



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

July 14, 2022

TO: Board of Education

FROM: Bruce Voss
Chairperson, Board of Education

AGENDA ITEM: Board Action on Superintendent Employment Contract

I. BACKGROUND

On June 17, 2021 the Board appointed Keith Hayashi as interim superintendent with an annual salary of \$210,000, effective upon the end of Christina Kishimoto's tenure as superintendent and until the start date of a new superintendent to be appointed by the Board.¹

The Board engaged in a months long search process for a superintendent.²

At its May 19, 2022 Special Meeting, the Board hired Keith Hayashi as superintendent of the Department of Education, pending a clean background check and the execution of an employment contract with the Board. The Board also authorized the Board Chairperson to negotiate an employment contract for Board approval. Former Board Chairperson Catherine Payne engaged in negotiations with Mr. Hayashi. Former Board Chairperson Payne's term on the Board ended on June 30, 2022, before contract negotiations were concluded. My term as Board Chairperson started on July 1, 2022.

¹ June 17, 2021 Minutes available at:

<https://alala1.k12.hi.us/STATE/BOE/Minutes.nsf/a15fa9df11029fd70a2565cb0065b6b7/4e4f3f226252ec130a25870d007a46de?OpenDocument>. Memorandum on action on interim superintendent available here: https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20210617_Action%20on%20Investigative%20Committee%20on%20Transition%20and%20Search%20Process%20findings%20and%20recommendations.pdf

² May 19, 2022 memorandum on the search process available at:

https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/Special_20220519_Action%20on%20Superintendent%20Search%20findings%20and%20recommendations%20on%20finalist.pdf

II. RECOMMENDATION

After the Board's May 19, 2022 Special Meeting, former Board Chairperson Payne asked that the Department conduct a background check on Mr. Hayashi in accordance with the Department's standard procedures for internal hires. On May 25, 2022, the Office of Talent Management's Employment Background Check Unit completed an Employee Background Check review on Mr. Hayashi and informed former Board Chairperson Payne that he is clear to work in close proximity to children.

I continued employment contract negotiations with Mr. Hayashi after Former Board Chairperson Payne's term ended and agreed upon the draft employment contract attached as Exhibit 1.

Proposed motion: "Move to approve the employment contract with Keith Hayashi attached as Exhibit 1, subject to review by a Deputy Attorney General, and authorize Board Chairperson Bruce Voss to execute the contract on behalf of the Board."

Exhibit 1
Employment Contract

EMPLOYMENT CONTRACT
BETWEEN
KEITH HAYASHI AND
STATE OF HAWAII BOARD OF EDUCATION

This Employment Contract (hereinafter referred to as the "Contract") is hereby made and entered into this ____ day of _____, 2022, by and between the STATE OF HAWAII BOARD OF EDUCATION (hereinafter referred to as the "Board"), and KEITH HAYASHI (hereinafter referred to as "Superintendent").

WHEREAS, the Board is authorized to appoint the superintendent of the Department of Education of the State of Hawaii (hereinafter referred to as "Department") under Hawaii Revised Statutes ("HRS") §302A-1101(b); and

WHEREAS, the Board desires to appoint KEITH HAYASHI to serve as superintendent of the Department.

WHEREAS, KEITH HAYASHI hereby accepts the appointment to serve as superintendent of the Department.

NOW, THEREFORE, the Board and Superintendent, for the consideration specified and acknowledged herein, hereby mutually agree as follows:

I. APPOINTMENT AND DURATION

The Board, hereby offers, and the Superintendent hereby accepts employment as superintendent of the Department, for a term commencing July 1, 2022, and ending June 30, 2025, unless sooner terminated as provided herein (hereinafter referred to as the "Term").

II. DUTIES AND RESPONSIBILITIES

The Superintendent agrees to devote all of the Superintendent's business time, attention, and energies to the business and interests of the Board and Department during the Term of this Contract. Superintendent shall serve as and carry out the duties of Superintendent in accordance with the Hawaii State Constitution, the laws of this State and the policies of the Board and the rules and regulations of the Department. The duties and responsibilities of the Superintendent are set forth in the Position Description attached hereto and incorporated herein as **Exhibit A**. It is understood and agreed that the duties and responsibilities are subject to modification, supplementation, change or deletion by the Board, provided that written notice of same shall be promptly given to Superintendent.

