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**Notice of Meeting  
STATE POST-SECONDARY EDUCATION COMMISSION**

**Date:** Thursday, August 18, 2022

**Time:** 10:45 a.m.

**Place:** University of Hawai'i at Mānoa  
Stan Sheriff Center  
Ed Wong Hospitality Suite  
1355 Lower Campus Road  
Honolulu, Hawai'i 96822

**See the Board of Regents website to access the live broadcast of the meeting and related updates: [www.hawaii.edu/bor](http://www.hawaii.edu/bor)**

**AGENDA**

- I. Call Meeting to Order**
- II. Approval of the Minutes of the April 18, 2019 Meeting**
- III. Public Comment Period:**

Individuals who are unable to provide testimony at this time will be allowed an opportunity to testify when specific agenda items are called.

All written testimony on agenda items received after posting of this agenda and up to 24 hours in advance of the meeting will be distributed to the board. Late testimony on agenda items will be distributed to the board within 24 hours of receipt. Written testimony may be submitted via the board's website through the testimony link provided on the Meeting Agendas, Minutes and Materials page. Testimony may also be submitted via email at [bor.testimony@hawaii.edu](mailto:bor.testimony@hawaii.edu), U.S. mail at 2444 Dole Street, Bachman 209, Honolulu, HI 96822, or facsimile at (808) 956-5156.

Those wishing to provide oral testimony virtually may register [here](#). Given the constraints with the format of hybrid meetings, individuals wishing to orally testify virtually must register no later than 8:30 a.m. on the day of the meeting in order to be accommodated. Registration for in-person oral testimony on agenda items will also be provided at the meeting location 15 minutes prior to the meeting and closed at the posted meeting time. It is highly recommended that written testimony be submitted in addition to registering to provide oral testimony. Oral testimony will be limited to three (3) minutes per testifier.

All written testimony submitted are public documents. Therefore, any testimony that is submitted orally or in writing, electronically or in person, for use in the public meeting process is public information and will be posted on the board's website.

- IV. Agenda Items**

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For disability accommodations, contact the board office at (808) 956-8213 or [bor@hawaii.edu](mailto:bor@hawaii.edu). Advance notice requested five (5) days in advance of the meeting.

- A. Adoption and Approval to Request the Governor's Final Approval for the Simultaneous Repeal of Hawai'i Administrative Rules Title 20, Chapter 40, "Rules of Practice and Procedure", and the Adoption of Chapter 40.1, "Rules of Practice and Procedure"

**V. Adjournment**

**DISCLAIMER – THE FOLLOWING ARE DRAFT MINUTES AND ARE SUBJECT TO CHANGE UPON APPROVAL BY THE STATE POST-SECONDARY EDUCATION COMMISSION**

**MINUTES**

**STATE POST-SECONDARY EDUCATION COMMISSION MEETING**

**APRIL 18, 2019**

**I. CALL MEETING TO ORDER**

Chair Lee Putnam called the meeting to order at 9:32 a.m. on Thursday, April 18, 2019, at Leeward Community College, Education Building, Room 201A/B, 96-045 Ala Ike Street, Pearl City, Hawai'i 96782.

Quorum (14): Chair Lee Putnam; Vice Chair Jeffrey Portnoy; Vice Chair Wayne Higaki; Regent Simeon Acoba; Regent Kelli Acopan; Regent Eugene Bal; Regent Ben Kudo; Regent Michael McEnerney; Regent Randy Moore; Regent Alapaki Nahale-a; Regent Jan Sullivan; Regent Robert Westerman; Regent Ernest Wilson Jr.; and Regent Stanford Yuen.

Excused (1): Regent Michelle Tagorda.

Others in attendance: President David Lassner; Vice President for Community Colleges John Morton; Vice President for Legal Affairs/University General Counsel Carrie Okinaga; Vice President for Academic Planning and Policy Donald Straney; Vice President for Research and Innovation Vassilis Syrmos; Vice President for Information Technology/Chief Information Officer Garret Yoshimi; Interim UH-Hilo (UHH) Chancellor Marcia Sakai; UH-West O'ahu (UHWO) Chancellor Maenette Benham; Honolulu Community College (HonCC) Chancellor Erika Lacro; Executive Administrator and Secretary to the Board of Regents (Board Secretary) Kendra Oishi; and others as noted.

**II. PUBLIC COMMENT PERIOD**

Board Secretary Oishi announced that the Board Office received no written testimony, and no individuals signed up to provide oral testimony.

**III. AGENDA ITEMS**

**A. Approval to Request the Governor's Approval to Hold a Public Hearing Regarding the Simultaneous Repeal of Hawai'i Administrative Rules Title 20, Chapter 40, "Rules of Practice and Procedure", and the Adoption of Chapter 40.1, "Rules of Practice and Procedure" for the State Post-Secondary Education Commission**

Chair Putnam explained that the State Post-Secondary Education Commission

(SPEC) formally consists of the members of the Board of Regents plus four additional members who have not been appointed and there are a sufficient number of members present to conduct business.

University General Counsel Okinaga explained that the proposed revisions to the Hawai'i Administrative Rules (HAR) is part of an effort to streamline the university's HARs. This specific action was previously approved by the Board in September 2017. However, the Attorney General noted that the SPEC should amend its own HARs, which is why the SPEC was convened today to address this matter.

Regent Moore moved to approve to request the Governor's approval to hold a public hearing regarding the simultaneous repeal of HAR Title 20, Chapter 40, "Rules of Practice and Procedure", and the adoption of Chapter 40.1, "Rules of Practice and Procedure" for the SPEC.

Chair Putnam requested Gary Takeuchi, Associate Vice President for Legal Affairs, to provide comment. AVP Takeuchi noted that the SPEC has not met in over ten years and there is no expectation that it would need to meet in the foreseeable future, but it is in statute and remains in existence in the event it is needed to accept certain federal funds, although such funds have not been provided for many years. There are a number of provisions in the current HAR Title 20, Chapter 40, that no longer apply and the proposed revisions would update and streamline the HARs. AVP Takeuchi noted that there are a few nonsubstantive corrections that need to be made to the proposed draft HAR revisions in Section 20-41.1-2 and Section 20-40.1-6.

Regent Moore agreed to amend his motion to request the Governor's approval to hold a public hearing regarding the simultaneous repeal of HAR Title 20, Chapter 40, "Rules of Practice and Procedure", and the adoption of Chapter 40.1, "Rules of Practice and Procedure" for the SPEC, to include the minor nonsubstantive amendments to the proposed draft HAR revisions, seconded by Regent Bal. The motion was put to a vote and carried unanimously.

Regent Yuen arrived at 9:36 a.m.

#### **IV. ADJOURNMENT**

There being no further business, Regent Moore moved to adjourn and Regent Wilson seconded, and with unanimous approval, the meeting was adjourned at 9:37 a.m.

Respectfully Submitted,

Kendra Oishi  
Executive Administrator and Secretary  
of the Board of Regents



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DTS 22538

August 11, 2022

**MEMORANDUM**

**TO:** Members  
State Post-Secondary Education Commission

**VIA:** David Lassner *David Lassner*  
Administrative Officer of State Post-Secondary Education Commission

**FROM:** Carrie K. S. Okinaga *Carrie K. S. Okinaga*  
Gary Y. Takeuchi *Gary Y. Takeuchi*  
Office of the Vice President for Legal Affairs and  
University General Counsel

**SUBJECT: RECOMMEND ADOPTION AND APPROVAL TO REQUEST THE GOVERNOR'S FINAL APPROVAL FOR THE SIMULTANEOUS REPEAL OF HAWAII ADMINISTRATIVE RULES TITLE 20, CHAPTER 40, "RULES OF PRACTICE AND PROCEDURE", AND THE ADOPTION OF CHAPTER 40.1, "RULES OF PRACTICE AND PROCEDURE"**

**I. SPECIFIC ACTION REQUESTED**

The administration requests that the State Post-Secondary Education Commission ("Commission") approve the simultaneous repeal of Chapter 20-40, Hawaii Administrative Rules ("HAR"), and adoption of Chapter 20-40.1, HAR, and request the Governor's final approval of these changes.

**II. RECOMMENDED EFFECTIVE DATE**

Upon approval.

**III. BACKGROUND INFORMATION**

In 1974, the Hawaii State Legislature established the Commission and the state post-secondary review program (the "review program") was established in 1994 via

Hawai'i Revised Statutes ("HRS") Chapter 305H.<sup>1</sup> The Commission was placed within the University of Hawai'i (the "University") for administrative purposes, and the University had certain oversight responsibility for post-secondary education under the review program.

In 2006, HRS Chapter 305H was repealed, and the statutory provisions governing the Commission were recodified in HRS §§ 304A-3151 to 3154. In 2013, the review program was moved to the Hawai'i Department of Commerce and Consumer Affairs ("DCCA"), when HRS Chapter 305J was enacted.<sup>2</sup>

Pursuant to HRS § 304A-3151, the Commission "shall consist of the members of the board of regents of the university, the provisions of section 78-4 notwithstanding,<sup>3</sup> and four other members who shall be broadly and equitably representative of the general public and public and private nonprofit and proprietary institutions of post-secondary education in the State and shall be appointed in accordance with section 26-34.<sup>4</sup> The commission shall be placed within the university for administrative purposes, and its administrative officer shall be the president of the university."

Because the Commission has been inactive for an extended period of time,<sup>5</sup> the four non-BOR Commission seats are currently vacant, and no one has been nominated to fill those seats. Nonetheless, the Commission can conduct meetings with a quorum, and take actions such as that requested here, so long as a majority of the members to which the Commission is entitled are in attendance.<sup>6</sup> Since the Commission consists of

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<sup>1</sup>HRS §305H-11 provided that: "The state post-secondary review program was to ensure that institutions participating in Title IV student financial assistance programs meet appropriate standards of educational quality and integrity by increasing the accountability of those institutions through expanded state oversight of the institutions."

<sup>2</sup>In light of the transfer of the review program to the DCCA, the University's Board of Regents ("BOR") was previously requested to approve moving forward with the rulemaking process to repeal HAR Chapter 20-42 governing the Hawaii State Postsecondary Review Program. The repeal of Chapter 20-42 went into effect on September 21, 2017.

<sup>3</sup> HRS § 78-4 concerns service on State boards and commissions, and provides among other things that no person shall serve on more than one state board or commission expressly created by a state statute or the state constitution.

<sup>4</sup> HRS § 26-34 concerns selection and terms of members of boards and commissions, and provides for gubernatorial appointment and Senate advice and consent.

<sup>5</sup> At the Commission's last meeting, on April 18, 2019 (for the sole purpose of approving a request to the Governor for approval to hold a public hearing on the subject rule amendments), it was reported that the Commission had not met in over ten years. See draft Minutes of the State Post-Secondary Education Commission Meeting, April 18, 2019, available at <https://www.hawaii.edu/offices/bor/regular/minute/201904180930.special.pdf>.

<sup>6</sup> HRS § 92-15 provides that unless otherwise specified in the legislation creating a board or commission or in any other law or ordinance, a majority of all the members to which the board or commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board or commission is entitled shall be necessary to make any action of the board or commission valid.

15 members (11 BOR members plus four other members), at least 8 Commission members can have a meeting and take action.

HRS § 304A-3152 specifically provides that:

The commission may cooperate with the federal government to qualify the State to receive funds made available under the Higher Education Act of 1965, Public Law 89-329, as amended from time to time, and in addition may serve as the state agency for the receipt of federal funds when federal legislation dealing with higher education or post-secondary education requires, as a condition of state receipt of such funds, the designation of a state agency that is broadly representative of the general public and of post-secondary education in the State and when agencies other than the commission created by this subpart may not qualify. The commission shall adopt appropriate rules not inconsistent with this subpart as may be required to administer this subpart. The rules shall be adopted in accordance with chapter 91.

Further, HRS § 91-2 requires each agency, including the Commission,<sup>7</sup> to “[a]dopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, and including a description of all forms and instructions used by the agency.”

Thus, the Commission is required to maintain a set of rules of practice and procedure, which can be found in Chapter 20-40, HAR. The current version of Chapter 20-40 is attached as Exhibit 1. However, as part of an extensive effort to repeal or amend various chapters of Title 20 of the HAR in order to improve management of the University by eliminating unnecessary or out-of-date rules, the administration seeks to repeal the current Chapter 20-40 in its entirety and adopt in its place Chapter 20-40.1 (the “Proposed Amendments”). Given the substantial amendment, rearrangement, and renumbering of sections proposed for Chapter 20-40, it is more efficient to simultaneously repeal the current chapter and adopt a new chapter, as permitted by §00-5-4.1 of the Hawai‘i Administrative Rules Drafting Manual.

Chapter 20-40 was last amended in 1995. The proposed adoption of Chapter 20-40.1 would retain certain portions of the existing Chapter 20-40, and:

- Remove definitions that are no longer necessary, given the transfer of the review program to the DCCA, and adjust other definitions.

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<sup>7</sup>HRS § 91-1 defines “agency” to include each state or county commission.

- Add provisions to better track the statutory language in HRS §§ 304A-3151 and -3152, which now govern the Commission.
- Adopt the BOR's rules of practice and procedure for rulemaking and declaratory rulings as the rules for the Commission to streamline the rules.
- Remove any rules relating to the review program (such as rules applicable to contested cases, currently in Subchapter 5 of Chapter 20-40), which is now under the jurisdiction of the DCCA.

A version of the proposed repeal of the current Chapter 20-40 and adoption of a Chapter 20-40.1 in standard format is attached as Exhibit 2. Given that certain sections of the existing Chapter 20-40 remain in the proposed Chapter 20-40.1, attached as Exhibit 3 is a Ramseyer format version of Chapter 20-40.1, showing changes to the current Chapter 20-40 and comments relating to the amendments.

#### **IV. PUBLIC HEARING**

At its meeting on April 18, 2019, the Commission unanimously approved agenda item III.A, which authorized requesting the Governor's approval to hold a public hearing regarding the simultaneous repeal of Chapter 20-40 and adoption of Chapter 20-40.1 in its place. On June 8, 2022, the Governor approved the Proposed Amendments, as well as those for other HAR chapters, for public hearing.

