

**"CHAPTER 302D
PUBLIC CHARTER SCHOOLS**

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" **§302D-1 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Applicant governing board" means the initial governing board that is:

- (1) Established by an eligible group or entity to submit a charter application pursuant to section 302D-13; and
- (2) Not subject to section 302D-12.

"Authorizer" means an entity established under this chapter with chartering authority to review charter applications, decide whether to approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to authorize, renew, deny renewal of, or revoke charter contracts. The term may include the commission when appropriate.

"Board" means the board of education.

"Charter application" means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status.

"Charter contract" or "charter" means a fixed-term, bilateral, renewable contract between a public charter school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

"Charter school" or "public charter school" refers to those public schools and their respective governing boards, as defined in this section, that are holding current charter contracts to operate as charter schools under this chapter, including start-up and conversion charter schools, and 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.

"Commission" means the state public charter school commission established pursuant to [section] 302D-3 as a statewide authorizer.

"Conversion charter school" means:

- (1) Any existing department school that converts to a charter school and is managed and operated in accordance with section 302D-13; or
- (2) Any existing department school that converts to a charter school and is managed and operated by a nonprofit organization in accordance with section 302D-13.

"Department" means the department of education.

"Department school" means any school that falls within the definition of "public schools" as defined in section 302A-101 and that is not a charter school.

"Executive director" means the executive director of the state public charter school commission.

"Governing board" means the independent board of a public charter school that is party to the charter contract with the authorizer that:

- (1) Is responsible for the financial, organizational, and academic viability of the charter school and implementation of the charter;
- (2) Possesses the independent authority to determine the organization and management of the school, the curriculum, and virtual education;
- (3) Has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of their employees and is considered the employer of charter school employees for purposes of chapters 76, 78, and 89; and
- (4) Ensures compliance with applicable state and federal laws.

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

- (1) Is recognized as a tax-exempt organization under the Internal Revenue Code; and
- (2) Is registered to do business in this State in accordance with chapter 414D.

"Organizational viability" means that a charter school:

- (1) Has been duly constituted and operates in accordance with its charter;
- (2) Has a governing board established in accordance with law and the charter school's charter;
- (3) Employs sufficient faculty and staff to provide the necessary educational program and support services to operate the facility in accordance with its charter;
- (4) Maintains accurate and comprehensive records regarding students and employees as determined by its authorizer;
- (5) Meets appropriate standards of student achievement as defined by the board pursuant to its duties under article X, section 3, of the Constitution of the State of Hawaii;
- (6) Cooperates with board and authorizer requirements in conducting its functions;
- (7) Complies with applicable federal, state, and county laws and requirements;
- (8) In accordance with authorizer guidelines and procedures, is financially sound and fiscally responsible in its use of public funds, maintains accurate and comprehensive financial records, operates

- in accordance with generally accepted accounting practices, and maintains a sound financial plan;
- (9) Operates within the scope of its charter contract and fulfills obligations and commitments of its charter;
 - (10) Complies with all health and safety laws and requirements;
 - (11) Complies with all authorizer directives, policies, and procedures; and
 - (12) Complies with all board policies deemed applicable to charter schools by the board.

"Pre-opening charter school" means a charter school that has not yet satisfactorily fulfilled the authorizer's pre-opening assurance as required under section 302D-14.5 or has not yet commenced full operations as a charter school during its first full academic year.

"Start-up charter school" means a new charter school established under section 302D-13 that is not a conversion charter school. [L 2012, c 130, pt of §2; am L 2013, c 159, §3; am L 2014, c 99, §3; am L 2015, c 114, §1]

" **§302D-2 REPEALED.** L 2014, c 99, §24.

" **§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.

(c) The commission shall consist of nine members to be appointed by the board. The board shall appoint members who will be tasked with authorizing public charter schools that serve the unique and diverse needs of public school students. The chair of the commission shall be designated by the members of the commission for each school year beginning July 1, and whenever there is a vacancy. The board shall consider the combination of abilities, breadth of experiences, and characteristics of the commission, including but not limited to reflecting the diversity of the student population, geographical representation, and a broad representation of education-related stakeholders. The commission shall be exempt from sections 26-34 and 26-36.

(d) Understanding that the role of the commission is to ensure a long-term strategic vision for Hawaii's public charter schools, each nominee to the commission shall meet the following minimum qualifications:

- (1) Commitment to education. Each nominee's record should demonstrate a deep and abiding interest in education, and a dedication to the social, academic, and character development of young people through the administration of a high performing charter school system;
- (2) Record of integrity, civic virtue, and high ethical standards. Each nominee shall demonstrate integrity, civic virtue, and high ethical standards and be willing to hold fellow commission members to the same;
- (3) Availability for constructive engagement. Each nominee shall commit to being a conscientious and attentive commission member; and
- (4) Knowledge of best practices. Each nominee shall have an understanding of best practices in charter school educational governance or shall be willing to be trained in such.

(e) Each nominee to the commission shall ideally meet the following recommended qualifications:

- (1) Experience governing complex organizations. Each nominee should possess experience with complex organizations, including but not limited to performance contract management, and a proven ability to function productively within them; and
- (2) Collaborative leadership ability. Each nominee should have substantial leadership experience that ideally illustrates the nominee's ability to function among diverse colleagues as an effective team member, with the ability to articulate, understand, and help shape consensus surrounding commission policies.

(f) Five members of the commission shall constitute a quorum to conduct business. Any action taken by the commission shall be by a simple majority of the members of the commission who are present; provided that any action of the commission that may be appealed pursuant to section 302D-15 shall require a concurrence of at least five members to be valid.

(g) Commission members shall serve not more than three consecutive three-year terms, with each term beginning on July 1; provided that the initial terms that commence after June 30, 2012, shall be staggered as follows:

- (1) Three members, including the chairperson, to serve three-year terms;
- (2) Three members to serve two-year terms; and

(3) Three members to serve one-year terms.

(h) Notwithstanding the terms of the members, the board may fill vacancies in the commission at any time when a vacancy occurs due to resignation, non-participation, the request of a majority of the commission members, or termination by the board for cause.

(i) Commission members shall receive no compensation. When commission duties require that a commission member take leave of the member's duties as a state employee, the appropriate state department shall allow the commission member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to fulfill that member's departmental duties. Members shall be reimbursed for necessary travel expenses incurred in the conduct of official commission business.

(j) The commission shall operate with dedicated resources and staff qualified to execute the day-to-day responsibilities of the commission pursuant to this chapter. Beginning with the 2015-2016 fiscal year, the legislature shall make an appropriation to the commission separate from, and in addition to, any appropriation made to charter schools pursuant to sections 302D-28 and 302D-29.5.

(k) The commission shall have the power to hire staff without regard to chapters 76 and 89. The commission shall determine staff wages, hours, benefits, and other terms and conditions for employment in accordance with chapter 89C. [L 2012, c 130, pt of §2; am L 2013, c 159, §4; am L 2014, c 99, §4; am L 2015, c 114, §2]

" **[§302D-3.2] Fees.** (a) In administering its responsibilities, the commission may assess fees on non-state entities and individuals to help offset its operating costs.

(b) Fees collected by the commission shall be deposited into insured checking or savings accounts and shall be expended by the commission.

(c) The commission shall adopt rules pursuant to chapter 91 to implement this section; provided that, notwithstanding this section or any other law to the contrary, the commission may set the initial amount of fees authorized pursuant to this section at any time without regard to chapter 91, if the commission:

- (1) Holds at least one public hearing to take and discuss public testimony on the proposed fee amount; and
- (2) Provides public notice at least thirty days prior to the date of the public hearing. [L 2014, c 99, pt of §1]

" **[§302D-3.5] Rules.** Unless otherwise provided for in this chapter or chapter 302A, the commission may adopt rules pursuant to chapter 91 to administer and implement this chapter; provided that the board shall maintain exclusive rule-making authority over state educational policy. [L 2013, c 159, pt of §1]

" **[§302D-4] Chartering authority application for eligible entities.** (a) The commission created under section 302D-3 may authorize public charter schools anywhere in the State.

