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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: April 14, 2016

Time: 9:30 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. TIMELINE FOR SERVICES**

Plaintiffs' appeal of this Court's order, coupled with its motion for civil contempt and sanctions, makes it clear that Plaintiffs seek to have Judge Susan O. Mollway determine the scope and size of the class, divest this Court of any remaining power and jurisdiction, and appoint a special master to make further class determinations. Plaintiffs, at the last status conference, did not tell anyone of its intention to appeal this Court's decision. That is why the Court asked, and the Department agreed, to go forward and work towards a potential resolution of the defined class members' claims. Had Plaintiffs been forthright about its intentions, there would never have been a discussion about how to proceed going forward. Because the Court's recommendations were premised on the existence of a defined class, Plaintiffs' appeal challenging the class size and motion seeking to appoint a special master to supplant this Court's decision making ability has thrown everything off course. Under the circumstances, the Department does not feel that it is appropriate to continue to follow the Court's recommended course of action and that it would be prudent to wait until Judge Mollway rules on those issues before expending additional time and resources.

## **II. APPEAL**

Plaintiffs' appeal covers the most significant portions of the Court's order, the closing of the class and determinations on who qualifies as a class member. Plaintiffs seek to have an open class with a special master appointed to search for additional interested class members.

## **III. INCARCERATED CLASS MEMBERS**

The Department will consider rescheduling the meeting with Todd Takahashi once the class issues have been resolved by Judge Mollway.

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

Because Judge Mollway's review of the Court's order is *de novo*, the identity of the class members may change and the Department does not want to violate FERPA by providing Plaintiffs with educational records of individuals who may not be class members. We have advised Plaintiffs that we would be producing records of those individuals who provide written FERPA consent forms. To date, less than half of the interested potential class members have submitted signed FERPA consent forms.

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

Without a defined class, the Department is unable to evaluate and comment on Plaintiffs' services matrix.

## **VI. SPECIAL MASTER**

The Department has always been open to discussing potential ways to resolve the class members' individual claims. However, since Plaintiffs have appealed the Court's decision and have implored Judge Mollway to appoint a special master as a civil contempt sanction, it would be premature to discuss any potential need for a special master. If Plaintiffs get their way in the appeal, there will be 1,800 class members in need of individualized determinations of compensatory education, and the Department does not believe that one or more special masters would be able to process those claims.

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

At the last status conference, the Court recommended that the Department provide Plaintiffs with the names of 40 class members and that Plaintiffs would then obtain their records via subpoena. Instead of the Department choosing the 40 individuals, the Department provided Plaintiffs with a list of the identified class members, grouped by school, and allowed Plaintiffs to choose the 40 class members. Despite the Court's recommendation to look at 40 class members, Plaintiffs chose 46 individuals.

Plaintiffs then, without first asking these 46 individuals whether they were receiving services from other state agencies, sent subpoenas to DDD and DVR asking for records for each of the 46 individuals. When Plaintiffs heard back from

DDD and DVR, they were told that only 37% received services from DDD and 26% received services from DVR. This is a clear indication that Plaintiffs have not initiated contact with their clients to determine what services, if any, they are receiving. If this is the process that Plaintiffs intend to use for all 1,800 potential class members, then there needs to be a discussion about the burden placed on the various state agencies to perform Plaintiffs' work.

When Plaintiffs were told that they would have to pay for the records that they were requesting via subpoena, Plaintiffs response was that they should not have to pay and/or that the Department should pay. The Department has already advised Plaintiffs that they will need to pay for the records that they have subpoenaed.

Dated: Honolulu, Hawai'i, April 13, 2016.

/s/ Carter K. Siu  
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DEPARTMENT OF EDUCATION  
State of Hawai'i

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CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 13, 2016, 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, April 13, 2016.

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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  
**Document Number:** [362](#)

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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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