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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,

Case No. 10-00436 SOM-KSC

**PLAINTIFFS' OBJECTIONS TO  
[316] MAGISTRATE JUDGE'S  
FINDINGS AND  
RECOMMENDATION TO DENY  
WITHOUT PREJUDICE  
PLAINTIFFS' INTERIM**

Plaintiffs,  
  
vs.  
  
DEPARTMENT OF EDUCATION,  
State of Hawai`i,  
  
Defendant.

**MOTION FOR ATTORNEYS’  
FEES; DECLARATION OF PAUL  
ALSTON; DECLARATION OF  
LOUIS ERTESCHIK;  
EXHIBITS “1” AND “2”;  
CERTIFICATE OF SERVICE**

**PLAINTIFFS’ OBJECTIONS TO [316] MAGISTRATE  
JUDGE’S FINDINGS AND RECOMMENDATION TO  
DENY WITHOUT PREJUDICE PLAINTIFFS’ INTERIM  
MOTION FOR ATTORNEYS’ FEES**

**I. INTRODUCTION**

An award of attorneys’ fees to Plaintiffs for time incurred through August 22, 2014, is both just and necessary. The award is just because Class Counsel earned those fees by successfully forcing the State to repeal an illegal law, gaining both (1) the right to two more years of education for thousands of Hawaii’s most disabled individuals on an ongoing basis, and (2) the right to compensatory education for nearly 2000 former students. These are valuable victories for the Class by any measure, and the IDEA provides for compensation to Class Counsel. *See* 20 U.S.C. § 1415(i)(3)(B).

The award is necessary because, as the Court is aware, this litigation is well into its sixth year. Except for a small award associated with the Ninth Circuit appeal, this is the first fee application filed by Plaintiffs. Class counsel is therefore being forced to carry a substantial load of unpaid fees as it litigates the most time-intensive portion of this case: the remedy phase.<sup>1</sup> An award of interim fees now will prevent this case from becoming a war of attrition.

Recognizing this significant issue, courts routinely grant interim fees to Plaintiffs throughout the course of complex civil rights litigation. Concerns for judicial economy are secondary to the extended financial drain and hardship that would otherwise inure if prevailing parties and their attorneys were forced to wait for fees until the conclusion of the action. Thus, commensurate with

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<sup>1</sup> The DOE's delay and inaction over the past 17 months has resulted in nearly 20 status conferences but no plan or budget for services to the older Class Members. Additionally, DOE now takes the contumacious position that every Class Member must prove a right to receive compensatory education irrespective of the Court's 2014 ruling. Plaintiffs have accrued nearly \$1 million in fees prosecuting this case through December 2015. See Declaration of Paul Alston ("Alston Decl.") ¶7; Declaration of Louis Erteschik ("Erteschik Decl.") ¶4.

Congress's intent in the IDEA's fee-shifting provision to encourage counsel to undertake IDEA cases, the Court should reject the Magistrate Judge's Findings and Recommendation to deny interim fees, and should instead grant Plaintiffs' request for an interim award of their attorneys' fees incurred up to August 22, 2014, the date of the Court's compensatory education order, totaling **\$234,949.20** (\$221,215.10 to AHFI and \$13,734.10 to HDRC).

## **II. STANDARD OF REVIEW**

When a party objects to a magistrate judge's findings or recommendations, the district court must review de novo those portions to which objections are made. *See United States v. Raddatz*, 447 U.S. 667, 673 (1980); Fed. R. Civ. P. 72(b); L.R. 74.2. The district court may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge. *Raddatz*, 447 U.S. at 673-74. This standard applies to findings and recommendations regarding an award of attorneys' fees. *See I.T. ex rel. Renee T. v. Dep't of Educ., Hawaii*, 18 F. Supp. 3d 1047, 1051 (D. Haw. 2014).

De novo review means the district court must consider “the matter anew, the same as if it had not been heard before and as if no decision previously had been rendered.” *Id.* (quoting *Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006)).

Although a hearing is not required, the district court must arrive at its own independent conclusion about these portions to which objections are made. *See I.T. ex rel. Renee T.*, 18 F. Supp. 3d at 1051 (citing *United States v. Remsing*, 874 F.2d 614, 617-18 (9th Cir. 1989)).

### **III. ARGUMENT**

#### **A. Congress Intended Prevailing Plaintiffs to Receive Interim Fee Awards Throughout the Course of Civil Rights Cases**

Courts recognize that awarding interim fees to civil rights plaintiffs is consistent with Congress’s intent to (1) encourage attorneys to accept civil rights cases and (2) provide attorneys the means of achieving effective access for plaintiffs with legitimate claims without imposing a financial drain. *See Bradley v. Richmond School Board*, 416 U.S. 696, 723 (1974) (endorsing the liberal use of interim awards and explaining that a delay in receiving “a fee award

until the entire litigation is concluded would work substantial hardship on plaintiffs and their counsel, and discourage the institution of [civil rights] actions despite clear congressional intent to the contrary”); *Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 790 (1989) (“Congress clearly contemplated that interim fee awards would be available” under § 1988 “where a party has prevailed on an important matter in the course of litigation”);<sup>2</sup> *McKenzie v. Kennickell*, 669 F. Supp. 529, 532 (D.D.C. 1987) (“To promote these goals of effective access and encourage attorneys to accept Title VII cases, Congress explicitly affirmed the propriety of interim awards.”).<sup>3</sup>

For this reason, Courts routinely grant interim fee awards to prevailing parties during the course of litigation in civil rights cases, including IDEA cases, following an order determining

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<sup>2</sup> The Ninth Circuit observed that “IDEA’s fee-shifting provision, 42 U.S.C. § 1415(i)(3)(B), is nearly identical to 42 U.S.C. § 1988.” *Aguirre v. Los Angeles Unified Sch. Dist.*, 461 F.3d 1114, 1117 (9th Cir. 2006).

