

DAVID Y. IGE
GOVERNOR



JOHN S.S. KIM
CHAIRPERSON

STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
(‘AHA KULA HO‘ĀMANA)
1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: (808) 586-3775 Fax: (808) 586-3776

SUBMITTAL FOR CONSIDERATION

DATE OF SUBMITTAL: January 3, 2020

MEETING DATE: January 9, 2020

TO: John S.S. Kim, Chairperson
State Public Charter School Commission

FROM: Sione Thompson, Executive Director
State Public Charter School Commission

AGENDA ITEM: VI. Action on the Intervention Protocol for Waimea Middle Public Conversion Charter School

I. DESCRIPTION

Action on the Intervention Protocol for Waimea Middle Public Conversion Charter School (Waimea).

II. AUTHORITY

Pursuant to HRS §302D-5, the State Public Charter School Commission (Commission), as the Authorizer of Waimea Middle Public Conversion Charter School, is responsible for “[m]onitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools.

Under Waimea’s Charter Contract with the Commission, Section 14.5 Intervention, states that when the Commission has failed to:

- a. Comply with applicable laws, rules, policies, or procedures;
- b. Comply with the terms and conditions of this Contract; or

c. Meet performance expectations as set forth in any of the Performance Frameworks.

. . . the Commission and the School shall follow the Intervention Protocol (Exhibit D) of the Charter Contract.

On November 14, 2019, at the Commission's General Business Meeting, the Attorney General's office requested that the Commission withhold \$75,000 from Waimea's current fiscal year's per pupil funds in order to satisfy a settlement agreement between the State of Hawaii and a plaintiff that sued the state for personal injury damages. As a result of the discussion, the Commission staff issued a Notice of Concern (NOC) to Waimea (See Exhibit 1). This NOC allowed the school 14 days to respond with their resolution and if the issue is not resolved, the Commission is prepared to withhold the funds from the December 1st per pupil allocation until such time it is resolved. Waimea was encouraged to pay the settlement as the Commission looked in further on the liability issues to the boarded portfolio of schools as a whole.

Waimea did request an extension to respond to the NOC and on December 27, 2019, Waimea's Governing Board Chair, Joe Uno, did respond to the NOC. (See Exhibit 2) Waimea is disputing the NOC and the issue of liability and stated that the school was not named as a Defendant and that the school did not agree to settle the claim as had been represented to the Commission.

Further on December 19, 2019, the Attorney General's Office informed Commission's Executive Director, Sione Thompson that the Attorney General's office had paid the \$75,000 settlement to the plaintiff, but is now requesting reimbursement for the payment.

III. PRESENTATION

Exhibit D Intervention Protocol of Waimea's Charter Contract is as follows:

In accordance with Section 302D-17, HRS, this Intervention Protocol is established pursuant to the Commission's authority and responsibility to monitor the performance and legal compliance of charter schools in accordance with the terms of this Charter Contract and consistent with nationally recognized principles and standards for quality authorizing. It enables the Commission to take timely and appropriate action to notify the School about performance and/or compliance concerns and provide the School a reasonable opportunity to remedy such problems.

NOTICE OF CONCERN PROTOCOLS

1. Upon finding that the School has failed to meet legal or contractual compliance obligations (including any goals, objectives, or outcomes set in the performance

frameworks), the Commission may issue a Notice of Concern, pursuant to Section 2.10 Notices of this Charter Contract.

2. Upon receiving a Notice of Concern, the School's Governing Board will be required to provide a written response to the Commission within fourteen calendar days and the response must include at least one of the following:
 - i. a description of the remedy of the compliance breach, if the breach has been completely remedied, including evidence of such remedy;
 - ii. a written notification disputing the determination that a compliance breach has occurred with accompanying evidence in support of that assertion;
 - iii. a Corrective Action Plan designed to remedy the compliance breach that includes timelines and persons responsible for each action within the plan. If the submitted Corrective Action Plan is not mutually agreeable to both the School and the Commission staff, the matter will be brought to the Commission at a General Business Meeting.
3. If the School disputes the Notice of Concern, the Commission will consider the matter at a General Business Meeting and retract, modify, or uphold the Notice of Concern.
4. The Commission shall be updated on the issuance, remedy, and progress towards implementation of Corrective Action Plans in the Executive Director's Report during General Business Meetings.

ESCALATION OF NOTICES OF CONCERN

If the School fails to respond or make progress towards correcting the breach in the time as stated in the Corrective Action Plan, repeatedly fails to comply with applicable law or Contract provision(s), or when the breach presents an immediate concern for student or employee health and safety, the Commission may take any or all of the following actions:

1. Issue a Notice of Deficiency which may include prescriptive, specific action plans and conditions for the School; or
2. Issue a Notification of Warning which initiates revocation proceedings in accordance with Chapter 302D, HRS, and applicable administrative rules.

