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STATE OF HAWAII  
**STATE PUBLIC CHARTER SCHOOL COMMISSION**  
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**SUBMITTAL FOR CONSIDERATION/INFORMATION**

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DATE OF SUBMITTAL: July 6, 2018

DATE OF HEARING: July 9, 2018

TO: John Kim, Interim Chairperson

FROM: Sione Thompson, Executive Director

RE: Revocation of Charter Contract for Ka‘u Learning Academy (KLA)

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I. DESCRIPTION/PURPOSE

Hearing on the revocation of Ka‘u Learning Academy’s Charter Contract.

II. AUTHORITY

Pursuant to Hawaii Revised Statutes (HRS) §302D-18 Renewals, revocations, and nonrenewals:

“(g) A charter contract may be revoked at any time or not renewed if the authorizer determines that the charter school did any of the following or otherwise failed to comply with the provisions of this chapter:

(1) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;

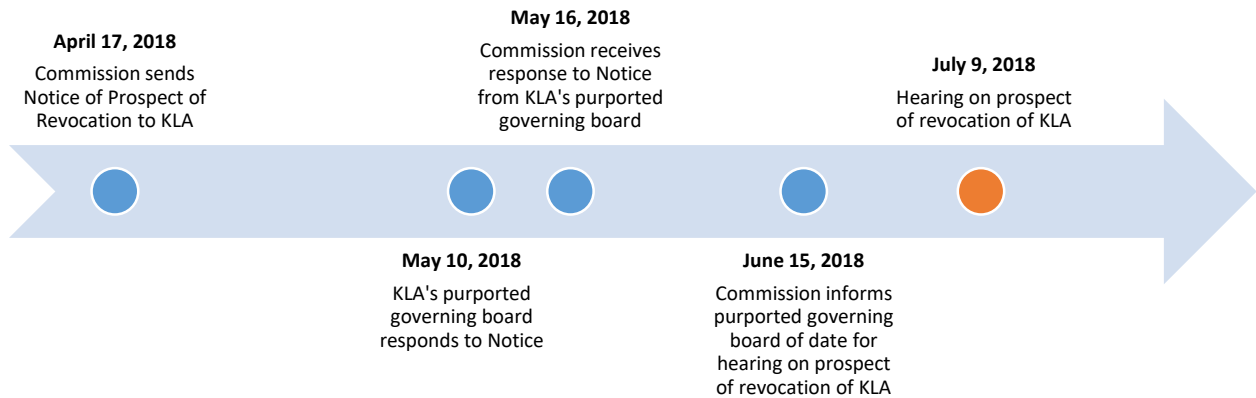
(2) Failed to meet or make sufficient progress toward performance expectations set forth in the contract;

(3) Failed to meet generally accepted standards of fiscal management; or

(4) Substantially violated any material provision of law from which the charter school is not exempted.”

(See Exhibit 1 for complete statutory language)

### III. BACKGROUND & PROCEDURAL HISTORY



On **April 17, 2018**, the Commission sent KLA's purported governing board a **Notice of Prospect of Revocation** via email and Certified Mail, Return Receipt Requested. (Exhibit 2) This notice was issued to KLA pursuant to §8-505-16, Hawaii Administrative Rules (HAR), and in accordance with the action taken at the State Public Charter School Commission's (Commission's) General Business Meeting on April 12, 2018. (Exhibit 3)

Under §302D-18(g), Hawaii Revised Statutes (HRS), the Commission took action to initiate the revocation of KLA's charter contract due to evidence that all four conditions for revocation were brought to the Commission's attention:

- (1) significant concerns over material and substantial violations of the terms, conditions, standards, and/or procedures required under its Charter Contract;
- (2) failure to meet or make sufficient progress toward performance expectations set forth in the contract;
- (3) failure to make generally accepted standards of fiscal management; and
- (4) substantial violations of material provisions of law from which the charter school is not exempted.

The specific allegations are listed in Table 1.

During the discussion and deliberation by the Commission at its general business meeting, the Commission raised concerns regarding the various issues brought to its attention by former employees, members of the public and by the current purported governing board.

