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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

D.K. and A.K, by their guardians )  
and next friends MELVIN KELLET )  
and CHERYL KELLET; ANOLANI )  
COON, ANELA COON, SUE )  
GOODRIDGE, ANUHEA COON, )  
by their guardian and next friend )  
PATRICIA COON; C.H., by her )  
guardian and next friend J.H.; )  
KYLE SCHAFFNER and AVERY )  
SCHAFFNER, by their guardian )  
and next friend CRYSTAL )  
SCHAFFNER; JERICHO GARRY )  
and FRANCES GARRY, by their )  
guardian and next friend SUE )  
GARRY, )  
)  
)  
Plaintiffs )

CIVIL NO. 01V09 00507 DAE LEK

VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF; VERIFICATION OF  
CRYSTAL SCHAFFNER; SUMMONS

vs.

LINDA LINGLE, in her official )

capacity as Governor of the State of )  
Hawai`i; PATRICIA HAMAMOTO, )  
in her official capacity as Superinten- )  
tendent of the State of Hawai`i )  
Department of Education; and )  
GARRETT TOGUCHI, in his official )  
capacity as Board Chairperson of the )  
State of Hawai`i Board of Education, )  
) )  
Defendants )  
\_\_\_\_\_ )

VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF

I. PRELIMINARY STATEMENT

This is a class action for declaratory and injunctive relief brought on behalf of D.K., A.K., ANOLANI COON, SUE GOODRIDGE, ANELA COON, ANUHEA COON, C.H., KYLE SCHAFFNER, AVERY SCHAFFNER, JERICHO GARRY and FRANCES GARRY who are children in the State of Hawai`i who are constitutionally and statutorily entitled to an adequate and appropriate public education as promised by the State Department of Education for the 2009-2010 school year. D.K, A.K., ANOLANI COON, SUE GOODRIDGE, ANELA COON, and ANUHEA COON also represent a subclass that is constitutionally and statutorily entitled to support for a statewide system of public schools in which there shall be no discrimination because of race or ancestry. Plaintiffs KYLE SCHAFFNER, ANOLANI COON, and ANELA COON, further represent a subclass that is constitutionally and statutorily entitled to free

appropriate public education, including the continuity of services during the pendency of due process administrative or judicial proceedings. JERICHO GARRY and FRANCES GARRY also represent a subclass of charter school students that is constitutionally entitled to equal protection under state and federal laws and is constitutionally and statutorily entitled to a free appropriate public education, including the continuity of services during the pendency of due process administrative or judicial proceedings.

The State of Hawai`i has the distinction of being the only state with a single statewide school district. State educational leaders often point to this as a strength of the system of education in Hawai`i. With the institution of “Furlough Fridays”, however, the State of Hawai`i demonstrates its utter failure in allowing a statewide system to adopt draconian measures to breach the promise of providing a certain standard of educational service to thousands of parents and students who chose to enroll in the public school system, to adversely and intentionally treat protected classes of citizens such that disparate impacts are felt by these classes to the detriment of their advancement, and to disregard the promise of free appropriate education to children with disabilities that are mandated by federal and state laws.

The Defendants have failed these children and their families and violated their statutory and constitutional rights. Plaintiffs seek an order from this

Court declaring that the Defendants have violated these rights, and permanently enjoining Defendants from further violations of these rights.

## II. JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. Sections 1331 and 1343(a)(3).

2. This Court has jurisdiction to award injunctive and declaratory relief pursuant to 28 U.S.C. Sections 2201 and 2202, and Rules 57 and 58 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), inter alia.

## III. PARTIES

3. D.K. is 12 years old and a citizen of the island of Oahu and is represented herein by Plaintiffs MELVIN KELLETT and CHERYL KELLETT, his grandparents, guardians and next friends.

4. A.K. is 6 years old and a citizen of the island of Oahu and is represented herein by Plaintiff MELVIN KELLETT and Plaintiff CHERYL KELLETT, her grandparents, guardians and next friends.

5. ANOLANI COON is 16 years old and a citizen of the island of Kauai and is represented herein by Plaintiff PATRICIA COON, her guardian and next friend.

6. ANELA COON is 15 years old and a citizen of the island of Kauai and is represented herein by Plaintiff PATRICIA COON, her natural guardian and next friend.

