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DEPARTMENT OF EDUCATION
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OFFICE OF THE SUPERINTENDENT

May 15, 2012

TO: The Honorable Donald G. Horner
Chairperson
Board of Education

FROM: Kathryn S. Matayoshi
Superintendent

SUBJECT: Post Public Hearing Discussion/Decision-Making Relating to Promulgation of New Chapter 8-63, Hawaii Administrative Rules, Relating to Civil Service Rules

1. RECOMMENDATION

The public hearing on the aforementioned proposed rules was held by the department on Tuesday, April 24, 2012, at 2:00 p.m. at the Queen Liliuokalani Building, 1390 Miller Street, Room 404, Honolulu, HI 96813. The department did not receive testimony before or at the public hearing and recommends that only technical, non-substantive changes be made to the proposed rules and that the Board of Education approve the proposed rules accordingly, for submission to the Governor for final approval. The changes were recommended by the Legislative Reference Bureau and improve the clarity and conciseness of the proposal and in no way have any substantive impact.

2. SUMMARY OF COMMENTS AND TESTIMONIES FROM THE PUBLIC HEARING

No testimony was submitted prior to or at the public hearing. The written comments from the Legislative Reference Bureau (that are attached) were related to style and have been incorporated for the most part in the final proposed rules.

3. NEW IMPLICATIONS NOT PREVIOUSLY REPORTED

a. Educational

None.

b. Personnel

None.

c. Facilities

None.

d. Financial

None.

4. OTHER SUPPLEMENTARY INFORMATION

None.

KSM:jo

Attachments: Chapter 8-63, Hawaii Administrative Rules
Legislative Reference Bureau Written Comments
Department of Education Notes

c: Office of Human Resources

DEPARTMENT OF EDUCATION

Adoption of Chapter 8-63
Hawaii Administrative Rules

Date of Adoption

1. Chapter 8-63, Hawaii Administrative Rules, entitled "Civil Service Rules", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 2

PART I

PUBLIC SCHOOLS

CHAPTER 63

CIVIL SERVICE RULES

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SUBCHAPTER 1

GENERAL PROVISIONS

§8-63-1 Purpose; statement of policy. The purpose of this chapter is to set forth the fundamental character of the system of personnel administration governed by these rules consistent with merit principles and the principles of equal employment opportunity within the department. Provisions of this chapter shall be construed as supplemental to, and in the context of, chapter 76, Hawaii Revised Statutes. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-17, 76-1)

§8-63-2 Applicability. (a) The rules in this chapter shall apply to all positions and employees in the civil service of the department. Unless a rule specifies otherwise, it shall not apply to positions and employees exempt from civil service.

(b) The department's civil service system includes all positions in the department except those positions that are exempted pursuant to section 76-16, Hawaii Revised Statutes, or specifically exempted therefrom by the assistant superintendent in accordance with statutory requirements.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-3 Definitions. As used in this chapter, unless the context indicates otherwise:

"Administrative review" means a reevaluation of a recruitment, examination, classification, reclassification, or initial pricing action in accordance with the provisions set forth in these rules, and in such policies, standards, guidelines, or procedures established by the assistant superintendent.

"Appointing authority" means the superintendent or designees having the power to make appointments, make changes in the status of employees, and take other actions as provided in these rules.

"Assistant superintendent" means the head of the department's office of human resources who assumes the duties of the director as provided in chapter 76, Hawaii Revised Statutes.

"Board" means the board of education.

"Calendar day" or "day" means a period that begins at midnight, Hawaii Standard Time, and ends twenty-four hours later at midnight, Hawaii Standard Time.

"Certificate of eligibles" means the official document through which eligibles are referred for employment consideration.

"Certification" means the process whereby the

names of qualified persons on the eligible lists are referred to the appointing authority.

"Civil service employee" means an employee who has met all requirements for membership in the civil service under section 76-27, Hawaii Revised Statutes.

"Civil service appointment" means an appointment to a civil service position from an appropriate eligible list.

"Civil service position" means a position within the department that is not exempt from civil service law and must be filled through civil service recruitment procedures based on merit.

"Civil service law" means chapter 76, Hawaii Revised Statutes, as amended. Unless the context of a specific rule or these definitions clearly indicate otherwise, all terms used in this chapter shall have the same meaning as in the civil service law, and references to the "law" shall be taken to mean the civil service law.

"Civil service recruitment procedure" means the procedure for the competitive process by which an applicant is deemed qualified for civil service appointment.

"Civil service system" means the personnel system based on merit principles as specified in section 76-1, Hawaii Revised Statutes.

"Class or class of work" means a group of positions that reflect sufficiently similar duties and responsibilities such that the same title and pay range may apply to each position allocated to the class.

"Class specification" means the official document, approved by the assistant superintendent, providing a formalized summary of the nature and scope of duties and responsibilities, level of difficulty and authority, and minimum qualification requirements of a class.

"Classification" means the process of establishing an occupational framework and grouping positions on the basis of the kind and level of work and knowledge, skills, abilities, and qualifications required for performance of the work.

"Compensatory time-off" means the number of hours that an employee is scheduled to be absent from work as mutually agreed to with the employee's appointing authority when such absence is credited as compensatory time-off and charged against the employee's compensatory time credit.

"Compensatory time credit" means the number of hours of credit which an employee earns for overtime work, determined on the basis of one and one-half hours for each hour of overtime work.

"Competitive examination" means an examination from which an eligible list is established. The competitive examination may be open to the public who qualify for admission.

"Compensation plan" means the pay plan consisting of the assignment of classes in the classification systems to ranges in the appropriate salary schedules.

"Critical-to-fill" means:

(1) Positions so vital to the organization's mission such that the work cannot be assigned or assumed by other positions, and the inability to fill would significantly and adversely affect the organization's ability to accomplish its goals and objectives; or

(2) Positions providing direct services that must be performed because the health, safety, and welfare of the general public are involved.

"Department" means the department of education.

"Discharge" means an action taken by the assistant superintendent or appointing authority dismissing an employee for just cause.

"Earned rating" means the rating attained as a result of a competitor's qualification or performance or both in examination without credit for the points added through veteran's preference.

"Eligible" means a person whose name is on an eligible list.

"Eligible list" means a list of persons who have qualified for appointment to positions in a particular class.

"Examination" means an assessment method used to evaluate the knowledge, skills, and abilities of applicants for employment.

"Exempt employee" means a person who is appointed to and occupies a position exempted pursuant to section 76-16, Hawai'i Revised Statutes or other law.

"Exemptions from civil service" means those positions, persons in those positions, and personal services exempted from civil service pursuant to section 76-16, Hawai'i Revised Statutes or other law.

"Initial allocation" means the action taken on a new position to place it in a specific class on the basis of its duties, responsibilities, and minimum qualification requirements.

"Initial pricing" means the determination of the appropriate pay range and pay relationships for a new class based on appropriate factors.

"Initial probationary period" means the probation period required of a person entering the department's civil service system. It is also the final test of the person's fitness and ability for the position before acquiring civil service membership.

"Internal departmental competitive examination" means a competitive examination restricted to departmental civil service members.

"Layoff" means the release of an employee due to lack of work, lack of funds, or other legitimate reasons.

"Minimum qualification" or "minimum qualification requirements" means the minimum education, experience, knowledge, skills, abilities, licensing, and other special requirements essential for performance in a class of work or position.

"New probationary period" means a probationary period served by a civil service member as part of the examination process to determine the employee's fitness and ability for the new position.

"Non-civil service appointment" means an appointment to a civil service position made without the use of an eligible list.

"Open competitive examination" means a competitive examination conducted by the department or

designated appointing authority that is open to all qualified employees who are civil service members and qualified applicants from the general public.

"Open-competitive list" means a list of persons who have been found to be qualified by an open-competitive examination for appointment in a particular class or series.

"Pay differential" means any additional compensation, in addition to the basic rate of pay, including but not limited to overtime, stand-by duty, compression differentials, lump sum pay, bonuses, recruitment and other financial incentives, awards, and other temporary differentials.

"Pay range" means the group of salary rates from minimum to maximum to which a class may be assigned as set forth in the salary schedules. Pay ranges among the different salary schedules are considered to be higher or lower than, or the same as the others on the basis of the maximum salary rate. In a salary schedule with single rate pay ranges, the single rate is considered the maximum rate of the range.

"Permanent appointment" means an appointment without a limitation date to a permanent position that allows the employee to become a civil service member.

"Permanent position" means a position without time limitation.

"Position description" means an official written description, approved by the appointing authority, of the duties and responsibilities assigned to and required of a specific position.

"Pricing" means the process of assigning classes to pay ranges based on appropriate factors.

"Probationary period" means a specified period which serves as the final test of an employee's qualifications for the position.

"Rating" means the score or measure of performance of an applicant in an examination.

"Reallocation" means the movement of a position from one class to another class.

"Reallocation downward" means the reallocation of a position to a class assigned to a lower pay range in

the same salary schedule.

"Reallocation upward" means the reallocation of a position to a class assigned to a higher pay range in the same salary schedule.

"Reclassification" means a change in the class to which a position is allocated based on a change in the classification system.

"Recruitment" means the process of locating applicants for employment.

"Related class" means a class which requires substantially similar knowledge, skills, and abilities as another class.

"Repricing" means the reassignment of classes from one pay range to another in the same salary schedule based on appropriate factors.

"Resignation" means an action by an employee severing the employee's employment relationship.

"Salary schedule" means a table of pay rates and ranges as established through collective bargaining, by executive order, or as otherwise authorized by law.

"Select priority list" means a list composed of a former employee of the department who was released under the conditions covered by section 386-142, Hawaii Revised Statutes.

"Selective certification" means the process of certification that is limited to those persons possessing distinctive or unique knowledge, skills, abilities, and other characteristics deemed critical to the successful performance of the work of a specific position.

"Series of classes" means classes similar as to subject matter of work, but differing in level of difficulty, responsibility, and qualifications required.

"Sick leave" means a leave of absence with pay as authorized by law, because of illness or injury.

"Suitability" means fitness for employment after consideration of such factors as physical and mental ability, character, criminal history record, and employment record.

"Superintendent" means the superintendent of the department who assumes the duties of chief executive

as provided in chapter 76, Hawaii Revised Statutes.

"Temporary assignment" means the assignment by the assistant superintendent or an appointing authority and the assumption, without a formal change in position, of all or a major portion of the significant duties and responsibilities of another position.

"Temporary reallocation" means the reallocation of a position because of emergency, unusual, or unique work situations for a period not to exceed six months, provided that the period may be extended for good reason for additional six-month periods with the prior approval of the assistant superintendent.

"Vacation" means a leave of absence with pay as authorized by law, granted at the request of an employee for the purpose of rest and relaxation or for the personal convenience of the employee and calculated as required by law and this chapter.

"Voluntary demotion" means a demotion requested by an employee and approved by the assistant superintendent and the appointing authorities concerned.

"Week" means a period of seven consecutive calendar days, beginning on Sunday and ending seven days later on Saturday. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-11, 76-17, 386-142)

§8-63-4 General responsibilities of the assistant superintendent. The assistant superintendent shall direct and supervise all administrative and technical activities of the department. In addition to other duties imposed by the civil service law, the assistant superintendent shall assume the duties specified in section 76-13, Hawaii Revised Statutes, and is authorized to make the final determination whether or not a position is in the civil service system. The assistant superintendent shall develop and promulgate such policies, rules, standards, guidelines, and procedures

as the assistant superintendent deems necessary including, but not limited to, those addressing the following areas:

(1) Classification and related systems to support sound utilization of human resources, recruitment of qualified personnel, and appropriate pay and pay relationships;

(2) A civil service merit-based recruitment and examination program;

(3) A performance appraisal system for the purpose of evaluating the performance of employees in civil service and improving employee performance, consistent with section 76-41, Hawaii Revised Statutes;

(4) An incentive and awards program for the purpose of recognizing employees who contribute to the efficiency, economy, or other improvement of exceptionally meritorious special acts or services in the public interest in connection with or related to their official employment consistent with the policies of the board;

(5) A compensation administration system that provides for the proper compensation of employees and adjustments as necessitated by personnel movements and employment actions;

(6) Personnel file management for the purpose of ensuring the proper retention, organization, and release of personnel records and materials; and

(7) Circumstances under which civil service positions may be excepted from the civil service classification system, or civil service recruitment system, or both.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-13.5, 76-17)

§8-63-5 <u>General responsibilities of offices and complex area offices.</u> The assistant superintendents of each office and the complex area superintendents of each

complex area shall be responsible for personnel management within their respective office or complex area, and shall cooperate with the office of human resources in the administration of human resources matters. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-5)

§8-63-6 Delegation and decentralization of human resource services, and agreements on furnishing services and facilities. The assistant superintendent, whenever consistent with economic and efficient administration, may delegate the performance of human resource services to those in the department responsible for the planning, directing, and supervising the work of others. The delegation may be withdrawn at any time as determined by the assistant superintendent. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-5)

§8-63-7 Authority to investigate. The assistant superintendent shall conduct investigations to secure the enforcement of chapter 76, Hawaii Revised Statutes, and pertinent portions of law and the rules, regulations, guidelines, procedures, standards, and policies governing civil service system employment. This may include investigations into the qualifications and suitability of applicants for positions in the civil service system. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-8 Enforcement authority of the assistant superintendent. Whenever the assistant superintendent finds:

(1) That any person has been appointed to, or is holding or performing the duties of a position in violation of any of the laws, rules, regulations, guidelines, procedures, standards, and policies administered by the

assistant superintendent, the assistant superintendent is authorized, after giving due notice and opportunity for explanation, to certify the facts to the department with specific instructions for corrective action. Whenever the assistant superintendent issues specific instructions for corrective actions, the appointing authority concerned shall comply with the assistant superintendent's orders and make a report thereon to the assistant superintendent;

(2) That any employee has violated the laws, rules, regulations, guidelines, procedures, standards, and policies administered by the assistant superintendent, the assistant superintendent shall take action in accordance with law as may be appropriate to secure compliance. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-9 Appointment through the civil service system. (a) The assistant superintendent shall be responsible for recruiting applicants for open-competitive and promotional examinations and for determining the relative knowledge, skills, abilities, and fitness of applicants.

(b) The assistant superintendent may establish standards in determining relative knowledge, skills, abilities, fitness, and other requirements that applicants must meet to be rated in examinations.

(c) Eligibles shall be placed on an appropriate eligible list in the manner prescribed by these rules.

(d) A person selected through a civil service recruitment procedure for a permanent or temporary position shall be required to serve an initial probationary period, provided that when a temporary appointment is made, the duration of service for the temporary position exceeds the initial probationary period.

