

NEIL ABERCROMBIE
GOVERNOR



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RECOMMENDATION SHEET

DATE: March 26, 2014

TO: Catherine Payne, Chairperson

FROM: Tom Hutton, Executive Director

AGENDA ITEM: Action on Kanuikapono Public Charter School’s Request for Approval on School’s Enrollment Preference Policy

I. DESCRIPTION

Recommendation that the Commission approve Kanuikapono Public Charter School’s (“Kanuikapono”) request for an enrollment preference for residents of Anahola on the island of Kauai but deny its request for an enrollment preference based on Title I eligibility.

II. AUTHORITY

Hawaii Revised Statutes §302D-34(b)(6) provides in pertinent part:

“A start-up charter school: May give any other enrollment preference permitted by the charter school’s authorizer, on an individual basis, if consistent with law; provided that nothing in this subsection shall preclude the formation of a start-up charter school whose mission is focused on serving students with disabilities, who are of the same gender, who pose such severe disciplinary problems that they warrant a specific educational program, or who are at a risk of academic failure.”

III. BACKGROUND

Kanuikapono has requested an enrollment preference, which would give eligible students better odds in its enrollment lottery based on residency in the Anahola area and/or Title I eligibility. Kanuikapono’s proposed enrollment preference in its Enrollment and Admissions policy is as

follows:

A. Priority

In accordance with federal law, and for the explicit purpose of providing greater choice to those students covered under the provisions of the Elementary and Secondary Education Act, Title I (ESEA Title I), Kanuikapono may give one (1) priority point to eligible students who qualify for the Title I Free/Reduced Lunch Program. Applicants that are residents of Anahola may receive three (3) priority points. Each priority point is equivalent to one lottery ticket.

Hawaii Revised Statutes §302D-34, states a start-up charter school shall select students through a public lottery if capacity is insufficient to enroll all students who have submitted a timely application. It also prohibits discrimination in admissions on the basis of various characteristics, expressly allows enrollment preferences for student already enrolled and their siblings, and for all other enrollment preferences requires Commission approval.¹

¹ Specifically, 302D-34, HRS states:

Enrollment. (a) A public charter school shall not discriminate against any student or limit admission based on race, color, ethnicity, national origin, religion, gender, sexual orientation, income level, disability, level of proficiency in the English language, need for special education services, or academic or athletic ability.

(b) A start-up charter school:

(1) Shall be open to any student residing in the State;

(2) Shall enroll all students who submit an application, unless the number of students who submit an application exceeds the capacity of a program, class, grade level, or building;

(3) Shall select students through a public lottery if, as described in paragraph (2), capacity is insufficient to enroll all students who have submitted a timely application;

(4) May give an enrollment preference to students within a given age group or grade level and may be organized around a special emphasis, theme, or concept as stated in the charter school's application and as approved by the charter school's authorizer;

(5) May give an enrollment preference to students enrolled in the charter school during the previous school year and to siblings of students already enrolled at the charter school; and

(6) May give any other enrollment preference permitted by the charter school's authorizer, on an individual charter school basis, if consistent with law;

provided that nothing in this subsection shall preclude the formation of a start-up charter school whose mission is focused on serving students with disabilities, who are of the same gender, who pose such severe disciplinary problems that they warrant a specific educational program, or who are at a risk of academic failure.

At its January 2014 meeting, the school's governing board discussed and approved its enrollment and admissions policy, which included the enrollment preference above. If approved by the Commission, the school intends to implement this policy with this enrollment preference during its next admission cycle, which originally was scheduled to start in March 2014. Kanuikapono anticipates that it will have to conduct a lottery because it currently has a waitlist of students, and the number of applications it receives usually exceeds the spaces available.