Under HAR §8-505-16, **KLA had thirty (30) days from the date of notification to respond to the Notice of Prospect of Revocation.** The school also had the **option of requesting a hearing** on this matter, in accordance with HAR §8-505-20, and may request legal representation, subject to Section 28-8.3, HRS.

**KLA's purported governing board did respond** to the Notice of Prospect of Revocation on **May**

**10, 2018**, received on **May 16, 2018**, and requested a hearing on the matter. (Exhibit 4)

On **June 15, 2018**, the Commission informed KLA that the Commission would hold a **hearing on the prospect of revocation on July 9, 2018**. (Exhibit 5)

#### IV. DISCUSSION

As the state's authorizer of charter schools, the Commission contracts with a public charter school's governing board to provide public education to the students of the state of Hawaii. When there are violations of the contract, the Commission is empowered by state statute to take action up to and including revoking the charter contract.

However, before addressing the revocation of KLA's charter contract, the Commission must first determine if there is a legally constituted governing board, which holds the charter contract. This fundamental question then allows for the Commission to determine whether or not the charter contract should be revoked.

At the February 23, 2018 and March 27, 2018 Commission meetings, KLA's purported board was questioned about the composition of their last reported board and its compliance with Section 302D-12 Hawaii Revised Statutes, which articulates the powers and duties of a charter school's governing board.

#### **Chronology of KLA's Governing Board changes:**

Date	Description of action	Notes
9/5/2017	KLA files their required governing board roster for SY 2017-18 and lists governing board members: Nancy Sledziewski (President), Jack Richard, Mark Fournier, Katie Szabo, Andy Griffin, and Kathryn Tydlacka	<i>This was filed as part of each charter school's required compliance task.</i>  <i>Nancy Sledziewski did not disclose her relationship to Managing Director Joe Iacuzzo in the charter application for KLA (Exhibit 6, page 271)</i>  <i>Sledziewski is in fact a relative (cousin) of Managing Director Joe Iacuzzo.</i>
12/11/17	KLA's board approves by email the appointment of new members to KLA's governing board: Doug Castro, Kailani Toriano, and Doug Flaherty	<i>Exhibit 7 (KLA board emails)</i>  <i>Doug Castro is not currently on the KLA governing board.</i>

Date	Description of action	Notes
"Dec 2017"	KLA governing board members resign: Andy Griffin, Katie Szabo, and Mark Fournier	<b>Exhibit 8</b> email between Director Tydlacka and purported governing board chair Richard.
1/16/2018	KLA informs Commission staff of KLA's governing board changes: replacing three of their governing board members, Mark Fournier, Katie Szabo, and Andy Griffin, with new members Guy Delameau, Harry McIntosh, Douglas Flaherty, Kailani Toriano	<b>Exhibit 9</b> (excerpt from KLA's response to the Commission's Notice of Prospect of Revocation dated 1/16/2018).
1/23/2018	KLA purportedly held a governing board meeting to elect new officers. It is alleged that Jack Richard is the new President (Board Chair); Kailani Toriano is now the Secretary, and Doug Flaherty is the Treasurer	<b>Exhibit 10</b>  These minutes were posted after 2/16/2018 (see <b>Exhibit 11</b> that shows KLA's minutes stated that there was no quorum on 1/23/18 and no meeting was held).
1/30/2018	KLA Managing Director Joe Iacuzzo informs Commission staff that governing board member Nancy Sledziewski is no longer the board chair as Jack Richard is now purportedly the governing board chair.	<b>Exhibit 12</b>
2/16/2018	KLA website posted minutes show no governing board meeting took place on 1/23/18 due to lack of quorum. Additionally, 12/4/17 minutes do not discuss the appointment, replacement or resignation of governing board members.	<b>Exhibit 11</b>
2/20/2018	KLA's purported board chair Jack Richard informs Commission Executive Director Sione Thompson that the 1/23/2018 minutes are inaccurate as there was a governing board meeting and they will be correcting the minutes.	
3/20/2018	KLA's purported board chair Richard confirms to Commission Exec. Director Thompson that former	

Date	Description of action	Notes
	chair Nancy Sledziewski is in fact the cousin of Joe lacuzzo.	
4/2/2018	KLA's purported governing board publicly noticed a governing board meeting 6 days prior, and held a meeting to elect and restructure its governing board. <b>NOTE: Minutes do not reflect the actual vote count, nor does it detail who voted to accept the new governing board members.</b>	<i>Exhibit 13</i>

