



STATE OF HAWAII
BOARD OF EDUCATION
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February 6, 2020

TO: Margaret Cox
Committee Chairperson, Student Achievement Committee

FROM: Catherine Payne
Chairperson, 2020 Legislative Ad Hoc Committee

AGENDA ITEM: Committee Action on recommendation concerning Board Policy positions for the 2020 Legislative Session: Multiple charter school authorizer funding and authorizer system

I. BACKGROUND

At its September 19, 2019 general business meeting, the Board of Education (“Board”) adopted policy positions supporting proposed legislation that advances the Board and Department of Education’s Strategic Priorities for School Year 2019-2020, policy positions relating to the Hawaii State Public Library System, policy positions relating to charter schools, and general policy positions.¹ At its October 3, 2019 meeting, the Board established an ad hoc committee to present, discuss, and negotiate its policy positions for the purposes of engaging in the 2020 Legislative Session (“Legislative Ad Hoc Committee”).²

There is currently at least one bill, House Bill 2427 (“HB 2427”)³ relating to charter school authorizer funding and the charter school authorizer system, so 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 authorizers as described in more detail below.

¹ The policy positions the Board adopted at its September 19, 2019 general business meeting are available at:

http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20190919_Action%20on%20Investigative%20Committee%20concerning%20Board%202020%20legislative%20policy%20positions.pdf

² See this memorandum for more information on the Legislative Ad Hoc Committee:

http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20191003_Action%20on%20Ad%20Hoc%20Committee%20re%202020%20Legislative%20Session.pdf

³ House Bill 2427, Relating to Charter Schools, attached as **Exhibit A** and available at: https://www.capitol.hawaii.gov/session2020/bills/HB2427_.htm.

II. DESCRIPTION

House Bill 2427 provides guidance as to charter school authorizer issues that the Board should consider taking a position on, so I used its proposals as the structure for my recommendations. House Bill 2427 proposes to: (1) appropriate funds to each authorizer the Board grants chartering authority to, other than the Hawaii State Public Charter School Commission (“Commission”); (2) make conforming amendments to ensure that the authorizer system reflects multiple authorizers and not just the Commission; and (3) clarify that the Board is responsible to manage the transfer of charter school funding to another authorizer when a charter school contract is transferred between authorizers.

Currently, the Board’s policy positions address charter school facilities, operational autonomy, and the Board’s organizational and oversight authority over charter school authorizers.⁴ The Board’s current policy position relating to charter school authorizers is drafted narrowly to only allow the Board to oppose legislation that removes the Board’s organizational and oversight authority over charter school authorizers. As drafted, it does not allow the Board to take a position on the structure and form of the overall authorizer system, which is what HB 2427 covers. I will go through each of the proposals covered in HB 2427 and provide explanations for the recommended policy position amendments.

Fund Authorizers. House Bill 2427’s first proposal is to appropriate funds to each authorizer the Board grants chartering authority to, other than the Commission. It proposes to do this by allocating funds to each authorizer based on the number of students in the charter schools under the oversight of the authorizer. Currently, the Commission is funded by the Legislature on a line-item basis; the Commission’s

⁴ The charter school policy positions the Board adopted at its September 19, 2019 general business meeting (available at: http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20190919_Action%20on%20Investigative%20Committee%20concerning%20Board%202020%20legislative%20policy%20positions.pdf), provide as follows:

“CHARTER SCHOOL POLICY POSITIONS

The Board supports proposed legislation that addresses charter school facilities needs as a longstanding and unresolved issue that the Board cites in its annual charter school report to the Legislature every year.

The Board opposes proposed legislation that restricts the operational autonomy necessary for charter schools to fulfill their missions and act as independent public schools.

The Board opposes proposed legislation that removes the Board’s organizational and oversight authority over charter school authorizers, as the Board believes that all public elementary and secondary institutions should ultimately fall under the Board’s purview.”

budget request is based on its needs, it is not tied to or determined by the number of students in the charter schools under its oversight. There are pros and cons to using a per-pupil method of allocation for authorizers, which the Board can provide comments on. However, I believe that the Board should consider the larger issue of whether it wants to support state funding of authorizers, other than the Commission.

Statute does not provide a mechanism for allocating state funds to any authorizers other than the Commission, so the assumption is that any other authorizer must be self-funded. While this has proven to be, and will likely continue to be, a significant barrier to the realization of another authorizer in this state, I believe that the Board should oppose legislation that uses state funding to support other authorizers, particularly if this funding divert funds from charter schools, supports for charter schools, or other educational efforts. For example, the operations of the Charter School Administrative Office's ("CSAO"), the Commission's predecessor, were funded with a percentage of per-pupil funds that would have otherwise gone to the charter schools. Preventing the diversion of funds from charter schools was a large part of the reason the Commission has a line item budget.

