

Agenda Item VII.G, Board Action on designation of Board Members to an investigative committee (a permitted interaction group pursuant to Hawaii Revised Statutes Section 92-2.5(b)(1)) concerning nomination of Hawaii State Public Charter School Commission member

General Business Meeting
November 21, 2019

Pursuant to Hawaii Revised Statutes (“HRS”) Section 302D-3(c),¹ entitled “[s]tate public charter school commission establishment; appointment,” the Board of Education (“Board”) appoints the members of the State Public Charter School Commission (“Commission”).

At its March 7, 2019 general business meeting, the Board adopted a new process for the nomination and appointment of individuals to serve as members of the Commission. The new process is attached as **Exhibit A**.

Pursuant to the process, the Board published on its website a call for applications and application form and notified charter school stakeholders, including governing boards, charter school directors, and the Commission, on Thursday, October 3, 2019. Applications are due by November 20, 2019.

The process requires the Board to, at this meeting, establish an investigative committee² (a permitted interaction group under Sunshine Law³) to investigate any applications the Board receives and nominate

¹Section 302D-3(c), HRS, provides:

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

²Section 5.6 of the Board’s By-Laws states, “The Board, as provided by law, may designate two or more Board members, but less than the number of members that would constitute a quorum of the Board, to investigate matters concerning Board business. The Board members designated by the Board are required to report their resulting findings and recommendations to the entire Board at a properly noticed meeting.”

³HRS §92-2.5(b)(1) states, “Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to [i]nvestigate a matter relating to the official business of their board; provided that:

- (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;
- (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

recommended individuals to serve as members on the Commission for the Board to consider for appointment. The investigative committee will present its nominations at the Board's December 5, 2019 meeting, and the Board will take action on the nominations at its subsequent meeting on January 16, 2020.

The Board is to take action to assign two to four Board members to the investigative committee tasked with nominating recommended individuals to serve as members on the Commission for the Board to consider for appointment and designate the Board member that will serve as the chairperson of the investigative committee.

(C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board[.]”

Exhibit A

**Board of Education Process for Appointing Members to the State Public Charter School Commission
(adopted March 7, 2019)**

BOARD OF EDUCATION PROCESS FOR APPOINTING MEMBERS TO THE STATE PUBLIC CHARTER SCHOOL COMMISSION

The purpose of this document is to set the general process for the Board of Education (“Board”) to solicit applications for, nominate, and appoint Commissioners to the State Public Charter School Commission (“Commission”), pursuant to Hawaii Revised Statutes (“HRS”) §302D-3.

PROCESS FOR UPCOMING VACANCIES DUE TO THE EXPIRATION OF EXISTING MEMBERS’ TERMS

| Time (Duration) | Activity |
|--|--|
| By April 1 prior to the anticipated vacancy | The Board publishes on its website a call for applications and an application form and notifies charter school stakeholders, including governing boards, charter school directors, and the Commission. |
| Next General Business Meeting after the publishing of the call for applications | The Board announces the call for applications and directs the public to its website. The Board establishes an Investigative Committee ⁱ (a permitted interaction group under Sunshine Law ⁱⁱ) to investigate any applications received and nominate recommended Commission appointees to the Board. |
| Window to apply begins with the publishing of the call for applications and ends 14 calendar days after the announcement is made at a General Business Meeting | The public and charter school stakeholders submit applications and resumes. ⁱⁱⁱ An individual may apply directly or an organization can apply on an individual’s behalf, provided that the application includes a certification from the individual that he or she is willing to serve as a Commissioner. The Commission may apply on behalf of individuals through this application process as well. |
| Within three business days after the application deadline | Board staff compiles and circulates all applications and resumes to the Investigative Committee. |
| By the next General Business Meeting after the application window closes, provided that there is at least five business days between the circulation of the applications and resumes to the Investigative Committee and the next meeting | The Investigative Committee develops its nomination recommendations for appointment with no more than three nominees per upcoming vacant position from the pool of applicants based on criteria in HRS §302D-3. ^{iv} The Investigative Committee may request Board staff conduct research on any potential nominees, provided that such research does not violate privacy rights. The Investigative Committee may recommend reopening the application window if it does not find qualified applicants to nominate to all upcoming vacant positions. |

| Time (Duration) | Activity |
|--|--|
| Next General Business Meeting after the application window closes, provided it is at least five business days after the circulation of the applications and resumes to the Investigative Committee | The Investigative Committee publicly reports its findings and nomination recommendations to the Board. ^v Pursuant to Sunshine Law, the Board may not deliberate or act upon any of the nominations at this meeting. |
| Next General Business Meeting following the Investigative Committee’s report on its findings and recommendations | The Board hears any public testimony on the nominees and deliberates, as necessary, prior to making appointment decisions. If the Board does not approve a nominee for appointment for whatever reason, the Board may decide to (1) establish another Investigative Committee at the next General Business Meeting and reopen the application window or (2) delegate authority to the Board Chairperson to fill the upcoming vacancy and use the mid-term vacancy process below. |

