

DOUGLAS S. CHIN 6465
Attorney General, State of Hawai‘i

CARTER K. SIU 7313
RYAN W. ROYLO 6329
HOLLY T. SHIKADA 4017

Deputy Attorneys General
235 S. Beretania Street, Room 304
Honolulu, Hawai‘i 96813
Tel. (808) 586-1255
Fax (808) 586-1488
Email: Carter.K.Siu@hawaii.gov

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

**DEFENDANT’S STATUS REPORT;
CERTIFICATE OF SERVICE**

Date: July 23, 2015
Time: 9:15 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. Assessment Reports for the Pilot Group

At this time, the Department believes that it is premature for Plaintiffs to criticize the recommendations made by the assessment teams without first having their experts review the reports and provide their own recommendations.¹ The Department looks forward to reviewing any and all expert reports that Plaintiffs' counsel may have regarding each disputed assessment report. Until that occurs, accusations from the attorneys that Plaintiffs deserve a "more comprehensive package of services" is speculative and without any basis.

It must also be noted that the Department still reserves the right to object to whether members of the pilot group were actually impacted by Act 163. For instance, R.G. turned 22 before Act 163 took effect, thus disqualifying him as a class member. In addition, M.P. was not impacted by Act 163 as he received uninterrupted IEP services through the end of school year 2013-2014, when he voluntarily left school.

II. Progressing with Services to the Second Group of Class Members

The Department is willing to discuss assessments of the second group of actual class members. In the meantime, the Department is waiting for Plaintiffs to

¹ All assessment reports have been provided to Plaintiffs' counsel. The assessment reports were, as suggested by the Court, short and concise and intended to provide a baseline of each pilot group member.

obtain FERPA consents from their clients. To date, the Department has received approximately 95 consent forms.

III. Disputed Class Members

The Department is currently working on a letter containing the names of those potential class members who do not appear to qualify as class members. After that, the Department looks forward to receiving any evidence establishing each class member's standing and working with Plaintiffs to resolve any outstanding issues.

Based on conflicting comments made at the last status conference by class counsel Alston Hunt Floyd & Ing and class representative/class co-counsel Hawai'i Disability Rights Center, there appears to be some disconnect as to the class status of those students who were born on or after August 5, 1993. By law, those students were entitled to continue to receive their special education and related services because they were still 19 at the start of the 2013-2014 school year. Despite being provided with their names several weeks ago, Plaintiffs have failed to come forward with any evidence that refutes the Department's claims of ineligibility.

IV. Reimbursement of Costs for Contacting Remaining Class Members

The Department has already satisfied its child find obligations. The issue of paying for Lexis/Nexis search was discussed at the last status conference and it

appeared that the parties were progressing towards an agreement, which would include a “drop dead” date by which all potential class members seeking compensatory education would be identified.

V. Rule 30(b)(6) Deposition

Plaintiffs waited approximately one month to request new dates for the continuation of the Department’s 30(b)(6) representative. On Thursday, July 16, 2015 at 4:15 p.m., Plaintiffs e-mailed counsel seeking to reconvene the deposition on Tuesday July 21, 2015 or Friday July 24, 2015. Plaintiffs were told that the Department’s representative and counsel were not available on those dates and were given alternative dates in the third week in August. The Department has not received any response.

Dated: Honolulu, Hawai‘i, July 22, 2015.

/s/ Carter K. Siu
CARTER K. SIU
RYAN W. ROYLO
HOLLY T. SHIKADA
Deputy Attorneys General

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DEPARTMENT OF EDUCATION
State of Hawai‘i

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 22, 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:

PAUL ALSTON

palston@ahfi.com

MICHELLE N. COMEAU

mcomeau@ahfi.com

LOUIS ERTESHIK

louis@hawaii-disabilityrights.org

MATTHEW C. BASSETT, ESQ.

mattbassettesq@gmail.com

JENNIFER V. PATRICIO

jpatricio@hawaiidisabilityrights.org

HAWAI‘I DISABILITY RIGHTS CENTER

JASON H. KIM

jkim@schneiderwallace.com

Attorneys for Plaintiffs

Dated: Honolulu, Hawai‘i, July 22, 2015.