Moreover, funding an authorizer is not funding support for charter schools. By law, authorizers are not permitted to provide technical support to charter schools, so the funding of an authorizer will not create supports for charter schools. There are many significant funding needs in the charter school system, anywhere from facilities to support, which should be addressed before money is siphoned away to fund another authorizer. I recommend the addition of this policy position: "The Board will oppose the funding of authorizers, other than the Commission, if such funding will divert funds from educational purposes."

Clarifying Multiple Authorizer System. House Bill 2427's second proposal is to make conforming amendments to ensure that the authorizer system reflects multiple authorizers and not just the Commission. The bill references subsections of Hawaii Revised Statutes, Section 302D-29.5, which establishes a charter school facilities funding working group, where either the Commission is referenced or where it would be more appropriate to reference the Board instead of the Commission. For example, the bill proposes making an amendment to reflect that the chairperson of each authorizer would sit on the working group and not just the chairperson of the Commission.⁵ For provisions where a single entity must make decisions that impact all authorizers, the amendments move that authority from the Commission to the

⁵ "The chairperson of ~~the commission;~~ each authorizer[.]" HB 2427, Section 4 describing the amendment to subsection (d).

Board.⁶ I believe that amendments like these are necessary to recognize a system with multiple authorizers where the Commission would be a peer to other authorizers and would not be able to have duties and responsibilities over other authorizers. The Board should support and propose conforming amendments that clarify how the Commission and other authorizers would fit into the charter school system and the Board's role in this system.

Board Management of Authorizers. House Bill 2427's third proposal is to clarify that the Board is responsible to manage the transfer of charter school funding to another authorizer when a charter school contract is transferred between authorizers. The proposal also provides a specific time period for the transfer to occur. While it is unclear what funding this proposal references, and therefore also whether a 10-day time period is sufficient, I believe that the Board is the appropriate entity to manage operations between and among authorizers and that the Board should adopt a policy position stating as such. In order to address both the clarification of the charter school system and the Board's management of authorizers, I recommend the addition of this policy position: "The Board supports proposed legislation that clarifies how the Commission and other authorizers fit into the charter school system, the Board's role in this system, and recognizes the Board's authority over operations and interactions between and among authorizers."

Based on the foregoing, the committee should recommend that the Board 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 addresses charter school facilities needs as a longstanding and unresolved issue that the Board cites in its annual charter school report to the Legislature every year.

The Board opposes proposed legislation that restricts the operational autonomy necessary for charter schools to fulfill their missions and act as independent public schools.

The Board opposes proposed legislation that removes the Board's organizational and oversight authority over charter school authorizers, as the Board believes that all public elementary and secondary institutions should ultimately fall under the Board's purview.

⁶ "The commission board shall develop criteria to determine the distribution of funds appropriated pursuant to subsection (a) to the charter schools." HB2427, Section 4 describing the amendment to subsection (d).

The Board will oppose the funding of authorizers, other than the Commission, if such funding will divert funds from educational purposes.

The Board supports proposed legislation that clarifies how the Commission and other authorizers fit into the charter school system, the Board's role in this system, and recognizes the Board's authority over operations and interactions between and among authorizers.

III. **RECOMMENDATION**

I recommend that the Board adopt the policy positions described in my memorandum dated February 6, 2020 and incorporate them into the policy positions it adopted at its September 19, 2020 general business meeting for the 2020 Legislative Session, as shown in **Exhibit B** attached to this memorandum.

Exhibit A
House Bill 2427, Relating to Charter Schools

A BILL FOR AN ACT

RELATING TO CHARTER SCHOOLS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the Center for
2 Education Reform has noted that the creation of multiple charter
3 school authorizers is one of the most important components of a
4 strong charter school law. Approximately seventy-eight per cent
5 of the nation's charter schools are located in states with
6 multiple charter school authorizers. These states are also home
7 to the highest quality charter schools, as evidenced by test
8 scores, numerous credible research studies, and continuous
9 observation.

10 The purpose of this Act is to require the legislature,
11 should the board of education grant chartering authority to
12 authorizers other than the state public charter school
13 commission, to appropriate funds to the commission and all other
14 authorizers based on a per-pupil allocation.

15 SECTION 2. Chapter 302D, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:



1 "§302D- Multiple authorizers; funding. (a) If the
2 board, pursuant to section 302D-4, grants chartering authority
3 to an authorizer other than the commission, the legislature
4 shall appropriate funds to each authorizer based on a per-pupil
5 allocation and in the same manner as allocations are made to the
6 charter schools pursuant to section 302D-28.