(e) Civil service membership will be acquired upon satisfactory completion of an initial probationary period.

(f) The assistant superintendent may determine the conditions for other types of appointments and may prescribe the methods for replacing persons holding these appointments.

(g) No person shall be appointed, promoted, transferred, or demoted in the civil service system until the person passes the examination prescribed by the assistant superintendent or unless specifically exempted. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-13)

§8-63-10 Discretion of appointing authority in filling civil service vacancies. An appointing authority may fill any vacancy in the civil service by appointment from a civil service eligible list, or any other means as provided for by this chapter or law. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-13)

§§8-63-11 to 8-63-13 (Reserved)

SUBCHAPTER 2

RECRUITMENT

§8-63-14 Citizenship and residence. Applicants shall be citizens, nationals, permanent resident aliens of the United States, or eligible under federal law for unrestricted employment in the United States, and shall become residents of the State within thirty days after beginning their employment and as a condition of eligibility for continued employment. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-22.5) (Imp: HRS §§76-22.5, 78-1)

§8-63-15 Announcement of recruitment and examination. As the needs of the department may require, the assistant superintendent may conduct a recruitment and examination announcement in the manner and for the period deemed reasonable and appropriate. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-22.5) (Imp: HRS §§76-13, 76-22.5)

§8-63-16 Acceptance of applications. (a) Application for examination and employment shall be made on the application form and with such supplemental information as prescribed by the assistant superintendent.

(b) The assistant superintendent or authorized designee may determine the number of applications to accept and evaluate based on need.

(c) Applications shall be accepted only during the period specified in the examination announcement. Late applications for competitive examinations may be accepted for good reason as determined by the assistant superintendent or designated appointing authority.

(d) Applications submitted to the department shall constitute official examination records. Applications and accompanying supporting documents shall become the property of the department. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-22.5) (Imp: HRS §§76-12, 76-13, 76-22.5)

§8-63-17 Cancellation of recruitment and examination announcements. (a) If there is no need for eligibles after a recruitment and examination announcement has been published or if other circumstances warrant it, the announcement may be canceled.

(b) All applicants shall be notified of the cancellation. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-22.5) (Imp: HRS §§76-12, 76-13, 76-22.5)

§8-63-18 Recruitment incentives. (a) To enhance the recruitment of persons employed or appointed to critical-to-fill or labor shortage positions, appointing authorities, with the prior approval of the assistant superintendent, may do both or one of the following:

(1) Compensate applicants for all or a portion of travel and transportation expenses; or

(2) Provide a monetary incentive in the form of a pay differential, as pre-determined and approved by the assistant superintendent.

(b) Recruitment incentives must be consistent with the merit principle and organizational and operational goals and objectives.

(c) Recruitment incentives are subject to annual review.

(d) The assistant superintendent may, for good reason, terminate incentives at any time.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-23.5) (Imp: HRS §§76-13, 76-23.5)

§§8-63-19 to 8-63-20 (Reserved)

SUBCHAPTER 3

EXAMINATION

§8-63-21 Scope and character of examinations. (a) The assistant superintendent may consult with qualified persons in regard to the content of tests, rating of applicants, or related test matters.

(b) Each examination shall relate to those matters which will evaluate the applicants' knowledge, skills, and abilities required to perform the duties of the class or position for which the examination is conducted.

(c) Any accepted personnel examining technique may be used, including a verification and evaluation of education, training, and experience; tests of knowledge, skill, ability, or aptitude; medical

examinations, including pre-employment drug testing; appraisals of personal suitability including factors such as employment history and references; employee background checks; and any other matter that the assistant superintendent determines appropriate. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-15, 76-18, 78-2.6)

§8-63-22 Disqualification of applicants. (a) The assistant superintendent may, for good reason, reject any application, disqualify an applicant for any period of time, or deny or rescind the certification of eligibility. This includes, but is not limited to, denying an applicant authorization to take an examination or denying or rescinding the certification of eligibility for any of the following reasons:

(1) Failure to meet the minimum qualification requirements or other public employment requirements for admission to the examination by the closing date for receipt of applications;
(2) Submission of a defective or an incomplete application;
(3) Refusal or failure to furnish documents required to verify any statements made in the application;
(4) Deception, fraud, or false statements in the application, examination, or appointment process;
(5) Failure to meet medical requirements to perform the essential job functions of the class or position;
(6) Illegal use of drugs;
(7) Conviction of any controlled substance-related offense during the three-year period immediately preceding the date of the application for employment;
(8) Conviction of a criminal offense which affects the applicant's suitability to

properly perform the duties and responsibilities of the class or position;

(9) A record of misconduct which is detrimental to the proper performance of the duties and responsibilities of the class or position; or

(10) Conviction of any act, attempt, or conspiracy to overthrow the State or the federal government by force or violence.

(b) The assistant superintendent may conduct investigations to determine an applicant's qualifications and suitability for civil service employment. If the investigation discloses that the person is ineligible for the position, the assistant superintendent shall take appropriate corrective action, which may include denying authorization to take the examination, removing the person's name from the list of eligibles, rescinding the certification of eligibility, barring an applicant from civil service employment for a specific period of time, or any combination thereof.

(c) The assistant superintendent shall notify any applicant whose application is rejected, specifying the reasons for the rejection.

(d) An applicant may request an administrative review of an examination rating in accordance with section 8-63-75. A request for administrative review shall not delay, prevent, or invalidate the certification of names from the eligible list nor the appointment of a person from the list.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-18, 76-29, 78-2.6) (Imp: HRS §§76-12, 76-13, 76-18, 78-2.6, 831-3.1)

§8-63-23 Conduct of examinations. (a) Examinations shall be held at the times, places and in the manner that, in the judgment of the assistant superintendent, are most practical and meet the needs of the department.

(b) Qualified applicants shall be notified of the date, time, and place of the examination. The

department shall not be responsible if a notice is lost in the mail or sent to an applicant's former address through failure of the applicant to inform the department of a change of address.

(c) No applicant shall be entitled to take an examination at a date, time, or place other than stated in the notification except as the assistant superintendent may authorize.

(d) All reasonable precautions shall be taken to protect the confidentiality of information about applicants.

(e) All applicants for examinations involving physical ability or performance tests may be required to sign a waiver of liability. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§8-63-24 Rating of examinations. (a) Appropriate testing techniques and procedures shall be used in rating examinations and determining the relative ranking of applicants. The final earned rating required to pass an examination shall be set by the assistant superintendent. The assistant superintendent may set minimum ratings for each part of an examination. Applicants may be required to obtain at least the minimum rating in each part of the examination to be rated on the remaining parts. The final earned rating of each applicant shall be determined by combining the earned ratings of each part of the examination in accordance with the weights established.

(b) Eligibles shall be placed on open-competitive lists in order of their final earned ratings, which includes any creditable veteran's preference points, and on promotional lists in the order of final earned ratings. Veteran's preference points shall be awarded for the periods and conditions authorized by law to applicants who qualify with at least the minimum passing rating for each part of the examination.

(c) Based on factors determined by the assistant superintendent, applicants may be notified only as to whether or not they qualified to be on the eligible list. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-18, 76-103) (Imp: HRS §§76-12, 76-13, 76-18, 76-103)

§8-63-25 Notification of results of examination. (a) Applicants who participate in an examination shall be given written notice of their test results.

(b) The filing of an appeal by an applicant on any part of an examination shall not delay, prevent or invalidate the certification of names from the eligible list nor the appointment of a person from the list. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§8-63-26 Changes in rating. (a) Changes in rating may be made as a result of the discovery of errors in the rating, or as a result of an administrative review.

(b) Rating errors and changes as a result of administrative review may be corrected throughout the life of the eligible list.

(c) Applicants whose ratings are changed shall be notified.

(d) Changes in rating shall not affect a certification already issued or invalidate an appointment already made from the eligible list, except that the appointment shall be voided when a person is found within the probationary period to have failed the examination. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§8-63-27 Custody and protection of materials. (a) To protect the confidentiality of examination questions, review of test materials prepared by the

department or obtained from other governmental jurisdictions or private firms shall not be permitted.

(b) Technical and examination materials used in preparation and ratings of examinations and supporting documents shall remain the property of the department.

(c) All examination material relating to a particular applicant or applicants including but not limited to reports of character and material regarding personal suitability of the applicant shall be considered confidential information.

(d) Appointing authorities or their authorized representatives may inspect the examination papers of eligibles whose names have been certified to them for appointment. To preserve the confidential character and sources of information and to protect against dissemination of unfounded or unproved allegations, reports of character, personal suitability and other confidential information shall be secured and held in strict confidence and will not be made available for review by the appointing authorities unless specifically authorized by the assistant superintendent. Appointing authorities and their representatives shall not disclose the examination materials or their contents to any person.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§8-63-28 Records and reports of examinations. An examination record shall be maintained in accordance with the department of accounting and general services guidelines. The assistant superintendent shall determine the contents of the examination record.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§§8-63-29 to 8-63-30 (Reserved)

SUBCHAPTER 4

CERTIFICATION

§8-63-31 Duration of eligibility. (a) An eligible on an open or promotional competitive eligible list shall have eligibility for employment consideration for no less than six months from the date the list is established or until the list is canceled or terminated. The eligibility period may be extended at the discretion of the assistant superintendent.

(b) A person on a select priority list shall be eligible for employment consideration until the person secures new employment. An employee who had a temporary appointment without return rights to a permanent position shall be eligible for select priority employment only to the end date of the temporary appointment. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13, 76-17, 386-142)

§8-63-32 Certification of eligibles. (a) Upon receipt of a request for a list of eligibles, the assistant superintendent shall certify names from available lists of eligibles for each vacancy. The order of eligible lists to be used for certification shall be as follows:

(1) Select priority list;
(2) Intra-departmental promotional list;
(3) Recall list; and
(4) Open-competitive list. An eligible on an open-competitive list shall be certified on the basis of the eligible's examination ratings and availability for work location and duration of employment.

(b) Unless the select priority list is used, a certification of eligibles for each vacancy in a department shall consist of a number of eligibles as requested by the appointing authority who are available for the same or related class in the order

in accordance with the procedures established by the assistant superintendent. The assistant superintendent may also authorize certification under the following conditions:

(1) An eligible whose name is restored to a list after termination of initial probation, may be excepted from certification to the office from which the person was terminated;

(2) A certification of eligibles shall be effective for thirty calendar days after the date of certification, and may be extended by the assistant superintendent.

(c) Veterans whose examination scores, after addition of applicable preference points, equal or exceed the examination score of the last eligible to be referred based on examination score, shall also be certified. In addition, when the last eligible to be referred based on examination score is one of two or more eligibles who have identical examination scores, the two or more eligibles shall also be certified.
[Eff] (Auth: HRS §§302A-1112, 76-17)
(Imp: HRS §§76-12, 76-13, 78-1, 386-142)

§8-63-33 Selective certification. When there is no list of eligibles appropriate for certification for filling a particular position requiring distinctive or unique qualifications, the assistant superintendent may certify selectively the names of eligibles who are qualified for the particular position. The certification may be in the order of the eligible's current ranking, or of a new ranking as determined by the assistant superintendent, based upon the particular requirements of the position.
[Eff] (Auth: HRS §§302A-1112, 76-17)
(Imp: HRS §§76-12, 76-13)

§8-63-34 Selection by the appointing authority. (a) The appointing authority may interview as many eligibles certified from an open-competitive eligible

list as deemed necessary to fill the vacant position based on job related requirements and program needs. All eligibles who possess the job related requirements must be given the opportunity for an interview.

(b) The appointing authority shall interview all interested and available eligibles certified from the intra-departmental promotional list. The requirement to interview an eligible may be waived whenever the appointing authority has interviewed and fully assessed the eligible's qualifications for a similar position from another interview conducted during the previous six months.

(c) All eligibles who are interviewed, but not selected shall be notified in writing.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§8-63-35 Suspension, restoration, and removal of names from eligible list. (a) The assistant superintendent may suspend an eligible from certification for any of the following reasons:

(1) Applicant fails to demonstrate interest or availability for employment;
(2) Failure to reply to a written inquiry relating to availability;
(3) Failure to meet physical or medical requirements for the position;
(4) Further investigation of the eligible's suitability needs to be conducted;
(5) Eligible is unavailable for employment;
(6) The eligible is appointed to a temporary position from an eligible list. The suspension shall apply to other temporary vacancies only; or
(7) There is other good reason as determined by the assistant superintendent.

(b) The following eligibles may, upon request, have their names restored to the list of certifiable eligibles if the eligible list is still active:

(1) A probationary employee who was terminated without delinquency or misconduct;

(2) An eligible who is currently available for employment; or

(3) An eligible who has been suspended because of correctable physical reasons and who currently meets physical standards.

(c) The assistant superintendent may remove an eligible from the eligible list for good reason, including but not limited to:

(1) The eligible was selected from the eligible list, or a related list at the same pay range, and is serving on initial or new probationary appointment;

(2) The person is found to be ineligible for appointment;

(3) Withdrawal by the eligible;

(4) The eligible or applicant fails to demonstrate interest or availability for employment;

(5) Failure to report for duty within the time prescribed by the appointing authority and good reason is not shown;

(6) Failure to report for or complete medical examination process and good reason is not shown;

(7) Failure to appear for or complete a required drug screening test and good reason is not shown; or

(8) Eligible is determined to be an illegal user of drugs. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-36 Cancellation of eligible lists. (a) The assistant superintendent may cancel an eligible list for good reason including but not limited to the following reasons:

(1) Changes in the minimum qualification or classification standards of a class of positions;

(2) Abolishment of the class for which the list of eligibles was established; or

(3) All eligibles are unavailable for employment.

(b) Applicants affected by the cancellation of the eligible list shall be notified.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§§8-63-37 to 8-63-38 (Reserved)

SUBCHAPTER 5

TYPES OF APPOINTMENT

§8-63-39 Civil service appointment. (a) An employee is granted a civil service appointment when the appointment is as a result of civil service recruitment procedures.

(b) A civil service appointment may be made to a temporary or permanent position in the civil service or permanent civil service position being filled on a temporary basis.

(c) The appointing authority shall inform all applicants referred under civil service recruitment procedures if the appointment has a limitation date.

(d) An applicant who receives a civil service appointment does not become a member of the civil service until completing a probationary period and otherwise meeting the requirements of this chapter, section 76-27, Hawaii Revised Statutes, and guidelines and procedures issued by the assistant superintendent.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76- 13, 76-27)

§8-63-40 Probationary appointment. (a) All vacancies and new positions in the civil service shall be filled by probationary appointments, except as provided by these rules. The probationary period shall be utilized as part of the examination process to determine the fitness and ability of the employee

for employment in the position and civil service. An employee must meet the performance requirements of the position in order to successfully complete the probationary period.

