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INFORMATIONAL SUBMITTAL

DATE OF SUBMITTAL: November 12, 2021

DATE OF MEETING: November 15, 2021

TO: John Kim, Chairperson
State Public Charter School Commission

FROM: Yvonne W.M. Lau, Interim Executive Director
State Public Charter School Commission

AGENDA ITEM: III. Update on Enrollment Irregularities and Notice of Concern issued on October 28, 2021 to Kamalani Academy regarding public charter school contract violations

I. DESCRIPTION

Update/Action on Enrollment Irregularities and Notice of Concern issued on October 28, 2021 to Kamalani Academy regarding public charter school contract violations.

II. AUTHORITY

Pursuant to Hawaii Revised Statutes (“HRS”) §302D-5(a)(5), the Commission as an authorizer of charter schools has the power and duty, among many, for monitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools.

Under HRS §302D-17, the Commission has the duty of ongoing oversight and corrective actions and shall continually monitor the performance and legal compliance of the public charter schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the charter contract. The Commission has the authority to conduct or require oversight activities that enable the Commission to fulfill its responsibilities under this chapter, including conducting

appropriate inquiries and investigations, so long as those activities are consistent with the intent of HRS Chapter 302D and adheres to the terms of the charter contract.

Section 4.2 of the Charter Contract 3.0, Material Elements of Educational Program, states, “The material elements of the School's Educational Program, including but not limited to the School's mission and vision statements, are as set forth in Exhibit A to this Charter Contract. The School shall, at all times, operate in a manner consistent with its Educational Program as defined in Exhibit A. Revisions to any of the elements in Exhibit A (such as establishing, creating, or expanding a virtual or blended learning programs or expanding or eliminating a division) shall be considered a material change to the Charter Contract and shall require prior written approval by the Commission. Where appropriate, this approval shall be informed by an analysis of the School’s performance on the Performance Frameworks under Section 5.1 of this Charter Contract particularly to the extent that such changes are intended to improve educational outcomes.” **See Exhibit 1 - Kamalani Academy Charter School Contract**

Section 7.3 of the Charter Contract 3.0, Admissions, states, “The School shall comply with its admission policies and procedures as approved by the Commission. If the number of applicants exceeds the School's capacity of a program, class, grade level, or building, the School shall select students to enroll using a public lottery that shall be publicly noticed; provided that if the School is a conversion charter school serving as the home school for the DOE district, then the School shall follow Section 302D-34(c), HRS. These policies and procedures shall be readily accessible from the School’s website, as described in Section 8.9 of this Charter Contract.”

§302D-28(f), Hawaii Revised Statutes, states:

(f) To enable charter schools to access state funding prior to the start of each school year, foster their fiscal planning, enhance their accountability, and avoid over-allocating general funds to charter schools based on self-reported enrollment projections, authorizers shall:

(1) Provide sixty percent of a charter school's per-pupil allocation based on the charter school's projected student enrollment no later than July 20 of each fiscal year; provided that the charter school shall have submitted to its authorizer a projected student enrollment no later than May 15 of each year;

(2) Provide an additional thirty percent of a charter school's per-pupil allocation no later than December 1 of each year, based on the October 15 student enrollment, as reviewed and verified by the authorizer; provided that the school is in compliance with all financial reporting requirements; and

(3) Retain no more than the balance of the remaining ten per cent of a charter school's per-pupil allocation, as a contingency balance to ensure fiscal accountability and compliance, no later than June 30 of each year;

provided that authorizers may make adjustments in allocations based on noncompliance with charter contracts and the board may make adjustments in allocations based on noncompliance with board policies made in the board's capacity as the state education agency, department

directives made in the department's capacity as the state education agency, the board's administrative procedures, and board-approved accountability requirements.

III. BACKGROUND

Enrollment Irregularity

When comparing the October 15 enrollment count to the official DOE count, an enrollment irregularity between a charter school's official enrollment count raised concerns with the Commission, as well as among other state agencies tasked with oversight of charter school funding.

