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STATE OF HAWAII
STATE ETHICS COMMISSION

Attorney for Petitioner
HAWAII STATE TEACHERS ASSOCIATION

THE ETHICS COMMISSION

STATE OF HAWAII

HAWAII STATE TEACHERS)	Case No. _____
ASSOCIATION, on behalf of)	
Its members in Unit 5,)	PETITION FOR DECLARATORY
)	ORDER OR ALTERNATIVELY FOR A
)	CONTESTED CASE; DECLARATION OF
)	COLLEEN HANABUSA;
Petitioner,)	EXHIBITS "A"- "C"
)	
)	
_____)	

PETITION FOR DECLARATORY ORDER
OR ALTERNATIVELY FOR A CONTESTED CASE

COMES NOW, Petitioner, HAWAII STATE TEACHERS ASSOCIATION ("HSTA"), by and through its Attorney, Colleen Hanabusa, and hereby respectfully petitions the Ethics Commission of the State of Hawai'i ("EC"), for a declaratory order or alternatively for a contested case in accordance with the *Hawai'i State Constitution*, Article XIV ("*Constitution*"), *Hawai'i Rev. Stat.* §§ 84-1 and 91-1, *et seq.*, ("*HRS*") Title 21 *Legislative Agencies* ("*EC Rules*") §21-2-6-6, as follows:

I. NAME, ADDRESS, EMAIL ADDRESS AND TELEPHONE NO.

The Petitioner is HAWAII STATE TEACHERS ASSOCIATION, (“HSTA”). Its address is:

HAWAII STATE TEACHERS ASSOCIATION
1200 Ala Kapuna Street
Honolulu, Hawaii 96819
(808) 833-2711

c/o WILBERT HOLCK, its Executive Director

For purposes of this Petition for Declaratory Order (“Petition”), HSTA request that the EC contact it through its attorney, Colleen Hanabusa, as identified above.

II. NATURE OF THE CONTROVERSY OR QUESTION

Petitioner HSTA is certified by the Hawaii Labor Relations Board (“HLRB”) to represent Bargaining Unit 5, the teachers. *HRS* §§ 89-2 and 89-8. HSTA brings this matter on behalf of the members of Bargaining Unit 5

The controversy which gives rise to HSTA’s filing is the determination by the EC that a long standing practice of the provision of free travel to teachers for chaperoning field trips and student travels is an ethics violation. Though it does not appear that there is a document entitled an advisory opinion; or a Rule, the “MEMORANDUM” issued is a “rule” by definition which has failed to comply with the provisions of the Hawaii Administrative Procedures Act, *HRS* §§91-1 et seq. (“HAPA”), a copy of said document is attached hereto as Exhibit “A”

("Rule on Trips"). It is important to note that the Rule on Trips issued by the EC is addressed to "Department of Education Teachers."

This Petition seeks from the EC a Declaratory Order which repeals the *de facto* Rule of Trips, the "MEMORANDUM" of August 4, 2015.

The basis of this Petition is as follows:

- 1) The EC has failed to comply with the provisions of **HRS** §§91-1 et seq. by not engaging in a rulemaking as to what is gift.
- 2) Relevant to this Petition, the EC by issuing its *defacto* Rule on Trips failed to realize that it was a "rule" as defined under Hawai`i's laws and case law.
- 3) Due to its failure to comply with HAPA, the EC has violated the due process rights of the members of Unit 5 and is acting in an arbitrary and capricious manner.
- 4) Just as critically, the EC, by failing to engage in rulemaking denies the public its input into the rule. Clearly student trips have major public interest and concern.
- 5) The EC has arbitrarily and capriciously determined what "reasonably be inferred that the gift is intended to influence" in this situation without the public's input.
- 6) The EC through its *defacto* Rule on trips has stated that:

[T]eachers who are involved in planning the trip itinerary and selecting the tour company, promoting the trip to students and their parents, deciding who will chaperone the students, and requesting DOE approval of the trip cannot accept free travel and other benefits from the tour company.

Teachers who accept free travel and other benefits after July 31, 2015, that are prohibited under the States Ethics Code may be subject to action by the Commission.

The Commission's position as reflected in this memorandum does not prohibit, and is not intended to be interpreted to prohibit, trips that are planned; the State Ethics Code simply prohibits teachers from accepting the free travel and other benefits offered by the tour companies for these trips.

Exhibit "A" at 3.

7) The EC failed to comply with the time limits set forth in the law as to when it must respond to an inquiry. Failure to do so under the law is a finding that the practice did not violate the Code of Ethics.

8) Alternatively, this Petition seeks a contested case hearing on the *defacto* Rule on Trips on the basis that it violates the constitutional due process.

HAPA and the established case law in this State on the due process rights mandate that the EC either repeal its *defacto* rule and engage in rule making or alternatively hold a contested case on this critical issue.

III. STATUTE, RULE OR ORDER IN QUESTION

The following are in question as to how they are applied or interpreted:

1. *Hawai'i State Constitution*, Article X and XIV
2. *Hawai'i Rev. Stat.* §§ 84-1 *et seq.*
3. *Hawai'i Rev. Stat.* §§ 89-1 *et seq.*
4. *Hawai'i Rev. Stat.* §§ 91-1 *et seq.*
5. Title 21 *Legislative Agencies ("EC Rules")*
6. *Defacto* Rule on Trips, Memorandum of August 4, 2015, Exhibit "A."

IV. STATEMENT OF FACTS

1. Petitioner HSTA is certified by the Hawaii Labor Relations Board (“HLRB”) to represent Bargaining Unit 5, the teachers. *HRS* §§ 89-2 and 89-8.

2. The Department of Education Teachers have engaged in chaperoning trips of students for many years. These teachers are members of or represented by Petitioner.

3. State of Hawai`i Department of Education (“DOE”) personnel have sought advice on this issue from the Ethics Commission in May 2014. Letter of May 26, 2015 from Superintendent Matayoshi to EC, a copy is attached hereto as Exhibit “B.”

4. The first response from the EC was received in January 2015 by way of a phone call seeking information. *Id.* This response was not timely under *HRS* § 84-31(a) (2).

5. On or about February 9, 2015, DOE was informed that the State Ethics Code prohibits teachers and other school personnel from accepting “free travel, stipends, and other benefits from a private educational tour company.” *Id.*

6. On February 19, 2015, the EC through its staff transmitted by email stating that the spring break trips can continue but the teacher chaperone should not accept any stipend or points. *Id.* at 2.

