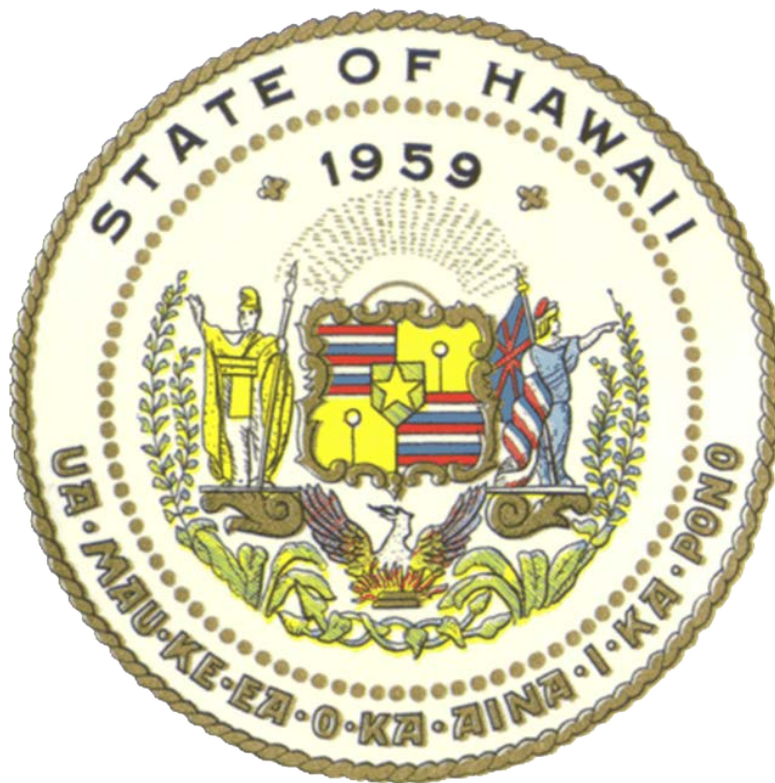


# State Public Charter School Commission



## Public Charter School Contract Ke Kula Niihau O Kekaha Learning Center

Effective July 1, 2017

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## **PARTIES**

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 KE KULA NIIHAU O KEKAHA LEARNING CENTER (“School”), whose mailing address is P.O. BOX 129 KEKAHA, HI 96752, singularly “Party” and collectively “Parties.”

## SECTION I. PURPOSE, TERM AND CONDITIONS

Charter school contracts are the operational legal agreements between the authorizer who approves charter applications and renewals, provide ongoing accountability oversight, and, if necessary, closures of public charter schools. The Commission authorizes public charter schools in accordance with 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.

### Mission – [§302D-3] State public charter school commission; establishment; appointment.

(a) There is established the state public charter school commission with statewide chartering jurisdiction and authority. The commission shall be placed within the department for administrative purposes only. Notwithstanding section 302D-25 and any law to the contrary, the commission shall be subject to chapter 92.

(b) The mission of the commission shall be to authorize high-quality public charter schools throughout the State.

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

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. Section 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. Through this Charter 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.

The Commission is committed to 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 ACT 130 will create genuine opportunities for communities to implement innovative models of community-based education.

The Commission is committed to the innovative nature and potential of dual language and cultural pathways in Hawaii public education system and affirms a commitment to develop a sensitive and appropriate evaluation framework for schools instructing in dual language and cultural contexts. The Commission is committed in engaging with the State Board of Education (BOE), the Hawaii Department of Education (DOE), charter schools, and other stakeholders in efforts, initiatives, and aspirations for

Hawaiian education programs as reflected in Article X Section IV of the Hawaii State Constitution and BOE policies, including BOE policies E3 and 105-8.

The Commission shall operate ethically and comply with ethical standards of conduct, federal and state laws, rules, regulations, policies, procedures, and guidance to promote public trust and confidence in public education. The Commission will adhere to the Hawaii State Code of Ethics and the Code of Ethics for public employees of the state as prescribed in Chapter 84 of the Hawaii Revised Statutes and Board of Education Policy 201-1.

The Commission shall approve quality charter applications that meet identified educational needs of the state, promote a diversity of educational opportunities and ensure the compliance of a public charter school it authorizes with all applicable state and federal laws, including reporting requirements.

The Commission shall produce and provide an annual report pursuant to Section 302D-7, HRS to include but not limited to; summarizing the Commission's strategic vision for chartering and progress towards that vision, academic and financial performance of all operating public charter schools overseen by the commission, commission's operating budget through its audited financials in compliance with generally accepted accounting principles, and a breakdown of federal funds received by the department and distributed by the commission.

The Commission shall distribute the School's per-pupil allocation each fiscal year pursuant to Section 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. The Commission shall distribute the School's per-pupil allocation each fiscal year pursuant to Section 302D-28(f), HRS, and shall provide the School with the calculations used to determine the per-pupil amount each year.

Charter Schools as defined in Section 302D-1, HRS are public schools that that have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management.

This contract—a charter—is a legally binding agreement that permits the school to operate and articulates **the rights and responsibilities of each party regarding school autonomy**, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms.



## **SECTION II. GENERAL TERMS**

### **Section 2.1 Entire Contract**

The Parties intend this Charter Contract, including all attachments and exhibits, to represent a final and complete expression of their agreement, which shall be considered the Charter 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 understand that any amendments to this Charter Contract needs to be in writing and expressly approved by the Commission.

### **Section 2.2 Amendments**

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

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. A violation of this provision shall be considered material and substantial and may be grounds for immediate revocation of this Charter Contract.

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.

### **Section 2.3 Term**

The term of this Contract shall be four years, commencing on July 1, 2017, and terminating on June 30, 2021.

### **Section 2.4 Governing Law**

This Charter Contract shall be governed by and construed in accordance with the laws of the State of Hawaii, including all requirements imposed by applicable policy and regulation, and all applicable federal laws of the United States.

### **Section 2.5 Compliance with Laws**

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

## **Section 2.6 Conflict Between Contract, Law, and Administration Rules**

In the event of a conflict between this Charter 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 Charter Contract.

## **Section 2.7 Legal Status of School**

Pursuant to Sections 302D-1 and 302D-25, 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.

## **Section 2.8 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 expressly identified by the BOE as applying to charter schools. Should conflicts between an applicable BOE policy and a provision in this Charter Contract occur, the BOE policy shall control.

## **Section 2.9 Non-Assignability**

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

## **Section 2.10 Notices**

Unless otherwise specified by law, any written notice required to be given by a Party to this Charter Contract shall be delivered: (a) personally, (b) by United States first class mail, postage prepaid, to the Parties' mailing addresses first indicated in this Charter Contract; or (c) electronically via email.

A notice shall be deemed to have been received three business days after mailing or at the time of actual receipt, whichever is earlier. For notices sent electronically via email, the notice shall be deemed to be received once the Party sending the notice receives confirmation via an email tracking notice.

Parties are responsible for notifying each other in writing of any change of mailing and email addresses.

## **Section 2.11 Severability**

In the event that any provision of this Charter 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 Charter Contract.

**Section 2.12 Waiver**

The failure of either Party to insist upon the strict performance of or compliance with any term, provision, or condition of this Charter 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 Charter Contract.

**Section 2.13 No Third-Party Beneficiary**

The enforcement of the terms and conditions of this Charter Contract shall be strictly reserved to the Commission and the School. Nothing contained in this Charter 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 Charter Contract that any person receiving services or benefits hereunder shall be deemed an incidental beneficiary only, without enforceable rights against a Party to this Charter Contract.

## **SECTION III. GOVERNANCE OF SCHOOL**

### **Section 3.1 Governing Board Responsibilities**

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, HRS; and ensures compliance with applicable laws.

### **Section 3.2 State Code of Ethics and Code of Conduct**

The School's Governing Board and employees shall comply with the State Code of Ethics, codified in Chapter 84, HRS. The School's Governing Board, employees, contractors, and volunteers shall also comply with the Code of Conduct developed and implemented by the Commission, as required in BOE Policy 201-1, as may be amended.

### **Section 3.3 Governing Board Reporting**

The School's Governing Board shall notify the Commission within 14 business days of any membership changes on the Governing Board.

The School's Governing Board shall make the following documents available at a publicly accessible area in its office so as to be available for review during regular business hours, and on its website, and by the respective due dates:

- a. A list of the current names and contact information of the Governing Board's members and officers;
- b. The schedule of Governing Board meetings by September 1 of each year;
- c. Governing Board meeting notices and agendas as specified in Section 302D-12, HRS; and
- d. Governing Board meeting minutes as specified in Section 302D-12, HRS.

## **SECTION IV. EDUCATIONAL PROGRAM**

### **Section 4.1 School's Control**

Subject to the terms and conditions of this Charter 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 Section 4.2 of this Charter Contract, 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.

