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DEPARTMENT OF EDUCATION,  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI‘I

E.R.K., by his legal guardian R.K.,  
et. al,

Plaintiffs,

vs.

DEPARTMENT OF EDUCATION,  
State of Hawai‘i,

Defendant.

CIVIL NO. 10-00436 SOM-KSC

DEFENDANT’S MEMORANDUM IN  
OPPOSITION TO PLAINTIFFS’ EX  
PARTE MOTION FOR INTERIM  
ATTORNEYS’ FEES FILED  
NOVEMBER 20, 2015; CERTIFICATE  
OF SERVICE

Judge: Hon. Kevin S.C. Chang

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**DEFENDANT’S MEMORANDUM IN OPPOSITION TO  
PLAINTIFFS’ EX PARTE MOTION FOR INTERIM  
ATTORNEYS’ FEES FILED NOVEMBER 20, 2015**

COMES NOW, Defendant DEPARTMENT OF EDUCATION, STATE OF HAWAI‘I, (“Department”), by and through its attorneys undersigned, hereby submits its memorandum in opposition to Plaintiffs’ ex parte motion for interim attorneys’ fees filed November 20, 2015 for this Honorable Court’s review and consideration.

**I. STATEMENT OF THE CASE**

Plaintiffs have filed this request seeking attorney's fees for Alston Hunt Floyd & Ing as well as for the Hawai'i Disability Rights Center. The Department opposes this request for reasons discussed below.

This case originally was filed in the United States District Court, District of Hawai'i ("District Court") on July 27, 2010. The Class Action Complaint for Declaratory and Injunctive Relief included an alleged violation of the Individuals with Disabilities Education Act ("IDEA") based upon Act 163 that established the age of 20 as the maximum age to receive a Free Appropriate Public Education ("FAPE").

On March 15, 2011, the District Court certified the class action lawsuit.

On March 30, 2012, the District Court issued Findings of Fact, Conclusions of Law and Decision. Among other things, the District Court found in favor of the Department because Plaintiffs failed to establish a violation of the IDEA.

Plaintiffs filed an appeal on May 4, 2012.

The main issue presented by Plaintiffs in their appeal was whether Act 163, as applied, is a valid exercise of State authority under the IDEA to limit the age to which the Department is required to provide a FAPE to IDEA eligible students. 20 U.S.C. § 1412(a)(1)(B).



The Ninth Circuit Court of Appeals issued its Opinion on August 28, 2013, affirming the decision of the District Court on the ADA and 504 claims, but reversed the decision on the IDEA claim and remanded the matter back to District Court. Subsequently, Act 163 was repealed.

On August 22, 2014, the District Court ordered the parties to work with Magistrate Judge Kevin S.C. Chang to identify the class members. The Department was ordered to provide Plaintiffs' counsel with the name and contact information of every potential class member including those who "might" have been affected or whom the Department concluded may have opted not to receive services. The District Court noted that the Department may ultimately have to propose a compensatory education package for every class member who desires one. See Plaintiffs' Interim Motion for Attorneys' Fees filed November 20, 2015, Exhibit 1.

One of the major issues of contention is class identification. Plaintiffs' assert that the class consists of 1,800 individual class members. The Department contends that the class size will likely range between 90 and 400 individuals. Once the class has been identified, the parties should be able to move forward with fashioning individual compensatory education settlements for each class member.

## **II. THE DEPARTMENT'S POSITION**

Without waiving its right to challenge prior rulings in this matter, it is the Department's contention that Plaintiffs' request for attorneys' fees is premature. In assessing a request for attorneys' fees, the degree of success analysis is essential in determining an award of reasonable attorneys' fees to the prevailing party . However, before the degree of success can be measured, the prevailing party status must be clarified. In this matter, the issue of prevailing party status has yet to be determined with respect to each potential class member. The nature of this case is such that the resolution for each class member will be an individualized compensatory education remedy. However, not all of the claimed 1,800 potential class members will receive a settlement. As such, the ultimate identified class will have a direct impact on the degree of success analysis because it will provide an objective number of the 1,800 potential class members that are actual class members. Once the class size is established, the Court will be able to meaningfully conduct the "degree of success" analysis necessary to establish the reasonable attorneys' fees Plaintiffs may be entitled to.

