

July 17, 2016

To: Board of Education Members

re: Lack of Sound Policies, Procedures, and Transparency in DOE Investigations is NOT Best Business Practice

7/19/16 HR Agenda IV.A. - *Quarterly Update on pending cases of Department of Education employees on DDL or LPI*

7/19/16 GBM Agenda IV.A. – *HR Committee Report*

Aloha BOE MEMBERS,

I am asking the Board of Education to establish better policies regarding employee investigations, and set expectations that the DOE create investigation guidelines by October 31, 2016 that are fair, honest, responsible, and available to all stakeholders online.

For years I have been asking the Board of Education to establish a policy that would require the Department of Education to make all non-confidential DOE information regarding its procedures and regulations available to the public online. This is the only way to provide openness, transparency and accountability. I do not understand why the Board of Education will not make such a policy. I would like an answer to this question: **Why won't the BOE set a policy that requires public access to all DOE procedures, memos of understanding, regulations, and all non-confidential DOE information?**

In the absence of any sound reasoning, I have begun to develop the following theory about why the DOE wants to keep this information a secret – hidden from public purview. In many cases the procedures and regulations are in such a deplorable state that the powers that be don't want the public to know how inadequate and unprofessional these documents are. The DOE doesn't want to be held accountable for establishing and implementing best business practices. Why? I could speculate, but none of it is positive.

For example, In February of this year I asked the DOE for a copy of the Department of Education policies and procedures related to employee investigations, DDL (Department Directed Leave), and LPI (Leave Pending Investigation). See [ATTACHMENT A](#): CORRESPONDENCE REQUESTING INVESTIGATION PROCEDURES.

WHAT DOE PROCEDURES FOR INVESTIGATIONS LOOK LIKE

In the attachment [2nd NTR Ott 3.8.16.pdf](#) that I received from the DOE on 3/8/16 you will see that one of the DOE's justifications for keeping investigation procedures a secret is that, "Disclosure of how the DOE conducts investigations may frustrate its ability to conduct investigations in the future." That reasoning is absurd. That is equivalent to saying that the public is not entitled to know the laws

and legal procedures by which citizens are legally investigated and prosecuted because it might frustrate law enforcement's ability to conduct investigations.

This kind of attitude produces a secret police state in which one group of people does not have access to the same information as the group that holds power over them. It is no wonder that [workplace bullying](#)¹ and a culture of fear permeate the DOE. Much of that comes from how the DOE conducts investigations and disclosure of how investigations are done would not frustrate the DOE's ability to conduct fair and ethical investigations. Disclosure of how the DOE conducts investigations would frustrate only the DOE's ability to railroad and harass employees unreasonably. Sometimes, investigations are used to bully subordinates. I wonder how often that is the case.

BEST PRACTICES LACKING IN DOE INVESTIGATIONS

One of the first steps in any investigation should be to have a conversation with the employee. That's apparently not a DOE requirement. I'd like to know how many DDLs and LPIs were initiated without talking to the employee first. How many people got a slip of paper or an email or a phone call saying don't back to work until further notice, you're under investigation.

During that pre-DDL/pre-LPI conversation, it should be determined if keeping the employee working truly is a threat to students and others on the job. What are the criteria for making that determination? Apparently, the DOE has no guidelines. I do not trust that all these employees on paid leave are a danger to students or the DOE and not able to return to work for months on end because I know first *and* second hand what is going on. People talk to me, and I lived through several bogus investigations. With a lack of firm guidelines, checks and balances, there is great opportunity of abuse, and it happens.

The one and only concrete procedure I was able to get from the DOE was the [template letter](#) on the last page of APPENDIX A. This is the letter an employee placed on DDL or LPI receives. This is about the only written procedure a CAS and a Principal have for how to proceed with an investigation. I am able to share this template with you only because I knew it existed, *and* I took the extra step of asking for it when it was not included in my first request for procedures. No one should have to dig for procedural information. No one should have to file freedom of information act requests to get government agency procedural information. In this day in age, this kind of procedural information should freely be available online so any employee, employee's relative or friend can find it. You want students to learn and pedagogues to teach, good citizenship, how to use a computer, openness, honesty, etc.? Then, the DOE should be the best practice model of this. As of today, it is a model of secrecy, hidden agendas, unprofessionalism, and bullying.

This paragraph from the investigation template letter is a perfect example of workplace bullying:

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.

¹ https://en.wikipedia.org/wiki/Workplace_bullying

Once an employee is placed under investigation, they are “encouraged” not to speak with anyone. “encourage” means if you choose to ignore the suggested method, you run the risk of being further investigated for insubordination. In effect, “Encouraged” means “Don’t do it.” Employees placed under investigation are effectively denied due process rights and at the very least, encouraged to not exercise them. Employees under investigation are not allowed to talk to witnesses for months on end about the issue. They are not allowed to garner support from others who have knowledge of the situation because they can’t talk to anyone. Potential supporters are instructed to not talk either. It is a repressive regime that isolates and silences people instead of openly seeking the truth. This is done under the guise of the integrity of the investigation, but to not allow the employee to speak about what is going on is the opposite of integrity.

