

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS
ASSOCIATION,

Complainant(s),

and

DAVID Y. IGE, Governor, State of
Hawai'i; BOARD OF EDUCATION, State
of Hawai'i; KEITH T. HAYASHI, Interim
Superintendent, Department of Education,
State of Hawai'i; DEPARTMENT OF
EDUCATION, State of Hawai'i,

Respondent(s).

CASE NO(S). 21-CE-05-961

ORDER NO. 3803

PRETRIAL ORDER AND NOTICES

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PRETRIAL ORDER AND NOTICES

THE PARTIES ARE NOTIFIED AND ORDERED TO COMPLY WITH THIS PRETRIAL ORDER AND NOTICES. The Hawai'i Labor Relations Board (Board) may impose appropriate monetary or other sanctions upon parties, representatives, or attorneys, who do not comply with this Pretrial Order and Notice, if the parties or attorneys have not shown good cause for failure to comply or a good faith effort to comply.

This document controls the course of proceedings and may not be amended, except by the Board through an Order or Notice. The use of singular, plural, masculine, feminine, and neuter pronouns include the others as the context may require.

(1) NOTICE OF RECEIPT OF A PROHIBITED PRACTICE COMPLAINT

The attached prohibited practice complaint (Complaint) was filed with the Board by the above-named Complainant(s) on: **10/20/2021**.

PER HAWAII REVISED STATUTES (HRS) § 377-9(b) AND HAWAII ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE IS GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed a prohibited practice Complaint with the Board, a copy of which is attached, alleging that you have engaged in or are engaging in prohibited practices in violation of HRS Chapter 89.

RESPONDENT(S) IS/ARE DIRECTED to file a written answer to the Complaint within ten (10) days after service of the Complaint. One copy of the answer must be served on each party, and the original with certificate of service on all parties must be filed with the Board no later than 4:30 p.m. on the tenth day after service of the Complaint. If you fail to timely file and serve an answer, that failure constitutes an admission of the material facts alleged in the Complaint and a waiver of hearing. (HAR § 12-42-45(g))

(2) NOTICE OF EXTRAORDINARY CIRCUMSTANCES

Due to the current concerns regarding the COVID-19 Response, the Governor of the State of Hawai'i (Governor) issued an Emergency Proclamation on August 5, 2021. This proclamation, among other things, gave agencies the ability to conduct certain hearings using interactive conference technology as needed to deal with the emergency situation brought on by COVID-19, and as would be permitted by 2021 Haw. Sess. Laws Act 168 when it becomes effective on October 1, 2021.

Accordingly, the Board is holding remote, videographic hearings and is mandating electronic filing during this emergency period. (See Order No. 3793)

(3) NOTICE OF FILING REQUIREMENTS

1) Electronic Filing

All filings in this case must be made electronically through the Board’s filing service FileandServeXpress (FSX). There is no charge to the parties for use of this electronic filing service. Should any party not have access to the Internet, or for any other concerns or complications, please contact the Board via electronic mail or (808) 586-8616.

To register, a party is required to complete and submit the Board Agreement to E-File (Form HLRB-25), as amended, which is available at <http://labor.hawaii.gov/hlrb/forms/>.

Questions regarding the Board’s electronic filing system should be directed to the Board’s staff at (808) 586-8616.

2) Filing Requirements Regarding Protection of Social Security Numbers and Personal Information

Before a party files or submits any pleading, correspondence, or other document (Documents) to the Board, whether electronically or manually, the party must make certain that all social security numbers and personal information are redacted or encrypted. “Personal information” includes social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest. To the extent any personal information is relevant to the Board’s consideration of this case, the submitting party must submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai‘i Court Records Rules, as amended.

If a party submits a document that requires redaction of a page(s), the party must, by motion, request permission from the Board to withdraw and replace the original document, in its entirety, with a redacted copy of such document, pursuant to HAR § 12-42-8(g)(11), “The Board may permit withdrawal of original documents upon submission of properly authenticated copies to replace such document.”

The Board may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this provision where the parties or attorneys have not shown good cause for failure to comply or a good faith attempt to comply.

(4) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS

All parties have the right to appear and to be represented by counsel or any other authorized person in all Board proceedings. Auxiliary aids and services are available upon

request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

The Board is located in a secured State of Hawai‘i building, which may not be accessible to the public during the emergency period referenced in Section (2) above.

(5) NOTICE OF STRUCTURE FOR REMOTE HEARINGS BEFORE THE BOARD

The Board currently uses Zoom as its primary platform for online proceedings. The Board orders all parties to follow the requirements laid out in this Order for all Remote Hearings before the Board.

Parties and representatives must familiarize themselves with Zoom in preparation for all online Board proceedings. For security purposes, the Board will utilize the “waiting room” function.

