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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; APPENDIX A;  
CERTIFICATE OF SERVICE**

DATE: August 13, 2015

TIME: 9:00 a.m.

JUDGE: Kevin S. C. Chang

vs.

DEPARTMENT OF EDUCATION,  
State of Hawai'i,

Defendant.

**PLAINTIFFS' STATUS REPORT FOR AUGUST 13, 2015  
STATUS CONFERENCE**

Plaintiffs submit the following status report in advance of the August 13, 2015, status conference.

**I. CHALLENGED CLASS MEMBERS**

The DOE now challenges 103 class members (approximately a third of the group of 330) solely based on their age.

The vast majority of these individuals were in fact unilaterally identified *by the DOE* as individuals who might have been affected by Act 163. With respect to the class members whom the DOE contends are “too old” or “too young” to receive services because they were not affected by Act 163, it has become clear that this is not the case. Plaintiffs have been made aware that the DOE policies and practices with respect to these individuals reflect the

implementation of Act 163 beyond the dates Plaintiffs understood previously.

For example, M.P. in the pilot group is identified as “too young” based on a birthdate in November 1993—yet he was forced to leave at age 20 in the summer of 2014 because, he was told, he had “aged out.” Plainly, this resulted from the application of Act 163 by the DOE officials at his school. R.G., also in the pilot group, was also forced to leave at age 20 in 2008 because he was also told he had aged out of the DOE. This is also an application of the very same illegal policy that was first overturned by Judge Ezra in 2009 as “blatant discrimination in violation of the IDEA”<sup>1</sup> (unbeknownst to R.G.) but was then codified by the state legislature the following year as Act 163. The DOE is well aware that R.G., and any others like him who were wrongly aged out but now desire services, suffered a compensable injury and that is likely why the DOE included them as potential class members.<sup>2</sup>

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<sup>1</sup> See *B.T. ex rel. Mary T. v. Dep’t of Educ.*, 637 F. Supp. 2d 856, 865 (D. Haw. 2009).

<sup>2</sup> R.G. understood his claims were covered by the class action filed in in July 2010 and the DOE assessed him with an offer of services. He is part of the class, or, if it is decided he is not part of the class, he should be granted an opportunity to file an individual claim.

The DOE also seeks improperly to exclude many individuals who dropped out or otherwise left school before the age of 20. However, these class members remained entitled to services until the age of 22 or the receipt of a high school diploma. This entitlement was cut off by Act 163. Judge Mollway has already considered and rejected a motion by the DOE to exclude from the class individuals who dropped out but did not age out. See ECF No. 222 (1/5/15 Hrg. Tr.) at 8.

Moreover, the DOE is well aware that it was sending highly misleading letters to former students that misrepresented the recipients had approximately two weeks to respond or they would never be eligible for special education again. An example is attached as Appendix A.

The DOE cannot in good faith claim that those who failed to respond to these letters were not misled. Under the circumstances of this case, where every disabled child has the right to receive special education until the age of 22 or until they obtain a diploma, but where hundreds of qualified individuals were prevented for returning for two years by a state law, the State should not be able to disclaim its obligation to provide those services by hypothesizing

that various individuals lost nothing because they decided not to wait until they were kicked out of school to exit.

Finally, the DOE has identified a small group of individuals as (1) “Exited at age 22”; (2) “Graduated with Diploma”; or (3) “Not IDEA eligible.” Plaintiffs are in agreement that those who received continuous services until age 22, or graduated with a high school diploma, may not be class members. In addition, Plaintiffs agree in principle that individuals who were not eligible for the IDEA may not be class members. However, with respect to this third group (approximately 13 individuals), Plaintiffs request that the DOE provide Plaintiffs sufficient access to these individuals’ education files so that Plaintiffs can investigate the DOE’s challenge. The DOE provided these names in the first instance, and several individuals in this group have stated that they did in fact receive special education services, so the DOE’s records may not be accurate.

## **II. “HELP DESKS” FOR CONSENT FORMS**

The parties are working to select dates and locations for the help desks, and then to send out notices to the next 400 class members with information containing the dates, times, and

locations of the Help Centers. Plaintiffs request a status update from Defendant on this item.

**III. SUPPLEMENTAL ASSESSMENT REPORTS FOR PILOT GROUP**

Defense counsel represented that the DOE will provide supplemental assessment reports for the pilot group by August 24, 2015.

DATED: Honolulu, Hawai`i, August 11, 2015.

/s/ Michelle N. Comeau

PAUL ALSTON

KRISTIN L. HOLLAND

MICHELLE N. COMEAU

Attorneys for Plaintiffs

NEIL ABERCROMBIE  
GOVERNOR

KATHRYN S. MATAYOSHI  
SUPERINTENDENT



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

September 16, 2013

[Redacted]

[Redacted]

Our records indicate that you are now 18 years of age and are not currently enrolled in a Hawaii public school. While you are no longer subject to the compulsory education law, you are still eligible to receive special education services up to age 22 as student with a disability under the Individuals with Disabilities Education Act (IDEA) and Chapter 60 of the Hawaii Administrative Rules, unless you receive a diploma. As a student with a disability, you continue to have protection under the procedural safeguards of Chapter 60 (see attached "Procedural Safeguards Notice for Parents and Students") and are eligible for the following:

X **Free Appropriate Public Education (FAPE)**

You are eligible to receive a FAPE which includes special education and related services in the public schools. If you wish to receive these services in a public school, contact the principal at the phone number listed above.

X **Reevaluation**

Our records indicate that your three year reevaluation is due. The DOE proposes to conduct a reevaluation to determine continued eligibility for special education services. A review of existing evaluation data in our files indicates that the information we have is no longer current. Should you continue to be eligible for special education, an appropriate program for you will be developed and placement will be determined. If you wish to have a reevaluation conducted, or if you need assistance in understanding the provisions of Chapter 60, please contact the principal at the phone number listed above.

If we do not hear from you by September 30, 2013:

- a reevaluation will **not** be conducted,
- you will **no longer** be eligible for special education, **and**
- you will no longer receive this notice.

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

**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 August 11, 2015:

|                        |                            |
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| Ryan W. Roylo, Esq.    | Ryan.W.Roylo@hawaii.gov    |

Attorneys for Defendant  
DEPARTMENT OF EDUCATION

DATED: Honolulu, Hawai`i, August 11, 2015.

/s/ Michelle N. Comeau  
PAUL ALSTON  
KRISTIN L. HOLLAND  
MICHELLE N. COMEAU  
Attorneys for Plaintiffs



**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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**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 8/11/2015 at 8:20 AM HST and filed on 8/11/2015

**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:** [254](#)

**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) Appendix A - Letter from DOE, # (2) Certificate of Service)(Comeau, Michelle)**

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

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

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**Document description:**Appendix A - Letter from DOE

**Original filename:**n/a

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