(b) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities may apply to the board, pursuant to this section, for statewide, regional, or local chartering authority, in accordance with each institution's regular operating jurisdiction.

(c) A county or state agency may apply to the board, pursuant to this section, for chartering authority.

(d) Governing boards of non-profit or charitable organizations, which are exempt from federal taxes under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, may apply to the board, and may be granted statewide chartering authority. Nonpublic sectarian or religious organizations and any other charitable organization which in their federal Internal Revenue Service Form 1023, Part IV, describe activities indicating a religious purpose, are not eligible to apply to become an authorizer under this chapter.

(e) The board shall establish, through administrative rules, the annual application and approval process for all entities eligible to apply for chartering authority pursuant to this section; provided that the board shall not approve any application for chartering authority until July 1, 2014, or until the board adopts rules, whichever is later. By June 30 of each year, the board shall make available information and guidelines for all eligible entities concerning the opportunity to apply for chartering authority under this chapter. The application process shall require each interested eligible entity to submit an application that clearly explains or presents the following elements:

- (1) Written notification of intent to serve as an authorizer in accordance with this chapter;
- (2) The applicant entity's strategic vision for chartering;
- (3) A plan to support the vision presented, including explanation and evidence of the applicant entity's

budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing, in accordance with this chapter;

- (4) A draft or preliminary outline of the request for proposals that the applicant entity, if approved as an authorizer, would issue to solicit public charter school applicants;
- (5) A draft of the performance framework that the applicant entity, if approved as an authorizer, would use to guide the establishment of a charter contract and for ongoing oversight and evaluation of public charter schools, consistent with the requirements of this chapter;
- (6) A draft of the applicant entity's renewal, revocation, and nonrenewal processes, consistent with section 302D-18;
- (7) A statement of assurance that the applicant entity seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of this chapter, and that if approved as an authorizer, the entity will fully participate in any authorizer training provided or required by the State; and
- (8) A statement of assurance that the applicant will ensure public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures.

(f) By June 30 of each year, the board shall decide whether to grant or deny chartering authority to each applicant. The board shall make its decisions on the merits of each applicant's proposal and plans.

(g) Within sixty days of the board's decision, the board shall execute a renewable authorizing contract with each entity it has approved for chartering authority. The initial term of each authorizing contract shall be six years. The authorizing contract shall specify each approved entity's agreement to serve as an authorizer in accordance with the expectations of this chapter, and shall specify additional performance terms based on the applicant's proposal and plan for chartering. No approved entity shall commence charter authorizing without an authorizing contract in effect.

(h) This section shall not apply to the commission. [L 2012, c 130, pt of §2]

" **§302D-5 Authorizer powers, duties, and liabilities.** (a) Authorizers are responsible for executing the following essential powers and duties:

- (1) Soliciting and evaluating charter applications;
- (2) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices;
- (3) Declining to approve weak or inadequate charter applications;
- (4) Negotiating and executing sound charter contracts with each approved charter applicant and with existing public charter schools;
- (5) Monitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools; and
- (6) Determining whether each charter contract merits renewal, nonrenewal, or revocation.

(b) An authorizer shall:

- (1) Act as a point of contact between the department and a public charter school it authorizes;
- (2) Be responsible for and ensure the compliance of a public charter school it authorizes with all applicable state and federal laws, including reporting requirements;
- (3) Be responsible for the receipt of applicable federal funds from the department and the distribution of funds to the public charter school it authorizes; and
- (4) Be responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the public charter school it authorizes.

(c) An authorizer shall have the power to make and execute contracts and all other instruments necessary or convenient for the exercise of its duties and functions under this chapter.

(d) An authorizer may delegate its duties to officers, employees, and contractors.

(e) Regulation by authorizers shall be limited to the powers and duties set forth in this section, and shall be consistent with the spirit and intent of this chapter.

(f) An authorizer, members of the board of an authorizer acting in their official capacity, and employees or agents of an authorizer are immune from civil and criminal liability with respect to all activities related to a public charter school authorized by that authorizer, except for any acts or omissions constituting wilful misconduct. Members of the commission shall be afforded the same protection afforded the members of the board pursuant to section 26-35.5.

(g) An authorizer shall not provide technical support to a prospective charter school applicant, an applicant governing board, or a charter school it authorizes in cases in which the

technical support will directly and substantially impact any authorizer decision related to the approval or denial of the charter application or the renewal, revocation, or nonrenewal of the charter contract. This subsection shall not apply to technical support that an authorizer is required to provide to a charter school pursuant to federal law. [L 2012, c 130, pt of §2; am L 2013, c 159, §5; am L 2014, c 99, §5; am L 2015, c 114, §3; am L 2016, c 113, §1]

" **§302D-6 Principles and standards for charter authorizing.**

All authorizers shall be required to follow nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing responsibility, including:

- (1) Organizational capacity and infrastructure;
- (2) Soliciting and evaluating charter applications;
- (3) Performance contracting;
- (4) Ongoing public charter school oversight and evaluation; and
- (5) Charter and charter contract renewal decision-making.

Authorizers shall carry out all their duties under this chapter in a manner consistent with nationally recognized principles and standards and with the spirit and intent of this chapter. Evidence of material or persistent failure to do so shall constitute grounds for losing charter authorizing powers. [L 2012, c 130, pt of §2; am L 2013, c 159, §6]

" **§302D-7 Authorizer reporting.** Every authorizer shall be required to submit to the board and the legislature an annual report summarizing:

- (1) The authorizer's strategic vision for chartering and progress toward achieving that vision;
- (2) The academic performance of all operating public charter schools overseen by the authorizer, according to the performance expectations for public charter schools set forth in this chapter, including a comparison of the performance of public charter school students with public school students statewide;
- (3) The financial performance of all operating public charter schools overseen by the authorizer, according to the performance expectations for public charter schools set forth in this chapter;
- (4) The status of the authorizer's public charter school portfolio, identifying all public charter schools and applicants in each of the following categories:

- approved (but not yet open), approved (but withdrawn), not approved, operating, renewed, transferred, revoked, not renewed, or voluntarily closed;
- (5) The authorizing functions provided by the authorizer to the public charter schools under its purview, including the authorizer's operating costs and expenses detailed in annual audited financial statements that conform with generally accepted accounting principles;
 - (6) The services purchased from the authorizer by the public charter schools under its purview;
 - (7) A line-item breakdown of the federal funds received by the department and distributed by the authorizer to public charter schools under its control; and
 - (8) Any concerns regarding equity and recommendations to improve access to and distribution of federal funds to public charter schools. [L 2012, c 130, pt of §2; am L 2014, c 99, §6]

" **§302D-8 Conflict of interests.** No employee, trustee, agent, or representative of an authorizer may simultaneously serve as an employee, trustee, agent, representative, vendor, or contractor of a public charter school authorized by that authorizer. Authorizer members shall disclose to the authorizer a list of all charter schools in which the member has previously been an employee, governing board member, vendor, contractor, agent, or representative. [L 2012, c 130, pt of §2; am L 2014, c 99, §7]

" **[§302D-9] Exclusivity of authorizing functions and rights.** No governmental or other entity, other than those expressly granted chartering authority as set forth in this chapter, may assume any charter authorizing function or duty in any form, unless expressly allowed by law. [L 2012, c 130, pt of §2]

" **[§302D-10] Services purchased from authorizer; itemized accounting.** (a) No public charter school shall be required to purchase services from its authorizer as a condition of charter approval or renewal or of executing a charter contract, nor may any such condition be implied.

(b) A public charter school may, at its discretion, choose to purchase services from its authorizer. In such event, the public charter school and authorizer shall execute an annual service contract, separate from the charter contract, stating

the parties' mutual agreement concerning any services to be provided by the authorizer and any service fees to be charged to the public charter school. An authorizer may not charge more than market rates for services provided to a public charter school. [L 2012, c 130, pt of §2]

" **[§302D-11] Oversight of public charter school authorizers.**

(a) The board shall be responsible for overseeing the performance and effectiveness of all authorizers established under this chapter.

(b) In accordance with section 302D-7, every authorizer shall submit to the board and the legislature an annual report. The board shall communicate to every authorizer the requirements for the format, content, and submission of the annual report.