<sup>3</sup> *See Doe v. Bd. of Educ. of Baltimore Cty.*, 165 F.3d 260, 264 (4th Cir. 1998) (recognizing that “Congress intended courts to interpret [the IDEA fee-shifting provision] as they have § 1988 and Title VII”).

the substantial rights of the parties. *See, e.g., Bradley*, 416 U.S. at 723 n.28 (affirming interim fee award and explaining “the entry of any order that determines substantial rights of the parties may be an appropriate occasion upon which to consider the propriety of an award of counsel fees”); *Garcia-Rubiera v. Fortuno*, 727 F.3d 102, 105-06 (1st Cir. 2013) (reversing denial of interim fee award following award of injunction to plaintiff class); *Gunasekera v. Irwin*, 774 F. Supp. 2d 882, 887 (S.D. Ohio 2011) (granting interim fees to section 1983 plaintiff, explaining “[a]ll that is required is a concrete order in which the moving party prevailed on the merits”); *Watkins v. Vance*, 328 F. Supp. 2d 23, 27 (D.D.C. 2004) (awarding interim fees in IDEA case); *K.R. ex rel. M.R. v. Bd. of Educ. of Brentwood Union Free Sch. Dist.*, 66 F. Supp. 2d 444, 453 (E.D.N.Y. 1999) (same); *G.R. v. Reg’l Sch. Dist. #15*, No. 3:95CV2173 AHN, 1996 WL 762324, at \*6 (D. Conn. Dec. 26, 1996) (same).<sup>4</sup>

These awards are commonly based on recognition of “the degree of hardship which delaying a fee award until the litigation is

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<sup>4</sup> The Ninth Circuit has already recognized in its fee order for the appeal that Plaintiffs are prevailing parties in this case. *See Alston Decl.* ¶6, Exh. “2” at 3-5, 12-13.

finally concluded would work on plaintiff and his or her counsel.” *Powell v. U.S. Dep't of Justice*, 569 F. Supp. 1192, 1200 (N.D. Cal. 1983); *see Bradley*, 416 U.S. at 723 (“To delay a fee award until the entire litigation is concluded would work substantial hardship on plaintiffs and their counsel[.]”); *Pigford v. Veneman*, 239 F. Supp. 2d 68, 71 (D.D.C. 2003) (class counsel entitled to immediate payment of \$500,000 for implementation fees and costs in order to continue their work on the case).

Interim fees are particularly important when a case has been pending for a significant amount of time prior to the application, with substantial litigation likely still to come. *See Powell*, 569 F. Supp. at 1200 (awarding interim fees because “litigation has been pending over a year and a half and is likely to continue for a substantial period of time” and therefore, “it would be unfair to require plaintiff and his counsel to wait until its conclusion for an award of fees in light of the fact that counsel has taken plaintiff’s case *pro bono*”); *A.D. ex rel. L.D. v. Dep’t of Educ., Hawaii*, No. CIV. 12-307 JMS-KSC, 2014 WL 692910, at \*1-\*2 (D. Haw. Feb. 20, 2014) (interim fees available to IDEA plaintiff in stay-

put phase of litigation after stay-put was granted but case was then stayed in 2012 pending *E.R.K.* appeal).

**B. The Magistrate Judge's Recommendation to Deny an Interim Fee Award Places a Significant Hardship and Financial Drain On Plaintiffs' Counsel**

This case is no different. The Magistrate Judge recommended denial of Plaintiffs' Motion on the basis that "the administration of justice will be served by addressing Plaintiffs' fee request at the conclusion of this action, or after meaningful progress has been made towards resolution or the delivery of agreed-upon services to class members." See ECF No. 316. But, as Plaintiffs established in their Motion, Plaintiffs have already borne substantial costs in order to sustain this litigation. From the initiation of this lawsuit in July 2010 to present, Plaintiffs' counsel has laid out nearly \$1 million in fees and costs. See Alston Decl. ¶7. Plaintiffs' fee request of **\$234,949.20** represents time expended from the beginning of this case (five and a half years ago) up to the date of the Court's August 2014 Order granting compensatory education to the older Class Members (minus appellate fees of approximately \$33,000). See ECF No. 187; Alston Decl. ¶¶6-7, Exh. "2." It is also approximately a quarter of the time

billed in this case, as Plaintiffs have fronted an additional \$700,598.37 (\$660,799.16 incurred by AHFI and \$39,799.22 incurred by HDRC) worth of attorney time in their efforts to enforce the August 2014 Order.<sup>5</sup>

It is deeply unfair to force Class Counsel to bear this hardship. There are only a few law firms in Hawai'i that are willing and able to take on complex class actions that seek to compel the State to change laws discriminating against disenfranchised groups. See Alston Decl. ¶10. These lawsuits are time-consuming and expensive because they seek systemic change, involve complex and often evolving factual situations, and are entirely *pro bono* unless and until Class Counsel succeeds.

AHFI and HDRC took this case because the State had diminished the educational opportunity of Hawaii's most disabled citizens and had violated the Individuals with Disabilities Education Act. Class counsel faced (and continues to face) significant opposition from the largest legal office in the State, despite having

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<sup>5</sup> See Alston Decl. ¶¶7-8; Erteschik Decl. ¶4. The fees associated with that time period will be sought at a later date. See Alston Decl. ¶8; Erteschik Decl. ¶4.

worked *pro bono* on this case since its inception **more than five years ago**. Declining to award fees at this juncture—where Plaintiffs have incurred significant fees, have plainly prevailed, and still face a long enforcement period prior to judgment in this case—punishes Plaintiffs and their counsel for good work and sends the wrong message to other attorneys pondering similar civil rights actions. *Accord McKenzie*, 669 F. Supp. at 533 (D.D.C. 1987) (“prospects of facing long delays [in receiving a fee award] dampens the enthusiasm of the public interest bar for accepting such cases and ultimately undermines the underlying remedial purposes of our civil rights laws”); *James v. Stockham Valves & Fittings Co.*, 559 F.2d 310, 358-59 (5th Cir. 1977) (“An award of interim attorneys’ fees will prevent extreme cash-flow problems for plaintiffs and their attorneys.”); *cf. Taylor v. Westly*, 525 F.3d 1288, 1290 (9th Cir. 2008) (noting “risk of starving out plaintiffs with what we have already determined to be good claims” if interim fees are denied).

