

MEMORANDUM

TO: Margery Bronster, Attorney General, State of Hawai'i

FROM: Nā Kumu o Kamehameha

DATE: September 9, 1998

SUBJECT: Petition for the Removal of Trustees Wong, Lindsey, and Peters

Since our last communication of December 8, 1997, much has transpired which leads us once more to plead for your assistance. The actions of Trustees Richard S. Wong, M. Lokelani Lindsey, and Henry H. Peters continue to harm Kamehameha Schools Bishop Estate, its beneficiaries, and its staff.

We respectfully petition prompt action to remedy the crisis confronting KSBE.* Trustees Wong, Lindsey, and Peters must be removed from all decision-making powers relating to the operation of the Kamehameha Schools Bishop Estate (KSBE).

Though it has been reported that the "lead" trustee system is no longer in place, in actuality the system has simply been camouflaged. Either directly, or indirectly through their administrative agents, the majority trustees continue to hold our campus hostage. The trustee majority controls school operations and KSBE personnel with threats, shunts, insinuations, and direct harassment.

Contrary to the impression of responsible management that these trustees have tried to convey, they continue to waste KSBE resources and to harm the beneficiaries and staff. We see the intervention of the Attorney General's office as absolutely necessary if positive changes are to be made at Kamehameha Schools.

ARGUMENTS IN SUPPORT OF THE PETITION

1. EROSION OF ASSETS

- **Peterson Consulting LLC Report:** The majority trustees, Wong, Lindsey, and Peters, selected Peterson Consulting LLC (Peterson) to conduct a study that was prompted by an earlier report by the court-appointed fact-finder, retired Judge Patrick Yim. Peterson charged \$520,000 for this report, which did not accomplish the intended objectives. Judge Yim (page 44) had directed that "a thorough audit of the educational functions and programs of Kamehameha Schools" be conducted "to assist the Kamehameha School Ohana and Trustees to collaboratively create an educational/operational strategic plan that will position and guide

* This memorandum was approved at a general meeting of Nā Kumu o Kamehameha held at 3:35 p.m., September 9, 1998. Coincidental to this meeting was your nearly concurrent press release calling for the immediate removal of all five trustees.

Kamehameha Schools and Hawaii's children into the next millennium." Toward that end, Judge Yim further recommended that "the Trustees should immediately engage an independent, neutral, professionally-qualified expert to nominate, screen and retain a foundation/organization to conduct" such a study.

The study Peterson Consulting conducted is flawed on three counts:

1. The majority trustees ignored Judge Yim's directives in their selection process (for further details see Nā Kumu o Kamehameha's 5/14/98 communication to the trustees, Attachment A). No independent entity was involved in sending out requests for proposals nor in evaluating any proposals. Indeed, even Peterson's proposal to the trustees is dated February 25, 1998, the day after it was selected by the trustee majority.
2. Although Judge Yim's recommendation was that a study center on "the educational functions and programs of Kamehameha Schools," Peterson's report did not do so but only dealt with the intended focus in a cursory and piecemeal fashion. This is no surprise to those working in the educational programs, for Peterson's team spent little or no time in observing classrooms or in conducting interviews with students, parents, or teachers.
3. The areas of the Peterson Report that do deal with the intended focus (e.g., with issues of school governance) are inaccurate in critical ways. For instance, the report found fault on several counts with decisions or practices of "the trustees" when in reality only one to three trustees were involved. Similarly, President Chun is directly blamed in the report for causing problems which the faculty know to have originated not with him but with the majority trustees.

In sum, the trustee majority paid \$520,000 for a report that did not come close to meeting the intended outcomes.

- **Media Campaign:** Recently, trustees expended Estate funds to launch a media campaign to defend their record of investment returns. This campaign was initiated subsequent to the release of Court Master Colbert Matsumoto's report. The information in the campaign was misleading, costly, and self-serving (see Broken Trust letter dated August 16, 1998, Attachment B). Its purpose was to counter Matsumoto's conclusions. Full-page ads were run in local newspapers for several days at an approximate cost of \$9,000-\$10,000 per day. The airwaves carried a similar defense, incurring additional costs. Further expenditures include the use of valuable KSBE staff time to prepare this campaign.
- **KSBE Coverage of Legal Expenses:** The assets of KSBE have been used to mount a legal defense led by attorney William McCorrison, purportedly for the protection of KSBE. McCorrison's services have nothing to do with protecting the Estate, its assets, or the trust. Rather, McCorrison's services blatantly defend specific trustees from being held accountable for their actions. If these trustees wish to continue to obstruct the attorney general's investigation and prevent a prompt resolution of legal issues, they should do so with their own money.
- **Hiring of Consultants to Undermine Faculty:** For sixteen months the faculty has attempted to communicate directly with the trustees to resolve concerns. Trustees Wong, Lindsey, and Peters have ignored such attempts. The trustee majority, unwilling to communicate and

opposed to any legal forum for a faculty voice, contracted individuals for the apparent purpose of forcing the Kamehameha Schools faculty to fail in its effort to establish protected representation under the National Labor Relations Act. These consultants, Michael "Buddy" McGuire and Robert S. Katz, were introduced to the faculty as individuals who would assist in a "healing process" that would find and implement solutions to concerns of the Kamehameha staff. Instead, they have contributed to creating artificial divisions between administrators and teachers (see Nā Kumu's letter of November 17, 1997, which warned of this outcome, Attachment C). These consultants continue to charge KSBE for their ongoing role as KSBE's representatives in union negotiations. Protracted negotiations are to their financial benefit. It is no wonder that they are therefore using numerous stalling tactics in dealing with KSFA.