III. COMPENSATION

The Superintendent shall receive a base annual salary of TWO HUNDRED AND FORTY THOUSAND DOLLARS (\$240,000.00), payable in equal, semi-monthly installments during the Term of this Contract. The Superintendent's annual salary cannot exceed the salary rate provided for by law (HRS §26-52).

It is understood by and between the parties hereto that all compensation paid to the Superintendent by the Board shall be less all amounts required by law or authorized in writing by the Superintendent to be withheld or deducted.

IV. BENEFITS

- A. Group Benefits. During the Term of this Contract, the Superintendent shall be eligible to participate in and be covered by such State employee benefit plans and programs as provided by law, which are effective generally with respect to other State employees, to the extent the Superintendent is eligible under the terms of such plans and programs. This includes medical plan coverage, life insurance, retirement benefits, paid state holidays (between thirteen (13) to fourteen (14) days), twenty-one (21) vacation days and twenty-one (21) sick days per calendar year.
- B. In addition to the foregoing benefits, the Superintendent shall also receive the following individual benefits:
 - 1. A reserved parking stall; and
 - 2. An automobile allowance in the amount of THREE HUNDRED AND TWENTY-SIX DOLLARS (\$326.00) per month.

The Board may approve other benefits, provided such benefits are permissible and not in contravention of any law.

V. EVALUATION

The parties recognize that the Board has the right to evaluate and assess Superintendent's performance on an informal and continuous basis. In addition, at least annually, there shall be a formal evaluation by the Board of Superintendent's performance. Superintendent's performance in pursuing and attaining such goals and objectives shall be considered as part of this evaluation by the Board. The Superintendent shall be provided a reasonable opportunity to respond to any evaluation or assessment by the Board.

At the request of either party, the parties shall meet to establish and review goals and objectives for the Superintendent's evaluation. The Superintendent's goals and objectives should be in alignment with and support the Board's Strategic Plan, which will be developed over the course of this Contract. It is understood and agreed that the goals and objectives are subject to modification, supplementation, change or deletion by the Board, provided that written notice of same shall be promptly given to Superintendent.

VI. TERMINATION OF CONTRACT

A. Grounds for Termination. Notwithstanding any other provision of this Contract, Superintendent's employment under this Contract may be terminated as follows:

1. At any time, by mutual agreement of the parties.
2. By the Superintendent, by tendering a minimum of thirty (30) calendar days advance written notice of resignation to the Board.
3. Whenever the Superintendent is not qualified (legally, physically, mentally, or otherwise) to perform the essential functions of the job with or without reasonable accommodation.
4. Upon the death of the Superintendent.
5. Upon reasonable determination by the Board, based upon the facts made known to it at the time, that there is cause to terminate the Superintendent pursuant to HRS §302A-1101 and as provided in this Contract.

Under any circumstances, unless agreed otherwise, salary earned and accrual of benefits ceases on Superintendent's last day of employment.

B. Definition of Cause. The parties agree that term "cause" shall be as determined under applicable law. The parties further agree that the following situations may, without limitation, constitute "cause" sufficient to justify the termination of the Superintendent from office:

1. Dishonesty against the Board and Department.
2. Failure to execute the duties and responsibilities of the office, as evidenced by an overall unsatisfactory evaluation rating by the Board.
3. Failure to attain the goals and objectives of the Board and Department, as evidenced by an overall unsatisfactory evaluation rating by the Board.

4. Failure to apprise the Board in a timely manner of any circumstances having a material impact on the Board or Department.
5. An overall unsatisfactory evaluation rating by the Board.
6. Failure to meet performance standards set by the Board, as evidenced by an overall unsatisfactory evaluation rating by the Board.
7. The conviction of the Superintendent, or the entry of a pleading of guilty or nolo contendere by the Superintendent, to any felony or any crime involving moral turpitude that may reasonably be expected to have an adverse impact on the Superintendent's reputation or standing in the community.
8. Upon the Superintendent's breach of a material provision of this Contract.
9. Determination that the Superintendent is unsuitable to work in close proximity to children, as provided by Hawaii Administrative Rules, Title 8, Chapter 7.
10. Personal misconduct or other dereliction of duty that would bring into disrepute the position of superintendent, the Department, or the Board.