7 (b) Beginning with the 2020-2021 fiscal year, the
8 legislature shall make an appropriation to each authorizer that
9 is separate from and in addition to any appropriation made to
10 charter schools pursuant to sections 302D-28 and 302D-29.5.

11 (c) The board shall adopt rules pursuant to chapter 91 to
12 implement this section.

13 (d) As used in this section, "authorizer" means an entity
14 to whom the board has granted chartering authority pursuant to
15 section 302D-4."

16 SECTION 3. Section 302D-20, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Transfer of a charter contract, and of oversight of
19 that public charter school, from one authorizer to another
20 before the expiration of the charter term shall not be permitted
21 except by special petition to the board by a public charter



1 school or its authorizer. The board shall review such petitions
2 on a case-by-case basis and may grant transfer requests in
3 response to special circumstances and evidence that such a
4 transfer would serve the best interests of the public charter
5 school's students. If the board grants the transfer request,
6 the board shall manage the timely and orderly transfer of the
7 charter contract and all applicable funding from the former
8 authorizer to the new authorizer within ten calendar days of its
9 granting of the transfer request."

10 SECTION 4. Section 302D-29.5, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By amending subsection (a) to read:

13 "(a) Beginning with the 2016-2017 fiscal year, and each
14 fiscal year thereafter, the legislature shall consider making an
15 appropriation and bond authorization to [~~the commission~~] each
16 authorizer for the design, planning, construction, repair, and
17 maintenance of public charter school improvements to address
18 issues of health, safety, and legal compliance; expand or
19 improve instructional space; provide for food services; or
20 provide restroom facilities. The appropriation and bond
21 authorization for charter schools shall be separate from, and in



1 addition to, any appropriation made to charter schools pursuant
2 to this section and section 302D-28. These amounts shall be
3 prioritized for allocation by the charter school facilities
4 funding working group."

5 2. By amending subsections (d) and (e) to read:

6 "(d) There is established a charter school facilities
7 funding working group within the department of education, which
8 shall consist of the following members, or their designees:

9 (1) The chairperson of [~~the commission,~~] each authorizer;

10 (2) The executive director of [~~the commission,~~] each
11 authorizer, as applicable;

12 (3) The director of finance;

13 (4) The comptroller;

14 (5) The superintendent of education;

15 (6) An individual with expertise in real estate, to be
16 appointed by the chairperson of the [~~commission,~~]
17 board; and

18 (7) An individual with expertise in finance, to be
19 appointed by the chairperson of the [~~commission,~~]
20 board.



1 The [~~commission~~] board shall develop criteria to determine
2 the distribution of funds appropriated pursuant to subsection
3 (a) to the charter schools. The criteria shall include
4 distribution based on the need and performance of the charter
5 schools, overall benefit to the surrounding community, amount of
6 risk and availability of recourse to the State, and whether a
7 particular charter school received facilities funding through
8 other state funding, including grants-in-aid or a separate
9 appropriation.

10 The charter school facilities funding working group shall
11 be exempt from chapter 92 and shall act in an advisory capacity
12 to prioritize the allocation of general fund appropriations and
13 bond proceeds for public charter schools to expend based on the
14 criteria established by the [~~commission-~~] board.

15 (e) Nothing in this section shall be construed as
16 restricting the authority of [~~the commission~~] each authorizer to
17 support the facilities needs of the charter schools through
18 other means."

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.

2

INTRODUCED BY:

David Carnes
Neil
[Signature]
[Signature]
[Signature]

JAN 22 2020



H.B. NO. 2427

Report Title:

Charter Schools; Multiple Authorizers; Funding; Transfers

Description:

Provides that if BOE grants chartering authority to an authorizer other than the State Public Charter School Commission, the Legislature must appropriate funds to the Commission and any other authorizer based on a per-pupil allocation. Beginning with FY2020-2021, requires the Legislature to make an appropriation to the Commission and any other authorizer that is separate from and in addition to any appropriation made to charter schools pursuant to sections 302D-28 and 302D-29.5, HRS. Requires the transfer of the charter contract and all applicable funding from a former authorizer to a new authorizer within 10 calendar days of board approval. Makes conforming amendments.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Exhibit B
**Proposed amendments to Board Policy Positions for the 2020 Legislative
Session**

BOARD OF EDUCATION 2020 LEGISLATIVE POLICY POSITIONS

DEPARTMENT OF EDUCATION POLICY POSITIONS

The Board of Education (“Board”) supports proposed legislation that advances the Board and Department of Education’s (“Department”) Strategic Priorities for the 2019-2020 school year (“Strategic Priorities”). The table below describes the Strategic Priorities and the Board’s policy positions associated with each Strategic Priority. These policy positions also intend to support the Board’s Committee Strategic Priorities for the 2019-2020 school year.