7. SUE GOODRIDGE is 14 years old and a citizen of the island of Kauai and is represented herein by Plaintiff PATRICIA COON, her guardian and next friend.

8. ANUHEA COON is 6 years old and a citizen of the island of Kauai and is represented herein by Plaintiff PATRICIA COON, her guardian and next friend.

9. C.H. is 10 years old and a citizen of the island of Oahu and is represented herein by Plaintiff J.H., her natural guardian and next friend.

10. KYLE SCHAFFNER is 5 years old and a citizen of the island of Oahu and is represented herein by Plaintiff CRYSTAL SCHAFFNER, his natural guardian and next friend.

11. AVERY SCHAFFNER is 3 years old and a citizen of the island of Oahu and is represented herein by Plaintiff CRYSTAL SCHAFFNER, his natural guardian and next friend.

12. JERICHO GARRY is 17 years old and a citizen of the island of Hawai'i and is represented herein by Plaintiff SUE GARRY, his natural guardian and next friend.

13. FRANCES GARRY is 15 years old and a citizen of the island of Hawai`i and is represented herein by Plaintiff SUE GARRY, her natural guardian and next friend.

14. Defendant LINDA LINGLE is the Governor of the State of Hawai`i and is responsible for faithful execution of the federal and state laws of the State of Hawai`i. Defendant LINGLE is sued in her official capacity.

15. Defendant PATRICIA HAMAMOTO is the Superintendent of the State Department of Education (hereinafter "DOE") and is responsible for administration of programs of public education and public instruction established by federal and state laws. Defendant HAMAMOTO is sued in her official capacity.

16. Defendant GARRETT TOGUCHI is the Chairperson of the State of Hawai`i Board of Education (hereinafter "BOE") and is responsible for insuring that public education policies and practices in the State of Hawaii are in full compliance with the Constitutions and laws of the United States and the State of Hawai`i. Defendant TOGUCHI is sued in his official capacity.

17. At all relevant times the Defendants have acted or failed to act as alleged herein under the color of state law.

#### IV. CLASS ACTION ALLEGATIONS

18. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(b)(2) of the FRCP, on behalf of others similarly situated.

19. Plaintiffs seek to represent a class of children and adolescents residing in Hawai`i, between the ages of 3 years and 20 years, who are required to enroll in a school and have chosen to do so within the State of Hawai`i's statewide system of public schools. Within that class Plaintiffs also seek to represent the following subclasses:

(a) Children of protected classes of race, color, or national origin who are disproportionately adversely affected by the State's furloughs such that these children suffer disparate impacts by the State's discriminatory furlough scheme.

(b) Children of protected classes of race, color, or national origin who are intentionally discriminated against by virtue of their enrollment in public charter schools, who suffer disparate impacts by the State's discriminatory furlough scheme, and who are deprived of education and mental health services that they are entitled to pursuant to the individualized education programs they currently have in place with the DOE.

(c) Children with disabilities who are eligible for and in need of education and mental health services, have individualized education programs (hereinafter "IEPs") currently in place with the DOE, and have pending

administrative proceedings that require continuity of their services as identified in their IEPs.

(d) Children with disabilities enrolled in the Hawai'i public charter schools who are eligible for and in need of education and mental health services, have IEPs currently in place with the DOE, and have pending administrative proceedings that require continue of their services as identified in their IEPs.

20. Members of the class and subclasses are so numerous that joinder of all members is impracticable.

21. The size of the class and subclasses is unknown to Plaintiffs, but should be within the knowledge of Defendants.

22. There are substantial questions of law and fact common to Plaintiffs and members of the class and subclasses.

23. Plaintiffs' claims that Defendants' actions and practices deprive them of constitutionally and statutorily protected rights are typical of the claims of the class and subclasses as a whole. Plaintiffs, therefore, will fairly and adequately represent the interests of the class and subclasses.

24. Plaintiffs are represented by attorneys who have litigated several class actions in this jurisdiction and will adequately represent the interests of the class and subclasses. Plaintiffs know of no conflicts of interest among members of the class or subclasses.

25. Defendants who have acted or refused to act on grounds generally applicable to the class and subclasses as a whole, thereby making appropriate final injunctive and declaratory relief with respect to the class and subclasses.