At this point in the lawsuit, moreover, the DOE has not provided a single service to older Class Members who were barred from receiving services by Act 163 from 2010 onward, and in fact the DOE now disputes the older Class Members are entitled to any

services without further individualized showings of injury by each and every one of them. *See, e.g.*, ECF Nos. 297 at 1-2, 32-34; 311 at 5-8. These pronouncements by the DOE do not suggest this case is nearing a point where the DOE will make “meaningful progress” on delivery of services, *see* ECF No. 316 at 2, nor is there any reason why this should be the benchmark for an interim fee award. Without an interim fee award, the DOE will continue to seek victory through an economic war of attrition against Plaintiffs.

The protracted nature of this litigation and the substantial amount of time advanced by Plaintiffs over the past five years warrants an interim fee award to ensure that Plaintiffs can sustain their litigation efforts in securing Class Members’ award of compensatory education at some point in the future. Accordingly, in accordance with Congressional intent and the supporting jurisprudence warranting awards of interim fees in civil rights cases, Plaintiffs and their counsel are entitled to an interim award of attorneys’ fees incurred for the significant victories achieved on behalf of Class Members.

**C. Plaintiffs Have Proven Their Entitlement to the Fees Requested**

Plaintiffs' Motion amply demonstrated that the requested fees—a total of \$234,949.20—were reasonably and necessarily incurred to achieve declaratory relief requiring that the state comply with the IDEA by providing two more years of education to thousands of disabled individuals, and an injunction granting compensatory education to nearly 2,000 more. *See* ECF Nos. 292, 314. Plaintiffs documented reasonable hourly rates and expenditures of time. The Magistrate Judge's failure to recommend the award of those fees to Plaintiffs was in error.

**IV. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that this Court reject the Magistrate Judge's Findings and Recommendations to deny Plaintiffs' Motion. Plaintiffs request the Court grant its motion and award (1) AHFI \$221,215.10 (which includes \$211,260.51 in attorneys' fees and \$9,954.60 in state excise tax) and HDRC \$13,734.10 (which includes \$13,116.07 in

attorneys' fees and \$618.03 in state excise tax) for a total award of **\$234,949.20.**

DATED: Honolulu, Hawai'i, January 28, 2016.

/s/ Michelle N. Comeau

PAUL ALSTON

KRISTIN L. HOLLAND

MICHELLE N. COMEAU

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,

vs.

DEPARTMENT OF EDUCATION,  
State of Hawai'i,

Defendant.

Case No. 10-00436 SOM-KSC

**DECLARATION OF  
PAUL ALSTON**

**DECLARATION OF PAUL ALSTON**

I, PAUL ALSTON, do hereby declare that:

1. I am an attorney and a director with the law firm of Alston Hunt Floyd & Ing ("AHFI"), counsel for Plaintiffs E.R.K., by his legal guardian R.K., R.T.D., through his parents R.D. and M.D., as well as HAWAII DISABILITY RIGHTS CENTER, in a representative capacity on behalf of its clients and all others similarly situated ("HDRC") (collectively "Plaintiffs") in this matter.

2. Unless otherwise stated, I make this Declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

3. I make this Declaration in support of Plaintiffs' *Objections to Magistrate Judge's Findings and Recommendation to Deny Without Prejudice Plaintiffs' Interim Motion for Attorneys' Fees*.

4. I am lead counsel for Plaintiffs, who prevailed in this matter.

5. Attached hereto as Exhibit "1" is a true and correct copy of Magistrate Judge's *Findings and Recommendation to Deny Without Prejudice Plaintiffs' Interim Motion for Attorneys' Fees*, filed January 11, 2016 [ECF No. 316].

6. Attached hereto as Exhibit "2" is a true and correct copy of the Ninth Circuit Appellate Commissioner's April 24, 2015, Order granting Plaintiffs attorneys' fees associated with the appeal. Plaintiffs received a total of \$33,529.30 in attorneys' fees. A majority of this fee award (\$27,930.00) was remitted to the law firm of Schneider Wallace Cottrell Brayton and Konecky, LLP located in San Francisco, California.

7. From the commencement of this lawsuit through December 2015, Plaintiffs have incurred approximately \$993,258.89 in fees prosecuting this case. This includes: (1) \$57,711.31 associated with the Ninth Circuit appeal, *see* Exhibit 2 at pages 5-6; (2) \$234,949.20 for fees incurred in the district court prior to appeal and from the Ninth Circuit's order through August 22, 2014 (as documented in Plaintiffs' Interim Motion); and (3) \$660,799.16 for AHFI's work from the date of the Court's August 22, 2014 Order through December 31, 2015. In addition, I am informed and believe based on Louis Erteschik's declaration that the Hawai'i Disability Rights Center has incurred approximately \$39,799.22 in unpaid fees for this same timeframe.

8. AHFI has accrued an estimated \$660,799.16 in attorneys' fees from the date of the Court's August 22, 2014 Order through December 31, 2015, representing approximately 2,773.9 hours of work by attorneys and other legal staff. These fees are not included in the instant interim fee application, but will be sought at

a later date. This fee estimate applied the same attorney billing rates that were applied in Plaintiffs' Interim Motion for Attorneys' Fees.

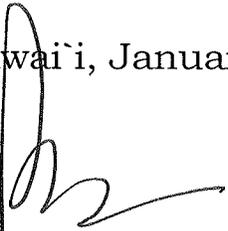
9. My firm had and continues to have a substantial interest in the case (having risked substantial time and resources on litigating this matter for over five years). It is unlikely that a small firm or a sole practitioner could have provided the resources and support needed to litigate this case on behalf of Plaintiffs and the Class.

10. Alston Hunt Floyd & Ing has in the past and continues to take on many complex public interest class actions, including (for example): (1) this case; (2) *Martin v. City & County of Honolulu*, Civ. No. 15-00363 HG-KSC; (3) *J.E. ex rel. Egan v. Wong*, Civ. No. 14-00399 HG/BMK; (4) *Sheehey v. Wong*, Civ. No. 13-00663 LEK-KSC; (5) *Korab v. Wong*, Civ. No. 10-00483 JMS KSC; (6) *Kawashima v. State of Hawaii, Department of Education*, Civil No. 06-1-0244-02 (ECN). These cases are taken without payment by the class members, with my firm and our co-counsel fronting the costs of

litigation throughout the pendency of the actions, which usually last years. To my knowledge, only a small number of other firms in this State are willing to handle these types of civil rights and public interest class actions, and those who are willing to take them on do so only occasionally.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, January 28, 2016.



