

FINAL DECISION OF STATE OF HAWAII BOARD OF EDUCATION

Appeal No. 11-23: Appeal by Laupahoehoe Community Public Charter School from the Charter School Review Panel's Denial of Amendment to Detailed Implementation Plan Submitted November 7, 2011

Appeal No. 11-24: Appeal by Laupahoehoe Community Public Charter School from the Charter School Review Panel's Revocation of Charter

Appellant: Laupahoehoe Community Public Charter School

Appeal Meeting: January 17, 2012

Board Members Present and Voting: Brian De Lima
Jim Williams
Charlene Cuaresma
Wesley Lo
Nancy Budd
Kimberly Gennaula

INTRODUCTION

Laupahoehoe Community Public Charter School (the "***Appellant***") filed two appeals with the State of Hawaii Board of Education (the "***Board***") which were brought before the Board in proceedings conducted pursuant to Hawaii Revised Statutes § 302B-3.5 and Board of Education Policy 8100, wherein the Appellant requested a review of **(1)** the Charter School Review Panel's (the "***CSRP***") denial of Appellant's amendment to its Detailed Implementation Plan ("***DIP***"), Appeal No. 11-23, and **(2)** the CSRP's revocation of Appellant's charter, Appeal No. 11-24.

Due to the related facts and issues of the appeals, the Board has consolidated the appeals and shall address them together in this decision.

FINDINGS OF FACT

1. The Appellant's DIP submitted August 23, 2010, revised February 17, 2011 and May 2, 2011 (the "***Final DIP***"), stated that the Appellant will conduct the local school board election by September 2011.
2. By letter dated May 31, 2011, the CSRP notified the Appellant that its DIP was not approved and informed Appellant that pursuant to Hawaii Revised Statutes ("***HRS***") § 302B-3.5, the Appellant had a right to appeal within twenty-one calendar days of receipt of the denial to the Board.

3. The Appellant, by letter to the Board dated June 19, 2011, appealed the CSRP's decision to deny its charter application which was received by the Board on June 20, 2011 ("**Appeal No. 11-04**").
4. After reviewing the record, and Appellant's written and oral argument, the Board issued its final written decision on August 3, 2011 reversing the CSRP's denial of the Appellant's charter application and granting the Appellant's request for issuance of a charter based in part on a determination that the CSRP's interpretation of HRS § 302B-6(c)(3) was clearly erroneous because HRS § 302B-6(c)(3) requires that the application and the proposed DIP be approved by "a majority of the votes cast by existing administrative, support, teaching personnel and parents of students at the proposed conversion charter school" and it does not require that the application and the proposed DIP be approved by a separate majority of each participant group. As the Appellant obtained the approval of a majority of the votes cast, the Appellant met the requirements of the statute ("**Board's August 3, 2011 Decision**").
5. By letter dated August 23, 2011, the CSRP advised the Appellant that

[b]efore opening your doors for the 2012-13 school year, the Panel requires that a set of assurances (see attached Assurances Framework) be given. Once the Assurances Framework document is signed by the LSB [local school board] Chair and returned to the Panel, a visiting team from the Panel will conduct a site visit to verify that the assurances have been met. Based upon the recommendation of the visiting team, the Chair of the CSRP will sign the Assurances Framework document.
6. By memorandum dated September 6, 2011, the CSRP reiterated to the Appellant that the assurances must be met before starting the school.
7. The CSRP's Assurances Framework does not state a date certain by which a charter school must hold its local school board elections, but it does state that "[t]he school shall duly elect and submit LSB [local school board] members' names, offices held, and contact information (pre-opening & ongoing)."
8. At the CSRP's General Meeting on October 8, 2011, the CSRP passed a motion requiring that the Appellant, within ten calendar days of the date of a letter to the Appellant, provide assurances that they will hold the local school board elections in accordance with HRS § 302B-7 no later than November 21, 2011.
9. As a result of that meeting, by letter dated October 14, 2011, the CSRP informed the Appellant that the local school board election must be held no later than November 21, 2011, in compliance with HRS § 302B-7 and requested that the Appellant provide written assurances in this regard to the CSRP no later than October 24, 2011.