V. APPLICABLE LAW

26. Plaintiffs reallege paragraphs 1 through 25 and incorporate them herein.

27. Article X of the Hawai`i State Constitution provides in relevant part that:

The State shall provide for the establishment, support and control of a statewide system of public schools....There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry[.]

28. Article I, Section 5 of the Hawai`i State Constitution provides that:

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.

29. Section 1 of the Fourteenth Amendment of the United States Constitution, similarly provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

30. Title VI of the Civil Rights Act of 1964 further provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d.

31. United States Department of Education Title VI regulations provide, in part, that

[a] recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

34 C.F.R. § 100.3(b)(2).

32. Title I of the Elementary and Secondary Education Act of 1965 provides, in part, that:

The purpose of this title is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education” and that schools can achieve this purpose by “meeting the educational needs of low-achieving children in our Nation’s highest-poverty schools, limited English proficient children, migratory

children, child with disabilities..., closing the achievement gap between high- and low-performing children, especially the achievement gaps between minority and nonminority students, and between disadvantaged children and their more advantaged peers; [and] holding schools, local educational agencies, and States accountable for improving the academic achievement of all students[.]

20 U.S.C. § 6301.

33. As the recipient of substantial funds from the American Recovery and Reinvestment Act of 2009 and other federal financial assistance, Defendants must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and a variety of other program-specific statutes with nondiscrimination requirements.

34. Hawai`i law further provides that:

[A]ll children who will have arrived at the age of at least six years, and who will not have arrived at the age of eighteen years, by January 1 of any school year, shall attend either a public or private school for, and during, the school year, and any parent, guardian, or other person having the responsibility for, or care of, a child whose attendance at school is obligatory shall send the child to either a public or private school.

H.R.S. § 302A-1132.

35. Hawai`i law also provides that:

All eligible children and youth between the ages of birth and seventeen shall receive the necessary mental health services to insure their proper and full development.

H.R.S. § 321-171.

36. Under the Individuals with Disabilities Education Act (hereinafter “IDEA”) the State of Hawai`i receives federal financial assistance for a portion of the cost of providing special education and related services to children with disabilities. IDEA mandates that the State provide these children with a “free appropriate public education.” 20 U.S.C. § 1412(b)(2).

37. To assure a free appropriate public education the DOE must identify and evaluate a child with a disability and provide special education and related services in conformity with an IEP and provide the related services mandated by the IEP.

38. The IDEA further provides that:

[D]uring the pendency of any proceedings pursuant to [Section 1415 of the IDEA], unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child. . .until all such proceedings have been completed.

20 U.S.C. § 1415(j).

39. Section 504 of the Rehabilitation Act of 1973 (hereinafter “Section 504”), prohibits discrimination on the basis of disability in, among other things, federally funded educational activities and ensures that students with disabilities are identified and evaluated and receive an appropriate public education.

40. Under Section 504, a protected “individual with disabilities” is one who has a [physical or] mental impairment which substantially limits one or more major life activities or has a record of such impairment or is regarded as having such an impairment.

41. With respect to public pre-school, elementary, and secondary school services, an individual with disabilities is protected by Section 504 if (s)he is: (a) within the ages when state law mandates such services; (b) similarly situated to a non-disabled person who receives such services; or (c) someone entitled to a free appropriate education under IDEA.

## VI. FACTUAL ALLEGATIONS

42. Plaintiffs reallege paragraphs 1 through 41 and incorporate them herein.

43. On or about July 30, 2009, approximately 178,649 public school students and their parents, and 7,819 public charter school students and their parents in the State of Hawai'i began the 2009-2010 school year with the expectation that the children would be in school for 180 instructional school days, five days a week, for the substantial majority of the school year.

44. Of the 288 State public schools, 255 are DOE schools and 31 are public charter schools.

45. Of these 288 State public schools, 111 are subject to accreditation by the Western Association of Schools and Colleges Accrediting Commission for Schools (hereinafter “WASC Commission”). In 2009, ten schools will be visited by the WASC Commission and twenty schools will have their accreditations expire. In 2010, eighteen schools will be visited by the WASC Commission and twenty-four schools will have their accreditations expire.

46. Currently over 60% of Hawai`i’s public schools have not met average yearly progress under the federal No Child Left Behind Act and Hawai`i.

47. According to the 2007 National Assessment of Educational Progress test scores, Hawai`i’s education is ranked 47<sup>th</sup> in the nation in eighth-grade reading and math scores.

