

REPORT TO THE 2006 LEGISLATURE

ON THE STUDY OF PARITY BETWEEN

OCCUPATIONAL THERAPISTS, PHYSICAL THERAPISTS

AND SPEECH PATHOLOGISTS

WORKING WITHIN THE DEPARTMENT OF EDUCATION

AS REQUIRED BY

H.C.R. NO. 203, SLH 2004

Prepared by the

Department of Human Resources Development

<http://www.hawaii.gov/hrd/main/HRDInfoCentral/ReportsCentral/>

December 29, 2005

Background

H.C.R. No. 203, SLH 2004, requested the Department of Education (DOE) and Department of Human Resources Development (HRD) to study and implement parity between Occupational Therapists, Physical Therapists and Speech Therapists working within the DOE. Specifically, the Legislature requested that:

- Updated position descriptions be prepared;
- A classification study be conducted of Occupational Therapists and Physical Therapists to 'bring their class specialization from SR-20 to SR-22, by utilizing the same "distinguishing characteristics" contained in the Speech Therapists IV description, ...';
- Shortage differentials for these classes of work be reviewed; and
- Occupational Therapists and Physical Therapists be included in the 1989 Memorandum of Understanding.

In December 2004, the DOE and HRD submitted a status report to the 2005 Legislature. See Attachment 2.

Classification Study

HRD completed a classification study of Occupational Therapists, Physical Therapists and Speech Pathologists within the DOE. The study covered 31 Occupational Therapist positions, 17 Physical Therapist positions and 256 Speech Pathologist positions. Occupational Therapists, Physical Therapists and Speech Pathologists within the DOE belong to two separate personnel/classification systems. Occupational Therapists and Physical Therapists belong to DOE's civil service classification system (as a result of Act 51, SLH 2004). Speech Pathologists are exempt from civil service and belong to the Board of Education Support Services Personnel (BSSP) system.¹

Pursuant to Act 51, SLH 2004, effective July 1, 2005, the DOE was authorized to operate their own centralized human resources system. As a result, all of DOE's civil service positions, including Occupational Therapists and Physical Therapists, were transferred from the civil service system administered by HRD to a civil service system administered by the DOE.

¹ Effective July 1, 2003, as a result of Act 253, SLH 2000, all of DOE's civil service Speech Pathologist positions (as well as teaching assistants, educational assistants, bilingual/bicultural school home assistants, school psychologists, psychological examiners, athletic health care trainers, alternative school work study assistants, alternative school educational/support services specialists, alternative school project coordinators and communication aides) became exempt from civil service, and are currently covered by the Board of Education Support Services Personnel (BSSP) classification system administered by the DOE.

Therefore, HRD no longer has authority or responsibility for the administration of personnel systems, including the classification and compensation of civil service, or any other positions in the DOE.

Shortage Pay

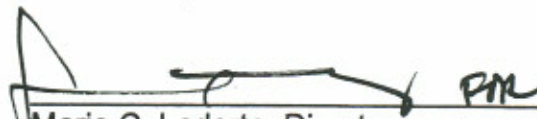
At DOE's request, HRD completed a shortage review of Occupational Therapists and Physical Therapists to determine if a labor shortage continues to exist. This included a review of vacancy rates, number of positions on active recruitment, number of eligible applicants available for positions, length of time positions have been vacant due to recruitment difficulty, recruitment strategies implemented, and turnover rates.

The findings show that there continues to be difficulty in filling Occupational Therapist and Physical Therapist positions. Therefore, to assist in attracting applicants to these positions, effective September 30, 2005, the DOE authorized an increase in the raised hiring rates and resulting shortage differentials for the Occupational Therapists and Physical Therapists. As we indicated in our report to the 2005 Legislature, shortage differentials are not determined by comparing the differential of one class of work with another. Therefore, the hiring rate for Speech Pathologists should not be used in determining the differentials accorded to either the Occupational Therapists or Physical Therapists.

