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GOVERNOR



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STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
(‘AHA KULA HO‘ĀMANA)

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FOR: House Concurrent Resolution 166/House Resolution 145
DATE: March 21, 2024
TIME: 2:00 P.M.
COMMITTEE: Committee on Education
ROOM: Conference Room 309 & Videoconference
FROM: Ed H. Noh, Ed. D., Executive Director
State Public Charter School Commission

Chair Woodson, Vice Chair La Chica, and members of the Committee:

The State Public Charter School Commission (“Commission”) appreciates the opportunity to **provide COMMENTS on HCR 166/HR 145** which urges the state public charter school commission to work with stakeholders to develop and adopt administrative rules governing the negotiation process between the commission and public charter schools.

The Commission currently has in place administrative rules to provide a process, including the ability to adopt, amend, or repeal any rule. The applicable Hawaii Administrative Rule is below:

§8-503-5, Hawaii Administrative Rules (HAR), allows for any interested person, organization, or agency to petition the Commission for the adoption, amendment, or repeal of any rule, which is designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements of the Commission. A copy of these [administrative rules](#) is available on the Commission’s website for the committee’s reference and review.

Charter schools, as well as any interested stakeholder can already apply the process provided for an existing administrative rule. There is precedence as this process has been utilized for review of a petition for administrative rules for a negotiation process between the commission and public charter schools. Past [meeting minutes](#) are available on the Commission’s website for the committee’s reference and review.

Thank you for the opportunity to provide this testimony.

HCR-166

Submitted on: 3/20/2024 1:14:15 PM

Testimony for EDN on 3/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Marion K A Kapuniai	Governing Board/Kanu O Ka 'Aina NCPCS	Support	Written Testimony Only

Comments:

LEGISLATIVE ACTION LONG OVERDUE! PLEASE CONSIDER SERIOUSLY!

1) "BE IT RESOLVED"

2) ALL POINTS ON "BE IT FURTHER RESOLVED"

THANK YOU IN ADVANCE FOR YOUR POSITIVE, UNDIVIDED ATTENTION FOR YOUR

SUPPORT! M KAPUNIAI

HCR-166

Submitted on: 3/19/2024 3:13:26 PM

Testimony for EDN on 3/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Taffi Wise	Kanu o ka Aina	Support	Written Testimony Only

Comments:

I fully support this resolution. We have petitioned the Commission on several occasions to adopt administrative rules, and they have refused.

Mahalo,

Taffi Wise

LATE

HCR-166

Submitted on: 3/21/2024 8:32:37 AM

Testimony for EDN on 3/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Steve Hirakami	Hawaii Academy of Arts & Science PCS	Support	Written Testimony Only

Comments:

The statute governing charter schools in Hawai'i 302D emphasizes that the Commission shall negotiate contracts with each charter school's governing board with bilateral contracts. This has not been the case even though charter school leaders have insisted that the law be followed. An example is the newly executed contract Contract 4.0 was far different from the previous Contract 3.0, but no negotiations were conducted. As a result, all 37 charter schools have the exact same contract terms and conditions, while no two charter school are alike. Negotiations need to take place immediately to bring the current contract into compliance.

LATE

HCR-166

Submitted on: 3/21/2024 9:14:50 AM

Testimony for EDN on 3/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Terri York	Hawaii Academy of Arts and Science Public Charter School	Support	Written Testimony Only

Comments:

Administrative rules would provide much needed clarity for charter schools, so that they can effectively and efficiently run schools.

LATE

HCR-166

Submitted on: 3/20/2024 8:47:42 PM

Testimony for EDN on 3/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
LYDIA TRINIDAD	Kualapuu Public Charter School, (Conversion School, Molokai)	Support	Written Testimony Only

Comments:

I support the need for the Charter School Commission to work with stakeholders to develop & adopt administrative rules to governing the negotiation process between the Commission and Public Charter Schools. This process is a more democratic and responsive process to community involvment and advocacy. This is in contrast to the "one size fits all" model of education in Hawaii.

HCR-166

Submitted on: 3/19/2024 5:34:27 PM

Testimony for EDN on 3/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kristi Desaucido	Individual	Oppose	Written Testimony Only

Comments:

Subject: Testimony Against Bill 166 HCR – Unnecessary and Redundant Regulations for Charter Schools

I am writing to express my opposition to Bill 166 HCR, which urges the State Public Charter School Commission to work with stakeholders to develop and adopt administrative rules governing the negotiation process between the Commission and public charter schools. As a staff member deeply involved in a charter school's administrative operations, I have firsthand experience with the Commission's current contractual obligations and reporting standards.

The Commission's expectations are already clear and well-articulated. The Commission's annual report thoroughly outlines the most recent iteration of our contract, Contract 4.0. This document provides comprehensive guidance on what is expected from charter schools in terms of performance metrics, accountability, and reporting. Like many others, our school relies on this document to ensure that we meet or exceed the Commission's standards.

