

March 4, 2022

**BY E-MAIL:** [htsb@hawaii.gov](mailto:htsb@hawaii.gov)

Teacher Education Committee  
and  
Hawaii Teacher Standards Board  
650 Iwilei Road, Suite 268  
Honolulu, Hawaii 96817

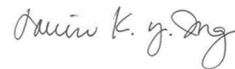
**Re: TeachNow, Inc., dba Moreland University**

Members of the Teacher Education Committee and the Hawaii Teacher Standards Board:

On behalf of TeachNow, Inc., dba Moreland University ("Moreland"), we respectfully submit the attached testimony on its behalf prepared by Janene Jackson of Holland & Knight, for consideration at both the March 4, 2022 meeting of the Teacher Education Committee and the Hawaii Teacher Standards Board. The letter sets forth the bases for Moreland's request that the Committee and Board withdraw from the agenda or defer acceptance of the "Report Summary: Moreland University's Comprehensive In-State Audit" until a later-scheduled Committee and Board meeting in order to allow Moreland a fair opportunity to respond to the Report, as well as continue its work with HTSB's lawyers to address and resolve licensing questions and develop a productive path forward with respect to licensing and license review of Moreland graduates.

We respectfully request that this letter and attachment be promptly distributed to members of the Teacher Education Committee and HTSB. Thank you.

Sincerely,



Louise K.Y. Ing  
William M. Kaneko  
Attorneys for TeachNow, Inc., dba Moreland  
University, and McKissock Investment Holdings, LLC

LI:WMK:vd

Enclosure

cc: Stuart Fujioka, Esq.  
Michael Azuma, Esq

# Holland & Knight

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*Via E-mail (htsb@hawaii.gov)*

Teacher Education Committee  
and  
Hawaii Teacher Standards Board  
650 Iwilei Road  
Suite 268  
Honolulu, Hawaii 96817

Re: Testimony on Report Summary: Moreland University's Comprehensive In-State Audit

Dear Teacher Education Committee and Hawaii Teacher Standard Board:

For more than four months and to no avail, Moreland University has attempted to open lines of communications directly with the HTSB in order to respond to HTSB's draft audit report and address other areas of mutual interest in a collaborative manner. As a result of HTSB's unwillingness to engage directly with Moreland University after an initial meeting with HTSB leadership in early January, Moreland is compelled to preserve its rights by submitting this letter in response to the Report Summary: Moreland University's Comprehensive In-State Audit ("Report Summary").

On behalf of Moreland University, and for the reasons stated below, we respectfully request that the Teacher Education Committee ("TEC") and the Hawaii Teacher Standards Board ("HTSB") withdraw or reject the above-referenced Report Summary. It is on the TEC's agenda for vote on whether to recommend to HTSB at its General Business Meeting on March 4, 2022, that HTSB accept the Report Summary and refer the matter to TEC for "recommendation on next steps." In the alternative, Moreland University respectfully requests the TEC and HTSB delay decision-making on whether to accept the Report Summary until Moreland is given the opportunity, and sufficient time, to demonstrate that it followed all the then applicable HTSB licensure requirements and interpretations.

## **Background**

Annually, the HTSB staff conducts an audit of all in-state Hawaii Education Preparation Programs ("EPPs"). The 2021 annual EPP completer audit was conducted between October 1, 2021 and October 21, 2021 and consisted of a review of a random sample of Hawaii program

completers reported by in-state EPPs between July 1, 2020 and June 30, 2021. In a random sampling of reported in-state Moreland University completers, the HTSB's licensing staff found discrepancies regarding two of Moreland University's completers and whether they met HTSB's content knowledge requirements prior to licensure.

Based on these audit findings, the HTSB licensing staff recommended auditing all Moreland (Teach Now) Hawaii program completers since Moreland University was issued a provisional approval on November 15, 2019, and reporting the findings at the next HTSB meeting. The designated purpose of the audit was to verify that all in-state Moreland University completers who were recommended for licensure by the university met all of HTSB's licensing requirements. The HTSB approved the HTSB's licensing staff's recommendation on November 19, 2021, under New Business Item ("NBI") 21-20. NBI 21-20 also included the following statement: "It is to be noted that Moreland (TEACH NOW) sent a letter to HTSB on October 19, 2021, eliminating their in-state Hawaii Educator Preparation Program, effective immediately."

