



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT ORDER NO. DO2023-12-0026 ✓

CREATION OF COMMITTEE ON ADMINISTRATIVE INVESTIGATION OF OFFICIALS IN THE THIRD LEVEL POSITIONS IN THE DEPARTMENT ENERGY

WHEREAS, the Civil Service Commission (CSC) issued the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) on 03 July 2017 to promote just, speedy and inexpensive disposition of administrative cases;

WHEREAS, the Department of Energy (DOE) issued Department Order (DO) No. DO2021-09-0013, titled "*Omnibus Rules of Procedure in the Disposition of Administrative Cases and Settlement of Grievances Involving Personnel of the Department of Energy*" on 13 September 2021, creating a comprehensive compilation of rules and procedures concerning disciplinary and non-disciplinary matters involving DOE employees and to harmonize the same with the 2017 RACCS;

WHEREAS, DO No. DO2021-09-0013 was established to create the *Personnel Administrative Disciplinary Investigation Committee (PADIC)*, the *Committee on Decorum and Investigation of Sexual Harassment (CODISH)*, the *Committee on Habitual Absenteeism, Tardiness, Undertime and Non-Wearing of Prescribed Office Uniforms or DOE Identification Card (CHATNU)*, and the *DOE Grievance Committee (DOE-GC)*;

WHEREAS, pursuant Section 5 of DO No. DO2021-09-0013 and in accordance with Section 9 of the 2017 RACCS, the Secretary shall be the Disciplining Authority that can impose penalties for cases falling under PADIC, CODISH, CHATNU, and DOE-GC;

WHEREAS, the rules provided in DO No. DO2021-09-0013 shall apply to all disciplinary and non-disciplinary administrative cases or matters brought against or involving DOE employees;

WHEREAS, Section 4(k) of the 2017 RACCS defines an *employee* as a person who works for an agency and occupies a position in either the first and second level whose functions are not managerial;

WHEREAS, Section 8 Paragraphs 1(c) and 2, Chapter 2, Book V of Executive Order No. 292 expressly provides that "third level" positions shall cover positions in the Career Executive Service and that "entrance" to the third level shall be prescribed by the Career Executive Service Board (CESB);

WHEREAS, pursuant to Section 1.7 of CESB Resolution No. 459, Career Executive Service (CES) Positions refer to the positions of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and such other positions of equivalent rank, as may be identified by the Board;

WHEREAS, there is a need to establish guidelines which will cover all disciplinary and non-disciplinary administrative cases or matters brought against or involving officials¹ in third level positions in the DOE;

WHEREAS, pursuant to the ruling laid down by Supreme Court of the Philippines in the case of *Department of Trade and Industry vs. Danilo B. Enriquez*, G.R. No. 225301, June 02, 2020 (*DTI vs. Enriquez*),² it was held that the Secretary in the Executive Department has the power to investigate his subordinates and officials in the third level positions;

WHEREAS, pursuant to *DTI vs. Enriquez*,³ the Secretary's disciplining power over his subordinates occupying third level positions is limited to investigations of administrative cases or matters brought against or involving said officials;

WHEREAS, pursuant to *Section 7(5) Book IV, Chapter 2 of Executive Order No. 292 (Administrative Code of 1987)*, the Secretary shall exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation;

WHEREAS, pursuant to the recommendation by the Legal Services (LS) through its issued Memorandum to the Secretary dated 23 August 2023, there is a need to create a task force/special committee to spearhead investigations of administrative cases or matters brought against or involving officials occupying third level positions in the DOE;

NOW, THEREFORE, for and in consideration of the abovementioned premises, this Order creating the "Committee on Administrative Investigation of Officials in the Third Level Positions in the DOE" (CAIOTLPD) is hereby issued:

I. COMMITTEE ON ADMINISTRATIVE INVESTIGATION OF OFFICIALS IN THE THIRD LEVEL POSITIONS IN THE DOE

Section 1. CAIOTLPD - Creation and Membership. The CAIOTLPD is hereby created to be composed of the following:

**CHAIRPERSON/
PRESIDING OFFICER** : A DOE Undersecretary or Assistant Secretary, preferably a lawyer (subject to the DOE Secretary's discretionary power to reorganize and depending on the nature of the case or the official involved).

