

NEIL ABERCROMBIE  
GOVERNOR



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CHAIRPERSON

STATE OF HAWAII  
**STATE PUBLIC CHARTER SCHOOL COMMISSION**  
**(‘AHA KULA HO‘ĀMANA)**  
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### RECOMMENDATION SUBMITTAL

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DATE: July 22, 2014

TO: Peter Tomozawa, Chairperson  
Administration and Operations Committee

FROM: Tom Hutton, Executive Director

AGENDA ITEM: Action on Amendments to the Commission Bylaws Relating to Public Testimony, Promulgation of Commission Meeting Agendas, and Addition of Ex-Officio Members

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#### I. DESCRIPTION

Recommendation that the Committee direct staff to submit the amended Commission Bylaws, attached to this submittal dated July 24, 2014 as **Exhibit A** after incorporation of informational briefings as described in this submittal, to the Commission’s Deputy Attorney General for review and comment.

#### II. AUTHORITY

**Establishment of the Commission:** Hawaii Revised Statutes (“HRS”) Section 302D-3 creates a state public charter school commission with statewide chartering jurisdiction and authority.

**Public Testimony:** Section 92-3, HRS, states, “[All] 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.”

**Public Testimony:** Subsection 8-501-4(b) of the pending draft the Commission’s Hawaii Administrative Rules (“HAR”) states, “The commission shall afford all interested persons an

opportunity to submit data, views, arguments or present oral testimony on any agenda item in an open meeting.”

**Oral Testimony:** Subsection 8-501-4(c) of the pending draft of the Commission’s HAR states, “The commission may reasonably administer oral testimony so as to limit testimony of excessive duration or limit or prohibit any redundant, immaterial, impertinent, or scandalous testimony or to limit the amount of time for testimony per individual or per issue.”

**Delegation of Duties:** Pursuant to HRS §302D-5(c), “[a]n authorizer may delegate its duties to officers, employees, and contractors.”

### III. BACKGROUND

#### **Procedural Background**

On July 12, 2012, the Commission adopted its bylaws, and on August 8, 2013, the Commission revised these same bylaws.

Events this year have revealed the need for clarifying the Commission’s policies and procedures relating to public meetings. At its October 17, 2013 meeting, the Commission adopted a segmented approach to oral public testimony, meaning that public testimony is taken together with agenda items, rather than accepting all public testimony at the beginning of the meeting. However, questions still arise surrounding the administration of public testimony and the promulgation of Commission agendas that the Commission’s bylaws or other policy currently do not address.

At the Commission’s April 10, 2014 General Business Meeting (“Commission’s April Meeting”), staff presented suggestions for clarifying the administration of public testimony and promulgation of Commission agendas. At the meeting, Commissioners expressed general support but also posed questions and provided comments regarding these suggestions. These questions and comments are noted with the corresponding issue below. After discussion and deliberation at the Commission’s April Meeting, the Commission decided to refer review of the proposed amendments to the Administration and Operations Committee.

On July 1, 2014, Act 99 became effective. The changes to the law effectuated by Act 99 clarified that charter school employees could not serve on the Commission. However, because Commissioners have found the advice and perspectives of former Commission members who were school directors invaluable to discussions and informing decision-making, several Commissioners have asked whether a school director could be included in Commission meetings in some way. Staff has also added language for a Governing Board Chair Member for reasons discussed below.

#### **Issues**

As a result of the foregoing, there are six issues that staff has tried to address with suggested amendments to the Commission’s Bylaws:

1. A School Director and a Governing Board Chair member;
2. Agenda approval process;

3. Deadlines and procedures relating to written testimony;
4. Use of media or other means of testifying other than oral or written;
5. Testifiers yielding time; and
6. Availability of remote testimony.

Each of these issues is discussed below along with an explanation of the amendments to the Bylaws being suggested. The Commission's Bylaws with proposed changes redlined are attached to this submittal as **Exhibit A**. Note that all of these proposed Bylaw amendments will have to be reviewed by the Commission's Deputy Attorney General. Staff plans to ask the Deputy Attorney General to review the proposed changes after making any changes necessary from the comments at this meeting and plans to bring the reviewed and reviewed Bylaws to the Commission at its August meeting.

