



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 1865, H.D. 1, RELATING TO CHARTER SCHOOLS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 2, 2022 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 308, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Anne T. Horiuchi, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

This bill requires the State Public Charter School Commission to disburse funds directly to public charter schools, and also repeals the exemption for charter schools from requirements on the administration and use of the federal funds allocated to the State for public education purposes. The bill also clarifies that the disbursement of these funds shall not be conditioned on the agreement of a public charter school to amend an existing charter contract.

The bill seeks to amend section 302D-28(e), Hawaii Revised Statutes (HRS) in pertinent part, to state:

(e) Per-pupil funding disbursement shall not be withheld or conditioned on the agreement of a charter school to amend an existing charter contract, including without limitation amendments that may compromise student eligibility for the Free Appropriate Public Education Program under federal law.

Page 6, lines 13-18.

Under federal law, there is no "Free Appropriate Public Education Program." Rather, the Individuals with Disabilities Education Act (IDEA), as amended in 2004, codified at 20 U.S.C. § 300.1, *et seq.*, requires states to ensure that a free appropriate

public education (FAPE) is made available to eligible children with disabilities. Moreover, the Department of Education is ultimately responsible for ensuring that all eligible students attending a public school, including a public charter school, receive FAPE, so per-pupil funding disbursements to charter schools should not impact special education and related services received by IDEA-eligible students.

The Department respectfully suggests that the Committee remove the reference to "student eligibility for the Free Appropriate Public Education Program under federal law" and revise the proposed amendment to section 302D-28(e), HRS, on page 6, lines 13-18, as follows:

Per-pupil funding disbursement shall not be withheld or conditioned on the agreement of a charter school to amend an existing charter contract~~[, including without limitation amendments that may compromise student eligibility for the Free Appropriate Public Education Program under federal law].~~

Thank you for the opportunity to provide our comments.



TESTIMONY HB1865 HD1

March 1, 2022

SUPPORT with Comments

Aloha Chair Luke, Vice Chair Yamashita and Committee Members,

The Network supports HB1865 with comments. Thank you for the amendments made to HD1. To further clarify the appeal process and funding distribution the Hawaii Public Charter School Network is requesting the following changes to the current language:

"§302D-25 Applicability of state laws. (a) Charter schools shall be exempt from chapters 91 and 92 and all other state laws in conflict with this chapter, except those regarding:

- (e) Notwithstanding any law to the contrary, as public schools and entities of the State, a charter school, including its governing board, the commission, and any authorizer may not bring suit against any other entity or agency of the State.
- (f) ~~Charter schools, the commission, and authorizers shall be exempt from section 302A-1401.~~ The Board of Education is the arbitrator of all appeals on any Commission action and Commission inaction resulting in prohibition to serve the community. In accordance with due process after a Board appeal or Board denial to hear an appeal, Charter Schools may seek judicial review for clarity on an issue.

SECTION 3. Section 302D-28, Hawaii Revised Statutes, is amended by amending subsections (d) through (f) to read as follows:

(e) [Authorizers] The commission shall calculate a general fund per-pupil amount based upon the amount of general funds appropriated by the legislature and released by the governor and the projected enrollment amount used to calculate the general funds appropriated pursuant to subsection (a) [-] and the DOE shall disburse the funding directly to charter schools. Per-pupil funding disbursement shall not be withheld or conditioned on the agreement of a charter school to amend an existing charter contract, including without limitation amendments that may compromise student eligibility for the Free Appropriate Public Education Program under federal law.

Mahalo for your time and service to our communities,

Taffi Wise, Vice President of Legislative Affairs

A handwritten signature in cursive script that reads "Taffi Wise".

To empower, support, and unify charter schools and the charter school system in the State of Hawai'i