



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

September 15, 2015

TO: The Honorable Brian De Lima
Chairperson, Human Resources Committee

FROM: 
Kathryn S. Matayoshi
Superintendent

SUBJECT: Committee Action on Deadlines and Timeline for Department of Education
Investigations of Employee Leave Department Directed Leaves ("DDL")
and Leaves Pending Investigation ("LPI")

1. RECOMMENDATION

The Department recommends that the Human Resources Committee take no action at this time.

2. RECOMMENDED EFFECTIVE DATE

N/A

3. DISCUSSION

a. Conditions leading to the recommendation

The Department provided presentations to the Human Resources Committee in December 2014 and August 2015 regarding employees on leave pending investigation of alleged misconduct. The Committee expressed a desire for the Department to provide written guidance to its employees regarding the conditions under which employees should be placed on Department Directed Leave (DDL) or Leave Pending Investigation (LPI) and the allegations investigated, including timelines.

b. Previous actions of the Board on the same or similar matters

N/A

- c. Other policies affected

N/A

- d. Arguments in support of the recommendation

The Department has drafted and is seeking stakeholder feedback on written Procedures for Department Directed Leave and Leave Pending Investigation, the most current copy of which is attached. The Procedures cannot be finalized until the feedback has been received and considered, revisions incorporated and the unions consulted.

- e. Arguments against the recommendation

N/A

- f. Other agencies or departments of the State of Hawaii involved in the action:

N/A

- g. Possible reaction of the public, professional organizations, unions, DOE staff and/or others to the recommendation:

Reaction is likely to be mixed. Those involved in the investigations and decision-making processes prefer Procedures without timelines because of the numerous variables outside of their control and, in addition, competing priorities. Union reaction will not be known until consultation occurs; however, we anticipate different reactions from the different unions.

- h. Educational implications:

N/A

- i. Financial implications

N/A

4. OTHER SUPPLEMENTARY RECOMMENDATIONS

N/A

KSM:BAK:je
Attachment

c: Office of Human Resources



DEPARTMENT OF EDUCATION

PROCEDURES FOR DEPARTMENT DIRECTED LEAVE OR LEAVE PENDING INVESTIGATION

DRAFT

9/10/15

TITLE

Procedures for Department Directed Leave or Leave Pending Investigation

PURPOSE

To outline the criteria, procedures, and timelines for the placing Department of Education (DOE) employees on department directed leave (DDL) or leave pending investigation (LPI).

POLICY

Board of Education policies state that the Department of Education has a fundamental responsibility to provide a safe and healthy work and learning environment for all public school students, employees, and persons under its jurisdiction. (*BOE Policies 1110-6, 1110-7, and 4200*)

Thus, the DOE must provide safe classrooms, schools, and workplaces for its students and employees. When credible allegations of employee misconduct arise or employees demonstrate conduct that jeopardizes a safe and healthy learning and work environment, DOE administrators and supervisors must take appropriate and timely administrative action. In some instances, temporary removal of an employee from the classroom, school, or worksite is appropriate.

The authority to direct removal of DOE employees from the classroom or workplace lies with the Complex Area Superintendent (CAS) or Assistant Superintendent (AS). For offices under the direct supervision of the Deputy Superintendent or Superintendent, the Deputy or Superintendent shall have the authority to direct employees from the workplace.

Employees will only be placed on DDL, LPI, or reassigned to another work location when the safety of students, schools, or workplaces is at risk, or the employee's presence during the investigation may negatively impact the integrity of the investigation.

Examples of situations in which employees should be placed on DDL or LPI include but are not limited to, where there are credible allegations of sexual misconduct and/or other acts of harm involving children; criminal acts; serious incidents of discrimination, harassment or retaliation; or acts of workplace violence that threaten to or actually result in serious injury.

All situations/complaints leading to the removal of an employee and placing him/her on DDL or LPI will be investigated thoroughly and expeditiously. When investigations

are completed, and where allegations of misconduct have been substantiated, post-investigation/due process proceedings should commence immediately thereafter.

- Decisions on whether to return an employee to the classroom or workplace are made by the Complex Area Superintendent or Assistant Superintendent
- Decisions to terminate classified employees are made by the CAS or AS
- Decisions to terminate certificated employees are made by the Superintendent

Nothing in these Procedures should be construed as preempting the authority of an employee's immediate supervisor to recommend or initiate discipline actions.

PROCEDURES

1) PRELIMINARY ASSESSMENT

Following receipt of an allegation/complaint at a school or workplace, the principal/manager conducts a preliminary assessment. The principal/manager:

- a. Determines whether the employee against whom the allegations have been made should be removed from the school/workplace.
 - i. The employee may be placed on initial DDL or LPI if the safety or welfare of students or staff is an issue, and/or if the employee's presence in the workplace may hinder the investigation.
 - ii. The principal/manager must obtain verbal approval (of DDL or LPI) from the CAS or AS prior to sending the employee home.
 - iii. The CAS or AS shall give written notice to the employee within forty-eight (48) hours after such action is taken, confirming verbal instructions by the principal/manager of being placed on DDL or LPI, the general nature of the allegation(s), and conditions of the DDL or LPI.
- b. Gathers preliminary facts surrounding incident or allegation
- c. Analyzes facts and determine what an appropriate course of action should be
- d. Seeks advice, if necessary
- e. Submits child abuse report, if required
- f. Calls police or law enforcement, if appropriate
- g. Examines safety considerations

It is expected that the preliminary assessment will be completed within ____ working days of the receipt of allegations, except in circumstances outside of the DOE's control.

