Office of the Ombudsman
State of Hawaii
Fiscal Year 2014-2015
Report Number 46

As a service to the public provided by the legislature, the Office of the Ombudsman receives and investigates complaints from the public about injustice or maladministration by executive agencies of the State and county governments.

The Ombudsman is a nonpartisan officer of the legislature. The Ombudsman is empowered to obtain necessary information for investigations, to recommend corrective action to agencies, and to criticize agency actions; but the Ombudsman may not compel or reverse administrative decisions.

The Ombudsman is charged with: (1) accepting and investigating complaints made by the public about any action or inaction by any officer or employee of an executive agency of the State and county governments; and (2) improving administrative processes and procedures by recommending appropriate solutions for valid individual complaints and by suggesting appropriate amendments to rules, regulations, or statutes.

By law, the Ombudsman cannot investigate actions of the governor, the lieutenant governor and their personal staffs; the legislature, its committees and its staff; the judiciary and its staff; the mayors and councils of the various counties; an entity of the federal government; a multistate governmental entity; and public employee grievances, if a collective bargaining agreement provides an exclusive method for resolving such grievances.

Kekuanaoa Building, 4th Floor
465 South King Street
Honolulu, HI 96813
Phone: 808-587-0770
Fax: 808-587-0773
TTY: 808-587-0774

Neighbor island residents may call our toll-free numbers.

Hawaii	**974-4000**
Maui	**984-2400**
Kauai	**274-3141**
Molokai, Lanai	**1-800-468-4644**

Telephone extension is 7-0770
Fax extension is 7-0773
TTY extension is 7-0774

email: complaints@ombudsman.hawaii.gov
website: www.ombudsman.hawaii.gov

State of Hawaii

Report of the Ombudsman

For the Period July 1, 2014 - June 30, 2015
Report No. 46

Presented to the Legislature
pursuant to Section 96-16 of
the Hawaii Revised Statutes

December 2015

Mr. President, Mr. Speaker, and Members of the
Hawaii State Legislature of 2016:

In accordance with Section 96-16, Hawaii Revised Statutes, I am pleased to submit the report of the Office of the Ombudsman for fiscal year 2014-2015. This is the forty-sixth annual report since the establishment of the office in 1969.

The Office of the Ombudsman is committed to its role as a link between the people and their government. We continue our efforts to independently and impartially investigate citizen complaints against government and to improve the level of public administration in Hawaii, and hope that these efforts help to strengthen the public's trust and confidence in government.

I would like to thank the Governor, the Mayors of the various counties, and the State and County department heads and employees for their ongoing cooperation and assistance in our efforts to resolve citizen complaints and their shared desire to ensure the fair and impartial delivery of government services.

I would also like to personally thank First Assistant Mark Au and the professional and support staff of the Office of the Ombudsman for their continued commitment and dedication to the mission and purpose of our office.

Respectfully submitted,

ROBIN K. MATSUNAGA
Ombudsman

December 2015

TABLE OF CONTENTS

Page

LETTER OF TRANSMITTAL

I. THE YEAR IN BRIEF 1

Total Inquiries Received 1
Two-Year Comparison 1
Staff Notes 2
Outreach Efforts 3

II. STATISTICAL TABLES 5

1. Numbers and Types of Inquiries 5
2. Means by Which Inquiries Are Received 7
3. Distribution of Population and Inquirers by Residence 9
4. Distribution of Types of Inquiries by Residence of Inquirers 11
5. Means of Receipt of Inquiries by Residence 13
6. Distribution and Disposition of Jurisdictional Complaints by Agency 15
7. Distribution and Disposition of Substantiated Jurisdictional Complaints by Agency 17
8. Distribution of Information Requests 19
9. Distribution of Non-Jurisdictional Complaints 21
10. Inquiries Carried Over to Fiscal Year 2014-2015 and Their Dispositions, and Inquiries Carried Over to Fiscal Year 2015-2016 23

III. SELECTED CASE SUMMARIES 25

Appendix

CUMULATIVE INDEX OF SELECTED CASE SUMMARIES 53

Chapter I

THE YEAR IN BRIEF

Total Inquiries Received

During fiscal year 2014-2015, the office received a total of 4,083 inquiries. Of these inquiries, 3,106, or 76.1 percent, may be classified as complaints within the jurisdiction of the office. The remaining inquiries consisted of 390 non-jurisdictional complaints and 587 requests for information.

There was a slight increase in the number of jurisdictional complaints and information requests. However, there was a decrease in non-jurisdictional complaints.

A comparison of inquiries received in fiscal year 2013-2014 and fiscal year 2014-2015 is presented in the following table.

TWO-YEAR COMPARISON

Years	Total Inquiries	Information Requests	Non-Jurisdictional Complaints	Jurisdictional Complaints		
				Total Jurisdictional	Prison Complaints	General Complaints
2014-2015	4,083	587	390	3,106	1,848	1,258
2013-2014	4,114	574	469	3,071	1,676	1,395
Numerical Change	-31	13	-79	35	172	-137
Percentage Change	-0.8%	2.3%	-16.8%	1.1%	10.3%	-9.8%

Staff Notes

Analyst Melissa Chee celebrated 10 years of State service in August 2014. Ms. Chee joined our office in November 2010. She was previously employed at the Education Division, Department of the Attorney General. Congratulations and thank you, Ms. Chee, for your years of outstanding public service and dedication to our office.

In October 2014, Administrative Services Officer Carol Nitta celebrated 30 years of State service. Ms. Nitta has been with the Office of the Ombudsman since September 2009. Prior to coming on board, she worked at the Legislative Reference Bureau. Over the years, she has come to realize that the Ombudsman's Office is a unique and special place to work.

Every election year, the Office of the Ombudsman provides a representative to serve as a Counting Center Official during the primary and general elections. Analyst Gansin Li was this year's representative. Mr. Li attended several informational sessions to prepare himself as an official observer to ensure that the processes within each section to which he was assigned were executed properly and smoothly. The primary election was held on August 9, 2014 and the general election on November 4, 2014.

Ombudsman Robin Matsunaga and Analysts Vanda Lam and Marcie McWayne attended the 35th Annual Conference of the United States Ombudsman Association (USOA) in Lincoln, Nebraska, from October 15-17, 2014. The conference provided attendees with "modern" ideas and tools to make changes, address challenges, and seize opportunities. One of the workshops, titled "Walking the Walk: Creative Tools for Transforming Compassion Fatigue and Vicarious Trauma," helped attendees to understand the emotional strain of working with those suffering from traumatic events and to recognize self-care strategies. Ms. Lam and Ms. McWayne also attended a pre-conference workshop on October 14, 2014, titled "Understanding and Managing High Conflict Personalities," which demonstrated effective ways of handling persons with high conflict personalities in conflict resolution settings.

Ombudsman Matsunaga, President of the USOA Board of Directors, served as one of four instructors of the USOA's two-day New Ombudsman Training pre-conference workshop. This workshop is designed for individuals who are relatively new to the role of government ombudsmen. The instructors provided attendees with practical information on the basic techniques of intaking, interviewing, investigating, and writing reports. Attendees also participated in small group discussions and role playing, where they were able to apply the techniques to a case study.

At the end of the fiscal year, our office staff consisted of Ombudsman Robin Matsunaga; First Assistant Mark Au; Analysts Herbert Almeida, Melissa Chee, Rene Dela Cruz, Alfred Itamura, Yvonne Jinbo, Vanda Lam, Gansin Li, Marcie McWayne; Administrative Services Officer Carol Nitta; and support staff Sheila Alderman, Debbie Goya, and Sue Oshima.

