enrollment counts as required for funding and reporting purposes. The Commission may elect to obtain actual enrollment counts directly from the student information data system.

11.3. Financial Reports

11.3.1. Budget and Cash Flow. The School shall prepare and provide to the Commission a copy of its annual budget as approved by the School's Governing Board and cash flow projections for each upcoming fiscal year by **June 15**.

11.3.2. Quarterly Financial Reports. The School shall prepare and submit quarterly financial reports to the Commission within ~~45-30~~ days of the end of each fiscal year quarter.

Comment [A35]: Suggest changing to 30

11.3.3. Unaudited Financial Statements. The School shall prepare and submit its unaudited annual financial statements to the Commission by ~~September 15~~ **August 31** of the subsequent fiscal year; provided that the Commission, with reasonable notice to the School, may change the deadline depending on circumstances.

Comment [A36]: Suggest changing to August 31

11.3.4. Annual Audits. Each fiscal year, the School shall provide for an independent annual financial audit conducted in accordance with Generally Accepted Auditing Standards

and Governmental Auditing Standards and performed by a certified public accountant (CPA). The Commission shall provide the guidelines and/or scope of the audit and may require minimum CPA qualifications or that the School select from a list of qualified CPAs as provided by the Commission. The School shall provide the completed audit to the Commission by ~~November 15~~October 31 after the conclusion of the fiscal year; provided that the Commission, with reasonable notice to the School, may change the deadline depending on circumstances. The School shall pay for the audit if an appropriation is not made by the Legislature for such purpose.

Comment [A37]: Suggest changing to October 31

11.4. **Governing Board Reporting.** The School shall make the following documents available at a publicly accessible area in its office and/or on its website, ~~if applicable,~~ by the respective due dates. ~~Additionally, the School shall make the following documents available on the Commission's website by either posting them directly onto the Commission's website or sending an electronic version to the Commission, by the respective due dates.~~

Comment [A38]: Suggest changing so that contract only requires that schools post on school website

Document Description	Due Date
Governing Board member list (current names and contact information)	Submitted to the Commission b By July 30th of each year
Governing Board member changes	Within-Submitted to the Commission within 30-14 days of any change
Schedule of Governing Board meetings	Posted on school website and/or in school office b By July 30th of each year
Revisions to schedule of Governing Board meetings	Posted on school website and/or in school office n Not less than six days prior to changed meeting date
Governing Board meeting notices and agendas	Posted on school website and/or in school office n Not less than six days prior to the Governing Board meeting
Governing Board meeting minutes	Posted on school website w Within 30 days following the Governing Board meeting

Comment [A39]: Suggest changing to Sept. 1

Comment [A40]: Suggest changing to 14 days

Comment [A41]: Suggest changing to Sept. 1

11.4.1. **School Policies and Procedures.** ~~By July 30~~ of each year, ~~the School shall provide written notification to the Commission on whether it has developed new policies and procedures or revised its current policies and procedures, the School shall submit electronically to the Commission its most current policies and procedures as follows in the following areas:~~

Comment [A42]: Suggest changing so that schools do not need to submit policies and procedures annual, but indicate that the policies are subject to Commission approval.

- ~~(a) (a)~~—Conflict of interest policy;
- ~~(b)~~ Admissions and enrollment;
- ~~(a)(c)~~ Student withdrawal and release;
- (b) Student conduct and discipline policy;
- ~~(c) Conflict resolution policy;~~
- (d) Complaints procedures;
- (e) Procurement policies and procedures; and
- (f) Personnel policies.

Comment [A43]: Suggest removing conflict resolution; add accounting policies that include internal financial controls

~~Within 14 days of revision and approval by the School's governing board, the School shall submit electronically to the Commission its revised policies and procedures~~

Comment [A44]: Suggest adding this language

- 11.4.2. Collective Bargaining. Within **14 days** of full execution, the School shall provide to the Commission a copy of any supplemental collective bargaining agreement.
- 11.4.3. Other Reporting. Upon request, the School shall provide the Commission any other documents deemed by the Commission to be relevant to the implementation of any term or condition of this Contract.
- 11.5. Educational Data. Pursuant to Sec. 302D-23, HRS, the School shall comply with the minimum educational data reporting standards established by the Board of Education (BOE) and with additional data reporting required by the Commission in its oversight of this Contract and shall ensure all data is accurate and complete. For the purposes of complying with the BOE's educational data reporting standards, the School shall only use data systems that have been approved by the BOE as complying with the BOE-approved data reporting standards and shall obtain prior written approval from the BOE for any data system that has not been so approved.
- 11.6. Personnel Data. The School shall maintain accurate and complete personnel and payroll information and shall provide such information to the Commission, in the format and timeframe prescribed by the Commission, as required for the Legislature or any State agency including but not limited to the Department of Budget & Finance, Employees' Retirement System and the Hawaii Employer-Union Health Benefits Trust Fund. The School shall ensure each employee receiving State benefits qualifies for such benefits.
- 11.7. School's Annual Report. The School shall submit an annual report to the Commission in the format and timeframe needed to assist the Commission in gathering complete information about the School.
- 11.8. Commission's Annual Report. The Commission shall publish and provide an annual report on the School's performance in accordance with the Performance Frameworks.
- 11.9. Immediate Notice. The School shall immediately notify the Commission (and other appropriate authorities) of any of the following:
- (a) Any circumstance requiring the closure of the School, including, but not limited to, a natural disaster, such as an earthquake, storm, tsunami, flood or other weather related event, other extraordinary emergency or destruction of or damage to the School facility;
 - (b) Any condition that may cause the School to vary from the terms of this Contract or applicable requirements, federal and/or State law;
 - (c) The arrest of any members of the School Governing Board or School employees for a crime punishable as a felony or any crime related to the misappropriation of funds or theft;
 - (d) Misappropriation of funds;
 - (e) Any complaint, citation or default filed against the School by a government agency or lessor;
 - (f) Any inaccuracy found in enrollment count or other data provided to the Commission;
 - (g) The School receives a notice or is otherwise informed that the School or Commission is a party to a legal suit;
 - (h) The discipline of employees at the School arising from misconduct or behavior that may have resulted in harm to students or others, or that constituted violations of law;
 - (i) A default on any obligation, which shall include debts for which payments are past due by ninety (90) days or more; or
 - (j) The School's enrollment at any time decreases by 10% or more compared to the most recent pupil count submitted to the Commission.

Comment [A45]: Suggest removing 14 days and stating instead that "any executed supplemental agreement must be on file with Commission"

Comment [A46]: Suggest changing to "information"

Comment [A47]: Suggest adding "relevant to any term or condition of this contract"

Comment [A48]: May need revision if it another approach makes more sense, e.g., DOE compiles this information from all public schools for news media and parents.

12. Monitoring & Intervention

12.1. Monitoring. The Commission shall continually monitor the performance and legal compliance of the School. The Commission shall have the authority to conduct or require oversight activities that enable the Commission to fulfill its responsibilities under Ch. 302D, HRS, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of Ch. 302D, HRS and adhere to the terms of this Contract. The Commission may take the necessary steps to evaluate the educational, legal, fiscal and organizational condition of the School and to ensure that the School is in compliance with this Contract.

Comment [A49]: We suggest adding a requirement here that says designated person at school and board is responsible for Epicenter. Others may also access Epicenter but the Commission would like one person at school and on board to be contact.

12.2. DOE Monitoring. To meet its oversight and reporting obligations, the DOE, as the State Education Agency or Local Education Agency, may monitor the School for compliance with programmatic or fiscal requirements, including requiring reports or other documentation, under any federal or State law. The School shall comply with all such monitoring by the DOE.

12.3. Access to Records. The School shall make all School records open to inspection by the Commission, the DOE, the Office of the Auditor, law enforcement officials, contracted evaluators or any other federal or State regulatory agency within five business days after request is made, or sooner if required by law.

Comment [A50]: Suggest adding, "Consistent with the school's obligations under FERPA...."

12.4. Site Visits. The Commission may visit the School informally without notice at any time and may, at its discretion, conduct announced formal school visits. Such site visits may include any activities reasonably related to fulfillment of its oversight responsibilities including, but not limited to, inspection of the facilities, audit of financial books and records, inspection of records maintained by the School, interviews and observations of the principal, staff, school families and community members, and observation of classroom instruction.

Comment [A51]: Suggest adding language indicating that Commission will make effort to provide notice

12.5. Intervention. If the Commission finds deficiencies in the School's performance or legal compliance, the Commission and the School shall follow the Intervention Protocol attached as Exhibit D. Intervention may be initiated when the Commission finds that the School has failed to:

Comment [A52]: Changes definitely forthcoming to IP.

- (a) Comply with applicable laws, rules, policies or procedures;
- (b) Comply with the terms and conditions of this Contract; or
- (c) Meet performance expectations as set forth in the Performance Frameworks.

Failure to invoke the Intervention Protocol shall not be (i) construed as a waiver or relinquishment of any requirement under applicable laws, rules, policies, procedures, contractual terms and conditions or performance expectations; or (ii) deemed a necessary precedent to non-renewal or revocation.

Comment [A53]: We anticipate making changes to the Intervention Protocol—perhaps adding something lower than "Notice of Deficiency" for reports that are turned in late, etc.

13. Renewal, Revocation & Closure

13.1. Renewal. The Parties agree that this Contract, ~~upon its expiration, will not be subject to the renewal process pursuant to Sec. 302D-18, HRS. The Parties agree that, upon expiration of this Contract term, they intend to execute a new charter contract for a subsequent term to be determined by the Commission.~~

Comment [A54]: Suggest deleting language as indicated

13.2. Revocation. The Commission may revoke a contract for reasons stated in Sec. 302D-18(g), HRS, provided that the Parties agree that the Contract will not be revoked for failure to meet or make sufficient progress toward performance expectations set forth in the Contract. The

Commission shall follow the revocation criteria and process as defined in Sec. 302D-18, HRS, administrative rules and Commission policies and procedures.

- 13.3. School-Initiated Closure. Should the School choose to voluntarily surrender this Contract before the end of the Contract term, it may do so in consultation with the Commission at the close of any school year and upon written notice to the Commission given at least ninety (90) days before the end of the school year.
- 13.4. Dissolution. In the event that the School ceases operation for any reason, including but not limited to non-renewal, revocation or voluntary surrender of this Contract, the School agrees to continue to operate its educational program until the end of the school year; provided that if the School voluntarily surrenders this Contract due to lack of funds, the School shall cooperate with the Commission in scheduling cessation of operations. The School shall cooperate with the Commission in ensuring the orderly closure of the School and shall comply with the Commission's closure policies and protocol.
- 13.5. Remaining Assets. In the event that the School closes, the School shall return any remaining public assets to the State, provided that any outstanding obligations of the School are fulfilled first pursuant to Sec. 302D-19, HRS.

14. Miscellaneous Provisions

- 14.1. Entire Contract. The Parties intend this Contract, including all attachments and exhibits, to represent a final and complete expression of their agreement, which shall be considered the Contract. All prior representations, understandings and discussions are merged herein, and no course of prior dealings between the Parties shall supplement or explain any terms used in this document. The Parties recognize that amendments to this Contract may be approved from time to time hereafter.
- 14.2. Amendments. Any amendment to this Contract shall be effective only if approved by a majority vote of the Commission at a public meeting.
 - 14.2.1. The School may submit any proposed requested amendment to the Commission in accordance with instructions provided by the Commission. The School shall not take action related to the requested amendment until the Commission has approved said amendment.
 - 14.2.2. Changes in operation that require the School to obtain an amendment to this Contract include but are not limited to the following changes:
 - (a) To any material term of the School's Educational Program (Exhibit A);
 - (b) In school location (relocation of site or adding or terminating sites);
 - (c) In School management arrangement (such as intention to hire or terminate a management provider);
 - (d) In admissions or enrollment policies or procedures.
- 14.3. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Hawaii, including all requirements imposed by DOE policy and regulation, and all applicable federal laws of the United States.
- 14.4. Conflict Between Contract, Law and Administrative Rules. In the event of a conflict between this Contract, State law and the administrative rules pertaining to charter schools, the order of

precedence shall be State law, followed by administrative rule, followed by the terms and conditions of this Contract.

- 14.5. Disputes Resolution. It is the intent of the parties to communicate on a regular basis in a positive and effective manner. The parties agree to communicate areas of concern as they arise and to address those concerns in a professional manner. Any disputes between the Commission and the School which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by the full Commission in writing, within 90 calendar days after a written request by the School for a final decision concerning the dispute; provided that where a disputes resolution process is defined for a particular program area (e.g., IDEA, Section 504, etc.), the Parties shall comply with the process for that particular program area; and further provided that the parties may mutually agree to utilize the services of a third-party facilitator to reach a mutual agreement prior to decision by the full Commission. Any such final decision by the Commission shall be final and conclusive.
- 14.6. Non-Assignability. The School shall not assign or subcontract any duty, obligation, right or interest under this Contract without prior written approval of the Commission. A violation of this provision shall be considered material and substantial and shall be grounds for immediate revocation of this Contract.
- 14.7. Notices. Unless otherwise specified by law, any written notice required to be given by a Party to this Contract shall be: (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice shall be sent to the Parties' mailing addresses first indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. Parties are responsible for notifying each other in writing of any change of mailing address.
- 14.8. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
- 14.9. Waiver. The failure of either Party to insist upon the strict performance of or compliance with any term, provision or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the Parties' right to enforce the same in accordance with this Contract.
- 14.10. No Third-Party Beneficiary. The enforcement of the terms and conditions of this Contract shall be strictly reserved to the Commission and the School. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other person. It is the express intent of the Parties to this Contract that any person receiving services or benefits hereunder shall be deemed an incidental beneficiary only, without enforceable rights against a Party to this Contract.

Comment [A55]: Suggest that notices and responses will be delivered via email and through Epicenter. We should clarify how days will be counted—business or calendar days? Epicenter will notify schools when a Notice has been uploaded and will also remind schools about due dates for responses.

IN WITNESS WHEREOF, the Parties have made and entered into this Contract as of the effective date.

STATE PUBLIC CHARTER SCHOOL COMMISSION

CHARTER SCHOOL

Signature

Signature

Print Name

Print Name

Title

Title

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Deputy Attorney General

Deputy Attorney General

EXHIBITS:

A - School's Educational Program

B - Performance Frameworks (Organizational and Financial and School-Specific if applicable)

C - Educational Service Provider Requirements

D - Intervention Protocol

[Insert EXHIBIT A here]

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EXHIBIT B.1.
FINANCIAL PERFORMANCE FRAMEWORK

The Financial Performance Framework is an accountability tool that provides the Commission with data necessary to assess the financial health and viability of charter schools in its portfolio on an ongoing basis and for the purposes of an annual review. The framework summarizes a charter school's current financial health while taking into account the school's financial trends over a period of three years. The measures are designed to be complementary. No single measure gives a full picture of the financial situation of a school. Taken together, however, the measures provide a comprehensive assessment of the school's financial health and viability based on a school's historic trends, near-term financial situation and future viability.

Within each annual reporting period, the Financial Performance Framework provides for an initial review and a follow-up assessment that together produce two ratings: a Preliminary Rating and a Final Rating. The Preliminary Rating indicates whether the school has met the standard for financial viability based on the Commission's initial review of financial information, which, for an annual review, will be drawn from the school's audited financials. The Final Rating documents the Commission's revised assessment based on more current financial information and/or more detailed examination of the school's financial position, as needed.

Preliminary Ratings

The Preliminary Rating is either *Meets Standard* or *Pending Further Analysis*. The *Meets* rating means that the information contained in the financials under review indicates that the school is meeting or exceeding the target for the standard in question. The *Pending* rating means that the school is not meeting the target based on the financials under review. A school that misses the standard on any one measure may or may not be at financial risk. It may be in immediate distress, financially trending negatively, both or neither. There are two types of additional information that the Commission may need before assigning a Final Rating. The first is more current information. When conducting a year-end evaluation of a school's financials, the Commission will be reviewing audit numbers that are typically at least four months old by the time the audit has been finalized. The Commission's further analysis will often include review of current, unaudited, financials. The second is more detailed information about the school's financial position to assess the reasons behind the failure to meet the standard. For example, a school might make a strategic long-term financial decision that results in it missing a standard in the near term. The Commission's follow-up will consider the more current and more detailed information to determine whether the Preliminary Rating is still applicable and the degree to which it is, in fact, an indication of financial risk or distress.

Final Ratings

The Final Rating is either *Meets Standard*, *Does Not Meet Standard* or *Falls Far Below Standard*.

Meets Standard

A *Meets* rating indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary *Pending* rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.

Does Not Meet Standard

A *Does Not Meet* rating indicates that upon further review following a preliminary *Pending* rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A *Does Not Meet* rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.

Falls Far Below Standard

A *Falls Far Below* rating indicates that upon further review following a preliminary *Pending* rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary. The school’s rating will be based on both the most recent audited financials and more current unaudited financials. The Commission will also consider any relevant context for the school’s financial position that informs the causes of the school’s substantial shortcomings for the area in question. Appropriate monitoring and/intervention will be determined, in part, by how the rating on the standard in question fits within the school’s overall performance on the framework.

1. NEAR TERM INDICATORS

1.a. Current Ratio (Working Capital Ratio): Current Assets divided by Current Liabilities	
Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Current Ratio is greater than or equal to 1.1 or <input type="checkbox"/> Current Ratio is between 1.0 and 1.1 <i>and</i> one-year trend is positive (current year ratio is higher than last year’s) <p>Note: For schools in their first or second year of operation, the current ratio must be greater than or equal to 1.1.</p>	<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.
<p>Pending Further Analysis:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Current Ratio is between 1.0 and 1.1 <i>and</i> one-year trend is negative or <input type="checkbox"/> Current Ratio is less than or equal to 1.0 	<p>Does Not Meet Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention. <p>Falls Far Below Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.
1.b. Unrestricted Days Cash: Unrestricted Cash divided by ((Total Expenses-Depreciation Expenses)/365)	
Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 60 Days Cash or 	<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the

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<input type="checkbox"/> Between 30 and 60 Days Cash <i>and</i> one-year trend is positive Note: Schools in their first or second year of operation must have a minimum of 30 Days Cash.	<p>standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.</p>
<p><i>Pending Further Analysis:</i> <input type="checkbox"/> Days Cash is between 30 and 60 days <i>and</i> one-year trend is negative or <input type="checkbox"/> Days Cash is below 30 days</p>	<p><i>Does Not Meet Standard:</i> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.</p> <p><i>Falls Far Below Standard:</i> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.</p>

1.c. Enrollment Variance: Actual Enrollment divided by Enrollment Projection in Charter School Board-Approved Budget	
Preliminary Rating	Final Rating (Following Additional Analysis)
<p><i>Meets Standard:</i> <input type="checkbox"/> Enrollment Variance equals or exceeds 95% in the most recent year</p>	<p><i>Meets Standard:</i> <input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.</p>
<p><i>Pending Further Analysis:</i> <input type="checkbox"/> Enrollment Variance is below 95% in the most recent year</p>	<p><i>Does Not Meet Standard:</i> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.</p> <p><i>Falls Far Below Standard:</i> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i></p>

B.1-3

	rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.
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2. SUSTAINABILITY INDICATORS

2.a. Total Margin: Net Income divided by Total Revenue

Aggregated Total Margin: Total 3 Year Net Income divided by Total 3 Year Revenues

Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Aggregated Three-Year Total Margin is positive <i>and</i> the most recent year Total Margin is positive or <input type="checkbox"/> Aggregated Three-Year Total Margin is greater than -1.5%, the trend is positive for the last two years <i>and</i> the most recent year Total Margin is positive <p>Note: For schools in their first or second year of operation, the cumulative Total Margin must be positive.</p>	<p>Meets Standard:</p> <p><input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.</p>
<p>Pending Further Analysis:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Aggregated Three-Year Total Margin is greater than -1.5%, but trend does not meet standard or <input type="checkbox"/> Aggregated Three-Year Total Margin is less than or equal to -1.5% or <input type="checkbox"/> The most recent year Total Margin is less than -10% 	<p>Does Not Meet Standard:</p> <p><input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.</p>
	<p>Falls Far Below Standard:</p> <p><input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.</p>

2.b. Debt to Asset Ratio: Total Liabilities divided by Total Assets

Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Debt to Asset Ratio is less than 0.50 	<p>Meets Standard:</p> <p><input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based</p>

B.1-4

	on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.
Pending Further Analysis: <input type="checkbox"/> Debt to Asset Ratio is greater than or equal to .50	Does Not Meet Standard: <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.
	Falls Far Below Standard: <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.