C. Procedures for Termination.

1. Any termination of this Contract by either party shall be communicated by written notice to the other party at least thirty days in advance of the effective date of the termination.
2. Notwithstanding anything contained in School Code, if the Superintendent is previously tenured in the Department and leaves the position of superintendent, the Superintendent shall be considered for a position in the Department for which the Superintendent is qualified.

VII. WAIVER OF BREACH

The waiver by the Board of any breach of a provision of this Contract shall not operate or be construed as a waiver of any further or subsequent breach by the Superintendent.

VIII. MODIFICATION

This Contract shall not be modified or extended except by written agreement signed by both parties. The Superintendent understands that any modification or extension to this Contract can only be authorized through the official approval of the Board, as evidenced by a majority vote of its members.

IX. APPLICABLE LAW

This Contract shall be construed, interpreted, and enforced in accordance with the laws of the State of Hawaii.

X. ARBITRATION

If a dispute arising under this Contract has not been satisfactorily resolved, either party may present the other with a written request for arbitration.

1. The Board and Superintendent shall immediately attempt to select an arbitrator. If the parties have not appointed an arbitrator within two (2) weeks from the receipt of the request for arbitration, the parties will request from the Hawaii Labor Relations Board a list of five (5) names from the register of arbitrators. The arbitrator shall be chosen by the parties by alternately striking one (1) name at a time from the list. The first party to scratch a name shall be determined by lot. The arbitrator whose name remains on the list shall serve for that case. By mutual agreement, the parties may select a permanent umpire to serve on all cases.

The arbitration hearing shall commence within forty-five (45) days from the Superintendent's official notification to the Board that the case is going to arbitration. The parties may mutually agree to a written waiver of the timelines. The arbitrator(s) to be selected must agree to the schedule.

In making a decision on a case, the arbitrator shall not have the authority to consider any facts not in evidence, nor shall the arbitrator add to, subtract from, delete, or in any way amend or modify any term or condition of the Contract. The arbitrator's decision shall be in writing and shall contain the rationale supporting the decision. The decision will be final and binding on the parties.

2. The voluntary labor arbitration rules of the American Arbitration Association as amended and in effect during the life of this Contract shall apply to the proceedings except as otherwise provided herein or as otherwise amended by mutual agreement.
3. The arbitration shall comply with the American Arbitration Association time limits unless the parties agree in writing to a waiver. The waiver shall not extend the timelines beyond six (6) months. If there are extraordinary circumstances, the arbitrator may request a waiver. This provision shall be provided to the arbitrator before his agreement to arbitrate.
4. The fees and expenses of the arbitrator shall be shared equally by the Board and the Superintendent, including the cost of the arbitrator's transcript if one is

requested by the arbitrator. Each party will pay the cost of presenting its own case.

5. If the Board disputes the arbitrability of any grievance submitted to arbitration, the arbitrator shall first determine the question of arbitrability. If the arbitrator finds that it is not arbitrable, the grievance shall be referred back to the parties without decision or recommendation on its merits.

When the arbitrator finds that any action was improper, the action may be set aside, reduced or otherwise modified by the arbitrator. The arbitrator may award back pay to compensate the Superintendent wholly or partially for any salary lost. Such back pay award shall be offset by all other compensation received by the Superintendent including but not limited to unemployment compensation or wages.

XI. SEVERABILITY

If a term or provision of this Contract is determined to be illegal, invalid, inoperative, or unenforceable, the remainder of this Contract shall not be affected by such a ruling but shall remain in force and effect without the illegal, invalid, inoperative, or unenforceable term or provision.

XII. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Contract.

XIII. COUNTERPARTS

This Contract may be executed by the parties in counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. Any signature delivered via facsimile or other electronic means shall be deemed an original signature hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Superintendent and the Board, through its duly authorized officer, have executed this Contract on the date and year first written above.

SUPERINTENDENT

HAWAII STATE BOARD OF EDUCATION
By its Chairperson

KEITH HAYASHI

BRUCE VOSS

APPROVED AS TO FORM:

APPROVED AS TO FORM:

ANNA ELENTO-SNEED
ES&a, Inc., A Law Corporation

JAMES HALVORSON
Deputy Attorney General

This Contract was approved by the Board of Education, through a majority vote of its members, at a meeting held on the ____ day of _____, 2022.