### **Section 4.2 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 Charter 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 (such as establishing, creating, or expanding a virtual or blended learning programs or expanding or eliminating a division) shall be considered a material change to the Charter Contract and shall require prior written approval by the Commission. Where appropriate, this approval shall be informed by an analysis of the School's performance on the Performance Frameworks under Section 5.1 of this Charter Contract particularly to the extent that such changes are intended to improve educational outcomes.

### **Section 4.3 Academic Standards**

As determined by BOE Policy 102-3, as may be amended, the School shall implement the Common Core or other State academic standards.

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

### **Section 4.4 Graduation Requirements for High School**

The School shall comply with the high school graduation requirements set in BOE Policy 102-15, as may be amended, provided that the School may request a waiver of this policy from the BOE and shall notify the Commission in writing of any approved waivers within 14 business days.

### **Section 4.5 Education of Students with Disabilities**

The DOE is the State of Hawaii's "state education agency" (SEA) and "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 Chapter 8-60, Hawaii Administrative Rules (HAR).

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 statutorily responsible for the provision of a free appropriate public education as defined by Section 504 of the Rehabilitation Act of 1973 ("Section 504") and IDEA. If the School enrolls special education students or identifies one of its students as eligible for special education, the School shall be responsible for ensuring the educational and related services that are required by a student's individualized education program (IEP) pursuant to Section 302D-30, HRS.

The programs and services for the student shall be determined collaboratively by the student's IEP team, which includes the student's parents or legal guardian.

#### **Section 4.6 Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act Amendments Act of 2008**

The School shall comply with Section 504 and the Americans with Disabilities Act Amendments Act of 2008 and all related DOE rules, policies, and procedures in its general curriculum, including but not limited to implementation of any Section 504 plan that has been developed for a student, all as may be amended from time to time. The DOE 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.

#### **Section 4.7 English Language Learners/English Learners**

The School shall provide services to students who are English Language Learners (English Learners) in compliance with all applicable 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. Should the DOE continue to provide the Commission funding to administer this technical assistance, the Commission shall provide the School such technical assistance. 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.

## **SECTION V. SCHOOL PERFORMANCE**

### **Section 5.1 Performance Frameworks**

The School's academic, organizational, and financial performance under this Charter Contract shall be evaluated using the Academic, Organizational, and Financial Performance Frameworks, respectively, attached as Exhibit B to this Charter Contract. 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 changes to the Performance Frameworks shall require approval by the Commission.

### **Section 5.2 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.

### **Section 5.3 State Accountability System**

The School shall be subject to the State public school accountability system and comply with all requirements related to the State assessment for all public schools. The School shall also be subject to mandatory reporting requirements from the United States Department of Education. The School shall administer all student testing as required by applicable federal and State law, rule, policies, and procedures.

## **SECTION VI. FINANCIAL MATTERS**

### **Section 6.1 Fiscal Responsibilities**

The School shall maintain accurate and comprehensive financial records, practice governmental accounting in accordance with Generally Accepted Accounting Principles, and use public funds in a fiscally responsible manner.

### **Section 6.2 Fiscal Year**

The fiscal year for the School shall begin on July 1 and end on June 30 of the subsequent calendar year.

### **Section 6.3 Procurement**

Pursuant to Sections 302D-25(b) and 302D-12(d), HRS, the School and its Governing Board shall be exempt from Chapter 103D, HRS. However, the School's Governing Board shall develop and adhere to a policy for the procurement of goods, services, and construction consistent with the goals of public accountability and public procurement practices. The policy shall be readily accessible from the School's website as described in Section 8.9 of this Charter Contract

### **Section 6.4 Management and Financial Controls**

The School's Governing Board shall develop and adhere to a policy for the School's financial management that shall be readily accessible from the School's website, as described in Section 8.9. This policy shall allow the School to maintain appropriate governance and management procedures and financial controls which shall include, but not be limited to:

- a. Budgets;
- b. Accounting policies and procedures;
- c. Payroll procedures;
- d. Financial reporting; and
- e. Internal control procedures for receipts, disbursements, purchases, payroll, inventory, and fixed assets.

### **Section 6.5 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.

### **Section 6.6 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.

### **Section 6.7 Transfer of Funds to Affiliated Nonprofit or Educational Service Provider**

The School shall not transfer public funds to any affiliated nonprofit or educational service provider except for legitimate and reasonable payments from the School to the affiliated nonprofit or



educational service provider pursuant to a written legal agreement. The School shall provide the Commission a copy of any newly executed agreement between the affiliated nonprofit or educational service provider and the School within 14 business days of execution.

### **Section 6.8 Financing Agreements**

The School shall comply with Chapter 37D, HRS, relating to financing agreements, which requires the approval of the attorney general. "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.

### **Section 6.9 Insurance**

The School shall be covered under the Statewide Risk Management Program pursuant to Chapter 41D, HRS, for liability, property, crime, and automobile insurance. The School shall comply with all applicable 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.

### **Section 6.10 Per-pupil Funding**

The School's non-facility general fund per-pupil funding shall be as defined in Section 302D-28, HRS. 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 Charter Contract.

### **Section 6.11 Per-pupil Funding: Enrollment Count Reports for Funding**

The School shall provide the Commission projected enrollment counts as required for funding, budgeting, and reporting purposes by May 15. The Commission shall obtain actual enrollment counts directly from student information data systems to determine the School's per-pupil funding.

### **Section 6.12 Per-pupil Funding: 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 Charter Contract shall terminate on the last day of the fiscal year for which sufficient funds are available.

### **Section 6.13 Per-pupil Funding: 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 Section 302D-28, HRS.

The Commission shall have the discretion to determine whether to make an adjustment by:

- a. Reconciling the adjusted amount in a subsequent disbursement to the School; or
- b. Either making payment to the School or requiring reimbursement from the School with at least thirty (30) days' written notice by the Commission.

#### **Section 6.14 Per-pupil Funding: 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, as provided for in Section 302D-29.5, HRS. All funds distributed to the School shall be restricted to the purposes of the appropriation.

#### **Section 6.15 Per-pupil Funding: Federal Funding**

Pursuant to Section 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 distribute federal funds to the School in accordance with applicable federal and state rules and regulations. The Commission shall make the allocation methods publicly available.

#### **Section 6.16 Per-pupil Funding: Title I Funding**

The School, if eligible, shall use Title I, Part A funds in accordance with applicable federal and state 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.

#### **Section 6.17 Per-pupil Funding: Additional Funds**

The School may accept monetary contributions or grants and shall comply with all applicable State or federal laws regarding such monetary contributions or grants.

#### **Section 6.18 Per-pupil Funding: Fees**

Pursuant to Section 302D-28, HRS, the School may charge reasonable fees, to the extent permitted by law, for co-curricular activities.

#### **Section 6.19 Financial Reporting: 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 or two weeks after the Commission notifies the School of the anticipated amount of State non-facility general fund per-pupil funding to be allocated, whichever is later.

**Section 6.20 Financial Reporting: Quarterly Financial Reports**

The School shall prepare and submit quarterly financial reports to the Commission within 30 calendar days of the end of each fiscal year quarter.

**Section 6.21 Financial Reporting: Annual Audits and Financial Reviews**

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); provided the Commission may allow a financial review, pursuant to Section 302D-32, HRS. The School shall provide the completed audit or financial review to the Commission by November 1, 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 or financial review if an appropriation is not made by the Legislature for such purpose.

## **SECTION VII. STUDENT ADMISSION, ENROLLMENT, WITHDRAWAL, & DISMISSAL**

### **Section 7.1 Compulsory Education**

The School shall follow the age and compulsory attendance requirements set in Section 302A-1132, HRS.

### **Section 7.2 No Tuition or Fees for Admission, Enrollment, or Attendance**

Pursuant to Section 302D-28, HRS, the School shall not assess tuition, contributions, or fees of any kind as a condition of admission, enrollment, or attendance. The School may charge fees for co-curricular activities, as described in Section 6.18 of this Charter Contract.

### **Section 7.3 Admissions**

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

### **Section 7.4 Enrollment**

Pursuant to Section 302D-34, HRS, 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, gender, sexual orientation, income level, disability, level of proficiency in the English language, need for special education services, or academic or athletic ability. The School shall maintain accurate and complete enrollment data.

The School shall not impose enrollment preferences, except as allowed for in Section 302D-34, HRS. Any enrollment preferences adopted by the School shall be included in the admissions policy and procedures, as described in Section 7.3 of this Charter Contract.

### **Section 7.5 Attendance**

The School's Governing Board shall maintain and adhere to a policy for attendance. The policy shall be readily accessible from the School's website, as described in Section 8.9 of the Charter Contract. The School shall maintain daily records of student attendance and absences.

### **Section 7.6 Attendance: Virtual or Blended Learning School/Program**

If the School is a virtual or blended learning school/program, the School's attendance policy shall include:

- a. School procedures to account for student attendance online; and
- b. The requirements for on-site attendance for each course and grade level.

