

JOSH GREEN, MD
GOVERNOR



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CHAIRPERSON

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

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SPECIAL GENERAL BUSINESS MEETING

DATE OF SUBMITTAL: October 20, 2023

DATE OF MEETING: October 26, 2023

TO: Cathy K. Ikeda, Chairperson
State Public Charter School Commission

FROM: PJ Foehr, Interim Executive Director
State Public Charter School Commission

AGENDA ITEM: III. Action on the Charter School Application for Lima No‘eau Career Academy

I. DESCRIPTION

Action on the Charter School Application for Lima No‘eau Career Academy

II. AUTHORITY

Charter School Applications: Pursuant to §302D-5(a), Hawaii Revised Statutes, “[a]uthorizers are responsible for executing the following essential powers and duties: . . . (1) Soliciting and evaluating charter applications; (2) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices; [and] (3) Declining to approve weak or inadequate charter applications[.]”

III. BACKGROUND

For the 2023 application cycle, the application was assessed by one external evaluation team that assessed the academic, organizational and financial plans and capacity of the applicant to carry out the academic, organizational, and financials plan of the application. The evaluation team consisted of Elisa Westapher, Gina Post, Kapono Ciotti, Walter Kahanamoku, III, and Jocelyn Demirbag.

The Evaluation Team’s role in the applications process was to evaluate the application against the evaluation criteria to develop a recommendation for approval or denial to the Commission. In developing its recommendation, the evaluation team assessed the submitted application and

conducted an interview with applicant group members. The Evaluation Team does not consider public hearing testimony or any comments that have been submitted by the DOE in developing its recommendation.

Key components of the evaluation process are as follows:

- **Evaluator Interview:** As required by Section 302D-13, HRS, the evaluation team assesses the academic, organizational, and financial plans of the application and conducted an interview with Lima No'eau Career Academy on June 9, 2023. The applicant group members that attended the interview were: Tyler Dos Santos-Tam, Patrick Branco, Ryan Naka, Nona Tamanaha, Miriam McMillian, Ginger Camara, Connie Espenesa, Brett Carey, Lynn Finnegan, Jenny Kendall, Nicholas Sutherland, Sheila Shiebler, and John Kramer.
- **Public Hearing:** Section 302D-13, HRS requires the Commission to hold a public hearing to allow the public an opportunity to provide its input on each charter application. As such, the Commission held a public hearing on the applications submitted as part of the 2023 Applications cycle on May 30, 2023. The public hearing was held at the Charter School Commission Office to enable the public to testify and receive a presentation from the applicant about their proposed charter school. One community member provided oral testimony in support of Lima No'eau Career Academy.
- **Evaluation Team Recommendation Report:** This report is produced by the external Evaluation Team culminating the review of the application, and the interview. The 2023 Application Cycle evaluation team, as previously stated consisted of Elisa Westapher, Gina Post, Kapono Ciotti, Walter Kahanamoku, III, and Jocelyn Demirbag. There are six components of the recommendation report, each corresponds to the main sections of the charter application: educational impact statement, academic performance, organization/capacity, financial performance, virtual/blended learning, and third party providers.¹
- **DOE Comments Solicited:** Commission staff solicited comments from the Department of Education ("DOE")—including all Complex Area Superintendents across the state on Lima No'eau Career Academy's application, as they seek to be a statewide public charter school. The Commission received comments from Assistant Superintendent, Teri Ushijima, Ed.D. The letter has been attached as **Exhibit 1** for your review.

IV. INFORMATION FOR CONSIDERATION

Summary of Section Ratings

Opening a successful, high-performing charter school depends on having a complete, coherent plan. It is not an endeavor for which strength in one area can compensate for material weakness in another. Therefore, in order to receive a recommendation for approval, the application must demonstrate evidence of capacity to implement the proposed plan, meet the criteria for the following sections of the application (educational impact statement, financial performance,

¹ The conversion charter schools section is not applicable to Lima No'eau Career Academy and therefore was not evaluated.

organization/capacity, academic performance, virtual/blended learning, third party providers, and conversion charter schools²), and present an overall proposal that is likely to result in the successful opening of a *high-quality charter school*, as defined in the Application.

Evaluation Team Recommendation Report

In creating its Recommendation Report for Lima No'eau Career Academy, the following was assessed:

- Lima No'eau Career Academy's application was assessed against the evaluation criteria presented in the 2023 Application;
- Evaluator Interview

The evaluation team, after completing their review of the Applicant's documentation and conducting clarification and capacity interviews, compiled their findings into the Recommendation Report. The Evaluation Team Recommendation Report is attached as **Exhibit 2** of this submittal.

In their report, the team recommend that the Commission deny the Lima No'eau application. The recommendation to deny the Lima No'eau Career Academy application was due to the applicant not meeting the standard of approval in all of the six relevant areas of the application.

V. SCOPE OF COMMISSIONER REVIEW

To make a decision regarding the approval or denial of each application, the Application states that the Commission will consider the following:

- Applicant Information Sheet
- Attachments
- Evaluation Team Interview
- Evaluation Team Recommendation Report
- Public hearing testimony
- DOE comments

Applicants were advised at the beginning of the application process that the Application should be a complete and accurate depiction of their proposed plans and that **no new information will be accepted**. For the purposes of the application process, **new information means any information that substantially differs from what is provided in the application and is revisionary in nature. Applicants shall not provide any new information beyond the information provided to the Evaluation Team in the Application, and interviews because such new information would not have been completely evaluated by the Evaluation Team.**

Further, the Application states that **the Commission shall not consider new information** that was not available to the Evaluation Team. As such, when conducting a review of the application, and during decision-making, Commissioners should not consider any new information submitted by the applicant.

² The conversion charter schools section is not applicable to Lima No'eau Career Academy and therefore was not evaluated

VI. PAST COMMISSION MEETINGS

On May 30, 2023ⁱ, the Commission received a presentation by Lima No'eau Career Academy and received public input on Lima No'eau Career Academy's proposed charter application.

On June 22, 2023ⁱⁱ, the Applications Committee met, accepted oral public testimony from nine individuals, received written testimony from seven individuals, reviewed the Evaluation Report, questioned both the Applicant and the Evaluation Team and then took action to recommend the denial of the Application for Lima No'eau Career Academy.

On June 29, 2023ⁱⁱⁱ, the Commission met, accepted oral public testimony from 15 individuals, received 13 written testimonies, reviewed the Applications Committee's recommendations, questioned the Applicant, and took action to approve the recommendation of the Application's Committee to deny the Application for Lima No'eau Career Academy.

VII. APPEAL

Lima No'eau Career Academy appealed the decision of the Commission to the Board of Education (BOE) .

On September 22, 2023, the BOE issued its decision on Appeal 23-02, Lima No'eau Career Academy v. State Public Charter School Commission (**Exhibit 3**).

The BOE has instructed the Commission the following:

1. By November 3, 2023, the Commission shall reconsider LNCA's charter application and decide, by vote, whether to approve or deny the charter application.
2. Any vote to deny shall include specific reasons for the denial with specific references to the applicable published approval criteria in the RFP. Any resulting written notification of denial, as required by HAR §8-505-5(c), shall contain the same reasons and references given in the affirmative vote to deny.
3. Any failure by the Commission to decide, by vote, to approve or deny LNCA's charter application by November 3, 2023, shall be construed as approval of LNCA's charter application.
4. These instructions shall not be construed to mean that the Appellant may change its charter application in any way nor that an evaluation team must reevaluate LNCA's charter application.

VIII. DECISION-MAKING

The Commission, per the BOE issued decision on Appeal 23-02, is to reconsider LNCA's charter application and decide, by vote, whether to approve or deny the charter application. Should the vote be to deny LNCA's application, Commissioners shall include specific reasons for the denial with specific references to the applicable published approval criteria in the RFP. Any resulting written notification of denial, as required by HAR §8-505-5(c), shall contain the same reasons and references given in the affirmative vote to deny.