Strategic Priorities	The Board supports measures that...
<p><u>Equity and Access</u> Ensuring that the appropriate policies, structures, and resources are in place to guarantee the advancement of access and support structures that enable and inspire all students to succeed in school and life. This priority references special education and English Learners in particular, but does not preclude issues like civil rights and Title IX.</p>	<ul style="list-style-type: none"> • Provide more resources for appropriate support structures that allow all students, especially those receiving special education or English learner services, to engage in learning • Provide more resources for appropriate support structures to provide access to Hawaiian language immersion education to all interested students • Protect students’ civil rights • Advance equitable access to facilities and opportunities for all students, particularly at schools with the greatest socioeconomic and academic needs • Expand early college opportunities for all students
<p><u>Safe Learning Environments that Support Students’ Wellbeing</u> Ensuring that the appropriate policies, structures, and resources, grounded in Nā Hopena A’o are in place so learning environments that support all students’ emotional and physical wellbeing can be cultivated. A truly safe learning environment that supports students’ wellbeing is one that students themselves want to be in so they attend school regularly and willingly, thereby reducing chronic absenteeism.</p>	<ul style="list-style-type: none"> • Provide resources for appropriate structures and school facilities that support students’ mental, emotional, and physical wellbeing • Recognize the importance of addressing bullying, harassment, and discrimination in schools
<p><u>Student-centered School Design</u> Ensuring that the appropriate policies, structures, and resources are in place to support schools designed to engage</p>	<ul style="list-style-type: none"> • Increase career and technical education

Strategic Priorities	The Board supports measures that...
<p>students in rigorous and innovative curriculum and encouraging students to strive beyond what is expected, while being mindful of the values, needs, and welfare of others, within a student and community designed learning environment that is aligned to college and careers. Design includes every aspect of a school: facilities, school models, themes, resources, partners (families, communities, and organizations), school day schedule, pedagogical approaches, allocation of teacher collaboration time, technology, governance, and organizational structure.</p>	<ul style="list-style-type: none"> • Advance or provide resources for innovative, student-centered school design
<p><u>Staff Professional Development, Recruitment, and Retention</u> Ensuring that the appropriate policies, structures, and resources are in place to allow for the establishment of a dynamic learning community that is responsive to parent and student reflections on the quality and relevance of the student’s learning and designed to continuously develop staff capacity to lead the work that results in high student achievement and the development of clear leadership pathways, supports, and incentives that attract and retain talent.</p>	<ul style="list-style-type: none"> • Support leadership pipeline development • Expand teacher recruitment and retention initiatives, which provide teachers with incentives and resources or support a teaching career path • Support teacher professional development that advances career and technical education
<p><u>Communication and Engagement</u> Ensuring that the appropriate policies, structures, and resources are in place so the Department and Board thoughtfully and intentionally engage with students, staff, families, and community stakeholders in two-way communications that will help to inform decision-making and priority setting (particularly with respect to the development of a new strategic plan) and improve transparency and access to information.</p>	<ul style="list-style-type: none"> • Support informed decision-making and priority setting through thoughtful and intentional engagement with stakeholders • Improve transparency and access to information to encourage an informed and engaged community of citizens

The Board supports proposed legislation that addresses the needs identified in the Department's Board-approved supplemental operating and Capital Improvement Program budget requests for Fiscal Year 2021.

LIBRARIES POLICY POSITIONS

The Board supports proposed legislation that addresses the needs identified in the Hawaii State Public Library System's Board-approved supplemental operating and Capital Improvement Program budget requests for Fiscal Year 2021.

CHARTER SCHOOL POLICY POSITIONS

The Board supports proposed legislation that addresses charter school facilities needs as a longstanding and unresolved issue that the Board cites in its annual charter school report to the Legislature every year.

The Board opposes proposed legislation that restricts the operational autonomy necessary for charter schools to fulfill their missions and act as independent public schools.

The Board opposes proposed legislation that removes the Board's organizational and oversight authority over charter school authorizers, as the Board believes that all public elementary and secondary institutions should ultimately fall under the Board's purview.

The Board will oppose the funding of authorizers, other than the Commission, if such funding will divert funds from educational purposes.

The Board supports proposed legislation that clarifies how the Commission and other authorizers fit into the charter school system, the Board's role in this system, and recognizes the Board's authority over operations and interactions between and among authorizers.

GENERAL POLICY POSITIONS

The Board **does not** support proposed legislation that:

- Prevents or hinders the Board or Department from addressing the Strategic Priorities;
- 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 rather than remain focused on its constitutional responsibility of policymaking; 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 in regards to matters of public policy only, and the Board defers to the Department (or its administratively attached agencies when appropriate) on operational and implementation matters.