

FEB 29 2016

25 January 2016

Dear Mr. Mizumoto

My name is William Harlan, I have been a public school teacher here in Hawaii for the past twenty-three years. I am writing this letter to every member of the BOE because I have seen in the news that you have been looking into the issue of teacher suspensions during investigations. I am one of those teachers. Three years ago I was placed on paid leave for almost a year while an investigation was conducted based on an allegation about me. I believe it is very important that you hear my story in order for the BOE to fully understand the devastating impact these "investigations" and suspensions have on teachers and their families.

My case is different from many of the others in that I obtained an attorney and filed a lawsuit against the DOE for violation of my contract as well as violation of basic due process rights and defamation. I recently "won" my lawsuit as the DOE has agreed to an out-of-court settlement in which they paid me a financial settlement with the agreement that I would drop the lawsuit. I very reluctantly agreed to this settlement as I wanted my case to go before a jury in order to expose to the public the unethical, even criminal, behavior of various individuals within the DOE. Only under pressure from my attorney did I agree to the settlement.

I could spend many pages giving you all the details of my case, but that is something I hope to do in testimony in front of the entire BOE. I am requesting that the Board call for me to provide oral testimony in front of the Board at some time in the near future. I feel the Board could learn much from me about this BROKEN system of teacher investigations. I truly feel when you hear my story all of you will be shocked at the unethical actions of certain DOE personnel and at the blatant violations of even basic due process rights. It is an incredible story and it is something that should never happen in the United States.

Imagine going to work one day, after many years, (in my case twenty) of exemplary service, having a "perfect" record, even having been nominated for "Teacher of the Year", yet as you enter the office at about 7:30am, you are called into the Principal's office, told to "turn over your keys, leave campus immediately and do NOT return." No explanation is given, no details are provided just—"leave now." That is how my nightmare began. My entire life was ripped apart in ten seconds. My psychologist compared it to getting raped. One second my life is fine, the next my world is torn apart. Due to this and other violations done to me I now suffer from depression and anxiety, (for which I have to take medication—for life) as well as being diagnosed with PTSD. What did all this stem from? After a student had told me "fuck you" in class I was accused of "yelling" and "kicking a desk"—both of which I did NOT do. The entire incident lasted about 25 seconds. The "investigator" assigned to my case by the district superintendent was my former principal who hated me! The years this man was our school principal I had been an active member of our APC union committee and we had clashed numerous times over the years, including my filing a grievance against him. The superintendent was well aware of our adversarial relationship yet he STILL assigned this man to be my investigator! To put it simply I had no chance, he saw this as a way to "get back" and he used the investigation as a personal vendetta against me—as everyone knew he would. I appealed to the superintendent not to have this man investigate my case—I reminded him of our long-term adversarial relationship including the grievance that I had filed against him which was heard by the superintendent! My appeal had no impact as the superintendent is good friends with this man, (in fact the

superintendent appointed him to his position in the District office), so he was allowed to conduct his "investigation". Let me note here that in the DOE's own "Conducting Investigations Manual" it states under "Important Considerations When Selecting an Investigator" - "Impartial-no bias or perception of bias; no special relationship with key witnesses." In addition it states-"calm and non-judgmental", it also states -"Available to conduct a PROMPT investigation." This investigator took TWO MONTHS to interview witnesses. He NEVER INTERVIEWED ME! It took SIX MONTHS for me to have a "Hearing" in front of the superintendent and state my case—SIX MONTHS. For an incident that lasted 25 seconds I was kept out of work for eight months. The "Hearing" was more like a kangaroo court—I was allowed to read my statement—again pleading that the investigator was biased against me—the superintendent did not ask me a SINGLE question. I also informed him that I had not been allowed to question ANY of the witnesses and/or accusers—which is a basic due process right and is in our contract! I had been sent numerous letters warning me to "NOT SPEAK TO ANYONE" or else I could suffer further punishment. How does one defend himself if he is given a gag order and not allowed to confront/question his accusers? I could have easily proven that I was completely innocent if I had been allowed to question the witnesses. In the end I was found to have "yelled" and "kicked a desk". When I asked/demanded to be informed WHAT I had "yelled" they could not tell me. "So you accuse me of yelling but you can't tell me WHAT I yelled?" "Yes." You accuse me of "kicking a desk so 1. which desk did I kick?(there are 12 in my room), 2. Where did I kick the desk?(top, bottom, side?), 3. How many times did I kick the desk?( 1, 2, 3, 4?), 4. How hard did I kick the desk?( not hard, kind of hard, really hard?), 5. Did the desk move? None of these questions were ever answered—that's because I did NOT ever kick a desk. The district superintendent found me "guilty" and gave me 7 days with NO PAY. At that point I obtained an attorney, Mr. Ken Ross, and filed a lawsuit against the DOE and various DOE personnel in Third Circuit Court here in Kona. We had two hearings in front of Judge Fujino and at the second hearing—the one prior to a jury trial—the DOE offered me an out-of-court settlement. I am not sure if I can reveal the amount of the settlement but it was many thousands of dollars.

My life will never be the same and I know I am not the only teacher who has suffered under this "investigation" process of the DOE. Things must change and they must change in a BIG way. I dealt with this issue for three years and I am well versed in all aspects of this matter. I truly feel the BOE could benefit from hearing me in person. Here are a few suggestions:

\*A teacher should ONLY be suspended from school in the case of alleged violence and/or sexual misconduct—that's all! Too many suspensions for "manini" things!

\*The district superintendent should NOT be involved. If he/she does not like the teacher being investigated(as in my case) they have no chance at a "fair & impartial" hearing. Instead there should be a committee of maybe five-two teachers/two parents and one administrator and NONE of them can KNOW the teacher being investigated. They must be totally neutral and non-biased.

I have many more ideas/suggestions but I'll leave it at that. I sincerely hope that the Board calls me to testify before it. The DOE destroys lives and it must stop!

Sincerely,  
William Harlan   
Kealakehe Intermediate  
Phone:325-5328

March 12, 2016

To: State of Hawai'i Board of Education Human Resources Committee

re: 3/15/16 BOE HR Committee Agenda Items V.A. and VI.A. – Action on DDL and LPI

Aloha Board of Education Human Resources Committee Members,

Thank you for your attention to DDL, LPI, and Investigation procedures. May I suggest that your notices in the future include the word “Investigations” so that the DOE is encouraged to create written procedures regarding *all* employee investigations, not just those that result in DDL or LPI? Note that all DDLs and LPIs fall under the category of Investigations whereas, according to prior DOE statements to the BOE, not all investigations result in DDL or LPI. The way the BOE notices are worded, they exclude discussion on Investigations (the superset) that do not result in DDL or LPI (subsets). *All* Investigations are a drain on the education system and distract employees from their work with students. Here's an example of meeting agenda item rewording:

Update on status of Department of Education employees under Investigation including those on Department Directed Leave (“DDL”) or Leave Pending Investigation (“LPI”), including status of Committee request for information relating to DDL and LPI.

I am hoping that by next Tuesday's BOE HR Committee meeting the DOE will present a draft of **Investigations procedures that:**

1. Instruct the supervisor requesting an investigation to have a conversation with all parties involved *first* to see if they all agree about what happened. If there is no dispute about what happened, there is no reason to conduct an investigation.
2. Specify criteria for conducting an investigation, and placing an employee on either DDL or LPI.
3. Mandate a full accounting from the CAS or Deputy Superintendent to the Human Resources Department justifying the investigation and any extensions to timelines. The CAS needs to be held responsible for approving the expenses incurred by an investigation, and accountable for the costs incurred.
4. Delineate timelines for completing all stages of investigations;
5. Specify responsible parties for conducting an investigation (e.g. who investigates an issue regarding an employee in which the Principal may have been involved in the incident directly or indirectly, as in the case of negligence?);
6. Provide explicit criteria for extending an investigation;
7. Are available on the public DOE web site to facilitate education of the Investigation process for everyone.

On the day of the last BOE HR meeting (2/16/16), I sent a request for records to the DOE asking for a copy of the Department of Education policies and procedures related to employee investigations,

DDL (Department Directed Leave), and LPI (Leave Pending Investigation). On pages 4-28 of this testimony are the records I received.

### **FORMAT**

What I noticed first was the formatting of the electronic documents I received, *LPI\_Records\_for\_Ott.pdf* and *DDL\_Records\_for\_Ott.pdf*. The \*.pdf files were pictures of printed material; therefore, the text cannot be copied. While these *are* electronic documents, they are substandard electronic documents by today's measure. I think that the State Of Hawai'i DOE should maintain all its files in an electronic format that allows for selecting, copying, and pasting text. It's 2016 for goodness sake and we should expect this level of professionalism from a state agency. Also, the LPI documents are unreadable on a computer unless you tilt your head 90° clockwise or turn your computer screen 90° counter-clockwise. Either the staff needs training in how to rotate a picture and set the page layout to Landscape mode instead of Portrait mode, or the layout is a deliberate action designed to make the document difficult to read.

### **EFFICIENCY**

I also noticed that, according to the *Notice to Requestor* forms, the DOE took **an hour and a half(!)** to gather and send these documents. (See *NTR Ott 2.26.16.pdf* and *2nd NTR Ott 3.8.16.pdf*)

I doubt that I am the only person in Hawai'i to request these documents. Does it take an hour and a half to answer every request? May I propose a more efficient process?

1. Make all the relevant documents available on the DOE public web site so that people can download them for themselves and not have to contact the DOE asking for the information thus saving the DOE employee time to respond to an OIP Request for Records.
  - a. Relevant documents include, but are not limited to copies of the contracts the BOE/DOE has entered into on behalf of the people of Hawai'i with the HSTA, Unit 1, Unit 2, Unit 3, Unit 10, and Unit 13 (the contracts from which the DOE provided excerpts in response to my request).
  - b. Online information would also include DOE procedures (when finally written) including a copy of the "[Notice of Complaint & Investigation](#)" form letter and other relevant documents when they become available.
2. Respond to a request for information with either:
  - a. attachments of the available documents online, the URLs (web addresses) where each document can be located, or both, and
  - b. page numbers for information relevant to the request for each document.
  - c. Note that this type of response would probably take less than 10 minutes, as opposed to the current process (1.5 hours).