Introducing additional administrative rules, as proposed by Bill 166 HCR, would be redundant and could impose unnecessary burdens on charter schools. The current system already ensures high accountability and transparency, allowing schools like ours to focus on delivering high-quality education to our students rather than navigating an increasingly complex bureaucratic landscape.

Moreover, the existing negotiation process between charter schools and the Commission has proven effective and collaborative. We can engage in open dialogue and address concerns directly with the Commission. Adding another regulation layer could stifle this productive communication channel and divert valuable resources away from educational activities.

In conclusion, I urge the State Legislature to consider Bill 166 HCR's practical implications for charter schools and recognize the adequacy of the current contractual and reporting frameworks. Our goal should be to support charter schools' educational and administrative efficiency, not to encumber them with redundant regulations.

Thank you for your attention to this matter.

Sincerely,
Kristi Desuacido

Testimony in Strong Support of HCR 166 / HR 145
John Thatcher

Aloha Chair Woodson, Vice Chair La Chica and members of the Committee on Education:

I am one of the founders of Connections Public Charter School in Hilo. I retired as the director of the school in 2021. Connections began as a school within a school in 1995. Five years later the program converted to become the first start-up charter school in the state. I currently serve as the secretary of the Hawai'i Public Charter Schools Network and as the Network designee on the Native Hawaiian Education Council.

The Hawai'i Public Charter Schools Network submitted written testimony expressing grave concerns regarding Charter School Contract 4.0 to Chairperson Ikeda, Vice Chair Alencastre, and members of the State Public Charter School Commission on June 8, 2023. Our concerns covered various issues: violations of statutory or regulatory provisions, excessive exercise of authority by the Commission, unlawful procedures, arbitrary actions, conflicts with national best practices, and the absence of clear delineation of the Commission's roles and responsibilities. We have communicated these concerns to the Commission and the Attorney General's Office for years. Many school leaders find the contract confusing, burdensome, and inconsistent with national best practices and our charter school state laws (§302D).

Our Network fully supported the illuminating findings and recommendations in the BOE report on the performance evaluation of the State Public Charter School Commission (<https://boe.hawaii.gov/About/Documents/Charter%20Schools/2021%20Commission%20Performance%20Evaluation%20Report.pdf>). We hoped for opportunities to explore further options for our involvement in the process of improvement outlined. We were astounded by the Commission's failure to meet the condition for the extended performance evaluation response form deadline and the failure of the Commission (and/or its PIG) to comment on the draft evaluation report. There are many much-needed changes to bring the Commission into compliance with §302D-6 (Principles and standards for charter authorizing). Members of the Commission stymied the evaluation process. We respectfully encouraged the BOE to consider potential actions that could be taken in accordance with §302D-3.

The BOE report on the performance evaluation of the Commission noted, "Charter school representatives did not verify that there is mutual understanding and acceptance of the material terms of the charter contract, and the level of understanding and acceptance of the charter contract by charter schools appears to be insufficient. In a survey of charter school leaders, only 25% of respondents somewhat agreed or strongly agreed that the Commission "negotiates and executes sound charter contracts with each approved charter applicant and with existing public charter schools," the lowest rate of agreement of all survey questions asked... Additionally, the deputy attorney general for the charter schools reviewed a draft of Charter Contract 4.0, at the request of some of the schools, and offered comments to the Commission's deputy attorney general. It appears the Commission accepted only a few comments without a clear indication to the schools why it did not accept the other comments offered by their legal counsel... any contract negotiation process must have clear two-way communication throughout to ensure the parties mutually understand and accept (with a clear understanding that acceptance is not the same as agreement) the material terms of the charter contract. The Commission did not appear to maintain clear two-way communication throughout the process."

Since 2014, the Commission has denied most requests to promulgate administrative rules. On July 14, 2016, I asked the Commission to adopt administrative rules to clarify the Intervention Protocol in the