2.c. Cash Flow: Multi-Year Cash Flow = (Year 3 Total Cash) – (Year 1 Total Cash); One-Year Cash Flow = (Year 2 Total Cash) – (Year 1 Total Cash)	
Preliminary Rating	Final Rating (Following Additional Analysis)
Meets Standard: <input type="checkbox"/> Multi-Year cumulative cash flow is positive <i>and</i> cash flow is positive each year or <input type="checkbox"/> Multi-year and most recent year cash flows are positive Note: Schools in their first or second year of operation must have positive cash flow.	Meets Standard: <input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.
Pending Further Analysis: <input type="checkbox"/> Multi-Year cumulative cash flow is positive, but trend does not meet standard or <input type="checkbox"/> Multi-Year cumulative cash flow is negative	Does Not Meet Standard: <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.

B.1-5

	<p>Falls Far Below Standard:</p> <p><input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.</p>
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2.d. Unrestricted Fund Balance Percentage: Fund balance / Total Expenses	
Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard:</p> <p><input type="checkbox"/> Fund balance percentage is greater than or equal to 25%</p>	<p>Meets Standard:</p> <p><input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.</p>
<p>Pending Further Analysis:</p> <p><input type="checkbox"/> Fund balance percentage is less than 25%</p>	<p>Does Not Meet Standard:</p> <p><input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.</p> <p>Falls Far Below Standard:</p> <p><input type="checkbox"/> Upon further analysis, the school's performance on this component signals a significant financial risk to the school.</p>

2.e. Change in Total Fund Balance:	
<p>Multi-Year= (Year 3 Fund Balance) – (Year 1 Fund Balance);</p> <p>One-Year= (Year 2 Fund Balance) – (Year 1 Fund Balance)</p>	
Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard (in one of two ways):</p> <p><input type="checkbox"/> Multi-Year change in fund balance is positive <i>and</i> change is positive each year</p> <p>or</p> <p><input type="checkbox"/> Multi-year and most recent year changes are positive</p> <p>Note: Schools in their first or second year of operation must have positive change each year.</p>	<p>Meets Standard:</p> <p><input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the</p>

B.1-6

	<p>standard indicates sound financial viability.</p>
<p><i>Pending Further Analysis:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Multi-Year change in fund balance is positive, but trend does not meet standard or <input type="checkbox"/> Multi-Year change in fund balance is negative 	<p><i>Does Not Meet Standard:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention. <p><i>Falls Far Below Standard:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.

B.1-7

EXHIBIT B. 2.
ORGANIZATIONAL PERFORMANCE FRAMEWORK

The purpose of the Organizational Performance Framework is to communicate to the charter school and public the compliance-related standards which the charter school must meet. The Organizational Framework includes the standards that the charter school is already required to meet through state and federal law, rules or the charter contract.

NACSA Principles & Standards (2012) states that,

“A Quality Authorizer implements an accountability system that effectively streamlines federal, state, and local...compliance requirements while protecting schools’ legally entitled autonomy and minimizing schools’ administrative and reporting burdens” (p. 16).

For each measure a school receives one of three ratings.

Meets Standard:

The school **materially** meets the expectations outlined below.

Does Not Meet Standard:

The school has failed to implement the program in the manner described **above**; the failure(s) were material, but the board has instituted remedies that have resulted in compliance or prompt and sufficient movement toward compliance to the satisfaction of the authorizer.

Falls Far Below Standard:

The school failed to implement the program in the described manner; the failure(s) were material and significant to the viability of the school, or regardless of the severity of the failure(s), the board has not instituted remedies that have resulted in prompt and sufficient movement toward compliance to the satisfaction of the authorizer.

Comment [A56]: Suggest adding a definition of material for organizational framework, e.g., “For purposes of defining organizational performance accountability, the authorizer should consider whether the information would be relevant and significant to decisions about whether to renew, non-renew, or revoke a charter.”

Comment [A57]: Change to “below”

1. EDUCATION PROGRAM

<p>Measure 1a Is the school implementing the material elements of its Educational Program as defined in the charter contract?</p>
<p>Meets Standard: The school implemented the material elements of its Educational Program in all material respects, and, in operation, the education program reflects the essential terms as defined in the charter contract, or the school has obtained approval for a modification to the essential terms.</p>
<p>Measure 1b Is the school complying with applicable education requirements?</p>
<p>Meets Standard: The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to education requirements, including but not limited to:</p> <ul style="list-style-type: none"> • Academic standards, including Common Core • Graduation requirements • State assessment and student testing • Implementation of mandated programming as a result of state or federal funding, including Title I and Title II funding

Measure 1c**Is the school protecting the rights of students with disabilities?****Meets Standard:**

Consistent with the school's status and responsibilities as a school within a single LEA under the State Department of Education, the school materially complies with applicable laws, rules, regulations and provisions of the charter contract (including the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act Amendment Act) relating to the treatment of students with identified disabilities and those suspected of having a disability, including but not limited to:

- Equitable access and opportunity to enroll
- Identification and referral
- Appropriate development and implementation of Individualized Education Plans (IEPs) and Section 504 plans
- Operational compliance including the academic program, assessments and all other aspects of the school's program and responsibilities
- Discipline, including due process protections, manifestation determinations and behavioral intervention plans
- Access to the school's facility and program to students in a lawful manner and consistent with students' IEPs or Section 504 plans
- Appropriate use of all available, applicable funding

Measure 1d**Is the school protecting the rights of English Language Learner (ELL) students?****Meets Standard:**

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to ELL requirements (including Title III of the Elementary and Secondary Education Act [ESEA] and U.S. Department of Education authorities), including but not limited to:

- Equitable access and opportunity to enroll
- Required policies related to the service of ELL students
- Proper steps for identification of students in need of ELL services
- Appropriate and equitable delivery of services to identified students
- Appropriate accommodations on assessments
- Exiting of students from ELL services
- Ongoing monitoring of exited students

2. FINANCIAL MANAGEMENT AND OVERSIGHT**Measure 2a****Is the school meeting financial reporting and compliance requirements?****Meets Standard:**

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to financial reporting requirements, including but not limited to:

- Complete and on-time submission of financial reports, including annual budget, revised budgets (if applicable), periodic financial reports as required by the authorizer and any reporting requirements if the board contracts with an Education Service Provider (ESP)
- On-time submission and completion of the annual independent audit and corrective action plans, if applicable
- No charging of tuition
- Adequate management and financial controls
- All reporting requirements related to the use of public funds

Measure 2b

B.2-2

Is the school following Generally Accepted Accounting Principles (GAAP)?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to financial management and oversight expectations as evidenced by an annual independent audit, including but not limited to:

- An unqualified audit opinion
- An audit devoid of significant findings and conditions, material weaknesses or significant internal control weaknesses
- An audit that does not include a going concern disclosure in the notes or an explanatory paragraph within the audit report

3. GOVERNANCE AND REPORTING

Measure 3a

Is the school complying with governance requirements?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to governance by its board, including but not limited to:

- Governing board composition and membership requirements pursuant to Ch. 302D, HRS
- Governing board policies
- Governing board reporting requirements
- Procurement policies
- State Ethics Code (Ch. 84, HRS), including conflict of interest policy

Measure 3b

Is the school holding management accountable?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to oversight of school management, including but not limited to:

- (For Education Service Providers [ESPs]) maintaining authority over management, holding it accountable for performance as agreed under a written performance agreement and requiring annual financial reports of the ESP
- (For Others) oversight of management that includes holding it accountable for performance expectations that may or may not be agreed to under a written performance agreement

Measure 3c

Is the school complying with data and reporting requirements?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to relevant reporting requirements to the State Public Charter School Commission, State Department of Education as the State Education Agency (SEA) and sole Local Education Agency (LEA) and/or federal authorities, including but not limited to:

- Compliance with minimum educational data reporting standards established by the BOE
- Maintaining and reporting accurate enrollment and attendance data
- Maintaining and reporting accurate personnel data
- Annual reporting and immediate notice requirements
- Additional information requested by the State Public Charter School Commission

4. STUDENTS AND EMPLOYEES

Measure 4a

Is the school protecting the rights of all students?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to the rights of students, including but not limited to:

- Compliance with admissions, enrollment and dismissal requirements (including nondiscrimination and rights to enroll or maintain enrollment)
- The collection and protection of student information (that could be used in discriminatory ways or otherwise contrary to law)
- Due process protections, privacy, civil rights and student liberties requirements, including First Amendment protections and the Establishment Clause restrictions prohibiting public schools from engaging in religious instruction
- Conduct of discipline (discipline hearings, suspension and expulsion)
- Treatment of students that qualify for services under the McKinney-Vento Act

Note: Proper handling of discipline processes for students with disabilities is addressed more specifically in Section 1c.

Measure 4b

Is the school meeting teacher and other staff requirements?

Meets Standard:

The school materially complies with applicable laws, rules, regulations, and provisions of the charter contract, including the State licensing requirements and federal Highly Qualified Teacher and Paraprofessional requirements within Title II of the Elementary and Secondary Education Act, hiring of qualified non-instructional staff, criminal history background checks and teacher/principal evaluations.

Measure 4c

Is the school respecting employee rights?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to employment considerations, including those relating to state employment law, the Family Medical Leave Act, the Americans with Disabilities Act and nondiscrimination. The school follows collective bargaining requirements.

5. SCHOOL ENVIRONMENT

Measure 5a

Is the school complying with facilities and transportation requirements?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to the school facilities, grounds and transportation, including but not limited to:

- Compliance with building, zoning, fire health and safety codes
- Fire inspections and related records
- Viable certificate of occupancy or other required building use authorization
- Compliance with DOE requirements for schools occupying DOE facilities
- Student transportation

Measure 5b**Is the school complying with health and safety requirements?****Meets Standard:**

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to health and safety, including but not limited to:

- Health clearances and immunizations
- Prohibiting smoking on campus
- Appropriate student health services
- Safety plan

Measure 5c**Is the school handling information appropriately?****Meets Standard:**

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to the handling of information, including but not limited to:

- Maintaining the security of and providing access to student records under the Family Educational Rights and Privacy Act and other applicable authorities
- Complying with the Uniform Information Practices Act and other applicable authorities
- Transferring of student records
- Proper and secure maintenance of testing materials

6. ADDITIONAL OBLIGATIONS**Measure 6a****Is the school complying with all other obligations?****Meets Standard:**

The school materially complies with all other legal, statutory, regulatory or contractual requirements contained in its charter contract that are not otherwise explicitly stated herein, including but not limited to requirements from the following sources:

- Revisions to state charter law
- Consent decrees
- Intervention requirements by the Commission
- Requirements by other entities to which the charter school is accountable (e.g., Hawaii Department of Education)

Exhibit C

Educational Service Provider (ESP) Requirements

Educational Service Provider arrangements sometimes give a third party substantial responsibility for the operation of a charter school and control over the school's finances. While the Commission is not responsible for monitoring that contractual relationship, it does have an obligation to ensure that the School's governing board retains its statutory responsibilities and that the School-service provider relationship will not inhibit the Commission from fulfilling its oversight responsibilities. The following requirements ensure that both the School's governing board and the Commission retain authority to fulfill their legal rights and responsibilities under the Contract and applicable law.

1. The ESP agreement shall be subject to, and shall incorporate by reference, the terms and conditions of the School's Contract.
2. The term of the ESP agreement shall not exceed the term of the School's Contract.
3. No provision of the ESP agreement shall interfere with the School's governing board's duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of the School. No provision of the ESP agreement shall prohibit the School's governing board from acting as an independent, self-governing public body, or allow decisions to be made other than in compliance with Ch. 302D, HRS.
4. The ESP agreement shall require the ESP to defend, indemnify and hold harmless the State of Hawaii, the Commission and the School, and their officers, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees, and all claims, suits and demands therefore, arising out of or resulting from the acts or omissions of the ESP or the ESP's employees, officers, agents or subcontractors under the ESP agreement. The ESP agreement shall not require the School to defend, indemnify or hold harmless the ESP. The ESP agreement shall contain insurance and indemnification provisions outlining the coverage the ESP will obtain.
5. The ESP agreement shall describe the specific services for which the ESP is responsible and shall clearly delineate the respective roles and responsibilities of the ESP and the School in the management and operation of the School, including development, approval and oversight of the School's budget; development, approval and oversight of the School's curriculum; and oversight of the ESP's services.
6. The ESP agreement shall expressly provide that the School retains, at all times, ultimate responsibility for the School's budget and curriculum.
7. The ESP agreement shall include procedures by which the ESP will be accountable to the School including expressly addressing how the School will evaluate and hold the ESP accountable in relation to the Performance Frameworks (Exhibit B).
8. The ESP agreement shall be terminable by the School in accordance with its established termination procedures.
 - a) Upon default by the ESP, including without limitation any act or omission of the ESP that causes a default under the School's Contract or that causes the School to be in material violation of applicable law; or
 - b) For other good cause as agreed by the School and the ESP.
9. The ESP agreement shall provide that the financial, educational and student records pertaining to the School are School property and that such records are subject to the provisions of the Uniform

Information Practices Act (Ch. 92F, HRS). All School records shall be physically or electronically available, upon request, at the School's physical facilities. Except as permitted under this Contract and applicable law, no ESP agreement shall restrict access to the School's records by the Commission, the DOE, the Office of the Auditor or other authorized party in compliance with par. 12.3 of the Contract.

10. The ESP agreement shall require that the ESP furnish the School with all information deemed necessary by the School or the Commission for the proper completion of the budget, quarterly reports or financial audits required under the School's Contract.
11. The ESP agreement shall provide that all financial reports provided or prepared by the ESP shall be presented in the format prescribed by the Commission.
12. The ESP agreement shall provide that all employees or contractors of the ESP who work in close proximity with students of the School shall be subject to criminal background check requirements in accordance with par. 10.6 of the Contract.
13. The ESP agreement shall contain provisions requiring compliance with all requirements, terms and conditions established by any federal or State funding source.
14. The ESP agreement shall provide that the School retains responsibility for selecting and hiring the auditor for the independent annual audit required by the School's Contract.
15. If an ESP purchases equipment, materials and supplies using public funds on behalf of or as the agent of the School, the ESP agreement shall provide that such equipment, materials and supplies shall be and remain the property of the School.
16. The ESP agreement shall contain a provision that clearly allocates the respective proprietary rights of the School governing board and the ESP to curriculum or educational materials. At a minimum, the ESP agreement shall provide that the School owns all proprietary rights to curriculum or educational materials that (i) are both directly developed and paid for by the School; or (ii) were developed by the ESP at the direction of the School governing board with School funds dedicated for the specific purpose of developing such curriculum or materials. The ESP agreement may also include a provision that restricts the School's proprietary rights over curriculum or educational materials that are developed by the ESP from School funds or that are not otherwise dedicated for the specific purpose of developing School curriculum or educational materials. The ESP agreement shall recognize that the ESP's educational materials and teaching techniques used by the School are subject to state disclosure laws and the Uniform Information Practices Act.
17. If the School intends to enter into a lease, execute promissory notes or other negotiable instruments, or enter into a lease-purchase agreement or other financing relationships with the ESP, then such agreements shall be separately documented and not be a part of or incorporated into the ESP agreement. Such agreements shall comply with Ch. 37D, HRS, if applicable, and shall be consistent with the School's authority to terminate the ESP agreement and continue operation of the School.
18. The ESP agreement shall provide that Hawaii law governs any legal proceeding arising out of a dispute between the School and the ESP.

EXHIBIT D

INTERVENTION **PROTOCOL**

Comment [A58]: Commission is considering a variety of ways to improve the Intervention Protocol. We hope to have a system that is more nuanced and does not treat all issues the same. Also, we need to clarify how days are counted.

In accordance with Sec. 302D-17, HRS, this intervention protocol is established pursuant to the Commission's authority and responsibility to monitor the performance and legal compliance of charter schools in accordance with the charter contract terms and consistent with nationally recognized principles and standards for quality authorizing. It enables the Commission to take timely and appropriate action to notify schools about performance and/or compliance concerns and provide schools a reasonable opportunity to remedy such problems.

1. Upon finding the School's performance or legal compliance unsatisfactory, the Commission shall issue a Notice of Deficiency to the School. The Notice shall state with specificity the deficiency, the applicable regulatory, performance or contractual provision(s) not satisfactorily met, the expected remedy, including whether a Corrective Action Plan is required, and the timeframe by which the Commission expects the deficiency to be remedied or the Corrective Action Plan to be submitted.
2. Upon receiving a Notice of Deficiency, the School may:
 - 1) Contest the Commission's determination that a breach has occurred in which case the School shall provide a written response to the Commission within 10 days of receipt of the Notice and shall provide evidence in support of its position;
 - 2) Remedy the deficiency and provide evidence of such remedy to the Commission within the timeframe identified in the Notice; or
 - 3) Provide a Corrective Action Plan, where required, to the Commission within the timeframe identified in the Notice.

If the School is not able to meet any of the timeframes in 2) and 3) above, the School shall provide a written response to the Commission within 10 days of receipt of the Notice, which shall include a justification for its inability to meet the timeframe(s) together with a proposed timeframe(s).

Corrective Action Plan. A Corrective Action Plan shall include specific actions that the School will take to remedy the violation. The Plan shall include deadlines and responsible person(s) for each action and specific indications of success. The Commission may require the School to provide periodic reports on compliance with the Corrective Action Plan. The School is encouraged to meet and talk with Commission staff to discuss the development of its Corrective Action Plan.

3. If the School contests the Notice of Deficiency, the Commission shall consider the School's evidence and, within 10 days of receipt of the School's response, either: 1) Uphold or amend its finding of a deficiency and reissue the Notice of Deficiency with amended timeframes, or 2) Retract the Notice of Deficiency.

If the School submits a Corrective Action Plan, the Commission shall approve, approve with modifications, or reject the Corrective Action Plan within 15 days of submission of the Plan by the School. If rejected, the School shall have 15 days thereafter to submit an amended Corrective Action Plan. Commission approval of a Corrective Action Plan shall in no way abridge or mitigate the School's ultimate responsibility and accountability for remedying the deficiency and/or the Commission's authority to take additional action in response to the School's failure to remedy the deficiency satisfactorily.

If the School submits a written response on why it is unable to meet the timeframe for remedy or for submission of a Corrective Action Plan identified in the Notice, the Commission shall consider the School's justification and approve, approve with modifications or reject the School's proposed timeframe within 10 days of receipt of the School's written response.

4. The School shall be responsible for notifying the Commission when a deficiency has been remedied, if the School requires an extension of time to remedy a deficiency, or if the School requires a modification to its Corrective Action Plan.
5. The Commission may issue a Notice of Warning to the School under the following conditions:
 - 1) Continued failure to meet performance goals;
 - 2) Repeated failure to comply with applicable law or Contract provisions;
 - 3) Repeated failure to remedy violations, develop approved Corrective Action Plans, or successfully implement Corrective Action Plans;
 - 4) Substantial and serious violation of a material provision of law or Contract provision; or
 - 5) Immediate concern for student or employee health and safety.

A Notice of Warning indicates that revocation proceedings will be initiated if deficiencies are not timely remedied. The Notice of Warning shall state the deficiencies, remedies and timeframe by which the deficiencies shall be remedied. In such Notice, the Commission may require the School to provide periodic reports on progress toward remedying identified deficiencies.

6. If the School does not satisfactorily remedy its deficiencies pursuant to the Notice of Warning, the Commission may initiate revocation proceedings in accordance with Chapter 302D, HRS, and applicable administrative rules.
7. Throughout the intervention process, if the School believes that the Commission has violated any provision of this Contract or disputes the Commission's determination after contesting it and allowing for Commission response, the School may initiate dispute resolution procedures in accordance with par. 14.5 of the Contract.
8. In accordance with Subsection 302D-17(c), HRS, this Intervention Protocol shall not apply in any circumstance in which the Commission determines that a problem or deficiency warrants revocation, in which case established rules, procedures and/or protocols for revocation pursuant to Chapter 302D, HRS, shall apply.
9. Notwithstanding this Intervention Protocol, the Commission may withhold the School's per-pupil allocations in accordance with Subsection 302D-28(f), HRS.