**1. A School Director and Governing Board Chair Member.**

This is a new issue that was not discussed at the Commission's April Meeting. Several Commissioners, however, have expressed an interest in having a school director who can be a part of the discussions and deliberations and provide advice. Recognizing the critical and previously less emphasized importance of governing boards in our charter school system, staff is also recommending that a governing board chair be a part of Commission discussions and deliberations. Staff has drafted proposed amendments to the Bylaws that would create two new member types — a School Director Member and Governing Board Chair Member. These members would have all the functions of other Commission members, except that they would be non-voting and would not be counted for quorum purposes. The Chairperson would appoint these members, who would serve one-year terms.

Again, as noted above, these proposed amendments will have to be reviewed by the Deputy Attorney General. It is possible that these additional members will not be permitted without a statutory change. If that is the case, staff would revise the Bylaws to create an advisory or consultant level position, which will most likely be permissible since those positions are already contemplated in Section 5.5 of the Bylaws. Staff is proposing to amend the Bylaws to add two new sections, Sections 2.3 and 2.4 as shown below:

Section 2.3 In addition to the nine (9) voting members, there shall be an ex-officio, non-voting member that currently serves, or formerly served, as a school director for a charter school in Hawaii ("Charter School Director Member"), who is appointed by the Chairperson and whose term shall be one (1) year. The Charter School Director Member will not be counted for quorum purposes. The Charter School Director Member may engage in discussions and deliberations, including any discussions and deliberations in Executive Session, but may not participate in decision-making by voting. The Charter School Director Member may be removed without cause and by a majority vote of the members of the Commission.

Section 2.4 In addition to the nine (9) voting members, there shall be an ex-officio, non-voting member that currently serves, or formerly served, as the governing

board chairperson for a charter school in Hawaii (“Charter School Chairperson Member”), who is appointed by the Chairperson and whose term shall be one (1) year. The Charter School Director Member will not be counted for quorum purposes. The Charter School Chairperson Member may engage in discussions and deliberations, including any discussions and deliberations in Executive Session, but may not participate in decision-making by voting. The Charter School Chairperson Member may be removed without cause and by a majority vote of the members of the Commission.

## **2. Agenda approval process.**

Occasionally members of the public have asked to place items on the Commission’s agenda. There is no formal process for doing so, and instead the current practice is that the Executive Director consults with Chairperson when preparing meeting agendas. At the Commission’s April Meeting, a Commissioner expressed concern about whether the Chairperson or the Executive Director gets final approval of the agenda. At this meeting, the Chairperson confirmed that under current practice, the Chairperson gets final approval, and staff confirmed that it would ensure that the Bylaws reflect this practice. The proposed changes below would clarify present practice:

Section 6.4 Meeting Agenda. The ~~g~~General ~~b~~Business ~~m~~Meeting agenda shall be ~~promulgated prepared~~ by the Commission Executive Director in consultation with the Chairperson, and with input, as necessary, from the Committee Chairpersons and members. The Chairperson will have final approval of the general business meeting agenda, and the Committee Chairperson will have final approval of the respective committee agenda.

## **3. Deadlines and procedures relating to written testimony.**

Staff has found that the current deadline for written testimony of noon the day before a Commission meeting does not provide adequate time for staff to compile packets for Commissioners that include the on-time written testimony. The current deadline is noon the day before the meeting. Staff set this late deadline to allow for more for time for the public to provide input to the Commission. However, staff now realizes it needs to balance providing reasonable time to the public to submit written testimony with the need for time to prepare written testimony for Commission meetings. In addition, some testifiers have attempted to distribute materials at Commission meetings. Not only is this disruptive, but not all Commissioners are guaranteed to receive a copy of the material in such instances.

At the April Commission Meeting, a Commissioner requested allowing late testimony although the testimony deadline has passed. Staff clarified that it accepts late testimony, but that late testimony may not be included in the Commissioners’ meeting packet and is not passed out at the meeting. The testimony does get emailed to Commissioners later and is linked on the online agenda, marked as late testimony. At the Commission’s April Meeting, Commissioners discussed amending the language to make the deadline for written testimony two business days before the meeting and that any late testimony will be shared with Commissioners at a later date. There was public testimony on this as well. The Hawaii Public Charter School Network provided testimony advocating for a 24

hour deadline. A law student testified that the two business day was reasonable and more generous than other state agencies.

