



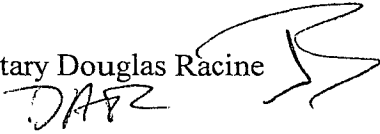
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Jeb Spaulding, Secretary

MEMORANDUM

TO: Senator Richard Sears

FROM: Secretary Jeb Spaulding and Secretary Douglas Racine 

DATE: January 15, 2014

RE: DOC Investigations (Reconstituting the AHS Investigations Unit)

Senator Sears, given your interest in the subject, we are sharing some thoughts and changes pertaining to State investigations of employee conduct.

The State is immediately creating a unit to focus on DOC investigations. More specifically, an investigative unit will be reconstituted in the AHS Central Office, consisting of three investigators who will focus primarily on DOC allegations and issues. A brief discussion of responsibilities, priorities, and some pertinent history follows.

The State has important human resource responsibilities that impact many parties. The State must be accountable to the public, must be fair to its employees, must prevent and eradicate discrimination, must address employee misconduct, must work with the unions, must protect individuals committed to its care, and must adhere to a variety of legal and contractual obligations when fulfilling its mission.

Principally, in any investigation of employee conduct, the State must understand the facts to meet its goals and satisfy its responsibilities. The State cannot take appropriate action unless it understands what transpired, and makes sense of conflicting, often voluminous information. With the benefit of good information, the State can perform its duties and protect the public, employees, and all interested parties. Contrarily, poor or deficient information leads to bad decisions, and the consequences can be severe. The lack of information can result in repeated fraud and/or abuse, can prevent the State from clearing the wrongly accused, can preclude the State from holding bad actors accountable, can foment discrimination, can jeopardize workplace safety, harmony, and efficiency, and can result in substantial civil liability.

The State is largely comprised of talented, terrific employees who are the foundation of all our successes. But, the State is a large employer, has many distinct responsibilities, and regularly receives allegations of discrimination and/or misconduct. Regrettably, the State does discover behavior unbecoming public servants.

Historically, the State did not have a trained team dedicated to investigating serious allegations of employee misconduct. A failure to recognize or redress serious misconduct has broad, detrimental impacts. Following an

unfortunate string of inmate suicides and a related State-funded, independent investigation, the State created the AHS Investigations Unit in 2004. The Unit focused primarily on Corrections, and enjoyed success in addressing inmate allegations and investigating employee misconduct.

The AHS Unit resulted in a better understanding of the facts, which facilitated better decisions. The remainder of State government did not have a similar, impartial investigative entity, and some Agencies and Departments suffered resultant repercussions.¹ The State endured some large civil judgments and/or settlements, routinely had discharged employees reinstated with back pay, had expensive dismissals proceed to the Vermont Supreme Court before gaining relief, and failed to uncover evidence that would have supported dismissals rendered necessary by employees' serious misconduct.

The biggest risk to the State, its employees, and the public often lies in a failure to discover the essential facts necessary to determine the truth. Accurate information leads to good results. Poor information or the lack of a commitment to discern the facts can be disastrous. In 2010, the State's human resource functions were consolidated within the Department of Human Resources by Executive Order. As part of the consolidation, the three AHS investigators were transferred to DHR. DHR then sought to extend the benefits of a centralized investigative unit to the rest of State government. Many benefits have been realized.

As a direct result of the centralized DHR investigations unit, wrongly accused employees have been cleared, bad actors have been dismissed, and the State has mitigated and/or avoided substantial civil liability. The State also dedicated itself to reaching reasonable agreement with employees and the VSEA, substantially reduced related litigation, and because the State knew the facts, it made decisions it could enforce. The results are notable, and the successes considerable.

Nevertheless, the volume of cases and the unique nature of the environment and work at DOC continue to require dedication of substantial resources in this area and those matters demand timely resolution. Now that the DHR investigations unit is well established, both the Agency of Administration and the Agency of Human Services believe that it is appropriate to re-establish an investigations unit to focus primarily on DOC investigations. The unit will consist of a supervisor, who will report to the Deputy Secretary and two investigators who will report to the unit supervisor. The positions will be classified to be consistent with DHR investigations unit positions.²

The advantages of transferring these positions to AHS include the opportunity for the AHS Secretary's office to oversee the investigations in order to assure consistent and timely resolution of complaints and to enhance efficiencies in human resources management within AHS in coordination with DHR. This change also will allow AHS to evaluate areas for improving and enhancing procedures and training for all staff, including supervisors and managers. As with the prior AHS investigations unit, this re-created unit will focus primarily on the unique circumstances in DOC.

In total, the State will now employ eight professional investigators, five of whom will work for DHR and broadly investigate statewide allegations, and three who will work for AHS and primarily investigate allegations that arise in Corrections. The State intends to effectuate the change within two weeks.

¹ The Vermont State Police have long enjoyed an Internal Affairs Department that investigates allegations against its sworn members.

² The State will transfer one of the former AHS investigators from DHR back to AHS, will transfer a vacant DHR investigator position to AHS, and will assign one additional position to the AHS Unit. From these positions, AHS will hire one unit supervisor and one investigator to join the investigator being transferred from DHR. AHS and DHR are consulting on the appropriate transfer of equipment and supplies to accompany the transferred positions.

The State remains committed to the same goals, and expects the additional resources and distribution of functions to benefit the entire State.

The State—AOA, AHS, DOC, DHR, and the rest of State government—will continue to work together to shoulder important responsibilities, build capacity and increase knowledge, exercise sound judgment, and protect taxpayers, employees, and those individuals who are committed to the State's care.