Outreach Efforts

Our office participated in the 30th Annual Hawaii Seniors' Fair – The Good Life Expo, which was held September 26-28, 2014, at the Neal Blaisdell Center. During this three-day event, we were one of over 275 exhibitors showcasing the services we provide via display booths, brochures, and free advertising items. Approximately 25,000 attendees were offered free flu shots, various entertainment on stage, cooking demonstrations, and exercise classes.

In January 2015, six members of the Office of Shanghai Municipal Government visited our office to discuss our office's operation and management. Also discussed was the establishment of a technical support system similar to the 311 customer service hotline that many cities in the United States have been providing to their citizens. Although Hawaii has not established a 311 customer service hotline, Ombudsman Matsunaga shared his understanding of the advantages and disadvantages of establishing a 311 service hotline.

The Hawaii United Okinawa Association held its Senior Health & Fitness Fair at the Hawaii Okinawa Center on June 19, 2015. We joined 43 other exhibitors to educate the seniors and other attendees of the services that we provide. The fair was open to the public free of charge and offered educational and wellness workshops throughout the day. The seniors participated in exercise sessions such as tai chi, yoga, and jazzercise. Representing our office were Ombudsman Matsunaga and Administrative Services Officer Carol Nitta.

Chapter II

STATISTICAL TABLES

For all tables, the percentages may not add up to a total of 100% due to rounding.

TABLE 1
NUMBERS AND TYPES OF INQUIRIES
Fiscal Year 2014-2015

Month	Total Inquiries	Jurisdictional Complaints	Non-Jurisdictional Complaints	Information Requests
July	341	261	32	48
August	327	256	32	39
September	379	293	32	54
October	366	273	47	46
November	322	249	32	41
December	384	306	29	49
January	329	256	24	49
February	331	245	31	55
March	304	218	28	58
April	346	254	37	55
May	322	241	32	49
June	332	254	34	44
TOTAL	4,083	3,106	390	587
% of Total Inquiries	--	76.1%	9.6%	14.4%

TABLE 2
MEANS BY WHICH INQUIRIES ARE RECEIVED
Fiscal Year 2014-2015

Month	Telephone	Mail	Email	Fax	Visit	Own Motion
July	294	27	15	0	3	2
August	242	73	8	0	4	0
September	319	35	17	0	8	0
October	321	28	17	0	0	0
November	275	23	22	0	1	1
December	329	37	14	0	4	0
January	276	37	12	0	4	0
February	283	43	3	0	2	0
March	265	17	18	0	4	0
April	276	42	21	1	6	0
May	276	23	19	1	3	0
June	278	27	24	0	3	0
TOTAL	3,434	412	190	2	42	3
% of Total Inquiries (4,083)	84.1%	10.1%	4.7%	0.0%	1.0%	0.1%

TABLE 3
DISTRIBUTION OF POPULATION AND INQUIRERS BY RESIDENCE
Fiscal Year 2014-2015

Residence	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City & County of Honolulu	991,788	69.9%	2,865	70.2%
County of Hawaii	194,190	13.7%	500	12.2%
County of Maui	163,108	11.5%	409	10.0%
County of Kauai	70,475	5.0%	63	1.5%
Out-of-State	--	--	246	6.0%
TOTAL	1,419,561	--	4,083	--

*Source: The State of Hawaii Data Book 2014, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 1.06, "*Resident Population, by County: 2000 to 2014.*"

TABLE 4
DISTRIBUTION OF TYPES OF INQUIRIES
BY RESIDENCE OF INQUIRERS
Fiscal Year 2014-2015

	TYPES OF INQUIRIES					
	Jurisdictional Complaints		Non-Jurisdictional Complaints		Information Requests	
Residence	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
C&C of Honolulu	2,230	71.8%	215	55.1%	420	71.6%
County of Hawaii	374	12.0%	53	13.6%	73	12.4%
County of Maui	338	10.9%	34	8.7%	37	6.3%
County of Kauai	40	1.3%	7	1.8%	16	2.7%
Out-of-State	124	4.0%	81	20.8%	41	7.0%
TOTAL	3,106	--	390	--	587	--

TABLE 5
MEANS OF RECEIPT OF INQUIRIES
BY RESIDENCE
Fiscal Year 2014-2015

Residence	Total Inquiries	Means of Receipt					
		Telephone	Mail	Email	Fax	Visit	Own Motion
C&C of Honolulu	2,865	2,465	242	112	2	41	3
% of C&C of Honolulu	--	86.0%	8.4%	3.9%	0.1%	1.4%	0.1%
County of Hawaii	500	468	6	25	0	1	0
% of County of Hawaii	--	93.6%	1.2%	5.0%	0.0%	0.2%	0.0%
County of Maui	409	369	20	20	0	0	0
% of County of Maui	--	90.2%	4.9%	4.9%	0.0%	0.0%	0.0%
County of Kauai	63	48	7	8	0	0	0
% of County of Kauai	--	76.2%	11.1%	12.7%	0.0%	0.0%	0.0%
Out-of-State	246	84	137	25	0	0	0
% of Out-of-State	--	34.1%	55.7%	10.2%	0.0%	0.0%	0.0%
TOTAL	4,083	3,434	412	190	2	42	3
% of Total	--	84.1%	10.1%	4.7%	0.0%	1.0%	0.1%

TABLE 6
DISTRIBUTION AND DISPOSITION OF JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2014-2015

Agency	Juris-dictional Complaints	Percent of Total	Completed Investigations		Discon-tinued	Declined	Assisted	Pending
			Substan-tiated	Not Substan-tiated				
State Departments								
Accounting & General Services	20	0.6%	0	12	1	4	2	1
Agriculture	4	0.1%	0	2	0	2	0	0
Attorney General	41	1.3%	0	5	2	16	17	1
Budget & Finance	58	1.9%	8	16	8	15	10	1
Business, Economic Devel. & Tourism	9	0.3%	0	0	6	0	2	1
Commerce & Consumer Affairs	39	1.3%	1	16	7	11	2	2
Defense	3	0.1%	0	0	0	3	0	0
Education	91	2.9%	4	14	20	38	1	14
Hawaiian Home Lands	7	0.2%	0	2	1	2	0	2
Health	98	3.2%	6	32	22	28	6	4
Human Resources Development	7	0.2%	1	2	1	2	1	0
Human Services	294	9.5%	17	80	47	92	48	10
Labor & Industrial Relations	77	2.5%	5	17	13	28	10	4
Land & Natural Resources	43	1.4%	2	13	7	16	2	3
Office of Hawaiian Affairs	0	0.0%	0	0	0	0	0	0
Public Safety	1,991	64.1%	88	521	124	1,105	106	47
Taxation	50	1.6%	1	5	11	24	9	0
Transportation	48	1.5%	1	11	7	24	2	3
University of Hawaii	11	0.4%	0	3	3	5	0	0
Other Executive Agencies	6	0.2%	0	5	0	1	0	0
Counties								
City & County of Honolulu	144	4.6%	8	23	23	72	11	7
County of Hawaii	35	1.1%	1	10	5	15	1	3
County of Maui	22	0.7%	1	5	4	10	0	2
County of Kauai	8	0.3%	0	2	1	5	0	0
TOTAL	3,106	--	144	796	313	1,518	230	105
% of Total Jurisdictional Complaints	--	--	4.6%	25.6%	10.1%	48.9%	7.4%	3.4%