At the April Commission Meeting, a Commissioner also requested information on the Board of Education's ("BOE") policy on public testimony. The BOE's requirements for submitting public testimony is attached as **Exhibit B**. BOE asks the public to submit testimony at least 24 hours prior to the meeting. Testimony received on the day of the meeting may be distributed to board members after the meeting. BOE staff emails late testimony to board members after the meeting. Currently, staff operates in a similar manner, making every effort to include late testimony in the Commissioners' meeting packet and to send late testimony out to the Commissioners as soon as possible after the meeting—either the same day or the next day. Staff would continue to make these efforts, but the two business day deadline would allow staff more time to prepare the meeting packets. There is an important distinction to note between the duties of Commission staff and BOE staff. Commission staff generates, presents, and prints all of the submittals and meeting material. BOE staff does not generate or print most of the Board's meeting material – a majority of the material consists of submittals drafted by DOE departments and other parties. When submitting material to the BOE, parties have to provide multiple copies so BOE staff does not print the meeting material.

Staff is suggesting a two-business-day deadline for late testimony, but will continue to make every effort to include late testimony in the meeting packets and send late testimony to Commissioners after the meeting. Staff is also recommending that, in general, late testimony will not be distributed at the meeting, but there is an allowance for in-meeting distribution if the Commission Chairperson determines that there are extenuating circumstances and a sufficient number of copies are provided so there are copies for all Commissioners. The suggested amendments are below:

Section 7.1 Submission of Data, Views, or Arguments. Any interested person may submit data, views, or arguments in writing to the Commission on any agenda item. ~~Said written~~ Written submittals shall be considered by members before taking action on any agenda item, ~~subject provided that written submittals are submitted to reasonable time for review~~ the Commission no later than two (2) business days prior to the respective meeting. While every effort will be made to distribute all written submittals received, written submittals received after the deadline may be distributed to members after the respective meeting. During Commission meetings, written material will only be distributed under extenuating circumstances, as determined by the Commission Chairperson, and only if there are a sufficient number of copies for all members.

**4. Use of media or other means of testifying other than oral or written.**

At the Commission's public hearing for new charter school applications on March 13, 2014, some testifiers asked staff if they could set up a video presentation for the Commission. Without a policy, and not wanting to interrupt the hearing, staff instead suggested that they could hold their laptop up and play the audio into the microphone as their oral testimony.

At the Commission's April Meeting, a Commissioner expressed concern about not allowing audio-visual options during public testimony because of the impact that it can provide. Commissioners discussed changing the language to clarify that the Chair has the discretion to allow audio-visual.

Staff is suggesting an amendment that would do what Commissioners discussed at the April Commission Meeting. The amendment would allow the Chair to determine whether there are extenuating circumstances, which are hopefully expressed in advance of the meeting, that require the use any means of testifying, other than oral or written. Staff suggests addition the following sentence to Section 7.2, entitled "Public Testimony," "[e]xcept under extenuating circumstances, as determined by the Commission Chairperson, preferably in advance of the meeting, interested persons may only present testimony orally or through written submittals.

#### **5. Testifiers yielding time.**

At the Commission's public hearing for new charter school applications on March 13, 2014, a number of testifiers also asked if they could yield their two minutes of oral testimony to another testifier to increase the length of time that the testifier would have for oral testimony. In the absence of any policy, the Chairperson allowed the yielding of testimony time. After the hearing, several individual Commissioners raised questions with staff about whether allowing this in the future was a good idea.

At the Commission's April Meeting, a Commissioner asked about the effectiveness of allowing the Chairperson to have the discretion to extend time to testifiers. Staff clarified that the current bylaws allow the Chair this discretion if there are extenuating circumstances. Another Commissioner expressed his agreement with leaving things to the Chairperson's discretion because Commission Chairpersons have historically used their discretion to allow testifiers ample time and that good guidelines were needed to conduct meetings in an efficient manner.

As meetings over the last couple of months have shown, the Chairperson has exercised this discretion when necessary. Furthermore, one purpose of public testimony is to hear from all members of the public that have come to the meeting to voice their opinions. Allowing for such yielding of time silences the voices of some members of the public in favor of others. As such, staff believes that yielding time is not necessary or advisable. Staff is suggesting adding the following sentence to Section 7.2, entitled "Public Testimony," "[t]he allotted time for testimony may not be yielded, designated, or otherwise transferred to another person."