48. These individual Plaintiffs, the class, and subclasses they represent are all children and parents who relied on the DOE’s representation of the length and character of the school year in deciding where to enroll their children, foregoing the opportunity to enroll their children in alternative schools such as charter schools within the public educational system or at private schools.

49. On or about September 19, 2009, the Hawai`i State Board of Education and Governor Lingle approved a retroactive contract with the Hawai`i State Teachers’ Association resulting in 17 furlough days to be taken from the instructional time of the 2009-2010 school year.

50. This contract was retroactive to July 1, 2009, and left intact teachers' nine paid holidays and six teacher planning days.

51. This contract was ostensibly reached due to Governor Lingle's attempts to balance the state budget and her withholding of 14% of the Department of Education's budget amounting to \$227 million.

52. The contract was ratified by the Hawai'i State Teachers' Association, and the altered school calendar was released by the Hawai'i State Board of Education identifying Friday, October 23, 2009 as the first of 17 "Furlough Fridays."

53. The remaining 16 furlough days fall on the following Fridays in the 2009-2010 school year: October 30, November 6, November 20, December 4, December 11, and December 18, 2009, and January 15, January 29, February 5, February 12, March 5, March 12, April 23, April 30, and May 7, and May 14, 2010.

54. Furloughs were deliberately and intentionally not scheduled for holidays or other paid non-work days or for professional development days during which students do not attend class.

55. The effect of this furlough program is that Hawai'i's public school students now have 163 instructional school days and only four remaining

weeks with five consecutive days of schooling, Monday through Friday, in the eight of the ten months that comprise the 2009-2010 school year.

56. In comparison to other states, the average school year is 190 days, and Hawai`i now has the shortest school calendar in the nation. Other states have imposed furloughs within their elementary and secondary education systems, but these furloughs are not on instructional school days. Most school districts, including California, Florida, and New Mexico, are requiring teachers to take unpaid days off.

57. No school system in the nation is taking as many furlough days as the State of Hawai`i. Furloughs of schools in other states are limited to fewer than five days for the school year.

A. CONSTITUTIONAL AND STATUTORY BREACHES OF CONTRACT BETWEEN THE STATE OF HAWAII AND PARENTS OF CHILDREN ENROLLED IN THE HAWAII STATE PUBLIC SCHOOL SYSTEM

58. The State of Hawai`i, the DOE, and the BOE have failed to meet their obligations under constitutional provisions and laws of the State of Hawai`i that create contractual obligations between the parents, the DOE and the schools in which the children are enrolled.

59. That Plaintiffs relied upon the representations of the DOE are evidenced by the following:

(a) For the 2009-2010 school year, Plaintiff J.H. removed her daughter, C.H., from private school to public school at Mililani Middle School. Plaintiff J.H. chose to enroll C.H. in the sixth grade at Mililani Middle School based upon a school calendar of 5 instructional days a week for the majority of the school year.

(b) ANOLANI COON and SUE GOODRIDGE are sisters enrolled at Kauai High School on the island of Kauai in the eleventh and ninth grades, respectively. ANUHEA COON, a 6-year old younger sister, is enrolled in kindergarten at King Kamualii Elementary School. Plaintiff PATRICIA COON is a single mother and has enrolled her daughters in Kauai High School and King Kamualii Elementary School based upon school calendars of 5 instructional days a week for the majority of the school year.

(c) In addition, ANOLANI COON is in the eleventh grade and intends to apply to postsecondary schools and continue her education at colleges or universities in Hawai'i or California. Kauai High School, the school at which ANOLANI is enrolled, is accredited through 2010 with a visit year scheduled by the WASC Commission in 2010. Because the number of instructional school days falls well below the WASC Commission's requirement that schools have a minimum of 175 class days, the acceptance of ANOLANI's transcripts for

admission into a college or university is jeopardized by the DOE's furlough program.

60. Defendants have failed to meet their contractual obligations under constitutional provisions and laws of the State of Hawai'i that Plaintiffs have relied upon in choosing to enroll their children within the public school system in Hawai'i.

B. DISCRIMINATORY IMPACTS OF FURLOUGH FRIDAYS UPON PROTECTED CLASSES

61. The State of Hawai'i's plan to close down schools and furlough DOE employees disproportionately and adversely affects children of protected classes of race, color or national origin. These children further suffer disparate impacts by the State's discriminatory furlough scheme.