Refer to the list of “Tactics” in the Wikipedia.org description of workplace bullying referenced earlier. Here are four that apply to the practice of “encouraging” employees to not talk to others:

Tactics

Research by the Workplace Bullying Institute, suggests that the following are the 25 most common workplace bullying tactics:

- 4. Used the "silent treatment" to "ice out" and separate from others (64 percent).
- 9. Started, or failed to stop, destructive rumors or gossip about the person (56 percent).
- 11. Singled out and isolated one person from other coworkers, either socially or physically (54 percent).
- 22. Launched a baseless campaign to oust the person; effort not stopped by the employer (43 percent).

BEST BUSINESS PRACTICE

Any responsible business manager will want to avoid the expense putting an employee on paid leave. In the DOE, however, a CAS is not held responsible for the costs incurred. The funds for employee pay and wages for the employee’s replacement come out of the general fund. The quarterly reports from the DOE about pending DDL and LPI cases lack a crucial piece of information. What is the complex area for each of these cases? I’d like to know if there are areas of the DOE where more expensive investigations are initiated than others. The Complex Area Superintendents need to be held responsible for preventing costly investigations when at all possible, and clearing cases in a timely manner. Without this data added to the quarterly reports, there is no accountability, and there is no way to identify and troubleshoot recurring problems.

Looking at the quarterly report provided for today’s meeting we see that 65% of the investigations concern “Inappropriate conduct toward students.” When a business sees such a significant pattern, a closer inspection is warranted. Why are there so many problems like this? What can be done to avoid them? I would venture to guess, based on my knowledge of how things work in the DOE, is that a large number of these investigations involve a student who is a known discipline problem, and the administration that did nothing to support the employee in solving the student discipline problem. Thus, the local administration bears some responsibility for what happened, but since they are leading the investigation, will never admit their own culpability.

At that is a major flaw in the investigation process, especially where student discipline problems that exploded in one way or another. The people in charge of investigating issues related to inappropriate conduct toward students cannot have any vested interest in the outcome other than finding out the truth. The investigators cannot be the local school administration in these cases, and yet they are. They have a vested interest in silencing the employee and blaming the employee.

CONCLUDING REQUESTS

The Board of Education has the power to fix this problem. Therefore I respectfully request that the BOE take the following actions.

1. I ask that the Board modify [POLICY 304.3 - OPEN COMMUNICATION](#)² to read as follows (added text underlined).

Excepting certain personnel matters, and those collective bargaining matters proscribed by law or union-management agreement, there shall be free and open communication of all programs and information to the public, directly and through the media. Such communication shall also be developed between and among individual schools, complex areas, state offices and all personnel in the Department of Education.

All DOE regulations, operating procedures, program information, professional development content, memos of understanding, and other non-confidential information will be made available to all education stakeholders via the Department of Education's public web site.

2. DOE reports to the BOE regarding pending DDL and LPI investigations will, henceforth, include a "Complex Area" field for each record.
3. The DOE must create investigation guidelines by October 31, 2016 that are fair, honest, responsible, and available to all stakeholders online.

Mahalo for your consideration,



Vanessa Ott

attachment (1): ATTACHMENT A: CORRESPONDENCE REQUESTING INVESTIGATION PROCEDURES

² <http://www.hawaiiboe.net/Docs/304/304.3%20v.1.pdf>

ATTACHMENT A:
CORRESPONDENCE REQUESTING INVESTIGATION PROCEDURES

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2/16/16 – Ott to DOE (Krieg): Request DOE Investigation Procedures

From: Vanessa Ott <msvott@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

attachment: *OIP_RequestRecords_InvestigationProcedures.pdf*

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

2/26/16 -DOE (Takaki): Attached are all records responsive to your request

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*
DDL Records for Ott.zip (containing one file: *DDL Records for Ott.pdf*)
LPI Records for Ott.zip (containing one file: *LPI Records for Ott.pdf*)

Excerpts

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.)

RECORDS OR
INFORMATION WITHHELD

APPLICABLE
STATUTES

AGENCY
JUSTIFICATION

*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.

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

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.