On January 16, 2018, KLA informed the Commission, that members of their Governing Board had recently undergone changes including replacing three of their governing board members, Mark Fournier, Katie Szabo, and Andy Griffin, with new members Guy Delameau, Harry McIntosh, Douglas Flaherty, Kailani Toriano (Exhibit 9). Then on January 30, 2018, Joe lacuzzo, Managing Director of KLA sent an email to Commission staff informing the Commission that their new governing board chair is Jack Richard, replacing Nancy Sledziewski who was their previous chair (Exhibit 12). Commission staff checked KLA's website on February 16, 2018 for KLA's posted minutes, but the minutes did not reflect the changes to the governing board. (Exhibit 11)

While the school did not state specifically that members Mark Fournier, Katie Szabo, and Andy Griffin had resigned, the Commission staff did request that KLA fill out the Board Roster which would identify the new governing board by name, officer position, voting member, term, relationships (if any), contact phone number, and contact email address. Commission staff requested this information on January 24, 2018 and again on January 31, 2018 from KLA.

The reported roster of governing board members provided to the Commission at the beginning of the school year on September 5, 2017, is as follows:

Ka'u Learning Academy Governing Board as of September 5, 2017

Last Name	First Name	Officer Position	Voting Member? (Yes or No)	Term	Employee, Relative, Vendor, or Contractor
Sledziewski	Nancy	Pres.	Yes	2017-20	None*
Richard	Jack		Yes	2016-19	Contractor
Fournier	Mark		Yes	2017-20	None
Szabo	Katie		Yes	2016-19	None
Griffin	Andy		Yes	2016-19	Relative/Relative of Former Employee
Tydlacka	Kathryn		Yes	2017-19	Employee/Former Employee

\*Sledziewski is in fact the cousin of employee and managing director Joe lacuzzo.

An examination of KLA's September 5, 2017 governing board roster above shows that the composition of the governing board was out of compliance with HRS § 302D-12(a)(4), as there appears to be a 50% composition of employees, relatives and contractors.

Commission staff also reviewed KLA's website on February 16, 2018 (see Exhibit 11 for pdf of minutes from website), and found that KLA had posted governing board minutes from December 4, 2017 and January 23, 2018. Neither minutes indicated any governing board membership changes, including the resignation of current members (Mark Fournier, Andy Griffin, and Katie Szabo), the additions of new members (Kailani Toriano, Guy Delameau, Harry McIntosh, and Doug Flaherty), or governing board chair changes. Additionally, from December 2017 to the February 23, 2018, the Commission did not receive any requests for waivers to the governing board meeting notice requirement (HRS §302D-12(h)(2)), that would have provided the governing board with the opportunity to hold a governing board meeting and make such changes to their governing board.

On February 20, 2018, KLA, through their purported governing board chair, Jack Richard, notified the Commission Executive Director Sione Thompson, that the governing board minutes posted on the school's website for the January 23, 2018 meeting stating there was no quorum, was inaccurate. The school has since updated the minutes to reflect that a meeting did occur on January 23, 2018 (Exhibit 12). A review of these new January 23, 2018 minutes, now appear to show that the governing board voted on January 23, 2018 to elect officers for the Board.

Additional documentation sent to Commission Executive Director Sione Thompson on March 6, 2018 include copies of email chains from KLA Director, Kathryn Tydlacka-McCown and members of the previous governing board (Andy Griffin, Mark Fournier, Jack Richard, Katie Szabo, Nancy Sledziewski) (Exhibit 7) and KLA Managing Director Joe Iacuzzo. The emails appear to show that the governing board "voted" by email to approve three new board members: Doug Castro, Kailani Toriano, and Doug Flaherty.

Copies of emails between Kathryn Tydlacka-McCown and Jack Richard regarding the resignations of Andy Griffin, Katie Szabo, and Mark Fournier indicate that they all "resigned in December of 2017" (Exhibit 8).

No other minutes or documentary evidence has been provided regarding the election of new board members. It is still unclear how purported members Guy Delameau and Harry McIntosh were elected to KLA's governing board and why Doug Castro is not a member of the governing board.