In accordance with Section 302D-17(c), HRS, this Intervention Protocol shall not apply in any circumstance in which the Commission determines that a problem or deficiency warrants revocation, in which case Chapter 302D, HRS, and the established rules, procedures and protocols for revocation shall apply.

IV. ITEMS FOR CONSIDERATION

Waimea is disputing the Notice of Concern, and the Commission may retract, modify, or uphold the Notice of Concern.

EXHIBIT 1

Notice of Concern Issued to Waimea on November 14, 2019

DAVID Y. IGE
GOVERNOR



JOHN S.S. KIM
CHAIRPERSON

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

<http://CharterCommission.Hawaii.Gov>
1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: (808) 586-3775 Fax: (808) 586-3776

November 14, 2019

VIA E-MAIL: juno@hookakoo.org

Joe Uno, Governing Board Chair
Waimea Middle Public Conversion Charter School
67-1229 Mamalahoa Hwy
Kamuela, HI 96743

RE: NOC # 201907M08

Dear Chair Uno:

This letter serves as a Notice of Concern pursuant to the State Public Charter School Contract Section 10.2, Reporting of Data and School Information, and Exhibit D, Intervention Protocol, along with Section 302D-17, HRS, Ongoing Oversight and Corrective Actions.

Issue of concern

Regarding the matter of the settlement of the lawsuit between Pamela Miller-Potter v. State of Hawaii, the Legislature passed a bill during the 2019 session that required Waimea Middle School to pay the \$75,000 settlement. Specifically, Act 99, SLH 2019 required that "the general fund sum of \$75,000 shall be expended for the fiscal year 2018-2019 budget (EDN 600, general funds) by the Hawaii state public charter school of this Act." As of the date of this letter, Waimea Middle School has not paid the settlement.

Section 2.5 Compliance with Laws of the Charter Contract states that "the School and the Commission shall comply with all federal, State, and city and county laws, ordinances, codes, rules, and regulations as the same may be amended from time to time.

Response Process

The school governing board is required to provide a written response to the Commission within 14 calendar days upon receipt of this Notice of Concern. Please select the appropriate option from the list below and submit the required documents to frameworks.compliance@spcsc.hawaii.gov **by 4:30 p.m. on November 28, 2019**. If the school fails to pay the settlement by the due date of this NOC the Commission will withhold \$75,000 from the next per-pupil allocation and take further action at the December 12, 2019 General Business meeting.

*Note: The response must include a completed Response to Notice of Concern Form that has been signed by the school governing board chair. A scanned copy or photo of the original signed form is preferred; if this is not possible, the Commission will accept an electronically signed copy (i.e., the school governing board chair's name typed in the signature field) **from the school governing board chair's email account**.*

Option 1: If the issues of concern were completely remedied by the response deadline, please submit:

- A completed Response to Notice of Concern Form (check Option 1) that includes:
 - A description of the remedy (e.g., school staff uploaded the required documents to Epicenter) including evidence of such remedy

Option 2: If the issues of concern were not completely remedied by the response deadline, but the remedy is currently in progress, please submit:

- A completed Response to Notice of Concern Form (check Option 2) that includes:
 - A description of the corrective action plan designed to remedy the issues of concern
 - A timeline and deadline for each action within the plan
 - The person(s) responsible for each action within the plan

Option 3: If the school governing board would like to dispute the issue of concern, please submit:

- A completed Response to Notice of Concern Form (check Option 3) that includes:
 - A description of the dispute with the issues of concern
 - Evidence supporting the school governing board's disagreement with the issues

November 14, 2019

Please be aware that issues of concern will be escalated to the Commission for consideration at a general business meeting if the school governing board ***fails*** to do any of the following:

- Respond to the Notice by the deadline using one of the options listed above.
- Submit a corrective action plan that is mutually agreeable to both the school governing board and Commission staff.
- Make progress toward remedying the issue of concern according to the accepted corrective action plan.

Any questions regarding this Notice may be directed to the Commission's Performance Team at frameworks.compliance@spcsc.hawaii.gov or 586-3775.

Thank you very much for your attention to this matter. We look forward to the speedy resolution of this Notice and will notify you via email once it has been satisfactorily resolved.

Best regards,

A handwritten signature in black ink, appearing to read "Sione Thompson", with a stylized flourish at the end.