7. On March 30, 2015 Virginia Chock, staff attorney for the EC (“Chock”), issued a guidance to the DOE. The EC’s set forth at least 3 reasons for its decision that the trips are prohibited gifts. What is significant is the EC does concede the “educational benefit” of the trip; however, the EC believes that there is “reasonable inference” that the gift influences and rewards the action of the teachers and outweighs the educational benefit to the students. In addition, Chock alleges that the “fair treatment law,” *HRS* §84-13 could also be violated.

8. In March 2015, certain personnel submitted gift disclosure reports and were questioned and felt intimidated by the EC. *Id.* at 3.

9. In May 2015, Chock informed the DOE that all teachers and others involved in the student trips would be subject to intense questioning and there would no assurances that they would not be subject to “administrative penalties.” *Id.*

10. On May 27, 2015, the EC held its meeting and set as an agenda items the following:

X. Free Trips To Teachers Who Chaperone Student Educational Tours

Update and discussion regarding the application of state Ethics Code to free travel offered to teachers by educational tour companies.

The Hawaii State Ethics Commission may convene an executive session pursuant to Hawaii Revised Statutes section 92-5(a)(4) to consult with the Commission’s attorneys on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities, and liabilities.

11. On August 4, 2015, the EC issued a “MEMORANDUM” re: “Free Travel Offered to Teachers By Travel Companies,” which states “[t]he State Ethics Code prohibits Department of Education (“DOE”) teachers and other employees (“teachers”) from accepting free travel and other benefits from tour companies from serving as chaperones on student educational trips.” Exhibit “A.

12. The *Constitution* entrusted the educational policies of this State to the Board of Education. Article X.

13. The Board of Education has set forth as a policy on “Field Trips and Student Travel, the following:

The Board of Education recognizes that travel beyond the school campus can enhance learning for students in the public schools of Hawaii. Therefore schools are encouraged to promote travel within the State of Hawaii, to the continental United States, and to foreign countries as part of their educational program.

Field trips and travel shall be permitted only when the derived educational benefits are clearly linked to and support ongoing standards-based classroom studies. Schools shall be cognizant of the safety and welfare of all participants on field trips and student travel, and shall have contingency plans, recognizing that trips may need to be cancelled, delayed, or otherwise revised.

Policy 2250.

14. The *Constitution* in Article XIV established a Code of Ethics. There are specific provisions identified as to be included in the Code; however the Code is to be adopted by the State Legislature for those covered elected officials, employees and boards and commission.

15. *HRS* §§ 84-11 to 19 is entitled "Part II Code of Ethics."

16. Gifts are defined as:

Gifts. No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the legislator or employee in the performance of the legislator's or employee's official duties or is intended as a reward for any official action on the legislator's or employee's part.

17. There does not appear to be a definition of "Gifts" or rules to govern what is a gift under Title *21 Legislative Agencies*, which are the identified *EC Rules* on its own website.

18. The process of a student trip requires the approval of the DOE administration including the Superintendent. The teacher sends the information on cost and destination to the parents/guardians who make the decision on whether the student will participate. The DOE Policy on travel and field trips are relevant in that it requires the trip to “satisfy educational benefits are clearly linked to and support ongoing standards-based classroom studies.” Without meeting this requirement the trip will not be permitted.¹

19. It is important to note that the decision to participate is by the parent who will then commit to the payment of expenses for the trip.

20. The EC considers the provision of a free trip per 10 students to be a gift to the teacher/employee who may receive the trip. In actuality, this may be a benefit provided for in the travel industry. Alternatively, the persons who determine if a trip will be taken are the parents themselves. It is believed that all providers of the student field trips offer the chaperone provision as part of their package.

21. Petitioners are unaware of any allegation of undue influence on the part of a teacher for parents to pay for the trips. It is believed and understood that parents believe that this is a unique educational experience for their children.

21. If this is a benefit “available to or distributed to the public generally without regard to the official status of the recipient” then it is not a reportable gift under *HRS* §84-11(d) (5). The practice in the industry should have been further investigated by the EC.

22. The *EC Rules* identifies as its intended purpose, “to carry out the provisions of chapter 84, HRS, relating to standards of conduct for state legislators and employees, and to provide for the efficient administration thereof.” *EC Rules* §21-1-1 and *HRS* §84-31(a) (5).

¹ The issue of the trips satisfying the DOE Policy is not an issue here.

V. POSITION OF HSTA-GROUNDS FOR PETITION AND INTEREST

A. HSTA's Reasons Or Grounds For Prompting The Petition.

EC Rules §21-6-6 requires the HSTA to set forth the reasons or grounds for prompting this petition. HSTA is the exclusive bargaining representative of the Department of Education Teachers against whom the MEMORANDUM of August 4 was directed. There is no question of the DOE or the State Board of Education's support of the teacher's ability to chaperone students based on their policy, adopted as 2250 and correspondence with the EC, such as Exhibit "B," attached hereto. The educational value of the Student Field Trips is admitted by the EC. What the issue here is determined by is how the EC interprets the provision of *HRS* § 84-11, more specifically, the terms "reasonably be inferred." To allow the EC or any agency to impose its "belief" or "decision" on the DOE, teachers, students, parents and public without the constitutionally protected due process rights being satisfied, is in violation of all relevant legal authority. The HSTA finds that it is the EC's unilateral implementation of policies, absent rules and the public's right to participate in the process that mandates the filing of this Petition for the repeal of its *de facto* Rule on Trips and/or alternatively that it engage in rule making or hold a contested case.

B. Full Disclosure of HSTA's Interest.

As referenced above, HSTA is the exclusive representative of the Department of Education Teachers. It fully supports its members in their unselfish efforts to facilitate the

policies of the DOE and to make available to public school students, the opportunity to learn from travel within the State of Hawai'i, to the "Continental" United States and to foreign countries. Our teachers believe that travel and field trips are ways the students do learn. HSTA as the certified representative of Unit 5 views this petition as fulfilling its responsibility to its membership.

VI. MEMORANDUM IN SUPPORT OF PETITION

A. Introduction

HSTA seeks this declaratory order from the EC to repeal its *defacto* Rule on Trips and to engage in proper rulemaking or alternatively to hold a contested case on the matter of the chaperone issue. The fact that the EC has failed to engage in rulemaking in compliance with the provisions of *HRS* §§ 91-1 et seq. makes its imposition of its Rule on Trips, arbitrary and capricious in violation of its members due process rights. Its members are portrayed as ethics violators due to the EC's own violations of the provisions of the HAPA and its own laws.

