

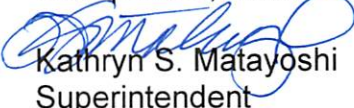


STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

October 18, 2016

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

FROM:  Kathryn S. Matayoshi
Superintendent

SUBJECT: **Quarterly Update on Pending Cases of Department of Education
Employees on Department Directed Leave ("DDL") or Leave Pending
Investigation ("LPI"), Including Status of Policies and Procedures**

1. DESCRIPTION

The Department of Education's Office of Human Resources (OHR) provides centralized support for the investigation of employees who have been accused of misconduct. Among its functions, the Investigations Section monitors and maintains records of the Department's employees who have been placed on DDL and LPI.

2. UPDATE

OHR will provide an update to its previous Human Resources Committee presentations regarding the status of employees on DDL and LPI. The presentation will include information about the policies and procedures related to investigations, including the recently issued "Procedures for Department Directed Leave or Leave Pending Investigation."

KSM:BAK:je
Attachment

c: Office of Human Resources

Quarterly Update on Pending Cases of Department of Education Employees on Department Directed Leave (“DDL”) or Leave Pending Investigation (“LPI”), Including Status of Policies and Procedures

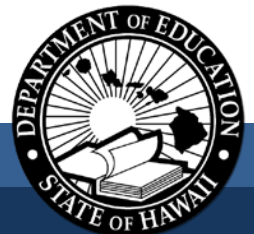
A Presentation to the
Board of Education
Human Resources Committee

