



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

May 20, 2014

TO: The Honorable Donald G. Horner, Chairperson  
Board of Education

FROM:   
Ronn Nozbe, Deputy Superintendent

SUBJECT: **Discussion at the May 20, 2014 Board of Education, General Business Meeting – Requests for Act 167 Waivers and Contract Exceptions**

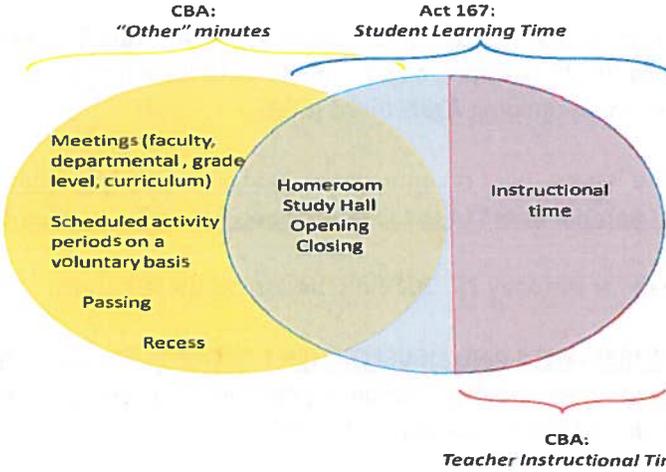
As you know, over the last year, the Department of Education (DOE) and the Hawaii State Teachers Association (HSTA) have been in protracted discourse about the interpretation and implementation of schedule-related requirements under Act 167 and the Collective Bargaining Agreement (CBA).

I have previously briefed the Board on these issues, most recently at the [February 4, 2014 Student Achievement Committee meeting](#), when I presented [our annual report to the legislature on Act 167 implementation](#).

This memo provides critical updates needed for the May 20, 2014 discussion on these issues.

- A. REFRESHER: SCHOOL SCHEDULE REQUIREMENTS AND DEVELOPMENT PROCESS.** A complete summary of the schedule-related requirements of Act 167, Collective Bargaining Agreement (CBA), and Board Policy can be found in the attached *School Schedule Criteria School Year 2014-15*.
- B. DISAGREEMENTS BETWEEN HSTA AND DOE**
- Over the last year, it has become clear that DOE and HSTA have some fundamental disagreements regarding the requirements of the contract and related processes. These disagreements have been manifested in several contexts:
- HSTA's statewide class grievance regarding the SY 2013-14 bell schedules.
  - The DOE's development and release of Optional Model Bell Schedules, as required by the CBA.
  - Positions taken in relationship to legislation during the 2014 Legislative Session.
  - The review of requests for Act 167 waivers or contract exceptions regarding SY 2014-15 bell schedules.

The substantive disagreements, as understood by the DOE, are summarized in the table below.

ISSUE	<u>DOE'S POSITION</u>	<u>DOE'S UNDERSTANDING OF HSTA'S POSITION</u>
<p>Position on Act 167</p>	<p>The DOE understands the important focus that Act 167/Act 52 have brought to the issue of minimum equity of learning time for students; this must be balanced with a focus on quality use of time and student results. The DOE recommended three legislative actions through our annual legislative report:</p> <ul style="list-style-type: none"> <li>• Suspend required increases to 1,080 hours until further data is available</li> <li>• Clarify the definition of student learning time to eliminate confusion and reduce burden</li> <li>• Provide additional funding to schools</li> </ul> <p>The DOE testified in support of proposed legislation in the 2014 Legislative session that would have repealed the requirements to increase student learning time to 1,080 hours; struck the statutory definition of student learning time; and directed the Board of Education to define student learning time.</p>	<p>Minimum requirements for student learning time are restrictive and interfere with the collective bargaining process. Act 167 should be repealed. HSTA testified in opposition to the noted proposed legislation, and actively worked to ensure the bill was not successful.</p>
<p>Relationship between teacher instructional time and student learning time</p>	<p>The DOE sees the definitions of teacher instructional time and student learning time as overlapping.</p>  <p>The CBA does not explicitly define instructional time. However, it does explicitly identify time blocks that are <i>not</i> considered instructional time: preparation; lunch; meetings (faculty, departmental, grade-level; curriculum); passing, opening; closing; recess; homeroom; schedule activities on a voluntary basis; and study hall.</p>	<p>HSTA seeks evidence for its case to the legislature that Act 167 should be repealed because schools cannot meet the requirements under the current CBA and funding levels.</p> <p>They are seeking to leverage the concept of teacher instructional time from the CBA for the purposes of meeting Act 167 definition of student learning time. For example, this would mean not counting homeroom, study hall, opening, and closing as student learning time. This may position schools' schedules as not meeting Act 167.</p>