Exhibit 1

**DOE Comments Received from Assistant Superintendent, Teri Ushijima, Ed.D.
Lima No'eau Career Academy**

JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF CURRICULUM AND INSTRUCTIONAL DESIGN

June 13, 2023

Via Email: commission.mail@spcsc.hawaii.gov
State Public Charter School Commission
1164 Bishop Street, Suite 1100
Honolulu, Hawaii 96813

Re: Lima No'eau Career Academy

Dear State Public Charter School Commission Board Members,

Per the request for feedback on the proposed charter school, Lima No'eau Career Academy.

The Hawaii Department of Education (Department) believes that creating a new K-12 fully virtual charter school would be duplicative and unnecessary. Currently there are two existing charter schools, Myron B. Thompson Academy and Hawaii Technology Academy, which offer virtual learning options. Introducing a third charter school with similar offerings would not be advantageous.

The Department provides a comprehensive virtual education option for students in the state through the State Distance Learning Program. This program, in collaboration with home base schools, allows students to access fully virtual education while still being able to avail themselves of support services provided by their home base school.

A significant concern arises from the information provided in the application, specifically on page 15 of Attachment 11-EIS, stating that middle and high school students at Lima No'eau Career Academy will be assigned one subject-specific teacher for each subject area. Based on this statement, it is implied that the academy intends to utilize K-12 teachers to instruct some of its courses. While these teachers may possess the necessary licensure to teach in Hawaii, the issue lies in their residency status. It is crucial to adhere to union and state policies, which require teachers to be residents of Hawaii. Allowing a charter school to outsource the instruction of its students to a for-profit company raises significant concerns.

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Considering the availability of virtual learning options through existing charter schools and the State Distance Learning Program, the establishment of Lima No'eau Career Academy as a separate fully virtual charter school is unnecessary.

Thank you for the opportunity to provide feedback on this proposed charter school.

Sincerely,



Teri Ushijima, Ed.D.
Assistant Superintendent

- c: Keith T. Hayashi, Superintendent, Hawaii State Department of Education
- Heidi Armstrong, Deputy Superintendent, Hawaii State Department of Education
- Curt T. Otaguro, Deputy Superintendent, Hawaii State Department of Education
- Tammi Oyadomari-Chun, Deputy Superintendent, Hawaii State Department of Education
- Camille Masutomi, Chief of Staff, Office of the Superintendent
- Cara Tanimura, Interim Assistant Superintendent, Office of Strategy, Innovation and Performance
- Ken Kakesako, Director, Office of Strategy, Innovation and Performance
- PJ Foehr, Interim Executive Director, State Public Charter School Commission

Exhibit 2
2023 Evaluation Team Recommendation Report
Lima No'eau Career Academy

Hawaii State Public Charter School Commission

CHARTER SCHOOL APPLICATION RECOMMENDATION REPORT 2023

National Association of Charter School Authorizers

June 16, 2023

New Charter School Application for

LIMA NO'EAU CAREER ACADEMY

Submitted by

LEADERS FOR HAWAII'S FUTURE

Evaluation Team

TEAM LEAD: Elisa Westapher

EVALUATORS: Gina Post

Jocelyn Romero Demirbag, Ed.D.

Dr. Kapono Ciotti

Dr. Walter Kahumoku III

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Report Contents

This evaluation report includes the following:

PROPOSAL OVERVIEW

Basic information about the proposed school as presented in the application.

RECOMMENDATION

An overall judgment regarding whether the proposal meets the criteria for approval.

EVALUATION

Analysis of the proposal based on these primary areas of plan development and the capacity of the applicant team to execute the plan as presented:

Educational Impact Statement: mission/vision, type of school governing board, communities served, educational needs of target population, top three challenges, expansion of educational options, community engagement, curriculum and assessment model, priority needs.

Financial Performance: staffing chart, annual budget for first five years, budget's support of school's mission and vision, fiscal management system and oversight, teacher recruitment and retention plans, fundraising during start-up phase.

Organization/Capacity: governing board member resumes and forms, board member roles in application development, job descriptions for leadership team members, selection of board members, organizational charts, description of non-profit entity.

Academic Performance: scope and sequence for each grade level band, graduation requirements, methodology alignment with mission and vision, accommodating the needs of all students, assessing student performance aligned with mission/vision, professional development plan.

Virtual/Blended Learning: financial and governance aspects, quality of instructional program, teacher and administrator quality to operate a virtual/blended school/program, special education and 504 requirements.

Third Party Providers: reason for ESP or CMO, selection process, provider alignment with mission/vision, providers record of achievement.

Conversion Charter Schools: alignment with mission and vision, community, staff plans and evaluation, facilities.

RATING CHARACTERISTICS

Evaluation teams assess each application against the published evaluation criteria. In general, the following definitions guide evaluator ratings:

Meets Criteria

The response reflects a thorough understanding of key issues. It addresses the topic with specific and accurate information that shows thorough preparation; presents a clear, realistic picture of how the school expects to operate; and inspires confidence in the applicant's capacity to carry out the plan effectively.

Partially Meets Criteria

The response meets the criteria in many respects but lacks detail and/or requires additional information in one or more areas.

Does Not Meet Criteria

The response is wholly undeveloped or significantly incomplete; demonstrates lack of preparation; is unsuited to the mission of the authorizer or otherwise raises substantial concerns about the viability of the plan or the applicant's ability to carry it out.

PROPOSAL OVERVIEW

Applicant Name:

LEADERS FOR HAWAII'S FUTURE

Proposed School Name:

LIMA NO'EAU CAREER ACADEMY

Mission:

To provide a K through 12 world class, adaptive, synchronous, and asynchronous virtual learning environment powered to meet the needs and interests of students across Hawai'i wherever they are academically, physically, socially, and/or culturally and to prepare them for success in their chosen college or career path, in alignment with their individual kuleana.

Our vision is to create a charter school that continuously paves new pathways for virtual education, leveraging technology and innovative teaching methods to advance education for all student populations. We will create alliances with parents, families, and communities to improve outcomes for all learners, both High Need and Non-High Need Students. By providing students with access to personalized learning and real-world experiences that prepare them for success in career, college, and beyond, we will create a brighter, more equitable future for these students and equip them with the tools they need to live, stay, and succeed.

Proposed Location:

Statewide Virtual Charter School

Enrollment Projections:

<i>Academic Year</i>	<i>Planned # Students</i>	<i>Grades Served</i>
2024-2025	700	K-10
2025-2026	825	K-11
2026-2027	975	K-12
2027-2028	1200	K-12
2028-2029	1500	K-12

EXECUTIVE SUMMARY

Recommendation:

NO'EAU CAREER ACADEMY

DENY

Summary Analysis:

The evaluation team recommends denial of the Lima No'eu Career Academy charter application because it does not meet the criteria for approval in the following areas: Educational Impact Statement, Virtual/Blended Learning, and Third-Party Providers.

The applicant has assembled a strong, passionate, diverse, and committed group of board members that have demonstrated the requisite experience and expertise both in the paper application and the capacity interview to effectively govern a charter school in Hawaii. The applicant has also laid out a clear mission and vision for the school. However, the applicant has not made a clear case for the need and desire for the school from the community to support its target enrollment numbers, nor has it made a compelling case that a virtual, CTE program will benefit the targeted student population, especially the students it identified as a priority, namely students in rural and remote areas and Micronesian students. It is also unclear from the application what other public virtual programs or CTE programs are available to students in Hawaii or whether this model provides a program that is otherwise unavailable.