### **DUE PROCESS**

I would like to draw your attention to the Template for "Notice of Complaint & Investigation" on the [last page of this document](#). This is the current form letter an employee receives when under

investigation. (This \*.pdf attachment was more advanced than the others because the text could be copied electronically. However the formatting was not copied, too, so I provided a picture of the document on [page 28](#).)

As an American, I am extremely perturbed by this statement:

**To preserve the integrity of the investigative process, you are encouraged not to speak with anyone concerning the case.**

Due process enables a defendant (someone placed under investigation for some infraction) to talk to potential witnesses. The process typed in Arial 14-point font above prevents someone from defending themselves. I'm shocked that the gag order above is permitted!

First of all, how many "Investigations" really require an investigation? Only when the facts are in dispute might this be warranted. Second, what about an individual's right to confront one's accusers, to question witnesses, to garner the assistance of witnesses to whatever incident occurred who might be in your favor? Aren't these essential components of "Due Process"? Third, are there no rights of free speech in Hawai'i's Department of Education? Apparently not. It is these conditions that create a culture of fear because Investigations are handled like inquisitions.

I find this practice, silencing and ostracizing employees under investigation, to be appalling, and I hope that the BOE will adopt a policy to put an end to this glaring abrogation of due process rights.

### **CONFLICT RESOLUTION TRAINING**

The real solution is education. I have no doubt that better training in conflict resolution and interpersonal communication is the key to preventing costly Investigations. These costs are immeasurable because they permeate our education system in countless ways that span measurable man-hours to the culture of fear that demotivates individuals and all the lives they touch.

I think the DOE should invest in good Conflict Resolution training for all employees. This will prevent Investigations and improve productivity. Do I have statistics to support this claim? No. It's just common sense.

### **CONCLUSION**

In closing, I ask that the Board of Education set a firm deadline for the DOE to develop a draft of Investigation procedures to present to the unions. I ask that the procedures allow for due process and protect the rights of employees to speak to potential witnesses. I ask that the CAS be held responsible financially and ethically for all investigations in their complex areas and regular public reports that show how many investigations a CAS approves, and how long they have been going on.

Mahalo,



Vanessa Ott

# Complete DOE Investigation Policies & Procedures as of 3/8/16

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## 2/16/16 – Ott: Request copy of DOE investigation policies and procedures

From: **Vanessa Ott** <mstvott@gmail.com>  
Date: Tue, Feb 16, 2016 at 10:17 AM  
Subject: Request to Access Government Record  
To: Barbara\_Krieg@notes.k12.hi.us

Please see my attached request for a government record.

Mahalo,

Vanessa Ott  
[808-854-1018](tel:808-854-1018)

Attachment:

- *OIP\_RequestRecords\_InvestigationProcedures.pdf* - REQUEST TO ACCESS A GOVERNMENT RECORD (2 pp.)

# REQUEST TO ACCESS A GOVERNMENT RECORD

DATE: February 16, 2016

TO: State of Hawai'i Department of Education Assistant Superintendent Barbara Krieg

FROM: Vanessa Ott

Name or Alias email: msvott@gmail.com USPS: 2825 S. King St., #2901

Contact Information phone: 808-854-1018 Honolulu, HI 96826

Although you are not required to provide any personal information, you should provide enough information to allow the agency to contact you about this request. The processing of this request may be stopped if the agency is unable to contact you. Therefore, please provide any information that will allow the agency to contact you (name or alias, telephone or fax number, mailing address, e-mail address, etc.).

## I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the government record you request will prevent delays in locating the record. Attach a second page if needed.

I request a copy of the Department of Education policies and procedures related to employee investigations, DDL (Department Directed Leave), and LPI (Leave Pending Investigation).

## I WOULD LIKE: (please check one or more of the options below)

- To inspect the government record.
- A copy of the government record: (Please check one of the options below.) See the back of this page for information about fees that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.
  - Pick up at agency (date and time): \_\_\_\_\_
  - Mail
  - Fax (toll free and only if available)
  - Other, if available (please specify): \_\_\_\_\_ *I request these policies and procedures be delivered in electronic format to my email address in either \*.doc, \*.docx, or \*.pdf format whereby text can be copied.*
- If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.
  - Electronic  Audio  Other (please specify): \_\_\_\_\_
  - to: msvott@gmail.com
- Check this box if you are attaching a request for waiver of fees in the public interest (see waiver information on back).

**SEE BACK FOR IMPORTANT INFORMATION**

## **Fees for Processing Record Requests**

You may be charged fees for the services that the agency must perform when processing your record request, including fees for making photocopies and other lawful fees. The first \$30 of fees charged for searching for a record, reviewing, and segregating will not be charged to you. Any amount over \$30 will be charged to you. Fees are as follows:

Search for a Record	\$2.50 for 15 minutes
Review and Segregation of a Record	\$5.00 for 15 minutes

## **Waiver of Fees in the Public Interest**

Up to \$60 of fees for searching for, segregating and reviewing records may be waived when the waiver would serve the public interest as described in section 2-71-32, Hawaii Administrative Rules. If you wish to apply for a waiver of fees in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver, found at section 2-71-32, Hawaii Administrative Rules, are:

- (1) The requested record pertains to the operations or activities of an agency;
- (2) The record is not readily available in the public domain; and
- (3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

## **Agency Response to Your Request for Access**

The agency to which you addressed your request must respond within a set time period. The agency will normally respond to you within 10 business days from the date it receives your request; however, in *extenuating circumstances* the agency must respond within 20 business days from the date of your request. If you have questions about the response time, you may contact the agency's UIPA contact person. If you are not satisfied with the agency's response, you may call the Office of Information Practices at 808-586-1400.

## **Requester's Responsibilities**

You have certain responsibilities under §2-71-16, Hawaii Administrative Rules. You may obtain a copy of these rules from the Lieutenant Governor's Office or from the Office of Information Practices. These responsibilities include making arrangements to inspect and copy records, providing further clarification or description of the requested record as instructed by the agency's notice, and making a prepayment of fees, if assessed.

## 2/26/16 - DOE (Takaki): Response with records requested

From: <Justin\_Takaki/SUPT/HIDOE@notes.k12.hi.us>  
Date: Fri, Feb 26, 2016 at 4:04 PM  
Subject: HRS 92F Request  
To: msvott@gmail.com

Ms. Vanessa Ott,

I am writing you this e-mail regarding your request for records. Please find attached a notice signed by Deputy Superintendent Stephen Schatz along with all records found to be responsive to your request.

Thank you,

Justin Takaki  
Hawaii State Department of Education  
Office of the Superintendent

### Attachments:

- *NTR Ott 2.26.16.pdf* – Notice to Requester (3 pp.)
- *LPI\_Records\_for\_Ott.pdf* - LPI – Leave Pending Investigation Records (11 pp.)
- *DDL\_Records\_for\_Ott.pdf* – DDL – Department Directed Leave Records (2 pp.)

**ATTACHMENT: Notice to Requester 2/16/16**

attachment: *NTR Ott 2.26.16.pdf*

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**NOTICE TO REQUESTER**

TO: Vanessa Ott  
FROM: HI Dept. of Edu., Deputy Superintendent Stephen Schatz, Contact Justin Takaki 586-3232  
(Agency/Name & telephone number of contact person at agency)

DATE REQUEST RECEIVED: 2/16/16  
DATE OF THIS NOTICE: 2/26/16

**GOVERNMENT RECORDS YOU REQUESTED** (attach copy of request or provide brief description below):

Copy of the Department of Education policies and procedures related to employee investigations, DDL (Department Directed Leave), and LPI (Leave Pending Investigation)

**NOTICE IS PROVIDED TO YOU THAT YOUR REQUEST:**

- Will be granted in its entirety.
- Cannot be granted in its entirety because:
  - Agency does not maintain the records. (HRS § 92F-3)
  - Agency that is believed to maintain records: \*See below
  - Agency needs a further description or clarification of the records requested. Please contact the agency and provide the following information: \_\_\_\_\_
  - Request requires agency to create a summary or compilation from records not readily retrievable. (HRS § 92F-11(c))

- Is denied in its entirety  Will be granted only as to certain parts  
based upon the following exemption provided in HRS § 92F-13 and/or § 92F-22 and other laws cited below.  
(Portions of records that agency will not disclose should be described.)

<u>RECORDS OR</u>	<u>APPLICABLE</u>	<u>AGENCY</u>
<u>INFORMATION WITHHELD</u>	<u>STATUTES</u>	<u>JUSTIFICATION</u>

\*The search did not produce any policies that specifically respond to your request. However, all records relating to the procedures regarding DDL and LPI have been attached to this notice.

**REQUESTER'S RESPONSIBILITIES**

You are required to (1) pay any lawful fees assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 30 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

**METHOD & TIMING OF DISCLOSURE**

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

OP (rev. 3/8/2014)

**Method of Disclosure:**

- Inspection at the following location: \_\_\_\_\_
- As requested, a copy of the record(s) will be provided in the following manner:
  - Available for pick-up at the following location:
  - Will be mailed to you.
  - Will be transmitted to you by other means requested: E mailed

**Timing of Disclosure:** All records, or first increment where applicable, will be made available or provided to you:

- On or about February 26, 2016
- After prepayment of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- The prior increment (if one prepayment of fees is required and received), or
- Receipt of each incremental prepayment, if prepayment for each increment is required.

Disclosure is being made in increments because the records are voluminous and the following extenuating circumstances exist:

- Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
- A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

**ESTIMATED FEES & COSTS:**

For personal record requests, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests, the agency is authorized to charge you certain fees to search for, review, and segregate your request (even if no record is subsequently found to exist). The agency must waive the first \$30 in fees assessed for general requesters, OR the first \$60 in fees when the agency finds that the request is made in the public interest. See HAR §§ 2-71-19, -31 and -32.

In addition to fees, the agency may also charge you for the costs of copying and delivering government or personal records in response to your request, outstanding fees and costs from a prior request, and other lawful fees and costs.