TABLE 7
DISTRIBUTION AND DISPOSITION OF SUBSTANTIATED JURISDICTIONAL COMPLAINTS BY AGENCY
Fiscal Year 2014-2015

Agency	Substantiated Complaints	Complaints Rectified	Not Rectified/ No Action Necessary
State Departments Accounting & General Services	0	0	0
Agriculture	0	0	0
Attorney General	0	0	0
Budget & Finance	8	5	3
Business, Economic Devel. & Tourism	0	0	0
Commerce & Consumer Affairs	1	1	0
Defense	0	0	0
Education	4	4	0
Hawaiian Home Lands	0	0	0
Health	6	6	0
Human Resources Development	1	1	0
Human Services	17	17	0
Labor & Industrial Relations	5	4	1
Land & Natural Resources	2	2	0
Office of Hawaiian Affairs	0	0	0
Public Safety	88	82	6
Taxation	1	1	0
Transportation	1	1	0
University of Hawaii	0	0	0
Other Executive Agencies	0	0	0
Counties City & County of Honolulu	8	8	0
County of Hawaii	1	1	0
County of Maui	1	1	0
County of Kauai	0	0	0
TOTAL	144	134	10
% of Total Substantiated Jurisdictional Complaints	--	93.1%	6.9%
% of Total Completed Investigations (940)	15.3%	14.3%	1.1%

TABLE 8
DISTRIBUTION OF INFORMATION REQUESTS
Fiscal Year 2014-2015

Agency	Information Requests	Percent of Total
State Departments Accounting & General Services	15	2.6%
Agriculture	5	0.9%
Attorney General	10	1.7%
Budget & Finance	18	3.1%
Business, Economic Devel. & Tourism	5	0.9%
Commerce & Consumer Affairs	44	7.5%
Defense	0	0.0%
Education	0	0.0%
Hawaiian Home Lands	2	0.3%
Health	63	10.7%
Human Resources Development	2	0.3%
Human Services	16	2.7%
Labor & Industrial Relations	13	2.2%
Land & Natural Resources	11	1.9%
Office of Hawaiian Affairs	1	0.2%
Public Safety	55	9.4%
Taxation	4	0.7%
Transportation	7	1.2%
University of Hawaii	4	0.7%
Other Executive Agencies	19	3.2%
Counties City & County of Honolulu	66	11.2%
County of Hawaii	9	1.5%
County of Maui	5	0.9%
County of Kauai	1	0.2%
Miscellaneous	212	36.1%
TOTAL	587	--

TABLE 9
DISTRIBUTION OF NON-JURISDICTIONAL COMPLAINTS
Fiscal Year 2014-2015

Jurisdictional Exclusions	Number of Complaints	Percent of Total
Collective Bargaining	18	4.6%
County Councils	0	0.0%
Federal Government	30	7.7%
Governor	9	2.3%
Judiciary	42	10.8%
Legislature	7	1.8%
Lieutenant Governor	0	0.0%
Mayors	2	0.5%
Multi-State Governmental Entity	0	0.0%
Private Transactions	277	71.0%
Miscellaneous	5	1.3%
TOTAL	390	--

TABLE 10
INQUIRIES CARRIED OVER TO FISCAL YEAR 2014-2015 AND THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER TO FISCAL YEAR 2015-2016

Types of Inquiries	Inquiries Carried Over to FY 14-15	Inquiries Carried Over to FY 14-15 and Closed During FY 14-15	Balance of Inquiries Carried Over to FY 14-15	Inquiries Received in FY 14-15 and Pending	Total Inquiries Carried Over to FY 15-16
Non-Jurisdictional Complaints	3	3	0	4	4
Information Requests	0	0	0	0	0
Jurisdictional Complaints	165	157	8	105	113
		Disposition of Closed Complaints: Substantiated 28 Not Substan. 89 Discontinued 40 157			
TOTAL	168	160	8	109	117

Chapter III

SELECTED CASE SUMMARIES

The following are summaries of selected cases investigated by the office. Each case summary is listed under the State government department or the county government involved in the complaint or inquiry. Although some cases involved more than one department or involved both the State and the county, each summary is placed under what we believe to be the most appropriate agency.

LIST OF SUMMARIES

Page

DEPARTMENT OF BUDGET AND FINANCE

Not enforcing administrative rule regarding the reinstatement of employee-beneficiary benefits 29

DEPARTMENT OF EDUCATION

Lack of policies governing School Community Council elections 30

Principals allowed casual hire applicants to start work prior to completion of their criminal history background checks 37

DEPARTMENT OF HEALTH

Unauthorized use of State vehicles 39

DEPARTMENT OF PUBLIC SAFETY

Management of Inmate Work Furlough Program waiting list 41

Noncompliance with urinalysis procedure 43

Inmate not allowed to tithe to his church 47

CITY AND COUNTY OF HONOLULU

Nonenforcement of park rules pertaining to dog obedience classes 48

HAWAII COUNTY

Improper installation of speed humps 50

DEPARTMENT OF BUDGET AND FINANCE

(15-01029) Not enforcing administrative rule regarding the reinstatement of employee-beneficiary benefits. A State employee complained about the cancellation of his health insurance plan by the Hawaii Employee-Union Health Benefits Trust Fund (EUTF), which provides health insurance benefit plans to State and county employees and retirees.

According to the EUTF, the complainant failed to pay his health insurance premiums during the period he was on leave from work without pay. Pursuant to its administrative rule, the EUTF sent the complainant notices informing him of the shortage in payment of the premiums, the last of which provided a due date by which the shortage had to be repaid in order to avoid cancellation of the complainant's health insurance plan. The EUTF also stated that if the employee failed to pay the shortage by the due date, not only would the employee's benefits be terminated but the employee would be considered to have a break in coverage and could not be reinstated until the employee reapplied during an open enrollment period.

After the due date passed without any payment of the shortage by the complainant, the EUTF terminated his benefits. We found that the termination was reasonable because the complainant had failed to contribute his portion of the insurance premiums even after he had been notified of the shortage by the EUTF.

However, the EUTF subsequently informed us that the complainant agreed to a repayment plan for the premium contribution shortage and therefore the EUTF accommodated his request to reinstate his benefits. We initiated a new investigation concerning this action by the EUTF since the reinstatement occurred outside of the open enrollment period.

Section 4.14 of the EUTF's Administrative Rules stated:

Reinstatement of Enrollment

. . . .

(b) Contribution Shortage Cancellation. If an employee-beneficiary's enrollment in the Fund's benefit plan or plans has been cancelled under Rule 4.12(c), the employee-beneficiary's enrollment in such benefit plan or plans may be reinstated if the employee-beneficiary makes full payment of all contributions due from the

> employee-beneficiary by the date specified in the contribution shortage notice provided for in Rule 4.11. The reinstatement shall be made so that the employee-beneficiary and his or her dependent-beneficiaries shall suffer no break in coverage. <u>However, if the employee-beneficiary fails to pay all contribution shortages by the date specified in the contribution shortage notice provided for in Rule 4.11, the employee-beneficiary will suffer a break in coverage and may only apply for a new enrollment at the next open enrollment as per Rule 4.14(a)</u>. (Emphasis added.)