Should this Court determine that it has sufficient basis to award interim attorneys' fees at this juncture, which the Department opposes, the Department submits that the hourly rates and fees requested by Class counsel in their motion

require a reduction. The Department also reserves its right to offset should it subsequently be determined that Class counsel was overpaid for fees.

### **III. ARGUMENT**

Plaintiffs' motion for interim attorneys' fees is premature because class member identification and an ultimate settlement of compensatory education service to all class members who desire such services must be accomplished before any attorneys' fees discussions and consideration may be had by the Court.

#### **A. Because the size of the class is necessary to measure the degree of success of the prevailing party, Plaintiffs' motion is premature.**

Plaintiffs claim prevailing party status because they successfully appealed the District Court's ruling. They state that they won class certification through the Ninth Circuit decision, ensuring that thousands of individuals will receive access to two additional years of IDEA services. Specifically, Plaintiffs claim the size of the class to be 1,800 individuals.

The Department contends that the ultimate class size will range between 90 to 400 individuals. The size of the class will assist the Court to determine a reduction, if any, of Plaintiffs' claimed interim attorneys' fees.

At the court's discretion, an award of reasonable attorneys' fees may be awarded as part of the costs to the prevailing party. 20 U.S.C. § 1415(i) When a prevailing party only obtains partial success, in considering reducing attorneys' fees, the court must consider whether: 1) the party failed to prevail on the claims

that were unrelated to the claims in which the party succeeded; and , 2) the party achieved a level of success that makes the hours reasonably expended a satisfactory basis for the fee award. Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S. Ct. 1933, 1939 (1983).

The Ninth Circuit Court of Appeals has provided guidance for determining whether a plaintiff is a ‘prevailing party’. In Shapiro v. Paradise Valley Unified Sch. Dist., 374 F.3d 857, 865 (9th Cir.2004), the Ninth Circuit held that in order to be a prevailing party, a plaintiff must not only achieve some material alteration of the legal relationship of the parties, but that change must also be judicially sanctioned. Subsequent Ninth Circuit law has confirmed that some judicial sanction or “imprimatur” is a prerequisite for determining that a plaintiff is a prevailing party under the IDEA. P.N. v. Seattle Sch. Dist., 458 F.3d 983 (9th Cir.2006), citing Carbonell v. INS, 429 F.3d 894, 898 (9th Cir.2005).

As the Supreme Court has ruled “[a] reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.” Hensley v. Eckerhart, 461 U.S. 424, 440, 103 S.Ct. 1933, 1943 (1983). The Supreme Court further stated “[w]here the [party] has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee.” Id. The Hensley rationale applies to Individuals with Disabilities

Education Act (“IDEA”) cases. See Aguirre v. Los Angeles Unified School District, 461 F.3d 1114 (9<sup>th</sup> Cir. 2006).

Given that any settlement of class member claims will involve individual compensatory education settlements, once the class has been definitively identified, the Court will be in a better position to see the extent of successful versus unsuccessful claims. Until the class is identified, individual compensatory education settlements cannot be determined. Plaintiffs will not have prevailing party status for any and all of the unsuccessful claims. Individuals who are denied class membership, deemed ineligible for compensatory education, or decline to accept an class approved compensatory education settlement offer would fall into the category of an unsuccessful claim. The Department anticipates that many of the claimed 1,800 class members will be excluded from the class for various reasons. Plaintiffs’ request for interim fees, therefore, is premature.

**B. Plaintiffs’ attorneys’ hourly rates and fees require reductions**

Should this Court determine that interim attorneys’ fees are appropriate in this case, which the Department does not concede, the Department submits that the hourly rates and hours being claimed by Plaintiffs require a significant reduction.

Plaintiffs’ are seeking an award of \$234,849.20 in attorneys’ fees for work performed between June 29, 2010 and August 22, 2014.