¹ **OFFICIAL** refers to a person who occupies either a professional, technical, or scientific position and whose function are managerial in character, exercising management over people, resource and/or policy and exercising functions such as planning, organizing, directing, coordinating, controlling, and overseeing the activities of an organization, a unit thereof or of a group, requiring degree of professional, technical or scientific knowledge and experience, application of managerial skills required to carry out basic duties and responsibilities involving leadership, functional guidance and control. XXX (Section 4(r), 2017 RACCS)

² "XXX In the absence of a law or legal justification prohibiting the Department Secretary to conduct its own investigation on its subordinates, such power of the Department Secretary to investigate, even a presidential appointee, under the Administrative Code, should then be upheld." (Omission supplied) (ibid)

³ XXX The disciplinary jurisdiction of the Department Secretary over presidential appointees is limited. XXX The power to investigate does not include the power to impose penalty. It has long been settled that the power to decide on such disciplinary matters and impose penalty upon said category of officers remains with the appointing authority. (Omission and emphasis supplied) (ibid)

MEMBERS

- LS Director; and
- A DOE Bureau or Service Director, preferably a lawyer.

Section 2. Committee Secretariat - Creation and Membership. CAIOTLPD shall be assisted by a Committee Secretariat which shall be composed of the following personnel:

Members:

One (1) personnel from LS to be designated by the LS Director (preferably a graduate of Bachelor of Laws/Juris Doctor);

Two (2) personnel from the Human Resource Management Division (HRMD) to be designated by the Administrative Services Director; and

Two (2) personnel from the Internal Audit Division (IAD) to be designated by its Supervising Undersecretary/Assistant Secretary.

Section 3. Disqualification of CAIOTLPD Members/Secretariat. Any Member of the CAIOTLPD or its Secretariat shall be disqualified from participating in the investigation/hearing of the case if:

- a. He/she is related within the fourth degree of affinity or consanguinity to the official or employee being charged;
- b. He/she is a party to the case either as a witness, complainant or respondent;
- c. The disqualification is approved by the DOE Secretary upon a request or petition to disqualify a Member of the CAIOTLPD or its Secretariat for any other just or valid reason which will render the Member incapable of exercising impartiality in deciding the case. Disqualification on this ground shall only take effect upon approval of the DOE Secretary of the request or petition for disqualification; or
- d. A Member of the CAIOTLPD or its Secretariat may also voluntarily inhibit in case he/she feels that he/she cannot perform his/her duties impartially. The Committee shall approve the request and, by a vote of majority, shall appoint his/her replacement from among the DOE Bureau/Service Directors/Assistant Directors;

Section 4. Quorum and Voting. A majority of the members of the CAIOTLPD shall constitute a quorum to conduct business and the concurrence of or approval by at least the majority of the quorum shall be necessary for its decisions, orders or any other actions to be valid and binding; provided that, the Chairperson or, in his/her absence, the LS Director, shall preside over every hearing or formal investigation of a

case. In all cases, the CAIOTLPD must have at least one (1) lawyer among its Members.

Section 5. Prosecution. The DOE LS-General Legal Services Division (GLSD) lawyers shall act as the prosecutor in the formal investigation of disciplinary cases under the jurisdiction of the CAIOTLPD.

II. GENERAL PROVISIONS

Section 6. Functions of the CAIOTLPD. The CAIOTLPD shall conduct formal investigations/hearings of administrative disciplining cases under its jurisdiction, submit findings and recommendations to the DOE Secretary, and perform such other functions as may be necessary and incidental to the discharge of their functions and responsibilities.