October 18, 2016



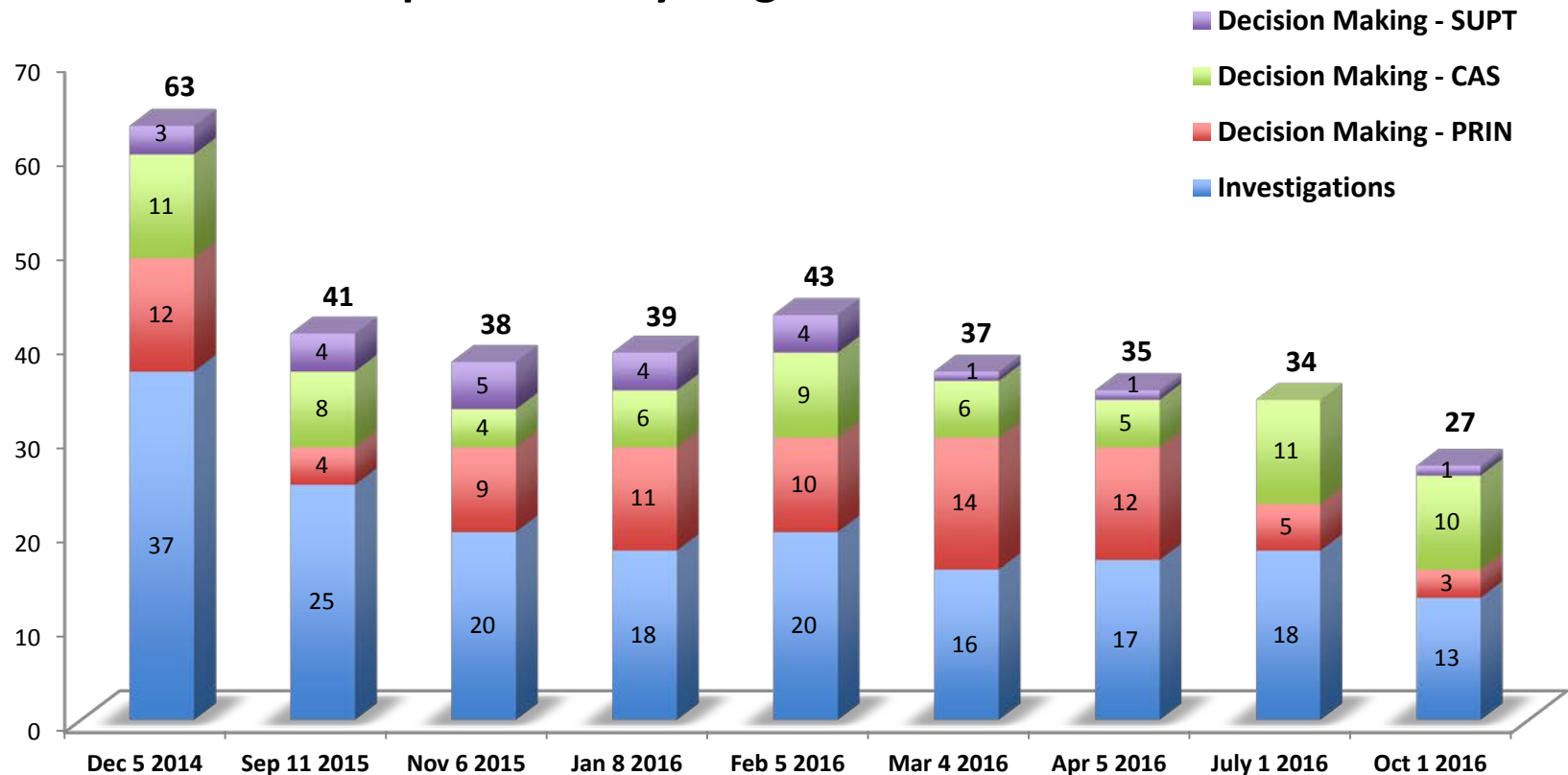
Quarterly Summary, 7/1/16-10/1/16

Cases closed: 16
Cases opened: 7
Cases pending: 27 (as of 10/1/16)



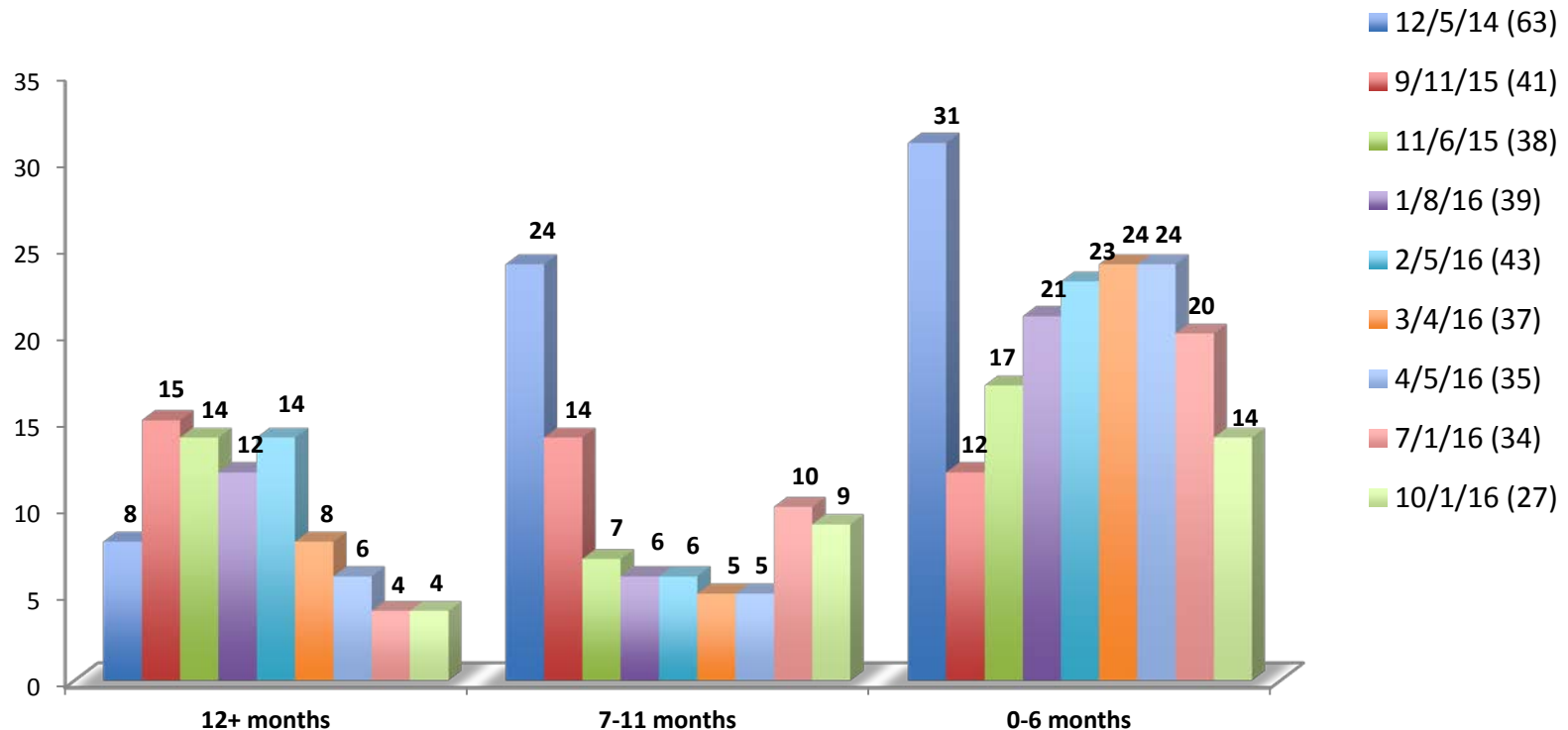
Update on pending cases of Department of Education employees on DDL and LPI