The school has received complaints from the Anahola community that it is not serving enough Anahola children. The school's governing board believes that the proposed geographic enrollment preference is important because the school has a responsibility to Anahola, its host community, and because of the school's emphasis on place-based education focused on Anahola. According to the school's executive director, the school fulfills this responsibility and delivers this educational program in part through the engagement of local kupuna who are long-time community residents. These long-time residents, who are not exclusively of Hawaiian descent, have deep family connections to the Anahola area and to children whose families wish to enroll them in the school and be engaged with its program, but who face longer odds each year in the enrollment lottery as interest in the school grows in nearby, and larger, communities. Kanuikapono also is a Hawaiian-focused school located on Hawaiian Home Lands. The school's governing board hopes the enrollment preference will demonstrate the school's commitment to serve its host community and help preserve these important relationships.

Following the initial presentation of the request at the February 27, 2013 meeting of the Performance and Accountability Committee, staff requested information from the school about its proposed definition of Anahola residency and student demographic information.

The definition of an Anahola resident provided by the school is as follows:

Any student residing in Anahola for at least one year. Applicant must show proof of residency for at least one year. Two utility bills in the name of guardian/s must be provided as proof of residency. The committee may require a home visit to verify residency. Physical address must be located on one of the following streets or roads listed below:

Aliomanu Rd, Anahola Rd, Ehukai Rd, Hakuaina Rd, Hokualele Rd, Hui Rd, Ioane Rd, Kalalea Rd, Kalalea View Dr, Kamalomalo`o Pl, Kamane Rd, Kapunohu Rd, Kawlo St, Kikoo Loop, Kinohi Rd, Konana Rd, Kukuihale Rd, Kukuna Rd, Malama`aina Pl, Mahuahua Rd, Maia Rd, Makaio Rd, Mana Rd, Manamana Rd, Pahale Rd, Pili Kai Rd, Pilipoli Rd, Poha Rd, Pu U Hale Loop, Puka O Kalalea St, Pukaokalalea.

According to the geographic student information provided by the school, students from the Kapa'a/Wailua area currently account for 49% (77 students) of the number of students at Kanuikapono, compared to students from the Anahola area, which account for 42%, or 66 students.

The school also provided preliminary application and enrollment information for the 2014-15 school year. The Kindergarten class, which is the primary grade level for new students to enter the school, has 14 openings for next school year. So far the school has received 24 applications for these 14 openings; among the 24 applications, four applicants are from Anahola. Based on these figures, a resident of Anahola has a 1:6 chance of being accepted to the school.

The enrollment and admissions policy submitted by the school for the Commission's review also includes an additional enrollment preference for students who qualify for the Title I Free and Reduced Lunch Program. Under federal guidelines, children from families with incomes at or below 130 percent of the poverty level are eligible for free lunches and those with incomes between 130 and 185 percent of the poverty level are eligible for reduced price meals, for which students can be charged no more than 40 cents. According to the Hawaii Department of Education, for the 2013-2014 school year, 48% of the students at Kanuikapono are eligible for a free or reduced lunch.

DECISION MAKING STATEMENT

For purposes of this submittal the two proposed enrollment preferences are discussed separately, and it is the staff's recommendation that the Commission consider them separately.

Geographic preference

Neither federal nor state law prohibits a charter school from adopting an enrollment preference based on geography per se. Questions can arise, however, where the geographic consideration has a disparate impact on students that correlates to a suspect classification, such as race or ethnicity. Staff has made inquiries and conducted research focused on a possible concern that the proposed enrollment policy could be contested as having impermissible impact based on race or ethnicity.

Based on information from the U.S. Census Bureau, Anahola is classified as a 'Census Designated Place' (CDP) which is defined as an area "delineated to provide data for settled concentrations of population identifiable by name but not legally incorporated under the laws of the state in which they are located. CDPs are delineated cooperatively by state and local officials and the Census Bureau, following Census Bureau guidelines." The Census Bureau states the Anahola area covers 3.6 square miles but it does not provide any boundaries or specification of the area.²

Demographic data of Anahola from the 2010 Census shows that residents who identify as Native Hawaiian and Pacific Islander account for approximately 38% of the total population of Anahola.