ISSUE	<u>DOE'S POSITION</u>	<u>DOE'S UNDERSTANDING OF HSTA'S POSITION</u>
	<p>Act 167 defines student learning time as "time during which students are engaged in learning activities including regularly-scheduled instruction and learning assessments within the curriculum, and does not include lunch, recess, or passing time."</p> <p>The law does not explicitly say that homeroom, study hall, opening, or closing are included or not included in student learning time. The Attorney General's office has advised the DOE that as the implementing agency, the DOE has the authority and responsibility to implement Act 167, including interpretation where there is a lack of clarity. The DOE interprets opening, closing, homeroom and study hall to legitimately fall under the definition of student learning time. Therefore, student learning time includes instructional time plus opening, closing, homeroom, and study hall. This interpretation has been clearly stated in our documentation, guidance and instructions to the field. HSTA has been privy to all of these materials and was invited to participate in training DOE conducted for state and complex area staff to understand our interpretation.</p>	
7-hour work day	<p>The CBA establishes a 7-hour work day that can be made flexible to aggregate to 35 hours over the week.</p> <p>The Attorney General's office has advised the DOE that if a schedule proceeds through the required collaborative process, then a contract exception may be sought for a longer work day.</p>	<p>HSTA has stated that the contract exception process cannot be used to lengthen the 7-hour work day; instead this is an issue that must be negotiated with the union on a case-by-case basis.</p>
Minimums or maximums	<p>The CBA establishes weekly totals for certain contractual blocks. There is a long-standing disagreement over whether these weekly totals are "minimums, maximums or absolutes." Communication and enforcement of these has not always been consistent. Given the lack of clarity, for SY 2014-15, the DOE gave the field clear instructions:</p> <ul style="list-style-type: none"> <li>• Student learning time is a minimum</li> <li>• Teacher instructional time is an absolute</li> <li>• Teacher prep time is a minimum</li> <li>• Lunch time is an absolute</li> <li>• "Other minutes" are an absolute</li> </ul> <p>As part of an attempt to engage HSTA in discussion and agreement to settle the grievance that was subsequently denied by HSTA, the DOE suggested seeking formal clarity on these issues.</p> <p>In recent days, following conversations with Board Members, the DOE will likely move forward with a clarified interpretation for SY 2015-16 that differs from that above in that:</p> <ul style="list-style-type: none"> <li>• Teacher instructional time is a maximum for which a contract exception can be sought.</li> <li>• Lunch time is a minimum for which a contract exception can be sought.</li> </ul>	<p>The DOE understands HSTA's position to be:</p> <ul style="list-style-type: none"> <li>• Student learning time is a minimum</li> <li>• Teacher instructional time is a maximum</li> <li>• Teacher prep time is a minimum</li> <li>• Lunch time is a minimum</li> <li>• "Other minutes" = position unknown</li> </ul>

ISSUE	<u>DOE'S POSITION</u>	<u>DOE'S UNDERSTANDING OF HSTA'S POSITION</u>
Requirements for breaks / recess	<p>Resolution is needed on the nature of the "other minutes" requirement.</p> <p>CBA states: "Teachers shall not be required to teach more than 180 consecutive minutes without a break, lunch, or recess. A break or recess of not less than 15 minutes in length shall be provided. This break or recess shall be duty free except for the period when teachers are assigned supervision of students on a rotation basis, with the understanding that no less than 5 minutes of a break is accorded the teacher-on-duty as personal time. Teachers may be assigned supervision not more than once every 5 days or no more than 1/5 of the total days per quarter, except in those small schools wherein it would be impractical or prohibitive to do so."</p> <p>Following 180 consecutive minutes of teaching, schedules typically include a 15 minute recess. This sufficiently addresses the requirement.</p> <p>Moreover, in secondary schools, students are not accompanied by a teacher for passing to recess.</p> <p>There is no contractual requirement that there be 75 minutes of recess.</p>	<p>Schedules need to include buffer time on either end of a recess block to walk students back and forth to recess. Otherwise, teachers are not receiving the required 15-minute, duty-free break.</p> <p>HSTA has shared their position that the CBA includes a minimum recess requirement of 75 minutes per week.</p>
Role of HSTA in interpreting and monitoring Act 167 compliance	<p>The CBA states that the schedule shall comply with Act 167. The DOE maintains the responsibility and authority to interpret the law and monitor implementation. Where there is disagreement between the DOE and HSTA on the interpretation of statutory requirements, the DOE interpretation, as the implementing agency, stands. The Attorney General's office advised the DOE that the definition of student learning time is not a matter of contract interpretation or arbitration.</p>	<p>The inclusion of this provision in the contract obligates HSTA to monitor Act 167 in line with their interpretation of Act 167. Where there is disagreement between the DOE and HSTA on the interpretation of statutory requirements, the definition of student learning time is a matter of contract interpretation or arbitration.</p>
Official bell school schedules	<p>This year the DOE made significant improvements to the process by providing clear guidance and instruction and common templates to ensure clarity and consistency. This included a schedule submission form that includes the bell schedule, a summary table that tallies requirements in comparison to requirements, and principal and CAS signatures.</p> <p>This was in part due to feedback from HSTA that it was difficult to interpret schedules because schools use different terminology and formats. The intent was to provide a common template that would reduce burden on schools for submission and on the DOE and HSTA for compliance efforts. HSTA was privy to iterations of the forms as they were developed; and provided feedback on the forms.</p> <p>The DOE policy communicated to the field is that the schedule</p>	<p>HSTA believes that schools misconstrue schedules on the state-provided templates and therefore the submitted school schedules are not the true bell schedule.</p>

ISSUE	<u>DOE'S POSITION</u>	<u>DOE'S UNDERSTANDING OF HSTA'S POSITION</u>
	<p>submitted on the state template is the official school schedule.</p> <p>The Department is committed to further improving the instructions, tools, and timeline to streamline efforts and reduce burden. DOE has dedicated staff to focus on these issues this summer and develop a refined process and timeline with input from schools, HSTA, and HGEA.</p>	

**C. 2+2 Committee Process<sup>1</sup>**

A school may receive approval for schedules that are out of compliance with Act 167 and the CBA, by requesting a waivers or contract exceptions through a School Community Councils (SCC) application to the Board of Education.

In the case of contract exceptions, the applications are subject to a review by the 2+2 Committee: 2 designees from HSTA and 2 designees for the BOE. Both parties must agree to the exception. The Committee makes recommendations for approval to the BOE, which must vote to approve the exception. The DOE also convenes a similar 2+2 Committee with the Hawaii Government Employees Association (HGEA). Schools note in their application package whether they are requesting an Act 167 waiver or a contract exception, and why that request is being made.

