



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • TTY (808) 586-8162

AMENDED AGENDA

Disability and Communication Access Board General Meeting

Location: Virtual Location Via Zoom
Date: August 13, 2020
Time: 11:00 a.m. to 1:00 p.m.

To join by PC or mobile device, click on the link below or copy and paste it into your browser window: <https://zoom.us/j/92598565316?pwd=bUFyYVBmVlg1UjdGMWJweHh5UWI2QT09> and enter Meeting ID: 925 9856 5316.

To join by phone, dial 1 253 215 8782 and enter Meeting ID: 925 9856 5316.

To join by Relay Conference Captioning, click on the link below:
<https://www.captionedtext.com/client/event.aspx?EventID=4536586&Customer...>

- I. Call to Order
- II. Roll Call
- III. Approval of Meeting Minutes of June 25, 2020
- IV. Executive Director's Report
 - Budget
 - Personnel
 - Other Administrative Issues - Update
- V. Committee Reports
 - A. Executive Committee (No report)
 - B. Legislative Committee (No report)
 - C. Standing Committee on Communication Access
 - Hawaii Administrative Rules, Title 11, Chapter 218, "Communication Access Services for Deaf, Hard of Hearing, and Deaf-Blind" – Public Hearing, August 15, 2019
 - Recommended Fee Schedule and Interpreter Handbook
 - Other Communication Activities from the Plan of Action
 - D. Standing Committee on Facility Access
 - Document Reviews and Database – Update
 - Other Facility Activities from the Plan of Action

- E. Standing Committee on Parking
 - Parking Program Issuance and Statistics – Update
 - Public Education Quality Assurance and Outreach Efforts – Update
 - Implementation of Act 87 (2019) and Hawaii Administrative Rules Title 11, Chapter 219, “Parking for Persons with Disabilities”
 - Other Parking Activities from the Plan of Action
- F. Special Parent Information Network
 - Update of Activities from the Plan of Action
- VI. Old Business
 - A. ADA Coordination Update
 - B. Nominating Committee Report and Election of Officers (refer to report of the Nominating Committee)
- VII. New Business
 - A. Approval of Plan of Action for Fiscal Year 2020-2021
 - B. Appointment of Committee Chairs
 - C. Board Meeting Schedule for Fiscal Year 2020-2021
 - D. Rule on Time Limits on Public Testimonies/Comments
 - E. Open Forum – Items from Last Meeting
 - F. Review of Executive Director
- VIII. Open Forum
- IX. Announcement of Next Meeting
- X. Adjournment

Board packets are available for inspection in the DCAB office, and by mail or by email upon request.

If you need an auxiliary aid/service or other accommodation due to a disability, contact Cindy Omura at (808) 586-8121 or dcab@doh.hawaii.gov as soon as possible, preferably by August 10, 2020. If a response is received after August 10, 2020, we will try to obtain the auxiliary aid/service or accommodation, but we cannot guarantee that the request will be fulfilled. Video Remote Interpreting and Relay Conference Captioning will be provided.

Upon request, this notice is available in alternative formats such as large print, Braille, or electronic copy.



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MINUTES

Disability and Communication Access Board General Meeting

Location: Virtual Location Via Zoom

Date: August 13, 2020

Time: 11:00 a.m. to 1:00 p.m.

PRESENT: Pauline Aughe, Chairperson; Anthony Akamine, Rosanna Daniel-Kanetake, Violet Horvath, Nikki Kepo'o, Marie Kimmey, Summer Kozai, Phyllis Meighen, Michael Nojima, Gerald Ohta, Board Members; Kirby Shaw, Kristine Pagano, Duane Buote, Bryan Mick, Colin Whited, Sue Radcliffe, Kamaile Hopfe, Cindy Omura, Staff

ABSENT: Ron Awa, Scott Fleming, Dean Georgiev, Gerald Isobe, Justin Tokioka, Amy Tsuji-Jones, Board Members

