




STATE OF HAWAII
DEPARTMENT OF EDUCATION

P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

August 29, 2021

TO: Assistant Superintendents
Complex Area Superintendents
Principals

FROM: Keith T. Hayashi 
Interim Superintendent

SUBJECT: **Non-Compliance of Attestation of COVID-19 Testing or Vaccination**

On August 5, 2021, Governor David Y. Ige issued an Emergency Proclamation (EP) Related to the COVID-19 Response that required all state and county employees to attest to whether they are (1) fully vaccinated for COVID-19; (2) partially vaccinated for COVID-19; or (3) not vaccinated for COVID-19.

All Hawaii State Department of Education (Department) employees were informed on August 13, 2021, of the requirement to attest to their vaccination status and/or report their COVID-19 test results in the Department's Electronic Human Resources System (eHR). Employees were forewarned that failure to comply with this requirement may result in disciplinary action, up to and including termination.

On August 18, 2021, all Department employees were sent an email stating that the deadline to submit proof of weekly test results or full COVID-19 vaccination had been extended by one week to Aug. 30, 2021.

A second email was sent on August 27, 2021, telling employees that they must submit documentation attesting to a negative COVID-19 test or vaccination before starting their scheduled workday on August 30, 2021.

Expedited Due Process

The Department will be expediting the due process for employees who refuse to comply with the requirement to attest to their vaccination status or report their COVID-19 test results.

In general, all employees shall be afforded due process before any disciplinary action or recommendation for serious discipline is issued. Under these extraordinary circumstances, and in a concerted effort to comply with the Governor's EP, the expedited due process for failing to comply with the EP is outlined below:

Directive

If the employee is not in compliance with the attestation requirement:

Supervisor:

- Provide the employee Interim Superintendent Hayashi's Memorandum regarding Attestation of COVID-19 Testing or Vaccination, dated August 13, 2021 (Attachment 1). The employee could also be given additional supporting documentation such as Board Policy 201.2 (Attachment 2) and the Department's Code of Conduct (Attachment 3).
- Give a verbal directive to comply with the attestation requirement. The directive should include that failure to comply precludes them from working and that they may be subject to disciplinary action up to and including termination.
- Allow the employee the opportunity to respond to the directive.
- Document the meeting in a Summary of Conference (SOC) or a Note to File.

Action

If the employee refuses to comply after a directive is given:

Supervisor:

- Confirm with the employee they are non-compliant with the previous directive.
- Allow the employee an opportunity to respond to their non-compliance.
- Inform the employee that they will be recommended for serious discipline to the Complex Area Superintendent (CAS) or Assistant Superintendent (AS).
- Inform the employee that they are not allowed to work since they are not in compliance with the directive and EP and that you will recommend to the CAS/AS that they be placed on unauthorized leave without pay (ULWOP).
- Send the recommendation for serious discipline and placement on ULWOP, along with any supporting documents (SOC, Note to File) related to the non-compliance, to the CAS/AS.
- Mail a copy of the recommendation for serious discipline to the employee.
- Ensure the Office of Fiscal Services, Payroll Unit, is informed of the ULWOP status for the employee.

Complex Area Superintendent/Assistant Superintendent:

- Review the supervisor's recommendation for serious discipline and placement on ULWOP.
- Decide to approve/deny the supervisor's recommendation for ULWOP.
- If the employee will be placed on ULWOP, send a letter to the employee to confirm this and schedule the due process meeting.
- Conduct the due process meeting.
 - For classified employees, decide on the appropriate serious disciplinary action.
 - For certificated employees, decide if you will make a recommendation for serious disciplinary action to the Superintendent.

Superintendent: Determines the appropriate disciplinary action, up to and including termination, for certificated employees.

Assistant Superintendents, et al.

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Employees covered by a collective bargaining agreement have the right to file a grievance, and the grievance procedures shall be adhered to.

For additional guidance and support, please contact the respective Personnel Regional Officer assigned to your District or State Office.

For Labor Relations (LR) support, contact LR at (808) 441-8422 or *labor_relations@k12.hi.us*.

KTH:sb

Attachments: 1. Attestation of COVID-19 Testing or Vaccination Memorandum
2. Policy 201.2
3. Code of Conduct

c: Phyllis Unebasami, Deputy Superintendent
Sean Bacon, Interim Assistant Superintendent, Office of Talent Management
Office of Fiscal Services – Payroll Unit