The HSTA 2+2 Committee met three times; the HGEA 2+2 Committee met twice. The attached document, *Status of 2+2 Committees' Recommendations Submitted Relating to Act 167 Waivers and Contract Exceptions*, summarizes votes from the Committees.

**D. DOE's position on HSTA's approach to the 2+2 Committee process**

It is inappropriate and extremely problematic to deny schools' schedules that are in compliance with the Department's implementation guidance.

- In most cases, the reason HSTA provided for denying the request was outside the scope of the request, and therefore the process.
- The 2+2 Committee process is not the mechanism to resolve differing interpretations of Act 167.
- Regardless, per the Attorney General's office, as the implementing agency, the DOE's interpretation stands for implementation purposes.
- In all cases, a schedule before the 2+2 Committees has already achieved consensus or a positive vote by school staff. This means HSTA's vote to disapprove a request for contract exception contradicts that of their members.
- Schools need to finalize their schedules and communicate them to staff immediately, before the end of the school year. It would have an undeniably negative impact on schools to deny schedules unnecessarily.

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<sup>1</sup> Note: The process for submitting requests for Act 167 waivers or contract exceptions needs to be improved and streamlined, and the DOE will do so for next year.

**E. Proposed Board Actions for Consideration**

The DOE respectfully asks that the Board consider the following actions.

- Approve those requests approved by the 2+2 Committees.
- Following review of the schedules and giving consideration to the analysis by the Attorney General's office that for some schools, no contract exceptions are necessary because there have been no deviations from the contract, acknowledge its full support of those schools' in their efforts to implement the school-developed schedules for SY2014-15. (See attached: *School Schedule Requests by Category*).

As such, direct the DOE to inform those schools that their school-developed schedules for SY2014-15 shall be implemented.

- Direct the Student Achievement Committee to develop for Board approval a policy that clarifies the interpretation of student learning time to include opening, closing, homeroom and study hall. The DOE already has the administrative right to interpret the law as such, but the establishment of a board policy would provide additional support for this position.

It is urgent that this policy be established before July 15, 2014 so that the DOE may prepare the dissemination of materials for SY 2015-16 schedule development by the first day of school for teachers on July 28, 2014.

Further Board action to explore expanding the definition of student learning time non-traditional concepts such as independent study; co-curricular activities, etc. will require additional research and deliberation and should not stall the needs for clarification for SY 2014-15.

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c: Kathryn S. Matayoshi, Superintendent

**Attachments:**

- *School Schedule Criteria School Year 2014-15*
- *Status of 2+2 Committees' Recommendations Submitted Relating to Act 167 Waivers and Contract Exceptions*
- *School Schedule Requests by Category*

## School Schedule Criteria School Year 2014-15

This document serves as a reference document for schools and Complex Area Superintendents as they create, approve, and submit School Schedules for School Year (SY) 2014-15 that are in compliance with the 2013-17 Agreement (Agreement) with the Hawaii State Teachers Association (HSTA) and legislative requirements regarding student learning time. It includes information about: 1) Schedule Criteria, 2) Terminology, 3) Process Requirements, 4) Board of Education (BOE) Exceptions and Waivers, and 5) Exceptions to the Agreement.

1. **SCHEDULE CRITERIA:** School schedules -- including school calendars; teacher schedules; and bell schedules -- for School Year 2014-15 must meet the criteria in the table below.

<b>Teacher Work Year</b>	<ul style="list-style-type: none"> <li>• <b>No more than 190 work days.</b> (This includes 189 full work days and 6 hours for use in multiples of 1/2 hour increments contiguous to their work day described below.)</li> <li>• <b>Work days without students:</b> <ul style="list-style-type: none"> <li>• <u>First 4 days</u> (including 2 days for administrator-initiated activities and 2 days for teacher-initiated activities)</li> <li>• <u>1 day scheduled between semesters</u> for grading and other teacher-initiated activities</li> <li>• <u>2 days for school planning and collaboration</u> (determined by school's leadership group and administrators, with input from faculty); (encouraged to align days across complex areas to support common planning)</li> <li>• <u>1 day at the end of the school year</u></li> <li>• <u>1 day for participation in Teacher Institute Day</u> (dates set by HSTA)</li> </ul> </li> <li>• <b>Hours contiguous to the teacher work day for collaboration and professional development</b> <ul style="list-style-type: none"> <li>• <u>21 hours, for use in 1 hour increments</u>, for DOE-directed job-embedded professional development that extends the work day of teachers (focused on Common Core State Standards, data teams and formative instruction, response to intervention, and teacher evaluation)</li> <li>• <u>6 hours for use in multiples of 1/2 hour increments</u> for DOE-directed in-service training, school program planning and assessment, or principal-teacher evaluation conferences beyond the regular work day of teachers                             <ul style="list-style-type: none"> <li>○ not to exceed 1 ½ hours; scheduled in advance; and contiguous to the teacher's work day</li> <li>○ teachers must have input on the training activities</li> </ul> </li> </ul> </li> </ul>
<b>Teacher Schedule</b>	<p><b><u>Per day:</u></b></p> <ul style="list-style-type: none"> <li>• 7-hour day</li> <li>• Work day may not extend beyond 4:30 p.m.</li> <li>• Duty-free lunch period of no less than 30 minutes</li> <li>• No more than 180 consecutive minutes without a break, lunch or recess of no less than 15 minutes.</li> </ul> <p><b><u>Per week:</u></b></p> <ul style="list-style-type: none"> <li>• 5-day week</li> <li>• Schools may use rotating, block, or other non-traditional schedules, as long as teachers' work time does not exceed a 35-hour work week</li> <li>• <b>For self-contained classes, during regular work day, per week:</b> <ul style="list-style-type: none"> <li>• 1,415 minutes of instructional time</li> <li>• 225 minutes of preparation time in blocks of not less than 45 continuous minutes during regular work day</li> <li>• 150 minutes of duty free lunch periods in blocks of not less than 30 continuous minutes during the teachers' regular work day</li> <li>• 310 minutes to be used exclusively for meetings (faculty, departmental, grade level, curriculum); passing, opening, and closing time; recess; homeroom; scheduled activity periods on a voluntary basis; and study hall</li> </ul> </li> <li>• <b>For departmental classes, during regular work day, per week:</b> <ul style="list-style-type: none"> <li>• 1,285 minutes of instructional time</li> <li>• 225 minutes of preparation time in blocks of not less than 45 continuous minutes</li> <li>• 150 minutes of duty free lunch periods in blocks of not less than 30 continuous minutes during the</li> </ul> </li> </ul>