Upon completion of the preliminary assessment:

- i. The principal/manager returns the employee to work, or

- ii. If an investigation is warranted, the principal/manager recommends that the employee (respondent) remain on DDL or LPI during the investigation.

The decision to keep an employee on DDL or LPI is made by the CAS or AS, utilizing the following criteria:

- i. Does the allegation raise credible concern for student or staff safety, or would the employee's presence in the school/workplace negatively impact the integrity of the investigation?
- ii. Are there alternatives short of placing the employee on DDL or LPI that might alleviate the concerns, e.g. could the employee be assigned to another classroom or workplace?

2) INVESTIGATION

- a. The investigation commence immediately.
- b. Investigations should be completed within the following timelines, except in circumstances outside of the control of the investigator (such as, for example, unavailability of necessary witnesses, unavailability of the respondent, or where the scope of the investigation changes significantly throughout its course):
 - i. For school level investigations, within _____ work days.
 - ii. For centralized investigations (district level, Office of Human Resources or Civil Rights Compliance Office), within ____ work days.
- c. It is recommended that investigations and/or assistance with investigations be assigned as follows:
 - i. Allegations of minor infractions of misconduct - school level (VP)
 - ii. Allegations of major infractions of misconduct - district level (CAPS or PAPA) or OHR Investigations Section
 - iii. Discrimination, harassment, or retaliation on a protected basis - Civil Rights Compliance Office
 - iv. Fiscal or financial improprieties - Internal Audit may conduct audit review (to be requested in accordance with IA procedures)
- d. An investigation is deemed completed when the written investigation report is delivered to the principal or manager.

3) POST-INVESTIGATION PROCESS

- a. PRINCIPAL or MANAGER. The principal/manager is expected to review the investigation report within _____ working days from receipt.

- i. The principal/manager determines whether any additional information is needed prior to the decision-making process commencing.
- ii. If no additional information is needed, the principal/manager determines the appropriate course of action for the employee on DDL or LPI.
 1. If the allegations are NOT SUBSTANTIATED, it is expected that the principal/manager take necessary steps to close out the investigation and return the employee to work within _____ working days.
 2. If the allegations are SUBSTANTIATED, it is expected that the principal/manager schedule the post-investigation meeting with respondent within ____ working days. A copy of investigation report and attachments are forwarded to the respondent for his/her review prior to the meeting.
- iii. Following the post-investigation meeting, the principal/ manager decides whether any corrective or disciplinary action is warranted.
 1. Verbal or written reprimand. It is expected that the principal/manager make the decision and issue the verbal or written reprimand within _____ working days from the post-investigation meeting with the respondent.
 2. Suspension or termination. It is expected that the principal/manager make the recommendation to the CAS or AS within _____ working days from the post-investigation meeting with the respondent.
- b. CAS or AS. The CAS/AS is expected review the recommendation for suspension or termination, including the investigation report and other supporting documents, within _____ working days from receipt. The CAS or AS may request additional information prior to making the decision on discipline and/or corrective action.

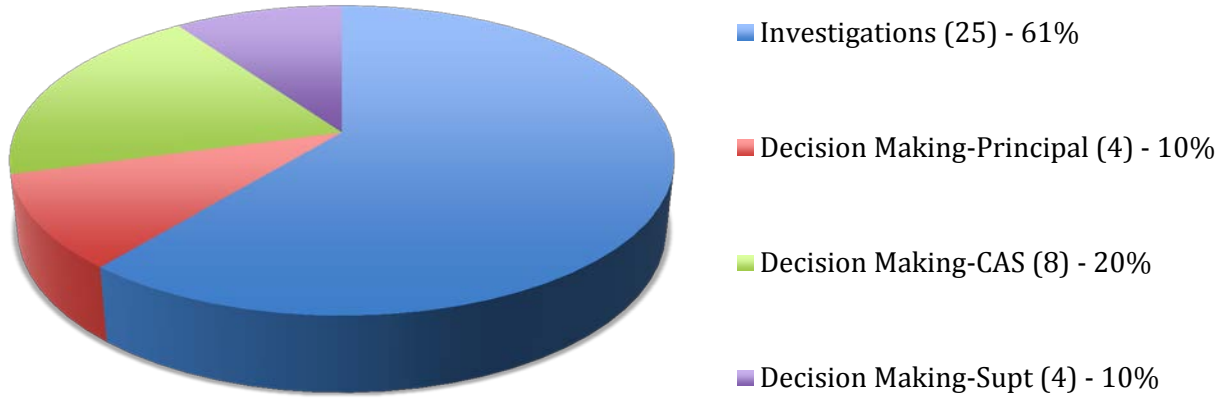
Upon determination that there is sufficient information to proceed, the CAS or AS is expected to schedule the due process meeting within ____ working days.

