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DEPARTMENT OF EDUCATION,  
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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 29, 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's representative is still out of the office for medical reasons. Her designated replacement, however, is currently out of town and does not return until Friday, October 30, 2015. The Department will consult with the client soon after her return to O'ahu.

### **II. CLASS MEMBER MATRIX**

The Department is again very interested in reviewing the "services matrix" being prepared by Plaintiffs.

### **III. SERVICES FOR PILOT GROUP**

A draft order for the disclosure of Department of Health records has been circulated between the parties and the deputy attorney general representing the Department of Health. The draft order proposes to allow the production of records of various class members who will be identified in an Exhibit "A."

The current form of the proposed order does not allow for the Department to sit in on the face-to-face interviews of the various Department of Health case managers. It is assumed that a proper draft Order will be agreed upon shortly and will be submitted to the Court for approval.

#### **IV. IDENTIFYING INTERESTED CLASS MEMBERS**

At the last status conference, it was disclosed that Plaintiffs were actively calling individuals on the “not interested” list created by Ward Research and trying to have them become “interested.” The Department does not agree to that procedure as it would appear that the thirty plus thousand dollars spent on Lexis/Nexis and Ward Research has been wasted and Plaintiffs are seemingly running up the bill by having their attorneys make additional phone solicitations in order to drive up the number of interested potential class members. Although the Court at the last status conference did not disapprove of Plaintiffs calling the “not interested” potential class members, the Department would again like to highlight the need to establish November 30, 2015 as the cut off date by which all solicitations stop and all interested potential class members are accounted for. This includes the parent search, calls to the “maybe” and “not interested” lists, and whatever other search Plaintiffs intend to utilize. Plaintiffs’ status report reinforces the need for a deadline as they wish to search and solicit indefinitely for interested class members.

If the search remains indefinite, Plaintiffs will continue to have their attorneys vis-à-vis paralegals bill for calling potential class members, leaving the class size undetermined and once again delaying the resolution of this case and the provision of compensatory services to interested undisputed class members.

**V. STIPULATION RE IDENTITY OF CLASS MEMBERS**

There can be no stipulation regarding the number and identity of undisputed class members as long as Plaintiffs insist that there be no deadline by which they can solicit potential class members.

Furthermore, as witnessed by the Court, the Plaintiffs will not agree to dismiss anyone categorized as too young. Although counsel initially admitted that those who were too young should not be considered class members and that their entitlement to compensatory services, if any, should be decided in a separate proceeding, counsel quickly backtracked from that position. Since July 2015, the Plaintiffs have been informed that those individuals who attended school through the 2013-2014 school year and could have continued until age 22 are not class members. Those potential class members have been identified yet Plaintiffs refuse to dismiss them. As a result, the Department is asking for a ruling on this issue and/or issue an Order to Show Cause requiring Plaintiffs to explain why and how each of the disputed underage potential class members were excluded because of Act 163. For purposes of this inquiry, it is important to note that the amendments to Act 163 were in effect prior to the 2014-2015 school year allowing each and every student age 20-21 to continue their special education and related services.

**VI. INTERIM FEE APPLICATION**

It is premature for an interim fee application as Plaintiffs have yet to prevail on the individual claims presented in this class action. Regardless, the Department reserves judgment and the right to object to Plaintiffs' ability to obtain their attorneys' fees, the hourly amount being requested, and the amounts being charged.

Dated: Honolulu, Hawai'i, October 28, 2015.

/s/ Carter K. Siu  
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DEPARTMENT OF EDUCATION  
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CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

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Dated: Honolulu, Hawai‘i, October 28, 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**

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

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