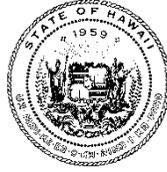


DAVID Y. IGE
GOVERNOR



CATHERINE PAYNE
CHAIRPERSON

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

July 23, 2020

TO: Board of Education

FROM: Catherine Payne
Chairperson, Board of Education

AGENDA ITEM: Board Action on Board Policy 500-20, entitled "School Community Council Waivers and School Community Council Exceptions," and School Community Council Process and Procedures for Requesting Waivers from Policies, Rules, or Procedures

I. EXECUTIVE SUMMARY

- The Board of Education ("Board") is statutorily required to have procedures necessary to process waivers initiated by School Community Councils ("SCC"), but the Board has not adopted such procedures to date.
- Proposed changes to Board Policy 500-20 are attached as Exhibit A (redline) and Exhibit B (clean copy), and proposed new process and procedures for SCCs to request waivers are attached as Exhibit C.
- Among the highlights, the proposed policy, process, and procedures codify one-year waivers and replace "generic waivers" with general waivers.

II. BACKGROUND

The Board is statutorily required to have procedures necessary to process waivers initiated by SCCs.¹ The Board adopted Board Policy 500-20, entitled "School Community Council

¹ Section 302A-1126, Hawaii Revised Statutes, states, "Any state agency that may be required to act under state law on a matter affecting an individual school or its school community, shall waive otherwise applicable policies, rules, or procedures when requested to do so by a school community council unless the agency, within thirty days, can justify a denial to the appropriate authority. The board shall adopt procedures necessary to process waivers initiated by a school community council. Any general waiver of policy, rule, or procedures granted by the board to a specific school or schools may be extended by the board to apply to other schools under comparable circumstances. This section shall apply to collective

Waivers and School Community Council Exceptions,” which states, in pertinent part, “[t]he Board has established procedures whereby [SCCs], 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.” However, the Board has not adopted such procedures to date.

At its September 5, 2019 general business meeting, the Board established an investigative committee tasked with developing proposed Board priorities for the 2020-2021 school year for the Board’s consideration. Board Member Kaimana Barcarse, chairperson of the investigative committee, reported the committee’s recommendations in a memorandum to the Board on July 9, 2020.² Among the proposed priorities, the committee recommended that the Board “reassess its procedures for SCCs to request waivers from policies, rules, and procedures to ensure it is a tool that provides Department schools with the flexibility necessary to navigate the challenges this year presents.” The committee noted, “The timing and nature of past SCC waiver requests raises some concerns as to whether schools have the flexibility to obtain waivers that may be necessary given the extenuating circumstances of the current school year, thus making formal waiver request procedures more important.”

III. DISCUSSION

I am proposing both changes to Board Policy 500-20, attached as Exhibit A (redline) and Exhibit B (clean copy), and new process and procedures for SCCs to request waivers, attached as Exhibit C. These procedures are intended to memorialize practices currently in place and add clarity to the gaps in existing practices. Having these procedures gives the Board a starting point from which it can explore streamlining and improving the SCC waiver process to provide more flexibility to school communities and be more responsive to their needs. The proposed changes to Board Policy 500-20 make the policy consistent with the proposed process and procedures.

The proposed procedures do not address the necessity of more flexibility for schools to navigate the challenges this year presents, as proposed as a Board priority in Board Member Barcarse’s July 9, 2020 memorandum. However, I am working on another proposal to grant schools and complex area superintendents the needed flexibility for this school year, which could potentially inform long-term changes to the waiver process to better align with a school empowerment model.

I would like to highlight the following relating to the proposed policy, process, and procedures:

bargaining agreements as provided in all relevant collective bargaining agreements negotiated pursuant to chapter 89.”

² Board Member Barcarse’s memorandum, dated July 9, 2020, is available here: http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20200709_Report%20on%20Investigative%20Committee%20concerning%20Board%202020-2021%20strategic%20priorities.pdf.

- Codification of one-year waivers;
- Replacement of “generic waivers” with general waivers;
- The need for an agreement with the Hawaii Government Employees Association (“HGEA”); and
- Implementation of the revised policy and the new process and procedures.