In accordance with HRS § 91-3, the public hearing notice was published in The Maui News on Saturday, June 25, 2022, and the Honolulu Star-Advertiser, Hawaii Tribune Herald, West Hawaii Today and The Garden Island newspapers on Sunday, June 26, 2022. The Proposed Amendments were available for public viewing in person at the University System Government Relations Office and regional public libraries, and on the University's website:

<https://www.hawaii.edu/offices/bor/adminrules/proposed.html>.

The University accepted public testimony on the Proposed Amendments from June 25, 2022, to July 28, 2022, and held a public hearing on July 28, 2022. The University did not receive any written or oral testimony on the Proposed Amendments. The Hearing Officer's Report containing the full record of the public hearing is attached hereto as Exhibit 4.

Given the outcome of the public hearing, the University does not have any further substantive changes to the Proposed Amendments.



**V. ACTION RECOMMENDED**

Approve the simultaneous repeal of Chapter 20-40 and adoption of Chapter 20-40.1, HAR, and transmittal to the Governor for final approval.

APPROVED/DISAPPROVED

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RANDOLPH G. MOORE

**Attachments:**

- Exhibit 1 Current version of HAR Chapter 20-40
- Exhibit 2 Standard Format of the Proposed Amendments to HAR Chapter 20-40.1
- Exhibit 3 Ramseyer Format of the Proposed Amendments to HAR Chapter 20-40.1
- Exhibit 4 Hearing Officer's Report

c: Kalbert Young, Vice President for Budget & Finance/CFO

TITLE 20  
UNIVERSITY OF HAWAII  
SUBTITLE 3  
STATE POSTSECONDARY EDUCATION COMMISSION  
CHAPTER 40  
RULES OF PRACTICE AND PROCEDURE

Subchapter 1 Rules of General Applicability

- §20-40-1 Statement of policy
- §20-40-2 Definitions
- §20-40-3 The commission
- §20-40-4 Public records
- §20-40-5 Severability
- §20-40-6 Appearances before the commission
- §20-40-7 Filing of documents
- §20-40-8 Computation of time
- §20-40-9 Continuance or extension of time
- §20-40-10 Amendment of documents
- §20-40-11 Retention of documents by the commission
- §20-40-12 Counsel for the commission

Subchapter 2 Proceedings Before the Commission

- §20-40-13 General
- §20-40-14 Appearances in a proceeding
- §20-40-15 Commission decision
- §20-40-16 Consolidations

Subchapter 3 Rules Applicable to Rulemaking Hearings

- §20-40-17 Notice of proposed rulemaking
- §20-40-18 Conduct of rulemaking hearing
- §20-40-19 Commission action
- §20-40-20 Emergency rulemaking
- §20-40-21 Petitions for adoption, amendment or repeal of rules
- §20-40-22 Filing and publication

Subchapter 4 Declaratory Rulings

- §20-40-23 Petition for declaratory rulings

Subchapter 5 Rules Applicable to Contested Cases

- §20-40-24 Delegation of powers

§20-40-1

§20-40-25 Procedure  
§20-40-26 Rules of evidence; official notice  
§20-40-27 Examination of evidence  
§20-40-28 Decisions and orders  
§20-40-29 Consultation by officials

Historical Note: This chapter is based substantially upon "Rules of Practice and Procedure" promulgated by the State postsecondary education commission. [Eff. 11/12/79; R JUN 22 1981]

## SUBCHAPTER 1

### RULES OF GENERAL APPLICABILITY

§20-40-1 Statement of policy. The following rules shall govern the practice and procedure before the State postsecondary education commission under chapter 91, HRS. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-2 Definitions. (a) As used in the rules prescribed by the commission, unless the context specifically requires otherwise:

"Administrative officer" means the president of the University of Hawaii.

"Chairperson" means the chairperson of the commission.

"Commission" means the State postsecondary education commission and for purposes of this rule shall not include committees of the commission.

"Committee" shall mean all committees of the commission including the executive committee of the commission and the committee of the whole.

"Contested case" means a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined by the commission after an opportunity for a hearing.

"Party" wherever used in these rules, shall mean each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in a contested case.

"Persons" includes individuals, partnerships, corporations, association, or public or private organizations of any character other than agencies.

"Petitioner" refers to the party on whose behalf a petition or application is made in proceedings involving petitions or applications for permission or authorization which the commission may give under statutory or other authority delegated to it.

"Proceedings" as used in these rules, shall mean

the commission's elucidation of the relevant facts and applicable law, consideration thereof and action with respect to a particular subject within the commission's jurisdiction. It does not apply to rulemaking hearings, contested cases or committee meetings.

"Rule" as used in these rules means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the commission. The term does not include matters concerning only the operation and management of internal affairs of the commission not affecting private rights of or procedures available to the public nor does it include declaratory rulings issued pursuant to section 91-8, HRS, to intra-agency memoranda.

"Rulemaking hearings" as used in these rules, shall mean all meetings where proposed rules or amendments or repeal thereof are to be presented for public comment as provided by chapter 91, HRS. It shall not apply to commission meetings relating to the operation and management of internal affairs of the commission nor to hearings for contested cases.

"Secretary" means the secretary of the commission.

"University" means the University of Hawaii.

(b) Unless otherwise specifically stated, the terms used in rules promulgated by the commission pursuant to powers granted by statute shall have the meaning defined by such statute.

(c) A rule which defines a term without express reference to the statute or to the rules of a portion thereof, defines such terms for all purposes as used both in the statute and in the rules, unless the context otherwise specifically requires.

(d) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things and words importing the plural may include the singular. Words importing the masculine gender may be applied to the feminine gender. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-3 The commission. (a) Office. The office of the commission is in the office of the secretary of the commission, situated in Honolulu, Hawaii. All communications to the commission shall be addressed to the "State Postsecondary Education Commission, University of Hawaii, State of Hawaii, Honolulu, Hawaii 96822," unless otherwise specifically directed.

(b) Hours. The office of the commission shall be open from 7:45 a.m. to 4:30 p.m. of each weekday except

holidays and unless otherwise provided by statute or executive order.

(c) Sessions. The commission shall meet annually and at such other times as required and may from time to time meet in each of the counties of Hawaii, Maui, and Kauai. The commission may meet in executive session, from which the public may be excluded as provided by chapter 92, HRS.

(d) Quorum and voting. A majority of the members to which the commission is entitled shall constitute a quorum at any proceeding or hearing. The concurrence of a majority of all the members to which the commission is entitled shall be necessary to make any action of the commission valid except for procedural action.

(e) Administrative officer. As stated in chapter 305H, HRS, the president of the University of Hawaii, as administrative officer of the commission, shall carry out the policies adopted by the commission.

(f) Unless otherwise provided in these rules, Robert's Rules of Order shall apply. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 80-1)

§20-40-4 Public records. (a) The term "public records" as used in this chapter is defined as in chapter 92, HRS.

(b) All public records of the commission shall be available for inspection during established office hours, subject to the limitations prescribed in chapter 92, HRS.

(c) All public records of the commission except as limited by chapter 92, HRS, shall be available to any person who requests them and pays the fees necessary, if any, as set by law.

(d) Requests for public information, for permission to inspect public records or for copies of public records will be handled with the regard for the dispatch of other public duties. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2, 92-50, 92-51, 92-52) (Imp: HRS §§305H-2, 91-2, 92-50, 92-51, 92-52)

§20-40-5 Severability. If any provision of these rules, or the application of them to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-6 Appearances before the commission. (a)

An individual may appear in his own behalf, a member of a partnership may represent the partnership, a bona fide officer of a corporation or association may represent the corporation or association, and an officer or employee of an agency of the State or a political subdivision of the State may represent such agency before the commission.

(b) A person may be represented by or with counsel or other duly qualified representative before the commission.

(c) When an individual acting in a representative capacity appears in person or signs a paper in practice before the commission, the personal appearance or signature shall constitute a representation to the commission that under the provisions of these rules and the law, the individual is authorized and qualified to represent the particular person on whose behalf the action is taken. The commission may at any time require any person appearing before the commission in a representative capacity to show his authority and qualification to act in such capacity.

[Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-7 Filing of documents. (a) All documents required to be filed with the commission shall be filed with the secretary. Such documents may be sent by mail or hand carried to the commission's office in Honolulu, Hawaii, within the time limit, if any, for such filing. The date on which the documents are actually received by the commission shall be deemed to be the date of filing.

(b) All documents must be signed by the party or a duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information, and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(c) The initial document filed by any person shall state on the first page thereof the name and mailing address of the person or persons who may be served with any documents filed. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-8 Computation of time. In computing any period of time prescribed by these rules or by order of the commission, provisions of section 1-29, HRS, shall apply. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-9 Continuance or extension of time.

Whenever a person or agency is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order or regulation, the chairperson may

- (1) Before the expiration of the prescribed period, with or without notice, extend such period; or
- (2) Upon motion, permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to the chairperson to be the result of excusable neglect.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-10 Amendment of documents.

If any document filed does not conform with the applicable rules of the commission as to the contents thereof, or is otherwise insufficient, the commission, on its own motion, or on motion of any interested person, may strike or dismiss such document or require its amendment. If amended, the document shall be effective as of the date of the original filing.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-11 Retention of documents by the

commission. All documents filed with or presented to the commission may be retained in the files of the commission. However, the commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace documents.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-12 Counsel for the commission.

The attorney general or a representative, in the capacity as counsel for the commission, may be present at all proceedings, hearings or contested cases governed by these rules. The attorney general or a representative shall be designated as counsel for the commission.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 28-4)

SUBCHAPTER 2

PROCEEDINGS BEFORE THE COMMISSION

§20-40-13 General. (a) The commission may on its own motion, or on petition of any interested person, group, organization or agency, hold such proceedings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the carrying out of its duties. For such purposes, it may call witnesses and call for the production of documents and other relevant statements. Procedures to be followed by the commission, shall, unless specifically prescribed in these rules, be such as in the opinion of the commission will best serve the purposes of such proceedings.

(b) Notice of any proceeding before the commission shall comply with section 92-7, HRS. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-14 Appearances in a proceeding. (a) No person shall be permitted to appear before the commission to speak on any matter which has been brought before a committee of the commission or which is listed as an exception under section 92-5, HRS, or which is not treated as a public record or not available to inspection under sections 92-50 and 92-51, HRS. This rule may be waived by a two-thirds vote of all commission members present at the meeting in question.

(b) Subject to the limitations of subsection (a) above, any person who wants to appear before the commission to present testimony must make a request to the secretary at least twenty-four hours prior to the meeting of the commission unless waived by a two-thirds vote of all commission members present at the meeting in question.

A written copy of such testimony must be submitted prior to the meeting unless waived by a two-thirds vote of all commission members present at the meeting in question.

The commission, upon two-thirds vote of all members present, shall have the authority to limit or terminate any testimony which it determines to be repetitious or made solely for purposes of delay. This rule shall not limit, however, the powers of the commission or its chairperson under section 20-40-3(f). [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-15 Commission decision. All final decisions of the commission in a proceeding shall be available for public inspection in the office of the commission or may be obtained upon request and upon



payment of charges, if any. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-16 Consolidations. The commission, upon its own initiation or upon motion, may consolidate for consideration or for other purposes two or more issues which involve substantially the same persons, or issues which are the same or closely related, if it finds that such consolidations will be conducive to the proper dispatch of its business and will not unduly delay the proceeding. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

### SUBCHAPTER 3

#### RULES APPLICABLE TO RULEMAKING HEARINGS

§20-40-17 Notice of proposed rulemaking. (a) When pursuant to a petition therefor, or upon its own motion, the commission proposes to issue, amend or repeal a rule, notice of proposed rulemaking will be published in accordance with chapters 91 and 92, HRS.

(b) A notice of the proposed issuance, amendment, or repeal of a rule shall include:

- (1) A statement of the date, time and place where the public hearing will be held.
- (2) Reference to the authority under which the issuance, amendment, or repeal of a rule is proposed.
- (3) A statement of the substance of the proposed rulemaking.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-18 Conduct of rulemaking hearing. (a) Public hearing. Unless otherwise specifically directed by the commission, all rulemaking hearings shall be held at Honolulu when the entire State or a major portion thereof is affected by the proposed issuance, amendment, or repeal of a rule. However, the commission may hold such hearings on a neighbor island if a written request for such a hearing is received by the commission within the time specified in the public notice. In all cases, however, written testimony may be received by the commission in accordance with these rules.

When a matter affects only a county other than Oahu, then the hearing shall be held in that county.

(b) Presiding officer. Each such rulemaking hearing shall be presided over by the chairperson or a

member of the commission as designated by the chairperson. The hearing shall be conducted in such a way as to afford interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the proceeding.

(c) Continuance of rulemaking hearing. Each such hearing shall be held at the time and place set in the notice of hearing, but may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement at the hearing.

(d) Order of hearing. At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(e) Conduct of hearing. All interested persons shall be given reasonable opportunity to submit written or oral testimony or evidence with respect to the matters specified in the notice of hearing. The conduct of the hearing and filing of all documents shall be in accord with sections 20-40-6 through 20-40-12. The presiding officer shall confine the testimony to the questions before the hearing and is empowered to confine the testimony so as to keep order. Every person testifying may be subject to questioning by any member of the commission or its counsel, but questioning by private persons shall not be permitted unless the presiding officer expressly permits it.

(f) Transcript of the testimony. Unless otherwise specifically ordered by the commission or the presiding officer, testimony given at the hearing need not be reported verbatim. All supporting written statements and data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, an original and fourteen copies of the exhibits shall be submitted. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-3)

§20-40-19 Commission action. At the final public hearing, the commission may make its decision or announce the date when its decision shall be made. The

commission will consider all relevant comments and material of record before taking final action in a rulemaking hearing. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-20 Emergency rulemaking. Notwithstanding the foregoing rules, if the commission finds that an imminent peril to public health, safety, or morals requires adoption, amendment or repeal of a rule upon less than twenty days notice of hearing, and states in writing its reason for such finding, it may proceed without prior notice of hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period not longer than one hundred twenty days without renewal. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-3)

§20-40-21 Petitions for adoption, amendment or repeal of rules. (a) Scope. Any interested persons, organization or agency may petition the commission for the issuance, amendment, modification or repeal of any rule as defined in this chapter.

(b) Form and contents. Petitions for rulemaking shall conform to the requirements of section 20-40-7. Such petition for rulemaking shall set forth the text of any proposed rule or amendment desired or shall specify the rule the repeal of which is desired and state concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the issuance, amendment or repeal of the rule and shall include any facts, views, arguments and data deemed relevant by petitioner. The commission may also require the petitioner to serve other persons, organizations or agencies known to be interested in the proposed rulemaking. No request for the issuance, amendment, modification or repeal of a rule which does not conform to the requirements set forth above will be considered by the commission.