(c) Persistently unsatisfactory performance of an authorizer's portfolio of public charter schools, a pattern of well-founded complaints about the authorizer or its public charter schools, or other objective circumstances may trigger a special review by the board. In reviewing or evaluating the performance of authorizers the board shall apply nationally recognized principles and standards for quality charter authorizing. If at any time the board finds that an authorizer is not in compliance with an existing charter contract, its authorizing contract with the board, or the requirements of all authorizers under this chapter, the board shall notify the authorizer in writing of the identified problems, and the authorizer shall have reasonable opportunity to respond to and remedy the problems.

(d) If an authorizer persists, after due notice from the board, in violating a material provision of a charter contract or its authorizing contract with the board, or fails to remedy other identified authorizing problems, the board shall notify the authorizer, within a reasonable amount of time under the circumstances, that it intends to revoke the authorizer's chartering authority unless the authorizer demonstrates a timely and satisfactory remedy for the violation or deficiencies.

(e) In the event of revocation of any authorizer's chartering authority, the board shall manage the timely and orderly transfer of each charter contract held by that authorizer to another authorizer in the State, with the mutual agreement of each affected public charter school and proposed new authorizer. The new authorizer shall enter into a new charter contract with the charter school for the remainder of the charter term. [L 2012, c 130 pt of §2]

" **§302D-12 Charter school governing boards; powers and duties.** (a) No person may serve on the governing board of a charter school if the person is an employee or former employee of any charter school under the jurisdiction of that governing board, a relative of an employee or former employee of any charter school under the jurisdiction of that governing board, or any vendor or contractor providing goods or services to any charter school under the jurisdiction of that governing board, unless:

- (1) The person is a former employee of a charter school under the jurisdiction of that governing board and at least one year has passed since the conclusion of the former employee's employment with that charter school;
- (2) The person is a relative of a former employee of a charter school under the jurisdiction of that governing board and at least one year has passed since the conclusion of the former employee's employment with that charter school;
- (3) The person is a vendor or contractor and at least one year has passed since the conclusion of the vendor or contractor's service to a charter school under the jurisdiction of that governing board; or
- (4) The person serving on the governing board shall not cause more than one-third of the voting members of the governing board to be made up of:
 - (A) Employees or former employees of any charter school that is under the jurisdiction of that governing board; provided that this subparagraph shall not include persons who are covered under paragraph (1);
 - (B) Relatives of employees or of former employees of any charter school that is under the jurisdiction of that governing board; provided that this subparagraph shall not include persons who are covered under paragraph (2); and
 - (C) Vendors or contractors who are providing goods or services to any charter school that is under the jurisdiction of that governing board; provided that this subparagraph shall not include persons who are covered under paragraph (3).

(b) In selecting governing board members, consideration shall be given to persons who:

- (1) Provide the governing board with a diversity of perspective and a level of objectivity that accurately represent the interests of the charter school students and the surrounding community;

- (2) Demonstrate an understanding of best practices of nonprofit governance; and
- (3) Possess strong financial and academic management and oversight abilities, as well as human resource and fundraising experience.

(c) No employee or former employee of a charter school, relative of an employee or former employee of a charter school, or any vendor or contractor providing goods or services to a charter school may serve as the chair of the governing board of that charter school unless at least one year has elapsed since the conclusion of the employee's employment with the school or the conclusion of a vendor's or contractor's service to the school; provided that an authorizer may grant an exemption from the provisions of this subsection based upon a determination by the authorizer that an exemption is in the best interest of the charter school.

(d) A nonprofit organization that has been approved by an authorizer to operate and manage a conversion charter school and serve as the conversion charter school's governing board shall establish the nonprofit organization's board of directors as the governing board and shall not be selected pursuant to subsections (a), (b), and (c); provided that:

- (1) The nonprofit organization may also appoint advisory groups of community representatives for each conversion charter school managed by the nonprofit organization; provided that these groups shall not have governing authority over the conversion charter school and shall serve only in an advisory capacity to the nonprofit organization;
- (2) The board of directors of the nonprofit organization, as the governing board of the conversion charter school that it operates and manages, shall have the same protections that are afforded to all other governing boards in its role as the conversion charter school governing body;
- (3) Any conversion charter school that is managed and operated by a nonprofit organization shall be eligible for the same federal and state funding as other public schools; provided that nothing in this section shall prohibit a nonprofit organization from making a contribution toward the operation of a conversion charter school; and
- (4) If, at any time, the board of directors of the nonprofit organization governing the conversion charter school votes to discontinue its relationship with the charter school as the charter contract holder, the conversion charter school's

administrators, teachers, or community may submit a charter application to the authorizer, in accordance with section 302D-13 to continue as a conversion charter school without the participation of the nonprofit organization.

(e) Section 78-4 shall not apply to members of governing boards; provided that no governing board member shall be allowed to serve on more than two governing boards simultaneously. For purposes of this subsection, a governing board that governs more than one charter school shall be considered one board.

(f) The governing board shall be the independent governing body of its charter school and shall have oversight over and be responsible for the financial, organizational, and academic viability of the charter school, implementation of the charter, and the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws. The governing board shall ensure its school complies with the terms of the charter contract between the authorizer and the school. The governing board shall have the power to negotiate supplemental collective bargaining agreements with the exclusive representatives of their employees.

(g) Governing boards and charter schools shall be exempt from chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. Governing boards and charter schools are encouraged to use the provisions of chapter 103D wherever possible; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the charter school to any other provision of chapter 103D.

(h) Charter schools and their governing boards shall be exempt from the requirements of chapters 91 and 92. The governing boards shall:

- (1) Hold meetings open to the public;
- (2) Post the notices and agendas of public meetings:
 - (A) At a publicly accessible area in the charter school's office so they are available for review during regular business hours; and
 - (B) On the charter school's internet website, not less than six calendar days prior to the public meeting, unless a waiver is granted by the authorizer or authorizer's designee in the case of an emergency;
- (3) Keep written minutes of all public meetings that shall include:
 - (A) The date, time, and place of the meeting;

- (B) The members of the governing board recorded as either present or absent;
 - (C) The substance of all matters proposed, discussed, and decided;
 - (D) The views of the participants;
 - (E) A record, by individual member, of any votes taken; and
 - (F) Any other information that any member of the governing board requests be included or reflected in the minutes;
- (4) Not be required to produce a full transcript or audio or video recording of any public meeting, unless otherwise required by law;
 - (5) Post the written minutes from public meetings:
 - (A) At a publicly accessible area in the charter school's office so the minutes are available for review during regular business hours; and
 - (B) On the charter school's internet website, within sixty calendar days after the public meeting or five calendar days after the next public meeting, whichever is sooner; and
 - (6) Maintain a list of the current names and contact information of the governing board's members and officers:
 - (A) In the charter school's office so it is available for review during regular business hours; and
 - (B) On the charter school's internet website.
- (i) All charter school employees and members of governing boards shall be subject to chapter 84.
 - (j) Governing boards shall be exempt from sections 26-34 and 26-36. The State shall afford the governing board of any charter school the same protections as the State affords the board in accordance with section 26-35.5.
 - (k) For purposes of this section:
 - "Employees" shall include but not be limited to:
 - (1) The chief executive officer, chief administrative officer, executive director, or otherwise designated head of a charter school; and
 - (2) Any person under an employment contract to serve as the chief executive officer, chief administrative officer, executive director, or designated head of a charter school.
- "Relative" means a spouse, fiance, or fiancée of the employee; any person who is related to the employee within four degrees of consanguinity; or the spouse, fiance, or fiancée of such person.

(1) Governing boards shall have the power to make and execute contracts and all other instruments necessary or convenient for the exercise of their duties and functions under this chapter. [L 2012, c 130, pt of §2; am L 2013, c 159, §7; am L 2014, c 99, §8; am L 2015, c 114, §4; am L 2016, c 113, §2]

" **§302D-13 Start-up and conversion charter schools; establishment.** (a) New start-up and conversion charter schools may be established pursuant to this section.