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PAUL ALSTON

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,

vs.

DEPARTMENT OF EDUCATION,  
State of Hawai'i,

Defendant.

Case No. 10-00436 SOM-KSC

**DECLARATION OF  
LOUIS ERTESCHIK**

**DECLARATION OF LOUIS ERTESCHIK**

I, LOUIS ERTESCHIK, do hereby declare that:

1. I am an attorney and director of the Hawai'i Disability Rights Center ("HDRC"), counsel for Plaintiffs E.R.K., by his legal guardian R.K., R.T.D., through his parents R.D. and M.D.; as well as the law firm ALSTON HUNT FLOYD & ING, in a representative capacity on behalf of its clients and all others similarly situated (collectively "Plaintiffs") in this matter.

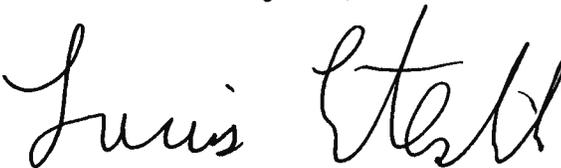
2. Unless otherwise stated, I make this Declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

3. I make this Declaration in support of Plaintiffs' *Objections to Magistrate Judge's Findings and Recommendation to Deny Without Prejudice Plaintiffs' Interim Motion for Attorneys' Fees* ("Objections").

4. HDRC has accrued an estimated \$39,799.22 in unpaid attorneys' fees from the date of the Court's August 22, 2014 through December 31, 2015, representing approximately 168.8 hours of work by attorneys. These fees are not included in the instant interim fee application, but will be sought at a later date. This fee estimate applied the same billing rates that were applied in Plaintiffs' Interim Motion for Attorneys' Fees.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, January 28, 2015.

  
\_\_\_\_\_  
LOUIS ERTESCHIK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

R.P.-K., through his ) CIVIL NO. 10-00436 SOM-KSC  
parents C.K.; R.T.D., )  
through his parents R.D. ) FINDINGS AND  
and M.D.; and the HAWAII ) RECOMMENDATION TO DENY  
DISABILITY RIGHTS CENTER, ) WITHOUT PREJUDICE  
in a representative ) PLAINTIFFS' INTERIM MOTION  
capacity on behalf of its ) FOR ATTORNEYS' FEES  
clients and all others )  
similarly situated, )  
)  
Plaintiffs, )  
)  
vs. )  
)  
DEPARTMENT OF EDUCATION, )  
State of Hawaii, )  
)  
Defendant. )  
\_\_\_\_\_ )

FINDINGS AND RECOMMENDATION TO DENY WITHOUT PREJUDICE  
PLAINTIFFS' INTERIM MOTION FOR ATTORNEYS' FEES

Before the Court is Plaintiffs' Interim Motion for Attorneys' Fees, filed November 20, 2015. On December 4, 2015, Plaintiffs filed a Statement of Consultation. Defendant filed an Opposition on December 18, 2015, and Plaintiffs filed a Reply on January 7, 2016. Given that this action is still pending, and Plaintiffs will unquestionably file a subsequent motion for fees, the Court finds that

judicial economy and the administration of justice will be served by addressing Plaintiffs' fee request at the conclusion of this action, or after meaningful progress has been made towards resolution or for the delivery of agreed-upon services to class members.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, January 11, 2016.



  
Kevin S.C. Chang  
United States Magistrate Judge

CV 10-00436 SOM-KSC; R.P.-K., et al. v. DEPARTMENT OF EDUCATION;  
FINDINGS AND RECOMMENDATION TO DENY WITHOUT PREJUDICE PLAINTIFFS'  
INTERIM MOTION FOR ATTORNEYS' FEES

FILED

UNITED STATES COURT OF APPEALS

APR 24 2015

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

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,

No. 12-16063

D.C. No. 10-CV-436-DAE  
District of Hawaii,  
Honolulu

Plaintiffs - Appellants,

v.

STATE OF HAWAII DEPARTMENT OF  
EDUCATION,

ORDER

Defendant - Appellee.

Before: Peter L. Shaw, Appellate Commissioner

I  
Background

E.R.K., by his legal guardian R.K.; R.T.D., through his parents, R.D. and M.D.; and Hawaii Disability Rights Center, in a representative capacity on behalf of its clients and all others similarly situated (together, "E.R.K."); brought a class action against the State of Hawaii Department of Education ("DOE") alleging violations of federal law arising from the DOE's enforcement of Hawaii Act 163's

age limit on public education as to the plaintiff class. After a one-day bench trial, the district court entered judgment in favor of the DOE, and E.R.K. appealed.

This court affirmed the district court's judgment on E.R.K.'s Americans with Disabilities Act ("ADA") and Rehabilitation Act claims, reversed the district court's judgment on E.R.K.'s Individuals with Disabilities Education Act ("IDEA") claim, and remanded to the district court for proceedings on the IDEA claim. *See E.R.K. ex rel. R.K. v. Haw. DOE*, 728 F.3d 982, 993 (9th Cir. 2013).

E.R.K. filed a bill of costs and the Clerk taxed costs against the DOE in the amount of \$390.80. *See* 28 U.S.C. § 1920; Fed. R. App. P. 39; 9th Cir. R. 39-1.1–1.5. E.R.K. filed an application for attorneys' fees under the IDEA, 20 U.S.C. § 1415(i). *See* 9th Cir. R. 39-1.6. The DOE filed an objection, and E.R.K. filed a reply. *See* 9th Cir. R. 39-1.7. The court referred to the Appellate Commissioner the determination of the attorneys' fees application. *See* 9th Cir. R. 39-1.9.

