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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 16, 2015

TIME: 9:00 a.m.

JUDGE: Kevin S. C. Chang

vs.

DEPARTMENT OF EDUCATION,
State of Hawai'i,

Defendant.

**PLAINTIFFS' STATUS REPORT
RE: COMPENSATORY EDUCATION**

Plaintiffs submit the following report regarding the status of pilot group assessments and the status of the DOE's provision of services to the Class as a whole. Plaintiffs request guidance from the Court regarding several issues for which the parties have been unable to reach agreement. These issues are:

I. Whether Parents Should Have Been Allowed to Observe Pilot Group Assessments and the Scope of Parents' Rights to Observe Future Assessments.

Plaintiffs' understanding is that assessments are near completion for the Pilot Group. Despite the Court's urging at the last status conference, the DOE has confirmed its refusal to allow families to observe the assessments, despite the fact that parents were welcome at assessments before their children "aged out."

As Plaintiffs have previously noted, Plaintiffs are unaware of any legal authority permitting a school district to close assessments in this manner. It is also highly counterproductive, particularly

with respect to the Pilot Group, as no one outside of the assessors and the disabled class members is able to provide any insight into the manner in which assessments were actually conducted.¹

Finally, the DOE's refusal to allow parents to observe created an unnecessarily adversarial atmosphere for the class members, as the DOE turned away their parents literally "at the door." Plaintiffs strongly object to this approach to parental observation as it is not in the best interest of the class members.²

¹ One of the primary reasons for proceeding with a Pilot Group was to establish a process subject to review and improvement. The ability to observe and critique is a critical component of this process. By way of example, in the lone assessment that the DOE did permit counsel to attend, the assessors did not conduct their observations in the way that had been explained ahead of time to the parent. Instead of one assessor at a time observing the class member for 15-20 minutes, three assessors all arrived together, observed the same approximately 30 minutes of behavior, and then left. Two of the three also left for several minutes during that time to move their cars. The only reason Plaintiffs are aware of this is that an observer—in that case, counsel—was present. The class member herself struggles with verbal communication.

² The *only reason* for this provided by DOE counsel is that in two cases (R.G. and A.C.), parents "got involved" by assisting their children. Counsel did not have any more specific information to provide, nor did he know whether in either of these cases the assessor had asked the parent to refrain from assisting the class member. Class counsel subsequently spoke to the mothers of R.G. and A.C., who were both surprised to hear that the assessors had wanted them to refrain from participating, because the assessors never said anything like that during the assessments. Both were under the impression that the assessments had been positive and

II. Whether the DOE Must Provide Documents and Information Reflecting the Instructions Given to the Pilot Group Assessors and When the Assessors' Reports will be turned over to Plaintiffs' Counsel.

Counsel for the DOE has stated that the reports on the Pilot Group would be ready by July 7-9 or they may be delayed by a week, and agreed to provide an update on this at the status conference. The DOE has stated that the reports will contain a recommendation for services to be provided, but it has provided Plaintiffs little information regarding the nature or content of the reports or the mandates and instructions that were given to the assessors who are tasked with drafting the reports. In response to Plaintiffs' inquiry on this issue, counsel for the DOE stated that the parties should "wait and see" what the reports contain. Plaintiffs sent a letter to the DOE on May 13, 2015, regarding Plaintiffs' expectations of the assessments, but did not receive a response.

Based on the DOE's "wait and see" response to Plaintiffs' inquiries regarding the mandate that was provided to the assessors, Plaintiffs are very concerned that the assessors assisting the DOE in proposing its plans for serving the Pilot Group have not been

productive (one noted that she even got a hug from the assessor at the end). Both parents stated that if their assessor had asked the parents to remain silent, they would have done so.

instructed properly regarding the purpose of the assessments and the scope of the determinations and services that should be offered.

Therefore, Plaintiffs have asked the DOE to provide all communications, instructions, guidance, and other documentation that has been provided to the assessors of the Pilot Group regarding their assignment in connection with this lawsuit. As Plaintiffs have repeatedly explained, an adequate offer of compensatory services must consist of a recommended program of services, from the DOE and private providers as necessary, to bring the class member to the level he or she would reasonably have been expected to achieve today if the full complement of special education and related services had been properly provided to age 22.

III. Whether the DOE Must Reimburse Class Counsel for the Cost of Locating Contact Information for the Remaining Class Members and Provide Phone Numbers to Class Counsel for those 48 Members who asked for More Information in January and February 2015.

Plaintiffs have asked the DOE to marshal the additional resources of other state agencies to track down the 70% of the Class that the DOE has so far failed to contact. The DOE has stated that it cannot obtain updated contact information from other state agencies. Plaintiffs are providing the DOE a summary of the

status of the class members provided by the DOE, and a quote to obtain new addresses and phone numbers via a Lexis service.³ As Plaintiffs have stated, this information is critical to advancing the case with respect to the approximately 1,300 class members who have not yet been reached because the DOE's records are incomplete and out of date.

IV. Confirmation that the Rule 30(b)(6) Deposition of the DOE will Proceed As Scheduled on Topics Noticed.

As discussed previously, the Rule 30(b)(6) deposition will take place on June 24, 2015. In response to the DOE's inquiry regarding the class definition, Plaintiffs have clarified that the class does not include students when they received uninterrupted services and turned 20 after Act 163 was repealed (July 2014). However, Plaintiffs do intend to explore whether the DOE provided uninterrupted service (or any service) to class members who turned 20 before the start of the 2013-14 school year. The topics include:

³ Plaintiffs are also waiting for the telephone numbers of the 48 Class Members who told Ward Research in January and February 2015—nearly *six months* ago—they wanted more information regarding the services available. The DOE has, to date, refused to provide those Class Members' phone numbers to class counsel, and so class counsel has been unable to follow up with these individuals.

1. Efforts taken since August 31, 2013, to extend Special Education and Related Services programs to students aged 20-22.
2. The amounts budgeted in Fiscal Years 2013-14, 2014-15 and 2015-16 for Special Education and Related Services programs to students aged 20-22; and the amounts expended to date for such services.
3. The DOE's capacity to provide services to persons aged 20-26 who are entitled to (a) special education and related services and/or (b) compensatory education.
4. How and where the DOE intends to provide services for Class Members aged 20-26 and what resources the DOE has—in terms of facilities, staff, and money—for that purpose.
5. The actual average per child cost to the DOE of Special Education and Related Services in Fiscal Years 2013-14, 2014-15, and the anticipated per child costs for Fiscal Years 2015-16 and 2016-17.

DATED: Honolulu, Hawai`i, June 15, 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 15, 2015:

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Attorneys for Defendant
DEPARTMENT OF EDUCATION

DATED: Honolulu, Hawai`i, June 15, 2015.

 /s/ Michelle N. Comeau
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KRISTIN L. HOLLAND
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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

From: <hid_resp@hid.uscourts.gov>
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Date: 6/15/2015 3:16 PM
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U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered by Comeau, Michelle on 6/15/2015 at 3:15 PM HST and filed on 6/15/2015

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: [235](#)

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), R. D., Hawaii Disability Rights Center, E.R. K.. (Attachments: # (1) Certificate of Service)(Comeau, Michelle)

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