62. According to a January 2003 study conducted by the Hawai'i Educational Policy Center (hereinafter "HEPC Study"), about 50% of all Hawai'i public students are disadvantaged with 31.8% identified as poverty only, 5.1% limited English only, and 11.4% with multiple disadvantages. This same study reported that the numbers of disadvantaged students are increasing with ten-year trends showing a significant increase in students receiving lunch subsidies, special education students, and limited English proficiency students.

63. The HEPC Study also reports that Native Hawaiians represent 26.1% of public school students and that Native Hawaiians as a group have the

lowest educational ranking for attainment of four-year college degrees with 15% as compared to Caucasians who lead all racial and ethnic groups with 42% completing at least four years of college. Filipinos are the next ethnic group with the next lowest ranking of 19.2% attaining a four year college degree.

64. Of the 288 State public schools, approximately 90 schools are identified as Title I schools with approximately 75 schools identified as in “corrective action,” “planning for restructuring,” or “restructuring.” A Title I school is one in which 45% of a school’s enrolled student population receives free or reduced-price lunches based on federal poverty levels and the school is eligible to receive Title I federal funds to improve learning opportunities for its students.

65. Title I schools are expected to demonstrate annual progress in meeting academic standards and other school quality measures. Title I schools that do not make “Adequate Yearly Progress” for two or more consecutive years enter Title I status of needing “school improvement” or in “corrective action,” followed by the categories “planning for restructuring” and “restructuring” if suitable progress is not made. Students at these schools are eligible for additional supplemental educational services and may be eligible to transfer to other higher performing schools.

66. That Defendants’ discriminatory policy and practice of implementing Furlough Fridays disproportionately and adversely affects children

of protected classes of race, color or national origin are evidenced by the following:

(a) Due to the proposed Furlough Fridays, a limited number of private programs have sprouted up to replace the educational services and programs that would be conducted at the public schools on Fridays.

(b) As of October 19, 2009, at a website sponsored by the Chamber of Commerce of Hawai`i that is serving as a public listing of available programs and services, only thirty-five listings have been posted with twenty-eight listed for the island of Oahu, two programs for the island of Maui, and two programs for the island of Hawai`i. There are no listings for the islands of Kauai, Molokai, and Lanai.

(c) These supplementary programs for Furlough Fridays vary in the times programs are offered, the age range to whom these programs are directed, and the cost of the services being provided. In terms of costs, the majority of the programs listing their costs range from \$25 to \$50 a day, amounting to \$425.00 through \$850.00 for a single child over the course of the 2009-2010 school year for the 17 furlough days.

(d) D.K. is a 12 year old student of part Hawaiian ancestry at Dole Middle School. Dole Middle School is a Title I school that is currently undergoing “restructuring” because it failed to make Adequate Yearly Progress for two or

more consecutive years. D.K. is currently identified as learning disabled with ADHD, inattention-type disorder, and is being evaluated for a Section 504 program.

(e) A.K., D.K.'s six year old sister, is also of part Hawaiian ancestry and attends Kalihi Elementary School. Like Dole Middle School, Kalihi Elementary School is a Title I that is in good standing with the No Child Left Behind Act but still has not met adequate yearly progress. A.K. is currently enrolled in a program in schools and school districts

(f) Both D.K. and A.K. are currently being raised by their grandparents Plaintiffs MELVIN and CHERYL KELLETT, one of whom is retired and one of whom will soon retire. D.K. and A.K. are both the children of parents who were drug addicts at the time of their births. Plaintiffs MELVIN and CHERYL KELLETT are the adoptive parents of D.K. and are the appointed guardians of A.K. It would be an extreme hardship for Plaintiffs MELVIN and CHERYL KELLETT to afford the \$850.00 to \$1700.00 to replace D.K. and A.K.'s lost educational services by placing them into one of the twenty-eight programs available on the island of Oahu.