## II Analysis

### A. Applicable Law

The IDEA, 20 U.S.C. § 1415(i), provides that "[i]n any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs . . . to a prevailing party." The court may reduce

the fee award where “the amount of attorneys’ fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience,” or “the time spent and legal services furnished were excessive considering the nature of the action or proceeding.” *Id.*; see also *Blum v. Stenson*, 465 U.S. 886, 895 & n.11 (1984); *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

#### B. Entitlement To Attorneys’ Fees Award

The DOE argues that E.R.K. may not be awarded attorneys’ fees because this action was not brought under 20 U.S.C. § 1415. See *Lucht v. Molalla River Sch. Dist.*, 225 F.3d 1023, 1028 (9th Cir. 2000). The DOE argues that the complaint sought declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, rather than judicial review of an administrative hearing decision regarding the denial of a free appropriate public education (“FAPE”). See 20 U.S.C. § 1415(f), (g), (i). The DOE also argues that an administrative hearing officer lacks jurisdiction to determine whether Hawaii Act 163 violates federal law. The DOE’s argument lacks merit.

Sections 2201 and 2202 create remedies, and do not authorize causes of action. This court’s opinion states that “[t]he complaint asserted claims under the IDEA.” See *E.R.K. ex rel. R.K.*, 728 F.3d at 985. E.R.K.’s cause of action is

authorized by the IDEA, 20 U.S.C. § 1415(i) and (l). Contrary to the DOE's argument, E.R.K.'s complaint challenged the denial of a FAPE. *Id.* E.R.K. sought a declaration that the DOE's refusal to provide class members with a FAPE after age 20 violated 20 U.S.C. § 1412(a), and sought to enjoin the DOE to provide a FAPE until class members reached age 22. *Id.* at 986-92. E.R.K.'s complaint did not request invalidation of Hawaii Act 163, as the DOE argues, and this court did not do so. *Id.* at 992. The court held that the DOE's enforcement of Hawaii Act 163 to deny class members a FAPE after age 20 violates the IDEA. *Id.*

Moreover, E.R.K.'s complaint alleged that R.T.D. and two other named plaintiffs requested administrative hearings regarding the discontinuance of their FAPes. In addition, the district court eventually determined that the named plaintiffs had exhausted their administrative remedies under 20 U.S.C. § 1415(f) and (g), or were not required to do so. *See* 20 U.S.C. § 1415(l); *N.D. v. Haw. DOE*, 600 F.3d 1104, 1110 (9th Cir. 2010) (plaintiffs demonstrating that defendant has adopted policy or pursued general practice contrary to law need not exhaust administrative remedies); *Hoefl v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1305, 1307 (9th Cir. 1992) (policy or practice is contrary to law if the question whether it violates IDEA is a question of law, and the agency was afforded an opportunity to consider and correct errors). Also, the district court and this court resolved

R.T.D.'s separate appeal from an administrative hearing decision by adopting the decision in *E.R.K. See R.T.D. ex rel. R.D. v. Haw. DOE*, 539 Fed. App'x 774, 775 (9th Cir. 2013).

This court has stated that the broadly worded provision for attorneys' fees "in any action or proceeding" brought under 20 U.S.C. § 1415 does not restrict attorneys' fees only to cases where parents of a disabled child opt to pursue an administrative hearing, and suggests that there is more than one type of proceeding in which a court is authorized to award fees. *See Lucht*, 225 F.3d at 1027. Other circuits have affirmed awards of attorneys' fees under § 1415 in class actions for violations of the IDEA. *See Blackman v. Dist. of Columbia*, 633 F.3d 1088, 1090-92 (D.C. Cir. 2011); *Keene v. Zelman*, 337 Fed. App'x 553, 554, 558 (6th Cir. 2009); *Beard v. Teska*, 31 F.3d 942, 945-46, 958 (10th Cir. 1994). E.R.K. may be awarded attorneys' fees here.

#### C. Amount Of Attorneys' Fees Award

E.R.K. requests attorneys' fees on appeal in the amount of \$57,483.58 for 134.5 hours of work by attorney Jason H. Kim of Schneider Wallace Cottrell Konecky LLP in San Francisco, California; attorney Paul Alston and paralegal Kelly K.M. Guadagno of Alston Hunt Floyd & Ing in Honolulu, Hawaii; and attorney Matthew C. Bassett of the Hawaii Disability Rights Center in Honolulu,

Hawaii. E.R.K. also requests Hawaii general excise taxes in the amount of \$227.73 on Alston's and Guadagno's fees.

1. Reasonable Hourly Rates

E.R.K. requests the following hourly rates for the legal professionals, and the DOE objects to all of the requested rates:

<u>Legal Professional</u>	<u>Position</u>	<u>Admission Date</u>	<u>Hourly Rate</u>
Paul Alston	Director	1971	\$592.52
Jason H. Kim	Of Counsel	1998	\$500.00
Matthew C. Bassett	Litigation Director	1986	\$285.00
Kelly K.M. Guadagno	Paralegal	N/A	\$125.00

a. Paul Alston

E.R.K. requests \$592.52 per hour for Paul Alston, an experienced Hawaii law firm director, appellate litigator, and bar leader admitted to practice in 1971. The requested hourly rate is based on a Hawaii district court award of Alston's 2011 hourly billing rate of \$567, adjusted for inflation, in a commercial dispute. Alston states here that his 2012-13 hourly billing rate is \$695 for new business clients in complex commercial cases, and that he is handling "much work" for clients at that rate. "That a lawyer charges a particular hourly rate, and gets it, is evidence bearing on what the market rate is, because the lawyer and his clients are

part of the market.” *Carson v. Billings Police Dep’t*, 470 F.3d 889, 892 (9th Cir. 2006).

The DOE argues that \$300 per hour should be awarded for Alston, because that is the highest rate that the Hawaii district court has allowed in IDEA cases. This argument lacks merit. The court may not rely exclusively on awards in IDEA cases to determine a market rate for Alston’s services. *See Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010); *Christensen v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1054 (9th Cir. 2009); *Van Skike v. Dir., OWCP*, 557 F.3d 1041, 1046-47 (9th Cir. 2009); *Moreno v. City of Sacramento*, 534 F.3d 1106, 1115 (9th Cir. 2008). To reflect Congress’s intent in the IDEA’s fee-shifting provision to encourage counsel to undertake IDEA cases, fees must be awarded for Alston that are commensurate with those he could obtain by taking other kinds of cases. *See Van Skike*, 557 F.3d at 1047; *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 981 (9th Cir. 2008).

