

SB496



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

S.B. NO. 496, RELATING TO CHARTER SCHOOLS.

BEFORE THE:

SENATE COMMITTEE ON EDUCATION AND HOUSING

DATE: Wednesday, February 11, 2009 **TIME:** 2:30 PM

LOCATION: State Capitol, Room 225

TESTIFIER(S): Mark J. Bennett, Attorney General
or Melissa W. H. Chee, Deputy Attorney General,
or Holly T. Shikada, Deputy Attorney General

Chair Sakamoto and Members of the Committee:

The Department of the Attorney General **opposes this measure** as currently written.

The purpose of this bill is to clarify the duties, roles, and functions of the Charter School Review Panel in the administration and operation of charter schools. This bill also addresses funding for the school year and facilities funding.

However, the bill, as written, interferes with the internal administration of the Department of the Attorney General (Department). The Department is legally obligated to advise and represent the various state departments and agencies, including the department of education, the board of education, as well as the various charter schools, the charter school administrative office, and the charter school review panel. The Department is engaged in the constant review and interpretation of statutory and case law in order to provide sound legal advice to our clients. Not only is the review and interpretation of statutory and case law constant, it is also consistent. The Department's legal opinion regarding the interpretation of a particular law does not change regardless of which client it may be advising.

The issue of potential conflicts relating to the Department's representation of its various clients is not new. The Rules of Professional Conduct recognize that the Department has a unique role and may at times properly represent several government departments or agencies in inter-departmental legal controversies where private attorneys would not be allowed to represent multiple private clients. See, Hawaii Rules of Professional Conduct, Scope. And where conflicts do exist, those conflicts are immediately addressed by the Department. Whether a conflict truly exists, however, is a determination that can only be made on a case by case basis. When a conflict does exist, the Department has the ability and procedures in place to handle such a conflict and does so explicitly and expeditiously.

Addressing a conflict can be handled in a variety of ways depending on the facts and circumstances of the situation. For example, the Department is able to ensure independent representation to conflicted state departments or agencies by screening off the various deputies and their divisions from each other in the representation of their respective clients. The Department also has the ability, when a particular situation so requires, to hire private counsel to represent and advise a conflicted party.

The Department of the Attorney General respectfully requests that, if this bill is passed, it be amended by deleting subsection (e) on page 13.

Date of Hearing: Wednesday, February 11, 2009

Committee: Senate Committee on Education and Housing

Board: Education

Person Testifying: Garrett Toguchi, Chairperson, Board of Education

Title of Bill: S.B. No. 496, Relating to Charter Schools

Purpose of Bill: Makes clarifying amendments to charter school laws by: (1) Requiring charter school compliance with Board of Education (Board) policies made in the Board's capacity as the State Education Agency (SEA) and Department of Education (Department) directives made in the Department's capacity as the SEA; (2) Requiring the Charter School Review Panel (CSRP) to determine the probation period for deficiencies related to noncompliance with Board policies, Department directives, state and federal laws, and health and safety issues; (3) Making the review, modification, and approval of the charter schools operating and Capital Improvement Projects budgets for charter schools, the responsibility of CSRP; (4) Requiring Board member recusal from reviewing a matter on appeal if the Board member served as a CSRP member at the time the appeal decision was made; (5) Establishing a per pupil funding amount and formula and facilities formula for charter schools; (6) To represent the Charter School Administrative Office, having an assigned deputy attorney general who does not represent, or function as a subordinate to, a deputy attorney general who represents the Department or the Board; and (7) Changing the interval in which CSRP is to conduct multi-year evaluations of each charter school.

Board's Position: Chairperson Sakamoto, Vice Chairperson Kidani, and members of the Senate Committee on Education and Housing, thank you for the opportunity to comment on S.B. No. 496.

The Board has not had an opportunity to discuss S.B. No. 496, and as such, does not have a position on this bill at this time. The Board Committee on Legislation, Public Charter Schools & Public Libraries will be taking up S.B. No. 496 and other education bills in committee tomorrow.

