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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: June 25, 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. Plaintiffs request guidance from the Court regarding several issues for which the parties have been unable to reach agreement.

**I. PROGRESSING WITH SERVICES TO THE SECOND
GROUP OF CLASS MEMBERS**

On June 16, 2015, Plaintiffs provided the DOE a listing of 306 class members who had consented to receive services. These names were not new to the DOE; in fact, the vast majority of names were provided to Plaintiffs last Fall **by the DOE** (which then provided the same names and phone numbers to Ward Research in January 2015). Plaintiffs asked the DOE to provide information on setting a schedule for assessments.¹

¹ The DOE shifted its legal team again last week. This request was made to Kunio Kuwabe, but Plaintiffs were advised in response that Mr. Kuwabe was no longer working on this case and that Carter Siu

However, the DOE refused to discuss scheduling and stated that the Pilot Group assessments must be completed before any “further decisions” are made. The DOE also, for the first time, challenged 89 individuals on the list as ineligible to receive compensatory services based on their age at the time they exited school.²

This list included 84 individuals whose names were provided **by the DOE** to Plaintiffs in 2014 and many whose phone numbers were then given to Ward in January 2015 so that Ward could call them and find out who wanted services—pursuant to the parties’ agreement. Indeed, the DOE had turned over these same names and phone numbers to Plaintiffs in May 2015. All without a single word about their supposed ineligibility for services.

was the new attorney. Thereafter, Plaintiffs have corresponded with Mr. Siu.

² The DOE also argued, for the first time, that “those who were/are still IDEA eligible and have not returned to school have failed to mitigate their damages and are not entitled to any and/or limited amounts of compensatory education.” The issue of mitigation of damages is not appropriate under the circumstances of this case, where class members were literally prevented from returning to school by the DOE during the pendency of Act 163, and now are too old to do so. Plaintiffs have repeatedly argued, and the DOE has agreed, that individuals in their early to mid-twenties cannot simply “return to school” and thereby be made whole. That is the very purpose of compensatory services.

Plaintiffs want to keep making progress and get the next round of assessments underway so that members can receive the services they are entitled to as soon as possible. There is no reason to delay. Given the size of this group, the DOE and class counsel need to be working *now* to plan for and coordinate this process. Plaintiffs ask for the Court's assistance in moving this issue forward and request that the DOE be ordered to proceed with the next phase of assessments.

II. RELEASE OF RECORDS TO CLASS COUNSEL

In an effort to streamline the process of delivering services to the second group of class members, Plaintiffs requested that the DOE have the class members sign FERPA consents for the release of records at the time of their assessments. The DOE refused to do so.

The DOE's position regarding the FERPA forms is an unfortunate and entirely artificial barrier to services, as FERPA consents are not a prerequisite to the assessments process. Plaintiffs have already provided consent through their counsel for this group to begin assessments. There is no reason why the DOE cannot obtain the signature on this form, a signature which the

DOE has insisted be provided for the release of records, from the class members upon initiation of the assessments. This is a simple and streamlined process (as it must be to facilitate delivery of services on the scale this class requires). The DOE will already be contacting the class members and meeting with them in person. This provides the best opportunity to obtain the class members' signatures, as many do not have ready access to fax machines, printers, or computers.

Plaintiffs' counsel has already mailed consents to each of these members, but many have not been returned and it would require in person meetings or unduly burdensome efforts to track them all down. Moreover, the same issue is anticipated for every additional member who consents to services. Plaintiffs request that the Court order the DOE to either (a) attempt to obtain signed FERPA consents when it meets with the class members for assessments or (b) provide the class members' education files to Plaintiffs' counsel without FERPA consents.³

³ See 34 C.F.R. § 99.31(a)(9).

III. REIMBURSEMENT OF COSTS FOR CONTACTING REMAINING CLASS MEMBERS

Finally, on June 15, 2015, Plaintiffs requested that the DOE advance the cost of \$2,080.00 to run a Lexis Search to locate individuals who have not yet been reached. The DOE responded that it would only agree to pay the \$2,080.00 if Plaintiffs agreed that this would be the last attempt to contact any of the remaining class members. Plaintiffs cannot agree to this unreasonable condition. It is not fair to the class to so limit efforts to reach members, particularly as we do not know at this time what kind of results the Lexis search will return. Plaintiffs proposed that the DOE authorize the small expenditure and then agree to review the results from Lexis and discuss “next steps” at that time. The DOE rejected this proposal.

Plaintiffs request that the Court order the DOE to pay for the cost of obtaining current addresses and phone numbers for this group, through the Lexis search at an estimated cost of \$2,080.00, without artificial conditions which appear designed only to limit number of class members who elect to receive services.

IV. RULE 30(B)(6) DEPOSITION

The Rule 30(b)(6) deposition commenced on June 24, 2015.

The DOE produced two deponents. The deposition was not completed, and upon mutual agreement will continue on another day to be determined by the availability of the parties.

DATED: Honolulu, Hawai`i, June 24, 2015.

/s/ Michelle N. Comeau
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 June 24, 2015:

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Attorneys for Defendant
DEPARTMENT OF EDUCATION

DATED: Honolulu, Hawai`i, June 24, 2015.

 /s/ Michelle N. Comeau
PAUL ALSTON
KRISTIN L. HOLLAND
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Attorneys for Plaintiffs

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: 6/24/2015 5:36 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
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U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered by Comeau, Michelle on 6/24/2015 at 5:35 PM HST and filed on 6/24/2015

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: [239](#)

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.. (Attachments: # (1) Certificate of Service)(Comeau, Michelle)

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

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