One-year waivers. The changes to Board Policy 500-20 make it clear that duration of any waivers are for up to one year. This change codifies the Board’s practice of granting waivers for only a single school year into policy. Granting waivers for only one year ensures SCCs and schools regularly review and update their Academic and Financial Plans because the policy and waiver process require waiver requests to align with the school’s Academic and Financial Plan. An SCC may request a waiver again, and requesting a repeat waiver does not theoretically add a significant administrative burden to a school because it can simply copy the information from its previously approved request if the SCC determines another waiver is necessary. Further, requiring the school community to go through the waiver process again provides another opportunity for the SCC and principal of the school to engage with each other meaningfully and review the success of and affirm their commitment to their school’s plan.

General waivers. The changes to Board Policy 500-20 remove the concept of “generic waivers” and replace it with general waivers, which more closely aligns with statute. Pursuant to current Board Policy 500-20, generic waivers “have sufficient merit or [are] sufficiently routine so as to justify automatic approval upon application by a school.” The only time the Board ever adopted generic waivers was in 2004. At the same time, it adopted the original version of Board Policy 500-20 (which was Board Policy 2412 at the time). The Board has not adopted generic waivers since then. Furthermore, the only generic waivers the Board adopted apply to provisions in the Hawaii State Teachers Association (“HSTA”) collective bargaining agreement. In accordance with current Board Policy 500-20, a generic waiver to collective bargaining agreement provisions “indicates only Board agreement” and still “requires union agreement,” thus raising questions as to the usefulness of the existing generic waivers.

Unlike generic waivers, which last in perpetuity until the Board repeals them, the proposed policy and process envisions general waivers as a temporary mechanism but still with a broad effect. The Board should not grant permanent general waivers because that essentially changes existing policy without actually changing it. If the Board believes existing policies, rules, or procedures under its jurisdiction require permanent changes, the Board should change those existing policies, rules, or procedures rather than granting generally applicable waivers from them in perpetuity. The same applies to statutes that the Board has the authority to waive. A permanent general waiver from those statutes is not the Legislature’s intent because it renders the law meaningless. If the Board believes the Legislature should change a statute, the Board should lobby the Legislature to do so, but such a policy decision lies with the Legislature, not the Board.

Lastly, general waivers do not apply to collective bargaining agreements. Any waiver from a collective bargaining provision requires approval from both the Board and the appropriate labor union. Other, more appropriate mechanisms, such as memoranda of understanding, exist to negotiate generally applicable changes, exemptions, or modifications to provisions in collective bargaining agreements, and the Board should use these mechanisms rather than general waivers.

Need for agreement with HGEA. Under collective bargaining law, schools have the right to request waivers from collective bargaining agreements.³ The proposed process and procedures include HSTA and align with a memorandum of understanding to which the Board and HSTA agreed. No formal agreement currently exists with HGEA, which is why the proposed process and procedures does not include it. The Board and HGEA used to have an agreement regarding procedures for schools to request waivers from HGEA collective bargaining agreements, but it expired many years ago. In practice, the Department consults with HGEA representatives on waiver requests. My understanding is that HGEA appreciates current practice, and HGEA would be willing to enter into a formal agreement to memorialize it. I believe the Board and Department should pursue this, and if or when the Board, Department, and HGEA reach such an agreement, the Board can amend the process and procedures to reflect it.

Implementation. Board Policy 400-3, entitled, “Implementation of Board of Education Policy,” requires the Department to “submit an implementation plan to the appropriate Board committee” within 90 days unless otherwise specified by the Board.⁴ I believe the Student Achievement Committee is the appropriate Board committee that should receive the implementation plan for the revised Board Policy 500-20 and associated new process and procedures. My understanding is that the Department typically releases a timeline for SCC waivers in the late fall. The Student Achievement Committee should receive the implementation plan before the Department releases the timeline. The plan should include drafts of the forms and guidance necessary for implementation of the policy, process, and procedures.