**Section 7.7 Dismissal**

The School shall not dismiss or transfer a student involuntarily, unless the dismissal or transfer is accomplished through procedures established by the School that are in compliance with Sections 302A-1134 and 302A-1134.6, HRS, and due process requirements, provided that any dismissal of a student with a disability shall comply with the requirements of Chapter 8-60, HAR.

**Section 7.8 Withdrawal and Transfer**

The School shall adopt and adhere to withdrawal and transfer procedures which provide for the timely release of any student who withdraws from the School and/or transfers to another school. The School's withdrawal and transfer procedures shall also provide for the transfer of the student's records to the new school in a reasonable timeframe.

## **SECTION VIII. OPERATION OF SCHOOL**

### **Section 8.1 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 (FERPA), as may be amended from time to time.

### **Section 8.2 Records Retention**

The School shall comply with all applicable federal and State requirements pertaining to the retention of all School records. 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.

### **Section 8.3 Open Records Law**

The School shall comply with Chapter 92F, HRS, the Uniform Information Practices Act.

### **Section 8.4 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 all applicable federal and State laws. The School shall provide this policy to parent(s)/guardian(s) and students at the start of each school year and shall make this policy readily accessible from the School's website, as described in Section 8.9 of this Charter Contract.

### **Section 8.5 Punishment of Pupils**

Pursuant to Section 302A-1141, HRS, no physical punishment of any kind may be inflicted upon any pupil.

### **Section 8.6 Complaints Process**

The School shall adopt and adhere to a process for resolving public complaints which shall include an opportunity for complainants to be heard by the School's Governing Board. For matters concerning the operations and administration of the School, the decision by the School's Governing Board shall be considered final, except where the complaint pertains to a possible violation of any law or breach of this Charter Contract. In the case of a possible violation of law or breach of the Charter Contract, the Commission or other appropriate state agency may investigate the validity of the complaint to determine whether additional actions are needed. The complaints process shall be readily accessible from the School's website, as described in Section 8.9, of this Charter Contract.

### **Section 8.7 Contracting with an Educational Service Provider**

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) and reviewed and approved as to form by the School's Deputy Attorney General. 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.

### **Section 8.8 Transportation**

The School may provide its own transportation services, provide transportation through an agreement or contract with a private provider, or access any other school transportation provided to it by law. Pursuant to Section 286-181, HRS, any transportation services provided by the School shall follow the safety rules and standards relating to school vehicles, equipment, and drivers adopted by the Department of Transportation.

### **Section 8.9 School Policies**

The School shall make the current versions of the following policies and procedures readily accessible from its website:

- a. Admissions policies and procedures, as described in Section 7.3 of this Charter Contract;
- b. Student conduct and discipline policy, as described in Section 8.4 of this Charter Contract;
- c. Complaints procedures, as described in Section 8.6 of this Charter Contract;
- d. Attendance policies and procedures, as described in Section 7.5 of this Charter Contract;
- e. Procurement policy, as described in Section 6.3 of this Charter Contract;
- f. Safety plan, as described in Section 9.1 of this Charter Contract;
- g. Financial management policies and procedures, as described in Section 6.4 of this Charter Contract; and
- h. Personnel policies, as described in Section 12.8 of this Charter Contract.

## **SECTION IX. HEALTH AND SAFETY**

### **Section 9.1 Safe Environment**

The School shall maintain a safe learning environment at all times. The School shall develop and adhere to a safety plan, which shall be readily accessible from the School's website, as described in Section 8.9 of this Charter Contract.

### **Section 9.2 Health Clearances**

The School shall comply with Sections 302A-1154 to 302A-1163, HRS, and Chapter 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 Section 302A-1161, HRS, if a child does not complete the immunizations or physical examination required within the period provided by Section 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.

### **Section 9.3 Student Health**

The School shall provide appropriate first aid care for ill and injured students. The School may recommend that parents seek the help of medical professionals or appropriate health agencies for cases beyond its scope of responsibility.

### **Section 9.4 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 reporting any incident; and
- c. Impose appropriate disciplinary action for failure to report these incidents, including probation, suspension, demotion, and discharge of School officials.

### **Section 9.5 Use of Tobacco Prohibited**

Pursuant to section 302A-102, HRS, the School shall prohibit the use of tobacco at its school or at School functions.



## **SECTION X. STUDENT RECORDS AND DATA**

### **Section 10.1 Educational Data**

Pursuant to Section 302D-23, HRS, the School shall comply with the minimum educational data reporting standards established by the 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.

### **Section 10.2 Reporting of Data and School Information**

The School shall provide to the Commission, in the format and timeframe prescribed by the Commission, any data necessary and reasonably required by the Commission to meet its oversight and reporting obligations. The Commission shall provide by June 1 the list of anticipated reports and due dates and provide this information to the School.

### **Section 10.3 Commission's Annual Report to the BOE and Legislature**

Pursuant to Section 302D-17, HRS, the Commission shall publish and provide an annual report on the School's performance in accordance with the performance frameworks.

### **Section 10.4 Permitted Disclosures and Users by Operators**

Pursuant to Section 302A-500, HRS, the School shall be responsible for notifying operators, as defined in Section 499, HRS, with access to student data and information of the operators' statutory responsibilities and restrictions.

## **SECTION XI. FACILITIES**

### **Section 11.1 Location**

The School shall provide educational services, including the delivery of instruction, primarily at locations identified in Exhibit A.

### **Section 11.2 Emergency Relocation**

In the event of natural disasters, emergencies, and/or damage to a School's facilities, the School may provide educational services at temporary locations not identified in Exhibit A, provided the School notify the Commission of the location prior to the start of services at the temporary location.

### **Section 11.3 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, except if the School occupies State or DOE school facilities.

### **Section 11.4 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.

If the School is located in facilities other than State or 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.

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

### **Section 11.5 Relocation or Expansion of Facilities**

The School's relocation to different or additional facilities for non-emergency reasons shall constitute a material change in the Contract and shall require prior written approval by the Commission pursuant to Section 4.2 of this Charter Contract. Approval shall be contingent upon meeting the following conditions:

- a. Submission of enrollment projections for the upcoming school year, should the School seek to increase enrollment;
- b. Submission to the Commission of a Certificate of Occupancy for the new facilities 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. Submission to the Commission of documentation that the new facilities meet applicable health, safety, fire, building, and zoning code requirements; and

- e. Submission to the Commission of documentation that the new facilities are of sufficient size to safely house the maximum anticipated enrollment.

## **SECTION XII. CHARTER SCHOOL PERSONNEL**

### **Section 12.1 Collective Bargaining**

All employees of the School shall be subject to collective bargaining under Chapter 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 or the DOE.

### **Section 12.2 Nondiscrimination**

The School, including any employees or agents of the School, shall not engage in any discrimination that is prohibited by any applicable federal, State, or city and county law, including but not limited to Section 378-2, HRS.

### **Section 12.3 Teacher Credentials**

Pursuant to Section 302A-804, HRS, the School shall hire licensed teachers that meet the applicable State licensing requirements consistent with federal law and requirements, State law, and collective bargaining agreements, as such requirements may be amended.

### **Section 12.4 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, DOE 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 that qualifies for State benefits receives such benefits.

### **Section 12.5 Evaluations**

Pursuant to federal and state law and policy, the School is responsible for implementing principal and teacher evaluation systems. The School shall ensure that the evaluation systems are in compliance with all applicable laws, regulations, and policies, including, but not limited to the State's Every Student Succeeds Act (ESSA) plan and collective bargaining requirements.

### **Section 12.6 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 Charter Contract, and that all applicable licensing and operating requirements imposed or required under federal, State, or city and 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, as well as any applicable collective bargaining agreements.

**Section 12.7 Criminal History Checks**

The School shall conduct criminal history checks, administered by the Hawaii Criminal Justice Data Center in accordance with Section 846-2.7, HRS, solely for the purpose of determining whether a prospective employee or agent 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.

**Section 12.8 Personnel Policies**

The School's Governing Board shall adopt and adhere to personnel policies for all school employees. These policies must be made readily accessible from the School's website, as described in Section 8.9 of this Charter Contract.

## **SECTION XIII. IMMEDIATE NOTICE**

### **Section 13.1 School Emergency Closure**

The School shall promptly notify the Commission, the appropriate county civil defense office(s), and the public of any circumstance requiring the closure of the School, including, but not limited to, a natural disaster or destruction of or damage to the School facility.