Exhibit 2
Schools Attending In-Person Meetings

Exhibit 2

The Commission staff held in-person meetings at three locations during the week of February 17, 2014, to discuss and receive feedback from schools on the Academic Performance Framework and suggested contract revisions. The Oahu meeting was held February 19, the Kona meeting was held February 20, and a meeting in Hilo was held on February 21. Additionally, a webinar was held February 26, 2014.

The chart below indicates whether—and if so, when and where—schools participated in one of these in-person meetings. If a school did not participate, this chart indicates which meetings schools were invited to attend.

Schools	Location/Date of meetings
Connections Public Charter School	Hilo, 2/21
Hakipu‘u Learning Center	Oahu, 2/19
Halau Ku Mana Public Charter School	Oahu, 2/19
Hālau Lōkahi Charter School	Oahu, 2/19
Hawaii Academy of Arts & Science Public Charter School (HAAS)	Hilo, 2/21
Hawaii Technology Academy	<i>Invited to 2/19 meeting and 2/26 webinar</i>
Innovations Public Charter School	<i>Invited to 2/20 meeting and 2/26 webinar</i>
Ka ‘Umeke Kā‘eo	Hilo, 2/21
Ka Waihona o ka Na‘auao Public Charter School	<i>Invited to 2/19 meeting and 2/26 webinar</i>
Kamaile Academy, PCS	Oahu, 2/19
Kanu o ka ‘Āina New Century Public Charter School	Kona, 2/20
Kanuikapono Public Charter School	<i>Intends to participate in 2/26 webinar</i>
Kawaikini New Century Public Charter School	Hilo, 2/21; also participated in 2/26 webinar
Ke Ana La‘ahana PCS	Hilo, 2/21
Ke Kula ‘o Nāwahīokalani‘ōpu‘u Iki, LPCS	Hilo, 2/21
Ke Kula ‘o Samuel M. Kamakau, LPCS	Oahu, 2/19
Ke Kula Niihau O Kekaha Learning Center	Participated in 2/26 webinar
Kihei Charter School	<i>Invited to 2/20 meeting and 2/26 webinar</i>
Kona Pacific Public Charter School	Kona, 2/20
Kua o ka Lā New Century Public Charter School	Kona, 2/20
Kualapu‘u School: A Public Conversion Charter	Oahu, 2/19
Kula Aupuni Niihau A Kahelelani Aloha (KANAKA) A New Century Public Charter School (PCS)	Oahu, 2/19 Hilo, 2/21

Lanikai Elementary Public Charter School	<i>Invited to 2/19 meeting and 2/26 webinar</i>
Laupahoehoe Community Public Charter School	Hilo, 2/21
Mālama Hōnua Learning Center	Oahu, 2/19
Myron B. Thompson Academy	<i>Invited to 2/19 meeting and 2/26 webinar</i>
Na Wai Ola (Waters Of Life) Public Charter School	Hilo, 2/21
SEEQs: The School for Examining Essential Questions of Sustainability	<i>Invited to 2/19 meeting and 2/26 webinar</i>
University Laboratory School	Oahu, 2/19
Volcano School of Arts & Sciences	Hilo, 2/21
Voyager: A Public Charter School	<i>Invited to 2/19 meeting and 2/26 webinar</i>
Waialae Elementary Public Charter School	Oahu, 2/19
Waimea Middle Public Conversion Charter School	Oahu, 2/19
West Hawai'i Explorations Academy	Kona, 2/20

Exhibit 3

Commission Staff Response to Contract Feedback

Sec	Current Contract Term	Change Suggested by Commission	Questions/Comments from Stakeholders	Commission Response
1.1	<p>The term of this Contract shall be one (1) year, commencing on July 1, 2013 and terminating on June 30, 2014.</p>	<p>The terms are to be determined.</p>	<p>Kamakau suggested that accreditation be included as an indicator for determining contract terms.</p>	<p>Commission staff has been in discussion with WASC staff about ways to collaborate. At this point, we will not include accreditation status as an indicator for determining contract terms, but there may be ways in which accreditation can be reflected in the performance frameworks in the future.</p>
2.2	<p>The School's Governing Board shall comply with the Code of Ethics (Ch. 84, HRS) and shall adopt and adhere to a conflict of interest policy which is consistent with Ch. 84, HRS, and which includes provisions related to nepotism.</p>	<p>The Commission suggests adding that Conflict of Interest policy will be subject to Commission's approval.</p>	<p>Dewey Kim addressed challenges here, including that there is no definition of nepotism in state law. Laupahoehoe asks for Commission guidance if the policies are subject to Commission approval.</p>	<p>The Commission will remove the word "nepotism" from the contract. Commission staff is planning to look into having the Ethics Commission review schools' conflict of interest policies, including hiring and supervision of relatives, and/or to provide guidance to the Commission on acceptability. Rather than having the policy subject to Commission approval, the Commission will require the policy to be consistent with criteria established by the Commission.</p>
3.3.2	<p>The School shall retain the autonomy to select a particular curricular and/or instructional approach consistent with Common Core or other State academic standards.</p>	<p>The Commission suggests replacing "consistent" with "aligned."</p>	<p>Laupahoehoe writes, "The commission and the state are encroaching on our autonomy if this is changed. The easy next step after requiring 'aligned' curriculum is to require specific curriculums and materials—in other words, become the DOE."</p>	<p>Good suggestion. The Commission agrees and will keep the language as is.</p>

3.4	<p><u>Graduation Requirements for High Schools.</u> The School shall comply with BOE Policy 4540, as the same may be amended from time to time, which shall apply starting with the incoming ninth graders for the school year 2013-2014, and shall provide evidence of such compliance; provided that the School may request a waiver of this Policy from the BOE.</p>	<p>This language may be revised to reflect BOE's position on 4540 (but Commission is committed to ensuring there is alignment).</p>	<p>University Lab asks about the possible revisions—brings up long process they went to with the Board of Ed and was told it would continue. Kua o ka Lā asks for guidance or expected guidance for the waiver. HAAS notes that CTE track (pathways program) is not defined in BOE policy; HAAS also wonders if it should be "may" or "shall" and if there is a process for BOE requirements if different from BOE policy, and if Section 4540 could be added as an addendum to the charter contract. Laupahoehoe writes, "There should be a provision for charters to have higher requirements and to substitute related courses. Somewhere it should also be spelled out that as standards-based schools, proficiency, not seat time is criteria for earning credits." Connections writes, "BOE Policy 4540 says, 'Proficiency shall be determined in accordance with established Department of Education procedures.' This, and other provisions of the policy, violate the school governing board's independent authority to determine the curricula at the school."</p>	<p>The Commission will continue to work with the Board of Education on these issues. For now, we will keep the contract language the same. The BOE already had demonstrated some inclination to respect charter school autonomy in this area.</p>
3.5	<p><u>Special Education</u> (covering sections 3.5, 3.5.1, 3.5.2, and 3.5.3) (Please note we did not copy and paste all the sections here due to the length. Refer to the contract for actual language).</p>	<p>This entire section needs work, and the Commission is working with DOE to clarify the roles and responsibilities. We also suggest moving section 3.5.3 to the start of this section.</p>	<p>Hālau Kū Māna emphasizes the importance of this section and suggests a working group. Laupahoehoe says, "This needs significant clarification. How does the school get services—and more specifically how does the school get positions? DOE does not allocate only based on student need—they allocate based on where they would like to place resources. Charters are told to use school resources to cover special education needs if the district does not want to allocate resources or, as we are often told, "is out of positions." There is also a requirement to have someone doing the [Student Services Coordinators] duties because that is the central pathway for SPED compliance—however, the state does not provide this position."</p>	<p>Commission staff has been meeting with DOE. Schools are required to meet the responsibilities of the Student Services Coordinator but they do not need to have an SSC position per se. Previously, schools received the position, but now schools receive the funds and may choose whether to establish an SSC position or to split responsibilities among other staff. The special education primers (which are currently being updated) will address the licensing requirements for the SPED teacher positions. As for changes in the contract, staff suggests now reorganizing the sections and making on some minor language changes to clarify the responsibilities.</p>

<p>3.5</p> <p><u>Section 504 and ADA</u>. The School shall comply with Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act Amendments Act and all related DOE rules, policies and procedures in its general curriculum, including but not limited to implementation of any formal Section 504 plan that has been developed for a student, all as may be amended from time to time. The Commission and/or the DOE will provide training, consultation and advice to the School as needed with regard to Section 504 compliance, including legal interpretations, recommendations for intervention strategies and assistance in conducting Section 504 plan and review meetings</p>	<p>University Lab questions why the entire sentence would be deleted, asking that the part about DOE providing services should remain. HAAS requests "will" be changed to "shall." Volcano wants to know (with regard to comment A7) who will provide training. Hālaū Kū Māna emphasizes the importance of this section and suggests a working group. Laupahoehoe writes, "Why would the commission not provide support for school to insure they are successful?" Kamakau suggests a statement be included about providing charters with opportunities to receive training (or who charters can refer to for training).</p>	<p>Our intention was to clarify that as the authorizer, the Commission will not provide consultation, training or legal advice to the schools with respect to Section 504. We are communicating with DOE about the language that pertains to them, but in general, this bilateral contract cannot obligate the DOE.</p>
<p>3.5</p> <p><u>3.7. English Language Learners.</u> The School shall provide services to students with limited English proficiency in compliance with all federal and State laws, regulations, rules, court orders, policies, procedures and guidance, all as may be amended from time to time, to ensure linguistic accessibility to the School's educational program. The Commission shall provide the School with technical assistance similar to those services provided by the DOE complex areas to the DOE-operated public schools. The School shall also assist Immigrant Children and Youth, as defined in Section 3301(6), Title III, Elementary and Secondary Education Act, as the same may be amended from time to time, in meeting the State academic content and student academic achievement standards that all public school students are expected to meet.</p>	<p>The Commission suggest deleting the last sentence in the section.</p> <p>(No change suggested)</p>	<p>KANAKA wants clarification on whether parents may opt out of ELL testing.</p> <p>The Commission and KANAKA have jointly raised questions regarding ELL with the Department of the Attorney General and are awaiting the response.</p>

3.5		<p>This is a heading for the section. The Commission is interested in adding a section on "withdrawal," which would also be reflected in the heading.</p>	<p>Laupahoehoe writes: "Adding withdrawal is fine but do no take away the right of school to dismiss students when appropriate."</p>	<p>Please see the comment below for Section 5.6.</p>
3.5	<p><u>Non-Discrimination</u>. The School shall make all student recruitment, admissions, enrollment and retention decisions in a nondiscriminatory manner and without regard to race, color, ethnicity, national origin, religion, sex, sexual orientation, marital status, income level, academic or athletic ability, disability, need for special education services, lack of proficiency in the English language</p>	<p>The Commission may expand the clause to include languages other than English. Also, there should be an "and" before the last clause in the sentence.</p>	<p>Kawaiini and KKNOK asked about inclusion of "other languages."</p>	<p>The Commission recognizes that there are certain instances, such as language immersion schools, which may warrant special consideration under this policy. We are considering leaving the language as it currently exists in the contract for now.</p>
3.5	<p><u>Enrollment Preferences</u>. The School shall not impose enrollment preferences, except as approved by the Commission.</p>	<p>The Commission suggests adding "enrollment restrictions" to this section. We also suggest changing it to read "except as set forth in its Admissions Policies and Procedures" as approved by the Commission.</p>	<p>Kamakau writes, "Keep original language as Exhibit A must be 'approved' by the Commission." Kawaiini and KKNOK had questions about enrollment preferences.</p>	<p>The Commission has already approved a revised Exhibit A which does not include admissions policies. These policies will now be submitted under the general contract and must be consistent with Commission guidance.</p>

3.5	<p><u>Dismissal.</u> The School shall not dismiss or transfer a student involuntarily, unless the dismissal or transfer is accomplished through established administrative procedures provided for by this Contract, or by administrative procedures in the Commission's rules or policies; provided that any dismissal of a student with a disability shall comply with the requirements of Ch. 8-60, HAR.</p>	<p>The current language mentions new provisions which are not yet established. The Commission may suggest revising the Contract so that schools follow Ch. 19 for involuntary dismissals and transfers only, unless the Commission issues alternative guidance.</p>	<p>KANAKA expresses concern about 5.6 and proposed addition of 5.7. KANAKA explains a particular situation at the school where DOE insisted they used the same DOE forms. KANAKA wants clarification on what the school's rights are and requests something that will protect the school. Dewey Kim echoes the concerns and wants to make sure we streamline. Kamakau writes, "If I understand correctly, charters are not required to follow all sections of Chapter 19 and can set other discipline policies. If we are bound to Chapter 19, we should know about it."</p>	<p>The Commission may need to clarify this section. Our goal is to ensure that dismissal is a process that is separate from withdrawal and transfer to another school. Terms should also be defined.</p>
3.5	<p>(Suggested addition) <u>Student Conduct and Discipline.</u> The School shall adopt, update, and adhere to written policies concerning standards of student conduct and discipline which shall comply with federal and State laws. The School shall provide copies to the School's parents and students at the start of each school year.</p>	<p>We suggest adding language regarding withdrawal and release—what is required when students are transferring to/from schools.</p>	<p>WHEA explains that there has been much confusion here, and that it may be a good idea to talk story with DOE here. The functions of the registrar and a SASA are different depending on whether the school is DOE or charter. Kamakau writes, "This section seems more procedural than should be in the contract. DOE should also be aware of the procedures. Currently, many DOE schools are not aware of the process. Procedures need to be clarified." Connections says that it needs to include provisions of §302A-1134.</p>	<p>This proposed section would merely address the process of transfers among schools. DOE is currently in the process of drafting a manual for registrars that will document different procedures such as transfers. For the purpose of the Charter Contract, we may want to only say that we are going to require charters to submit their withdrawal and transfer policies for Commission review.</p>
3.5	<p><u>Student Conduct and Discipline.</u> The School shall adopt, update, and adhere to written policies concerning standards of student conduct and discipline which shall comply with federal and State laws. The School shall provide copies to the School's parents and students at the start of each school year.</p>	<p>The Commission suggests adding language saying subject to Commission approval.</p>	<p>Connections writes, "This violates the school governing board's independent authority to determine compliance with applicable federal and state laws."</p>	<p>The Commission will ensure that policies are consistent with Commission criteria. The school's governing board does not have the full authority to determine what constitutes compliance with applicable federal and state laws.</p>

<p>3.5 <u>Reporting of Crime-Related Incidents.</u> The School shall adopt policies and procedures to:</p> <p>(a) Require a report to appropriate authorities from a teacher, official or other employee of the School who knows or has reason to believe that an act has been committed or will be committed, which:</p> <p>(1) Occurred or will occur on School property during School hours or during activities supervised by the School; and</p> <p>(2) Involves crimes relating to arson, assault, burglary, disorderly conduct, dangerous weapons, dangerous drugs, harmful drugs, extortion, firearms, gambling, harassment, intoxicating drugs, marijuana or marijuana concentrate, murder, attempted murder, sexual offenses, rendering a false alarm, criminal property damage, robbery, terroristic threatening, theft or trespass;</p> <p>(b) Establish procedures for disposing of any incident reported; and</p> <p>(c) Impose appropriate disciplinary action for failure to report these incidents, including probation, suspension, demotion and discharge of School officials.</p>		<p>Connections wonders why there is no mention of alcohol, bullying, cyberbullying, or hazing. Connections also asserts that Section C violates the school governing board's independent authority to determine the management of the school.</p>	<p>This section does address alcohol (intoxicating drugs) and harassment. Nothing in this section precludes a school from adopting similar policies and procedures regarding other misconduct; however, this contract will not require it.</p>
<p>3.5</p> <p><u>Transportation.</u> The School may provide transportation through an agreement or contract with a private provider. The School shall ensure the safety of students in any transportation arrangement.</p>	<p>(No change suggested)</p> <p>The Commission suggests adding, "and shall comply with state and county requirements pertaining to drivers that transport students" to the end of the section.</p>	<p>Hālau Kū Māna points out nothing is mentioned about school-owned vehicles and wonders if this should be added. Kamakau asks that language be added to include the use of school vehicles (vans, buses) for transporting students.</p>	<p>Per HKM and Kamakau's suggestion, we offer this revised language: "<u>The School may provide its own transportation service or provide transportation through an agreement or contract with a private provider. The School shall ensure the safety of students in any transportation arrangement and shall comply with state and county requirements pertaining to vehicles and drivers that transport students.</u>"</p>

3.5	<p><u>Conflict Resolution Policy.</u> The School shall adopt, update and adhere to a Conflict Resolution Policy to provide parents and students due process in the event that a conflict arises; provided that where a dispute resolution process is defined for a particular program area (e.g., IDEA, Section 504, etc.), the School shall comply with the process for that particular program area which shall control. The Commission shall not intervene in the School's Conflict and Resolution procedures except where the dispute pertains to a possible violation of any law or term under this Contract</p>	<p>The Commission suggests removing the need to submit a Conflict Resolution policy altogether</p>	<p>Laupahoehoe writes, "I am not opposed to removing this but aren't we required to submit it under the framework? Or would it be removed there as well?"</p>	<p>Good point. The requirement will be removed from the Organizational Performance Framework as well.</p>
3.5	<p><u>Complaints Process.</u> The School shall establish and adhere to a process for resolving public complaints which shall include an opportunity for complainants to be heard. The final administrative appeal shall be heard by the School's Governing Board, except where the complaint pertains to a possible violation of any law or term under the Contract.</p>	<p>New change: The Commission suggests adding "for which there is an alternative complaint procedure" to the end of the section.</p>		
3.5	<p><u>Safe Environment.</u> The School shall maintain a safe learning environment at all times. The School shall file a safety plan with the Commission.</p>	<p>The Commission suggests adding "subject to Commission approval" and also adding language to indicate school shall file and "adhere to" the plan.</p>	<p>Laupahoehoe writes, "The suggested language repeatedly includes 'subject to commission approval.' If this is the case there needs to be a promise of support and guidance. A safety plan for example is not going to be written for a Hawaii charter school using an example from the mainland where they have brick fortresses that can be closed down." Kamakau writes, " Add statement, 'Charter Schools shall be included in the safe schools trainings for public schools to appropriately address school safety and emergency plans.' Training is needed to better inform the charter schools of emergency plans that will be taken by the first responders. "</p>	<p>The Commission will provide basic criteria policies are expected to meet. Rather than stating that the safety plan "will be subject to Commission approval," the contract language may instead require the safety plan to be consistent with criteria established by the Commission. Additionally, this contract is between the schools and the Commission and cannot obligate the Department of Education to provide training.</p>