Section 7. Jurisdiction. The CAIOTLPD shall have the power to exercise the functions and investigative powers mentioned under *Section 6* of this Order covering any of the following two (2) cases:

- A. All disciplinary and non-disciplinary administrative cases or matters brought against or involving an **official occupying a third level position** in the DOE; or
- B. All disciplinary and non-disciplinary administrative cases or matters brought against an **employee occupying a first or second level position** who is charged as co-principal, accomplice, or accessory in the same case **with an official occupying a third level position.**

The CAIOTLPD shall only investigate administrative cases or matters when an official occupying a third level position is involved. The conduct of an investigation solely involving an employee occupying a first or second level position, without the involvement of an official occupying a third level position, shall be exercised by the appropriate committee (PADIC, CHATNU, CODISH or DOE-GC) which has jurisdiction over the matter pursuant to DO No. DO2021-09-0013.

Administrative cases mentioned under *Paragraph B* of this Section involving both an employee occupying a first or second level position and an official occupying a third level position in the same case shall be consolidated and jointly investigated by the CAIOTLPD.

Section 8. Adoption of the Rules. The CAIOTLPD shall adopt all the applicable rules under DO No. DO2021-09-0013 and the pertinent provisions of the *2017 RACCS*, including the issuance of preventive suspension.

Section 9. Action of the Secretary on the Findings and Recommendations of CAIOTLPD. In cases falling under Section 7(A) of this Order, the Secretary may approve and adopt the recommendation/s of the CAIOTLPD. After finding a *prima facie* case, the Secretary shall issue an Investigation Report to the Office of the President, Office of the Ombudsman, or Career Executive Service Board, as may be

applicable, report his findings and recommendations⁴, and submit the complete records of the case to the appropriate disciplining authority which has jurisdiction to impose penalties over the official occupying a third level position.

In cases falling under Section 7(B) of this Order, the Secretary, being the disciplining authority and having jurisdiction to impose penalties on employees occupying a first and second level positions, may approve and adopt the findings and recommendations of the CAIOTLPD and may decide and impose the corresponding penalty in accordance with Rule IX to Rule XI of DO No. DO2021-09-0013 and the pertinent provisions of 2017 RACCS. The Secretary, in his discretion, may also refer the case to the appropriate committee under DO No. DO2021-09-0013 for further investigation.

III. MISCELLANEOUS PROVISIONS

Section 10. Funding. All expenses to be incurred and all emoluments to which the Investigation Committee is entitled to shall be sourced from the funds available to the DOE, subject to the usual government accounting and auditing rules and regulations.

Section 11. Designation of the Members. Upon approval of this DO, a separate Special Order/s shall be issued designating the Members of the CAIOTLPD and its Secretariat.

Section 12. Suppletory Clause. The provisions of the 2017 RACCS, insofar as applicable, shall have suppletory application to these Rules.

Section 13. Separability Clause. If, for any reason, any part of this DO is declared unconstitutional or invalid, the other parts or provisions hereof that are not so affected shall remain in full force and effect.

Section 14. Repealing Clause. All other orders or issuances inconsistent with this Order are hereby repealed or modified accordingly.

Section 15. Effectivity. This DO shall take effect immediately and shall remain in full force and effect unless revoked or modified accordingly.

Issued on ____ December 2023 at DOE, Energy Center, Rizal Drive cor. 34th Street, Bonifacio Global City, Taguig City.


RAPHAEL P.M. LOTILLA
Secretary



DEC 07 2023

⁴ "While the power to impose penalty (to third level positions) remains with the President or the Ombudsman, the power to investigate, as well as to designate a committee or officer to investigate, and thereafter to report its findings and make recommendations, may be delegated to and exercised by subordinates or a special commission or committee specifically created for such purpose." (comments supplied) (Department of Trade and Industry vs. Danilo B. Enriquez, G.R. No. 225301, June 02, 2020)