### **Section 13.2 Mandatory Notification**

The School shall notify the Commission within two calendar days when it has knowledge of any of the following:

- a. Any condition that may cause the School to vary from the terms of this Charter Contract or applicable requirements, federal and/or State law;
- b. 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;
- c. A court judgment that any members of the School Governing Board or School employees have been found guilty; plead no-contest, or accepted a deferred acceptance of a no-contest plea;
- d. Any complaint, citation, or default filed against the School by a government agency or lessor;
- e. Any inaccuracy found in enrollment count or other data provided to the Commission;
- f. The School receives a notice or is otherwise informed that the School is a party to a legal suit;
- g. Severe damage to a School's facilities that render the facilities unusable and require the School to relocate; or
- h. A default on any obligation, which shall include debts for which payments are past due by ninety (90) calendar days or more.

## SECTION XIV. OVERSIGHT

### Section 14.1 Monitoring

The Commission shall continually monitor the performance and legal compliance of the School. The Commission shall have the authority to conduct oversight activities that enable the Commission to fulfill its responsibilities under Chapter 302D, HRS, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of Chapter 302D, HRS, and adhere to the terms of this Contract.

### Section 14.2 Monitoring Related to Federal Programs

The School shall allow the DOE access to and provide any information needed to meet its oversight and reporting obligations as the SEA or LEA. The DOE may monitor the School for compliance with programmatic or fiscal requirements, including requiring reports or other documentation, under any applicable law related to federal programs, including but not limited to special education.

### Section 14.3 Access to Records

Consistent with the school's obligations under FERPA, the School shall make all School records open to inspection by the Commission, the DOE, the Office of the Auditor, law enforcement officials, contractors, or any other federal or State regulatory agency within five business days after request is made, or sooner if required by law.

### Section 14.4 Site Visits

The Commission may visit the School at any time and may, at its discretion, conduct site visits and monitoring. When appropriate, the Commission shall make reasonable efforts to provide notice of visits. Such site visits may include any activities reasonably related to fulfillment of the Commission's 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, staff of an affiliated nonprofit or educational service provider and community members; and observation of classroom instruction.

### Section 14.5 Intervention

Intervention(s) may be initiated when the Commission finds that the School has failed to:

- 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 any of the Performance Frameworks.

Upon finding that a School has failed to meet legal or contractual compliance obligations, the Commission and the School shall follow the Intervention Protocol (Exhibit D). 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.

## **SECTION XV. RENEWAL, NON-RENEWAL, REVOCATION, CLOSURE, AND DISSOLUTION**

### **Section 15.1 Renewal and Non-renewal**

Charter contract renewal and non-renewal shall follow the requirements set in Section 302D-18, HRS. The Commission's renewal and non-renewal criteria and processes are provided within this charter contract as Exhibit E.

### **Section 15.2 Revocation**

The Commission may revoke a charter contract pursuant to Section 302D-18, HRS, and Chapters 8-5-505-15, HAR.

### **Section 15.3 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.

### **Section 15.4 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 shall cooperate with the Commission in scheduling cessation of operations and shall comply with the Commission's closure policies and protocol.

### **Section 15.5 Financial Insolvency**

Pursuant to Section 302D-28.5, HRS, any public charter school that becomes financially insolvent shall be deemed to have surrendered its charter. For the purpose of this provision, the School shall be determined to be financially insolvent when it is unable to pay its staff when payroll is due. The School shall cooperate with the Commission in ensuring the orderly closure of the School. The School shall comply with the Commission's closure policies and protocol, once adopted by the Commission.

### **Section 15.6 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 Section 302D-19, HRS.



**SECTION XVI. AGREEMENT**

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

**STATE PUBLIC CHARTER SCHOOL COMMISSION**

  
Signature

Sione Thompson

Executive Director

6/24/2017  
Date

**KE KULA NIIHAU O KEKAHA LEARNING CENTER**

  
Signature

Kelley Phillips

Governing Board President

6/22/17  
Date



APPROVED AS TO FORM:

  
Deputy Attorney General

APPROVED AS TO FORM:

Deputy Attorney General

## **APPENDICES**

Exhibit A: Educational Program

Exhibit B: Performance Frameworks (Academic, Financial, and Organizational)

Exhibit C: Education Service Provider Requirements

Exhibit D: Intervention Protocol

Exhibit E: Renewal, Non-renewal, and Revocation

**Exhibit A: Educational Program**

**EXHIBIT A  
EDUCATIONAL PROGRAM**

SCHOOL INFORMATION	
<b>School Name:</b>	Ke Kula Niihau O Kekaha Learning Center
<b>Shortened School Name:</b>	KKNOK
<b>Grades Served in School Year:</b>	<b>2017-2021:</b> K-12
<b>Grade Levels that Comprise Each Division:</b>	<b>Elementary:</b> K-5 <b>Middle:</b> 6-8 <b>High:</b> 9-12
<b>Mission and Vision:</b>	<p>Ke Kula Niihau O Kekaha will perpetuate and strengthen the language and culture of Niihau among the children and youth of the Niihau community living on Kauai, as well as meet the special needs of this community by providing an education which results in a positive attitude toward a lifelong search for knowledge and preparing students for success in today's world of rapid change and technology.</p> <p>A Ke Kula Niihau O Kekaha graduate is a proficient communicator in Niihau and English prepared for success in college and/or career.</p>
<b>Essential Term #1:</b>	Ke Kula Niihau O Kekaha students in grades K-5 will receive bilingual immersion instruction in Niihau and English in the following ways: K-2 students receive 5 periods of Niihau and 1 period of English instruction, grade 3-5 students receive 4 periods of Niihau and 2 periods of English instruction.
<b>Essential Term #2:</b>	Ke Kula Niihau O Kekaha students in grades 6 – 12 will receive 3 periods of Niihau and 3 periods of English instruction.
<b>Essential Term #3:</b>	Beginning in grade 9 every Ke Kula Niihau O Kekaha student will develop a post-secondary transition plan.
<b>Essential Term #4:</b>	N/A
<b>Essential Term #5:</b>	N/A
<b>Targeted Geographic Area:</b>	West Kauai

<b>Instructional Sites and Maximum Occupancy:</b>	8135 Kekaha Rd., Kekaha, HI 96752	Max Occupancy: 50
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<b>Educational Service Provider:</b>	N/A
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***For the purposes of this section, a virtual learning program is defined as a form of distance education that uses the Internet and computer technologies to connect teachers and students and deliver curriculum with students fewer than five hours per week of instruction at a supervised brick and mortar school site location.***

Does the school have a virtual learning program?      Yes      No

Maximum enrollment of the virtual learning program: \_\_\_\_\_

Maximum percentage of total student population enrolled in the virtual learning program:  
\_\_\_\_\_

Grades served by the virtual learning program: \_\_\_\_\_

***For the purposes of this section, blended learning is defined as a program where students receive instruction at a supervised brick and mortar school site location for five hours or more per week and in part through a virtual learning program or alternative learning experience in which students have some element of control over time, place, path, and/or pace.***

Does the school have a blended learning program?      Yes      No

Maximum enrollment of the blended learning program: \_\_\_\_\_

Maximum percentage of total student population enrolled in the blended learning program:  
\_\_\_\_\_

Grades served by the blended learning program: \_\_\_\_\_

**Exhibit B: Performance Frameworks (Academic, Financial, and Organizational)**

## EXHIBIT B ACADEMIC PERFORMANCE FRAMEWORK

The Academic Performance Framework consists of two sections: Student Academic Outcomes and Value Added.

### 1. Student Academic Outcomes

This section contains the measures that are required by Section 302D-16, HRS including:

- a) **Student academic proficiency:** schools will set a target for the percentage of students who score at the levels of proficient or above on the statewide assessments in English Language Arts or Hawaiian Language Arts and math.
- b) **Student academic growth:** schools will set a target for growth based on statewide assessment results, as measured under the state ESSA plan for federal reporting and accountability or revised state accountability system (i.e., Strive HI)<sup>1</sup>.
- c) **Achievement gaps in proficiency between major subgroups:** schools will set a target for high-needs proficiency rates in order to close the achievement gap between the non-high needs and high needs student subgroups.<sup>2</sup>
- d) **College and career readiness:** schools will set a target for each college and career readiness indicator for each grade division served.
  - a. For high schools and schools with a high school division, the readiness measures must include the four-year graduation rate.<sup>3</sup> In addition, schools may also add the five-year graduation<sup>4</sup> and/or college-going rates.<sup>5</sup>

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<sup>1</sup> If this measure is not calculated using the current growth model for the state ESSA plan for federal reporting and accountability or revised state accountability system (i.e., Strive HI), this measure will not be calculated for the Academic Performance Framework until a calculation methodology for growth is determined and approved by the Commission.

<sup>2</sup> High needs students include the following full school year students who tested: economically disadvantaged, students with disabilities (IDEA only), English Language Learners, recent exits (2 years) for students with disabilities and English Language Learner. Non-high needs students comprise of all remaining full school year students who tested. See [2015-16 Strive HI Indicators and Measures Technical Report](#) for more details.