The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. The following is the estimate of the fees and costs that the agency will charge you, with the applicable waiver amount deducted.

**For public record requests only:**

<b>Fees:</b> Search	Estimate of time to be spent: <u>50</u> hours (\$2.00 for each 15-minute period)	\$ <u>5</u>
Review & segregation	Estimate of time to be spent: <u>15</u> mins (\$5.00 for each 15-minute period)	\$ <u>5</u>
Fees waived	<input checked="" type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60)	<\$ <u>30</u> >
Other	_____ (Pursuant to HAR §§ 2-71-19 & 2-71-31)	\$
<b>Total Estimated Fees:</b>		\$

**For all record requests:**

Costs: Copying	Estimate of # of pages to be copied: _____ at \$ ____25____ per page, pursuant to HRS § 92-21)	\$
Delivery	Postage	\$
Other	_____	\$
<b>Total Estimated Costs:</b>		<b>\$</b>

**PREPAYMENT IS REQUIRED** (50% of fees + 100% of costs, as estimated above) \$  
Payment may be made by cash or:  personal check payable to Hawaii Department of Education  
 other \_\_\_\_\_

**The estimated fees and costs above are for the first incremental disclosure only. Also, only one waiver will be allowed per request, not per incremental disclosure.**

For questions about this notice, please contact the person named at the beginning of this form. Questions regarding compliance with the UIPA may be directed to the Office of Information Practices at 808-586-1400 or oip@hawaii.gov.

**ATTACHMENT: LPI – Leave Pending Investigation Records**

attachment: *LPI\_Records\_for\_Ott.pdf*

**UNIT 2**

**K. Leave Pending Investigation of Charges.**

1. Whenever an investigation of charges against an Employee is pending and the Employee's presence at the work site is deemed by the Employer to be detrimental to the proper conduct of the investigation or the operations of the work place, the Employee may be placed on a leave of absence without pay pending investigation subject to the following:

a. The Union and the Employee who is placed on the leave without pay pending an investigation shall be given written notice within forty-eight (48) hours after such action is taken. The written notice shall provide an explanation, including available facts, on why the Employee's presence at the work site is deemed by the Employer to be detrimental to

Unit 02

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the proper conduct of the investigation or the operations of the work place and the effective date of the leave of absence without pay pending an investigation.

b. The period of leave of absence without pay pending an investigation shall be for such length of time as may be necessary to conclude the investigation, but not exceeding thirty (30) days. In the event the investigation exceeds thirty (30) days, the appointing authority may exercise its options provided in subparagraph K 2.

c. If the Employee who has been placed on leave of absence without pay pending investigation is cleared of all charges or if the charges are dropped or not substantiated, the Employee shall be reinstated without loss of pay and all rights and benefits will be restored as though the Employee had not been on leave of absence without pay pending an investigation.

d. Disciplinary or discharge action resulting from an investigation of charges.

1) In the event a suspension is warranted, the Employer may consider any portion of the period of the leave of absence without pay pending an investigation towards fulfilling, in whole or in part, the disciplinary action considered appropriate by the Employer. The Employee shall be reinstated without loss of pay and benefits for any portion of the period of the leave of absence without pay which has not been considered towards fulfilling the disciplinary action.

2) In the event a discharge is warranted, the Employee shall not be granted any back pay or restored with any rights and benefits for the period of the leave of absence without pay pending an investigation.

2. Notwithstanding the foregoing, whenever an investigation of charges against an Employee is pending, the Employer shall have the discretion to:

- a. retain the Employee in active duty status;
- b. place the Employee on leave of absence with pay;
- c. return the Employee to active duty status from leave without pay pending an investigation; or,

d. reassign the Employee to another work unit or area and in the same or different capacity.

The action shall be for the length of time as may be necessary to conclude the investigation.

#### ARTICLE 43 - LEAVE FOR INDUSTRIAL INJURY

A. Whenever an Employee who is temporarily exposed to unusually hazardous conditions, or who is a member of a class recognized by the action of repicing to be a class exposed to unusually hazardous conditions, receives personal injury arising out of the unusually hazardous conditions and in the performance of the Employee's duty, the Employee shall be placed on accidental injury leave unless suspended or dismissed for cause, and continued on the payroll of the Employee's respective department at the Employee's full regular monthly salary during the first four (4) months of the Employee's disability and thereafter during the period of the Employee's total disability from work at sixty percent (60%) of the Employee's regular monthly salary, as though the Employee did not sustain an industrial injury. The Employee shall be entitled to all rights and remedies allowed under Chapter 386, Hawaii Revised Statutes, as amended, provided that any salary paid under this section shall be applied on account of any compensation allowed the Employee under Chapter 386, Hawaii Revised Statutes, as amended or any benefits awarded the Employee under Part III of Chapter 386, Hawaii Revised Statutes, as amended.

B. No accidental injury leave shall be granted for an injury incurred by an Employee by the Employee's willful intention to injure oneself or another or by the Employee's intoxication.

#### ARTICLE 44 - MILITARY LEAVE

##### A. Military Leave With Pay.

1. Employees whose appointment is for six (6) months or more shall, while on active duty or during periods of camps of instruction or field maneuvers as members of the Hawai'i national guard, air national guard, naval militia, organized reserves, including the officers' reserve corps and the enlisted reserve corps, under call of the President of the United States or the governor of the State, be placed on leave with pay status for a period not exceeding fifteen (15) working days in any calendar year, except as provided in subparagraph A.2. No such person shall be subjected by any person, directly or indirectly, by reason of absence to any loss or diminution of vacation or holiday privileges or be prejudiced by reason of the absence with reference to promotion or continuance of employment or reemployment.

d. Toileting: Getting to and from the toilet, getting on and off the toilet, and associated personal hygiene.

e. Eating: All major tasks of getting food into the body.

f. Bathing: Getting into or out of a tub or shower and/or otherwise washing the parts of the body.

g. Continence: Controlling one's bladder and bowel functions.

H. Return Rights from a Leave Without Pay. Except as specifically provided otherwise in this Article, an Employee granted leave without pay under this Article shall, upon condition of showing to the satisfaction of the appointing authority that the Employee has fulfilled the purpose of the leave, shall have the following rights:

1. A regular Employee, upon expiration of the leave shall be reinstated to the Employee's former position; provided, that if such position has been abolished during the period of such leave, the provisions of Article 9, Reduction-In-Force shall be applicable.

2. A non-regular Employee, upon expiration of the leave shall have reinstatement rights to the Employee's former position, provided that the status and function of the position remained the same in the Employee's absence. In the event that the Employee cannot be reinstated, the Employee shall be terminated.

3. Failure of an Employee to return to duty at the expiration of the leave shall be deemed a resignation; provided that if within fifteen (15) days of the expiration of the leave, the Employee furnishes satisfactory reasons to the appointing authority as to why the Employee was unable to return immediately after the expiration of the leave, the Employee shall be entitled to such rights as the Employee had at the expiration of the leave. In the event the appointing authority does not accept the reasons, the issue of the reasonableness of the reasons shall be subject to the provisions of Article 11, Grievance Procedure.

I. Other Rights and Conditions.

1. A regular Employee on an approved leave of absence shall be eligible during the period on such leave for promotional examinations and status of promotional eligible lists under the same conditions as though in active service.

2. An Employee who accepts employment, either in another position under civil service or in conflict with the purpose of the leave during the leave

of absence, shall be deemed to have resigned from the Employee's position from which the leave was granted, effective the date of the appointment to the other position.

J. Unauthorized Leave. Any absence from work which does not meet the requirements for an authorized leave, with or without pay, shall be charged as unauthorized absence from work. Any period of unauthorized absence from work shall not be considered as service rendered.

K. Leave Pending Investigation of Charges.

1. Whenever an investigation of charges against an Employee is pending and the Employee's presence at the work site is deemed by the Employer to be detrimental to the proper conduct of the investigation or the operations of the work place, the Employee may be placed on a leave of absence without pay pending investigation subject to the following:

a. The Union and the Employee who is placed on the leave without pay pending an investigation shall be given written notice within forty-eight (48) hours after such action is taken. The written notice shall provide an explanation, including available facts, on why the Employee's presence at the work site is deemed by the Employer to be detrimental to the proper conduct of the investigation or the operations of the work place and the effective date of the leave of absence without pay pending an investigation.

b. The period of leave of absence without pay pending an investigation shall be for such length of time as may be necessary to conclude the investigation, but not exceeding thirty (30) days. In the event the investigation exceeds thirty (30) days, the appointing authority may exercise its options provided in subparagraph K.2.

c. If the Employee who has been placed on leave of absence without pay pending investigation is cleared of all charges or if the charges are dropped or not substantiated, the Employee shall be reinstated without loss of pay and all rights and benefits will be restored as though the Employee had not been on leave of absence without pay pending an investigation.

d. Disciplinary or Discharge Action Resulting From an Investigation of Charges.

1) In the event a suspension is warranted, the Employer may consider any portion of the period of the leave of absence without pay pending an investigation towards fulfilling, in whole or in part, the disciplinary action considered appropriate by the

### UNIT 3

Employer. The Employee shall be reinstated without loss of pay and benefits for any portion of the period of the leave of absence without pay which has not been considered towards fulfilling the disciplinary action.

2) In the event a discharge is warranted, the Employee shall not be granted any back pay or restored with any rights and benefits for the period of the leave of absence without pay pending an investigation.

2. Notwithstanding the foregoing, whenever an investigation of charges against an Employee is pending, the Employer shall have the discretion to:

- a. retain the Employee in active duty status;
- b. place the Employee on leave of absence with pay;
- c. return the Employee to active duty status from leave without pay pending an investigation, or,
- d. reassign the Employee to another work unit or area and in the same or different capacity.

The action shall be for the length of time as may be necessary to conclude the investigation.