IV. RECOMMENDATION

Based on the forgoing, I recommend that the Board:

1. Approve the amendments to Board Policy 500-20, attached as Exhibit A to this memorandum;
2. Adopt the new process and procedures attached as Exhibit C to this memorandum;
3. Direct the Department to pursue a formal agreement with HGEA, for Board approval, to establish a process for SCCs to requests waivers from provisions of the Bargaining Unit 2, 3, 6, 9, and 13 collective bargaining agreements; and

³ Section 89-10.6, Hawaii Revised Statutes, states, “Any school may initiate a waiver from policies, rules, or procedures, including collective bargaining agreements, as provided for in section 302A-1126.”

⁴ Board Policy 400-3 is available here:

<http://boe.hawaii.gov/policies/Board%20Policies/Implementation%20of%20Board%20of%20Education.pdf>

4. For purposes of complying with Board Policy 400-3, direct the Department to submit an implementation plan for revised Board Policy 500-20 and the new waiver process and procedures to the Student Achievement Committee by October 21, 2020.

Exhibit A

Board Policy 500-20 (redlined with proposed amendments)

POLICY 500-20

SCHOOL COMMUNITY COUNCIL WAIVERS ~~AND SCHOOL COMMUNITY COUNCIL~~ EXCEPTIONS

The Board has established procedures whereby School Community Councils ("SCC"), upon application to the ~~Board~~appropriate authorities, may be granted waivers from specific provisions in statute, rules, policies, procedures, regulations, or collective bargaining agreements~~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 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 ensure SCCs and schools regularly review and update their Academic and Financial Plans, any waivers granted shall be effective for up to one school year. Nothing in this policy shall be construed to prohibit an SCC from requesting a waiver that may have been granted previously, provided that the waiver request still aligns with the school's Academic and Financial Plan.

The Board may grant general waivers from specific administrative rules, policies, or procedures under its jurisdiction or specific statutory provisions, as allowed by law, to apply to all schools under the same circumstances. General waivers shall be effective for up to one school year. The Board may extend general waivers if it determines a general waiver is more appropriate than changing permanently changing administrative rules, policies, or procedures or seeking permanent changes to statute.

~~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 all requests from schools for such waivers or exceptions.*~~

~~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: 11/17/2015 (as Board Policy 500.20); amended: 06/21/2016 (renumbered as Board Policy 500-20)]

Former policy 2412 history: approved: 10/07/2004; amended: 05/05/2005; 01/19/2006

Exhibit B

Board Policy 500-20 (clean copy with proposed amendments)

POLICY 500-20

SCHOOL COMMUNITY COUNCIL WAIVERS

The Board has established procedures whereby School Community Councils ("SCC"), upon application to the appropriate authorities, may be granted waivers from specific provisions in statute, rules, policies, procedures, regulations, or collective bargaining agreements. The Department shall administer the procedures and make them widely available to the public.

Waivers 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 will improve student learning and increase student achievement.

To ensure SCCs and schools regularly review and update their Academic and Financial Plans, any waivers granted shall be effective for up to one school year. Nothing in this policy shall be construed to prohibit an SCC from requesting a waiver that may have been granted previously, provided that the waiver request still aligns with the school's Academic and Financial Plan.

The Board may grant general waivers from specific administrative rules, policies, or procedures under its jurisdiction or specific statutory provisions, as allowed by law, to apply to all schools under the same circumstances. General waivers shall be effective for up to one school year. The Board may extend general waivers if it determines a general waiver is more appropriate than changing permanently changing administrative rules, policies, or procedures or seeking permanent changes to statute.

[Approved: 11/17/2015 (as Board Policy 500.20); amended: 06/21/2016 (renumbered as Board Policy 500-20)]

Former policy 2412 history: approved: 10/07/2004; amended: 05/05/2005; 01/19/2006

Exhibit C

**School Community Council Process and Procedures for Requesting Waivers
from Policies, Rules, or Procedures (proposed)**



**STATE OF HAWAII
BOARD OF EDUCATION**

**SCHOOL COMMUNITY COUNCIL PROCESS AND PROCEDURES FOR REQUESTING
WAIVERS FROM POLICIES, RULES, OR PROCEDURES**

I. Introduction

This document describes the process and procedures for School Community Councils (an “SCC” or “SCCs”) to request waivers from policies, rules, or procedures, pursuant to Section 302A-1126, Hawaii Revised Statutes.¹ The Board of Education (the “Board”) established these process and procedures with the understanding that SCCs provide “a means whereby parents, students, and community members have an increased voice in the affairs of the school” and “direction, coordination, and communication to improve teaching and learning, resulting in greater student achievement.”² The waiver process is “designed to enhance flexibility in order to facilitate school improvement,” and waivers should “improve student learning and increase student achievement.”³

The Department of Education (the “Department”) is responsible for administering these process and procedures, and the Department shall develop and maintain any forms and guidance necessary to implementation.