<sup>3</sup> The four-year graduation rate is calculated using a four-year adjusted cohort graduation rate (ACGR) methodology. The graduation rate reported is lagged by one year. The rate reported for 2015-2016 results are based on the four-year cohort graduating by the end of 2014-2015.

The four-year ACGR = 
$$\frac{\text{\# of on-time graduates in a year}}{\text{\# of first time entering 9<sup>th</sup> graders + transfers in} - \text{transfers out}}$$

- Graduates are students who receive a diploma within four years
- on-time for all students is four years
- graduation requirements may be completed during the summer of the given final year

- b. For middle schools and schools with middle school divisions, schools may choose any measure that is consistent with the middle school college and career readiness measures used or captured by the DOE such as chronic absenteeism<sup>6</sup> or average daily attendance<sup>7</sup>, ACT Aspire exam, eighth graders taking and passing Algebra 1, or the PSAT.
- c. For elementary divisions, schools will set a target for attendance and may choose between chronic absenteeism, or average daily attendance rates as defined above.

**Optional other measures:** optional measures are not required by Section 302D-16, HRS. They must focus on valid and reliable student outcome data and may be school-developed or drawn from existing data sources such as DOE data or school-selected formative assessment.

When selecting measures within these categories, the availability and reliability of the data are important, and sometimes limiting, factors. For this reason, the Academic Performance Framework measures pull from Strive HI data and other data collected by the DOE for all public schools statewide.

For each measure, schools will work with staff to set annual target ranges, and interim targets if required by the school's charter contact. These ranges will be developed by analyzing a school's historical data, as well as comparative data for each school's geographic complex and all schools statewide.

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- GED certificates of completion and other school-based certificates do not count as graduates for this calculation
  - students who transfer in will be added to the school's appropriate graduating cohort
  - students who transfer out must be documented by the sending school with an official transcript from the receiving school, only then can the student be removed from the cohort, students whose status is unknown or dropped out of the system are non-graduates
  - students who are retained in grade 9 count only in their "first time grade 9" cohort.

See [2015-16 Strive HI Indicators and Measures Technical Report](#) for more details.

<sup>4</sup> The five-year graduation rate is an extended year adjusted cohort graduation rate that accounts for graduates for an additional, fifth year. This rate is calculated following the same methodology used for the four-year adjusted cohort graduation rate. See [2015-16 Strive HI Indicators and Measures Technical Report](#) for more details.

<sup>5</sup> This metric reports the percent of high school diploma earners with confirmed postsecondary enrollment (based on National Clearing House data) within 16 months after high school graduation. See [College and Career Readiness Indicators Report Class of 2015 Technical Report](#) for more details.

<sup>6</sup> Chronic absenteeism is based on the number of full school year students (as defined by DOE) enrolled at a school (denominator) and the number of full school-year students who were absent, excused or unexcused, for 15 days or more during the full school year period (numerator). See [2015-16 Strive HI Indicators and Measures Technical Report](#) for more details.

<sup>7</sup> Average Daily Attendance = (sum of full day present attendance days x 100) / (sum of the total number of possible school attendance days for each active student).

Excused and unexcused absences are treated as absences in the attendance calculation.

Calculation example: There are 30 students at your school and it is the 10th day of the new school year. During the first 10 days of school 9 students missed a full school day. The denominator is based on the total number of possible school days: 30 students x 10 days = 300. The numerator is 30 students x 10 days of school/ 9 days of absences = 291. (291 x 100) / 300 = 97%



## **2. Value Added**

The second section of the Academic Performance Framework captures the work that schools are doing to add value to their school community or the education system at large. Each school must create a minimum of one Value Added goal. This section can measure the implementation of systems designed to increase program effectiveness, innovative practices and those that are aligned to the school's mission and vision. These goals will be specifically articulated and measurable and will include implementation timelines.

### **Evaluation and Reporting**

For each measure included in its Academic Performance Framework, schools will set targets for each year of their contract. The Commission will publicly report these targets, as well as each school's performance on the measures, to the extent possible while protecting the privacy and confidentiality of students' data. The Commission will also report whether the school met its annual target, exceeded the target, or did not meet the target.

If the School does not achieve results within the set target range, the School is subject to the Intervention Protocol, provided in Exhibit D of this Charter Contract.

### **Modifications to the Academic Performance Framework During the Contract Period**

Modifications can be made to the APF during the contract period in limited circumstances:

1. Modifications to the student outcome targets, which can be made when a school experiences a major shift in demographics.
2. Measures in both the Academic Student Outcomes and Value Added sections may be modified or added,
3. Academic Student Outcome targets may be renegotiated should the approved ESSA state accountability plan include extensive deviations from the methodology currently described in this submittal.

New Student Academic Outcome measures may be added between March 1<sup>st</sup> and May 15<sup>th</sup> for implementation the following year. Value Added measures may be added or modified after the school conducts a comprehensive needs assessment or similar strategic planning, but no later than July 1<sup>st</sup>.

# Ke Kula Niihau O Kekaha Learning Center

## Academic Performance Framework

### I. Student Academic Outcomes

#### 1. Academic Proficiency

Ke Kula Niihau O Kekaha Learning Center (KKNOK) will strive for improved student academic proficiency each year of the contract in language arts and math. Specific targets for achievement will be set when sufficient baseline data is available.

In SY 2017-2018 the school's proficiency rates will be based on Kaiapuni Assessment of Educational Outcomes (KĀEO) results for the 3<sup>rd</sup> and 4<sup>th</sup> graders and Smarter Balance Assessment (SBA) results for 8<sup>th</sup> and 11<sup>th</sup> graders.

In SY 2018-2019 the school's proficiency rates will be based on KĀEO results for 3<sup>rd</sup> through 5<sup>th</sup> graders and SBA results for 8<sup>th</sup> and 11<sup>th</sup> graders.

In SY 2019-2020 the school's proficiency rates will be based on KĀEO results for 3<sup>rd</sup> through 6<sup>th</sup> graders (pending development of KĀEO) and SBAC results for 8<sup>th</sup> and 11<sup>th</sup> graders.

In SY 2020-2021, the school's proficiency rates will be based on KĀEO results for 3<sup>rd</sup> through 7<sup>th</sup> graders (pending development of KĀEO) and SBAC results for 8<sup>th</sup> and 11<sup>th</sup> graders.

Subject	GRADES TESTED			
	SY 17-18	SY 18-19	SY 19-20	SY 20-21
KĀEO Math	3 <sup>RD</sup> AND 4 <sup>TH</sup>	3 <sup>RD</sup> – 5 <sup>TH</sup>	3 <sup>RD</sup> – 6 <sup>TH</sup>	3 <sup>RD</sup> – 7 <sup>TH</sup>
KĀEO HLA	3 <sup>RD</sup> AND 4 <sup>TH</sup>	3 <sup>RD</sup> – 5 <sup>TH</sup>	3 <sup>RD</sup> – 6 <sup>TH</sup>	3 <sup>RD</sup> – 7 <sup>TH</sup>
SBA Math	8 <sup>TH</sup> AND 11 <sup>TH</sup>	8 <sup>TH</sup> AND 11 <sup>TH</sup>	8 <sup>TH</sup> AND 11 <sup>TH</sup>	8 <sup>TH</sup> AND 11 <sup>TH</sup>
SBA ELA	8 <sup>TH</sup> AND 11 <sup>TH</sup>	8 <sup>TH</sup> AND 11 <sup>TH</sup>	8 <sup>TH</sup> AND 11 <sup>TH</sup>	8 <sup>TH</sup> AND 11 <sup>TH</sup>

#### 2. Academic Growth

*SGP = Student Growth Percentile*

Subject	TARGETS			
	Median SGP SY 17-18	Median SGP SY 18-19	Median SGP SY 19-20	Median SGP SY 20-21
Math	56 - 62	56 - 62	56 - 62	56 - 62
ELA	55 - 58	55 - 58	55 - 58	55 - 58

# Ke Kula Niihau O Kekaha Learning Center Academic Performance Framework

## 3. College and Career Readiness

### Chronic Absenteeism: Elementary and Middle School

TARGETS			
% Chronically Absent Combined Elementary & Middle SY 17-18	% Chronically Absent Combined Elementary & Middle SY 18-19	% Chronically Absent Combined Elementary & Middle SY 19-20	% Chronically Absent Combined Elementary & Middle SY 20-21
37% - 28%	34% - 25%	31% - 22%	19% - 16%

### 11<sup>th</sup> Grade ACT

TARGETS			
% Scoring 19+ SY 17-18	% Scoring 19+ SY 18-19	% Scoring 19+ SY 19-20	% Scoring 19+ SY 20-21
75% - 84%	75% - 84%	75% - 84%	75% - 84%

### Graduation Rate: High School

TARGETS			
% Graduating in 4 years SY 17-18	% Graduating in 4 years SY18-19	% Graduating in 4 years SY 19-20	% Graduating in 4 years SY 20-21
85% - 100%	85% - 100%	85% - 100%	85% - 100%

# Ke Kula Niihau O Kekaha Learning Center

## Academic Performance Framework

### II. Value Added

All Hawaiian-focused Charter Schools (HFCS) agreed to the Vision of the Graduate. Each HFCS has developed a kula specific Vision of the Graduate that derives from their place, community, culture, and language context.