contract. I recognized that the contract was clearly a legal procedure and practice essential in defining the legal parameters charter schools must operate under in this state. I received a letter from Commission Chairperson Payne denying the request on August 12, 2016. Payne wrote, "Regarding your request for the adoption of administrative rules to clarify the Intervention Protocol in the Connections School Contract, the Commission declines to do so and will not be promulgating any administrative rules pursuant to HRS Chapter 91. The Commission declines to promulgate such administrative rules because the Intervention Protocol is part of the contract between the Commission and Connections allowing Connections to operate as a public charter school. The Intervention Protocol which is part of Connections School Contract, does not come within the requirement for rule-making under HRS Chapter 91. The Intervention Protocol in the Connections School Contract provides for the Commission's management of its oversight duties and powers regarding Connections past and present liabilities related to its performance and legal compliance. Therefore, the Intervention Protocol does not come within the definition of agency statements that are required to be a rule under HRS Chapter 91. The Intervention Protocol also comes within the exception under HRS Chapter 91 for the internal management of the Commission that does not affect the privacy rights of the public or the procedures available to the public. The Intervention Protocol is part of Connections School Contract with the Commission, a public contract between two public entities that allows Connections to operate as a public charter school. Pursuant to HRS Chapter 302D, the Commission has statutory duties/power to monitor, in accordance with charter contract terms, the performance and legal compliance of Connections. The Intervention Protocol specifies the Commission's actions regarding the oversight and monitoring of Connections' performance and legal compliance. Such actions are the internal management of the Commission's oversight duties and powers related to Connections' performance and legal compliance. Furthermore, the Connections School Contract, including the Intervention Protocol, does not affect the private right of the public nor does the Contract, including the Intervention Protocol, affect public procedures as the Contract only sets forth the contractual rights and obligations between Connections and the Commission, not the general public. Accordingly, the Commission is not required to promulgate administrative rules clarifying the Intervention Protocol that is part of Connections School Contract and declines your request for the adoption of such administrative rules."

Frustrated with no form for submitting petitions for administrative rules, I submitted a request via email to the Commission. I wrote, "Pursuant to §91-6 Petition for adoption, amendment or repeal of rules. Any interested person may petition an agency requesting the adoption, amendment, or repeal of any rule stating reasons therefor. Each agency shall adopt rules prescribing the form for the petitions and the procedure for their submission, consideration, and disposition. Upon submission of the petition, the agency shall within thirty days either deny the petition in writing, stating its reasons for the denial or initiate proceedings in accordance with section 91-3. [L 1961, c 103, §6; Supp, §6C-6; HRS §91-6] As an interested party I am formally requesting the adoption of administrative rules to define the form and the procedures for petitioning for the adoption, amendment or repeal of administrative rules."

Interim executive director, Yvonne Lau presented my request at a Commission General Business meeting on September 8, 2016. I requested the promulgation of administrative rules defining the adoption and amendment of administrative rules and establishing the process for future changes to the administrative rules. Lau said that in reviewing the request and the statutes, the request met the requirements and recommended that the Commission move forward with promulgation of those rules. Chair Payne asked for further clarification on the process of drafting the rules. Lau replied that the staff would start drafting the rules, work with the Attorney General to review the proposed rules, have public hearings, make adjustments, and then submit those rules to the Governor for final approval.

On April 30, 2021 I proposed the initiation of an administrative rule making process, as defined in §8-503-2 for the purpose of interpreting §302D-5 Authorizer powers, duties, and liabilities (4) Negotiating and executing sound charter contracts with each approved charter applicant and with existing public charter schools. On May 27, 2021 the Commission denied my request for the following reasons:

- How the Commission negotiates contracts with approved charter applicants and existing public charter schools is not appropriate for rulemaking;
- The proposed rule infringes upon the Commission’s authority and responsibility as an authorizer with the power and duty to negotiate and execute sound charter contracts;
- The proposed rule addresses functions that are already being carried out by the Commission in its development and negotiations of public charter school contracts; and
- The proposed rule infringes upon the internal processes of the Commission and the Commission staff which is not appropriate for rulemaking.

The minutes of the May 27, 2021 Commission General Business meeting pointedly summarize some commissioners’ reluctance to promulgate administrative rules. The (approved) minutes included the following comments:

“Commissioner D’Olier shared his thoughts on the denial recommendation which included background on the charter school law adopted by the Legislature, creation of the Authorizer, the purpose of the Authorizer in creating rigorous standards for charter schools, and having best results for the children. He felt that is for the management of the Commission and the petition will take up a lot of time and not get things done. He felt that behind the petition is unhappiness with the process. He commended Commission and staff for its time and work on the charter contract and suggested to accommodate reasonable requests that have been made but that there is no need for rulemaking... Commission Chair Kim shared concern that in his understanding of the petition that it’s an attempt for a school to insert itself in the Commission’s process. He felt it muddies the water.”

On January 12, 2024 via email, the State Public Charter School Commission received two petitions for the initiation of administrative rule making process as defined in §8-503-2 for the purpose of interpreting §302D-5 Authorizer powers, duties, and liabilities (4) Negotiating and executing sound charter contracts with each approved charter applicant and with existing public charter schools. The Commission met on February 8, 2024 to consider the petitions and voted on the following motion:

Move to deny the petition for proposed rule-making for the following reasons:

- How the Commission negotiates contracts with approved charter applicants and existing public charter schools is not appropriate for rulemaking;
- The proposed rule infringes upon the Commission’s authority and responsibility as an authorizer with the power and duty to negotiate and execute sound charter contracts;
- The proposed rule addresses functions that are already being carried out by the Commission in its development and negotiations of public charter school contracts; and
- The proposed rule infringes upon the internal processes of the Commission and the Commission staff which is not appropriate for rulemaking.

