

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter, “Agreement”) is by and between Petitioner-Appellant HAWAII STATE TEACHERS ASSOCIATION (“HSTA”), as the organization certified by the Hawaii Labor Relations Board to represent Bargaining Unit 5 employees, and Appellee Hawaii State Ethics Commission (“Ethics Commission”). HSTA and Ethics Commission are sometimes referred to herein collectively as the “Undersigned Parties.”

WHEREAS, HSTA, through its attorneys, filed a Petition for Declaratory Order or Alternatively for a Contested Case, Case # OTH-15-00480 (hereinafter “Petition”) on August 26, 2015 with the Ethics Commission, which was thereafter appealed to the Circuit Court of the First Circuit, CV 15-1-2453-12 (RAN); and

WHEREAS, the decision in CV 15-1-2453-12 granted and denied HSTA’s administrative appeal but ruled that the Ethics Commission violated Hawaii Revised Statutes chapter 91 by failing to engage in rulemaking and invalidated Advisory Opinion 2015-1 (August 19, 2015) and the August 5, 2015 Memorandum entitled “Free Travel Offered to Teachers by Travel Companies; and

WHEREAS, in order to avoid the further expense and risk of litigation, and to provide clarity for HSTA’s members in the immediate future regarding their ability to organize, promote, and chaperone student travel, the Undersigned Parties now desire to mutually and finally resolve and compromise all issues and claims related to the Petition;

NOW, THEREFORE, in consideration for the mutual promises, covenants and conditions contained herein, the Undersigned Parties hereby agree as follows:

1. DEFINITIONS:

- a. “Chaperone” refers to a Teacher who travels with students as part of a Student Educational Tour and who is not required to pay for some or all of her/his personal travel costs such as airfare and lodging.
- b. “Department of Education” refers to the State of Hawaii Department of Education and its respective employees, insurers, reinsurers, administrators, trustees, past, present and future officers, directors, partners, shareholders, attorneys, members, predecessors, agents, successors in interest, trustees, subrogees, and assigns.
- c. “Student” refers to a student attending a Department of Education school.
- d. “Student Educational Tour” refers to travel in which Tour Companies selected by Teachers provide travel services, most commonly to the continental United

States or internationally, and where one or more Teachers can travel with Students as a Chaperone provided that a certain/sufficient number of Students (or their parents/guardians) pay to participate. “Student Educational Tour” does not include travel that is organized by and paid for by the Department of Education (such as conferences and trainings).

- e. “Teacher” means and includes all members of Bargaining Unit 5 represented by HSTA, in their official capacities as employees of the Department of Education.
 - f. “Tour Companies” includes private for-profit or non-profit individuals or organizations that offer travel services (including but not limited to transportation, lodging, meals, tours, and so on) for a fee.
2. CONSIDERATION: The full, sufficient, and complete consideration for the promises, covenants and conditions contained in the Agreement includes the following:
- a. Policies regarding Student Educational Tours: Until such time as the law is changed, either by statute or by administrative rule, the Ethics Commission shall not consider a Teacher’s participation as a Chaperone on a Student Educational Tour (that is, the Teacher’s acceptance of transportation, lodging, and/or other travel-related services – without paying the full market value of those transportation services – while supervising Students on a Student Educational Tour), and/or a Teacher’s planning of such a Student Educational Tour, to be a violation of the Hawaii State Ethics Code, Hawaii Revised Statutes chapter 84.
 - b. Assumptions of Student Educational Tours:
 - i. Educational purpose: Any proposed Student Educational Tour shall satisfy the Department of Education’s current or future policy on travel and field trips (which currently provides that the trip “satisfy educational benefits [that] are clearly linked to and support ongoing standards-based classroom studies”). Teachers shall comply with any and all Department of Education internal protocols.

- ii. Transparency in offers to students and their parents/guardians:
 - (a) At the time Students are offered the opportunity to purchase a Student Educational Tour, Students and their parents/guardians shall be informed that one or more Teachers (or other Department of Education employees) may travel for free, as Chaperones, as part of the Student Educational Tour. Students and their parents/guardians shall be informed as to the ratio of free Chaperone trips to the number of paid students (that is, they shall be informed that – for example – for every 10 paid Students, one Chaperone will be provided with free airfare, lodging, etc.). Students and their parents/guardians shall likewise be informed regarding any additional rewards that the Department of Education may receive as a result of the Student Educational Tour (*see* section iii, below).
 - (b) Teachers may not sign their names to (nor grant permission for their names to be used on) promotional materials created or provided by a Tour Company; Teachers may forward promotional materials to Students and their parents/guardians in accordance with subparagraph 1, above.
- iii. Additional rewards for Teachers:
 - (a) Teachers shall not accept any rewards (including but not limited to tangible rewards such as iPads or other personal electronics, additional free/discounted travel (other than the Student Educational Tour itself), and/or points/credit towards other rewards) from Tour Companies, except as approved by the Department of Education. With respect to individual frequent flyer miles the Teacher may accrue while traveling, Teachers shall comply with existing or future regulations regarding State employees' receipt of frequent flyer miles while traveling. *See, e.g.,* Comptroller's Memorandum 1992-9.
 - (b) The Department of Education may, but need not, establish policies and procedures by which any rewards offered by Tour Companies would become the property of the Department of Education. Teachers may take all necessary steps to transfer these rewards from the Tour Company to the Department of Education. Nothing

herein shall limit the Department of Education's authority or discretion in determining how to utilize any property it acquires through this process.