Open Cases by Stage in Process



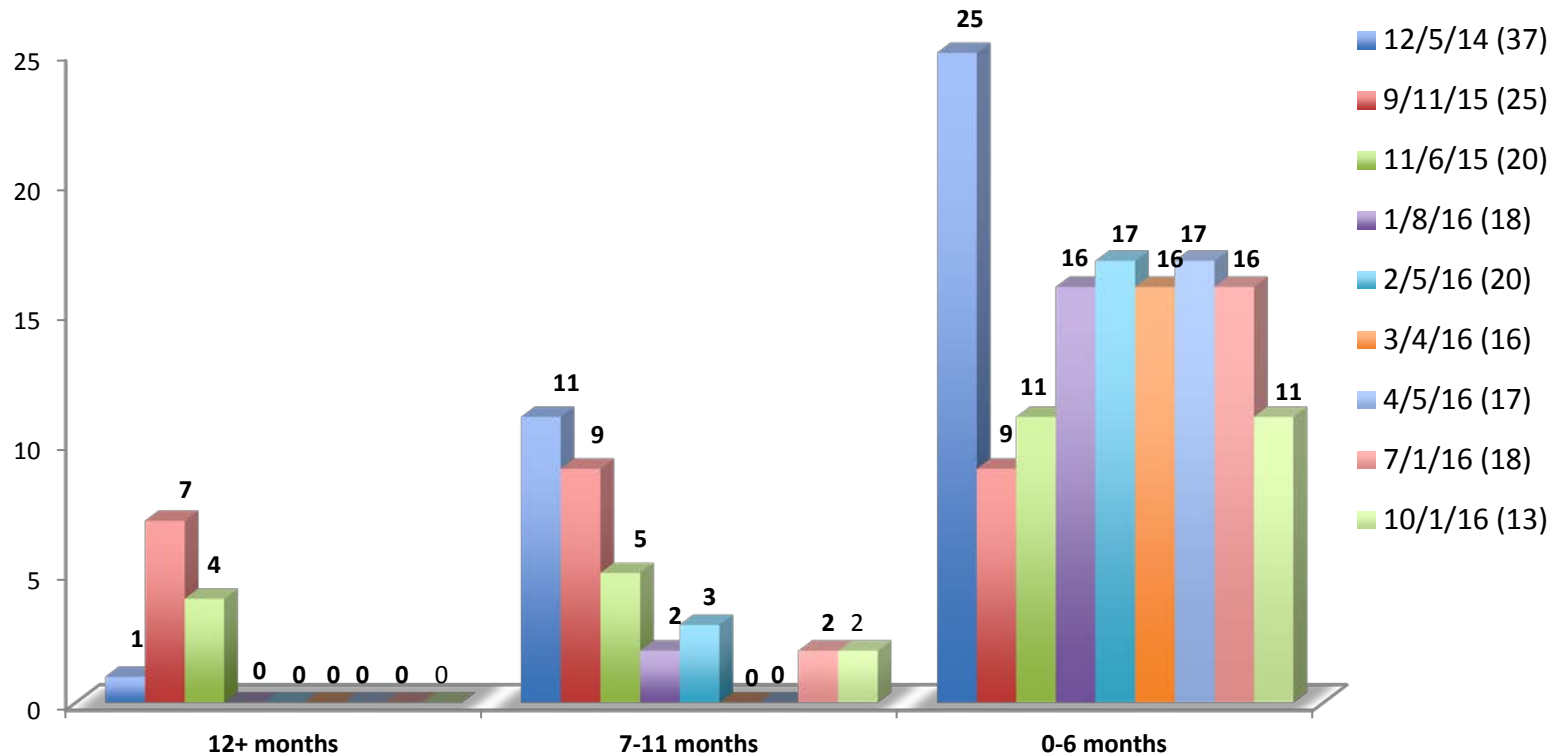
Update on pending cases of Department of Education employees on DDL and LPI