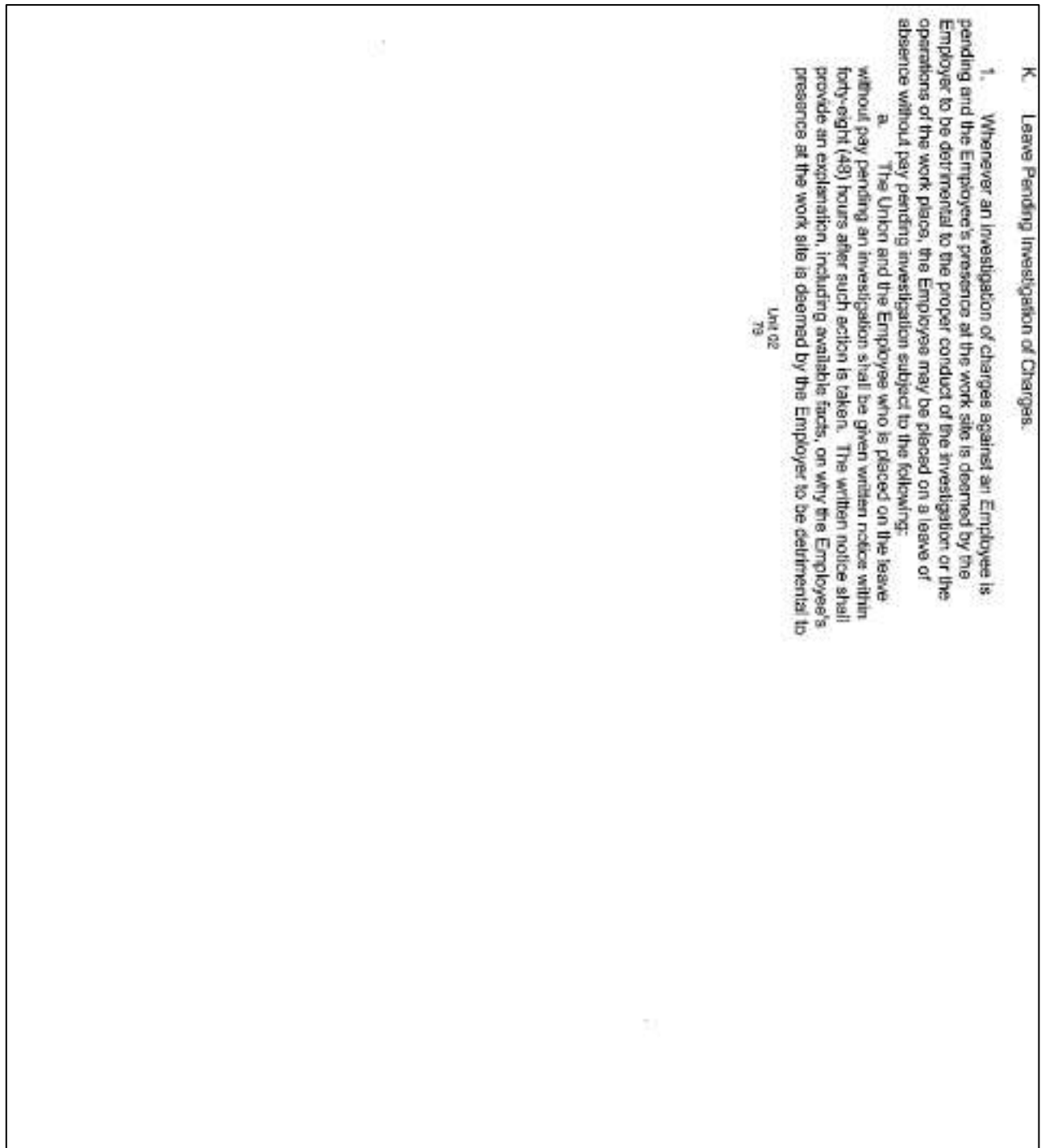
3. OFFICE OF PERSONNEL SERVICES

Processes leave with pay.

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

LPI Records for Ott.pdf

Note that this is how the DOE delivered the documentation – sideways. The reader has to turn the computer monitor on its side to read it.



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 reporting 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 at 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 366, 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 366, 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 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 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.

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.

L 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

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 reporting 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'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 86, Hawaii's Revised Statutes, as amended.

B. No accidental injury leave shall be granted for an injury incurred by an Employee with 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, 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.

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.

L. 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 absences 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 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.

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 repeating 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.

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. 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:

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.

L. 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 or 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.

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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.

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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.**

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- 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

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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.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.

3/1/16 – Ott to DOE (Takaki): Something is missing, e.g. Investigation Form Letter

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

3/8/16 – DOE (Takaki) to Ott:

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
Template_Notice of Cpt and Investigation.pdf

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 2/26/16		
GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):		
<ol style="list-style-type: none">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:		
<input type="checkbox"/> Will be granted in its entirety.		
<input checked="" type="checkbox"/> Cannot be granted in its entirety because:		
<input checked="" type="checkbox"/> Agency does not maintain the records. (HRS § 92F-3)		
<input type="checkbox"/> Agency that is believed to maintain records: <u>*See below</u>		
<input type="checkbox"/> Agency needs a further description or clarification of the records requested. Please contact the agency and provide the following information: _____		
<input type="checkbox"/> Request requires agency to create a summary or compilation from records not readily retrievable. (HRS § 92F-11(c))		
<input type="checkbox"/> Is denied in its entirety <input checked="" type="checkbox"/> 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.)		
RECORDS OR INFORMATION WITHHELD	APPLICABLE STATUTES	AGENCY JUSTIFICATION
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.		
<u>*The search did not produce any instructions on how to fill out the template.</u>		

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