Additionally, the applicant has not demonstrated how the proposed curriculum and model of instruction, to be provided by K12 Virtual Schools LLC (K12), can be successfully implemented in Hawaii in a way that is culturally appropriate for all island students (particularly Native Hawaiians and other Pacific Islanders) as well as rural/remote student populations – all of which were identified as priorities within the targeted student population. The applicant's plan also lacks detail for how the CTE component (both virtual and in-person) will be developed in partnership with communities, business and industry, who will be managing this external and internal coordination of programming, and whether the CTE program can be realistically implemented with fidelity across all islands and in remote regions and for all students with disabilities.

The evaluation team applauds the board for assembling a talented and committed group of board members, and for creating a vision for a school that is indeed compelling – in theory. However, the application does not adequately support how the school can take this theoretical school, which in some ways is working to be everything for everyone, and translate it into reality in a way that will deliver on its promises to all Hawaiian students regardless of where they live, their background or their needs. As such, the evaluation team recommends denial of the application.

Summary of Section Ratings:

Opening and maintaining a successful, high-performing charter school depends on having a complete, coherent plan and identifying highly capable individuals to execute that plan. It is not an endeavor for which strengths in some areas can compensate for material weaknesses in others. *Therefore, to receive a recommendation for approval, the application must Meet the Criteria in all areas.*

EDUCATIONAL IMPACT STATEMENT

Partially Meets Criteria

FINANCIAL PERFORMANCE

Meets Criteria

ORGANIZATION/CAPACITY

Meets Criteria

ACADEMIC PERFORMANCE

Meets Criteria

VIRTUAL/BLENDED LEARNING (IF APPLICABLE)

Partially Meets Criteria

THIRD PARTY PROVIDERS (IF APPLICABLE)

Partially Meets Criteria

CONVERSION CHARTER SCHOOLS (IF APPLICABLE)

Not applicable

EDUCATIONAL IMPACT STATEMENT

LIMA NO'EAU CAREER ACADEMY

RATING:

Partially Meets Criteria

Plan Summary:

LNCA's mission is to provide a K through 12 world class, adaptive, synchronous, and asynchronous virtual learning environment powered to meet the needs and interests of students across Hawaii wherever they are academically, physically, socially, and/or culturally and to prepare them for success in their chosen college or career path, in alignment with their individual kuleana. The school's target student population is statewide, focusing on those students who could benefit from a virtual education including those in rural and remote areas and Micronesian students. A core component of LNCA's model is a career and technical education (CTE) focus, which they propose to integrate through elementary, middle, and high school grades. Other program components include a focus on project-based learning and internship and work/study opportunities for the higher grades. Community engagement activities noted included phone meetings with families, inquiry data provided by K12, and letters of support, including some from elected officials.

Analysis:

This section partially meets the criteria for approval. While the applicant lays out a clear mission and vision for the school, it has not made a clear case for the need and desire for the school from the community to support its target enrollment numbers, nor has it made a compelling case that a virtual program will benefit the targeted student population. It is also not clear how the program will expand the existing options available to students in Hawaii.

The mission and vision for the school is a laudable one and the board members, especially during the capacity interview, demonstrated a passion for their vision and a strong commitment to the work. The community engagement cited in the application and noted in the capacity interview does not show the deep engagement needed to demonstrate the community as strategic partner that is integral to the school's development.

While the applicant demonstrates it has engaged some community members through targeted outreach, meetings, and three information sessions, the engagement described is cursory and the only hard data provided to support the need and demand for the school is the inquiry data provided by K12 over a two-year period. The applicant cites the inquiries at more than 2,500, but aside from a geographic heat map, there is no context about those families, their interests or needs, or whether they would consider enrolling their child in LNCA if it was approved. With a statewide enrollment option, the potential community here is vast, and the applicant did not demonstrate an understanding of these vast needs or get the requisite support to demonstrate the demand.

Also, while the applicant notes that its target student population is any student that would benefit from a virtual program, it also states that it will focus on serving students in rural and remote areas and Micronesian students. There is no doubt that there is a need to better serve students in rural and remote areas and Micronesian students, but the applicant does not provide how it knows or is confident that a virtual program, with a focus on CTE, will meet the needs of these students or benefit them. It is also unclear from the application what other public virtual programs or CTE programs are available to students in Hawaii or whether this model provides a program that is otherwise unavailable.

Lastly, the evaluation team is concerned regarding the need for a learning coach (defined in the application as usually the student's parent or another responsible adult who is responsible for ensuring their student is on track with assignments and coursework as well as communicating

with teachers throughout the school year). In elementary grades, a typical learning coach can be expected to spend three to six hours a day assisting the student. The need for an active learning coach, which is not a reality for many students for a variety of reasons, including parent work schedules and commitments, raises issues of access and the ability for all students to be able to participate successfully in the proposed program.

FINANCIAL PERFORMANCE

LIMA NO'EAU CAREER ACADEMY

RATING:

Meets Criteria

Plan Summary:

The applicant provided a budget and staffing plan for the first five years of the school. Both plans are based on an ending enrollment of 700 students in year 1, with enrollment gradually growing to an anticipated enrollment of 1,500 in year 5. The staffing plan includes one school director, two principals (one for the elementary school and one for the middle/high schools), a range of 16-29 classroom teachers at the elementary school level, 8-13 teachers at the middle school level, and 6-18 teachers at the high school level (each range over the course of five years). Special education teachers range from 1-3 depending on the grade level with few additional counselors and CRE classroom teachers. Average classroom teacher salary is budgeted at \$65,000 for year one. The board plans to engage K12 for financial management of the school, which includes budgeting, financial reporting, and compliance.

Analysis:

This section meets the criteria for approval. The applicant provided a clear and relatively detailed budget and staffing plan, including a comprehensive description of revenue assumptions, planning year start-up costs, and expense assumptions, specifying where such expenses are provided by K12, as the education service provider. In addition, the applicant and K12 have set forth a system of clear policies and practices that employs checks and balances to ensure that effective fiscal rules and regulations are implemented. The role of the board, with its fiduciary duty to provide financial oversight, is described in detail and reflects the board's understanding of the importance of this duty. The applicant outlines a sufficient plan for recruiting and hiring teachers from Hawai'i. If the school cannot recruit enough teachers locally, it plans to rely on K12 and its extensive national network to recruit teachers from outside the state given the ability to work virtually. If the contingency plan is needed, the evaluation team does have concerns about the school's ability to hire teachers with the needed cultural competencies or adequately train them to effectively serve the intended student population. On retention, the applicant, through its partnership with K12, will offer all LNCA teachers an opportunity to enroll in a Masters in Education (M.Ed.) in Online Instruction or one of six related specializations for free.

While this section meets the criteria for approval, the evaluation team did have concerns regarding the board's plan to raise the requisite funding needed for the planning year, the school's ability to meet their enrollment projections, and if the staffing and financial plan provided is realistic for the extensive course offerings and robust CTE plan envisioned in this application.

ORGANIZATION/CAPACITY

LIMA NO'EAU CAREER ACADEMY

RATING:

Meets Criteria

Plan Summary:

The proposed school governing board has eight voting members and one non-voting member (the school's executive director). All members of the board participated in the capacity interview. The board engaged Lynn Finnegan, a consultant with many years of experience in Hawaii's charter school sector, to serve as the executive director during the application process. In addition, the existing board members recruited new board members and noted experience in the following areas: education, fundraising, finance, governance, human resources, collective bargaining, grassroots, CTE industries, parent perspective, and neighbor island. The current executive director plans to lead the school through its planning year and then LNCA will employ a school director who will lead the school starting in its first year of operation. Additional school leadership team members include: the Elementary and Middle/High School Principals, the Special Education/Programs Academic Administrator/Student Services Coordinator, the Human Resources/Payroll/Benefits Manager, and the Community Engagement Specialist.

