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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: September 10, 2015

TIME: 11:00 a.m.

JUDGE: Kevin S. C. Chang

vs.

DEPARTMENT OF EDUCATION,
State of Hawai'i,

Defendant.

**PLAINTIFFS' STATUS REPORT FOR SEPTEMBER 10, 2015
STATUS CONFERENCE**

Plaintiffs submit the following status report in advance of the September 10, 2015, status conference.

I. SERVICES FOR PILOT GROUP

At the last status conference, the parties discussed counterproposals for plans of service that would involve input from existing case managers. Plaintiffs will work on developing counterproposals to the DOE's August 2015 recommended services, with input from these individuals' existing case managers to the extent possible, as well as their families. Plaintiffs propose to begin with G.R., A.C., A.K., E.K., and N.P.

II. "HELP DESKS" FOR CONSENT FORMS

Seven help desk sessions will take place this week on the Big Island and Maui. Those among the 93 undisputed Class Members

who are able to attend will sign the DOE's consent form to be assessed, as well as a FERPA form if they have not done so already. Plaintiffs' understanding is that the DOE will schedule their assessments.

III. OUTREACH TO REMAINING CLASS MEMBERS

Ward Research begins calling the class members' updated phone numbers this week. Plaintiffs continue to wait on contact information for the parents and guardians, which was supposed to be provided on August 20, 2015. The DOE advised Plaintiffs on September 2, 2015, that the DOE had this information, but it still has not been provided to Plaintiffs, despite repeated requests.

IV. RULE 30(B)(6) DEPOSITION BRIEFING

During the continued deposition of the DOE's Rule 30(b)(6) deponent, Debra Farmer, defense counsel repeatedly instructed Ms. Farmer not to answer questions posed regarding the Pilot Group assessments and reports as well as the DOE's list of class members. Per the Court's request, the parties are submitting letter briefs to the Court to address the legality of these instructions.

V. DOE’S DEMAND FOR INFORMATION REGARDING CLASS MEMBERS

On September 4, 2015, defense counsel emailed a request to counsel for Plaintiffs to provide, for each of the 93 undisputed class members, as well as each of the Pilot Group members: (1) the identity of all healthcare providers who have provided healthcare services for each Class Member related to his or her disability since 2010; (2) the identity and contact information for all volunteer and paying employers of each Class Member since 2010; (3) the identity and contact information for all schools each Class Member has attended since 2010; and (4) the identity of all other service providers who have provided services to each Class Member since 2010. The DOE indicated it will be obtaining records from all of these places to “better understand your client’s post-high school history, including his/her current educational and life skill needs.”

Plaintiffs believe the DOE misunderstood the thrust of the discussion during last week’s status conference, which focused on Plaintiffs’ proposal to employ community-based case managers to provide services recommendations and, if needed, referrals for assessments.

The DOE's request for information is plainly overbroad and excessively intrusive, particularly the broad request for healthcare information and the demand for five years' worth of history on each Class Member. Services a Class Member received in 2010 but no longer receives today are of little utility in determining an offer of relevant compensatory services to be given to a Class Member in 2015. The useful information—as was discussed at the status conference last week—would include *current services*, i.e., employment, schooling, or the other services that the Class Member receives on a daily or weekly basis.

Plaintiffs suggest that this current information may be obtained simply by asking the Class Members or families about it during the assessment. The Pilot Group assessments involved communications with the families and the Class Members, including parent interviews. Plaintiffs were under the impression that questions about the Pilot Group's current services should have and were in fact a part of those conversations. In at least one case, a parent provided a recent Department of Health assessment to the Pilot Group assessors.

Plaintiffs have proposed that the DOE relinquish its role of assessing and proposing services, based on the four months that have passed without any reasonable resolution for the 18 Pilot Group members. Plaintiffs proposed that community-based case managers take over the responsibility of meeting with Class Members, obtaining information about services, and interfacing with the Class Members' existing service providers and case managers as appropriate. If the DOE is refusing to give up the role of assessing and proposing services, it remains the DOE's responsibility to interface with the Class Members' service providers, etc., as needed. This need not include extensive inquiry into all manner of services, schooling, employment, and healthcare received over the past five years. The point is to figure out what services will be useful to Class Members' current adult lives, and translate the education services the Class Members lost into an updated plan of services.

DATED: Honolulu, Hawai`i, September 8, 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 September 8, 2015:

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DEPARTMENT OF EDUCATION

DATED: Honolulu, Hawai`i, September 8, 2015.

/s/ Michelle N. Comeau
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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: 9/8/2015 10:22 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
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U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered by Comeau, Michelle on 9/8/2015 at 10:22 AM HST and filed on 9/8/2015

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: [266](#)

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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