

**IV.A. Board Action on settlement authority relating to *Unga v. Board of Education, et.al* (Civil No. 20-0000576)**  
General Business Meeting  
August 20, 2020

On April 14, 2020 the attached complaint was filed by plaintiff Sunny Rainbows Kim Unga against the Board of Education and State of Hawaii.

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**FIRST CIRCUIT**  
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IN THE CIRCUIT COURT OF FIRST CIRCUIT

STATE OF HAWAII

SUNNY RAINBOWS KIM UNGA, ) Civil No. \_\_\_\_\_  
 ) (Other Civil Action)  
 Plaintiff, )  
 vs. ) COMPLAINT; SUMMONS  
 )  
 BOARD OF EDUCATION AND STATE OF )  
 HAWAII, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**COMPLAINT**

Plaintiff SUNNY RAINBOWS KIM UNGA for cause of action against Defendants BOARD OF EDUCATION and STATE OF HAWAII (collectively “Defendants”) alleges as follows:

1. The Court has subject matter jurisdiction over the claims or relief in this action pursuant to Hawaii Revised Statutes (HRS) §§91-7, 92-12, and 603-21.5.
2. Venue is properly laid in this judicial circuit pursuant to HRS §603-36(5) because the meeting, public hearing and action taken at the meeting, within the meaning of Chapters 91 and 92,

HRS occurred in this judicial circuit.

3. Plaintiff SUNNY RAINBOWS KIM UNGA is a resident of the island of O‘ahu, State of Hawai‘i and a parent of schoolchildren who attend public school.

4. Defendant BOARD OF EDUCATION is established pursuant to Article X, Section 2 of the Hawai‘i State Constitution and HRS §302A-121.

5. Defendant BOARD OF EDUCATION is a “board” “created by constitution [and] statute” and is therefore a “board” within the meaning of HRS § 92-2(1) of Hawai‘i’.

6. On or about January 15, 2020, Plaintiff filed a Petition for Rulemaking with the Board of Education in the form of and in compliance with the procedures listed in Hawaii Administrative Rules (HAR) § 8-2-2 (hereafter "Petition").

7. On or about February 6, 2020, Defendant BOARD OF EDUCATION members Catherine Payne, Brian De Lima, Kaimana Barcarse, Margaret Cox, Kili Namau'u and Kenneth Uemura were present at a meeting of the Board.

8. On or about February 6, 2020, Defendant BOARD OF EDUCATION reviewed, deliberated and made a decision on the Petition with a quorum present.

9. Defendant BOARD OF EDUCATION’s review, deliberation and decision-making was the convening of the board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

10. Defendant BOARD OF EDUCATION did not produce, file or publish a notice or agenda for its meeting on February 6, 2020.

11. Defendant BOARD OF EDUCATION did not hold a public meeting or allow oral or written testimony on its review, deliberation and decision-making on the Petition on February 6, 2020.

## COUNT ONE – VIOLATION OF THE SUNSHINE ACT I

12. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting.

13. Boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item.

14. Boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item.

15. Defendant BOARD OF EDUCATION's February 6, 2020 meeting was not open to the public and Plaintiff and other members of the public were not permitted to attend the meeting.

16. Defendant BOARD OF EDUCATION did not afford Plaintiff or any other interested person an opportunity to submit data, views or argument, in writing on any agenda item at its February 6, 2020 meeting.

17. Defendant BOARD OF EDUCATION did not afford Plaintiff or any other interested person an opportunity to present oral testimony on any agenda item.

18. Plaintiff seeks to have the action regarding the Petition voided and for a determination otherwise as to the applicability of Part I, Chapter 92, HRS.

## COUNT TWO -- VIOLATION OF THE SUNSHINE ACT II

19. Boards shall post notice on an electronic calendar on a website maintained by the State and post notice in the board's office for public inspection no less than six days prior to the meeting.

20. Defendant BOARD OF EDUCATION did not post notice on an electronic calendar on a website maintained by the State and did not post notice in the Board's office for public inspection.