Aging of All Cases from Initial Date of DDL/LPI



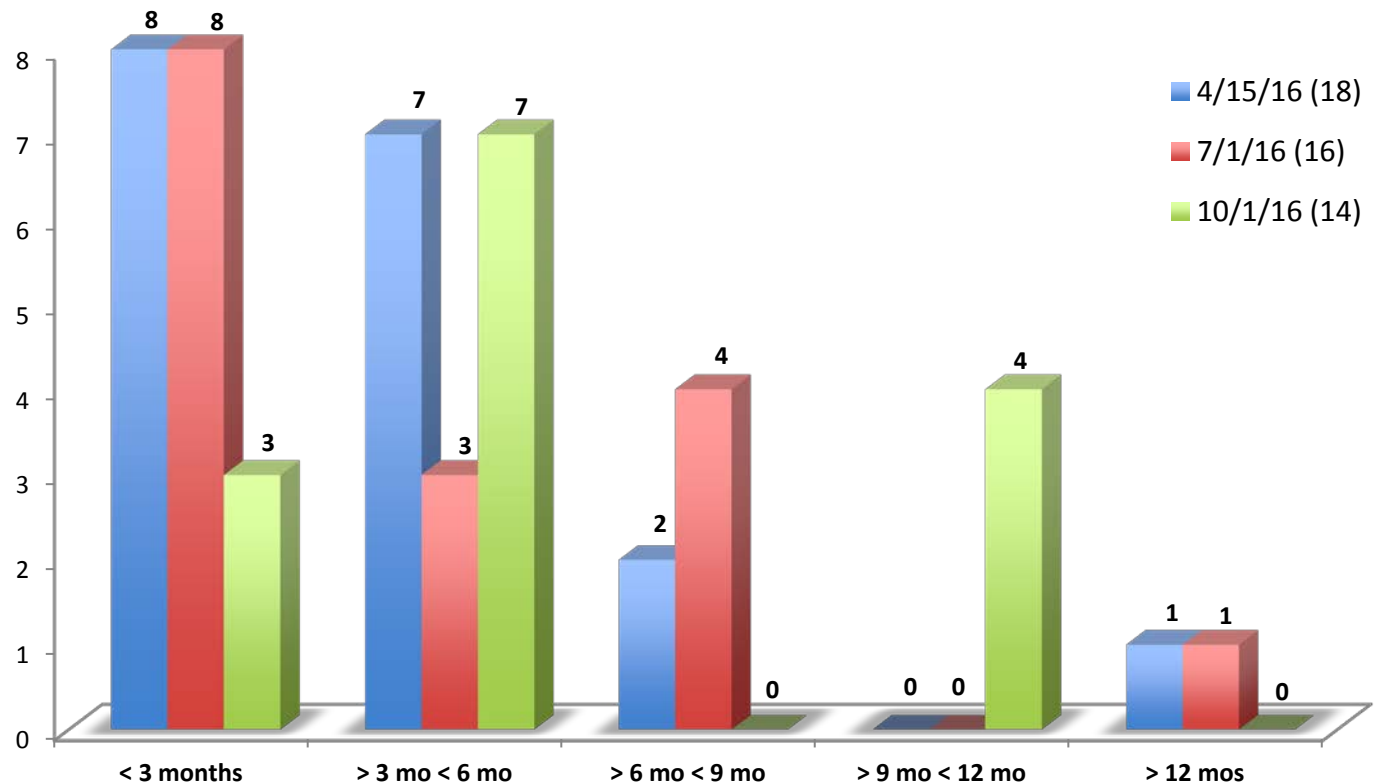
Update on pending cases of Department of Education employees on DDL and LPI