<u>Attorney</u>	<u>Hourly Rate</u>
Paul Alston	\$628.60
Shelby A. Floyd	\$450.00
Chrystn Eads	\$330.00
Jason H. Kim	\$318.27
Aryanna Abouzari	\$250.00
Michelle N. Comeau	\$250.00
Claire W. Black	\$250.00
Maile B. Osika	\$175.00
Trisha C. Gibo	\$125.00
Thomas F. Moriarty	\$125.00
Kyu Y. Paek	\$175.00
Matthew C. Bassett	\$302.36
Louis Erteschik	\$300.00
Jennifer V. Patricio	\$225.00
Aubry Wand	\$125.00
Kelly K. M. Guadagno	\$132.61
Jya Ming Bunch	\$50.00
Sherri L. Meyer	\$50.00

**1. Plaintiffs’ attorneys’ hourly rates are unreasonable**

The hourly rates claimed by Plaintiffs are as follows:

The Department requests that the Court reduce the claimed hourly rates and fees for the following reasons.

The Ninth Circuit has held that a reasonable hourly rate should be based on "the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." Webb v. Ada County, 285 F.3d 829, 840 (9<sup>th</sup> Cir. 2002) (quoting Chalmers v. City of L.A., 796 F.2d 1205, 1210-11 (9<sup>th</sup> Cir. 1986) (emphasis added). The rate awarded should reflect "the rates of attorneys practicing in the forum district." Gates v. Deukmejian, 987 F.2d 1392, 1405 (9<sup>th</sup> Cir. 1992) (emphasis added).

Other factors considered by the Ninth Circuit in determining the reasonableness of the hours expended and reasonable hourly rate are:

(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the 'undesirability' of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9<sup>th</sup> Cir. 1975).

**a. Plaintiffs' hourly rates must reflect their respective level of experience in IDEA cases.**

The Ninth Circuit has held that a court may consider the fee rates awarded by other judges in the same locality in similar cases. Moreno v. City of Sacramento, 534 F.3d 1106, 1115 (9<sup>th</sup> Cir. 2008).

The following chart is a list of attorney's who specialize in IDEA cases and have had their respective hourly rates approved by this Court for their work on IDEA cases.

Attorney	Experience in IDEA cases	Hourly rate
Stanley Levin	30+ years	\$300.00 <sup>1</sup>
Jerel Fonseca	29+ years with 12+ in IDEA cases	\$285.00 <sup>2</sup>
Carl Varady	16+ years (but not all in IDEA cases)	\$285.00 <sup>3</sup>
Matthew Bassett	20+	\$275.00 <sup>4</sup>
John Deller	20+ (but not all in IDEA cases)	\$275.00 <sup>5</sup>

<sup>1</sup> Sam K. v. Hawai'i Dep't of Education, 2013 WL 3071317 at \*4 (D. Hawaii June 17, 2013).

<sup>2</sup> Aaron P. v. Hawai'i Dep't of Education, 2013 WL 4791444 (D. Hawaii Sept. 5, 2013).

<sup>3</sup> Sam K.

<sup>4</sup> B.T. ex rel. Mary T. v. Department of Educ., Hawai'i, 2010 WL1644989 (D. Hawaii April 2, 2010).

<sup>5</sup> J.T. v. Hawai'i Dep't. of Education, 2012 WL 5383404 (D. Hawaii Oct. 31, 2012).



With the exception of Matthew C. Bassett, Esq., Louis Erteschik, Esq., and Jennifer V. Patricio, Esq., the overall experience of Plaintiffs' attorneys in IDEA cases are minimal. As such, any Court approved hourly rate must take into account the level of experience of each respective attorney. The Court must note that Ms. Patricio, whose practice primarily consists of IDEA type cases, has billed the Department previously at an hourly rate of \$125.00/hr. Except for Shelby A. Floyd, Esq., Ms. Patricio arguably has more experience in IDEA cases than any other attorney at Alston Hunt Floyd & Ing. As such, the hourly rate set by this Court for any of Plaintiffs' attorneys, but for Mr. Alston, should not exceed Ms. Patricio's hourly rate. Recently, Ms. Patricio has requested an hourly rate increase to \$185.00/hr. This amounts to a 60% increase in her hourly rate. The Department does not object to an increase in Ms. Patricio's hourly rate and submits that a reasonable hourly rate for Ms. Patricio is \$150.00/hr. Such an increase amounts to a 20% increase in Ms. Patricio's hourly rate, which the Department submits is an extremely generous increase, particularly when the Department is currently dealing with budget cuts.