Ke Kula Niihau O Kekaha (KKNOK) will measure Cultural Competency as defined as haumana knowledge, skills, and perspectives that are aligned to ancestral learning within a contemporary context. KKNOK will find evidence of Cultural Competency within ceremony. Ceremony is defined as the opportunity for formal demonstration and recognition of readiness to advance to a higher level of kuleana and learning expectations.

By June 2021, KKNOK’s end of year ceremony will focus on Niihau core values and muolelo as an opportunity to measure the acquisition of the following cultural competency dimensions:

- Respect and honor genealogy
- Recognize and accept leadership roles to manifest cultural knowledge
- Know a place as piko and foundation for making larger connections

Ke Kula Niihau O Kekaha will increase cultural competency in grades 2, 5, and 8 by developing and implementing ceremony rubrics aligned to Niihau core values and muolelo. The school has identified 3 Niihau core values and 7 sub values that have been identified and attributed.

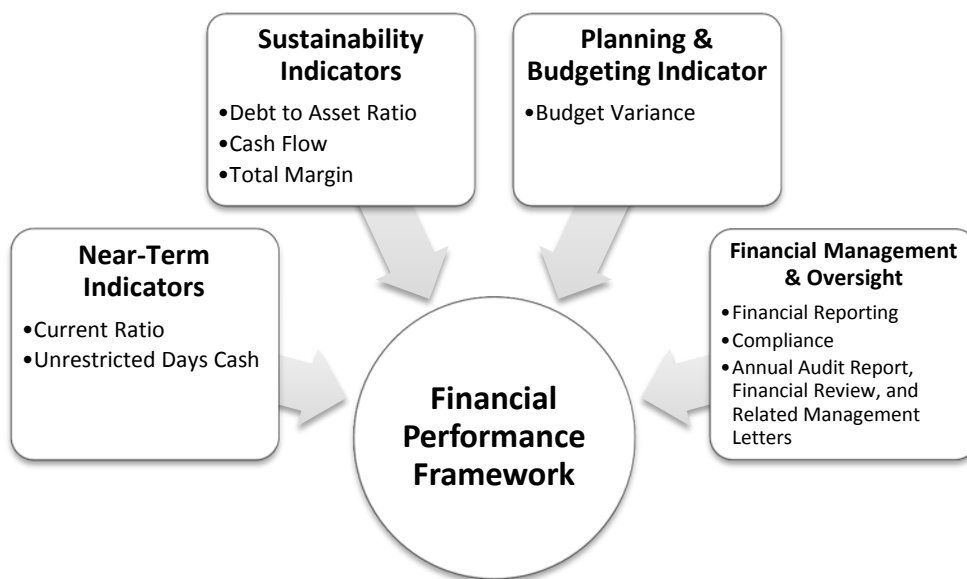
Action	Measurable Outcomes	Lead	Evidence of Completion	Due Date
1. Grade K-2 teachers will develop a rubric of Cultural Competency (Dimensions of Ceremony) aligned to Niihau Core Values	Completed K-2 rubrics aligned to Niihau Core Values	Lead: Pookumu  Support: K-2 Kumu, Olelo Niihau Kumu, Papa Hoike Kumu	Submit K-2 rubric to Commission	December 7, 2017
2. Implement grade K-2 Cultural Competency rubric	Cultural Competency rubric results for K-2	Lead: Grade K-2 teachers  Support: Pookumu, Papa Hoike Kumu	Submit rubric results for grade 2 to Commission	June 21, 2018
3. Grade 3-5 teachers will develop a rubric of Cultural Competency (Dimensions of Ceremony) aligned to Niihau Core Values	Completed 3-5 rubrics aligned to Niihau Core Values	Lead: Pookumu  Support: Grade 3-5 Kumu, Olelo Niihau Kumu, Papa Hoike Kumu	Submit 3-5 rubric to Commission	December 6, 2018

## Ke Kula Niihau O Kekaha Learning Center Academic Performance Framework

Action	Measurable Outcomes	Lead	Evidence of Completion	Due Date
4. Implement grade K-5 Cultural Competency rubric	Cultural Competency rubric results for K-5	Lead: Grade K-5 teachers  Support: Pookumu, Papa Hoike Kumu	Submit rubric results for grades 2 and 5 to Commission	June 19, 2019
5. Revise grade K-2 Cultural Competency rubric	Revised K-2 Cultural Competency rubric	Lead: Grade K-2 teachers  Support: Pookumu, Papa Hoike Kumu	Submit revised K-2 rubric to Commission	December 6, 2019
6. Grade 6-8 teachers will develop a rubric of Cultural Competency (Dimensions of Ceremony) aligned to Niihau Core Values	Completed 6-8 rubrics aligned to Niihau Core Values	Lead: Pookumu  Support: Grade 6-8 teachers, Olelo Niihau Kumu, Papa Hoike Kumu	Submit final 6-8 rubric to Commission	December 4, 2020
7. Implement K-8 Cultural Competency rubric	Cultural Competency rubric results for K-8	Lead: Grade K-8 teachers  Support: Pookumu, Papa Hoike Kumu	Submit rubric results for grades 2, 5 and 8 to commission	June 18, 2021
8. Revise grade 3-5 cultural competency rubric	Revised 3-5 Cultural Competency rubric	Lead: Grade 3-5 teachers  Support: Pookumu, Papa Hoike Kumu	Submit revised 3-5 rubric to commission	December 4, 2020

## EXHIBIT B FINANCIAL PERFORMANCE FRAMEWORK

The Financial Performance Framework (“Framework”) serves as a tool for the Commission to assess the financial health and viability of charter schools in its portfolio. The framework intends to provide a financial frame of reference based on current and past financial performance of charter schools. The indicators used in the framework are based on industry standard financial measures (e.g. ratios, variances) designed to be viewed in the aggregate with other complementary and supplementary information (e.g. timely and accurate financial and reporting practices, management practices). No single indicator or point in time data point gives a full picture of the financial situation of a school. Taken together, however, the indicators provide a qualitative assessment of the school’s near-term financial health, mid-term capacity, and long-term financial sustainability.



### Risk-Based Approach

The framework adopts a risk assessment model as part of ongoing oversight and monitoring of charter schools’ fiscal activities, and renewal decision-making. The model aligns the framework to the unique funding and governance environment for charter schools in the State of Hawai‘i. This risk-based approach will help identify areas of strength and weakness, highlighting controls that are designed to mitigate risks.

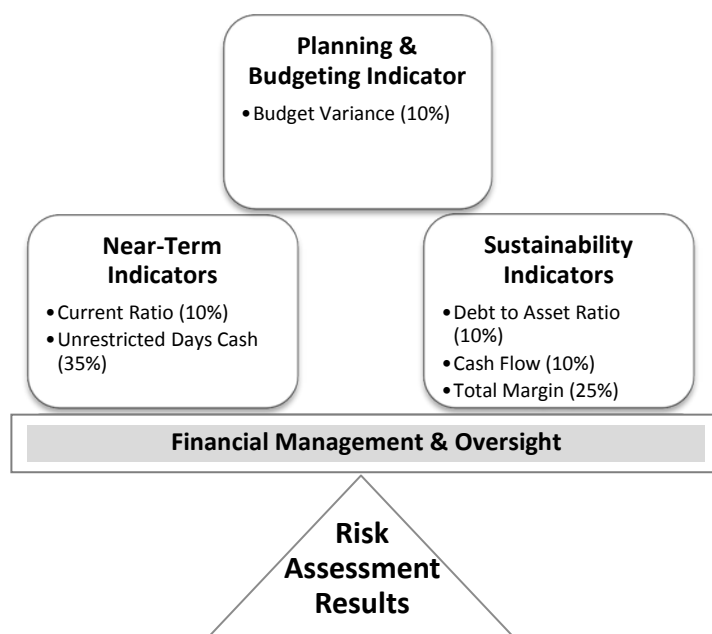
School(s) will be closely monitored if there is heightened risk of financial problems. Financial monitoring may include, but not limited to, request for reports or other documentation, inquiries through written or telephone communications, desk audits, or on-site visits, announced or otherwise. Moreover, a school may be requested to develop an appropriate corrective action plan in accordance with the Intervention Protocol (**Exhibit D**) to address any monitoring issues identified during the risk assessment. The corrective action plan provides a school an opportunity to explain the issue(s); identify measurable solution(s); identify person(s) who will be responsible for each solution; set timelines; and monitor the progress of the corrective action plan.