Aging of Cases in INVESTIGATION



Update on pending cases of Department of Education employees on DDL and LPI

Amount of Time Cases in DECISION MAKING

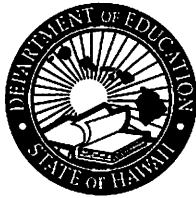


Investigation Policies and Procedures

- **Investigation Guidance**
- **DDL/LPI Procedures (effective 9/1/16)**
- **Office of Attorney General Audit**



	Type of School	Investigator Category	POSITION TITLE	Age of Case (in months)	Nature of Allegations	Status as of 10/1/16
1	K-12	CRCO	Teacher	12+	Inappropriate conduct toward students.	Decision Making - CAS
2	High	CRCO	Teacher	12+	Inappropriate conduct toward students.	Decision Making - CAS
3	Inter/Middle	CRCO	Teacher	12+	Inappropriate conduct toward students.	Decision Making - Principal
4	7-12	District	Teacher	12+	Hostile work environment	Decision Making - CAS
5	Inter/Middle	CRCO	Teacher	7-11	Inappropriate sexual relations with student.	Decision Making - CAS
6	Inter/Middle	District	Teacher	7-11	Inappropriate conduct toward students.	DM - Principal
7	Inter/Middle	School	Teacher	7-11	Inappropriate use of DOE internet and/or technology.	Decision Making - Superintendent
8	7-12	School	Teacher	7-11	Inappropriate conduct toward students.	DM - Principal
9	7-12	CRCO	Teacher	7-11	Inappropriate sexual relations with student.	Decision Making - CAS
10	High	School	School Security Attendant	7-11	Failure to follow protocol related to contraband	Decision Making - CAS
11	High	CRCO	Teacher	7-11	Inappropriate conduct toward students.	Investigation Ongoing
12	High	CRCO	Teacher	7-11	Inappropriate conduct toward students.	Decision Making - CAS
13	High	CRCO	Teacher	7-11	Inappropriate conduct toward students.	Investigation Ongoing
14	High	District	School Administrative Services Assistant	0-6	Hostile work environment; time abuse.	Investigation Ongoing
15	Elementary	CRCO	Teacher	0-6	Inappropriate conduct toward students.	Decision Making - CAS
16	High	OHR/EBC	Teacher	0-6	Suitability analysis.	Investigation Ongoing
17	Elementary	District	Teacher	0-6	Inappropriate conduct toward students.	Investigation Ongoing
18	Inter/Middle	CRCO	Teacher	0-6	Inappropriate conduct toward students and staff.	Investigation Ongoing
19	High	School	School Custodian	0-6	Inappropriate conduct toward students.	Decision Making - CAS
20	Elementary	School	School Custodian	0-6	Inappropriate use of DOE internet and/or technology.	Decision Making - CAS
21	High	OHR/Inv	Teacher	0-6	Inappropriate sexual relations with student.	Investigation Ongoing
22	High	CRCO	Educational Assistant	0-6	Inappropriate sexual relations with student.	Investigation Ongoing
23	Inter/Middle	OHR/PRO	Teacher	0-6	Suitability analysis.	Investigation Ongoing
24	Elementary	OHR/EBC	Teacher	0-6	Suitability analysis.	Investigation Ongoing
25	K-12	District	Teacher	0-6	Inappropriate conduct toward student.	Investigation Ongoing
26	High	School	School Custodian	0-6	Workplace violence.	Investigation Ongoing
27	Elementary	CRCO	Educational Assistant	0-6	Inappropriate conduct toward student.	Investigation Ongoing