During the Commission's general business meeting on February 23, 2018, KLA's purported new board chair, Jack Richard, needed and requested a waiver under HRS §302D-12(c) from the Commission for him to serve as KLA's board chair, as he had been contracted by the school to build the ADA compliant bathrooms for the school, and is therefore a vendor to the school and ineligible to be Board Chair without a waiver from the Commission (Exhibit 14). The Commission never granted him this waiver.

During the meeting KLA also confirmed that board member Kailani Toriano is a vendor and contract hire to the school. On March 6, 2018, KLA also submitted an unsigned agreement from Ms. Toriano to KLA Director, Kathryn Tydlacka describing her monthly fee and duties. (Exhibit 15)

On March 20, 2018, purported governing board chair Richard informed Commission Executive Director Thompson that KLA's previous board chair and current member, Nancy Sledziewski, is in fact related to KLA's managing director, Joe Iacuzzo. She is his cousin. This was in direct contradiction to what the school had reported to the Commission on September 5, 2017 on their governing board roster, and in KLA's original application for a charter school (Exhibit 6, page 271). Ms. Sledziewski disclosed that she knew Joe Iacuzzo since they were children in Buffalo, NY. She did not disclose their relationship as the disclosure asked for the exact nature of their relationship. This appears to be a purposeful misrepresentation of Ms. Sledziewski's relationship with the managing director of KLA, Joe Iacuzzo. This also calls into question the legitimacy of any actions taken by KLA's board during Ms. Sledziewski's tenure as Chair of KLA.

Based on all available information to the Commission, the purported board membership as of January 23, 2018 is as follows:

Last Name	First Name	Officer Position	Voting Member? (Yes or No)	Term	Employee, Relative, Vendor, or Contractor*
Sledziewski	Nancy		Yes	2017-20	Relative
Richard	Jack	Chair/President	Yes	2016-19	Contractor
Toriano	Kailani	Secretary	Yes	?	Contractor
Flaherty	Doug	Treasurer	Yes	?	None
Delameau*	Guy		Yes	?	None
Tydlacka	Kathryn		Yes	2017-19	Employee
McIntosh*	Harry		Yes	?	Relative of an employee (daughter works at KLA)

*\*unclear how these two individuals became members of the board, as the minutes/emails do not document their election/appointment to KLA's governing board.*

On May 10, 2018, KLA's purported board then submitted a response to the Notice of Prospect of Revocation that restructured KLA's governing board on April 2, 2018. The purported governing board of KLA as of April 2, 2018 is as follows:

Last Name	First Name	Officer Position	Voting Member? (Yes or No)	Term	Employee, Relative, Vendor, or Contractor*
Flaherty	Doug	President	Yes	?	None
Richard	Jack	Treasurer	Yes	?	Vendor/Contractor
Toriano	Kailani	Secretary	Yes	?	Employee
McIntosh	Harry	Member	Yes	?	Relative of Employee (daughter works in kitchen)
Delumeau	Guy	Member	Yes	?	None

Last Name	First Name	Officer Position	Voting Member? (Yes or No)	Term	Employee, Relative, Vendor, or Contractor*
Sokach	Nick	Member	Yes	?	None - Parent of student
Tate	Dave	Member	Yes	?	None
Kerr	Duane	Member	Yes	?	None – Parent of student
Valverde	Becky	Member	Yes	?	None

## V. ANALYSIS

### Governing board composition:

KLA's governing board composition since September 5, 2017 is clearly out of compliance with HRS §302D-12(h). Both governing boards of 9/5/2017 and 1/23/2018 are over the statutory limit of HRS §302D-12(a)(4) of no more than one-third representation of relatives, employees, vendors or contractors as members of a charter school's governing board.

With the confirmation that former governing board President and Chair Nancy Sledziewski's relationship to an employee of KLA--Managing Director, Joe Iacuzzo--the over-representation of the 9/5/2017 board is at 67% (4/6) Employee, Relative, Vendor, or Contractor.

The 1/23/18 purported governing board of KLA is even more over-represented by employees, relatives, contractors, and vendors by 71% (5/7) to 29% no relation (2/7).

The 4/2/19 purported governing board of KLA now consists of 3 members who are a vendor, relative and employee, and 6 members who have no such relation, which means that the board is represented by 3/9 or 33% by Employee, Relative, Vendor, or Contractor.