The EUTF acknowledged that its rules prohibited the reinstatement of benefits until an open enrollment period, but informed us that its long-standing practice had been to allow reinstatement at any time, as long as the employee paid off the shortage or at least agreed to a repayment plan.

We noted, however, that the EUTF's practice was in violation of its administrative rules. We therefore recommended that the EUTF immediately begin enforcement of its current reinstatement rule and that it amend the administrative rule if it would like to allow reinstatement at any time. The EUTF agreed to enforce its current rule. The EUTF notified its staff of the change in reinstatement procedures and notified all State and county department personnel officers that the rule would be strictly enforced.

DEPARTMENT OF EDUCATION

(14-01468) Lack of policies governing School Community Council elections. One way for the Ombudsman to evaluate an action by an agency is to determine whether that action is in accordance with existing laws, administrative rules, policies, or procedures. In our investigation of a complaint regarding a School Community Council (SCC) election at a Department of Education (DOE) elementary school, we found that the law and administrative rules did not prescribe a specific process for the elections, and that there were no polices or procedures to guide the election process. However, we did locate guidelines for SCC elections in the DOE’s “School Community Council Handbook II” (Handbook).

We conducted research on SCCs and learned that in 2004, the Hawaii Legislature passed Senate Bill No. 3238, which was enacted as

Act 51, Session Laws of Hawaii 2004 (Act 51). Act 51, also known as the "Reinventing Education Act of 2004," contained a coordinated package of initiatives to implement comprehensive education reform in Hawaii's public schools. One of these initiatives was the establishment of an SCC for each public school to strengthen the involvement of parents, the community, and other key stakeholders in the affairs of their local schools.

As a result of Act 51, Section 302A-1124, Hawaii Revised Statutes (HRS), titled "Mandate to initiate school community councils," was amended to require each public school, excluding charter schools, to create and maintain an SCC. Paragraph (e) of Section 302A-1124, HRS, stated, in part, that "each school community council shall establish policies governing the council's . . . election."

Although Section 302A-1124, HRS, directed each SCC to establish policies governing the SCC elections, we found that at the time of our investigation, ten years had passed since the passage of Act 51 without such policies being added to this particular SCC's bylaws. Thus, we sought to convince this school's SCC to establish policies governing SCC elections in order to comply with Section 302A-1124, HRS, and to allow us to better evaluate any future complaints we might receive regarding SCC elections at this particular school.

We contacted the school's principal, who by law is a member of the school's SCC, and recommended that the SCC establish policies governing its elections, as mandated by the law. The school's SCC subsequently revised its bylaws and included a section on elections. We reviewed the revised SCC bylaws and found that the policies on SCC elections addressed most, but not all, of the guidelines that were recommended in the Handbook.

The Handbook contained the following provisions regarding the elections process:

> **SCC Elections**
>
> All DOE public schools are required to hold SCC elections.
>
> **Nominations**
> **The nomination process should include:**
>
> 1. Announcements to request nominations for the SCC through school newsletters, community newspapers, bulletins, etc. The process should encourage qualified candidates to run. Information should include deadlines and the location for submitting nomination forms.

2. Identification of contact persons responsible for the nomination process.
3. Informational meetings for all interested candidates regarding qualifications, roles and responsibilities of SCC members, and procedures for nominations and elections. In addition, school newsletters may include information on each candidate.
4. Meetings at which candidates are introduced to the school community to provide voters an opportunity to meet the candidates and to provide equal time for candidates to publicize their campaigns.

The nomination committees should consider the following:

- Was there a wide solicitation for nominees?
- Were qualified candidates encouraged to run?
- Does this process promote diversity in representation?

Voting

The voting process should include:

1. Determination of a date for voting and method for counting ballots
2. Publicizing the election
3. Preparation and distribution of the ballots
4. A method of counting ballots to insure fairness and integrity
5. A formal announcement of winners to all candidates

The election committees should consider the following:

- Does the election process give everyone a fair chance at voting?
- Are election rules fair and impartial?
- Who is eligible to vote and how is their eligibility verified?
- Send a notice to the school community if a candidate ran unopposed. The candidate will fill the vacant position for the next term of office provided that the SCC nomination process was followed, and the role group chose not to send out ballots and conduct an election.

Announcement of Elected Members

A public announcement of the election results to the school community should be made. The announcement could be posted on the school's website or in a newsletter.

Vacancy

Any vacancy on the SCC shall be filled for the remainder of the un-expired term through the appointment of a duly elected alternate. If the composition of the SCC falls below legal requirements and no

alternates are available, vacancies for the un-expired term may be filled by a special election or by recommendations from the principal with selection and appointment by the SCC.

Specifically, the revised SCC bylaws lacked policies pertaining to the nomination process and the public announcement of the election results to the school community. Thus, we recommended that the SCC further revise its bylaws to incorporate policies to address these components of the election process.

Subsequently, the school's SCC added a nomination process to its bylaws and a provision for the public announcement of the election results to the school community. We believed that the school's SCC established policies for an elections process that were consistent with the process described in the Handbook. The following provisions appeared in the school's SCC bylaws regarding the elections process:

> **Election of Members and Term of Office.** There shall be elections at which the SCC members and alternates are elected every two years and shall serve for two years until their successors have been elected and qualified. Newly elected members shall assume their office at the regular meeting during the month of August.
>
> **Nominations**
>
> The Parent Community Network Coordinator (PCNC), or other designee, acts as the lead of the nomination and election process. The request for nominations will be announced in the school newsletter, school web page, community bulletin boards, and community news online forum. The announcement will include which role group is seeking nominations for election, qualifications, deadlines, and options for submitting nominations. Nominations will be routed to the PCNC. Information will be made available regarding qualifications, roles, and responsibilities of SCC members, and Bylaws which outline the nomination and election process.
>
> a. School level leaders of the teacher role group are responsible for organizing a one week nomination period, one week campaigning period, and a one week voting period.
> b. For the classified role group, the PCNC, or designee, will organize a one week nomination period, one week campaigning period, and a one week voting period.
> c. The student nomination and election processes will be conducted by student council advisors. Students who will be in the 6th grade in the upcoming year are eligible to run. Student elections will follow a one week nomination period, a one week campaigning period, and a one day voting process.

d. For the parent and community role groups, the nomination window will be 2 weeks immediately before the first Thursday of April. Candidates will then have a 2 week campaigning window which will include the opportunity to address the school community during the first Thursday in April SCC meeting.

e. Timelines for teachers, classified staff and students will be reported to the PCNC. (Timelines must reflect completion of all processes no later than the second to the last week of school.)

Candidates for the Parent Representative are ineligible if their student is in the last year of the school. (6th grade)

Parents and teachers serve a two year term beginning in odd numbered years. Non-certified personnel and community serve a two year term beginning in even numbered years. Students are elected each year.

All members, with the exception of Principal, have a two term re-election limit.

The elections will be held no earlier than March 1st and no later than May 31st of each year, with elected members to begin their term of office at the first regular meeting in August.