Prior to the hearing:

1. The Board will provide Zoom login information to the parties in advance of the hearing.
2. Parties and witnesses are not permitted to utilize virtual backgrounds or any other technology that alters the Board’s ability to observe the area around the party/witness.
3. A party who shares the Zoom login information with any other group or individual (Sharing Party) must provide the Board and the other party/parties with a complete list of participants they have invited to attend the proceedings, including any support staff and witnesses. **This list must be emailed to the Board at dliir.laborboard@hawaii.gov prior to the start of the hearing.**
4. Any Sharing Party must inform non-witness participants:
 - 1) that they must keep their microphones muted at all times; and
 - 2) that they must keep their cameras off at all times.
5. Any Sharing Party must inform **all** participants:
 - 1) that they must submit their full name as their username when requesting entry to the Zoom conference, to allow the Board to ensure compliance with the witness

exclusion rule, unless the party sets up a device specifically for witness use only, in which case that device may log in with the username “witness”; and

2) **that they may not record, screen shot, record conversations, and/or use third party software to record the proceeding.**

6. Sharing Parties and their counsel or representatives are responsible for ensuring that all of their invitees abide by the requirements set forth in this Order. An invitee’s failure to comply with this order will be regarded as the Sharing Party and/or their counsel or representative’s failure to comply with this Order during a hearing.

Failure to comply with this Order may be grounds for the Board to commence proceedings regarding that party’s counsel or representative under HAR § 12-42-8(g)(9)(A).

(6) NOTICE OF PREHEARING CONFERENCE

PER HRS § 89-5(i)(4) and (i)(5), and HAR § 12-42-47:

NOTICE IS GIVEN that the Board will conduct a Prehearing Conference on the date listed below and in the Schedule of Deadlines and Hearing Dates (Schedule) in this document.

DATE AND TIME: Friday, November 19, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

The purpose of the Prehearing Conference is to clarify the issues, if any; to the extent possible, to reach an agreement on facts, matters, or procedures that will facilitate and expedite the hearing or adjudication of the issues presented; to establish deadlines for prehearing briefing; and for such other matters as may be raised.

All parties have the right to appear at the Prehearing Conference and to be represented by counsel or any other authorized person. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

(7) NOTICE OF WITNESS REQUIREMENTS WHILE TESTIFYING REMOTELY

Due to the situation with COVID-19, unless otherwise ordered by the Board, all witnesses must testify videographically.

For the purposes of HAR § 12-42-8(g)(5), witnesses are appearing “in person” if they appear in accordance with this Section (8). Accordingly, the Board **orders all parties** to inform their witnesses that, unless otherwise directed or allowed, when the witness testifies:

1. The witness must be in a location without anyone else in the room with them, and there should be no one at the location who can overhear their testimony;
2. The device from which the witness appears must be used during the witness’ testimony solely for the purpose of the witness appearing by video;
3. The witness may not consult with anyone during testimony;
4. The party calling the witness must ensure that the witness has access to all exhibits in the case;
5. The witness must not look at or make reference to notes or any other documents or materials other than the exhibits, and may look at the exhibits only when directed to do so by a party or the Board;
6. At all times while testifying, the witness must be clearly visible, face the camera, and speak directly and audibly into the microphone;
7. The witness may not use a virtual background; and
8. The witness must not have any communication with third parties while they are on the stand and under oath.

(8) NOTICE OF HEARING ON THE MERITS

NOTICE IS GIVEN, per HRS §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and HAR §§ 12-42-46 and 12-42-49, the Board will conduct a hearing on the merits of the case in the above-entitled matter at the place, time, and date listed below and in the Schedule set forth below. The purpose of the HOM is to receive evidence and arguments on whether Respondent(s) committed prohibited practices as alleged by Complainant(s). The HOM will begin with oral argument on any dispositive motions that may be filed in this case.

DATE AND TIME: Wednesday, November 24, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

Subject to the Board’s discretion due to the Extraordinary Circumstances listed above in Section 2, all parties have the right to appear at the Hearing on the Merits and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear at the hearing on the merits.** Please note that this requirement may be altered by Board Order due to the Extraordinary Circumstances listed above in Section 2.

Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(9) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

DATES AND DEADLINES

<u>Prehearing Conference</u>	11/19/21	9:00 a.m.
<u>Dispositive Motion Deadline</u>	11/12/21	
<u>Response to Dispositive Motion Deadline</u>	11/19/21	
<u>Hearing on the Merits</u>	11/24/21	9:00 a.m.

All submissions must be filed on or before 4:30 p.m. on the deadline date.

DATED: Honolulu, Hawai‘i, _____ October 21, 2021 _____.

HAWAI‘I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Keani Alapa, Esq.

David Y. Ige, Governor

Catherine Payne, Board of Education

Keith T. Hayashi, Interim Superintendent

James Halvorson, Deputy Attorney General

HSTA v. DAVID Y. IGE, ET AL.

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