### Governing board meetings:

The December 11, 2017 actions by KLA's former governing board to appoint new members to KLA's governing board (Doug Castro, Kailani Toriano, and Doug Flaherty) did not comply with HRS §302D-12(h) open meeting requirements as they appear to have taken action by way of email, nor was the meeting noticed 6 days prior to the meeting as required or a waiver requested from the Commission.

It is important to note that the governing board of KLA during the December 11, 2017 email chain appear to indicate that the governing board was intact at that time, but three members had resigned in "December of 2017" leaving Kathryn Tydlacka, Jack Richard, and Nancy Sledziewski. All three remaining members make the board completely in violation of HRS §302D-12(a)(4) (100% employee/relative/contractor/vendor) and questionable in their authority to take actions on behalf of the school.

If the email "meeting" of the KLA governing board on December 11, 2017 does not comply with the statutory requirements of governing board meetings, then the actions taken to approve of at least

two of the governing board members (Kailani Toriano and Doug Flaherty), invalidate their appointment to the governing board as well. Additionally, KLA has not provided any additional documentation showing how new members Guy Delameau and Harry McIntosh became members of the governing board.

This then calls into question the legitimacy and legality of the January 23, 2018 governing board meeting.

Recall that the January 23, 2018 governing board meeting had purportedly not been held due to lack of quorum (as stated in the minutes posted to KLA's website on 2/16/2018 -see Exhibit 3) and then subsequently changed and reposted as of February 23, 2018 (Exhibit 4), now showing there was a meeting of the governing board with Kathryn Tydlacka, Jack Richard, Doug Flaherty, Kailani Toriano, Guy Delameau, Harry McIntosh, and Nancy Sledziewski by telephone.

KLA's purported governing board then attempts to remedy the situation by holding a meeting on April 2, 2018 that then votes additional people onto the governing board, now indicating that there are 3 people who are a vendor, relative, and employee along with 6 members who are not a vendor, relative, or employee.

**KLA's Bylaws:**

All of the actions of the former and current purported governing board also did not comply with KLA's own bylaws. (Exhibit 16) Specifically, both governing boards failed to comply with Article II. Meetings Section 9. Open Meetings requirements which, actually adopts HRS §92 Part I<sup>1</sup> (Sunshine Law).

Additionally, KLA's bylaws require the Board to have no less than five (5) and no more than nine (9) board members. At the time of the April 2, 2018 governing board meeting, there was only one (1) remaining governing board member, Jack Richard.

**DECISION MAKING STATEMENT:**

Given the evidence regarding KLA's governing board membership, it's resignations, and non-compliance of the board during the December 11, 2017 and January 23, 2018 meetings, all of the attempts to remedy the governing board membership since those dates, cannot be recognized by the Commission as legal or legitimate, as none of those meetings comply with HRS 302D-12. When the members of the governing board at the December 11, 2017 meeting resigned, KLA was effectively left with no legal governing board.

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<sup>1</sup> §92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of §1; am L 1985, c 278, §1]

The only member that remains from the governing board of December 11, 2017, is Jack Richard, however, as a single remaining member of the governing board, he cannot on his own vote to add all of the new members to the board, as by KLA's own bylaws, a single member does not constitute a governing board. Additionally, as a vendor/contractor to the school, and the only remaining member, he cannot be board chair, nor can he legally have cast the only vote to add 8 other board members to the governing board on April 2, 2018.

Therefore, all attempts to add new members cannot be legally recognized as none of the people purportedly remaining on the board could have legitimately voted the additional new people onto the governing board.

Given the non-compliance with both HRS §302D-12 and KLA's own bylaws, there is significant evidence that the purported governing board cannot be recognized as the governing board and contract holder of the charter contract for KLA.

