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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: August 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. Challenged Class Memembers

Plaintiffs raise several issues related to the Department's list of disputed potential class members.

First, Plaintiffs assert that the Department's list of disputed potential class members contain individuals who were "unilaterally identified" by the Department as individuals who might have been affected by Act 163. It must be noted that at no point did the Department agree that the list of potential class members produced, as ordered by Judge Mollway, should be deemed as a list of qualified class members. The Department still has the right to challenge and/or dispute the qualifications of class members. It must also be noted that the original list of potential class members produced by the Defendant was substantially less, but the Plaintiffs demanded more names and as previously mentioned, Judge Mollway ordered the Department to provide additional names.

Second, as illustrated by the Plaintiffs' alleged two (2) examples, determination of whether each individual is indeed a qualified class member will require a case by case fact intensive review.

Lastly, the Department denies Plaintiffs allegation that the subject letter were “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.” A review of the subject clearly shows that the rights of the student under the Individuals with Disabilities Education Act (IDEA) and Chapter 60 of the Hawaii Administrative Rules were explained. It must be noted that despite Plaintiffs’ assertion, nowhere in the subject letter does the Department state that the student will “never be eligible for special education again” if he or she does not respond to the subject letter. The subject letter clearly states that the student is “still eligible to receive special education services up to the age of 22 as well as Free Appropriate Public Education (FAPE), which includes special education and related services. The student would have still had the right to contact the Department and/or his school to pursue his rights under the IDEA.

Plaintiffs are in agreement that individuals who have received continuous services until age 22, or graduated with a high school diploma may not be class members. Interestingly, these individuals were also previously disclosed by the Department as potential class members, yet Plaintiffs do not raise the same argument that since these individuals were on the list, they must be bona fide class members. The Department has the right to challenge and/or dispute the

qualifications of any individual listed as a potential class member in order to ensure that only qualified individuals are allowed into the class.

II. Education Records

The Department is in the process of obtaining the education records for the students for which consents were recently provided and will produce said records to Plaintiffs' as soon as possible.

III. "Help Desks"

The Department is currently working on organizing the "help desks" and will update Plaintiffs regarding times, dates, and locations as soon as they are established.

IV. Supplement Assessment Reports for Pilot Group

The Department anticipates completing the supplemental/revised/amended assessment reports for the Pilot Group by August 24, 2015. In addition, the Department anticipates being able to produce the confirmed/verified guardian contact information to Plaintiffs by August 20, 2015.

Dated: Honolulu, Hawai'i, August 12, 2015.

/s/ Ryan W. Roylo
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DEPARTMENT OF EDUCATION

State of Hawai‘i

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that on August 12, 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, August 12, 2015.

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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

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U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered by Roylo, Ryan on 8/12/2015 at 8:59 AM HST and filed on 8/12/2015

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: [255](#)

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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