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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI`I

E.R.K., by his legal guardian R.K.;  
R.T.D., through his parents R.D. and  
M.D.; HAWAI`I 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' RESPONSE TO  
[420] DEFENDANT DEPARTMENT  
OF EDUCATION'S OBJECTIONS  
TO PLAINTIFFS' PROPOSED  
CLASS LIST; CERTIFICATE OF  
SERVICE**

vs.

DEPARTMENT OF EDUCATION,  
State of Hawai`i,

Defendant.

**PLAINTIFFS’ RESPONSE TO [420] DEFENDANT  
DEPARTMENT OF EDUCATION’S OBJECTIONS TO PLAINTIFFS’  
PROPOSED CLASS LIST**

The DOE now objects to approximately 140 class members—the vast majority of those added to list of interested class members over the past few months. Plaintiffs have reviewed the objections, have conferred with the DOE to clarify certain objections, and respond as follows:

**“Too young” (5 class members)<sup>1</sup>:** Plaintiffs have placed calls to these class members to verify their birthdates and to find out whether they received notice of their right to attend school, if they left school during the pendency of Act 163. It is, at this point, impossible to say whether the DOE has used the correct birthdates or whether these individuals qualify for inclusion under the criteria used by Magistrate Judge Chang for inclusion. A supplemental response will be made as soon as possible.

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<sup>1</sup> There are duplicate objections among the lists; the DOE objects to all of the class members in this group multiple times and so their names also appear elsewhere in the DOE’s letter.

**Drop outs (Exited prior to age 20) (102 class members)<sup>2</sup>:** The DOE's October 7, 2016, list of objections includes individuals who allegedly exited school before age 20. Judge Chang overruled the DOE's identical "early exit" objections, after full briefing and argument, in February 2016. *See* ECF No. 342 at 23. Neither side appealed that ruling. The DOE's continued objection on this basis is unfounded and improper.

**"Declined FAPE"/ "Ineligible"/ "Exited after repeal"/ "Earned Enough Credits to Receive Diploma"/ "Aged out at 22"/ "Individual not Found"/ "Withdrew" (82 class members)<sup>3</sup>:** Plaintiffs are reaching out to the listed class members to discuss the DOE's specific claims with the clients in this final group. Plaintiffs' initial calls indicate that many class members dispute the DOE's claims. For example, C.T.'s family indicates he was receiving special education when he left school and is not, therefore "ineligible"; J.V.'s family does believe that it ever "declined FAPE," as claimed; K.T. likewise stated he never "declined" any offer of a FAPE and that the DOE never informed him of any right to return to school until age 22.<sup>4</sup> Plaintiffs will provide an initial list to the DOE on

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<sup>2</sup> The DOE objects to 46 of the class members on this list multiple times and so their names appear elsewhere in the DOE's letter.

<sup>3</sup> The DOE objects to 51 of the class members on this list multiple times and so their names appear elsewhere in the DOE's letter.

<sup>4</sup> Additionally, five class members are objected to solely as having withdrawn from school. This objection appears to be a variation of the "early exit" objection. As

Friday, October 14, 2016, with clarifying information where such information will assist in resolving the objection.<sup>5</sup>

Because the DOE's objections are based on records in the class member's educational file, Plaintiffs have also requested that the **DOE provide the records it relied on to advance each objection** (Plaintiffs do not have the DOE's records for these individuals).

Finally, hundreds of class members are indisputably eligible for services, and have been waiting for years for compensatory services. Both parties have expressed to the Court that they want to move this case forward expeditiously. Plaintiffs therefore request that the Court permit the parties to resolve this final group of objections to several dozen class members concurrently with moving forward with services/settlement as to the vast majority of the class.

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Judge Chang noted previously, "The fact that they were eligible to receive services, regardless of whether they availed themselves of that opportunity, warrants their inclusion in the class." ECF No. 342 at 21.

<sup>5</sup> Plaintiffs anticipate that they will be able to clarify the identity of the two individuals not found, as well as the status of the two class members who allegedly received services until age 22, the class member who allegedly earned a diploma, and those who allegedly left school after Act 163 was repealed.

DATED: Honolulu, Hawai'i, October 13, 2016.

/s/ Michelle N. Comeau  
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