B. Argument

1. EC Incorrectly Concludes That Reasonable Inference Outweighs Educational Benefit.

In a letter of March 30, 2015 from Chock to Superintendent Matayoshi, Chock states as follows:

The "gifts law," HRS section 84-11, prohibits state employees from soliciting, accepting, or receiving any gift, including travel, under circumstances where it can reasonably be inferred that the gift is given to influence the employees in the performance of the employees' official

duties or is intended as a reward for official action on the employees' part. In our view, free travel packages, stipends, "points," other benefits, and free orientation trips for new Group Leaders are all prohibited "gifts."

Notwithstanding the "educational benefit" of the trip proffered by King Intermediate educators and the Complex area Superintendent, we believe there is a reasonable inference that the free travel and other related benefits are offered to the teachers to "influence" their official actions or as "reward for their official actions." . . .

We recognize that the trips offer a unique and valuable educational experience for the students. Moreover, we further recognize the work the teachers who accompany the students on the trip perform in terms of both conducting lessons and serving as chaperones. However, the purpose of the State Ethics Code is to preserve public confidence in state employees and the State Ethics Commission is mandate to construe the ethics laws to promote high standards of ethical conduct in state government. . . .

March 30, 2015 letter, attached hereto as Exhibit "C," without attachments, at 4 and 6.

Clearly the dispositive language the EC has relied upon is "reasonably be inferred that the gift is intended to influence." *HRS* §84-11. The question is without rules how does the EC and/or its staff arrive at the conclusion that the provision of the free trip is to influence by inference the teacher to take the trip. It fails to first acknowledge that the teacher does not decide who will take the trip, the parents do. The EC refuses to give weight to, although it does concede, that the teachers conduct lessons and act as chaperones on the trip. However, no matter how "unique and valuable the educational experience" may be, the EC has determined it would violate public confidence. The *Constitution* at Article XIV does state, "[t]he people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government." However, though the *Constitution* does entrust the administration of the Code of Ethics to the Ethics Commission, the Code itself is adopted by the Legislature of the State of Hawai'i as required by the voters of the State of Hawai'i.

The laws of this State and its case law, make very clear that public participation such as by rulemaking is very critical to public confidence. Petitioner finds it troubling that the EC would impose its balancing test and or its own standard without having conducted any rulemaking or a contested case to conclude that the chaperone trips can be reasonably inferred that it is a gift and intended to influence a teacher who is performing an unselfish service to the students of his/her class.

2. The Memorandum Of August 4, 2015 Is A Rule.

HRS § 91-1 (4) defines a “Rule” as follows:

“Rule” means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The terms does not include regulations concerning only the internal management of an agency and not affecting private rights or procedures available to the public, nor does the terms include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda.²

The leading authority on the issue of rule-making is *Aguilar v. HHA*, 55 Hawaii 478, 489-490 (1974). The Hawai`i Supreme Court has made clear that it will not interpret the provisions of the Hawai`i Administrative Procedures Act (“HAPA”) to even give government the “appearance of being arbitrary and capricious.” Cases have held that an agency’s failure to

² Other relevant sections to the definition of “Rule” are: **HRS** § 91-1 (1) which defines “Agency” as “each state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, except the legislature of judicial branch”; and **HRS** § 91-8 addresses “Declaratory rulings by agencies.” It provides that “[a]ny interested person may petition an agency for a declaratory order as to the applicable of any statutory provision or any rule or order of the agency.”

In the same year that *Aguiar* was decided, the Hawai'i Supreme Court also decided *Town v. Land Use Commission*, 55 Hawai'i 538 (1974). The Court discussed at length and in detail the importance of compliance with HAPA. It also made clear that unless the language of the statute clearly exempts HAPA, the agency must comply or its action will be determined to be null and void. *Id.* at 544-545. *Town* would also be supportive of the conclusion that the facts of this case would warrant rulemaking and if not, then a contested case hearing would have to be held. *Id.* at 548.

Rule-making is to provide for the public to participate in matters of general applicability. *Aguiar*, 55 Hawaii at 482. From the media coverage, there is no question, that parents, students, teachers and the DOE are concerned with the EC's *de facto* Rule on Trips. The authorities of clear, Exhibit "A" must be repealed until the EC engages in rulemaking.

3. Gifts are not per se violations.

Yet another reason for rule-making is that to receive gifts are not, per se, violations or prohibited. This is clear by the fact that *HRS* §84-11.5 sets forth a reporting requirement of gifts in excess of \$200. The fact that there is a reporting requirement and also definition of "excluded" gifts means there is no absolute prohibition from accepting gifts. Where the dispute arises is in the question of whether it can "reasonably inferred" that it [the gift] was intended to influence. Rules are mandated under HAPA to ensure that these terms are not arbitrarily and capriciously defined and acted upon by the agency personnel. This is what HSTA contends has occurred here.

Within the Code of Ethics, if the benefit is "available to or distributed to the public generally without regard to the official status of the recipient" then it is not a reportable

Within the Code of Ethics, if the benefit is “available to or distributed to the public generally without regard to the official status of the recipient” then it is not a reportable gift under *HRS* §84-11(d) (5). If it is not a reportable gift, then it cannot be a per se violation. As stated above, if in fact that the free trip is contingent upon ten (10) students/parents is a benefit that is generally available to big groups that travel. It is not unique to teachers who take these field trips. Moreover, the persons who truly make the trips happen are the parents or students who pay for the trips. No teacher can or would force or otherwise exert any pressure on the parents to sign up for the trip. This is, as the EC admits, is a unique and valuable educational experience, but subject to the economic situation of each family.

The facts of this case, requires an analysis as to how the EC arrives at the reasonable inference that a free trip for the teacher would influence the parents decision to send their child on this trip. After all, it is not mandatory and it is voluntary subject to each family’s financial situation.

4. Fair Treatment Law Is Not Violated.

Reference was made to the fact that the free trip may be “unwarranted privilege” in violation of the fair treatment law. The question is what is meant by an “unwarranted privilege?” The EC concedes that the teacher will conduct lessons and also act as a chaperone on this trips. These trips would not be authorized by the DOE if it did not comply with Policy 2250. The DOE must determine that “the derived educational benefits are clearly linked to and support ongoing standards-based classroom studies.” Given the benefits identified by the BOE as the constitutionally mandated policy maker for education in this state, how can the field trips and chaperone be an “unwarranted privilege?” If the public were participate in rule making on

what is meant by “unwarranted privilege” or “reasonably infer” in the context of field trips and chaperones, the consensus would be that the free trip is not a prohibited gift.

