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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

E.R.K., by his legal guardian
R.K.; R.T.D., through his
parents R.D. and M.D.; HAWAII
DISABILITY RIGHTS CENTER,
in a representative capacity on
behalf of its clients and all
others similarly situated,

Plaintiffs,

Case No. 10-00436 SOM-KSC

**PLAINTIFFS' STATUS
REPORT; CERTIFICATE OF
SERVICE**

DATE: July 30, 2015

TIME: 9:30 a.m.

JUDGE: Kevin S. C. Chang

vs.

DEPARTMENT OF EDUCATION,
State of Hawai'i,

Defendant.

**PLAINTIFFS' STATUS REPORT REGARDING
THE DOE'S PROVISION OF COMPENSATORY EDUCATION**

Plaintiffs submit the following report regarding the status of the DOE's provision of compensatory services to the Class.

I. ASSESSMENT REPORTS FOR THE PILOT GROUP

Plaintiffs' consultants have reviewed the Pilot Group assessments and have provided the following general observations:

- The assessments focus only on students' academic deficits—not strengths and interests.
- The assessments use outdated and inappropriate testing methodologies.
- Recommending community-based services is positive.
- Members of the Pilot Group should receive comprehensive Independent Educational Evaluations ("IEE") that produce recommendations for services consistent with the IDEA.

The consultants highlighted issues with the DOE's assessments for three students in the Pilot Group, summarized below:

Name	K.C.
DOE's Recommended Compensatory Services	<ul style="list-style-type: none"> • Identifies working at Navy Exchange as Student's "specific goal" • Services to assist in process of researching job opportunities and application process (undetermined length of time) • 5 hours/week for one year of tutoring in reading, writing, and math as "related to job she would like to obtain"
Consultant Feedback	<ul style="list-style-type: none"> • Current job does not reflect Student's future goals and is not appropriate for long term • Student's stated desire to attend community college to take acting classes is not reflected • Recommendation resigns student to her limitations, rather than suggesting how she might pursue her stated goal of working in hotel industry • No independent living assessments or goals conducted
Parent Feedback	<ul style="list-style-type: none"> • 1 year of service is unacceptable • Recommendation does not explain how services will be incorporated into Student's and family's lives
Name	R.G.
DOE's Recommended Compensatory Services	<ul style="list-style-type: none"> • Provide computer classes for one year at community college or adult community school to foster the development of independent skills.
Consultant Feedback	<ul style="list-style-type: none"> • Evaluation did not reflect Student's and family's desired goal: to attend community college for acting with support services. • No life skill assessments conducted. • None of Student's IEP goals are reflected in assessment report.
	<ul style="list-style-type: none"> • Offer was incomplete and vague; Parent does not see how offer applied to Student's skills.

<p>Parent Feedback</p>	<ul style="list-style-type: none"> • Computer-related services did not specify what he was going to do on computer; further, unclear why the choice of computer classes was offered when student has goals to be an actor. • Parent did not understand the relevance of services in light of Student’s aspiration to be an actor and other desired services including support to increase his reading ability or obtaining his GED diploma. • Speech services or support to attend community college to take acting classes “would make the most sense.”
<p>Name</p>	<p>I.N.</p>
<p>DOE’s Recommended Compensatory Services</p>	<ul style="list-style-type: none"> • 2 hours/week for one year of tutoring in math using real life situations to assist with everyday budgeting skills. • 4 hours/month for one year of instruction/counseling to address social and self-monitoring skills.
<p>Consultant Feedback</p>	<ul style="list-style-type: none"> • Noted that parent is unsatisfied. • Noted that the information was not detailed enough to allow for a proper critique.
<p>Parent Feedback</p>	<ul style="list-style-type: none"> • Unsatisfied with evaluation; wants an Independent Educational Evaluation performed. • Finds offer unacceptable, in part, because no information was provided on pragmatic speech or receptive language, which are two of parent’s biggest concerns. • When Student left DOE, he received SPED instruction all day and an additional 3 hours of ESY. Parent consulted with mental health provider who currently has contract with DOE and that individual indicated that to replicate the services Student had at the time he exited DOE would cost approx. \$25,000 for 10 months.

For each of these students, the recommended services were based only on the students' deficient areas and thus were misaligned with each student's IEP goals, transition plan, current strengths, and desired life goals.

By concentrating on the skills that each student **lacks**, the DOE's recommended services merely provide remediation to shore up deficiencies. The recommendations provided by the DOE do not reflect proper transition planning required of an IEP and failed to consider: (1) each student's strengths, preferences, and interests; and (2) the services needed to build the student's functional ability to allow the student to meet his or her post-secondary goals. Proper assessments would focus on a student's: (1) life goals; (2) known strengths and deficits; and (3) needed transition¹ skills.