There are, however, two provisions in S.B. No. 496 that are similar to what the Board supports in S.B. No. 143 and H.B. No. 11. The provisions:

- Specify that charter schools are to comply with Board policies made in the Board's capacity as the SEA and Department directives made in the Department's capacity as the SEA.
- Authorize the Board to terminate any member of the Charter School Review Panel for cause.

Thank you for the opportunity to comment on S.B. No. 496.

Linda Lingle
Governor



Vanelle Maunalei Love
Executive Director

Charter School Administrative Office

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FOR: SB496, Relating to Charter Schools
DATE: Wednesday, February 11, 2009
TIME: 2:30 p.m.
COMMITTEE(S): Committee on Education and Housing
ROOM: Conference Room 225
FROM: Maunalei Love, Executive Director

Testimony **in Support with Amendment.**

Chair Sakamoto, Vice Chair Kidani, and Members of the Committee:

Thank you for the opportunity to testify today on this measure. First of all, the CSAO would like to thank Chair Sakamoto and your staff for all the work you have put into this bill and in your support of the charter schools. We appreciate the efforts of all the stakeholders who have been working diligently to get the charter schools equitable funding.

Since the introduction of SB496, several proposed revisions and drafts have been circulated. The CSAO is attaching this revision in our testimony as a proposed SD1 for SB496. We believe that our proposed SB496 SD1 captures what most of the stakeholders feel is acceptable.

Our proposed SD1 differs from the current draft in the following significant ways:

1. Removes references to making the local school boards responsible for complying with the board of education's policies and the department of education's directives.
2. Retains the word "significant" as a modifier of "amendment" with respect to the panel's authority in monitoring changes in detailed implementation plans so that the panel need not address every insignificant change undertaken by a local school board.
3. Adds a section to provide an independent Attorney General to represent the panel and the CSAO.
4. Requires B&F to follow the formula
5. Requires that B&F provide the office and the legislature the formula and means of calculation of the charter school appropriation prior to the submission of the executive budget request.
6. Drastically minimizes any changes to the existing formula.
7. Further clarifies the panel's authority respecting probation and revocation of charter schools.

We respectfully ask that the committee amend this bill by using the language of our proposed SB496 SD1 and pass the bill forward as amended. Thank you again for the opportunity to testify.

From: [tom_macdonald](#)
To: [EDH Testimony](#)
Cc: [REDACTED]
Subject: Testimony Re SB496 Relating to Charter Schools 2/11/09 2:30 PM
Date: Saturday, February 07, 2009 3:35:03 PM

My name is Tom Macdonald. I am a member of the Charter School Review Panel and have been actively providing suggestions to Committee Clerk Alvin Awaya to update last year's SB 2751 to serve as an omnibus Charter School Bill for 2009.

All of us in the Charter community appreciate the continuing efforts that this Committee, and the Legislature generally, have made over the last several years to treat charter schools equitably. We all hope this is the year when we can complete the job.

The Panel **supports the changes made in SB496** to clarify the duties of the Panel in regard to the charter school system budget, authorizing Charter Schools to submit a Capital Improvements Budget, and providing that an independent deputy attorney general support charter schools.

The suggested changes I list below are supported by the Charter Review Panel, By the Charter School Administrative Office and the Charter School Network which represents all 31 charter schools. In the interest of time, I only mention major items here.

First of all, the charter school community strongly opposes the provisions in SB 496 that require charter schools to comply with Board of Education policies and Department of Education directives. Charter schools fear that, over time, these provisions could be used to eliminate the autonomy and freedom to experiment that the Legislature intended charter schools to have. Applying these policies and directives to charter schools would unnecessarily duplicate the Charter Review Panel's role in ensuring that all charter school's comply with all state and federal laws relating to education. These provisions appear in several places in SB 496 and should be deleted wherever they appear

Charter schools also oppose the exclusion of Special Education expenses from the calculation of charter school per pupil funding.

The Department of Education does not provide comprehensive special education services to charter schools. The Department provides special ed teachers, but only to some of the charters that have special ed students. And even those charter schools who are provided with Department special ed teachers must bear all of the non-teacher expenses of special ed students: classroom facilities, materials, special supervision, etc.

And just this year the Department has stopped funding charter school Student Services Co-ordinators, who provide many services to special ed students. This shifted \$1.8 million from the Department budget onto charter schools. Some type of formula needs to be developed that deals with the fact that Department and the charter schools both provide some special ed services to charter students.