#### **6. Availability of remote testimony.**

Part of staff's April 10, 2014 recommendation regarding oral testimony was to provide remote testimony as a courtesy to the public. Commissioners expressed concern that many charter schools are not located on Oahu and that this recommendation could limit public input. Commissioners shared their experiences with oral testimony and that the opportunity to present oral testimony and have Commissioners ask questions is more effective than written testimony. Limiting access to provide oral testimony remotely limits access to the process for many schools. Staff provided clarification on its choice to state that the Commission "may" provide remote access versus

mandating remote access with the word “shall.” “May” was used so that the Commission would not violate its bylaws if it lost communication with a remote testifier. Staff currently makes every effort to provide remote access, but due to things like limitations in available technology, technical difficulties, and issues with multiples remote sites, there are times when it is not possible to provide remote access. A Commissioner suggested changing the term “may” to “would make every effort” to reflect current practice.

In line with the discussion at the Commission’s April Meeting, staff is suggesting that they Bylaws be amended to add a sentence to Section 7.2, entitled “Public Testimony,” stating “[t]he Commission will make every effort to allow interested persons the opportunity to present oral testimony remotely.”

#### **Other issues**

At the Commission’s April Meeting, a Commissioner also asked that staff develop procedures that include a courtesy response to any emailed submissions to acknowledge receipt. Staff will incorporate a courtesy response into its procedures.

In public testimony submitted for this agenda item West Hawaii Explorations Academy Co-Director and former Commissioner Curtis Muraoka suggests including in the Bylaws a space for “informational briefings,” which would be allowed at the Chairperson’s discretion. The reasons for these briefings are described in his testimony, included in your meeting packets. Staff believes that informational briefings or something similar would be beneficial, but did not have time to draft corresponding language. If the Committee holds the same belief, staff can work on drafting language to include these kinds of briefings in the Bylaws.

#### **IV. RECOMMENDATION**

Motion to the Commission:

**“Moved to direct staff to submit the amended Commission Bylaws, attached to this submittal dated July 24, 2014 as Exhibit A after incorporation of informational briefings as described in this submittal, to the Commission’s Deputy Attorney General for review and comment.**

**Exhibit A**

**Suggested Amendments to Commission's Bylaws (Redlined)**

**BYLAWS OF THE  
STATE PUBLIC CHARTER SCHOOL COMMISSION**

ARTICLE I

**PREAMBLE**

Section 1.1 Chapter 302D, Hawaii Revised Statutes, provides that there shall be established a State Public Charter School Commission (the “Commission”) with statewide chartering jurisdiction and authority whose mission is to authorize high-quality public charter schools throughout the State.

Section 1.2 Recognizing the Hawaiian language as the other official state language, the Commission shall also be known as ‘Aha Kula Ho‘āmana.

ARTICLE II

**COMMISSION MEMBERS**

Section 2.1 The Commission consists of nine (9) voting members appointed by the Hawaii State Board of Education, each of whose term shall be three (3) years, except as provided for in the initial appointment. If a member vacates his/her position mid-term, the Board of Education may appoint a replacement to serve out the remainder of the term.

Section 2.2 The members of the Commission shall serve without pay, but shall be entitled to reimbursement for necessary expenses, including travel and lodging expenses, while attending meetings of the Commission or when actually engaged in business relating to the work of the Commission.

Section 2.3 In addition to the nine (9) voting members, there shall be an ex-officio, non-voting member that currently serves, or formerly served, as a school director for a charter school in Hawaii (“Charter School Director Member”), who is appointed by the Chairperson and whose term shall be one (1) year. The Charter School Director Member will not be counted for quorum purposes. The Charter School Director Member may engage in discussions and deliberations, including any discussions and deliberations in Executive Session, but may not participate in decision-making by voting. The Charter School Director Member may be removed without cause and by a majority vote of the members of the Commission.