Exhibit A
Job Description

Approved March 3, 2022

State of Hawaii Department of Education
POSITION DESCRIPTION – SUPERINTENDENT OF EDUCATION

Position Summary: The Hawaii State Superintendent of Education serves as the chief executive officer of the statewide public school system and is responsible for both the State Education Agency and Local Education Agency functions of the Hawaii State Department of Education (“Department”). Hawaii has 257 Department schools and 37 charter schools organized into 15 complex areas on six islands, with over 171,000 students (159,000+ in Department schools and over 12,000 in charter schools), approximately 22,600 permanent employees, approximately 20,000 casual hires and substitute employees, and an annual operating budget of more than \$2 billion. Reporting to the State Board of Education (“Board”), the Superintendent is accountable for achieving the goals established in the statewide strategic plan for education as approved by the Board and guided by the Board’s vision, mission, and policies.

Education. Master’s degree from an accredited college or university in education, business, public administration, or a closely related field. Alternatives to the education qualifications may be considered as the Board deems appropriate and acceptable.

Experience. Minimum of ten years in progressively increasing leadership roles with history of successfully handling the increased responsibilities associated with each promotion earned. At least five years shall have been as a chief executive officer or similar position of leadership. Experience in a similar sized organization desired.

Competencies.

- Demonstrates commitment to developing a culturally responsive, internationally competitive, student-centered education curriculum and instructional program for all students and families.
- Exhibits an understanding of complex organizations and how to produce successful change management and educational reform.
- Demonstrates understanding of the structure, roles, and responsibilities of the Department’s state, complex area, and school-level system of education.
- Has a demonstrated ability to make large-scale positive impacts for students and a history of establishing effective processes and organizational systems to achieve desired outcomes.

- Is cognizant of national and international trends, best practices, policies, and research on ensuring student success.
- Has a record of excellent decision making based on a thorough understanding of the issues and of incorporating multiple stakeholder voices in the process.
- Has a deep understanding of Hawaii's history, culture, and values, including the key role that Kaiapuni education plays, and has incorporated this understanding in leadership decisions, actions, and style.
- Has credibility and builds positive relationships with all stakeholders.
- Demonstrates a commitment to lifelong learning as a reflective and self-aware leader.
- Has a demonstrated ability to fully understand a diverse and unique education system.
- Has a demonstrated ability to hire and manage competent people in key positions, including finance and budget, facilities, human resources, and information technology.

Primary Responsibilities

Visionary Leadership and Organizational Culture. The Superintendent promotes the success of all students by articulating and implementing a vision of learning, developing and modeling a positive organizational culture and school climate throughout the Department, and sustaining instructional programs conducive to student learning and staff professional growth. The Superintendent:

- Is the public face of educational excellence and embraces this role by sharing a bold, future-oriented vision for the state education system based on the vision, mission, and goals and priorities set by the Board;
- Clearly aligns leadership actions, staffing, and resources to a student-centered vision that is evident in the culture of all schools;
- Collaboratively builds, nurtures, and sustains an organizational culture that supports a system that serves all students;
- Creates and implements a HĀ-based, focused plan for achieving strategic plan goals and objectives supported by resources;
- Builds an executive team that complements and adds to his/her skill set and experience and can offer diverse perspectives and advice;
- Fosters innovative continuous improvement and effectiveness at all levels;
- Develops and nurtures leaders and empowers employees;
- Listens to and incorporates diverse perspectives in all decision-making processes;

- Develops, nurtures, sustains, and models trust, collaboration, learning, and elevated expectations by empowering and collaborating with state, complex area, and school leadership, and teacher leaders to make decisions that improve student learning;
- Leads and supports the use of quantitative and qualitative data to identify priorities, assess organizational effectiveness, identify effective practices, promote continuous organizational learning, and inform instruction; and
- Ensures that all staff receive relevant and continuous professional development, including leadership development (especially at the complex area and school levels), that directly enhances their performance.