Elections

Election of Parent and Community Members

Election Process:

a. The election committee shall be comprised of school staff members not serving on the council or running for office, will be established prior to the election period. The election committee will advertise in the Naalehu School Community during the nomination period.

b. Ballots should be distributed to parents, one per family, in numbered envelopes with instructions to return the marked ballot to the school within specific return deadlines and in the numbered envelope. A master list of corresponding numbers and family units will be kept by a member of the Election Committee.

c. The Election Committee, comprised of school staff members not serving on the council or running for office, should match the ballot

with the school's student list, one numbered ballot per family and determine if the ballot is eligible. The ballot shall then be removed from the envelope and stored in a secure place along with the envelope it came in.

d. The Election Committee should count and record the vote. In the event a candidate wants to witness the counting of ballots, he or she is allowed to witness the process of counting but not view the actual vote on the ballots. Only candidates may observe the counting process.

e. All ballots, envelopes and the vote count should be secured and stored for 30 days following the election.

f.   In the event an eligible individual has not received a ballot and requests the opportunity to vote, a provisional ballot should be issued, prior to the counting of the ballots.

g. Elected members will be announced within one week of the elections.

Election Policies:

a. Candidates cannot give out campaign material at school or use school resources to campaign.

b. Elections must be conducted by secret ballot.

c. Candidates receiving the greatest number of votes are elected to the SCC. Candidates receiving the next greatest number of votes will be declared the duly elected alternates and shall replace elected members in the event of an unexpired term.

d. In the event of a tie for the community or parent council seat (not alternate) a run off election will occur following standard election procedure. In the event of a tie for the community or parent council seat <u>as alternate</u>, both candidates may serve as alternates. Alternates must determine rotation of who will fill in for council member when absent.

e. Ballots may be rejected if:

1. They contain votes for more candidates than in the instruction.
2. The ballot cast is dissimilar to those issued by the school.
3. The ballot is ambiguous or unclear as to which candidates they are voting for.

4. Ballots are not received at the school in the numbered envelope.
5. Ballots turned in after the deadline.

School Personnel Elections

The Principal is responsible for ensuring that a fair election has been implemented for school personnel elections. Teachers employed at the school are eligible to vote for teacher SCC representative. Non-certificated personnel employed at the school are eligible to vote for non-certificated personnel SCC Representative.

Student Elections

Students in grade 6, who receive the recommendation of school staff will be eligible to run. Students in Grade 5 and 6 will be eligible to vote for the candidates.

Special Elections

A special election may occur if both member and alternate are no longer able to fulfill their two year term. Normal election practices will be followed during a special election. The elected member will complete the designated term.

Alternates. Any seated alternate shall have voting power for the meeting at which he/she is seated. The elected alternate will be the candidate that receives the second largest number of votes.

Alternates are welcome to attend any SCC meeting. They may participate during open forum discussion, but may only vote when seated as an official role representative.

Termination of Membership. The SCC members, by affirmative vote of two-thirds, may terminate a member who is absent for three consecutive meetings.

Vacancy. Any vacancy on the SCC shall be filled for the remainder of the un-expired term through the appointment of a duly elected alternate. If the composition of the SCC falls below legal requirements and no alternates are available, vacancies for the un-expired term may be filled by a special election or by recommendations from the principal with selection and appointment by the SCC.

We believed that the SCC had taken the necessary steps to comply with Section 302A-1124, HRS, and the elections procedures the school would need to follow in the future were made available to the public.

(14-02229) Principals allowed casual hire applicants to start work prior to completion of their criminal history background checks. In the course of investigating a complaint about a specific action by an agency, we sometimes become aware of a potentially larger, possibly systemic, problem that warrants a self-initiated investigation by our office.

A casual hire employee of the Department of Education (DOE) working at a public elementary school complained that she was not timely paid. Casual hire employees of the DOE are part-time, non-salaried employees who are paid on a daily or hourly rate for the work performed.

In investigating the complaint, we learned that the complainant was not timely paid because the process that verifies whether the person seeking employment is qualified for the position and has cleared a criminal history background check was not completed. We reviewed the law and found that a criminal history background check is required of all DOE employees, including casual hire employees, who work in close proximity to children. Section 302A-601.5, Hawaii Revised Statutes, stated in relevant part:

> **Employees of the department of education and teacher trainees in any public school; criminal history record checks.** (a) The department of education . . . shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or seeking employment in any position, including teacher trainees, that places them in close proximity to children. These procedures shall include criminal history record checks in accordance with section 846-2.7.
>
> . . . .
>
> (b) The employer or prospective employer may refuse to employ, and may:
>
> (1) Refuse to issue a certificate for school administrators;
>
> (2) Revoke the certificate for school administrators;

(3) Refuse to allow or continue to allow teacher training; or

(4) Terminate the employment of any employee or deny employment to an applicant,

if the person has been convicted of a crime, and if the employer or prospective employer finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety, or well-being of children. Refusal, revocation, or termination may occur only after appropriate investigation and notification to the employee or applicant for employment of results and planned action, and after the employee or applicant for employment is given an opportunity to meet and rebut the finding.

We learned that the verification process can take from two days to as long as two months to complete and can delay the hiring of new casual hires, who are sometimes needed on short notice. In the complainant's case, we found that the school principal allowed the complainant to start work prior to the completion of the new hire verification process.

While we understood the need for principals to properly staff their schools, we believed the safety of the students was a higher priority. We were concerned about the possibility of a person being allowed to work at a school and causing harm to a student, only to subsequently fail the criminal history background check. Furthermore, based on our discussions with DOE staff, it appeared that the practice of allowing a new casual hire to begin work prior to completion of the verification process was not limited to the complainant's school. We believed the potential threat this practice posed to the safety of even one student warranted the initiation of an investigation of the DOE's hiring process for casual hires.

We contacted the DOE administration and learned that guidelines and procedures for the hiring of casual employees, which included the requirement for completion of a criminal history background check prior to an employee being allowed to work, titled "Employment Guidelines for Casual Hires in the (Casual Personnel System) for Certificated and Classified Employees" (hereinafter Guidelines), had been distributed to each DOE school. However, the DOE acknowledged that it was aware that while not widespread, casual hire employees were still being allowed to work before their background checks were completed.

We reviewed the Guidelines and found that they clearly stated that a casual hire employee shall not be allowed to work until the employee's

verification process, including the criminal history background check, is completed. Thus, we determined that the practice of allowing a casual hire employee to work prior to completion of the verification process was not a systemic problem caused by the lack of policies or procedures, but rather a problem attributed to the erroneous decision of principals or administrators to disregard the established procedures in the Guidelines.

Consequently, we recommended that a reminder be sent out to all Complex Area Superintendents and school Principals emphasizing the importance of not allowing new casual hires to begin employment until the verification process is completed. The DOE agreed with our recommendation and issued a memorandum with this information, including the following statement:

> These guidelines/procedures **must** be followed, as they are essential to the establishment of basic safeguards necessary to create a safe environment for children, the general public, and our colleagues.

It is our hope that the reminder will result in better compliance with the Guidelines and thereby help to ensure a safer environment for students.

DEPARTMENT OF HEALTH

(15-01786/15-01787) Unauthorized use of State vehicles. An anonymous caller alleged that two Department of Health (DOH) employees were regularly using State vehicles for unauthorized personal use. The complainant reported that the first employee would come to work in his personal vehicle. During his lunch break, however, the employee would drive a State vehicle to pick up his wife, who also worked for the DOH, to go home for lunch. The complainant reported that the second employee would also come to work in his personal vehicle but would go home for lunch using a State vehicle.

In our investigation of the complaints, we reviewed the pertinent laws applicable to the use of State vehicles.