Analysis:

This section meets the criteria for approval. The applicant has assembled a strong, passionate, diverse, and committed group of individuals that have demonstrated the requisite experience and expertise both in the paper application and the capacity interview to effectively govern a charter school in Hawaii. During the capacity interview, the board members demonstrated deep knowledge of the application, the proposed educational model, including its challenges and where development is still needed, and showed how they have worked together through the course of this application to lean on the collective experience of the group to map out a compelling vision of this school and what they hope it can deliver to students throughout Hawaii.

With the career and college readiness program in mind, the applicant also plans to create an Advisory Board, comprised of parents, students, and community leaders from industry, business, government and education from around the state. The specific role and function of this group, including who is managing it and who it reports to needs to be more clearly defined; this group, if executed well, could be critical in establishing a strong and community-centered CTE program. School leadership roles are also clearly defined and the organization chart submitted identifies whether staff are school staff or employed by K12.

ACADEMIC PERFORMANCE

LIMA NO'EAU CAREER ACADEMY

RATING:
Meets Criteria

Plan Summary:

The applicant submitted a school calendar and schedules for each grade level band to be served at the school. The LNCA board has selected the K12 curriculum and included a scope and sequence schedule for each grade level band. While the application states, “The LNCA Board does not have first-hand experience using the K12 curriculum,” it goes on to explain “the Board has met with K12 representatives in Hawai‘i and has participated in lesson demonstrations of K12’s curriculum; discussed alignment with Hawai‘i Subject Matter Standards; discussed the use of live instruction and asynchronous lessons in their instructional program; and other components of a career education program that could be implemented at LNCA.”

The application includes details on how the school will accommodate the needs of all students, citing MTSS for early identification, data analysis to inform and evaluate learning needs, provision of special education services and accommodations to meet the needs of students with a 504 plan.

The proposed professional development plan is a “a joint effort between the LNCA governing board and K12” and will be “based on the School’s mission, vision, culture, student data analysis, the Board’s academic plan, curriculum map, assessment calendar, and state required annual professional development for all teachers and other staff.” Teachers will have the opportunity to earn a Master of Education degree in online instruction.

Analysis:

This section meets the criteria for approval. The applicant communicates how their mission and vision is connected to the proposed curriculum, describing how the CTE and career focus are weaved through the elementary, middle and high school grades, with the focus becoming more tangible and intensive in the high school grades. The instructional methodology supports their mission and vision and demonstrates continuity from one grade to the next, building upon student learning.

The applicant demonstrates an understanding of the school’s responsibilities in serving students with disabilities in compliance with IDEA, Section 504 and other applicable statutes and regulations. The virtual program, including the ability to customize and adapt, can provide certain advantages in serving special student populations, though in other areas, where more hands-on and intensive supports are needed, questions remain about students’ ability to fully participate in the program, especially non-virtual components of the CTE programming.

The applicant also outlines a comprehensive professional development program that will be managed by K12 through its partnership with Southern New Hampshire University (SNHU), including a year-long induction program during a teacher’s first year, new teacher/staff onboarding, mentor programs, competency-based professional learning modules, and a program specifically designed for its special programs. During the capacity interview, board members expressed confidence that they could work with K12 to ensure that cultural competencies are woven into the professional development program.

While the evaluation team determined that the section met the criteria for approval, certain concerns remain regarding the strength of the academic model as it moves from theoretical to actual. These concerns include the plan and timeline for developing new curriculum needed to support Micronesian students (application noted curriculum would be available in multiple languages) and how Micronesian and other Pacific Islander students will navigate an English

medium school, particularly when teachers are not required to have certain language skills and cultural acumen. Another area of concern is how LNCA is planning to provide the hands-on experience needed for successful CTE across the islands, including in remote locations, and who is specifically responsible for shepherding and coordinating both the relationships with business and industry and the execution of those programs, including monitoring of effectiveness.

Plan Summary:

As noted above, the applicant plans to contract with K12 for delivery of its statewide virtual school model and notes that it will make special efforts to reach remote and rural students. Many aspects of the virtual program including its staffing model, the program costs, its curriculum, assessment strategy, and corresponding professional development plan are included in other sections of the application and generally discussed above. In discussing the educational need served by this program, the applicant highlights this current generation where “technology is ubiquitous” and where “Hawaii’s students must be prepared for a future where they can operate successfully in an all-virtual environment,” especially when being able to take advantage of virtual job opportunities may allow Hawaii’s students to stay in Hawaii. For state testing for a virtual student population, the applicant notes that upon enrollment, the school will make clear to families that participation in state assessments is a prerequisite for enrollment and will plan to administer these assessments with transportation required if warranted or required through a student’s IEP.

Analysis:

This section partially meets the criteria for approval. The applicant’s plan to deliver its proposed educational program – a virtual model – does not meet the criteria for approval in the following areas: evidence and knowledge of community need, including the diverse demands of the community and how a virtual program will meet those needs; demonstration of how the virtual program will meet the cultural and linguistic needs of its targeted student population; and evidence of how a blended CTE program can be implemented successfully across Hawaii, including remote areas, and for all students with disabilities. In addition, the budget does not appear to cover all the requisite costs for implementing the proposed virtual model.

Based on the written application and the capacity interview, it is still unclear if a virtual program will meet the needs of the targeted student population, if a virtual program is, in fact, desired by the targeted student population, and whether a virtual program will benefit the targeted student population. The information included in the application was cursory and did not demonstrate the requisite knowledge of the community and their needs. Evidence included meetings and conversations with families and stakeholders with experience in virtual education, a few information sessions, and inquiry data from K12 over a two-year period. It is unclear how many families were interviewed, how many expressed interest in enrolling their student, or of the priority subgroups within the targeted student population, any specific data about their needs beyond general academic performance information.

While there were references to making the proposed virtual curriculum applicable to Hawaii and culturally appropriate for Hawaiian students, limited information was provided in the application and during the capacity interview to show that the curriculum will be applicable, culturally appropriate (particularly for Native Hawaiians and other Pacific Islanders). To the extent that curriculum needs to be developed (a commitment to developing curricula for language(s) spoken by the Micronesian community was noted in the application), no timeline or concrete plan for delivering on that commitment was provided.

In addition, minimal explanation is given for how the CTE component (both virtual and in-person) can delivered with fidelity across all islands and in remote regions and for all students with disabilities. The proposed budget also did not appear to include appropriate costs for the development of CTE pathways (and corresponding curriculum and programming) in partnership

with community, business, and industry and associated transportation costs needed to make this program a viable one for all students in Hawaii regardless of where they live or special needs.

THIRD PARTY PROVIDERS (IF APPLICABLE)

RATING:

Partially Meets Criteria

LIMA NO'EAU CAREER ACADEMY

Plan Summary:

LNCA proposes to contract with K12 for third-party school management services. A subcommittee of the board of directors reviewed providers, conducted due diligence, and ultimately the board chose K12 citing the provider's ability to meet the need of all students, robust college and career program, and their collaborative approach. Pursuant to the draft Educational Products and Services Agreement, K12 will provide LNCA with access to their educational products and their administrative and technology services, including but not limited to their learning management system course access and content; student and enrollment services; student devices, logistics and support; testing products and services; and support services and technology services.

Analysis:

This section partially meets the criteria for approval. While the applicant provides sufficient information and explanation regarding its process for selecting the provider, including other providers considered, the applicant has not shown the due diligence needed to show that K12 can successfully offer a virtual program that is applicable and culturally relevant for Hawaiian students and can deliver it to all areas of the islands in alignment LNCA's ambitious mission and vision. The applicant provides examples of current schools managed by K12, including some performance information, but none that reflect the complexity of delivering a virtual, CTE program to students across Hawaii.