Operations, Resource, and Personnel Management. The Superintendent manages operations and implements sound personnel practices to promote a safe, trusting, respectful, effective learning environment for students and staff and to ensure the fiscal fidelity and efficiency of the Department. The Superintendent:

- Monitors and evaluates operational systems to ensure the effective, efficient use of human, fiscal, capital, and technological resources;
- Develops and ensures the effective implementation of processes, procedures, and structures to support compliance with local, state, and federal laws and regulations;
- Implements personnel procedures and employee performance programs to effectively recruit, hire, develop, and retain highly effective teachers, administrators, and personnel;
- Articulates and implements a comprehensive plan for educator recruitment and retention;
- Manages fiscal planning and budget development, makes strategic recommendations based upon the Department's current fiscal position and future needs, prepares operating and financial budgets that align with the Board's strategic plan and makes sound fiscal decisions aligned with the strategic plan goals and objectives, and establishes clear, transparent systems of fiscal control and accountability;
- Monitors facilities use and needs, makes facilities recommendations as needed to the Board and Legislature, promotes safety across the state, and ensures that a facilities management plan is in place; and
- Provides timely, relevant, and strategic information and advice to the Board during labor negotiations, effectively collaborates with the exclusive representatives of public employee bargaining units, and actively seeks to improve collective bargaining outcomes that best serve students and the public education system.

Board Governance and Policy. With an understanding of how their distinct roles promote student success, the Superintendent partners effectively with the Board to ensure a high-quality education for every student and leads and manages the Department consistent with Board policies, promoting transparency, fairness, and trust. The Superintendent:

- Collaborates with the Board to shape a joint vision, mission, and strategic goals, with measurable objectives of elevated expectations for student achievement;
- Communicates the impact of federal policy and regulations on state operations and local policy decisions;
- Articulates the state's system of public-school governance, differentiates policymaking and administrative roles, interprets and executes the intent of Board policies, and advises the Board on the need for new or revised policies in a timely manner;
- Advocates for and represents the Board's and Department's position on legislative initiatives and works effectively with local, state, and federal leaders and public officials;
- Offers professional perspective to the Board, with recommendations based on thorough study and analysis, and keeps the Board regularly informed with relevant quantitative and qualitative data, reports, and information that enable it to make effective, timely decisions on policies and strategic goal development; and
- Collaborates with the Board to define and deploy multiple-measure accountability systems that consider whole child development.

Communication and Community Relations. The Superintendent establishes effective communication and engagement processes with students, parents, teachers, and the community at large and seeks understanding of cultural, political, social, economic, and legal contexts to respond effectively to internal and external stakeholder feedback, build staunch support for the public education system, and promote the success of all students. The Superintendent:

- Uses effective public information strategies to communicate with all stakeholders in an appropriate and timely manner, manage internal and external perceptions of the Board and Department, and promote a positive image of the public education system with families, the media, federal and state officials, and the community at large;
- Engages meaningfully, proactively, and strategically with media;
- Communicates with diverse audiences in a timely manner to achieve desired results and practices;

- Works with staff, federal and state agencies, and other community members to secure resources and build partnerships to support strategic plan goals and student success;
- Works with state legislators, governor, and other state-level policymakers to ensure continuity of vision and coherence of policy implementation;
- Establishes effective communication within the Department, promotes positive interpersonal relations among staff, and creates a HÃ-based atmosphere of trust and respect with staff, families, and community members;
- Works with birth-prekindergarten early learning partners to ensure K-12 school readiness and student success;
- Collaborates with higher education institution and business leaders to ensure smooth transitions for high school graduates and development of appropriate career pathways for students;
- Exercises cultural competence in all communications, interactions, and community engagement; and
- Maintains an open, honest, transparent relationship with the Board always.

Equity Advocacy. The Superintendent advocates for equitable opportunities and conditions and builds a foundation rooted in the promise of equity, integrity, and fairness for every student and every staff member. The Superintendent:

- Maintains a primary focus on equity and excellence in all aspects of the job;
- Champions and builds a diverse, equitable, inclusive environment in schools and throughout the Department and advocates for equity and fair play among student groups, schools, complexes, and state offices;
- Promotes social-emotional wellness of students, staff, and community;
- Promotes social justice and civil rights, ensuring that schools are safe learning environments free of inequities and injustices; and
- Ensures equitable distribution of resources, both human and fiscal.

Other Duties and Responsibilities

- Works with the Board to select and administer statewide assessments aligned with Board-approved state standards.
- Executes a comprehensive planning process to manage short- and long-term crises, including processes and systems to communicate regularly with the Board, educators, parents, and other stakeholders.
- Approves the appointment of all education officers and hires, recommends Board approval for Department executives, makes final decisions on

actions where serious disciplinary action is considered for an employee, and engages in labor negotiations.

- Administers agencies attached to the Department, as provided by law, including the Executive Office on Early Learning, the Hawaii Teacher Standards Board, the State Public Charter School Commission, and the Hawaii State Public Library System.