The per pupil funding formula in SB496 deducts debt service from Department expenses in making the calculation. This is a major item, representing over \$1,100 per pupil. The Budget Proviso Work Group that this Committee appointed during the 2008 Legislative session agreed that this deduction from the calculation was appropriate if a Charter School Facilities Funding provision were added to the Bill. The Proviso Group suggested that the value of a school building to Department students could be approximated by dividing the Department's debt service amount by the Department enrollment. SB496 contains no such formula to fund charter school facilities costs. It only makes a vague, general statement about a facilities cost appropriation. We would ask that a specific formula be added to the bill to provide equitable treatment to charters, who do not receive the benefit of a school building.

Finally, The Panel asks for revisions to be made to the bill giving it authority to determine the length of probation periods on charter schools when probation becomes necessary, and to provide that violation of the terms of probation are grounds for charter revocation prior to the end of the probationary period.

We thank you for this opportunity to present our views and look forward to working with your staff to get an omnibus charter bill enacted this year.



Ho'okāko'o Corporation

*"Supporting New Opportunities
for Student Success through
Conversion Charter Schools"*

To: The Honorable Senator Norman Sakamoto, Chair
Members of the Senate Committee on Education

From: Lynn Fallin, Executive Director/Chief Executive Officer
Ho'okako'o Corporation

Lydia Trinidad, Principal
Kualapu`u School

John Colson, Chief Education and Executive Officer
Waimea Middle School

Glen Kila, Administrator
Kamaile Academy

Clarence DeLude, Administrator
Kamaile Academy

Date: February 11, 2009
Time: 2:30 pm
Location: State Capitol
Room 225

Subject Senate Bill (SB) 496 Relating to Charter Schools

The Ho'okako'o Corporation (HC) and its partner conversion charter schools, Waimea Middle School, Kualapu`u School and Kamaile Academy, thank the legislature for its efforts and support over the years to clarify and to resolve many of the policies that affect charter school students. We are encouraged by the continued legislative efforts.

We support the intent of SB 496 to clarify the functions, duties, and roles of the charter school review panel. However, we do not support Section 2. Section 302B-1 (2). This section has generated great concern with the schools regarding the scope and implementation of the role of the BOE and DOE as the SEA. The proposed amendment states: (2) Possesses the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with board policies made in the board's capacity as the state education agency, department directives made in the department's capacity as the state education agency, and applicable federal and state laws.

The amendment is unnecessary and does not meet the spirit and intent of the laws governing charter schools. By laws, charter schools do not fall under the administration of the state

Department of Education. HC's Local School Board with seasoned and experienced business people and educational leaders and HC's schools led by veteran and experienced school administrators, comply with state and federal laws governing charter schools.

We are not aware of failure to report and comply and have exceeded the requirements of the laws when implementing the laws governing charter schools to demonstrate and to set high standards by requiring annual audits of the schools especially in their first five years of conversion to charter status.

If there are problems with specific schools, it seems more prudent and practical to identify the problems and have the Charter School Review Panel, in its' role mandated by state statute, resolve the specific problems rather than casting a broad and nebulous net over charter school administration and autonomy.

Conversion charter schools have a unique role in the charter world because we are the feeder school for the geographical community like our DOE counterparts. In this capacity, we make every effort to coordinate and collaborate with the DOE and we respect and value the leadership and guidance of Superintendent Pat Hamamoto and her staff.

BACKGROUND

Ho'okako'o Corporation is a private, non-profit organization established in 2002.

Our mission is helping HC conversion chart schools reinvent themselves for the purpose of improving the academic achievement and personal growth of their students. Collaborating with communities, educators, and families, Ho'okako'o provides conversion charter schools with expertise and resources to improve student achievement.

The creation of conversion charter schools was made possible in 2002 when the Hawaii legislature passed Act 2. The Act expanded education choices through charter conversion schools in Hawaii and allows eligible non-profit organizations to manage and operate conversion schools and to provide a \$1 match for every \$4 state dollars. The matching funds are intended to enrich and not to supplant state funding of public schools.