(g) ANOLANI COON, SUE GOODRIDGE, and ANUHEA COON, as mentioned previously, are students attending Kauai High School and King Kamualii Elementary School on the island of Kauai. King Kamualii

Elementary is a Title I school that is currently undergoing “corrective action.” All three children are of different ancestries: ANOLANI COON is Cambodian, SUE GOODRIDGE is of Thai ancestry, and ANUHEA COON is Korean. ANOLANI and ANUHEA are adopted by Plaintiff PATRICIA COON, while SUE is PATRICIA COON’s foster child. Plaintiff PATRICIAN COON is raising her three daughters and a fourth older disabled daughter as a single mother. Notwithstanding that there are no to few programs on the island of Kauai, Plaintiff PATRICIA COON is unable to afford the \$1,275.00 to \$2,550.00 that would be required to place her daughters into child care programs.

67. As recipients of federal financial assistance under Title I, American Recovery and Reinvestment Act of 2009, and other federal funds, the Defendants have failed to satisfy the nondiscrimination requirements of these federal statutes and the disadvantaged subclasses represented by children D.K., A.K., ANOLANI COON, SUE GOODRIDGE, and ANUHEA COON, and Plaintiffs MELVIN KELLET, CHERYL KELLET, and PATRICIA COON will be disproportionately and adversely impacted to their great detriment.

C. VIOLATION OF IDEA AND STAY PUT PROVISIONS

68. The State of Hawai’i has failed to provide the necessary programs and services to meet the individualized needs of Plaintiffs as outlined in their individualized education programs (IEPs) and has failed to enforce the stay

put provisions required by IDEA while there are pending administrative proceedings concerning the continuity of Plaintiffs' IEPs.

69. That the State of Hawai'i, DOE and the BOE have failed to meet their obligations under IDEA and Section 504 as evidenced by the following:

(a) KYLE SCHAFFNER is 5 years old and is currently enrolled in kindergarten at Pearl Harbor Elementary School. KYLE has an IEP dated April 14, 2009, that requires that he be placed in a general education kindergarten class at the beginning of the 2009-2010 school year with special education services for 45 minutes per day. At the time that Plaintiff CRYSTAL SCHAFFNER, KYLE's mother, agreed to the IEP this agreement was based upon the expectation that KYLE would be in school for 180 instructional school days, five days a week, for the substantial majority of the school year.

(b) AVERY SCHAFFNER is 3 years old and is currently enrolled at Pearl Harbor Elementary School. AVERY has an IEP dated June 2, 2009, that requires 540 minutes of speech language services per quarter and 1,710 minutes of special education services per week. At the time that Plaintiff CRYSTAL SCHAFFNER, AVERY's mother, agreed to the IEP, this agreement was based upon the expectation that AVERY would be in school for 180 instructional school days, five days a week, for the substantial majority of the school year.

(c) On or about October 20, 2009, Plaintiff CRYSTAL SCHAFFNER filed a Request for Impartial Due Process Hearing form on behalf of KYLE and AVERY with Pearl Harbor Elementary School. Due to the substantive change represented by the 17 Furlough Fridays over the remaining eight months of the 2009-2010 school year calendar, Plaintiff CRYSTAL SCHAFFNER requested the continuation of services, five days a week, at the same levels currently in the IEPs of KYLE and AVERY Plaintiff CRYSTAL SCHAFFNER simultaneously requested that pending the resolution of these due process hearings, the stay-put provisions of the IDEA be implemented such that the current educational placements of K.S. and A.S. be maintained.

(d) ANELA COON is 15 years old and is currently enrolled in the tenth grade at Kapaa High School. ANELA has an IEP dated September 15, 2009, that requires that she be placed in general education classes and receive special education services for 350 minutes per week and 180 minutes per quarter of counseling. At the time that Plaintiff PATRICIA COON, ANELA's mother, agreed to the IEP, this agreement was based upon the expectation that ANELA would be in school for 180 instructional school days, five days a week, for the substantial majority of the school year. ANELA is currently 1.5 credits behind and she will continue to fall behind without the continuum of services outlined in her IEP.

(e) On or about October 20, 2009, Plaintiff PATRICIA COON filed a Request for Impartial Due Process Hearing form on behalf of ANELA with Kapaa High School. Due to the substantive change represented by the 17 Furlough Fridays over the remaining eight months of the 2009-2010 school year calendar, Plaintiff PATRICIA COON requested the continuation of services, five days a week, at the same levels currently in ANELA's IEP. Plaintiff PATRICIA COON simultaneously requested that pending the resolution of this due process hearing, the stay-put provisions of the IDEA be implemented such that the current educational placements of ANELA be maintained.