(c) Procedure. The commission shall within thirty days following the filing of the petition either deny the petition in writing or initiate public rulemaking procedures. No public hearing, oral argument or other form of proceedings will be held directly on any such decision, but if the commission determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceedings, the procedures to be followed will be as set forth in sections 20-40-17 through 20-40-19. Where the commission determines that the petition does not

disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in material respect to comply with the requirements of these rules or where the petition does not concern a rule, the commission shall deny the petition and the petitioner will be so notified together with the grounds for such denial. The provisions of this section shall not operate to prevent the commission, on its own motion, from acting on any matter disclosed in any petition. [Eff. JUN 22 1981 (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-6)

§20-40-22 Filing and publication. (a) The commission, after obtaining the approval of the governor of any rule, shall file certified copies of the rule with the lieutenant governor.

(b) The commission shall also keep a compilation of all such rules adopted by the commission which are still in effect. Such compilation shall be supplemented, revised and made available to the public as provided by these rules and chapters 91 and 92, HRS. [Eff. JUN 22 1981 (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-4, 91-5)

#### SUBCHAPTER 4

#### DECLARATORY RULINGS

§20-40-23 Petition for declaratory rulings. (a) Form and contents. On petition of an interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. Petitions for the issuance of such orders shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest and shall conform to the requirements of section 20-40-7.

(b) Additional data and supporting authorities. The commission, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.

(c) Dismissal. The commission may, without notice or hearing, dismiss a petition or declaratory ruling which fails in material respect to comply with the requirements of this chapter.

(d) Request for hearing. Although in the usual

course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the commission may at its discretion order such proceeding set down for hearing. Any petitioner or party in interest, who desires a hearing on a petition for declaratory ruling, shall set forth in detail in a request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence will not permit the fair and expeditious disposition of the petition. In addition, to the extent that such request for hearing is dependent upon factual assertion, the petitioner shall accompany the request with an affidavit establishing such facts. In the event a hearing is ordered by the commission, sections 20-40-24 and 20-40-25 shall govern the proceedings.

(e) Declaratory ruling on commission's own motion. Notwithstanding the other provisions of this chapter, the commission may, on its own motion or upon request but without notice or hearing, issue a written declaratory order to terminate a controversy or to remove uncertainty. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-7, 91-8)

#### SUBCHAPTER 5

#### RULES APPLICABLE TO CONTESTED CASES

§20-40-24 Delegation of powers. The commission shall have the power to delegate the power to hear contested cases. The decision of said delegate shall be deemed to be the decision of the commission but may be subject to review by the commission on its own motion. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-25 Procedure. (a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

- (b) The notice shall include a statement of:
- (1) The date, time, place, and nature of hearing.
  - (2) The legal authority under which the hearing is to be held.
  - (3) The particular sections of the statutes and rules involved.
  - (4) An explicit statement in plain language of the issues involved and the facts alleged by the commission in support thereof; provided that, if the commission is unable to state such issues and facts in detail at the time the notice is served, the initial notice may

be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished.

(5) The fact that any party may retain counsel if so desired.

(c) Opportunities shall be afforded all parties to present evidence and argument on all issues involved.

(d) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(e) For the purpose of decisions, the record shall include:

(1) All pleadings, motions, intermediate rulings.

(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed.

(3) Offers of proof and rulings thereon.

(4) Proposed findings and exceptions.

(5) Report of the officer who presided at the hearing.

(6) Staff memoranda submitted to members of the commission in connection with their consideration of the case.

(f) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(g) No matters outside the record shall be considered by the agency in making its decision except as provided in this chapter.

(h) Any contested cases provided for by rules established by the commission shall, at a minimum, reflect the rules of procedure and evidence set forth in the rules of this subchapter. Any contested case hearing procedure required by federal or State law or regulation shall take precedence over the procedures established by this subchapter or by any rule or regulation established by the commission.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-9)

§20-40-26 Rules of evidence; official notice. In contested cases: (a) Any oral or documentary evidence may be received but the hearing board or officer shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The hearing board

or officer shall give effect to the rules of privilege recognized by law.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original.

(c) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.

(d) The hearing board or officer may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(e) Any documents filed in a contested case, other than evidence, shall conform to the requirements of section 20-40-7. In addition, all such documents shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2" x 14" in size except that tables, charts, and other documents may be larger, folded to the size of the documents to which they are attached. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-10)

§20-40-27 Examination of evidence. Whenever in a contested case the official who is to render the final decision has not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the commission itself, shall not be made until a proposal for decision containing a statement of reasons and including a determination of each issue of fact or law necessary to the proposed decision has been served upon the parties. An opportunity will be afforded to each party adversely affected to file exceptions and present argument to the official who is to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

[Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-28 Decisions and orders. Every decision and order adverse to a party to the proceeding, rendered by the commission in a contested case, shall be in writing or stated in the record and shall be

accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record. [Eff. JUN 22 1981 (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-12)]

§20-40-29 Consultation by officials. No official of the commission who renders a decision in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. [Eff. JUN 22 1981 (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-13)]



STATE POST-SECONDARY EDUCATION COMMISSION

Amendments to Chapters 20-40 and 20-41 and  
Adoption of Chapter 20-42, Hawaii Administrative Rules

(12/16/94)


SUMMARY

1. The heading of chapter 20-40 is amended.
2. §20-40-2 is amended.
3. §20-40-4 is amended.
4. §20-40-14 is amended.
5. §§20-40-24 to 20-40-29 are amended.
6. The heading of chapter 20-41 is amended.
7. §20-41-3 is amended.
8. A new chapter 20-42, Hawaii Administrative Rules, entitled "Hawaii State Postsecondary Review Program", is adopted.

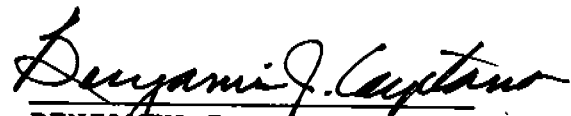
STATE POST-SECONDARY EDUCATION COMMISSION

Amendments to the heading of chapter 20-40, §§20-40-2, 20-40-4, 20-40-14, 20-40-24, 20-40-25, 20-40-26, 20-40-27, 20-40-28, 20-40-29, heading of chapter 20-41, §20-41-3, and addition of a new chapter 20-42, Hawaii Administrative Rules, were adopted on April 21, 1995, following public hearings held on April 17, 18, 19, and 20, 1995, after public notice was given in The Honolulu Advertiser on March 10, 1995.

The amendments and addition shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
\_\_\_\_\_  
ROY Y. TAKEYAMA  
Chairperson  
State Post-Secondary  
Education Commission


APPROVED:

  
\_\_\_\_\_  
BENJAMIN J. CAYETANO  
Governor  
State of Hawaii

Dated: July 6, 1995

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General

JUL 14 1995  
~~JUL 24 1995~~ 

Filed

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OFFICE  
LIEUTENANT GOVERNOR'S

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TITLE 20  
UNIVERSITY OF HAWAII  
SUBTITLE 3  
STATE POST-SECONDARY EDUCATION COMMISSION  
CHAPTER 40  
RULES OF PRACTICE AND PROCEDURE

§20-40-2 Definitions. (a) As used in the rules prescribed by the commission, unless the context specifically requires otherwise:

\*\*\*

"Commission" means the State post-secondary education commission and for purposes of this rule shall not include committees of the commission.

\*\*\*

"SPRE" means the commission acting as the State of Hawaii's State Postsecondary Review Entity, as defined in 34 C.F.R. §667.4, pursuant to HRS §305H-12 and chapter 20-42.

\*\*\* [Eff 6/22/1981; am JUL 24 1995 ]  
(Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 305H-11 to 305H-16, 91-2)

§20-40-4 Government records. (a) The term "government records" as used in this chapter is defined as in chapter 92F, HRS.

(b) All government records of the commission shall be available for inspection during established office hours, subject to the limitations prescribed in chapter 92F, HRS.

(c) All government records of the commission except as limited by chapter 92F, HRS, shall be available to any person who requests them and pays the fees necessary, if any, as set by law.

(d) Requests for public information, for permission to inspect government records or for copies of government records will be handled with the regard for the dispatch of other public duties. [Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2, chapter 92F) (Imp: HRS §§305H-2, 91-2, chapter 92F)

§20-40-14 Appearances in a proceeding. (a) Any person shall be afforded an opportunity to present oral testimony to the commission at a meeting on any agenda item.

(b) In order to ensure an orderly and efficient meeting, any person who wants to appear before the commission to present testimony is requested to notify the secretary of the commission at least twenty-four hours prior to the meeting of the commission and, if possible, submit a written copy of the testimony to the secretary prior to the meeting.

(c) The chairperson of a meeting shall have the authority to limit or terminate any testimony which the chairperson determines to be repetitious or made solely for purposes of delay. Further, the chairperson of the meeting shall have authority to remove any person who wilfully disrupts the conduct of a meeting and to impose other reasonable conditions to ensure an orderly and efficient meeting. This rule shall not limit, however, the powers of the commission or its chairperson under section 20-40-3(f). [Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

SUBCHAPTER 5

RULES APPLICABLE TO CONTESTED CASES

§20-40-24 Delegation of powers. The commission shall have the power to delegate the power to hear contested cases to a designated hearing officer. The proposed decision of the hearing officer shall be subject to review by the commission pursuant to the process set forth in section 20-40-27. [Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-25 Procedure. (a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of:

(1) The date, time, place, and nature of hearing.

(2) The legal authority under which the hearing is to be held.

(3) The particular sections of the statutes and rules involved.

(4) An explicit statement in plain language of the issues involved and the facts alleged by the commission or SPRE in support thereof; provided that, if the commission or SPRE is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished.

(5) The fact that any party may retain counsel if so desired.

(c) At least fifteen days before the hearing, a written notice of hearing shall be provided to all parties to the proceeding by certified mail, return receipt requested. Proof of receipt shall be evidenced by the delivery date indicated on the United States Postal Service return receipt card (green card).

(d) Opportunities shall be afforded all parties to present evidence and argument on all issues involved.

(e) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(f) For the purpose of decisions, the record shall include:

(1) All pleadings, motions, intermediate rulings.

(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed.

(3) Offers of proof and rulings thereon.

(4) Proposed findings and exceptions.

(5) Report of the officer who presided at the hearing.

(6) Staff memoranda submitted to members of the commission in connection with their consideration of the case.



(g) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(h) No matters outside the record shall be considered by the commission and the hearing officer in making a decision, except as provided in this chapter.

(i) Any contested case provided for by rules established by the commission shall, at a minimum, reflect the rules of procedure and evidence set forth in the rules of this subchapter. Any contested case hearing procedure required by federal or State law or regulation shall take precedence over the procedures established by this subchapter or by any rule or regulation established by the commission.

[Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-9, 91.9.5)

§20-40-26 Rules of evidence; official notice.

(a) Any oral or documentary evidence may be received but the commission and hearing officer shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The commission and hearing officer shall give effect to the rules of privilege recognized by law.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original.

(c) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.

(d) The commission and hearing officer may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(e) Any document filed in a contested case, other than evidence, shall conform to the requirements of section 20-40-7. In addition, all such documents shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2" x 14" in size except that tables, charts, and other documents may be larger, folded to the size of the documents to which they are attached. [Eff 6/22/81; am JUL 24 1995 ]  
 (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-10)

§20-40-27 Examination of evidence. Whenever in a contested case the hearing is not held by the commission, but delegated to a hearing officer, and the commission has not heard and examined all of the evidence, the decision shall not be made until a proposal for decision containing a statement of reasons and including a determination of each issue of fact or law necessary to the proposed decision has been served upon the parties. An opportunity will be afforded to each party to the proceeding adversely affected by the proposed decision, other than the commission or SPRE itself, to file exceptions to the proposed decision and present argument to the commission. The members of the commission shall personally consider the whole record of the contested case or such portions thereof as may be cited by the parties. [Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-11)

§20-40-28 Decisions and orders. Every decision and order rendered by the commission in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the commission shall incorporate in its decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record. [Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-12)

§20-40-29 Consultation by officials. No official or member of the commission who renders a decision in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. [Eff 6/22/81; am JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-13)

UNIVERSITY OF HAWAII

Repeal of Chapter 20-40 and  
Adoption of Chapter 20-40.1  
Hawaii Administrative Rules

( \_\_\_\_\_ )

SUMMARY

1. Chapter 20-40, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is repealed.

2. Chapter 20-40.1, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

SUBTITLE 3

STATE POST-SECONDARY EDUCATION COMMISSION

CHAPTER 40

RULES OF PRACTICE AND PROCEDURE

REPEALED

**§§20-40-1 to 20-40-29** Repealed. [R ]

HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

SUBTITLE 3

STATE POST-SECONDARY EDUCATION COMMISSION

CHAPTER 40.1

RULES OF PRACTICE AND PROCEDURE

§20-40.1-1	Statement of policy
§20-40.1-2	Definitions
§20-40.1-3	The commission; administrative officer; other officers
§20-40.1-4	Office; hours
§20-40.1-5	The commission's powers and authority
§20-40.1-6	Meetings
§20-40.1-7	Quorum and voting; Robert's Rules of Order
§20-40.1-8	Government records; inspection; cost of copies
§20-40.1-9	Counsel for the commission
§20-40.1-10	The University's administrative practice and procedure
§20-40.1-11	Severability

§20-40.1-1 **Statement of policy.** The following rules set forth the practices and procedures



§20-40.1-1

established by the State post-secondary education commission for carrying out its functions pursuant to sections 304A-3151 through 304A-3154, HRS. [Eff ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-2 **Definitions.** (a) As used in this chapter, unless the context specifically requires otherwise:

"Administrative officer" means the president of the University of Hawaii.

"Board" means the board of regents of the University of Hawaii.

"Chairperson" means the chairperson of the commission.

"Commission" means the State post-secondary education commission.

"Persons" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

"President" means the president of the University of Hawaii.

"Rule" as used in these rules means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the commission. The term does not include matters concerning only the operation and management of internal affairs of the commission not affecting private rights of or procedures available to the public nor does it include declaratory rulings issued pursuant to section 91-8, HRS, nor intra-agency memoranda.