10. The cumulative effect of the duration of **(1)** the delays by the CSRP in acting on the charter application and **(2)** the appeals process and decision of Appeal No. 11-04, was that it did not allow the Appellant to transition to charter school governance during the 2011-12 school year and thereby hold an election for the local school board no later than November 21, 2011 as instructed by the CSRP.
11. By letter dated October 24, 2011, the Appellant informed the CSRP that it cannot meet the November 21, 2011 date to complete the local school board election because only one of the participant groups required to be represented in HRS § 302B-7 exist at that time and, therefore, the Appellant will be submitting a minor amendment to the DIP to the Charter School Administrative Office ("**CSAO**"), with a copy sent to the CSRP, modifying the date for the local school board election to be held on or before September 30, 2012.
12. The amended date of September 30, 2012 proposed for the local school board election is consistent with the September 2011 date stated in the Final DIP which was effectively approved by the Board's August 3, 2011 Decision to reverse the CSRP's denial of the Appellant charter application.
13. According to the CSRP's Procedure for Submitting Amendments to Detailed Implementation Plan, dated July 2009 ("**DIP Amendment Procedures**"), and citing HRS § 302B-3(i)(3), amendments to a DIP that are not significant only require notifying the CSAO of the amendment to the DIP, but amendments to a DIP that are significant require a seven-step process beginning with a local school board representative and the charter school administrator consulting with the CSAO about the need for and format of the proposed amendment.
14. HRS § 302B-3(i)(3) provides that the CSRP's powers and duties shall include the ability to "[r]eview, approve, or deny significant amendments to detailed implementation plans to maximize the school's financial and academic success, long-term organizational viability, and accountability. Charter schools that are denied a significant amendment to their detailed implementation plan may appeal to the board for a final decision pursuant to section 302B-3.5."
15. The CSRP's DIP Amendment Procedure does not include a process for determining whether or not a DIP amendment is significant.
16. Accordingly, the CSRP's DIP Amendment Procedure for determining whether or not a DIP amendment is significant is unclear.
17. By letter dated November 7, 2011, the Appellant submitted its amendment to the DIP to the CSAO with copy to the CSRP which stated that the local school board election was to be conducted on or before September 30, 2012 (the "**November 7, 2011 DIP Amendment Submittal**").

18. The Appellant has never received a response to the November 7, 2011 DIP Amendment Submittal from either the CSAO or the CSRP.

19. At a CSRP General Meeting held on November 10, 2011, the CSRP passed a motion determining that the Appellant **(1)** had not met the requirements of its DIP or the CSRP's directive regarding holding conversion charter school local school board elections as stated in the CSRP's letter dated October 14, 2011; and **(2)** "the current principal, instructional staff, support staff, parents and students of Laupahoe School qualify as the stakeholder groups under HRS 302, B-7 for purposes of an election of a conversion charter school LSB [local school board]." The CSRP's motion also determined that the directives of the CSRP in the letter of October 14, 2011 stand and if the conditions of the October 14, 2011 letter are not met, the CSRP will proceed with additional corrective actions, up to and including the initiation of probation/revocation proceedings; and if the CSRP determines that the requirements of the Assurances Framework will likely not be met for July 1, 2012 conversion charter school opening, Laupahoe School will continue to operate as a State of Hawaii Department of Education (the **"Department of Education"**) school.

20. HRS § 302B-7(a) states that

[a]ll local school boards . . . shall be composed of, at a minimum, one representative from each of the following participant groups

- (1) Principals;
- (2) Instructional staff members selected by the school instructional staff;
- (3) Support staff selected by the support staff of the school;
- (4) Parents of students attending the school selected by the parents of the school;
- (5) Student body representatives selected by the students of the school; and
- (6) The community at large.

21. HRS § 302B-3 defines a "local school board" as a the

autonomous governing body of a charter school that:

- (1) Receives the charter and is responsible for the financial and academic viability of the charter school and implementation of the charter;
- (2) Possesses the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws; and
- (3) Has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of their employees.

22. An "interim local school board" is the governing body of a newly established charter school until the "local school board" is established according to law.

23. By letter dated November 14, 2011, the CSRP informed the Appellant that, at its meeting on November 10, 2011, the CSRP had reviewed and discussed the Appellant's memo dated October 24, 2011 and determined that it would notify the Appellant that it must conduct the local school board election "no later than November 21, 2011" otherwise "it is unlikely the CSRP will find that the requirements of its Assurances Framework will be met for a July 1, 2012 conversion charter school opening, in which case Laupahoehoe School will continue to operate as a DOE [Department of Education] school."

24. On November 28, 2011, the Board received the Appellant's appeal of the CSRP's denial of amendment to the DIP submitted on November 7, 2011 (***Appeal No. 11-23***).

25. At a CSRP General Meeting held on December 8, 2011, the CSRP determined that the Appellant had not met the requirements for opening the school and likely will not meet the required Assurances Framework due to its failure to hold the local school board election by November 21, 2011. Therefore, the conversion of the charter school will not commence for the 2012-13 school year.

26. The CSRP's actions at its meetings of November 10, 2011 and December 8, 2011 constitute a denial of the proposed amendment to the DIP changing the Appellant's local school board election date from by September 2011 to on or before September 30, 2012.

27. The CSRP's decision to delay opening of the school was based on the Appellant's failure to hold the local school board election by November 21, 2011.

28. By letter dated December 14, 2011, the CSRP notified the Appellant that the Appellant could not commence operations for the 2012-13 school year and that the Appellant is not to proceed with plans to begin hiring staff for the charter school.

29. The delay in the commencement of operations of the conversion of the charter school would mean the loss of the remaining \$250,000 of the conversion charter school planning and implementation grant awarded to the Appellant by the United States Department of Education.

30. On December 29, 2011, the Board received Appellant's appeal of the CSRP's revocation of its charter (***Appeal No. 11-24***).