2) PROTECTING KAMEHAMEHA STUDENTS AND EMPLOYEES FROM ADVERSE TRUSTEE ACTIONS

- **Harming Students' Self-Esteem:** Last December Trustee Lindsey released to *The Honolulu Advertiser* her confidential study which alleged that the longer students stay at Kamehameha, the worse they do academically. This past June, Mrs. Lindsey's attorney, Michael Green, stated to the media that Kamehameha Schools was a "factory of failure." These rash assertions have damaged the self-esteem of our students and have adversely affected both students' and parents' full confidence in the quality of the programs offered at Kamehameha Schools. Though the trustee majority has spent thousands of dollars on a media campaign to repudiate damaging claims regarding the trustees' investment record, they have done nothing to reassure parents that their children are being well served by our school. Further, the trustees have not given an explanation to the parents regarding the conditional three-year accreditation (the optimal accreditation period is six years) issued in June by the Western Association of Schools and Colleges (WASC). The trustees elected not to address this issue. The WASC's award of a three-year accreditation was based on the governance crisis caused by the majority trustees as observed by the WASC team.
- **Employee Investigation:** The trustee majority continues to maintain power by intimidation and harassment of staff. In June, the trustee majority initiated an investigation regarding the release to the media of the WASC report. This was the first WASC report on Kamehameha to be designated confidential by KSBE in over 30 years of WASC's accrediting Kamehameha. It is standard practice for all schools that undergo the WASC process to make a final report available to the public. In mid-May, McCorriston's law firm was charged by the trustee majority to find a culprit. As a result, employee interrogations were initiated. The employees were not informed of their legal rights prior to the interrogations. The initial interrogations required staff to appear before a KSBE lawyer and to be sworn in before a court reporter. Employees were also requested to submit to a lie detector test. The first interrogations took place without the knowledge of trustees Oswald K. Stender and Gerard A. Jervis. Though the above approach has changed following trustee minority, community, and faculty opposition, these costly and demoralizing employee interrogations continue.

- **Employee Rules of Conduct:**
 - * The recently issued edition of the Employee Handbook is even more onerous and restrictive than the edition it replaces. Furthermore, handbook guidelines have not been uniformly enforced with all employees; some have received preferential treatment. Estate staff are placed on notice by the handbook that they are "at will" employees, as though the Estate is a regular business corporation rather than a charitable trust.
 - * The trustees, who have been appointed through the vagaries of the state political system, continue to wield their power without regard for the rules of conduct they have established for all KSBE employees. They have repeatedly and with impunity violated provisions of the Employee Handbooks (both old and revised).

 - **Lack of Meaningful Communication:** Meaningful communication between campus administration and educational staff continues to be impeded at best, and at worst, undermined completely. A trustee communication dated August 7, 1998, prohibits "...any further meetings of the ...faculty/administration committee..." (see memorandum dated August 7, 1998, Attachment D). This memo refers to a volunteer committee of faculty and administration created last year through the collaboration of the educational administration and Nā Kumu. The committee charge was to promote constructive dialogue regarding the concerns of the educational division, and was generally seen as a hopeful vehicle for restoring our sense of campus community. The committee continued to meet throughout the summer to summarize staff proposals for submission to trustees and to develop a possible structure and mission statement for a faculty assembly. On August 6, the trustees abruptly forbade further meetings of this committee (this was confirmed in writing in the aforementioned memorandum of August 7). At no time were members or co-chairs of this committee contacted by the trustees for input prior to this decree.

 - **Anxiety Created for Students, Parents, and Staff:** Recent events in the opening week of school again demonstrate the arrogant and abusive disregard trustees Wong, Lindsey, and Peters continue to have for the welfare of our campus community. Persistent rumors in the press and on campus that President Michael Chun was to be fired on Friday, August 28, were not quickly or categorically repudiated by the trustees to spare students and staff the extremely unsettling effects of such rumors during these all-important first days of the school year. As one student said to a staff member opening day, "We've only been in school two hours and there's already a crisis."
- 3. OBSTRUCTION OF GOOD FAITH BARGAINING WITH THE KAMEHAMEHA SCHOOLS FACULTY ASSOCIATION (KSFA)**
- **Punitive Actions Against KSFA:**
 - * Forbidding the use of KSBE facilities: After the faculty overwhelmingly voted in favor of a union (186 yes, 36 no), the trustees took punitive action against the new union by forbidding it the use of KSBE facilities (meeting space, campus mail boxes, Daily Bulletin notices, telephones, etc.) which it allows other organizations (even those not associated with KSBE) to use free of charge.

- * Denial of stipends for elementary school grade level chairpersons: These teachers take on additional school tasks to coordinate grade-level operations. They have traditionally been compensated for their extra efforts (about \$1,700/year). KSBE is withholding such compensation this year.
- **Failure to Pursue Negotiations in a Timely Fashion:**
 - * On June 16, 1998, the KSFA union notified KSBE that it would be ready to commence collective bargaining on June 22. After purposeful stalling on McGuire's part, the first meeting finally took place on September 3. This loss of time is critical to KSFA, which faces a March, 1999, deadline to ratify a first contract. Failure to meet this deadline may necessitate a second union certification election.
 - * The typical response time from KSBE to KSFA written correspondences has been 20 days, while the typical response time from KSFA to KSBE written correspondences has been four days.
 - * Numerous KSFA requests for information and responses were ignored (see KSFA's letter to McGuire dated August 29, 1998, Attachment E).

SUMMARY

We urge the Attorney General to take prompt action on this petition in consideration of the arguments in its support. To fail to do so will permit Wong, Lindsey, and Peters to continue to act in ways which are detrimental to the assets and the students, families, and staff of the Kamehameha Schools Bernice Pauahi Bishop Estate.

cc: Dr. Tod Anton
Colbert Matsumoto
Circuit Court