Based upon the preceding, the highest hourly rate the Court should deem appropriate should not exceed \$300.00 for Mr. Alston and Ms. Floyd<sup>6</sup> and range between \$125.00 to \$150.00 an hour for the lesser IDEA experienced attorneys.

**b. Plaintiffs' hourly rates must reflect their respective hourly rate during the year the work was performed.**

Plaintiffs' are claiming fees for work performed by their attorneys between 2010 and 2014. The claimed hourly rates should be reflective of the appropriate billable hourly rate for the corresponding calendar year and/or adjusted appropriately. On April 24, 2015, the hourly rates for the following attorneys were set by the Ninth Circuit as follows:

<u>Attorney</u>	<u>Year(s)</u>	<u>Hourly Rate</u>
Paul Alston	Pre-2011	\$540.00
	2012-2013	\$592.52
Jason H. Kim	2012-2013	\$300.00
Matthew C. Bassett	2008-2009	\$275.00
	2012-2013	\$285.00

See Plaintiffs' Interim Motion for Attorneys' Fees filed November 20, 2015, Exhibit 3, pg 7-10.

Applying the above-referenced hourly rates for time billed in 2010 to 2014

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<sup>6</sup> While Ms. Floyd was one of the lead attorney's in the Felix case, Ms. Floyd has done very little practice in the area of the IDEA since the Felix case terminated in 2005, and has not had any IDEA cases that we are aware of in the last 5 years. In contrast, Eric Seitz, Esq., one of the other lead counsels in the Felix case has continued to actively represent parents in IDEA cases. The most recent billing statement submitted by Mr. Seitz has his hourly rate at \$350.00/hr.

for Mr. Alston and Mr. Bassett, their respective fees require, at a minimum, reduction as follows:

<u>Attorney</u>	<u>Year</u>	<u>Hours x Hourly Rate</u>	<u>Total</u>	<u>Reduction</u>
P. Alston	2010	5.3 x 540.00	\$2,862.00	\$469.58
M. Bassett	2010-11	20.5 x 275.00	\$5,637.50	\$560.88
M. Bassett	2012-14	5.5 x 285.00	\$1,567.50	\$95.48
Total Reduction:				<b>\$1,125.94</b>

**2. Not all the time sought by Plaintiffs were reasonably necessary to achieve the results obtained.**

**a. Clerical time should not be allowed.**

Courts have held that attorneys should not be allowed to bill for clerical services. Seffer v. Experian Information Solutions, Inc., 290 F. Supp.2d 538, 549 (E.D. Pa. 2003); Painsolvers, Inc. v. State Farm Mut. Auto. Ins. Co., 2012 WL 2529260 at \*5 (Feb. 28, 2012). This was also recognized by the United States District Court, District of Hawai`i in B.T. ex rel M.T. v. Department of Educ., Hawai`i, 2011 WL3021129 (D. Hawai`i June 27, 2011). In addition to being clerical in nature, the time spent compiling attorney time and drafting the motion and memorandum in support of fees is also ministerial and should be considered part of the cost of doing business. Melodee H. and Jon H. on behalf of their son Kelii H. v. Department of Education, State of Hawai`i, Civil No. 07-00256 HG-

LEK (September 23, 2008). This is not something that that Department should be responsible for.