Kamalani Academy Charter School's (Kamalani) enrollment increased by 169 students between the DOE August official enrollment count and the October 15 enrollment which more than doubled the school's enrollment. (**See Exhibit 2 - FY 2021-2022 Charter School Enrollment Report**) Kamalani's enrollment counts are summarized below:

	Enrollment Count
May 15 Enrollment Projection	263
DOE August Official Enrollment Count	166
October 15 Enrollment Count	335

The Department of Budget and Finance brought several concerns to the attention of the Commission, specifically that this significant enrollment increase could potentially have major ramifications on the true-up calculations affecting the funding for both charter schools and the Department of Education. As a result of these concerns, B & F has informed the governor and the Legislature that the true-up calculations and transfer of funds between charter schools and DOE will not occur by the November 1st statutory deadline. (See **Exhibit 3 - 10.21.2021 memo from B&F Director to the Legislature.**)

Importance of an accurate October 15 enrollment count:

The October 15 enrollment count is used to determine not only the per pupil allocation for all public charter schools but also to determine funding disbursements for federal impact aid and ESSER funding for FY2022 to all 37 public charter schools. In addition, the enrollment count also factors into the true-up calculations between charter schools and the Department of Education.

Commission Meeting and Notice of Concern

On October 28, 2021, at the General Business Meeting, the Commission discussed School Year 2021-2022 Charter School Enrollment October 15th Count and Enrollment Count Irregularities. Following the discussion, a Motion was passed to issue a Notice of Concern to the Kamalani

Academy Governing Board in accordance with Exhibit D: Intervention Protocol of the Charter Contract. (See **Exhibit 4 - Notice of Concern to Kamalani Academy**)

The issue of concern included in the Notice was Kamalani Academy's failure to comply with the terms and conditions of the Charter Contract for the following:

Students are enrolled in an unauthorized Virtual Learning Program for SY 2021-2022: Enrolling students in a Virtual Learning Program not approved by the Commission. Exhibit "A": Educational Program of Kamalani Academy's charter contract does not indicate a Commission approved Virtual Learning Program. At Kamalani's September and October Governing Board meetings, the school's School Director publicly stated that the school has a Virtual Learning Program. The Commission has been made aware that for the current school year of 2021-2022, Kamalani Academy has enrolled students in grades Kindergarten to 8th grade (K-8) in a virtual learning program. The enrollment of students in grades K-8 in a virtual learning program is not consistent with the enrollment allowed by the school's charter contract.

As specified by the Intervention Protocol found in Exhibit D of their Charter Contract, a school governing board is required to provide a written response to the Commission within 14 calendar days of the date of the Notice.

In addition to a written response required by the Notice of Concern, the school was requested to provide the following additional documentation listed below. This additional information was to help determine the validity of public representations made by the school concerning their Virtual Learning Program and the resulting applicability of per-pupil funding for the students enrolled in the program:

- Copies of Governing Board agendas and minutes from July 2021 up to and including the most recent (October 2021);
- Complete the requested information in the Kamalani Enrollment Documentation Form;
- Copies of all applications, admission, and enrollment documents from August 16, 2021 up to and including October 15, 2021 for students listed on the Kamalani Enrollment Documentation Form;
- A copy of Kamalani Academy's Admission Policy and Procedures approved by the Commission;
- A description or documentation of Kamalani Academy's internal process and procedures following the receipt of a completed student admission and enrollment;
- Documentation supporting a Commission approved Virtual Learning Program for Kamalani Academy; or Documentation supporting a Distance Learning Program following the requirements as adopted on May 13, 2021 at the Commission's General Business Meeting;

- Complete the “Virtual and/or Blended Learning Requirements Form” as outlined in the Commission approved Hawai’i State Public Charter School Commission Online Virtual and Blended Learning Guidelines;
- A list of teachers, including names and licensure information, for Kamalani’s Virtual Learning Program; and
- Copy of any agreements entered into with Harmony Educational Services.

Due to FERPA requirements, documentation containing student records and other requested information was asked to be provided through a secure online application used by the Commission to receive and provide any sensitive and/or confidential information.

The documentation requested was due on or before 4:30 PM on November 11, 2021 (14 calendar days from the date of the Notice of Concern).

