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September 5, 2019

VIA EMAIL

Mr. Kamealoha Smith

Ms. Kanoë Ahuna
Executive Director
Kanuikapono Public Charter School

Re: Personnel File (U APPEAL 20-2)

Dear Mr. Smith and Ms. Ahuna:

The Office of Information Practices (OIP) opened an appeal at the request of Mr. Kamealoha Smith to determine whether the Kanuikapono Public Charter School's (KPCS) partial denial of his request for his personnel records violated Part III of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA). This appeal file was randomly assigned to OIP's experimental alternative appeal resolution track pursuant to H.R. 104, Regular Session of 2019, in which the Hawaii House of Representatives requested that OIP conduct an alternative appeal resolution pilot program and prepare "short, informal, unenforceable guidance" for files assigned to the alternative appeal resolution track within two weeks of receiving the agency's final response. A copy of H.R. 104 is enclosed with this letter.

In this appeal, Mr. Smith asked whether (1) KPCS properly denied his request for access to his personnel records for the 2010-2011 school year on the grounds that the school did not maintain those records, and (2) for the records that KPCS did maintain, KPCS did not need to accommodate his request that he not be left alone in the room with the Human Resources (HR) clerk to review the records because Mr. Smith claims he was previously assaulted by the HR clerk.

Normally, when an agency's response to a record request states that no responsive records exist and that response is appealed, OIP assesses whether the agency's search for a responsive record was reasonable. OIP Op. Ltr. No. 97-8 at 4. A reasonable search is one "reasonably calculated to uncover all relevant documents" and an agency must make "a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Id.* at 5 (citations omitted).

In its letter of August 19, 2019, KPCS said that Mr. Smith's personnel file for the 2010-2011 school year was transferred to the Kawaikini Public Charter School when he was hired by that school. Furthermore, no employment records were transferred to KPCS when he was rehired in 2018. KPCS

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suggests that Mr. Smith make a record request to the last school he was employed at before returning to KPCS.

Since KPCS has not provided any information to determine whether KPCS conducted any search, OIP is inclined to find that KPCS did not conduct a reasonable search. If KPCS has conducted a search, it should provide an explanation to OIP, within ten business days of the date of this letter, as to what steps KPCS took in searching for the records that KPCS could not find. If it has not conducted a search, KPCS should do so immediately. Further, if KPCS makes a search for records in an attempt to comply with the "reasonable search" standard, it should send a revised notice to requester within ten business days of the date of this letter. Notice to requester model forms may be found on OIP's website.

Further, if, after receipt of a revised notice to requester, Mr. Smith is not satisfied with the response from KPCS, he should confirm his outstanding issues to OIP in writing within thirty business days of the date of this letter. In the interim, at the suggestions of KPCS, Mr. Smith may wish to make record requests to the school where he was last employed before he returned to KPCS, where he may receive access to the records he seeks if they are maintained by that school.

Regarding the second issue, an agency may take reasonable measures to protect its records. HRS § 92F-11(e) (year). As such, KPCS can protect the record in question by having an employee present when Mr. Smith is inspecting the record. However, because there was an alleged prior incident between Mr. Smith and the HR Clerk, OIP is inclined to find that Mr. Smith's request that another employee be in the room when he is inspecting the room is not unreasonable.

In the KPCS letter of August 19, 2019, Ms. Ahuna stated:

I hereby confirm that Mr. Smith did not request as an "accommodation" that he not be "left alone" with our "HR clerk." Back in April 2019, Mr. Smith did request that our HR specialist not be allowed access to his personnel file, a request I rejected as unreasonable and without merit. In any event, Mr. Smith has at all times been free to make another appointment with me to review his file and has never done so.

As previously stated, OIP is inclined to find that Mr. Smith's request to have another employee other than the HR Clerk present in the room while he is inspecting his personnel records is not unreasonable. Furthermore, OIP is inclined to find that Ms. Ahuna has made and is making a reasonable accommodation by inviting Mr. Smith to schedule an appointment with her to review his file. Finally, OIP is inclined to find that there is conflicting evidence which indicates both that at least one appointment to inspect was cancelled by KPCS, and that both KPCS and Mr. Smith may have failed to follow up on requests to reschedule. OIP therefore is further inclined to find that the failure for an inspection at this point has not resulted in an effective denial of access, both parties should make a good faith effort to schedule and keep a future appointment to inspect. OIP is therefore inclined to find that both parties should correspond in writing to confirm a mutually agreeable appointment time.

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OIP's inclinations as stated herein are informal guidance and are not binding on the parties to this appeal. By this letter OIP notifies Mr. Smith and Ms. Ahuna that, subject to the time limits set forth above, if any party does not wish to accept this informal guidance as resolving this appeal, that party is requested to so notify OIP in writing within 20 business days of the date of this letter and OIP will resolve the appeal according to our general "first-in-first-out" policy and cases older than yours will be completed first. Depending upon the facts of each appeal, many, but not all, appeals are closed with the issuance of an OIP opinion letter, which could take a year or longer to complete because of OIP's backlog of cases.

Unless either party informs OIP within 20 business days from the date of this letter (i.e., October 3,, 2019) that you do not wish to accept OIP's initial inclinations, this appeal will be dismissed.

This letter also serves as notice that OIP is not representing anyone in this matter. OIP's role herein is as a neutral third party.

If you have any questions concerning this matter, please contact OIP.

Very truly yours,



Donald H. Amano
Staff Attorney

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Enclosure