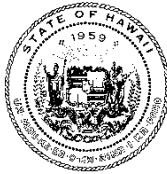


DAVID Y. IGE
GOVERNOR



LANCE A. MIZUMOTO
CHAIRPERSON

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

November 7, 2017

TO: Board of Education

FROM: Lance Mizumoto
Chairperson, Board of Education

AGENDA ITEM: Board Action on amendment of the By-Laws of the Hawai'i State Board of Education: non-committee member participation in committee meetings and meetings once a month

I. BACKGROUND

The By-Laws of the Hawai'i State Board of Education ("By-Laws") were originally approved on April 26, 2011. The By-Laws have been amended five times since then.¹ The By-Laws were last amended on July 18, 2017. The change in July amended Sections 6.1 and 6.3 to clarify that the Board of Education ("Board") would will hold its meetings on Thursdays instead of Tuesdays, effective January 1, 2018.

The present proposal is the further amendment of the By-Laws to: (1) clarify the rules, rights and privileges of Board Members that participate in committee meetings without being a member of the committee and, (2) to hold meetings once a month. A full, clean copy of the By-laws with the proposed amendments is attached as **Exhibit A**.

Board Member Participation in Committee Meetings. The Board has four standing committees, Audit, Finance and Infrastructure, Student Achievement, and Human Resources. Board Members can participate in any of the standing committee meetings even if they are not formal members of a committee. Current practice is that Board Members that are not on the committee can attend meetings and engage in deliberations,

¹ The December 1, 2015 memorandum included a similar, but distinct proposal to amend the By-laws to allow for one General Business Meeting a month with all committee meetings on one day and the General Business Meeting on another day. The full memorandum is available at: http://boe.hawaii.gov/Meetings/Notices/Documents/2015-12-01%20GBM/GBM_20151201_Action%20on%20Board%20By-Law%20Amendments.pdf. The Board declined to amend the By-laws to include this proposal.

but cannot make motions or vote. Board Members that are not on the committee do not count for quorum purposes.

Current practice is not in conflict with the By-laws or *Robert's Rules of Order Newly Revised, 11th Edition* ("*Robert's Rules*"); however, I am recommending that the Board amend the By-laws to memorialize current practice and clarify the rights and privileges of Board Members participating in standing committees when they are not committee members. Section 5.3, entitled "Standing Committee Members and Officers," provides, in pertinent part, that "All Board members not appointed to a Standing Committee shall be an ad hoc member of that Standing Committee." However, *ad hoc* is not the appropriate term describing the role Board Members play. All Board Members are members of the Standing Committee by way of their status as Board Members. As such, they should be referred to as *ex-officio*. *Ex-officio* is defined as "by virtue or because of an office,"² which more accurately describes the reason Board Members can participate in standing committee meetings.

The proposed amendment shown below would change the term "*ad hoc*" to "*ex-officio*" and would also memorialize current practice of non-committee member participation being limited to discussion and not having such individuals count for quorum purposes.³

Section 5.3 Standing Committee Members and Officers. Each Standing Committee shall have a Committee Chairperson and a Committee Vice Chairperson who shall be elected from among and by the Board membership. The Board shall vote on the appointment of Standing Committee members. All Board members not appointed to a Standing Committee shall be an ~~ad hoc~~ *ex-officio* member of that Standing Committee. Board members participating ex-officio may engage in discussion and deliberation at the Standing Committees, but shall not have any other rights or privileges, including the right to make motions or vote; they shall not be counted for quorum purposes.

Meetings Once a Month. The Board currently meets on the first and third Tuesdays of the month. Starting in January 2018, the Board is scheduled to meet on the first and third Thursdays of the month. I would like to propose, however, condensing the meeting schedule so that the Board meets only on the first Thursday of the month. Fewer meetings will result in a number of efficiencies, which will allow the Board to reallocate and use its resources more productively. Financial resources can be reallocated to allow neighbor island Board Members to attend events, outside of Board meetings, which are significant to the public education community and engage in thoughtful planning meetings. Funds could also be reallocated to allow for a General Business Meeting on a neighbor island or for streamlining meeting preparation with things like electronic meeting material.

Time resources will also be used more efficiently because Board and committee chairs would be required to develop agendas that strategically focus on priorities and run efficient meetings that are rich in content. The once-a-month schedule will also allow the

² See definition at: <https://www.merriam-webster.com/dictionary/ex%20officio>.