Thus, the Hawaii award in a non-IDEA case of \$567 per hour for Alston’s 2011 work is relevant evidence of the prevailing market rate. In addition, this court recently awarded Alston’s pre-2011 hourly billing rate of \$540 in *BlueEarth Biofuels, LLC, v. Haw. Elec. Co.*, No. 11-16848 (9th Cir. Sept. 3, 2014) (Order). The DOE does not provide evidence to rebut the reasonableness of the requested

\$592.50 hourly rate for Alston, or support its contention that \$300 is a reasonable hourly rate for Alston. *See Camacho*, 523 F.3d at 980 (9th Cir. 2008); *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992). The requested \$592.52 hourly rate is reasonable for Alston’s 2012-13 work in this case, and it is awarded.

b. Jason H. Kim

E.R.K. requests \$500 per hour, or in the alternative \$300 per hour, for Jason H. Kim, an experienced San Francisco trial and appellate litigator admitted to practice in 1998. During the litigation, Kim left Alston Hunt Floyd & Ing in Honolulu and became “of counsel” at Schneider Wallace Cottrell Konecky LLP in San Francisco, where he continued to work on the case. The requested \$500 hourly rate for Kim is based on San Francisco market rates, but E.R.K. acknowledges that \$300 per hour is reasonable for Kim if Honolulu is considered to be the relevant market.

The DOE argues that \$275 per hour should be awarded for Kim, because Honolulu is the relevant market and there is no evidence of Kim’s experience in IDEA litigation. The DOE provides evidence of Hawaii district court awards of \$275 to \$300 per hour for 2010-13 IDEA work by attorneys admitted in 1988 and earlier. The DOE’s argument has partial merit. Generally, the relevant market is

the forum district. *See Camacho*, 523 F.3d at 979. Honolulu is the relevant market here, in part because Kim began representing the class while employed there.

But the court may not rely exclusively on awards in IDEA cases, or Kim's experience in IDEA cases, to determine a market rate for Kim's services. *See Prison Legal News*, 608 F.3d at 455. Fees must be awarded for Kim that are commensurate with those he could obtain by taking other kinds of cases. *See Van Skike*, 557 F.3d at 1047; *Camacho*, 523 F.3d at 981. Alston states that the requested \$300 hourly rate for Kim "is well within the range of reason for attorneys with similar experience in this community." Because the DOE's evidence involves only IDEA cases, it does not rebut Alston's declaration. Alston's declaration is corroborated by this court's award in *BlueEarth* of a 2011 or earlier hourly billing rate of \$280 for an attorney admitted in 1998. E.R.K.'s requested \$300 hourly rate for Kim's 2012-13 work is reasonable and is awarded.

c. Matthew C. Bassett

E.R.K. requests \$285 per hour for Matthew C. Bassett, the litigation director of the Hawaii Disability Rights Center, who was admitted to practice in 1986. The requested hourly rate is based on the Hawaii district court's award of \$275 per hour for 2008-09 IDEA work by Bassett. The DOE argues that \$275 remains a reasonable hourly rate for Bassett. This argument lacks merit. Bassett's rate for

the 2012-13 work here should reflect a reasonable increase from the 2008-09 rates awarded by the district court. Also, the court may not rely exclusively on awards in IDEA cases. *See Prison Legal News*, 608 F.3d at 455. The requested \$285 hourly rate for Bassett is reasonable and is awarded.

d. Kelly K.M. Guadagno

E.R.K. requests \$125 per hour for Kelly K.M. Guadagno, who has 21 years of experience as a litigation paralegal in Honolulu. Alston states that Guadagno's rate "is well within the range of reason for paralegals with similar experience in this community." The DOE argues that \$85 per hour should be awarded for Guadagno, based on awards in IDEA cases. But the DOE does not cite the cases, or state when the work was performed. In *BlueEarth*, this court awarded \$145 per hour for a Honolulu paralegal employed by Alston with 22 years of experience. The requested \$125 hourly rate for Guadagno is reasonable and is awarded.

2. Reasonably Expended Hours

On Ninth Circuit Form 9, E.R.K. claims the legal professionals spent the requested 134.5 hours performing various services on appeal, as follows:

<u>Services</u>	<u>Alston</u>	<u>Kim</u>	<u>Bassett</u>	<u>Guadagno</u>	<u>Hours</u>
Conferences	0.8	8.5	0	3.0	12.3
Records	1.9	0	3.9	0	5.8
Research	0	4.3	0	0.2	4.5
Briefs	0	45.8	0	11.0	56.8
Oral Argument	0.9	31.2	3.2	0	35.3
<u>Other</u>	<u>0</u>	<u>10.2</u>	<u>2.2</u>	<u>7.4</u>	<u>19.8</u>
Total Hours	3.6	100.0	9.3	21.6	134.5

E.R.K. requests fees for filing a mediation questionnaire, a letter confirming an extension of time to file the opening brief, a notice of appearance, an 8,275-word opening brief, three volumes of excerpts of record, a motion to consolidate the appeal with R.T.D.'s separate appeal, a 3,238-word reply brief, a bill of costs, and a motion for attorneys' fees. E.R.K. does not request fees for filing a reply to the DOE's opposition to the attorneys' fees motion.

E.R.K. also requests fees for Kim's, Alston's, and Bassett's preparation for and attendance at the oral argument in Honolulu, which was presented by Kim. This appeal was consolidated for the purpose of oral argument with R.T.D.'s separate appeal.