	<p>teachers' regular work day</p> <ul style="list-style-type: none"> <li>440 minutes to be used exclusively for meetings (faculty, departmental, grade level, curriculum); passing, opening, and closing time; recess; homeroom; scheduled activity periods on a voluntary basis; and study hall</li> </ul> <p><b>Per semester:</b> 6 teacher preparation periods per semester may be used at discretion of Employer for training, planning and assessment, or principal-teacher conferences.</p>
<b>Student learning time</b>	<p>For all schools, excluding charter schools and multi-track public schools:</p> <ul style="list-style-type: none"> <li><b>School Year 2013-14</b> <ul style="list-style-type: none"> <li>All schools: 180 days</li> <li>Elementary schools: 915 student instructional hours (1,525 student instructional minutes per week)</li> </ul> </li> <li><b>School Years 2014-15 and 2015-16</b> <ul style="list-style-type: none"> <li>All schools: 180 days</li> <li>Elementary schools: 915 student instructional hours (1,525 student instructional minutes per week)</li> <li>Secondary schools: 990 student instructional hours (1,650 student instructional minutes per week)</li> </ul> </li> <li><b>School Years 2016-17 and 2017-18</b> <ul style="list-style-type: none"> <li>All schools: 180 days</li> <li>All schools: 1,080 student instructional hours (1,800 student instructional minutes per week)</li> </ul> </li> <li><b>School Year 2018-19</b> <ul style="list-style-type: none"> <li>All schools: 190 days</li> <li>All schools: 1,146 student instructional hours (1,800 student instructional minutes per week)</li> </ul> </li> <li><b>Course offerings</b> <ul style="list-style-type: none"> <li>Secondary students have access to coursework in order to earn more than 6 credits per year.</li> <li>Elementary students have expanded course offerings.</li> </ul> </li> </ul>

2. **Terminology:** The table below clarifies the source of terminology used. It is drawn from Act 167/Act 52, the Agreement, and the Joint Interpretation of New Provisions.

<b>Term</b>	<b>Definition</b>	<b>Source</b>
Student learning time	Time during which students are engaged in learning activities including regularly-scheduled instruction and learning assessments within the curriculum, and does not include lunch, recess, or passing time.	Act 167/Act 52
	Student learning time includes opening, closing, homeroom, and study hall.	DOE interpretation of Act 167/Act 52
Teacher instructional time	Teacher instructional time does not include faculty meetings, departmental meetings, grade level meetings, curriculum meetings, passing time, opening and closing time, recess, homeroom, scheduled activity periods on a voluntary basis or study hall.	Agreement, Article VI, CC.
Teacher prep time	A preparation period shall be for the pursuit of personally initiated school tasks in preparing for instruction, evaluation students and performing other instructional related activities. A preparation period shall not be used for personal or Association business or activities.	Agreement, Article VI, X, 1
Teacher "other" time	Teacher "other" time includes faculty meetings, departmental meetings, grade level meetings, curriculum meetings, passing time, opening and closing time, recess, homeroom, scheduled activity periods on a voluntary basis or study hall.	Agreement, Article VI, CC.
Coursework in order to earn more than 6 credits per year	The DOE intended that this provision would help ensure students had access to opportunities for enrichment or credit recovery, including online learning opportunities.	DOE interpretation of Agreement
	Many secondary schools offer an advisory period. Advisory is not a contractual block, and therefore cannot be used in the School Schedule Submission Form. Schools	

	<p>offering an advisory period should describe it in the Submission Form as the contractual time blocks that is most consistent with how the time is used: e.g. instructional block or homeroom.</p> <p>If a school chooses to offer students credits for work completed during an advisory period (e.g. Personal Transition Plan), those credits may count toward the “more than 6 credits per year” requirement.</p>	
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### **3. PROCESS REQUIREMENTS**

School schedules must be determined through a collaborative process involving all active bargaining unit members at the school and the administration, per Article VI (DD) (5-8) and Article VII (B).

- Principals shall work with the leadership group to develop a schedule for the school that meets the above criteria and the needs of the particular school.
- If all active bargaining unit members and the administration achieve consensus, the schedule will be adopted. Consensus has been reached when all bargaining members in the school agree that their points of view have been heard and understood and that they can live with the decision.
- If consensus is not achieved, then the principal must put the proposed schedule to a vote of the active bargaining unit members. The schedule will be adopted if approved by 66-2/3% of the members voting.
- If the vote is not approved by 66 2/3%, the principal shall select a schedule from the DOE-developed Optional Model Bell Schedules.
- By the last day of the school year, the Tentative Master schedules for the following year must be posted and teachers must be notified in writing of their assignments.