(b) An initial probationary period shall be required when a person who does not have regular status or membership in civil service is appointed to a permanent civil service position, except as provided by these rules.

(c) A new probationary period shall be required of a regular employee when the employee:

(1) Is promoted to a permanent position;

(2) Is transferred to a permanent position in another class;

(3) Receives a voluntary demotion to a permanent position which is not in the same series; or

(4) Is in a position which is reallocated to a class in a higher pay range.

(d) The appointing authority has the discretion to require a new probationary period where not required under subsection (c) above.

(e) Initial and new probationary periods shall be for a period of six months. However, this provision may be modified and the assistant superintendent may establish a longer initial probationary period for a class of work when a longer period is needed to adequately train and evaluate the employee. The assistant superintendent shall identify these classes and the duration of the probationary period in guidelines.

(f) The appointing authority may extend the probationary period upon written notification to the employee and the assistant superintendent prior to the expiration of the probationary period. Failure to inform the employee in writing of the extension shall result in the employee being granted a permanent appointment by default. The appointing authority may extend the probationary period for any of the following reasons:

(1) Further evaluation of the employee's ability to successfully perform the duties of the position is required. The extension shall

not exceed six months or as deemed appropriate by the assistant superintendent;

(2) The employee's absence affects the appointing authority's ability to evaluate the employee's performance. The duration of the adjustment shall not exceed the period of absence or combined periods of absences;

(3) A final determination of the employee's suitability for employment has not been made provided the extension shall not exceed six months; or

(4) The appointment may be affected due to a pending appeal against the selection. Upon resolution of such appeal, the appointing authority shall notify the assistant superintendent who will take appropriate action.

(g) Crediting of service as part of the employee's probationary period may be allowed under the circumstances below:

(1) Service in a temporary position or a permanent position temporarily vacant or any part of service in a temporarily reallocated position may be credited as part of the employee's probationary period should changes subsequent to the initial date of the temporary reallocation warrant the granting of a probationary appointment in the same class;

(2) Any part of an initial probationary period served in a position, prior to being transferred to a different position in the same class, may be credited as part of the employee's initial probationary period; or

(3) A probationary period is not required when an employee filling a permanent position temporarily vacant will be given a permanent appointment to the position if it later develops that the vacancy will be permanent and the employee was appointed through a civil service recruitment procedure to this vacancy. The employee must have been

performing the duties of the position in a satisfactory manner for at least six months and the appointing authority certifies that the period of temporary service immediately preceded the new appointment and that the employee's duties are essentially similar to the duties to be performed for the initial probationary period for the same or related position.

(h) A member's new probationary period may be terminated and the employee shall be permitted to return to the former position or another position in the former class in the department where the employee last held a permanent appointment and shall be restored as though the employee had remained in the position continuously. For compensation purposes such a release shall be considered a termination of the promotion. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-41 Non-civil service appointments. (a) The appointing authority may make an appointment of not more than eighty-nine consecutive calendar days or of less than twenty hours a week for thirty-seven consecutive weeks without regard to the minimum qualification requirements of the position or a non-civil service temporary appointment outside the list in order to meet immediate operational needs provided that:

(1) The employee chosen for such an appointment must meet the public employment requirements under section 78-1, Hawaii Revised Statutes, and possess the necessary occupational license, certification, or registration required by statute or regulation. Service acquired in a non-civil service appointment shall not be credited towards meeting the requirements of an initial probationary period;

(2) The following conditions shall apply for such appointments:

(A) The appointing authority ensures the employee will perform duties characteristic of the class;
(B) The employee has not received a non-civil service appointment in the same class of work within the last three months, unless this restriction is waived by the assistant superintendent; and
(C) There are no interested and available applicants on an appropriate eligible list to fill the vacancy, or the appointing authority is unable to make a selection from an appropriate eligible list.

(b) The appointing authority may make a non-civil service temporary appointment outside the list when there are no interested and available applicants on an appropriate eligible list to fill the vacancy, or the appointing authority determines that the period of the temporary appointments makes it impracticable to fill the position by recruitment procedures. The following conditions shall apply:

(1) For permanent vacancies, the appointment shall not exceed six months;
(2) For temporary vacancies, the appointment shall not exceed one year;
(3) An appointing authority may request and be granted an extension to continue an employee in a non-civil service temporary appointment outside the list at the discretion of the assistant superintendent or authorized designee. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-17)

§8-63-42 Exempt appointment. The assistant superintendent shall create positions exempted from civil service as permitted by section 76-16, Hawaii Revised Statutes, or as may otherwise be permitted by law. The assistant superintendent may also exempt a position temporarily when a position is pending

establishment of a new class, or may exempt a position permanently when the establishment of a class is impracticable. Exempt appointments also include positions that have a narrow limitation period that precludes completion of probation. The assistant superintendent shall review on a periodic basis the exempt positions to determine whether such positions should continue to be exempt and may revoke a previously authorized exemption when the particular position or services no longer meets the criteria or conditions for exemption. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-13 76-16)

§§8-63-43 to 8-63-44 (Reserved)

SUBCHAPTER 6

CLASSIFICATION SYSTEMS

§8-63-45 Purpose. The purpose of this subchapter is to develop and maintain systems within the department for the objective, consistent, and timely classification of all civil service positions and for the reasonable and consistent assignment of classes of positions to pay ranges. The systems so established shall be based on merit, and contribute to the selection and retention of public employees by compensating them in accordance with law. The systems or any portions thereof may be extended to non-civil service positions as required by law or for the good of the service. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-1, 76-12, 76-13, 76-13.5)

§8-63-46 Development and maintenance of classification systems. The assistant superintendent shall establish, implement, and maintain one or more classification systems covering all civil service

positions, not otherwise exempted by rules. The classification systems shall be constructed with the objective of achieving equal pay for equal work as provided in section 76-1, Hawaii Revised Statutes. The duties and responsibilities assigned to positions and other factors necessary to a proper understanding of their work are to be documented in official position descriptions prepared by the affected state office or complex area. In establishing, implementing, and maintaining the classification systems, the assistant superintendent may inquire at any time into the work of positions, their minimum qualification requirements and other relevant factors.
[Eff] (Auth: HRS §§302A-1112, 76-17)
(Imp: HRS §§76-12, 76-13, 76-13.5)

§8-63-47 Establishment of classification standards. (a) The assistant superintendent shall establish standards for the development and maintenance of classification systems relative to position descriptions, class specifications, and other matters.

(b) The assistant superintendent is authorized to establish, revise, or abolish classes in order to maintain the classification systems.
[Eff] (Auth: HRS §§302A-1112, 76-17)
(Imp: HRS §§76-12, 76-13, 76-13.5)

§8-63-48 Procedures for classification. Authority to develop procedures for the establishment, implementation, and maintenance of the classification systems is vested with the assistant superintendent. Governing procedures shall apply to all relevant aspects including position descriptions, authorizations, supporting documents, standards of adequacy, and submittal of classification requests.
[Eff] (Auth: HRS §§302A-1112, 76-17)
(Imp: HRS §§76-12, 76-13, 76-13.5)

§8-63-49 Classification of positions. (a) The assistant superintendent shall:

(1) Place any position subject to this chapter into an appropriate class; and

(2) Reallocate any position from one class to another class, whenever warranted, by material changes in position duties and Responsibilities, class allocation standards, or to correct an error.

(b) Each position shall be placed in a class consistent with the nature and level of its duties, responsibilities, and minimum qualification requirements.

(c) The assistant superintendent may establish standards and procedures and delegate to offices the authority to place their own positions into existing classes. Post audits shall be made of an office's exercise of classification authority. The assistant superintendent may rescind or otherwise correct any action taken, as appropriate, and may withdraw the authority when it is determined that continued delegation is not in the best interest of the system.

(d) The assistant superintendent may approve the temporary reallocation of a position because of emergency, unusual, unique, or other special conditions. When the conditions no longer apply, the appointing authority shall promptly discontinue the temporary reallocation and notify the assistant superintendent of the discontinuance. Upon discontinuance, and in any event no later than the ending date that was authorized by the assistant superintendent for such reallocation, the position shall revert to its former classification status.

(e) The incumbent of a position that is reallocated shall be required to meet the minimum qualification requirements established for the class to which the position is reallocated, including for temporary reallocations.

(f) The reallocation downward of a filled position for disciplinary, involuntary, or voluntary reasons, or to avoid a layoff, or because of a reorganization or injury or illness, shall be so

specified by the appointing authority and treated as if a demotion for the specified purpose took place. Whatever procedures and requirements apply to the respective demotion process shall also apply to the corresponding reallocation downward action. [Eff] (Auth: HRS §§76-5, 76-17) (Imp: HRS §§76-5, 76-12, 76-13, 76-13.5, 76-16)

§8-63-50 Effective dates of classification actions. The assistant superintendent shall put forth guidelines on establishing effective dates for classification of new positions and existing positions. [Eff] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 76-13.5)

§8-63-51 Position descriptions. The duties and responsibilities assigned to a position shall be accurately reflected in an official position description and aligned to the organization's functional statement. Revised position descriptions shall be submitted on a timely basis if significant changes in the duties and responsibilities of the position are made. [Eff] (Auth: HRS §§ 302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-52 Classification actions and merit principles. Classification actions effected shall be consistent with the principles of the merit system. In the event other more appropriate personnel processes are not available, the appointing authority may request the reallocation of a position in lieu of promoting or demoting the affected incumbent, provided the basic principles and requirements governing promotions and demotions, as applicable, are followed. [Eff] (Auth: HRS §§ 302A-1112, 76-17) (Imp: HRS §§76-1, 76-12, 76-13)

§§8-63-53 to 8-63-54 (Reserved)

SUBCHAPTER 7

COMPENSATION SYSTEMS

§8-63-55 Assignment of new classes to pay ranges. The assistant superintendent shall assign new classes to appropriate pay ranges in the compensation plans, consistent with policies and standards established in accordance with statute and the following principles:

(1) Equal pay for equal work shall apply between classes in the same bargaining unit among jurisdictions for those classes determined to be equal through systematic classification of positions based on objective criteria and adequate job evaluation, unless it has been agreed in accordance with chapter 89, Hawaii Revised Statutes, to negotiate the repricing of classes;

(2) Permanent and continual exposure to unusually hazardous working conditions may be recognized as a factor in the assignment of classes to pay ranges.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-1, 76-12, 76-13)

§§8-63-56 to 8-63-57 (Reserved)

SUBCHAPTER 8

EXEMPTIONS FROM CIVIL SERVICE

§8-63-58 General provisions. (a) This subchapter applies to positions, and persons in those positions, and persons providing personal services which are by law excepted from all or part of the provisions of the civil service law.

(b) All positions and persons in the exempt service are excluded from the requirements of selection by merit competition and from civil service status but should be fully qualified by experience and ability to perform the duties of the position or personal services.

(c) Except as provided by law, the requirements of position classification and compensation may not be applicable.

(d) At the time of their hire as a condition of eligibility for continued employment, persons shall be citizens, nationals, permanent resident aliens of the United States, or deemed eligible for employment under federal law, and residents or former residents of the State with the exceptions as provided by section 78-1, Hawaii Revised Statutes.

[Eff] (Auth: HRS §§302A-1112, 76-17, 78-1) (Imp: HRS §§76-13, 76-16, 78-1)

§8-63-59 Authority to exempt. (a) The assistant superintendent shall exempt positions, persons, or personal services in accordance with law upon finding that the conditions and requirements of law are met.

(b) The assistant superintendent may establish standards and procedures for the exemption of positions.

(c) The assistant superintendent may revoke a previously authorized exemption when the particular position or services no longer meet the criteria or conditions for exemption. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-13, 76-16)

§§8-63-60 to 8-63-61 (Reserved)

SUBCHAPTER 9

LEAVES

§8-63-62 Leave of absences. Employees shall be eligible for vacation leave, sick leave, and other leaves of absences with or without pay, as negotiated under applicable collective bargaining agreements. Employees excluded from collective bargaining shall secure similar leaves as provided under section 89C-3 and 89C-4, Hawaii Revised Statutes, as applicable. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13, 78-23)

§8-63-63 Leave sharing. (a) The assistant superintendent may establish a leave sharing program that allows employees within the department to ease the burdens of fellow employees who otherwise need to take time off from work without pay to recover from a serious personal illness or injury or to care for a family member who has a serious illness or injury and is incapable of self care.

(b) As used in this section:

(1) "Family member" means an employee's:

(A) Spouse; or

(B) Parent or unmarried child in a blood or legal relationship, or a "hanai" relationship through the Hawaiian custom, provided the employee is the primary caregiver.

(2) "Serious personal illness or injury" means an illness, injury, or impairment that meets the conditions below:

(A) Is life threatening or critical, severe, and debilitating which does not include minor surgeries, routine pregnancies, illnesses due to colds or flus, broken limbs, and other non-critical conditions; and

(B) Is certified by a physician, as defined under section 386-1, Hawaii Revised Statutes, as being totally incapacitating, and:

(i) Where the condition involves the employee, is also certified as

being the cause of the employee's inability to work; or

(ii) Where the condition involves the employee's family member, is also certified as serious and requiring the employee's full-time assistance to provide primary care to the family member.

(c) An employee who wishes to donate accumulated leave credits must not have solicited nor accepted anything of value in exchange for the donation.

[Eff] (Auth: HRS §§302A-1112, 76-17, 78-26) (Imp: HRS §§76-13, 78-26)

§§8-63-64 to 8-63-65 (Reserved)

SUBCHAPTER 10

MEDICAL EXAMINATIONS

§8-63-66 Medical guidelines. The assistant superintendent is authorized to establish medical guidelines related to performing the essential job functions for the department's classes of work. In establishing these guidelines, the assistant superintendent may consult with medical professionals, the applicable department or appointing authority, or other appropriate specialists. These guidelines will:

(1) Ensure that persons seeking employment in the department civil service system meet the medical and physical requirements necessary for the safe and efficient performance of the essential functions of the position for which they are being medically evaluated; and

(2) Ensure that employees are able to perform the essential functions of their positions.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13)

§8-63-67 Kinds of medical examinations. The assistant superintendent may require the following kinds of medical examinations:

(1) Pre-employment medical examination. A pre-employment medical examination is a medical examination to evaluate the person's ability to satisfactorily perform the essential job functions of the position for which the individual is being hired;

(2) Medical evaluation. A medical evaluation is a medical examination to evaluate the employee's ability to satisfactorily perform the essential functions of the employee's current position.