Section 2.4 In addition to the nine (9) voting members, there shall be an ex-officio, non-voting member that currently serves, or formerly served, as the governing board chairperson for a charter school in Hawaii (“Charter School Chairperson Member”), who is appointed by the Chairperson and whose term shall be one (1) year. The Charter School Director Member will not be counted for quorum purposes. The Charter School Chairperson Member may engage in discussions and deliberations, including any discussions and deliberations in Executive Session, but may not participate in decision-making by voting. The Charter School Chairperson Member may be removed without cause and by a majority vote of the members of the Commission.

ARTICLE III

**OFFICERS AND TERM OF OFFICE**

Section 3.1 The officers of the Commission shall be the Chairperson and Vice Chairperson.

Section 3.2 The Commission members shall select the Chairperson as provided by law.

Section 3.3 The Vice Chairperson shall be elected from among and by the Commission membership and shall serve as Interim Chairperson in the event the Chairperson's seat becomes vacant.

Section 3.4 The term of Chairperson and Vice Chairperson shall be for one (1) school year beginning July 1 and expiring on June 30.

Section 3.5 When terms of Chairperson and Vice Chairperson expire on June 30, an Interim Chairperson shall be appointed until the offices are elected by the Commission at the first meeting of the new school year and through the following order of succession, only appointing the qualified member if the preceding position in the list is vacant or the qualified member for that position is unavailable to serve as Interim Chairperson: **(1)** Previous Commission Chairperson, **(2)** Previous Commission Vice Chairperson, **(3)** Administration & Operations Committee Chairperson, **(4)** Performance & Accountability Committee Chairperson, **(5)** Applications Committee Chairperson, **(6)** Administration & Operations Committee Vice Chairperson, **(7)** Performance & Accountability Committee Vice Chairperson, **(8)** Applications Committee Vice Chairperson.

Section 3.6 A vacancy in the office of Chairperson or Vice Chairperson shall be filled by the Commission at the next regular or special meeting of the Commission to serve out the remainder of the term.

Section 3.7 If a vacancy in both the offices of Chairperson and Vice Chairperson occurs suddenly and simultaneously, an Interim Chairperson shall be appointed until the offices are elected by the Commission at the next meeting and through the following order of succession, only appointing the qualified member if the preceding position in the list is vacant or the qualified member for that position is unavailable to serve as Interim Chairperson: **(1)** Administration & Operations Committee Chairperson, **(2)** Performance & Accountability Committee Chairperson, **(3)** Applications Committee Chairperson, **(4)** Administration & Operations Committee Vice Chairperson, **(5)** Performance & Accountability Committee Vice Chairperson, **(6)** Applications Committee Vice Chairperson.

## ARTICLE IV

### DUTIES OF OFFICERS AND COMMISSION MEMBERS

Section 4.1 Chairperson. The Chairperson shall call meetings of the Commission and shall preside at all meetings of the full Commission. The Chairperson shall delegate assignments and duties to other Commission members, manage all matters of the Commission, and perform such other duties as are incident to the office or are required by the Commission or by law.

Section 4.2 Vice Chairperson. In the absence or unavailability of the Chairperson, the Vice Chairperson shall perform all of the duties of the Chairperson, and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairperson. The Vice Chairperson shall assist the Chairperson as the Chairperson deems necessary and shall have such powers and perform such other duties as from time to time may be prescribed by the Chairperson or the Commission.

Section 4.3 Commission Members. Members shall fulfill duties and responsibilities as provided by law and delegated by the Chairperson and shall comply with the Code of Conduct attached hereto as Exhibit A and with Conflicts of Interest provisions provided by law.

Section 4.4 Committee Chairpersons. Committee Chairpersons shall report activities and decisions of their respective committees to the full Commission and shall inform the Chairperson when items need to be placed on the agenda for the Commission general business meeting or special meeting.

Section 4.5 Committee Vice Chairpersons. Committee Vice Chairpersons shall perform all of the duties of the Committee Chairperson of their respective committees in the absence or unavailability of the Committee Chairperson.

## ARTICLE V

### COMMITTEES

Section 5.1 Standing Committees. The Commission shall have three (3) Standing Committees: (1) Administration & Operations, (2) Applications, (3) Performance & Accountability.

Section 5.2 Scope, Authority and Mission. The scope of authority and mission of each of the Commission's Standing Committees shall be memorialized in a committee charter. Each charter shall be developed, maintained, and recommended for approval to the Commission by the Administration & Operations Committee.