## Annual Risk Assessment Process

The annual risk assessment evaluates whether the financial viability of a school is at-risk based on the Commission’s review of financial information which will be drawn from the school’s annual audited financial statements or financial review. The inclusion of a “component unit” (an affiliated non-profit entity) may apply when a school’s annual audited financial statements include the presentation of reporting the audited component unit. The Commission’s assessment may also include other financial information and/or a more detailed examination of the school’s financial position and practices, as needed. The Commission may also consider the more current and more detailed information to determine whether the risk assessment result is still applicable throughout the assessment period and the degree to which it is, in fact, an indication of financial risk or distress or mitigation.

The risk assessment will focus on six indicators, or measures based on the National Association of Charter School Authorizers (NACSA) standards. Each indicator will be assessed on a scale from 1 to 5, with 1 being the lowest risk and 5 the highest risk. All six indicators will collectively make up a school’s overall risk level. The annual risk assessment result for a school will be determined using a balanced weighted formula utilizing the individual scores calculated for each indicator as follows:

$$(Current\ Ratio \times 0.10) + (Unrestricted\ Days\ Cash \times 0.35) + (Debt\ to\ Asset\ Ratio \times 0.10) + (Cash\ Flow \times 0.10) + (Total\ Margin \times 0.25) + (Budget\ Variance \times 0.10)$$



The individual and final risk assessment results will be represented as one of five categories based on the school’s risk assessment calculations as color-coded below and will be rounded to the nearest whole number.

Low	Acceptable	Moderate	High	Significant
1	2	3	4	5

## Near Term Indicators

### Current Ratio

$$\text{Current Ratio} = \text{Current Assets} \div \text{Current Liabilities}$$

The current ratio shows the relationship between a school’s current assets and current liabilities. Current assets are balance sheet accounts (e.g. cash, receivables) that include the value of all assets that are expected to be converted to cash through normal operations within the current fiscal year. Current liabilities represent obligations (e.g. payables, accrued payroll, accrued vacation) that are payable in cash within a fiscal year. This ratio gives an indication of a school’s ability to pay its obligations over the next twelve months. A school may be at-risk if it is unable to meet its current obligations.

This indicator accounts for **10 percent** of a school’s aggregate final risk assessment.

Low	Acceptable	Moderate	High	Significant
Ratio is greater than (>) 1.5	Ratio is between 1.35 – 1.5	Ratio is between 1.2 – 1.35	Ratio is between 1.0 – 1.2	Ratio is less than (<) 1.0

### Unrestricted Days of Cash on Hand

$$\text{Unrestricted Days Cash} = \text{Days Cash} \div [(\text{Total Expenses} - \text{Depreciation Expense}) \div 365]$$

The unrestricted days of cash on hand provides the number of days a school can pay its current expenses without another inflow of cash. Cash balances fluctuate since schools can expend and receive money on an almost daily basis. It indicates whether a school maintains a sufficient cash balance to meet its cash obligations. A school may be at-risk if there is insufficient cash to meet its cash obligations.

The indicator looks at a fixed point in time (the time the financial statement is prepared) and a trend over a period of time. Although this indicator is at a fixed point in time, it tells whether a school may have challenges in meeting its cash obligations. Note that this indicator looks at unrestricted cash, not cash that already has been earmarked for a specific purpose, such as renovations or facilities.

This indicator accounts for **35 percent** of a school’s aggregate final risk assessment.

Low	Acceptable	Moderate	High	Significant
Days Cash is more than 60 days and having an upward or downward trend over three years or more	Days Cash is between 50 – 60 days and having an upward or downward trend over three years or more	Days Cash is between 30 – 50 days and having an upward or downward trend over three years or more	Days Cash is between 20 – 30 days and having an upward or downward trend over three years or more	Days Cash is less than 20 days and having a downward trend over three years or more



## Sustainability Indicators

### Debt to Asset Ratio

$$\text{Debt to Asset Ratio} = \text{Total Liabilities} \div \text{Total Assets}$$

The Debt to Asset Ratio compares a school’s financial liabilities against the assets it owns. A lower ratio generally indicates stronger financial health. A higher ratio indicates that the school may be at-risk of not being able to pay back its debts. It is generally accepted indicator of potential long-term financial issues.

This indicator accounts for **10 percent** of a school’s aggregate final risk assessment.

Low	Acceptable	Moderate	High	Significant
Ratio is less than (<) 0.2	Ratio is between 0.2 – 0.4	Ratio is between 0.4 – 0.5	Ratio is between 0.5 – 0.75	Ratio is greater than (>) 0.75

### Cash Flow

$$\text{Cash Flow} = \text{Year-end Cash Balance} - \text{Beginning Year Cash Balance}$$

Cash Flow measures a school’s change in cash balance from one period to another. This indicator is similar to days’ cash on hand, but it provides insight into a school’s long-term stability, as it helps to assess a school’s sustainability over a period of time in an uncertain funding environment. A positive cash flow over time generally indicates increasing financial health and sustainability.

This indicator and accounts for **10 percent** of a school’s aggregate final risk assessment.

Low	Acceptable	Moderate	High	Significant
Current Year Cash Flow is positive (+) and having an upward trend over three years or more	Current Year Cash Flow is positive (+) and having an upward or a down trend over three years or more	Current Year Cash Flow is either positive or negative (+/-) and having an upward or a downward trend over three years or more	Current Year Cash Flow is negative (-) and having an upward or a downward trend over three years or more	Current Year Cash Flow is negative (-) and having a downward trend over three years or more

## Total Margin

$$\text{Total Margin} = \text{Net Income} \div \text{Total Revenue}$$

Total Margin measures the surplus or deficit a school yields out of its total revenues. This indicator is important because a school cannot operate at a deficit for a sustained period of time without the risk of closure. The intent of this indicator is not for the schools to be profitable, but is important for charter schools to operate within its available resources in a particular year and to build a reserve to support growth and sustainability.

This indicator is calculated by dividing net income by total revenue and accounts for **25 percent** of a school's aggregate final risk assessment.

Low	Acceptable	Moderate	High	Significant
Current Year Margin is positive (+) and having an upward trend over three years or more	Current Year Margin is positive (+) and having an upward or a downward trend over three years or more	Current Year Margin is either positive or negative (+/-) and having an upward or a downward trend over three years or more	Current Year Margin is negative (-) and having an upward or a downward trend over three years or more	Current Year Margin is negative (-) and having a downward trend over three years or more

## Planning & Budgeting

### Budget Variance

$$\text{Budget Variance} = \text{Actual Total Revenues} \div \text{Projected Total Revenues in the Charter School's Board-Approved Budget}$$

The budget variance depicts actual versus projected incoming revenues for a fiscal year. This indicator is important because revenues drive the development of a school's budget. While the per-pupil funding is the primary revenue source for charter schools, there are other sources (e.g. federal funds, grants, other state funds) that provide the basis for determining costs such as staffing and supplies. A budget based on revenues that are significantly more than its actual revenues may be at-risk of not meeting all of its budgeted expenses. Budgeted revenues that do not exceed actual revenues would not have a significant impact to the risk assessment rating scale.

This indicator accounts for **10 percent** of a school's aggregate final risk assessment.

Low	Acceptable	Moderate	High	Significant
Variance is greater than (>) 99%	Variance is between 96% – 98%	Variance is between 94% – 95%	Variance is between 91% – 93%	Variance is less than (<) 90%

## Financial Management and Oversight

### Compliance

The Commission ensures that the school complies with applicable laws, rules, regulations and provisions of the charter contract relating to financial reporting requirements, and to financial management and oversight expectations as evidenced by an annual independent audit or review, 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
- 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

If the School does not comply with the requirements of this Financial Performance Framework, the School is subject to the Intervention Protocol, provided in Exhibit D of this Charter Contract.<sup>1</sup>

As provided in the Charter Contract:

14.1 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, so long as those

<sup>1</sup> in accordance with **§302D-17 Ongoing oversight and corrective actions;**

(a) An authorizer shall continually monitor the performance and legal compliance of the public charter schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the Charter Contract.

responsibilities are consistent with the intent of Chapter 302D, HRS, and adhere to the terms of this Charter Contract.

## **EXHIBIT B**

### **ORGANIZATIONAL PERFORMANCE FRAMEWORK**

The Organizational Performance Framework serves as the means by which the Commission addresses one of an authorizer's core responsibilities: protecting the public interest. The framework ensures that charter schools meet all applicable federal, state, and local laws and regulations as well as contractual requirements.

The Commission pledges to exercise its best efforts to meet NACSA's standards on performance evaluation and compliance monitoring by implementing an accountability system that effectively streamlines federal, state, and local performance expectations and compliance requirements while protecting schools' legally entitled autonomy and minimizing school's administrative and reporting burdens.

