

V.A. Board Action on February 6, 2020 Determination of State of Hawaii Board of Education denying petition of Sunny Unga, Petition No. 20-01 and settlement terms and authority relating to *Unga v. Board of Education, et.al* (Civil No. 20-0000576)

General Business Meeting

September 17, 2020

The attached Determination of State of Hawaii Board of Education on Petition No. 20-21 was made on February 6, 2020.

DETERMINATION OF STATE OF HAWAII BOARD OF EDUCATION

Petition No.: 20-01
Petitioner: Sunny Unga
Determination Date: February 6, 2020

Board Members Present and Voting:
Catherine Payne, Board Chairperson
Brian De Lima, Board Vice Chairperson
Kaimana Barcarse
Margaret Cox
Kili Namau'u
Kenneth Uemura

INTRODUCTION

A petition for rulemaking (the "**Petition**") is brought before the State of Hawaii Board of Education (the "**Board**"), pursuant to Hawaii Revised Statutes ("**HRS**") §91-6 and Hawaii Administrative Rules ("**HAR**") §8-3-6, wherein Sunny Unga (the "**Petitioner**") proposes the adoption of a new administrative rule.

FINDINGS OF FACT

1. To the extent that any findings of fact are more properly construed as conclusions of law, they shall be so construed.
2. On January 15, 2020, the Petitioner hand-carried the Petition to the Board's office and filed the document in accordance with HAR §8-2-2.
3. The Petition sets forth the text of the proposed rule as follows: "Whenever any state or county agency or private landowner seeks comment from the Department or any of its employees, agents or officers or whenever the Department intends to provide comment regarding any proposed development or other change in land use within five miles of a school or library, the principal or head librarian shall hold a public meeting at the school or library and shall obtain and consider the views of the community when providing such comment."
4. The Petition does not define the term "Department," and the Board interprets it to mean the Department of Education (herein referenced as the "Department").
5. The Petition states the nature of the Petitioner's interest in the subject matter as follows: "Sunny Unga is a parent of small school-aged children who live in Kahuku, Koolauloa, O'ahu and attend Kahuku Elementary and is concerned that changes in land use nearby her children's school may impact their health, welfare, and learning environment."

6. The Petition states the Petitioner's reasons for seeking the adoption of the rule as follows: "In many instances, the Department is asked to provide comments on proposed developments and other land use changes that will occur near a school or library and is not aware of the full range of community views regarding the proposed developments or their impact on school children or library patrons. This is especially important because the Department has an obligation to support child learning environments and open space of libraries and that informing parents/guardians and patrons about nearby land use actions is a means of meeting that obligation. This rule would require schools and libraries to obtain and consider these views before providing comment."
7. The Department generally does not have authority over "proposed development[s] or other change[s] in land use" unless those developments are on land under the Department's jurisdiction.
8. The Department does not have authority over non-school-based public libraries, as such libraries fall under the jurisdiction of the Hawaii State Public Library System.
9. Any comments the Department provides to state or county agencies or private landowners on "proposed developments or other land use changes that will occur near a school" are its own views and not the views of the community.
10. The Board did not hold a public hearing or other proceeding in accordance with HAR §8-3-6(c).
11. The Board reviewed, deliberated, and made a determination on the petition on February 6, 2020.

APPLICABLE LAW AND AUTHORITY

According to HRS §91-6, "Any interested person may petition an agency requesting the adoption, amendment, or repeal of any rule stating reasons therefor. Each agency shall adopt rules prescribing the form for the petitions and the procedure for their submission, consideration, and disposition. Upon submission of the petition, the agency shall within thirty days either deny the petition in writing, stating its reasons for the denial or initiate proceedings in accordance with section 91-3." HAR §8-2-2 prescribes the form for petitions, and HAR §8-3-6 prescribes the procedure for the submission, consideration, and disposition of petitions. The Board must either deny the Petition in writing or initiate public rulemaking proceedings within thirty days following the filing of the Petition. The Board must deny the Petition if:

- (1) The Board determines the Petition does not disclose sufficient reasons to justify the institution of public rulemaking proceedings; or

(2) The Petition fails, in material respect, to comply with the requirements of HAR §§8-2-2 and 8-3-6.

CONCLUSIONS OF LAW

1. If any of the following conclusions of law are more properly construed as a finding of fact, it shall be so construed.
2. The Board concludes that the Petition does not disclose sufficient reasons to justify the institution of public rulemaking proceedings for the Petitioner's proposed rule.
3. The Petitioner failed to include in the Petition any facts, views, arguments, or data that sufficiently support the Petitioner's reasons for seeking the adoption of the rule.
4. The applicable state or county agency or private landowner is responsible to obtain public input on proposed developments or land use changes, not the Department. If the Petitioner feels she does not have adequate opportunity to provide public comments on proposed developments or land use changes, the Petitioner should address that issue with the government agencies that have the authority and jurisdiction over such proposed developments or land use changes.

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DETERMINATION

RE: PETITION NO. 20-01, Sunny Unga

After reviewing the Petition, the Board, by unanimous vote of the above-noted members who were present and voting, denies the Petitioner's request for rulemaking based on the grounds noted herein.

Honolulu, Hawaii, this 6th day of February 2020.

BOARD OF EDUCATION

Catherine Payne, Chairperson

NOTICE OF DETERMINATION OF THE STATE OF HAWAII BOARD OF EDUCATION

RE: PETITION NO. 20-01, Sunny Unga

Enclosed herewith is the determination of the State of Hawaii Board of Education with respect to the aforementioned petition for rulemaking.

CERTIFICATE OF SERVICE

This is to certify that on February 7, 2020, the above notice and the attached decision were mailed postage prepaid to:

Sunny Unga
56-303 Kiu Place
Kahuku, Hawaii 96731

Alison Kunishige, Executive Director
State of Hawaii Board of Education