- iv. Avoidance of conflicts of interest in selecting tour company: Teachers who consider selecting a Tour Company in which they (or a family member) have a financial interest should contact the Ethics Commission for guidance so as to avoid any violations of conflict of interest / fair treatment laws; the Ethics Commission retains the authority to investigate and charge individuals with violations of these provisions as appropriate.
 - c. Ethics Commission's powers and duties: Except as otherwise set forth in this Agreement, nothing herein shall limit the Ethics Commission's authority to engage in rulemaking, issue advisory opinions, publish educational materials, adjudicate individual cases as set forth by law, or seek changes in existing law, nor shall anything herein limit the Ethics Commission's authority to investigate/adjudicate cases involving Student Educational Tours that do not comply with the guidelines set forth herein.
3. PURPOSE AND INTENT: The purpose of this Agreement is, among other things, to allow Department of Education students to enjoy the rich opportunities that come from educational travel and to allow Teachers to plan and to serve as Chaperones.
 4. DISMISSAL: At the time this Agreement is fully and finally executed, the Undersigned Parties will execute and lodge a Stipulation of Dismissal With Prejudice and Order, pursuant to Hawaii Rules of Civil Procedure, Rule 41(a)(1)(B). A copy of this Agreement shall be attached to the Stipulation of Dismissal and shall be filed on the public record (subject to the Court's approval, if necessary).
 5. JOINT PRESS RELEASE: At the time this Agreement is fully and finally executed, the Undersigned Parties shall issue a joint statement to the press/public explaining that the case has been resolved so as to allow Teachers to continue to participate in Student Educational Tours.
 6. UNDERSTANDINGS AND AGREEMENTS: The Undersigned Parties acknowledge, agree and understand that:
 - a. No Admission of Liability: It is understood and agreed that this is a compromise settlement of the matters described herein and that neither this

Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed as an admission of liability or wrongdoing of any kind by any of the Undersigned Parties.

- b. Complete and Voluntary Agreement: This Agreement constitutes the entire understanding of the Undersigned Parties on the subjects covered. The Undersigned Parties acknowledge that neither of them, nor their agents or attorneys, have made any promise, representation or warranty whatsoever, either express or implied, written or oral, which is not contained in this Agreement, for the purpose of inducing the other Undersigned Party to execute this Agreement, and the Undersigned Parties acknowledge that they have executed this Agreement in reliance only upon such promises, representations and warranties as are contained herein, and are executing this Agreement voluntarily and free of any duress or coercion.
- c. Modification: This Agreement may not be modified in whole or in part except by an agreement in writing signed by the Undersigned Parties.
- d. Knowledge: The Undersigned Parties make this compromise with full knowledge of the facts, are represented by counsel, and are fully informed as to the terms, content and effect of this Agreement.
- e. Expenses, Fees and Costs: Each of the parties shall bear all of its own costs, expenses, and fees, including attorneys' fees, incurred by the party up to and including the date of execution of this Agreement.
- f. Hawaii Law: This Agreement shall be construed and the rights of the parties determined in accordance with the laws of the State of Hawaii.
- g. Severability: If any term, provision or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining terms, provisions, and covenants of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- h. Effective Date: The releases and other provisions of this Agreement shall become effective only upon the mutual execution of this document by and between the Undersigned Parties.

- i. Additional Documents and Actions: The Undersigned Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
- j. No Party Deemed Drafter: In the event of any future action or proceedings relating to this Agreement neither of the Undersigned Parties shall be considered to have drafted this Agreement for purposes of construing the intent of this Agreement.
- k. Counterparts: This Agreement may be executed and delivered by way of electronic signature and transmission or facsimile transmission, and may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than a single counterpart containing the respective signatures of each of the Undersigned Parties.
- l. Authority to Agree to and to Execute Provisions Herein: The Undersigned Parties represent and warrant that they have the authority to agree to, and to execute, all the terms specified herein.


Dated: _____

Wilbert Holck, Executive Director
Hawaii State Teachers Association
Petitioner-Appellant

Dated: _____

Colleen Hanabusa
Counsel for Petitioner-Appellant
Hawaii State Teachers Association

Dated: 12/22/16 _____



Susan N. DeGuzman, Chair
Hawaii State Ethics Commission

Dated: 12/22/16 _____



David O'Neal, Vice Chair
Hawaii State Ethics Commission

Dated: 12/22/16 _____



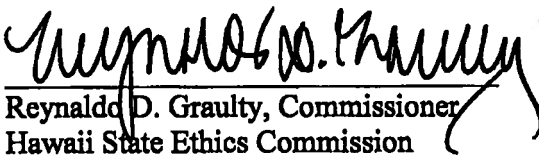
Ruth D. Tschumy, Commissioner
Hawaii State Ethics Commission

Dated: 12/22/16 _____




Melinda Wood, Commissioner
Hawaii State Ethics Commission

Dated: 12/22/16 _____



Reynaldd D. Graulty, Commissioner
Hawaii State Ethics Commission

Dated: 12/22/16 _____




Daniel M. Gluck
Executive Director and General Counsel
Hawaii State Ethics Commission

Dated: _____


Robyn B. Chun, Deputy Attorney General
Counsel for Appellee
Hawaii State Ethics Commission

Dated: 12/21/16



Wilbert Holck, Executive Director
Hawaii State Teachers Association
Petitioner-Appellant

Dated: 12/21/16



Colleen Hanabusa
Counsel for Petitioner-Appellant
Hawaii State Teachers Association

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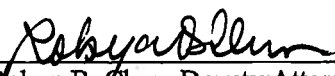
Dated: _____

Reynaldo D. Grouly, Commissioner
Hawaii State Ethics Commission

Dated: _____

Daniel M. Gluck
Executive Director and General Counsel
Hawaii State Ethics Commission

Dated: 12/22/16



Robyn B. Chun, Deputy Attorney General
Counsel for Appellee
Hawaii State Ethics Commission