Date	Attorney	Description	Time	Reduction
7/21/10	J. Kim	Assemble exhibits	1.70	\$510.00 (1.70 x \$300.00)
7/28/10	J. Kim	Obtain additional exhibits	.50	\$150.00 (.50 x \$300.00)
10/18/10	P. Alston	Review scheduling conference statement	.10	\$62.84 (.10 x \$628.36)
10/20/10	P. Alston	Review scheduling conference statement	.10	\$62.84 (.10 x \$628.36)
6/29/11	J. Kim	Email with law clerk	.40	\$120.00 (.40 x \$300.00)
6/30/11	J. Kim	Email with law clerk	.10	\$30.00 (.10 x \$300.00)
7/8/11	J. Kim	Email with paralegal	.10	\$30.00 (.10 x \$300.00)
7/14/11	P. Alston	Review 1 <sup>st</sup> Amended Notice of 30(b)(6) deposition	.10	\$62.84 (.10 x \$628.36)
8/22/11	P. Alston	Review Plaintiffs' memorandum in opposition	.30	\$188.51 (.30 x \$628.36)
8/23/11	P. Alston	Review J. Kim's letter to C. Siu	.10	\$62.84 (.10 x \$628.36)
1/12/12	J. Kim	Email with paralegal	.30	\$90.00 (.30 x \$300.00)
1/27/12	J. Kim	Email with paralegal	.20	\$60.00 (.20 x \$300.00)
1/28/12	J. Kim	Email with paralegal	.10	\$30.00 (.10 x \$300.00)
1/30/12	J. Kim	Prep exhibit binder	1.0	\$300.00 (1.0 x \$300.00)
2/1/12	J. Kim	Email with paralegal	.20	\$60.00 (.20 x \$300.00)
4/3/13	P. Alston	Review notice of hearing	.10	\$62.84 (.10 x \$628.36)
9/11/13	P. Alston	Telephone call with M.	.20	\$125.67

		Bronster		(.20 x \$628.36)
2/11/14	K. Paek	Review case file	1.0	\$175.00 (1.0 x \$175.00)
2/22/14	P. Alston	Review notice of hearing	.10	\$62.84 (.10 x \$628.36)
4/17/14	P. Alston	Review order setting further hearing	.10	\$62.84 (.10 x \$628.36)
5/28/14	P. Alston	Email re: scheduling status conference	.20	\$125.67 (.20 x \$628.36)
5/29/14	P. Alston	Email with J. Patricio re: scheduling status conference	.10	\$62.84 (.10 x \$628.36)
5/29/14	P. Alston	Review Notice of Status Conference	.10	\$62.84 (.10 x \$628.36)
6/16/14	P. Alston	Meeting and telephone call with paralegal	.80	\$502.69 (.80 x \$628.36)
7/28/14	P. Alston	Review Order rescheduling motion	.10	\$62.84 (.10 x \$628.36)
	<b>TOTAL:</b>		8.10	<b>\$3,125.94</b>

If all of this time is excluded, this results in a total reduction of **\$3,125.94**.

**b. Time spent consulting with other attorneys should not be allowed.**

The time sheets submitted by Plaintiffs’ reflect time spent by Plaintiffs’ attorneys consulting with attorneys other than communications with the opposing counsel. The logs include time spent communicating with co-counsel representing Plaintiffs. Consulting time with co-counsel who also represent Plaintiffs should not be allowed. Sheehan v. Centex Homes, 853 F.Supp.2d 1031, 1044 (D. Haw. 2011)(Courts in Hawaii do not “permit more than one attorney to bill for attending: (1) a meeting between co-counsel; (2) a client meeting; or (3) a meeting with opposing counsel”).