(A) Periodic medical evaluation shall be required of all employees holding positions in classes for which such examinations are required by law or which the assistant superintendent finds, based on the nature of the work performed or other interests of the department, an evaluation is necessary.

(B) The appointing authority may require a medical evaluation whenever it is necessary to determine the employee's ability to safely perform the essential functions of the employee's present position.

(C) If an employee is selected for a promotion, transfer, or other change to a position in a class for which the medical and physical requirements to perform the essential functions exceed those required for the employee's present position, and the assistant superintendent has determined that a medical evaluation is required for the position, the employee shall be medically evaluated prior to appointment. [Eff]
(Auth: HRS §§302A-1112, 76-17, 76-18)
(Imp: §§76-12, 76-13)

§8-63-68 Failure to meet employment requirements. (a) In determining whether a person is qualified for initial appointment or continued employment, the assistant superintendent or appointing authority shall review medical as well as other pertinent information from the individual, or any other appropriate source regarding the person's ability to currently perform the essential functions of the position.

(b) If it is determined that an applicant does not meet the employment requirements for initial appointment, the applicant shall be disqualified for appointment. The assistant superintendent shall notify the applicant in writing of the reason(s) they are denied from further employment consideration for the position for which they applied.

(c) If it is determined that an employee does not meet the medical requirements for continued employment, the appointing authority shall notify the assistant superintendent in writing prior to taking any action. Upon concurrence by the assistant superintendent, the appointing authority shall notify the employee in writing of the reason(s) for disqualification and action to be taken.

(d) The assistant superintendent shall prescribe the procedures for the placement of employees on a department-wide basis whenever, upon medical evaluation, employees do not meet the medical requirements to perform the essential functions of their positions. If there is no suitable position for which an employee meets the minimum qualification and medical requirements, the appointing authority may terminate the employee's employment. Upon termination, the former employee shall be eligible to be placed on the priority placement list, if the employee meets the requirements to be placed on this list, or on the appropriate re-employment list for which the former employee meets the minimum qualifications and medical requirements.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13)

§§8-63-69 to 8-63-70 (Reserved)

SUBCHAPTER 11

INTERNAL COMPLAINT PROCEDURE

§8-63-71 Purpose. The purpose of this subchapter is to establish a procedure for handling complaints related to human resources actions described in this chapter. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: §76-42)

§8-63-72 Applicability. (a) The internal complaint procedure shall apply to matters within the jurisdiction of the merit appeals board in accordance with section 76-14, Hawaii Revised Statutes:

(1) Recruitment: Actions taken in processing applicants for civil service employment;
(2) Examination: Actions taken in evaluating an applicant for civil service employment, to include the initial probationary period;
(3) Classification and reclassification: Actions taken in assigning a civil service position to a class of work;
(4) Initial pricing of classes: Actions taken affecting a civil service employee in a new class when initially priced; and
(5) Adverse employment actions under chapter 76, Hawaii Revised Statutes, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6, Hawaii Revised Statutes.

(b) The internal complaint procedure may also be used for handling other complaints related to human resources actions as determined by the assistant superintendent.

(c) Matters subject to collective bargaining grievance procedures shall not be processed under the internal complaint procedure. [Eff]

(Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-14, 76-42)

§8-63-73 Internal complaint procedure. This procedure consists of an informal review and a formal complaint process. An administrative review constitutes the informal review process. If the complaint cannot be resolved at this level, a formal complaint may then be filed through the formal complaint process. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-14, 76-42)

§8-63-74 Administrative review. (a) For complaints within the jurisdiction of the merit appeals board, the following persons shall be entitled to file a request for administrative review:

(1) Recruitment: Any person who has filed an application for a vacant civil service position or a recruitment program and who alleges an improper recruitment.

(2) Examination:

(A) Any applicant who:

(i) Receives notification of failure to meet minimum qualifications for the class, position, or public employment requirements for which a formal application was filed;

(ii) Receives notification of an unsatisfactory examination score;

(iii) Receives notification of non-selection for a civil service position; or

(iv) Receives notification of unsuitability for public employment or a specific class of work applied for;

(B) Any employee serving an initial probationary appointment in a civil

service position who is disciplined or terminated for failure to successfully complete the initial probationary period.

(3) Classification or Reclassification: The civil service employee occupying the position as of the effective date of the classification action and any subsequent civil service employee in the position up to the date of the notice of final action who believes the classification action was improper.

(4) Initial pricing of classes: The civil service incumbent of a position in a new class as of the effective date of the initial pricing action who alleges an improper pricing action.

(5) Other employment actions taken against a civil service employee who is excluded from collective bargaining: Any civil service employee who is excluded from collective bargaining coverage under section 89-6, Hawaii Revised Statutes, who alleges an adverse employment action under Chapter 76, Hawaii Revised Statutes.

The request for administrative review must be filed within ten calendar days after the date of the notice of the recruitment, examination, classification, reclassification, pricing, or final adverse action.

(b) For complaints not within the jurisdiction of the merit appeals board, the complainant shall be entitled to file a request for administrative review. The request for administrative review must be filed within ten calendar days after the date of the notice of the final adverse action.

(c) Upon receipt of the request for administrative review, the assistant superintendent or designee shall take appropriate action, including:

(1) If the complaint is not within the jurisdiction of the department, refer and forward the complaint to the appropriate agency, if known, and notify the complainant

accordingly;

(2) If the complaint is covered by another department complaint process, refer and forward the complaint and notify the complainant accordingly;

(3) If the matters are clearly subject to the collective bargaining procedure, return the complaint to the complainant; or

(4) Accept the complaint for appropriate action and notify the complainant accordingly.

(d) If the complaint falls within the authority of the department and the scope of this internal complaint procedure, the assistant superintendent or designee shall review the complaint and issue a written decision within ten calendar days after the completion of the administrative review. If the complaint is denied, information on filing a formal complaint through the formal complaint process, set forth in section 8-63-75, shall accompany the written decision. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-14, 76-42)

§8-63-75 Formal complaint process. (a) If the complaint is denied through the administrative review process, the complainant shall be entitled to file a formal complaint within ten calendar days after the notice of administrative review decision.

(b) Upon receipt of the formal complaint, the assistant superintendent or designee shall review the complaint and issue a written decision within ten calendar days after completion of the formal review. If the complaint is:

(1) Denied and the matter is within the jurisdiction of the merit appeals board, information on filing a formal appeal with the merit appeals board shall accompany the written decision; or

(2) Denied and the matter is not within the jurisdiction of the merit appeals board, the decision on the complaint shall be final and binding, unless the matter is within the

proper jurisdiction of another body or agency. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-14, 76-42)

§8-63-76 Appeals to the merit appeals board. The internal complaint procedures shall be exhausted before an appeal is filed with the merit appeals board. Appeals to the merit appeals board shall be in accordance with section 76-14, Hawaii Revised Statutes, chapter 8-62, Hawaii Administrative Rules, and in accordance with the rules of practice and procedures as may be adopted by the merit appeals board. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-14, 76-42)

§8-63-77 Other appeals processes. When an appeal is not under the jurisdiction of the merit appeals board but some other administrative agency or appellate body, the complainant is responsible for the timely filing of an appeal with the appropriate agency regardless of whether the internal complaint procedure under this subchapter was used. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-42)

§§8-63-78 to 8-63-79 (Reserved)

SUBCHAPTER 12

RESIGNATION

§8-63-80 Purpose. The purpose of this subchapter is to provide for orderly and uniform procedures for the resignation of employees from department service. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-30)

§8-63-81 Applicability. This subchapter shall apply to civil service and exempt employees unless otherwise specified. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-30)

§8-63-82 Notice of resignation. When an employee elects to separate from the service, the employee shall notify the appointing authority in writing at least fifteen calendar days before the date of the separation, unless the appointing authority waives this requirement, or due to circumstances specified under section 8-63-83. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-30)

§8-63-83 Failure to report to duty; resignation. (a) An employee who fails to report to duty for a period of fifteen calendar days without providing the employer with reasons for the absence during the period shall have been deemed to have resigned. The effective date of the resignation shall be the day immediately following the fifteenth day of absence.

(b) If the employee expresses a desire to continue employment within fifteen days from the last day the employee reported for work, the employee shall not be deemed to have resigned. The appointing authority may consider appropriate disciplinary action, including discharge, where the employee fails to provide satisfactory reasons for failure to report for duty as expected. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-30)

§8-63-84 Withdrawal of resignation. A resignation shall be binding on the employee upon the submission of the resignation notice. It may be withdrawn only with the appointing authority's consent. [Eff] (Auth: HRS§§302A-1112, 76-17) (Imp: HRS §76-30)

§8-63-85 Resignation submitted during an investigation. When an employee submits a written resignation while being the subject of an investigation pertaining to an alleged impropriety on the employee's part, the appointing authority shall determine whether to:

(1) Discontinue the investigation and accept the resignation, provided that the requirements of section 8-63-82 have been met; or

(2) Continue the investigation and accept the resignation on the condition that it may be changed to a discharge, depending upon the outcome of the investigation.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-30)

§8-63-86 Resignation submitted following notice of discharge. If an employee submits a written resignation after receiving notice of discharge, the appointing authority shall determine whether to:

(1) Accept the resignation, provided that, notwithstanding section 8-63-82, the effective date is on or before the date the discharge would have taken place; or

(2) Reject the resignation and effect the discharge.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-30)

§8-63-87 Collective bargaining provisions. Whenever there are provisions in a collective bargaining agreement that conflict with this subchapter, the terms of the agreement shall prevail. Actions taken by the appointing authority shall, if grieved, be filed pursuant to the contractual grievance procedure." [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-30)

§§8-63-88 to 8-63-89 (Reserved)

2. The adoption of chapter 8-63, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

_____
Chairperson, Board of Education

APPROVED AS TO FORM:

_____
Deputy Attorney General

DEPARTMENT OF EDUCATION

Adoption of Chapter 8-63
Hawaii Administrative Rules

date of adoption

1. Chapter 8-63, Hawaii Administrative Rules, entitled "Civil Service Rules", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 2

PART I

PUBLIC SCHOOLS

CHAPTER 63

CIVIL SERVICE RULES

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chapter(?) SUBCHAPTER 1

GENERAL PROVISIONS

§8-63-1 Purpose; statement of policy. The purpose of this subchapter is to set forth the fundamental character of the system of personnel administration governed by these rules consistent with merit principles and the principles of equal employment opportunity within the department. Provisions of this chapter shall be construed as supplemental to, and in the context of, chapter 76, Hawaii Revised Statutes. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-17, 76-1)

§8-63-2 Applicability. (a) The rules in this chapter shall apply to all positions and employees in the civil service of the department. Unless a rule specifies otherwise, it shall not apply to positions and employees exempt from civil service.

(b) The department's civil service system includes all positions in the department except those positions that are exempted pursuant to section 76-16, Hawaii Revised Statutes, or specifically exempted therefrom by the assistant superintendent in accordance with statutory requirements.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-3 Definitions. As used in this chapter, unless the context indicates otherwise:

"Administrative review" means a reevaluation of a recruitment, examination, classification, reclassification, or initial pricing action in accordance with the provisions set forth in these rules, and in such policies, standards, guidelines, or procedures established by the assistant superintendent.

"Appointing authority" means the superintendent or designees having the power to make appointments, make changes in the status of employees, and take other actions as provided in these rules.

"Assistant superintendent" means, ~~unless the context indicates otherwise,~~ the head of the department's office of human resources who assumes the duties of the director as provided in chapter 76, Hawaii Revised Statutes.

"Board" means the board of education.

"Calendar day" or "day" means a period that begins at midnight, Hawaii Standard Time, and ends twenty-four hours later at midnight, Hawaii Standard Time.

"Certificate of eligibles" means the official document through which eligibles are referred for employment consideration.

"Certification" means the process whereby the

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names of qualified persons on the eligible lists are referred to the appointing authority.

"Civil service employee" means an employee who has met all requirements for membership in the civil service under section 76-27, Hawaii Revised Statutes.

"Civil service appointment" means an appointment to a civil service position from an appropriate eligible list.

"Civil service position" means a position within the department that is not exempt from civil service law and must be filled through civil service recruitment procedures based on merit.

"Civil service law" means chapter 76, Hawaii Revised Statutes, as amended. Unless the context of a specific rule or these definitions clearly indicate otherwise, all terms used in this chapter shall have the same meaning as in the civil service law, and references to the "law" shall be taken to mean the civil service law.

"Civil service recruitment procedure" means the procedure for the competitive process by which an applicant is deemed qualified for civil service appointment.

"Civil service system" means the personnel system based on merit principles as specified in section 76-1, Hawaii Revised Statutes.

"Class or class of work" means a group of positions that reflect sufficiently similar duties and responsibilities such that the same title and pay range may apply to each position allocated to the class.

"Class specification" means the official document, approved by the assistant superintendent, providing a formalized summary of the nature and scope of duties and responsibilities, level of difficulty and authority, and minimum qualification requirements of a class.

"Classification" means the process of establishing an occupational framework and grouping positions on the basis of the kind and level of work and knowledge, skills, abilities, and qualifications required for performance of the work.

that "Compensatory time-off" means the number of hours ~~which~~ an employee is scheduled to be absent from work as mutually agreed to with the employee's appointing authority when such absence is credited as compensatory time-off and charged against the employee's compensatory time credit.

"Compensatory time credit" means the number of hours of credit which an employee earns for overtime work, determined on the basis of one and one-half hours for each hour of overtime work.

"Competitive examination" means an examination from which an eligible list is established. The competitive examination may be open to the public who qualify for admission.

"Compensation plan" means the pay plan consisting of the assignment of classes in the classification systems to ranges in the appropriate salary schedules.

"Critical-to-fill" means:

(1) Positions so vital to the organization's mission such that the work cannot be assigned or assumed by other positions, and the inability to fill would significantly and adversely affect the organization's ability to accomplish its goals and objectives; or

(2) Positions providing direct services that must be performed because the health, safety, and welfare of the general public are involved.

"Department" means the department of education.

"Discharge" means an action taken by the assistant superintendent or appointing authority dismissing an employee for just cause.

"Earned rating" means the rating attained as a result of a competitor's qualification or performance or both in examination without credit for the points added through veteran's preference.

"Eligible" means a person whose name is on an eligible list.

"Eligible list" means a list of persons who have qualified for appointment to positions in a particular class.

"Examination" means an assessment method used to evaluate the knowledge, skills and abilities of applicants for employment.

"Exempt employee" means a person who is appointed to and who occupies a position exempted pursuant to section 76-16, Hawai'i Revised Statutes or other law.

"Exemptions from civil service" means those positions, persons in those positions, and personal services exempted from the civil service pursuant to section 76-16, Hawai'i Revised Statutes or other law.