In addition, while the Educational Products and Services Agreement provided by the applicant is in "draft" form, it is the agreement that was submitted and one that must form the basis of our review. Under the draft services agreement, the evaluation team has concerns about whether the board would be able to continue to operate the school in the event it wishes to terminate services agreement with K12, which is of utmost importance any time a board decides to contract with a third party for comprehensive school services. Specifically, while the agreement allows for both parties to terminate the agreement due to a material breach (see Section 12.1), the termination effects are such that it would be difficult, if not impossible, for the applicant to continue to operate the school without them. For example, upon termination all K-12 provided equipment must be immediately returned and the school must immediately discontinue all use of K12 proprietary materials and marks (see Sections 13 and 14). This is in addition to financial fees associated with termination (see Section 13). K12 also has additional termination rights that the school does not have, including the ability to terminate due to "material reduction in school revenue" (Section 12.2); termination for "failure to approve budget" (Section 12.4); or for a change in board or authorizer policy without K12's written consent that "could reasonably be determined to require K12 to increase materially the level of services required" or "to increase materially the financial risk to K12 arising from its performance of its obligations" under the contract (Section 12.5).

The draft services agreement also raises questions about the ability of the board to maintain control over personnel decisions regarding LNCA employees. Section 8.4 of the agreement notes that if K12 is dissatisfied or concerned about the job performance of any of the board's staff (to the extent not prohibited by a collective bargaining agreement), it can recommend disciplinary action, including termination, with board approval not to be unreasonably withheld.

Lastly, the application does not outline a comprehensive oversight and evaluation plan for evaluating the performance of K12. The applicant notes that a "fair and meaningful evaluation system" will be developed during the negotiation of the services agreement, but the applicant

does not provide a sufficient description or detail of the metrics that will be used, how the evaluation will be conducted, by whom, or what the board's rights may be if the performance is deemed unsatisfactory. Given that the success of this school is heavily dependent on the performance of K12, the lack of thorough review and consideration of these issues raises questions about the viability of this proposed partnership and therefore does not meet the criteria for approval.

EVALUATOR BIOGRAPHIES

Elisa Westapher

Elisa serves as the Chief Development and Business Officer at the National Association of Charter School Authorizers (NACSA). Elisa Westapher cultivates and strengthens NACSA's organizational and business partnerships to further its mission and strategic initiatives. These partnerships include NACSA's board of directors, strategic advisory council, association members, federal policy partners, and working with authorizers across the country on customized projects. Elisa also leads NACSA's development team to ensure future financial growth and stability through maintaining strong relationships with NACSA's current donors and creating new relationships aligned to our strategic priorities.

Prior to joining NACSA, Elisa practiced law at Holland & Knight, LLP, where she specialized in education and commercial real estate. During her time there, Elisa helped state agencies, charter schools, nonprofits, and ed tech companies structure programs and transactions to achieve their educational goals and maximize flexibility under the law.

Elisa holds a J.D. from Northwestern University Pritzker School of Law and a B.A. in government from Cornell University. Elisa lives in Oak Park, Illinois with her husband, two children, and dog.

Jocelyn Romero Demirbag, Ed.D.

Jocelyn Romero Demirbag has been actively involved in education since 1984 as a tutor, a teacher, an administrator, a head of school, and a fundraiser. She has worked directly with students from preschool through graduate school, and in private as well as public education. Demirbag grew up on Maui in the public school system, earned her BA in Sociology at Loyola Marymount University, her MA in Sociology at UC Berkeley, and her EdD in Professional Educational Practice at University of Hawai'i. During her career as a school head she founded the Maui Independent School Organization which she led for over 10 years. She has served on numerous licensing and accrediting teams throughout the state.

Gina Post

Gina Post is the National Association of Charter School Authorizer's Director of Fundraising and Business Development. Prior to her work with NACSA, Gina worked for the Maine Charter School Commission for nearly 8 years, serving first as Program Manager, then Chief Program Officer, and finishing her time with MCSC as Interim Executive Director. Gina's authorizing work focused on leading work through the lifecycle of the charter from the initial application process through the renewal process, with a strong focus on oversight and monitoring as aligned with the performance framework.

Before her work in authorizing, she was an educator and administrator, with experience in the elementary classroom, special education, technology, adult education, and homeschool support.

Gina earned a bachelor's degree from Salve Regina University in Newport, Rhode Island, and a master's degree in education from Southern New Hampshire University. She also spent a year studying at l'Université d'Angers in France.

Gina lives in Maine. She enjoys reading, doing crossword puzzles, working on her family's Christmas tree farm, learning new skills, and spending time with her family.

Dr. Walter Kahumoku III

Dr. Walter Kahumoku III is currently associate faculty and the Co-director of the Doctorate in Education in Professional Educational Practice at the University of Hawai'i at Mānoa's College of Education. A former school administrator, high school teacher, and director of forensics, Dr. Kahumoku has dedicated his work to improving the wellbeing of Hawaiian learners through education. His publications and presentations advocate for cultural, linguistic, and indigenous approaches that advance relevant, rigorous, relationship-based, and responsibility-focused leading, teaching, and learning. As a researcher, policy analyst, grant writer, and former higher education administrator, he is called upon for his knowledge of curriculum development, instructional strategies, assessment, professional development, community integration, educational policy, and educational systems transformation that advance Indigenous, Native education.

Kapono Ciotti

Kapono Ciotti attributes his educational philosophy to his own schooling experience in a progressive, social-constructivist school during his early years in Honolulu, Hawaii. He taught in Honolulu, Hawaii, and Dakar, Senegal, for over a decade before moving into school leadership. Kapono has led schools in the United States and Egypt, where he put into practice the philosophy of "students making the world a better place," shifting school culture to impact-based education practice. His strong belief in education being an act of social justice drives his work.

Kapono has worked internationally in educational change organizations, leading the work of Deeper Learning and place and culture-based pedagogy, and he is currently the Executive Director for What School Could Be. In these roles, he has trained teachers in over 100 schools and school districts over four continents, impacting hundreds of thousands of students. In addition, Kapono spent 15 years as National Faculty for the National Association of Independent Schools in Diversity, Equity, Inclusion, and Justice, facilitating national and international learning experiences. As a curriculum writer, he has authored multiple curricula for federal and non-profit programs. His work has significantly contributed to the organizations What School Could Be, The Buck Institute, EdLeader21, The Pacific American Foundation, and many others.

Kapono holds a Ph.D. in International Education Leadership from Northcentral University, a Masters degree in Social Change and Development from the University of Newcastle, and a Bachelors of Language and Culture from the Evergreen State College. He currently lives between Hawaii, Cairo, Egypt, and Dakar Senegal.

Exhibit 3

**State of Hawaii Board of Education's final decision on Appeal No. 23-02
Lima No'eau Career Academy v. State Public Charter School Commission**

STATE OF HAWAII
BOARD OF EDUCATION

LIMA NO'EAU CAREER ACADEMY,

Appellant

v.

STATE PUBLIC CHARTER SCHOOL
COMMISSION,

Appellee.

APPEAL NO. 23-02

FINAL DECISION OF THE BOARD OF
EDUCATION

FINAL DECISION OF THE BOARD OF EDUCATION

I. INTRODUCTION

This appeal is brought before the State of Hawaii Board of Education (the “**Board**”) as a proceeding pursuant to Hawaii Revised Statutes (“**HRS**”) §302D-15 and Hawaii Administrative Rules (“**HAR**”) Title 8, Chapter 510, wherein Lima No’eau Career Academy (the “**Appellant**” or “**LNCA**”) requested an appellate review of the State Public Charter School Commission’s (the “**Appellee**” or the “**Commission**”) denial of the Appellant’s charter application.

The Board determined, pursuant to HAR §8-510-10, that oral argument in this appeal was unnecessary.

The Board reviewed and deliberated on the appeal at a meeting on September 21, 2023. The members of the Board present at the meeting unanimously approved the contents of this written decision.