**Table I:** List of Contract Violations, Governing Board response, Contract Provision; Corresponding HRS 302D-18(g) Revocation Basis

Issue #	NOC Category	Issue, as outlined in NOC	KLA governing board response, 05/10/2018	Applicable Contract provision(s)	Related condition(s) for revocation
1	Financial and Operational Irregularities	Lack of internal controls and additional oversight as described in the independent auditor's report, including the use of school moneys, checks and debit card(s) for employee personal expenses	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader worked with a new CPA to set up policies and procedures to ensure that the findings were corrected and prevented from occurring in the future.</li> </ul> <p>(Exhibit 4 Response, page 2-3)</p>	2.1, 9.4	1, 2, 3
2	Financial and Operational Irregularities	Accounting does not follow Generally Accepted Accounting Principles (GAAP)	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader worked with a new CPA to set up policies and procedures to insure that the findings were corrected and prevented from occurring in the future.</li> </ul> <p>(Exhibit 4 Response, page 2-3)</p>	9.1	1, 2, 3

Issue #	NOC Category	Issue, as outlined in NOC	KLA governing board response, 05/10/2018	Applicable Contract provision(s)	Related condition(s) for revocation
3	Financial and Operational Irregularities	Failure to comply with collective bargaining agreements, Department of Labor laws and regulations in the hiring, termination, and compensation of employees and other persons who were paid to complete work for KLA	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader worked with the respective union to set up policies and procedures to insure that the findings were corrected and prevented from occurring in the future.</li> </ul> <p>(Exhibit 4, Response, page 2-3)</p>	1.3, 10.1, 9.4	1, 4
4	Financial and Operational Irregularities	Failure to properly report and transmit employee union dues to the requisite employee union including but not limited to the: Hawaii State Teachers Association, Hawaii Government Employees Association, and United Public Workers	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader worked with the respective union to set up policies and procedures to insure that the findings were corrected and prevented from occurring in the future.</li> </ul> <p>(Exhibit 4, Response, page 2-3)</p>	10.1	1, 4

Issue #	NOC Category	Issue, as outlined in NOC	KLA governing board response, 05/10/2018	Applicable Contract provision(s)	Related condition(s) for revocation
5	Financial and Operational Irregularities	Failure to comply with teacher licensing requirements in the hiring and employment of non-licensed unqualified personnel as teachers	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader worked with the respective union to set up policies and procedures to insure that the findings were corrected and prevented from occurring in the future.</li> </ul> <p>(Exhibit 4, Response, page 2-3)</p>	10.3	1, 4
6	Enrollment Discrepancies	Enrollment of students outside of grades authorized by the charter contract, resulting in the overpayment of per-pupil funds to the school, as well as potentially affecting the educational rights of those students incorrectly enrolled	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader corrected the situation by transferring students to other schools and adopted policies and procedures that prevent such practices from occurring in the future.</li> </ul> <p>(Exhibit 4, Response, page 3-4)</p>	5.3, 5.7, 3.2	1
7	Enrollment Discrepancies	Failure to report knowledge of these enrollment discrepancies to the Commission within	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader corrected the situation, by</li> </ul>	11.9.2	1

Issue #	NOC Category	Issue, as outlined in NOC	KLA governing board response, 05/10/2018	Applicable Contract provision(s)	Related condition(s) for revocation
		48 hours, as required by the Charter Contract	transferring students to other schools and adopted policies and procedures that prevent such practices from occurring in the future.  (Exhibit 4, Response, page 3-4)		
8	Maintenance of Records	Failure to properly maintain student records, as evidenced by inconsistent documentation including student grades and other requisite academic and required student health records	No dispute or denial; however, stated that: <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader corrected the situation, by transferring students to other schools and adopted policies and procedures that prevent such practices from occurring in the future.</li> </ul> (Exhibit 4, Response, page 3-4)	6.7.1	1
9	Maintenance of Records	Failure to maintain accurate and complete personnel and payroll information and to provide such information to the Employer Union Benefits Trust Fund and the Hawaii State Employees' Retirement System to ensure each	No dispute or denial; however, stated that: <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader corrected the situation, by transferring students to other schools and adopted policies and procedures that prevent such practices from occurring in the future.</li> </ul>	1.3, 11.6	1