3.5	<p><u>Location.</u> The School shall provide educational services, including the delivery of instruction, at the location(s) identified in Exhibit A (Educational Program); provided that the School may conduct class site visits to temporary locations not identified in Exhibit A and may provide instruction at such temporary locations not to exceed 30 days. The School shall not operate in any other location without the prior written approval of the Commission.</p>	<p>This section should be revised for clarity. The Commission also suggests changing the instruction period at temporary locations for no more than 20 consecutive days.</p>	<p>Connections asks, "What applicable state or federal laws were used to determine the time limits for temporary use of a location not identified in Exhibit A? Without such, it is a violation of the school governing board's authority to determine the curricula."</p>	<p>During the review and feedback process with charter schools, NACSA repeatedly asked charter schools to provide either a recommended number of days or information on how their programs use off-site locations to provide a better guide in coming up with the number of days (or another way of defining the temporary locations). No charter school responded, and thus 30 days was recommended. For now, the Contract will keep it at 30 days. This is something that can be monitored and reviewed during the term for the next contract. The Commission may clarify other language in this section. Please note that that the Commission does not need to rely on state or federal laws to determine time limits for use of a temporary location as a part of its contract. Use of a location and determination of curriculum are two distinct things. The Commission does not require the school to submit its curriculum for approval.</p>
3.5	<p>If the School is located in facilities other than DOE facilities, the School shall obtain and maintain any necessary certificates or permits required for use and occupancy of the School's facilities from the applicable building, zoning, fire, health and safety authorities. The School shall immediately notify the Commission in the event that any such certificate or permit is jeopardized, suspended or revoked.</p>	<p>(No change suggested)</p>	<p>Connections asks, "What exactly constitutes being 'jeopardized' and who makes that determination?"</p>	<p>The Oxford Dictionary defines "jeopardize" as to "[p]ut (someone or something) into a situation in which there is a danger of loss, harm, or failure." If the school has reasonable grounds to believe a certificate or permit may be called into question, it should err on the side of notifying the Commission.</p>
3.5	<p>Any other law to the contrary notwithstanding, any exemptions from building, zoning, fire, health and safety laws, regulations, codes, standards and requirements shall not be applicable to the School except as approved by the Commission, which shall not be unreasonably withheld. Where necessary, the School shall be responsible for requesting permits and approvals from appropriate governmental agencies in compliance with this subparagraph.</p>	<p>Suggest changing "authorized" to "approved"</p>	<p>Connections writes, "The Commission is responsible for ensuring a charter school complies with state and federal laws. Most zoning codes and standards are set at the county level. The Commission has no legal authority over a county."</p>	<p>Statute grants authorizers broad authority to monitor legal compliance and are not limited to monitoring compliance with state and federal laws. HRS Section 302D-5(a)(5) states that, "Authorizers are responsible for executing the following essential powers and duties, which includes [m]onitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools." Recent events at some charter schools highlight the importance of the Commission's need to reassure the public and policymakers on this point.</p>

3.5	<p><u>Relocation or Expansion.</u> The School's relocation or expansion to different facilities shall constitute a material change in the Contract and shall require prior written approval by the Commission. Approval shall be subject to the following conditions:</p> <p>(a) Prior written request to the Commission for approval of such relocation or expansion;</p> <p>(b) Submission to the Commission of a Certificate of Occupancy for the new facilities at least 30 days prior to the first day of occupancy;</p> <p>(c) Submission to the Commission of a lease, deed or other document showing the School possesses the right to occupy the new premises;</p> <p>(d) Documentation that the new facilities meet applicable health, safety, fire, building and zoning code requirements; and</p> <p>(e) Documentation that the new facilities are of sufficient size to safely house anticipated enrollment.</p>	<p>The Commission suggests separating this section into two separate sections, one for relocation and another for expansion.</p> <p>Relocation should be a different process than expansion.</p> <p>Approval for expansion should also include some demonstration of success on the Performance Frameworks.</p>	<p>Hālau Kū Māna wonders if there needs to be something about enrollment expansion. Laupahoehoe writes, "Shouldn't this be removed? Why on earth would a charter school need to ask permission to expand facilities or relocate?" Connections states that the Commission has no legal authority over a county issue; Connections also questions the need for Section D if the Commission has the Certificate of Occupancy and wonders what state and/or federal standards will be used by the Commission to determine compliance.</p>	<p>Enrollment expansion at the same location would require a modification to Exhibit A only, as is current practice. This clause refers to whether a school is changing locations or adding another campus.</p>
3.5	<p><u>Funding Subject to Appropriation.</u> The general fund per-pupil funding is contingent upon legislative appropriation and allocation of funds. If the Legislature fails to appropriate sufficient monies or if the appropriation is reduced by the Governor or by any other means and the effect of such non-appropriation or reduction is to provide insufficient monies for the continuation of the School, this Contract shall terminate on the last day of the fiscal year for which sufficient funds are available.</p>	<p>(No change suggested)</p>	<p>Connections asks, "Who defines 'sufficient funds' and what federal and/or state laws is it based on? Would this apply if the Legislature does not provide charter schools with facilities funding?"</p>	<p>This provision is intended to address the unlikely situation where the Legislature does not appropriate enough funding to enable a charter school to continue to serve children. Whether a school is financially viable would be determined by the Commission in accordance with the Financial Performance Framework.</p>

3.5	<p>Facility Funds. In each year in which funds are appropriated for charter school facility purposes, the Commission shall allocate the funds among eligible charter schools. All funds distributed to the School shall be restricted to the purposes of the appropriation.</p>	<p>(No change suggested)</p>	<p>WHEA questioned how eligible charters would be determined. Ka 'Umeke said that it should be "all" instead of eligible. HAAS says targeted funding should be discussed before distribution formula is developed. Connections asks, "Who determines which schools are 'eligible' for facility funds? The Commission is currently in violation of this provision of the existing contract by using impact aid funding for the 'Facilities Pilot Project.'"</p>	<p>This provision is based on current law. Should the law change, the provision can be updated as well.</p>
3.5	<p><u>Federal Funding.</u> Pursuant to Sec. 302D-28, HRS, the School shall be eligible for all federal financial support to the same extent as all other public schools. The Commission shall timely distribute federal funds to the School based on the same methodology used by the DOE to distribute the funds to DOE-operated public schools; provided that the Commission may, by a majority vote at a public meeting, elect to employ an alternative distribution method where such discretion is allowed. The Commission shall make the DOE allocation methods publicly available and shall work with the DOE and the School where questions of equity may arise.</p>	<p>(No change suggested)</p>	<p>Connections writes, "Who determines if the 'discretion' is allowed? This should be tied to an AG opinion. When will the Commission 'make the DOE allocation methods publicly available'? How do the schools bring up 'questions of equity'? This should require administrative rules as it is directly related to the powers, duties, and liabilities of the Commission."</p>	<p>The Commission would make any such determination in consultation with the Attorney General. DOE allocation methods will be made available as such point in time that they are made public by the DOE. Schools can, and do, raise questions of equity at any time by communicating with the Commission and/or DOE. The Commission is currently working with the DOE on several such questions. Administrative rules are not required because allocation of funds to the schools (state agencies) are considered internal management procedures and such procedures do not have to be done by rule.</p>
3.5	<p><u>Additional Funds.</u> The School may accept gifts, donations or grants and shall comply with all applicable State or federal laws regarding such gifts, donations or grants. The School shall keep separate accounting records of all gifts, donations and grants.</p>	<p>The Commission suggests adding that school shall provide a report on this accounting and any other funds not from state or federal sources to the Commission by Sept. 15</p>	<p>Kona Pacific wonders how the information will be used, and worries if this is required for all state agencies, then charters will stand out if they do not provide the information. They wonder if this will affect the support to the affiliated nonprofit and encourage awareness that the information might be misused. Laupahoehoe writes, "This is already reflected in our accounting. Why add another layer of reporting. We have enough to do without making up work." Connections writes, "What state or federal laws require these funds to be reported to the Commission?"</p>	<p>The reason for this request is that Commission staff is asked to provide this information on behalf of the charter schools. Please bear in mind that while DOE schools are on a common platform, charter schools' financial systems are stand alone, and independent from the State system and each other. This should not have any impact on affiliated organizations. Information at detail level will be maintained at the Commission office while information provided to DOE/DAGS will be provided in aggregate. Commission staff is willing to accept reports generated by a school's accounting system as long as donor information is provided.</p>

3.5	<p><u>Management and Financial Controls.</u> At all times, the School shall maintain appropriate governance and management procedures and financial controls which shall include, but not be limited to: (a) budgets, (b) accounting methods, (c) payroll procedures, (d) financial reporting and (e) internal control procedures for receipts, disbursements, purchases, payroll and fixed assets.</p>	<p>The Commission suggests that schools submit a financial control policy, also subject to Commission approval.</p>	<p>Waialae questions whether another policy is needed. They do not have a separate policy but that they do follow procedures. University Lab says that after the first audit, they were encouraged to have accounting in addition to procurement policies and procedures, though they might be combined. Laupahoehoe writes, "Aren't we already required to have financial controls—and shouldn't our external auditor determine if they are adequate?" Kamakau writes, "Keep language as is. Commission approval is not needed since Management and Financial Controls are reviewed during the annual financial audits." Connections: "This violates the school governing board's independent authority to determine financial viability."</p>	<p>The Commission will request accounting policies and procedures and will provide basic criteria that must be met.</p>
3.5	<p><u>Chart of Accounts.</u> The Commission may require the School to follow a uniform chart of accounts; provided that the Commission shall provide a reasonable time period for the School to convert to such chart of accounts.</p>	<p>(No change suggested)</p>	<p>Kanu o ka 'Āina and Innovations expressed concern about a standardized chart of accounts.</p>	<p>Instead of creating a standard chart of accounts, the Commission is now considering creating a worksheet to capture the information needed. While this approach initially may seem cumbersome, staff believes it will become easier once schools become familiar with it.</p>
3.5	<p><u>Transfer of Funds to Nonprofits.</u> The School shall not transfer funds provided to it by the Commission to any affiliated nonprofit organization except for legitimate and reasonable payments from the School to the nonprofit pursuant to a written agreement.</p>	<p>(No change suggested)</p>	<p>Connections writes, "If the school is leasing space from an affiliated nonprofit organization, who determines if the payments are reasonable? This is part of the governing board's independent authority to determine financial viability."</p>	<p>The Commission will make this determination as part of its duty to monitor financial performance. Both the Office of the Auditor and the Attorney General have highlighted transactions between school and non-profit as warranting attention.</p>

3.5	<p><u>Financing Agreements.</u> The School shall comply with Ch. 37D, HRS, relating to financing agreements. "Financing agreement" means any lease purchase agreement, installment sale agreement, loan agreement, line of credit or other agreement of the department or, with the approval of the director, and any agency, to finance the improvement, use or acquisition of real or personal property that is or will be owned or operated by one or more agencies of the State, the department or any agency, or to refinance previously executed financing agreements including certificates of participation relating thereto. The School shall not act as a guarantor of any such financing agreement.</p>	(No change suggested)	<p>Kamakau says that the language currently precludes the school from entering into lease agreements for copiers or other equipment. Some schools are also in need of a line of credit/loan to keep afloat until final per pupil allotments are received. They suggest revising language to set a limit of lease purchase agreements to include the smaller and necessary items</p>	<p>Commission staff is looking into HRS Chapter 37D and how it applies to charter schools. The current language does not preclude schools for entering into these agreements, but it is currently unclear what schools would have to do when entering into these agreements for relatively small sums. Commission staff is working with the Legislature and the Department of Budget and Finance to get clarification on this, with the intent of minimizing administrative complications for schools.</p>
3.5	<p><u>Collective Bargaining.</u> The School shall be subject to collective bargaining under Ch. 89, HRS, and shall comply with the master agreements as negotiated by the State; provided that the School may enter into supplemental collective bargaining agreements that contain cost and non-cost items to facilitate decentralized decision-making. The School shall provide a copy of any supplemental collective bargaining agreement to the Commission within 14 days of full execution</p>	(No change suggested)	<p>Connections asks, "What state and/or federal laws give the Commission the authority to demand a copy of supplemental collective bargaining agreement to the Commission within 14 days of full execution?"</p>	<p>Statute grants authorizers broad authority to monitor legal compliance and are not limited to monitoring compliance with state and federal laws. HRS Section 302D-5(a)(5) states, that authorizers are responsible for executing the following essential powers and duties, which includes "[m]onitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools."</p>

3.5	<p><u>Evaluations</u>. Pursuant to Board of Education Policy 2055, the School is responsible for implementing principal and teacher evaluation systems that are based on efficiency, ability, contribution to student learning and growth. The School may elect to implement the State-developed educator evaluation system or to develop and implement its own educator evaluation system that meets the criteria outlined in BOE Policy 2055, as may be amended from time to time.</p>	<p>The Commission suggests the following change: "pursuant to federal and state law and policy..." and add "By the Commission" before "that meets the criteria outlined."</p>	<p>WHEA student suggests language change to reflect that some schools do not have principals because they are teacher-led schools. WHEA governing board chair questions Commission's qualifications to implement teacher evaluation system. KANAKA school later points out she is not considered a principal by HGEA. Kawaikini wondered about comma placement in "based on efficiency, ability, contribution to student learning and growth." Connections wonders, "Which specific federal and state laws and policies? What federal and/or state laws give the Commission the authority or power to set criteria of an educator evaluation system?"</p>	<p>The designation by the schools of their administrators for other purposes also will suffice for purposes of the state educator effectiveness system requirements. HRS 302D-5(b)(3) requires the Commission to be responsible for and ensure the compliance of a public charter school it authorizes with all applicable state and federal laws. HRS 302D-28(d) calls for the distribution by the Commission of federal funds to the charter schools it authorizes in accordance with federal requirements.</p>
3.5	<p><u>Personnel Policies</u>. The School shall adopt, update, and adhere to personnel policies.</p>	<p>The Commission suggests adding that these are subject to Commission approval.</p>	<p>Laupahoehoe writes, "Once again, where is the commitment to provide guidance and help?" Connections asks, "What federal and/or state laws give the Commission the authority or power to approve a school's personnel policies?"</p>	<p>Rather than requiring the Commission to approve policies, the language will be changed to reflect that policies must be consistent with Commission criteria.</p>
3.5	<p>Reports, Generally. 11.1.1 The School shall provide to the Commission, in the format and timeframe prescribed by the Commission, any reports necessary and reasonably required by the Commission to meet its oversight and reporting obligations. The Commission shall annually update the list of required reports and due dates and provide this information to the School. 11.1.2 The Commission shall endeavor to reduce the reporting burden it places on the School by providing reasonable notice for requests, providing timely notification when due dates are changed, avoiding duplicate requests and limiting requests to what is reasonably required by the Commission and other State entities.</p>	<p>The Commission suggests changing "reports" to "data" or "information."</p>	<p>Hālaui Kū Māna suggests that the Commission let schools know annually which reports are required and only hold schools accountable for those reports-- adding that currently the reporting requirements are too open-ended and that schools feel bogged down, which detracts from their primary responsibility of educating students. They suggest changing "any reports necessary" to something different. Connections asks, "When specifically will the required reports and due dates be released each year?" Connection also asks, "Connections asks, "What constitutes 'reasonable' and 'timely' notice?"</p>	<p>The Commission will work on establishing a list by the start of the school year, and schools will be expected to meet all deadlines established in that list. Schools will be granted more flexibility for other deadlines that come up through the year whenever possible. At this point, we cannot provide an exact date for when the list will be provided, but we will endeavor to ensure it is distributed before the start of the traditional school year. The reports and due dates will be released as soon as the Commission receives the necessary information for the reporting schedule. The Commission will determine what is reasonable and timely notice since it will depend on the circumstances. There are unforeseen circumstances or times where the Commission receives little notice from the Legislature or another agency and must compile the needed information promptly. The Commission will continue to explain such circumstances to the schools when asking for the information, seek additional time, and work with the requesting agency to identify ways to avoid a repeat.</p>

3.5		<p>The Commission suggests adding new provision that reads something like, "School shall submit to the appropriate state agencies, including but not limited to the Department of Education, Department of Health, and Office of Information Practices, any data required to meet its obligations as a public school and entity of the state."</p>	<p>Kona Pacific wants the Commission to confirm that the information is required and if so, to have these organized and managed in Epicenter; Kona Pacific also suggests that info requests from Commission. Laupahoehoe writes, "Language stating that these are reasonable requests need to be included if you move forward with this. An ever increasing number of demands on the schools assume that we have large district resources. Each of us could use an additional administrator and secretary just to provide documentation for the new accountability measures." Connections writes, "Who determines which data is required?"</p>	<p>Good suggestions. The Commission can always explain to schools why things are required. We do try to do this. Also Epicenter will indeed help.</p>
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(Suggested addition)

3.5	<p>The Commission initially suggested asking schools to submit quarterly financial reports to the Commission within 30 days instead of 40 days of each fiscal year quarter, that unaudited financial statements be due to the Commission by Aug. 31 instead of Sept. 15; and that completed audit be due to Commission by Oct. 31 instead of Nov. 15.</p>	<p>People at every meeting expressed concerns over the changes. Connections specifically requested that administrative rules be developed to set deadlines and to define "reasonable notice and circumstances." Connections also asks, "What federal and/or state laws give the Commission the authority and/or power to create 'guidelines and/or scope of the audit,' 'minimum requirements for a CPA, or a list of qualified CPAs? Administrative rules should be developed to define 'reasonable notice' and the 'circumstances' for changing deadlines."</p>	<p>Leila Shar met with one of the auditors who suggested that the schools be asked to provide a report packet containing the information Leila would need to prepare the financial framework assessment. Leila is still working with DAGs and DOE to see if the deadline can be adjusted. For now, the deadlines will stay the same as they have been this past year.</p>
3.5	<p><u>Financial Reports</u> (Please note we did not copy and paste the current language here due to its length. Refer to the current contract for the language).</p>	<p>Changes include only having schools post to their website and in their offices; submitting member lists to Commission by Sept. 1 instead of July 30; and asking that GB member changes be submitted within 14 instead of 30 days.</p>	<p>WHEA and Laupahoehoe ask for more time to submit the GB minutes because sometimes GBs do not meet every month, and thus the minutes from the previous meeting would not be approved within 30 days. Connections wants everything defined through administrative rules.</p>
3.5	<p><u>Governing Board Reporting</u>. (Please note we did not copy and paste the current language here due to its length. Refer to the current contract for the language).</p>	<p>State law requires that charter school governing boards post minutes within 30 days of the meeting. Schools have raised valid points regarding the fact that minutes may not be approved. We will clarify in the contract that the minutes need not be approved to comply with the 30-day requirement, so long as they are designated as unapproved. After the minutes are approved, schools should re-post the approved minutes.</p>	<p>State law requires that charter school governing boards post minutes within 30 days of the meeting. Schools have raised valid points regarding the fact that minutes may not be approved. We will clarify in the contract that the minutes need not be approved to comply with the 30-day requirement, so long as they are designated as unapproved. After the minutes are approved, schools should re-post the approved minutes.</p>

3.5	<p>The Commission suggests that policies and procedures be subject to Commission approval. Also, the Commission wants to remove the requirement for submission of a Conflict Resolution policy and add submission of Admissions and Enrollment, Student Withdrawal and Release, and Accounting Policies. The Commission also suggests removing the July 30 deadline.</p>	<p>Hakipu'u expressed concern over the approval process for policies--instead they want to be sure the policies meet the criteria. They suggest word changes, perhaps "meeting the criteria established by the Commission." Hakipu'u also questioned how the Commission will monitor adherence to policies. HAAS also wondered about extensiveness of the review.</p>	<p>Good point. The wording will be changed to reflect that policies must be consistent with Commission criteria.</p>
3.5	<p><u>School Policies and Procedures.</u> By July 30 of each year, the School shall submit electronically to the Commission its most current policies and procedures as follows: (a) Conflict of interest policy; (b) Student conduct and discipline policy; (c) Conflict resolution policy; (d) Complaints procedures; (e) Procurement policies and procedures; and (f) Personnel policies.</p>	<p>Hālau Kū Māna wonders who to notify for school lockdowns. Kamakau writes, "Need to clarify the process for reporting school closures; however, not necessary to include process in the contract." Connections writes, "And what will the Commission do once notified? The last time this happened I was told (by Mr. Tom Hutton) that it is the school's responsibility to notify the public that the school would be closed. In the event of a lawsuit, will the Commission inform the AG?"</p>	<p>Commission staff will work with the DOE, the Hawaii School Safety & Security Council, and the county police departments to get this clarification and more guidance. The notice to the Commission may be a district issue from notice to the public.</p>