The DOE objects that the requested hours should be reduced.

a. Degree Of Success

The DOE argues that E.R.K.'s hours should be reduced because E.R.K. prevailed on appeal on the IDEA claim, but not on the ADA or Rehabilitation Act claims. *See E.R.K.*, 728 F.3d at 993. This argument lacks merit. When a prevailing party succeeds on only some claims, the court must consider whether: (1) the party failed to prevail on claims that were unrelated to the claims on which the party succeeded; and (2) the party achieved a level of success that makes the hours reasonably expended a satisfactory basis for the fee award. *See Hensley*, 461 U.S. at 434; *McCown v. City of Fontana*, 565 F.3d 1097, 1103 (9th Cir. 2009). The *Hensley* analysis applies in IDEA cases. *See Aguirre v. Los Angeles Unified Sch. Dist.*, 461 F.3d 1114, 1120-21 (9th Cir. 2006).

E.R.K.'s claims involve a common core of facts and are based on related legal theories. *See Hensley*, 461 U.S. at 434; *McCown*, 565 F.3d at 1103; *Webb v. Sloan*, 330 F.3d 1158, 1169 (9th Cir. 2003); *Odima v. Westin Tucson Hotel*, 53 F.3d 1484, 1499 (9th Cir. 1995). E.R.K.'s claims of violation of the IDEA's requirement to provide a FAPE to disabled children through age 22 and E.R.K.'s claims of disability discrimination in violation of the ADA and the Rehabilitation Act arise together from the DOE's refusal to provide class members aged 20 to 22

with FAPes in Hawaii's General Education Development and Competency Based programs at the Community Schools for Adults.

The DOE concedes that the ADA and Rehabilitation Act claims are similar to each other, and that there is "overlap in the factual information" regarding all three claims. At least one court has determined that IDEA and Rehabilitation Act claims arising from a failure to provide a FAPE to a disabled child are related. *See Mass. Dep't of Public Health v. Sch. Comm. of Tewksbury*, 841 F. Supp. 449, 457 (D. Mass. 1993).

A review of the time records shows that E.R.K.'s attorneys' and paralegal's time was devoted generally to the appeal as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. *See Hensley*, 461 U.S. at 435. For the purposes of an attorney's fees award, E.R.K.'s action cannot be viewed as a series of discrete claims, and the court must focus on the significance of the overall relief obtained in relation to the hours reasonably expended on the appeal. *Id.*

E.R.K. obtained an excellent result on appeal, because the court's remand of the IDEA claim requires further proceedings that may result in an award of all the relief that E.R.K. sought pursuant to any of the claims -- the continuation of class members' FAPes through age 22. Therefore, E.R.K. should recover a fully compensatory attorneys' fee. *See Hensley*, 461 U.S. at 435; *McCown*, 565 F.3d at

1104. “Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court’s rejection of . . . certain grounds is not a sufficient reason for reducing a fee.” *Hensley*, 461 U.S. at 435.

Thus, E.R.K.’s attorneys and paralegal’s reasonably expended hours in pursuit of the ultimate result achieved may be included in the attorney’s fees award, with no reduction based on degree of success. *See Hensley*, 461 U.S. at 434-35; *McCown*, 565 F.3d at 1103-04.

b. Clerical Work

The DOE objects to 6.7 hours requested for Kim, arguing that the work was clerical in nature and therefore may not be billed at an attorney’s hourly rate. *See Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989); *Tr. of Constr. Indus. & Laborers Health & Welfare Tr. v. Redland Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006). The DOE’s objection has partial merit.

Kim’s supervision of paralegal Guadagno’s and D. Ahuna’s preparation and filing of the opening brief, excerpts of record, and bill of costs, as well as Kim’s call to the Clerk about oral argument, were clerical in nature. *See Davis v. City & Cnty. of San Francisco*, 976 F.2d 1536, 1543 (9th Cir. 1992); *Action on Smoking & Health v. CAB*, 724 F.2d 211, 222 (D.C. Cir. 1984). On September 22, 2013, however, Kim block-billed 4 hours that involved permissible work on the

attorneys' fees application in addition to the clerical work of "[c]ompiling attorney time in required format." *See Missouri*, 491 U.S. at 288 n.10. Therefore, only 1 hour on this date is attributable to clerical work.

In addition to the hours to which the DOE objects, Kim also billed 3.2 hours on July 17 and 18, 2012, August 20, 2012, and May 10, 2013 for the clerical work of compiling and filing the excerpts of record. *Id.*; *Action on Smoking & Health*, 724 F.2d at 222. Altogether, 2.8 hours in the conferences category, 2.8 hours in the briefs category, 0.1 hour in the oral argument category, and 1.2 hours in the "other" category are disallowed for Kim's clerical work.

Also, 0.1 hour in the records category for Alston's May 14, 2013 review of a Clerk notice regarding electronic submission of the excerpts of record and 2.9 hours in the conference category, 0.2 hours in the research category, 11 hours in the briefs category, and 0.5 hours in the "other" category for Guadagno's August 16, 20, 21, 22, 23, 24, and 27, 2012 and August 28, 29, and September 4, 2013 compilation of information for the excerpts of record, bill of costs, and attorneys' fees application are disallowed as clerical work. *Id.*

c. Co-Counsel Conferences

The DOE objects to 5.1 hours requested for Kim's conferences with co-counsel. But these hours include 1.4 hours on May 10, 2013 that do not involve co-counsel conferences and have been disallowed as clerical in nature.

In support of this objection, the DOE cites *Sheehan v. Centex Homes*, 853 F. Supp. 2d 1031, 1044 (D. Haw. 2011), where the district court stated that it did not permit more than one attorney to bill for attending a meeting with co-counsel, a client, or opposing counsel. The DOE does not show, however, that the specified hours for Kim involved meetings that were also billed by another legal professional. In fact, the time entries to which the DOE objects do not involve meetings at all, but rather emails from Kim in San Francisco to the other legal professionals at two law firms in Honolulu.

A review of Kim's and the others' time entries, including those submitted in support of the fee request in R.T.D.'s separate appeal, reveals several instances where, on the same date that Kim billed for emails, one or more of the other legal professionals also billed a minimal amount of time for emailing with Kim. Yet Kim's and the others' hours for reciprocal emailing were reasonably expended, particularly in light of Kim's relocation to San Francisco and the class plaintiff's

representation by multiple law firms. The authority cited by the DOE does not prohibit the award of these hours, and they are awarded.

d. Travel Time

The DOE objects to 16 hours requested for Kim's round-trip oral argument travel between San Francisco and Honolulu, contending that Kim may have performed work for other clients during the time. The DOE contends that no more than 8 hours should be awarded for the travel, citing two unpublished district court decisions awarding reduced hours or rates for travel. This objection lacks merit.