### **4. BOE SCHOOL COMMUNITY COUNCIL EXCEPTIONS AND WAIVERS**

The following section serves as a reminder of existing Hawaii State BOE policies regarding BOE School Community Council waivers and exceptions policies. The annual memo announcing the process and deadlines for submitting BOE waivers and exceptions, “School Community Council (SCC) Waiver/Exception Requests for SY 2014-2015,” was posted on October 30, 2013. SCC Waivers/Exceptions requests that do not impact the school calendar must be submitted by March 14, 2014. Questions regarding this process should be directed to Jill Zodrow, SCC Educational Specialist, at 203-5571 or via Lotus Notes.

#### *Board Policy 2412 - “SCHOOL COMMUNITY COUNCIL WAIVERS AND SCHOOL COMMUNITY COUNCIL EXCEPTIONS POLICY”*

*The Board of Education (Board) has established procedures whereby School Community Councils (SCC), upon application to the Board, may be granted waivers from specific Board policies or rules and/or may be granted exceptions to specific provisions of labor agreements to which the Board is a signatory. The Department of Education (Department) shall administer the procedures and make them widely available to the public.*

*Requests for waivers from rules not under the direct control of the Board shall be forwarded to the appropriate governmental agency by the Department.*

*Waivers and exceptions are designed to enhance flexibility in order to facilitate school improvement. Schools are encouraged to explore alternate solutions before seeking waivers or exceptions to collective bargaining agreements.*

*Schools shall ensure that requests for waivers and exceptions align with their respective school's Academic and Financial Plan and demonstrate how the waiver or exception will improve student learning and increase student achievement.*

*To facilitate its commitment to School Community Councils and to make the process of obtaining waivers less burdensome and less time-consuming, the Board hereby establishes the category, "Generic Waiver and/or Exception" to which the Board may assign any request.*

*Generic waivers and/or exceptions have been found by the Board to have sufficient merit or be sufficiently routine so as to justify automatic approval\* upon application by a school. The Superintendent shall maintain an up-to-date list of SCC Waivers and SCC Exceptions that have been designated "Generic" by the Board, and shall approve upon receipt, all requests from schools for such waivers or exceptions.\* A list of SCC Waivers and SCC Exceptions, along with the stipulations for automatic approval, that have been designated "Generic" by the Board, is provided in the attachment.*

*The Board, for reasons it finds appropriate, may remove the "Generic" designation from a waiver or exception at any time without necessarily affecting the status of schools previously granted such waivers or exceptions under this policy.*

*All requests for waivers or exceptions not designated by the Board to be "Generic" shall require Board approval.*

*\*In the case of SCC exceptions to the provisions of a labor agreement to which the Board is a signatory, such approval indicates only Board agreement. The exception also requires union agreement.*

*Approved: 10/07/04; Amended: 05/05/05; 01/19/06*

**Board Policy 2413 – "STUDENT INSTRUCTIONAL HOURS AND SCHOOL YEAR REQUIREMENTS POLICY AND WAIVER PROCESS"**

*Upon application to the Board of Education (Board) a school may be granted waivers from student instructional hours and school year requirements pursuant to HRS 302A-251. The Department of Education shall administer such procedures as may be adopted by the board.*

*Notwithstanding the multi-track public schools exemption from HRS 302A-251 requirements, multi-track public schools shall adhere to no less than 95% of the statutorily required days in a school year pursuant to HRS 302A-251. Multi-track public schools may, however, request a waiver under this policy.*

*Waivers shall be granted only in extraordinary circumstances. Waivers are intended to facilitate student learning and student achievement by enhancing school-level flexibility. Schools are expected to explore alternate solutions before seeking waivers.*

*Any school requesting a waiver shall ensure that such waiver aligns with its Academic and Financial Plan and demonstrate, with specificity, (1) the circumstances unique to the school justifying the waiver, (2) significant harm to students' learning and students' achievement should the waiver not be granted, (3) the school's plan to exit the waiver and achieve full compliance with the statutory requirements, (4) whether the complex area superintendent and the superintendent concur with the request, (5) whether other applicable processes noted in the Board Policy entitled "School Community Council Waivers and School Community Council Exceptions Policy" were completed, and (6) alternatives considered or implemented by the school prior to requesting the waiver.*

*The Board may grant waivers for no longer than one school year.*

*Due to the scope of the justification for the waiver, the principal of the applicant school shall present the request to the Board.*

*Approved: 7/16/13*

**5. HSTA AGREEMENT APPENDIX III (EXCEPTIONS TO THE AGREEMENT)**

The following section serves as a reminder of Appendix III of the Agreement - the Memorandum of Understanding (MOU) between the BOE and HSTA regarding exceptions to the Agreement.

*“Appendix III*

*This Memorandum of Understanding is effective as of July 1, 2013 by and between the State of Hawaii, Board of Education and the Hawaii State Teachers Association.*

*The Board and the Association believe that the most effective decisions are those made closest to the point of implementation. They further acknowledge that bargaining unit 5 members have a right and an obligation to engage and participate actively in open dialogue where issues are presented, defined, discussed and resolved. In accordance with Hawaii Revised Statutes, the Board has established, at each school, a School Community Council (SCC). The SCC assumes a collaborative approach to decision making.*

*The Board and the Association acknowledge that as part of school-level decision making, exceptions to the Bargaining Unit 5 Agreement (hereinafter called “the Agreement”) may be requested by a SCC.*

***Bargaining Unit 5 Exception Process***

*When exceptions to the Agreement are being requested, Bargaining Unit 5 members shall use a consensus decision-making process. For the purpose of this Memorandum, consensus has been reached when all bargaining members in the school agree that their points of view have been heard and understood and that they can live with the decision. If, after good faith efforts have been exhausted and consensus has not been reached, bargaining unit members shall move to the fallback decision-making process.*

