



Board of Education  
P.O. Box 2360  
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April 6, 2020

Dear Chair Payne, Vice Chair De Lima, and members of the Board of Education:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes to express concern about the ability of the public to participate in the virtual Board of Education ("BOE") meetings scheduled during the COVID-19 crisis.

In light of the COVID-19 pandemic, the ACLU of Hawai'i supports the use of virtual meetings. The Governor's Supplementary Proclamation ("Supplemental Proclamation") strongly encourages the use of virtual meetings for the public meetings of public agencies.<sup>1</sup> However, the BOE April 2, 2020, virtual general business meeting allowed prior written testimony but no oral, same-day testimony.<sup>2</sup> This includes both verbally speaking on the WebEx call as well as submitting writing comments in the chat function. Previous in-person BOE meetings have allowed oral testimony.<sup>3</sup>

The Governor's Supplementary Proclamation, while allowing some flexibility to boards to conduct meetings remotely, is silent on the use of live testimony. Supplemental Proclamation, Section 4, Part C ("Boards shall consider reasonable measures to allow public participation consistent with social distancing practices, such as providing notice of meetings, allowing submission of written testimony on agendized items, live streaming meetings, and posting minutes of meetings online.").

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<sup>1</sup> Office of the Governor "Supplementary Proclamation," March 16, 2020, [https://governor.hawaii.gov/wp-content/uploads/2020/03/2003109-ATG\\_COVID-19-Supplementary-Proclamation-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/03/2003109-ATG_COVID-19-Supplementary-Proclamation-signed.pdf).

<sup>2</sup> Board of Education "Notice of Meeting," April 2, 2020 Virtual Meeting, <http://boe.hawaii.gov/Meetings/Notices/Pages/April-2%2c-2020-General-Business-Meeting-%28Virtual%29.aspx> ("Written testimony may be submitted on any agenda item. No oral testimony will be accepted. Testimony should be related to an item that is on the agenda.").

<sup>3</sup> Board of Education "Notice of Meeting," February 20, 2020, <http://boe.hawaii.gov/Meetings/Notices/Pages/February-20%2c-2020-General-Business-Meeting.aspx> ("Written testimony may be submitted on any agenda item. Oral testimony will be accepted at the meeting. Each individual is allotted four (4) minutes, or an amount of time otherwise designated by the Chairperson, to provide oral testimony to the Board.").

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Public comment and questions are important to meaningful public participation during *public* BOE meetings. Given the rapidly changing nature of education services in the state, and the equity and operational issues arising from COVID-19 responses, facilitating public engagements is particularly important at this time. The Department of Education has given directives to teachers to use the same WebEx platform as part of classroom instruction. If such format and platform is good enough for your classrooms, they should be good enough for the BOE meetings.

Because of these factors, we suggest the BOE allow oral or live testimony at future meetings. We appreciate your attention to this matter.

Sincerely,

Rae Shih  
Legal Fellow  
ACLU of Hawai'i

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for 50 years.*

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