Conversion charter schools are not under the DOE jurisdiction. However, conversion charter schools continue in their role as the public feeder school for the geographical community in which the school is located just like DOE schools. The conversion schools must accept all students within the public school service area. The school has an obligation to guarantee services that are at minimum comparable to their DOE counterparts.

HC was established with a partnership between HC's volunteer board of directors and Kamehameha Schools. The non-profit HC volunteer board serves as the school board for the conversion charter school. HC provides and/or brokers technical support in organizational change, instructional expertise, organizational systems and supports, policy and interface with major stakeholders. As an HC partner, KS has contributed technical support and funding. HC and the partner conversion charter schools leverage resources and support from many additional partners, including philanthropic foundations and trusts, government, unions, business and family/community volunteers in order to benefit the conversion charter school as the school implements its plans..

As an education change agent, HC seeks partnerships with public school communities committed to implementing the following necessary conditions for conversion school success:

- Effective school leadership
- Capable teachers with high expectations and the skills to work together in focused learning communities
- Curriculum that is aligned, articulated, and integrated
- Parents and the greater community with a sense of ownership in the school and willingness to be part of the change process
- Personalized schools
- More time on instructional and co-curricular activities
- Data and results driven
- Supportive and effective policies and regulations

Three HC Conversion Charter Schools

The three HC conversion charter schools are in communities with significant socio-economic need. On October 15, 2008, the official student enrollment count date for charter schools, the three schools enrollment for SY 2008-2009 is 1444 students or almost 19% of the charter school enrollment.

- Waimea Middle School, a 6 - 8 grade conversion charter school in Waimea on Hawai'i Island, 357 students
- Kualapu'u Elementary School, a K-6 conversion charter school on Molokai, 375 students
- Kamaile Academy, a K-8 conversion charter school in Waianae on Oahu, 712 students

Examples of School Outcomes/Results

Overall each school has shown a trend of steady growth. Initial measures of success include:

School Year 2006-07

A growth in reading and math scores (at Kualapu'u); increased student attendance at Kualapu'u and Waimea; a decrease in the special education population due to improved identification, remediation, and curriculum (at Kualapu'u); new programs offered (at Kualapu'u and Waimea); greatly increased family involvement (Waimea); Waimea and Kualapu'u achieved NCLB AYP

School Year 2007-08

Kualapu'u met federal NCLB AYP targets for two consecutive years and was awarded school in good standing status.

HC, Waimea Middle School, Kualapu'u School and Kamaile Academy thank the legislature for the opportunity to provide information about HC and HC schools and to testify on this legislation.



KAMEHAMEHA SCHOOLS

Testimony to the Senate Committee on Education and Housing
Hearing Date: February 11, 2009
2:30 p.m. – Conference Room 225

***Kalei Kailihiwa, Director, Ho'olako Like
Kamehameha Schools***

Re: SB 496 CHARTER SCHOOLS

Good afternoon Chair Sakamoto, Vice Chair Kidani and members of the Senate Committee on Education and Housing. My name is Kalei Kailihiwa, Director of Ho'olako Like of Kamehameha Schools. Thank you for this opportunity to **comment on SB 496**. We oppose this bill in its current form. We support both autonomy in delivering public education and accountability in public charter schools and want to be part of the ongoing and meaningful dialog regarding this measure. We note that provisions requiring compliance with Board of Education policies created some concern and may need further clarification.

Kamehameha Schools has been a collaborator in the charter school movement for more than six years now. As part of our Education Strategic plan, KS hopes to significantly impact more Hawaiian children ages 0-8 and grades 4-16+, and their families/ caregivers over the next five years, in collaboration with others whenever possible.

Currently, Kamehameha Schools works with 12 nonprofit tax-exempt organizations, including `Aha Pūnana Leo, OHA, KALO and Ho'okāko'o Corporation, to assist a total of 14 start-up and 3 conversion charters with special projects, professional development, and technical assistance. Kamehameha Schools believes that these efforts provide more positive educational choices and ultimately enhances academic achievement and greater school engagement for Hawaiian students. Through these collaborations, Kamehameha Schools currently assists more than 3,200 students in eleven communities on 4 major islands, within the public education system.