PROCESS FOR MID-TERM VACANCIES

| Time (Duration) | Activity |
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| Within five business days of receiving written notification of the vacancy | The Board publishes on its website a call for applications and an application form and notifies charter school stakeholders, including governing boards, charter school directors, and the Commission. |
| Next General Business Meeting after the publishing of the call for applications | The Board establishes an Investigative Committee ⁱ (a permitted interaction group under Sunshine Law ⁱⁱ) to investigate any applications received and nominate recommended Commission appointees to the Board. |
| Window to apply ends 14 calendar days after the publishing of the call for applications | The public and charter school stakeholders submit applications and resumes. ⁱⁱⁱ An individual may apply directly or an organization can apply on an individual’s behalf, provided that the application includes a certification from the individual that he or she is willing to serve as a Commissioner. |

| Time (Duration) | Activity |
|---|--|
| <p>Within three business days after the application deadline</p> | <p>Board staff compiles and circulates all applications and resumes to the Board Chairperson and Investigative Committee. The Board Chairperson may appoint interim members from the list of applicants for each vacant position to serve as Interim Commissioners until the Board appoints members, from the list of nominees to be provided by the Investigative Committee, to fill the remainder of each vacation position.</p> |
| <p>By the next General Business Meeting after application window closes, provided that there is at least five business days between the circulation of the applications and resumes to the Investigative Committee and the next meeting</p> | <p>The Investigative Committee develops its nomination recommendations for appointment with no more than three nominees from the pool of applicants based on criteria in HRS §302D-3^{iv} to fill the remainder of the term of each vacant position. The Investigative Committee may request Board staff conduct research on any potential nominee, provided that such research does not violate privacy rights. The Investigative Committee may recommend reopening the application window if it not find qualified applicants to nominate to the vacant positions.</p> |
| <p>Next General Business Meeting after the application window closes, provided it is at least five business days after the circulation of the applications and resumes to the Investigative Committee</p> | <p>The Investigative Committee publicly reports its findings and nomination recommendations to the Board.^v Pursuant to Sunshine Law, the Board may not deliberate or act upon any of the nominations at this meeting.</p> |
| <p>Next General Business Meeting following the Investigative Committee’s report on its findings and recommendations</p> | <p>The Board hears any public testimony on the nominees and deliberates, as necessary, prior to making appointment decisions. If the Board does not approve a nominee for appointment for whatever reason, the Board may decide to establish another Investigative Committee at the next General Business Meeting and reopen the application window. Any interim appointments made to the Commission by the Board Chairperson will continue serving until the Board appoints a member to the position.</p> |

ⁱ Section 5.6 of the Board’s By-Laws states, “The Board, as provided by law, may designate two or more Board members, but less than the number of members that would constitute a quorum of the Board, to investigate

matters concerning Board business. The Board members designated by the Board are required to report their resulting findings and recommendations to the entire Board at a properly noticed meeting.”

ⁱⁱ HRS §92-2.5(b)(1) states, “Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to [i]nvestigate a matter relating to the official business of their board; provided that:

- (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;
- (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
- (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board[.]”

ⁱⁱⁱ The Board keeps applications and resumes confidential only to the extent allowable by law. The Board will make the names and resumes of all applicants nominated by the Investigative Committee publicly available on its website. Through the act of submitting an application, every applicant agrees to these terms and should be mindful that information provided could become public.

^{iv} HRS §302D-3 states, in pertinent part:

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

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

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

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

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

^v The Investigative Committee may or may not disclose nominee names in written meeting material or on a public meeting agenda at the nomination stage. The Investigative Committee can opt to disclose nominee names orally at the meeting only. Board staff will make every effort to notify nominees before the Board or Investigative Committee publicly discloses their names or includes them on a public meeting agenda. Names will be public at the appointment stage.