5. EC Violated Its Own Statutory Time Frame.

The EC is not above the law. *HRS* §84-31(a) (2) requires as a DUTY of the EC to “render advisory opinions.” The EC is required to render the advisory opinion within thirty (30) days after the request is filed with the EC. The failure to render the advisory opinion within the designated time period, “it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the code of ethics.” *Id.*

From the Statement of Facts, it is clear that requests were made and continued to be made by the DOE personnel. The law requires that for the failure to act in the required time, the determination must be made that there is no violation of the code of ethics. In Supreme Court also addressed the issue of compliance with time lines in *Town*. When the time periods are clearly set forth in the law as it is here and in *Town*, the action was deemed null and void for failure to comply with the requirements under the law. It is also evident that by Superintendent Matayoshi’s letter, Exhibit “B” at 5 that she raised the time delay and the requirements under the law.

6. Alternatively, Petitioner Requests A Contested Case Hearing.

Petitioner in the alternative requests a Contested Case Hearing. A contested case is defined in *HRS* § 91-1 (5) as follows: “[c]ontested case’ means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an

opportunity for agency hearing.” An “agency hearing” is defined in *HRS* § 91-1 (6) as follows: “[a]gency hearing’ refers only to such hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14.” The various agenda items of the EC which discussed this issue do not qualify as an “agency hearing” because no right to appeal from an agency decision and order follows. *HRS* § 91-14 and *Bush v. Hawaiian Homes Commission*, 76 Hawai`i 128 (1994).

In the relatively recent case of *Kaleikini v. Thielen*, 124 Hawai`i 1 (2010), the Supreme Court discussed at length when a contested case shall be held. It is when it is required by rule, statute and/or to ensure constitutional due process. *Kaleikini* at 29. There is no doubt that the constitutional due process rights are the Petitioner acting for its members are being violated absent the protections afforded by HAPA. Also reference is also made to the *Town* decision and how the link was made that if it is not rulemaking then it is a contested case. The Hawai`i Supreme Court has continually found that when an agency is found to have acted in an arbitrary and capricious manner, it is a violation of the party’s due process rights.

Notwithstanding, the *de facto* Rule on Trips cannot stand in that it has been arrived at in violation of HAPA whether it be for the failure to engage in rulemaking or for failure to have a contested case. In addition, the EC violated its own statute by failing to issue an opinion in the time required.

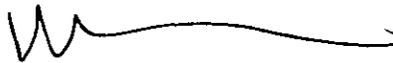
VII. CONCLUSION

For the reasons set forth above, HSTA respectfully request the EC grant its petition for a declaratory order and repeal its MEMORANDUM of August 4, 2015 as null and void for failure to comply with the provisions of HAPA. The EC must engage in rulemaking for its "statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy." Alternatively, Petitioner requests a contested case hearing on this matter in that it clearly violated the constitutional due process rights of its members.

DATED: Honolulu, Hawai'i. August 24, 2015.



COLLEEN HANABUSA
Attorney for Petitioner
HAWAII STATE TEACHERS ASSOCIATION

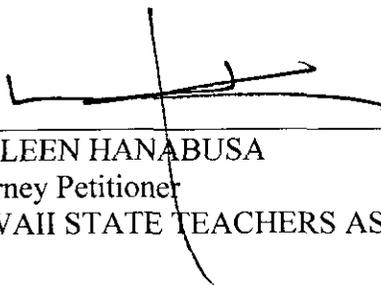


WILBERT HOLCK
Executive Director of Petitioner
HAWAII STATE TEACHERS ASSOCIATION
(In Compliance with *EC Rules* § 21-6-6)

3. Attached as Exhibit "C" to this Petition is a true and correct copy of a March 30, 2015 letter from the Hawaii State Ethics Commission to Kathryn S. Matayoshi, Superintendent the Department of Education. This Exhibit is without attachments.

I declare under penalty of perjury under the laws of the State of Hawai`i that the foregoing is true and correct.

DATED: HONOLULU, HAWAII. August 26, 2015.



COLLEEN HANABUSA
Attorney Petitioner
HAWAII STATE TEACHERS ASSOCIATION



HAWAII
STATE
ETHICS
COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

MEMORANDUM

Date: August 4, 2015
To: Department of Education Teachers
From: Hawaii State Ethics Commission
Subject: Free Travel Offered to Teachers By Travel Companies

The State Ethics Code¹ prohibits Department of Education ("DOE") teachers and other employees ("teachers") from accepting free travel and other benefits from tour companies for serving as chaperones on student educational trips. More specifically, teachers who are involved in planning the trip itinerary and selecting the tour company, promoting the trip to students and their parents, deciding who will chaperone the students, and requesting DOE approval of the trip cannot accept free travel and other benefits from the tour company.

The Hawaii State Ethics Commission ("Commission") is issuing this memorandum to help teachers who intend to serve as chaperones on upcoming trips organized through tour companies understand the application of the State Ethics Code to the free travel and to help prevent teachers from acting in a manner that is contrary to state law.

The Commission is aware that teachers have received free travel and other benefits from tour companies for trips that have already occurred. The Commission also is aware that teachers have been offered free travel and other benefits from tour companies for a number of upcoming trips that are planned or are being planned, including trips for which students have already paid. The Commission will discuss each situation separately.

I. Travel Already Completed

- A. The Commission will take no action against teachers for accepting free travel and other benefits from tour companies for student educational trips that occurred before July 31, 2015, i.e., the travel was completed before July 31, 2015.

¹ Hawaii Revised Statutes ("HRS") Chapter 84.

Exhibit "A"

- B. Teachers who accepted free travel and other benefits from tour companies for student educational trips that occurred after June 1, 2014, must report the travel and other benefits that they received on a Gifts Disclosure Statement² filed with the Commission, as explained below:
1. For trips that occurred between June 1, 2014 and June 1, 2015, teachers must report the travel and other benefits they received from the tour company on a Gifts Disclosure Statement filed with the Commission no later than September 15, 2015.³
 2. For trips that occurred after June 1, 2015, teachers must report the travel and other benefits they received from the tour company on a Gifts Disclosure Statement filed with the Commission no later than June 30, 2016.

The Gifts Disclosure Statement form and instructions are available on the Commission's website at http://ethics.hawaii.gov/gifts_form/. The following is an example of how to properly report travel and other benefits received from a tour company on a Gifts Disclosure Statement:

- | | |
|---|---|
| 1. Donor: <u>XYZ Education Tour Company</u>
Gift (Description): <u>Washington, DC and NY City Educational Trip</u> | Date Received: <u>3/22/15</u>
Value/Cost: <u>\$3,500</u> |
| 2. Donor: <u>XYZ Educational Tour Company</u>
Gift (Description): <u>Stipend</u> | Date Received: <u>3/22/15</u>
Value/Cost: <u>\$150</u> |
| 3. Donor: <u>XYZ Educational Tour Company</u>
Gift (Description): <u>iPad</u> | Date Received: <u>2/25/15</u>
Value/Cost: <u>\$400</u> |
| 4. Donor: <u>XYZ Educational Tour Company</u>
Gift (Description): <u>Group Leader Orientation Travel (NY City)</u> | Date Received: <u>1/17/15</u>
Value/Cost: <u>\$800</u> |

The "Value/Cost" of the travel is the fair market value of the trip, which includes the cost of airfare, lodging, meals, admissions, gratuities, travel insurance, and other covered expenses. For the trip, the "Date Received" is the departure date. Any benefit received from the tour company in addition to the trip should be reported as a separate entry. Other benefits include separate "orientation" travel; a stipend; and other personal gifts, such as an iPad.