Recent research conducted over the past three years shows that Hawaiian-focused charter schools are implementing positive educational strategies and make a difference to Hawai'i's public school landscape in the following ways:

- They demonstrate success in helping "at-risk" students jump-start academic momentum using rigorous place-based and project-based strategies;
- The schools provide relevant and rigorous education in ways that engage both Hawaiian and non-Hawaiian students;
- They cultivate values of environmental stewardship and civic responsibility among future leaders;
- They build a strong sense of 'ohana through caring and supportive student/teacher relationships;
- They enhance the well-being, family involvement, and economic sustainability of communities.

In summary, supporting and replicating the successful strategies found in Hawaiian-focused charter schools is a good way to invest in education that has potential benefits for the entire public school system.

Attention: Senator Norman Sakamoto, Chair, and Members of Committee on Education & Housing
Testimony of Linda Elento, Kaneohe, (808) 235-7610

Hearing: Monday, February 11, 2009, 2:30 pm

SB496 Charter Schools

As a parent of an eight-year-old boy, Jason, who was born with Down syndrome, I have spent the past five years seeking--no, fighting for--a regular school program that is developmentally appropriate for his expected growth pattern based on his disability and not on his chronological age. Only this past week, my son Jason was enrolled at a Hawaii public charter school in order to begin his education with typically-developing children in kindergarten classes, with special education services to give him the opportunity to succeed.

In line with Hawaii's definition of charter school (HRS302B-01)--

"Charter school" refers to those public schools holding charters to operate as charter schools under this chapter, including start-up and conversion charter schools, and that have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management.

I ask the Committee on Education and Housing to **consider amendments to SB496** to exempt charter schools from the directives of the Department of Education, and--*in regards to special education for students at charter schools*--to clarify funding, the authority of the charter schools and of the Board of Education, and the role of the Executive Director of the Charter School Administrative Office.

Specify that charter schools are exempt from the directives of the Department of Education;

Include amendments to **HRS302B-15** (Special Education funding) based on federal law: The department shall allow charter schools to choose between receiving special education services in the same manner provided to other schools, and other options including receiving funds or a combination of funds and services. Regardless of the choice that the public charter schools make, the State Board of Education must ensure that students with disabilities attending public charter schools and their parents retain all their rights under federal and state laws.

Make clear the role of the Executive Director of the Charter School Administrative Office regarding special education policies, procedures, authority and funding, including the line of authority for special education law compliance as well as individual decisions made for students which must be within the Charter Schools.

These amendments would help to reduce the risk of students dropping out of school, including children eligible for special education. Just as important, these amendments will clarify a process for schools to understand in order for our children who are eligible for special education to be able to apply and enroll in and enjoy the benefits of charter schools as if they were non-special education eligible.

Thank you for the opportunity to present testimony.



K A W A I K I N I

A New Century Public Charter School

Testimony to the Senate Committee on Education and Housing

Hearing Date: February 11, 2009

2:30 p.m. – Conference Room 225

*Mohala Aiu, Development & Community Liaison,
Kawaikini New Century Charter School*

Re: SB 496 CHARTER SCHOOLS

Ano'ai Chair Sakamoto, Vice Chair Kidani and members of the Senate Committee on Education and Housing. My name is Mohala Aiu, Development & Community Liaison for Kawaikini New Century Public Charter School (Kawaikini). Mahalo for the opportunity to testify on SB 496. We **oppose this bill as it is currently written**. We support autonomy in the delivery of public education and accountability in public charter schools and would like to be a part of the ongoing dialog regarding this measure. Please note that the provisions requiring compliance with Board of Education policies call for concern and need further clarification.

Kawaikini Public Charter School is a K-12 Hawaiian medium school located in Puhi, Kaua'i. We currently serve 79 students from communities from Hanalei through Kekaha. We are one of the 14 Hawaiian-focused charter schools located in Hawai'i Island, O'ahu, and Kaua'i. We are also part of the Hawai'i Charter School Network which represents all 31 schools.

Charter schools have been a part of the educational landscape since 2001. Through years of innovation and research by the Kamehameha Schools we know we are making a difference in our children, environment, and family systems. Mahalo for this opportunity to testify.