The school was also informed that should they fail to produce the documentation by the November 11, 2021 deadline, the Commission will make a determination based on the information it has available.

The school provided a response to the NOC on November 11, 2021, choosing to dispute the issue of concern before the Commission. The school has provided some of the documentation requested but have withheld student records citing FERPA concerns. (See **Exhibit 5 - NOC Response Form and attachment**)

IV. DISCUSSION

A review of Kamalani Academy’s student enrollment counts for the Department of Education’s August official DOE enrollment count and the Charter Schools Official Enrollment count on October 15, 2021, has shown a significant enrollment irregularity that has major ramifications on the calculations affecting funding for all charter schools and the Department of Education. Until this irregularity can be resolved, the Department of Budget and Finance cannot complete the calculations of the final per-pupil funds to be transferred between charter schools and the DOE.

In order to determine the enrollment count for Kamalani, the Commission must consider Kamalani’s claim of an authorized virtual learning program and proper admission and enrollment of the students Kamalani is claiming in their October 15, 2021 count based on evidence and documentation provided.

- **The key question for the Commission to determine is whether or not Kamalani Academy’s charter school contract allows for the implementation of a new virtual or blended learning program at its school?**

- **If the answer is yes, then Kamalani Academy's 10/15/2021 count of 335 students should stand.**
- **If the Commission determines that Kamalani Academy does not have contractual authority to start a new virtual or blended learning program, then the Commission needs to determine what Kamalani Academy's 10/15/2021 enrollment count number should be for purposes of budgeting and determining the per pupil allocation for Hawai'i Public Charter Schools and to determine federal impact aid and ESSER funding for FY2022 for public charter schools.**

As to the key question of whether Kamalani Academy's contract allows them to implement a new virtual or blended learning program, the following are discussion points for the Commission's consideration:

- The Commission staff had been made aware of the significant enrollment increase for Kamalani by the school's fiscal officer and Principal as reported at its September 9th, 2021 governing board meeting. The principal stated publicly that the school had initiated a virtual learning program utilizing Harmony Education Services that was going to bring in more than 180 students. At the close of the Board meeting, Commission staff asked to meet briefly with the Board chair and Principal to share that their contract was not approved for a virtual learning program. In a follow up email on September 14, 2021, the Commission staff requested more information related to the above from the school governing board and administration.

No information was provided to the Commission despite several repeated inquiries.

- According to the information entered by Kamalani Academy into Infinite Campus, of the 335 students enrolled at the school on October 15, 2021:
 - 108 of these students (32% of the school's total October 15 enrollment count) were enrolled at Kamalani Academy the previous school year.
 - Therefore, **227 students (68% of the school's total October 15 enrollment count) were new to Kamalani Academy in school year 2021-2022.**
- Based on information provided by HIDOE's Accountability Section, of the 335 students enrolled at Kamalani Academy on October 15, 2021:
 - 176 students (52% of the school's total October 15 enrollment count) enrolled at Kamalani Academy between HIDOE's official enrollment count date of August 16, 2021, and the charter school per-pupil funding count date of October 15, 2021.
 - 94 of these newly enrolled students (53% of newly enrolled students and 28% of the school's total October 15 enrollment count) were enrolled at a different Hawai'i public school on August 16, 2021.
 - 82 of these newly enrolled students (47% of newly enrolled students

and 24% of the school's total October 15 enrollment count) were not enrolled at *any* Hawai'i public school on August 16, 2021.

As of the date of this submittal, the minutes from the September 9, 2021 meeting are not posted on the school's website, Governing Board section. The school's response to the NOC *does* include minutes from the July, August, and October Board meetings. (See **Exhibit 6 - Email Chain to GB Chair and Vice Chair follow up On Per Kamalani Enrollment**)