(b) Any community, department school, school community council, group of teachers, group of teachers and administrators, or nonprofit organization may submit a letter of intent to an authorizer to form a charter school and establish an applicant governing board. An applicant governing board may develop a charter application pursuant to this section; provided that:

- (1) An applicant governing board established by a community may develop a charter application for a start-up charter school;
- (2) An applicant governing board established by a department school or a school community council may develop a charter application for a conversion charter school;
- (3) An applicant governing board established by a group of teachers or a group of administrators may develop a charter application for a start-up or conversion charter school; and
- (4) A nonprofit organization may:
 - (A) Establish an applicant governing board that is separate from the nonprofit organization and develop a charter application for a start-up or conversion charter school; or
 - (B) Establish an applicant governing board that shall be the board of directors of the nonprofit organization and may develop a charter application for a conversion charter school; provided that any nonprofit organization that seeks to manage and operate a conversion charter school shall:
 - (i) Submit to the authorizer at the time of the charter application bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of potential conflict of interest situations;

- (ii) Have experience in the management and operation of public or private schools or, to the extent necessary, agree to obtain appropriate services from another entity or entities possessing such experience;
- (iii) Not interfere in the operations of the department school to be converted until otherwise authorized by the authorizer in consultation with the department; and
- (iv) Have the same protections that are afforded to all other governing boards in its role as the conversion charter school governing board.

(c) The charter school application process and schedule shall be determined by the authorizer, and shall provide for and include, at a minimum, the following elements:

- (1) The issuance and publication of a request for proposals by the authorizer on the authorizer's internet website that, at a minimum:
 - (A) Solicits charter applications and presents the authorizer's strategic vision for chartering;
 - (B) Includes or directs applicant governing boards to the performance framework developed by the authorizer in accordance with section 302D-16;
 - (C) Includes criteria that will guide the authorizer's decision to approve or deny a charter application;
 - (D) States clear, appropriately detailed questions and provides guidelines concerning the format and content essential for applicant governing boards to demonstrate the capacities necessary to establish and operate a successful charter school; and
 - (E) Requires charter applications to provide or describe all essential elements, as determined by the authorizer, of proposed school plans;
- (2) The submission of a letter of intent to open and operate a start-up charter school or to convert a department school to a conversion charter school;
- (3) The timely submission of a completed charter application to the authorizer; provided that a charter application for a conversion charter school shall include certification and documentation that the charter application was approved by a majority of the votes cast by existing administrative, support, and teacher personnel, and parents of students at the existing department school; provided that:

- (A) This vote shall be considered by the authorizer to be the primary indication of the existing administrative, support, and teaching personnel, and parents' approval to convert to a charter school;
 - (B) The balance of stakeholders represented in the vote and the extent of support received in support of the conversion shall be key factors, along with the applicant's proposed plans, to be considered by the authorizer when deciding whether to award a charter; and
 - (C) A breakdown of the number of administrative, support, and teaching personnel, and parents of students who constitute the existing department school and the number who actually participated in the vote shall be provided to the authorizer;
- (4) The timely review of the charter application by the authorizer for completeness, and notification by the authorizer to the applicant governing board that the charter application is complete;
 - (5) Upon receipt of a completed charter application, the review and evaluation of the charter application by qualified persons including but not limited to:
 - (A) An in-person interview with representatives from the applicant governing board; and
 - (B) An opportunity in a public forum for the public to provide input on each charter application;
 - (6) Following the review and evaluation of a charter application, approval or denial of the charter application by the authorizer in a meeting open to the public;
 - (7) A provision for a final date by which a decision to approve or deny a charter application must be made by the authorizer, upon receipt of a complete charter application; and
 - (8) A provision that no charter school may begin operation before obtaining authorizer approval of its charter application and charter contract and fulfilling pre-opening requirements that may be imposed by the authorizer, pursuant to section 302D-14.5.
- (d) A charter application to become a start-up or conversion charter school shall meet the requirements of this subsection, section 302D-25, and any other requirements set by the authorizer. The charter application shall, at a minimum:
- (1) Include plans for a charter school that are likely to satisfactorily meet the academic, financial, organizational, and operational performance

indicators, measures, and metrics set forth in the authorizer's performance framework, pursuant to section 302D-16;

(2) Include plans for a charter school that is in compliance with applicable laws; and

(3) [Recognize] the interests of the general public.

(e) In reviewing a charter application under this section, an authorizer shall take into consideration the constitution of the applicant governing board, terms of applicant governing board members, and the process by which applicant governing board members were selected.

(f) In reviewing charter applications under this section, an authorizer shall develop a schedule to approve or deny a charter application by the end of the calendar year prior to the opening year of the proposed charter school for purposes of meeting any deadlines to request funding from the legislature; provided that nothing in this section shall be construed as requiring an authorizer to accept and review charter applications annually.

(g) If a conflict between the provisions in this section and other provisions in this chapter occurs, this section shall control. [L 2012, c 130, pt of §2; am L 2013, c 159, §8; am L 2014, c 99, §9; am L 2015, c 114, §5; am L 2016, c 113, §3]

" **§302D-14 REPEALED.** L 2015, c 114, §12.

" **§302D-14.5 Approved charter applications; start-up period; pre-opening charter schools.** (a) The authorizer may require an applicant governing board whose charter application is approved by the authorizer pursuant to section 302D-13 to satisfactorily meet pre-contracting criteria set by the authorizer before being allowed to enter into a charter contract.

(b) An approved applicant governing board that fails to satisfactorily meet the pre-contracting criteria and enter into a charter contract with its authorizer within the period initially established or subsequently extended by the authorizer shall be considered to have withdrawn its application.

(c) An applicant governing board shall not be considered an entity of the State, but shall have the authority to execute the initial charter contract; provided that the term of duration of the initial charter contract shall not exceed five years, not including the pre-opening period. Upon the execution of the initial charter contract, the applicant governing board shall become the governing board of the newly established pre-opening charter school. A pre-opening charter school that is a

conversion charter school shall be a separate entity of the State from the department school from which it is converting during the start-up period.

(d) The authorizer shall establish pre-opening criteria in order to ensure that a pre-opening charter school is prepared to successfully open and operate as a charter school. Until such time as the pre-opening school satisfactorily meets such pre-opening criteria and commences operations in its first full academic year, the pre-opening charter school:

- (1) Shall not be entitled to receive funding under section 302D-26, 302D-28, 302D-29, or 302D-29.5;
- (2) Shall employ no employees but may engage independent contractors;
- (3) Shall not be subject to the performance framework under section 302D-16; and
- (4) May be granted temporary exemptions from provisions of the charter contract by the authorizer.

(e) The charter contract of a pre-opening charter school that fails to satisfactorily meet its pre-opening criteria within the start-up period initially established or subsequently extended by the authorizer shall be void. The pre-opening charter school shall thereupon be considered an approved charter applicant that has withdrawn its application.

(f) An approved applicant governing board that withdraws its application shall not be allowed to execute a charter contract unless it reapplies and has its charter application approved by an authorizer in accordance with this chapter. [L 2014, c 99, pt of §1; am L 2015, c 114, §6]

" **§302D-15 Appeals; charter applications, renewals, or revocations.** (a) The board shall have the power to decide appeals of decisions by an authorizer to deny the approval of a charter application, deny renewal of a charter contract, or revoke a charter school's charter contract. An appeal shall be filed with the board within twenty-one calendar days of the receipt of the notification of denial or revocation. Only a party whose charter application has been denied, whose charter contract renewal has been denied, or whose charter contract has been revoked may initiate an appeal under this section for cause. The board shall review an appeal and issue a final decision within sixty calendar days of the filing of the appeal.

(b) The board shall serve as the final arbitrator of appeals authorized by subsection (a).

(c) A party shall not be entitled to a hearing before the board under this section until it has exhausted all available administrative remedies.