GUEST: Donald Sakamoto

SIGN LANGUAGE

INTERPRETERS: Mala Arkin and Michele Morris

- I. The meeting was called to order by Chairperson Pauline Aughe at 11:02 a.m.
- II. Roll was taken, and staff and guest introduced themselves.
- III. Approval of June 25, 2020 Meeting Minutes

Kirby Shaw read an additional comment to the draft June 25, 2020 minutes from Peter Fritz, who was in attendance at the June 25, 2020. The comment stated "Guest Peter Fritz asked whether the Board adopted a rule per Hawaii Revised Statutes Section 92-3 on oral testimony time limits at board meetings because the statute clearly requires that the Board take such action and he could find no record of the Board having voted on such a rule. He noted that while the Office of Information Practices says it is permissible, the plain language of the law requires that it be adopted by the Board and cannot be unilaterally imposed by the Executive Director." The draft minutes will be amended and approved with the additional comment (M/S/P Horvath/Akamine).

(NOTE: The minutes were written in the order the items were shown on the agenda, not as they were discussed at the meeting.)

IV. Executive Director's Report

Kirby Shaw informed Board members that DCAB has a ten percent reduction in place right now. DCAB was notified that more reductions may be coming down the road. Kristine Pagano reported on the budget noted that for the current fiscal year only the first quarter monies have been released and allocated to the program. She reported that the ten percent restriction applies to all means of funding.

Kirby Shaw reported that staff sought an exception to the hiring freeze to request to fill the vacant Communication Access Specialist position through the administration; that did not pass. The budget bill, Senate Bill 126 which passed, included the position, but with no funding. DCAB staff will schedule a meeting with the Director of Health to ask to obtain funding for this vital position. The Communication Access Specialist position handles the testing of sign language interpreters, issuance of the Hawaii State Sign Language Interpreting Credential, amendments to the administrative rules, Continuing Education Unit program for sign language interpreters and provides technical assistance to State agencies on the use of interpreters and communication access providers.

Kristine Pagano informed Board members that DCAB staff assumed the responsibility as the Department of Health (DOH) liaison for the Kamamalu Building and is working on an emergency preparedness plan for the building.

V. Committee Reports

A. Executive Committee

The Committee did not meet, and no report was provided.

B. Legislative Committee

The Committee did not meet, and no report was provided.

C. Standing Committee on Communication Access

Board member Nikki Kepo'o reported for Committee Chairperson Justin Tokioka. She reported that the Hawaii Administrative Rules (HAR), Title 11, Chapter 218, "Communication Access Services for Deaf, Hard of Hearing, and Deaf-Blind" was signed by Governor Ige and delivered to the Lieutenant Governor's Office on August 4, 2020. The rules take effective ten days after filing with Office of the Lieutenant Governor.

She reported on the changes to the Recommended Fee Schedule which included increments for years of certification, increments for years interpreting professionally in Hawaii, increments for years of education, and a rate calculator. Input to the Recommended Fee Schedule was provided from the interpreter community, deaf community, State agencies, University of Hawaii system, and Vocational Rehabilitation, etc. She explained the Committee emphasized that it is a recommended fee schedule, not a must use; a lot of the terminology from the rules were carried over into this separate document. Colin Whited reported that at the January DCAB meeting the Board voted to approve the interim fee schedule, and the only revision to the schedule is a

chart. The Recommended Fee Schedule was taken out of the administrative rules and now that it is a standalone document, there is more flexibility which was one of the concerns from the interpreting community. The Recommended Fee Schedule was approved by the Board (M/S/P Kimmey/Akamine).

The Committee has been working with the Dendros Group to finalize the Manual on Hiring Sign Language Interpreters. The Manual is to assist State agencies and will be made available when the administrative rules take effect.

The Hawaii Quality Assurance System (HQAS) Test performances of three interpreters were evaluated; they all were issued an HQAS credential. One received a Level IV, one received a Level III, and one received a Level II. There are currently thirty-one interpreters enrolled in the continuing education program. A total of forty interpreters (26 HQAS, 14 RID) completed the Code of Professional Conduct Verification form and submitted the Hawaii State Sign Language Interpreter Credential Application.