This document contains the following sections:

- Section I. Introduction
- Section II. Types of Waivers
- Section III. Roles and Responsibilities
- Section IV. Waiver Process
- Section V. Procedures to Request a Waiver to CBA Provisions
- Section VI. Procedures to Request a Waiver from Statute or Board Policy

¹ Section 302A-1126, Hawaii Revised Statutes, states, “Any state agency that may be required to act under state law on a matter affecting an individual school or its school community, shall waive otherwise applicable policies, rules, or procedures when requested to do so by a school community council unless the agency, within thirty days, can justify a denial to the appropriate authority. The board shall adopt procedures necessary to process waivers initiated by a school community council. Any general waiver of policy, rule, or procedures granted by the board to a specific school or schools may be extended by the board to apply to other schools under comparable circumstances. This section shall apply to collective bargaining agreements as provided for in all relevant collective bargaining agreements negotiated pursuant to chapter 89.”

² Excerpts are from the rationale of Board Policy 500-19, entitled “School Community Councils,” available here: <http://boe.hawaii.gov/policies/Board%20Policies/School%20Community%20Councils.pdf>.

³ Excerpts are from Board Policy 500-20, entitled “School Community Council Waivers,” available here: [insert when available].

- Section VII. Procedures to Request a Waiver from Department Regulations
- Section VIII. Procedures to Request a Waiver from Other State Agency Policies or Regulations
- Section IX. Disagreements, Dispute Resolution, and Appeals

II. Types of Waivers

This document defines the types of waivers as follows:

- Waiver from Statute. A waiver granted by the Board to an individual school from specific statutory provisions as allowed by law.
- Waiver from Board Policy. A waiver granted by the Board to an individual school from specific administrative rules, policies, or procedures under the Board’s jurisdiction.
- Waiver to Collective Bargaining Agreement (“CBA”) Provisions. A waiver from certain CBA provisions agreed to and granted by the Board (as the employer) and the exclusive representative of the employees covered by the applicable CBA to an individual school.
- Waiver from Department Regulations. A waiver granted by the Superintendent to an individual school from specific, system-wide internal policies, procedures, or regulations under the Department’s sole jurisdiction.⁴
- Waiver from Other State Agency Policies or Regulations. A waiver granted by a state agency other than the Board or Department from rules, policies, procedures, or other regulations under the jurisdiction of that agency.

General Waivers. In addition to the above waivers applicable to individual schools, the Board may grant General Waivers. A General Waiver is a waiver granted by the Board to all schools under the same circumstances from specific administrative rules, policies, or procedures under its jurisdiction or specific statutory provisions as allowed by law.⁵

Only the Superintendent may request a General Waiver from the Board. The Board only grants General Waivers for one school year. Before the Board considers extending any General Waiver beyond one school year, it must consider whether permanent changes to administrative rules, policies, procedures, or statute is a more appropriate approach.

III. Roles and Responsibilities

Multiple people and entities are involved in requesting and approving waivers. The roles and responsibilities of the parties involved are as follows:

- SCC. The SCC is responsible for determining whether a waiver from policies, rules, or procedures is necessary and, if so, submitting a request in accordance with this document.

⁴ This document does not cover school-level or complex-area-level policies and procedures. SCCs should work with their respective principals and CASs if they determine any exemptions from such policies and procedures are necessary. Decisions by principals and CASs may be subject to appeal.

⁵ The Board does not grant general waivers to CBA provisions. The Board, Department, and exclusive representative should formalize any generally applicable changes to CBA provisions through appropriate written agreements, not this waiver process.