² HRS section 84-11.5.

³ Gifts Disclosure Statements for the June 1, 2014 through June 1, 2015, gifts reporting period were due on June 30, 2015. Therefore, a Gifts Disclosure Statement for this gifts reporting period must be filed as soon as possible, but no later than September 15, 2015.

If you have any questions regarding filing a Gifts Disclosure Statement, please contact the Commission's office at (808) 587-0460.⁴

II. Upcoming Trips (Travel That Was Not Completed Before July 31, 2015)

With regard to upcoming student educational trips (i.e., travel that was not completed before July 31, 2015), including trips that are already planned and scheduled and trips for which students have already paid, the Commission reminds teachers that the State Ethics Code prohibits teachers from accepting free travel and other benefits from the tour companies if the teachers were involved in planning the trip itinerary and selecting the tour company, promoting the trip to students and their parents, deciding who will chaperone the students, and/or requesting DOE approval of the trip.

Teachers who accept free travel and other benefits after July 31, 2015, that are prohibited under the State Ethics Code may be subject to action by the Commission.

The Commission's position as reflected in this memorandum does not prohibit, and is not intended to be interpreted to prohibit, trips that are planned; the State Ethics Code simply prohibits teachers from accepting the free travel and other benefits offered by the tour companies for these trips.

The Commission has offered to assist the DOE develop policies and procedures to address the State Ethics Code issues associated with the acceptance of free travel as discussed above, including possible ways to fund the teachers' travel for upcoming student educational trips. The Commission anticipates that the DOE will inform teachers and parents about upcoming trips and the policies and procedures that the DOE may implement to address the Commission's concerns regarding the free travel.

If you have questions regarding how teachers and others may raise funds to pay for the teachers' travel, please submit your questions, including any fundraising proposals you have, in writing, to:

Virginia Chock, Hawaii State Ethics Commission, at ethics@hawaiiethics.org

and a copy to:

Malia Espinda, DOE Government Affairs Specialist, at malia_espinda@notes.k12.hi.us.

Thank you very much for your cooperation.

⁴ We recommend that teachers who accepted travel and other benefits from tour companies consult their tax advisors as to whether the value of the free travel and other benefits they received must be reported as income for tax purposes. See *Taxable and Nontaxable Income*, Publication 525 (2014), Department of the Treasury, Internal Revenue Service.



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

OFFICE OF THE SUPERINTENDENT

May 26, 2015

Hawaii State Ethics Commission
American Savings Bank Tower
1001 Bishop Street, Suite 970
Honolulu, HI 96813

Aloha Chair and Members of the Hawaii State Ethics Commission:

Thank you for this opportunity to discuss the ethical questions that have been raised regarding public school teachers and employees "free-travel" as it relates to Hawaii's "gift law," Hawaii Revised Statute (HRS), Section 84-11.

In May 2014, staff from the Department of Education's Castle-Kahuku Complex Area placed a request for ethics guidance to the Hawaii State Ethics Commission (Ethics Commission) about a trip being planned by King Intermediate for March 2015. The first response from the Ethics Commission came to the Complex Area in January 2015 in the form of individual phone calls with questions and requests for documents. Subsequently, the teacher who was involved was informed by the Ethics Commission that a formal "inquiry" had been filed about King's planned trip.

On February 9th, 2015, Department of Education (Department) Complex Area Superintendent Lea Albert (CAS Albert) was informed by Ethics Commission staff attorney, Ms. Virginia Chock, that the State Ethics Code prohibits teachers and other school employees from accepting free travel, stipends, and other benefits from a private educational tour company.

On February 17, 2015, CAS Albert and staff from Superintendent Kathryn Matayoshi's office met with Ethics Commission Executive Director Leslie Kondo and Ms. Chock to further discuss the issue. Although Mr. Kondo stated to CAS Albert that he wanted to "be helpful", the "inquiry" quickly escalated through tone and questioning to what CAS Albert characterized as an interrogation.

On February 18, 2015, the Ethics Commission met and discussed this as agenda Item 8 ("Free Trips To Teachers Who Chaperone Student Educational Tours"). In the audience was a Department staff member who was asked to observe the meeting, take notes about the discussion, and subsequently reported back to the Superintendent. During this meeting, Mr. Kondo was noted as verbalizing to the Commission members "The free travel was considered by the State Ethics Commission staff to be a prohibited gift, but it was too late to nix the trips" and "The Ethics Commission would not be pulling the plug on trips already planned, but for the future, it is a prohibited gift."

Exhibit "B"

On February 19, 2015, Mr. Kondo transmitted an email to Department staff that stated:

“Yesterday, we informed the State Ethics Commission of the advice we had given you, including our position that, because of the timing of the scheduled travel, it may be unreasonable and detrimental to prohibit the teacher-chaperones from accepting the free travel for this year’s Spring Break trip. As we said, we will memorialize our advice in a letter to the Superintendent. We, however, advise you that, for this year’s trip, we believe that it is inappropriate for the teacher-chaperones to accept: (1) any “stipend” or other payment beyond the tour package that is offered to the students and parents; and (2) any “points” that may be used for personal travel, rewards or personal benefits.”

On March 30, 2015, Ms. Chock authored a written guidance by the Ethics Commission to the Department. This guidance was transmitted via email to Hawaii News Now reporter, Keoki Kerr, on March 31, 2015 by Mr. Kondo prior to the Department receiving the guidance. The Department first learned of the guidance after received an inquiring email from Mr. Kerr on April 1, 2015. The Ethics Commission transmitted the guidance to the Department later that morning. In the guidance, the Department was advised that teachers and other school employees were prohibited from accepting free travel, stipends, and other benefits from a private educational tour company under the State Ethics Code for the following summarized reasons:

- 1) Notwithstanding the “educational benefit” of a trip, there is reasonable inference that free travel is offered to teachers and other employees to “influence” or “reward” their action in selecting the private educational tour company.
- 2) The teachers or employees are personally taking an official action in the selection of the company, not a principal or other DOE official, and are personally benefiting from the action through the “gift” of free travel. There is “reasonable inference” that the “gift” influences or rewards the personal action taken by the teacher. This negative impact of the “reasonable inference” has been deemed by the Ethics Commission to be more significant than the “educational benefit” derived by the students.
- 3) Concern about violations of the “fair treatment law”, HRS Section 84-13, has also been raised, suggesting that teachers and other employees have used their official position to obtain unwarranted privileges, exemptions, advantages, contracts, or treatment for themselves or others by being personally involved in the selection of the private educational tour company.

