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## Hawaii Charter School Wants Ethics Commission to Quit Being a 'Bully'

By Nathan Eagle CONNECT | 01/24/2014



PF Bentley/Civil Beat

Connections Public Charter School Principal John Thatcher.

A Big Island charter school principal says bullying is a growing concern on campus, but not among students or teachers.

Connections Public Charter School principal John Thatcher said the [Hawaii State Ethics Commission](#) and its executive director, [Les Kondo](#), have been so aggressive in their years-long investigation into a conflict-of-interest case that it amounts to bullying.

"Fishing expeditions" forced the Hilo-based school to spend hundreds of hours compiling thousands of documents that the commission requested, Thatcher said, adding that the commission's attorneys at times silenced school employees' private legal counsel during "interrogations."

Kondo dismisses accusations that the commission is overzealous in its approach. The commission is responsible for enforcing the State Ethics Code, he said, which includes investigating allegations of misconduct.

"When a state employee violates the public trust by acting in a manner that is below the minimum standards of conduct that the Legislature established in the State Ethics Code, he should be held accountable," he said.

The commission's work came to a head last February with its unanimous decision to fine Connections administrative assistant Eric Boyd [\\$10,000 for 20 ethics violations](#) dating back to 2006. It was the commission's first contested case hearing — a quasi-judicial two-day meeting in November 2012 — since 1985.

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The strongest counts involved Boyd, who owns an Amway distributorship with his wife, signing off on payments to his own company for providing hundreds of school meals and thousands of dollars worth of electronics equipment and other supplies to the school.

"Our community is in shock over the disgraceful manner in which the investigation and hearing was conducted," Thatcher said, describing the hearing as a "kangaroo court" that tolerated frequent outbursts from the crowd.

"Mr. Boyd's 'crime' was that he tried to save the school money during times that we were facing severe underfunding."

Boyd and his attorney, Ted Hong, fought the commission's decision in court. They convinced Circuit Court Judge Greg Nakamura in December to reverse 11 of the 20 counts, reducing the fine to \$4,500.

The state Attorney General's office is [appealing the decision](#) on behalf of the commission and wants the original convictions restored. Boyd is cross-appealing with the hopes of a higher court throwing out the remaining charges.

Kondo said the fact that Boyd and Connections continue to deny any violation of the Ethics Code highlights the "lack of accountability and institutional governance" at the school.

"The State Ethics Code simply does not allow an employee to misuse his state position to transact business with himself," Kondo said. "It is a conflict of interest."

### 'As Useful as a Potted Plant'

Thatcher said he believes the Ethics Commission is targeting charter schools in general. He points at the commission's continuing investigations into Connections and another contested case hearing coming up in March involving a charter school on Oahu.

The commission charged Myron B. Thompson Academy principal Diana Oshiro last February with [146 counts of violating the state Ethics Code](#). The Honolulu-based charter school is also the subject of a criminal investigation; the AG's office raided the school in December, seizing computers and boxes of records.

While the commission has invested significant resources into its investigations of the Connections and Myron B. Thompson charter schools, its [most recent ethics charges](#) were against employees of regular public schools, community colleges, the Department of Transportation and members of unrelated boards and working groups.

"A shoplifter or axe murderer has more constitutional protection than someone who faces an Ethics Commission charge," Hong said.

He described the commission's attorneys limiting his ability to defend the Connections employees during depositions for the case in 2010.

In a civil litigation or criminal investigation, Hong said, an attorney representing a party or the accused can object and instruct the witness not to answer questions because of potential constitutional violations, like Miranda rights.

Hong said when he tried to object or instruct his client not to answer, the commission attorneys told him he could not do that.

"I was there for all witnesses but was as useful as a potted plant because I could not say anything during the interrogations," Hong said.

The commission fought to keep Hong from representing Connections at all.

The state Attorney General's office is the default legal counsel for all state employees in legal trouble relating to their state job, although Hong continues to argue that Boyd, as a charter



*Nathan Eagle/Honolulu Civil Beat*  
*Hawaii Ethics Executive Director Les Kondo, center, takes notes, April 10, 2013.*

school employee, is not subject to the Ethics Code. The court has ruled that charter school employees are indeed state

employees.