"Initial allocation" means the action taken on a new position to place it in a specific class on the basis of its duties, responsibilities, and minimum qualification requirements.

"Initial pricing" means the determination of the appropriate pay range and pay relationships for a new class based on appropriate factors.

"Initial probationary period" means the probation period required of a person entering the department civil service that is the final test of the person's fitness and ability for the position before acquiring membership in the civil service.

"Internal departmental competitive examination" means a competitive examination restricted to department civil service members.

"Layoff" means the release of an employee due to lack of work, lack of funds, or other legitimate reasons.

"Minimum qualification" or "minimum qualification requirements" means the minimum education, experience, knowledge, skills, abilities, licensing, and other special requirements essential for performance in a class of work or a position.

"New probationary period" means a probationary period served by a civil service member as part of the examination process to determine the employee's fitness and ability for the new position.

"Non-civil service appointment" means an appointment to a civil service position made without the use of an eligible list.

"Open competitive examination" means a competitive examination conducted by the department or

designated appointing who are authority that is members open to all qualified employees ~~of the~~ civil service and qualified applicants from the general public.

"Open-competitive list" means a list of persons who have been found to be qualified by an open-competitive examination for appointment in a particular class or series.

"Pay differential" means any additional compensation, in addition to the basic rate of pay, including but not limited to overtime, stand-by duty, compression differentials, lump sum pay, bonuses, recruitment and other financial incentives, awards, and other temporary differentials.

"Pay range" means the group of salary rates from minimum to maximum to which a class may be assigned as set forth in the salary schedules. Pay ranges among the different salary schedules are considered to be higher or lower than, or the same as the others on the basis of the maximum salary rate. In a salary schedule with single rate pay ranges, the single rate is considered the maximum rate of the range.

"Permanent appointment" means an appointment without a limitation date to a permanent position that allows the employee to become a member ~~of the~~ civil service. ~~service.~~

"Permanent position" means a position without time limitation.

"Position description" means an official written description, approved by the appointing authority, of the duties and responsibilities assigned to and required of a specific position.

"Pricing" means the process of assigning classes to pay ranges based on appropriate factors.

"Probationary period" means a specified period which serves as the final test of an employee's qualifications for the position.

"Rating" means the score or measure of performance of an applicant in an examination.

"Reallocation" means the movement of a position from one class to another class.

"Reallocation downward" means the reallocation of a position to a class assigned to a lower pay range in

the same salary schedule.

"Reallocation upward" means the reallocation of a position to a class assigned to a higher pay range in the same salary schedule.

"Reclassification" means a change in the class to which a position is allocated based on a change in the classification system.

"Recruitment" means the process of locating applicants for employment.

"Related class" means a class which requires substantially similar knowledge, skills, and abilities as another class.

"Repricing" means the reassignment of classes from one pay range to another in the same salary schedule based on appropriate factors.

"Resignation" means an action by an employee severing the employee's employment relationship.

"Salary schedule" means a table of pay rates and ranges as established through collective bargaining, by executive order, or as otherwise authorized by law.

"Select priority list" means a list composed of a former employee of the department who was released under the conditions covered by section 386-142, Hawaii Revised Statutes.

"Selective certification" means the process of certification that is limited to those persons possessing distinctive or unique knowledge, skills, abilities, and other characteristics deemed critical to the successful performance of the work of a specific position.

"Series of classes" means classes similar as to subject matter of work, but differing in level of difficulty, responsibility, and qualifications required.

"Sick leave" means a leave of absence with pay as authorized by law, because of illness or injury.

"Suitability" means fitness for employment after consideration of such factors as physical and mental ability, character, criminal history record, and employment record.

"Superintendent" means the superintendent of the department who assumes the duties of chief executive

as provided in chapter 76, Hawaii Revised Statutes.

"Temporary assignment" means the assignment by the assistant superintendent or an appointing authority and the assumption, without a formal change in position, of all or a major portion of the significant duties and responsibilities of another position.

"Temporary reallocation" means the reallocation of a position because of emergency, ~~or~~ unusual, or unique work situations for a period not to exceed six months, ~~but~~ provided that the period may be extended for good reason for additional six-month periods with the prior approval of the assistant superintendent.

"Vacation" means a leave of absence with pay as authorized by law, granted at the request of an employee for the purpose of rest and relaxation or for the personal convenience of the employee and calculated as required by law and this chapter.

"Voluntary demotion" means a demotion requested by an employee and approved by the assistant superintendent and ~~by~~ the appointing authorities concerned.

"Week" means a period of seven consecutive calendar days, beginning on Sunday and ending seven days later on Saturday. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-11, 76-17, 386-142)

§8-63-4 <u>General responsibilities of the assistant superintendent.</u> The assistant superintendent shall direct and supervise all administrative and technical activities of the department. In addition to other duties imposed by the civil service law, the assistant superintendent shall assume the duties specified in section 76-13, Hawaii Revised Statutes, and is authorized to make the final determination of ~~determine finally~~ whether or not a position is in the civil service system. The assistant superintendent shall develop and promulgate such policies, rules, standards, guidelines, and procedures as the assistant superintendent deems necessary including, but not

limited to, those addressing the following areas:

(1) Classification and related systems to support sound utilization of human resources, recruitment of qualified personnel, and appropriate pay and pay relationships;

(2) A civil service merit-based recruitment and examination program;

(3) A performance appraisal system for the purpose of evaluating the performance of employees in civil service and improving employees' performance, consistent with section 76-41, Hawaii Revised Statutes;

(4) An incentive and awards program for the purpose of recognizing employees who contribute to the efficiency, economy, or other improvement of exceptionally meritorious special acts or services in the public interest in connection with or related to their official employment consistent with the policies of the board;

(5) A Compensation administration system ~~which~~ that provides for the proper compensation of employees and adjustments as necessitated by personnel movements and employment actions;

(6) Personnel file management for the purpose of ensuring the proper retention, organization, and release of personnel records and materials; and

(7) Circumstances under which civil service positions may be ~~excepted~~ exempted (?) from the civil service classification system, or civil service recruitment system, or both.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-13.5, 76-17)

§8-63-5 General responsibilities of offices and complex area offices. The assistant superintendents of each office and the complex area superintendents of each complex area shall be responsible for personnel management within their respective office or complex

area, and shall cooperate with the office of human resources in the administration of human resources matters. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-5)

§8-63-6 Delegation and decentralization of human resource services, and agreements on furnishing services and facilities. The assistant superintendent, whenever consistent with economic and efficient administration, may delegate the performance of human resource services to those in the department responsible for the planning, directing, and supervising the work of others. The delegation may be withdrawn at any time as determined by the assistant superintendent.
[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-5)

§8-63-7 Authority to investigate. The assistant superintendent shall conduct investigations to secure the enforcement of chapter 76, Hawaii Revised Statutes, and pertinent portions of law and the rules, regulations, guidelines, procedures, standards, and policies governing civil service system employment. This may include investigations into the qualifications and suitability of applicants for positions in the civil service system.
[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-8 Enforcement authority of the assistant superintendent. Whenever the assistant superintendent finds:

(1) That any person has been appointed to, or is holding or performing the duties of a position in violation of any of the laws, rules, regulations, guidelines, procedures, standards, and policies administered by the assistant superintendent, the assistant superintendent is authorized, after giving

due notice and opportunity for explanation, to certify the facts to the department with specific instructions for corrective action. Whenever the assistant superintendent issues specific instructions for corrective actions, the appointing authority concerned shall comply with the assistant superintendent's orders and make a report thereon to the assistant superintendent;

(2) That any employee has violated the laws, rules, regulations, guidelines, procedures, standards, and policies administered by the assistant superintendent, the assistant superintendent shall take action in accordance with law as may be appropriate to secure compliance. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-9 Appointment through the civil service system. (a) The assistant superintendent shall be responsible for recruiting applicants for open-competitive and promotional examinations and for determining the relative knowledge, skills, abilities and fitness of applicants.

(b) The assistant superintendent may establish standards in determining relative knowledge, skills, abilities, fitness, and other requirements ~~which~~ that applicants must meet to be rated in examinations.

(c) Eligibles shall be placed on an appropriate eligible list in the manner prescribed by these rules.

(d) A person selected through a civil service recruitment procedure for a permanent or temporary position shall be required to serve an initial probationary period provided that when a temporary appointment is made, the duration of service for the temporary position exceeds the initial probation period.

(e) Membership ~~in the~~ civil service will be acquired ~~by a probationary employee~~ upon satisfactory completion of an initial probationary period.

(f) The assistant superintendent may determine

the conditions for other types of appointments and may prescribe the methods for replacing persons holding these appointments.

(g) No person shall be appointed, promoted, transferred, or demoted in the civil service system until the person passes the examination prescribed by the assistant superintendent or unless specifically exempted. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-13)

§8-63-10 Discretion of appointing authority in filling civil service vacancies. An appointing authority may fill any vacancy in the civil service, by appointment from a civil service eligible list, or any other means as provided for by this chapter or law. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-13)

§§8-63-11 to 8-63-13 (Reserved)

SUBCHAPTER 2

RECRUITMENT

§8-63-14 Citizenship and residence. Applicants shall be citizens, nationals, or permanent resident aliens of the United States, or eligible under federal law for unrestricted employment in the United States, and shall become residents of the State within thirty days after beginning their employment and as a condition of eligibility for continued employment. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-22.5) (Imp: HRS §§76-22.5, 78-1)

§8-63-15 Announcement of recruitment and examination. As the needs of the department require, the assistant superintendent may conduct a recruitment and examination announcement in the manner and for the

period deemed reasonable and appropriate.
[Eff] (Auth: HRS §§302A-1112, 76-17, 76-22.5) (Imp: HRS §§76-13, 76-22.5)

§8-63-16 Acceptance of applications. (a) Application for examination and employment shall be made on the form and with such supplemental information as prescribed by the assistant superintendent.

(b) The assistant superintendent or authorized designee may determine the number of applications to accept and evaluate based on need.

(c) Applications shall be accepted only during the period specified in the examination announcement. Late applications for competitive examinations may be accepted for good reason as determined by the assistant superintendent or designated appointing authority.

(d) Applications submitted to the department shall constitute official examination records. Applications and accompanying supporting documents shall become the property of the department.
[Eff] (Auth: HRS §§302A-1112, 76-17, 76-22.5) (Imp: HRS §§76-12, 76-13, 76-22.5)

§8-63-17 Cancellation of recruitment and examination announcements. (a) If there is no need for eligibles after a recruitment and examination announcement has been published or if other circumstances warrant it, the announcement may be canceled.

(b) All applicants shall be notified of the cancellation. [Eff] (Auth: HRS §§76-17, 76-22.5) (Imp: HRS §§76-12, 76-13, 76-22.5)

§8-63-18 Recruitment incentives. (a) To enhance the recruitment of persons employed or appointed to critical-to-fill or labor shortage positions, appointing authorities with the prior

approval of the assistant superintendent may do both or one of the following:

(1) Compensate applicants for all or a portion of travel and transportation expenses; or

(2) Provide a monetary incentive in the form of a pay differential, as pre-determined and approved by the assistant superintendent.

(b) Recruitment incentives must be consistent with the merit principle and organizational and operational goals and objectives.

(c) Recruitment incentives are subject to annual review.

(d) The assistant superintendent may, for good reason, terminate incentives at any time.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-23.5) (Imp: HRS §§76-13, 76-23.5)

§§8-63-19 to 8-63-20 (Reserved)

SUBCHAPTER 3

EXAMINATION

§8-63-21 Scope and character of examinations. (a) The assistant superintendent may consult with qualified persons in regard to the content of tests, rating of applicants or related test matters.

(b) Each examination shall relate to those matters which will evaluate the applicants' knowledge, skills and abilities required to perform the duties of the class or position for which the examination is conducted.

(c) Any accepted personnel examining technique may be used, including a verification and evaluation of education, training, and experience; tests of knowledge, skill, ability or aptitude; medical examinations, including pre-employment drug testing; appraisals of personal suitability including factors such as employment history and references; employee background checks; and any other matter that the

assistant superintendent determines appropriate. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-15, 76-18, 78-2.6)

§8-63-22 Disqualification of applicants. (a) The assistant superintendent may, for good reason, reject any application, disqualify an applicant for any period of time, or deny or rescind the certification of eligibility. This includes, but is not limited to, denying an applicant authorization to take an examination or denying or rescinding the certification of eligibility for any of the following reasons:

(1) Failure to meet the minimum qualification requirements or other public employment requirements for admission to the examination by the closing date for receipt of applications;
(2) Submission of defective or incomplete application;
(3) Refusal or failure to furnish documents required to verify any statements made in the application;
(4) Deception, fraud or false statements in the application, examination or appointment process;
(5) Failure to meet medical requirements to perform the essential job functions of the class or position;
(6) Illegal use of drugs;
(7) Conviction of any controlled substance-related offense during the three-year period immediately preceding the date of the application for employment;
(8) Conviction of a criminal offense which affects the applicant's suitability to properly perform the duties and responsibilities of the class or position;
(9) A record of misconduct which is detrimental to the proper performance of the duties and

responsibilities of the class or position; or

(10) Conviction of any act, attempt, or conspiracy to overthrow the State or the federal government by force or violence.

(b) The assistant superintendent may conduct investigations to determine an applicant's qualifications and suitability for civil service employment ~~in the civil service.~~ If the investigation discloses that the person is ineligible for the position, the assistant superintendent shall take appropriate corrective action, which may include denying authorization to take the examination, removing the person's name from the list of eligibles, rescinding the certification of eligibility, barring an applicant from civil service employment for a specific period of time, or any combination thereof.

(c) The assistant superintendent shall notify any applicant whose application is rejected, specifying the reasons for the rejection.

(d) An applicant may request an administrative review of an examination rating in accordance with section 8-63-75. A request for administrative review shall not delay, prevent, or invalidate the certification of names from the eligible list nor the appointment of a person from the list.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-18, 76-29, 78-2.6) (Imp: HRS §§76-12, 76-13, 76-18, 78-2.6, 831-3.1)

§8-63-23 Conduct of examinations. (a) Examinations shall be held at the times, places, and in the manner ~~which~~ that, in the judgment of the assistant superintendent, are most practical and meet the needs of the department.

(b) Qualified applicants shall be notified of the date, time, and place of the examination. The department shall not be responsible if a notice is lost in the mail or sent to an applicant's former address through failure of the applicant to inform the department of a change of address.

(c) No applicant shall be entitled to take an examination at a date, time, or place other than stated in the notification except as the assistant superintendent may authorize.

(d) All reasonable precautions shall be taken to protect the confidentiality of information about applicants.

