



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

February 18, 2021

TO: Board of Education

FROM: Catherine Payne
Chairperson, 2021 Legislative Ad Hoc Committee

AGENDA ITEM: Board Action on Board Policy positions for the 2021 Legislative Session: Charter school system structure, governance, and accountability

I. EXECUTIVE SUMMARY

- There are currently several bills relating to the structure and governance of the charter school system, including the Board of Education's ("Board") oversight role over authorizers.
- The Board would need to amend its policy positions for the 2021 Legislative Session in order to authorize its Legislative Ad Hoc Committee to testify on any of the aforementioned bills.
- The recommendation is to amend the Board's policy positions for the 2021 Legislative Session by adopting the policy positions proposed in this memorandum, as attached as **Exhibit A**.

II. BACKGROUND

At its December 3, 2020 special meeting, the Board established an ad hoc committee to present, discuss, and negotiate its policy positions for the purposes of

engaging in the 2021 Legislative Session (“Legislative Ad Hoc Committee”).¹ At its December 17, 2020 general business meeting, the Board adopted legislative policy positions for the Legislative Ad Hoc Committee to use during the 2021 Legislative Session, including a policy position relating to charter schools that states, “The Board supports proposed legislation that preserves per-pupil funding for charter schools.”²

There are currently several bills relating to the structure and governance of the charter school system, including the Board’s oversight role over authorizers. The Board may want to authorize its Legislative Ad Hoc Committee to take positions on these matters. Therefore, I recommend amending the current charter school policy positions by adding policy positions relating to charter school system accountability as described in more detail below.

III. **DISCUSSION**

The table below lists the bills relating to charter school system accountability that the Legislative Ad Hoc Committee is monitoring. The table contains each bill’s number, description, and status as of the writing of this memorandum.

Measure	Status
<p><u>HB399</u>³ Allows governing boards of accredited public and private postsecondary institutions, county agencies, and state agencies to authorize public charter schools without applying to the board of education for chartering authority.</p>	<p>The House Committee on Education (“EDN”) has not scheduled a hearing for this measure.</p>
<p><u>HB1161</u>⁴ Repeals the state public charter school commission. Transfers the duties of the state public charter school commission to public charter school authorizers. Transfers appropriations from the state public charter school commission to the board of education to be used by public charter school authorizers.</p>	<p>EDN has not scheduled a hearing for this measure.</p>

¹ See this memorandum for more information on the Legislative Ad Hoc Committee: https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/Special_20201203_Action%20on%20Ad%20Hoc%20Committee%20re%202021%20Legislative%20Session.pdf.

² See Exhibit A of this memorandum for the policy positions the Board adopted at its December 17, 2020 general business meeting: https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_2020-12-17_Action%20on%20Investigative%20Committee%202021%20policy%20positions%20and%20leg%20report.pdf.

³ See HB399 here: https://www.capitol.hawaii.gov/session2021/bills/HB399_.pdf.

⁴ See HB1161 here: https://www.capitol.hawaii.gov/session2021/bills/HB1161_.pdf.

Measure	Status
<p><u>HB1220 HD1</u>⁵ Requires members of the charter school commission to collectively possess strong experience and expertise in various fields. Allows staff of an authorizer to assist in the application and review process and completion of an incomplete application. Clarifies charter application notice requirements. Clarifies authorizer compliance requirements in cases of an appeal. Effective 7/1/2050.</p>	<p>EDN passed this measure with amendments. The next referral is to the House Committee on Judiciary & Hawaiian Affairs.</p>
<p><u>HB1367</u>⁶ Amends the appointing authority of the public charter school commission members. Specifies the transition from existing members to members appointed under the new appointing authority. Requires that members of the public charter school commission possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, assessment, curriculum, instruction, and public education law.</p>	<p>EDN has not scheduled a hearing for this measure.</p>
<p><u>SB814</u>⁷ Clarifies the process for applicants to submit a letter of intent to apply to open and operate a charter school. Provides for penalties for authorizers who fail to timely comply with board decisions.</p>	<p>The Senate Committee on Education (“EDU”) passed this measure with amendments. The next referral is to the Senate Committee on Judiciary.</p>
<p><u>SB959</u>⁸ Requires that members of the public charter school commission be appointed by the governor or various members of the legislature. Automatically allows public and private postsecondary institutions and county and state agencies to authorize public charter schools. Clarifies the procedures for establishment of a new start-up and conversion charter school. Repeals language prohibiting authorizers from providing technical support to prospective charter school applicants. Provides the board of education with the power to penalize public charter school authorizers.</p>	<p>EDU has not scheduled a hearing for this measure.</p>

The Board deliberately adopted policy positions for this legislative session focused on persevering resources for public schools, including charter schools, and libraries

⁵ See HB1220 HD1 here: https://www.capitol.hawaii.gov/session2021/bills/HB1220_HD1_.pdf.

⁶ See HB1367 here: https://www.capitol.hawaii.gov/session2021/bills/HB1367_.pdf.

⁷ See SB814 here: https://www.capitol.hawaii.gov/session2021/bills/SB814_.pdf.