- Principal. The principal is responsible for providing advice and technical assistance to the SCC with regard to waiver requests and ensuring waiver requests are in the best interest of the school's students in accordance with the Academic and Financial Plan.
- Complex Area Superintendent ("CAS" or "CASs"). The CAS is responsible for ensuring the waiver request aligns with the school's Academic and Financial Plan, providing recommendations to the SCC and principal, and resolving disagreements between an SCC and its principal with regard to waiver requests.
- State Office. The state-level office responsible for coordinating and assisting with SCC waiver requests and distributing forms, guidance, and other information related to the waiver request process and procedures to SCCs, principals, and CASs. The State Office serves as a liaison between SCCs and their principals and decision-makers.
- Superintendent. The Superintendent is responsible for designating the State Office and setting the annual waiver process timeline based on the Board Chairperson's deadline. The Superintendent has final decision-making authority over requests for Waivers from Department Regulations.
- Board Waiver Review Representatives. The Board Waiver Review Representatives are responsible for reviewing all waiver requests to determine whether they require Board approval, and if so, the Board Waiver Review Representatives make a recommendation to the Board. The Board Waiver Review Representatives act as the Board's representatives on the SCC Exception Review Committee. The Board Waiver Review Representatives can either be two Department employees or one Board member and one Department employee.⁶
- Hawaii State Teachers Association ("HSTA") Waiver Review Representatives. The HSTA Waiver Review Representatives are responsible for reviewing all waiver requests to determine whether they affect the Bargaining Unit 5 CBA and require waivers from any of its provisions.
- SCC Exception Review Committee. The SCC Exception Review Committee (comprised of the Board Waiver Review Representatives and the HSTA Waiver Review Representatives) is responsible for reviewing all waiver requests in accordance with the procedures in Sections V through VIII.
- Board. The Board is responsible for establishing the SCC process and procedures for requesting waivers, through this document, and approving any periodic changes. The Board appoints the Board Waiver Review Representatives. The Board has final decision-making authority over requests for Waivers from Statute, Waivers from Board Policy, and Waivers to CBA Provisions (as the employer only).
- Others. Other state agencies are responsible for decision-making on requests for Waivers from Other State Agency Policies or Regulations. Exclusive representatives of bargaining units other than Bargaining Unit 5 are responsible for decision-making on requests for Waivers from CBA Provisions, as applicable.

⁶ To avoid complications with Sunshine Law, this document contemplates only up to one Board member serving as a Board Waiver Review Representative. Additional procedures, including the incorporation of a permitted interaction group, are necessary if two Board members serve as the Board Waiver Review Representative.

IV. Waiver Process

Main steps. The steps below outline the general process for all waiver requests. Procedures that are specific to each type of waiver request are contained in Sections V through VIII. The main steps of the process are:

1. Determine need. After approval of a school's Academic and Financial Plan, the SCC determines, in consultation with the school's principal, whether it needs to request a waiver to implement the plan.
2. Complete application form. After an SCC determines it needs a waiver, it completes an application form provided by the State Office.
3. Submit to principal. The SCC submits the completed application form to the principal. The principal conducts a technical review of the application to ensure the SCC provides all the required information completely and accurately and, if necessary, assists the SCC in completing the form correctly.
4. Submit to CAS. The principal submits the application to the CAS. The CAS reviews the application to ensure it aligns with the school's Academic and Financial Plan and identifies all the applicable, specific provisions from statute, policy, rules, procedures, regulations, and/or CBAs. The CAS may offer recommended changes or considerations to the SCC regarding its application and waiver request, which the SCC may accept or decline. The CAS may describe any concerns he or she has about the request on the application form, but the CAS does not have the authority to deny the request or prevent the application from moving to the next step.
5. Submit to State Office. The CAS submits the application to the State Office. The State Office prepares a cover memorandum for the application explaining key information about the waiver request. If key information is missing, the State Office may request it from the CAS, principal, and SCC, but the State Office does not have the authority to deny the request or prevent it from moving forward.
6. Submit to SCC Exception Review Committee. The State Office submits the request to SCC Exception Review Committee for review. The Board Waiver Review Representatives determine whether the request requires Board approval, and if so, the Board Waiver Review Representatives develop a recommendation for the Board. The HSTA Waiver Review Representatives determine whether the request affects the Bargaining Unit 5 CBA and requires waivers from any of its provisions. Any request requiring a waiver from Bargaining Unit 5 CBA provisions must go through the procedures to request a Waiver from CBA Provisions (see Section V). The HSTA Waiver Review Representatives do not have the authority to deny a request or prevent it from moving forward if the request does not affect the Bargaining Unit 5 CBA.
7. Additional submissions. The State Office determines who to submit the request to next depending on the type of waiver requested, and the State Office submits the cover memorandum and application accordingly (see Sections V through VIII for specific procedures).
8. Decision and notification. The decision-maker and decision-making process depends on the type of waiver requested (see Sections V through VIII for specific procedures). Regardless of the