3.5	<p><u>Monitoring and Intervention.</u> (Please note we did not copy and paste the current language here due to its length. Refer to the current contract for the language).</p>	<p>The Commission suggests adding a requirement for schools to designate a staff member to be responsible for Epicenter reporting.</p>	<p>To the Commission's suggestion of asking schools to designate a person responsible for Epicenter, Kona Pacific suggested to make the language broad enough so that it will still apply if we no longer use Epicenter. Ka 'Umeke meeting questioned whether more could be added. Kamakau writes, "Change comment A49 to make it more generic, not naming Epicenter specifically which would allow for changes of the system. Within the past 3 years, we have been introduced to a couple of online systems for posting data. Change comment A49 to make it more generic, not naming Epicenter specifically which would allow for changes of the system. Within the past 3 years, we have been introduced to a couple of online systems for posting data."</p>	<p>Good suggestions. The language will be amended so as to not specifically refer to Epicenter.</p>
3.5	<p><u>Monitoring.</u> The Commission shall continually monitor the performance and legal compliance of the School. The Commission shall have the authority to conduct or require oversight activities that enable the Commission to fulfill its responsibilities under Ch. 302D, HRS, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of Ch. 302D, HRS and adhere to the terms of this Contract. The Commission may take the necessary steps to evaluate the educational, legal, fiscal and organizational condition of the School and to ensure that the School is in compliance with this Contract.</p>	<p>(No change suggested)</p>	<p>HAAS requests clarification and "necessary steps under Ch 302D" and feels the language is too vague. HAAS expresses concern over Contract/Charter school, given different definitions of charter school in Ch 302A or Ch 302B. There is concern that charter and contract become synonymous. Connections asks, "What exactly is the intent of Ch. 302D, HRS? Who makes the determination of consistency in relation to 'appropriate inquiries and investigations'? What exactly are the 'necessary steps'? This should be defined through administrative rules."</p>	<p>Again, recent events at some charter schools highlight the importance of the Commission's need to reassure the public and policymakers on this point. Administrative rules are not required because process and procedures between the Commission and schools (state agencies) are considered internal management procedures and such procedures do not have to be done by rule. The definitional questions do not appear related to this provision.</p>
3.5	<p><u>DOE Monitoring.</u> To meet its oversight and reporting obligations, the DOE, as the State Education Agency or Local Education Agency, may monitor the School for compliance with programmatic or fiscal requirements, including requiring reports or other documentation, under any federal or State law. The School shall comply with all such monitoring by the DOE.</p>	<p>(New Change) Add language: including but not limited to requiring reports or other documentation for purposes of IDEA</p>		<p>The Commission may add language here stating "including but not limited to special education."</p>

<p>3.5</p> <p><u>Access to Records.</u> The School shall make all School records open to inspection by the Commission, the DOE, the Office of the Auditor, law enforcement officials, contracted evaluators or any other federal or State regulatory agency within five business days after request is made, or sooner if required by law</p>	<p>The Commission suggests adding "consistent with school's obligation under FERPA" and language adding that the Commission will make efforts to provide notice.</p>	<p>Hālau Kū Māna wonders about personnel records, due process cases, etc. Does the Commission have access to everything? More clarity is needed. Dewey Kim says you might want to have a formal stamp on the records that go to Commission and then Commission releases it back to the schools. Connections wonders if it matters who the contracted evaluators are working for. Connections also wonders if these activities can take place during informal visits.</p>	<p>The Commission believes that adding the language "consistent with FERPA" should address these concerns. Procedural details need not be included in the contract.</p>
<p>3.5</p> <p><u>Site Visits.</u> The Commission may visit the School informally without notice at any time and may, at its discretion, conduct announced formal school visits. Such site visits may include any activities reasonably related to fulfillment of its oversight responsibilities including, but not limited to, inspection of the facilities, audit of financial books and records, inspection of records maintained by the School, interviews and observations of the principal, staff, school families and community members, and observation of classroom instruction.</p>	<p>The Commission will change the language to indicate that we will make an effort to provide notice.</p>	<p>Hālau Kū Māna wants to seek permission of school boards or to seek formal request.</p>	<p>Certain situations may warrant site visits without notice, but the Commission will make reasonable efforts to provide notice.</p>

3.5	<p><u>Intervention.</u> If the Commission finds deficiencies in the School's performance or legal compliance, the Commission and the School shall follow the Intervention Protocol attached as Exhibit D. Intervention may be initiated when the Commission finds that the School has failed to:</p> <p>(a) Comply with applicable laws, rules, policies or procedures;</p> <p>(b) Comply with the terms and conditions of this Contract; or</p> <p>(c) Meet performance expectations as set forth in the Performance Frameworks.</p> <p>Failure to invoke the Intervention Protocol shall not be (i) construed as a waiver or relinquishment of any requirement under applicable laws, rules, policies, procedures, contractual terms and conditions or performance expectations; or (ii) deemed a necessary precedent to non-renewal or revocation.</p>	<p>The Commission intends to change the Intervention Protocol, perhaps adding something less serious than a "Notice of Deficiency" for missed deadlines, etc.</p>	<p>Kona Pacific agrees that the Intervention Protocol be changed, especially as the Notices of Deficiency are public records. Connections suggests that the Intervention Protocol be defined through administrative rules.</p>	<p>In all likelihood, the new, less serious notice still would be a public record, but the connotation would be less serious for a missed deadline of relatively minor significance.</p>
3.5	<p><u>Renewal.</u> The Parties agree that this Contract, upon its expiration, will not be subject to the renewal process pursuant to Sec. 302D-18, HRS. The Parties agree that, upon expiration of this Contract term, they intend to execute a new charter contract for a subsequent term to be determined by the Commission.</p>	<p>The language will be changed to indicate that the contract will be subject to the renewal process pursuant to Sec. 302D-18, HRS.</p>	<p>Connections wonders why there is need for agreement when this is the law. They assert that the last contract required us to agree to not follow the law and add that the new law takes precedence over a contract.</p>	<p>The Commission agrees that this provision no longer is necessary.</p>
3.5	<p><u>Revocation.</u> The Commission may revoke a contract for reasons stated in Sec. 302D-18(g), HRS, provided that the Parties agree that the Contract will not be revoked for failure to meet or make sufficient progress toward performance expectations set forth in the Contract. The Commission shall follow the revocation criteria and process as defined in Sec. 302D-18, HRS, administrative rules and Commission policies and procedures.</p>	<p>(No change suggested)</p>	<p>Connections suggests that "policies and procedures" should be consistent with the administrative rules.</p>	<p>As with previous section, the "hold harmless" language was from the initial one-year contract, so this section no longer is necessary.</p>

3.5	<p><u>Disputes Resolution</u>. (Please note we did not copy and paste the current language here due to its length. Refer to the current contract for the language).</p>	(No change suggested)	<p>Connections writes, "What about an appeals process?"</p>	<p>302D-15 authorizes the BOE to hear appeals specifically of application denials, revocations, and non-renewals. 302D-25(e) does not allow charter schools, as state agencies, to bring suit against any other state agency -- this would prohibit appeals being heard by the circuit court.</p>
	<p>Definitions</p>	<p>Change added March 25, 2014. Staff has requested that the Commission include definitions of digital and blended learning, and of virtual schools, in the contract.</p>		

Exhibit 4
Second Revision to 2013-14 Charter Contract

STATE PUBLIC CHARTER SCHOOL CONTRACT

This Contract is executed by and between the STATE PUBLIC CHARTER SCHOOL COMMISSION (“Commission”), a commission established under the laws of the State of Hawaii, whose mailing address is 1111 Bishop Street, Suite 516, Honolulu, Hawaii, 96813, and (“School”), whose mailing address is XX, singularly “Party” and collectively “Parties.”

RECITALS

WHEREAS, Article X, Section 1 of the Hawaii State Constitution provides for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor;

WHEREAS, the Hawaii State Legislature enacted Act 130, Session Laws of Hawaii 2012, effective June 19, 2012 and codified as Chapter 302D, Hawaii Revised Statutes (HRS), which sets forth the laws under which charter schools are created and governed;

WHEREAS, the Hawaii State Legislature found that this Act will support new approaches to education that accommodate the individual needs of students and provide the State with successful templates that can dramatically improve Hawaii's educational standards for the twenty-first century, and that this Act will create genuine opportunities for communities to implement innovative models of community-based education;

WHEREAS, pursuant to Chapter 302D, HRS, the Commission has statewide chartering jurisdiction and authority and is empowered to authorize public charter schools and enter into a charter contract with approved public charter schools;

WHEREAS, Sec. 302D-1, HRS, defines the “charter contract” as a fixed-term, bilateral, renewable contract between a public charter school and a charter school authorizer that outlines the role, powers, responsibilities and performance expectations for each party to the contract;

WHEREAS, through this Contract, the Parties are desirous of ensuring clear requirements for accountability while preserving the autonomy of the School to support new, innovative approaches to education and contribute to the development of high quality public charter schools throughout the State;

WHEREAS, pursuant to Sec. 302D-2, HRS, any charter school holding a charter to operate under part IV, subpart D, of Chapter 302A, HRS, as that subpart existed before July 11, 2006, and any charter school holding a charter to operate under Chapter 302B, HRS, as it existed before June 19, 2012, shall be considered a charter school for the purposes of this chapter under a charter contract with the Commission unless the charter contract is revoked, transferred to another authorizer, or not renewed, or the charter school voluntarily closes;

WHEREAS, the School was granted a charter on May 17, 2001 which has not been revoked and therefore qualifies as an existing charter school pursuant to Sec. 302D-2, HRS; and

WHEREAS, the School desires to continue operating as a charter school.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained here, the Parties hereby agree as follows:

1. General Terms

- 1.1. Term. The term of this Contract shall be ~~one (1) year, commencing on July 1, 2013 and terminating on June 30, 2014.~~
- 1.2. Legal Status of School. Pursuant to Sec. 302D-25(e), HRS, the School is a public school and entity of the State and may not bring suit against any other entity or agency of the State. The School shall be nonsectarian in its operations.
- 1.3. Compliance with Laws. The School shall comply with all applicable federal, State and county laws, ordinances, codes, rules and regulations, as the same may be amended from time to time.

Comment [A1]: To be determined. Staff is recommending three year contract terms, with an option for automatic renewal for schools demonstrating exemplary performance on the performance frameworks.

2. Governance of School

- 2.1. The School's Governing Board is the independent board of the School that is responsible for the financial, organizational and academic viability of the School; possesses the independent authority to determine the organization and management of the School, the curriculum and the instructional methods; has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of their employees and is considered the employer of School employees for purposes of chapters 76, 78 and 89; and ensures compliance with applicable laws.
- 2.2. The School's Governing Board shall comply with the Code of Ethics (Ch. 84, HRS) and shall adopt and adhere to a conflict of interest policy which is consistent with Ch. 84, HRS, ~~and which includes provisions related to nepotism.~~ The policy must clarify how the School will comply with Sections 84-13, HRS, and Section 84-14, HRS, as it pertains to the hiring and supervision of school personnel who are 'relatives' as defined in Section 302D-12(h). The conflict of interest policy adopted by the Governing Board shall be subject to Commission criteria and approval.

Comment [A2]: Suggest adding that Conflict of Interest policy must be consistent with Commission criteria.

3. Educational Program

- 3.1. School's Control. Subject to the terms and conditions of this Contract, the School shall have control over and responsibility for the design and delivery of the educational program and for attaining the academic performance standards and targets established in the Performance Frameworks attached as Exhibit B and, subject to par. 3.2, shall have the discretion to modify, amend, adapt and otherwise change its educational program as it deems necessary to achieve the academic performance standards and targets.
- 3.2. Material Elements of Educational Program. The material elements of the School's Educational Program, including but not limited to the School's mission and vision statements, are as set forth in Exhibit A to this Contract. The School shall, at all times, operate in a manner consistent with its Educational Program as defined in Exhibit A. Revisions to any of the elements in Exhibit A shall be considered a material change to the Contract and shall require prior written approval by the Commission; provided that such approval shall not be unreasonably withheld, particularly to the extent that such changes are intended to improve educational outcomes.

3.3. Academic Standards.

3.3.1. Consistent with State law, the School shall implement the Common Core or other State academic standards as may hereafter be approved by the State Board of Education (BOE).

3.3.2. The School shall retain the autonomy to select a particular curricular and/or instructional approach consistent with the Common Core or other State academic standards.

Comment [A3]: No change as requested by the schools; language to remain as is.

3.4. Graduation Requirements for High Schools. The School shall comply with BOE Policy 4540, as the same may be amended from time to time, which shall apply starting with the incoming ninth graders for the school year 2013-2014, and shall provide evidence of such compliance; provided that the School may request a waiver of this Policy from the BOE.

Comment [A4]: The Commission will continue to ask the Board of Education to clearly delineate which policies apply to charter schools. For now, we will keep the contract language as is.

3.5. Education of Students with Disabilities.

Comment [A5]: The Commission is working with DOE to clarify the roles and responsibilities. We also suggest moving section 3.5.3 to the start of this section.

3.5.1. The State Department of Education (DOE) is statutorily responsible for the provision of a free appropriate public education. If the School enrolls special education students or identifies one of its students as eligible for special education, the School shall be responsible for providing the educational and related services required by a student's individualized education program. The programs and services for the student shall be determined collaboratively by the student's individualized education program team, which includes the student's parents or legal guardians.

3.5.2. If the School is unable to provide all of the required services, then the DOE is responsible for providing the student with services as determined by the student's individualized education program team. The Commission shall collaborate with the DOE to develop guidelines related to the provision of special education services and resources to each charter school. The DOE is responsible for reviewing all of the current individualized education programs of special education students enrolled in a charter school and may offer staff, funding or both, to the charter school based upon a per-pupil weighted formula implemented by the DOE and used to allocate resources for special education students in the public schools.

3.5.3. The DOE is the State of Hawaii's "local education agency" (LEA) for purposes of compliance with the Individuals with Disabilities Education Act (IDEA). All public schools, including charter schools, are part of and fall under the LEA. As such, the School shall comply with all applicable federal and State laws, rules, policies, procedures and directives regarding the education of students with disabilities, including but not limited to Ch. 8-60, Hawaii Administrative Rules (HAR).

3.6. Section 504 and ADA. The School shall comply with Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act Amendments Act and all related DOE rules, policies and procedures in its general curriculum, including but not limited to implementation of any formal Section 504 plan that has been developed for a student, all as may be amended from time to time. The ~~Commission and/or the~~ DOE will ~~may~~ provide training, consultation and advice to the School as needed with regard to Section 504 compliance, including legal interpretations, recommendations for intervention strategies and assistance in conducting Section 504 plan and review meetings.

Comment [A6]: Spelling error; Change to "policies"

Comment [A7]: The Commission cannot mandate the DOE to provide training in the Contract, which is why we suggest changing "will" to "may." Also, we are deleting the reference to the Commission from this section.

3.7. English Language Learners. The School shall provide services to students with limited English proficiency in compliance with all federal and State laws, regulations, rules, court orders, policies, procedures and guidance, all as may be amended from time to time, to ensure linguistic accessibility to the School's educational program. The Commission shall

provide the School with technical assistance similar to those services provided by the DOE complex areas to the DOE-operated public schools. The School shall also assist Immigrant Children and Youth, as defined in Section 3301(6), Title III, Elementary and Secondary Education Act, as the same may be amended from time to time, in meeting the State academic content and student academic achievement standards that all public school students are expected to meet.

4. School Performance

4.1. Performance Frameworks.

4.1.1. Consistent with the requirements of Sec. 302D-16(a), HRS, the School's academic performance under this Contract shall be evaluated based on the School's record of performance according to the State accountability system as may be amended from time to time consistent with State and federal requirements and shall give due consideration to the School's performance based on any Commission-approved school-specific indicators adopted by the School.

Comment [A8]: Once the Academic FW is approved, we suggest deleting 4.1 and adding the academic framework to 4.1.2., so that 4.1.2 reads, "The school's organization, financial, and academic performance...."

4.1.2. The School's organizational and financial performance under this Contract shall be evaluated using the Organizational and Financial Performance Frameworks, respectively, attached as Exhibit B to this Contract. These Performance Frameworks shall supersede and replace any and all financial operation metrics and organizational performance metrics established prior to the execution of this Contract and not explicitly incorporated into the Performance Frameworks. The specific terms, forms and requirements of the Performance Frameworks, including any required indicators, measures, metrics and targets, are maintained and disseminated by the Commission and shall be binding on the School. Material amendments to the Performance Frameworks shall require approval by the Commission.

4.2. Modification to Performance Frameworks. The Parties acknowledge that specific terms, forms and requirements of the Performance Frameworks may be modified to the extent required to align with changes to applicable State or federal accountability requirements as set forth in law or policies or based on other circumstances that make assessment based on the existing Performance Framework requirements impracticable. In the event that such modifications are required, the Commission will make its best effort to apply expectations for school performance in a manner as reasonably consistent with those set forth in the Performance Frameworks and the School's Educational Program as set forth in Exhibit A to this Contract.

4.3. State Accountability System. The School shall be subject to and comply with all requirements related to the State assessment and accountability system for all public schools. The School shall administer all student testing as required by federal and State law, rule, policies and procedures. The School may elect to administer assessments in addition to the State's summative test. These additional assessments will not be factored into the School's index score for the purposes of the State school accountability system but the School may use them for the School's Commission-approved school-specific goals and measures, if any, and the Commission shall factor them into the overall accountability assessments in accordance with the Performance Frameworks.

4.4. Board of Education Authority. Pursuant to its duties under Article X, Section 3, of the Hawaii State Constitution, the BOE has the power to formulate statewide educational policy. The School shall only be subject to BOE policies that are specified in this Contract

or are expressly identified by the BOE as applying to charter schools. If there is any conflict between an applicable BOE policy and a provision in this Contract, the BOE policy shall control.

5. Student Admission, Enrollment, ~~Withdrawal~~, & Dismissal

Comment [A9]: Commission will add "withdrawal" to the heading.

5.1. Non-Discrimination. The School shall make all student recruitment, admissions, enrollment and retention decisions in a nondiscriminatory manner and without regard to race, color, ethnicity, national origin, religion, sex, sexual orientation, marital status, income level, academic or athletic ability, disability, need for special education services, ~~lack of proficiency in the English language.~~

Comment [A10]: The Commission recognizes there are certain instances, such as language immersion school, which would be excluded from this policy. Staff recommends leaving this language as is for the time being.

5.2. Admissions. The School shall comply with its Admission Policies and Procedures as approved by the Commission, ~~and provided in Exhibit A (Educational Program)~~. If the number of applicants exceeds the School's capacity of a program, class, grade level or building, the School shall select students to attend using a random selection process that shall be publicly noticed and open to the public; provided that if the School is a conversion charter school serving as the home school for the DOE district, then the School shall follow DOE policies and procedures regarding admissions and shall not be subject to the random selection ~~requirements~~.

Comment [A11]: Admissions policies have been removed from Exhibit A; instead they will be submitted to the Commission under the contract and subject to approval. Admissions policies should also address any enrollment preferences.

5.3. Enrollment. The School shall maintain accurate and complete enrollment data and daily records of student attendance.

Comment [A12]: Note that 302D-C does state that a conversion is subject to same admissions procedures for any grade in the conversion that was not in place when the school converted. We recommend adding this language in to make that clear and consistent with the law.

5.4. Joint Enrollment. Only for the purpose of calculating funding based on enrollment, no student may be jointly enrolled in the School and another public or private school.

5.5. Enrollment Preferences. The School shall not impose enrollment ~~preferences~~, except as ~~provided for in Exhibit A (Educational Program) or otherwise~~ approved by the Commission.

Comment [A13]: Suggest requiring that enrollment preferences are consistent with Commission criteria and subject to Commission approval.

5.6. Dismissal. The School shall not dismiss ~~or transfer~~ a student involuntarily, unless the dismissal ~~or transfer~~ is accomplished through established administrative procedures provided for ~~by this Contract, or by administrative procedures in the Commission's rules or policies in Section 8-19-9, HAR~~; provided that any dismissal of a student with a disability shall comply with the requirements of Ch. 8-60, HAR.

Comment [A14]: Staff will clarify this section. Our goal is to ensure that dismissal is a process separate from withdrawal and transfer to another school. Also, because the current language refers to provisions which are not yet established, we suggest revising the Contract so that schools follow Ch. 19 for involuntary dismissals and transfers only, unless the Commission issues alternative guidance.

~~6.~~ 5.7. ~~Withdrawal and Release~~Transfer. The School shall incorporate the procedures of the Department of Education into its own policy for students who are withdrawn from the School and transferring to a department school. This policy shall be provided to the Commission for its review. The School shall develop and adhere to its own withdrawal policy for students who wish to transfer to a non-department school. This policy shall be approved by the School's governing board.

Comment [A15]: Section added to highlight difference between dismissal and transfer.

7.6. Operation of School

7.1-6.1. Student Conduct and Discipline. The School shall adopt, update, and adhere to written policies concerning standards of student conduct and discipline which shall comply with federal and State laws. The policies are subject to Commission approval. The School shall provide copies to the School's parents and students at the start of each school year.