Chapter 105, Hawaii Revised Statutes (HRS), pertained to “Government Motor Vehicles.” Section 105-1, HRS, stated that it is unlawful for any person to use, operate, or drive any motor vehicle owned or controlled by the State or by any county for personal pleasure or personal

use (as distinguished from official or governmental service or use) including, but not limited to, travel by or transporting of any officer or employee of the State, or of any county, directly or indirectly, from his place of service or from his work to or near his place of residence, or, directly or indirectly, from such place of residence to his place of service or to his work.

One of the exceptions to the above restriction was found in Section 105-2(4), HRS, which stated that Section 105-1, HRS, shall not apply to any officer or employee of the State who, upon written recommendation of the Comptroller, is given written permission by the Governor to use, operate, or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the State.

We also reviewed Administrative Directive No. 08-02, issued by the Governor on October 30, 2008, which stated in part:

> The purpose of this directive is to allow the State Comptroller of the Department of Accounting and General Services to administer section 4 of §105-2, Exceptions, Hawaii Revised Statutes.
>
> . . . .
>
> The authority and responsibility to approve departmental policies and <u>designated employees personal use of government vehicles is delegated to the State Comptroller of the Department of Accounting and General Services or designee</u>. In addition, the State Comptroller shall develop procedures for the application and approval for personal use of government vehicles. (Emphasis added.)

We thereafter contacted a DOH Deputy Director about the complaints. We informed him of the provisions of the law regarding the use of State vehicles, and he agreed to look into the allegations. The Deputy Director subsequently reported that the first employee being complained about admitted to occasionally using a State vehicle to pick up and drop off lunch to his wife and that the second employee being complained about was periodically using a State vehicle to go home to eat lunch. The Deputy Director reported that the employees thought they could use the vehicles for personal use during their lunch break. The Deputy Director informed the employees that personal use of a State vehicle without prior authorization was prohibited by law and thus their actions must cease immediately.

The Deputy Director subsequently issued a memorandum to all staff in the particular district health office to remind the employees that the personal use of a State vehicle is prohibited by Chapter 105-1, HRS. The

memorandum noted that, except as provided in Section 105-2, HRS, it shall be unlawful for any person to use, operate, or drive any motor vehicle owned or controlled by the State, or by any county thereof, for personal pleasure or personal use (as distinguished from official or governmental service or use). The memorandum further stated that all permits for the personal use of a State vehicle require approval of the agency's Department Head and the Comptroller.

DEPARTMENT OF PUBLIC SAFETY

(14-02787) Management of the Inmate Work Furlough Program waiting list. The Department of Public Safety (PSD) Work Furlough Program (Program) is intended to promote inmate responsibility to facilitate reintegration and eventual return to the community. An inmate in the Program is given an authorized leave of absence from a correctional facility without an escort, and time in the Program is credited toward service of the inmate's sentence. The Hawaii Paroling Authority (HPA) commonly recommends that inmates complete the Program as a prerequisite to being granted parole.

The Program is only offered at select facilities and there are almost always more inmates who are eligible to participate in the Program than there are available bed spaces at these furlough centers. As a result, the PSD created a waiting list for those inmates who are eligible to transfer to a furlough center to participate in the Program.

Several inmates who had been recommended by the HPA to participate in the Program and were placed on the Program waiting list complained that they had not been able to participate in the Program before their next scheduled parole consideration hearing, also known at the PSD as the inmate's "parole eligibility date" (PED). They also informed us that at the hearing, the HPA subsequently denied their requests for parole because they had failed to participate in the Program. We therefore initiated an investigation to determine whether the PSD was managing the Program waiting list in a reasonable manner.

The PSD informed us that inmates were placed on the Program waiting list chronologically according to their PED, with the inmate with the earliest PED at the top of the waiting list. The PSD also informed us that if an inmate was denied parole, the HPA would schedule a new PED for the

inmate (often at least 11 months in the future). The PSD informed us that when an inmate received a new PED, they would reposition the inmate on the waiting list in the appropriate chronological order.

Based on the prior complaints we received about long wait times for participation in the Program, we were concerned that the PSD practice of repositioning an inmate lower on the waiting list based on the new PED created situations where some inmates might never be able to participate in the Program, and thus likely never be approved for parole.

We shared our concerns with a PSD deputy director. The deputy director recognized the predicament that the practice created but informed us that the department also wanted to allow as many inmates as possible to participate in the Program. The deputy director explained that he believed that it was not necessary for an inmate to spend more than a few months in the Program in order to satisfy the HPA's recommendation. He further explained that placing into the Program an inmate who had a PED that was 11 months away would result in that inmate holding a space in the Program for an excessive period of time, thereby preventing other inmates from entering the Program. The deputy director therefore believed the practice of repositioning inmates on the waiting list was justified because it helped maintain a better movement of inmates through the Program.

While we noted the deputy director's concerns, we believed the practice was still inherently unfair to some inmates. Thus, we recommended that the PSD cease its practice of repositioning an inmate on the Program waiting list when the inmate received a new PED. We instead recommended the inmate's position on the waiting list not be affected by a new PED if the only reason the HPA denied parole at the last hearing and set the new PED was because the inmate did not participate in the Program. If, however, the inmate had been offered an opportunity to participate in the Program but refused, we agreed that the inmate should be repositioned on the waiting list according to the inmate's new PED. In order to address the deputy director's concerns about inmates spending excessive time in the Program while waiting to see the HPA again, we also recommended that the PSD ask the HPA to consider scheduling an early parole hearing for the inmate after the inmate has successfully been in the Program for at least a few months.

After discussing our recommendations with the HPA, the deputy director issued to the PSD staff involved with the Program waiting list the following directive "[t]o promote fairness and positive prison adjustment":

1. The outcome of the parole board's decision will not change the inmate's priority on the waiting list.

2. Reprioritization of the inmate's position on the waitlist will only be done as a result of adverse behavior by the inmate in complying with facility rules or the inmate's refusal to enter furlough.

3. Case management staff will recommend an early parole hearing to the HPA for any inmate that has served his minimum term of incarceration, completed two full months of employment and is not scheduled for a parole hearing within the next four months.

We believed the directive reasonably addressed our concerns.

(15-00690) Noncompliance with urinalysis procedure. The use of illicit drugs by inmates and detainees presents a serious threat to the safety and security of correctional facilities of the Department of Public Safety (PSD). To help maintain a drug-free correctional environment, the PSD utilizes urinalysis testing to detect the use of drugs and alcohol. Violators are subject to disciplinary sanctions and may be required to participate in substance abuse treatment programs. The PSD conducts urinalysis testing for any of the following reasons: (1) random testing; (2) for suspicion or cause; (3) in connection with a substance abuse treatment program; (4) in connection with community-based correctional programs, such as community work lines and work furlough; (5) in all cases requiring urinalysis testing as a court-ordered condition for supervised release; and (6) for security reasons with respect to transferring of inmates and detainees.

An inmate who was tested for cause complained that an adjustment committee (committee) found him guilty for use of a controlled substance because his urinalysis produced a positive result for methamphetamine. The complainant stated that his confirmatory test was not completed within 15 working days as required by PSD policy, and as such, the test result should not have been reported or recorded. He therefore believed that the committee erroneously found him guilty of the use of methamphetamine.

In our investigation, we reviewed PSD Policy No. COR.08.10, titled "Inmate/Detainee Drug Detection Program," which stated in part:

6.0 <u>PROCEDURES</u>

. . . .