waiver type, the State Office is responsible for notifying the SCC, principal, and CAS of the decision.

The subject matter of a waiver request could require the SCC to request a waiver from provisions across statute, rules, policies, procedures, and/or CBAs, thus resulting in a request for more than one type of waiver. Under this circumstance, the State Office may need to run the request through multiple sets of procedures simultaneously and ensure all appropriate decision-makers receive the portions of the request over which they have jurisdiction.

Application form. The State Office maintains an application form for SCCs to use to request waivers. The application form must require an SCC to ensure that the waiver aligns with its Academic and Financial Plan and demonstrate, with specificity:

1. The provisions of statute, rules, policy, regulations, and/or a CBA from which the SCC is requesting a waiver;
2. The circumstances unique to the school justifying the waiver;
3. How the waiver will improve student learning and increase student achievement;
4. The school's plan to achieve full compliance with the statutory requirements after the waiver expires (for Waivers from Statute only);
5. Whether the principal and CAS concur with the request; and
6. Alternatives considered or implemented by the school prior to requesting the waiver.

Timeline. The Board Chairperson, on behalf of the Board, sets the annual deadline for waiver requests to come before the Board for decision-making. The Superintendent sets the timeline and any other internal deadlines necessary to meet the Board's deadline. The timeline should include and account for the dispute resolution and appeals process described in Section IX. The State Office communicates the timeline, deadlines, process, procedures, and forms to all SCCs, principals, and CASs annually.

V. Procedures to Request a Waiver to CBA Provisions

The Board has an executed memorandum of understanding with the Hawaii State Teachers Association ("HSTA") describing a process and mechanism for SCCs and schools to seek waivers to the Bargaining Unit 5 CBA.

The memorandum of understanding (hereafter referred to as "HSTA MOU") establishes the SCC Exception Review Committee comprised of two representatives appointed by HSTA and two representatives appointed by the Board. The Board Waiver Review Representatives act as the Board's representatives to SCC Exception Review Committee, and the HSTA Waiver Review Representatives act as HSTA's representatives to the SCC Exception Review Committee. The SCC Exception Review Committee establishes its own rules of operation (of which the State Office maintains a copy) and acts in accordance with the HSTA MOU.

The procedures below apply to requests for waivers from the HSTA CBA and align with the HSTA MOU:

1. The SCC determines whether it needs to request a Waiver to CBA Provisions (see Step 1 under Section IV).

2. Before the SCC can complete and submit an application form, the SCC needs agreement from the Bargaining Unit 5 members at the school on the waiver request. In accordance with the HSTA MOU, Bargaining Unit 5 members use a consensus decision-making process and reach consensus 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 bargaining unit members have exhausted good faith efforts and did not reach consensus, they use the fallback decision-making process described in the HSTA MOU. The fallback decision-making process allows all active bargaining unit members at the school to vote by secret ballot. In order for the vote to be valid, two-thirds of all of the ballots cast must be affirmative.
3. If the Bargaining Unit 5 members at the school agree with the waiver request either through the consensus or fallback decision-making processes, the SCC completes the application form (see Step 2 under Section IV) and submits it to the principal.
4. The principal reviews the application (see Step 3 under Section IV) and submits it to the CAS.
5. The CAS reviews the application (see Step 4 under Section IV) and submits it to the State Office.
6. The State Office prepares a cover memorandum for the application (see Step 5 under Section IV) and submits both documents to the SCC Exception Review Committee.
7. The SCC Exception Review Committee reviews the request (see Step 6 under Section IV). If HSTA or its authorized representatives reject the request, the request is considered denied and the State Office prepares notifications accordingly (see Step 8 under Section IV). If HSTA or its authorized representatives agree to the request, the Board Waiver Review Representatives make a recommendation to the Board, as the employer, on whether to approve or deny the request. The State Office prepares the recommendation material for the Board.
8. The Board reviews the Board Waiver Review Representatives’ recommendation and makes a final decision. The State Office prepares notifications of the decision accordingly (see Step 8 under Section IV), but it cannot finalize notifications of approval without first receiving HSTA’s approval in writing.

