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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: August 27, 2015

TIME: 10:45 a.m.

JUDGE: Kevin S. C. Chang

vs.

DEPARTMENT OF EDUCATION,
State of Hawai'i,

Defendant.

**PLAINTIFFS' STATUS REPORT FOR AUGUST 27, 2015
STATUS CONFERENCE**

Plaintiffs submit the following status report in advance of the August 27, 2015, status conference.

I. SUPPLEMENTAL ASSESSMENT REPORTS FOR THE PILOT GROUP

Plaintiffs received the Pilot Group supplemental reports on Monday, August 24. Plaintiffs are reviewing the reports and are seeking feedback from the Pilot Group members and their families. However, on a preliminary review, the reports offer no new or better compensatory services than were offered previously. Instead, it appears the DOE is offering even less. Fifteen out of the 18 reports now indicate that "Compensatory services are **not needed** to remedy a free appropriate public education that was not provided" because, in the DOE's estimation, "An additional 2 years of education would not produce alternate results" for nearly 85% of

the Pilot Group. The reports do not explain what “alternate results” refers to and provides only the most general description of what actual skills and abilities might have formed the basis of this conclusion.

Plaintiffs are incredulous that the Department of Education of the State of Hawai`i—whose mission is to “develop[] the academic achievement, character and social-emotional well-being of our students to the fullest potential” and whose “core values” include “commitment to equity and excellence” and “meaningful learning”¹—could conclude that any one of its former special education students, much less nearly 85% of them, are incapable of attaining any additional skills or abilities in two years of schooling.

More fundamentally, this conclusion reflects a deep misunderstanding of the remedy phase of this case. This issue has already been litigated and decided; Judge Mollway has *already held* that the class members are entitled to compensatory education because Plaintiffs had established a specific loss of educational opportunity for all class members. See ECF No. 187. The Class

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<http://www.hawaiipublicschools.org/ConnectWithUs/Organization/Mission/Pages/home.aspx>.

Members have had the right to compensatory services for nearly a year, yet it now appears that most of them are no closer to actually reaching this goal than they were when the order was issued.

II. DELIVERY OF SERVICES TO CLASS MEMBERS

Per the Court's request, Plaintiffs are continuing to reach out to the organizations identified as providers who may be needed to provide compensatory services to Class Members. Many of the providers whom Plaintiffs have contacted are willing to service the Pilot Group and are willing to serve additional class members, although their ability to do so varies according to the size of the organization. In general, they would need a funding commitment and several months to ramp up in order to provide services to a significantly increased number of individuals.

Plaintiffs will report on the status of this effort at the status conference. However, to date this has been a one sided effort. Despite multiple requests from Plaintiffs, the DOE has not yet provided information regarding its efforts, if any, to ramp up its current providers or to contract with others who will be needed to provide services, and Plaintiffs request that the DOE offer an update on its own efforts at the status conference.

III. DOE'S CHALLENGE TO CLASS MEMBERS

Per the Court's request, Plaintiffs have provided the DOE with its list of the Class Members who have expressed interest in receiving services to date. The DOE has indicated it will prepare a list of those it disputes are entitled to compensatory education.

IV. "HELP DESKS" FOR CONSENT FORMS

At the last status conference on August 20, 2015, defense counsel delivered to Plaintiffs a draft of a letter to be sent to approximately 100 individuals regarding the help desks. Plaintiffs provided feedback on Friday, August 21, 2015, and the parties continue to discuss the letter.

V. OUTREACH TO REMAINING CLASS MEMBERS

Per the parties' agreement, Plaintiffs have set up Lexis to run the search for updated contact information for 1,300 people. That search is in process. Once the parent and guardian contact information is received, Lexis will run searches for those individuals as well. Also per the parties' agreement, Plaintiffs have arranged with Ward Research to attempt to reach the missing class members, beginning with the Class Members themselves, and then via the

parent and guardian contact information if necessary. Plaintiffs provided a draft call script to the DOE on August 18, 2015.

DATED: Honolulu, Hawai`i, August 25, 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 August 25, 2015:

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Attorneys for Defendant
DEPARTMENT OF EDUCATION

DATED: Honolulu, Hawai`i, August 25, 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

From: <hid_resp@hid.uscourts.gov>
To: <hawaii_cmecf@hid.uscourts.gov>
Date: 8/25/2015 9:46 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 8/25/2015 at 9:44 AM HST and filed on 8/25/2015

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: [260](#)

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)

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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