"Rulemaking hearings" mean all meetings where proposed rules or amendments or repeal thereof are to be presented for public comment as provided by chapter 91, HRS.

"University" means the University of Hawaii.

(b) Unless otherwise specifically stated, the terms used in rules adopted by the commission pursuant to powers granted by statute shall have the meaning defined by that statute.

(c) A rule which defines a term without express reference to the statute or to the rules of a portion thereof, defines such terms for all purposes as used both in the statute and in the rules, unless the context otherwise specifically requires.

(d) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things, and words importing the plural may include the singular. Words importing the masculine gender may be applied to the feminine and neuter gender. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-3 **The commission; administrative officer; other officers.** (a) The commission shall consist of the members of the board and four other members who shall be appointed in accordance with section 26-34, HRS.

(b) The president shall be the administrative officer of the commission. The administrative officer shall carry out the policies adopted by the commission.

(c) The commission may elect a chairperson and/or such other officers from among the members of the commission as may be necessary to exercise and perform such other powers and duties as may from time to time be assigned by the commission. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-4 **Office; hours.** (a) The office of the commission is in the office of the administrative officer, situated in Honolulu, Hawaii. All

§20-40.1-4

communications to the commission shall be addressed to the "State Postsecondary Education Commission, University of Hawaii, Office of the President, Bachman Hall 202, 2444 Dole Street, Honolulu, Hawaii 96822," unless otherwise specifically directed.

(b) The office of the commission shall be open from 7:45 a.m. to 4:30 p.m. of each weekday except holidays and unless otherwise provided by statute or executive order. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-5 **The commission's powers and authority.** The commission may cooperate with the federal government to qualify the State to provide administrative action and/or receive funds made available under the Higher Education Act of 1965, Public Law 89-329, as amended from time to time, and in addition may serve as the state agency for the receipt of federal student information and/or federal funds when federal legislation dealing with higher education or post-secondary education requires, as a condition of state receipt of such funds, the designation of a state agency that is broadly representative of the general public and of post-secondary education in the state and when agencies other than the commission may not qualify.

The commission may exercise and perform any other powers and duties that the commission considers necessary, proper, or desirable in order to carry out effectively the duties and responsibilities of the commission as prescribed in this chapter or by statute. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-6 **Meetings.** (a) The commission shall meet as needed for administrative action and/or the receipt of federal student information and/or federal

funds. The commission may from time to time meet in any of the counties of the State of Hawaii. The commission may meet in executive session, from which the public may be excluded as provided by chapter 92, HRS.

(b) The commission may, at the request of the administrative officer or the members of the commission, hold meetings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in carrying out its duties. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-7 **Quorum and voting; Robert's Rules of Order.** (a) A majority of the members to which the commission is entitled shall constitute a quorum at any commission meeting. The concurrence of a majority of all the members to which the commission is entitled shall be necessary to make any action of the commission valid.

(b) The current (or most recent) edition of *Robert's Rules of Order* shall guide the conduct of the commission meetings except where in conflict with this chapter. No action of the commission shall be invalid or ineffective by reason of noncompliance with *Robert's Rules of Order*. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-8 **Government records; inspection; cost of copies.** (a) The term "government record" as used in this chapter is defined as in chapter 92F, HRS.

(b) All government records of the commission shall be available for inspection during established office hours of the administrative officer, subject to the limitations prescribed in chapter 92F, HRS.

(c) All government records of the commission except as limited by chapter 92F, HRS, shall be

§20-40.1-8

available to any person who requests them and pays the fees necessary, if any, as set by law.

(d) Requests for public information, for permission to inspect government records or for copies of government records will be handled with due regard for the dispatch of other public duties, subject to chapter 92F, HRS. [Eff ] (Auth: HRS §§91-2, 92F-11, 92F-12, 304A-3152) (Imp: HRS §§91-2, 92-21, 92F-11, 92F-12, 304A-3151, 304A-3152)

§20-40.1-9 **Counsel for the commission.** The university general counsel shall be designated as legal counsel for the commission. The university general counsel or the university general counsel's representative, in the capacity as legal counsel for the commission, may be present at all meetings and hearings governed by this chapter. [Eff ] (Auth: HRS §§91-2, 304A-1005, 304A-3152) (Imp: HRS §§91-2, 304A-1005, 304A-3151, 304A-3152)

§20-40.1-10 **The university's administrative practice and procedure.** The rules applicable to rulemaking hearings and declaratory rulings, as set forth in the rules of practice and procedure of the board of regents for the university within subchapter 3 and subchapter 4 of chapter 20-1.1, Hawaii Administrative Rules, shall be incorporated by reference and made a part of this chapter. [Eff ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-11 **Severability.** If any provision of these rules, or the application of them to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the

rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable. [Eff ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

UNIVERSITY OF HAWAII

The repeal of chapter 20-40 and the adoption of chapter 20-40.1, Hawaii Administrative Rules, on the Summary Page dated \_\_\_\_\_, were adopted on \_\_\_\_\_, following a public hearing held on \_\_\_\_\_, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune Herald, West Hawaii Today, The Garden Island, and The Maui News \_\_\_\_\_ on \_\_\_\_\_.

The repeal of chapter 20-40 and the adoption of chapter 20-40.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.

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DAVID LASSNER  
Administrative Officer,  
State Post-Secondary  
Education Commission

APPROVED:

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DAVID Y. IGE  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

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Filed

APPROVED AS TO FORM:

University of Hawaii

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Carrie K. S. Okinaga, Esq.  
Vice President for Legal Affairs and  
University General Counsel

Department of the Attorney General

---

Lori N. Tanigawa  
Deputy Attorney General



UNIVERSITY OF HAWAII

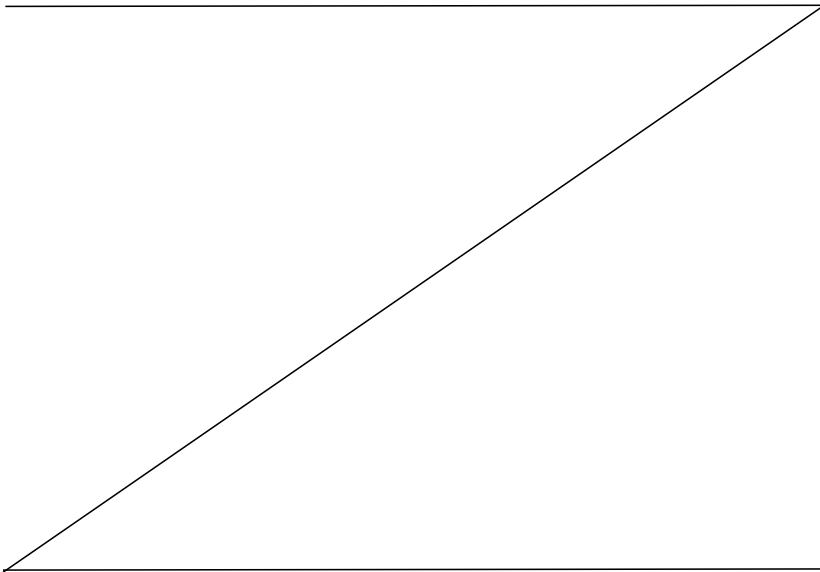
Repeal of Chapter 20-40 and  
Adoption of Chapter 20-40.1  
Hawaii Administrative Rules

( \_\_\_\_\_ )

SUMMARY

1. Chapter 20-40, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is repealed.

2. Chapter 20-40.1, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is adopted ~~to read as follows:.~~



"HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

SUBTITLE 3

STATE POST-SECONDARY EDUCATION COMMISSION

CHAPTER 40.1

RULES OF PRACTICE AND PROCEDURE

~~Subchapter 1 — Rules of General Applicability~~

<del>§20-40.1-1</del>	<del>Statement of policy</del>
<del>§20-40.1-2</del>	<del>Definitions</del>
<del>§20-40-3</del>	<del>The commission</del>
<del>§20-40.1-3</del>	<del>The commission; administrative officer; other officers</del>
<del>§20-40-4</del>	<del>Public records</del>
<del>§20-40.1-4</del>	<del>Office; hours</del>
<del>§20-40-5</del>	<del>Severability</del>
<del>§20-40.1-5</del>	<del>The commission's powers and authority</del>
<del>§20-40-6</del>	<del>Appearances before the commission</del>
<del>§20-40.1-6</del>	<del>Meetings</del>
<del>§20-40-7</del>	<del>Filing of documents</del>
<del>§20-40.1-7</del>	<del>Quorum and voting; Robert's Rules of Order</del>
<del>§20-40-8</del>	<del>Computation of time</del>
<del>§20-40.1-8</del>	<del>Government records; inspection; cost of copies</del>
<del>§20-40-9</del>	<del>Continuance or extension of time</del>
<del>§20-40.1-9</del>	<del>Counsel for the commission</del>
<del>§20-40-10</del>	<del>Amendment of documents</del>
<del>§20-40.1-10</del>	<del>The University's administrative practice and procedure</del>
<del>§20-40-11</del>	<del>Retention of documents by the commission</del>
<del>§20-40.1-11</del>	<del>Severability</del>
<del>§20-40-12</del>	<del>Counsel for the commission</del>

~~Subchapter 2 — Proceedings Before the Commission~~

- ~~§20-40-13 General~~
- ~~§20-40-14 Appearances in a proceeding~~
- ~~§20-40-15 Commission decision~~
- ~~§20-40-16 Consolidations~~

~~Subchapter 3 — Rules Applicable to Rulemaking Hearings~~

- ~~§20-40-17 Notice of proposed rulemaking~~
- ~~§20-40-18 Conduct of rulemaking hearing~~
- ~~§20-40-19 Commission action~~
- ~~§20-40-20 Emergency rulemaking~~
- ~~§20-40-21 Petitions for adoption, amendment or repeal of rules~~
- ~~§20-40-22 Filing and publication~~

~~Subchapter 4 — Declaratory Rulings~~

- ~~§20-40-23 Petition for declaratory rulings~~

~~Subchapter 5 — Rules Applicable to Contested Cases~~

- ~~§20-40-24 Delegation of powers~~
- ~~§20-40-25 Procedure~~
- ~~§20-40-26 Rules of evidence; official notice~~
- ~~§20-40-27 Examination of evidence~~
- ~~§20-40-28 Decisions and orders~~
- ~~§20-40-29 Consultation by officials~~

~~SUBCHAPTER 1~~

~~RULES OF GENERAL APPLICABILITY~~

§20-40.1-1 **Statement of pPolicy.** The following rules ~~shall govern~~set forth the practices~~s~~ and

procedures ~~before established by~~ the State post-secondary education commission ~~for carrying out its functions under chapter 91, pursuant to sections 304A-3151 through 304A-3154,~~ HRS. [~~Eff 06/22/81, am and eomp~~ \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-2 **Definitions.** (a) As used in ~~the rules prescribed by the commission this chapter,~~ unless the context specifically requires otherwise:

"Administrative officer" means the president of the University of Hawaii.

"Board" means the board of regents of the University of Hawaii.

"Chairperson" means the chairperson of the commission.

"Commission" means the State post-secondary education commission ~~and for purposes of this rule shall not include committees of the commission.~~

"Committee" ~~shall mean all committees of the commission including the executive committee of the commission and the committee of the whole.~~

"Contested case" ~~means a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined by the commission after an opportunity for a hearing.~~

"Party" ~~wherever used in these rules, shall mean each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in a contested case.~~

"Persons" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

"Petitioner" ~~refers to the party on whose behalf a petition or application is made in proceedings involving petitions or applications for permission or authorization which the commission may give under statutory or other authority delegated to it.~~

"Proceedings" ~~as used in these rules, shall mean the commission's elucidation of the relevant facts and applicable law, consideration thereof and action with~~

**Commented [TTT1]:** Certain definitions are removed as no longer necessary in light of the transfer of the state post-secondary review program to the DCCA via HRS Chapter 305H.

~~respect to a particular subject within the commission's jurisdiction. It does not apply to rulemaking hearings, contested cases or committee meetings.~~

"President" means the president of the University of Hawaii.

"Rule" as used in these rules means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the commission. The term does not include matters concerning only the operation and management of internal affairs of the commission not affecting private rights of or procedures available to the public nor does it include declaratory rulings issued pursuant to section 91-8, HRS, nor to ~~intra-agency memoranda.~~

"Rulemaking hearings" as used in these rules, shall mean all meetings where proposed rules or amendments or repeal thereof are to be presented for public comment as provided by chapter 91, HRS. It shall not apply to commission meetings relating to the operation and management of internal affairs of the commission nor to hearings for contested cases.

~~"Secretary" means the secretary of the commission.~~

~~"SPRE" means the commission acting as the State of Hawaii's State Postsecondary Review Entity, as defined in 34 C.F.R. §667.4, pursuant to HRS §305H-12 and chapter 20-42.~~

"University" means the University of Hawaii.

(b) Unless otherwise specifically stated, the terms used in rules ~~promulgated~~ adopted by the commission pursuant to powers granted by statute shall have the meaning defined by ~~such that~~ such statute.

(c) A rule which defines a term without express reference to the statute or to the rules of a portion thereof, defines such terms for all purposes as used both in the statute and in the rules, unless the context otherwise specifically requires.

(d) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things, and words importing the plural may include the singular. Words importing the masculine gender may be applied to the feminine and neuter gender. [~~Eff 06/22/81; am 07/24/95; am and comp~~

\_\_\_\_\_ ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-3 The commission; administrative officer; other officers. (a) The commission shall consist of the members of the board and four other members who shall be appointed in accordance with section 26-34, HRS.

(b) The president shall be the administrative officer of the commission. The administrative officer shall carry out the policies adopted by the commission.

(c) The commission may elect a chairperson and/or such other officers from among the members of the commission as may be necessary to exercise and perform such other powers and duties as may from time to time be assigned by the commission. [Eff

\_\_\_\_\_ ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

**Commented [TTT2]:** Subsections (a) and (b) track the statutory language in HRS § 304A-3151.

**Commented [TTT3]:** Subsection (c) is broadly stated to allow the Commission to elect officers as it deems necessary to carry out its functions.

§20-40.1-4 Office; hours. (a) ~~Office.~~—The office of the commission is in the office of the ~~secretary of the commission~~ administrative officer, situated in Honolulu, Hawaii. All communications to the commission shall be addressed to the "State Postsecondary Education Commission, University of Hawaii, ~~State of Hawaii~~ Office of the President, Bachman Hall 202, 2444 Dole Street, Honolulu, Hawaii 96822," unless otherwise specifically directed.