- Kamalani **has not been authorized** in its Charter School Contract to provide a virtual or blended learning program. (See **Exhibit 1 - Kamalani Contract, Exhibit A, page 37**)
- A review of Kamalani's Approved Charter School Application indicates that the school applied to be a Brick and Mortar (in person learning charter school). Kamalani's Charter Application clearly states on page 35 of their application, that "The proposed school doesn't contain a virtual/blended learning program." See **Exhibit 7 - Kamalani Academy Narrative Proposal - February 12, 2016**
- On May 10, 2021 at 12:31 PM, Principal Langston notified the Commission by stating in the School Restart Plans Google Sheet that Kamalani Academy was going back to "100% in person learning" as its reopening plan for the 2021-2022 School Year. (See **Exhibit 8 - Copy of School Restart plans - 5.10.21@12:31 PM with Amanda Langston changes accepted by PJ Foehr**. An inquiry was made to all Charter Schools asking for their reopening plans for SY 2021-222 by U.S. Senator Brian Schatz, and schools responded to this inquiry by filling in this Google Sheet on-line.)
- Kamalani's Principal has previously claimed that she "cleared" the virtual learning program with Commission staff. Commission staff dispute this assertion as the phone call between Kamalani's Principal and Commission's Director of Finance and Operations was regarding the use of CARES Act funding to address COVID-19 related expenditures.
 - Only the Commission can approve programmatic changes to a Charter School's Contract; Commission staff do not have that authority; and
 - The Commission has not received any request from Kamalani Academy to amend their contract to include a virtual learning program.
- Kamalani's Principal has also pointed to the Commission's motion at its May 13, 2021, general business meeting as the source of the School's authority to start a new virtual learning program. At that May 13, 2021 meeting the Commission approved a temporary extension to all 37 public charter schools which:
 - Allowed schools to provide distance, virtual, or other alternative mode of instruction or education **in line with Hawaii Department of Health guidelines in effect at the time, which delineated the model of learning based on COVID-19 infection rates, for their individual counties where**

the school operates;

- Required schools **with existing virtual or blended programs to abide by the contractual limits** to the enrollment of students into their virtual or blended learning programs **as stated in their current Charter Contract**;
- Required schools to continue to meet the requirements for equity and access for all public school students, as well as the provision of free and appropriate public education for special education students as delineated by the end of the 2021-2022 school year;
- Required schools to provide a copy of its 2021-2022 reopening plan to the Commission, no later than two (2) weeks prior to the start of the 2021-2022 school year; and
- Requires the reopening plan to include at a minimum: (1) for those public charter school's whose charter contract authorizes the provision of in person learning (brick and mortar schools), a description of the school's efforts to provide for safe in-person learning in alignment with the Department of Health guidelines; (2) a description of the instructional delivery model or models they will be utilizing during the 2021-2022 school year. Should the individual county restrict their learning model to a blended learning or full distance learning model; (3) a brief outline of how they plan to assess student progress under each of those circumstances; (4) the steps that their public charter school will be taking to ensure the health and safety of their students and employees; and (5) a copy of the Governing board agenda and minutes that show this plan was presented in open public session at a school Governing Board meeting. **See Exhibit 9 - 5.13.2021 submittal presented to the Commission and Exhibit 10 - 5.13.2021 approved General Business meeting minutes** for the full discussion on the matter.

Nowhere in the discussions leading to the motion adopted by the Commission does it allow schools to start completely new virtual or blended learning programs. Much of the discussion focused around in person learning, giving schools flexibility to move between models of education as necessitated by COVID-19 infection rates in their counties, and returning to the school's original contractual models of education.

Additionally, eight other public charter schools abided by the Commission's May 13, 2021 motion, whereby when their schools were affected by high COVID-19 infections, they moved to a distance learning model and when the COVID-19 infection rates subsided, returned back to their in person learning model.

- Since October 18, 2019, the Commission adopted Online Virtual and Blended Learning Guidelines and revised them on November 12, 2020. (See **Exhibit 11 - SPCSC Online**

Virtual and Blended Learning Guidelines Revised November 12, 2020) The Commission specifically adopted these guidelines due to concerns over the teaching of students in these programs. The guidelines state: The Commission is charged with ensuring that all students enrolled in public charter schools receive instruction from teachers licensed by the Hawaii Teacher Standards Board (HTSB) or enrolled in a State Approved Teacher Education Program (SATEP) as required by state law. To that end, public charter schools whose educational program includes the delivery of instruction through a virtual and/or blended learning model are required to employ and assign appropriately licensed teachers to every student enrolled in their school. The guidelines also provide specific areas that schools must address before being approved for such a program. To date five charter schools have come before the Commission for a contract amendment to be authorized to provide a virtual or blended learning program. On April 8, 2021, the Commission did approve one school's virtual learning program design and implementation.