- i. Suspension
 1. For teachers, it is expected that the CAS or AS makes the decision on suspension or other appropriate corrective action, and issues notice of the decision to the employee, within _____ working days from date of meeting with the respondent.
 2. For educational officers (EOs), if the CAS or AS agrees with the recommendation for suspension, the CAS or AS makes a recommendation for suspension to Superintendent usually within _____ working days from date of meeting with the respondent.

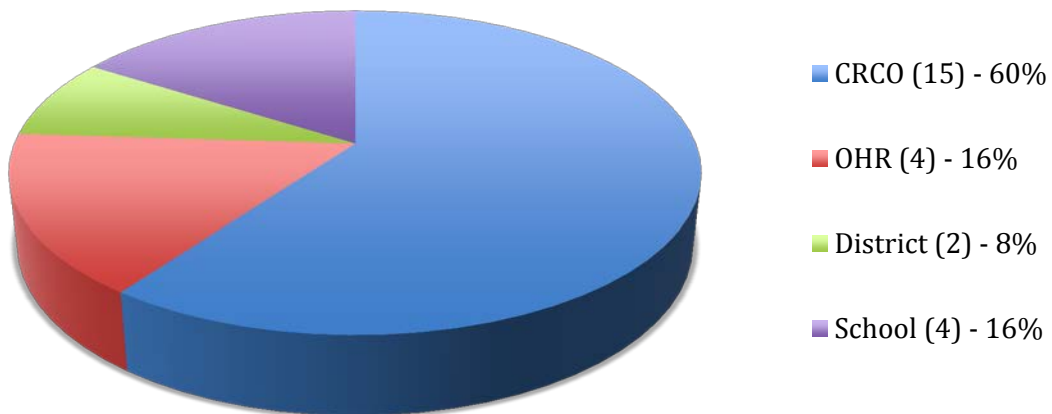
3. If the CAS or AS does not agree with the recommendation for suspension of the EO, the CAS or AS makes a decision on other appropriate corrective action and issues his/her decision to the employee usually within ____ working days from the date of meeting with the respondent.
 - ii. Termination. If the CAS or AS concurs with the recommendation for termination of a teacher or EO, the CAS or AS makes a recommendation for termination to the Superintendent, usually within ____ working days from date of meeting with respondent. The CAS or AS also sends a letter to the respondent, informing him/her of the recommendation for termination.
- c. SUPERINTENDENT. The Superintendent is expected to review the recommendation for termination of a teacher or suspension/termination of an EO, within ____ working days from receipt. The Superintendent may request additional information prior to making a decision on discipline and/or corrective action.
 - i. Following receipt of all necessary information, the Superintendent will schedule a due process meeting with the respondent.
 - ii. Following the due process meeting, the Superintendent makes the decision on teacher termination or EO suspension/termination, or other appropriate corrective action, and issues decision to respondent usually within ____ working days from date of meeting with respondent. This timeline will be extended to accommodate any requests for additional information the Superintendent may identify in the course of the meeting with the respondent.

All timelines in these Procedures are subject to extension in appropriate circumstances. Such circumstances include, but are not limited to, unavailability of necessary witnesses, unavailability of the respondent, where the scope of the investigation changes significantly throughout its course, or where a decision-maker determines that additional information is necessary in order to provide the respondent a meaningful due process opportunity.

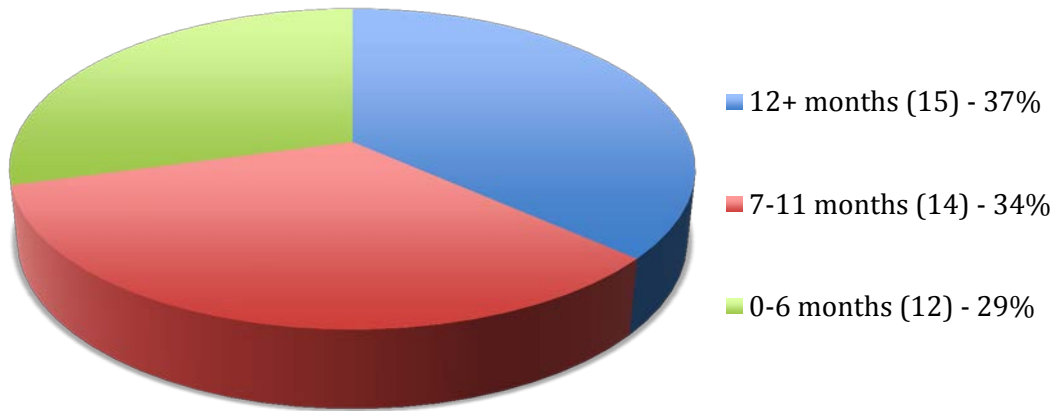
Open DDL & LPI Cases as of Sept 11, 2015



Cases under Investigation by INVESTIGATOR



Aging of All Cases by initial date of DDL/LPI



Aging of Cases in INVESTIGATION