(b) ~~Hours.~~—The office of the commission shall be open from 7:45 a.m. to 4:30 p.m. of each weekday except holidays and unless otherwise provided by statute or executive order. [Eff \_\_\_\_\_ ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

**Commented [TTT4]:** It is proposed that the Commission's office be in the office of the administrative officer given that, by statute, the Commission shall have an administrative officer.

§20-40.1-5 The commission's powers and authority. The commission may cooperate with the federal government to qualify the State to provide

administrative action and/or receive funds made available under the Higher Education Act of 1965, Public Law 89-329, as amended from time to time, and in addition may serve as the state agency for the receipt of federal student information and/or federal funds when federal legislation dealing with higher education or post-secondary education requires, as a condition of state receipt of such funds, the designation of a state agency that is broadly representative of the general public and of post-secondary education in the state and when agencies other than the commission may not qualify.

The commission may exercise and perform any other powers and duties that the commission considers necessary, proper, or desirable in order to carry out effectively the duties and responsibilities of the commission as prescribed in this chapter or by statute. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

**Commented [TTT5]:** This paragraph tracks the language of HRS § 304A-3152.

**Commented [TTT6]:** This paragraph is proposed as a catch-all clause to allow the Commission the authority to act as it deems necessary.

§20-40.1-6 Meetings.

~~(e) Sessions.~~ (a) The commission shall meet as needed for administrative action and/or the receipt of federal student information and/or federal funds. The commission annually and at such other times as required and may from time to time meet in each any of the counties of the State of Hawaii, Maui, and Kauai. The commission may meet in executive session, from which the public may be excluded as provided by chapter 92, HRS.

(b) The commission may, at the request of the administrative officer or the members of the commission, hold meetings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in carrying out its duties. [Eff \_\_\_\_\_] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-7 Quorum and voting; Robert's Rules of Order. (a) ~~(d) Quorum and voting.~~ A majority of the

members to which the commission is entitled shall constitute a quorum at any ~~proceeding or hearing~~commission meeting. The concurrence of a majority of all the members to which the commission is entitled shall be necessary to make any action of the commission valid ~~except for procedural action~~.

~~(be) Administrative officer. As stated in chapter 305H, HRS, the president of the University of Hawaii, as administrative officer of the commission, shall carry out the policies adopted by the commission.~~

~~(f) The current (or most recent) edition of Robert's Rules of Order shall guide the conduct of the commission meetings except where in conflict with this chapter. No action of the commission shall be invalid or ineffective by reason of noncompliance with Robert's Rules of Order. Unless otherwise provided in these rules, Robert's Rules of Order shall apply. -[Eff 06/22/81; am and comp~~

~~]~~ (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

§20-40.1-84 Government records; inspection; cost of copies. Public records. (a) The term "government records" as used in this chapter is defined as in chapter 92F, HRS.

(b) All government records of the commission shall be available for inspection during established office hours of the administrative officer, subject to the limitations prescribed in chapter 92F, HRS.

(c) All government records of the commission except as limited by chapter 92F, HRS, shall be available to any person who requests them and pays the fees necessary, if any, as set by law.

(d) Requests for public information, for permission to inspect government records or for copies of government records will be handled with due the regard for the dispatch of other public duties, subject to chapter 92F, HRS. [Eff ~~06/22/81; am~~ 07/24/95; am and comp] (Auth: HRS §§91-2, 92F-11, 92F-12, 304A-3152) (Imp: HRS §§91-2, 92-21, 92F-11, 92F-12, 304A-3151, 304A-3152)



§20-40.1-9 Counsel for the commission. The university general counsel shall be designated as legal counsel for the commission. The university general counsel or the university general counsel's representative, in the capacity as legal counsel for the commission, may be present at all meetings and hearings governed by this chapter. [Eff ] (Auth: HRS §§91-2, 304A-1005, 304A-3152) (Imp: HRS §§91-2, 304A-1005, 304A-3151, 304A-3152)

**Commented [TT7]:** Under the current HAR § 20-40-12, the AG is said to be the Commission's counsel. However, given that the Commission is placed under UH for administrative purposes, it would be consistent with the practice for other administratively attached entities that the University general counsel be designated as its legal counsel.

§20-40.1-10~~5~~ The university's administrative practice and procedure. The rules applicable to rulemaking hearings and declaratory rulings, as set forth in the rules of practice and procedure of the board of regents for the university, ~~as amended within subchapter 3 and subchapter 4 of chapter 20-1.1, Hawaii Administrative Rules,~~ shall be incorporated by reference and made a part of this chapter. [Eff ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

**Commented [TT8]:** It is uncertain whether the Commission will ever need rules relating to rulemaking and declaratory rulings (which are current in Subchapters 2 and 3 of Chapter 40). In an effort to streamline this chapter, it is proposed that this section be added to incorporate the BOR's rules relating to rulemaking and declaratory rulings in HAR Chapter 1, which is currently in the rulemaking process.

§20-40.1-11 Severability. If any provision of these rules, or the application of them to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable. [Eff ~~06/22/81, am and comp~~ ] (Auth: HRS §§91-2, 304A-3152) (Imp: HRS §§91-2, 304A-3151, 304A-3152)

~~§20-40-6 Appearances before the commission. (a) Any individual may appear in his own behalf, a member~~

~~of a partnership may represent the partnership, a bona fide officer of a corporation or association may represent the corporation or association, and an officer or employee of an agency of the State or a political subdivision of the state may represent such agency before the commission.~~

~~(b) A person may be represented by or with counsel or other duly qualified representative before the commission.~~

~~(c) When an individual acting in a representative capacity appears in person or signs a paper in practice signature shall constitute a representation to the commission that under the provisions of these rules and the law, the individual is authorized and qualified to represent the particular person on whose behalf the action is taken. The commission may at any time require any person appearing before the commission in a representative capacity to show his authority and qualification to act in such capacity. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

~~§20-40-7 **Filing of documents.** (a) All documents required to be filed with the commission shall be filed with the secretary. Such documents may be sent by mail or hand carried to the commission's office in Honolulu, Hawaii, within the time limit, if any, for such filing. The date on which the documents are actually received by the commission shall be deemed to be the date of filing.~~

~~(b) All documents must be signed by the party or a duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information, and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.~~

~~(c) The initial document filed by any person shall state on the first page thereof the name and mailing address of the person or persons who may be~~

~~served with any documents filed. [Eff 06/22/81; am and comp  
] (Auth: HRS §§305H-2, 91-2).  
(Imp: HRS §§305H-2, 91-2)~~

~~§20-40-8 **Computation of time.** In computing any period of time prescribed by these rules or by order of the commission, the provisions of section 1-29, HRS, shall apply. [Eff 06/22/81; am and comp  
] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2).~~

~~§20-40-9 **Continuance or extension of time.** Whenever a person or agency is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order of regulation, the chairperson may~~

- ~~(1) Before the expiration of the prescribed period, with or without notice, extend such period; or~~
- ~~(2) Upon motion, permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to the chairperson to be the result of excusable neglect. [Eff 06/22/81; am and comp  
] (Auth: HRS §§305H-2, 91-2).  
(Imp: HRS §§305H-2, 91-2)~~

~~§20-40-10 **Amendment of documents.** If any document filed does not conform with the applicable rules of the commission as to the contents thereof, or is otherwise insufficient, the commission, on its own motion, or on motion of any interested person, may strike or dismiss such document or require its amendment. If amended, the document shall be effective as of the date of the original filing. [Eff 06/22/81; am and comp  
] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

~~§20-40-11 Retention of documents by the commission.~~ All documents filed with or presented to the commission may be retained in the files or the commission. However, the commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace documents. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: ~~HRS §§305H-2, 91-2~~) (Imp: ~~HRS §§305H-2, 91-2~~)

~~§20-40-12 Counsel for the commission.~~ The attorney general or a representative, in the capacity as counsel for the commission, may be present at all proceedings, hearings or contested cases governed by these rules. The attorney general or a representative shall be designated as counsel for the commission. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: ~~HRS §§305H-2, 91-2~~) (Imp: ~~HRS §§305H-2, 91-2, 28-4~~)

#### ~~SUBCHAPTER 2~~

#### ~~PROCEEDINGS BEFORE THE COMMISSION~~

~~§20-40-13 General.~~ (a) The commission may on its own motion, or on petition or any interested person, group, organization or agency, hold such proceedings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the carrying out of its duties. For such purposes, it may call witnesses and call for the production of documents and other relevant statements. Procedures to be followed by the commission, shall, unless specifically prescribed in these rules, be such as in the opinion of the commission will best serve the purposes of such proceedings.

(b) Notice of any proceeding before the commission shall comply with section 92-7, HRS. [Eff

~~06/22/81; am and comp \_\_\_\_\_ ] (Auth: HRS  
§§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

~~§20-40-14 **Appearances in a proceeding.** (a) Any person shall be afforded an opportunity to present oral testimony to the commission at a meeting on any agenda item.~~

~~(b) In order to ensure an orderly and efficient meeting, any person who wants to appear before the commission to present testimony is requested to notify the secretary of the commission at least twenty-four hours prior to the meeting of the commission and, if possible, submit a written copy of the testimony to the secretary prior to the meeting.~~

~~(c) The chairperson of a meeting shall have the authority to limit or terminate any testimony which the chairperson determines to be repetitious or made solely for purposes of delay. Further, the chairperson of the meeting shall have authority to remove any person who willfully disrupts the conduct of a meeting and to impose other reasonable conditions to ensure an orderly and efficient meeting. This rule shall not limit, however, the powers of the commission or its chairperson under section 20-40-3(f). [Eff 6/22/1981; am 07/24/95; am and comp \_\_\_\_\_ ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

~~§20-40-15 **Commission decision.** All final decisions of the commission in a proceeding shall be available for public inspection in the office of the commission or may be obtained upon request and upon payment of charges, if any. [Eff 06/22/81; am and comp \_\_\_\_\_ ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

~~§20-40-16 **Consolidations.** The commission, upon its own initiation or upon motion, may consolidate for consideration or for other purposes two or more issues~~

~~which are the same or closely related, if it finds that such consolidations will be conducive to the proper dispatch of its business and will not unduly delay the proceeding. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

### ~~SUBCHAPTER 3~~

#### ~~RULES APPLICABLE TO RULEMAKING HEARINGS~~

##### ~~§20-40-17 Notice of proposed rulemaking.~~

~~(a) When pursuant to a petition therefor, or upon its own motion, the commission proposes to issue, amend or repeal a rule, notice of proposed rulemaking will be published in accordance with chapters 91 and 92, HRS.~~

~~(b) A notice of the proposed issuance, amendment, or repeal of a rule shall include:~~

~~(1) A statement of the date, time and place where the public hearing will be held.~~

~~(2) Reference to the authority under which the issuance, amendment, or repeal of a rule is proposed.~~

~~(3) A statement of the substance of the proposed rulemaking.~~

~~[Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

##### ~~§20-40-18 Conduct of rulemaking hearing.~~

~~(a) Public hearing. Unless otherwise specifically directed by the commission, all rulemaking hearings shall be held at Honolulu when the entire State or a major portion thereof is affected by the proposed issuance, amendment, or repeal of a rule. However, the commission may hold such hearings on a neighbor island if a written request for such a hearing is received by the commission within the time specified in the public notice. In all cases, however, written testimony may~~

~~be received by the commission in accordance with these rules.~~

~~When a matter affects only a county other than Oahu, then the hearing shall be held in that county.~~

~~(b) Presiding officer. Each such rulemaking hearing shall be presided over by the chairperson or a member of the commission as designated by the chairperson. The hearing shall be conducted in such a way as to afford interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the proceeding.~~

~~(c) Continuance of rulemaking hearing. Each such hearing shall be held at the time and place set in the notice of hearing, but may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement at the hearing.~~

~~(d) Order of hearing. At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.~~

~~(e) Conduct of hearing. All interested persons shall be given reasonable opportunity to submit written or oral testimony or evidence with respect to the matters specified in the notice of hearing. The conduct of the hearing and filing of all documents shall be in accord with sections 20-40-6 through 20-40-12. The presiding officer shall confine the testimony to the questions before the hearing and is empowered to confine the testimony so as to keep order. Every person testifying may be subject to questioning by any member of the commission or its counsel, but questioning by private persons shall not be permitted unless the presiding officer expressly permits it.~~

~~(f) Transcript of the testimony. Unless otherwise specifically ordered by the commission or the presiding officer, testimony given at the hearing need~~

~~not be reported verbatim. All supporting written statements and data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, an original and fourteen copies of the exhibits shall be submitted. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-3)~~

~~§20-40-19 **Commission action.** At the final public hearing, the commission may make its decision or announce the date when its decision shall be made. The commission will consider all relevant comments and material of record before taking final action in a rulemaking proceeding. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)~~

~~§20-40-20 **Emergency rulemaking.** Notwithstanding the foregoing rules, if the commission finds that an imminent peril to public health, safety, or morals requires adoption, amendment or repeal of a rule upon less than twenty days notice of hearing, and states in writing its reason for such finding, it may proceed without prior notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period not longer than one hundred twenty days without renewal. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-3)~~

~~§20-40-21 **Petitions for adoption, amendment or repeal of rules.** (a) Scope. Any interested persons, organization or agency may petition the commission for the issuance, amendment, modification or repeal of any rule as defined in this chapter.~~



~~(b) Form and contents. Petitions for rulemaking shall conform to the requirements of section 20-40-7. Such petition for rulemaking shall set forth the text of any proposed rule or amendment desired or shall specify the rule the repeal of which is desired and state concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the issuance, amendment or repeal of the rule and shall include any facts, views, arguments and data deemed relevant by petitioner. The commission may also require the petitioner to serve other persons, organizations or agencies known to be interested in the proposed rulemaking. No request for the issuance, amendment, modification or repeal of a rule which does not conform to the requirements set forth above will be considered by the commission.~~