Comment [A16]: Suggest adding language here indicating that policy must be consistent with Commission criteria—for example, policy should address due process rights.

7.2-6.2. Punishment of Pupils Limited. No physical punishment of any kind may be inflicted upon any pupil, but reasonable force may be used by a principal, principal's agent, teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor in order to restrain a pupil in attendance at school from hurting oneself or any other

person or property, and reasonable force may be used as delineated in Sec. 703-309(2), HRS.

~~7-3-6.3. Conflict Resolution Policy. The School shall adopt, update and adhere to a Conflict Resolution Policy to provide parents and students due process in the event that a conflict arises; provided that where a dispute resolution process is defined for a particular program area (e.g., IDEA, Section 504, etc.), the School shall comply with the process for that particular program area which shall control. The Commission shall not intervene in the School's Conflict and Resolution procedures except where the dispute pertains to a possible violation of any law or term under this Contract.~~

Comment [A17]: We suggest removing 6.3 altogether. It will also be removed from the Organizational Framework.

~~7-4-6.4. Complaints Process. The School shall establish and adhere to a process for resolving public complaints which shall include an opportunity for complainants to be heard. The final administrative appeal shall be heard by the School's Governing Board, except where the complaint pertains to a possible violation of any law or term under this Contract.~~

Comment [A18]: Suggest adding language requiring complaints procedures are consistent with Commission criteria.

~~7-5-6.5. Contracting for Educational Services. The School shall not enter into a contract or subcontract for comprehensive management or administration services of its core educational program or services, unless otherwise agreed to in writing by the Commission or identified in Exhibit A (Educational Program). Such contracting is conditioned upon the School developing a management agreement with the educational service provider that meets the conditions in Exhibit C to this Contract; provided requirements of a School Improvement Grant or other federal grant shall control.~~

7-6-6.6. Health and Safety

~~7-6-1-6.6.1. Safe Environment. The School shall maintain a safe learning environment at all times. The School shall file a safety plan with the Commission.~~

Comment [A19]: The Commission will provide basic criteria policies are expected to meet. Rather than stating that the safety plan "will be subject to Commission approval," the contract language may instead require the safety plan to be consistent with criteria established by the Commission. Language will also be added indicating schools must also adhere to the plan.

~~7-6-2-6.6.2. Health Clearances. The School shall comply with Secs. 302A-1154 to 302A-1163, HRS, and Ch. 11-157, HAR, requiring documentation that each student has received immunizations against communicable diseases, is free from tuberculosis in a communicable form and has received a physical examination. Pursuant to Sec. 302A-1161, HRS, if a child does not complete the immunizations or physical examination required within the period provided by Sec. 302A-1155, HRS, after provisional entry into school, the School shall notify the parent or guardian of the child that if the required immunizations or physical examination is not completed within thirty days of the date of the notice, the child shall not be admitted to the School.~~

~~7-6-3-6.6.3. School Employees Afflicted with Tuberculosis. The School shall not allow any person who has contracted tuberculosis, while afflicted with the disease, to teach or work at the School.~~

~~7-6-4-6.6.4. Student Health Services. The School shall provide appropriate student health services and safety protections including providing first aid care for ill and injured students. The school may recommend that parents seek the help of a medical professional or appropriate health agencies for cases beyond its scope of responsibility.~~

~~7-7-6.7. Insurance. The School shall be covered under the Statewide Risk Management Program pursuant to Ch. 41D, HRS, for liability, property, crime and automobile insurance. The School shall comply with all laws, rules, policies, procedures and directives of the Department of Accounting and General Services' Risk Management Office. The School may purchase additional insurance coverage if so desired.~~

7-8-6.8. Procurement. Pursuant to Secs. 302D-25(b) and 302D-12(d), HRS, the School and its Governing Board shall be exempt from Ch. 103D, HRS. The School's Governing Board shall develop policies and procedures for the procurement of goods, services and construction consistent with the goals of public accountability and public procurement practices.

Comment [A20]: Add language indicating that procurement policies must also be consistent with Commission criteria. Also add language to indicate school shall adopt, update, and adhere to the plan.

7-9-6.9. Records

7-9-6.9.1. Student Records. The School shall maintain student records for current and former students in accordance with the requirements of State and federal law, including the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g, as may be amended from time to time. Should a student transfer to another school, the School shall transfer the student's records to the new school in a timely manner and may maintain copies of the departing student's academic records created during the student's attendance at the School.

Comment [A21]: We suggest cross-referencing this section to the withdrawal section suggested in 5.7.

7-9-6.9.2. Records Retention. The School shall comply with all federal and State record keeping requirements. As a State entity, the School shall comply with the policies and guidelines of the Department of Accounting and General Services, Archives Division, Records Management Branch, with regard to the retention and disposal of government records.

7-9-6.9.3. Open Records Law. The School shall comply with Ch. 92F, HRS, the Uniform Information Practices Act.

7-10-6.10. Reporting of Crime-Related Incidents. The School shall adopt policies and procedures to:

- (a) Require a report to appropriate authorities from a teacher, official or other employee of the School who knows or has reason to believe that an act has been committed or will be committed, which:
 - (1) Occurred or will occur on School property during School hours or during activities supervised by the School; and
 - (2) Involves crimes relating to arson, assault, burglary, disorderly conduct, dangerous weapons, dangerous drugs, harmful drugs, extortion, firearms, gambling, harassment, intoxicating drugs, marijuana or marijuana concentrate, murder, attempted murder, sexual offenses, rendering a false alarm, criminal property damage, robbery, terroristic threatening, theft or trespass;
- (b) Establish procedures for disposing of any incident reported; and
- (c) Impose appropriate disciplinary action for failure to report these incidents, including probation, suspension, demotion and discharge of School officials.

7-11-6.11. Smoking Prohibited. As a public school, the School shall prohibit the use of tobacco at its school or at School functions.

7-12-6.12. Transportation. The School may provide its own transportation services or provide transportation through an agreement or contract with a private provider. The School shall ensure the safety of students in any transportation arrangement and shall comply with state and county requirements pertaining to vehicles and drivers that transport students.

Comment [A22]: Suggest that this is changed to read, "A school that provides transportation shall ensure the safety of students and shall comply with state and county requirements..."

8-7. Facilities

8.1.7.1. Location. The School shall provide educational services, including the delivery of instruction, at the location(s) identified in Exhibit A (Educational Program); provided that the School may conduct class site visits to temporary **locations** not identified in Exhibit A and may provide instruction at such temporary locations not to exceed 30 days. The School shall not operate in any other location without the prior written approval of the Commission.

Comment [A23]: Suggest minor language revisions to make this section more clear. We will not change, as originally suggested, the language regarding 30 days. We will leave it as is.

8.2.7.2. Occupancy Rights. The School shall possess the lawful right to occupy and use the premises on which the School operates. The School shall provide the Commission a copy of the School's lease, deed or other occupancy agreement for all locations identified in Exhibit A (Educational Program), except if the School occupies DOE school facilities.

8.3.7.3. Compliance with Codes. The School shall be located in facilities that comply with all applicable State and county building, zoning, fire, health and safety code requirements.

8.3.1.7.3.1. If the School is located in facilities other than DOE facilities, the School shall obtain and maintain any necessary certificates or permits required for use and occupancy of the School's facilities from the applicable building, zoning, fire, health and safety authorities. The School shall immediately notify the Commission in the event that any such certificate or permit is jeopardized, suspended or revoked.

8.3.2.7.3.2. The School shall comply at all times with the occupancy capacity limits set by zoning, building, fire and other applicable regulations.

8.3.3.7.3.3. Any other law to the contrary notwithstanding, any exemptions from building, zoning, fire, health and safety laws, regulations, codes, standards and requirements shall not be applicable to the School except as **approved authorized** by the Commission, which **approval** shall not be unreasonably withheld. Where necessary, the School shall be responsible for requesting permits and approvals from appropriate governmental agencies in compliance with this subparagraph.

Comment [A24]: Minor language changes (changing "authorized" to "approved")

8.4.7.4. Relocation or Expansion. The School's **relocation or expansion** to different facilities shall constitute a material change in the Contract and shall require prior written approval by the Commission. Approval shall be subject to the following conditions:

Comment [A25]: Suggest separating these into two: 7.4.1 Relocation and 7.4.2. Expansion. Relocation should be a different process than expansion. Approval for expansion should also include some demonstration of success on the Performance Frameworks. The words "relocation" and "expansion" should also be defined.

- (a) Prior written request to the Commission for approval of such relocation or expansion;
- (b) Submission to the Commission of a Certificate of Occupancy for the new facilities at least 30 days prior to the first day of occupancy;
- (c) Submission to the Commission of a lease, deed or other document showing the School possesses the right to occupy the new premises;
- (d) Documentation that the new facilities meet applicable health, safety, fire, building and zoning code requirements; and
- (e) Documentation that the new facilities are of sufficient size to safely house anticipated enrollment.

9.8. Funding

9.1.8.1. Per-Pupil Funding. The School's non-facility general fund per-pupil funding shall be as defined in Sec. 302D-28, HRS. The Commission shall distribute the School's per-pupil allocation each fiscal year pursuant to Sec. 302D-28(f), HRS, and shall provide the School with the calculations used to determine the per-pupil amount each year. All funds distributed to the School from the Commission shall be used solely for the School's

educational purposes as appropriated by the Legislature, and the School shall have discretion to determine how such funding shall be allocated at the school level to serve those purposes subject to applicable laws and this Contract.

9-2-8.2. Funding Subject to Appropriation. The general fund per-pupil funding is contingent upon legislative appropriation and allocation of funds. If the Legislature fails to appropriate sufficient monies or if the appropriation is reduced by the Governor or by any other means and the effect of such non-appropriation or reduction is to provide insufficient monies for the continuation of the School, this Contract shall terminate on the last day of the fiscal year for which sufficient funds are available.

9-3-8.3. Adjustments to Funding. The Commission's disbursement of per-pupil funds may be adjusted for the following reasons: (a) To reconcile projected versus actual enrollment counts; (b) To adjust the per-pupil amount due to restriction by the Governor or other reduction action; (c) To adjust the actual enrollment count based on an audit of pupil counts and per pupil revenue that impact the funding received by the School; or (d) To withhold funds due to non-compliance in accordance with Sec. 302D-28(f), HRS. The Commission shall have the discretion to determine whether to make an adjustment by: (i) Reconciling the adjusted amount in a subsequent disbursement to the School; or (ii) Either making payment to the School or requiring reimbursement from the School with at least thirty (30) days' written notice by the Commission.

Comment [A26]: Suggest deleting "F" from here and just keeping 302D

9-4-8.4. Facility Funds. In each year in which funds are appropriated for charter school facility purposes, the Commission shall allocate the funds among eligible charter schools. All funds distributed to the School shall be restricted to the purposes of the appropriation.

9-5-8.5. Federal Funding. Pursuant to Sec. 302D-28, HRS, the School shall be eligible for all federal financial support to the same extent as all other public schools. The Commission shall timely distribute federal funds to the School based on the same methodology used by the DOE to distribute the funds to DOE-operated public schools; provided that the Commission may, by a majority vote at a public meeting, elect to employ an alternative distribution method where such discretion is allowed. The Commission shall make the DOE allocation methods publicly available and shall work with the DOE and the School where questions of equity may arise.

9-6-8.6. Title I Funding. The Commission shall furnish the School with a Title I, Part A of the Elementary and Secondary Education Act eligibility measure and shall provide Title I, Part A funds to the School based on that information. The School, if eligible, shall use Title I, Part A funds in accordance with applicable federal law and regulations including programmatic and fiscal requirements, and the Commission shall provide information to assist the School in understanding Title I, Part A requirements. The School shall provide a school plan that includes the components and school improvement elements required under Title I, Part A, and the Commission shall approve school plans within a reasonable timeframe. The Commission shall allocate set-aside funds in accordance with the intent and purpose of Title I, Part A to support academic progress in the School.

9-7-8.7. Additional Funds. The School may accept gifts, donations or grants and shall comply with all applicable State or federal laws regarding such gifts, donations or grants. The School shall keep separate accounting records of all gifts, donations and grants.

Comment [A27]: Suggest adding that school shall provide a report on this accounting and any other funds not from state or federal sources to the Commission by Sept. 15

9-8-8.8. No Tuition. The School shall not assess tuition, contribution or attendance fees of any kind as a condition of enrollment.

~~9.9.8.9.~~ **Fees.** The School may charge reasonable fees, to the extent permitted by law, for summer school programs, after school programs, student activities and any other service, materials or equipment for which the DOE-operated public schools may charge a fee.

~~10.9.~~ **Financial Matters**

~~10.1-9.1.~~ The School shall maintain accurate and comprehensive financial records, operate in accordance with Generally Accepted Accounting Principles and use public funds in a fiscally responsible manner.

~~10.2-9.2.~~ **Fiscal Year.** The fiscal year for the School shall begin on July 1 and end on June 30 of the subsequent calendar year.

~~10.3-9.3.~~ **Management and Financial Controls.** At all times, the School shall maintain appropriate governance and management procedures and financial controls which shall include, but not be limited to: (a) budgets, (b) accounting methods, (c) payroll procedures, (d) financial reporting and (e) internal control procedures for receipts, disbursements, purchases, payroll and fixed assets.

Comment [A28]: Suggest requiring submission of accounting policies and procedures, which also must be consistent with Commission criteria.

~~10.4-9.4.~~ **Assets.** The School shall maintain a complete and current inventory of all of its property and shall update the inventory annually. The School shall take all necessary precautions to safeguard assets acquired with public funds.

~~10.5-9.5.~~ **Chart of Accounts.** The Commission may require the School to follow a uniform chart of accounts; provided that the Commission shall provide a reasonable time period for the School to convert to such chart of accounts.

~~10.6-9.6.~~ **Transfer of Funds to Nonprofits.** The School shall not transfer funds provided to it by the Commission to any affiliated nonprofit organization except for legitimate and reasonable payments from the School to the nonprofit pursuant to a written agreement.

~~10.7-9.7.~~ **Financing Agreements.** The School shall comply with Ch. 37D, HRS, relating to financing agreements. "Financing agreement" means any lease purchase agreement, installment sale agreement, loan agreement, line of credit or other agreement of the department or, with the approval of the director, and any agency, to finance the improvement, use or acquisition of real or personal property that is or will be owned or operated by one or more agencies of the State, the department or any agency, or to refinance previously executed financing agreements including certificates of participation relating thereto. The School shall not act as a guarantor of any such financing agreement.

~~11.10.~~ **Personnel**

~~11.1-10.1.~~ **Collective Bargaining.** The School shall be subject to collective bargaining under Ch. 89, HRS, and shall comply with the master agreements as negotiated by the State; provided that the School may enter into supplemental collective bargaining agreements that contain cost and non-cost items to facilitate decentralized decision-making. The School shall provide a copy of any supplemental collective bargaining agreement to the Commission within 14 days of full execution.

~~11.2-10.2.~~ **Nondiscrimination.** No person performing work under this Contract, including any employees or agents of the School, shall engage in any discrimination that is prohibited by any applicable federal, State or county law, including but not limited to Sec. 378-2, HRS.

~~11.3.10.3.~~ **Teacher Credentials.** The School's teachers shall comply with applicable State licensing requirements consistent with the Elementary and Secondary Education Act and collective bargaining agreement, as such requirements may be amended. Teachers shall be licensed by the Hawaii Teachers Standards Board and shall meet the federal designation of "Highly Qualified" as adopted by the DOE and defined in the "*Title IIA Highly Qualified Teacher Guidelines*," updated May 2012, as may be amended. If the School receives Title I funding, the School shall ensure that 100% of teachers in core academic subjects are Highly Qualified, and federal funds shall not be used to pay for teachers who do not meet this requirement.

~~11.4.10.4.~~ **Evaluations.** Pursuant to Board of Education Policy 2055, the School is responsible for implementing principal and teacher evaluation systems that are based on efficiency, ability, contribution to student learning and growth. The School may elect to implement the State-developed educator evaluation system or to develop and implement its own educator evaluation system that meets the criteria outlined in BOE Policy 2055, as may be amended from time to time.

Comment [A29]: Suggested change: "Pursuant to federal and state law and policy..."

Comment [A30]: Add "By the Commission"

~~11.5.10.5.~~ **Non-Instructional Employees.** The School shall ensure that the School's non-instructional employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, State or county laws, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

~~11.6.10.6.~~ **Criminal History Checks.** The School shall conduct criminal history checks in accordance with Sec. 846-2.7, HRS, to determine whether a prospective employee or agent is suitable for working in close proximity to children. Information obtained pursuant to this provision shall be used exclusively by the School for the purposes of determining whether a person is suitable for working in close proximity to children. All such decisions shall be subject to applicable federal laws and regulations currently or hereafter in effect. The School may terminate the employment of any employee or deny employment to an applicant if the person has been convicted of a crime, and if the School finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety or well-being of children.

~~11.7.10.7.~~ **Personnel Policies.** The School shall adopt, update and adhere to personnel policies.

Comment [A31]: Suggest adding that these policies must be consistent with Commission criteria

~~12.11.~~ Reporting & Data

~~12.1.11.1.~~ Reports, Generally.

~~12.1.1.11.1.1.~~ The School shall provide to the Commission, in the format and timeframe prescribed by the Commission, any reports necessary and reasonably required by the Commission to meet its oversight and reporting obligations. The Commission shall annually update the list of required reports and due dates and provide this information to the School.

Comment [A32]: Suggest using "data" or "information" instead of reports

Comment [A33]: Also change to "data" or "information"

~~11.1.2.~~ The Commission shall endeavor to reduce the reporting burden it places on the School by providing reasonable notice for requests, providing timely notification when due dates are changed, avoiding duplicate requests and limiting requests to what is reasonably required by the Commission and other State entities.

~~12.1.2-11.1.3.~~

~~12.2.11.2.~~ **Enrollment Count Reports.** The School shall provide to the Commission actual and projected enrollment counts as required for funding and reporting purposes. The Commission may elect to obtain actual enrollment counts directly from the student information data system.

Comment [A34]: Suggest adding new provision that reads something like, "School shall submit to the appropriate state agencies, including but not limited to the Department of Education, Department of Health, and Office of Information Practices, any data required to meet its obligations as a public school and entity of the state."

~~12.3.11.3.~~ **Financial Reports**

~~12.3.1-11.3.1.~~ **Budget and Cash Flow.** The School shall prepare and provide to the Commission a copy of its annual budget as approved by the School's Governing Board and cash flow projections for each upcoming fiscal year by **June 15**.

~~12.3.2-11.3.2.~~ **Quarterly Financial Reports.** The School shall prepare and submit quarterly financial reports to the Commission **within 45** days of the end of each fiscal year quarter.

Comment [A35]: We initially suggested changing this to 45 days, but after school feedback, we will leave it at 45.

~~12.3.3-11.3.3.~~ **Unaudited Financial Statements.** The School shall prepare and submit its unaudited annual financial statements to the Commission by **September 15** of the subsequent fiscal year; provided that the Commission, with reasonable notice to the School, may change the deadline depending on circumstances.

Comment [A36]: We initially suggested changing the date to August 31 but after feedback from the schools, we will keep it Sept. 15.

~~12.3.4-11.3.4.~~ **Annual Audits.** Each fiscal year, the School shall provide for an independent annual financial audit conducted in accordance with Generally Accepted Auditing Standards and Governmental Auditing Standards and performed by a certified public accountant (CPA). The Commission shall provide the guidelines and/or scope of the audit and may require minimum CPA qualifications or that the School select from a list of qualified CPAs as provided by the Commission. The School shall provide the completed audit to the Commission by **November 15** after the conclusion of the fiscal year; provided that the Commission, with reasonable notice to the School, may change the deadline depending on circumstances. The School shall pay for the audit if an appropriation is not made by the Legislature for such purpose.

Comment [A37]: We initially suggested changing the date to Oct. 31 but will keep it as is.