If the HSTA MOU substantively changes, the aforementioned procedures in this section are invalid to the extent that the changes to the HSTA MOU conflict with the procedures. If the HSTA MOU expires without renewal, the aforementioned procedures in this section are invalid.

The Board does not have any other active, formal written agreements with the exclusive representatives of other bargaining units working at the school level describing a process or mechanism for SCCs and schools to request waivers to the respective CBAs. Any SCC or school wishing to seek any such waiver should inform the Superintendent and Board.⁷

VI. Procedures to Request a Waiver from Statute or Board Policy

The procedures below apply to requests for Waivers from Statute and Waivers from Board Policy:

⁷ As of the adoption of this document, the Board is seeking a written agreement with the Hawaii Government Employees Association to establish a formal process for requesting waivers from provisions in the Bargaining Units 2, 3, 6, 9, and 13 CBAs. When the parties reach an agreement, the Board will amend this document.

1. The SCC determines whether it needs to request a Waiver from Statute or Board Policy (see Step 1 under Section IV).
2. The SCC completes the application form (see Step 2 under Section IV) and submits it to the principal.
3. The principal reviews the application (see Step 3 under Section IV) and submits it to the CAS.
4. The CAS reviews the application (see Step 4 under Section IV) and submits it to the State Office.
5. The State Office prepares a cover memorandum for the application (see Step 5 under Section IV) and submits both documents to the SCC Exception Review Committee.
6. The HSTA Waiver Review Representatives review the request to determine whether it affects the Bargaining Unit 5 CBA and requires waivers from any of its provisions (see Step 6 under Section IV), and if so, the request must simultaneously follow the procedures to request a Waiver from CBA Provisions (see Section V). The Board Waiver Review Representatives review the request and make a recommendation to the Board on whether to approve or deny the request. The State Office prepares the recommendation material for the Board.
7. The Board reviews the Board Waiver Review Representatives' recommendation and makes a final decision. The State Office prepares notifications of the decision accordingly (see Step 8 under Section IV).

VII. Procedures to Request a Waiver from Department Regulations

The procedures below apply to requests for Waivers from Department Regulations:

1. The SCC determines whether it needs to request a Waiver from Department Regulations (see Step 1 under Section IV).
2. The SCC completes the application form (see Step 2 under Section IV) and submits it to the principal.
3. The principal reviews the application (see Step 3 under Section IV) and submits it to the CAS.
4. The CAS reviews the application (see Step 4 under Section IV) and submits it to the State Office.
5. The State Office prepares a cover memorandum for the application (see Step 5 under Section IV) and submits both documents to the SCC Exception Review Committee and the Superintendent.
6. The HSTA Waiver Review Representatives review the request to determine whether it affects the Bargaining Unit 5 CBA and requires waivers from any of its provisions (see Step 6 under Section IV), and if so, the request must simultaneously follow the procedures to request a Waiver from CBA Provisions (see Section V). The Board Waiver Review Representatives review the request to determine whether it affects policies, rules, or procedure over which the Board has jurisdiction, and if so, the request must simultaneously follow the procedures to request a Waiver from Statute or Board Policy (see Section VI).
7. The Superintendent reviews the request and makes a final decision. The State Office prepares notifications of the decision accordingly (see Step 8 under Section IV).

