

COMMENTS RE: DRAFT CONTRACT 4.0, PUBLIC CHARTER SCHOOL CONTRACT EFFECTIVE 7-1-21

FROM: Laupahoehoe Community Public Charter School Governing Board

Pam Elders, Chair

Recitals:

- As the Commission under 302D-5, (2) is responsible for and ensures the compliance of public charter schools it authorizes with all applicable state and federal laws, including reporting requirements, shouldn't the Commission be responsible for timely notification to PCSs of any changes in applicable laws which pertain to the Charter Contract?

ARTICLE I: PURPOSE, TERM AND CONDITIONS PRECEDENT

- S 1.3 Conditions: does this section refer to school-specific contract conditions?

ARTICLE II: SCHOOL CHARTER AND MISSION

- S 2.4 Amendment to Charter Contract: the phrase "any proposed changes to the provisions of this Charter Contract" should be specifically defined. Timeline for Commission approval should be included.

ARTICLE III: DEFINITIONS

- "**Applicable Law**": "However, the Commission shall be the ultimate authority regarding what laws apply to the charter schools it has authorized and the extent to which they apply." Does the Commission have the legal authority to do this? Shouldn't a determination of legal applicability be made by the AG's office?
- "**Asset**": Does "Small and Attractive Assets" include pens? Paper clips?
- "**Known**" or "**Knowledge**": this provision is wide-open for abuse. How would it be determined that a representative of a school's governing board and/or school was aware of a fact, circumstance, or result, or has information that would lead a reasonable person in the same situation to believe that the facts, circumstances, or results exist or that such knowledge has triggered or impacted a legal responsibility or obligation of a school's governing board or school? What kind of investigation would be carried out? Who would lead the investigation?

ARTICLE IV: GOVERNANCE OF SCHOOL

- S4.3 Governing Board Membership
 1. Does the Commission intend to determine whether a GB is in compliance with its Bylaws?
 2. HRS 302D-12 does not require board members to meet "individual standards." It only requires Boards during the selection process to give "consideration" to persons with those strengths listed in (b) (1)-(3).
 3. Does the Commission intend to reserve the right to deny board membership to any individual being considered by a governing board? This level of surveillance is not authorized in 302D-12.
- S4.6 School Governing Board Member Information
 1. Re: (d) How does submission of board member's resumes "facilitate regular and emergency communications"?

ARTICLE V: SCHOOL PERFORMANCE

- S. 5.1 Performance Frameworks
 1. Since this contract lays out mutual responsibilities, timelines and general procedures for the Commission regarding the annual report should be included in the contract.
 2. What if the amendment(s) made by the Commission to the Performance Framework will pose an undue hardship in terms of compliance or documentation for charter school(s)?
 5. How will "substantial progress toward meeting the performance standards" be evaluated? What criteria will be used?
- S5.3 Data and Reports: while under 302D-17, the authorizer may conduct "appropriate inquires and investigations" consistent with the intent of the law, it also calls for prompt notification by the authorizer to a charter school of any perceived performance problem(s). It would seem in the case of a specific request for data, records or documentation that

such a request should be accompanied by an explanation from the Commission as to why such a request is being made and how it intends to use the information it gathers.

ARTICLE VI: ACADEMIC PERFORMANCE

- S6.2 Material Elements of the Educational Program: the governing board has the independent authority to determine instructional methods, why is it required to submit any change (Exhibit A) to the Commission presumably for approval?
- S. 6.4, Curriculum: S2.4 requires schools to submit any proposed changes to the Commission, while S6.4 refers to “material” changes. What changes are considered “material”? If the governing board under 302D-12 has the “independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws,” why is approval from the Commission warranted in cases of changes in mission, vision?
- S6.6 Students with Disabilities: why was “The Commission shall collaborate with DOE to develop guidelines relative to the provision of special education services and resources to each charter school” deleted from draft 4.0?
- 2.v. What was the rationale for using the geographic complex for comparison rather than comparable schools with similar demographics as many charter schools have suggested?
- S6.11, Academic Performance Evaluation: Is failure to meet all academic performance indicators considered insubstantial progress?

ARTICLE VII: ORGANIZATIONAL PERFORMANCE

- S. 7.2, 3: More explanation is required for the meaning of this requirement (“Create and implement policies and procedures following general practices and guidelines to manage school operations”).
- S7.2, 5: This requirement appears to be contradictory: do you mean, comply with everything else not contained in the contract?
- S7.2, 6: A definition of “other entities” is needed. If the term refers to DOE or the DOH, isn’t that covered in relevant laws, regulations, etc.?
- S7.2, 7: Refer to comments in S5.3, above.