D. Standing Committee on Facility Access

Committee Chairperson Marie Kimmey reported that the Committee has not conducted a meeting since the last DCAB Board meeting. The Facility Access Unit (FAU) conducted 609 document reviews between April 1, 2020 and August 12, 2020 of which 278 were new submittals. During this period a total of \$533,822 in review fees were processed. The FAU distributed six "Access E-Bulletins" during the same time period and has continued to provide technical assistance to the design community. The next Committee meeting will be scheduled prior to the September Board meeting.

E. Standing Committee on Parking

Committee Chairperson Summer Kozai reported that the Committee met on August 11, 2020. She reported that Governor Ige suspended the expiration dates on parking placards until September 30, 2020. The fourth quarter statistics (April-June 2020), were 3,668 placards and 223 special license plates issued. Of the placards, 703 were temporary and 2,964 were long term placards. Of the long term placards, 1,830 were renewals issued by DCAB. The renewal rate was only thirty seven percent; that rate was skewed by the suspension of expiration dates.

She reported that the Committee further discussed three efforts that staff are pursuing: 1) subscribing to a service such as Constant Contact to inform permittees that their parking placards would expire soon. DCAB obtained the email addresses of approximately ten percent of the permittees whose placards are due to expire, with the percentage steadily rising; 2) surveying permittees regarding their experiences in finding and using accessible parking spaces in order to help the Committee to pursue appropriate solutions to challenges that people encounter; and 3) a method where the public can report a vehicle with a parking permit incorrectly using the permit or the accessible parking space, such as parking in the access aisle. Staff can follow up with the permittee and provide educational materials.

The HAR, Title 11, Chapter 219, "Parking for Persons with Disabilities" were reviewed by the Deputy Attorney General and were forwarded to the Legislative Reference Bureau for review. Once reviewed, the rules will be forwarded to the Governor for approval to schedule public hearings.

The effort to retrieve placards from deceased permittees has resumed. A request was submitted to the vendor for active permittees and this will be cross referenced with Vital Records.

F. Special Parent Information Network (SPIN)

Board member Phyllis Meighen reported on SPIN's activities. SPIN has been active since June preparing to shift the April in-person conference to a virtual conference scheduled for Saturday, October 17, 2020 featuring nine workshops (in three timeslots), a plenary presentation, exhibitor visiting rooms, and interactive Question and Answer Sessions. The conference is called "SPIN 2020 – Home Edition." The proceedings will be taped, so that parents and interested professionals can easily access or re-access the content at a convenient time. SPIN staff are building a new SPIN Conference website to house the videos and written materials. She reported that SPIN staff was given access to teacher training materials and departmental memos regarding the provision of special education services upon the reopening of school for the first semester of this school year and in return SPIN will develop parent-friendly infographics to simplify the procedures for parents of children with Individual Education Programs as well as general education staff. SPIN staff is working to produce infographics on key topics such as definitions of terms (online learning, distance learning, virtual learning, asynchronous learning, etc.), COVID-19 Impact (compensatory) Services, Extended School Year Services and parent tips for assisting with distance learning. She also reported that SPIN is also helping to plan for the first virtual Footsteps to Transition Fair for middle and high school youth with disabilities and their families to be held on Saturday, October 24, 2020. The planning team is taking advantage of the ability for all islands and districts to access the online Fair by creating unique resource 'rooms' for each district.

VI. Old Business

A. ADA Coordination Update

Colin Whited provided information on technical assistance to various State departments/agencies on the ADA. One example is If someone cannot wear a face covering because of a disability, do I have to let them in without one? And the answer is No. While public health mandates do not replace the ADA, the ADA does not override public health mandates. Both must be considered. Modifications or accommodations do not have to be made if it would create a direct threat to the health and safety of others or result in a fundamental alteration. Instead of allowing someone without a face covering into a building, entities can offer a reasonable modification to provide options to individuals with disabilities, engage in an interactive process to collaboratively problem solve, and/or identify the best way to accommodate the individual with a disability.