² U.S. Census Bureau website- <http://www.census.gov/geo/maps-data/data/gazetteer2013.html>; Retrieved 3/25/14

Staff also contacted the Department of Hawaiian Homelands (DHHL) for additional information and assistance. DHHL indicated that on the streets listed in the proposed policy an estimated 85% of residents are DHHL lessees and approximately 15% are fee simple property owners who are not on homestead lands. Ten of the streets on the list are fronted at least in part by land other than homestead land, and based on some mapping performed by staff, the configuration of the proposed boundaries for the preference is contiguous and does not appear to present anomalies that would suggest selective drawing.

The school observes that the Anahola population is much more diverse than previously. Of the 11 current applicants from Anahola for grades K through 12 for the coming school year, the executive director believes four to be non-Native Hawaiians.

Based on this information, staff is persuaded that the school has articulated both a non-discriminatory purpose and a nondiscriminatory likely impact of its proposed geographic preference. Staff's recommendation is that, as a policy matter, the Commission err on the side of giving the school the benefit of the doubt under these circumstances and approving the request as to this part of the proposed policy. The proposed "preference" is actually not for an absolute guarantee or bar to admission for any student but merely for some improvement in the lottery odds.

In implementing the policy, however, the school would be well advised to monitor the policy's results on enrollment, with an eye toward being prepared to address any potential questions about a disparate impact. To the extent the proposed boundaries for the preference present a somewhat different demographic profile than the overall Census Designated Place, this takes on some added potential importance.

Income

HRS 302D-16(a) expressly prohibits discrimination in enrollment and admissions on the basis of income. In January 2014 the U.S. Department of Education recently issued revised guidance that eliminated a previous federal rule that had made a school with a weighted lottery favoring low-income children ineligible to receive federal funds from the federal charter school program. That guidance was adopted to enable schools from jurisdictions that *require* such a weighted lottery to be eligible for funding. The federal rules on eligibility for funding do not trump Hawaii state law.

HRS 302D-16 does provide that nothing in that section precludes a school from focusing its mission on serving students who at risk of academic failure. Title I eligibility does not necessarily equate to risk of academic failure, although poverty obviously can be one important factor in such risk. At this time, staff has insufficient information about the school's reasons for proposing the income-based preference to make a determination that this provision of the law could govern the Commission's consideration of the request.

Based on staff's fact-finding, it does not appear that the proposed income-based enrollment preference would have an appreciable impact on the school's desire to serve more Anahola residents, since Title I Free and Reduced Lunch eligibility does not seem to be appreciably lower among residents of nearby communities than among those of Anahola.

Based on the information we have as of this writing, staff recommends that the Commission deny the request for the enrollment preference based on Title I eligibility at this time. However, we do recommend that the Commission direct staff to pursue with the Legislature a change to HRS 302D that would expressly permit a school to adopt a weighted lottery in favor of economically disadvantaged students, in keeping with the recent policy change at the federal level. It is unclear whether such a change could be obtained at this relatively late stage in the current legislative session, but if such an effort were unsuccessful staff would pursue the change with the next Legislature. Even if the amendment to the statute were made this session, the change in the law would not become effective until after Kanuikapono's lottery for the 2014-15 school year was completed.

IV. RECOMMENDATION

Motions to the Commission:

Moved that Kanuikapono Public Charter School's request for an enrollment preference, provided for in §302D-34, Hawaii Revised Statutes, for residents of the Anahola area of the Island of Kauai be approved.

Moved that Kanuikapono Public Charter School's request for an enrollment preference, provided for in §302D-34, Hawaii Revised Statutes, for students who qualify for the Title I Free and Reduced Lunch Program be rejected.

Moved that Commission staff seek a change to HRS 302D-16 that would expressly authorize a charter school to adopt a weighted lottery favoring low-income students.