⁸ See SB959 here: https://www.capitol.hawaii.gov/session2021/bills/SB959_.pdf.

due to expected decreases in the overall state budget. However, the Board plays a key oversight role in the charter school system, and its voice may be necessary on a number of bills moving through this legislative session. I will go through the main proposals covered in bills listed above and provide explanations for my recommended policy position amendments.

New authorizers without application to the Board. Pursuant to Section 302D-4, Hawaii Revised Statutes, the Board promulgated administrative rules and established an application process for eligible entities to apply for chartering authority. HB399 (and the original version of HB1220) would allow certain entities to be authorizers without applying to the Board. This would severely weaken the Board's oversight abilities over authorizers because the Board would not be able to revoke chartering authority from an entity that derives such authority from statute.

Repeal of State Public Charter School Commission ("Commission"). HB1161 would repeal the Commission and transfer its duties to other authorizers. However, the Board has not approved another authorizer. Thus, if this measure passed, all existing charter schools could face closure without another authorizer or exist with limited to no accountability.

Appointing authority for Commission. HB1367 and SB959 (as well as the original version of HB1220) would change the Commission's governance structure by removing the Board as the appointing authority for the Commission. This could weaken the Board's oversight abilities over the Commission.

Penalties for authorizers. SB814 and SB959 (as well as the original version of HB1220) would amend the charter applicant process and allow the Board to impose penalties on authorizers who do not comply with the Board's appeal orders. Statute and the Board's administrative rules already provide some mechanisms for the Board to deal with insubordinate authorizers who violate law. Still, the Board should be open to more accountability tools.

Technical assistance from authorizers. SB959 would allow authorizers to provide technical assistance to charter schools and charter applicants. HB1220 HD1 would allow the staff of authorizers to assist in the charter application and review process and completion of an incomplete application. Authorizers or their staff as proxies providing technical support to charter schools or charter applicants runs counter to national best authorizing practices and can conflict with accountability duties. Rather than authorizers providing support to charter schools and charter applicants, the

Board has expressed a desire for several years to see some kind of centralized support for charter schools separate from authorizers.

Based on the foregoing, the Board should add the following policy positions to the charter school policy positions as shown below (amendments shown in red, underlined text):

CHARTER SCHOOL POLICY POSITIONS

The Board supports proposed legislation that preserves per-pupil funding for charter schools.

The Board supports measures that would ensure meaningful yet reasonable accountability of charter schools and their authorizers, including adequate resources and support that ensure such accountability is achievable. The Board, however, opposes measures that could weaken the effectiveness of any accountability necessary for a high-quality charter school system.

IV. RECOMMENDATION

I recommend that the Board amend the policy positions it adopted at its December 17, 2020 general business meeting for the 2021 Legislative Session by adopting the policy positions proposed in this memorandum, as shown in **Exhibit A** attached to this memorandum.

Proposed Motion

“Move to amend the Board’s policy positions for the 2021 Legislative Session as proposed in Exhibit A of Legislative Ad Hoc Committee Chairperson Catherine Payne’s memorandum dated February 18, 2021.”

Exhibit A

Board of Education 2021 Legislative Policy Positions with Proposed Amendments

BOARD OF EDUCATION 2021 LEGISLATIVE POLICY POSITIONS

DEPARTMENT OF EDUCATION POLICY POSITIONS

The Board of Education (“Board”) supports proposed legislation that preserves funding and resources for student learning at the classroom level, including for our most vulnerable students who are economically disadvantaged, English learners, or receiving special education services.

The Board supports proposed legislation that fulfills the needs identified in the Department’s Board-approved biennium operating and Capital Improvement Program budget requests for Fiscal Years 2022 and 2023.

LIBRARIES POLICY POSITIONS

The Board supports proposed legislation that addresses the needs identified in the Hawaii State Public Library System’s Board-approved biennium operating and Capital Improvement Program budget requests for Fiscal Years 2022 and 2023.

CHARTER SCHOOL POLICY POSITIONS

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GENERAL POLICY POSITIONS

The Board supports proposed legislation that:

- Support informed decision-making and priority setting through thoughtful and intentional engagement with stakeholders; and/or
- Improve transparency and access to information to encourage an informed and engaged community of citizens.

The Board opposes proposed legislation that:

- Diminishes the Board’s power to formulate statewide educational policy as envisioned and established by Article X, Section 3, of the Constitution of the State of Hawaii;
- Requires the Board to assume management responsibilities over employees other than the Superintendent of Education and the State Librarian (or heads of other agencies over which the Board has governance authority) rather than remain focused on its constitutional responsibility of policymaking; and/or
- Creates additional duties or responsibilities for the Department or Board without appropriating adequate, commensurate resources to accomplish such duties or responsibilities.

The Board takes no position on legislation relating to the Board's governance structure, as the Board believes it is most appropriate for the Legislature and Governor to decide such matters. The Board will endeavor to provide the Legislature with any relevant information relating to Board governance matters to enable to the Legislature to make informed decisions. The Board's positions on proposed legislation are from a policy-level standpoint, and the Board defers to the Department (or its administratively attached agencies when appropriate) on operational and implementation matters.