- 1. This process requires all active bargaining unit members at the school be provided the opportunity to vote by secret ballot. The Association Policy Committee at the school shall be responsible for contacting Bargaining Unit 5 members on paid and unpaid leave with return rights to the school.*
- 2. Bargaining Unit 5 members shall be provided five (5) working days to cast their ballot.*
- 3. In order for the vote to be valid, 66-2/3% of all of the ballots cast must be affirmative.*
- 4. Bargaining Unit 5 members shall then report the results to the SCC. All contract exceptions are binding on all bargaining unit members at the school.*

***School Community Council Exception Review Committee***

*A State Committee to be called the SCC Exception Review Committee shall be established.*

- 1. This Committee shall be comprised of two (2) representatives appointed by the Association and two (2) representatives appointed by the Board.*
- 2. This Committee shall establish its own rules of operation.*
- 3. This Committee shall review SCC’s requests for exceptions to the Agreement, including those items incorporated by reference.*
- 4. Both parties must approve exceptions to the Agreement.*
- 5. Any exceptions to the Agreement shall not extend past the duration of the Agreement.*

6. *Unless otherwise specified by the Committee, all exceptions shall be renewed if all role groups at the school agree to continue them. The school shall submit a notification of renewal to the Committee.*

7. *If Bargaining Unit 5 members object to renewing an exception, they must go through the exception process before the request is submitted to the Committee.*

8. *If there are modifications to an exception, the role groups must go through the exception process before the request is submitted to the Committee.*

9. *The exceptions granted shall be applicable only to the school submitting the exception request.*

10. *Properly processed requests for exceptions granted by this Committee shall not be subject to the Grievance Procedure as provided for in the Agreement for the duration of the exception.*

*This Memorandum of Understanding shall expire on June 30, 2017."*



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
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OFFICE OF THE SUPERINTENDENT

May 20, 2014

TO: The Honorable Donald G. Horner, Chairperson  
Board of Education

FROM:  Kathryn S. Matayoshi, Superintendent

SUBJECT: **Status of 2+2 Committees' Recommendations Submitted relating to Act 167 Waivers and Contract Exceptions**

The table below captures the votes of the meetings held by the 2+2 Committees that met on May 9, 2014 (Hawaii State Teachers Association/Department of Education) and May 13, 2014 (Hawaii Government Employees Association/Department of Education) to review the submitted requests for contract exceptions and Act 167 waivers.

School	BOE Designees	HSTA Position	HGEA Position	Status
Aiea High	Yes	Abstain: contract exception is not needed.	Yes	Recommended for approval
Aiea Inter	Yes	No: 96 mins for homeroom and opening were used in determining student instructional mins.	Yes	Does not move forward
Aikahi El	Yes	No: 25 mins for opening time is used for student instructional mins	Yes	Does not move forward
Baldwin High	Yes	No: Decrease of 25 mins in recess/breaks.	Yes	Does not move forward
Blanche Pope El	Yes	No: 75 mins homeroom is used for student instructional mins.	Yes	Does not move forward
Dole Middle	Yes	No: 107 mins homeroom is used for student instructional mins.	Yes	Does not move forward
Ewa Beach	Yes	Abstain: contract exception is not needed.	Yes	Recommended for approval
Ha'aheo El	Yes	No: 65 mins opening/closing is used for student instructional mins.	Yes	Does not move forward
Hau'ula El	Abstain: lack of clarification on quantity of teacher instructional mins	No: 1) +10 teacher instructional mins; 2) 100 mins of homeroom for student instructional minds; 3) - 15 mins of recess/breaks	Yes	Does not move forward
HSDB El	Yes	No: 1) 125 min opening/closing is used for student instructional mins; 2) +185 mins for teacher instructional mins.	Yes	Does not move forward

School	BOE Designees	HSTA Position	HGEA Position	Status
HSDB Sec	Yes	No: 67 mins opening, closing is used for student instructional mins.	Yes	Does not move forward
Iao	Yes	No: 100 mins homeroom used for student instructional mins	Yes	Does not move forward
Jarrett Mid	Yes	No: 205 mins homeroom, opening mins used for student instructional mins	Yes	Does not move forward
Kailua El	Yes	Abstain: contract exception not needed	Yes	Recommended for approval
Kailua High	Yes: contract exception Abstain: Act 167 waiver	No: 1) 100 mins of opening/closing toward student instructional mins; 2) +40 teacher instructional mins; 3) -25 in teacher prep	Yes	Does not move forward
Kalaheo High	Yes	Abstain: no exception needed.	Yes	Recommended for approval
Kalakaua Mid	Yes	No: opening, homeroom used for student instructional mins	Yes	Does not move forward
Ka'u High & Inter	Yes	No: 72 mins of homeroom, opening used for student instructional mins	Yes	Does not move forward
Kauai High	Yes	No: 154 mins of advisory, homeroom, opening used for student instructional mins	Yes	Does not move forward
Kea'au High	Yes	No: 218 mins homeroom, opening, closing used for student instructional mins	Yes	Does not move forward
Kealakehe Inter	Yes	Abstain: no exception needed	Yes	Recommended for approval
Keaukaha El	Yes	No: 50 mins of homeroom used in calculation of student instructional mins	Yes	Does not move forward
King Inter	Yes	No: 223 mins of homeroom, study hall used in calculation of student instructional mins.	Yes	Does not move forward
Kohala Mid	Yes	No: 160 mins of homeroom, study hall used in calculation of student instructional mins	Yes	Does not move forward
Konawaena Middle	Yes	No: 138 mins of homeroom, opening used in calculation of student instructional mins	Yes	Does not move forward
Lahaina Inter	Yes	No: 90 mins of homeroom, opening used in calculation of student instructional mins	Yes	Does not move forward
Lanakila	Yes	No: 70 mins of homeroom, closing used in calculation of student instructional mins	Yes	Does not move forward
Likelike	Yes	No: 50 mins of homeroom used in calculation of student instructional mins	Yes	Does not move forward
Maui High	Yes	No: 154 mins of homeroom, closing used in calculation of student instructional mins	Yes	Does not move forward
Maui Waena	Yes	No: 125 mins of homeroom, study hall, closing used in calculation of student instructional mins	Yes	Does not move forward
Maunaloa	Yes	Abstain: no exception is needed	Yes	Recommended for approval
Mililani High	Yes	No: 159 homeroom, study, opening, closing used in calculation of student instructional time	Yes	Does not move forward