~~12.4.11.4.~~ **Governing Board Reporting.** The School shall make the following documents available at a publicly accessible area in its office and/or on its website, if applicable, by the respective due dates. ~~Additionally, the School shall make the following documents available on the Commission's website by either posting them directly onto the Commission's website or sending an electronic version to the Commission, by the respective due dates.~~

Comment [A38]: Suggest changing so that contract only requires that schools post on school website

Document Description	Due Date
Governing Board member list (current names and contact information)	Submitted to the Commission by July 30th of each year
Governing Board member changes	Within- Submitted to the Commission within 30- 14 days of any change
Schedule of Governing Board meetings	Posted on school website and/or in school office by July 30th of each year
Revisions to schedule of Governing Board meetings	Posted on school website and/or in school office n ot less than six days prior to changed meeting date
Governing Board meeting notices and agendas	Posted on school website and/or in school

Comment [A39]: Suggest changing to Sept. 1

Comment [A40]: Suggest changing to 14 days

Comment [A41]: Suggest changing to Sept. 1

	office n A ot less than six days prior to the Governing Board meeting
Governing Board meeting minutes	Posted on school website w W ithin 30 days following the Governing Board meeting

~~12.4.1-11.4.1.~~ School Policies and Procedures. By ~~July 30~~ of each year, the School shall provide written notification to the Commission on whether it has developed new policies and procedures or revised its current policies and procedures, the School shall submit electronically to the Commission its most current policies and procedures as follows in the following areas:

Comment [A42]: Suggest changing so that schools do not need to submit policies and procedures annual, but indicate that policies must be consistent with Commission criteria

- ~~(a) (a)~~ Conflict of interest policy;
- ~~(b) Admissions and enrollment;~~
- ~~(a)(c) Student withdrawal and release;~~
- (b) Student conduct and discipline policy;
- ~~(c) Conflict resolution policy;~~
- (d) Complaints procedures;
- (e) Procurement policies and procedures; and
- (f) Personnel policies.

Comment [A43]: Suggest removing conflict resolution; add accounting policies that include internal financial controls

Within 14 days of revision and approval by the School's governing board, the School shall submit electronically to the Commission its revised policies and procedures

Comment [A44]: Suggest adding this language

~~12.4.2-11.4.2.~~ Collective Bargaining. Within **14 days** of full execution, the School shall provide to the Commission a copy of any supplemental collective bargaining agreement.

Comment [A45]: Suggest removing 14 days and stating instead that "any executed supplemental agreement must be on file with Commission"

~~12.4.3-11.4.3.~~ Other Reporting. Upon request, the School shall provide the Commission any other ~~documents~~ deemed by the Commission to be ~~relevant to the implementation of~~ any term or condition of this Contract.

Comment [A46]: Suggest changing to "information"

Comment [A47]: Suggest adding "relevant to any term or condition of this contract"

~~12.5-11.5.~~ Educational Data. Pursuant to Sec. 302D-23, HRS, the School shall comply with the minimum educational data reporting standards established by the Board of Education (BOE) and with additional data reporting required by the Commission in its oversight of this Contract and shall ensure all data is accurate and complete. For the purposes of complying with the BOE's educational data reporting standards, the School shall only use data systems that have been approved by the BOE as complying with the BOE-approved data reporting standards and shall obtain prior written approval from the BOE for any data system that has not been so approved.

~~12.6-11.6.~~ Personnel Data. The School shall maintain accurate and complete personnel and payroll information and shall provide such information to the Commission, in the format and timeframe prescribed by the Commission, as required for the Legislature or any State agency including but not limited to the Department of Budget & Finance, Employees' Retirement System and the Hawaii Employer-Union Health Benefits Trust Fund. The School shall ensure each employee receiving State benefits qualifies for such benefits.

~~12.7-11.7.~~ School's Annual Report. The School shall submit an annual report to the Commission in the format and timeframe needed to assist the Commission in gathering complete information about the School.

~~12.8.11.8.~~ **Commission's Annual Report.** The Commission shall publish and provide an annual report on the School's performance in accordance with the Performance Frameworks.

~~12.9.11.9.~~ **Immediate Notice.** The School shall immediately notify the Commission (and other appropriate authorities) of any of the following:

- (a) Any circumstance requiring the closure of the School, including, but not limited to, a natural disaster, such as an earthquake, storm, tsunami, flood or other weather related event, other extraordinary emergency or destruction of or damage to the School facility;
- (b) Any condition that may cause the School to vary from the terms of this Contract or applicable requirements, federal and/or State law;
- (c) The arrest of any members of the School Governing Board or School employees for a crime punishable as a felony or any crime related to the misappropriation of funds or theft;
- (d) Misappropriation of funds;
- (e) Any complaint, citation or default filed against the School by a government agency or lessor;
- (f) Any inaccuracy found in enrollment count or other data provided to the Commission;
- (g) The School receives a notice or is otherwise informed that the School or Commission is a party to a legal suit;
- (h) The discipline of employees at the School arising from misconduct or behavior that may have resulted in harm to students or others, or that constituted violations of law;
- (i) A default on any obligation, which shall include debts for which payments are past due by ninety (90) days or more; or
- (j) The School's enrollment at any time decreases by 10% or more compared to the most recent pupil count submitted to the Commission.

Comment [A48]: Staff may revise this section. We are working with DOE, the Hawaii School Safety & Security Council, and the county police departments to get this clarification and more guidance. The notice to the Commission may be a district issue from notice to the public.

~~13.12.~~ **Monitoring & Intervention**

~~13.1.12.1.~~ **Monitoring.** The Commission shall continually monitor the performance and legal compliance of the School. The Commission shall have the authority to conduct or require oversight activities that enable the Commission to fulfill its responsibilities under Ch. 302D, HRS, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of Ch. 302D, HRS and adhere to the terms of this Contract. The Commission may take the necessary steps to evaluate the educational, legal, fiscal and organizational condition of the School and to ensure that the School is in compliance with this Contract.

Comment [A49]: We suggest adding a requirement here that says designated person at school and board is responsible for submitting information to the Commission in the format requested by the Commission.

~~13.2.12.2.~~ **DOE Monitoring.** To meet its oversight and reporting obligations, the DOE, as the State Education Agency or Local Education Agency, may monitor the School for compliance with programmatic or fiscal requirements, including requiring reports or other documentation, under any federal or State law. The School shall comply with all such monitoring by the DOE.

Comment [A50]: Suggest adding "included but not limited to special education"

~~13.3.12.3.~~ **Access to Records.** The School shall make all School records open to inspection by the Commission, the DOE, the Office of the Auditor, law enforcement officials, contracted evaluators or any other federal or State regulatory agency within five business days after request is made, or sooner if required by law.

Comment [A51]: Suggest adding, "Consistent with the school's obligations under FERPA..."

~~13.4.12.4.~~ **Site Visits.** The Commission may visit the School informally without notice at any time and may, at its discretion, conduct announced formal school visits. Such site visits may include any activities reasonably related to fulfillment of its oversight

Comment [A52]: Suggest adding language indicating that Commission will make reasonable efforts to provide notice

responsibilities including, but not limited to, inspection of the facilities, audit of financial books and records, inspection of records maintained by the School, interviews and observations of the principal, staff, school families and community members, and observation of classroom instruction.

~~13.5.12.5.~~ Intervention. If the Commission finds deficiencies in the School's performance or legal compliance, the Commission and the School shall follow the Intervention Protocol attached as Exhibit D. Intervention may be initiated when the Commission finds that the School has failed to:

Comment [A53]: Staff is developing a notice that would come before a Notice of Deficiency.

- (a) Comply with applicable laws, rules, policies or procedures;
- (b) Comply with the terms and conditions of this Contract; or
- (c) Meet performance expectations as set forth in the Performance Frameworks.

Failure to invoke the Intervention Protocol shall not be (i) construed as a waiver or relinquishment of any requirement under applicable laws, rules, policies, procedures, contractual terms and conditions or performance expectations; or (ii) deemed a necessary precedent to non-renewal or revocation.

Comment [A54]: We anticipate making changes to the Intervention Protocol—perhaps adding something lower than “Notice of Deficiency” for reports that are turned in late, etc.

14.13. Renewal, Revocation & Closure

~~14.1. Renewal.~~ The Parties agree that this Contract, upon its expiration, will not be subject to the renewal process pursuant to Sec. 302D-18, HRS. The Parties agree that, upon expiration of this Contract term, they intend to execute a new charter contract for a subsequent term to be determined by the Commission.

Comment [A55]: Suggest deleting this provision

~~14.2. Revocation.~~ The Commission may revoke a contract for reasons stated in Sec. 302D-18(g), HRS, provided that the Parties agree that the Contract will not be revoked for failure to meet or make sufficient progress toward performance expectations set forth in the Contract. The Commission shall follow the revocation criteria and process as defined in Sec. 302D-18, HRS, administrative rules and Commission policies and procedures.

Comment [A56]: Suggest deleting this provision.

~~14.3.13.1.~~ School-Initiated Closure. Should the School choose to voluntarily surrender this Contract before the end of the Contract term, it may do so in consultation with the Commission at the close of any school year and upon written notice to the Commission given at least ninety (90) days before the end of the school year.

~~14.4.13.2.~~ Dissolution. In the event that the School ceases operation for any reason, including but not limited to non-renewal, revocation or voluntary surrender of this Contract, the School agrees to continue to operate its educational program until the end of the school year; provided that if the School voluntarily surrenders this Contract due to lack of funds, the School shall cooperate with the Commission in scheduling cessation of operations. The School shall cooperate with the Commission in ensuring the orderly closure of the School and shall comply with the Commission’s closure policies and protocol.

~~14.5.13.3.~~ Remaining Assets. In the event that the School closes, the School shall return any remaining public assets to the State, provided that any outstanding obligations of the School are fulfilled first pursuant to Sec. 302D-19, HRS.

15.14. Miscellaneous Provisions

~~15.1.14.1.~~ Entire Contract. The Parties intend this Contract, including all attachments and exhibits, to represent a final and complete expression of their agreement, which shall be

considered the Contract. All prior representations, understandings and discussions are merged herein, and no course of prior dealings between the Parties shall supplement or explain any terms used in this document. The Parties recognize that amendments to this Contract may be approved from time to time hereafter.

~~15.2.14.2.~~ Amendments. Any amendment to this Contract shall be effective only if approved by a majority vote of the Commission at a public meeting.

~~15.2.1-14.2.1.~~ The School may submit any proposed requested amendment to the Commission in accordance with instructions provided by the Commission. The School shall not take action related to the requested amendment until the Commission has approved said amendment.

~~15.2.2-14.2.2.~~ Changes in operation that require the School to obtain an amendment to this Contract include but are not limited to the following changes:

- (a) To any material term of the School's Educational Program (Exhibit A);
- (b) In school location (relocation of site or adding or terminating sites);
- (c) In School management arrangement (such as intention to hire or terminate a management provider);
- (d) In admissions or enrollment policies or procedures.

~~15.3-14.3.~~ Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Hawaii, including all requirements imposed by DOE policy and regulation, and all applicable federal laws of the United States.

~~15.4-14.4.~~ Conflict Between Contract, Law and Administrative Rules. In the event of a conflict between this Contract, State law and the administrative rules pertaining to charter schools, the order of precedence shall be State law, followed by administrative rule, followed by the terms and conditions of this Contract.

~~15.5-14.5.~~ Disputes Resolution. It is the intent of the parties to communicate on a regular basis in a positive and effective manner. The parties agree to communicate areas of concern as they arise and to address those concerns in a professional manner. Any disputes between the Commission and the School which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by the full Commission in writing, within 90 calendar days after a written request by the School for a final decision concerning the dispute; provided that where a disputes resolution process is defined for a particular program area (e.g., IDEA, Section 504, etc.), the Parties shall comply with the process for that particular program area; and further provided that the parties may mutually agree to utilize the services of a third-party facilitator to reach a mutual agreement prior to decision by the full Commission. Any such final decision by the Commission shall be final and conclusive.

~~15.6-14.6.~~ Non-Assignability. The School shall not assign or subcontract any duty, obligation, right or interest under this Contract without prior written approval of the Commission. A violation of this provision shall be considered material and substantial and shall be grounds for immediate revocation of this Contract.

~~15.7-14.7.~~ Notices. Unless otherwise specified by law, any written notice required to be given by a Party to this Contract shall be: (a) delivered personally, or (b) sent by United

States first class mail, postage prepaid. Notice shall be sent to the Parties' mailing addresses first indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. Parties are responsible for notifying each other in writing of any change of mailing address.

Comment [A57]: Suggest that notices and responses will be delivered via email and electronically. We will also clarify how days will be counted—business or calendar days.

~~15.8-14.8.~~ **Severability.** In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

~~15.9-14.9.~~ **Waiver.** The failure of either Party to insist upon the strict performance of or compliance with any term, provision or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the Parties' right to enforce the same in accordance with this Contract.

~~15.10-14.10.~~ **No Third-Party Beneficiary.** The enforcement of the terms and conditions of this Contract shall be strictly reserved to the Commission and the School. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other person. It is the express intent of the Parties to this Contract that any person receiving services or benefits hereunder shall be deemed an incidental beneficiary only, without enforceable rights against a Party to this Contract.

IN WITNESS WHEREOF, the Parties have made and entered into this Contract as of the effective date.

STATE PUBLIC CHARTER SCHOOL COMMISSION

CHARTER SCHOOL

Signature

Signature

Print Name

Print Name

Title

Title

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Deputy Attorney General

Deputy Attorney General

EXHIBITS:

A - School's Educational Program

B - Performance Frameworks (Organizational and Financial and School-Specific if applicable)

C - Educational Service Provider Requirements

D - Intervention Protocol

[Insert EXHIBIT A here]

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EXHIBIT B.1.
FINANCIAL PERFORMANCE FRAMEWORK

The Financial Performance Framework is an accountability tool that provides the Commission with data necessary to assess the financial health and viability of charter schools in its portfolio on an ongoing basis and for the purposes of an annual review. The framework summarizes a charter school's current financial health while taking into account the school's financial trends over a period of three years. The measures are designed to be complementary. No single measure gives a full picture of the financial situation of a school. Taken together, however, the measures provide a comprehensive assessment of the school's financial health and viability based on a school's historic trends, near-term financial situation and future viability.

Within each annual reporting period, the Financial Performance Framework provides for an initial review and a follow-up assessment that together produce two ratings: a Preliminary Rating and a Final Rating. The Preliminary Rating indicates whether the school has met the standard for financial viability based on the Commission's initial review of financial information, which, for an annual review, will be drawn from the school's audited financials. The Final Rating documents the Commission's revised assessment based on more current financial information and/or more detailed examination of the school's financial position, as needed.

Preliminary Ratings

The Preliminary Rating is either *Meets Standard* or *Pending Further Analysis*. The *Meets* rating means that the information contained in the financials under review indicates that the school is meeting or exceeding the target for the standard in question. The *Pending* rating means that the school is not meeting the target based on the financials under review. A school that misses the standard on any one measure may or may not be at financial risk. It may be in immediate distress, financially trending negatively, both or neither. There are two types of additional information that the Commission may need before assigning a Final Rating. The first is more current information. When conducting a year-end evaluation of a school's financials, the Commission will be reviewing audit numbers that are typically at least four months old by the time the audit has been finalized. The Commission's further analysis will often include review of current, unaudited, financials. The second is more detailed information about the school's financial position to assess the reasons behind the failure to meet the standard. For example, a school might make a strategic long-term financial decision that results in it missing a standard in the near term. The Commission's follow-up will consider the more current and more detailed information to determine whether the Preliminary Rating is still applicable and the degree to which it is, in fact, an indication of financial risk or distress.

Final Ratings

The Final Rating is either *Meets Standard*, *Does Not Meet Standard* or *Falls Far Below Standard*.

Meets Standard

A *Meets* rating indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary *Pending* rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.

Does Not Meet Standard

A *Does Not Meet* rating indicates that upon further review following a preliminary *Pending* rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A *Does Not Meet* rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.

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Falls Far Below Standard

A *Falls Far Below* rating indicates that upon further review following a preliminary *Pending* rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary. The school’s rating will be based on both the most recent audited financials and more current unaudited financials. The Commission will also consider any relevant context for the school’s financial position that informs the causes of the school’s substantial shortcomings for the area in question. Appropriate monitoring and/intervention will be determined, in part, by how the rating on the standard in question fits within the school’s overall performance on the framework.

1. NEAR TERM INDICATORS

1.a. Current Ratio (Working Capital Ratio): Current Assets divided by Current Liabilities	
Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Current Ratio is greater than or equal to 1.1 or <input type="checkbox"/> Current Ratio is between 1.0 and 1.1 <i>and</i> one-year trend is positive (current year ratio is higher than last year’s) <p>Note: For schools in their first or second year of operation, the current ratio must be greater than or equal to 1.1.</p>	<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.
<p>Pending Further Analysis:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Current Ratio is between 1.0 and 1.1 <i>and</i> one-year trend is negative or <input type="checkbox"/> Current Ratio is less than or equal to 1.0 	<p>Does Not Meet Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention. <p>Falls Far Below Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.
1.b. Unrestricted Days Cash: Unrestricted Cash divided by ((Total Expenses-Depreciation Expenses)/365)	
Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 60 Days Cash or 	<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the

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<input type="checkbox"/> Between 30 and 60 Days Cash <i>and</i> one-year trend is positive Note: Schools in their first or second year of operation must have a minimum of 30 Days Cash.	<p>standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.</p>
<p><i>Pending Further Analysis:</i></p> <input type="checkbox"/> Days Cash is between 30 and 60 days <i>and</i> one-year trend is negative or <input type="checkbox"/> Days Cash is below 30 days	<p><i>Does Not Meet Standard:</i></p> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention. <p><i>Falls Far Below Standard:</i></p> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.

1.c. Enrollment Variance: Actual Enrollment divided by Enrollment Projection in Charter School Board-Approved Budget	
Preliminary Rating	Final Rating (Following Additional Analysis)
<p><i>Meets Standard:</i></p> <input type="checkbox"/> Enrollment Variance equals or exceeds 95% in the most recent year	<p><i>Meets Standard:</i></p> <input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.
<p><i>Pending Further Analysis:</i></p> <input type="checkbox"/> Enrollment Variance is below 95% in the most recent year	<p><i>Does Not Meet Standard:</i></p> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention. <p><i>Falls Far Below Standard:</i></p> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i>

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	rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.
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2. SUSTAINABILITY INDICATORS

2.a. Total Margin: Net Income divided by Total Revenue

Aggregated Total Margin: Total 3 Year Net Income divided by Total 3 Year Revenues

Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Aggregated Three-Year Total Margin is positive <i>and</i> the most recent year Total Margin is positive or <input type="checkbox"/> Aggregated Three-Year Total Margin is greater than -1.5%, the trend is positive for the last two years <i>and</i> the most recent year Total Margin is positive <p>Note: For schools in their first or second year of operation, the cumulative Total Margin must be positive.</p>	<p>Meets Standard:</p> <p><input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.</p>
<p>Pending Further Analysis:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Aggregated Three-Year Total Margin is greater than -1.5%, but trend does not meet standard or <input type="checkbox"/> Aggregated Three-Year Total Margin is less than or equal to -1.5% or <input type="checkbox"/> The most recent year Total Margin is less than -10% 	<p>Does Not Meet Standard:</p> <p><input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.</p>
	<p>Falls Far Below Standard:</p> <p><input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.</p>

2.b. Debt to Asset Ratio: Total Liabilities divided by Total Assets

Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Debt to Asset Ratio is less than 0.50 	<p>Meets Standard:</p> <p><input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based</p>

B.1-4

	on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.
Pending Further Analysis: <input type="checkbox"/> Debt to Asset Ratio is greater than or equal to .50	Does Not Meet Standard: <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.
	Falls Far Below Standard: <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.

2.c. Cash Flow: Multi-Year Cash Flow = (Year 3 Total Cash) – (Year 1 Total Cash); One-Year Cash Flow = (Year 2 Total Cash) – (Year 1 Total Cash)	
Preliminary Rating	Final Rating (Following Additional Analysis)
Meets Standard: <input type="checkbox"/> Multi-Year cumulative cash flow is positive <i>and</i> cash flow is positive each year or <input type="checkbox"/> Multi-year and most recent year cash flows are positive Note: Schools in their first or second year of operation must have positive cash flow.	Meets Standard: <input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.
Pending Further Analysis: <input type="checkbox"/> Multi-Year cumulative cash flow is positive, but trend does not meet standard or <input type="checkbox"/> Multi-Year cumulative cash flow is negative	Does Not Meet Standard: <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.