The Organizational Performance Framework requires the School to complete the Assurance of Compliance Statement (included in this framework) on an annual basis. The Assurance of Compliance Statement identifies the specific federal, state, and local laws and regulations and contractual requirements that the School is accountable to. Regardless of the specific references to law, rule, regulation, or contractual provision contained in the Statement, the School is required comply with all relevant laws and regulations at all times.

The Commission will evaluate and assess performance under the framework by:

1. Conducting audits of any compliance requirements associated with the references identified in the Statement;
2. Conducting at least one school site visit during the term of the Charter Contract;
3. Requiring submission of documentation verifying compliance through the Commission's online compliance management system; and
4. Reporting on the School's fulfillment of compliance requirements specified in this framework.

The level of oversight the School will receive may vary during the term of the Charter Contract. If the School does not comply with the requirements of this Organizational Performance Framework, the School is subject to the Intervention Protocol, provided in **Exhibit D** of this Charter Contract.

Within the first quarter of each fiscal year, the Commission will provide an annual Organizational Framework Report to the School that covers the previous year. The report will include a narrative of the School's performance under the framework, including any compliance breaches and actions required through the Intervention Protocol.

## ASSURANCE OF COMPLIANCE STATEMENT

This document provides assurances to the Commission that the School is in compliance with the laws, rules, regulations, policies, and Charter Contract provisions set forth below. This document will be assigned to the School through the Commission's online compliance management system and must be completed, signed, and dated by the School's board chair and school leader annually.

In addition to this Assurance of Compliance Statement, the School is required to comply with all relevant laws and regulations at all times, regardless of the specific references in this document.

The School should read through each reference below, and then check the corresponding box to assure the Commission that the School is in compliance with the specified items identified below for the specified school year. A School with compliance breaches that require the Intervention Protocol will need to resolve the compliance breach by the end of the school year or be in the process of implementing a corrective action plan that resolves the compliance breach.

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### GOVERNANCE

- Section 302D-12(a), HRS: Governing Board Composition
- Section 302D-12(c), HRS: Governing Board Composition- Chair
- Section 302D-12(b), HRS: Governing Board Recruitment
- Section 302D-12(f), HRS: Oversight
- Section 302D-12(g), HRS: Procurement
- Section 302D-12(h), HRS: Open Meeting Requirements
- Section 302D-12(i), HRS: State Code of Ethics

### HEALTH AND SAFETY

- Charter Contract Section 11.4: Facilities- Compliance with Codes
- Charter Contract Section 9.1: Safe Environment
- Chapter 12-45.2, Hawaii Administrative Rules: State Fire Code

### ACCESS AND EQUITY

- Section 302D-34(a), HRS: Enrollment
- Charter Contract Section 7.3- Admissions
- Americans with Disabilities Act: 42 U.S.C. 12101
- Individuals with Disabilities Educational Act: 20 U.S.C. 1400 et seq.
- Section 302D-30, HRS: Special Education Services
- Section 504 of the Rehabilitation Act of 1973: 29 U.S.C 794



**Exhibit C: Education Service Provider Requirements**



## **EXHIBIT C**

### **EDUCATIONAL SERVICE PROVIDER REQUIREMENTS**

For the purpose of this section an Educational Service Provider (ESP) is defined as a non-profit or for-profit entity that is contracted by the School to provide services that would otherwise be handled by employees of the School, which include, but are not limited to, operational back office functions and services related to the instructional design of the School, in return for fees. ESP 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 Charter Contract and applicable law.

1. The ESP agreement shall be subject to, and shall incorporate by reference, the terms and conditions of the Charter Contract.
2. The term of the ESP agreement shall not exceed the term of the Charter Contract.
3. No provision of the ESP agreement shall interfere with the duty of the governing board 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 Chapter 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 Charter 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 (Chapter 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 Section 14.3 of the Charter 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 Charter 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 Section 12.7 of the Charter 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 Charter 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 Chapter 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**

## **EXHIBIT D INTERVENTION PROTOCOL**

In accordance with Section 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 terms of this Charter Contract and consistent with nationally recognized principles and standards for quality authorizing. It enables the Commission to take timely and appropriate action to notify the School about performance and/or compliance concerns and provide the School a reasonable opportunity to remedy such problems.

### **NOTICE OF CONCERN PROTOCOLS**

1. Upon finding that the School has failed to meet legal or contractual compliance obligations (including any goals, objectives, or outcomes set in the performance frameworks), the Commission may issue a Notice of Concern, pursuant to Section 2.10 Notices of this Charter Contract.
2. Upon receiving a Notice of Concern, the School's Governing Board will be required to provide a written response to the Commission within fourteen calendar days and the response must include at least one of the following:
  - i. a description of the remedy of the compliance breach, if the breach has been completely remedied, including evidence of such remedy;
  - ii. a written notification disputing the determination that a compliance breach has occurred with accompanying evidence in support of that assertion;
  - iii. a Corrective Action Plan designed to remedy the compliance breach that includes timelines and persons responsible for each action within the plan. If the submitted Corrective Action Plan is not mutually agreeable to both the School and the Commission staff, the matter will be brought to the Commission at a General Business Meeting.
3. If the School disputes the Notice of Concern, the Commission will consider the matter at a General Business Meeting and retract, modify, or uphold the Notice of Concern.
4. The Commission shall be updated on the issuance, remedy, and progress towards implementation of Corrective Action Plans in the Executive Director's Report during General Business Meetings.

### **ESCALATION OF NOTICES OF CONCERN**

If the School fails to respond or make progress towards correcting the breach in the time as stated in the Corrective Action Plan, repeatedly fails to comply with applicable law or Contract provision(s), or when the breach presents an immediate concern for student or employee health and safety, the Commission may take any or all of the following actions:

1. Issue a Notice of Deficiency which may include prescriptive, specific action plans and conditions for the School; or
2. Issue a Notification of Warning which initiates revocation proceedings in accordance with Chapter 302D, HRS, and applicable administrative rules.

In accordance with Section 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 Chapter 302D, HRS, and the established rules, procedures and protocols for revocation shall apply.

**Exhibit E: Renewal, Non-renewal, and Revocation**

## **EXHIBIT E**

### **RENEWAL AND NON-RENEWAL CRITERIA AND PROCESS**

The School will begin the process for renewal or non-renewal in the fall of the final year of the contract. Soon after academic results are released for the previous school year, typically in September or October, the School will receive a Final Performance Report for each year of the contract. The Final Performance Report shall summarize the School's performance record to date as well as the due process afforded to the School through the administrative rules<sup>1</sup>. Each school will have 30 days from the time of receipt of the Final Performance Report to complete the renewal application and respond to the Final Performance Report.

#### **PROCESS FOR SCHOOLS THAT DID NOT RECEIVE A NOTICE OF DEFICIENCY DURING THE CONTRACT PERIOD**

If the School did not receive a Notice of Deficiency during the contract period will submit a renewal application for a five-year contract after receiving the Final Performance Report. The School may also request a hearing pursuant to Sections 8-505-12(b)(2) or 8-505-16(3), HAR.

#### **PROCESS FOR SCHOOLS THAT RECEIVED A NOTICE OF DEFICIENCY DURING THE CONTRACT PERIOD**

If the School received a Notice of Deficiency at any time during the contract period, the Commission will conduct a performance review hearing within 45 days of receiving the School's application for renewal. During the performance review hearing, the Commission will determine whether or not the School has earned a renewal of the charter and may apply conditions if applicable.

At the performance review hearing, the Commission may decide not to renew the Charter Contract if it is determined that the school:

- (1) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under Chapter 302D, HRS, or the charter school contract.**

In evaluating this provision, the Commission will place a heavier emphasis on violations of law or contract when the law or contract provision was designed to protect the health or safety of students or protect equal access and equity of educational opportunities.

- (2) Failed to meet or make sufficient progress toward performance expectations set forth in the contract.**

When evaluating this provision for the Academic Framework, the Commission shall find that sufficient progress was not made toward academic performance expectations when there is a pattern of failing to meet a majority of targets, there is a pattern of failing to meet targets coupled with a downward trend in performance, or there is a pattern of failure to implement corrective action plans.

<sup>1</sup> The processes and procedures pertaining to renewal or nonrenewal of a charter contract are found in Sections 8-505-10 through 8-505-13, HAR.



When evaluating this provision for the Organizational and Financial Performance Frameworks, the Commission shall find that progress has not been made when standards have not been met and/or there is a pattern of failure to implement corrective action plans in a timely manner.

**(3) Failed to meet generally accepted accounting principles of fiscal management.**

The Commission shall find failure to meet standards when there is a pattern of fiscal mismanagement in addition to failing to take corrective actions to address significant financial risks identified during the contract period.

**(4) Substantially violated any material provision of law from which the charter school is not exempted.**

When evaluating this provision, the Commission will place a heavier emphasis on violations of law that were designed to protect the health and safety of students and access and equity of educational opportunities.