Despite these prohibited practice findings, in consideration that the trip under review had already been planned and was weeks away, the Ethics Commission guidance specifically provided an allowance for that trip and other educational trips already planned for the year. The wording from the guidance stated “we issued the advice prospectively, i.e., with respect to educational trips that may be considered for next year and thereafter.” The guidance concludes that it is the Ethics Commission understanding that there were similar trips organized throughout the school system,

and requested that the Department disseminate the March 30th guidance throughout the DOE Complex Areas.

With this substantial communications as the basis of the Department's understanding that the prohibited practice guidance would be prospective for the following year, Superintendent Matayoshi advised all complex area superintendents that the Ethics Commission had allowed for all planned school trips to proceed, however, the following guidelines would be imposed:

- 1) Any planned travel could not be conducted with company in which a teacher or school employee maintains a personal interest;
- 2) Completion and submission of a gift disclosure form within the one-year period required by the Ethics Commission; and
- 3) No acceptance of any related extra gifts (i.e., "points", ipads, etc.).

In March 2015, two teachers at the same school but at a different area complex submitted gift disclosure forms to the Ethics Commission for an upcoming trip. These teachers and their school principal then faced intense questioning by Ethics Commission staff. The school principal contacted the Superintendent's office and union representative at HGEA relaying that she felt intimidated.

On May 7, 2015, a meeting was convened between Ms. Chock, Superintendent Matayoshi, and a number of Department of Education and Department of the Attorney General staff to address this new inquiry and to continue discussions about the prohibited practice. Mr. Kondo did not attend this meeting.

On May 12, 2015, the Department received a letter from Ms. Chock informing the Department that all teachers and employees involved in similar trips planned for this year would be immediately subject to the Ethics Commission's questioning. The letter plainly stated that the Ethics Commission would not provide assurances that teachers and staff under question would not be subject to administrative penalties. An extensive 41-question "Student Trip Questionnaire" accompanied this letter, with instructions that it be disseminated to appropriate teachers and other employees, with an expected submittal date of May 20th, eight days later.

As this was a different message from the Ethics Commission than had been previously understood through its March 30th guidance, the Department sent a response letter to Ms. Chock on May 13, 2015 seeking a clear statement from the Ethics Commission that could be disseminated to teachers and principals.

On May 15, 2015, a response was provided by Mr. Kondo to the Department, objecting to the Department's understanding of the prospective application of the guidance and the statements he made on numerous occasions. This letter went on to further invoke HRS, Section 84-36, that the Department was required to cooperate and assist the Ethics Commission in the performance of its statutory duties, strongly urging the Department's cooperation.

On May 18, 2015, the Department followed with a letter suggesting the use of the Ethics Commission's own "Request for Guidance Regarding Travel Expenses Paid by Non-State Entities" form, which is the general form used by the Ethics Commission to analyze state employee and legislative free travel. The Department felt that this form might be less intimidating to teachers and staff than the 41-questions in the "Student Trip Questionnaire" and it followed standard Ethics Commission practice. In this letter, the Department also requested a cover letter be developed by the Ethics Commission to clearly explain the gift-law and the reasons for the collection of the information.

On May 19, 2015, a letter from Ms. Chock informed the Department that if the Department were to proceed in using the "Request for Guidance Regarding Travel Expenses Paid by Non-State Entities" form, the Ethics Commission would expect that those replying still answer the 41-questions, or the Ethics Commission staff would need to follow-up with those questions. There was no response, in writing, to the Department's request for a cover letter. However, in a subsequent phone exchange, Ms. Chock informed the Department that there would be no cover letter provided. After further discussion with Department staff, Ms. Chock did agree to extend the deadline for the submittal of Student Travel Questionnaire from May 20th to May 29th.

On May 20, 2015, the Department disseminated its own cover letter and the Student Trip Questionnaire to DOE teachers and school employees. The Department clearly stated that all employees were obligated to comply with completing the questionnaire if they were participating in a student trip. With the Student Trip Questionnaire and cover letter now dispersed to the appropriate personnel, the Department anticipates numerous questions and concerns that may be raised by teachers, school employees, families, and students about how the questionnaire may impact their upcoming trips.

As the Department sought clarification and clear guidance from the Ethics Commission, the Board of Education (BOE) also met to review its own related policies for applicability. The first, Policy 105.15, Field Trips and Student Travel, supports travel beyond school campuses to enhance learning for students in Hawaii's public schools. It states:

Schools are encouraged to promote travel within the State of Hawaii, to the continental United States, and to foreign countries as part of their educational program. Field trips and travel shall be permitted only when the derived educational benefits are clearly linked to and support ongoing standards-based classroom studies. Schools shall be cognizant of the safety and welfare of all participants on field trips and student travel and shall have contingency plans to address unexpected developments.

The second related policy, Policy 201.2, Accountability of Employees, states:

In furtherance of the requirements of applicable state law as it relates to education, the Board of Education and the Department of Education strategic plan, and other relevant policies, rules, regulations and procedures, it is the policy of the Board of Education (Board) that all Department of Education (Department) employees at school, complex area, and state levels comply with and implement Board policies and Department rules, regulations, and procedures. All Department

employees will be held accountable for failure to comply with or implement Board policies or Department rules, regulations, or procedures.

Any employee who is found to have violated this policy or other policies, laws, rules, regulations, procedures, guidelines, or directives may be subject to disciplinary action, up to and including termination of employment from the Department consistent with applicable Board and Department policies, regulations, rules, collective bargaining agreements, and other civil service laws, rules, and regulations.

The Board of Education continues to support travel for students. The BOE is prepared to work with the Ethics Commission to put in place policies that address any state ethics concerns.

Overall, the Department has a number of concerns as a result of this particular process that the Ethics Commission has imposed over the past few months.