ARTICLE VIII: FINANCIAL PERFORMANCE

- S8.2 Financial Oversight: Refer to comments in S5.3, above.
- S8.9 Quarterly Reports: a more reasonable timeframe would be 45 days.
- S8.3 Fiscal Year: this section refers to the FY July 1-June 30, but section 8.15 says it is September 1 – August 31.
- S8.24 Per-pupil Funding: Funding Subject to Appropriation: How does this section relate to conversion charter schools? Would DOE take over operation of the school?
- S8.25 Per-pupil Finding: Adjustments to Funding: please explain the meaning of item d. How much does this amount to? Shouldn’t charter schools be given an accounting of how funds allocated for operations are being paid out centrally?
- S8.31, Financial Reporting: Annual Audits: Commission staff informed schools that the November 1 deadline for audit submission could not be changed.
- Since governing boards are “independent” with responsibility to oversee the financial viability of the school, use GAAP, and ensure an annual audit, is it necessary to include such prescriptive guidelines in the contract (i.e., 8.4, 8.6, 8.7, 8.10, 8.11, 8.13, 8.21, and 8.29)?

ARTICLE IX: ADMISSION, ENROLLMENT, AND ATTENDANCE

- Is it necessary to reiterate provisions contained in 302D since these are addressed both in the law and in Exhibit B of the contract?

ARTICLE X: GENERAL OPERATION OF SCHOOL

ARTICLE XI: EDUCATIONAL SERVICE PROVIDER

ARTICLE XII: HEALTH AND SAFETY

- 12.4 Student Health: not all schools have nursing services.

ARTICLE XIII: STUDENT RECORDS AND DATA

ARTICLE XIV: SCHOOL FACILITIES

- S14.5 Non-Emergency Relocation or Expansion of Facilities: Refer to comments under S2.4.
- S14.5 1.b.: Performance below 73% on the APF for the most recent year of reporting would not necessarily warrant school closure under ordinary circumstances, so why should the Commission be able to deny a request on this basis, especially if it might improve the overall conditions of the school for students and employees?
- S14.51.b.: If a NOC is relating to “perceived problems,” why should a request be denied on the basis of supposition or if the school has submitted a response to the NOC which has been accepted by the Commission?
- S14.51.d.: How can the school provide educational services primarily at locations identified in Exhibit “A” if it is requesting a relocation?

ARTICLE XV: CHARTER SCHOOL PERSONNEL AND EMPLOYMENT

- S15.6 Personnel Data: How can the school ensure each employee receives benefits for which they qualify? Submitting appropriate paperwork is one thing, but ultimately ensuring benefits are received via a system over which schools lack control creates unwarranted financial risk for schools.

ARTICLE XVI: INSURANCE AND LEGAL LIABILITIES

- 16.1 Insurance: has the deductible issue been resolved?
- Are schools prohibited from purchasing additional insurance as provided in the 2017, 3.0 Contract?

ARTICLE XVII: COMMISION OVERSIGHT AND RESPONSIBILITIES

- S17.4 Right to Review and S17.5 Inquires and Investigations: have these sections been reviewed by the charter school AG?
- S17.6, Site Visits: What are “reasonable efforts” to provide notice of visits?
- S17.7 Notice of Concern: “Perceived problems” gives the Commission wide latitude to issue a NOC. What are the grounds for “perceived problems”? What is considered “reasonable opportunity to respond and remedy the problem”? Under what circumstances would “immediate revocation” be warranted regarding a NOC as opposed to a NOD? Failure to issue a NOC by the Commission should be a consideration if non-renewal or revocation of the contract is under consideration.

ARTICLE XVIII: RENEWAL, BREACH OF CONTRACT, TERMINATION, AND DISSOLUTION

- S18.2 Non-Renewal of a Charter Contract, #1: This provision reiterates the law (302D-18)...commission of a material and substantial violation of any of the terms, conditions, standards, or procedures...is grounds for termination yet, it also states heavier emphasis will be placed on violations relating to health or safety and equal access and equity of educational opportunities, which is perhaps, a contradiction. Is there discretion here or not? One might conclude the definition of “material” is those violations which pertain to health and safety and equal access.
- S18.2 Non-Renewal of a Charter Contract, #2 & #3: what would constitute a “pattern of failing to meet expectations”?
- S18.3 Revocation: Which provisions of the contract are considered “material”? The explanation at the end would seem to include everything and anything the Commission might deem “material.”
- S18.5 Termination by the Commission: has the Commission developed a public charter school closure protocol as required by 302D-19 and referred to in S18.9? This would be an informative attachment to the contract. Items 2, 3, and 5 are re-statements of #1. Item 6 goes beyond what the law allows: 302D-18 states failure to make sufficient progress toward performance expectations set forth in the contract may be grounds for termination. In the case of insufficient funds, would conversion charter schools be terminated? If so, is there a commitment from HIDOE to resume operation of the conversion public schools?