³ According to *Robert's Rules of Order Newly Revised, 11th Edition*, *ex-officio* members of committees have the same rights and privileges as all other committee members, including the right to vote, and do not count toward quorum in certain instances. However, this is not current Board practice, and the By-Laws stake precedence over *Robert's Rules*.

Department and other personnel more time to work and meet with Board Members, prepare higher quality meeting material, and remove the current “churn and burn” meeting cycle.

Included below are two proposed meeting day schedules. The first shows a meeting day schedule with an Audit Committee meeting (the committee meets quarterly) and the second shows a meeting day schedule without an Audit Committee meeting. The schedules were developed so that the committee meetings and General Business Meetings would be consistent. For example, General Business Meetings would always start at 3:30 p.m.

Proposed Meeting Day Schedule (with Audit Committee)

8:30 a.m. – 10:00 a.m.	Audit Committee Meeting
10:00 a.m. – 11:30 a.m.	Finance and Infrastructure Committee Meeting
11:30 a.m. – 1:00 p.m.	Human Resources Committee
1:00 p.m. – 2:00 p.m.	Lunch break
2:00 – 3:30 p.m.	Student Achievement Committee
3:30 – 5:00 p.m.	General Business Meeting

Proposed Meeting Day Schedule (without Audit Committee)

10:00 a.m. – 11:30 a.m.	Finance and Infrastructure Committee Meeting
11:30 a.m. – 1:00 p.m.	Human Resources Committee Meeting
1:00 p.m. – 2:00 p.m.	Lunch break
2:00 p.m. – 3:30 p.m.	Student Achievement Committee
3:30 p.m. – 5:00 p.m.	General Business Meeting

While these schedules would make for long meeting days, on the upside General Business Meetings will have to start later. This later start time may make it more convenient for members of the public to attend and participate in these meetings. Paired with the possibility of a neighbor island General Business Meeting, the overall effect may be to increase meaningful public access to Board meetings.

Operationally, there are some considerations. The Vineyard parking structure closes at 5:15 p.m. Members of the public typically use this parking structure, so General Business Meetings must end promptly at 5:00 p.m. to allow the public to get to their vehicles. The Board support office will have to prepare all meeting minutes (committee and General Business Meeting) at the same time instead of on the current staggered schedule. Timelines for some Board activities (like the appointment of State Public Charter School Commission members) may have to be adjusted because they were developed under the two-meetings-a-month schedule. These timeline changes will have to be communicated to the public. There may be years where a holiday falls on the first Thursday in January (New Year’s Day), July (Independence Day), and/or November (Veterans’ Day), which means there would be no meetings scheduled for the regular day. The Board can easily remedy this problem when the Board adopts its annual meeting calendar by rescheduling the meetings for those months to a different day of the month. There may be some additional operational costs associated with meetings ending later (like overtime, security, utilities), but they would likely be minimal.

In order to allow staff time to address these operational considerations, I am recommending that the amendment not be effective until January 1, 2018.

Before presenting this proposal to the Board, Board staff reached out to Board Members, Student Representative advisor, Military Liaison, Deputy Superintendent and Assistant Superintendents, Hawaii State Public Library System, and State Public Charter School Commission to get feedback on the proposal. Board staff also reached out to stakeholder organizations that frequently submit testimony for items on Board agendas, including the Office of Hawaiian Affairs, Hawaii State Teachers Association, Hui for Excellence in Education, Native Hawaiian Education Council, Special Education Advisory Council of Hawaii, and Kamehameha Schools. While the feedback was mixed, stakeholders seem to be generally supportive of the change but with a few concerns, including:

- Limited access to the Board. Some stakeholders expressed concern that the public would have less access to the Board because there would be fewer chances to interface with and bring concerns to the attention of the Board. Related to this concern, some stakeholders believe, in addition to fewer opportunities to testify before the Board per month, that the Board would reduce the overall amount of time for testimony to keep back-to-back meetings on schedule.