Chairperson Pauline Aughe asked about the effect on persons who cannot wear a face covering because of a disability. Kirby Shaw said that the Centers for Disease Control and Prevention (CDC) recommends that everyone wear a face covering in certain situations with an exception for children age two and under, people who have difficulty breathing with a face covering and individuals who are unable to independently remove the face covering. On the other hand, the U.S. Department of Justice (DOJ) says that it is not discriminatory under the ADA if an entity has a "no mask, no entry" policy based on concerns that individuals who do not wear a face covering pose a direct threat to the health and safety of others, and the policy is based on current scientific or medical knowledge. However, the entity is required to make an alternate arrangement to serve the person who is excluded to the extent that it does not fundamentally alter the nature of the program, service, or activity that the entity offers. Say a grocery store with close quarters, the assumption is that everyone has coronavirus, so if a person does not wear a mask, the person cannot enter. What can the store do to assist? Provide curbside delivery, online ordering, and/or call by phone and someone can take groceries to the car or deliver them to the home. But the store cannot just exclude a person with a disability without trying to serve the person by offering an alternate arrangement. That's the obligation. He said that DCAB can assist on a case-by-case basis; this is what can be done without having to file a complaint or this is another way to resolve the problem.

Vigorous discussion ensued over the role that DCAB should play in providing guidance to persons with disabilities and businesses regarding their obligations to serve persons with disabilities who cannot wear a face covering. Chairperson Pauline Aughe encouraged DCAB to "get ahead of the game" instead having to go back to fix things.

Board member Phyllis Meighen suggested that during these COVID times DCAB could put out frequently asked questions (FAQ) with answers that could be easily accessed. Kirby Shaw said that a webpage with the FAQs could be added to DCAB's website. Board member Phyllis Meighen suggested calling the webpage, "Access During COVID," and putting ads in the paper to build awareness. Chairperson Pauline Aughe suggested that staff could also put something together for persons with disabilities to carry with them in the event that they are confronted at a store, and they could present the FAQ. Board member Phyllis Meighen said that it is important because "we are in this for the long haul."

Kirby Shaw said that more information would be helpful to people with disabilities and to those entities with a "no mask, no entry" policy to inform them of their obligation to help people who cannot wear face coverings.

Colin Whited added that DCAB hosted a webinar on face coverings and noted DCAB's technical assistance is consistent with what was presented.

B. Nominating Committee Report and Election of Officers

Kirby Shaw reported that the Nominating Committee composed of Bill Bow, Summer Kozai and Violet Horvath met and nominated Pauline Aughe as Chairperson and Nikki Kepo'o as Vice Chairperson. There were no

nominations from the floor. The slate of officers was approved as recommended (M/S/P Meighen/Akamine).

VII. New Business

A. Approval of Plan of Action for Fiscal Year 2020-2021

Kirby Shaw reported that the Board met earlier today and discussed the Proposed Plan of Action for Fiscal Year 2020-2021. The Board voted to approve the Plan of Action as amended with the following two new objectives added under the Parking section:

8.3.2 Develop and maintain methods for members of the public to report the use of an expired disability parking placard to obtain parking privileges or a vehicle parked in an access aisle while displaying a disability parking placard or special license plates.

8.3.3 Staff will provide information to permittees on the proper use of disability parking permits and accessible parking spaces and access aisles when a report of improper use is received.

(M/S/P Horvath/Daniel-Kanetake)

B. Appointment of Committee Chairs

Chairperson Pauline Aughe announced that she appointed the current Committee Chairs to continue serving as Committee Chairs for the next fiscal year. The Committee Chairs are Marie Kimmey, Standing Committee on Facility Access; Rosanna Daniel-Kanetake, Legislative Committee; Summer Kozai, Standing Committee on Parking; and Amy Tsuji-Jones as Interim Chair for the Standing Committee on Communication Access.

C. Board Meeting Schedule for Fiscal Year 2020-2021

Regular meetings will continue to be held on the third Thursday of every other month at 11:00 a.m.