D. EQUAL PROTECTION VIOLATIONS AS APPLIED TO THE TREATMENT OF CHARTER SCHOOL SPECIAL EDUCATION STUDENTS

70. The State of Hawai'i's plan to furlough DOE employees and withhold funding of DOE Special Education teachers in charter schools intentionally discriminates and deprives charter school students of equal protection under State and federal laws.

71. Special education charter school children of protected classes of race, color, or national origin are further disproportionately and adversely affected by the State's discriminatory furlough schemes and are deprived of education and mental health services that they are entitled to pursuant to the individualized education programs they currently have in place with the DOE.

72. That Defendants' discriminatory policy and practice of implementing Furlough Fridays deprives charter school special education students of equal protection under State and federal laws are evidenced by the following:

(a) According to "Public Education Finances 2007" report by the United States Census Bureau issued on July 2009, the per pupil revenue amount for Hawaii's elementary-secondary public school is \$16,520.00.

(b) According to reports from Hawaii's Charter School Administrative Office, the per-pupil funding for students in Hawaii's charter schools in fiscal years 2008, 2009, and 2010 decreased from \$8,150.00 to \$7,588.00 to \$5,536.00. These figures do not include any facility monies insofar as charter school facilities are not funded.

(c) Under the IDEA, the DOE is the State Educational Agency responsible for the offer and delivery of a free appropriate public education to students with disabilities. This responsibility includes students with disabilities enrolled in the public charter schools.

(d) The DOE is implementing the furloughs in charter schools by restricting the release of funds for students with disabilities. The DOE has informed the charter schools that if the charter schools remain open on Furlough Fridays, the charter schools will be responsible for paying for the services that are to be provided by the charter schools on those days.

(e) The effect of this intentionally discriminatory funding scheme is to treat public charter school students with disabilities as a separate and unequal class of students, thereby not affording these students with equal protection under state and federal laws.

73. That Defendants have failed to meet their obligations under IDEA and Section 504 are further evidenced by the following:

(a) JERICHO GARRY is 17 years old and is currently enrolled at Hawaii Academy of Arts and Sciences, a charter school on the island of Hawai'i. JERICHO has an IEP that requires that he be placed in a fully self-contained classroom for the 2009-2010 school year. At the time that Plaintiff SUE GARRY, Jericho's mother, agreed to the IEP this agreement was based upon the expectation that Jericho would be in school for 180 instructional school days, five days a week, for the substantial majority of the school year.

(b) FRANCES GARRY is 15 years old and also is currently enrolled at Hawaii Academy of Arts and Sciences. FRANCES has an IEP that requires that she be placed in a fully self-contained classroom for the 2009-2010 school year. At the time that Plaintiff SUE GARRY, Frances' mother, agreed to the IEP, this agreement was based upon the expectation that FRANCES would be in school for 180 instructional school days, five days a week, for the substantial majority of the school year.

(c) On or about October 21, 2009, Plaintiff SUE GARRY filed a Request for Impartial Due Process Hearing form on behalf of JERICHO and FRANCES with Hawaii Academy of Arts and Sciences. Due to the substantive change represented by the 17 Furlough Fridays over the remaining eight months of the 2009-2010 school year calendar, Plaintiff SUE GARRY requested the continuation of services, five days a week, at the same levels currently in the IEPs of JERICHO and FRANCES. Plaintiff SUE GARRY simultaneously requested that pending the resolution of these due process hearings, the stay-put provisions of the IDEA be implemented such that the current educational placements of JERICHO and FRANCES be maintained.

#### VII. FIRST CAUSE OF ACTION: BREACH OF CONTRACT

74. Plaintiffs incorporate herein by reference each and every allegation contained in paragraphs 1 through 73 of this Complaint, inclusive.

75. Defendants have failed to provide the educational services promised to Plaintiffs' by retroactive application of an agreement that imposes 17 furlough days on instructional days after Plaintiffs have relied upon by representations of Defendants to Plaintiffs' substantial detriment.

76. As a result of Defendants' acts, Plaintiffs and the class they represent have been injured or will suffer injury irreparably.