31. The appeals were reviewed by the Board on Tuesday, January 17, 2012 where the Appellant and the CSRP provided the Board with written argument, presented oral argument and answered questions of the Board at an open meeting.

32. The Appellant does not have the requisite participant groups in place to hold the local school board election pursuant to HRS § 302B-7.

33. The Appellant has assured both the CSRP and the Board that it will meet all requirements of the law and of the Assurances Framework, including holding the local school board election as soon as the respective participant groups are in place, in preparation for operating as a charter school for the 2012-13 school year.

APPLICABLE LAW AND AUTHORITY

According to HRS § 302B-3.5, “the [B]oard [of Education] shall review an appeal and issue a final decision within sixty calendar days of the filing of the appeal.” The appeal is filed pursuant to Hawaii Administrative Rules § 8-2-2. The appeal process is administered according to Board Policy 8100. The Board shall review the record on appeal to determine if the CSRP’s decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or the CSRP’s procedure for arriving at the decision was arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

CONCLUSIONS OF LAW

1. Based on **(1)** the CSRP’s unclear process for determining a significant DIP amendment, **(2)** the Appellant’s proposed DIP amendment to change the local school board election date from by September 2011 to on or before September 30, 2012 submitted by memo dated October 24, 2011 to the CSRP; **(3)** the CSRP’s review and discussion of such memo on November 10, 2011 which included the CSRP’s directive to the Appellant to conduct the local school board election no later than November 21, 2011; and **(4)** the subsequent CSRP decision on December 8, 2011 to delay the opening of the school based on the Appellant’s failure to hold the local school board election by November 21, 2011, the Board concludes that the CSRP denied the Appellant’s proposed DIP amendment to change the Appellant’s local school board election date from by September 2011 to on or before September 30, 2012.

2. The Board has jurisdiction to review the Appellant’s appeal and issue a final decision based on applicable law, HRS §§ 302B-3(i)(3) and 302B-3.5.

3. Since Appeal No. 11-24 is based on the delay of Appellant’s opening of the conversion charter school which is due to the Appellant’s failure to hold the local school board election by November 21, 2011 and these are issues determined in Appeal No. 11-23, the Board concludes that it does not need to decide Appeal No. 11-24, as it is moot.

4. HRS § 302B-7 sets forth the participant groups which make up a local school board.
5. HRS § 302B-7 does not state when a local school board election must be held.
6. HRS § 302B-7 is devoid of any requirement that the Appellant hold their local school board election by November 21, 2011.
7. A "local school board" is the governing body of a charter school, and an "interim local school board" is the governing body of a new charter school until the "local school board" is established according to law.
8. The CSRP's November 20, 2011 determination that the Laupahoehoe School's current principal, instructional staff, support staff, parents and students of Laupahoehoe School qualify as the stakeholder groups under HRS § 302B-7 for purposes of an election of a conversion charter school local school board is not supported by law, and therefore was clearly erroneous.
9. Since the Appellant did not have the requisite stakeholder groups in place to hold the local school board election pursuant to HRS § 302B-7 and, in this case, could not have those requisite stakeholder groups in place because the school continues to be operated as a Department of Education school, the Appellant could not practicably hold an election to create the local school board to govern the charter school on November 21, 2011.
10. The CSRP's decision to require that the Appellant's local school board elections be held no later than November 21, 2011 was clearly erroneous.

DECISION

After hearing all testimony and reviewing the evidence of record, the Board finds that the CSRP's denial of Appellant's amendment to the DIP stating that it will hold local school board elections on or before September 30, 2012 is reversed and the Final DIP is so amended. To the extent permitted by law and consistent with the CSRP's duties, the Board instructs the CSRP and the Department of Education, and encourages the CSAO, to use their best efforts to cooperate with the Appellant in the process of opening the charter school for the 2012-13 school year.

This decision was unanimously adopted by all Board members present and voting.

Honolulu, Hawaii, this 24th day of January, 2012.

BOARD OF EDUCATION

A handwritten signature in cursive script, appearing to read "B De Lima", written over a horizontal line.

Brian De Lima, Vice-Chairperson

RIGHT TO APPEAL

The Appellant has the right to appeal to a court of competent jurisdiction within thirty (30) days of receipt of this decision.

NOTICE OF FINAL DECISION OF THE STATE OF HAWAII BOARD OF EDUCATION

RE: APPEAL NOS. 11-23 and 11-24 Laupahoehoe Community Public Charter School

Enclosed herewith is the final decision of the State of Hawaii Board of Education.

CERTIFICATE OF SERVICE

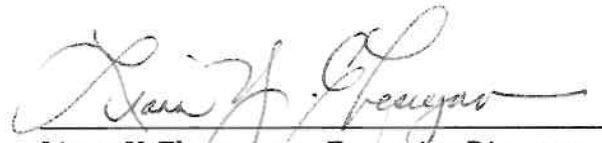
This is to certify that on January 24, 2012, the above notice and attached decision was mailed via certified mail return receipt requested postage prepaid to:

Nicolette Barton-Hubbard, President
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