The TEC and HTSB consider the audit of in-state Moreland completers concluded and have placed the Report Summary on their respective agendas for consideration and possible action on March 4th. Moreland University requests that TEC and HTSB withdraw, reject or defer decision-making on accepting or taking other action on the Report Summary for three reasons: (i) the TEC and HTSB's authority to act on any of the findings in the Report Summary is limited to current license holders or those seeking licensure; (ii) some of the Report Summary findings are based upon the retroactive application of the 2021 revision of NBI 12-29; and (iii) Moreland University was not allowed to present favorable evidence to the HTSB licensing staff or HTSB nor was it allowed to review and respond to the audit findings prior to consideration and possible action by the TEC and HTSB.

**The TEC's and HTSB's authority to act on any of the finding in the Report Summary is limited to current license holders or those seeking licensure.**

As HTSB is aware, Moreland University voluntarily eliminated its in-state Hawaii EPP program on October 19, 2021, a full month before HTSB authorized HTSB staff to conduct an audit of all in-state Moreland University completers. When the HTSB affirmed the HTSB licensing staff's recommendation, Moreland University was no longer a licensed in-state EPP, and, consequently, the HTSB lacked the authority to audit Moreland University. Since Moreland University is no longer subject to HTSB's regulatory or enforcement authority, Moreland University, the Report Summary, and its findings concerning Moreland University are not properly before the HTSB or TEC.

The Hawaii Revised Statutes ("HRS") and relevant corresponding Hawaii Administrative Rules ("HAR") limit the HTSB's authority to licensees or those seeking to be licensed by the HTSB. HRS §302A-803 establishes the powers and duties of the HTSB. Specifically, HRS §302A-803 (a)(8) provides that the HTSB may issue, renew, forfeit, restore, condition, revoke, suspend and reinstate licenses. Additionally, HRS. §302A-803 (d)(3) provides that the HTSB cannot delegate

its authority for discretionary functions that result in a final decision or disciplinary action against *a licensee*, including license denial, reinstatement, revocation or suspension, or the imposition of conditions or fines. Therefore, because Moreland University is no longer an EPP licensee, the Summary Report and its findings exceed HTSB's legal authority. Additionally, the HTSB does not have statutory authority to take any enforcement or other adverse actions against Moreland University. The HTSB cannot place conditions, revoke, or suspend Moreland University's EPP license based on the Report Summary because the university voluntarily surrendered its license on October 19, 2021. Consequently, any consideration of further action concerning Moreland is moot. The HTSB's consideration of the Report Summary report is academic and without consequence since its regulatory authority over Moreland University ended on October 19, 2021.

**Some of the findings in the Report Summary are based on the retroactive application of NBI 12-29 Rev. 2021.**

Even if the TEC and HTSB determine that consideration of the Report Summary still lies within their corresponding purviews, the audit results should be rejected because some of the deficiency findings are based on improper retroactive application of a new requirement, NBI 12-29 Rev. 2021. Ultimately, this misapplication of the correct NBI calls into question the accuracy of the Report Summary findings.

The Report Summary states that the HTSB staff reviewed fourteen unnamed (14) in-state completers and found nine (9) met the HTSB's requirements. The HTSB licensing staff concluded that the other five (5) unnamed in-state completers were not in compliance with HTSB's licensure requirements and attributed their non-compliance to Moreland University.

The Report Summary, however, failed to apply NBI 12-29 Rev. 2017 to its review of in-state completers. Instead, the HTSB licensing staff based their finding of non-compliance on the retroactive application of the newly adopted 2021 version of NBI 12-29. Specifically, the HTSB revised NBI 12-29 in 2013, 2016, 2017 and, most recently on November 19, 2021. The 2021 revision is the first time the HTSB uses the term "semester hours" with the minimum number of hours required to demonstrate content knowledge. The HTSB licensing staff used this new 2021 version of NBI 12-29 to determine whether in-state Moreland University completers met the content knowledge requirements. The HTSB licensing staff should have reviewed in-state completers based on the NBI applicable at the time they were recommended for licensure. Since the HTSB reviewed in-state completers recommended by Moreland University between November 15, 2019 and October 19, 2021, it was unfair and unreasonable to expect that all in-state completers would meet the new content knowledge requirements adopted *one month later*, on November 19, 2021.