#### ARTICLE 41 - LEAVE FOR INDUSTRIAL INJURY

A. Whenever an Employee who is temporarily exposed to unusually hazardous conditions, or who is a member of a class recognized by the action of repicting to be a class exposed to unusually hazardous conditions, receives personal injury arising out of the unusually hazardous conditions and in the performance of the Employee's duty, the Employee shall be placed on accidental injury leave unless suspended or dismissed for cause, and continued on the payroll of the respective department at the Employee's full regular monthly salary during the first four (4) months of disability and thereafter during the period of total disability from work at sixty percent (60%) of the Employee's regular monthly salary, as though the Employee did not sustain an industrial injury. The Employee shall be entitled to all rights and remedies allowed under Chapter 386, Hawaii Revised Statutes, as amended, provided that any salary paid under this section shall be applied on account of any compensation allowed the Employee under Chapter 386, Hawaii Revised Statutes, as amended, or any benefits awarded the Employee under Part III of Chapter 88, Hawaii Revised Statutes, as amended.

B. No accidental injury leave shall be granted for an injury incurred by an Employee by the Employee's willful intention to injure oneself or another or by the Employee's intoxication.

#### ARTICLE 42 - MILITARY LEAVE

##### A. Military Leave With Pay.

1. Employees whose appointment is for six (6) months or more shall, while on active duty or during periods of camps of instruction or field maneuvers as members of the Hawaii national guard, air national guard, naval militia, organized reserves, including the officers' reserve corps and the enlisted reserve corps, under call of the President of the United States or the governor of the State, be placed on leave with pay status for a period not exceeding fifteen (15) working days in any calendar year, except as provided in subparagraph A.2. No such person shall be subjected by any person, directly or indirectly, by reason of absence to any loss or diminution of vacation or holiday privileges or be prejudiced by reason of the absence with reference to promotion or continuance of employment or reemployment.

2. If an Employee is called to active duty or required to report for camp training or field maneuvers by official military orders a second time within a calendar year, the Employee may elect to use up to fifteen (15) working days of the succeeding calendar year, provided that the Employee's entitlement to the working days advanced shall be canceled from the succeeding calendar year, and the Employee shall so agree in writing. The Employee who is advanced leave shall be required to reimburse the Employer an amount equivalent to the days advanced in the event the Employee leaves government employment prior to completion of a year's service in the succeeding year from which leave was advanced, except in the case of death of the Employee.

##### B. Military Leave Without Pay.

1. Employees shall be entitled to military leave without pay for service in the United States Armed Forces.
2. The duration of military leave without pay shall not exceed five (5) years provided that Employees whose period of employment is less than five (5) years, the military leave without pay shall not exceed the specified period of employment.
3. Upon conclusion of the military leave without pay, Employees shall have reemployment rights in accordance with Chapter 43 of Title 38 of the United States Code.
4. Replacements for Employees on Military Leave Without Pay.

## UNIT 4

Except as specifically provided otherwise in this Article, Employees granted leaves without pay under this Article shall, upon condition of showing to the satisfaction of the appointing authority that the Employee has fulfilled the purpose of the leave, shall have the following rights:

1. A regular Employee, upon expiration of the leave shall be reinstated to the Employee's former position; provided, that if such position has been abolished during the period of such leave, the provisions of Article 9, Layoff shall be applicable.
2. A non-regular Employee, upon expiration of the leave shall have reinstatement rights to the Employee's former position, provided that the status and function of the position remained the same in the Employee's absence. In the event that the Employee cannot be reinstated, the Employee shall be terminated.
3. Failure of an Employee to return to duty at the expiration of the leave shall be deemed a resignation; provided that if within fifteen days of the expiration of the leave, the Employee furnishes satisfactory reasons to the appointing authority as to why the Employee was unable to return immediately after the expiration of the leave, the Employee shall be entitled to such rights as the Employee had at the expiration of the leave. In the event the appointing authority does not accept the reasons, the issue of the reasonableness of the reasons shall be subject to the provisions of Article 11, Grievance Procedure.
  1. Other Rights and Conditions.
    1. A regular Employee on an approved leave of absence shall be eligible during the period on such leave for promotional examinations and status of promotional eligible lists under the same conditions as though in active service.
    2. An Employee who accepts employment, either in another position under civil service or in conflict with the purpose of the leave during the leave of absence, shall be deemed to have resigned from the Employee's position from which the leave was granted, effective the date of the appointment to the other position.
  - J. Unauthorized Leave.

Any absence from work which does not meet the requirements for an authorized leave, with or without pay, shall be charged as unauthorized absence from work. Any period of unauthorized absence from work shall not be considered as service rendered.
  - K. Leave Pending Investigation of Charges.

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1. Whenever an investigation of charges against an Employee is pending and the Employee's presence at the work site is deemed by the Employer to be detrimental to the proper conduct of the investigation or the operations of the work place, the Employee may be placed on a leave of absence without pay pending investigation subject to the following:
  - a. The Union and the Employee who is placed on the leave without pay pending an investigation shall be given written notice within forty-eight hours after such action is taken. The written notice shall provide an explanation, including available facts, on why the Employee's presence at the work site is deemed by the Employer to be detrimental to the proper conduct of the investigation or the operations of the work place and the effective date of the leave of absence without pay pending an investigation.
  - b. The period of leave of absence without pay pending an investigation shall be for such length of time as may be necessary to conclude the investigation, but not exceeding thirty days. In the event the investigation exceeds thirty days, the appointing authority may exercise its options provided in subparagraph K2.
  - c. If the Employee who has been placed on leave of absence without pay pending investigation is cleared of all charges or if the charges are dropped or not substantiated, the Employee shall be reinstated without loss of pay and all rights and benefits will be restored as though the Employee had not been on leave of absence without pay pending an investigation.
  - d. Disciplinary or discharge action resulting from an investigation of charges.
    - 1) In the event a suspension is warranted, the Employer may consider any portion of the period of the leave of absence without pay pending an investigation towards fulfilling, in whole or in part, the disciplinary action considered appropriate by the Employer. The Employee shall be reinstated without loss of pay and benefits for any portion of the period of the leave of absence without pay which has not been considered towards fulfilling the disciplinary action.
    - 2) In the event a discharge is warranted, the Employee shall not be granted any back pay or restored with any rights and benefits for the period of the leave of absence without pay pending an investigation.

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2. Notwithstanding the foregoing, whenever an investigation of charges against an Employee is pending, the Employer shall have the discretion to:

- a. retain the Employee in active duty status;
- b. place the Employee on leave of absence with pay;
- c. return the Employee to active duty status from leave without pay pending an investigation; or,
- d. reassign the Employee to another work unit or area and in the same or different capacity.

The action shall be for the length of time as may be necessary to conclude the investigation.

#### ARTICLE 41 - LEAVE FOR INDUSTRIAL INJURY

A. Whenever an Employee who is temporarily exposed to unusually hazardous conditions or who is a member of a class recognized by the action of repitcing to be a class exposed to unusually hazardous conditions, receives personal injury arising out of the unusually hazardous conditions and in the performance of the Employee's duty, the Employee shall be placed on accidental injury leave unless suspended or dismissed for cause, and continued on the payroll of the respective department at the Employee's full regular monthly salary during the first four (4) months of disability and thereafter during the period of total disability from work at sixty percent (60%) of the Employee's regular monthly salary, as though the Employee did not sustain an industrial injury. An Employee shall be entitled to all rights and remedies allowed under Chapter 386, Hawaii's Revised Statutes, as amended, provided that any salary paid under this section shall be applied on account of any compensation allowed the Employee under Chapter 386, Hawaii's Revised Statutes, as amended or any benefits awarded the Employee under Part III of Chapter 88, Hawaii's Revised Statutes, as amended.

3. No accidental injury leave shall be granted for an injury incurred by an Employee by the Employee's willful intention to injure oneself or another or by the Employee's intoxication.

#### ARTICLE 42 - MILITARY LEAVE

A. Military Leave With Pay.

1. Employees whose appointment is for six (6) months or more shall, while on active duty or during periods of camps of instruction or field maneuvers as members of the Hawaii's national guard, air national guard,

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naval militia, organized reserves, including the officers' reserve corps and the enlisted reserve corps, under call of the President of the United States or the governor of the State, be placed on leave with pay status for a period not exceeding fifteen (15) working days in any calendar year, except as provided in subparagraph A.2. No such person shall be subjected by any person, directly or indirectly, by reason of absence to any loss or diminution of vacation or holiday privileges or be prejudiced by reason of the absence with reference to promotion or continuance of employment or reemployment.

2. If an Employee is called to active duty or required to report for camp training or field maneuvers by official military orders a second time within a calendar year, the Employee may elect to use up to fifteen (15) working days of the succeeding calendar year, provided that the Employee's entitlement to the working days advanced shall be canceled from the succeeding calendar year, and the Employee shall so agree in writing. The Employee who is advanced leave shall be required to reimburse the Employer an amount equivalent to the days advanced in the event the Employee leaves government employment prior to completion of a year's service in the succeeding year from which leave was advanced, except in the case of death of the Employee.

B. Military Leave Without Pay.

1. The following Employees shall be entitled to military leave without pay for service in the United States Armed Forces:

- a. Employees serving initial probational appointments.
  - b. Regular Employees serving permanent or new probational appointments.
  - c. Regular Employees serving temporary appointments and who have not forfeited their rights to the position in which they last held permanent appointment.
  - d. Exempt Employees serving other than temporary appointments.
2. The duration of the military leave without pay shall be for no more than five (5) years.
3. Upon conclusion of the military leave without pay, Employees shall have reemployment rights in accordance with Chapter 43 of Title 38 of the United States Code.
4. Replacements for Employees on military leave without pay.

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3. Failure of an Employee to return to duty at the expiration of the Employee's leave shall be deemed a resignation; provided that if within fifteen (15) days of the expiration of the leave, the Employee furnishes satisfactory reasons to the appointing authority as to why the Employee was unable to return immediately after the expiration of the leave, the Employee shall be entitled to such rights as the Employee had at the expiration of the leave. In the event the appointing authority does not accept the reasons, the issue of the reasonableness of the reasons shall be subject to the provisions of Article 11, Grievance Procedure.

1. Other Rights and Conditions.

1. A regular Employee on an approved leave of absence shall be eligible during the period on such leave for promotional examinations and status of promotional eligible lists under the same conditions as though in active service.