II. FINDINGS OF FACT

1. If any of the following findings of fact are more properly construed as a conclusion of law, it shall be so construed.
2. The Commission released its 2020 Request for Proposals (the “**2020 RFP**”) on March 30, 2020, which included an application process overview and timeline (the “**2020 Application Cycle**”).
3. On April 23, 2020, the Commission suspended the 2020 Application Cycle.

4. On August 7, 2020, the Board issued preliminary findings and holdings allowing LNCA to appeal the decisions the Commission made on LNCA's charter application between April 15, 2020 and June 25, 2020 during the intent to apply stage of the 2020 Application Cycle.
5. On October 27, 2020, the Board issued the Final Decision of the Board of Education on Appeal No. 20-01, *Lima No'eau Career Academy v. State Public Charter School Commission* ("**Appeal No. 20-01**"), remanding the decision to deny LNCA's charter application back to the Commission with instructions.
6. On December 22, 2020, the Commission denied LNCA's charter application at the intent to apply stage of the 2020 Application Cycle, a decision on which LNCA appealed to the Board.
7. On March 3, 2021, the Board issued the Final Decision of the Board of Education on Appeal No. 21-01, *Lima No'eau Career Academy v. State Public Charter School Commission* ("**Appeal No. 21-01**"), reversing the decision to deny LNCA's charter application and allowing LNCA's charter application to move forward in the 2020 Application Cycle upon resumption.
8. On December 16, 2021, the Commission resumed the 2020 Application Cycle with revisions to the timeline and other technical changes throughout the 2020 RFP.
9. On June 23, 2022, the Commission denied LNCA's charter application, a decision on which LNCA appealed to the Board.
10. On September 15, 2022, the Board issued the Final Decision of the Board of Education on Appeal No. 22-01, *Lima No'eau Career Academy v. State Public Charter School Commission* ("**Appeal No. 22-01**"), remanding the decision to deny LNCA's charter application back to the Commission with instructions.
 - a. The Board concluded, in pertinent part, "The Commission erred in denying the Appellant's charter application without providing a basis "with specific references to the adopted policies, criteria, or guidelines" of the Commission, as required by HAR §8-505-5(c), violating the Commission's own regulatory provision. The letter provided to the Appellant notifying it of its denial provides only the most general reason for denial. Combined with the discussion at the Commission's Applications Committee meeting and general business meetings, it is not entirely clear why the Commission's decision makers decided to deny the Appellant's charter application. As the record does not indicate that the members of the Commission rejected or disregarded the Recommendation Report, it is reasonable to infer that the Commission based its decision at least in part on the Recommendation Report, although it is not clear what parts of the Recommendation Report with which the Commission agreed."

- b. The Board instructed the Commission, in pertinent part, to “start a new application cycle with a new application process and schedule,” specifically instructing the Commission, “Any vote to deny a charter application shall include specific reasons for the denial. When the Commission notifies the applicant of the denial in writing, the notification shall include the reasons for denial with specific references to the Commission’s adopted policies, criteria, or guidelines, as required by HAR §8-505-5(c).”
11. On February 13, 2023, the Commission released its 2023 Charter School Application (the “**2023 Application**”), which included an application process overview and timeline (the “**2023 Application Cycle**”).
12. On May 15, 2023, LNCA submitted a charter application for the 2023 Application Cycle.
13. On June 22, 2023, the Commission’s Applications Committee held a meeting with an agenda item entitled “Action on the Application for Lima No’eau Career Academy.” At this meeting, the Applications Committee voted to “recommend the denial of the Application for Lima No’eau Career Academy.”
14. On June 29, 2023, the Commission held a meeting with an agenda item entitled “Action on the Applications Committee’s Recommendation regarding the Application for Lima No’eau Career Academy.” At this meeting, the Commission voted to “deny the charter application for Lima No’eau Career Academy.”
15. On June 30, 2023, Commission Interim Executive Director Patrick J. Foehr sent a letter to LNCA notifying LNCA that the Commission denied its charter application because “the application [did not meet] the standard of approval set forth in the criteria detailed in the 2023 Application.” The letter explains, “During the Commission’s deliberations, Commissioners voiced concerns with the submitted application in reference to the Third Party Provider criteria listed on page 95 of the 2023 Application. Commissioners questioned whether the proposed curriculum and instruction model, to be delivered through a third party agreement with K12 Virtual Schools, LLC, can be successfully implemented in Hawai’i in a manner that is culturally appropriate for the rural and Micronesian communities that Lima No’eau Career Academy highlights in their application as two of the many groups of student populations their mission and vision proposes to serve. Commissioners also expressed concerns that the submitted draft agreement between the proposed school and third party provider favored the interests of the third party vendor over the proposed school.”
16. On July 26, 2023, the Appellant filed a Notice of Appeal electronically with the Board.
17. On August 3, 2023, the Board received several emails from the parties regarding procedural matters related to this appeal:

- a. At 12:12 PM, the Board received an email from the Appellant alleging that the Commission failed to timely transmit the index and Record on Appeal, requesting an extension of time to file the Opening Brief, and requesting to review the Record on Appeal in its entirety.
 - b. At 3:32 PM, the Board received an email from the Commission notifying the Board that the Commission was not served a copy of the Notice of Appeal by mail or by hand delivery and requesting clarification as to the date upon which the Appellant properly its notice of appeal.
 - c. At 6:07 PM, the Board received an email from the Appellant responding to the Commission referencing and attaching a memorandum from the Board last year regarding procedures for Appeal No. 22-01. The memorandum from then-Board Chairperson Bruce Voss ordered the parties in that appeal to file any documents necessary to the appeal with the Board through electronic mail.
 - d. At 7:33 PM, the Board received an email from the Appellee directed and responding to the Appellant asserting that the Appellee cannot rely on “prior communications related to a different appeal as a basis to disregard codified rules.”
18. On August 4, 2023, the Board transmitted a letter to the parties that declined to dismiss this appeal on procedural grounds, accepted the Notice of Appeal as filed, ordered the Commission to transmit the Record on Appeal immediately but did not find the Commission noncompliant in this regard, denied the Appellant’s request for an extension on filing the Opening Brief, and ordered the parties to file any documents necessary to this appeal with the Board through electronic mail.
19. On August 4, 2023, the Appellee transmitted a Record on Appeal to the Board.
20. On August 7, 2023, the Appellant filed a timely Opening Brief with the Board. In the Opening Brief, the Appellant:
- a. Asserted that the Commission’s letter notifying LNCA of its denial “failed to provide a specific reason for why the Commissioners voted to deny the application, instead referring to the deliberations of the Commissioners during the meeting in which no consensus was met on reasons to deny.”
 - b. Argued that the Commission’s decision was biased. Specifically, the Appellant asserted that:
 - i. Some Commissioners with experience in a prior LNCA charter application demonstrated biases that prevented them from viewing the charter application as a different charter application responding to different evaluation criteria;
 - ii. A Commissioner demonstrated biases against charter schools using third-party providers from the continental United States;

- iii. Some Commissioners demonstrated biases against virtual education; and
 - iv. A Commissioner had a conflict of interest and was biased against the third-party provider LNCA selected because of the Commissioner's past experience with the third-party provider; and
 - v. The Commission relied on the advice of a third-party expert who had a conflict of interest because the expert worked in the same organization as the lead evaluator.
- c. Argued that the application process violated state law and Board directives. Specifically, the Appellant asserted that:
- i. The 2023 Application did not provide clear guidance on the expected level of detail for certain elements as explained in the Commissioner Performance Evaluation Report, thus violating HRS §302D-13(c)(1)(D) and the Board's instructions in Appeal No. 22-01;
 - ii. The Commission used undisclosed and unpublished approval criteria to deny LNCA's charter application, further violating state law and Board directives; and
 - iii. Commissioners' misunderstanding of what information could be discussed or considered demonstrated a lack of clarity and consistency in the evaluation process.
- d. Argued that there were flaws in the Commission's denial of LNCA's charter application. Specifically, the Appellant asserted that:
- i. The denial letter cites Third Party Provider criteria as the only area of concern even though the Commission did not vote on the reason for denial, violating administrative rules and Board instructions;
 - ii. LNCA met the Third Party Provider criteria as published in the 2023 Application even though it lacked the same level of specificity as in other approval criteria; and
 - iii. The concerns in the denial letter related to the cultural appropriateness of the third-party provider's proposed curriculum and instructional model and a draft agreement favoring the interests of the third-party provider are not based on approval criteria published in the 2023 Application.
- e. Argued that the Commission's decision to deny LNCA's charter application was in error. Specifically, the Appellant asserted that:
- i. LNCA met its statutory burden because evaluators found its charter application met the standards in the academic, financial, and organizational sections;
 - ii. The Commission denied LNCA's charter application "without a specific reason on the record"; and
 - iii. The two specific reasons for denial in the written notification do not align with the approval criteria in the 2023 Application.