ARTICLE XXIV: GENERAL TERMS

- S19.2 Amendments: This section lists changes in operation that require the school to petition the Commission for an amendment. It appears in contradiction to S2.4 which states schools must request Commission approval for any changes in the contract.

- S19.7 Board of Education Authority: how is this determined? It would be helpful if the Commission would identify those BOE policies which apply to charters and notice the schools.

GENERAL COMMENTS:

If anyone held thoughts of the Commission as an advocate for charter schools or a supportive and cooperative partner in continuous improvement efforts, Contract 4.0 dispels those misconceptions. The Commission has clearly embraced its role as enforcer and eschewed other responsibilities such as providing support/technical assistance and advocacy. It is up to the Commission to consider a balanced focus: how does it want to implement its role to “oversee” public charter schools? The way to a “high performing charter school system” is not necessarily achieved only through termination of contracts.

In addition, this contract is confusing in the sense that it reiterates the law throughout but in most cases, only part of the law is repeated, so the reader must refer to the actual law to figure out what provisions have been omitted in the contract. The contract also adds additional requirements above and beyond the law without making a distinction between the two. This could be remedied by simply making a statement that all provisions and requirements of 302D-12 are incorporated into the contract by reference (the Commission’s AG could advise on the pros and cons of this approach).

In a pandemic and time of budget cuts, this contract unnecessarily burdens charter schools with additional reporting requirements:

1. Governing Board Member Information Form;
2. Submission of Bylaws, meeting agendas, and minutes (these can be accessed via the schools’ websites);
3. Resumes of Governing Board members;
4. Student level data from school administered assessments (biannually);
5. Mission-aligned narrative (annually);
6. List of banks where schools hold accounts, documentation or release (upon request);
7. Procedures to determine the school’s adherence to Procurement Policies (can be accessed via schools’ websites);
8. Description of current lottery process and notice of material change to same;
9. Policies and procedures for reporting crime-related incidents and suspected child abuse and neglect;
10. Policies and procedures relating to prohibited use of tobacco and tobacco products;
11. Monthly updates on location status during an emergency relocation;
12. Collective bargaining agreements submitted to HIDOE.

EXHIBIT B: ACADEMIC PERFORMANCE FRAMEWORK

Introduction: the statement referencing “increased school autonomy” is a fallacy...charter schools in Hawaii are highly regulated and individual charter schools probably experience this to a greater extent than individual HIDOE schools. This perceived flexibility is referenced as the reason for high academic standards, achievement, and mission accomplishment, and of course, termination for non-compliance. These standards are not enforced in HIDOE as they are in the Hawaii Charter community: when was the last time a HIDOE school was closed due to non-performance? To add salt to the wound, charter schools receive less funding to achieve the standards set by the Commission. Why did the Commission not consider use of demographically similar schools as a comparison as opposed to Complex Area?

Indicator 1. Mission Aligned Initiative: will the narrative be evaluated on how well the measures (“Basic,” “Developing,” “Practiced,” “Ingrained”) are addressed by each school?

EXHIBIT B: ORGANIZATIONAL PERFORMANCE FRAMEWORK

2(b). Is the school following Generally Accepted Accounting Principles?: an audit finding should not necessarily warrant a “Does Not Meet Standard” particularly if the school responded to the audit finding with a plan to come into compliance and implementation of that plan is verified. If there are a number of deficiencies identified, a “Does Not Meet Standard” might be warranted.

3(a). Is the School Complying with governance requirements?: the last bulleted statement should be clarified. There is no “ban on employees or contractors serving on the board provided the one-third rule is observed. This statement should be clarified by referencing the actual law. To which portion of the law does “Board recruitment” reference in the last bulleted statement? Here again, referring to the actual law would provide greater clarity.

General: if the school is able to come into compliance once the deficiency is noted, why should it receive a “Does Not Meet Standard” rating?

General: will feedback submitted via the Commission Input Sessions or via the link be shared with the charter community? Will the Commission publish their responses to the feedback received?