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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: July 16, 2015

TIME: 9:00 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.

I. ASSESSMENT REPORTS FOR THE PILOT GROUP

On July 13, 2015, the DOE provided Plaintiffs eight assessment reports. Below is a brief summary of the reports received:

Name	Report Date	Assessment Date(s)	Regression Assessment?	Recommended Compensatory Services
A.C.	6/23/15	6/2/15	No	6-7 hours physical therapy, 6-7 hours occupational therapy, over 3 months.
K.H.	6/23/15	5/29/15-6/4/15	Minimal	1 year computer classes at WCC or adult community school.
J.I.	6/23/15	5/28/15-6/5/15	Yes	6 months – “develop self-help and independent living skills at home through visual schedules and modeling.”

Name	Report Date	Assessment Date(s)	Regression Assessment?	Recommended Compensatory Services
E.R.K.	6/23/15	5/28/15-6/9/15	No	6 months “social work services” to help find adult day program. 6 months speech therapy.
A.K.	6/17/15	6/1/15-6/12/15	Minimal	Develop visual schedules. Teach family members to make visual day schedules.
P.S.	6/13/15	5/26/15-6/5/15	Minimal	6 months (maximum) vocational advising. 1 year math tutoring. 3 months “parent training.”
K.S.	6/23/15	5/27/15-6/1/15	Yes	1 year tutoring (reading/writing/math). 6 months “social work services” to help find adult day program or vocational program.
K.Y.	6/18/15	5/29/15-6/1/15	No	Help family connect to agencies that could help K.Y. become involved in community and/or find structured employment. “Support the learning of job skills to promote independence.” 6 months “social work services” to help find

Name	Report Date	Assessment Date(s)	Regression Assessment?	Recommended Compensatory Services
				job opportunities. 6 months speech therapy.

Plaintiffs and their experts are now reviewing the reports, which were written weeks ago. However, it is clear that the DOE does not understand the full breadth of its obligations to compensate for two years of lost services.

For example, E.R.K. lost two years of services at Roosevelt. Had he stayed in school, he would have been able to access two extra years of socialization, pre-vocational training, classroom activities, extra-curricular club activities, independent living training (*i.e.*, catching the bus, shopping, crossing the street safely, etc.), and more. As compensation, the DOE wants only to provide six months of vague “social work services” so he can find a program. E.R.K.’s family is already well aware of what programs exist and does not need to be given a list of services. The only other service offered E.R.K. was six months of speech therapy, a service E.R.K.’s family reports is of low value given his present abilities.

This is far from what is needed to compensate for the panoply of services he lost for two years.

In another case, A.K. was forced to exit school at age 20—again, two years too early—and is now being offered a compensatory package that consists solely of visual schedules to help plan her day (and instruction for her family on how to make those schedules).

Critically, only a few of the reports discuss the issue of regression¹; many contain no discussion of what is necessary to restore the class member to the level of functioning obtained when he or she left school, and none discuss what services are needed to advance the class member's level of achievement to what it would have been if the student had received a proper FAPE up to age 22 without interruption. Plaintiffs raised these exact issues with the DOE via letter on May 13, 2015, in advance of the assessments of the Pilot Group, to ensure that the assessments and reports would reflect the standards of compensatory education, in an effort to avoid this precise situation.²

¹ The reports that do discuss regression all say no regression occurred.

² As Plaintiffs have explained previously, the principles guiding the compensatory education remedy at work in this case are not novel. Plaintiffs are simply applying well-established case law, as well as

II. PROGRESSING WITH SERVICES TO THE SECOND GROUP OF CLASS MEMBERS

Following the last status conference, the parties have twice discussed the Court's proposal to set up dates and times for individuals in the second group to come and sign up to be assessed and to sign their forms.³ Thus far the DOE has been unwilling to move forward with scheduling of this group as discussed.

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 again ask for the Court's assistance in moving this issue

the law of this case. The fundamental principle is that the compensatory services provided to Plaintiffs must make up for what the Plaintiffs lost. See Dkt. No. 187 (Court Order) at 2-3 ("this court now determines that the members of the class should receive compensatory services to make up for the services missed as a result of th[e] improper determination of ineligibility"). The goal is to place each Plaintiff in the position he or she would have been in had a full complement of educational and related services never been taken away. See *R.P. ex rel. C.P. v. Prescott Unif. Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011).

³ *I.e.*, the FERPA consent and whatever additional consents the DOE is going to require to do assessments and offer services. Again, the individuals in the second group, a group which largely came from the DOE's lists, have *already indicated* that they want services.

forward and request that the DOE be ordered to proceed with the next phase of assessments.

III. REIMBURSEMENT OF COSTS FOR CONTACTING REMAINING CLASS MEMBERS

As the Court is aware, Plaintiffs requested in June 2015 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 parties were not able to reach agreement at that time.

IV. DISPUTED CLASS MEMBERS

The parties disagree with respect to the eligibility of approximately 89 individuals to receive services. Plaintiffs have sought information from the DOE as to why the DOE identified them as persons who might have been affected by Act 163, but the DOE has stated that it will not provide that information. Plaintiffs have also sought information regarding which of these individuals were properly informed of their right to return to school (via FAPE letters). However, the DOE has stated that it will not provide FAPE letters without signed FERPA consents from the individual class members. The parties are continuing to discuss this issue, but Plaintiffs urge the Court to issue an order compelling disclosure to cut this Gordian knot.

V. RULE 30(B)(6) DEPOSITION

The transcript of the first part of the Rule 30(b)(6) deposition was received on July 6, 2015. Plaintiffs will contact the DOE in the near future to schedule a continuation of the deposition, as discussed previously by the parties.

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

/s/ Michelle N. Comeau
PAUL ALSTON
KRISTIN L. HOLLAND
MICHELLE N. COMEAU
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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>
To: <hawaii_cmecf@hid.uscourts.gov>
Date: 7/15/2015 9:57 AM
Subject: Activity in Case 1:10-cv-00436-SOM-KSC P.-K. et al v. Department of Education, State of Hawai'i Status Report
Bc: DONNA AHUNA

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U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered by Comeau, Michelle on 7/15/2015 at 9:57 AM HST and filed on 7/15/2015

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: [241](#)

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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