In a letter to Kondo in June 2011, Deputy Attorney General Michelle Puu said Hong could not represent Connections without a prior waiver from the governor, which he lacked, but he could in theory represent Boyd.

Hong eventually dropped Connections as a client and just represented Boyd as the legal opinions from the AG's office surfaced and a deputy attorney general took the case for Connections.

"I would have preferred the AG coming into the case sooner than later, but I don't believe the quality of legal representation was compromised or the ability to defend the school and its representatives was affected in any way," Hong said.

Hong believes the confusion and slowness was at least partially a product of the newness of charter schools in Hawaii. He said state government, especially the Department of Education, has been unable or unwilling to understand what charter schools are and how they operate.

"State government looks at charter schools from the lenses of traditional brick-and-mortar DOE schools," he said.

"So when you tell these bureaucracies that the school administrator, like Eric, has to drive a school bus or empty trash cans, or needs trash bags right now, it's like you're speaking a foreign or interplanetary language," Hong said.

State Public Charter School Commission Executive Director Tom Hutton described some historical realities of how charter schools evolved in Hawaii. He said the charter movement started with a policy of "benign neglect" from the DOE and teachers union but in recent years there has been a realization among charter schools that they are in fact public institutions.

"A lot of charter schools started from a point of we are declaring independence," Hutton said. "But we are state entities with state employees using state dollars. We're still seeing that cultural shift."

While it doesn't excuse it, he said that history led to situations in which schools stretched for dollars took shortcuts that weren't always right.

### 'Green, Purple and Yellow Tape'

Connections fought the Ethics Commission probe directly, often through feisty letters between the attorneys, but also indirectly.

Thatcher filed a complaint against Kondo with the [Office of Disciplinary Counsel](#), which investigates claims of attorney misconduct. The office dismissed the complaint in 2011, saying it lacked "clear and convincing evidence."

Thatcher also filed a request with the state [Office of Information Practices](#) asking for help accessing executive session minutes from a Charter School Review Panel meeting. OIP told him in 2010 that the panel should have provided a statutory basis for withholding the minutes, but nonetheless was allowed to keep private their discussion about the commission's investigation of Connections.

In April 2011, Kondo proposed a settlement. The terms included a \$2,000 fine, publicly disclosing Boyd's identity and giving the commission the option of issuing a public opinion on the charge. The offer was rejected and the matter proceeded to the contested case hearing.

Ultimately, Thatcher said he just wants charter schools to be free of the bureaucracy that inhibits their core purpose.

"The future does not look good for charter schools in Hawaii," he said. "The Legislature created charter schools to be 'free from statutory and regulatory requirements that tend to inhibit or restrict a school's ability to make decisions relating to the provision of educational services to the students attending the school.'

"The red tape we escaped has been replaced by green, purple and yellow tape."

Kondo said the Ethics Commission will remain focused on its mission.

"At this point, it raises significant and fundamental concerns for Connections — whether it is the head of the school, the governing board or both — to accuse the Ethics Commission of 'bullying' instead of addressing the real issue: holding Mr. Boyd accountable for his unethical conduct that violated the public trust."

Hutton said he thinks the Ethics Commission is just doing its job.

"I don't think we have some crazed, overzealous regulators who are trying to make life miserable for charter schools," he said.

There are many people who only read the damaging headlines about charter schools and none of the amazing things they are doing with limited resources, Hutton said.

"That's a hard reality," he said. "But the bottom line is this: I think charter schools really have to go above and beyond on issues that relate to public confidence and public use of public resources and transparency. We've got to be beyond perfect."

Hutton calls it the "enlightened self-interest perspective," because if charter schools lose their credibility then the whole system collapses.

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DISCUSSION: *Do you think the Ethics Commission is bullying charter schools or just doing its job?*

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Discussion



Janet Fox Mason · ★ Top Commenter · Honolulu, Hawaii

Looks like the Ethics Commission tried to negotiate a settlement to this dispute that would have saved Connections time and money (and some reputation risk to its principal). Seems like they could have recognized this beforehand instead of digging in their heels and resorting to hyperbole. "More constitutional rights than an axe murderer"? Come on....

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