~~(c) Procedure. The commission shall within thirty days following the filing of the petition either deny the petition or writing or initiate public rulemaking procedures. No public hearing, oral argument or other form of proceedings will be held directly on any such decision, but if the commission determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceedings, the procedures to be followed will be as set forth in sections 20-40-17 through 20-40-19. Where the commission determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in material respect to comply with the requirements of these rules or where the petition does not concern a rule, the commission shall deny the petition and the petitioner will be so notified together with the grounds for such denial. The provisions of this section shall not operate to prevent the commission, on its own motion, from acting on any matter disclosed in any petition. [Eff 06/22/91; am and comp ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-6)~~

~~§20-1-22 Filing and publication. (a) The~~

~~commission, after obtaining the approval of the governor of any rule, shall file certified copies of the rule with the lieutenant governor.~~

~~(b) The commission shall also keep a compilation of all such rules adopted by the commission which are still in effect. Such compilation shall be supplemented, revised and made available to the public and provided by these rules and chapter 91 and 92, HRS. [Eff 06/22/81; am and comp ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-4, 91-5).~~

#### ~~SUBCHAPTER 4~~

#### ~~DECLARATORY RULINGS~~

##### ~~§20-40-23 Petition for declaratory rulings.~~

~~(a) Form and contents. On petition of an interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. Petitions for the issuance of such orders shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest, and shall conform to the requirements of section 20-40-7.~~

~~(b) Additional data and supporting authorities. The commission, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.~~

~~(c) Dismissal. The commission may, without notice or hearing, dismiss a petition or declaratory ruling which fails in material respect to comply with the requirements of this chapter.~~

~~(d) Request for hearing. Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the~~

~~petitioner or to a party in interest, the commission may at its discretion order such proceeding set down for hearing. Any petitioner or party in interest, who desires a hearing on a petition for declaratory ruling, shall set forth in detail in a request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence will not permit the fair and expeditious disposition of the petition. In addition, to the extent that such request for hearing is dependent upon factual assertion, the petitioner shall accompany the request with an affidavit establishing such facts. In the event a hearing is ordered by the commission, sections 20-40-24 and 20-40-25 shall govern the proceedings~~

~~(e) Declaratory ruling on commission's own motion. Notwithstanding the other provisions of this chapter, the commission may, on its own motion or upon request but without notice or hearing, issue a written declaratory order to terminate a controversy or to remove uncertainty. [Eff 06/22/81; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-7, 91-8)~~

#### ~~SUBCHAPTER 5~~

#### ~~RULES APPLICABLE TO CONTESTED CASES~~

~~§20-40-24 **Delegation of powers.** The commission shall have the power to delegate the power to hear contested cases to a designated hearing officer. The proposed decision of the hearing officer shall be subject to review by the commission pursuant to the process set forth in section 20-40-27. [Eff 6/22/1981; am 07/24/95; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp. HRS §§305H-2, 91-2)~~

~~§20-40-25 **Procedure.** (a) In any contested case, all parties shall be afforded an opportunity for~~

~~hearing after reasonable notice.~~

~~(b) The notice shall include a statement of:~~

~~(1) The date, time, place, and nature of hearing.~~

~~(2) The legal authority under which the hearing is to be held.~~

~~(3) The particular sections of the statutes and rules involved.~~

~~(4) An explicit statement in plain language of the issues involved and the facts alleged by the commission or SPRE in support thereof; provided that, if the commission or SPRE is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished.~~

~~(5) The fact that any party may retain counsel if so desired.~~

~~(c) At least fifteen days before the hearing, a written notice of hearing shall be provided to all parties to the proceeding by certified mail, return receipt requested. Proof of receipt shall be evidenced by the delivery date indicated on the United State Postal Service return receipt card (green card).~~

~~(d) Opportunities shall be afforded all parties to present evidence and argument on all issues involved.~~

~~(e) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.~~

~~(f) For the purpose of decisions, the record shall include:~~

~~(1) All pleadings, motions, intermediate rulings.~~

~~(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed.~~

~~(3) Offers of proof and rulings thereon.~~

~~(4) Proposed findings and exceptions.~~

~~(5) Report of the officer who presided at the hearing.~~

~~(6) State memoranda submitted to members of the~~

~~commission in connection with their consideration of the case.~~

~~(g) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.~~

~~(h) No matters outside the record shall be considered by the commission and the hearing officer in making a decision, except as provided in this chapter.~~

~~(i) Any contested case provided for by rules established by the commission shall, at a minimum, reflect the rules of procedure and evidence set forth in the rules of this subchapter. Any contested case regulation shall take precedence over the procedures established by this subchapter or by any rule of regulation established by the commission. [Eff 6/22/1981; am 07/24/95; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp. HRS §§305H-2, 91-2, 91-9, 91.9.5)~~

~~§20-40-26 Rules of evidence; official notice.~~

~~(a) Any oral or documentary evidence may be received but the commission and hearing officer shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The commission and hearing officer shall give effect to the rules of privilege recognized by law.~~

~~(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original.~~

~~(c) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.~~

~~(d) The commission and hearing officer may take notice of judicially recognizable facts. In addition,~~

~~they may take notice of generally recognized technical or scientific facts within their specialized knowledge, but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.~~

~~(c) Any documents filed in a contested case, other than evidence, shall conform to the requirements of section 20-40-7. In addition, all such documents shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 9 1/2" x 14" in size except that tables, charts, and other documents may be larger, folded to the size of the documents to which they are attached. [Eff 6/22/1981; am 07/24/95; am and comp ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-10)~~

~~§20-40-27 Examination of evidence. Whenever in a contested case the hearing is not held by the commission, but delegated to a hearing officer, and the commission has not heard and examined all of the evidence, the decision shall not be made until a proposal for decision containing a statement of reasons and including a determination of each issue of fact or law necessary to the proposed decision has been served upon the parties. An opportunity will be afforded to each party to the proceeding adversely affected by the proposed decision, other than the commission or SPRE itself, to file exceptions to the proposed decision and present argument to the commission. The members of the commission shall personally consider the whole record of the contested case or such portions thereof as may be cited by the parties. [Eff 6/22/1981; am 07/24/95; am and comp ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-11)~~

~~§20-40-28 Decisions and orders. Every decision and order rendered by the commission in a contested~~

~~ease, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the commission shall incorporate in its decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record. [Eff 6/22/1981; am 07/24/95; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-12)~~

~~§20-40-29 **Consultation by officials.** No official of the commission who renders a decision in a contested case shall consult any person or any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. [Eff 6/22/1981; am 07/24/95; am and comp \_\_\_\_\_] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-13)~~

~~32. This simultaneous repeal of chapter 20-40 and adoption of chapter 20-40.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant GovernorMaterial, except source notes, to be repealed is bracketed and stricken. New material is underscored.~~

~~3. Additions to update source notes to reflect these amendments and compilations are not underscored.~~

~~4. These amendments to and compilation of chapter 20-40, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.~~

I certify that the foregoing are copies of the rules drafted in Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ and filed with the Office of the Lieutenant Governor.

ROY Y. TAKEYAMA David Lassner  
Chairperson Administrative  
Officer,  
State Post-Secondary Education  
Commission

APPROVED AS TO FORM:

University of Hawaii

Carrie K. S. Okinaga, Esq.  
Vice President for Legal Affairs and  
University General Counsel

Department of the Attorney General

Diane Erickson  
Deputy Attorney General



HEARINGS OFFICER'S CONSOLIDATED REPORT

FOR PROPOSED

- Amendments to Chapter 20-4, Hawaii Administrative Rules (HAR), entitled "Determination of Residency as Applied to Tuition Payments and Admission";
- Amendments to Chapter 20-10, HAR, entitled "Delinquent Financial Obligations";
- Simultaneous repeal of Chapter 20-30, HAR, entitled "Rules of Practice and Procedure" and the adoption of Chapter 20-30.1, HAR, entitled "Rules of Practice and Procedure" for the State Board of Career and Technical Education; and
- Simultaneous repeal of Chapter 20-40, HAR, entitled "Rules of Practice and Procedure" and the adoption of Chapter 20-40.1, HAR, entitled "Rules of Practice and Procedure" for the State Postsecondary Education Commission.

Report Compiled by the

University of Hawai'i

System Government Relations Office

and

The Office of the Vice President for Legal Affairs and University General Counsel

for Hearings Officer

Amy Kunz

Associate Vice President  
for Budget & Finance/Controller

July 28, 2022

## I. INTRODUCTION

This report is the Hearings Officer's consolidated report of the public hearing on amendments to four (4) HAR chapters:

- Chapter 20-4 "Determination of Residency as Applied to Tuition Payments and Admission";
- Chapter 20-10 "Delinquent Financial Obligations;"
- Chapter 20-30 "Rules of Practice and Procedure;" and
- Chapter 20-40 "Rules of Practice and Procedure."

The public hearing was held on July 28, 2022, at the University of Hawai'i at Mānoa, Informational Technology Center, Room 105A. The hearing was conducted pursuant to section 91-3, Hawai'i Revised Statutes (HRS), and HAR section 20-1.1-19.

The University duly noticed the public hearing by the publication of the *Notice of Public Hearing* ("Notice") in The Maui News on June 25, 2022, and in the Honolulu Star-Advertiser, The Garden Island, Hawai'i Tribune-Herald, and West Hawai'i Today on June 26, 2022. The Notice is attached here as Exhibit "A." The Notice was also posted on the UH News and Board of Regents (BOR) websites.

The purpose of this report is to provide the BOR with all submissions (contained in Exhibit "B") regarding the proposed rules. Under section 91-3(a)(2), HRS, the BOR "shall fully consider all written and oral submissions respecting the proposed rule." A summary of submissions is also contained herein as required by Administrative Directive No. 18-02, which sets forth the process to be followed in obtaining the Governor's approval during rule-making. The summaries provided in the following table are brief and not intended to take the place of written or oral submissions.

## II. EXECUTIVE SUMMARY

This section provides information related to the public hearing and written submissions received for the period between the public Notice on June 25 and 26, 2022, and 11:59 p.m. on Thursday, July 28, 2022 (the extended time for submitting written testimony electronically, after the close of the public hearing).

### *Written Testimony Received*

As stated in the Notice, interested persons had an opportunity to submit data, views, or arguments in writing by five methods:

- at the public hearing;
- by mail to the University System Government Relations Office;
- in person to the University System Government Relations Office;
- by email; or

- through an online site set up for this purpose.

A total of seven (7) written submissions were received by all methods.

*Oral Testimony Received*

In addition to submitting written comments, all interested persons also had an opportunity to submit data, views, or arguments orally at the public hearing either in person or virtually via Zoom Webinar (Webinar). Included in the Notice was a URL to register for the Webinar link. Upon completion of the registration, an automatic reply would be sent to the testifier with information on how to login into the hearing. Registering to testify virtually was disabled at 7:00 a.m. on July 28, 2022, as provided for in the Notice. No oral testimony was received, either in person or via the Webinar link.

*Summary of the Hearing*

Thursday, July 28, 2022, University of Hawai‘i at Mānoa, Informational Technology Center, Room 105A

- Start Time: 12:01 p.m.
- End Time: 12:31 p.m.
- Oral testifiers on the Record: None
- Approximate Persons in Attendance: 8
- Written Testimony Submitted for Hearing: 7

**III. WRITTEN TESTIMONY RECEIVED BEFORE OR AFTER PUBLIC HEARING (VIA POSTAL MAIL) (until 11:59 p.m. July 28, 2022)**

No testimony was received via Postal mail.

**IV. WRITTEN TESTIMONY RECEIVED BEFORE OR AFTER PUBLIC HEARING (VIA EMAIL/ONLINE) (until 11:59 p.m. July 28, 2022)**

No.	Name	Date Received	Position on Rules	Chapter	Summary of Testimony
1	Stephen Schatz – Exec Director, Hawai‘i P-20	July 26, 2022	Support	20-4	Strong support of the amendments to Chapter 20-4. Students are currently challenged in completing the UH application process, including residency questions. The proposed rule changes will allow UH to streamline the residency determination process for tuition and this will assist students.

No.	Name	Date Received	Position on Rules	Chapter	Summary of Testimony
2	Denise DeArment – UH System Bursar	July 26, 2022	Support	20-10	Fully support the changes to Chapter 20-10. The proposed rule changes will allow for a basic understanding so that all outstanding balances will adhere to the rules and will assist students on continuing their academic journeys.
3	Hae Okimoto – individual	July 28, 2022	Support	20-4	Support the changes to Chapter 20-4. They will simplify the criteria for residency determination, reduce the number of contested cases, and provide clearer evidence of residence for the admission officers. This will make the application process clearer.
4	Hae Okimoto – individual	July 28, 2022	Support	20-10	Support the changes to Chapter 20-10. The current rules create undue difficulties for residents to achieve their educational goals. The changes will help students continue their education while being able to clearly understand their financial obligations.
5	Rainbow Ulii – Basic Needs Coordinator, UH System	July 28, 2022	Support	20-4	Strong support of the amendments to Chapter 20-4. The changes will streamline the residency determination process for tuition purposes. The circumstances of certain students can make the current process confusing.
6	Makana H. Tani – individual	July 28, 2022	Support	20-4	Strong support of the amendments to Chapter 20-4. The changes will streamline the residency determination process for tuition purposes. This will help students, including special populations who have difficulty completing the current process.
7	Debora Halbert – VP for Academic Strategy, UH System	July 28, 2022	Support	20-4	Strong support of the amendments to Chapter 20-4. The revisions will streamline the residency determination process for prospective students while aligning more closely with the applicable statute. The current process can be frustrating to some applicants. The rule changes will improve the user experience for prospective students. When approved, the changes will be carefully implemented.

*Exhibit A – Copies of the Affidavit of Publication for all the newspapers*

*Exhibit B – Copies of written testimonies*

*Exhibit C – Public hearing transcript*

# Maui News

## ADVERTISING INSERTION ORDER

Pickup#: 00000

Pickup Date:

Customer #: D00646

Customer Name: U OF H SYS GOV RELATIONS

Description: NTC OF PUBLIC HEARING

Notes: COST W/ COST: \$834.95. PROOF TO LEGALS AND LLCHUN@HAWAII.EDU LAURA CHUN, 808-956-7387, 2442 CAMPUS ROAD, ADMINISTRATIVE SERVICES BUILDING 1, ROOM 101, HONOLULU, HI, 96822 print to web: 6/25-7/1/22.