Date	Attorney	Description	Time	Reduction
8/3/10	J. Kim	Telephone call with P. Alston	.20	<b>\$60.00</b> (.20 x \$300.00)
8/3/10	P. Alston	Telephone call with J. Kim	.20	\$125.67 (.20 x \$628.36)
10/1/13	P. Alston	Conference with S. Dellera and L. Erteschik	.40	\$251.34 (.40 x \$628.36)
10/1/13	J. Patricio	Conference with L. Erteschik, P. Alston, and M. Bassett	.50	<b>\$112.50</b> (.50 x \$225.00)
2/12/14	P. Alston	Email with K. Paek	.30	\$188.51 (.30 x \$628.36)
2/13/14	K. Paek	Email with P. Alston	.10	<b>\$17.50</b> (.10 x \$175.00)
2/14/14	K. Paek	Email with P. Alston	.10	<b>\$17.50</b> (.10 x \$175.00)
2/14/14	P. Alston	Email with K. Paek	.10	\$62.84 (.10 x \$628.36)
3/3/14	P. Alston	Email with J. Patricio	.10	\$62.84 (.10 x \$628.36)
3/3/14	J. Patricio	Email with P. Alston	.20	<b>\$45.00</b> (.20 x \$225.00)
3/3/14	J. Patricio	Conference with L. Erteschik	.30	<b>\$67.50</b> (.30 x \$225.00)
3/3/14	L. Erteschik	Conference with J. Patricio	.30	\$90.00 (.30 x \$300.00)
4/17/14	J. Patricio	Conference with L. Erteschik	.20	<b>\$45.00</b> (.20 x \$225.00)
4/17/14	L. Erteschik	Conference with J. Patricio	.20	\$60.00 (.20 x \$300.00)
4/18/14	P. Alston	Email with C. Black	.40	\$251.34 (.40 x \$628.36)
4/18/14	C. Black	Email with P. Alston	.30	<b>\$75.00</b> (.30 x \$250.00)
6/2/14	M. Comeau	Telephone call with A. Abouzari	.20	<b>\$50.00</b> (.20 x \$250.00)
6/2/14	A. Abouzari	Strategize with M. Comeau	.60	\$150.00 (.60 x \$250.00)
6/4/14	P. Alston	Email with J. Patricio and L.	.20	\$125.67

		Erteschik		(.20 x \$628.36)
6/4/14	J. Patricio	Email with P. Alston	.20	<b>\$45.00</b> (.20 x \$225.00)
6/14/14	M. Comeau	Email with P. Alston	.30	<b>\$75.00</b> (.30 x \$250.00)
6/14/14	P. Alston	Email with M. Comeau	.30	\$188.51 (.30 x \$628.36)
6/16/14	M. Comeau	Email with P. Alston	.50	<b>\$125.00</b> (.50 x \$250.00)
6/16/14	P. Alston	Email with M. Comeau	.30	\$188.51 (.30 x \$628.36)
7/13/14	M. Comeau	Email with P. Alston re: opposition to DOE motion	.10	<b>\$25.00</b> (.10 x \$250.00)
7/14/14	P. Alston	Email with M. Comeau re: opposition to DOE motion	.10	\$62.84 (.10 x \$628.36)
7/15/14	P. Alston	Email with M. Comeau re: compensatory education	.20	\$125.67 (.20 x \$628.36)
7/16/14	M. Comeau	Email with P. Alston re: compensatory education	.20	<b>\$50.00</b> (.20 x \$250.00)
7/20/14	M. Comeau	Email with P. Alston	.10	<b>\$25.00</b> (.10 x \$250.00)
7/20/14	P. Alston	Email with M. Comeau	.10	\$62.84 (.10 x \$628.36)
7/25/14	M. Comeau	Email with P. Alston re: reply memo	.20	<b>\$50.00</b> (.20 x \$250.00)
7/25/14	P. Alston	Email with M. Comeau re: reply memo	.20	\$125.67 (.20 x \$628.36)
8/5/14	M. Comeau	Email to P. Alston	.40	\$100.00 (.40 x \$250.00)
8/5/14	P. Alston	Email with M. Comeau	.10	<b>\$62.84</b> (.10 x \$628.36)
	<b>TOTAL:</b>		8.2	\$3,170.09

If all the time of the lower fees (in bold) of the co-counsel were excluded, this results in a total reduction of **\$947.84**.

**c. Time spent by multiple Plaintiffs’ attorneys attending the same hearing should not be allowed.**

Similarly, Plaintiffs’ time sheet submittals reflect attendance at status conferences and hearing motions by multiple attorneys. Fees related to the attendance of multiple Plaintiffs’ attorney should not be allowed.