School	BOE Designees	HSTA Position	HGEA Position	Status
Mililani Ike	Yes	No: use of opening and closing used in calculation of student instructional time	Yes	Does not move forward
Moanalua HS	Yes	No: 187 mins of homeroom, study hall, opening, closing used in calculation of student instructional mins	Yes	Does not move forward
Olomana	Yes	Abstain: No exception needed	Yes	Recommended for approval
Pahala	Yes	No: 100 mins of homeroom, closing used in calculation of student instructional mins	Yes	Does not move forward
Pahoa High & Inter	Yes	No: 44 mins of homeroom used in calculation of student instructional mins	Yes	Does not move forward
Paia El	Yes	No: 115 mins of homeroom and closing used in calculation of student instructional mins	Yes	Does not move forward
Pearl City High	Yes	No: 1) recess is under by 25 mins; 2) 159 mins of study hall and opening in calculation of student instructional mins	Yes	Does not move forward
Roosevelt High	Yes	No: 210 mins of homeroom, study hall, opening, closing used in calculation of student instructional mins	Yes	Does not move forward
Stevenson Mid	Yes	No: 155 mins of homeroom, opening, closing used in calculation of student instructional mins	Yes	Does not move forward
Wahiawa Middle	Yes	No: 178 mins of homeroom, study hall, opening and closing used in calculation of student instructional mins	Yes	Does not move forward
Waiialua High & Inter	Yes	No: 162 mins of homeroom, study hall, opening, closing used in calculation of student instructional mins	Yes	Does not move forward
Waikoloa El and Mid	Yes	No: <i>Elementary</i> : 150 mins of homeroom, closing used in calculation of student instructional mins <i>Secondary</i> : 145 mins of homeroom, study hall used in calculation of student instructional mins	Yes	Does not move forward
Washington Middle	Yes	No: 157 mins of homeroom, study hall, opening, and closing used in calculation of student instructional mins	Yes	Does not move forward

The following requests for Act 167 waivers or contract exceptions were withdrawn.

- Kaimuki Mid
- Royal El

The Honorable Donald G. Horner

May 20, 2014

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The following requests are pending further clarification or more information.

- Kuhio El
- Jefferson El
- Mililani Mauka
- Pa'auilo

KSM:jo

Attachments

## SCHOOL SCHEDULE REQUESTS BY CATEGORY

This document groups the school schedule requests by category and notes the votes from the parties of the 2+2 Committees. Schools marked with an asterisk are included in multiple categories. Those schools marked “pending” were delayed due to schedule clarifications; committee members votes have not yet been submitted.

### 1. **Approved by 2+2 Committees (7/49)**

- Developed by school
- Achieved staff consensus or 66 2/3rds vote of approval
- SCC signature of approval
- Principal and CAS signature of approval
- Submitted contract exception based on DOE initial implementation interpretation
- Recommended for approval by 2+2 Committee

School	BOE Designees	HSTA Position	HGEA Position
1. Aiea High	Yes	Abstain: contract exception is not needed.	Yes
2. Ewa Beach	Yes	Abstain: contract exception is not needed.	Yes
3. Kailua El*	Yes	Abstain: contract exception is not needed.	Yes
4. Kalaheo High	Yes	Abstain: contract exception is not needed.	Yes
5. Kealakehe Inter	Yes	Abstain: contract exception is not needed.	Yes
6. Maunaloa	Yes	Abstain: contract exception is not needed.	Yes
7. Olomana	Yes	Abstain: contract exception is not needed.	Yes

### 2. **No contract exception needed (39/49)**

- Developed by school
- Achieved staff consensus or 66 2/3rds vote of approval
- SCC signature of approval
- Principal and CAS signature of approval
- Submitted contract exception based on DOE initial implementation interpretation
- Not approved by 2+2 Committees

School	BOE Designees	HSTA Position	HGEA Position
1. Aiea Inter	Yes	No: 96 mins for homeroom and opening were used in determining student instructional mins.	Yes
2. Aikahi El	Yes	No: 25 mins for opening time is used for student instructional mins	Yes
3. Baldwin High	Yes	No: Decrease of 25 mins in recess/breaks.	Yes
4. Blanche Pope El	Yes	No: 75 mins homeroom is used for student instructional mins.	Yes
5. Dole Middle	Yes	No: 107 mins homeroom is used for student instructional mins.	Yes
6. Ha'aheo El	Yes	No: 65 mins opening/closing is used for student instructional mins.	Yes
7. Hau'ula El*	Abstain: lack of clarification on quantity of teacher instructional mins	No: 1) +10 teacher instructional mins; 2) 100 mins of homeroom for student instructional mins; 3) - 15 mins of recess/ breaks	Yes
8. HSDB El*	Yes	No: 1) 125 min opening/closing is used for student instructional mins; 2) +185 mins for teacher instructional mins.	Yes
9. HSDB Sec	Yes	No: 67 mins opening, closing is used for student instructional mins.	Yes
10. Iao	Yes	No: 100 mins homeroom used for student instructional mins	Yes
11. Jarrett Mid	Yes	No: 205 mins homeroom, opening mins used for student instructional mins	Yes