DEPARTMENT OF EDUCATION

PROCEDURES FOR DEPARTMENT DIRECTED LEAVE OR LEAVE PENDING INVESTIGATION, STANDARD PRACTICE, Effective September 1, 2016

TITLE

Procedures for Department Directed Leave or Leave Pending Investigation

PURPOSE

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

POLICY

Board of Education policies state that the DOE has a fundamental responsibility to provide a safe and healthy work and learning environment for all public school students, employees, and persons under its jurisdiction.

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

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

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

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

All situations/complaints leading to the removal of an employee from the workplace will be thoroughly and expeditiously investigated. When investigations are completed, and where allegations of misconduct have been substantiated, post-

investigation/due process proceedings should commence promptly thereafter. If the allegations are not substantiated, the employee will be informed by letter that the allegations are not substantiated.

- Decisions on whether to return an employee to the classroom or workplace are made by the CAS or AS, or the Deputy or Superintendent in cases where the employee's office comes under the supervision of the Deputy or Superintendent.
- Decisions to terminate classified employees are made by the CAS or AS, or the Deputy or Superintendent in cases where the employee's office comes under the supervision of the Deputy or Superintendent.
- Decisions to terminate certificated employees are made by the Superintendent, except for termination decisions based on suitability analysis. In accordance with the suitability analysis process, the CAS or AS (or Deputy or Superintendent, if the employee's office falls under their supervision) terminates an employee who is deemed not suitable to work in close proximity to children.

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

In addition, nothing in these Procedures should be construed as altering or superseding the rights and obligations of any employee or the DOE under the collective bargaining agreements, School Code, and/or State or Federal laws, rules, or regulations. The applicable collective bargaining agreements should be reviewed and followed concurrently with these procedures.

PROCEDURES

1. PRELIMINARY ASSESSMENT

- a. Following receipt of an allegation/complaint at a school or workplace, the principal/manager conducts a preliminary assessment. The principal/manager:
 - i. Determines whether the employee against whom the allegations have been made should be removed from the school/workplace.
 - (a) The employee may be placed on initial DDL or LPI if the safety or welfare of students or staff is an issue, and/or if the employee's presence in the workplace is deemed detrimental to the conduct of the investigation or the operations of the workplace.

- (b) The principal/manager must obtain verbal approval (of DDL or LPI) from the CAS or AS, or the Deputy or Superintendent in cases where the employee's office comes under the supervision of the Deputy or Superintendent, prior to sending the employee home.
 - (c) The CAS or AS, or the Deputy or Superintendent in cases where the employee's office comes under the supervision of the Deputy or Superintendent, shall give written notice to the employee within forty-eight (48) hours after such action is taken, confirming verbal instructions by the principal/manager of being placed on DDL or LPI, the general nature of the allegation(s), and conditions of the DDL or LPI.
- ii. Gathers preliminary facts surrounding the incident or allegations
 - iii. Analyzes facts and determines the appropriate course of action
 - iv. Seeks advice, if necessary
 - v. Submits a child abuse report, if required
 - vi. Calls police or law enforcement, if appropriate
 - vii. Examines safety considerations

It is expected that the preliminary assessment should be completed within five (5) work days of the incident or receipt of allegations.*