Issue #	NOC Category	Issue, as outlined in NOC	KLA governing board response, 05/10/2018	Applicable Contract provision(s)	Related condition(s) for revocation
		employee receiving such benefits qualifies for such benefits	(Exhibit 4, Response, page 3-4)		
10	Governing Board	Failure to comply with Governing Board HRS 302D-12 statutory member composition requirements	No dispute or denial; however, that the purported governing board submits that they have remedied this problem by having restructured the board at their 4/2/18 meeting, which added additional members to the purported governing board of KLA and removed the over-representation of employees/relatives/contractors/vendors.  (Exhibit 4, Response, page 4-5)	1.3	1
11	Governing Board	Failure to follow HRS 302D-12 open meeting and governing board requirements, as well as the school's own bylaws as to the election of new members to the governing board, calling into question the legal authority of the past and current governing board	No dispute or denial; however, that the purported governing board submits that they have remedied this problem by having restructured the board at their 4/2/18 meeting, which added additional members to the purported governing board of KLA and removed the over-representation of employees/relatives/contractors/vendors.  (Exhibit 4, Response, page 4-5)	1.3	1

Issue #	NOC Category	Issue, as outlined in NOC	KLA governing board response, 05/10/2018	Applicable Contract provision(s)	Related condition(s) for revocation
12	Governing Board	Failure to follow the school's own policies and procedures, including enrollment policy, fiscal policy, conflicts of interest policy	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader corrected the situation, by transferring students to other schools and adopted policies and procedures that prevent such practices from occurring in the future.</li> </ul> <p>(Exhibit 4, Response, page 4-5)</p>		1
13	Governing Board	Lack of fidelity to Hawaii Department of Education statewide assessment procedures and protocols, leading to possible test fraud	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the purported governing board and their new school leader has put a plan together to correct the testing practices within the school.</li> </ul> <p>(Exhibit 4, Response, page 4-5)</p> <ul style="list-style-type: none"> <li>HIDOE investigation finds that KLA's leadership sought to exclude low-performing students from state assessment testing and provided unearned advantages on state assessments to students that KLA leadership hand-picked for testing in the administration office. A few KLA staff also</li> </ul>	4.3	1

Issue #	NOC Category	Issue, as outlined in NOC	KLA governing board response, 05/10/2018	Applicable Contract provision(s)	Related condition(s) for revocation
			committed test security violations by providing educator coaching and interference with student responses; reviewing, reading, looking at test items or student responses during the administration of the assessment. KLA also allowed untrained and unauthorized personnel to administer state assessments. As a result of these actions by KLA, the 2017 assessment scores of all students tested at KLA cannot be considered valid or trustworthy or relied upon and will be invalidated.		
14	Personnel Management	Failure to conduct criminal history background checks	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader corrected the situation, by transferring students to other schools and adopted policies and procedures that prevent such practices from occurring in the future.</li> </ul> <p>(Exhibit 4, Response, page 5-6)</p>	10.6	1

Issue #	NOC Category	Issue, as outlined in NOC	KLA governing board response, 05/10/2018	Applicable Contract provision(s)	Related condition(s) for revocation
15	Personnel Management	Hiring of inexperienced and unqualified non-instructional employees/agents to engage in the activities and operating requirements	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the findings were addressed</li> <li>the purported governing board and new school leader corrected the situation, by transferring students to other schools and adopted policies and procedures that prevent such practices from occurring in the future.</li> </ul> <p>(Exhibit 4, Response, page 5-6)</p>	10.5	1
16	Health and Safety	Failure to submit an annual and standard School Fire Inspection Report for the school's facilities	<p>No dispute or denial; however, stated that:</p> <ul style="list-style-type: none"> <li>the school will be compliant with this requirement and will be inspected in June of 2018.</li> </ul> <p>(Exhibit 4, Response, page 6)</p> <p>KLA submitted an inspection on June 7, 2018 it was submitted. Inspection report was dated June 1, 2018.</p>	6.5.1, 7.3	1

## **REVOCATION:**

HRS 302D-18(g), the state law regarding the revocation of charter school contract states that:

“(g) A charter contract may be revoked at any time or not renewed if the authorizer determines that the charter school did any of the following or otherwise failed to comply with the provisions of this chapter:

- (1) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;
- (2) Failed to meet or make sufficient progress toward performance expectations set forth in the contract;
- (3) Failed to meet generally accepted standards of fiscal management; or
- (4) Substantially violated any material provision of law from which the charter school is not exempted.”

The statute allows the Commission to revoke the charter contract if **any one** of the 4 provisions are met.