(e) All applicants for examinations involving physical ability or performance tests may be required to sign a waiver of liability. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§8-63-24 Rating of examinations. (a) Appropriate testing techniques and procedures shall be used in rating examinations and determining the relative ranking of applicants. The final earned rating required to pass an examination shall be set by the assistant superintendent. The assistant superintendent may set minimum ratings for each part of an examination. Applicants may be required to obtain at least the minimum rating in each part of the examination to be rated on the remaining parts. The final earned rating of each applicant shall be determined by combining the earned ratings of each part of the examination in accordance with the weights established.

(b) Eligibles shall be placed on open-competitive lists in order of their final earned ratings, which includes any creditable veteran's preference points, and on promotional lists in the order of final earned ratings. Veteran's preference points shall be awarded for the periods and conditions authorized by law to applicants who qualify with at least the minimum passing rating for each part of the examination.

(c) Based on factors determined by the assistant superintendent, applicants may be notified only as to whether or not they qualified to be on the eligible list. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-18, 76-103) (Imp: HRS §§76-12, 76-13, 76-

18, 76-103)

§8-63-25 Notification of results of examination. (a) Applicants who participate in an examination shall be given written notice of their test results.

(b) The filing of an appeal by an applicant on any part of an examination shall not delay, prevent, or invalidate the certification of names from the eligible list nor the appointment of a person from the list. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§8-63-26 Changes in rating. (a) Changes in rating may be made as a result of the discovery of errors in the rating, or as a result of an administrative review.

(b) Rating errors and changes as a result of administrative review may be corrected throughout the life of the eligible list.

(c) Applicants whose ratings are changed shall be notified.

(d) Changes in rating shall not affect a certification already issued or invalidate an appointment already made from the eligible list, except that the appointment shall be voided when a person is found within the probationary period to have failed the examination. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§8-63-27 Custody and protection of materials. (a) To protect the confidentiality of examination questions, review of test materials prepared by the department or obtained from other governmental jurisdictions or private firms shall not be permitted.

(b) Technical and examination materials used in preparation and ratings of examinations and supporting documents shall remain the property of the department.

(c) All examination material relating to a

particular applicant or applicants including but not limited to reports of character and material regarding personal suitability of the applicant shall be considered confidential information.

(d) Appointing authorities or their authorized representatives may inspect the examination papers of eligibles whose names have been certified to them for appointment. To preserve the confidential character and sources of information and to protect against dissemination of unfounded or unproved allegations, reports of character, personal suitability and other confidential information shall be secured and held in strict confidence and will not be made available for review by the appointing authorities unless specifically authorized by the assistant superintendent. Appointing authorities and their representatives shall not disclose the examination materials or their contents to any person.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§8-63-28 Records and reports of examinations. An examination record shall be maintained in accordance with the department of accounting and general services guidelines. The assistant superintendent shall determine the contents of the examination record.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§§8-63-29 to 8-63-30 (Reserved)

SUBCHAPTER 4

CERTIFICATION

§8-63-31 Duration of eligibility. (a) An eligible on an open or promotional competitive eligible list shall have eligibility for employment consideration for no less than six months from the date the list is

established or until the list is canceled or terminated. The eligibility period may be extended at the discretion of the assistant superintendent.

(b) A person on a select priority list shall be eligible for employment consideration until the person secures new employment. An employee who had a temporary appointment who does not have return rights to a permanent position shall be eligible for select priority employment only to the end date of the temporary appointment. [Eff] (Auth: HRS §§76-17) (Imp: HRS §§76-12, 76-13, 76-17, 386-142)

§8-63-32 Certification of eligibles. (a) Upon receipt of a request for a list of eligibles, the assistant superintendent shall certify names from available lists of eligibles for each vacancy. The order of eligible lists to be used for certification shall be as follows:

(1) Select priority list;
(2) Intra-departmental promotional list;
(3) Recall list; and
(4) Open-competitive list. An eligible on an open-competitive list shall be certified on the basis of the eligible's examination ratings and availability for work location and duration of employment.

(b) Unless the select priority list is used, a certification of eligibles for each vacancy in a department shall consist of a number of eligibles as requested by the appointing authority who are available for the same or related class in the order in accordance with the procedures established by the assistant superintendent. The assistant superintendent may also authorize certification under the following conditions:

(1) An eligible whose name is restored to a list after termination of initial probation, may be excepted from certification to the office from which the person was terminated;
(2) A certification of eligibles shall be

effective for thirty calendar days after the date of certification, and may be extended by the assistant superintendent.

(c) Veterans whose examination scores, after addition of applicable preference points, equal or exceed the examination score of the last eligible to be referred based on examination score, shall also be certified. In addition, when the last eligible to be referred based on examination score is one of two or more eligibles who have identical examination scores, the two or more eligibles shall also be certified.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13, 78-1, 386-142)

§8-63-33 Selective certification. When there is no list of eligibles appropriate for certification for filling a particular position requiring distinctive or unique qualifications, the assistant superintendent may certify selectively the names of eligibles who are qualified for the particular position. The certification may be in the order of the eligible's current ranking, or of a new ranking as determined by the assistant superintendent, based upon the particular requirements of the position.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-34 Selection by the appointing authority. (a) The appointing authority may interview as many eligibles certified from an open-competitive eligible list as deemed necessary to fill the vacant position based on job related requirements and program needs. All eligibles who possess the job related requirements must be given the opportunity for an interview.

(b) The appointing authority shall interview all interested and available eligibles certified from the intra-departmental promotional list. The requirement to interview an eligible may be waived whenever the appointing authority has interviewed and fully assessed the eligible's qualifications for a similar

position from another interview conducted during the previous six months.

(c) All eligibles who are interviewed, but not selected shall be notified in writing.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§8-63-35 Suspension, restoration and removal of names from eligible list. (a) The assistant superintendent may suspend an eligible from certification for any of the following reasons:

(1) Applicant fails to demonstrate interest or availability for employment;
(2) Failure to reply to a written inquiry relating to availability;
(3) Failure to meet physical or medical requirements for the position;
(4) Further investigation of the eligible's suitability needs to be conducted;
(5) Eligible is unavailable for employment;
(6) The eligible is appointed to a temporary position from an eligible list. The suspension shall apply to other temporary vacancies only; or
(7) There is other good reason as determined by the assistant superintendent.

(b) The following eligibles may, upon request, have their names restored to the list of certifiable eligibles if the eligible list is still active:

(1) A probationary employee who was terminated without delinquency or misconduct;
(2) An eligible who is currently available for employment; or
(3) An eligible who has been suspended because of correctable physical reasons and who currently meets physical standards.

(c) The assistant superintendent may remove an eligible from the eligible list for good reason, including but not limited to:

(1) The eligible was selected from the eligible list, or a related list at the same pay

range, and is serving on initial or new probationary appointment;

(2) The person is found to be ineligible for appointment;

(3) Withdrawal by the eligible;

(4) The eligible or applicant fails to demonstrate interest or availability for employment;

(5) Failure to report for duty within the time prescribed by the appointing authority and good reason is not shown;

(6) Failure to report for or complete medical examination process and good reason is not shown;

(7) Failure to appear for or complete a required drug screening test and good reason is not shown; or

(8) Eligible is determined to be an illegal user of drugs. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-36 Cancellation of eligible lists. (a) The assistant superintendent may cancel an eligible list for good reason including but not limited to the following reasons:

(1) Changes in the minimum qualification or classification standards of a class of positions;

(2) Abolishment of the class for which the list of eligibles was established; or(?)

(3) All eligibles are unavailable for employment.

(b) Applicants affected by the cancellation of the eligible list shall be notified.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§§8-63-37 to 8-63-38 (Reserved)

SUBCHAPTER 5

TYPES OF APPOINTMENT

§8-63-39 Civil service appointment. (a) An employee is granted a civil service appointment when the appointment is as a result of civil service recruitment procedures.

(b) A civil service appointment may be made to a temporary or permanent position in the civil service or permanent civil service position being filled on a temporary basis.

(c) The appointing authority shall inform all applicants referred under civil service recruitment procedures if the appointment has a limitation date.

(d) An applicant who receives a civil service appointment does not become a member of the civil service until completing a probationary period and otherwise meeting the requirements of this chapter, section 76-27, Hawaii Revised Statutes, and guidelines and procedures issued by the assistant superintendent. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76- 13, 76-27)

§8-63-40 Probationary appointment. (a) All vacancies and new positions in the civil service shall be filled by probationary appointments, except as provided by these rules. The probationary period shall be utilized as part of the examination process to determine the fitness and ability of the employee for employment in the position and civil service. An employee must meet the performance requirements of the position in order to successfully complete the probationary period.

(b) An initial probationary period shall be required when a person who does not have regular status or membership in civil service is appointed to a permanent civil service position, except as provided by these rules.

(c) A new probationary period shall be required of a regular employee when the employee:

(1) Is promoted to a permanent position;
(2) Is transferred to a permanent position in another class;
(3) Receives a voluntary demotion to a permanent position which is not in the same series; or(?)
(4) Is in a position which is reallocated to a class in a higher pay range.

(d) The appointing authority has the discretion to require a new probationary period where not required under subsection (c) above.

(e) Initial and new probationary periods shall be for a period of six months. However, this provision may be modified and the assistant superintendent may establish a longer initial probationary period for a class of work when a longer period is needed to adequately train and evaluate the employee. The assistant superintendent shall identify these classes and the duration of the probationary period in guidelines.

(f) The appointing authority may extend the probationary period upon written notification to the employee and the assistant superintendent prior to the expiration of the probationary period. Failure to inform the employee in writing of the extension shall result in the employee being granted a permanent appointment by default. The appointing authority may extend the probationary period for any of the following reasons:

(1) Further evaluation of the employee's ability to successfully perform the duties of the position is required. The extension shall not exceed six months or as deemed appropriate by the assistant superintendent;
(2) The employee's absence affects the appointing authority's ability to evaluate the employee's performance. The duration of the adjustment shall not exceed the period of absence or combined periods of absences;
(3) A final determination of the employee's suitability for employment has not been made provided the extension shall not exceed six months; or(?)

(4) The appointment may be affected due to a pending appeal against the selection. Upon resolution of such appeal, the appointing authority shall notify the assistant superintendent who will take appropriate action.

(g) Crediting of service as part of the employee's probationary period may be allowed under the circumstances below:

(1) Service in a temporary position or a permanent position temporarily vacant or any part of service in a temporarily reallocated position may be credited as part of the employee's probationary period should changes subsequent to the initial date of the temporary reallocation warrant the granting of a probationary appointment in the same class;

(2) Any part of an initial probationary period served in a position prior to transfer to a different position in the same class may be credited as part of the employee's initial probationary period;

(3) A probationary period is not required when an employee filling a permanent position temporarily vacant will be given a permanent appointment to the position if it later develops that the vacancy will be permanent and the employee was appointed through a civil service recruitment procedure to this vacancy. The employee must have been performing the duties of the position in a satisfactory manner for at least six months and the appointing authority certifies that the period of temporary service immediately preceded the new appointment and that the employee's duties are essentially similar to the duties to be performed for the initial probationary period for the same or related position.

(h) A member's new probationary period may be terminated and the employee shall be permitted to

return to the former position or another position in the former class in the department where the employee last held a permanent appointment and shall be restored as though the employee had remained in the position continuously. For compensation purposes, such a release shall be considered a termination of the promotion. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-41 Non-civil service appointments. (a) The appointing authority may make an appointment of not more than eighty-nine consecutive calendar days or of less than twenty hours a week for thirty-seven consecutive weeks without regard to the minimum qualification requirements of the position or a non-civil service temporary appointment outside the list in order to meet immediate operational needs provided that:

(1) The employee chosen for such an appointment must meet the public employment requirements under section 78-1, Hawaii Revised Statutes, and possess the necessary occupational license, certification, or registration required by statute or regulation. Service acquired in a non-civil service appointment shall not be credited towards meeting the requirements of an initial probationary period;

(2) The following conditions shall apply for such appointments:

(A) The appointing authority ensures the employee will perform duties characteristic of the class; ~~and~~

(B) The employee has not received a non-civil service appointment in the same class of work within the last three months, unless this restriction is waived by the assistant superintendent; and

(C) There are no interested and available applicants on an appropriate eligible list to fill the vacancy, or the appointing authority is unable to make a selection from an appropriate eligible list.

(b) The appointing authority may make a non-civil service temporary appointment outside the list when there are no interested and available applicants on an appropriate eligible list to fill the vacancy, or the appointing authority determines that the period of the temporary appointments makes it impracticable to fill the position by recruitment procedures. The following conditions shall apply:

(1) For permanent vacancies, the appointment shall not exceed six months;

(2) For temporary vacancies, the appointment shall not exceed one year; And or or ?

(3) An appointing authority may request and be granted an extension to continue an employee in a non-civil service temporary appointment outside the list at the discretion of the assistant superintendent or authorized designee. [Eff] (Auth: HRS §§302a-1112, 76-17) (Imp: HRS §76-17)

§8-63-42 Exempt appointment. The assistant superintendent shall create positions exempted from civil service as permitted by section 76-16, Hawaii Revised Statutes, or as may otherwise be permitted by law. The assistant superintendent may also exempt a position temporarily when a position is pending establishment of a new class, or may exempt a position permanently when the establishment of a class is impracticable. Exempt appointments also include positions that have a narrow limitation period that precludes completion of probation. The assistant superintendent shall review on a periodic basis the exempt positions to determine whether such positions should continue to be exempt and may revoke a previously authorized exemption when the particular

position or services no longer meets the criteria or conditions for exemption. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-13 76-16)

§§8-63-43 to 8-63-44 (Reserved)

SUBCHAPTER 6

CLASSIFICATION SYSTEMS

§8-63-45 Purpose. The purpose of this subchapter is to develop and maintain systems within the department for the objective, consistent, and timely classification of all civil service positions and for the reasonable and consistent assignment of classes of positions to pay ranges. The systems so established shall be based on merit, and contribute to the selection and retention of public employees by compensating them in accordance with law. The systems or any portions thereof may be extended to non-civil service positions as required by law or for the good of the service. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-1, 76-12, 76-13, 76-13.5)

§8-63-46 Development and maintenance of classification systems. The assistant superintendent shall establish, implement, and maintain one or more classification systems covering all civil service positions, not otherwise exempted by rules. The classification systems shall be constructed with the objective of achieving equal pay for equal work as provided in section 76-1, Hawaii Revised Statutes. The duties and responsibilities assigned to positions and other factors necessary to a proper understanding of their work are to be documented in official position descriptions prepared by the affected state

office or complex area. In establishing, implementing and maintaining the classification systems, the assistant superintendent may inquire at any time into the work of positions, their minimum qualification requirements and other relevant factors.
[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13, 76-13.5)

§8-63-47 Establishment of classification standards. (a) The assistant superintendent shall establish standards for the development and maintenance of classification systems relative to position descriptions, class specifications, and other matters.