Board business meetings, however, are not the primary or sole way the public interacts or raises concerns with the Board. There are several avenues that members of the public can utilize to contact or engage with the Board or Board Members, including Board community meetings and directly contacting Board Members using methods like electronic mail. Additionally, having one less meeting day per month would free up time and resources for Board Members to participate in other community engagement activities, such as attending events or meetings. As far as time for testimony, the proposal only reduces the number of general business meetings to one a month. There would be the same number of committee meetings and the same amount of time (90 minutes) would be allocated to committee meetings as currently. As such, the amount of time allotted per testifier would not change, as the proposal still allots committees the same amount of time as the current schedule. Further regarding testimony, the topics on the meeting agendas, not the number of meetings per month, determine testimony opportunities. Pursuant to Sunshine Law, members of the public are allowed to testify only on items on the meeting agenda, and the law does not contemplate public testimony as open to any subject matter. Again, the public can raise concerns unrelated to agenda topics to the Board through other avenues.

- Reduced Board discussion. Some stakeholders expressed concern that the proposed meeting day schedule shortens the duration of meetings, thus reducing the amount of deliberation and discussion on important issues.

As previously mentioned, committee meetings would still have 90 minutes to conduct their business, which is the same as the current schedule. While some committees occasionally go over the allotted time, this is not standard practice. With the new schedule, committee chairs may need to plan and manage meetings a bit more carefully and focus on priority issues, but with proper agenda planning, important

discussions should not be limited. Moreover, General Business Meetings may be able to go over the allotted time, if necessary, with advanced notice.

- More meeting materials to review. Some stakeholders noted that having three or four committee meetings on one day instead of one or two could significantly increase the number of meeting materials to review without providing more time for review. This could make drafting and submitting timely testimony difficult.

This is certainly a valid concern, but there may be a possible solution. With only one meeting day a month, relevant personnel would have more time to work on meeting materials for the next set of meetings. Therefore, it may be possible for the Board to publish the agendas a couple more days in advance (preceding Wednesday to the Thursday meeting) instead of the usual six days, the minimum required by statute, with some of the meeting materials made available with the agendas. The Board would make the rest of the materials available by the preceding Friday (six days in advance). This approach would provide more time for the public to review materials.

On the balance, the possibility of increased efficiencies and access outweigh the operational considerations, and I recommend that Section 6.1 and Section 6.3 be amended as shown below to condense the meeting schedule to one meeting a month:

Section 6.1 General Business Meetings. The Board shall 1) meet regularly on the first ~~and third~~ Thursday of each month, 2) with one general business meeting scheduled to begin on or after 5:00 p.m. once a quarter and that meeting shall be scheduled in each of the counties once a year, and may be held in conjunction with a community meeting, provided, however that the Board has sufficient funds to hold meetings in each of the counties, as determined by the Board Chairperson. Any Board general business meeting date, time, or location may be changed or canceled by the Board Chairperson, subject to statutory notice requirements.

Section 6.3 Committee Meetings. All committees shall meet at the discretion of the Committee Chairperson. Meetings may be held in conjunction with regular Board meetings on the first ~~and third~~ Thursday of the month or at the call of the Committee Chairperson. The Committee Chairperson, may change or cancel any committee meeting date, time, or location, subject to statutory notice requirements.

A full copy of the By-Laws with the proposed amendments redlined into the document is attached as **Exhibit A**.

II. PROPOSED MOTION

Move to amend Section 6.1 and Section 6.3 of the By-Laws of the Hawai'i State Board of Education ("By-Laws") to clarify the rights and responsibilities of Board Members participate in standing committee meetings when they are not standing committee members and to allow the Board to meet once a month on the first Thursday of each month, as reflected in the By-Laws attached as **Exhibit A** of this memorandum. The aforementioned amendment, however, shall not be effective until January 1, 2018.

Exhibit A
BY-LAWS OF THE
HAWAI'I STATE BOARD OF EDUCATION

ARTICLE I

PREAMBLE

Section 1.1 The Constitution of the State of Hawai'i provides that the State shall establish, support and control a statewide system of public schools and libraries, free from sectarian control and discrimination.

ARTICLE II

BOARD MEMBERS

Section 2.1 The Board consists of nine voting members appointed by the Governor, with the advice and consent of the Senate, in accordance with Article X, Section 2, of the Hawai'i State Constitution and Chapter 302A, Hawai'i Revised Statutes, each of whose term shall be three years, except as provided for in the initial appointment.

Section 2.2 The members of the Board shall serve without pay, but shall be entitled to reimbursement for necessary expenses, including travel and lodging expenses, while attending meetings of the Board or when actually engaged in business relating to the work of the Board.

Section 2.3 There shall be a student member and a military representative as provided by law.