2. An Employee who accepts employment, either in another position under civil service or in conflict with the purpose of the Employee's leave during the leave of absence, shall be deemed to have resigned from the Employee's position from which the leave was granted, effective the date of the appointment to the other position.

J. Unauthorized Leave. Any absence from work, which does not meet the requirements for an authorized leave, with or without pay, shall be charged as unauthorized absence from work. Any period of unauthorized absence from work shall not be considered as service rendered.

K. Leave Pending Investigation of Charges.

1. Whenever an investigation of charges against an Employee is pending and the Employee's presence at the work site is deemed by the Employer to be detrimental to the proper conduct of the investigation or the operations of the work place, the Employee may be placed on a leave of absence without pay pending investigation subject to the following:

a. The Union and the Employee who is placed on the leave without pay pending an investigation shall be given written notice within forty-eight (48) hours after such action is taken. The written notice shall provide an explanation, including available facts, on why the Employee's presence at the work site is deemed by the Employer to be detrimental to the proper conduct of the investigation or the operations of the work place and the effective date of the leave of absence without pay pending an investigation.

b. The period of leave of absence without pay pending an investigation shall be for such length of time as may be necessary to conclude the investigation, but not exceeding thirty (30) days. In the event the investigation exceeds thirty (30) days, the appointing authority may exercise its options provided in subparagraph K.2.

c. If the Employee who has been placed on leave of absence without pay pending investigation is cleared of all charges or if the charges are dropped or not substantiated, the Employee shall be reinstated without loss of pay and all rights and benefits will be restored as though the Employee had not been on leave of absence without pay pending an investigation.

d. Disciplinary or Discharge Action Resulting from an Investigation of Charges.

1) In the event a suspension is warranted, the Employer may consider any portion of the period of the leave of absence without pay pending an investigation towards fulfilling, in whole or in part, the disciplinary action considered appropriate by the Employer. The Employee shall be reinstated without loss of pay and benefits for any portion of the period of the leave of absence without pay which has not been considered towards fulfilling the disciplinary action.

2) In the event a discharge is warranted, the Employee shall not be granted any back pay or restored with any rights and benefits for the period of the leave of absence without pay pending an investigation.

2. Notwithstanding the foregoing, whenever an investigation of charges against an Employee is pending, the Employer shall have the discretion to:

- a. retain the Employee in active duty status;
- b. place the Employee on leave of absence with pay;
- c. return the Employee to active duty status from leave without pay pending an investigation; or,
- d. reassign the Employee to another work unit or area and in the same or different capacity.

The action shall be for the length of time as may be necessary to conclude the investigation.

## UNIT 1 AGREEMENT

UNIT 1 AGREEMENT – July 1, 2013 to June 30, 2017

**11.01 f.** An Employee who is discharged shall be granted an opportunity to respond to the charges prior to the effective date of discharge.

### **11.02** **MEETING.**

**11.02 a.** In the event that an Employee is scheduled in advance by the Employer to meet to answer questions, the Employee shall be informed of the purpose of the meeting.

**11.02 b.** When the subject of the meeting is on a job related incident and the Employee reasonably feels that disciplinary action may result from the meeting, the Employee may request that a Union representative or steward be present in the meeting.

**11.02 c.** The Employee shall be credited with work time in the event the meeting is held on non-work hours.

### **SECTION 11A. LEAVE PENDING INVESTIGATION OF CHARGES.**

#### **11A.01** **INVESTIGATION.**

When an investigation of charges against an Employee is pending and the Employee's presence at the workplace is deemed to be detrimental to the conduct of the investigation or the operations of the workplace, the Employer may place the Employee on a leave of absence without pay pending investigation as follows:

**11A.01 a.** The Employee, who is placed on a leave of absence without pay pending investigation, and the Union shall be given written notice within forty-eight (48) hours after the action is taken.

**11A.01 b.** The written notice shall include the specific reason(s) for placing the Employee on leave of absence without pay pending investigation, available facts supporting the reason(s), and the effective date of the leave of absence without pay pending investigation.

**11A.01 c.** The leave of absence without pay pending investigation shall be for the length of time necessary to conclude the investigation, but not exceeding thirty (30) days. In the event the investigation exceeds thirty (30) days, the Employer may exercise its options as provided in Section 11A.02.

**11A.01 d.** After the investigation ends, the Employee who has been placed on leave of absence without pay pending investigation shall be reinstated without loss of pay and all rights and benefits will be restored as though the Employee had not been on leave of absence without pay pending investigation if the Employee is cleared by the investigation or the charge is dropped or not substantiated.

UNIT 1 AGREEMENT – July 1, 2013 to June 30, 2017

**11A.01 e.** In the event, the Employee is suspended the Employer may consider applying any portion of the leave of absence without pay pending investigation towards fulfilling, in whole or in part, the suspension.

**11A.01 f.** In the event the Employee is discharged, the Employee shall not be granted any back pay or restored with any rights and benefits for the leave of absence without pay pending investigation.

**11A.02** **OPTIONS.**

**11A.02 a.** Whenever an investigation of charges against an Employee is pending, the Employer shall have the option to:

**11A.02 a.1.** Retain the Employee at work,

**11A.02 a.2.** Place the Employee on leave of absence with pay,

**11A.02 a.3.** Return the Employee to work from the leave without pay pending investigation,  
or

**11A.02 a.4.** Reassign the Employee to a temporary workplace in the same or different position.

**11A.02 b.** The decision of the Employer shall be for the length of time necessary to conclude the investigation.

**SECTION 12. LAYOFF.**

**12.01** All personnel actions under Section 12. shall be restricted to Employees of Bargaining Unit 1 and shall be confined to the Employer in which the layoff occurs.

**12.02** **FIRST NOTICE.**

**12.02 a.** When there is an impending layoff because of lack of work, need, or funds, the Employer shall inform the affected Employee and the Union of this in writing as soon as possible but in any case at least ninety (90) calendar days before the impending layoff will take place.

**12.02 b.** After receipt of notification, the Union may request a meeting with the Employer to discuss the Employer's reason(s) and plan(s) for layoff.

**12.03** **RETENTION POINTS.**

## UNIT 10 AGREEMENT

UNIT 10 AGREEMENT – July 1, 2013 to June 30, 2017

- 11.01 d.** In the event the need to impose discipline other than an oral warning or reprimand is immediate, the Employee and the Union shall be furnished the reason(s) in writing within forty-eight (48) hours after the disciplinary action is taken.
- 11.01 e.** Written notifications of disciplinary actions involving suspension and discharge shall include the following:
- 11.01e.1.** Effective dates of the penalties to be imposed and
- 11.01e.2.** Details of the specific reasons.
- 11.01f.** An Employee who is discharged shall be granted an opportunity to respond to the charges prior to the effective date of discharge.
- 11.02** **MEETING.**
- 11.02 a.** In the event that an Employee is scheduled in advance by the Employer to meet to answer questions, the Employee shall be informed of the purpose of the meeting.
- 11.02 b.** When the subject of the meeting is on a job related incident and the Employee reasonably feels that disciplinary action may result from the meeting, the Employee may request that a Union representative or steward be present in the meeting.
- 11.02 c.** The Employee shall be credited with work time in the event the meeting is held on non-work hours.

### **SECTION 11A. LEAVE PENDING INVESTIGATION OF CHARGES.**

- 11A.01** **INVESTIGATION.**  
When an investigation of charges against an Employee is pending and the Employee's presence at the workplace is deemed to be detrimental to the conduct of the investigation or the operations of the workplace, the Employer may place the Employee on a leave of absence without pay pending investigation as follows:
- 11A.01 a.** The Employee, who is placed on a leave of absence without pay pending investigation, and the Union, shall be given written notice within forty-eight (48) hours after the action is taken.
- 11A.01 b.** The written notice shall include the specific reason(s) for placing the Employee on leave of absence without pay pending investigation, available facts supporting the reason(s), and the effective date of the leave of absence without pay pending investigation.
- 11A.01 c.** The leave of absence without pay pending investigation shall be for the length of time necessary to conclude the investigation, but not exceeding thirty (30) days. In

UNIT 10 AGREEMENT – July 1, 2013 to June 30, 2017

the event the investigation exceeds thirty (30) days, the Employer may exercise its options as provided in Section 11A.02.

**11A.01 d.** After the investigation ends, the Employee who has been placed on leave of absence without pay pending investigation shall be reinstated without loss of pay and all rights and benefits will be restored as though the Employee had not been on leave of absence without pay pending investigation if the Employee is cleared by the investigation or the charge is dropped or not substantiated.

**11A.01 e.** In the event the Employee is suspended, the Employer may consider applying any portion of the leave of absence without pay pending investigation towards fulfilling, in whole or in part, the suspension.

**11A.01 f.** In the event the Employee is discharged, the Employee shall not be granted any back pay or restored with any rights and benefits for the leave of absence without pay pending investigation.

**11A.02** **OPTIONS.**

**11A.02 a.** Whenever an investigation of charges against an Employee is pending, the Employer shall have the option to:

**11A.02a.1.** Retain the Employee at work,

**11A.02a.2.** Place the Employee on leave of absence with pay,

**11A.02a.3.** Return the Employee to work from the leave without pay pending investigation, or

**11A.02a.4.** Reassign the Employee to a temporary workplace in the same or different position.

**11A.02a.4.** Reassign the Employee to a temporary workplace in the same or different position.

**11A.02 b.** The decision of the Employer shall be for the length of time necessary to conclude the investigation.

**SECTION 12. LAYOFF.**

**12.01** All personnel actions under Section 12 shall be restricted to Employees of Bargaining Unit 10 and shall be confined to the Employer in which the layoff occurs.

**12.02** **FIRST NOTICE.**

**12.02 a.** When there is an impending layoff because of lack of work, need, or funds, the Employer shall inform the affected Employee and the Union of this in writing as soon as possible but in any case at least ninety (90) calendar days before the impending layoff will take place.

ATTACHMENT: DDL – Department Directed Leave Records

Attachment: *DDL\_Records\_for\_Ott.pdf*

Regulation #5411 J-M

Regulation #5411

Leaves of Absence - Special  
Short-Term Leaves With Pay (continued)

J. Pre-Induction Physical Examination Leave

An employee is eligible for leave with pay to undergo physical examination prior to induction into the armed forces.