.5 Confirmatory Testing.

a. Those inmates/defendants who test positive on the initial test shall be notified in writing that they may request for a confirmatory test by a certified (licensed) laboratory form PSD 8719 (see attached). Upon such a request, a confirmatory test <u>shall be conducted within 15 working days by the certified (licensed) laboratory</u>. . . . (Emphasis added.)

. . . .

15.0 <u>COMPLIANCE</u>

A positive test result that fails to meet the requirements of this policy and procedure shall not be reported or recorded.

We also reviewed staff reports and other relevant documents. According to the documents we obtained, the complainant provided a urine sample on April 8, 2013. The complainant was informed of the positive test result for methamphetamine on April 19, 2013, at which time he requested a confirmatory test. The facility received the positive result of the confirmatory test on May 22, 2013. Based on this information, it appeared that the confirmatory test was not conducted in a timely manner.

We contacted the adult corrections officer (ACO) who conducted the urinalysis for more information about the delay in receiving the confirmatory test results. The ACO informed us that the facility sent the complainant's urine sample to the certified laboratory for confirmatory testing on the same day the complainant requested it. The ACO explained that the laboratory received the complainant's urine sample but the sample had been damaged during transit, so the laboratory requested another sample. The facility sent another sample of the complainant's urine, which the laboratory received on May 13, 2013. The laboratory tested the complainant's urine sample and on May 22, 2013, reported the results to the facility.

The ACO further informed us that the Chief of Security (COS) told him that the 15-working-day period in which the confirmatory test should be conducted was met because the urine sample was sent to the laboratory within 15 working days of when the confirmatory test was requested by the inmate. Thus, the ACO considered and treated the confirmatory test as having been conducted in a timely manner.

We contacted the committee chairperson to ask if the committee considered the timeliness of the confirmatory test and whether the results

should have been considered. The chairperson informed us that the committee relied on the judgment of the ACO who conducted the urinalysis to determine whether the results should be reported. Since the reports of the initial and confirmatory test results were included in the evidence provided to the committee, and since the confirmatory test showed a positive result, the committee found the complainant guilty of the use of a controlled substance.

We disagreed with the COS's interpretation of the urinalysis policy and the committee's decision not to question whether the confirmatory test had been conducted according to policy before considering the results of the test. We therefore contacted the Institutions Division Administrator (IDA) and requested his review of the matter. We noted the complainant's argument that according to policy, since the urinalysis policy was not followed, the urinalysis results should not be reported or recorded and therefore, there was no evidence to support the guilty finding.

The IDA agreed that the facility staff misinterpreted the urinalysis policy but upheld the guilty finding because the delay was not caused by facility staff, the damage to the urine sample was out of the control of facility staff, and the confirmatory test result was positive for methamphetamine. The IDA did not believe the delay in conducting the confirmatory test affected the results of the test or adversely impacted the integrity of the urinalysis procedure.

We recognized that the complainant's case was a situation where factors outside the control of staff caused the confirmatory test to not be conducted within the 15-working-day deadline. We also noted that while the policy established a fixed time period for confirmatory testing, the law did not, and acknowledged that policies and procedures lack the force and effect of laws. Section 353-13.4, Hawaii Revised Statutes, stated:

> **Substance abuse testing of inmates.** (a) When an inmate under the custody of the department of public safety is subjected to substance abuse testing, the inmate shall be afforded the option of a confirmatory test by a licensed, certified laboratory as provided in chapter 329B. The cost of a confirmatory test shall be paid for by the State; provided that in those instances where a positive test result is confirmed, the inmate shall be charged with the cost of the confirmatory test.
>
> (b) All specimens shall be sealed and coded in the presence of the inmate and the inmate shall sign an approved form acknowledging that the specimen has been sealed and coded in the inmate's presence. The director of the

department of public safety shall establish a chain-of-custody procedure that includes a tracking form documenting the handling and storage of the specimen from collection to final disposition of the specimen.

(c) Positive test results of substance abuse testing and the availability of a confirmatory test shall be provided to the inmate in writing.

(d) A positive test result from a substance abuse test that fails to meet the requirements of this section shall not be reported or recorded.

We searched for but found no evidence to suggest that a delay in conducting the confirmatory test would cause a false positive result for methamphetamine. We also found no documentation suggesting that an inmate's right to due process would be violated if a confirmatory test was not conducted within 15 working days. Consequently, while the urinalysis policy was not followed, we were unable to find the IDA's decision to uphold the guilty finding in this particular case to be unlawful or unreasonable. We reported our findings to the complainant.

Based on our investigation of this complaint, the IDA reconsidered the basis for the 15-working-day time limit prescribed in the policy. The IDA subsequently amended the urinalysis policy to reflect more closely what the law required. The amended PSD Policy No. COR.08.10 stated in part:

6.0 <u>PROCEDURES</u>

. . . .

.5 Confirmatory Testing.

a. Those inmates/defendants who test positive on the initial test shall be notified in writing that they may request for a confirmatory test by a certified (licensed) laboratory form PSD 8719 (see attached). Upon such a request, the sample will be split with half being sent for confirmation to a certified (licensed) laboratory, and the other half being retained until the confirmatory results are obtained. . . .

. . . .

15.0 COMPLIANCE

> A positive test result from a substance abuse test that fails to meet the requirements of HRS 353-13.4 shall not be reported or recorded.

(15-01447) Inmate not allowed to tithe to his church. An inmate in the custody of the Department of Public Safety (PSD) complained that he was no longer allowed to send his church a contribution of $10 from his workline earnings, an act also known as "tithing." The facility had previously allowed him to tithe to this church from his inmate account. However, his most recent request was denied. The facility warden informed the complainant that the denial was made pursuant to a department policy prohibiting the solicitation and collection of money from inmates for organizations.

We reviewed PSD Policy No. COR.01.12, titled "Inmate Solicitation and Contributions," which stated in part:

3.0 POLICY

> .1 . . . Facilities shall not approve, solicit or become involved in the collection of monies from inmates for any organization.

We believed that the above-stated policy could be interpreted to prohibit the act of tithing, and thus we did not find the warden's decision to be contrary to the PSD policy. However, we believed such an interpretation could lead to the infringement of an inmate's religious rights.

We discussed this complaint with a PSD administrator. The administrator informed us that the department did not intend to prohibit tithing to legitimate religious organizations. The administrator further informed us that inmates should be allowed to tithe as long as they had sufficient funds in their inmate accounts and they did not have any outstanding debts, such as a victim restitution order. The administrator informed us that a revision to the policy would be drafted to clarify that facilities could allow tithing.

We reported this to the complainant and suggested that he resubmit his request to tithe. He was pleased with the outcome.

CITY AND COUNTY OF HONOLULU

(14-01149) Nonenforcement of park rules pertaining to dog obedience classes. A woman complained that the Department of Parks and Recreation (DPR), City and County of Honolulu (C&C), allowed a "dog obedience class" to be held at a county park even though this was prohibited by the C&C rules. The county park had been designated for use only by dogs on leashes. When the complainant brought the rule violation to the attention of the DPR staff, she was informed that there was no violation of the rules. The DPR declined to request the termination of the class or take any action against the dog obedience class instructor.

We reviewed C&C Administrative Rules (C&CAR) Title 19, DPR, Chapter 5, titled "Rules Governing Dogs in Public Parks."

Section 19-5-4, C&CAR, titled "Prohibition of Dogs," stated in part:

> Within the limits of any public park, it shall be unlawful for any person to permit any dog, to enter and remain within the confines of any public park. This section shall not apply to the following:
>
> (a) A dog show, dog obedience class, and dog trial shall be permitted only in a leash park by department permit.