- b. Upon completion of the preliminary assessment:
 - i. The principal/manager has a discussion with the CAS or AS to return the employee to work, or
 - ii. If an investigation is warranted, the principal/manager has a discussion with the CAS or AS that the employee (respondent) should remain on DDL or LPI during the investigation.
- c. The decision to keep an employee on DDL or LPI is made by the CAS or AS, or the Deputy or Superintendent in cases where the employee's office comes under the supervision of the Deputy or Superintendent, utilizing the following criteria:
 - i. Does the allegation raise credible concern for student or staff safety, or would the employee's presence in the school/workplace negatively impact the integrity of the investigation?
 - ii. Are there alternatives short of placing the employee on DDL or LPI that might alleviate the concerns, e.g. could the employee be assigned to another location or workplace?

Extensions of DDL or LPI must be authorized/approved by the Superintendent.

2. INVESTIGATION

- a. It is important that every investigation commence promptly.
- b. It is expected that investigations should be completed within the following timelines.*
 - i. For school level investigations, within forty-five (45) work days.
 - ii. For centralized investigations (district level, Office of Human Resources or Civil Rights Compliance Office), within one hundred twenty (120) work days.
- c. It is recommended that investigations and/or assistance with investigations be assigned as follows:
 - i. Allegations of minor infractions of misconduct – school level, usually vice principal (VP)
 - ii. Allegations of major infractions of misconduct – district level, usually complex area personnel specialists (CAPS) or other district educational officer, or OHR Investigations Section
 - iii. Discrimination, harassment, or retaliation on a protected basis – Civil Rights Compliance Office (CRCO)
 - iv. Fiscal or financial improprieties – Internal Audit may conduct audit review (to be requested in accordance with Internal Audit procedures)

An investigation is deemed completed when the written investigation report is delivered to and accepted by the first level decisionmaker.

3. POST-INVESTIGATION PROCESS

- a. **FIRST LEVEL DECISIONMAKER.** The first level decisionmaker (usually the principal or manager) is expected to review the investigation report promptly upon receipt.
 - i. The first level decisionmaker determines whether any additional information is needed prior to the decision-making process commencing.
 - ii. Should additional information be needed, the first level decisionmaker will request that the investigator obtain the additional information. The additional information should be promptly obtained within a reasonable time period.*
 - iii. Upon receipt of the additional information, or if no additional information is needed, the first level decisionmaker determines the appropriate course of action for the employee removed from the workplace.

- (a) If the allegations are NOT SUBSTANTIATED, it is expected that the principal/manager take necessary steps, including, but not limited to, sending a letter to the employee, informing him/her that the investigation has been completed and the allegations were not substantiated, to close out the investigation and immediately return the employee to work.
 - (b) If the allegations are SUBSTANTIATED, it is expected that the first level decisionmaker schedule the post-investigation meeting with respondent on the earliest date on which all of the necessary parties are available. A copy of the investigation report and any attachments are forwarded to the respondent for his/her review prior to the meeting.
- iv. Following the post-investigation meeting, the first level decisionmaker decides whether any corrective or disciplinary action is warranted.
 - (a) Verbal or written reprimand. Where the first level decisionmaker determines that a verbal or written reprimand is the appropriate discipline, the reprimand is to be issued promptly after the post-investigation meeting with the respondent and the respondent returned to work.
 - (b) Suspension, demotion, or termination. Where the first level decisionmaker determines suspension, demotion or termination is the appropriate discipline, the recommendation is made to the CAS/AS, or the Deputy or Superintendent in cases where the employee's office comes under the supervision of the Deputy or Superintendent, promptly after the post-investigation meeting with the respondent.

It is expected that the first level decisionmaker complete his/her post-investigation responsibilities within thirty (30) work days.*

Please review the provision related to discipline in the applicable CBA or School Code. If other than an oral warning or reprimand is issued, the employee (and union, if applicable) should receive written notice within forty-eight (48) hours.