/s/ Carter K. Siu
CARTER K. SIU
RYAN W. ROYLO
HOLLY T. SHIKADA
Deputy Attorneys General

Attorneys for Defendant
DEPARTMENT OF EDUCATION
State of Hawai‘i

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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U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered by Siu, Carter on 7/22/2015 at 8:56 AM HST and filed on 7/22/2015

Case Name: P.-K. et al v. Department of Education, State of Hawai'i
Case Number: [1:10-cv-00436-SOM-KSC](#)
Filer: Department of Education, State of Hawai'i
Document Number: [245](#)

Docket Text:

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

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

Adam T. Snow Adam.T.Snow@hawaii.gov, Gina.M.Lum@hawaii.gov,
Holly.T.Shikada@hawaii.gov, Kari.K.Noborikawa@hawaii.gov, Richlynn.C.Kong@hawaii.gov,
Yvette.K.Achong@hawaii.gov, Zandra.S.Yamamoto@hawaii.gov

Carter K. Siu Carter.K.Siu@hawaii.gov, carter.siu@gmail.com, Gina.M.Lum@hawaii.gov,
Holly.T.Shikada@hawaii.gov, Lianne.T.Chung@hawaii.gov, Richlynn.C.Kong@hawaii.gov,
Zandra.S.Yamamoto@hawaii.gov

Claire Wong Black cblack@ahfi.com, bkawagoe@ahfi.com, notice@ahfi.com

Gary S. Sukanuma Gary.S.Sukanuma@hawaii.gov, Gina.M.Lum@hawaii.gov,
Holly.T.Shikada@hawaii.gov, Lianne.T.Chung@hawaii.gov, Richlynn.C.Kong@hawaii.gov,
Zandra.S.Yamamoto@hawaii.gov

Harvey E. Henderson , Jr harvey.e.hendersonjr@hawaii.gov, derick.y.ikemoto@hawaii.gov

Holly T. Shikada holly.t.shikada@hawaii.gov, Lianne.T.Chung@hawaii.gov,
Richlynn.C.Kong@hawaii.gov

Jason H. Kim jkim@schneiderwallace.com, mail@schneiderwallace.com

Jennifer Visitacion Patricio jpatricio@hawaiiidisabilityrights.org, mike@hawaiiidisabilityrights.org

Kristin L. Holland KHolland@ahfi.com, notice@ahfi.com, nyanagihara@ahfi.com

Kunio Kuwabe Kunio.Kuwabe@hawaii.gov, Gina.M.Lum@hawaii.gov,
Holly.T.Shikada@hawaii.gov, kkuwabe@objectionsustained.com, Lianne.T.Chung@hawaii.gov,
Richlynn.C.Kong@hawaii.gov, Zandra.S.Yamamoto@hawaii.gov

Louis Erteschik louis@hawaiiidisabilityrights.org, mike@hawaiiidisabilityrights.org

Matthew C. Bassett mattbassettesq@gmail.com, mike@hawaiiidisabilityrights.org

Michelle N. Comeau mcomeau@ahfi.com, dka@ahfi.com, notice@ahfi.com

Paul Alston palston@ahfi.com, notice@ahfi.com, rjkgp@ahfi.com

Ryan W. Roylo ryan.w.roylo@hawaii.gov, Gina.M.Lum@hawaii.gov, Holly.T.Shikada@hawaii.gov,
Lianne.T.Chung@hawaii.gov, Richlynn.C.Kong@hawaii.gov, rwroylo@aol.com,
Zandra.S.Yamamoto@hawaii.gov

Steve K. Miyasaka steve.k.miyasaka@hawaii.gov, gina.m.lum@hawaii.gov,
holly.t.shikada@hawaii.gov, Lianne.T.Chung@hawaii.gov, richlynn.C.kong@hawaii.gov,
Zandra.S.Yamamoto@hawaii.gov

1:10-cv-00436-SOM-KSC Notice will not be electronically mailed to:

Chrystn K.A. Eads
Alston Hunt Floyd & Ing
1001 Bishop St Ste 1800
Honolulu, HI 96813

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