Sione Thompson
Executive Director

Attachment 1: Response to Notice of Concern Form

cc: Janice English, Principal (janice_english@wmpccs.org)

EXHIBIT 2

Waimea's Response to Notice of Concern Issued to Waimea on November 14, 2019

DAVID Y. IGE
GOVERNOR



JOHN S.S. KIM
CHAIRPERSON

STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
(‘AHA KULA HO‘ĀMANA)
1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: (808) 586-3775 Fax: (808) 586-3776

RESPONSE TO NOTICE OF CONCERN FORM

NOC #: 201907M08
Settlement of Lawsuit
Sent to Governing Board Chair of Waimea Middle Public Conversion Charter School on
November 14, 2019

Response Deadline: November 28, 2019

Deadline extended to December 31, 2019

On behalf of Waimea Middle Public Conversion Charter School, I, Joe Uno, the school's governing board chair, hereby affirm:

☐ **Option 1: The issue of concern was completely remedied by the response deadline.**

Included below is:

- A description and evidence of the remedy (e.g., school staff uploaded the required documents to Epicenter)

☐ **Option 2: The issue of concern was not completely remedied by the deadline, but the remedy is currently in progress.**

Included below is:

- A description of the corrective action plan designed to remedy the issue of concern
- A timeline and deadline for each action within the plan
- The person(s) responsible for each action within the plan

☒ **Option 3: The school governing board would like to dispute the issue of concern.**

Included below is:

- A description of the dispute with the issue of concern
- Evidence supporting the school governing board's disagreement with the issue (*if necessary, please attach additional documentation*)

Description of the remedy, corrective action plan, or dispute for the issue of concern and other required information, as outlined above:

.....

We, the Governing Board of Waimea Middle Public Conversion Charter School, dispute the November 14, 2019 Notice of Concern (NOC #: 201907M08) for the following reasons.

1. The Governing Board contends that the school was not named as a defendant in the lawsuit and was not a party to the settlement agreement in this case and disputes the claim that it is “required” to pay any settlement pursuant to it. However, the State of Hawaii was a party to the lawsuit and settlement agreement and the State of Hawaii is apparently required to pay something under it. The school was never informed that it was a party to the settlement, and the school never considered itself the target of the lawsuit, but rather a witness to the facts. The Governing Board does not agree with the proposition that the settlement “requires” the school to make this payment, especially out of per-pupil allocated funding.
2. The Governing Board, in reliance on the clear language of *Section 6.9 Insurance* of our 2017-2020 Public Charter School Contract itself, contends that even if Waimea Middle School agreed that it was liable for the payment of the settlement, the school by contract is covered by the State’s Risk Management Program. Section 6.9 Insurance states: “The School shall be covered under the Statewide Risk Management Program pursuant to Chapter 41D, HRS, for liability, property, crime, and automobile insurance. The School shall comply with all applicable laws, rules, policies, procedures, and directives of the Department of Accounting and General Services’ Risk Management Office. The School may purchase additional insurance coverage if so desired.”

Along with a lack of coverage by the Risk Management Program, the school has also been advised by the Hawaii State Deputy Attorney General Greg Ushiroda in October 2019, that it is not allowed to purchase commercial liability insurance, as also provided for in the charter contract.

Because the Governing Board in good faith entered into the charter contract as a bilateral agreement, the school has a right to rely on it and a right to have the contract legally enforced.

3. To deny our school the protection of both the state’s Risk Management Program and private commercial general liability insurance coverage - and with no other protection available to us for such claims - Waimea Middle School, as well all Hawaii charter schools, has exposure to potential legal liabilities that could mandate its closure as a charter school, thereby causing disruption to the academic progress of our students. Waimea Middle School, as a public charter school, should be entitled to the protections afforded other departments of the state.

4. The Governing Board and Waimea Middle School have cooperated fully with the Attorney General's office and with the Charter School Commission and has the legal right to dispute the claim that it is responsible for the payment of the settlement. As such, the school does not believe it has violated *Section 2.5 Compliance with Laws* of the charter contract as it has in fact not violated any laws, and the Commission therefore has no basis to issue a Notice of Concern for this matter.

It could be argued that it is the State of Hawai'i who is in breach of our contract by not honoring Section 6.9 of our agreement to cover Waimea Middle School under the Statewide Risk Management Program. The Governing Board considers this to be a very serious matter and questions the legal representation it has received in the protection of our rights and in the exploration of solutions.

While our hope is to resolve this issue to the mutual satisfaction of all parties involved in this lawsuit, and we have thus far avoided taking this matter public, we are prepared to seek all administrative, legal, legislative and social remedies available to us on behalf of Waimea Middle School and for the protection of all charter schools statewide.

.....

I am aware that the issue of concern will be escalated to the Commission for consideration at a general business meeting if the school governing board fails to do any of the following:

- Respond to the Notice by the deadline using one of the options listed above.
- Submit a corrective action plan that is mutually agreeable to both the school governing board and Commission staff.
- Make progress toward remedying the issue of concern according to the accepted corrective action plan.

I also understand that the Executive Director's Report to the Commission during general business meetings shall include de-identified updates on issued Notices of Concern, remedies, and implementation of approved corrective action plans.

Signature _____
Governing Board Chair, Waimea Middle Public Conversion Charter School

12/27/19
Date