21. Plaintiff seeks to have the action regarding the Petition voided and for a determination otherwise as to the applicability of Part I, Chapter 92, HRS.

### COUNT THREE -- VIOLATION OF HAWAII ADMINISTRATIVE PROCEDURES ACT

22. The adoption of administrative rules by an agency in violation of statutory provisions, or in excess of the statutory authority of the agency are invalid.

23. Defendant BOARD OF EDUCATION is an agency within the meaning of HRS §91-1.

24. HAR § 8-3-6(c) states, in part: "No public hearing or other proceedings shall be held with respect to such determination" regarding petitions for the adoption, amendment, or repeal of any rule.

25. The only exception to the requirements of open meetings in Part I, Chapter 92, HRS is for judicial and quasi-judicial actions of an agency pursuant to HRS §§ 91-7, 91-8, and 92-6.

26. Rulemaking is an action of an agency pursuant to HRS §91-3 and consideration and determination of petitions for the adoption of a rule is an action of an agency pursuant to HRS §91-6.

27. To the extent HAR §8-3-6(c) is interpreted to mean that Defendant BOARD OF EDUCATION is excepted from the requirements of open meetings under Part I, Chapter 92, HRS, such a rule violates the duties to conduct as openly as possible the formation and conduct of public policy.

28. There is no other statutory authority upon which Defendant BOARD OF EDUCATION may exempt itself from the requirements of Part I, Chapter 92, HRS.

29. Plaintiff seeks the Court to find HAR §8-3-6(c) violates statutory provisions or otherwise exceeds the statutory authority of Defendant BOARD OF EDUCATION and to

invalidate the rule: "No public hearing or other proceedings shall be held with respect to such determination."

WHEREFORE Plaintiff prays and demands judgment against Defendants (a) voiding actions taken at the February 6, 2020 meeting inconsistent with HRS §92-7, (b) voiding actions taken at the February 6, 2020 meeting inconsistent with HRS §92-3, (c) determining the applicability of Part I, Chapter 92, HRS, to the decision of the Defendant, (d) invalidating the portion of HAR § 8-3-6(c) that states "No public hearing or other proceedings shall be held with respect to such determination," pursuant to HRS § 91-7, (e) granting all orders, legal or equitable, in furtherance of justice, and (f) an award of reasonable attorneys' fees and costs.

DATED: Makawao, Maui, Hawai'i

April 14, 2020

/s/ Lance David Collins

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LAW OFFICE OF LANCE D COLLINS  
LANCE D. COLLINS

LAW OFFICE OF BIANCA ISAKI  
BIANCA ISAKI  
Attorneys for Plaintiff

<b>STATE OF HAWAI'I</b> <b>CIRCUIT COURT OF THE</b> <b>FIRST CIRCUIT</b>	<b>SUMMONS</b> <b>TO ANSWER CIVIL COMPLAINT</b>	CASE NUMBER
PLAINTIFF SUNNY RAINBOWS KIM	VS.	DEFENDANT(S) BOARD OF EDUCATION AND STATE OF HAWAI'I
PLAINTIFF'S NAME & ADDRESS, TEL. NO. LAW OFFICE OF LANCE D COLLINS, PO BOX 782, MAKAWAO, HI 96768 (808) 243-9295  LAW OFFICE OF BIANCA ISAKI, 1720 HUNA ST. 401B, HONOLULU, HI 96817 (808) 927-5606		
<p><b>TO THE ABOVE-NAMED DEFENDANT(S)</b></p> <p>You are hereby summoned and required to file with the court and serve upon  BOARD OF EDUCATION AND STATE OF HAWAI'I</p> <hr/> plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. <p><b>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</b></p> <p><b>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</b></p>		
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: <a href="http://www.courts.state.hi.us">http://www.courts.state.hi.us</a>	<b>Effective Date of 28-Oct-2019</b> <b>Signed by: /s/ Patsy Nakamoto</b> <b>Clerk, 1st Circuit, State of Hawai'i</b> 	
	In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on OAHU- Phone No. 808-539-4400, TTY 808-539-4853, FAX 539-4402, at least ten (10) working days prior to your hearing or appointment date.	