A. Independent Educational Evaluations

Plaintiffs' counsel has spoken with the parents of students in the Pilot Group and most have similar concerns. Consistent with

¹ Under the IDEA, transition services are defined as a "coordinated set of activities for a child with a disability" that is "designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation," and "is based on the individual child's needs, taking into account the child's strengths, preferences, and interest." 20 U.S.C.A. § 1401(34).

the consultants' recommendations and parental concerns, Plaintiffs propose that a sub-group of the pilot group (4-5 students) undergo Independent Educational Evaluations utilizing more modern, strength-based assessments such as the Supports Intensity Scale ("SIS"), the Inventory for Client and Agency Planning ("ICAP"), or vocational assessments.² After IEEs are conducted on the sub-group, the Court can compare the DOE assessments to the IEEs with the help of an independent expert.

This process will allow the DOE and Plaintiffs to consider the new assessment data in conjunction with each student's (1) IEP goals, (2) transition plan, (3) Summary of Performance issued upon exit from DOE, and (4) desired life goals (i.e., community college, employment placement, functional life skills, etc.). If done correctly, the recommended services for each student, based on the new assessment data, should bridge the gap between the student's strengths and his or her desired life goals.

² Parents have a right to an IEE at the DOE's expense if the parent disagrees with the DOE's evaluation obtained by the State. 34 C.F.R. § 300.502(b)(1). Further, if a parent requests an IEE, the DOE may not require the parent to provide an explanation and may not unreasonably delay in either providing the IEE at public expense or filing a due process complaint. *Id.* at § 300.502(b)(4)

B. Proposed Court Consultant

The Court suggested that an independent expert or consultant might be helpful. Plaintiffs propose the following list of individuals to serve as a Court-Appointed Expert Witness, FRE 706, or independent consultant:

- **Robert A. Stodden, Ph.D.** – Founder and retired director of the University of Hawaii’s (“UH”) Center on Disability Studies, and past president of the Association of University Centers on Disabilities;
- **Charles Mueller, Ph.D.** – Professor, Department of Psychology at UH; or
- **Judge Karen M. Radius** – Retired family court judge who helped establish the First Circuit Girls Court for at-risk and delinquent girls.

II. PROGRESSING WITH SERVICES TO THE SECOND GROUP OF CLASS MEMBERS

Plaintiffs request IEEs for a sub-group of the Pilot Group as discussed above to determine more accurate and relevant data upon which meaningful and relevant services may be offered to students and their families. Further DOE assessments without the IEEs are likely premature.

III. DISPUTED CLASS MEMBERS

At the July 23, 2015 status conference, the DOE represented that, on or before July 30, 2015, it would provide (1) Plaintiffs with

its final list of every class member it intends to dispute from those who have asked to receive services, and (2) relevant information regarding the claim of ineligibility so that a finder of fact is able to evaluate the DOE's claim. To date, Plaintiffs have yet to receive that list. Plaintiffs again request that the Court issue an order compelling disclosure to prevent further unnecessary delay.

IV. REIMBURSEMENT OF COSTS FOR CONTACTING REMAINING CLASS MEMBERS

At the last status conference, the parties discussed a timeline for completion of attempts to contact other class members. No decision was made as to payment for the Lexis-Nexis search for those individuals. Plaintiffs request that the Court order Defendants to pay for the search at an estimated cost of \$2,080.00.

Plaintiffs again request the Court **disclose the names of parents/guardians of the unreachable class members**, to facilitate Plaintiffs' efforts to contact this population of disabled adults and to make sure that the Lexis search provides the best results.

V. RULE 30(B)(6) DEPOSITION

The parties are working towards a new date and should have one agreed upon before the Status Conference.

DATED: Honolulu, Hawai`i, July 28, 2015.

/s/ Kristin L.Holland
PAUL ALSTON
KRISTIN L. HOLLAND
MICHELLE N. COMEAU
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date and method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served electronically through CM/ECF on July 28, 2015:

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Attorneys for Defendant
DEPARTMENT OF EDUCATION

DATED: Honolulu, Hawai`i, July 28, 2015.

/s/ Kristin L. Holland
PAUL ALSTON
KRISTIN L. HOLLAND
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Attorneys for Plaintiffs

Court NOTICE - Activity in Case 1:10-cv-00436-SOM-KSC P.-K. et al v. Department of Education, State of Hawai'i Status Report

From: <hid_resp@hid.uscourts.gov>
To: <hawaii_cmecf@hid.uscourts.gov>
Date: 7/28/2015 9:00 AM
Subject: Activity in Case 1:10-cv-00436-SOM-KSC P.-K. et al v. Department of Education, State of Hawai'i Status Report
Bc: Court NOTICE

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U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered by Holland, Kristin on 7/28/2015 at 8:59 AM HST and filed on 7/28/2015

Case Name: P.-K. et al v. Department of Education, State of Hawai'i
Case Number: [1:10-cv-00436-SOM-KSC](#)
Filer: M. D.
R. T. D.
Hawaii Disability Rights Center
E.R. K.

Document Number: [247](#)

Docket Text:

STATUS REPORT by M. D., R. T. D. (through his parents R.D. and M.D., for themselves and on behalf of a class of those similarly situated), Hawaii Disability Rights Center, E.R. K.. (Holland, Kristin)

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