The Department is concerned that that the Ethics Commission was substantially delayed in its response to the initial King Intermediate inquiry. The discussion with CAS Albert came over nine months later. This is not aligned with statutory timelines imposed on the Ethics Commission in HRS Section 84-31 (a)(2), which states (italicized emphasis added):

“(2) It shall render advisory opinions upon the request of any legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the code of ethics. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the code of ethics. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such persons in the request for an advisory opinion;”

Nevertheless, the Department continued to engage in the discussion with the Ethics Commission. However, throughout this dialogue, the Department does not consider that the “free travel” for teachers and other school employees is a personal benefit and does not motivate their selection of the tour company. The teachers and other school employees volunteer to chaperone these types of experiences to extend educational opportunities for Hawaii’s public school students, some of whom might not otherwise experience national or international travel. This closely aligns with Board of Education Board Policy 105.15, Field Trips and Student Travel, promoting and encouraging travel opportunities for students to enrich their education. Voluntary participation by the teachers and other school employees is not a personal benefit, but rather the students and families are who realize the personal, positive, and progressive educational impact of such travel.

The Department has been frustrated with the lack of consistency, clarity, and timeliness in the Ethics Commission guidance. We are concerned by the intensity and contentiousness of the inquiry process by the Ethics Commission staff with Department staff. The Department is also concerned

about the lack of consideration for the time required to complete a 41-item questionnaire and the 10 calendar day time frame for response, especially at the end of the school year when school deadline pressures are heightened.

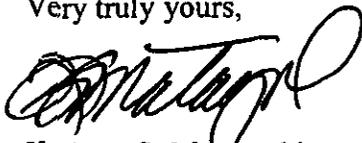
Above all, the Department is most concerned about the impact this may impose upon families and students who may not be able to complete this year's travel plans, as a direct result of this review process by the Hawaii State Ethics Commission.

Therefore, the Department respectfully requests the following considerations:

- 1) Hold any Ethics Commission review or action related to teacher or other school employee travel for trips already planned this year, consistent with the Department's understanding of the March 30th guidance;
- 2) For future consideration, review the interpretation of "gift" as it relates to the educational experience; and
- 3) For any future ethical issues as they relate to the Department, develop a process that communicates concerns and findings, presented in a respectful and clear manner to prevent confusion and frustration.

Thank you for this opportunity to provide testimony. I look forward to answering any questions.

Very truly yours,



Kathryn S. Matayoshi
Superintendent

KSM:me



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

March 30, 2015

Kathryn S. Matayoshi
Superintendent
Office of the Superintendent
Department of Education
P.O. Box 2360
Honolulu, Hawaii 96804

Re: Free Trips to Teachers who Chaperone Student Educational Tours

Dear Superintendent Matayoshi:

In response to a request for ethics guidance from an employee in the Castle-Kahuku Complex Area Superintendent's office, our office recently advised Lea Albert, the Castle-Kahuku Complex Area Superintendent ("CAS Albert") and Wendy Matsuzaki, the King Intermediate School ("King Intermediate") Principal, that, in our opinion, the State Ethics Code prohibited teachers and other school employees who were chaperoning King Intermediate students on a school approved trip, from accepting free travel, stipends, and other benefits from the private educational tour company that was selected to help organize the trip.¹

Because it is our understanding that teachers at other Department of Education schools may be accepting the same or similar gifts relating to school trips, we are informing you of the guidance to CAS Albert and Principal Matsuzaki.

Facts

The facts, as provided to us by CAS Albert, Principal Matsuzaki, and the King Intermediate Student Services Coordinator, are as follows:

- King Intermediate teachers, as they appear to have done in prior years, organized and arranged for an educational tour to Washington, D.C., and New York City around the time of spring break, for interested King Intermediate eighth grade students.

¹ This advice was issued to CAS Albert and Principal Matsuzaki by the staff of the State Ethics Commission ("Commission"). The Commission's staff discussed this matter with the Commission, who agreed with the advice.

Exhibit "C"

- The trip is not mandatory or a required part of the curriculum but, rather, an "enrichment" activity offered to any student who is interested.
- This year, over 50 eighth graders each paid over \$2,600 to go on the trip. The departure date was March 10 and the return date was March 18, 2015.² The travel group included five King Intermediate employees: the Student Services Coordinator, three eighth grade teachers, and a teacher's aide. The group also included about 10 parents, each of whom paid \$2,900 for their travel expenses.
- The tour this year was organized through Education First Explore America ("EF"), a private travel company that offers educational trips to students.
- We learned that, over the years, King Intermediate has received unsolicited information from various travel companies that advertise student educational tours to Washington, D.C., New York City, and other locations. We were informed that educational tours to Washington, D.C., and New York City relate to the eighth grade curriculum.
- It appears that the selection of EF as the travel company for this year's trip was an informal decision made by the King Intermediate Student Services Coordinator and a few King Intermediate teachers among themselves, without implementing any formal procurement procedures, and without the involvement of the principal.
- It appears that this informal selection method has been used in the past and that EF has been the choice of travel company for more than one trip. It also appears that at least one other company was used for a prior King Intermediate trip.
- King Intermediate teachers who are interested in and/or willing to accompany the students and serve as chaperones plan and organize the trip.
- EF offers one free travel package for every 10 students who pay for a trip.
- EF touts itself as a company that offers "the best free-place ratio" for schools. (Attachment A, p. 2.)

² Spring break started in the school week beginning March 16, 2015.

- King Intermediate teachers who accompany the students on the tour and serve as chaperones receive the free travel packages. The teachers implement lessons relating to the tour sites that are visited. In some instances, school employees other than teachers receive the free travel package.³
- This year, the value of the trip per adult was \$2,900, which covered airfare, hotel accommodations, breakfasts and dinners, overnight hotel security, a "full service traveler support team," 24-hour "on-tour" emergency support, illness and accident insurance coverage, and all entrance fees to the sites visited and gratuities. (Attachment A.)
- It appears that EF also offered each chaperone a stipend, although the school did not inform us of the amount or intended purpose of the stipend.
- In addition, we learned that a chaperone can earn "points" from EF by participating in a tour, which can be applied toward obtaining personal benefits from EF. It also appears that EF has offered items such as iPads to the teachers.
- EF relies on a "Group Leader" or contact person from King Intermediate to promote the trip and disseminate informational material about the trip to the parents.⁴ This year's Group Leader is King Intermediate's Student Services Coordinator. This person served as an EF Group Leader on at least one King Intermediate student educational tour in the past, in her capacity as a teacher.
- EF offers every new Group Leader a free orientation weekend trip to New York City or Boston, to experience a tour firsthand, attend seminars on educational travel, and meet EF student travel staff.
- The Group Leader and teachers promote and generate interest in the trip by having informational meetings with the parents.