D. Rule on Time Limits on Public Testimonies/Comments

Kirby Shaw reported that he contacted the Office of Information Practices (OIP) which stated that the Board must adopt a rule per Hawaii Revised Statutes 92-3 to establish a time limitation on public testimony or comments on meeting agenda items. He read aloud the following wording to start discussion on a rule:

Time Limitation on Public Testimony/Comment Rule: For Disability and Communication Access Board meetings that are subject to the Sunshine Law, testimony or comment presented by members of the public shall be limited to two minutes per agenda item, except that additional time may be provided for persons who have a communication disability.

Vigorous discussion ensued with the following questions raised and viewpoints made by Board members:

- Does the rule need to specify time limits?
- If additional time is afforded to individuals with a communication access disability, how much time should be afforded?
- If the Board decides to grant additional time, include an affirmative "shall" versus a permissive "may" in the rule.
- Should persons with communication access disabilities be required to indicate a need for additional time in advance of the meeting?
- The rule should mention that time limitations are imposed because of time constraints to conduct Board business so people understand that the Board is not being punitive.
- Should the rule mention that persons providing oral testimony have three minutes and not mention the Board's discretion to provide additional time for persons with communication access disabilities?
- Should the rule notify people that they have the option of submitting their testimony orally or in writing?
- Should the rule include the following sentence: "At the discretion of the Board, more time shall be provided for persons who have a communication disability?"
- Everyone has three minutes, but if someone is having difficulty, use discretion to allow the person to complete the person's thought.
- The rule should read: "Due to meeting time constraints, comments by the public shall be limited to three minutes per agenda item. At the discretion of the Board, more time may be provided."

At the conclusion of the discussion, the Board directed Kirby Shaw to inquire with OIP to determine whether making a time limitation exception for persons with communication disabilities is permissible; and if an exception is permissible, whether the rule must indicate a time limitation. The Board postponed a vote on time limitations until it receives OIP input on the matter.

E. Open Forum – Items from Last Meeting

Kirby Shaw reported that he spoke with the Hawaii Civil Rights Commission (HCRC) Chief Counsel about outreach to the Governor, the counties and public accommodations on the topics of face coverings, social distancing, mail in voting and accessibility as they apply to persons with disabilities. He said the Chief Counsel said that HCRC does not conduct proactive outreach. HCRC's role is more reactionary. It takes complaints on discrimination and tries to resolve them, so HCRC is not a suitable partner in being proactive. Kirby Shaw suggested putting such information on DCAB's website and in other sources, such as the Kokua Line which reaches a lot of people, and in other news media (interviews) to let the community know about the rights of people who cannot use face coverings or who need access to sidewalks if there is outdoor dining and those kinds of measures.

He also mentioned that he spoke with a reporter with "Civil Beat" on accessible mail in voting. Guest Donald Sakamoto said that mail in voting is a learning experience and the Legislature will give a report on issues after the

elections and that is when the public can provide input on their experiences. Kirby Shaw said the "Civil Beat" article says that the Office of Elections has taken positive steps in making mail in voting accessible for blind and visually impaired individuals, but that the instructional information is not easy to find. Kirby Shaw spoke with a staff member of the Office of Elections about making existing instructional videos accessible for persons who are deaf and hard of hearing. The Office of Elections gave a positive response to making its voter registration video and mail in voting video accessible for persons who are deaf.

F. Review of Executive Director

Chairperson Pauline Aughe said an annual evaluation of the Executive Director needs to be done. The evaluation will offer constructive criticism; what has been done and where it needs to go. The Board has two options: (1) the Executive Committee as it stands would take on the task, or 2) create a new committee with at least three or five volunteers. Chairperson Pauline Aughe nominated Board member Phyllis Meighen to serve on the Committee to evaluate the Executive Director. The Board voted to approve the Executive Committee with the addition of Board member Phyllis Meighen to conduct the annual evaluation of the Executive Director (M/S/P Horvath/Daniel-Kanetake).