Charter school leaders have repeatedly expressed their dissatisfaction with the contract, finding it confusing, burdensome, and inconsistent with national best practices (§302D-3). The National Association of Charter School Authorizers (NACSA) is recognized as the leading authority on best practices for charter authorizers. NACSA developed Principles & Standards for Quality Charter School Authorizing, which aims to maintain high standards for schools, protect student and public interests, and uphold school autonomy. According to NACSA's Policy guidelines, the contract should ensure a mutual understanding and acceptance of its terms by the school's governing board before authorization.

Specifically, the contract should clearly define the rights and responsibilities of each party, including matters related to school autonomy, funding, administration and oversight, performance outcomes, success or failure evaluation criteria, consequences for performance, and other significant terms.

Government boards and commissions in Hawai‘i, like those in other states, need administrative rules for several key reasons:

1. To implement and interpret laws:
 - Legislatures pass laws, but they often don't provide all the details needed for their effective implementation.
 - Administrative rules fill in those gaps by specifying how the law should be applied in concrete situations.
 - This ensures consistency and fairness in the application of the law across different cases and situations.
2. To provide clarity and guidance:
 - Administrative rules clarify the specific requirements, procedures, and expectations associated with a particular board or commission's mandate.
 - This helps individuals and businesses understand what they need to do to comply with regulations or apply for licenses, permits, or other services.
3. To promote public participation and transparency:
 - By following a public rulemaking process, boards and commissions involve stakeholders in shaping the regulations that govern their activities.
 - This promotes transparency and accountability, as the public can see how rules are developed and why certain decisions are made.
4. To ensure efficiency and effectiveness:
 - Administrative rules establish standardized processes and procedures for boards and commissions to operate.
 - This helps to streamline operations, save time and resources, and ensure that decisions are made in a consistent and efficient manner.
5. To address specific needs and circumstances:
 - Boards and commissions often deal with complex and nuanced issues that require tailored solutions.
 - Administrative rules allow them to adapt regulations to specific situations and address unique challenges within their area of responsibility.

Finally, HRS §302D-5 (a) (4) mandates one of the “duties of the Commission is to negotiate and execute sound charter contract with each...existing charter school”. Governing Boards have not been given the opportunity to negotiate any provision of the contract terms. Our schools would like to exercise this right to ensure successful implementation and clear understanding. Your support of these two resolutions is crucial to both public charter schools and the students we serve. We need clear, transparent rules to guide negotiations, not a system shrouded in uncertainty. The passage of HCR 166 and HR 145 is a much needed first step. It fosters a collaborative environment that prioritizes quality education for all children. Let us not allow a lack of administrative rules to be the reason a single child misses out on their full potential. I urge this esteemed committee to stand with our students and educators by supporting these pivotal resolutions.

HCR-166

Submitted on: 3/20/2024 12:12:23 PM

Testimony for EDN on 3/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Janice English	Individual	Support	Written Testimony Only

Comments:

I support the adoption of Administrative Rules between

the Charter School Commission and stakeholders working to negotiate for the betterment of Charter Schools.

HCR-166

Submitted on: 3/20/2024 1:24:58 PM

Testimony for EDN on 3/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laura Rehmert	Individual	Support	Written Testimony Only

Comments:

I support the State of Hawai‘i Public Charter School Commission to work with stakeholders to develop and adopt Administrative Rules governing the negotiation process between the Commission and Public Charter Schools.

LATE

HCR-166

Submitted on: 3/20/2024 5:58:12 PM

Testimony for EDN on 3/21/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Davis Haas	Individual	Support	Written Testimony Only

Comments:

Dear Members of the House Committee on Education,

Currently, the Hawai'i State Charter School Commission is responsible for authorizing charter schools and negotiating contracts to renew Schools charters. However, the Commission's discretion in allocating finances provides it with a lot of bargaining power and has allowed it to construct contracts that do not properly account for the individualized needs of each school, often settling for a "one size fits all" approach. This procedure is not in accordance with the law.

At the moment, if charter schools feel that they have been unfairly treated, ignored, or had an adverse experience during negotiations with the Commission they have no options to turn to. For these reasons, the Commission should create administrative rules to govern the negotiation process so that charter schools have a body of rules and expectations they can use to study, prepare, and navigate the process; instead of the broad scope of discretion provided to the Commission.

Lastly, once there are set rules, there should be a process put in place to allow charter schools to appeal violations of the negotiation process to ensure that the Commission is acting ethically and within the bounds of its mandate.

Mahalo