Memorandum of Understanding

The Memorandum of Understanding (MOU) between the DOE and the Hawaii Government Employees' Association (HGEA) which covered the Speech Pathologists and other specific Special Services Personnel in Bargaining Unit 13, within the DOE, was to expire on June 30, 2005. Authority to extend, and/or to include the Occupational Therapists and Physical Therapists in, the MOU rests with the DOE. HRD has no authority with regard to this MOU.

Respectfully submitted,



Marie C. Laderta, Director
Department of Human Resources Development

12/23/05
Date

Attachments:

1. HCR 203
2. Report to 2005 Legislature
3. Memorandum of Understanding Special Services Personnel in the Department of Education Bargaining Unit 13 dated December 16, 2004

HOUSE OF REPRESENTATIVES
TWENTY-SECOND LEGISLATURE,
2004

H.C.R. NO. 203

STATE OF HAWAII

HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF EDUCATION and the department of human resources development to study and implement parity between occupational therapists, physical therapists, and speech therapists within the department of education.

WHEREAS, occupational therapists, physical therapists, and speech therapists all work as related services for special education students, and their services are mandated by state and federal law; and

WHEREAS, occupational therapists and physical therapists work side by side on the same integrated educational teams with speech therapists in the Department of Education and are unique by training and skills, but their job responsibilities and duties are essentially equal in nature; and

WHEREAS, speech therapists have operated under a memorandum of understanding entered into between the Department of Education and the Hawaii Government Employees Association, American Federation of State, County and Municipal Employees, Local 152, AFL-CIO, on August 30, 1989, which affected certain state employees, including speech

therapists and social workers, and as a result, there has been a disparity between occupational therapists and physical therapists on one side, and speech therapists on the other, who are in the same bargaining unit 13, working in the Department of Education; and

WHEREAS, in most settings other than the state system, occupational therapists and physical therapists are paid more than speech therapists due to their significantly increased amount of technical and science background. Within the Department of Education, occupational therapists and physical therapists are paid significantly less than speech therapists and work two months more each year. While teachers and other related services are on paid vacation, occupational therapists and physical therapists are limited in their duties without the rest of the integral team; and

WHEREAS, the disparity between speech therapists and other professionals working in the Department of Education with respect to compensation and work schedule has created a problem of recruitment of qualified, permanent occupational therapists and physical therapists for years in Hawaii; and

WHEREAS, as a result, the State has spent several million dollars hiring contracted therapists from the mainland who typically spend less than one year in our community, only to leave after countless hours of Department of Education therapists' time to orient, train, and acclimate them to the work situation, essentially acting in the role of senior therapists even when their salary package is lower than that of the contractors; and

WHEREAS, fragmented services of this nature have a negative effect on the quality of services provided to our children, and only adds fuel to the dissatisfaction of parents and advocacy groups who continue to challenge the system, and creates a hostile environment for those permanent therapists who remain; and

WHEREAS, improving the standards of compensation and creating parity among professionals with similar professional roles would considerably improve morale and our ability to recruit and retain qualified, permanent therapists; and

WHEREAS, for the purpose of improving the quality of services to our special needs children, and with the goal

of removing the disparity between speech therapists and occupational and physical therapists; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2004, the Senate concurring, that the Department of Education and the Department of Human Resources Development are respectfully requested to study and implement parity between occupational therapists, physical therapists, and speech therapists working within the Department of Education; and

BE IT FURTHER RESOLVED that the study include a review and analysis of the following:

- (1) Updating job descriptions relevant to the new roles of occupational therapists and physical therapists as staff specialists, since they transitioned from the Department of Health to the Department of Education in 2001, including review and input from present occupational therapists and physical therapists in the Department of Education;

- (2) A classification study specific to occupational therapists and physical therapists within the Department of Education, looking to bring their class specialization from SR20 to SR22, by utilizing the same "distinguishing characteristics" contained in the speech therapists IV description, specifically, Type II, which involves providing services under a non-technical supervisor;