(d) The board shall adopt rules pursuant to chapter 91 to implement this section. [L 2012, c 130, pt of §2; am L 2013, c 159, §10]

" **§302D-16 Performance framework.** (a) The performance provisions within the charter contract shall be based on a performance framework that clearly sets forth the academic, financial, organizational, and operational performance indicators, measures, and metrics that will guide the authorizer's evaluations of each public charter school. The performance framework, as established by the authorizer, shall include indicators, measures, and metrics for, at a minimum:

- (1) Student academic proficiency;
- (2) Student academic growth;
- (3) Achievement gaps in proficiency and growth between major student subgroups;
- (4) Attendance;
- (5) Enrollment variance;
- (6) Postsecondary readiness, as applicable for high schools;
- (7) Financial performance and sustainability;
- (8) Performance and stewardship, including compliance with all applicable laws, rules, and terms of the charter contract; and
- (9) Organizational viability.

(b) Annual academic performance targets shall be set by each public charter school in conjunction with its authorizer, and shall be designed to track each school in meeting applicable federal, state, and authorizer expectations.

(c) The performance framework shall allow the inclusion of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance; provided that the authorizer approves the quality and rigor of such school-proposed indicators, and the indicators are consistent with the purposes of this chapter and the charter contract.

(d) The performance framework shall require the disaggregation of all student performance data by major student subgroups.

(e) For each public charter school it oversees, the authorizer shall be responsible for verifying and either maintaining or having access to all charter school data upon which the performance framework relies.

(f) Multiple schools overseen by a single governing board shall be required to report their performance as separate, individual charter schools, and each charter school shall be

held independently accountable for its performance. [L 2012, c 130, pt of §2; am L 2013, c 159, §11; am L 2014, c 99, §11]

" **§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. Every authorizer shall have the authority to conduct or require oversight activities that enable the authorizer to fulfill its responsibilities under this chapter, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this chapter and adhere to the terms of the charter contract.

(b) Each authorizer shall annually publish and provide, as part of its annual report to the board and the legislature, a performance report for each public charter school it oversees, in accordance with the performance framework set forth in the charter contract and section 302D-16. The authorizer may require each public charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school. The annual report may include the status of the charter school's compliance with annual performance targets, as determined by the charter contract.

(c) In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify the public charter school of the perceived problem and provide reasonable opportunity for the charter school to remedy the problem, unless the problem warrants revocation in which case the revocation time frames set forth in section 302D-18 shall apply.

(d) Notwithstanding section 302D-18 to the contrary, every authorizer shall have the authority to take appropriate corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in public charter school performance or legal compliance. Such actions or sanctions may include, if warranted:

- (1) Requiring a school to develop and execute a corrective action plan within a specified time frame; and
- (2) Reconstituting the governing board of the charter school; provided that the following conditions are met:
 - (A) Reconstitution occurs only under exigent circumstances, including the following:
 - (i) Unlawful or unethical conduct by governing board members;

- (ii) Unlawful or unethical conduct by the charter school's personnel that raises serious doubts about the governing board's ability to fulfill its statutory, contractual, or fiduciary responsibilities; and
 - (iii) Other circumstances that raise serious doubts about the governing board's ability to fulfill its statutory, contractual, or fiduciary responsibilities;
- (B) The authorizer shall replace up to, but no more than, the number of governing board members necessary so that the newly appointed members constitute a voting majority in accordance with the governing board's bylaws; except that the authorizer may replace the entire governing board if the alternative is the initiation of revocation of the charter school's charter contract and the governing board opts instead for reconstitution; and
- (C) Reconstitution occurs in accordance with processes set forth by the authorizer that provide the charter school's personnel and parents with timely notification of the prospect of reconstitution.

(e) The authorizer shall have the authority to direct the governing board and the charter school to take appropriate action to immediately address serious health and safety issues that may exist at a charter school in order to ensure the health and safety of students and employees or mitigate significant liability to the State.

The board shall have the authority to direct the authorizer to take appropriate action to immediately address serious health and safety issues that may exist at a charter school in order to ensure the health and safety of students and employees and mitigate significant liability to the State. [L 2012, c 130, pt of §2; am L 2014, c 99, §12; am L 2015, c 114, §7]

" **§302D-18 Renewals, revocations, and nonrenewals.** (a) A charter contract may be renewed for successive five-year terms of duration, although an authorizer may vary the terms based on performance, demonstrated capacities, and particular circumstances of each charter school. An authorizer may grant a renewal of a charter contract with specific conditions for necessary improvements to a charter school.

(b) The authorizer shall issue a charter school performance report and charter contract renewal application

guidance to any charter school whose charter contract is in its final contract year. The performance report shall summarize the charter school's performance record to date, based on the data required by this chapter and the charter contract, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the charter school that may jeopardize its position in seeking renewal.

(c) The renewal application guidance shall, at a minimum, provide an opportunity for the public charter school to:

- (1) Submit any corrections or clarifications to the performance report;
- (2) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;
- (3) Describe improvements undertaken or planned for the school; and
- (4) Detail the charter school's plans for the next charter term.

(d) The renewal application guidance shall include or refer explicitly to the criteria that will guide the authorizer's renewal decisions, which shall be based on the charter contract and be consistent with this chapter.

(e) No later than thirty days after the issuance of the performance report, the governing board of a charter school seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal guidance issued by the authorizer. The authorizer shall decide whether or not to renew the charter no later than forty-five days after the filing of the renewal application.

(f) In making charter renewal decisions, every authorizer shall:

- (1) Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;
- (2) Ensure that data used in making the renewal decisions are available to the charter school and the public; and
- (3) Provide a public report summarizing the evidence and basis for each decision.

(g) A charter contract may be revoked at any time or not renewed if the authorizer determines that the charter school did any of the following or otherwise failed to comply with the provisions of this chapter:

- (1) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;

- (2) Failed to meet or make sufficient progress toward performance expectations set forth in the contract;
 - (3) Failed to meet generally accepted standards of fiscal management; or
 - (4) Substantially violated any material provision of law from which the charter school is not exempted.
- (h) An authorizer shall develop revocation and nonrenewal processes that:
- (1) Provide charter contract holders with a timely notification of the prospect of revocation or non-renewal and the reasons for such possible closure;
 - (2) Allow charter contract holders a reasonable amount of time in which to prepare a response;
 - (3) Provide charter contract holders with an opportunity to submit documents and give testimony challenging the rationale for closure and supporting the continuation of the school at an orderly proceeding held for that purpose; provided that the proceeding shall be governed by the requirements set forth in this section and shall not be additionally subject to the requirements for an agency hearing under chapter 91;
 - (4) Allow charter contract holders access to representation by counsel, subject to section 28-8.3, and to call witnesses on their behalf;
 - (5) Permit the recording of proceedings described in paragraph (3); and
 - (6) After a reasonable period for deliberation, require a final determination to be made and conveyed in writing to the charter contract holders.
- (i) If an authorizer revokes or does not renew a charter contract, the authorizer shall clearly state in writing the reasons for the revocation or nonrenewal.
- (j) Within fifteen days of taking action to renew, not to renew, or to revoke a charter contract, the authorizer shall report to the board the action taken, and shall simultaneously provide a copy of the report to the charter school. The report shall set forth the action taken and reasons for the decision and assurances as to compliance with all the requirements set forth in this chapter. [L 2012, c 130, pt of §2; am L 2013, c 159, §12; am L 2014, c 99, §13; am L 2016, c 113, §4]

" **[§302D-19] School closure and dissolution.** (a) Prior to any public charter school closure decision, an authorizer shall have developed a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper

disposition of school funds, property, and assets in accordance with the requirements of this chapter. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the school and the authorizer. In the event of a public charter school closure for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.

(b) In the event of a public charter school closure for any reason, the assets of the school, excluding facilities, shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to creditors of the school, and then to the state treasury to the credit of the general fund. If the assets of the school are insufficient to pay all parties to whom the school owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

(c) In the event of a public charter school closure for any reason, if the public charter school received an appropriation for capital improvements to its facilities, the charter school or its authorizer shall negotiate with the expending agency for a lump sum or installment repayment to the State of the amounts appropriated. This restriction shall be registered, recorded, and indexed in the bureau of conveyances or with the assistant registrar of the land court as an encumbrance on the property. Amounts received from the repayment under this subsection shall be deposited into the general fund.