Section 5.3 Standing Committee Members and Officers. Each Standing Committee shall have a Committee Chairperson and a Committee Vice Chairperson. The Commission Chairperson shall nominate a slate of Chairperson and Vice Chairperson candidates for approval by the Commission. The Commission shall vote on the appointment of Standing Committee members. All members not appointed to a Standing Committee shall be non-voting, ex-officio members of that Standing Committee that will not be counted for quorum purposes.

Section 5.4 Voting. Standing Committees can take action or make a recommendation upon the concurrence of a simple majority of the Standing Committee.

Section 5.5 Advisors/Consultants to Committees. Each committee may consult with or be advised by non-Commission members, as determined appropriate by the Committee Chairperson.

Section 5.6 Ad Hoc Committees. The Commission Chairperson may, as circumstances warrant, authorize the creation of an ad hoc committee for a discrete and specific purpose of interest to the Commission and shall appoint all members and officers of such ad hoc committee(s). The Commission shall approve the charge of any ad hoc committee. Such committee may be created for a definite time period or until its specific function has been completed, but shall not exist longer than one (1) year from the date of authorization unless specifically authorized by its charge.

Section 5.7 Investigative Committees. The Commission, as provided by law, may designate two or more members, but less than the number of members that would constitute a quorum of the Commission, to investigate matters concerning Commission business. The members designated by the Commission are required to report their resulting findings and recommendations to the entire Commission at a properly noticed meeting.

Section 5.8 Committee Reports. Committees may submit written reports in advance of any regular meeting in lieu of an oral report unless the report contains action items.

## ARTICLE VI

### MEETINGS OF THE COMMISSION

Section 6.1 General Business Meetings. The Commission shall meet regularly on the second Thursday of each month, provided, however that any general business meeting date, time, or location may be changed or canceled by the Commission Chairperson, subject to statutory notice requirements.

Section 6.2 Special Meetings. The Commission Chairperson may call a special meeting of the Commission at any time, subject to statutory notice requirements.

Section 6.3 Committee Meetings. All committees shall meet at the discretion of the Committee Chairperson. The Committee Chairperson may change or cancel any committee meeting date, time, or location, subject to statutory notice requirements.

Section 6.4 Meeting Agendas. The ~~g~~General ~~b~~Business ~~m~~Meeting agenda and committee agendas shall be promulgated-prepared by the Commission Executive Director in consultation with the Chairperson, and with input, as necessary, from the Committee Chairpersons and members. The Chairperson will have final approval of any general business meeting agenda and the Committee Chairperson will have final approval of the respective committee agenda.

Section 6.5 Executive Session. An affirmative vote, taken at an open meeting, of ~~two~~ thirds of the members present shall be required to convene an executive session; provided the

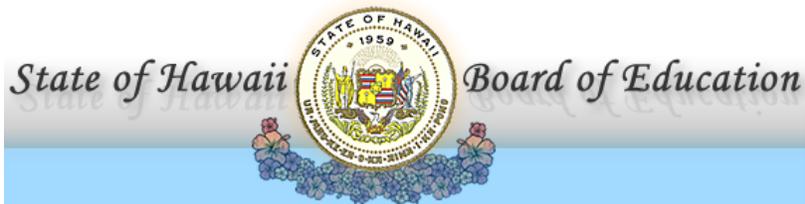
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**Exhibit B**

**BOE's Public Testimony Policy**

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## Submit Testimony

Persons wishing to offer comments should submit testimony at least 24 hours prior to the meeting indicating the following information:

- Testifier's name with position/title and organization if applicable;
- The date and time of the meeting which the comments are directed to; and
- Agenda item reference.

While every effort will be made to copy, organize, and collate all testimony received, materials received on the day of the meeting or improperly identified, may be distributed after the meeting.

Submit written testimony in **ONE** of the following ways:

PAPER: One copy to the Board of Education office at P.O. Box 2360, Honolulu, Hawaii 96813;

FAX: (808) 586-3433

EMAIL: [boe\\_hawaii@notes.k12.hi.us](mailto:boe_hawaii@notes.k12.hi.us)

Testimony submitted will be placed on the Board of Education website with the minutes of the respective meeting. This public posting of testimony on the website should be considered when including personal information in your testimony.