K. Department-Directed Medical Reexamination

When a medical reexamination is directed by the Department, the employee concerned shall be granted leave with pay for the period involved.

L. Department-Directed Leave

The immediate supervisor may, in the best interest of the students or for the good of the Department, immediately relieve an employee by placing that employee on leave with pay for a period not to exceed 10 working days. Further leave may be authorized by the Superintendent.

M. Family Leave

An employee may be granted family leave due to the birth of an employee's child, adoption of a child, or for care of an employee's immediate family member with a serious health condition which is defined as an acute, traumatic, or life-threatening illness; injury; or impairment which involves treatment or supervision by a health care provider. The employee is entitled to four (4) weeks (equivalent to 20 workdays) of leave taken consecutively or intermittently during the school year. Family leave is not cumulative from year to year. Employees may use accumulated sick leave or vacation leave or a combination of these leaves for this requested leave with pay. Family leave without pay may also be requested by using existing leave without pay procedures provided for in Procedure #5401.1.

Revised 9/1/70; Amended 1/73; Amended 10/74; Amended 11/92

5400-74

## Regulation #5411 Procedure: Imposing DDL with Pay

Procedure #5411

PROCEDURE: IMPOSING DEPARTMENT-DIRECTED LEAVE WITH PAY

REFERENCE: REGULATION #5411

FORM : PERSONNEL FORM 400a (REQUEST FOR LEAVE OF ABSENCE)

### RESPONSIBILITIES:

#### 1. IMMEDIATE SUPERVISOR

- a. After observation and/or obtaining sufficient evidence warranting this type of action, makes recommendation to district superintendent/assistant superintendent.
- b. After receiving verbal approval from district superintendent/assistant superintendent, confers with and places employee on leave of absence with pay for a period not exceeding ten working days. Completes request for leave form for the employee and distributes as directed on the form.
- c. Insures that the employee understands the conditions of the leave which may include activities other than just remaining off the job.
- d. If it is necessary to require a medical examination, follows Procedure #5100.2.

#### 2. DISTRICT SUPERINTENDENT/ASSISTANT SUPERINTENDENT

- a. Acts on recommendation of immediate supervisor.
- b. Informs Office of Personnel Services of action taken.
- c. Processes leave form.

#### 3. OFFICE OF PERSONNEL SERVICES

Processes leave with pay.

Adopted 9/1/70; Amended 1/73; Amended 10/74; Amended 6/86

5400-75

### **3/1/16 – Ott: Some Information Seems to be Missing**

From: Vanessa Ott <msvott@gmail.com>  
Date: Tue, Mar 1, 2016 at 11:08 PM  
Subject: Re: HRS 92F Request  
To: Justin\_Takaki/SUPT/HIDOE@notes.k12.hi.us  
Cc: stephen\_schatz@notes.k12.hi.us

Aloha Justin,

Thank you for sending the information. However, I think something is missing. I asked for procedures and policies regarding investigations. I do believe the HR Department must have a letter template for supervisors when issuing a Notice of Investigation and instructions for how to fill out the form. Otherwise, the language in all the investigation notices would not be so similar. There also should be instructions for how to conduct an investigation, yes?

Please provide this information.

Mahalo,

Vanessa Ott

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### **3/8/16 – DOE (Takaki): Response with additional records requested**

From: <Justin\_Takaki/SUPT/HIDOE@notes.k12.hi.us>  
Date: Tue, Mar 8, 2016 at 3:30 PM  
Subject: Re: HRS 92F Request  
To: Vanessa Ott <msvott@gmail.com>  
Cc: stephen\_schatz@notes.k12.hi.us

Vanessa Ott,

Please find attached a notice regarding your follow up request. Please also find attached the template regarding Notice of Investigation letters. However, there are no instructions on how to fill it out. The instructions regarding conducting investigations are addressed in the attached notice.

Thank you,

Justin Takaki  
Hawaii State Department of Education  
Office of the Superintendent

Attachments:

- *2nd NTR Ott 3.8.16.pdf* – Notice to Requester (3 pp.)
- *Template\_Notice of Cpt and Investigation.pdf* - (1 p.)

**ATTACHMENT: Notice to Requester 3/8/16**

attachment: *2nd NTR Ott 3.8.16.pdf*

**NOTICE TO REQUESTER**

TO: Vanessa Ott  
FROM: HI Dept. of Edu., Deputy Superintendent Stephen Schatz, Contact Justin Takaki 586-3232  
(Agency name & telephone number of contact person at agency)

DATE REQUEST RECEIVED: 2/16/16  
DATE OF THIS NOTICE: 3/8/16 originally responded on 2/20/16

**GOVERNMENT RECORDS YOU REQUESTED** (attach copy of request or provide brief description below):

1. Letter template for supervisors when issuing a Notice of Investigation and instructions for how to fill out the form.
2. Instructions for how to conduct an investigation.

**NOTICE IS PROVIDED TO YOU THAT YOUR REQUEST:**

- Will be granted in its entirety.
- Cannot be granted in its entirety because:
- Agency does not maintain the records. (HRS § 92F-3)  
Agency that is believed to maintain records: See below
  - Agency needs a further description or clarification of the records requested. Please contact the agency and provide the following information: \_\_\_\_\_
  - Request requires agency to create a summary or compilation from records not readily retrievable. (HRS § 92F-11(e))
- Is denied in its entirety       Will be granted only as to certain parts  
based upon the following exemption provided in HRS § 92F-13 and/or § 92F-23 and other laws cited below.  
(Portions of records that agency will not disclose should be described.)

<u>RECORDS OR INFORMATION WITHHELD</u>	<u>APPLICABLE STATUTES</u>	<u>AGENCY JUSTIFICATION</u>
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Draft of investigation guidelines      HRS §92F-13(3)

Guidelines are not completed. Disclosure of how the DOE conducts investigations may frustrate its ability to conduct investigations in the future.

\*The search did not produce any instructions on how to fill out the template.

**REQUESTER'S RESPONSIBILITIES**

You are required to (1) pay any lawful fees assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

**METHOD & TIMING OF DISCLOSURE:**

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. If incremental disclosure is

OPF (REV. 5/8/2014)

authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

**Method of Disclosure:**

- Inspection at the following location: \_\_\_\_\_
- As requested, a copy of the record(s) will be provided in the following manner:
  - Available for pick-up at the following location:
  - Will be mailed to you.
  - Will be transmitted to you by other means requested: E-mailed

**Timing of Disclosure:** All records, or first increment where applicable, will be made available or provided to you:

- On or about March 8, 2016.
- After prepayment of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- The prior increment (if one prepayment of fees is required and received), or
- Receipt of each incremental prepayment, if prepayment for each increment is required.

Disclosure is being made in increments because the records are voluminous and the following extenuating circumstances exist:

- Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
- A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

**ESTIMATED FEES & COSTS:**

For personal record requests, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests, the agency is authorized to charge you certain fees to search for, review, and segregate your request (even if no record is subsequently found to exist). The agency must waive the first \$30 in fees assessed for general requesters, OR the first \$60 in fees when the agency finds that the request is made in the public interest. See HAR §§ 2-71-19, -31 and -32.

In addition to fees, the agency may also charge you for the costs of copying and delivering government or personal records in response to your request, outstanding fees and costs from a prior request, and other lawful fees and costs.

The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. The following is the estimate of the fees and costs that the agency will charge you, with the applicable waiver amount deducted:

**For public record requests only:**

<b>Fees:</b> Search	Estimate of time to be spent: <u>15</u> mins <small>(\$2.50 for each 15-minute period)</small>	\$ <u>2.50</u>
Review & segregation	Estimate of time to be spent: <u>15</u> mins <small>(\$1.00 for each 15-minute period)</small>	\$ <u>5</u>
Fees waived	<input checked="" type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60)	<\$ <u>20</u> >
(Remaining balance from 2/26/16 notice)		

Other	_____	\$
	(Pursuant to HAR §§ 2-71-19 & 2-71-31)	
<b>Total Estimated Fees:</b>		<b>\$</b>

**For all record requests:**

<b>Costs: Copying</b>	Estimate of 0 of pages to be copied: _____ (@ \$ _____ per page, pursuant to HRS § 92-21)	\$
<b>Delivery</b>	Postage	\$
<b>Other</b>	_____	\$
<b>Total Estimated Costs:</b>		<b>\$</b>

**PREPAYMENT IS REQUIRED** (50% of fees + 100% of costs, as estimated above) \$  
 Payment may be made by cash or:  personal check payable to Hawaii Department of Education  
 other \_\_\_\_\_

**The estimated fees and costs above are for the first incremental disclosure only. Also, only one waiver will be allowed per request, not per incremental disclosure.**

For questions about this notice, please contact the person named at the beginning of this form. Questions regarding compliance with the UIPA may be directed to the Office of Information Practices at 808-586-1400 or oip@hawaii.gov.

ATTACHMENT: Template – NOTICE OF COMPLAINT & INVESTIGATION

attachment: 2nd NTR Oct 3.8.16.pdf

**NOTICE OF COMPLAINT & INVESTIGATION**

[Date]

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED & REGULAR MAIL

[Name of Respondent]

[address]

[city, state zip code]

Dear [insert name]

Re: NOTICE OF COMPLAINT AND INVESTIGATION

I am writing this letter to inform you that I have received information that alleges that you [insert allegation(s)]. An investigation has been initiated. The investigation will cover this allegation and any other issue(s) that are made known during the course of the investigation.

[Name & title of investigator] has been assigned to look into the matter. [Mr or Ms. (last name of investigator)] will contact you to schedule a meeting to provide you with an opportunity to respond to the allegation(s). At that time, you may also provide the investigator with any additional information that you would like to have considered regarding the case.

Please be advised that you have a right to have a union representative present during the meeting. If you choose to have a union representative present, you are responsible to contact the union to arrange to have a representative present during the investigation interview.

To preserve the integrity of the investigative process, you are encouraged not to speak with anyone concerning the case. Please be advised that the Department of Education strictly prohibits any form of retaliation, and if this provision is not adhered to, it may mean an additional investigation of that matter.