- (3) Inclusion of similar shortage differentials including geographic differentials; and

- (4) Amending the memorandum of understanding entered into between the Department of Education and the Hawaii Government Employees Association, American Federation of State, County

and Municipal Employees, Local 152,
AFL-CIO, on August 30, 1989 to include
occupational therapists and physical
therapists; and

BE IT FURTHER RESOLVED that the Department of Education and
the Department of Human Resources Development are requested
to report their findings and recommendations, including
proposed legislation, to the Legislature not later than
twenty days prior to the convening of the Regular Session
of 2005; and

BE IT FURTHER RESOLVED that certified copies of this
Concurrent Resolution be transmitted to the Superintendent
of Education and the Director of Human Resources
Development.

OFFERED BY: _____

Report Title:

DOE; Therapists

REPORT TO THE 2005 LEGISLATURE

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H.C.R. NO. 203, SLH 2004

Prepared jointly by

Department of Education
Department of Human Resources Development

December 27, 2004

Prior to January 1, 2001, occupational therapist and physical therapist positions which provided services to students in the Department of Education (DOE) were located in the Department of Health (DOH). On January 1, 2001, the occupational therapist and physical therapist positions were legislatively transferred from the DOH to the DOE but remained in the civil service. The organizational structure and operation under which the occupational therapists and the physical therapists functioned in the DOH were significantly different from the way the speech pathologist (therapist) positions have operated, and how they currently operate in the DOE. However, they continue to provide services to the students. The requirement for updated position descriptions to reflect current duties and responsibilities, supervisory-subordinate relationships and organizational locations of the affected positions within the DOE relative to their new roles are therefore legitimate concerns, which will be addressed in the review.

On July 1, 2003, all speech pathologist positions and employees in those positions in the DOE were legislatively transferred from the civil service system to a separate personnel system under the Board of Education. While the speech pathologists are now exempt from the civil service, the occupational therapists and the physical therapists remain civil service. With differences in the characteristics and requirements of the two personnel systems, comparisons between positions, classes, and employee working conditions and benefits may not be appropriate.

Staff of the Department of Education and Department of Human Resources Development (DHRD) met to discuss the course of action each department will take to study and ensure fairness in the treatment of occupational therapists and physical therapists working within the DOE and to address the following items indicated in H.C.R. No. 203.

1. Updating job descriptions relevant to the new roles of occupational therapists and physical therapists.

Updated prototype position descriptions representing the various levels of work of the occupational therapists and physical therapists were prepared by the DOE and submitted to the DHRD in October 2004.

2. A classification study specific to occupational therapists and physical therapists within the Department of Education.

The DHRD is conducting a review of the prototype position descriptions of occupational therapists and physical therapists located in the DOE, as well as a review of the work assignments of occupational therapist and physical therapist positions in other departments in the Executive Branch in order to assess the scope of the study required. The DHRD will be working with the DOE and other affected departments, and agencies, as necessary, in order to plan and conduct the classification study and to implement the results.

3. Inclusion of similar shortage differentials, including geographic differentials.

For a number of years, the DHRD has recognized that a labor shortage for occupational therapists and physical therapists exists, and employees in these classes are currently receiving shortage differentials.

Shortage differentials are authorized to increase the hiring rate for a class or group of positions when there is a labor shortage and it is difficult to recruit applicants to fill these positions. Shortage differentials may also be provided to incumbents in a shortage or related shortage position. The raised hiring rate is set at an amount that is reasonable and at which employees can be recruited from the labor market.