Section 19-5-3, C&CAR, titled "Definitions," stated in part:

> "Dog obedience class" means an activity where dogs and their handlers are trained to obey rules of conduct.

Based upon our review of the C&CAR, we determined that it was unlawful for an individual to train dogs and their handlers to obey rules of conduct in any county park unless: (1) the DPR Director designated that particular area as a "leash park" and (2) the department issued a permit to the individual for that particular event.

An administrator from the park district informed us that while the park was a designated leash park, she did not believe the instructor needed a permit because this particular activity did not meet the C&CAR's definition of a "dog obedience class." The administrator also informed us that because there were no restrooms at this particular park, a permit for a dog obedience class could not be issued to the instructor. The administrator further said

that her staff found no evidence that money was being offered in exchange for participation in this activity and that the participants who were interviewed denied that they were attending a "class."

We recognized that dog handlers are likely to share information about the "rules of conduct" for dogs during informal conversations with each other while within the confines of leash and off-leash county parks. Therefore, we realized that in these types of settings a ban on every "activity where dogs and their handlers are trained to obey rules of conduct" would be challenging, if not impossible, to enforce.

However, we also believed that the particular activity in this complaint had many characteristics that distinguished it from a typical dog park encounter. According to the complainant and an article in a local newspaper about this very class, the instructor did not appear to have any dog obedience class credentials despite having held this weekly class between April and September for the past ten years. The instructor led various exercises on dog handling techniques during the class. The newspaper article also said the DPR Director claimed that this particular class was "not an official class" and thus did not require a permit. The article further reported that the director noted that there was no exchange of money and no commercial activity taking place.

Based on the characteristics of the "class" however, we found it difficult to characterize it as just a casual gathering of dog owners/handlers and their animals. We believed this activity met the definition of a "dog obedience class" and that pursuant to the DPR rules, the instructor should not be allowed to continue teaching this class without a permit to do so. We also believed that the lack of an exchange of money between the participants and instructor should not have been a factor in determining whether a permit was required as the C&CAR did not include an exchange of money as a component of the "dog obedience class" definition.

Based on the foregoing, we recommended that the DPR prohibit the instructor from teaching a dog obedience class in any county park until the instructor obtained a permit to do so. The district supervisor and the DPR Director declined to take any action against the instructor, so we wrote to the C&C Managing Director to explain why we believed this activity should not be allowed to continue. After consulting with the DPR and the Department of Corporation Counsel, the Managing Director informed us that she agreed that the activity might fall within the definition of a "dog obedience class." The Managing Director notified us that the DPR would stop the activity and notify the instructor that these kinds of classes were not allowed in a county park without a permit.

By the time we received the Managing Director's response, the dog obedience classes had concluded for the year. However, since it was possible that the classes would begin again the following year, we contacted the DPR to ask how they would notify the class instructor since the classes were often held after park staff already went home for the day. The DPR informed us that they had asked Honolulu Police Department officers who patrolled the neighborhood to assist with after-hours enforcement.

The complainant was pleased with the outcome of our investigation. We notified her that she could notify the district park office if the dog obedience class resumed.

HAWAII COUNTY

(14-00712) Improper installation of speed humps. A woman complained that the Hawaii County (HC) Department of Public Works (DPW) planned to install speed humps on the street where she lived, including one in front of her house. She said her family members had various medical problems, including a spinal injury, that would be exacerbated by the speed humps.

The HC Code authorized the DPW Director to grant or deny a request for a speed hump from the public that is made pursuant to the HC Code and in accordance with DPW's Traffic Division Administrative Rules (Administrative Rules) and regulations governing speed humps on county streets. The HC Code required that all requests for a speed hump include a petition in support of the speed hump signed by owners of the properties that abut the county street within 500 feet of the proposed speed hump. According to the Administrative Rules, the petition for a speed hump required the support of a minimum of 67% of the adjacent property owners and the support of 100% of the property owners with a speed hump being installed in front of their property. The DPW also required support by the county police and fire departments of the installation of the speed humps as a condition of approving the request.

The complainant alleged that the DPW relied on petitions that were not distributed properly to affected property owners, and thus the decision to approve the request for the speed humps was unreasonable. She alleged that the signatures on the petition included individuals who rented and did not own the affected properties. She also alleged that not all of the individuals

who signed the petition were notified of the consequences of the speed hump installation. The complainant said that the petition was presented to residents on two separate occasions and those who signed the first petition were not informed that speed humps might reduce the response times of emergency vehicles by up to 30 seconds per speed hump. She believed that some of the individuals who signed the petition would not have given their support if they had been informed of this fact. Finally, the complainant believed that due to her family's disabilities, provisions of the Americans with Disabilities Act (ADA) prohibited the installation of the speed humps.

We spoke with the DPW Director about the complaint. He believed that the Administrative Rules gave him the final authority to design, install, maintain, repair, remove, require, or otherwise administer speed humps in HC. The Director also believed that the approval of the request to install the speed humps met all of the requirements of the law. In order to evaluate the Director's decision, we obtained copies of the documents that he utilized during the review and approval of the requested speed hump installations.

During our review of the petitions, we found signatures of individuals for a number of properties who were not the owners of those properties according to county records. We brought this issue to the attention of the DPW, which subsequently acknowledged that not all of the petitions the department received were signed by property owners. The DPW reported that it would disregard the responses signed by the renters and resend the petition to the actual owners of those properties.

We also found that a number of petitions did not include information about the impact of the speed humps on emergency response times. The DPW acknowledged that some of the property owners had not been notified of the increase in emergency response times during the petition distribution process. However, the DPW reasoned that it was no longer necessary to notify all property owners about the emergency response times because the police and fire departments had already approved the installation of the speed humps.

We reviewed the responses of the police and fire departments and found that although the police chief approved the installation of the speed humps, the fire chief stated that the fire department would support the placement of speed humps as long as the affected community understood the impact the speed humps would have on emergency response times. We reported this to the DPW and questioned how the affected community would know about the impact of the speed humps on emergency response times if some of the property owners had not received a petition that included this information. The DPW concurred with our analysis and agreed to send revised petitions with this information to all property owners who previously

received petitions without the information. These property owners were thus given the opportunity to consider this information before deciding whether to sign the petition. We subsequently learned that in the end, more than 67% of the property owners supported the installation of the speed humps.

We also learned that the complainant had filed a complaint with the county ADA coordinator about the planned installation of the speed humps. The ADA coordinator found that instead of installing five speed humps on the complainant's street, the DPW planned to install three speed humps. This would allow the complainant to travel seven alternate routes without having to cross over a speed hump. The ADA coordinator noted that there were no ADA standards applicable to the design and construction of speed humps and, as such, found insufficient evidence to support the complainant's case. After reviewing the applicable federal laws, we found the ADA coordinator's findings to be reasonable.

At the conclusion of our investigation, we informed the DPW Director that we believed that his agency had taken reasonable steps to act upon our recommendations and to address the complainant's concerns.

Appendix

CUMULATIVE INDEX OF SELECTED CASE SUMMARIES

To view a cumulative index of all selected case summaries that appeared in our Annual Report Nos. 1 through 46, please visit our website at www.ombudsman.hawaii.gov and select the “Cumulative Index” link from the homepage.

If you do not have access to our cumulative index via the Internet, you may contact our office to request a copy.