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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; EXHIBIT 1;
CERTIFICATE OF SERVICE**

DATE: November 12, 2015

TIME: 9:00 a.m.

JUDGE: Kevin S. C. Chang

vs.

DEPARTMENT OF EDUCATION,
State of Hawai'i,

Defendant.

**PLAINTIFFS' STATUS REPORT FOR NOVEMBER 12, 2015
STATUS CONFERENCE**

Plaintiffs submit the following status report in advance of the November 12, 2015, status conference.

I. IDENTIFYING INTERESTED CLASS MEMBERS

On Friday, November 6, 2015, counsel for Plaintiffs met in person with counsel for the DOE to make a final effort to reach agreement with respect to identifying Class Members interested in participating and/or receiving compensatory education services or participating in a settlement of the pending lawsuit.

The DOE's own statistics (as reported to the U.S. Department of Education) show that within the relevant years (and age ranges), the DOE prematurely terminated services to more than 1,182 individuals who "reached maximum age" or received a certificate (See Exhibit 1). In addition, over 500 SPED students dropped out

and were prematurely barred from returning for more education and related services after age 20 because of Act 163 (*Id.*). Efforts to find and communicate with these Class Members and/or their guardians have been largely ineffective because the DOE failed to maintain up-to-date contact information for the Class Members.

To date, only about 600 out of more than 1,800 former students have been contacted. Out of that number, Plaintiffs have identified over 400 interested Class Members. Out of this group, the DOE only acknowledges a group of approximately 93 individuals as “eligible” interested Class Members. The parties have agreed to exclude a small group of other individuals based on their age. All others who have indicated that they want to receive compensatory education are disputed by the DOE.¹ Plaintiffs are preparing a stipulation reflecting these areas of common ground.

¹ This totals approximately 230 individuals at this time, with the DOE asserting objections largely to individuals who exited before age 20 and to individuals the DOE asserts are too young. In addition, the DOE is still evaluating whether it has objections to individuals added to the list in October—largely those who said “yes” to the Ward calls completed in September 2015. The parties request the Court’s guidance as to whether the Court intends for the question of whether these disputed individuals are Class Members to be briefed as a part of the “motions regarding identification of class members.”

The DOE requested that Plaintiffs agree to “close the class” as of November 30, 2015, or some other date. Plaintiffs cannot agree to stop attempting to reach Class Members while more than half the Class is prevented from participating because they still have not been contacted.

As the Court is aware, between September and December 2014, Plaintiffs received from the DOE the names and the “contact information” (consisting of years-old street addresses) of 1,800 disabled young adults. Plaintiffs sought to contact these individuals by letter, and eventually contracted with Ward Research to place calls after the DOE refused to turn over the Class Members’ phone numbers (a lengthy process as the DOE insisted on oversight over the script). However, the addresses and phone numbers provided proved to be useless for many. Plaintiffs have therefore undertaken efforts to update the information available. As the Court is aware, Plaintiffs have repeatedly requested the DOE’s assistance in expediting this process by using the DOE’s contacts within other State agencies, but the DOE has refused. Plaintiffs are therefore searching on their own using what resources they have.

However, this is not a paralyzing condition, as the DOE claims. There are 400+ individuals who have expressed interest in receiving services. The case should proceed with respect to these individuals. For planning purposes, approximately 200 additional Class Members are likely incarcerated based upon the initial estimate previously received from the Education Specialist who had contacted class counsel. Plaintiffs are also seeking to reach parents and guardians via a search that is currently being conducted by Lexis.² Finally, there are likely to be additional individuals who will express interest if and when it is known what services will be available to them. Plaintiffs will submit their motion with respect to identification of Class Members on November 16, 2015, as requested by the Court.

Finally, the parties discussed provision of notice to incarcerated Class Members, potentially including handouts and/or postings in the facilities. Counsel for the DOE agreed to arrange a call with Diane Taira, counsel for the Bureau of Public Safety, to discuss this potential means of reaching incarcerated individuals.

² A search which became necessary only after the DOE refused to provide parent information in September 2015.

II. SETTLEMENT OFFER

At the October 22nd and October 29th, 2015, status conferences, the parties discussed the timing of a settlement offer. The Court has asked the DOE to prepare a proposal that identifies the components of its offer, without a dollar figure. The DOE has stated that one of its client representatives was out on medical leave and that the other was out of town. The DOE stated it would consult with the individual who was out of town after she returned on October 30, 2015.

III. CLASS MEMBER SERVICE MATRIX

Plaintiffs provided their services matrix to the Court and to the DOE at the last status conference. The Court requested that Counsel for the DOE discuss the services matrix with their client; in particular, whether the DOE is in agreement with Plaintiffs with respect to the groupings of individuals and the categories of services. If the DOE did not agree with Plaintiffs on these items, the DOE agreed to present an alternative schematic.

IV. SERVICES FOR PILOT GROUP

Plaintiffs continue to wait on responses to the counterproposals for the six Pilot Group members submitted on September 28, 2015, and October 6, 2015.

Plaintiffs submitted a jointly prepared order on November 3, 2015. The DOH requested to put off the meetings with the case managers until the order regarding HIPAA information was entered. The Court entered the order on November 9, 2015, and the parties will work with the DOH to reschedule those meetings as soon as possible.

