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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: October 22, 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. SETTLEMENT OFFER

The Department is prepared to make a global settlement offer once the class has been properly constituted and all disputes regarding qualified class members are resolved. Whether the settlement offer is "serious" and will be accepted by individual class members is unknown, but the Department would like sufficient assurances and documentation evidencing each class members' acceptance or rejection of the offer. In the event individual class members reject the offer, the Department would seek to adjudicate those claims in accordance with the procedure(s) created/ordered by the Court.

On October 9, 2015, the Department sent a letter request to Plaintiffs' counsel requesting that they provide the Department with their "position with respect to each disputed underage potential class member and, to the extent that you disagree with our assessment, we ask for documentation proving that they were impacted by Act 163." This follows earlier correspondence in July and August identifying these individuals as being "too young." To date, there has been no response or documentation provided refuting the Department's claim that the identified underage potential class members were impacted by Act 163. Plaintiffs'

refusal to dismiss these individuals from the class action is unreasonable and has and will ultimately delay the final resolution of this class action.

II. CLASS MEMBER MATRIX

The Department is very interested in reviewing the “services matrix” being prepared by Plaintiffs in this class action for injunctive relief.

III. SERVICES FOR PILOT GROUP

At some point in time, Plaintiffs may order and obtain records from the Department of Health in order to determine the current services that each eligible pilot group member is currently receiving. Plaintiffs are also arranging for face-to-face meetings with various case managers; these meetings may take place in November 2015. Based on the discussion that took place at the last two status conferences, the Department requests that these meetings do not transform into a deposition where Plaintiffs’ counsel will ask these case managers to provide expert opinions on what services would or may benefit the pilot group members going forward. It was unclear whether the Plaintiffs will consent to allow opposing counsel to attend the face-to-face interviews or if a Court order is required; whatever the case may be, the Department would like all copies of Plaintiffs’ Individual Service Plans (ISP).

IV. OUTREACH TO REMAINING CLASS MEMBERS¹

The Department agreed to pay for a separate Lexis/Nexis search with respect to the guardianship information and will do so; however, it will not pay the extra \$600 to search for updated parent information. If Plaintiffs would like to piggyback the Lexis/Nexis search with a request to search for parent information, it is the Department's position that Plaintiffs must pay the \$600 difference.

The Department will agree to use a limited portion of the Ward Research budget to call only those guardians reported by Lexis/Nexis to have updated contact information.² The Department does not agree to using the remaining budget to pay for Ward Research to call parents. That will need to be funded solely by Plaintiffs' counsel.

¹ The Department agreed to pay for these searches and call centers with the understanding that a drop-dead date would be established closing the class and specifically identifying the individuals who would be considered a class member. It appears that Plaintiffs do not want any sort of deadline and want the ability to continually search for potential class members. A deadline must be established and a class defined if there is any hope of resolving this class action.

² The Department would like clarification on the guardianship information it provided to Plaintiffs. It was believed that the information (40 names) would be provided to Ward Research during the second round of calls and that calls would be made to the guardians. The Department would like to know: (1) whether Ward Research called the 40 guardians; (2) how many guardians were contacted; (3) how many guardians could not be contacted because of outdated contact information; and (4) despite have outdated contact guardianship information, whether the student was contacted.

With regard to those class members who may be incarcerated, it is the Department's understanding that Plaintiffs' counsel provided the list of 1,800 potential class members to State of Hawai'i's Corrections Education Specialist and asked that he confirm who on the list is currently incarcerated.

V. STIPULATION RE IDENTITY OF CLASS MEMBERS

Based on the large number of document requests, there will be a delay in obtaining relevant information for the newly identified potential class members. When that information is obtained, the Department will inform Plaintiffs of any and all objections to class member qualifications.

VI. ORDER RE: EDUCATIONAL RECORDS

The Department objects to the issuance of a Court order for the production of records for the challenged potential class members. Plaintiffs' counsel has been in touch with each and every interested potential class member and has requested that each of them provide a signed FERPA consent form. To date, and after several months of contact, only 40% (138/338) of the potential class members who indicated interest in participating in the lawsuit have provided signed consent forms, either through the mail or through the Department's help desks. The Department believes that this is an indication that the remaining 60% are not interested in participating. The Department is concerned about FERPA requirements and implications of releasing education records of individuals who

have had multiple opportunities but have chosen not to consent to the release of their education records. As a result, the Department will continue to provide Plaintiffs' counsel with records upon receipt of a signed consent form from either the student or his/her appointed guardian.

Dated: Honolulu, Hawai'i, October 21, 2015.

/s/ Carter K. Siu
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CIVIL NO. 10-00436 SOM-KSC

CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that on October 21, 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, October 21, 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 Siu, Carter on 10/21/2015 at 8:37 AM HST and filed on 10/21/2015

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: [280](#)

Docket Text:

STATUS REPORT *Defendant's Status Report; Certificate of Service* by Department of Education, State of Hawai'i. (Siu, Carter)

1:10-cv-00436-SOM-KSC Notice has been electronically mailed to:

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