(d) In the event of a public charter school closure for any reason, other public charter schools shall have the right of first refusal for the closed public charter school's facilities, if the facilities are owned by the State. If no other public charter school exercises the right of first refusal, the facilities shall revert back to the department and the State. [L 2012, c 130, pt of §2]

" **[§302D-20] Charter transfers.** (a) Transfer of a charter contract, and of oversight of that public charter school, from one authorizer to another before the expiration of the charter term shall not be permitted except by special petition to the board by a public charter school or its authorizer. The board shall review such petitions on a case-by-case basis and may grant transfer requests in response to special circumstances and evidence that such a transfer would serve the best interests of the public charter school's students.

(b) The board may adopt rules pursuant to chapter 91 to carry out the purposes of this section. [L 2012, c 130, pt of §2]

" **§302D-21 Annual board report.** No later than the opening day of each regular session of the legislature, the board shall issue to the governor, the legislature, and the public, an annual report on the State's public charter schools, drawing from the annual reports submitted by every authorizer, as well as any additional relevant data compiled by the board, for the school year ending in the preceding calendar year. The annual report shall include:

- (1) The board's assessment of the successes, challenges, and areas for improvement in meeting the purposes of this chapter, including the board's assessment of the sufficiency of funding for public charter schools, and any suggested changes in state law or policy necessary to strengthen the State's public charter schools;
- (2) A line-item breakdown of all federal funds received by the department and distributed to authorizers;
- (3) Any concerns regarding equity and recommendations to improve access to and distribution of federal funds to public charter schools;
- (4) A summary of the criteria used by the charter school facilities funding working group, established pursuant to section 302D-29.5, in allocating facilities funding;
- (5) A detailed breakdown of the allocation of funding through general funds and bond funds;
- (6) A detailed list of the projects funded by general funds and bond funds;
- (7) The status of funding for projects previously awarded; and
- (8) A discussion of all board policies adopted in the previous year, including a detailed explanation as to whether each policy is or is not applicable to charter schools. [L 2012, c 130, pt of §2; am L 2013, c 159, §13; am L 2014, c 99, §14; am L 2015, c 114, §8 and c 234, §3]

" **§302D-22 REPEALED.** L 2013, c 159, §17.

" **[§302D-23] Minimum educational data reporting standards.** The board shall establish educational reporting standards that

shall include minimum standards for reporting fiscal, personnel, and student data, by means of electronic transfer of data files from charter schools to the department. The minimum standards established by the board shall include but not be limited to data required for the department, as the state education agency, to meet all applicable federal reporting requirements. [L 2012, c 130, pt of §2]

" **§302D-24 Occupancy and use of facilities of department schools.** (a) When the department considers whether to close any particular department school, the department shall submit a notice of possible availability of a department school or notice of vacancy of a department school to the board pursuant to section 302A-1151.5(b); provided that the department has not elected to use the department school to support education programs.

(b) If a charter school exclusively or jointly occupies or uses buildings or facilities of a department school immediately prior to converting to a charter school, upon conversion that charter school shall be given continued exclusive or joint use of the buildings or facilities; provided that:

- (1) The State may reclaim some or all of the buildings or facilities if it demonstrates a tangible and imperative need for such reclamation; and
- (2) The State and the conversion charter school voluntarily enter into an agreement detailing the portion of those buildings or facilities that shall be reclaimed by the State and a timetable for the reclamation. If a timetable cannot be reached, the State may petition the board for the reclamation, and the board may grant the petition only to the extent that it is not possible for the conversion charter school and the State to jointly occupy or use the buildings or facilities.

(c) Upon receipt of a notice pursuant to section 302A-1151.5(b), the board shall solicit applications from charter schools interested in using and occupying all or portions of the facilities of the department school by:

- (1) Promptly notifying all charter schools that the department school is being considered for closure; and
- (2) Affording each charter school an opportunity to submit an application with a written explanation and justification of why the charter school should be considered for possible occupancy and use of the facilities of the department school.

(d) After fully considering each charter school's application and based on the applications received and on other considerations, the board shall:

- (1) Provide a written response to each charter school's application after each application has been fully considered;
- (2) Compile a prioritized list of charter schools; and
- (3) Make a final determination of which charter school, if any, shall be authorized to use and occupy the department school facilities.

(e) Upon the selection of a charter school to use a vacant department school facility or portion of a department school facility, the department and the charter school's authorizer shall enter into necessary agreements within ninety days of the selection to carry out the purposes of this section; provided that any agreement between the authorizer and the department shall stipulate that a charter school that uses and occupies a department school facility or portion of a department school facility shall be responsible for the full or pro rata share of the repair and maintenance costs for that facility or portion of the facility, as the case may be.

(f) The board shall adopt policies and procedures necessary to carry out the purposes of this section, including but not limited to:

- (1) Procedures for charter schools to apply in writing to use vacant department school facilities;
- (2) Criteria for the board to use in determining which charter schools to include on the prioritized list to be submitted to the department; and
- (3) Procedures for the board to notify charter school applicants that are granted or denied the use of vacant department school facilities. [L 2012, c 130, pt of §2; am L 2014, c 99, §15]

Note

The reference to §302A-1151.5(b), relating to notice of public school site availability in subsections (a) and (c) is to former §302A-1151.5(b) that was deleted by L 2012, c 133, §22.

" **§302D-25 Applicability of state laws.** (a) Charter schools shall be exempt from chapters 91 and 92 and all other state laws in conflict with this chapter, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:

- (A) The exclusive representatives as defined in chapter 89 and the governing board of the charter school may enter into supplemental agreements that contain cost and noncost items to facilitate decentralized decision-making;
 - (B) The agreements shall be funded from the current allocation or other sources of revenue received by the charter school; provided that collective bargaining increases for employees shall be allocated by the department of budget and finance to the charter school's authorizer for distribution to the charter school; and
 - (C) These supplemental agreements may differ from the master contracts negotiated with the department;
- (2) Discriminatory practices under section 378-2; and
 - (3) Health and safety requirements.

(b) Charter schools, the commission, and authorizers shall be exempt from chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. Charter schools, the commission, and authorizers are encouraged to use the provisions of chapter 103D where possible; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the charter school, commission, or authorizer to any other provision of chapter 103D. Charter schools, the commission, and authorizers shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public.

(c) Charter schools and their employees, the commission and its employees, and governing boards and their members shall be subject to chapter 84.

(d) Any charter school, prior to the beginning of the school year, may enter into an annual contract with any department for centralized services to be provided by that department.

(e) Notwithstanding any law to the contrary, as public schools and entities of the State, a charter school, including its governing board, the commission, and any authorizer may not bring suit against any other entity or agency of the State.

(f) Charter schools, the commission, and authorizers shall be exempt from section 302A-1401.

(g) For purposes of statutory delegation of authority to department heads by other state agencies, the executive director shall be deemed the department head of the commission and

charter schools unless otherwise specifically provided. [L 2012, c 130, pt of §2; am L 2014, c 99, §16]

" **§302D-26 Civil service status; employee rights.** (a) Civil service employees of department schools shall retain their civil service status upon the conversion of their school to a conversion charter school. Positions in a conversion charter school that would be civil service in a department school shall be civil service positions and subject to chapter 76. An employee with civil service status at a conversion charter school who transfers, is promoted, or takes a voluntary demotion to another civil service position shall be entitled to all of the rights, privileges, and benefits of continuous, uninterrupted civil service. Civil service employees of a conversion charter school shall have civil service status in the department's civil service system and shall be entitled to all rights, privileges, and benefits as other civil service employees employed by the department. Exempt employees as provided in section 76-16(b)(11)(B) of a conversion charter school shall have support services personnel status in the department's support services personnel system and shall be entitled to all rights, privileges, and benefits as other exempt employees employed by the department in their support services personnel system.

(b) The State shall afford administrative, support, and instructional employees in charter schools full participation in the State's systems for retirement, workers' compensation, unemployment insurance, temporary disability insurance, and health benefits in accordance with the qualification requirements for each.

(c) The department, to the extent possible, shall provide its position listings to authorizers and any interested governing board of any charter school.