When a request for a shortage declaration is made by departments, the DHRD conducts a review of the propriety of the request. Factors that are used to determine if a labor shortage exists for a particular class include:

- Vacancy rates
- Number of eligibles
- Current labor market conditions
- Length of time positions have been vacant due to recruitment difficulty
- Recruitment strategies implemented
- Turnover rate
- Reasons for employees leaving
- Historical recruitment information
- Criticality of filling the position

After it is determined that a shortage does exist for a particular class, a review and analysis is made to determine the hiring rate that would be necessary to recruit and fill vacancies for the class. Shortage differentials are not determined by comparing the differential of one class with another. The hiring rate for speech therapists, therefore, cannot be used in determining any differentials that may be accorded to either the occupational therapists or the physical therapists.

The DOE will be submitting new information on the recruitment experience of their occupational therapists and physical therapists along with salary rates for similar positions in other states for review by the DHRD to first determine if a labor shortage continues to exist, and if it does, whether the amount of the shortage is still appropriate. The DHRD will take appropriate action, if necessary.

4. Amending the memorandum of understanding (MOU) entered into between the Department of Education and the HGEA on August 30, 1989, to include occupational therapists and physical therapists.

The MOU between the DOE and the HGEA, covers specific Special Services Personnel in Bargaining Unit 13 hired by the DOE. The MOU is scheduled to

terminate on June 30, 2005. A plan to deal with the affected personnel upon termination of the MOU is currently being formulated by the DOE.

In conclusion, the DOE and the DHRD will continue to work collaboratively in addressing the issues enumerated above and will inform the affected employees of the outcome of the review upon its completion.

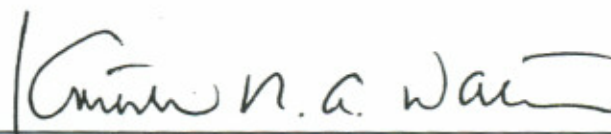
Respectfully submitted,



Patricia Hamamoto, Superintendent
Department of Education

DEC 17 2004

Date



Kathleen N. A. Watanabe, Director
Department of Human Resources Development

12/17/04

Date

MEMORANDUM OF UNDERSTANDING
Special Services Personnel in the Department of Education
Bargaining Unit 13

This MEMORANDUM OF UNDERSTANDING is entered into this 16th day of DECEMBER, 2004 by and between the State of Hawaii, Department of Education, hereinafter called the "Employer" and the Hawaii Government Employees Association, American Federation of State, County and Municipal Employees, Local 152, AFL-CIO, hereinafter called the "Union".

It is mutually agreed that for the effective school years 2003-2005, the following terms and conditions shall be applicable to the Special Services Personnel (budgeted through Appropriation 015 or 215 including those employed at the Hawaii Center for the Deaf and the Blind) who are in Bargaining Unit 13 and who are hired for Department of Education positions as audiologist, social workers, psychological examiners, speech pathologists, and school psychologists, who shall hereinafter be called the "Employees". Unless specifically modified herein, the provisions of the professional and scientific employee's BU 13 agreement shall be applicable.

I. Work Year, Holidays, Vacation and Recesses

- A. The Employees shall not be entitled to earn vacation leave credits in accordance with the provisions of Article 36-Vacation Leave, Section A, Earning of Vacation Leave of the Unit 13 Agreement.

Employees with previously accrued vacation leave credits may request vacation leave only for regularly scheduled workdays during the work year. Any employee newly entering into these 10-month positions shall not be allowed to transfer accrued vacation leave credits.

- B. The Employees shall have the same work year, holidays, vacation (the day after Thanksgiving, Winter and Spring), and summer and intersession recesses as Bargaining Unit 05 members in the Department of Education provided that:
1. The work schedule for full-time Employees shall remain eight (8) hours a day and forty (40) hours a week for each normal workweek.
 2. The work schedule for half-time Employees shall remain four (4) hours a day and twenty (20) hours a week for each normal workweek.
 3. Employees may be assigned by the Employer to a work year schedule that aligns with the schedule of a year round school.