School	BOE Designees	HSTA Position	HGEA Position
12. Kailua High*	Yes: contract exception Abstain: Act 167 waiver	No: 1) 100 mins of opening/closing toward student instructional mins; 2) +40 teacher instructional mins; 3) -25 in teacher prep	Yes
13. Kalakaua Mid	Yes	No: opening, homeroom used for student instructional mins	Yes
14. Ka'u High & Inter	Yes	No: 72 mins of homeroom, opening used for student instructional mins	Yes
15. Kauai High	Yes	No: 154 mins of advisory, homeroom, opening used for student instructional mins	Yes
16. Kea'u High	Yes	No: 218 mins homeroom, opening, closing used for student instructional mins	Yes
17. Keaukaha El	Yes	No: 50 mins of homeroom used in calculation of student instructional mins	Yes
18. King Inter	Yes	No: 223 mins of homeroom, study hall used in calculation of student instructional mins.	Yes
19. Kohala Mid	Yes	No: 160 mins of homeroom, study hall used in calculation of student instructional mins	Yes
20. Konawaena Middle	Yes	No: 138 mins of homeroom, opening used in calculation of student instructional mins	Yes
21. Lahaina Inter	Yes	No: 90 mins of homeroom, opening used in calculation of student instructional mins	Yes
22. Lanakila	Yes	No: 70 mins of homeroom, closing used in calculation of student instructional mins	Yes
23. Likelike	Yes	No: 50 mins of homeroom used in calculation of student instructional mins	Yes
24. Maui High	Yes	No: 154 mins of homeroom, closing used in calculation of student instructional mins	Yes
25. Maui Waena	Yes	No: 125 mins of homeroom, study hall, closing used in calculation of student instructional mins	Yes
26. Mililani High	Yes	No: 159 homeroom, study, opening, closing used in calculation of student instructional time	Yes
27. Mililani Ike	Yes	No: use of opening and closing used in calculation of student instructional time	Yes
28. <i>Mililani Mauka</i>	Yes	<i>Pending</i>	<i>Pending</i>
29. Moanalua HS	Yes	No: 187 mins of homeroom, study hall, opening, closing used in calculation of student instructional mins	Yes
30. Pahala	Yes	No: 100 mins of homeroom, closing used in calculation of student instructional mins	Yes
31. Pahoia High & Inter	Yes	No: 44 mins of homeroom used in calculation of student instructional mins	Yes
32. Paia El	Yes	No: 115 mins of homeroom and closing used in calculation of student instructional mins	Yes
33. Pearl City High	Yes	No: 1) recess is under by 25 mins; 2) 159 mins of study hall and opening in calculation of student instructional mins	Yes
34. Roosevelt High	Yes	No: 210 mins of homeroom, study hall, opening, closing used in calculation of student instructional mins	Yes
35. Stevenson Mid	Yes	No: 155 mins of homeroom, opening, closing used in calculation of student instructional mins	Yes

School	BOE Designees	HSTA Position	HGEA Position
36. Wahiawa Middle	Yes	No: 178 mins of homeroom, study hall, opening and closing used in calculation of student instructional mins	Yes
37. Waialua High & Inter	Yes	No: 162 mins of homeroom, study hall, opening, closing used in calculation of student instructional mins	Yes
38. Waikoloa El and Mid	Yes	No: Elementary: 150 mins of homeroom, closing used in calculation of student instructional mins Secondary: 145 mins of homeroom, study hall used in calculation of student instructional mins	Yes
39. Washington Middle	Yes	No: 157 mins of homeroom, study hall, opening, and closing used in calculation of student instructional mins	Yes

### 3. Contract exception required (5/49)

- Developed by school
- Achieved staff consensus or 66 2/3rds vote of approval
- SCC signature of approval
- Principal and CAS signature of approval
- Submitted contract exception based on DOE initial implementation interpretation
- Not approved by 2+2 Committees

School	BOE Designees	HSTA Position	HGEA Position
1. Hau'ula El*	Abstain: lack of clarification on quantity of teacher instructional mins	No: 1) +10 teacher instructional mins; 2) 100 mins of homeroom for student instructional minds; 3) - 15 mins of recess/ breaks	Yes
2. HSDB El*	Yes	No: 1) 125 min opening/closing is used for student instructional mins; 2) +185 mins for teacher instructional mins.	Yes
3. Jefferson El	Yes	<i>Pending</i>	<i>Pending</i>
4. Kailua High*	Yes: contract exception Abstain: Act 167 waiver	No: 1) 100 mins of opening/closing toward student instructional mins; 2) +40 teacher instructional mins; 3) -25 in teacher prep	Yes
5. Kuhio El	Yes	<i>Pending</i>	<i>Pending</i>

### 6. Act 167 Waiver required (3/49)

- Developed by school
- Achieved staff consensus or 66 2/3rds vote of approval
- SCC signature of approval
- Principal and CAS signature of approval
- Submitted contract exception based on DOE initial implementation interpretation
- Not approved by 2+2 Committees

School	BOE Designees	HSTA Position	HGEA Position
1. Kalaheo High*	Yes	Abstain: contract exception is not needed.	Yes
2. Kailua High*	Yes: contract exception Abstain: Act 167 waiver	No: 1) 100 mins of opening/closing toward student instructional mins; 2) +40 teacher instructional mins; 3) -25 in teacher prep	Yes

School	BOE Designees	HSTA Position	HGEA Position
3. Paauilo El & Inter	Yes	Pending	Pending

Note: Kaimuki Middle and Royal Elementary withdrew submissions.

\*School is included in multiple categories