(d) The department, in conjunction with authorizers, shall facilitate the movement of instructional personnel between the department and charter schools; provided that:

- (1) Comparable and verifiable professional development and employee evaluation standards and practices, as determined and certified by the authorizers, are in place in charter schools for instructional staff;
- (2) Licensed charter school teachers, as determined by the Hawaii teacher standards board, who are not yet tenured in the department and are entering or returning to the department after employment at a charter school, shall be subject to a probationary period in the department pursuant to policies and

practices as determined by the department, the board, and collective bargaining agreements; and

- (3) Tenured department licensed teachers, as determined by the department, who transfer to charter schools shall be subject to the appropriate collective bargaining agreement.

(e) The department shall establish a process that permits employees of department public schools that become conversion charter schools pursuant to section 302D-13 to transfer to a department public school governed by chapter 302A. [L 2012, c 130, pt of §2; am L 2014, c 99, §17; am L 2015, c 112, §2 and c 114, §9]

" **[§302D-27] Administration of workers' compensation.** The department of human resources development shall administer workers' compensation claims for employees of charter schools, who shall be covered by the same self-insured workers' compensation system as other public employees. The department of human resources development shall process, investigate, and make payments on claims; provided that:

- (1) Charter schools shall compile the preliminary claim form and forward it to the department of human resources development; and
- (2) The department of human resources development shall receive no more than 0.07 per cent of the EDN 600 appropriation to process these workers' compensation claims. [L 2012, c 130, pt of §2]

" **§302D-28 Funding and finance.** (a) Beginning with fiscal year 2012-2013, and each fiscal year thereafter, the non-facility general fund per-pupil funding request for charter school students shall be the same as the general fund per-pupil amount to the department in the most recently approved executive budget recommendation for the department and shall be based upon reasonable projected enrollment figures for all charter schools. The general fund per-pupil request for each regular education and special education student shall:

- (1) Include all general fund regular education cost categories, including comprehensive school support services, but excluding special education services, adult education, and the after-school plus program; provided that these services are provided and funded by the department; and
- (2) Exclude fringe benefit costs and debt service.

(b) Fringe benefit costs for charter school employees, regardless of the payroll system utilized by a charter school, shall be included in the department of budget and finance's annual budget request. No fringe benefit costs shall be charged directly to or deducted from the charter school per-pupil allocations.

The legislature shall make an appropriation based upon the budget request; provided that the legislature may make additional appropriations for facility and other costs.

The governor, pursuant to chapter 37, may impose restrictions or reductions on charter school appropriations similar to those imposed on department schools.

(c) Notwithstanding any law to the contrary, to ensure non-facility per-pupil general fund amounts allocated for the department and charter school students are equal on an annualized fiscal year basis, each year the director of finance shall:

- (1) Determine the sum of general fund appropriations made for department and charter school student non-facility costs described in subsections (a) and (b);
- (2) Determine the sum of department and charter school student enrollment based on reviewed and verified student enrollment counts as of October 15;
- (3) Determine a per-pupil amount by dividing the sum of general fund appropriations determined under paragraph (1) by the sum of student enrollment determined under paragraph (2);
- (4) Transfer a general fund amount between the department and charter schools that will provide each with a per-pupil allocation equal to the amount determined on an annualized fiscal year basis under paragraph (3); and
- (5) Annually account for all calculations and transfers made pursuant to this subsection in a report to the legislature, governor, department, and charter schools.

This subsection shall not limit the ability of the director of finance to modify or amend any allotment pursuant to chapter 37.

(d) Charter schools shall be eligible for all federal financial support to the same extent as department schools. The department shall provide all authorizers with all state-level federal grant proposals submitted by the department that include charter schools as potential recipients and timely reports on state-level federal grants received for which charter schools may apply or are entitled to receive. Federal funds received by the department for charter schools shall be transferred to authorizers for distribution to the charter schools they authorize in accordance with the federal requirements. If

administrative services related to federal grants are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six per cent of the charter school's federal grants.

Any charter school shall be eligible to receive any supplemental federal grant or award for which any department school may submit a proposal, or any supplemental federal grants limited to charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to these supplemental grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six per cent of the supplemental grant for which the services are used.

All additional funds generated by the governing boards, that are not from a supplemental grant, shall be held separate from allotted funds and may be expended at the discretion of the governing boards.

(e) Authorizers shall calculate a general fund per-pupil amount based upon the amount of general funds appropriated by the legislature and released by the governor and the projected enrollment amount used to calculate the general funds appropriated pursuant to subsection (a).

Authorizers shall submit a report to the legislature no later than twenty days prior to the convening of each regular session that contains each charter school's current school year projection that is used to submit the budget request, the updated May 15 enrollment projection, the actual October 15 enrollment count, the authorizer's reviewed and verified enrollment count, and the November 15 enrollment count.

(f) To enable charter schools to access state funding prior to the start of each school year, foster their fiscal planning, enhance their accountability, and avoid over-allocating general funds to charter schools based on self-reported enrollment projections, authorizers shall:

- (1) Provide sixty per cent of a charter school's per-pupil allocation based on the charter school's projected student enrollment no later than July 20 of each fiscal year; provided that the charter school shall have submitted to its authorizer a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional thirty per cent of a charter school's per-pupil allocation no later than December 1 of each year, based on the October 15 student enrollment, as reviewed and verified by the

authorizer, only to schools in compliance with all financial reporting requirements; and

- (3) Retain no more than the balance of the remaining ten per cent of a charter school's per-pupil allocation, as a contingency balance to ensure fiscal accountability and compliance, no later than June 30 of each year;

provided that authorizers may make adjustments in allocations based on noncompliance with charter contracts and the board may make adjustments in allocations based on noncompliance with board policies made in the board's capacity as the state education agency, department directives made in the department's capacity as the state education agency, the board's administrative procedures, and board-approved accountability requirements.

(g) The department shall provide appropriate transitional resources to a conversion charter school for its first year of operation as a charter school based upon the department's allocation to the school for the year prior to the conversion.

(h) No charter school may assess tuition; provided that a charter school may assess and collect special fees and charges from students for co-curricular activities. Any special fees and charges collected pursuant to this subsection shall be deposited into insured checking or savings accounts and expended by each individual charter school. [L 2012, c 130, pt of §2; am L 2014, c 96, §17 and c 99, §18; am L 2016, c 113, §5]

" **[\$302D-28.5] Financial insolvency.** (a) In the event that any public charter school becomes financially insolvent, the school shall be deemed to have surrendered its charter. For purposes of this section, a school shall be determined to be financially insolvent when it is unable to pay its staff when payroll is due.

(b) In the event that any public charter school becomes financially insolvent, the authorizer shall adopt a closure protocol as described under section 302D-19(a). [L 2015, c 110, §1]

" **[\$302D-29] Weighted student formula.** (a) Notwithstanding section 302D-28, charter schools shall elect whether to receive allocations calculated according to the department's procedures and methodology used to calculate the weighted student formula allocation adopted pursuant to section 302A-1303.6; provided that:

- (1) All charter schools, as a group, with each governing board being accorded one vote, shall elect, by greater than two-thirds agreement among the governing boards, whether to receive allocations calculated through the department's procedures and methodology for the weighted student formula; provided that a nonprofit organization that governs more than one conversion charter school may cast one vote representing each school it governs; and
- (2) Any election by charter schools to receive allocations, or not to receive allocations, calculated through the procedures and methodology for the department's weighted student formula shall be made by September 1 of each even-numbered year, and the election shall apply to the fiscal biennium beginning July 1 of the following year.

(b) The charter schools, through their authorizer, may propose to the board an alternative weighted student formula, approved by more than two-thirds of the governing boards, with each governing board being accorded one vote, to be administered by the commission and to apply to the per-pupil allocation for charter schools. [L 2012, c 130, pt of §2]

" **§302D-29.5 Facilities funding.** (a) Beginning with the 2016-2017 fiscal year, and each fiscal year thereafter, the legislature shall consider making an appropriation and bond authorization to the commission for the design, planning, construction, repair, and maintenance of public charter school improvements to address issues of health, safety, and legal compliance; expand or improve instructional space; provide for food services; or provide restroom facilities. The appropriation and bond authorization for charter schools shall be separate from, and in addition to, any appropriation made to charter schools pursuant to this section and section 302D-28. These amounts shall be prioritized for allocation by the charter school facilities funding working group.