- f. Requested that the Board reverse the Commission’s decision to deny LNCA’s charter application and order the Commission to approve LNCA’s charter application for a start-up school to commence operations in School Year 2024-2025 or the earliest available opportunity.

21. On August 17, 2023, the Appellee filed a timely Answering Brief with the Board. In the Answering Brief, the Appellee:

- a. Argued that the claim of bias is without merit and lacks evidence that Commission members or third-party evaluators “obtained a direct, personal, or pecuniary benefit by denying LNCA’s application.”
- b. Argued that the application process was sufficiently clear. Specifically, the Appellee asserted that:
 - i. The Commission complied with the Board’s order in Appeal No. 21-01 to provide clear approval criteria;
 - ii. Evaluators used the approval criteria in the 2023 Application to judge the information LNCA provided in its charter application; and
 - iii. The Applications Committee’s recommendation and Commission’s decision were consistent with the evaluators’ report.
- c. Argued that denial was appropriate. Specifically, the Appellee asserted that:
 - i. The 2023 Application provided clear instructions and approval criteria;
 - ii. The Commission does not need to provide the level of exactness in the instructions and approval criteria that the Appellant seeks;
 - iii. LNCA failed to provide sufficient information to demonstrate that it met the standards in the 2023 Application;
 - iv. The concern in the denial letter related to the cultural appropriateness of the third-party provider’s proposed curriculum and instructional model is based on the 2023 Application approval criteria, which considered the use of the third-party provider to LNCA’s stated mission and vision;
 - v. Evaluators did not find that LNCA’s use of the third-party provider met LNCA’s mission and vision and the approval criteria because of the lack of supervision for elementary level students and dependence on at-home “learning coaches” for the hands-on career and technical education aspect of LNCA’s proposal; and
 - vi. Evaluating LNCA’s draft third-party provider service agreement was appropriate due to the nature of the proposed school being entirely virtual and dependent on the third-service provider’s ability and willingness to provide services.
- d. Argued that the Commission’s decision was not in error. Specifically, the Appellee asserted that:

- i. The Commission can and did set requirements in its 2023 Application above the minimum statutory requirements that LNCA claims it met;
 - ii. LNCA was required to demonstrate that the use of a third-party provider aligned with its mission and vision, but evaluators did not find that LNCA met the applicable approval criteria;
 - iii. Evaluators explained in their report that strengths in some areas of LNCA's charter application cannot compensate for material weaknesses in other areas; and
 - iv. The Commission denied LNCA's charter application by relying upon information contained in LNCA's charter application, the evaluators' report, and the Applications Committee's recommendation and after hearing oral testimony.
 - e. Requested that the Board "exercise judicial deference" to the Commission, which is an administrative agency for purposes of HRS Chapter 92, citing *Coon v. City & Cty. of Honolulu*, 98 Haw. 233, 237, 47 P.3d 348, 352 (2002) and summarizing it as "Hawai'i Supreme Court recognizing the rule of judicial deference to decisions by administrative agencies acting within the realm of their expertise."
 - f. Requested that the Board affirm the Commission's decision.
22. On August 24, 2023, the Appellant filed a timely Reply Brief with the Board. In the Reply Brief, the Appellant:
- a. Argued that the Board should deny the Commission's request for judicial deference.
 - b. Argued that the Commission's approval criteria in the 2023 Application fails to comply with state law and the Board's instructions. Specifically, the Appellant asserted that:
 - i. The Commission failed to provide clear approval criteria in the Third Party Providers section of the 2023 Application, which is the sole section where the Appellee asserts LNCA did not provide sufficient information;
 - ii. The approval criteria in the 2023 Application is ambiguous and omits descriptive language necessary to determine the quality needed to satisfy the approval criteria; and
 - iii. The Appellee did not substantiate how the 2023 Application adheres to state law and the Board's instructions.
 - c. Argued that the Commission refused to adhere to its published approval criteria and relied on unpublished approval criteria. Specifically, the Appellant asserted that:

- i. The 2023 Application states that the approval criteria are the required elements imperative to approval, but the Appellee focuses on the narrative questions in the 2023 Application instead;
 - ii. The Appellee's Answering Brief illustrates how the Commission continues to change the expectations;
 - iii. The Commission's Interim Executive Director's memorandum to the Applications Committee included "undisclosed requisites" not part of the approval criteria in the 2023 Application, which evaluators and Commission members considered; and
 - iv. The expert that the Commission consulted with argued that "the evaluators and Commissioners should venture beyond the published [2023] Application evaluation criteria."
- d. Argued that LNCA adhered to the Commission's published criteria.
- e. Argued that certain Commission members had preconceived biases against LNCA, not financial conflicts of interests.

23. On August 25, 2023, the Appellee emailed the Board an objection to LNCA's Reply Brief. The Appellee's objection asserted that the Reply Brief failed to meet formatting requirements and exceeded page limit requirements by writing the Reply Brief in a legal size (8 ½" x 14") page format instead of standard letter size (8 ½" x 11"). The Appellee further asserted that the Appellant knowingly violated the rules. The Appellee requested that the Board sanction the Appellant.

24. On August 26, 2023, the Appellant emailed the Board a response to the Appellee's objection. The Appellant's response rebutted the Appellee's assertions and noted that HAR §8-2-2(b) states, in pertinent part, "All papers filed with the [B]oard shall be . . . not larger than 8 ½" x 14" in size[.]"

III. STANDARDS OF REVIEW

According to HRS §302D-15, "the [B]oard shall review an appeal and issue a final decision within sixty calendar days of the filing of the appeal." The Board administers the appeal process in accordance with HAR Title 8, Chapter 510. Upon review of the record, and pursuant to HAR §8-510-11, the Board may affirm the decision of the Commission, remand the case with instructions for further proceedings, or reverse or modify the decision if the substantial rights of the Appellant may have been prejudiced because the Commission's decision is:

- (1) In violation of statutory or regulatory provisions;
- (2) In excess of the authority or jurisdiction of the Commission;
- (3) Made upon unlawful procedure;

- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

IV. CONCLUSIONS OF LAW

1. If any of the following conclusions of law are more properly construed as a finding of fact, it shall be so construed.
2. The Board denies the Appellee's request in its objection to the Reply Brief to sanction the Appellant, as the Appellee failed to demonstrate how the Reply Brief violated administrative rules.
3. The Board agrees with the Appellee that the Appellant's claim of bias is without merit and lacking evidence.
4. The Commission erred in denying the Appellant's charter application without a "vote to deny [the] application [that] include[s] specific reasons for the denial," as required by the Board's instructions in Appeal No. 22-01, thus violating statutory and regulatory provisions.
 - a. HAR §8-505-5(c) requires the Commission to notify a denied applicant in writing, stating the reasons for the denial with specific references to the adopted policies, criteria, or guidelines. While some individual members of the Commission expressed varying concerns at a Commission meeting, the Commission's actual decision to deny, made through a majority vote of its members, was absent of reasons for the denial. Further, the written notification provides only a general reason for denial (*i.e.*, not meeting the standard of approval) and a summary of some of the concerns discussed by individual Commission members, not specific reasons why the Commission denied LNCA's charter application. Based on the foregoing, it cannot be presumed that the Commission denied LNCA's charter application based on the concerns stated in the written notification nor can it be presumed that each Commission member who voted in favor of denial agreed with each other's concerns as the basis for denial. Therefore, because the written notification did not state the Commission's specific reasons for the denial (*i.e.*, the decision-making body's reasons, not its individual members' reasons, for denial), the Commission violated HAR §8-505-5(c).
 - b. As the final arbitrator on appeals pursuant to HRS §302D-15, the Board's decisions on such appeals are binding. Pursuant to HAR §8-510-11, the Board may decide to

remand a case with instructions for further proceedings, which the Board did in Appeal No. 22-01. The Commission's failure to follow one of the instructions in Appeal No. 22-01 is a violation of the Board's authority pursuant to statutory and regulatory provisions.

