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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

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 STATUS REPORT;
CERTIFICATE OF SERVICE**

Date: November 12, 2015

Time: 9:00 a.m.

Judge: Hon. Kevin S.C. Chang

DEFENDANT’S STATUS REPORT

Defendant DEPARTMENT OF EDUCATION, State of Hawai‘i
 (“Department”) submits the following Status Report in the above entitled case.

I. Identifying Interested Potential Class Members

On November 6, 2015, the parties’ counsel met to discuss and make efforts to reach an agreement on identifying class members interested in participating and/or receiving compensatory education services or participating in a settlement.

As a result of this meeting, the parties were able to agree to list of approximately 400 interested potential class members including categorizing by disputed or undisputed with basis of dispute. Unfortunately, the parties could not come to an entire agreement with regard to a total stipulated list of class members. As such, the Department will be prepared to file appropriate motions regarding the identification of class members by November 16th.

Plaintiffs imply that it is the Department’s duty or obligation to “maintain up-to-date contact information for the Class Members.” This is not the Department’s duty or obligation. As the Court is aware, the Department was ordered to provide Plaintiffs’ counsel with contact information of the individuals and/or individuals’ legal guardians as contained in the education records. This

obligation was only upon the Department and not “other State agencies.” As noted by Plaintiffs’ counsel, the identity of 1800 individuals and the addresses and telephone numbers from their respective education records were provided by the Department between September and December 2014.

Despite Plaintiffs’ assertion that the listing of 1800 individual’s contact information was “years-old street addresses”, it is the Department’s understanding that a very minimal number of mailed notices to the individuals were returned to the Department as unclaimed. As the Court is aware, in addition to the Ward Research calling service and Lexis searches, the Department also undertook publishing legal notices and coordinating and running assistance centers in an effort to contact any potential interested class members. As the Court is also aware, the Department absorbed the costs and expenses related to these efforts. The Department has spoken with the deputy attorney general for the Department of Public Safety regarding a process to notify any potential class member who is currently incarcerated about the class action. We can discuss this in further detail at the status conference.

As mentioned at prior status conferences, the Department would like to see a definitive cut-off date by which any and all interested potential class members must be identified by Plaintiffs’ counsel. The Court has previously

identified November 30, 2015 as the target date to define the class and the Department is agreeable to this date.

The Department will likely need to know the number of class members before it will be able to obtain settlement authority to resolve this matter.

II. Service Matrix & Settlement Offer Components

Counsel for the Department has met with and discussed Plaintiffs' "ERK v. DOE – Service Matrix" ("Matrix"). The Court asked the Department to consider whether the Matrix was: 1) a workable general schematic; and, 2) an accurate reflection of the percentage distribution amongst the six (6) category examples.

While the category schematic may generally be usable for the purposes of resolving this matter, there are some flaws. First, the Matrix lists all categories as "low cognitive" or "well below average." This is not accurate as to the proposed class. In addition, the descriptors of the categories on the Matrix is not consistent with the IDEA. For example, individuals with a "Specific Learning Disability" have average to above-average intelligence. However, the Matrix has listed it as low cognitive. Further, the service grids do not appear to match the needs of the students. It also does not differentiate services, but instead proposes that same services to all students.

Another concern is that the Matrix does not show how it will build upon existing services. In some instances the proposed services are inappropriate. For example, an individual with an Intellectual Disability is being provided with intensive mental health services without indication of mental health issues.

Other services noted in the Matrix are simply not appropriate. For example, the delivery of Behavioral Instructional Support Services (BISS) is for consultation purposes for a classroom teacher and not appropriate for an adult in the community. The overall offer of services does not foster independence and are contrary to an individual's transition into adulthood.

Per the Court's request for the Department to identify service components which could be included in a settlement proposal, the services which could be included are as follows: tutoring; speech; occupational therapy; physical therapy; vocational pre-employment services; counseling; and, functional living skills. The Department is in the process of preparing a more detailed schematic of such services to be included in a settlement offer once the class has been identified.

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III. Counter-Proposals for the Pilot Group

As previously mentioned, the Department is in the process of preparing an offer that could possibly be offered to all class members including those in the pilot group.

Dated: Honolulu, Hawai‘i, November 10, 2015.

/s/ Ryan W. Roylo
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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that on November 10, 2015, a true and correct copy of **DEFENDANT'S STATUS REPORT** was duly served electronically through CM/ECF on the following at their last known address:

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Dated: Honolulu, Hawai‘i, November 10, 2015.

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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

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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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Docket Text:

[STATUS REPORT Defendant's Status Report; Certificate of Service by Department of Education, State of Hawai'i. \(Roylo, Ryan\)](#)

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