³ It appears that in one instance in the past, the previous King Intermediate principal received a free trip. This year, the King Intermediate Student Services Coordinator and a teacher's aide (in addition to three teachers) were to receive the free trips. It is our understanding that the Student Services Coordinator participated in prior trips in her capacity as a King Intermediate teacher.

⁴ It does not appear that the Group Leader or any King Intermediate teacher involved in selecting EF for the tour is employed by EF.

- Also, on behalf of EF, the Group Leader disseminates informational and promotional material about the trip, prepared by EF, to the parents, including a letter, on EF's letterhead. For a prior trip, the Group Leader's name was printed on EF's letterhead as the signatory of the letter. (Attachment B.) The letter regarding the 2015 trip identified the Group Leader in the body of the letter and was signed by EF's sales manager. (Attachment A.)
- For a prior tour, the Group Leader presented an EF PowerPoint slide show to parents. The Group Leader's name appeared on the title slide. (Attachment C.)⁵
- The Group Leader and teachers also organize fundraising activities to help defray the cost of the trip for the students.⁶
- We were informed that the trip must be approved by the principal and the Complex Area Superintendent to ensure that the trip curriculum is aligned with the DOE's core standards. (Attachment E.) It also appears that the State Superintendent's Office may have approved trips in the past. (Attachment G.)

Application of the State Ethics Code

Based on our understanding of how the trip is currently organized and arranged, we believe that the State Ethics Code, Chapter 84, Hawaii Revised Statutes ("HRS") prohibits the teachers and other school personnel from accepting free travel packages, stipends, "points," and other benefits, including free orientation trips for New Group Leaders, from EF. The "gifts law," HRS section 84-11, prohibits state employees from soliciting, accepting, or receiving any gift, including travel, under circumstances where it can reasonably be inferred that the gift is given to influence the employees in the performance of the employees' official duties or is intended as a reward for official action on the employees' part. In our view, free travel packages, stipends, "points," other benefits, and free orientation trips for new Group Leaders are all prohibited "gifts."

Notwithstanding the "educational benefit" of the trip proffered by King Intermediate educators and the Complex Area Superintendent, we believe there is a reasonable inference that the free travel and other related benefits are offered to the teachers to "influence" their official actions or as a "reward" for their official actions.

⁵ See also EF's promotional "School Board & Administration Booklet." (Attachment D.) We do not know whether this booklet was part of the material the Group Leader was expected to disseminate on behalf of EF.

⁶ Any parent who goes on the trip is expected to pay for himself or herself with personal funds.

Specifically, a group of teachers who is interested in and/or willing to chaperone the students on an out-of-state tour organize and arrange the travel. On their own, they choose the destination; select the private travel company; send information home to parents about the trip (sometimes, even on the travel company's letterhead); and organize and conduct meetings with parents to promote the trip. The travel company generates revenue based on the number of students and parents who decide to participate in the tour. For the 2015 trip, the teachers estimated the amount that the travel company would receive for 50 students and 10 parents to be \$160,250 (Attachment F). For the 2014 trip, the travel company was estimated to receive \$161,370 (Attachment G); and for the 2013 trip, the total estimated amount for the travel company was \$202,000 (Attachment H).

For every 10 students who pay for a trip, the travel company offers a free trip and, apparently, other benefits as well, to a teacher. The more students who purchase a trip, the more free trips are offered to the teachers. Moreover, it appears that, but for the free trip, many teachers may not be interested or willing to go on the trip.⁷ Thus, there is an incentive for the teachers to promote the trip.

As we understand the situation to be, the teachers, not King Intermediate's principal or some other DOE official, are responsible for the above described decisions relating to the selection of the tour, the selection of the travel company, and the promotion of the trip. Stated differently, the King Intermediate teachers, personally, are taking official action with respect to the travel company. These same teachers are also receiving a substantial "gift," i.e., free tour packages, stipends, and other personal benefits. We believe that there is a reasonable inference that the "gift" is offered to influence or reward the teachers' actions. In our view, the reasonable inference is not outweighed or otherwise negated by the "educational benefit" or "educational purpose" associated with the trip.

The teachers' activities also raise concerns under HRS section 84-13, the "fair treatment law." This section of the State Ethics Code prohibits state employees from using or attempting to use the employees' official position to obtain unwarranted privileges, exemptions, advantages, contracts, or treatment for themselves or others. By their involvement in selecting the travel company and promoting the tour, as described above, there is an appearance that the teachers are using their positions to obtain an "unwarranted" benefit or advantage for themselves; specifically, the free travel, the stipends, and other benefits.

Our office advised CAS Albert and Principal Matsuzaki that, based on the facts as described to us, the King Intermediate teachers' actions with respect to selecting the trip destination, selecting the private travel company, deciding who will accompany the students; "promoting" the trip to the students and parents; and, finally, accepting the free trips and other benefits they "earned" or were otherwise offered by engaging in those

⁷ We were informed that the school does not have funds to pay the teachers' travel expenses.

Superintendent Kathryn S. Matayoshi
March 30, 2015
Page 6 of 6

activities, appeared to be prohibited under the State Ethics Code. However, because this year's trip was only weeks away and there was a delay on the part of our office in issuing the advice as well as a delay on the part of King Intermediate and the Castle-Kahuku Complex in providing us with complete and accurate information, we issued the advice prospectively; i.e., with respect to educational trips that may be considered for next year or thereafter. Although our office did not take any action against the King Intermediate employees for accepting the free trip to Washington, D.C. and New York City from EF this year, we advised them against accepting any stipends, "points," or other items from EF relating to this year's trip.

We wish to emphasize that the State Ethics Code does not prohibit educational trips for students. We recognize that the trips offer a unique and valuable educational experience for the students. Moreover, we further recognize the work the teachers who accompany the students on the trip perform in terms of both conducting lessons and serving as chaperones. However, the purpose of the State Ethics Code is to preserve public confidence in state employees and the State Ethics Commission is mandated to construe the ethics laws to promote high standards of ethical conduct in state government. In light of how educational trips are currently organized and arranged, we believe that the State Ethics Code prohibits school employees from accepting free trips and other benefits from the travel company.

It is our understanding that, over the years, teachers from DOE schools besides King Intermediate have organized similar educational trips for students through travel companies and have received free trips and other benefits from the travel companies. Therefore, we ask your assistance in disseminating the guidance we have provided in this letter to other DOE Complex Areas/schools. Should you have any questions as to how DOE teachers and other employees might participate in student educational trips without raising concerns under the State Ethics Code, please do not hesitate to contact our office for guidance.

Thank you for your assistance and cooperation in this matter.

Very truly yours,



Virginia M. Chock
Staff Attorney

VMC/af

Attachments A – H

c: Tom Hutton, Executive Director, State Public Charter School Commission