5. Any arguments related to the appropriateness or specificity of the approval criteria used or the merits of LNCA's charter application are moot in the absence of reasons for denial clearly given by the Commission (*i.e.*, reasons for denial adopted by the Commission through a vote). By this decision, the Board is making no determination on the appropriateness or specificity of the approval criteria used or the merits of LNCA's charter application, as the Board cannot and will not make a determination on these aspects of the case when it is not clear why the Commission denied LNCA's charter application in the first place.
6. The Board declines to exercise judicial deference to the Commission's decision. Irrespective of the Board's conclusion that the Commission violated statutory and regulatory provisions, nothing binds the Board to *Coon*. Even if the tenets of *Coon* were applicable, in addition to being a quasi-judicial agency, the Board, too, is an administrative agency whose "realm of expertise" includes charter school system and authorizer oversight. Therefore, the Board would only ever exercise judicial deference if a decision by the Commission being appealed to the Board did not prejudice the substantial rights of an appellant in accordance with HAR §8-510-11.

Accordingly, the Board, after reviewing the evidence of record and by unanimous vote of its members who were present and voting (Board Chairperson Warren Haruki, Board Vice Chairperson Kaimana Barcarse, and Board Members Bill Arakaki, Ken Kuraya, and Lauren Moriarty),¹ remands the Commission's decision denying the Appellant's charter application with the following instructions for further proceedings:

INSTRUCTIONS

1. By November 3, 2023, the Commission shall reconsider LNCA's charter application and decide, by vote, whether to approve or deny the charter application.
2. Any vote to deny shall include specific reasons for the denial with specific references to the applicable published approval criteria in the RFP. Any resulting written notification of denial, as required by HAR §8-505-5(c), shall contain the same reasons and references given in the affirmative vote to deny.²

¹ Board Member Makana McClellan recused herself from these appeal proceedings on July 31, 2023. She did not receive the Record on Appeal, Opening Brief, Answering Brief, or Reply Brief, nor was she present at the decision-making meeting.

² Since 2020, the Board has docketed and decided on six appeals filed in accordance with HAR Chapter 510, including this appeal. The Board is acutely aware that it has remanded or reversed every one of

3. Any failure by the Commission to decide, by vote, to approve or deny LNCA's charter application by November 3, 2023, shall be construed as approval of LNCA's charter application.
4. These instructions shall not be construed to mean that the Appellant may change its charter application in any way nor that an evaluation team must reevaluate LNCA's charter application.

Honolulu, Hawaii, this 21st day of September 2023.

BOARD OF EDUCATION

A handwritten signature in black ink that reads "Warren Haruki". The signature is written in a cursive style with some stylized flourishes.

Warren Haruki, Chairperson

these appeals. The underlying themes and message that the Board has tried to convey is that the Commission must follow its own stated processes and procedures, state clear expectations for applicants and charter schools, make decisions grounded in those stated expectations, and state the specific reasons for its decisions, especially when those decisions have high stakes, such as the denial of a charter application or the nonrenewal of a charter contract.

NOTICE OF FINAL DECISION OF THE STATE OF HAWAII BOARD OF EDUCATION

RE: APPEAL NO. 23-02, Lima No'eau Career Academy v. State Public Charter School Commission

Enclosed herewith is the final decision of the State of Hawaii Board of Education with respect to the aforementioned appeal.

CERTIFICATE OF SERVICE

This is to certify that on September 22, 2023, the above decision was electronically mailed to:

Trevor R. Ozawa, Esq., Appellant (trevor@ozawalaw.com)
Bradford K. Chun, Esq., Appellee, Department of the Attorney General (bradford.k.chun@hawaii.gov)
Carter K. Siu, Esq., Appellee, Department of the Attorney General (carter.k.siu@hawaii.gov)
Cathy Ikeda, Chairperson, State Public Charter School Commission (private email address)
Makalapua Alencastre, Vice Chairperson, State Public Charter School Commission (private email address)
Shannon Clearly, Member, State Public Charter School Commission (private email address)
Alex Harris, Member, State Public Charter School Commission (private email address)
Kama Hopkins, Member, State Public Charter School Commission (private email address)
Matthew Kodama, Member, State Public Charter School Commission (private email address)
Roger McKeague, Member, State Public Charter School Commission (private email address)
Carl Takamura, Member, State Public Charter School Commission (private email address)
Lehua Veincent, Member, State Public Charter School Commission (private email address)
PJ Foehr, Interim Executive Director, State Public Charter School Commission
(pj.foehr@spcsc.hawaii.gov)

This is to certify that on September 22, 2023, the above decision was mailed postage prepaid to:

Trevor R. Ozawa, Esq.
Attorney for Lima No'eau Career Academy
PO Box 25393
Honolulu, Hawaii 96825



Kenyon Tam, Board Analyst
State of Hawaii Board of Education

i Links to the General Business Meeting materials for 5/30/2023

Agenda: <http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/Final%20General%20Agenda%202023-5-30.pdf>

Submittal:

<http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/III.%20LNCA%20Application%20Information%20Sheet%20and%20GB%20Members%20List.pdf>

Applicant Handout:

<http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/III.%202023.05.30%20LNCA%20Presentation.pdf>

Minutes: <http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/Approved%20Minutes%20General%202023-5-30.pdf>

Recording: https://drive.google.com/file/d/14oeqOqG-QYP8EVdI9I60X5Zur4WkoAJ/view?usp=share_link

ii Links to Applications Committee Meeting materials for 6/22/23

Agenda: <http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/Final%20APPS%20Agenda%202023-6-22.pdf>

Written testimony:

<http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/II.%20combined%20testimony%202023-6-22.pdf> and

http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/II.%20combined%20testimony%202023-6-22%20additional_Redacted%202.pdf

Submittal:

<http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/IV.%20Action%20on%20Application%20for%20Lima%20No%E2%80%99eau%20Career%20Academy%20FINAL.pdf>

Minutes: <http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/Approved%20Minutes%20APPS%202023-6-22.pdf>

Recording: <http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/Approved%20Minutes%20APPS%202023-6-22.pdf>

iii Links to the General Business Meeting materials for 6/29/23

Agenda: <http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/Final%20General%20Agenda%202023-6-29.pdf>

Submittal:

<http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/IV.b.%20Action%20on%20Application%20for%20Lima%20No%E2%80%99eau%20Career%20Academy%20FINAL.pdf>

Testimony: <http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/II.%20combined%20testimony%202023-6-29%20redacted.pdf>

Minutes: <http://sharepoint.spcsc.hawaii.gov/SPCSC/Documents/Approved%20Minutes%20General%202023-6-29.pdf>

Recording: https://drive.google.com/drive/folders/1E2ID0lyHxeEx4k25vUHfwGNB53fe5Ye8?usp=share_link