Should you have any questions concerning this case, please feel free to contact me regarding the process. The investigator will be in touch with you.

Thank you for your cooperation.

Sincerely,

[Name of Decision Maker]

[Title of Decision Maker]

c: \_\_\_\_\_, Complex Area Superintendent

\_\_\_\_\_, Personnel Regional Officer

Name and title of investigator

Mireille Ellsworth, English Teacher, Waiakea High School, Hilo, Hawaii District

Submitted on March 14, 2016 at 7:00 am

Testimony for BOTH the **Human Resources Committee meeting at 10:30 am**, March 15, 2016  
AND the **General Business Meeting at 5:00 pm**, March 15, 2016

**Agenda Item: New metric for Department of Education's Scorecard (measuring progress against the desired outcomes of the Board of Education and Department of Education's Joint Strategic Plan) for Goal 2 (Staff Success)**

Position: Comment

Aloha Chairman Mizumoto and Board members,

My name is Mireille Ellsworth, an English teacher for the past 12 years at Waiakea High School in Hilo on the Big Island. I have submitted written testimony that provides specific links to the studies I will reference, and I urge you to look into these documents before final decisions have been made to revisit the Strategic Plan. This testimony speaks to Goal 2B, Strategies for Staff Success.

We are at the brink of a wonderful opportunity with changes to the federal law, the Every Student Succeeds Act, to do better for our students by paying attention to the research and at the same time take into consideration our unique challenges here in Hawai'i.

I have to say, I adore my principal, Kelcy Koga. He has always promoted life long learning and research-based teaching practices at our school, and I have taken this to heart. As a professional, I do my very best to stay at the cutting edge of issues in education, and through my research, I have found that using the Student Growth Model as 50% of teachers' evaluation is not only invalid and unreliable, but it is contributing to the chronic teacher shortage in Hawai'i by overtaxing teachers with time-consuming and often meaningless data-collection. It is demeaning to our very best educators and making them either retire earlier than they had planned, to leave the state, or just to leave the teaching profession altogether.

**Board Policy 2055** included a mandate to use standardized tests in teacher evaluations in order to win the Race to the Top grant, but those days are over. With ESSA, we as a state have the freedom to stop this practice and put in place ways to nurture our teacher workforce and encourage collaboration. For the last two years, my professional development from the department has primarily focused on two things: how to complete the non-research-based demands of the EES and how to use technology in the classroom (and I only have two computers in my classroom, so I don't see how that training can help me).

If teachers are deemed unsatisfactory under the EES, what is our alternative? Fire that teacher and replace him or her with a full-time substitute or emergency hire who is not even going to be evaluated at all? It's not like we have a waiting list of people clamoring for teaching jobs in Hawai'i. We have a **SHORTAGE!**

Research backs up what I'm saying:

RESEARCH & WEBSITE LINKS	WHAT IT TELLS US
<p>"Problems with the Use of Student Test Scores to Evaluate Teachers" August 27, 2010</p> <p>written by 10 top-notch education experts including Linda Darling-Hammond and Diane Ravitch</p> <p>Link: <a href="http://www.epi.org/publication/bp278">www.epi.org/publication/bp278</a></p>	<p>Teacher evaluation ratings using VAM:</p> <ul style="list-style-type: none"> <li>• show inconsistency from year-to-year for same teacher</li> <li>• can easily identify average or lower quality teachers as effective</li> <li>• do not account for class size nor presence of an EA or co-teacher</li> <li>• do not provide incentives for better teaching</li> <li>• contribute to teacher attrition and demoralization</li> <li>• prevent people from entering the teaching profession</li> <li>• emphasize quantitative measures instead of qualitative measures (which are used in most other industries, especially for professionals)</li> <li>• must consider the quality of the tests themselves*</li> </ul>
<p>"Statisticians slam popular teacher evaluation method"</p> <p><i>Washington Post</i> April 13, 2014</p> <p>Link: <a href="http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/04/13/statisticians-slam-popular-teacher-evaluation-method/">http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/04/13/statisticians-slam-popular-teacher-evaluation-method/</a></p>	<ul style="list-style-type: none"> <li>• there are statistical problems with VAM's reliability and validity according to the American Statistical Association, the largest organization in the United States representing statisticians and related professionals</li> <li>• ratings are being attributed to individual teachers who have not necessarily taught students tested on skills outside of their subject areas</li> <li>• VAM can only indicate correlation, not causation</li> </ul>
<p>"Use and Validity of Test-Based Teacher Evaluations"</p> <p>put out by the National Education Policy Center, June 2012</p> <p>Link: <a href="http://nepc.colorado.edu/publication/analysis-la-times-2011">http://nepc.colorado.edu/publication/analysis-la-times-2011</a></p>	<ul style="list-style-type: none"> <li>• concerns with factors out of a teacher's control</li> <li>• notes disparity between teaching assignments**</li> <li>• "may reflect (and perhaps encourage) teaching to the test rather than high-quality, comprehensive instruction"</li> <li>• tests only assess a fraction of the content taught</li> <li>• major year-to-year fluctuations in the same teacher's ratings</li> <li>• same teacher's ratings change significantly when teacher moves from one school to another</li> </ul>

	<ul style="list-style-type: none"> <li>• strong evidence that students are not randomly assigned in schools ***</li> <li>• teacher evaluation ratings using student test scores therefore are not reliable for comparison or prediction of teacher performance</li> </ul>
<p>Review of the literature on Student Learning Objectives commissioned by the U.S. Department of Education released in Sept. 2013</p> <p>By Brian Gill, Julie Bruch, and Kevin Booker of Mathematica Policy</p> <p>(National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences and REL Mid-Atlantic, Regional Educational Laboratory and ICF International also put their names on this report)</p> <p>Link:  <a href="http://files.eric.ed.gov/fulltext/ED544205.pdf">http://files.eric.ed.gov/fulltext/ED544205.pdf</a></p>	<p>On VAM (or what Hawaii calls SGP):</p> <ul style="list-style-type: none"> <li>• pg. i "Little is known about growth/value-added models based on locally-developed, curriculum-based assessments"</li> <li>• pg. ii "More research is needed to inform the decisions of states and districts as they expand growth models to teachers"</li> </ul> <p>On SLOs:</p> <ul style="list-style-type: none"> <li>• "no studies have looked at SLO reliability...More research is needed as states roll out SLOs as teacher evaluation measures...Until some of the research gaps are filled, districts that intend to use SLOs may want to roll them out for instructional planning before using them in high-stakes teacher evaluations...SLOs are difficult to make valid and reliable."</li> </ul>

\* The Smarter Balanced Test is brand new and was never field-tested to assure validity and reliability. Throughout the country, people have reported errors on these tests as well as shown how the Smarter Balanced test is not developmentally appropriate, especially for younger students.

\*\* When one considers how test scores in high school are counted for teachers of all subject areas and are merely based on one grade level's scores. Many teachers are being held accountable for the scores of students they have never taught.

\*\*\* This is particularly true for special education teachers and teachers of honors and Advanced Placement Tests.

I urge the board to follow my principal's advice. Make decisions for our students taking into consideration the educational research available. Let's seize this opportunity to work together not to chase teachers away from the profession but to embrace what we know -- Students are MORE than a score! Teachers are teaching WAY more than reading, writing, and math. Even our superintendent recognizes successes in our schools that are not dependent on succeeding on a test, like the fabulous arts program in that elementary school she mentioned last meeting and how at my school, Waiakea High students win international robotics competitions in Japan against college engineering students. Let's stop demeaning teachers and start developing the precious adults who are willing to work with

our students despite the scant resources. You can't expect improvement by merely continuing to measure and collect data. We can do better.

Thank you,

Mireille Ellsworth



Debbie Anderson/WAIAKEAI/HIDOE  
03/14/2016 02:46 PM

To boe\_hawaii@notes.k12.hi.us  
cc  
Subject "Testimony" for 15 March 2016  
Tuesday

Aloha,

Am submitting for Tuesday BOE meeting(s), 2 pages double-sided attachment:



HumanResources15Mar16.docx

Deborah V. Anderson, NBCT Library Media Specialist Waiakea Intermediate School Meeting (Human Resources, and General Business Meeting (full Board));

Agenda items: **A.** [Presentation on new metric for Department of Education's Scorecard \(measuring progress against the desired outcomes of the Board of Education and Department of Education's Joint Strategic Plan\) for Goal 2 \(Staff Success\)](#) **\*\*new (03/11/16)\*\***

**A. Human Resources Committee Report: (1) Presentation on new metric for Department of Education's Scorecard (measuring progress against the desired outcomes of the Board of Education and Department of Education's Joint Strategic Plan) for Goal 2 (Staff Success); (2) Update on status of Department of Education employees on Department Directed Leave ("DDL") or Leave Pending Investigation ("LPI"), including status of Committee request for information relating to DDL and LPI; (3) Committee Action on Department of Education investigations (DDL and LPI): procedures, deadlines, and timelines for investigations; (4) Committee Action on declaration of annual reduction in force ("RIF") for classified employees to initiate collectively bargained placement rights for employees displaced due to changes in staffing needs**

**B. Update on review and extension of the 2011-2018 Joint Department of Education and Board of Education Strategic Plan**  
**\*\*new (03/10/16)\*\***

Position (oppose Extension without changes).

Thanks!

Monday, March 14, 2016

Aloha Chairman Mizumoto and Board members,

The Every Student Succeeds Act (ESSA) ensures that decision-making at the federal, state, and local levels teachers' includes teacher voices. I'm Debbie Anderson, NBCT, a 25-year veteran of the DOE on two islands. Thank you for reading this and listening to us.

Our Joint BOE/DOE Strategic Goal 2B is Staff Success. The purpose of evaluation of human resources is improvement. In light of ESSA, as we re-authorize the Strategic Plan we can use models which are **Effective**, had **Potential**, and consider some significant Changes needed in BOE Policy **2055** and our Educator Evaluation System (EES) (See **headings**).