(b) The assistant superintendent is authorized to establish, revise, or abolish classes in order to maintain the classification systems.
[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13, 76-13.5)

§8-63-48 Procedures for classification. Authority to develop procedures for the establishment, implementation and maintenance of the classification systems is vested with the assistant superintendent. Governing procedures shall apply to all relevant aspects including position descriptions, authorizations, supporting documents, standards of adequacy, and submittal of classification requests.
[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13, 76-13.5)

§8-63-49 Classification of positions. (a) The assistant superintendent shall:

(1) Place any position subject to this chapter into an appropriate class; and
(2) Reallocate any position from one class to another class, whenever warranted by material changes in position duties and responsibilities ~~or~~ class allocation

standards, or to correct an error.

(b) Each position shall be placed in a class consistent with the nature and level of its duties, responsibilities, and minimum qualification requirements.

(c) The assistant superintendent may establish standards and procedures and delegate to offices the authority to place their own positions into existing classes. Post audits shall be made of an office's exercise of classification authority. The assistant superintendent may rescind or otherwise correct any action taken, as appropriate, and may withdraw the authority when it is determined that continued delegation is not in the best interest of the system.

civil service system (?)

(d) The assistant superintendent may approve the temporary reallocation of a position because of emergency, unusual, unique, or other special conditions. When the conditions no longer apply, the appointing authority shall promptly discontinue the temporary reallocation and notify the assistant superintendent of the discontinuance. Upon discontinuance, and in any event no later than the ending date that was authorized by the assistant superintendent for such reallocation, the position shall revert to its former classification status.

(e) The incumbent of a position that is reallocated shall be required to meet the minimum qualification requirements established for the class to which the position is reallocated, including for temporary reallocations.

(f) The reallocation downward of a filled position for disciplinary, involuntary, or voluntary reasons, or to avoid a layoff, or because of a reorganization or injury or illness, shall be so specified by the appointing authority and treated as if a demotion for the specified purpose took place. Whatever procedures and requirements apply to the respective demotion process shall also apply to the corresponding reallocation downward action.

[Eff] (Auth: HRS §§76-5, 76-17) (Imp: HRS §§76-5, 76-12, 76-13, 76-13.5, 76-16)

§8-63-50 Effective dates of classification actions. The assistant superintendent shall put forth guidelines on establishing effective dates for classification of new positions and existing positions. [Eff] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 76-13.5)

§8-63-51 Position descriptions. The duties and responsibilities assigned to a position shall be accurately reflected in an official position description and aligned to the organization's functional statement. Revised position descriptions shall be submitted on a timely basis if significant changes in the duties and responsibilities of the position are made. [Eff] (Auth: HRS §§ 302A-1112, 76-17) (Imp: HRS §§76-12, 76-13)

§8-63-52 Classification actions and merit principles. Classification actions effected shall be consistent with the principles of the merit system. In the event other more appropriate personnel processes are not available, the appointing authority may request the reallocation of a position in lieu of promoting or demoting the affected incumbent, provided the basic principles and requirements governing promotions and demotions, as applicable, are followed. [Eff] (Auth: HRS §§ 302A-1112, 76-17) (Imp: HRS §§76-1, 76-12, 76-13)

§§8-63-53 to 8-63-54 (Reserved)

SUBCHAPTER 7

COMPENSATION SYSTEMS

§8-63-55 Assignment of new classes to pay ranges. The assistant superintendent shall assign new classes to appropriate pay ranges in the compensation

plans, consistent with policies and standards established in accordance with statute and the following principles:

(1) Equal pay for equal work shall apply between classes in the same bargaining unit among jurisdictions for those classes determined to be equal through systematic classification of positions based on objective criteria and adequate job evaluation, unless it has been agreed in accordance with chapter 89, Hawaii Revised Statutes, to negotiate the repricing of classes;

(2) Permanent and continual exposure to unusually hazardous working conditions may be recognized as a factor in the assignment of classes to pay ranges.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-1, 76-12, 76-13)

§§8-63-56 to 8-63-57 (Reserved)

SUBCHAPTER 8

EXEMPTIONS FROM CIVIL SERVICE

§8-63-58 General provisions. (a) This subchapter applies to positions, and persons in those positions, and persons providing personal services which are by law excepted from all or part of the provisions of the civil service law.

(b) All positions and persons in the exempt service are excluded from the requirements of selection by merit competition and from civil service status but should be fully qualified by experience and ability to perform the duties of the position or personal services.

(c) Except as provided by law, the requirements of position classification and compensation may not be

applicable.

(d) At the time of their hire as a condition of eligibility for continued employment, persons shall be citizens, nationals or permanent resident aliens of the United States, or deemed eligible for employment under Federal law, and residents or former residents of the State with the exceptions as provided by section 78-1, Hawaii Revised Statutes.
[Eff] (Auth: HRS §§302A-1112, 76-17, 78-1) (Imp: HRS §§76-13, 76-16, 78-1)

§8-63-59 Authority to exempt. (a) The assistant superintendent shall exempt positions, persons, or personal services in accordance with law upon finding that the conditions and requirements of law are met.

(b) The assistant superintendent may establish standards and procedures for the exemption of positions.

(c) The assistant superintendent may revoke a previously authorized exemption when the particular position or services no longer meet the criteria or conditions for exemption. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-13, 76-16)

§§8-63-60 to 8-63-61 (Reserved)

SUBCHAPTER 9

LEAVES

§8-63-62 Leave of absences. Employees shall be eligible for vacation leave, sick leave, and other leaves of absences with or without pay, as negotiated under applicable collective bargaining agreements. Employees excluded from bargaining shall secure similar leaves as provided under section 89C-3 and 89C-4, Hawaii Revised Statutes, as applicable.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-12, 76-13, 78-23)

§8-63-63 Leave sharing. (a) The assistant superintendent may establish a leave sharing program that allows employees within the department to ease the burdens of fellow employees who otherwise need to take time off from work without pay to recover from a serious personal illness or injury or to care for a family member who has a serious illness or injury and is incapable of self care.

(b) As used in this section:

(1) "Family member" means an employee's:

(A) Spouse; or

(B) Parent or unmarried child in a blood or legal relationship, or a "hanai" relationship through the Hawaiian custom, provided the employee is the primary caregiver.

(2) "Serious personal illness or injury" means an illness, injury, or impairment that meets the conditions below:

(A) Is life threatening or critical, severe, and debilitating which does not include minor surgeries, routine pregnancies, illnesses due to colds or flus, broken limbs, and other non-critical conditions; and?

(B) Is certified by a physician, as defined under section 386-1, Hawaii Revised Statutes, as being totally incapacitating, and;

(i) Where the condition involves the employee, is also certified as being the cause of the employee's inability to work; or

(ii) Where the condition involves the employee's family member, is also certified as serious and requiring the employee's full-time assistance to provide primary care

to the family member.

(c) An employee who wishes to donate accumulated leave credits must not have solicited nor accepted anything of value in exchange for the donation. [Eff] (Auth: HRS §§302A-1112, 76-17, 78-26) (Imp: HRS §§76-13, 78-26)

§§8-63-64 to 8-63-65 (Reserved)

SUBCHAPTER 10

MEDICAL EXAMINATIONS

§8-63-66 Medical guidelines. The assistant superintendent is authorized to establish medical guidelines related to performing the essential job functions for the department's classes of work. In establishing these guidelines, the assistant superintendent may consult with medical professionals, the applicable department or appointing authority, or other appropriate specialists. These guidelines will:

(1) Ensure that persons seeking employment in the department civil service system meet the medical and physical requirements necessary for the safe and efficient performance of the essential functions of the position for which they are being medically evaluated; and

(2) Ensure that employees are able to perform the essential functions of their positions. [Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13)

§8-63-67 Kinds of medical examinations. The assistant superintendent may require the following kinds of medical examinations:

(1) Pre-employment medical examination. A pre-employment medical examination is a medical

examination to evaluate the person's ability to satisfactorily perform the essential job functions of the position for which the individual is being hired.

(2) Medical evaluation. A medical evaluation is a medical examination to evaluate the employee's ability to satisfactorily perform the essential functions of the employee's current position.

(A) Periodic medical evaluation shall be required of all employees holding positions in classes for which such examinations are required by law or which the assistant superintendent finds, based on the nature of the work performed or other interests of the department, an evaluation is necessary.

(B) The appointing authority may require a medical evaluation whenever it is necessary to determine the employee's ability to safely perform the essential functions of the employee's present position.

(C) If an employee is selected for a promotion, transfer or other change to a position in a class for which the medical and physical requirements to perform the essential functions exceed those required for the employee's present position, and the assistant superintendent has determined that a medical evaluation is required for the position, the employee shall be medically evaluated prior to appointment. [Eff]
(Auth: HRS §§302A-1112, 76-17, 76-18)
(Imp: §§76-12, 76-13)

§8-63-68 Failure to meet employment requirements. (a) In determining whether a person is qualified for initial appointment or continued

employment, the assistant superintendent or appointing authority shall review medical as well as other pertinent information from the individual, or any other appropriate source regarding the person's ability to currently perform the essential functions of the position.

(b) If it is determined that an applicant does not meet the employment requirements for initial appointment, the applicant shall be disqualified for appointment. The assistant superintendent shall notify the applicant in writing of the reason(s) they are denied from further employment consideration for the position for which they applied.

(c) If it is determined that an employee does not meet the medical requirements for continued employment, the appointing authority shall notify the assistant superintendent in writing prior to taking any action. Upon concurrence by the assistant superintendent, the appointing authority shall notify the employee in writing of the reason(s) for disqualification and action to be taken.

(d) The assistant superintendent shall prescribe the procedures ~~on~~ for the placement of employees on a department-wide basis whenever, upon medical evaluation, employees do not meet the medical requirements to perform the essential functions of their positions. If there is no suitable position for which an employee meets the minimum qualification and medical requirements, the appointing authority may terminate the employee's employment. Upon termination, the former employee shall be eligible to be placed on the priority placement list, if the employee meets the requirements to be placed on this list, or on the appropriate re-employment list for which the former employee meets the minimum qualifications and medical requirements.

[Eff] (Auth: HRS §§302A-1112, 76-17, 76-18) (Imp: HRS §§76-12, 76-13)

§§8-63-69 to 8-63-70 (Reserved)

SUBCHAPTER 11

INTERNAL COMPLAINT PROCEDURE

§8-63-71 Purpose. The purpose of this subchapter is to establish a procedure for handling complaints related to human resources actions described in this chapter. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: §76-42)

§8-63-72 Applicability. (a) The internal complaint procedure shall apply to matters within the jurisdiction of the merit appeals board in accordance with section 76-14, Hawaii Revised Statutes:

(1) Recruitment: Actions taken in processing applicants for civil service employment;
(2) Examination: Actions taken in evaluating an applicant for civil service employment, to include the initial probationary period;
(3) Classification and reclassification: Actions taken in assigning a civil service position to a class of work;
(4) Initial pricing of classes: Actions taken affecting a civil service employee in a new class when initially priced; and
(5) Adverse employment actions under chapter 76, Hawaii Revised Statutes, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6, Hawaii Revised Statutes.

(b) The internal complaint procedure may also be used for handling other complaints related to human resources actions as determined by the assistant superintendent.

(c) Matters subject to collective bargaining grievance procedures shall not be processed under the internal complaint procedure. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-14, 76-42)

§8-63-73 Internal complaint procedure. This procedure consists of an informal review and a formal complaint process. An administrative review constitutes the informal review process. If the complaint cannot be resolved at this level, a formal complaint may then be filed through the formal complaint process. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-14, 76-42)

§8-63-74 Administrative review. (a) For complaints within the jurisdiction of the merit appeals board, the following persons shall be entitled to file a request for administrative review:

(1) Recruitment: Any person who has filed an application for a vacant civil service position or a recruitment program and who alleges an improper recruitment.

(2) Examination:

(A) Any applicant who:

(i) receives notification of failure to meet minimum qualifications for the class, position, or public employment requirements for which a formal application was filed;

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(ii) receives notification of an unsatisfactory examination score;

(iii) receives notification of non-selection for a civil service position; or

(iv) receives notification of unsuitability for public employment or a specific class of work applied for; or ?

(B) Any employee serving an initial probationary appointment in a civil service position who is disciplined or terminated for failure to successfully complete the initial probationary period.

(3) Classification or Reclassification: The civil service employee occupying the position as of the effective date of the classification action and any subsequent civil service employee in the position up to the date of the notice of final action who believes the classification action was improper.

(4) Initial pricing of classes: The civil service incumbent of a position in a new class as of the effective date of the initial pricing action who alleges an improper pricing action.

(5) Other employment actions taken against a civil service employee who is excluded from collective bargaining: Any civil service employee who is excluded from collective bargaining coverage under section 89-6, Hawaii Revised Statutes, who alleges an adverse employment action under Chapter 76, Hawaii Revised Statutes.

The request for administrative review must be filed within ten ~~(10)~~ calendar days after the date of the notice of the recruitment, examination, classification, reclassification, pricing, or final adverse action.

(b) For complaints not within the jurisdiction of the merit appeals board, the complainant shall be entitled to file a request for administrative review. The request for administrative review must be filed within ten ~~(10)~~ calendar days after the date of the notice of the final adverse action.

(c) Upon receipt of the request for administrative review, the assistant superintendent or designee shall take appropriate action, including:

(1) If the complaint is not within the jurisdiction of the department, refer and forward the complaint to the appropriate agency, if known, and notify the complainant accordingly;

(2) If the complaint is covered by another department complaint process, refer and

forward the complaint and notify the complainant accordingly;

(3) If the matters are clearly subject to the collective bargaining procedure, return the complaint to the complainant; or

(4) Accept the complaint for appropriate action and notify the complainant accordingly.

(d) If the complaint falls within the authority of the department and the scope of this internal complaint procedure, the assistant superintendent or designee shall review the complaint and issue a written decision within ten ~~(10)~~ calendar days after the completion of the administrative review. If the complaint is denied, information on filing a formal complaint through the formal complaint process, set forth in section 8-63-75, shall accompany the written decision. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-14, 76-42)

§8-63-75 Formal complaint process. (a) If the complaint is denied through the administrative review process, the complainant shall be entitled to file a formal complaint within ten ~~(10)~~ calendar days after the notice of administrative review decision.