There is no evidence that Kim's travel involved work other than the *E.R.K.* oral argument. The Ninth Circuit has affirmed as reasonable a full award of travel time for client meetings, where the evidence showed that billing travel to clients is customary. *See Davis*, 876 F.2d at 1543. Another, more recent district court decision awarded travel time for an attorney who presented oral argument in the Ninth Circuit. *See Oldoerp v. Wells Fargo & Co. LTD Plan*, 2014 WL 2621202, at \*6 (N.D. Cal. 2014). Kim's travel time was reasonably expended and is awarded.

e. Alston's And Bassett's Hours

The DOE objects to E.R.K.'s requested 3.6 hours for Alston and 9.3 hours for Bassett for reviewing pleadings and preparing for and attending oral argument,

because Kim prepared the pleadings and presented the oral argument. The DOE's objection lacks merit.

The court may not determine fees based on speculation about how other firms might have staffed the case. *See Moreno*, 534 F.3d at 1114. The inquiry is limited to whether the fees requested by this particular legal team are justified for the work performed and the results obtained. *Id.* E.R.K. states that Alston's and Bassett's assistance was necessary because both were involved in the district court litigation, Alston is an experienced appellate advocate, and Bassett is an experienced disability rights advocate.

The time records show that Alston's and Bassett's brief review, oral argument preparation, and oral argument attendance hours were reasonably expended. In particular, using multiple attorneys for oral argument preparation and attendance is not unnecessary duplication where, as here, the attorneys attend to assist the attorney presenting the argument, rather than merely to observe and learn. *See Democratic Party of Wash. State v. Reed*, 388 F.3d 1281, 1286-87 (9th Cir. 2004); *Sheehan*, 853 F. Supp. 2d at 1044. Alston's 3.6 hours and Bassett's 9.3 hours were reasonably expended and they are awarded.

## f. Reasonably Expended Hours Summary

A review of the briefs and time records, in light of fee requests in similar appeals, shows that E.R.K.'s remaining 112.9 hours for the appeal were reasonably expended. In particular, Kim completed the research and the briefing in a reasonable number of hours. After the adjustments discussed above for clerical work, which are in boldface type, E.R.K.'s remaining 112.9 hours are awarded, as follows:

<u>Services</u>	<u>Alston</u>	<u>Kim</u>	<u>Bassett</u>	<u>Guadagno</u>	<u>Hours</u>
Conferences	<b>0.7</b>	<b>5.7</b>	0	<b>0.1</b>	<b>6.5</b>
Records	1.9	0	3.9	0	5.8
Research	0	4.3	0	<b>0</b>	<b>4.3</b>
Briefs	0	<b>43.0</b>	0	<b>0</b>	<b>43.0</b>
Oral Argument	0.9	<b>31.1</b>	3.2	0	<b>35.2</b>
<u>Other</u>	<u>0</u>	<u>9.0</u>	<u>2.2</u>	<u>6.9</u>	<u>18.1</u>
Total Hours	<b>3.5</b>	<b>93.1</b>	9.3	<b>7.0</b>	<b>112.9</b>

## 3. Attorneys' Fees Award Summary

E.R.K. is awarded attorneys' fees in the amount of \$33,529.32, as follows:

<u>Legal Professional</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Total</u>
Paul Alston	Director	\$592.52	3.5	\$ 2,073.82
Jason H. Kim	Of Counsel	\$300.00	93.1	\$27,930.00
Matthew C. Bassett	Litigation Director	\$285.00	9.3	\$ 2,650.50
<u>Kelly K.M. Guadagno</u>	Paralegal	<u>\$125.00</u>	<u>7.0</u>	\$ <u>875.00</u>
Total			112.9	\$33,529.32

#### D. Hawaii General Excise Taxes

E.R.K. also requests an award of Hawaii general excise taxes at 4.712 percent on the fees for Alston and Guadagno. *See Annette K. v. Haw. DOE*, 2013 WL 3731102, at \*3-\*4 (D. Haw. 2013) (awarding Hawaii general excise taxes at 4.712 percent in IDEA case). The DOE does not object to E.R.K.'s request for the taxes. The award for Alston and Guadagno has been reduced to \$2,948.82 in fees. Accordingly, E.R.K. is awarded Hawaii general excise taxes in the amount of \$138.95. *Id.*

### III Conclusion

Attorneys' fees in the amount of \$33,529.32 and Hawaii general excise taxes in the amount of \$138.95 are awarded in favor of E.R.K., by his legal guardian R.K.; R.T.D., through his parents R.D. and M.D.; and Hawaii Disability Rights Center, in a representative capacity on behalf of its clients and all others similarly

situated; and against the State of Hawaii Department of Education. This order amends the court's mandate. *See* Fed. R. App. P. 41.

**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 January 28, 2016:**

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DEPARTMENT OF EDUCATION

DATED: Honolulu, Hawai`i, January 28, 2016.

/s/ Michelle N. Comeau  
PAUL ALSTON  
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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 Objection**

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**U.S. District Court**

**District of Hawaii**

**Notice of Electronic Filing**

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**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:** [327](#)

**Docket Text:**

**OBJECTION re [316] FINDINGS AND RECOMMENDATIONS re [292] Interim MOTION for Attorney Fees filed by Hawaii Disability Rights Center, M. D., R. D., R. T. D., E.R. K. filed 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) Declaration of Paul Alston, # (2) Declaration of Louis Erteschik, # (3) Exhibit 1 - Findings and Recommendation (316), # (4) Exhibit 2 - 4/24/15 Order re attorneys' fees, # (5) Certificate of Service)(Comeau, Michelle)**

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**Original filename:**n/a

**Electronic document Stamp:**

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**Original filename:**n/a

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**Document description:**Exhibit 1 - Findings and Recommendation (316)

**Original filename:**n/a

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**Document description:**Exhibit 2 - 4/24/15 Order re attorneys' fees

**Original filename:**n/a

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