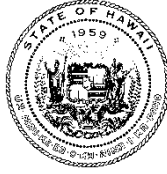


DAVID Y. IGE  
GOVERNOR



CATHERINE PAYNE  
CHAIRPERSON

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

September 17, 2020

TO: Board of Education

FROM: Catherine Payne  
Chairperson, Board of Education

AGENDA ITEM: Board Action on delegation of authority for interim approvals of School Community Council requests for waivers from policies, rules, or procedures for the 2020-2021 school year

---

## **I. EXECUTIVE SUMMARY**

- The Board of Education (“Board”) adopted new procedures to process waivers initiated by School Community Councils (“SCC”), but the procedures do not address the necessity of more flexibility for schools to navigate the challenges this year presents.
- This memorandum proposes that the Board delegate authority to complex area superintendents (“CASs”) to grant interim approval for waivers from statute, Board policy, and Department of Education (“Department”) regulations as requested by an SCC within the CAS’s geographic jurisdiction. In addition, the proposal contemplates the Board delegating authority to the SCC Exception Review Committee to grant interim approval for waivers from collective bargaining agreement (“CBA”) provisions as requested by any SCC.
- Waivers with interim approval would still need to complete the waiver process and receive final approval from the appropriate decision-making authority.

## **II. BACKGROUND**

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.<sup>1</sup> 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.”

At its July 23, 2020 meeting, the Board approved amendments to Board Policy 500-20, entitled “School Community Council Waivers” and adopted a new process and procedures for SCCs to request waivers (“SCC Waiver Procedures”).<sup>2</sup> The SCC Waiver Procedures memorialize practices currently in place, add clarity to the gaps in existing practices, give 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. While the new procedures do not address the necessity of more flexibility for schools to navigate the challenges this year presents, I noted in my memorandum that I was working on another proposal to grant 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.

### **III. DISCUSSION**

Section II of the SCC Waiver Procedures defines the type of waivers that SCCs may request:

- 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 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.

---

<sup>1</sup> 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](http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20200709_Report%20on%20Investigative%20Committee%20concerning%20Board%202020-2021%20strategic%20priorities.pdf).

<sup>2</sup> The amendments to Board Policy 500-20 and the Board’s new adopted process and procedures for SCC waiver requests are attached to my memorandum, dated July 23, 2020, available here: [http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM\\_20200723\\_Action%20on%20SCC%20Waiver%20Policy%20and%20Procedures.pdf](http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20200723_Action%20on%20SCC%20Waiver%20Policy%20and%20Procedures.pdf).

- 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.

I am proposing that the Board delegate authority to CASs to grant interim approval for Waivers from Statute, Waivers from Board Policy, and Waivers from Department Regulations as requested by an SCC within the CAS's geographic jurisdiction. Further, I am proposing that the Board delegate authority to the SCC Exception Review Committee to grant interim approval for Waivers from CBA Provisions as requested by any SCC.

Interim approval means that the school and its SCC may proceed with their plans as if their requested waiver received final approval. Waivers with interim approval still must complete the waiver process pursuant to the SCC Waiver Procedures and receive final approval from the appropriate decision-making authority (*i.e.*, Board, Superintendent, and/or the Hawaii State Teachers Association or its authorized representatives depending on the type of waiver request). If the appropriate decision-making authority ultimately denies a waiver with interim approval, the school and its SCC must change their operations and plans to comply with the provisions from which they sought a waiver.

No interim approval exists for Waivers from Other State Agency Policies or Regulations because the Board does not have authority over rules, policies, procedures, or other regulations under the jurisdiction of other state agencies.

#### **IV. RECOMMENDATION**

Based on the forgoing, I recommend that the Board allow CASs to grant interim approval for waivers from statute, Board policy, and Department regulations and allow the SCC Exception Review Committee to grant interim approval for waivers from CBA provisions, as described in this memorandum, for the 2020-2021 school year.