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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: April 14, 2016

TIME: 9:30 a.m.

JUDGE: Kevin S. C. Chang

vs.

DEPARTMENT OF EDUCATION,  
State of Hawai`i,

Defendant.

**PLAINTIFFS' STATUS REPORT FOR APRIL 14, 2016  
STATUS CONFERENCE**

Plaintiffs submit the following status report in advance of the April 14, 2016, status conference.

**I. TIMELINE FOR SERVICES**

Progress toward services has stopped. The DOE refuses to work on the case because Plaintiffs appealed portions of this Court's *Order Granting in Part and Denying in Part 1) Defendant's Motion with Regard to Efforts in Identifying Class Members and 2) Plaintiffs' Motion re Identification of Class Members* [ECF No. 342; the "Order"]. See ECF No. 355-2, 355-3, 355-4 ("stop work" letters). Plaintiffs request that the Court advise the DOE that its inaction is improper.

## **II. APPEAL**

Plaintiffs appealed portions of the Order. The hearings on that appeal and on Plaintiffs' *Motion for Contempt* are set for May 3, 2016.

## **III. INCARCERATED CLASS MEMBERS**

As the Court directed, the DOE scheduled a meeting for March 15, 2016, for Class Counsel to speak with the Department of Public Safety regarding incarcerated Class Members. The DOE unilaterally canceled the meeting because of the appeal.

Plaintiffs request that the Court direct the DOE to schedule the DPS meeting as soon as possible.

## **IV. PRODUCTION OF EDUCATIONAL RECORDS FOR INTERESTED CLASS MEMBERS**

The DOE refused to produce the educational records ordered by the Court because Plaintiffs have appealed portions of this Court's Order—even though these records are for Class Members not affected by the Appeal.

## **V. SETTLEMENT AND SERVICES MATRIX**

The Court requested that Plaintiffs refine the services matrix. On March 8, 2016, Plaintiffs provided a revised version of the

services matrix with pricing for services broken out for each service. Plaintiffs also provided an offer of settlement that includes payment or reimbursement to the Class Members up to fixed, per-person amounts, plus reimbursement of out-of-pocket costs paid (if any) by the Class Member or family member for compensatory services provided since July 2010.

The DOE informed Plaintiffs that it will not respond to or discuss the offer because of the appeal.

#### **VI. SPECIAL MASTER**

On March 24, 2016, Plaintiffs again requested the DOE discuss the proposal to proceed under the guidance of one or more special masters. The DOE did not respond.

#### **VII. SUBPOENAS FOR RECORDS OF SERVICES**

Pursuant to the DOE's and the Court's request, Plaintiffs issued subpoenas for records of services for 46 individuals on March 11, 2016. The DOH/DDD has stated that it has records for 17 of these individuals (37%). The DHS/DVR has stated that it has records for 12 of these individuals (26%). Plaintiffs have worked with both agencies to prepare mutually agreeable orders to present to the Court regarding release of records—except the agencies have

stated that they will not produce records without the payment of fees even though they are not entitled to reimbursement under FRCP 45.<sup>1</sup>

Plaintiffs have asked the deputy AGs for DOH and DHS to discuss this issue informally with the Court. Plaintiffs will advise the Court of their responses.<sup>2</sup>

Plaintiffs request an update from the DOE regarding the steps it has taken since the last status conference to start providing services to these Class Members or to any others.

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<sup>1</sup> The agencies are relying on Hawaii Administrative Rules, which do not apply in federal court. *Cf. United States v. Cardinal Growth, L.P.*, No. 11-CV-4071, 2015 WL 850230 (N.D. Ill. Feb. 23, 2015). Plaintiffs paid the fees charged by the DDD last year for the records of several pilot group members solely in the interest of expediency, but it now appears this is likely to be a recurring issue.

<sup>2</sup> Plaintiffs sought to discuss these costs with the DOE but the DOE flatly refused to contribute, advising Plaintiffs that “the ultimate responsibility to obtain your clients’ records lies with your office, as does the responsibility to pay for them. This is the same issue that we encountered previously when your office requested the DOE to pay for the pilot group’s records from DDD. The answer then, as it is now, is a ‘no.’ In the future, and unless there is a Court order, please do not request that the DOE front the money to pay for you to obtain your client’s individual records from non-DOE agencies.”

DATED: Honolulu, Hawai`i, April 12, 2016.

/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 April 12, 2016:

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Attorneys for Defendant  
DEPARTMENT OF EDUCATION

DATED: Honolulu, Hawai`i, April 12, 2016.

/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**

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**From:** <hid\_resp@hid.uscourts.gov>  
**To:** <hawaii\_cmecf@hid.uscourts.gov>  
**Date:** 4/12/2016 9:16 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 4/12/2016 at 9:16 AM HST and filed on 4/12/2016

**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:** [360](#)

**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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