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DEPARTMENT OF EDUCATION,
STATE OF HAWAII

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

R.P.-K, through his parent, C.K., et al.,

Plaintiffs,

vs.

DEPARTMENT OF EDUCATION,
State of Hawaii,

Defendant.

CIVIL NO. 10-00436 SOM/KSC

DEFENDANT'S SEPTEMBER 30,
2014 STATUS REPORT

DEFENDANT’S SEPTEMBER 30, 2014 STATUS REPORT

Per this Court’s August 22, 2014 Order (ECF Doc No. 187), the Department of Education (DOE) hereby submits its Status Report. The Court ordered the Parties to resolve certain initial matters before a final course of action is selected.

First and foremost, this Court ordered the DOE to provide Plaintiffs’ counsel with “the name of every *potential* class member,” accompanied by his or her last-known contact information no later than September 22, 2014. (emphasis added).

To comply with this order, the Parties had telephonic status conferences with Magistrate Judge Chang prior to releasing an agreed upon pre-disclosure letter to all 1,800 potential class members as required by the Family Educational Rights Privacy Act (FERPA), 20 U.S.C. § 1232(g)(b)(2)(B); 34 C.F.R. (a)(9) (i)-(ii) (2011).

The parties agreed to a FERPA pre-disclosure letter which was mailed by the DOE on September 8, 2014. The letter asked that all potential class members contact the DOE if they objected to disclosure no later than September 18, 2014. *See* enclosure (1).

On September 22, 2014, the DOE transmitted a spreadsheet with names and contact information for potential class members to Plaintiffs’ Counsel. This transmittal did not include those who requested non-disclosure after receiving the

FERPA letter (23 total). This spreadsheet also did not include names and contact information for those whose mail were returned as undeliverable at the time of transmittal (351 total). Therefore, at the time of transmittal, the spreadsheet provided to Plaintiffs' counsel included 1,426 total names.

On September 24, 2014, at the request of Plaintiffs' Counsel, the DOE transmitted an updated spreadsheet to counsel. The purpose of the updated spreadsheet (1,424 names total) was to eliminate any truncated names from the previous version, and also to remove (2) names that were previously disclosed. The two names were removed when the potential class members came forward after the DOE's deadline to respond to the September 8, 2014 letter (September 18, 2014), and after the first transmittal to Plaintiffs' Counsel (September 22, 2014), raising the total requests for non-disclosure to (25) as of September 24, 2014.

As of September 29, 2014, the DOE continues to receive returned FERPA pre-disclosure letters that are undeliverable. Due to undeliverable mail, the DOE is currently attempting to find good contact information for these individuals by going through these individual's files, and locating their last known telephone numbers in an effort to contact each potential class member so that they can be mailed a FERPA pre-disclosure letter. This will take a few weeks to resolve.

The DOE will send FERPA pre-disclosure letters to those whom the DOE is able to contact after locating telephonic, or other contact information in their files. The DOE will then inform Plaintiffs' Counsel of their name and contact information, unless disclosure is requested to be withheld by the potential class member.

For those potential class members without any current contact information in the DOE files, the DOE will log its attempt to locate contact information, and provide the court with these class members' names and last known contact information. The DOE will also request a judicial finding of "reasonable efforts" to comply with FERPA pre-disclosure requirements so that the names, and last known contact information, of these individuals may be disclosed to Plaintiffs' Counsel.

Next Steps

To plan for the next steps in this litigation with accuracy, the DOE requests permission from the Court to send a letter to all 1,800 potential class members requesting that they contact the DOE to let us know if they are interested in compensatory education services no later than a date certain (TBD). The DOE believes this is a prerequisite to demonstrating capacity to delivering compensatory education services to the Court because appropriate compensatory education

services will focus on the individual needs, interests, and locations of potential class members. Without the ability to gather this information, neither the DOE nor the Court will have a precise method of measuring DOE capacity, or needed service providers.

DATED: Honolulu, Hawai`i, September 30, 2014.

/s/ Adam T. Snow

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Deputy Attorneys General

Attorneys for Defendant

DEPARTMENT OF EDUCATION

STATE OF HAWAII

NEIL ABERCROMBIE
GOVERNOR



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OFFICE OF THE SUPERINTENDENT

September 5, 2014

Dear Former Students and Guardians:

A recent court decision requires the state Department of Education (DOE) to provide special education and related services to students until their 22nd birthday unless the student graduates with a regular high school diploma. Before the lawsuit, the DOE, pursuant to state law, was terminating special education services at age 20.

If you left school before turning 22 without a regular diploma, you may be entitled to free services to make up for those you lost because of the prior policies. The court has ordered the DOE to give your name and contact information to the attorneys who brought the lawsuit so that they may contact you regarding your right to receive these services.

Under federal law, the Family Educational Rights and Privacy Act, **BEFORE** the DOE can disclose your name and contact information, the DOE is required to make reasonable efforts to notify you to provide you with an opportunity to object to the disclosure. If you do not want your contact information released to the attorneys, you must contact the DOE before **September 18, 2014**, to state that you object to sharing your contact information.

Phone: (808) 305-9806

Email: DOE_SPED@notes.k12.hi.us

Mail: Department of Education, Special Education Section, 475 22nd Ave., #115,
Honolulu, HI 96816. Letters must be received by close of business
September 18, 2014.

Very truly yours,

A handwritten signature in black ink, appearing to read "K. Matayoshi".

Kathryn S. Matayoshi
Superintendent

KSM:itk

c: Deputy Superintendent
Office of Curriculum, Instruction and Student Support

DONNA AHUNA - 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: 9/30/2014 3:31 PM
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: DONNA AHUNA

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U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered by Snow, Adam on 9/30/2014 at 3:30 PM HST and filed on 9/30/2014

Case Name: P.-K. et al v. Department of Education, State of Hawai'i
Case Number: [1:10-cv-00436-SOM-KSC](#)
Filer: Department of Education, State of Hawai'i
Document Number: [194](#)

Docket Text:

STATUS REPORT *Defendant's September 30, 2014 Status Report* by Department of Education, State of Hawai'i. (Attachments: # (1) Main Document Enclosure '1')(Snow, Adam)

1:10-cv-00436-SOM-KSC Notice has been electronically mailed to:

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1:10-cv-00436-SOM-KSC Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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Document description:Main Document Enclosure '1'

Original filename:n/a

Electronic document Stamp:

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