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	<p>Falls Far Below Standard:</p> <p><input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.</p>
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2.d. Unrestricted Fund Balance Percentage: Fund balance / Total Expenses	
Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard:</p> <p><input type="checkbox"/> Fund balance percentage is greater than or equal to 25%</p>	<p>Meets Standard:</p> <p><input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the standard indicates sound financial viability.</p>
<p>Pending Further Analysis:</p> <p><input type="checkbox"/> Fund balance percentage is less than 25%</p>	<p>Does Not Meet Standard:</p> <p><input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention.</p> <p>Falls Far Below Standard:</p> <p><input type="checkbox"/> Upon further analysis, the school's performance on this component signals a significant financial risk to the school.</p>

2.e. Change in Total Fund Balance:	
<p>Multi-Year= (Year 3 Fund Balance) – (Year 1 Fund Balance);</p> <p>One-Year= (Year 2 Fund Balance) – (Year 1 Fund Balance)</p>	
Preliminary Rating	Final Rating (Following Additional Analysis)
<p>Meets Standard (in one of two ways):</p> <p><input type="checkbox"/> Multi-Year change in fund balance is positive <i>and</i> change is positive each year</p> <p>or</p> <p><input type="checkbox"/> Multi-year and most recent year changes are positive</p> <p>Note: Schools in their first or second year of operation must have positive change each year.</p>	<p>Meets Standard:</p> <p><input type="checkbox"/> Indicates sound financial viability based on the overall financial record. Either the school has already met the standard based on the financials under review, or previous financial concerns that produced a preliminary <i>Pending</i> rating have been adequately remedied based on more current financial data or addressed adequately based on additional information such that the Commission concludes that performance against the</p>

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	<p>standard indicates sound financial viability.</p>
<p><i>Pending Further Analysis:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Multi-Year change in fund balance is positive, but trend does not meet standard or <input type="checkbox"/> Multi-Year change in fund balance is negative 	<p><i>Does Not Meet Standard:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission concludes that there is financial risk such that heightened monitoring and/or intervention may be warranted. A <i>Does Not Meet</i> rating means that even based on more current financial information, the school is not currently meeting the standard or concerns previously identified, although not currently manifested, have been of a depth or duration that warrants continued attention. <p><i>Falls Far Below Standard:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Upon further review following a preliminary <i>Pending</i> rating, the Commission identifies significant financial risk and has concerns about financial viability such that heightened monitoring and/or intervention are necessary.

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EXHIBIT B. 2.
ORGANIZATIONAL PERFORMANCE FRAMEWORK

The purpose of the Organizational Performance Framework is to communicate to the charter school and public the compliance-related standards which the charter school must meet. The Organizational Framework includes the standards that the charter school is already required to meet through state and federal law, rules or the charter contract.

NACSA Principles & Standards (2012) states that,

“A Quality Authorizer implements an accountability system that effectively streamlines federal, state, and local...compliance requirements while protecting schools’ legally entitled autonomy and minimizing schools’ administrative and reporting burdens” (p. 16).

For each measure a school receives one of three ratings.

Meets Standard:

The school **materially** meets the expectations outlined below.

Does Not Meet Standard:

The school has failed to implement the program in the manner described **above**; the failure(s) were material, but the board has instituted remedies that have resulted in compliance or prompt and sufficient movement toward compliance to the satisfaction of the authorizer.

Falls Far Below Standard:

The school failed to implement the program in the described manner; the failure(s) were material and significant to the viability of the school, or regardless of the severity of the failure(s), the board has not instituted remedies that have resulted in prompt and sufficient movement toward compliance to the satisfaction of the authorizer.

Comment [A58]: Suggest adding a definition of material for organizational framework, e.g., “For purposes of defining organizational performance accountability, the authorizer should consider whether the information would be relevant and significant to decisions about whether to renew, non-renew, or revoke a charter.”

Comment [A59]: Change to “below”

1. EDUCATION PROGRAM

Measure 1a
Is the school implementing the material elements of its Educational Program as defined in the charter contract?
<p>Meets Standard:</p> <p>The school implemented the material elements of its Educational Program in all material respects, and, in operation, the education program reflects the essential terms as defined in the charter contract, or the school has obtained approval for a modification to the essential terms.</p>
Measure 1b
Is the school complying with applicable education requirements?
<p>Meets Standard:</p> <p>The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to education requirements, including but not limited to:</p> <ul style="list-style-type: none"> • Academic standards, including Common Core • Graduation requirements • State assessment and student testing • Implementation of mandated programming as a result of state or federal funding, including Title I and Title II funding

Measure 1c**Is the school protecting the rights of students with disabilities?****Meets Standard:**

Consistent with the school's status and responsibilities as a school within a single LEA under the State Department of Education, the school materially complies with applicable laws, rules, regulations and provisions of the charter contract (including the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act Amendment Act) relating to the treatment of students with identified disabilities and those suspected of having a disability, including but not limited to:

- Equitable access and opportunity to enroll
- Identification and referral
- Appropriate development and implementation of Individualized Education Plans (IEPs) and Section 504 plans
- Operational compliance including the academic program, assessments and all other aspects of the school's program and responsibilities
- Discipline, including due process protections, manifestation determinations and behavioral intervention plans
- Access to the school's facility and program to students in a lawful manner and consistent with students' IEPs or Section 504 plans
- Appropriate use of all available, applicable funding

Measure 1d**Is the school protecting the rights of English Language Learner (ELL) students?****Meets Standard:**

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to ELL requirements (including Title III of the Elementary and Secondary Education Act [ESEA] and U.S. Department of Education authorities), including but not limited to:

- Equitable access and opportunity to enroll
- Required policies related to the service of ELL students
- Proper steps for identification of students in need of ELL services
- Appropriate and equitable delivery of services to identified students
- Appropriate accommodations on assessments
- Exiting of students from ELL services
- Ongoing monitoring of exited students

2. FINANCIAL MANAGEMENT AND OVERSIGHT**Measure 2a****Is the school meeting financial reporting and compliance requirements?****Meets Standard:**

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to financial reporting requirements, including but not limited to:

- Complete and on-time submission of financial reports, including annual budget, revised budgets (if applicable), periodic financial reports as required by the authorizer and any reporting requirements if the board contracts with an Education Service Provider (ESP)
- On-time submission and completion of the annual independent audit and corrective action plans, if applicable
- No charging of tuition
- Adequate management and financial controls
- All reporting requirements related to the use of public funds

Measure 2b

Is the school following Generally Accepted Accounting Principles (GAAP)?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to financial management and oversight expectations as evidenced by an annual independent audit, including but not limited to:

- An unqualified audit opinion
- An audit devoid of significant findings and conditions, material weaknesses or significant internal control weaknesses
- An audit that does not include a going concern disclosure in the notes or an explanatory paragraph within the audit report

3. GOVERNANCE AND REPORTING

Measure 3a

Is the school complying with governance requirements?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to governance by its board, including but not limited to:

- Governing board composition and membership requirements pursuant to Ch. 302D, HRS
- Governing board policies
- Governing board reporting requirements
- Procurement policies
- State Ethics Code (Ch. 84, HRS), including conflict of interest policy

Measure 3b

Is the school holding management accountable?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to oversight of school management, including but not limited to:

- (For Education Service Providers [ESPs]) maintaining authority over management, holding it accountable for performance as agreed under a written performance agreement and requiring annual financial reports of the ESP
- (For Others) oversight of management that includes holding it accountable for performance expectations that may or may not be agreed to under a written performance agreement

Measure 3c

Is the school complying with data and reporting requirements?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to relevant reporting requirements to the State Public Charter School Commission, State Department of Education as the State Education Agency (SEA) and sole Local Education Agency (LEA) and/or federal authorities, including but not limited to:

- Compliance with minimum educational data reporting standards established by the BOE
- Maintaining and reporting accurate enrollment and attendance data
- Maintaining and reporting accurate personnel data
- Annual reporting and immediate notice requirements
- Additional information requested by the State Public Charter School Commission

4. STUDENTS AND EMPLOYEES

Measure 4a

Is the school protecting the rights of all students?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to the rights of students, including but not limited to:

- Compliance with admissions, enrollment and dismissal requirements (including nondiscrimination and rights to enroll or maintain enrollment)
- The collection and protection of student information (that could be used in discriminatory ways or otherwise contrary to law)
- Due process protections, privacy, civil rights and student liberties requirements, including First Amendment protections and the Establishment Clause restrictions prohibiting public schools from engaging in religious instruction
- Conduct of discipline (discipline hearings, suspension and expulsion)
- Treatment of students that qualify for services under the McKinney-Vento Act

Note: Proper handling of discipline processes for students with disabilities is addressed more specifically in Section 1c.

Measure 4b

Is the school meeting teacher and other staff requirements?

Meets Standard:

The school materially complies with applicable laws, rules, regulations, and provisions of the charter contract, including the State licensing requirements and federal Highly Qualified Teacher and Paraprofessional requirements within Title II of the Elementary and Secondary Education Act, hiring of qualified non-instructional staff, criminal history background checks and teacher/principal evaluations.

Measure 4c

Is the school respecting employee rights?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to employment considerations, including those relating to state employment law, the Family Medical Leave Act, the Americans with Disabilities Act and nondiscrimination. The school follows collective bargaining requirements.

5. SCHOOL ENVIRONMENT

Measure 5a

Is the school complying with facilities and transportation requirements?

Meets Standard:

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to the school facilities, grounds and transportation, including but not limited to:

- Compliance with building, zoning, fire health and safety codes
- Fire inspections and related records
- Viable certificate of occupancy or other required building use authorization
- Compliance with DOE requirements for schools occupying DOE facilities
- Student transportation

Measure 5b**Is the school complying with health and safety requirements?****Meets Standard:**

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to health and safety, including but not limited to:

- Health clearances and immunizations
- Prohibiting smoking on campus
- Appropriate student health services
- Safety plan

Measure 5c**Is the school handling information appropriately?****Meets Standard:**

The school materially complies with applicable laws, rules, regulations and provisions of the charter contract relating to the handling of information, including but not limited to:

- Maintaining the security of and providing access to student records under the Family Educational Rights and Privacy Act and other applicable authorities
- Complying with the Uniform Information Practices Act and other applicable authorities
- Transferring of student records
- Proper and secure maintenance of testing materials

6. ADDITIONAL OBLIGATIONS**Measure 6a****Is the school complying with all other obligations?****Meets Standard:**

The school materially complies with all other legal, statutory, regulatory or contractual requirements contained in its charter contract that are not otherwise explicitly stated herein, including but not limited to requirements from the following sources:

- Revisions to state charter law
- Consent decrees
- Intervention requirements by the Commission
- Requirements by other entities to which the charter school is accountable (e.g., Hawaii Department of Education)

Exhibit C

Educational Service Provider (ESP) Requirements

Educational Service Provider arrangements sometimes give a third party substantial responsibility for the operation of a charter school and control over the school's finances. While the Commission is not responsible for monitoring that contractual relationship, it does have an obligation to ensure that the School's governing board retains its statutory responsibilities and that the School-service provider relationship will not inhibit the Commission from fulfilling its oversight responsibilities. The following requirements ensure that both the School's governing board and the Commission retain authority to fulfill their legal rights and responsibilities under the Contract and applicable law.

1. The ESP agreement shall be subject to, and shall incorporate by reference, the terms and conditions of the School's Contract.
2. The term of the ESP agreement shall not exceed the term of the School's Contract.
3. No provision of the ESP agreement shall interfere with the School's governing board's duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of the School. No provision of the ESP agreement shall prohibit the School's governing board from acting as an independent, self-governing public body, or allow decisions to be made other than in compliance with Ch. 302D, HRS.
4. The ESP agreement shall require the ESP to defend, indemnify and hold harmless the State of Hawaii, the Commission and the School, and their officers, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees, and all claims, suits and demands therefore, arising out of or resulting from the acts or omissions of the ESP or the ESP's employees, officers, agents or subcontractors under the ESP agreement. The ESP agreement shall not require the School to defend, indemnify or hold harmless the ESP. The ESP agreement shall contain insurance and indemnification provisions outlining the coverage the ESP will obtain.
5. The ESP agreement shall describe the specific services for which the ESP is responsible and shall clearly delineate the respective roles and responsibilities of the ESP and the School in the management and operation of the School, including development, approval and oversight of the School's budget; development, approval and oversight of the School's curriculum; and oversight of the ESP's services.
6. The ESP agreement shall expressly provide that the School retains, at all times, ultimate responsibility for the School's budget and curriculum.
7. The ESP agreement shall include procedures by which the ESP will be accountable to the School including expressly addressing how the School will evaluate and hold the ESP accountable in relation to the Performance Frameworks (Exhibit B).
8. The ESP agreement shall be terminable by the School in accordance with its established termination procedures.
 - a) Upon default by the ESP, including without limitation any act or omission of the ESP that causes a default under the School's Contract or that causes the School to be in material violation of applicable law; or
 - b) For other good cause as agreed by the School and the ESP.
9. The ESP agreement shall provide that the financial, educational and student records pertaining to the School are School property and that such records are subject to the provisions of the Uniform

Information Practices Act (Ch. 92F, HRS). All School records shall be physically or electronically available, upon request, at the School's physical facilities. Except as permitted under this Contract and applicable law, no ESP agreement shall restrict access to the School's records by the Commission, the DOE, the Office of the Auditor or other authorized party in compliance with par. 12.3 of the Contract.

10. The ESP agreement shall require that the ESP furnish the School with all information deemed necessary by the School or the Commission for the proper completion of the budget, quarterly reports or financial audits required under the School's Contract.
11. The ESP agreement shall provide that all financial reports provided or prepared by the ESP shall be presented in the format prescribed by the Commission.
12. The ESP agreement shall provide that all employees or contractors of the ESP who work in close proximity with students of the School shall be subject to criminal background check requirements in accordance with par. 10.6 of the Contract.
13. The ESP agreement shall contain provisions requiring compliance with all requirements, terms and conditions established by any federal or State funding source.
14. The ESP agreement shall provide that the School retains responsibility for selecting and hiring the auditor for the independent annual audit required by the School's Contract.
15. If an ESP purchases equipment, materials and supplies using public funds on behalf of or as the agent of the School, the ESP agreement shall provide that such equipment, materials and supplies shall be and remain the property of the School.
16. The ESP agreement shall contain a provision that clearly allocates the respective proprietary rights of the School governing board and the ESP to curriculum or educational materials. At a minimum, the ESP agreement shall provide that the School owns all proprietary rights to curriculum or educational materials that (i) are both directly developed and paid for by the School; or (ii) were developed by the ESP at the direction of the School governing board with School funds dedicated for the specific purpose of developing such curriculum or materials. The ESP agreement may also include a provision that restricts the School's proprietary rights over curriculum or educational materials that are developed by the ESP from School funds or that are not otherwise dedicated for the specific purpose of developing School curriculum or educational materials. The ESP agreement shall recognize that the ESP's educational materials and teaching techniques used by the School are subject to state disclosure laws and the Uniform Information Practices Act.
17. If the School intends to enter into a lease, execute promissory notes or other negotiable instruments, or enter into a lease-purchase agreement or other financing relationships with the ESP, then such agreements shall be separately documented and not be a part of or incorporated into the ESP agreement. Such agreements shall comply with Ch. 37D, HRS, if applicable, and shall be consistent with the School's authority to terminate the ESP agreement and continue operation of the School.
18. The ESP agreement shall provide that Hawaii law governs any legal proceeding arising out of a dispute between the School and the ESP.

EXHIBIT D

INTERVENTION **PROTOCOL**

Comment [A60]: We are developing a system that is more nuanced and does not treat all issues the same. Before a Notice of Deficiency, schools may receive a lower warning of some sort. Also, we need to clarify how days are counted.

In accordance with Sec. 302D-17, HRS, this intervention protocol is established pursuant to the Commission's authority and responsibility to monitor the performance and legal compliance of charter schools in accordance with the charter contract terms and consistent with nationally recognized principles and standards for quality authorizing. It enables the Commission to take timely and appropriate action to notify schools about performance and/or compliance concerns and provide schools a reasonable opportunity to remedy such problems.

1. Upon finding the School's performance or legal compliance unsatisfactory, the Commission shall issue a Notice of Deficiency to the School. The Notice shall state with specificity the deficiency, the applicable regulatory, performance or contractual provision(s) not satisfactorily met, the expected remedy, including whether a Corrective Action Plan is required, and the timeframe by which the Commission expects the deficiency to be remedied or the Corrective Action Plan to be submitted.
2. Upon receiving a Notice of Deficiency, the School may:
 - 1) Contest the Commission's determination that a breach has occurred in which case the School shall provide a written response to the Commission within 10 days of receipt of the Notice and shall provide evidence in support of its position;
 - 2) Remedy the deficiency and provide evidence of such remedy to the Commission within the timeframe identified in the Notice; or
 - 3) Provide a Corrective Action Plan, where required, to the Commission within the timeframe identified in the Notice.

If the School is not able to meet any of the timeframes in 2) and 3) above, the School shall provide a written response to the Commission within 10 days of receipt of the Notice, which shall include a justification for its inability to meet the timeframe(s) together with a proposed timeframe(s).

Corrective Action Plan. A Corrective Action Plan shall include specific actions that the School will take to remedy the violation. The Plan shall include deadlines and responsible person(s) for each action and specific indications of success. The Commission may require the School to provide periodic reports on compliance with the Corrective Action Plan. The School is encouraged to meet and talk with Commission staff to discuss the development of its Corrective Action Plan.

3. If the School contests the Notice of Deficiency, the Commission shall consider the School's evidence and, within 10 days of receipt of the School's response, either: 1) Uphold or amend its finding of a deficiency and reissue the Notice of Deficiency with amended timeframes, or 2) Retract the Notice of Deficiency.

If the School submits a Corrective Action Plan, the Commission shall approve, approve with modifications, or reject the Corrective Action Plan within 15 days of submission of the Plan by the School. If rejected, the School shall have 15 days thereafter to submit an amended Corrective Action Plan. Commission approval of a Corrective Action Plan shall in no way abridge or mitigate the School's ultimate responsibility and accountability for remedying the deficiency and/or the Commission's authority to take additional action in response to the School's failure to remedy the deficiency satisfactorily.

If the School submits a written response on why it is unable to meet the timeframe for remedy or for submission of a Corrective Action Plan identified in the Notice, the Commission shall consider the School's justification and approve, approve with modifications or reject the School's proposed timeframe within 10 days of receipt of the School's written response.

4. The School shall be responsible for notifying the Commission when a deficiency has been remedied, if the School requires an extension of time to remedy a deficiency, or if the School requires a modification to its Corrective Action Plan.
5. The Commission may issue a Notice of Warning to the School under the following conditions:
 - 1) Continued failure to meet performance goals;
 - 2) Repeated failure to comply with applicable law or Contract provisions;
 - 3) Repeated failure to remedy violations, develop approved Corrective Action Plans, or successfully implement Corrective Action Plans;
 - 4) Substantial and serious violation of a material provision of law or Contract provision; or
 - 5) Immediate concern for student or employee health and safety.

A Notice of Warning indicates that revocation proceedings will be initiated if deficiencies are not timely remedied. The Notice of Warning shall state the deficiencies, remedies and timeframe by which the deficiencies shall be remedied. In such Notice, the Commission may require the School to provide periodic reports on progress toward remedying identified deficiencies.

6. If the School does not satisfactorily remedy its deficiencies pursuant to the Notice of Warning, the Commission may initiate revocation proceedings in accordance with Chapter 302D, HRS, and applicable administrative rules.
7. Throughout the intervention process, if the School believes that the Commission has violated any provision of this Contract or disputes the Commission's determination after contesting it and allowing for Commission response, the School may initiate dispute resolution procedures in accordance with par. 14.5 of the Contract.
8. In accordance with Subsection 302D-17(c), HRS, this Intervention Protocol shall not apply in any circumstance in which the Commission determines that a problem or deficiency warrants revocation, in which case established rules, procedures and/or protocols for revocation pursuant to Chapter 302D, HRS, shall apply.
9. Notwithstanding this Intervention Protocol, the Commission may withhold the School's per-pupil allocations in accordance with Subsection 302D-28(f), HRS.