Sales Rep Id	Sales Rep Name	Sales Rep Email
150	Kamery Lee	klee@mauinews.com

### SCHEDULING INFORMATION

Edition	Ad No.	Start	Stop	Times	Section
N-Classified Maui News-MNH	MNH0011980-0	06-25-2022	06-25-2022	1	Legals

June 2022						
SU	MO	TU	WE	TH	FR	SA
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25 N
26	27	28	29	30		

### PRODUCT INFORMATION/INVOICE CODES

Online Legal	Proof	Code: N 604 MNH11980 \$0.00 Code: N 718 ntc of pub hearing July 28 \$802.84
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3.00 Col X 19.75 Inches = 59.25 Total Inches

CLASSIFIED

Total Amount: 802.84 + taxes

#834.95

THE MAUI NEWS  
100 MAHAIANI STREET  
HAWAII, HI 96793  
(808) 244-3381

### Phone Order

Merchant ID: 542525662015316  
Term ID: 1K00788809  
June 22, 2022  
Batch#: 848  
MASTERCARD  
XXXXXXXXXXXX0277  
Seq. #: 0001  
10:29 AM  
Inv #: 060001  
Entry Method: M  
Appr Code: 639297

Total: \$ 834.95  
AWS Code: Z  
CW2 Code: H

APPROVED

Customer Copy  
THANK YOU!

TRANSACTION  
ENCRYPTED BY  
WORLDPAY  
REFERENCE ID:  
22062228480001

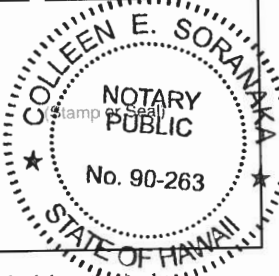


AFFIDAVIT OF PUBLICATION

IN THE MATTER OF
NOTICE OF PUBLIC HEARING

STATE OF HAWAII
City and County of Honolulu

Doc. Date: JUN 27 2022 # Pages: 1
Notary Name: COLLEEN E. SORANAKA First Judicial Circuit
Doc. Description: Affidavit of Publication
Notary Signature: [Signature] Date: JUN 27 2022



Lisa Sakakida being duly sworn, deposes and says that she is a clerk, duly authorized to execute this affidavit of Oahu Publications, Inc. publisher of The Honolulu Star-Advertiser, MidWeek, The Garden Island, West Hawaii Today, and Hawaii Tribune-Herald, that said newspapers are newspapers of general circulation in the State of Hawaii, and that the attached notice is true notice as was published in the

Table with 2 columns: Publication Name and Frequency. Includes Honolulu Star-Advertiser (1 time on 06/26/2022), MidWeek (0 times on), The Garden Island (1 time on 06/26/2022), Hawaii Tribune-Herald (1 time on 06/26/2022), West Hawaii Today (1 time on 06/26/2022), and Other Publications (0 times on).

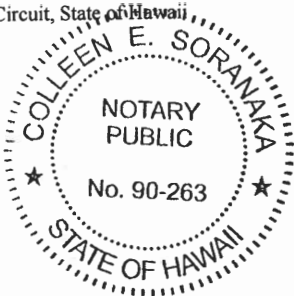
And that affiant is not a party to or in any way interested in the above entitled matter.

[Signature]
Lisa Sakakida

Subscribed to and sworn before me this 27th day of June A.D. 2022

Colleen E. Soranaka, Notary Public of the First Judicial Circuit, State of Hawaii
My commission expires: Jan 06 2024

Ad # 0001375647



NOTICE OF PUBLIC HEARING

Pursuant to Chapter 91, Hawaii Revised Statutes, notice is hereby given that the University of Hawaii (UH) will hold a hybrid public hearing on Thursday, July 28, 2022, from 12:00 p.m. to 2:00 p.m. (or may be concluded earlier if all submitted testimony has been received and heard) at the University of Hawaii at Manoa, Informational Technology Center, Room 105A, 2520 Correa Road, Honolulu, Hawaii 96822, for the proposed adoption of:

- Amendments to Chapter 20-4, Hawaii Administrative Rules (HAR), entitled "Determination of Residency as Applied to Tuition Payments and Admission";
Amendments to Chapter 20-10, HAR, entitled "Delinquent Financial Obligations";
Simultaneous repeal of Chapter 20-30, HAR, entitled "Rules of Practice and Procedure" and the adoption of Chapter 20-30.1, HAR, entitled "Rules of Practice and Procedure" for the State Board of Career and Technical Education; and
Simultaneous repeal of Chapter 20-40, HAR, entitled "Rules of Practice and Procedure" and the adoption of Chapter 20-40.1, HAR, entitled "Rules of Practice and Procedure" for the State Postsecondary Education Commission.

The proposed actions are summarized below:

- 1. Amendments to Chapter 20-4, entitled "Determination of Residency as Applied to Tuition Payments and Admission"

The proposed amendments are intended to simplify the application and review processes while ensuring that the basic criteria to qualify for resident tuition, as set forth in HRS §304A-402, are met.

- 2. Amendments to Chapter 20-10, entitled "Delinquent Financial Obligations"

The proposed amendments are intended to remove the categories of delinquent financial obligations upon which a hierarchical structure, prioritizing certain obligations for purposes of applying sanctions, was established.

- 3. Simultaneous Repeal of Hawaii Administrative Rules Chapter 20-30, "Rules of Practice and Procedure" and the Adoption of Chapter 20-30.1, "Rules of Practice and Procedure" for the State Board of Career and Technical Education

The proposed adoption of the new rules of practice and procedure for the Board of Career and Technical Education (CTE), Chapter 20-30.1, would:

- (1) Eliminate those rules that formally existed in the Board of Regents' (BOR) rules of practice and procedure, HAR Chapter 20-1 (now Chapter 20-1.1). Because the BOR is designated as the CTE Board, the proposed amendment would adopt the BOR's current rules of practice and procedure (HAR Chapter 20-1.1) as the rules for the CTE Board so as not to create redundancy;
(2) Retain other portions of the existing Chapter 20-30, specifically, the rules applicable to contested cases, which are not covered in the BOR's rules of practice and procedure;
(3) Update HRS citations contained in Chapter 20-30 to the current HRS and the name of the board to reflect its current name, the State Board for Career and Technical Education, as opposed to the State Board for Vocational Education.

- 4. Simultaneous Repeal of Hawaii Administrative Rules Chapter 20-40, "Rules of Practice and Procedure" and the Adoption of Chapter 20-40.1, "Rules of Practice and Procedure" for the State Postsecondary Education Commission

The proposed adoption of the new rules of practice and procedure for the State Postsecondary Education Commission, Chapter 20-40.1, would:

- (1) Retain certain portions of the existing Chapter 20-40;
(2) Update other portions of Chapter 20-40; and
(3) Streamline the rules to reflect the administrative functions of the Commission. Additionally, any rules relating to the review program (such as rules applicable to contested cases, currently in Subchapter 5 of Chapter 20-40), which is now under the jurisdiction of the Department of Commerce and Consumer Affairs, will not be included in the new Chapter 20-40.1.

PUBLIC TESTIMONY

All are invited to state their views on the proposed amendments to the Hawaii Administrative Rules, either orally or in writing.

Interested persons may present written/oral testimony regarding the proposed rules at the time of the public hearing. Those unable to attend the public hearing may submit written testimony by mail to the UH System Government Relations Office at 2442 Campus Road, Administrative Services Building 1, Room 101, Honolulu, Hawaii 96822; by email at uhhar@hawaii.edu; or through the University website at www.hawaii.edu/offices/bor/adminrules/proposed.html. All submissions must be received prior to the conclusion of the scheduled public hearing.

Persons who intend to present oral testimony may sign up at the public hearing, or if wishing to provide oral testimony via Zoom, you must register at www.hawaii.edu/offices/bor/adminrules/proposed.html. Given constraints with the hybrid format of our meeting, individuals wishing to testify virtually must register no later than 7:00 a.m. on the day of the hearing in order to be accommodated. It is highly recommended that written testimony be submitted in addition to registering to provide oral testimony. Oral testimony will be limited to three (3) minutes per testifier.

All oral and written testimony is public information. Please do not include information in your testimony that you do not want disclosed to the public.

Persons with special needs (e.g., large print, sign language interpreter, or translator) shall make all requests for assistance by contacting the UH System

## NOTICE OF PUBLIC HEARING

Pursuant to Chapter 91, Hawaii Revised Statutes, notice is hereby given that the University of Hawaii (UH) will hold a hybrid public hearing on Thursday, July 28, 2022, from 12:00 p.m. to 2:00 p.m. (*or may be concluded earlier if all submitted testimony has been received and heard*) at the University of Hawaii at Manoa, Informational Technology Center, Room 105A, 2520 Correa Road, Honolulu, Hawaii 96822, for the proposed adoption of:

- Amendments to Chapter 20-4, Hawaii Administrative Rules (HAR), entitled “Determination of Residency as Applied to Tuition Payments and Admission”;
- Amendments to Chapter 20-10, HAR, entitled “Delinquent Financial Obligations”;
- Simultaneous repeal of Chapter 20-30, HAR, entitled “Rules of Practice and Procedure” and the adoption of Chapter 20-30.1, HAR, entitled “Rules of Practice and Procedure” for the State Board of Career and Technical Education; and
- Simultaneous repeal of Chapter 20-40, HAR, entitled “Rules of Practice and Procedure” and the adoption of Chapter 20-40.1, HAR, entitled “Rules of Practice and Procedure” for the State Postsecondary Education Commission.

The proposed actions are summarized below:

1. Amendments to Chapter 20-4, entitled “Determination of Residency as Applied to Tuition Payments and Admission”

The proposed amendments are intended to simplify the application and review processes while ensuring that the basic criteria to qualify for resident tuition, as set forth in HRS §304A-402, are met.

2. Amendments to Chapter 20-10, entitled “Delinquent Financial Obligations”

The proposed amendments are intended to remove the categories of delinquent financial obligations upon which a hierarchical structure, prioritizing certain obligations for purposes of applying sanctions, was established.

3. Simultaneous Repeal of Hawaii Administrative Rules Chapter 20-30, “Rules of Practice and Procedure” and the Adoption of Chapter 20-30.1, “Rules of Practice and Procedure” for the State Board of Career and Technical

## Education

The proposed adoption of the new rules of practice and procedure for the Board of Career and Technical Education (CTE), Chapter 20-30.1, would:

- (1) Eliminate those rules that formally existed in the Board of Regents' (BOR) rules of practice and procedure, HAR Chapter 20-1 (now Chapter 20-1.1). Because the BOR is designated as the CTE Board, the proposed amendment would adopt the BOR's current rules of practice and procedure (HAR Chapter 20-1.1) as the rules for the CTE Board so as not to create redundancy;
- (2) Retain other portions of the existing Chapter 20-30, specifically, the rules applicable to contested cases, which are not covered in the BOR's rules of practice and procedure;
- (3) Update HRS citations contained in Chapter 20-30 to the current HRS and the name of the board to reflect its current name, the State Board for Career and Technical Education, as opposed to the State Board for Vocational Education.

4. Simultaneous Repeal of Hawaii Administrative Rules Chapter 20-40, "Rules of Practice and Procedure" and the Adoption of Chapter 20-40.1, "Rules of Practice and Procedure" for the State Postsecondary Education Commission

The proposed adoption of the new rules of practice and procedure for the State Postsecondary Education Commission, Chapter 20-40.1, would:

- (1) Retain certain portions of the existing Chapter 20-40;
- (2) Update other portions of Chapter 20-40; and
- (3) Streamline the rules to reflect the administrative functions of the Commission. Additionally, any rules relating to the review program (such as rules applicable to contested cases, currently in Subchapter 5 of Chapter 20-40), which is now under the jurisdiction of the Department of Commerce and Consumer Affairs, will not be included in the new Chapter 20-40.1.

## **PUBLIC TESTIMONY**

All are invited to state their views on the proposed amendments to the Hawaii Administrative Rules, either orally or in writing.

Interested persons may present written/oral testimony regarding the proposed rules



at the time of the public hearing. Those unable to attend the public hearing may submit written testimony by mail to the UH System Government Relations Office at 2442 Campus Road, Administrative Services Building 1, Room 101, Honolulu, Hawaii 96822; by email at [uhhar@hawaii.edu](mailto:uhhar@hawaii.edu); or through the University website at [www.hawaii.edu/offices/bor/adminrules/proposed.html](http://www.hawaii.edu/offices/bor/adminrules/proposed.html). All submissions must be received prior to the conclusion of the scheduled public hearing.

Persons who intend to present oral testimony may sign up at the public hearing, or if wishing to provide oral testimony via Zoom, you must register at [www.hawaii.edu/offices/bor/adminrules/proposed.html](http://www.hawaii.edu/offices/bor/adminrules/proposed.html). Given constraints with the hybrid format of our meeting, individuals wishing to testify virtually must register no later than 7:00 a.m. on the day of the hearing in order to be accommodated. It is highly recommended that written testimony be submitted in addition to registering to provide oral testimony. Oral testimony will be limited to three (3) minutes per testifier.

All oral and written testimony is public information. Please do not include information in your testimony that you do not want disclosed to the public.

Persons with special needs (e.g., large print, sign language interpreter, or translator) shall make all requests for assistance by contacting the UH System Government Relations Office at (808) 956-4250 or by email to [uhhar@hawaii.edu](mailto:uhhar@hawaii.edu) at least five (5) state working days prior to the hearing. Prompt requests help to ensure the availability of appropriate accommodations.

## **VIEWING OF THE PROPOSED RULES**

The proposed rules may be viewed:

- On the Internet, free of charge, at the UH BOR's website [www.hawaii.edu/offices/bor/adminrules/proposed.html](http://www.hawaii.edu/offices/bor/adminrules/proposed.html).
- In person, free of charge, at the UH System Government Relations Office located at the University of Hawaii at Manoa, 2442 Campus Road, Administrative Services Building 1, Room 101, Honolulu, Hawaii 96822, Monday through Friday between the hours of 9:00 a.m. to noon and 1:30 p.m. to 4:00 p.m.
- At regional public libraries during library hours.
- Via mailed hard copy if a request is made to the UH System Government

Relations Office. A hard copy will be mailed upon receipt of a check made payable to "University of Hawaii" in the amount of \$2.41 (for Chapter 20-4); \$2.71 (for Chapter 20-10); \$1.81 (for Chapter 20-30.1); and \$1.81 (for Chapter 20-40.1) for copying and postage. Please call (808) 956-4250 for more information.