(b) Upon receipt of the formal complaint, the assistant superintendent or designee shall review the complaint and issue a written decision within ten ~~(10)~~ calendar days after completion of the formal review. If the complaint is:

(1) Denied and the matter is within the jurisdiction of the merit appeals board, information on filing a formal appeal with the merit appeals board shall accompany the written decision; or

(2) Denied and the matter is not within the jurisdiction of the merit appeals board, the decision on the complaint shall be final and binding, unless the matter is within the proper jurisdiction of another body or agency.

[Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-14, 76-42)

§8-63-76 Appeals to the merit appeals board. The internal complaint procedures shall be exhausted before an appeal is filed with the merit appeals board. Appeals to the merit appeals board shall be in accordance with section 76-14, Hawaii Revised Statutes, chapter 8-62, Hawaii Administrative Rules, and in accordance with the rules of practice and procedures as may be adopted by the merit appeals board. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §§76-14, 76-42)

§8-63-77 Other appeals processes. When an appeal is not under the jurisdiction of the merit appeals board but some other administrative agency or appellate body, the complainant is responsible for the timely filing of an appeal with the appropriate agency regardless of whether the internal complaint procedure under this subchapter was used. [Eff] (Auth: HRS §§302A-1112, 76-17) (Imp: HRS §76-42)

§§8-63-78 to 8-63-79 (Reserved)

SUBCHAPTER 12

RESIGNATION

§8-63-80 Purpose. The purpose of this subchapter is to provide for orderly and uniform procedures for the resignation of employees from department service. [Eff] (Auth: HRS §§ 302a-1112, 76-17) (Imp: HRS § 76-30)

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§8-63-81 Applicability. This subchapter shall apply to civil service and exempt employees unless

otherwise specified. [Eff] (Auth: HRS §§ 302a-1112, 76-17) (Imp: HRS § 76-30)

§8-63-82 Notice of resignation. When an employee elects to separate from the service, the employee shall notify the appointing authority in writing at least fifteen calendar days before the date of the separation, unless the appointing authority waives this requirement, or due to circumstances specified under section 8-63-83.
[Eff] (Auth: HRS §§ 302a-1112, 76-17) (Imp: HRS § 76-30)

§8-63-83 Failure to report to duty; resignation. (a) An employee who fails to report to duty for a period of fifteen calendar days without providing the employer with reasons for the absence during the period shall have been deemed to have resigned. The effective date of the resignation shall be the day immediately following the fifteenth day of absence.

(b) If the employee expresses a desire to continue employment within fifteen days from the last day the employee reported for work, the employee shall not be deemed to have resigned. The appointing authority may consider appropriate disciplinary action, including discharge, where the employee fails to provide satisfactory reasons for failure to report for duty as expected. [Eff] (Auth: HRS §§ 302a-1112, 76-17) (Imp: HRS § 76-30)

§8-63-84 Withdrawal of resignation. A resignation shall be binding on the employee upon the submission of the resignation notice. It may be withdrawn only with the appointing authority's consent. [Eff] (Auth: HRS §§302a-1112, 76-17) (Imp: HRS §76-30)

§8-63-85 Resignation submitted during an investigation. When an employee submits a written resignation while being the subject of an investigation pertaining to an alleged impropriety on the employee's part, the appointing authority shall determine whether to:

(1) Discontinue the investigation and accept the resignation, provided that the requirements of section 8-63-82 have been met; or

(2) Continue the investigation and accept the resignation on the condition that it may be changed to a discharge, depending upon the outcome of the investigation.

[Eff] (Auth: HRS §§302a-1112, 76-17) (Imp: HRS §76-30)

§8-63-86 Resignation submitted following notice of discharge. If an employee submits a written resignation after receiving notice of discharge, the appointing authority shall determine whether to:

(1) Accept the resignation, provided that, notwithstanding section 8-63-82, the effective date is on or before the date the discharge would have taken place; or

(2) Reject the resignation and effect the discharge.

[Eff] (Auth: HRS §§302a-1112, 76-17) (Imp: HRS §76-30)

§8-63-87 Collective bargaining provisions. Whenever there are provisions in a collective bargaining agreement that conflict with this subchapter, the terms of the agreement shall prevail. Actions taken by the appointing authority shall, if grieved, be filed pursuant to the contractual grievance procedure." [Eff] (Auth: HRS §§302a-1112, 76-17) (Imp: HRS §76-30)

§§8-63-88 to 8-63-89 (Reserved)

2. The adoption of chapter 8-63, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

_____
Chairperson, Board of Education

APPROVED AS TO FORM:

_____
Deputy Attorney General

STATE OF HAWAII
Department of Education
Administrative Rules - Public Hearing
Board of Education Conference Room
Tuesday, April 24, 2012

Department of Education Staff:

Galen Onouye, Esq.
Randy Kawamoto
Donna Kagawa
Wilfred Keola

Also Present:

Douglas K. Murata
Kerry Tom
Sean Bacon
Presley Pang, Esq.
Leiomalama Desha
Holly Shikada, Esq.
James Halvorson, Esq.
Iris Tomita
Donna Kagawa
Annette Anderson
Lisa Asato
Noe Noe Tom
Sandra Yeh
Janet Offner
Lynn Young
Sharon Nishihira

I. Call to Order

The public hearings meeting for the proposed changes to Hawaii Administrative Rules (HAR) Title 8, Chapters 8-63, 8-65, and 8-66 was called to order by Mr. Galen Onouye at 2:03 p.m.

Mr. Onouye, hearings officer, stated that the location of the hearing is 1390 Miller Street, Hawaii State Board of Education (Board) Conference Room. He further stated that staff from the Department of Education (DOE) are also in attendance and will be introducing themselves during their presentations.

Mr. Onouye stated that the hearing was being conducted and properly noticed in accordance with Hawaii Revised Statutes, Chapter 91, for purposes of receiving testimony relating to the proposed revisions and adoption of the HAR Title 8, Chapters

8-63, 8-65, and 8-66. At the conclusion of the hearing, the record of the hearing and all testimonies received will be forwarded to the Board for review and action on May 15, 2012.

Mr. Onouye called upon Mr. Randy Kawamoto, Office of Human Resources (OHR), to begin the discussion on Title 8, Chapter 8-63.

II. Chapter 63

Mr. Kawamoto spoke to Chapter 63 and its proposal for a new chapter on civil service rules. He stated that the proposed rules apply to all positions and employees of the civil service of the DOE and unless otherwise specified does not apply to positions and employees exempt from civil service. He stated that the proposed rules set forth civil service personnel policy for certain key functions including recruitment, examination, certification appointment, classification, compensation, exemptions from civil service, leaves, medical examinations, internal complaint procedures, and resignation.

Mr. Onouye stated that he would take testimony at this time. He stated that testimony would be limited to five minutes and that a buzzer would sound at four minutes, followed by a second buzzer at five minutes. He asked testifiers to state their name and to speak loudly and clearly. He further stated that all comments should be addressed to him and should not be of a personal nature.

Mr. Onouye asked if anybody would like to testify regarding Chapter 8-63. Hearing none, the meeting moved to Chapter 8-65.

Mr. Onouye called upon Ms. Donna Lum Kagawa, Professional Development and Educational Research Institute (PDERI).

III. Chapter 65

Ms. Kagawa spoke on the proposal to promulgate Chapter 65, Alternative Routes to Certification. She stated that to satisfy the federal Race to the Top (RTTT) grant requirements related to alternate certification, the proposed rules set forth alternative routes to certification to be a school administrator in the DOE. She stated that the proposed rules define the requirements and components of an alternate certification program and define the entry requirements that applicants must meet to be accepted into an alternate certificate program.

Mr. Onouye asked Mr. Zachary DiIonno to please step forward to testify on Chapter 65.

Mr. DiIonno, former middle school special education teacher at Ilima Intermediate School in Ewa Beach, testified in support of the adoption of the proposed Chapter 8-65, HAR, regarding alternative routes to certification for principals and vice principals. He stated that he taught a traditionally high-need community that struggled to fill positions at the teaching and administrative levels. He understood the importance of providing an alternative pathway to certification. He stated that he came to Hawaii in 2007 with

the Teach for America (TFA) program without any prior experience teaching and lacking teaching credentials; however, the DOE, the Board, and the University of Hawaii worked together to ensure that he and his fellow TFA colleagues would be able to achieve their licensure through an alternative certification process while teaching full time.

He stated that the implementation of an alternative certification program for vice principals serves a dual purpose. It fulfills the assurances made in Hawaii's RTTT application, but also seeks to fill vacant administrative positions in high-need schools with high-quality candidates.

Mr. DiIonno stated that under proposed rule 8-65-8(c) "Candidate requirements for enrollment in an alternative certification program," he would like the Board to consider extending the candidates' length of commitment for serving within the DOE after graduation from three years to four years, at minimum. A problem he observed as a teacher was the high attrition rate of teachers and school-level administrators. This "revolving door" effect prevents teachers, administrators, and other school personnel from establishing a sense of community, cohesion, and consistency that benefits not only collaboration amongst faculty, but also stability in students' learning environment and expectations. By requiring candidates for the alternative certification program to remain at the school for at least four years, the Board will ensure that: 1) the certification program attracts candidates who are dedicated to serving a long-term commitment in a school, 2) newly-minted administrators will be able to fully absorb into the cultures of their schools, and 3) teachers have the opportunity to work with their reporting office for a significant amount of time.

Regarding the residency aspect under HAR 8-65-12; he would like the Board to consider requiring candidates to complete a capstone project upon the completion of their residency. This project would require the candidates to apply the methods, approaches, observations, and perspectives studied throughout their residency to produce a seminar paper that recognizes an observed issue/area of focus, provides an analysis of that focus, and sets forth actionable steps towards a viable solution. This may help candidates think critically about issues that they are likely to face as administrators. Candidates could use these seminar papers directly toward their practices. He included other suggestions in his submitted testimony. (Attachment A)

Mr. Onouye noted for the record that written testimony in support of Chapter 8-65 was received from Ms. Sasha Hamada (Attachment B), Ms. Lianne Lee (Attachment C), Mr. Daniel Ellis (Attachment D), Ms. Serena Podish (Attachment E), Mr. Christopher St. Sure (Attachment F), Ms. Connie Yonashiro (Attachment G), and Mr. Brian Tongg (Attachment H). Mr. Onouye stated that Mr. Alex Cyran's email (Attachment I) does not indicate support or against but reflects several concerns which will be made part of the record.

Hearing no further request for testimony, Mr. Onouye moved to Chapter 8-66.

IV. Chapter 66

Mr. Wilfred Keola, Jr., OHR, presented the proposal to promulgate a new Chapter 66, Part-time Temporary Employees. He stated that the purpose of the proposed rule is to set forth the compensation for part-time temporary teachers and certain other part-time temporary and casual employees of the DOE.

Ms. Mei Fei Kuo, Esq. from the law firm of Alston, Hunt, Floyd and Ing, testified on behalf of part-time teachers (PTTs) they represent in a lawsuit of Dianne Kawashima vs. State of Hawaii. She testified on behalf of the part-time employees (PTEs) opposing proposed HAR Chapter 8-66 which unlawfully seeks to reclassify PTEs and reduce their compensation to hourly rates that are lower than what they are entitled to under the law.

Ms. Kuo stated that in the Kawashima class action, the Court granted summary judgment motion on behalf of the PTEs which held that the prior efforts of the DOE, its Superintendent, and the Board to try to amend and reduce the hours for PTEs were unlawful and ineffective. Therefore, from 1976 to the present date, the PTEs' hourly rates are governed by Regulation 5203 which provided that their compensation "shall be based on the most current per diem rates established for substitute teachers." (Attachment J with exhibits)

She stated that for decades, the PTEs' pay has been linked to the pay for substitute teachers to ensure they were receiving equal pay for equal work and that concept is recognized in the DOE School Code and in Chapters 76 and 89 (HAR). They object to the proposed Chapter 8-66. Ms. Kuo highlighted two of the reasons. Part-time teachers and part-time employees are entitled to equal pay for equal work and their classification and compensation system should continue to be tied to the rates paid substitute teachers. At a minimum, their hourly rates should not be reduced. Currently, under Regulation 5203, the PTTs are entitled to the hourly rates that range between $22.56 an hour to $26.50 an hour. With the proposed Chapter 8-66, the classification of the part-time teachers and part-time employees are being reduced to $20.67 and $22.43 an hour which will result in a significant pay cut for the part-time employees which will range between 9 percent and 19 percent depending on the classification of the part-time teachers and part-time employees. Additionally, they object to the proposed changes to Chapter 8-66 because the DOE is attempting to set PTEs pay at the illegal rate that it was in 2005 even though the pay that has been given to other teachers and substitute teachers under the same compensation scheme has increased. The 2005 levels violate Chapter HRS 89(c)(2) which requires the DOE to make adjustments for excluded employees that are not less than those provided under collective bargaining agreements to employees hired on a comparable basis. After decades of having the part-time teachers and part-time employees pay linked to the pay of the teachers in Bargaining Unit 5, it is wrong at this point to deny the part-time teachers and part-time employees fair wages that are increased in the manner of how the law had contemplated it to be.

Mr. Onouye stated that Ms. Kuo's testimony would be noted as part of the record and submitted to the Board.

Mr. Onouye noted that testimony was received from Mr. Neil Okuna in opposition which will be made part of the record. (Attachment K)

The meeting was recessed at 2:18 p.m. and reconvened at 2:45 p.m.

Mr. Onouye stated that the recess was taken for purposes of providing additional time for late-comers.

Mr. Onouye stated that testimony was received from Mr. Jarrett Keohokalole in support of Chapter 65 and will be part of the record. (Attachment L)

Mr. Onouye asked if there were any other testimonies. Hearing none he stated that all materials will be forwarded to the Board and will be acted upon at the Board meeting on Tuesday, May 15, 2012.

V. Adjournment

The public hearing meeting adjourned at 2:47 p.m.

ATTACHMENTS

Attachment A	Written Testimony of Mr. DiIonno
Attachment B	Written Testimony of Ms. Sasha Hamada
Attachment C	Written Testimony of Ms. Lianne Lee
Attachment D	Written Testimony of Mr. Daniel Ellis
Attachment E	Written Testimony of Ms. Serena Podish
Attachment F	Written Testimony of Mr. Christopher St. Sure
Attachment G	Written Testimony of Ms. Connie Yonashiro
Attachment H	Written Testimony of Mr. Brian Tongg
Attachment I	Written Testimony of Mr. Alex Cyran
Attachment J	Written Testimony of Alston, Hunt, Floyd & Ing Lawyers
Attachment K	Written Testimony of Mr. Neil Okuna
Attachment L	Written Testimony of Mr. Jarrett Keohokalole