- **Kamalani Academy** has not followed these guidelines in establishing their stated virtual learning program.

Additional Concerns regarding Kamalani Academy's Virtual Learning Program:

Collective Bargaining

- Of the three teachers identified by Kamalani Academy as working with the students in the school's virtual learning program (see Kamalani Academy's testimony for the Commission general business meeting on November 15, 2021 ("Commission Presentation 2021"), page 21), only one — Krystyl Fenton — appears in Infinite Campus, the school's student information system. According to the information entered by Kamalani Academy into Infinite Campus, 182 students — 136 students in kindergarten through grade 5 and 46 students in grades 6 to 8 — are assigned to Ms. Fenton, who, as noted in the materials submitted by the school, is only licensed for Elementary Education K-6.
 - This student-to-teacher ratio appears to **violate the Unit 5 Collective Bargaining Agreement** with the Hawaii State Teachers Association (see **Exhibit 12 - HSTA Contract 2021-23** page 14, Article VI - Teaching Conditions and Hours, A. 6. The Employer agrees to maintain the average statewide class size ratio of 26.15 to 1).
 - The assigned teacher, Krystyl Fenton, is **not licensed to teach secondary students (i.e., Kamalani Academy students in 7th and 8th grade)**.
 - The other two teachers identified by Kamalani Academy as working with the students in the school's virtual learning program are **also not licensed to teach secondary students**:
 - Shannah Fagundes has a provisional license for Elementary Education K-6.
 - Jill Brewster has a standard license for Early Childhood Education P-3,

Special Education P-3, and Teaching English to Speakers of Other Languages P-3.

ESSA Compliance

- **The federal Every Student Succeed Act (“ESSA”) or ESSA law requires all teachers to meet state licensing or certification requirements in the subject area of their assignment. This expands the requirement from teachers of core subjects to all teachers in all subjects. When students are not taught by a Hawaii qualified teacher, the school must send letters home to all parents whose student(s) is/are being taught by a non-Hawaii qualified teacher (one that is teaching out of their certification). **The school has not done so as required by ESSA requirements.****

Proper vetting of personnel or persons having contact with students:

- Schools using Harmony Ed have stated that students are assigned “**Mentors**” to assist with their education, but that it is **unclear if these “mentors” are Hawaii Licensed and Certified Teachers and if these “Mentors” who work with and have contact with students are properly vetted and background checked as required.**

Homeschool

- Harmony Educational Services have advertised to parents “Home-based Educational Programs Offered in Partnership with Public Schools --Free Resources, Curriculum, Mentoring and More.” (See **Exhibit 13 - Screenshot from Harmony Educational Services Website**) Harmony Educational Services has also targeted public schools to explicitly help schools: increase enrollment; increase funding for your district . . . See YouTube video: https://youtu.be/B_MMZwTSop8
 - Testimony from the October 28, 2021 Commission meeting included parents who enrolled as previously home-schooling their children.
 - Testimony from Kamalani Academy on October 28, 2021 stated that the school had enrolled 97/183 (53%) previously homeschooled before enrolling at Kamalani. (See page 4 of **Exhibit 14 - Kamalani Academy Written Testimony for the October 28, 2021 General Business meeting**)

Teacher licensure:

- Hawaii Revised Statutes §302A-805 Teachers; license or permit required; renewals: states: “No person shall serve as a half-time or full-time teacher in a public school without first having obtained a license or permit from the board under this subpart.”
- Hawaii Administrative Rules §8-54-3 Defines Teacher as the following:
"Teacher" means a person whose duties in the public school system are primarily teaching or instruction of students or related activities centered primarily on students and who is in close and continuous contact with students, and shall include but not be limited to classroom teachers, school librarians, counselors, registrars, and special education teachers.