Audit best practices dictate that when conducting a compliance review, the review must be based on the processes, internal controls, regulations, and requirements in existence at the time the records were made. Here, HTSB licensing staff choose not to review the in-state completers based on the 2017 version of NBI 12-29 but rather on the version adopted on the same day the

licensing staff recommended a review of all Moreland University in-state completers. The TEC and HTSB should know, prior to considering and taking action on the Report Summary, whether the Moreland University in-state completers identified by the HTSB's licensing staff as not meeting the content knowledge requirements actually met the requirements of NBI 12-29 prior to the 2021 revision.

While the term "semester hours" appears in the Hawaii Revised Statute, the HTSB has used the term inconsistently or not at all when establishing its policies and requirements. By way of example, the May 2020 version of HTSB Form LA 3009 used the phrase "hours of coursework" in the Content Knowledge section of the form rather than the term "semester hours."<sup>1</sup> When completing the 2020 version the LA 3009, an EPP or educator assumed the HTSB was actually requesting proof of "30 hours of coursework" because that is what was printed on the form. The HTSB has now chosen to make its forms consistent with statutory language and clarify that the former requirement of "hours of coursework" means "semester hours." As the regulator, the HTSB can change its requirements when it chooses to do so but it is not fair or reasonable to retroactively apply a new standard and penalize license holders for their reasonable reliance that the HTSB's own documents and forms were consistent with Hawaii's statutory requirements.

**Moreland University was not given the opportunity to present favorable evidence to the HTSB's licensing staff or the HTSB, nor was it allowed to review or respond to the audit findings prior to consideration and possible action by the TEC and HTSB.**

HTSB's licensing staff have not afforded Moreland University the opportunity to address any of the conclusions in the Report Summary. Moreland University was not asked to participate in the audit, provide any documentation demonstrating compliance with HTSB's requirements, nor was it allowed to review the Report Summary to correct inaccuracies before it was placed on agenda for the TEC and HTSB's consideration and possible action on March 4<sup>th</sup>.

HAR §8-54-30 (a) provides that an EPP that receives an adverse decision may appeal that decision. HAR §8-54-30 (b)(3) and (4) provides that an appeal may be filed when evidence favorable to the EPP provided to the review team was not considered or evidence favorable to the EPP provided to the Board was not considered. While Moreland was not given the opportunity to provide favorable evidence to either the HTSB's licensing staff or the HTSB, it is clear that the HAR contemplates that an EPP will be afforded the opportunity to present favorable evidence for review. The HTSB denied Moreland University the right and opportunity to present any evidence before issuing its Report Summary.

The HTSB has not afforded Moreland University the opportunity to address any of the conclusions in the Report Summary nor identified the specific Moreland graduates who allegedly did not meet licensing requirements so that Moreland can review each completer's student record and respond to each alleged finding in the Report Summary. If the HTSB's position is that

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<sup>1</sup> Moreland University is aware the HTSB Form LA 3009 applies to out-of-state completers but reasonably assumed that HTSB used the same interpretation of course hours when licensing both in-state and out-of-state graduates.

Moreland University is no longer a licensed EPP and, as a result, it is not entitled to any due process rights, the question must be called as to why the HTSB is considering the findings of a report regarding a former EPP licensee. The HTSB cannot hold mutually incompatible positions regarding Moreland University: either the Report Summary should be withdrawn or Moreland should be afforded a full and fair opportunity to respond before the Report Summary is submitted to the TEC and HTSB for consideration and possible action.

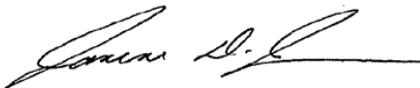
### **Conclusion**

For the reasons summarized above, Moreland University is requesting the TEC and HTSB withdraw or reject the recommendation in the Report Summary as well as its conclusions. In the alternative, Moreland University is requesting the TEC and HTSB to delay decision-making on whether or not to accept the Report Summary until Moreland University is given the opportunity, and sufficient time, to demonstrate that it followed all the then applicable HTSB licensure requirements and interpretations.

Moreland University will continue to work with the Education Division of the Hawaii Attorney General's Office in an effort to understand the HTSB's audit process, the student records reviewed by the HTSB licensing staff, and the HTSB's position. While Moreland University has not been able to engage directly with HTSB, Moreland hopes its continued discussions with the HTSB's legal counsel will help chart a productive path forward with respect to the licensing of Moreland University graduates.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "Janene Jackson", written over a horizontal line.

Janene Jackson  
Equity Partner