#### EFFECTIVE:

With over 200 studies verifying its effectiveness, the National Board for Professional Teaching Standards (NBPTS.org) is our grassroots definition of Accomplished Teaching. We propose that a key teacher group to involve in ESSA implementation would be HSTA NBCTs, particularly relating their forte of Teacher Leadership development. The distinction we'd like to promote is that ANY & EVERY teacher can become Accomplished, which meets the concern of Equity promoted by Finland and the Education Institute of Hawaii (EIH), while membership is exclusive in groups selected from outside criteria.

#### POTENTIAL:

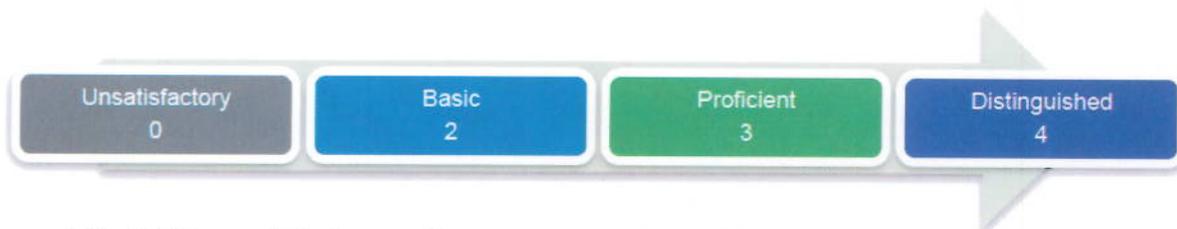
Sometimes even the best laid plans for education workforce capacity building go awry, by becoming too cumbersome to sustain. Kamehameha Schools implemented an evaluation system based primarily on Charlotte Danielson's Framework between a 2009-2010 Pilot and a 2010-2014 Field Test. The underlying objective of Ka Pi'ina was to "provide a structure that enables Kamehameha Schools to better recruit, retain and reward our Education workforce. According to Danielson, a framework for teaching is useful not only to practicing educators but also to the larger community, because it conveys that educators, like other professionals, are members of a professional community. A framework also promotes excellence and can serve as a structure for educators to discuss, practice and reflect on effective practices." For Ka Pi'ina, teachers developed an ePortfolio using Blackboard (<http://bb.ksbe.edu>) as a repository to store ...bodies of evidence and other supporting documents and files. Their rubrics were "dynamic and should always reflect our best thinking around practice and align with research (See the attached page listing Danielson Framework Implementation Forms)." Nevertheless, Ka Pi'ina sunsetted as a project. Selected work will continue such as Performance Management Evaluation Process.

#### TEACHER AND PRINCIPAL PERFORMANCE EVALUATION POLICY 2055

Board of Education Policy 2055 bases 50% percent of their personnel evaluation rating on "performance" measures which are outside of personnel control and statistically invalid, which was based on NCLB "requirements" to garner a Race To The Top grant. Under ESSA, these clauses are mandated federally no longer!

#### Educator Evaluation System (EES) improvements needed

Design flaws in the Educator Evaluation System [Rating Calculations for Observations and the Working Portfolio \(EES Manual, 19 & 23\)](#) "The level of performance assigned by an evaluator on the rubric is quantified using the following ratings... The final WP rating is a number from 0 to 4 that is produced by averaging the scores from all five-component ratings:"



The DOE's modified Danielson scale is indefensible as it stands currently in 2 portions ([Observations and the Working Portfolio](#)). The EES includes but is NOT limited to four ratings and only whole numbers, which provide little formative assessment *for learning*. Why only whole numbers? Does growth show only in chunks?

Transferring the whole number scale to a usual % scale, only 4 choices are possible: 0, 40-60%, 60-80%, 80-100%. Why are principals' hands tied? How can our BOE wonder that most teachers are rated in the 60-100%? Would this satisfy parents for their children?

What is the problem with this EES math? A range of 0 2 3 4 is actually 5 placeholders. A scale of 0, 2-4 is not a four-point range, it includes only 4/5 points. We're told what the other ratings mean, with 4 an idealized height of Distinguished.

What is the effect of the 0 signifier for **Incomplete**? A baseline of 0 could mean either dead on arrival (DOA) or missing in action (MIA), by virtue of "failure to complete (EES p. 24)," aka punishment theory (Reeves, p. 324) Grading with a 0 is referred to elsewhere as "tyranny," because of its devastating effect on an average. Philosophical proposals include a 'No-Zero Policy.' Why is 0 a mathematical option, with no 1 to guide toward improvement?

To empower constructive conversations, we need changes toward formative assessment *for learning!* What's the hole? If the DOE wants a rating labeled Marginal, why isn't that in the missing 1 column? A baseline of 0 with no option of a 1 provides insufficient feedback. Greater formative feedback could add 1 point for Marginal between 2 for Basic and 0 for Unsatisfactory, similar to the SLO/SSIO's **Ineffective: 1**, (EES Manual, p. 30)

Flawed instruments can lead to consequences which are devastating. Let's extrapolate a couple of examples: Why does Basic exist? [Danielson's rubric modeled from bottom to top: Unsatisfactory, Basic, Proficient, and Distinguished.] The teacher performing at the *basic* level "appears to understand the concepts underlying the component and **attempts** to implement its elements." Any teacher in a new/transfer position is expected to function in basic for at least 2-3 years, according to Danielson.

Teachers in Danielson's Basic category/ equivalent should receive salary increases they've earned and need, especially with few service years. Administration reserves the right to transfer teachers involuntarily; any teacher could be assigned so an expected rating would be Basic (re-labeled Marginal in the overall Department of Education [DOE] rating). At my school, 14 teachers in Gr. 6 are moving positions next year. Denying these teachers a salary increase is unfair, as a remedy is time to adjust. With only the 3 & 4 "earning" pay increases, that leaves 60% of "spaces" not even allowing "Cost Of Living Adjustment (COLA)." How is this acceptable when we are facing educational underfunding which contributes to teacher shortages? To fulfill ESSA, we need to have discussions about this.

What circumstances would be considered "fair" analysis and providing sufficient feedback? If the EES scale is to INFORM improvement, it needs a re-design by fair psychometricians.

Thank you for your ongoing consideration that an "Extension" of current DOE Human Resource tools is not good enough.

Literature References (inc. discussion of a 'No-Zero Policy')

Danielson, C. (2007). *Enhancing Professional Practice: A framework for teaching*. Alexandria, VA: ASCD. <https://www.danielsongroup.org/charlotte-danielson/>

Kamehameha Schools. (2014). Danielson Framework Implementation Forms. <https://apps.ksbe.edu/kapiina/forms/danielson-framework-implementation-forms>

McMillan, J. (1999) *Devastating Effect of Zeros on Grades: What Can Be Done? ED428136.pdf*. A zero could bring down an average so far that recovery is not an option.

Naluai, N. (2014). Through the eyes of Librarians: Helping ourselves and others "see" what we do. *Knowledge Quest Inquiry* Volume 43, No. 2 November/December 2015, E 10 -14. The Nov/Dec 2014 issue of *Knowledge Quest* also featured three online exclusives, including: <http://www.ala.org/aasl/sites/ala.org.aasl/files/content/NovDec14OE3Naluai.pdf>.

National Education Association. (2015). [ESSA Teacher Empowerment 120415.pdf](#)

Reeves, D. (2004). "The Case Against the Zero," *Phi Delta Kappan*, Vol. 86, No. 4, December 2004, pp. 324-325.

Ø Grading Practices. <http://www.slideshare.net/klafrancis/the-power-of-zero>.

Wormeli, R. (2006). *Fair Isn't Always Equal: Assessing and Grading in the Differentiated Classroom*. Portland, ME: Stenhouse. p. 138-139.

# Danielson Framework Implementation Forms

 [Form A - Teacher Preparation Audit](#)

FormA-TeacherPreparationAudit.doc 56.5 KB

 [Form B - Clinical Observation Notes](#)

FormB-ClinicalObservationNotes.doc 44.5 KB

 [Form B3 - Feedback Guide for the Unit Plan](#)

FormB3-FeedbackGuidefortheUnitPlan.doc 53.5 KB

 [Form B4 - Feedback Guide for the Activity or Assignment](#)

FormB4-FeedbackGuidefortheActivityorAssignment.doc 50 KB

 [Form B5 - Feedback Guide for Communicating with Families](#)

FormB5-FeedbackGuideforCommunicatingwithFamilies.doc 50 KB

 [Form B6 - Feedback Guide for Instructional and Non-Instructional Records](#)

FormB6-FeedbackGuideforInstructionalandNoninstructionalRecords.doc 46 KB

 [Form C\(a\) - Teaching Interview \(Annotated\)](#)

FormC(a)-TeachingInterview(Annotated).doc 34 KB

 [Form C - Teaching Interview](#) FormC-TeachingInterview.doc 31 KB

 [Form D - Teacher Lesson Reflection](#)

FormD-TeacherLessonReflection.doc 109 KB

 [Form E - Informal Classroom Observations](#)

FormE-InformalClassroomObservations.doc 99 KB

 [Form F - Formal Classroom Observations](#)

FormF-FormalClassroomObservations.doc 34 KB

 [Form G - Formal Observation Summary](#)

FormG-FormalObservationSummary.doc 131 KB

 [Form H - Evidence for Domain 4](#)

FormH-EvidenceforDomain4.doc 76.5 KB

 [Form I - Self-Assessment of Practice](#)

FormI-Self-AssessmentofPractice.doc 148 KB

 [Form J - Individual Professional Development Plan](#)

FormJ-IndividualProfessionalDevelopmentPlan.doc 45.5 KB

 [Form K - Individual Professional Development Log of Activities](#)

FormK-IndividualProfessionalDevelopmentLogofActivities.doc 49.5 KB

 [Form L - Reflection on the Individual Professional Development](#)

FormL-ReflectionontheIndividualProfessionalDevelopment.doc 43 KB

 [Form M - Artifacts Cover Sheet v4](#)

FormM-Artifacts Cover Sheet v4.pdf 481.24 KB

 [Form N - Annual Evaluation 1](#) FormN-AnnualEvaluation1.doc 30.5 KB

 [Form O - Annual Evaluation 2](#) FormO-AnnualEvaluation2.doc 48.5 KB