VIII. Procedures to Request a Waiver from Other State Agency Policies or Regulations

The procedures below apply to requests for Waivers from Other State Agency Policies or Regulations:

1. The SCC determines whether it needs to request a Waiver from Other State Agency Policies or Regulations (see Step 1 under Section IV).
2. The SCC completes the application form (see Step 2 under Section IV) and submits it to the principal.
3. The principal reviews the application (see Step 3 under Section IV) and submits it to the CAS.
4. The CAS reviews the application (see Step 4 under Section IV) and submits it to the State Office.
5. The State Office prepares a cover memorandum for the application (see Step 5 under Section IV) and submits both documents to the SCC Exception Review Committee and the Superintendent.
6. The HSTA Waiver Review Representatives review the request to determine whether it affects the Bargaining Unit 5 CBA and requires waivers from any of its provisions (see Step 6 under Section IV), and if so, the request must simultaneously follow the procedures to request a Waiver from CBA Provisions (see Section V). The Board Waiver Review Representatives review the request to determine whether it affects policies, rules, or procedure over which the Board has jurisdiction, and if so, the request must simultaneously follow the procedures to request a Waiver from Statute or Board Policy (see Section VI).
7. The Superintendent reviews the request and determines the appropriate agency and individual to which to address the request. The State Office prepares a memorandum from the Superintendent to the agency detailing the waiver request for the Superintendent to send.
8. As provided by law, the agency must either grant or deny the waiver request within 30 calendar days. If the agency denies the waiver request, it must provide justification for the denial to the appropriate authority. The State Office prepares notifications of the decision accordingly (see Step 8 under Section IV).

IX. Disagreements, Dispute Resolution, and Appeals

While the Board encourages a school's SCC and principal to work together closely and come to consensus as often as possible, the Board acknowledges that disagreements may occur from time to time. State law allows a principal to "set aside" any decision by an SCC and allows the SCC to appeal any such decision by the principal.⁸ This document includes a dispute resolution process, which acts as a built-in appeals process for waiver requests. The following steps describe the dispute resolution process in the event the SCC and principal disagree.

1. After the SCC submits the application to the principal and he or she reviews it (see Step 3 under Section IV), the principal may decide to stop the application from advancing to the next step of the process by notifying the SCC of his or her disagreement and decision unless the SCC objects to the decision. If the SCC objects to the principal's decision, the principal must indicate and describe the disagreement on the application form and submit it to the CAS for resolution.

⁸ Section 302A-1124(g), Hawaii Revised Statutes, states, "The principal shall have the authority to set aside any decision made by the school community council if the principal determines it to be in the best interests of the school; provided that the principal notifies the school community council. If the school community council opposes a decision of the principal, an appeal shall first be brought to the complex area superintendent for resolution and, if necessary, to the superintendent and, finally, to the board of education."

2. If an application under review by the CAS (see Step 4 under Section IV) indicates a disagreement between the SCC and the principal regarding the waiver request, the CAS must attempt to resolve the disagreement. If the parties are unable to reach a mutual agreement, the CAS describes the failed dispute resolution on the application form and forwards it to the State Office for processing. The CAS does not have the authority to deny the request or prevent the application from moving to the next step.
3. If an application under review by the State Office (see Step 5 under Section IV) indicates a failed dispute resolution, the State Office prepares a cover memorandum for the application explaining key information about the waiver request and the disagreement between the SCC and the principal, also noting any concerns or comments from the CAS. The State Office submits the memorandum and application to the Superintendent for review.
4. The Superintendent reviews the memorandum and application and determines whether the requested waiver is in the best interest of the students at the school. The Superintendent issues his or her decision in writing, and the State Office provides the written decision to the SCC, principal, and CAS. The Superintendent's decision on a request for a Waiver from Department Regulations is final. The SCC may appeal the Superintendent's decision on a request for any other type of waiver by submitting an appeal to the State Office.
5. If an SCC appeals the Superintendent's decision to deny a waiver request (except for a denial of a request for a Waiver from Department Regulations), the State Office provides the appeal, the Superintendent's written decision, cover memorandum, and application to the Board Waiver Review Representatives (described in Section III). The Board Waiver Review Representatives review the documents and make a recommendation to the appropriate decision-making authority (as described in Sections V through VIII).