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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: September 10, 2015

Time: 11:00 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. Services for the Pilot Group and 93 undisputed potential class members

Pursuant to the Court’s recommendation, the Plaintiffs’ are to provide a counter-proposal to the Department in response to the recommendations contained in the assessments for the Pilot Group. In addition, in order to facilitate the implementation of services to the Pilot Group and the 93 undisputed potential class members, the Department is seeking the following information from the Plaintiffs:

1. The identity, including the name, address, and telephone number, of any and all service providers who may have provided services to your client from July 1, 2010 to the present;
2. The identity, including the name, address, and telephone number, of any and all health care professionals, including psychologists, doctors, and counselors, who may have provided services to your client from July 1, 2010 to the present for his/her disability;
3. The identity, including name, address, and telephone number, of any and all post-secondary schools and/or educational facilities that your client(s) attended from July 1, 2010 to the present; and,
4. The identity, including name, address, and telephone number, of your clients' places of employment, regardless if your client received payment for his/her work, from July 1, 2010 to the present.

It is the Department’s hope that with the signed consent forms for the release of this information it will be able to obtain these records and better understand the

subject potential class members post-high school history, including his/her current educational and life skill needs.

However, based upon a review of Plaintiffs' September 8, 2015 Status Report, it does not appear that such information will be forthcoming. Plaintiffs' counsel suggests that such information may be obtained by simply posing such questions to the potential class members without the need for independent verification of the information. Without the disclosure of such information, it will be impossible to achieve the goal noted by Plaintiffs' counsel which is to "figure out what services will be useful" to the potential class members in their respective adult lives.

As noted by the Court, if the Department is not allowed to participate in Plaintiffs' proposed evaluation process to be performed by case managers, there is a possibility that it will not agree with the case managers' recommendations. There are obvious concerns with the qualifications and experience of the subject case managers evaluating compensatory education and/or services as well as not knowing what the case managers will be considering in the development of the service plans. There needs to be an agreement as to how disagreements, if any, will be resolved. The Department cannot blindly agree to the services recommended by the case managers. As pointed out at the last status conference, the Plaintiffs are mistaken if they are under the impression that it will be an open

check book scenario with regard to the case manager recommendation. The Department takes the position that it must be allowed to participate in some degree in the proposed case manager evaluation process.

Lastly, Plaintiffs' status report is contradictory. On one hand, they propose that the Department "relinquish its role of assessing and proposing services" and on the other hand state that it is their understanding that the DOE will schedule assessments. If the Plaintiffs' position is the former, then it raises great concern as it would mean that all the time, effort, expenses, and resources expended by the Department in order to obtain consents to assessments have been for nothing. The Department requests clarification of Plaintiffs' position on this issue.

II. "Help Desks"

Based upon the discussions at the September 3, 2015 Status Conference, it was the Department's understanding that, in addition to consents to release education records and to perform assessments, Plaintiffs' counsel were agreeable to allowing the potential class members sign consents to release their respective service records at the scheduled "help desks." The subject consents will allow the Department to obtain a potential class member's records from agencies such as the Department of Health, etc. The Department is awaiting word from Plaintiffs'

counsel whether any of the service providers have any language specifications for the release of this information.

In addition, the first “help desk” was held on September 8, 2015 in Kona. The Department reports that neither potential class members nor Plaintiffs’ counsel appeared.

III. Guardian Contact Information

The Department expects to be able to provide the guardian contact information by the end of this week. It is our understanding that the Department is awaiting information from a few more districts. We further understand that the number of individuals for which there are verified guardian contact information to submit to Plaintiffs’ counsel will be relatively small in number. It is the Department’s understanding that Ward Research anticipates completing this second round of call by the end of October after which it will implement calls to the guardians, but only for those that have not been contacted.

IV. Rule 30(b)(6) Deposition Briefing

The Department will submit its position on the issue(s) related to the Rule 30(b)(6) deposition by 4:00 p.m. on September 9, 2015.

Dated: Honolulu, Hawai'i, September 9, 2015.

/s/ Ryan W. Roylo
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Deputy Attorneys General

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CIVIL NO. 10-00436 SOM-KSC

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 9, 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, September 9, 2015.

/s/ Ryan W. Roylo

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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

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U.S. District Court

District of Hawaii

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Case Number: [1:10-cv-00436-SOM-KSC](#)
Filer: Department of Education, State of Hawai'i
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[STATUS REPORT ; CERTIFICATE OF SERVICE by Department of Education, State of Hawai'i. \(Siu, Carter\)](#)

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