(b) The governor, pursuant to chapter 37, may impose restrictions or reductions on appropriations for charter schools similar to those imposed on department schools.

(c) This section shall not limit the ability of the director of finance to modify or amend any allotment pursuant to chapter 37.

(d) There is established a charter school facilities funding working group within the department of education, which shall consist of the following members, or their designees:

- (1) The chairperson of the commission;

- (2) The executive director of the commission;
- (3) The director of finance;
- (4) The comptroller;
- (5) The superintendent of education;
- (6) An individual with expertise in real estate, to be appointed by the chairperson of the commission; and
- (7) An individual with expertise in finance, to be appointed by the chairperson of the commission.

The commission shall develop criteria to determine the distribution of funds appropriated pursuant to subsection (a) to the charter schools. The criteria shall include distribution based on the need and performance of the charter schools, overall benefit to the surrounding community, amount of risk and availability of recourse to the State, and whether a particular charter school received facilities funding through other state funding, including grants-in-aid or a separate appropriation.

The charter school facilities funding working group shall be exempt from chapter 92 and shall act in an advisory capacity to prioritize the allocation of general fund appropriations and bond proceeds for public charter schools to expend based on the criteria established by the commission.

(e) Nothing in this section shall be construed as restricting the authority of the commission to support the facilities needs of the charter schools through other means. [L 2013, c 159, pt of §1; am L 2014, c 99, §19; am L 2015, c 234, §4]

" **§302D-30 Responsibilities of the department; special education services.** (a) The department shall collaborate with each authorizer to develop a system of technical assistance related to compliance with federal and state laws and access to federal and state funds. The department shall collaborate with each authorizer to develop a list of central services that the department may offer for purchase by a charter school at an annual cost to be negotiated between an individual charter school and the department. The department shall enter into a contract with a charter school to provide these services, which shall be renegotiated on an annual basis.

(b) The department shall be responsible for the provision of a free appropriate public education. Any charter school that enrolls special education students or identifies one of its students as eligible for special education shall be responsible for providing the educational and related services required by a student's individualized education program. The programs and services for the student shall be determined collaboratively by

the student's individualized education program team, which includes the student's parents or legal guardians.

If the charter school is unable to provide all of the required services, then the department shall provide the student with services as determined by the student's individualized educational program team. The department shall collaborate with the commission to develop guidelines related to the provision of special education services and resources to each charter school. The department shall review all of the current individualized education programs of special education students enrolled in a charter school and may offer staff, funding, or both, to the charter school based upon a per-pupil weighted formula implemented by the department and used to allocate resources for special education students in the department schools. [L 2012, c 130, pt of §2; am L 2014, c 99, §20]

" **§302D-31 Athletics.** The department shall provide students at charter schools, including students enrolled at charter schools whose curriculum incorporates virtual education, with the same opportunity to participate in athletics as is provided to students at department schools. If a student at any charter school wishes to participate in a sport for which there is no program at the charter school, the department shall allow that student to participate in a comparable program at the department school in the service area in which the student resides. All charter school students participating in athletics shall abide by all rules, regulations, and policies of the athletic league, association, and program applicable to the department school in whose athletic program the student is participating. [L 2012, c 130, pt of §2; am L 2013, c 159, §14; am L 2014, c 99, §21]

" **§302D-32 Annual audit or financial review.** Each charter school shall annually complete an independent financial audit that complies with the requirements of its authorizer and the department; provided that the authorizer shall have the discretion to allow a financial review in lieu of an independent financial audit. [L 2013, c 159, pt of §1; am L 2014, c 99, §22]

" **§302D-33 Criminal history record checks.** (a) The authorizer shall require charter schools to obtain verifiable information regarding the criminal history of persons who are employed or seeking employment in any position, including teacher trainees, that places them in close proximity to children, including criminal history record checks in accordance

with section 846-2.7. Information obtained pursuant to this subsection shall be used exclusively by the charter school for the purpose of determining whether a person is suitable for working in close proximity to children. All such decisions shall be subject to applicable federal laws and regulations.

(b) The employer or prospective employer may:

- (1) Refuse to allow or continue to allow teacher training;
- (2) Terminate the employment of any employee; or
- (3) Deny employment to an applicant,

if the person has committed a crime, and if the employer or prospective employer 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. Refusal, termination, or denial may occur only after appropriate investigation and notification to the employee or applicant of the results and planned action and after the employee or applicant is given an opportunity to meet and rebut the findings. Nothing in this subsection shall abrogate any applicable rights under chapter 76 or 89, or any administrative rule of the commission.

(c) Notwithstanding any other law to the contrary, for purposes of this section, the commission shall be exempt from section 831-3.1 and shall not be required to conduct investigations, notifications, or hearings in accordance with chapter 91. [L 2013, c 159, pt of §1; am L 2015, c 114, §10]

" **§302D-34 Enrollment.** (a) A public charter school shall not discriminate against any student or limit admission based on race, color, ethnicity, national origin, religion, gender, sexual orientation, income level, disability, level of proficiency in the English language, need for special education services, or academic or athletic ability.

(b) A start-up charter school:

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

- (3) Shall select students through a public lottery if, as described in paragraph (2), capacity is insufficient to enroll all students who have submitted a timely application;
- (4) May give an enrollment preference to students within a given age group or grade level and may be organized around a special emphasis, theme, or concept as stated in the charter school's application and as approved by the charter school's authorizer;
- (5) May give an enrollment preference to students enrolled in the charter school during the previous school year and to siblings of students already enrolled at the charter school;
- (6) May give an enrollment preference through a weighted lottery to educationally disadvantaged students. For the purposes of this paragraph:

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

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

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

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

(c) A conversion charter school shall:

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

- (A) For grades that were not in place when the school converted to a public charter school; and
- (B) For any seats still available at the charter school after the enrollment of all students desiring to attend the charter school who reside within the school's former geographic service area pursuant to section 302A-1143.

(d) *[Subsection repealed July 1, 2020. L 2016, c 55, §53.]* Any law to the contrary notwithstanding, the university laboratory school may conform its student enrollment profile to the standard prescribed by the University of Hawaii college of education in order to meet the University of Hawaii college of education's research requirements. [L 2013, c 159, pt of §1; am L 2014, c 99, §23; am L 2015, c 111, §§1, 5 and c 114, §11; am L 2016, c 113, §6]

Note

Review of university laboratory school's actual admissions data by state public charter school commission; reports to 2016-2020 legislature. L 2015, c 111, §2.

The 2015, c 114 amendment is exempt from the repeal and reenactment condition of L 2015, c 111, §5. L 2016, c 55, §54.

" **[\$302D-35] Use of vacant department facilities.** (a) When any department considers whether to close any particular facility, it shall give reasonable consideration to making all or portions of the facility available to public charter schools and early learning programs that are affiliated with a public charter school.

(b) Each department shall provide notice to the superintendent and state public charter school commission identifying suitable unused facilities that may be appropriate for:

- (1) Public charter schools; and
- (2) Early learning programs, including the pre-plus program, that are affiliated with a public charter school.

The department of accounting and general services shall inventory the suitable facilities, and, in determining suitability for educational reuse, priority shall be given to facilities on sites with sufficient space for three or more classrooms.

(c) The department of accounting and general services shall adopt rules pursuant to chapter 91 necessary to carry out the purposes of this section.

(d) For purposes of this section, "department" means all of the departments listed in section 26-4.

(e) Upon receipt of a notice pursuant to subsection (b), the state public charter school commission shall:

- (1) Solicit applications from public charter schools or early learning programs that are affiliated with a public charter school, respectively, that are interested in using and occupying all or portions of the facilities; and
- (2) Submit a prioritized list of public charter schools or early learning programs that are affiliated with a public charter school, respectively, to the department of accounting and general services for final determination of which public charter schools or early learning programs that are affiliated with a public charter school, if any, shall be authorized to use and occupy the facilities. [L 2015, c 234, §2]