- The Hawaii Teacher Standards Board (HTSB) checks every Hawaii applicant, license, and permit holder daily against records in the NASDTEC Clearinghouse. The NASDTEC Educator Identification Clearinghouse is the national collection point for professional educator discipline actions taken by the fifty states, the District of Columbia, U.S. Department of Defense Educational Opportunity schools, and Guam.
 - Federal and State background checks do not include educator misconduct cases that were heard in an administrative hearing.
 - The goal of the Clearinghouse provides each state with a notification of any adverse action taken against an educator by other state or jurisdiction.
 - The NASDTEC Clearinghouse is to protect the interests of children served by the professional education community within the United States and beyond.
 - **It is unclear whether any of these Harmony Ed “mentors” have been cleared or even background checked by the school or the Hawaii Teacher Standards Board.**
 - This raises a major **liability concern** with the use of these “mentors” who have access and are interacting with the students.

Special Education student compliance:

- Despite what Kamalani’s Principal stated at the Commission’s 10-28-2021 meeting, Kamalani is currently out of SpEd compliance with a number of its SpEd students which include incomplete/missing/overdue/aged out IEPs, as well as missing COVID-19 Impact Statements from a significant number of SpEd students, all this in addition to a double digit number of newly enrolled virtual students who have no documentation in eCSSS as having started any of the required SpEd documentation.
- **If the Commission determines that Kamalani Academy does not have contractual authority to start a new virtual or blended learning program, then the Commission needs to determine what Kamalani Academy’s 10/15/2021 enrollment count number should be for purposes of budgeting and determining the per pupil allocation for Hawai’i Public Charter Schools and to determine federal impact aid and ESSER funding for FY2022 for public charter schools.**

The HIDOE Accountability Section provided Commission staff with detailed rosters for all students enrolled at Kamalani Academy as of October 15, 2021. This information was matched with the enrollment entry and exit data for Kamalani’s students in the Statewide Student Enrollment System, the system of record for enrollment for the Hawai’i public school system.

Although the Commission requested that Kamalani identify all of the students on the official enrollment roster as of October 15, 2021, as of the date of this submittal, Kamalani has not provided this information citing the need to consult with their Deputy Attorney General on FERPA concerns. It should be noted that Section 14.3 Access to Records states: “Consistent with the school’s obligation under FERPA, the School shall make all School records open to inspection by the Commission, the DOE, the Office of the Auditor, law enforcement officials, contractors, or

any other federal or State regulatory agency within five business days after the request is made, or sooner if required by law.”

Commission staff, however, was able to obtain student records off of the Harmony Educational Services Website and made digital copies of their student records. (This information has since been removed from Harmony Education’s Website). Commission staff have matched the names of all students enrolled in Harmony’s system against the official enrollment rosters provided by the HIDOE Accountability Office. Of the 335 students listed in Kamalani’s October 15, 2021 enrollment count, 164 appear to be students enrolled in Harmony Educational Services system.

Exhibit 1

Kamalani Contract 2017-2021

Exhibit 2

FY 2021-2022 Charter School Enrollment Report

Exhibit 3

10.21.2021 Memo from B&F Director to Legislature

Exhibit 4

Notice of Concern to Kamalani Academy

Exhibit 5

NOC Response Form and Attachment

Exhibit 6

09.24.2021 Email Chain to GB Chair and Vice Chair follow up on Per Kamalani Enrollment

Exhibit 7

Kamalani Narrative Proposal - February 12, 2016

Exhibit 8

**Copy of School Restart Plans - 05.12.21 @12:31 PM submitted by Amanda Langston
changes approved by PJ Foehr**

Exhibit 9

05.13.2021 Submittal to Commission re: Action on Temporary Authorization

Exhibit 10

Approved Commission Minutes General Business Meeting 2021-5-13

Exhibit 11

SPCSC Virtual Blended Guidelines approved 11.12.2020

Exhibit 12

HSTA Collective Bargaining Agreement Final 2021-23

Exhibit 13

Screenshot from Webpage - Harmony Educational Services

Exhibit 14

Kamalani Academy's Written Testimony submitted for the October 28, 2021 General Business Meeting