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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: October 8, 2015
TIME: 11:00 a.m.
JUDGE: Kevin S. C. Chang

vs.

DEPARTMENT OF EDUCATION,
State of Hawai'i,

Defendant.

**PLAINTIFFS' STATUS REPORT FOR OCTOBER 8, 2015
STATUS CONFERENCE**

Plaintiffs submit the following status report in advance of the October 8, 2015, status conference.

I. SERVICES FOR PILOT GROUP

Plaintiffs are continuing to develop counterproposals to the DOE's service offers with input from parents and case managers. As Plaintiffs reported to the Court last week Thursday, the Department of Health has stated that case managers will be made available only in the presence of DOH attorneys, and with various limitations on what they will be able to discuss. Plaintiffs understand counsel for the DOH will attend the status conference to discuss this important issue with the Court.

At the last status conference, the DOH advised that it would provide feedback on the counterproposals for V.C., K.C., J.C.C., and

K.S., which were provided by Plaintiffs on Monday, September 28. Plaintiffs have completed counterproposals for M.P. and G.R.¹ and will deliver those counterproposals to the Court today.

As discussed previously, these proposals incorporate: (1) the services each Class Member was receiving at the time of her exit from school, (2) the DOE's proposed "Post-Secondary Outcomes and Recommendations" provided to each Class Member at the time of her exit from school; (3) existing services being provided to the Class Member; (4) the Class Member's goals; (5) experts' feedback; and (6) parents' feedback, where applicable. Additionally, for these individuals, their final IEP included a summary of strengths, and their proposed services incorporate those comments as well.

II. SERVICES TO UNDISPUTED GROUP

Plaintiffs would like to discuss getting started with providing services to the "undisputed" group of 93, such as community college with supports and other types of services that will be commonly needed.

¹ M.P. receives no services and has no case manager. G.R.'s case manager works for a private organization, the LIFE Foundation, and readily assisted Plaintiffs on behalf of G.R.

III. OUTREACH TO REMAINING CLASS MEMBERS

Ward Research was provided updated contact information for 571 individuals out of the 1,300 that have not yet been reached. Lexis was unable to locate updated contact information for approximately 730 individuals.

Of the 571 potential respondents, Ward was able to reach 123 people. Out of that group, 56% responded yes (50) or maybe (19).² However, Ward has not yet contacted parents or guardians, as the DOE has turned over this contact information for only about 40 individuals. As Plaintiffs stressed repeatedly over the past three months, this information is required to allow Ward to make a reasonable effort to reach the Class Members, disabled individuals whose movements may not be tracked by a Lexis service. According to the Lexis account manager for its Accurint service, the service looks at data sources such as the DMV, utility bills, and credit card or loan payments (among other public and non-public information). Therefore, an individual who does not participate in these types of

² Hawaii Disability Rights Center received several calls from individuals who received the survey call but were confused by it; Plaintiffs are therefore reviewing the callers' notes and following up with other individuals who may have been confused by the survey calls.

activities is unlikely to have an updated address even if he or she has moved.

Judge Mollway ordered the DOE to provide Plaintiffs access to the contact information for these individuals a year ago, and FERPA permits access via this court order. See ECF No. 187. Plaintiffs expected this information to be provided in September, as discussed, but the DOE has failed to do so. To the extent there is some question whether or not this precise information fell under the DOE's FERPA letter of last September, the DOE should issue whatever communication it believes is required to correct this problem and provide the information as soon as possible—indeed, this should have been done in July or August, as soon as the DOE decided not to provide the parents' information based on its perceived concerns with FERPA. This case cannot move forward while the DOE hides behind FERPA to deny Plaintiffs access to updated contact information for fully 40% of the Class.

Plaintiffs have also discussed this issue with Lexis, as suggested by the Court. Lexis can provide the names of individuals who resided with the Class Members in 2010, as well as updated contact information for each of these individuals. Lexis is putting

together a quote for this work and has advised that this search would take 10 business days to process.

IV. STIPULATION RE IDENTITY OF CLASS MEMBERS

As discussed at the last status conference, on September 29, 2015, Plaintiffs provided the DOE a list of the Class Members who have expressed interest as of that date, and marked those who are undisputed. The DOE stated it would supply reasons for disputing those individuals it claimed were not class members.

DATED: Honolulu, Hawai`i, October 6, 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 October 6, 2015:

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Attorneys for Defendant
DEPARTMENT OF EDUCATION

DATED: Honolulu, Hawai`i, October 6, 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: 10/6/2015 10:52 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 10/6/2015 at 10:51 AM HST and filed on 10/6/2015

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: [273](#)

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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