DATED: Honolulu, Hawai`i, November 10, 2015.

/s/ Michelle N. Comeau
PAUL ALSTON
KRISTIN L. HOLLAND
MICHELLE N. COMEAU
Attorneys for Plaintiffs

School Year	Initial Count Ages 17-21 at date of data collection	Exited by going to Reg Ed, Grad w/ Reg Dipl, or moved (age 17+)	"Reached maximum age"	Certificate	Dropped out
2005-2006	14:1953 15:2023 16:2044 17: 1692 18:438 19:145	RE: 14:77 GR:16:68 MV: 14:* 15:74 17:866 15:* 16:107 18:187 16:60 17:83 19:* 17:32 18:* 20* 18:*	18:95 19:20 20:5	15:* 16:* 17:26 18:14 19:16 20:* (total 65)	14:0 15:* 16:11 17:* 18:9 19:*
2006-2007	14:1757 15:1908 16:1909 17:1688 18:438 19:97	RE:14:49 GR:15:* MV:14:42 15:96 16:88 15:66 16:155 17:899 16:43 17:112 18:221 17:* 18:* 19:25 18:*	18:174 19:35 20:10	17:29 18:12 19:* 20:* (total 14-21 is 69)	14:* 15:13 16:* 17:61 18:* 19:** (total 114)
2007-2008	14:1608 15:1742 16:1766 17:1688 18:445 19:97	RE:14:61 GR:16:80 MV:14:52 15:96 17:902 15:64 16:160 18:257 16:33 17:96 19:39 17:* 18:* 20:* 18:*	18:169 19:17 20:* 21:* (total 198)	16:* 17:33 18:8 19:19 20:* (no total listed)	14:8 15:13 16:16 17:* 18:* (total 71)
2008-2009	2131 17:1501 18:447 19:149 20:34	RE:14:54 GR: 17:853 MV: 14:41 15:60 18:286 15:49 16:162 19:55 16:48 17:158 20:17 17:42 18:25	14:* 15:* 16:* 17:* 18: 132 19:54 20:25 (total 216)	17:10 21:24 (no total listed and other cells left blank)	17:15 (total listed at 41 with all other cells left blank)
2009-2010	2056 17:1414 18:445 19:149 20:48	RE:14:46 GR:17:744 MV:14:59 15:65 18:216 15:57 16:137 19:51 16:44 17:98 20:15 17:26	19:39 20:29 (total 69, cell for age 21 blank)	17:54 18:21 19:22 20:10	14:15 15:12 16:23 17:91 18:93 19:11
2010-2011	2031 17:1391 18:451 19:151 20:38	RE:14:39 GR:16:57 MV:14:35 15:81 17:686 15:38 16:128 18:215 16:33 17:48 19:44 17:13	14:* 15:* 16:* 17:* 18:0 19:19 20:10 (total35)	16:Blank 17:61 18:18 19:26 20:11 (total 119)	16:11 17:61 18:50 (cells 15 and 19 blank with total listed as 119)
2011-2012	1913 17:1262 18:467 19:146 20:38	RE:14:39 GR:16:52 MV:14:47 15:75 17:651 15:36 16:106 18:222 16:38 17:66 17:21	14:* 15:* 16:* 17:* 18:0 19:23 (total 41)	17:54 18:26 19:43 (cells 16 and 20 blank, total listed as 147)	15:11 16:21 17:69 18:42 (total 147)
2012-2013	1897 17:1317 18:397 19:151 20:32	RE:14:32 GR:16:52 MV:14:45 15:71 17:660 15:44 16:107 18:176 16:40 17:56 19:15 17:10	19:59 20:21	17:60 18:22 19:38 20:14 (cells 15 & 16 left blank, total 138)	14:17 15:23 16:19 17:80 18:59 (cell 19 blank, total 198)
2013-2014	1990 17:1260 18:446 19:177 20:74 21:33	RE:14:64 GR:16:58 MV:14:45 15:77 17:613 15:48 16:115 18:193 16:26 17:73 19:18 17:16	0	17:40 18:19 19:8 (cells 16 and 20 blank, total listed as 74)	14:14 15:21 16:10 17:69 18:52 19:30 20:6
Total of Estimated Class members			555+ students in redacted cells plus students with birthdates after the first day of school	627 + students in redacted cells plus students with birthdates after the first day of school	500+ students in redacted cells plus students with birthdates after the first day of school

Total of known class members: 1,682 plus those in redacted cells and those who whose birthdates are after the first day of school

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 November 10, 2015:

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DEPARTMENT OF EDUCATION

DATED: Honolulu, Hawai`i, November 10, 2015.

/s/ Michelle N. Comeau
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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

From: <hid_resp@hid.uscourts.gov>
To: <hawaii_cmecf@hid.uscourts.gov>
Date: 11/10/2015 9:05 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
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U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered by Comeau, Michelle on 11/10/2015 at 9:04 AM HST and filed on 11/10/2015

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: [288](#)

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) Exhibit 1: Chart of Known Class Members, # (2) Certificate of Service)(Comeau, Michelle)

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

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Document description:Exhibit 1: Chart of Known Class Members

Original filename:n/a

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