- C. The Employer shall retain the right to determine the numbers and types of Employees it needs to perform work during the vacation and recess periods noted above and the duration of such work provided that each Employee can request to be excused from recall duty for at least ten (10) days per year. Such requests shall be subject to reasonable advance scheduling and shall be granted by the Employer when operationally feasible. In the process of deciding which Employees will be assigned to perform the work, the Employer shall take into consideration the following:
 - 1. For summer recess periods, the Employer shall, to the extent possible, identify manpower requirements for the summer recess periods by April 15th of each year provided that adjustments may be made by the Employer to the manpower requirement projections after April 15th due to unanticipated operational requirements.
 - a. To the extent possible, the notification of Employees of their summer recess or work assignments shall be made not later than April 30th subject to changes in Employee status designation based on additional manpower needs to satisfy unanticipated operational requirements.
 - b. The Employer shall consider the availability of qualified volunteer Employees for work assignments with qualifications being determined by the Employer.
 - c. To the extent possible, the rotation of work assignments among Employees based on Employees' qualifications, work assignments, and qualification requirements shall be observed. The Employer shall develop a rotation of work schedule after consultation with the Union and with due consideration being given to the desires of Employees to work during summer vacation periods.

II. Overtime and Other Benefits

- A. Article 25 – Overtime of the Unit 13 Agreement shall not be applicable to Employees. Employees shall not receive extra compensation for required occasional professional duties performed before or after the regular workday.
- B. Article 27 – Meals; Article 28 – Standby Pay; Article 29 – Call Back Pay; Paragraph B of Article 30 – Show-up Time and Reporting Pay; of the Unit 13 Agreement shall not be applicable to Employees.

III. Sick Leave

- A. Article 37 – Sick Leave of the Unit 13 Agreement shall not be applicable to Employees.
- B.
- C. Employees shall accrue sick leave credits in the same manner as bargaining unit 05 members provided that Employees shall take and be charged for sick leave in accordance with the provisions of the Sick Leave provisions of the Unit 13 Agreement.

IV. Personal Leave

The Employer shall grant up to three (3) days of personal leave per school year with pay. Such personal leave shall be granted upon application for business that can only be transacted during the normal work hours of the Employee and shall be charged to sick leave.

V. Funeral Leave

In lieu of Section C, Article 38 of the Unit 13 Agreements and in recognition of the fact that Employees do not earn vacation leave credits, the following shall be applicable:

If the death or funeral occurs outside the State of Hawaii, the Employee shall be granted, upon request, a reasonable number of additional days of accumulated sick leave not to exceed three (3) working days or leave without pay to attend the funeral.

VI. Leave for Jury or Witness Duty

In lieu of Section C, Article 39, Leave for Jury or Witness Duty, of the Unit 13 Agreement and in recognition of the fact that the employees do not earn vacation leave credits, the following shall be applicable:

An Employee called to serve as a witness in a case which arises out of the Employee's outside employment or personal business or private affairs shall not be entitled to leave of absences with pay as provided in paragraph (A) of Article 39 of the Unit 13 Agreement, provided that the Employee shall be entitled to leave of absences with pay as provided in paragraph (A) of Article 39 of the Unit 13 Agreement, provided that the Employee shall be entitled to take leave of absences without pay or personal leave (if available).

VII. Compensation

The Employees shall be employed under the provision of Chapter 76, HRS, and shall have their compensation fixed in accordance with the appropriate salary schedule provided that:

- A. The Employees shall receive salaried compensation based on their Adjusted Prorated Monthly Rate of Pay. As defined herein, the Adjusted Prorated Monthly Rate of Pay includes a Prorated Monthly Rate, a Special Services Adjustment plus a Standby Adjustment and, beginning with the 1998-1999 school year, a salary differential for working seven (7) additional instructional days added to the school year.
1. The Employee's Prorated Monthly Rate shall be determined by multiplying the Employee's monthly rate of Pay as determined by the salary schedule in the Unit 13 Agreement by 10 months and dividing the product by 12 months.
 2. The Employee's Special Services Adjustment shall be determined by multiplying the Employee's Prorated Monthly Rate by the differential factor of .125.
 3. The Employee's Standby Adjustment shall be determined by multiplying the Employee's Prorated Monthly Rate by three (3) months and such product by .25. The resulting product shall then be divided by ten (10) months.
 4. The Employee's salary differential for working seven (7) additional days added to the school year shall be determined by multiplying fifty-six hours (seven eight-hour days) by the hourly rate of pay from the appropriate range and step on the Unit 13 Salary Schedule and dividing the product by 12 months.
- B. Beginning July 1, 1997, salaried compensation shall be administered according to DOE Administrative Regulation #5201, "Salary Administration for Ten-month Employees" as appropriately adjusted to the compensation rated adopted herein for each Employee. The Prorated Monthly Rate of Pay shall be multiplied by 12 and this amount shall become the Annual Salary Rate from which the daily and hourly salary rates shall be derived as follows:

Daily Salary Rate = Annual Salary Rate divided by the Total Number of Paid Days within the Official Work Year when salary is earned.

Hourly Salary Rate = Daily Salary Rate divided by 8 hours.

Salaries shall be **paid** in twenty four (24) equal semimonthly installments over a period of 12-months subject to proper adjustments for absences without pay and other disruptions to salary earnings.

Salaries shall be **earned** at the Hourly Salary Rate for each hour of paid status entitlement.

Employees who work at less than 100% FTE shall have their salaried compensation rated adjusted accordingly.

The Employees shall receive compensation for any holiday(s) or vacation days falling within the official salaried work year if they are on a full day's paid status for at least one of the five working days immediately preceding the holiday(s) or vacation (four (4) of the five (5) working days involved may be on a leave without pay status).

Exception: In the case of resignations or terminations, compensation shall not be earned nor paid for vacation or holidays occurring subsequent to the effective date of resignation or termination.

- C. The Employees shall receive extra compensation for any work that they actually perform upon direction of proper authority on the day after Thanksgiving, during Winter and Spring vacation, Summer and intersession recess periods, holidays and on weekends. Compensation for such additional work shall not be prorated.

The rate of extra compensation shall be the entry rate in the Employee's assigned salary range and classification and shall be paid on the basis of one-half (1/2) day's pay for up to four (4) hours of work per day and one (1) full day's pay for more than four (4) hours of work per day. The eight (8) hour rate of pay as reflected on the Unit 13 salary schedule shall be used to compute such extra compensation.

- D. The rate of pay for both salaried and extra compensation shall be based on the current Salary Schedule.


VII. Grievances

Any complaint by Employees or the Union concerning the application and interpretation of this Memorandum of Understanding shall be subject to the Grievance Procedure contained in the Unit 13 Agreement between the Employer and the Union.

This MEMORANDUM OF UNDERSTANDING shall be effective from July 1, 2004 through, and including, June 30, 2005, unless either of the parties terminates this Agreement by giving thirty (30) days notice.

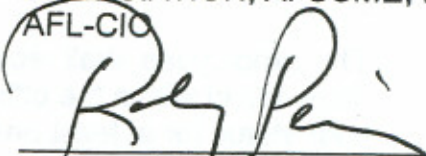
IN WITNESS WHEREOF the parties hereto have executed this MEMORANDUM OF UNDERSTANDING the day and year first written above.

STATE OF HAWAII
Department of Education



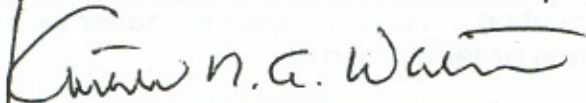
Its Superintendent of Education

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, Local 152,
AFL-CIO



for Its Executive Director

Department of Human Resources Development



Its Director

Office of Collective Bargaining




Its Chief Negotiator

Department of Budget and Finance



Its Director

APPROVED AS TO FORM:



State Attorney General