VIII. SECOND CAUSE OF ACTION: DISCRIMINATORY IMPACTS OF FURLOUGH FRIDAYS UPON PROTECTED CLASSES

77. Plaintiffs incorporate herein by reference each and every allegation contained in paragraphs 1 through 76 of this Complaint, inclusive.

78. Defendants' discriminatory furlough plan disproportionately and adversely affects children of protected classes of race, color or national origin such that the class and subclasses that Plaintiffs represent suffer disparate impacts in violation of state and federal laws.

79. As a result of Defendants' acts, Plaintiffs and the class they represent have been injured or will suffer injury irreparably.

IX: THIRD CAUSE OF ACTION: VIOLATION OF IDEA

80. Plaintiffs incorporate herein by reference each and every allegation contained in paragraphs 1 through 79 of this Complaint, inclusive.

81. Defendants' failure to provide the continuum of mental health services, programs, and placements violates Plaintiffs' rights under IDEA and its implementing regulations in that as a matter of general practice they have:

(a) Failed or will fail to implement individualized education programs and include mental health services from a continuum of programs and placements.

(b) Failed to ensure that children with disabilities are provided with the individualized mental health services and programs in the least restrictive environment appropriate to their needs.

82. As a result of Defendants' acts, Plaintiffs and the class they represent have been injured or will suffer injury irreparably

X. FOURTH CAUSE OF ACTION: VIOLATION OF 504

83. Plaintiffs hereby realleges by reference each and every allegation contained in paragraphs 1 through 82 of this Complaint, inclusive.

84. Defendants have failed to provide Plaintiffs with related mental health aids, services, programs and placements as required by Section 504 and discriminated against them based on their disability by committing the acts and omissions described herein.

85. As a result of Defendants' acts, Plaintiffs and the class they represent have been injured or will suffer injury irreparably

XI: FIFTH CAUSE OF ACTION: EQUAL PROTECTION AND STATUTORY VIOLATIONS AS APPLIED TO THE TREATMENT OF CHARTER SCHOOL SPECIAL EDUCATION STUDENTS

86. Plaintiffs incorporate herein by reference each and every allegation contained in paragraphs 1 through 85 of this Complaint, inclusive.

87. Defendants' discriminatory furlough plan intentionally discriminates against and deprives charter school students of equal protection under State and federal laws.

88. Defendants' discriminatory furlough plan further violates the rights of the subclass of charter school children with disabilities under the IDEA and its implementing regulations in that:

(a) Defendants have failed or will fail to implement individualized education programs and include mental health services from a continuum of programs and placements.

(b) Defendants have failed to ensure that children with disabilities are provided with the individualized mental health services and programs in the least restrictive environment appropriate to their needs.

## XII. SIXTH CAUSE OF ACTION: 42 U.S.C. SECTION 1983

89. Plaintiffs hereby realleges by reference each and every allegation contained in paragraphs 1 through 88 of this Complaint, inclusive.

90. Defendants' failure to adhere to the requirements imposed on them by IDEA and Section 504 violated Plaintiffs' rights to due process of law guaranteed by the 14<sup>th</sup> Amendment of the United States Constitution for which Plaintiffs are entitled to bring this action under 42 U.S.C. Section 1983.

91. As a result of Defendants' acts, Plaintiffs and the class they represent have been injured or will suffer injury irreparably.

### XIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

1. Assume jurisdiction of this case.
2. Certify this action as a class action pursuant to Fed. R. Civ. P. 23(b)(2).
3. Declare that Defendants have violated Plaintiffs' rights as set forth herein.
4. Enter preliminary and permanent injunctions requiring Defendants to cease illegal practices described in this Complaint and comply with and fulfill obligations mandated under federal and state laws.
5. Award Plaintiffs their costs and attorneys' fees as provided in IDEA, Section 504, and 42 U.S.C. Section 1988, and other appropriate statutory provisions.
6. Grant Plaintiffs such other appropriate relief as may be just and proper, including the appointment of a special master to assume control of the State Department of Education and report on the number of placements and programs for children with special disabilities necessary to comply with federal law.

DATED: Honolulu, Hawai'i, October 21, 2009.

A handwritten signature in black ink, appearing to read 'E. Seitz', written over a horizontal line.

ERIC A. SEITZ  
LAWRENCE I. KAWASAKI  
DELLA A. BELATTI  
RONALD N.W. KIM

Attorneys for Plaintiffs