- b. CAS or AS (or DEPUTY/SUPERINTENDENT). The CAS/AS, or the Deputy or Superintendent in cases where the employee's office comes under the supervision of the Deputy or Superintendent, is expected to review the recommendation for suspension, demotion or termination, including the investigation report and other supporting documents, promptly upon receipt. The CAS or AS (or Deputy or Superintendent) may request additional information prior to making the decision on discipline and/or corrective action.

Upon determination that there is sufficient information to proceed, the CAS or AS, or the Deputy or Superintendent in cases where the employee's office comes under the supervision of the Deputy or Superintendent, is expected to schedule the due process meeting on the earliest date on which all of the necessary parties are available. The CAS or AS (or Deputy or Superintendent in cases where the employee's office comes under the supervision of the Deputy or Superintendent) will also determine whether the employee should remain on DDL or LPI, be returned to work, or be reassigned to another position, as the decision making process continues.

i. Suspension/Demotion

- (a) For teachers and classified employees, the CAS or AS (or Deputy or Superintendent, if applicable) makes the decision on suspension, demotion, or other appropriate corrective action and issues notice of the decision to the employee promptly after the due process meeting and due consideration of any new information presented at the meeting.
- (b) For educational officers (EOs), if the CAS or AS (or Deputy, if applicable) agrees with the recommendation for suspension or demotion, the CAS or AS (or Deputy, if applicable) promptly makes a recommendation to the Superintendent.
- (c) If the CAS or AS (or Deputy or Superintendent, if applicable) does not agree with the recommendation for suspension or demotion of the EO, the CAS or AS (or Deputy or Superintendent, if applicable) makes a decision on other appropriate corrective action and issues his/her decision to the employee promptly after completion of the meeting with the respondent.

ii. Termination

- (a) For classified employees, the CAS or AS (or Deputy or Superintendent, if applicable) makes the decision on termination, or other appropriate corrective action, and issues notice of the decision to the employee promptly after the due process meeting and due consideration of any new information presented at the meeting.
- (b) For teachers and EOs, if the CAS or AS (or Deputy, if applicable) concurs with the recommendation for termination, the CAS or AS (or Deputy, if applicable) makes a recommendation for termination to the Superintendent. The CAS or AS (or Deputy, if applicable) also sends a letter to the respondent, informing him/her of the recommendation for termination.

It is expected that the CAS/AS (or Deputy, if applicable) should complete his/her post-investigation responsibilities within thirty (30) work days.*

- c. SUPERINTENDENT. It is expected that the Superintendent review the recommendation for termination of a teacher or suspension/termination of an EO promptly upon receipt. The Superintendent may request additional information prior to making a decision on discipline and/or corrective action. The Superintendent will also determine whether the employee should remain on DDL, be returned to work, or be reassigned to another position as the decision making process continues.
 - i. Following receipt of all necessary information, the Superintendent will schedule a due process meeting with the respondent.
 - ii. Following the due process meeting, the Superintendent makes the decision on teacher termination or EO suspension/demotion/termination, or other appropriate corrective action, and customarily issues a decision to the respondent within thirty (30) work days* following the meeting with the respondent. This timeline will be extended to accommodate any requests for additional information the Superintendent may identify as a result of the meeting with the respondent.

***All timelines in these Procedures are subject to extension in appropriate circumstances, and where necessary.** Circumstances may include, but are not limited to circumstances outside the DOE's control, such as unavailability of necessary witnesses, the respondent, or a union representative; unavailability of investigator or decisionmaker; inability to timely obtain necessary releases or authorizations; where the scope of the investigation changes significantly throughout its course; or where a decisionmaker determines that additional information is necessary in order to provide the respondent a meaningful due process opportunity. The timelines are intended to provide guidance about "best practices" and every effort should be made to comply with them. However, where additional time is needed to ensure a thorough, complete, and fair investigation or post-investigation process, then the necessary additional time should be taken. The DOE will make every effort to notify the employee prior to the expiration of his/her leave whether he/she will return to work or whether the leave will be further extended.