David Lassner  
President, University of Hawaii  
(SA/HTH/WHT/TGI1375647 6/26/22)

**Public Hearing for Hawai'i Administrative Rules**  
 Title 20, Chapters -4, -10, -30, -40  
 UH Manoa Informaton Technology Center, Rm 105A  
 July 28, 2022 at 12:00 pm  
 List of Submitted Testimony

**Exhibit B**

Updated 07/28/2022 at 11:35am							
No.	Name	Organization (if any)	Support/Oppose/ Comment	Chapter	Received	TESTIMONY	
						Written	Oral
1	Stephen Schatz	Hawai'i P-20	Support	20-4	07/26/22; 9:22am	x	
2	Denise DeArment	UH System - Bursar	Support	20-10	07/26/22; 3:42pm	x	
3	Hae Okimoto		Support	20-4	07/28/22; 7:29am	x	
4	Hae Okimoto		Support	20-10	07/28/22; 7:29am	x	
5	Rainbow Ulii		Support	20-4	07/28/22; 7:51am	x	
6	Makana H. Tani		Support	20-4	07/28/22; 9:17am	x	
7	Debora Halbert	VP for Academic Strategy	Support	20-4	07/28/22; 1124am	x	



July 26, 2022

University of Hawaii System Government Relations  
2442 Campus Road  
Administrative Services Building I, Room 101  
Honolulu, HI 96822

Dear Hearings Officer:

I am providing testimony in strong support of the amendments to Chapter 20-4, Hawaii Administrative Rules, entitled "Determination of Residency as Applied to Tuition Payments and Admission."

Hawaii P-20 conducts significant outreach to high school seniors to support productive post-high plans, including enrollment in postsecondary education and training. For example, Hawaii P-20's College Exploration and Application Season provides support to high schools for seniors to complete the UH admissions application and FAFSA each fall. As Hawaii P-20 staff work with schools statewide, they observe the challenges that high school seniors have in completing the UH admissions application, including the residency questions. Currently, the regular application process requires students to answer many questions; currently, a high school senior who was born in Hawaii and lived in Hawaii their entire life answers a minimum of eight questions, provided that they are aware that they were claimed as a dependent of a parent or guardian who filed Hawaii resident taxes in the prior year. Many prospective UH students who should qualify as residents are frustrated in the process by the questions or answering incorrectly and being notified that they have been classified a non-resident.

Proposed changes to the HAR Chapter 20-4 would allow the University of Hawaii (UH) to streamline the process for determining whether a prospective student would be considered a resident or non-resident for tuition purposes. A streamlined process would assist high school seniors who are applying for admission. Furthermore, the changes in the HAR also allow use of additional sources of data, such as administrative data (e.g., Hawaii Department of Education enrollment records), rather than solely relying on a questionnaire as evidence of residency.

We look forward to collaborating with the Office of the Vice President for Academic Strategy and UH's ten campuses to improve the application process for high school seniors, communicate the changes with high schools, and increase the number of high school graduates who apply for and enroll at UH to advance their education and training. Thank you for your consideration.

Sincerely,

Stephen Schatz  
Executive Director



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## Update to HAR Ch 20-10

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**Denise DeArment** <dearment@hawaii.edu>  
To: uhhar@hawaii.edu

Tue, Jul 26, 2022 at 3:35 PM

Hello,

I am writing in regards to proposed changes to HAR 20-10 for Delinquent Financial Obligations. I fully support all applicable changes to language. The changes will allow for a basic understanding that all outstanding balances within the UH system will adhere to administration rules.

By allowing for a specific threshold amount to allow for registration, we will assist students on continuing their academic journey. This will also assist with continued enrollment throughout the system.

Thank you for your time and consideration.

Sincerely,

--

Denise DeArment  
University of Hawaii-System Bursar  
[dearment@hawaii.edu](mailto:dearment@hawaii.edu)  
Phone: (808) 956-2934  
Fax: (808) 956-2098



July 28, 2022

UH System Government Relations Office  
2442 Campus Road  
Administrative Services Building 1, Room 101,  
Honolulu, Hawaii 96822

To Whom It May Concern,

I am writing in support of the proposed changes to Hawaii Administrative Rules Chapter 20-4. Of particular importance are the proposed changes to Section 20-4-7, which simplifies the criteria for residency determination. The determination will be based on evidence of being a "bona fide resident", as required by statute, rather than evidence of "intent to establish domicile in Hawaii". The proposed rules do identify various types of evidence that a prospective student may use to demonstrate that they have been a Hawai'i resident for at least 12 months prior to starting courses.

As a recently retired Associate Vice President for the University of Hawaii System, which had responsibility for overseeing the residency officers of the 10 campuses of the University of Hawai'i system, these changes will not only reduce the number of contested cases, due to the current finding of subjective fact as well as objective fact, but provide clearer evidence of residence for the Admission's Offices as students make residency determinations as students are applying. More importantly, these changes will make it clearer for the applicants at the time of their application to the University of Hawai'i.

Therefore, I am in support of these proposed changes.

Aloha,  
Hae Okimoto

July 28, 2022

UH System Government Relations Office  
2442 Campus Road  
Administrative Services Building 1, Room 101,  
Honolulu, Hawaii 96822

To Whom It May Concern,

I am writing in support of the proposed changes to Hawaii Administrative Rules Chapter 20-10. The University of Hawai'i is the sole system of public higher education in the state, which provides affordable education for our residents. It is also recognized that higher education provides social and economic mobility for our residents. I believe that the current HAR Chapter 20-10 creates undue difficulties for our residents to achieve their educational goals. In particular:

In subchapter 1:

Section 20-10-4: setting a dollar limit threshold amount versus a list of financial obligation types will allow students to continue their education, especially as financial aid may cover the small amount still outstanding.

Section 20-10-6: application of sanctions being imposed prior to subsequent registrations, so that students will have the opportunity to discharge their financial obligation in order to register.

As a recently retired Associate Vice President for the University of Hawaii System, which had responsibility for overseeing registrations of the 10 campuses of the University of Hawai'i system, these changes will help students to continue their education, while being able to clearly understand their financial obligations to the University. This change will be beneficial for students without financial obligation as past practice allowed students with financial obligations to register, but then were administratively removed from the courses, freeing up seats in classes shortly before the semester begins which resulted in a flurry of registration activities.

Therefore, I am in support of these proposed changes,

Aloha,  
Hae Okimoto

July 27, 2022

University of Hawaii System Government Relations  
2442 Campus Road  
Administrative Services Building 1, Room 101  
Honolulu, HI 96822

Transmitted by email to [uhhar@hawaii.edu](mailto:uhhar@hawaii.edu)

Dear Hearings Officer:

I am providing testimony in strong support of the amendments to Chapter 20-4, Hawai'i Administrative Rules, entitled "Determination of Residency as Applied to Tuition Payments and Admission." I am the UH System Basic Needs Coordinator and a proud graduate of Windward Community College, UH West Oahu and UH Mānoa.

Proposed changes to the HAR Chapter 20-4 would allow the University of Hawai'i (UH) to streamline the process for determining whether a prospective student would be considered a resident for tuition purposes. I support streamlining the process.

Due to the high cost of living and affordable housing shortage, many parents leave temporarily to work outside of Hawai'i while their high school aged child remains with their extended family. When applying to a UH campus, students in this situation are required to complete a residency declaration attesting that their parent has lived in Hawai'i for the past twelve months. Based on this example, the student is deemed as a non-resident since their parent worked outside of the state. This determination can be confusing to a student who has lived in Hawai'i all of their life and graduated from a Hawai'i high school.

Thank you for your support.

Mahalo nui loa,

A handwritten signature in black ink that reads "Rainbow K. Uli'i". The signature is written in a cursive, flowing style.

Rainbow Uli'i



July 27, 2002

University of Hawaii System Government Relations  
2442 Campus Road  
Administrative Services Building 1, Room 101  
Honolulu, HI 96822

Transmitted by email to [uhhar@hawaii.edu](mailto:uhhar@hawaii.edu)

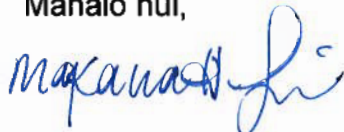
Dear Hearings Officer:

I am providing testimony in strong support of the amendments to Chapter 20-4, Hawaii Administrative Rules, entitled "Determination of Residency as Applied to Tuition Payments and Admission." I am an alumni of Windward Community College and UH West Oahu and a current student at UH Manoa. I have worked in various student affairs positions in outreach and recruitment, including processing UHCC Admissions applications.

Proposed changes to the HAR Chapter 20-4 would allow the University of Hawaii (UH) to streamline the process for determining whether a prospective student would be considered a resident for tuition purposes. I support streamlining the process.

I have first-hand experience of assisting prospective students with completing the application and have witnessed the frustration among special populations of students, especially foster youth, homeless adults and previously incarcerated individuals, who have to answer multiple questions to prove their residency. Many do not have the answers readily available due to their socio-economic status. They tend not to complete the application which further impedes their equitable access to college.

Mahalo nui,



Makana H. Tani

July 26, 2022

University of Hawai'i System Government Relations  
2442 Campus Road  
Administrative Services Building 1, Room 101  
Honolulu, HI 96822

Transmitted by email to [uhhar@hawaii.edu](mailto:uhhar@hawaii.edu)

Dear Hearings Officer:

I am providing testimony in strong support of the amendments to Chapter 20-4, Hawaii Administrative Rules, entitled "Determination of Residency as Applied to Tuition Payments and Admission."

Proposed changes to the HAR Chapter 20-4 would allow the University of Hawai'i (UH) to streamline the process for determining whether a prospective student would be considered a resident or non-resident for tuition purposes. The revisions align the HAR more closely with the law governing residency (Chapter 304A-402, Hawaii Revised Statutes). The current rules require that an applicant provide multiple sources of evidence: "finding of subjective fact as well as objective fact..." and that "no single evidence is decisive." Whereas, the proposed changes allow for various types of evidence to provide residency, such as filing of a resident personal income tax return, or ownership or continuous rental of a principal residence, without referring to subjective facts and objective facts.

The proposed changes remedy cases where prospective students have been required to produce multiple pieces of evidence to prove their status as residents. For example I have met with students who are long time residents of the state who were asked to provide such detailed evidence that it became a barrier to their admission, including evidence they owned their home and tax returns and voting registration and pay slips for their job and copies of utility bill they had paid only to be told they still might not be able to "prove" they are a resident. This process frustrates prospective students and sometimes deters them from pursuing education at UH all together.

The UH takes its responsibility to steward the state's resources and to apply the Hawaii Revised Statutes and HAR. These revisions to the HAR would allow UH to improve the "user experience" for prospective students. As Vice President for Academic Strategy, I commit to a thorough review of UH's application of the residency rules to streamline the process of residency determination based on the revised HAR Chapter 20-4, when it is approved. Also, I will work with my Associate Vice President for Student Affairs (in recruitment) to implement changes to the residency determination processes embedded in UH's admissions application and to also work with campus residency officers on changes in practice that are aligned with the revised HAR.

Thank you for your consideration,

Sincerely,

A handwritten signature in black ink that reads "Debora Halbert". The signature is written in a cursive style with a large initial 'D'.

Debora Halbert  
Vice President for Academic Strategy

**HAWAII ADMINISTRATIVE RULES**  
**July 28, 2022**  
**PUBLIC HEARING TRANSCRIPT**

Amy Kunz: Hearings Officer  
Stephanie Kim: Staff

**Hearings Officer:**

Good afternoon.

I call this hearing to order.

It is Thursday, July 28, 2022. The time is 12:01 p.m. at the University of Hawai'i at Mānoa, Informational Technology Center, Room 105A in Honolulu, Hawai'i. This hearing is scheduled to conclude at 2:00 p.m., however it may be concluded earlier if all testimony received has been heard.

My name is Amy Kunz and I will be serving as the hearing officer for today's public hearing.

Pursuant to Chapter 91, Hawai'i Revised Statutes, we are here to receive testimony and public comment on the following Hawai'i Administrative Rules:

Chapter 20-4, entitled "Determination of Residency as Applied to Tuition Payments and Admission";

Chapter 20-10, entitled "Delinquent Financial Obligations";

Chapter 20-30, entitled "Rules of Practice and Procedure" for the State Board for Vocational Education; and

Chapter 20-40, entitled "Rules of Practice and Procedure" for the State Postsecondary Education Commission.

The public hearing notice was published in The Maui News on Saturday, June 25, 2022 and the Honolulu Star-Advertiser, Hawaii Tribune Herald, West Hawaii Today and The Garden Island newspapers on Sunday, June 26, 2022. Copies of the public hearing notice are available online as well as on the table with the sign-up

sheets for those who are present in-person.

The drafts of the proposed rule amendments have been made available at public libraries statewide, as well as posted on the University of Hawai'i Board of Regents' website. For locations and web links to these materials, please review the notice.

The purpose of this hearing is to take testimony and public comments on the amendments to the aforementioned administrative rules. We will not be discussing the proposed amendments to these rules today, or answering or asking any questions about the amendments. After the public hearing, the Board of Regents will have a full opportunity to discuss and make further modifications to the rules to accommodate comments or concerns raised during this public hearing. That discussion will take place at a future public meeting of the Board.

Before I open these proceedings to those who wish to provide oral testimony on the proposed rule amendments, will staff please note for the record whether any written testimony was received?

**Staff:**

Yes, written testimony was received on these proposed amendments:

For Chapter 20-4, we received five testimonies, all in support, from:

- Stephen Schatz
- Hae Okimoto
- Rainbow Ulii
- Makana Tani
- Deborah Halbert

For chapter 20-10, we received two testimonies, all in support, from:

- Denise DeArment
- Hae Okimoto

**Hearings Officer:**

Thank you.

I will now hear from those who registered to provide oral testimony on the proposed rule amendments. Will staff please note for the record whether

anyone registered to provide oral testimony?

**Staff:**

No one has registered to provide oral testimony.

**Hearings Officer:**

Thank you. For the record, no oral testimony was received on these proposed rule amendments. The hearing will remain open until 12:30 p.m. in the case there are some last-minute testifiers.

***Note: No testifiers showed up to testify by 12:30 p.m.***

***CLOSING REMARKS:***

**Hearings Officer:**

No oral testimony was received and the Board of Regents will consider all public testimony and comments received. Thank you for participating in the public hearing. There being no further testifiers, and as provided for in the notice, this public hearing is adjourned. The time is now 12:31 p.m.