ARTICLE III

OFFICERS AND TERM OF OFFICE

Section 3.1 The officers of the Board shall be the Chairperson and Vice Chairperson.

Section 3.2 The governor shall select the Chairperson as provided by law.

Section 3.3 The Vice Chairperson shall be elected from among and by the Board membership and shall serve as interim chairperson in the event the chairperson's seat becomes vacant. A vacancy in the office of Vice Chairperson shall be filled by the Board at the next regular or special meeting of the Board.

Section 3.4 The term of Chairperson shall be set by the Governor. The term of Vice Chairperson shall be for one (1) year, commencing immediately following the election, except that the term of the first Vice Chairperson elected shall expire on June 30, 2012.

ARTICLE IV

DUTIES OF OFFICERS AND BOARD MEMBERS

Section 4.1 Chairperson. The Board Chairperson shall call meetings of the Board and shall preside at all meetings of the full Board. The Board Chairperson shall delegate assignments and duties to other Board members, manage all matters of the Board, and perform such other duties as are incident to the office or are required by the Board or by law.

Section 4.2 Vice Chairperson. In the absence or unavailability of the Chairperson, the Vice Chairperson shall perform all of the duties of the Chairperson, and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairperson. The Vice Chairperson shall assist the Chairperson as the Chairperson deems necessary and shall have such powers and perform such other duties as from time to time may be prescribed by the Chairperson or the Board.

Section 4.3 Board Members. Board members shall fulfill duties and responsibilities as provided by law and delegated by the Board Chairperson and shall comply with the Code of Conduct attached hereto as Attachment A and with Conflicts of Interest provisions provided by law.

Section 4.4 Committee Chairpersons. Committee Chairpersons shall report activities and decisions of their respective committees to the full Board and shall inform the Board Chairperson when items need to be placed on the agenda for the Board general business meeting or special meeting.

ARTICLE V

COMMITTEES

Section 5.1 Standing Committees. The Board shall have four standing committees: Audit, Finance and Infrastructure, Student Achievement, and Human Resources.

Section 5.2 Scope, Authority and Mission. The scope of authority and mission of each of the Board's standing committees shall be memorialized in a committee charter. Each charter shall be recommended for approval to the full Board by the chairperson of the respective committee.

Section 5.3 Standing Committee Members and Officers. Each Standing Committee shall have a Committee Chairperson and a Committee Vice Chairperson who shall be elected from among and by the Board membership. The Board shall vote on the appointment of Standing Committee members. All Board members not appointed to a Standing Committee shall be an *ex-officio* member of that Standing Committee. Board members participating *ex-officio* may engage in discussion and deliberation at the Standing Committee, but shall not have and other rights or privileges, including the right to make motions or vote; they shall not be counted for quorum purposes.

Section 5.4 Advisors/Consultants to Committees. Each committee may consult with or be advised by non-BOE members, as determined appropriate by the Committee Chairperson.

Section 5.5 Ad Hoc Committees. The Board Chairperson may, as circumstances warrant, authorize the creation of an ad hoc committee for a discrete and specific purpose of interest to the Board and shall appoint all members and officers of such ad hoc committee(s). The Board shall approve the charge of any ad hoc committee. Such committee may be created for a definite time period or until its specific function has been completed, but shall not exist longer than one year from the date of authorization unless specifically authorized by its charge.

Section 5.6 Investigative Committees. 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.

Section 5.7 Committee Reports. Committees may submit written reports in advance of any regular meeting in lieu of an oral report unless the report contains action items.

ARTICLE VI

MEETINGS OF THE BOARD

Section 6.1 General Business Meetings. The Board shall 1) meet regularly on the first Thursday of each month, 2) with one general business meeting scheduled to begin on or after 5:00 p.m. once a quarter and that meeting shall be scheduled in each of the counties once a year, and may be held in conjunction with a community meeting, provided, however that the Board has sufficient funds to hold meetings in each of the counties, as determined by the Board Chairperson. Any Board general business meeting date, time, or location may be changed or canceled by the Board Chairperson, subject to statutory notice requirements.

Section 6.2 Special Meetings. The Board Chairperson may call a special meeting of the Board at any time, subject to statutory notice requirements.

Section 6.3 Committee Meetings. All committees shall meet at the discretion of the Committee Chairperson. Meetings may be held in conjunction with regular Board meetings on the first Thursday of the month or at the call of the Committee Chairperson. The Committee Chairperson, may change or cancel any committee meeting date, time, or location, subject to statutory notice requirements.