Hearing/Status Conf. Date	Attorney	Time	Hourly Rate/Fees	Total Fees
9/6/13 – Status Conference	J. Patricio	1.0	225.00/225.00	\$853.60
	P. Alston	1.0	628.36/628.36	
3/4/14 – Motion Hearing	J. Patricio	.70	225/157.50	\$870.38
	P. Alston	.80	628.36/502.88	
	L. Erteschik	.70	300.00/210.00	
4/18/14 – Motion Hearing	J. Patricio	.30	225.00/67.50	\$318.94
	P. Alston	.40	628.36/251.44	
6/5/14 – Status Conference	J. Patricio	.50	225.00/112.50	\$489.66
	P. Alston	.60	628.36/377.16	
8/13/14 – Motion Hearing	J. Patricio	1.20	225.00/270.00	\$2,622.90
	L. Erteschik	1.20	300.00/360.00	
	P. Alston	1.50	628.36/942.90	
	M. Comeau	2.90	250.00/725.00	
	C. Black	1.30	250.00/325.00	
			<b>TOTAL:</b>	<b>\$5,155.48</b>

If all of this time was reduced to a more appropriate hourly rate and just for the time of the lead attorney, a total reduction of **\$3,865.48**. (See table below (\$5,155.48 - \$1,290.00)).

Hearing/Status Conf. Date	Attorney	Time	Hourly Rate	Total Fees
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9/6/13 – Status Conference	P. Alston	1.0	300.00	\$300.00
3/4/14 – Motion Hearing	P. Alston	.80	300.00	\$240.00
4/18/14 – Motion Hearing	P. Alston	.40	300.00	\$120.00
6/5/14 – Status Conference	P. Alston	.60	300.00	\$180.00
8/13/14 – Motion Hearing	P. Alston	1.50	300.00	\$450.00
			TOTAL:	\$1,290.00

It must be noted that should the Court determine that reductions in Plaintiffs’ claimed hourly rates, then the calculations above must be adjusted accordingly.

**IV. CONCLUSION**

Based upon the foregoing, the Department respectfully requests that this Honorable Court deny Plaintiffs’ Ex Parte Motion for Interim Attorneys’ Fees as premature and take up Plaintiffs’ request at the appropriate time. In the alternative,

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the Department requests that reductions of Plaintiffs' claimed hourly rates and fees be reduced as discussed above.

DATED: Honolulu, Hawai'i, December 18, 2015.

/s/ Ryan W. Roylo

RYAN W. ROYLO

Deputy Attorneys General

Attorneys for Defendant

DEPARTMENT OF EDUCATION

State of Hawai'i

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

E.R.K., by his legal guardian R.K.,  
et. al,

Plaintiffs,

vs.

DEPARTMENT OF EDUCATION,  
State of Hawai‘i,

Defendant.

CIVIL NO. 10-00436 SOM-KSC

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I hereby certify that on December 18, 2015, a true and correct copy of Defendant Department of Education, State of Hawai‘i’s Answering Brief was duly served electronically through CM/ECF as follows:

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Dated: Honolulu, Hawai'i, December 18, 2015.

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Attorneys for Defendant  
DEPARTMENT OF EDUCATION  
State of Hawai'i

**Nancie Yanagihara - Activity in Case 1:10-cv-00436-SOM-KSC P.-K. et al v. Department of Education, State of Hawai'i Memorandum in Opposition to Motion**

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**U.S. District Court**

**District of Hawaii**

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**Case Number:** [1:10-cv-00436-SOM-KSC](#)  
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**Document Number:** [303](#)

**Docket Text:**

**MEMORANDUM in Opposition re [292] Interim MOTION for Attorney Fees Defendant's Memorandum in Opposition to Plaintiffs' Ex Parte Motion for Interim Attorneys' Fees filed November 20, 2015; Certificate of Service filed by Department of Education, State of Hawai'i. (Roylo, Ryan)**

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