- (1) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;**
- (2) Failed to meet or make sufficient progress toward performance expectations set forth in the contract;**
- (3) Failed to meet generally accepted standards of fiscal management; or**
- (4) substantial violations of material provisions of law from which the charter school is not exempted.**

The evidence collected shows that **KLA has met all four of the bases** for which the Commission can revoke their charter contract. Table I shows how KLA has violated twenty-two (22) separate contract violations.

KLA has neither denied nor proffered evidence that any of the violations were not true, and instead offered vague explanations of how KLA has remedied the violations and/or placed new policies and procedures to insure that such violations are never again committed. (Exhibit 4)

### **Additional evidence of contract violation:**

With respect to the charge of KLA Governing Board’s failure to abide with fidelity to Hawaii Department of Education statewide assessment procedures and protocols, leading to possible test fraud (Charter Contract provision 4.3), the Commission reported these allegations to the Hawaii Department of Education (HIDOE) for investigation.

On June 21, 2018, HIDOE informed the Commission that after completing an investigation of possible test breaches, HIDOE’s investigation found that KLA’s leadership sought to exclude low-performing students from state assessment testing and provided unearned advantages on state assessments to students that KLA leadership hand-picked for testing in the administration office. A few KLA staff also committed test security violations by providing educator coaching and interference with student responses; reviewing, reading, looking at test items or student responses during the administration of the assessment. KLA also allowed untrained and unauthorized

personnel to administer state assessments. As a result of these actions by KLA, the 2017 assessment scores of all students tested at KLA cannot be considered valid or trustworthy or relied upon and will be invalidated.

Additionally, KLA failed to make their Audited Financial Performance Expectations for Fiscal Year 2016-17. (Exhibit 18) KLA's Independent Financial Audit for Fiscal Year 2016-17 (Exhibit 17) of this submittal. A review of the audit found that the school had been cited for several material weaknesses and incidents of non-compliance. The audit report defined a material weakness as "a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis."

The audit reported the following findings:

- **Finding 2017-001: Lack of Internal Controls and Additional Oversight - continuation of 2016-001**
  - A lack of separation of duties in school financial procedures was noted as a material weakness. Specific instances noted included:
    - Funds for bill payments were disbursed with no approval by an appropriate level of authority;
    - Reimbursements for personal travel costs and payment for a utility bill for school management were made to KLA following the close of the fiscal year; and
    - A lack of documentation for 12 charges made on the school debit account could not provide support for the disbursement of school funds.
  - This finding was previously reported in KLA's 2015-2016 financial audit and continued into the current audit.
- **Finding 2017-002: Accounting does not follow Generally Accepted Accounting Principles (GAAP)**
  - It was reported that school management did not utilize accrual accounting which resulted in significant adjustments to the school's financial reports at the end of the fiscal year.
  - Financial reports completed during the school year were not an accurate representation of the school's financial status.
- **Finding 2017-003: Non-compliance with Department of Labor Laws and Regulations**
  - Employee compensation, specifically bonuses, were not run through payroll.

- Educational Assistants were paid as independent contractors.

Again, KLA has neither denied nor proffered evidence that any of the violations were not true, and instead offered explanations of how KLA has remedied the violations and/or placed new policies and procedures to insure that such violations are never again committed.

#### **DECISION MAKING STATEMENT**

Based upon the evidence gathered and KLA's purported governing board's own response to the Notice of Prospect of Revocation, all four conditions, of which only one condition is necessary for the Commission to revoke a charter contract of a public charter school, have been met.

The purported governing board argues that the transgressions and twenty-two (22) separate violations of the charter contract should be disregarded in favor of allowing this new purported governing board to continue operating KLA. KLA's purported governing board argues that they have corrected all of the violations.

While the purported governing board and its new school leader have worked diligently to correct the violations, the question for the Commission is whether, the Commission should allow KLA to continue as a charter school through this new purported governing board.

The Commission should review KLA's original approved charter application (Exhibit 6) and determine if this new purported governing board has the capacity to implement what the Commission had originally intended for this community and its students—this is the charter that the Commission approved. The Commission should also consider whether KLA in its existing form matches what was approved and if not, whether this purported governing board has the ability and capacity to implement the approved charter application.