Section 6.4 Community Meetings and Notice. The Board shall hold not less than six community meetings annually which shall include one community meeting in each county in addition to regular meetings to discuss and receive input from the community on public education and public library issues. The Board Chairperson shall designate Board members to attend the community meetings. These community meetings shall not be held for the purpose of formulating educational policy. As provided by law, the community meetings shall be exempt from sections 91-2.5, 92-7, 92-9, and 92-41, Hawai'i Revised Statutes; provided that the Board shall give written public notice of each community meeting indicating the date, time, and place

of the meeting, and such notice shall be filed in the Office of the Lieutenant Governor and in the Board's office for public inspection six calendar days before the meeting. The notice shall also be posted at the site of the meeting.

Section 6.5 Meeting Agenda. The Agenda shall be promulgated by the Board Chairperson, with input from the Superintendent, State Librarian, Committee Chairpersons, and Board members, and shall docket items in the order received, provided that Board member recommendations are placed on an agenda for Board review within ninety (90) days of written request and Committee recommendations are placed on an agenda for Board review within ninety (90) days of Committee approval. All meetings of the Board and its committees shall be held in accordance with the law.

Section 6.6 Executive Session. An affirmative vote, taken at an open meeting, of two-thirds of the Board members present shall be required to convene an executive session; provided that the affirmative vote constitutes a majority of the members to which the Board is entitled. A meeting closed to the public may be convened only as provided by law.

Section 6.7 Quorum and Voting. A majority of all the voting members to which the Board is entitled shall constitute a quorum to conduct business. At any time the Board has fewer than five voting members, three voting members of the Board shall constitute a quorum to conduct business and the concurrence of at least three voting members shall be necessary to make any action of the Board valid.

ARTICLE VII

PUBLIC TESTIMONY AND SUBMISSION OF DATA, VIEWS OR ARGUMENTS

Section 7.1 Submission of Data, Views, or Arguments. Any interested person may submit data, views, or arguments in writing to the Board on any agenda item. Said written submittals shall be considered by Board members before taking action on any agenda item. Written comments are strongly encouraged.

Section 7.2 Public Testimony. All interested persons shall be provided an opportunity to present testimony on any agenda item. An individual or representative wishing to testify should register prior to the meeting. Testimony must be related to an item that is on the agenda and such person shall be required to identify the agenda item to be addressed by the testimony. Each individual or representative of an organization is allotted four minutes, or an amount of time otherwise designated by the Chairperson, to provide testimony to the Board.

Section 7.3 Communication from the Public. Any member of the public or any organization may submit written communication to the Executive Director of the Board on any matter involving public education or the public library system. The communication shall be filed with the Board of Education and all members of the Board shall be advised of the communication.

ARTICLE VIII

AMENDMENTS TO BYLAWS

Section 8.1 Notice Regarding Proposed Amendments. These bylaws can be amended at any General Business or Special Meeting provided that previous written notice was given to all Board members, including the specific language for the proposed amendment, and the matter was properly placed on the Board's agenda.

Section 8.2 Approval of Amendments. Any amendment to the Board's bylaws requires the approval of two-thirds of the total membership of the Board.

ARTICLE IX

LEGAL COUNSEL

Section 9.1 Advice. An Officer or Committee Chairperson may seek informal, verbal advice from the Board's assigned Deputy Attorney General as the Officer or Committee Chairperson deems necessary. The Committee Chairperson may request that the Board Chairperson seek formal written advice or opinion from the Attorney General. The Board Chairperson may seek formal written advice or opinion from the Attorney General.

Section 9.2 Written Opinion. Whenever a formal legal opinion is issued by the Attorney General or a Deputy Attorney General, such opinion and request shall be distributed to all members of the Board.

ARTICLE X

PARLIAMENTARY AUTHORITY

Section 10.1 The rules contained in *Robert's Rules of Order*, newly revised, shall govern meetings where they are not in conflict with the law, these bylaws, or other rules of the Board. In making a ruling or interpretation of the rules, the order of determination shall be 1) the law, 2) these bylaws, 3) Board policy, and 4) *Robert's Rules of Order*, newly revised.

Approved: 04/26/2011

Amended: 05/17/2011, 12/02/2014, 01/20/2015, 12/01/2015, 07/18/2017 (eff. 01/01/2018),
10/25/2017 (eff. 01/01/2018)