VIII. Open Forum

Guest Donald Sakamoto said the 30th Anniversary of the ADA celebration was in July and he contacted the Honolulu City Council. The proclamation included reference to Citizens for a Fair ADA Ride (CFADAR), DCAB, and the City ADA Coordinator for Human Resources Department. A copy of the proclamation was given to DCAB. Kirby Shaw said that Governor Ige also did a 30th Anniversary ADA proclamation.

IX. Chairperson Pauline Aughe announced that the next DCAB General Meeting is scheduled for September 17, 2020 beginning at 11:00 a.m.

X. The meeting adjourned at 1:16 p.m.

Respectfully submitted,



CINDY Y. OMURA



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DISABILITY AND COMMUNICATION ACCESS BOARD

**General Meeting
August 13, 2020**

ADA Coordination Report

Since the last meeting on June 25, 2020, ADA activities of all DCAB staff included:

1. Provided technical assistance (TA) to one hundred five (105) callers on issues related to the ADA. Key Departments/agencies were: Office of the Governor, Aloha Stadium, Judiciary, Hawaii State Senate, Business, Economic Development, and Tourism (DBEDT), Land and Natural Resources (DLNR), Public Safety (PSD), University of Hawaii (UH); and the County of Maui. An example of significant TA to State and County ADA Coordinators is:

Department/Agency

Issue and TA provided

Various Entities

If someone cannot wear a face covering because of a disability, do I have to let them in without one? *No. While public health mandates do not replace the ADA, the ADA does not override public health mandates. Both must be considered. Modifications or accommodations do not have to be made if it would create a direct threat to the health and safety of others or result in a fundamental alteration. Instead of allowing someone without a face covering into a building, entities can offer a reasonable modification to provide options to individuals with disabilities, engage in an interactive process to collaboratively problem-solve, and/or identify the best way to accommodate the individual with a disability.*

2. Hosted one (1) webinar related to ADA issues:
 - One (1) webinar sponsored by the National ADA Network on:
 - “Face Coverings and the ADA: Implications for Title III”
3. Maintained current information on the ADA Coordinators secured website and DCAB’s website by ensuring current lists of State and County ADA Coordinators were available.

Any questions regarding ADA Coordination activities should be directed to Colin Whited at (808) 586-8121 or colin.whited@doh.hawaii.gov.

SPIN Report August 2020

Virtual SPIN Conference

After four conference planning meetings since June, the SPIN Advisory Committee has chosen Saturday, October 17th as the tentative date for a virtual SPIN Conference featuring nine workshops, a plenary presentation, exhibitor visiting rooms and interactive Question & Answer Sessions. The proceedings will be taped, so that parents and interested professionals can easily access or re-access the content at a convenient time. SPIN staff are building a new SPIN Conference website to house the videos and written materials.

Collaboration with HDOE on School Reopening Parent Materials

Annie Kalama, the Director of the Exceptional Support Branch, has given SPIN staff access to teacher training materials and departmental memos regarding the provision of special education services upon the reopening of school for the 1st Semester of the 2020-2021 School Year. In return, SPIN will develop parent-friendly infographics to simplify the procedures for parents of children with IEPs as well as general education staff. Given the recent surge in COVID-19 cases on Oahu, the Superintendent has postponed in-person learning until September 14th, opting instead for distance learning. Neighbor islands have been given the option to open school on August 17th with the original instructional options or to adopt Oahu's restrictions on in-person learning. Susan and Amanda are working to produce infographics on key topics such as definitions of terms (online learning, distance learning, virtual learning, asynchronous learning, etc.), COVID-19 Impact (compensatory) Services, Extended School Year Services and parent tips for assisting with distance learning.

Footsteps to Transition Fair

SPIN is also helping to plan for the first virtual Footsteps to Transition Fair for middle and high school youth with disabilities and their families to be held on Saturday, October 24th. The planning team is taking advantage of the ability for all islands and districts to access the online Fair by creating unique resource 'rooms' for each district.