



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

July 15, 2021

TO: Board of Education

FROM: Catherine Payne  
Chairperson, Board of Education

AGENDA ITEM: Board Action on designation of Board Members to a permitted interaction group, pursuant to Hawaii Revised Statutes Section 92-2.5(b)(1), acting as part of the evaluation team tasked with conducting a performance evaluation of the State Public Charter School Commission

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**I. EXECUTIVE SUMMARY**

- The Board of Education (“Board”) must conduct a performance evaluation of the State Public Charter School Commission (“Commission”).
- The must select at least two, but no more than three, Board members to serve on the evaluation team.
- I recommend assigning Board Member Lynn Fallin and myself to the evaluation team.

**II. BACKGROUND**

On February 21, 2017, the Board completed a special review of the Commission, culminating in the issuance of a report to the Commission with findings, including deficiencies that the Commission needed to address.<sup>1</sup> The Board considered the

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<sup>1</sup> The special review report is attached as Exhibit B to Investigative Committee Chairperson Brian De Lima’s memorandum dated February 7, 2017, available here: [https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM\\_20170207\\_Report%20on%20Special%20Review%20Committee.pdf](https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20170207_Report%20on%20Special%20Review%20Committee.pdf).

special review as the Commission’s first performance evaluation as required by Hawaii Administrative Rules (“HAR”) Section 8-515-11(e) requiring the Board to “conduct a performance evaluation of each authorizer no less than every five years.”

On May 2, 2019, the Board adopted the Hawai’i Authorizer Performance Evaluation System (“HAPES”)<sup>2</sup> as the performance evaluation system required by HAR Section 8-515-10.<sup>3</sup> HAPES requires an evaluation team to conduct the performance evaluation of an authorizer. HAPES states, in pertinent part:

The Evaluation Team will consist of at least four members, but no more than five, of which at least two, but no more than three, are Board members with the remaining members being external experts. The Board will select the Board member evaluators. The Board Chairperson will select the external expert evaluators. The Board Chairperson may instruct Board staff to gather suggestions for external expert evaluators from Board members in a manner that complies with Sunshine Law (HRS Chapter 92, Part I). The Evaluation Team must have at least one member with expertise in each of the following areas:

- Charter school authorizing at either the state or national level;
- Finance, accounting, or a related field; and
- Hawaii’s charter school legal framework.

A single evaluator with expertise in more than one of the required areas is qualified to fulfill the Evaluation Team’s constitution requirements in those areas. While not required, other desirable areas of expertise include charter school operations, educational program design or data analysis (particularly as it relates to the authorizer’s mission and vision, if possible), human resources, governance, and/or public administration.

### **III. DISCUSSION**

The Board will need to complete a performance evaluation of the Commission by February 2022 in order to meet the five-year deadline for evaluating authorizers. In accordance with HAPES, I notified the Commission of the performance evaluation and provided it with instructions and the performance evaluation response form on May 14, 2021. The general timeline of the performance evaluation is below.

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<sup>2</sup> HAPES is available here:

[https://boe.hawaii.gov/About/Documents/Charter%20Schools/Hawaii%20Authorizer%20Performance%20Evaluation%20System%20\(adopted%202019-05-02\).pdf](https://boe.hawaii.gov/About/Documents/Charter%20Schools/Hawaii%20Authorizer%20Performance%20Evaluation%20System%20(adopted%202019-05-02).pdf).

<sup>3</sup> HAR Section 8-515-10 states, in pertinent part, “The board shall develop a performance evaluation system to assess the effectiveness of all authorizers and the commission using the procedures described in sections 8-515-11 and 8-515-12.”

<b>Date</b>	<b>Activity</b>
May 14	Board notifies authorizer that performance evaluation will be conducted
August 2-6	Evaluation Team selected
August 13	Authorizer submits Performance Evaluation Response Form and attachments
August 16 to September 3	Window for Evaluation Team's initial review
September 7-10	Evaluation Team interviews authorizer representatives
September 7-17	Evaluation Team surveys and/or interviews representatives from charter schools within authorizer's portfolio
September 13-17	Evaluation Team holds a public forum to allow public input on authorizer
October 1	Evaluation Team provides authorizer with draft performance evaluation report
October 8	Authorizer submits written comments on draft performance evaluation report
October 15	Final draft of performance evaluation report posted
October 21 (GBM)	Board General Business Meeting on performance evaluation presentation
November 18 (GBM)	Board General Business Meeting on performance evaluation decision
November 5	Board issues performance evaluation report

Board Member Lynn Fallin agreed to serve on and chair the evaluation team. I am volunteering to serve as the second required Board member evaluator. Pursuant to HAPES, I will select external expert evaluators to round out the evaluation team with the necessary skillsets.

Sunshine Law allows two Board members to discuss Board business between themselves.<sup>4</sup> However, for two Board members to participate in the evaluation team envisioned by HAPES with other evaluators besides themselves, the Board would need to assign these members to a permitted interaction group in accordance with Hawaii Revised Statutes (“HRS”) Section 92-2.5(b)(1).<sup>5</sup>

#### **IV. RECOMMENDATION**

I am recommending that the Board assign Board Member Fallin and myself to a permitted interaction group, pursuant to HRS Section 92-2.5(b)(1), tasked with investigating the Commission’s performance in accordance with HAPES and to the evaluation team responsible for conducting the performance evaluation of the Commission, pursuant to HAPES, with Board Member Fallin chairing the evaluation team.

**Proposed Motion: “Move to assign Board Member Lynn Fallin and Board Chairperson Catherine Payne to a permitted interaction group, pursuant to HRS Section 92-2.5(b)(1), tasked with investigating the Commission’s performance in accordance with HAPES and to the evaluation team responsible for conducting the performance evaluation of the Commission, pursuant to HAPES, with Board Member Fallin chairing the evaluation team.”**

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<sup>4</sup> HRS Section 92-2.5(a) states, “Two members of a board may discuss **between themselves** matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.” (emphasis added)

<sup>5</sup> HRS Section 92-2.5(b)(1) states, “Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to . . . [i]nvestigate a matter relating to the official business of their board; provided that:

- (A) The scope of the investigation and the scope of each member’s authority are defined at a meeting of the board;
- (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
- (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board[.]”