



STATE OF HAWAII
BOARD OF EDUCATION
P.O. BOX 2360
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March 4, 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: early learning, superintendent minimum qualifications, board member orientation and training, and collective bargaining employer votes

I. EXECUTIVE SUMMARY

- Bills relating to early learning, minimum qualifications for the superintendent, orientation and training for board members, and collective bargaining employer votes are currently proceeding through the 2021 Legislative Session.
- The Board of Education ("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, 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.² The Board subsequently amended its legislative policy positions at its February 18, 2021 general business meeting by adding additional charter school policy positions.³

Bills relating to early learning, minimum qualifications for the superintendent, orientation and training for board members, and collective bargaining employer votes are currently proceeding through the 2021 Legislative Session. The Board may want to authorize its Legislative Ad Hoc Committee to take positions on these matters. Therefore, I recommend amending the Board’s policy positions as described below.

III. DISCUSSION

The Board deliberately adopted policy positions for this legislative session focused on persevering resources for public schools, including charter schools, and libraries due to expected decreases in the overall state budget. However, the Board has significant interest in other matters that its policy positions currently do not cover. I will go through several bills and provide explanations for my recommended policy position amendments.

Early learning. HB1362 HD1, requires the Board to adopt and the Department of Education (“Department”) to administer a kindergarten entry assessment, among other things related expanding access to early learning.⁴

Board members have long expressed their support for expanding early learning opportunities, and many understand the profound effects early education has on K-12 student outcomes. While much of the early learning system lies outside of the

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 this memorandum for the amendments to the policy positions the Board made at its February 18, 2021 general business meeting: https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20210218_Action%20on%20Board%20Policy%20Positions%20-%20Charter%20School%20Governance%20and%20Accountability.pdf.

⁴ See HB1362 HD1 here: https://www.capitol.hawaii.gov/session2021/bills/HB1362_HD1_.pdf.

Board's statutory jurisdiction, the Board should nonetheless support any efforts to expand access to early education.

Therefore, I recommend adding a policy position that states, "The Board supports proposed legislation that expands access to early learning opportunities for more children."

Superintendent minimum qualifications. SB76 SD2 requires the Board to prioritize for the superintendent position candidates that have the minimum qualification of ten years of employment in a department of education with at least five of those years serving in the capacity as a principal or higher.⁵ The measure also includes a desired qualification for a candidate as having a working understanding of the State's tri-level system of educational administration.

The main issue with this measure is not necessarily one of content but of principle. This is essentially the Legislature dictating a management function over which the Board clearly has authority and responsibility as envisioned by the State Constitution. Even if this Board does not disagree with the minimum qualifications this measure would set, a future Board might. As a final point, while this measure would not have prevented the Board from hiring its current superintendent, it would have prevented the hiring of previous, long-serving superintendents.

Therefore, I recommend adding a policy position that states, "The Board opposes proposed legislation that restricts its ability to hire and effectively manage and oversee the Superintendent."

Mandatory orientation and training for board members. SB82 SD1 requires each new member of a board or commission to participate in a formal educational and orientation session with the head of the department with jurisdiction of that member's board or commission to receive voting rights.⁶ The measure also requires each department and agency to train their members at least once per calendar year.

This measure is problematic for the Board, and it likely poses similar issues for several boards and commissions attached to the Department, such as the Early Learning Board, Hawaii Teachers Standard Board, and State Public Charter School Commission. These boards and commissions under the "jurisdiction" of the Department do not have the same organizational relationship with the

⁵ See SB76 SD2 here: https://www.capitol.hawaii.gov/session2021/bills/SB76_SD2_.pdf.

⁶ See SB82 SD1 here: https://www.capitol.hawaii.gov/session2021/bills/SB82_SD1_.pdf.

superintendent as boards and commissions of other departments may have with their department head.

The superintendent does not have authority over any of these boards and commissions. In the Board's case, the reverse is true, as the Board has hiring, management, and oversight authority over the superintendent. Thus, requiring Board members to receive training from the superintendent lest their voting rights be withheld is inappropriate to the position's authority and an awkward and unfair responsibility to place on the superintendent. Therefore, I recommend adding a policy position that states, "The Board opposes proposed legislation that requires the Superintendent to execute duties and responsibilities inappropriate to the position."

Additionally, giving the superintendent some kind of training authority and responsibility over attached boards and commissions when little to no authority over these agencies exists elsewhere blurs lines of authority and confuses the organizational structure. Therefore, I recommend adding another policy position that states, "The Board opposes proposed legislation that makes the organizational structure and lines of authority within the public education system, including the Department of Education and its attached agencies, less clear and more confusing."

Collective bargaining employer votes. SB810 SD1 eliminates the superintendent as a voting member constituting the public employer for the purpose of negotiating a collective bargaining agreement with personnel of the Department.⁷

While I do not have a strong opinion about the particular employer group voting structure that this measure proposes, any voting structure should ensure that the Board is a critical party in labor negotiations. Not only does the Board oversee the superintendent and the Department, but it also represents a larger constituency, including charter schools. The Board can ensure any bargaining affecting the Department considers charter schools as well.

Regardless of the structure, the Board should be the conduit and connector between the Department and the Executive Branch in labor negotiations. The governor and superintendent should be communicating with the Board about labor negotiations and vice versa. In no instance should the governor and superintendent be communicating and negotiating with each other without the Board's involvement, as labor negotiations have significant education policy implications over which the Board has constitutional authority.

⁷ See SB810 SD here: https://www.capitol.hawaii.gov/session2021/bills/SB810_SD1_.pdf.

Therefore, I recommend adding a policy position that states, “The Board supports proposed legislation that ensures the Board is a critical party in labor negotiations with the exclusive representatives of Bargaining Units 5 and 6, although the Board takes no position on other aspects of the applicable employer group voting structure.”

IV. RECOMMENDATION

Based on the foregoing, I recommend that the Board amend the revised policy positions it adopted at its February 18, 2021 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 (amendments shown in red, underlined text).

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 March 4, 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.

The Board opposes proposed legislation that restricts its ability to hire and effectively manage and oversee the Superintendent.

The Board opposes proposed legislation that requires the Superintendent to execute duties and responsibilities inappropriate to the position.

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

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.

EARLY LEARNING POLICY POSITIONS

The Board supports proposed legislation that expands access to early learning opportunities for more children.

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; ~~and/or~~
- Makes the organizational structure and lines of authority within the public education system, including the Department of Education and its attached agencies, less clear and more confusing.

The Board supports proposed legislation that ensures the Board is a critical party in labor negotiations with the exclusive representatives of Bargaining Units 5 and 6, although the Board takes no position on other aspects of the applicable employer group voting structure.

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.