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**FIRST CIRCUIT**  
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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEAH K. YIM and JEREMY K. YIM, )  
Individually and in behalf of their )  
minor son, E.M.Y, and on behalf )  
of all others similarly situated, )

Plaintiff, )

vs. )

KEITH T. HAYASHI, State )  
Superintendent of Education; JUSTIN )  
MEW; TYLER KOCHI; JANE and/or )  
JOHN DOES 1-25, and DOE )  
ENTITIES 1-10, )

Defendants. )

CIVIL NO. \_\_\_\_\_  
(Other Civil Action)

PLAINTIFFS' COMPLAINT FOR  
DECLARATORY JUDGMENT  
INJUNCTION AND DAMAGES;  
SUMMONS

**PLAINTIFFS' COMPLAINT FOR DECLARATORY  
JUDGMENT, INJUNCTION, AND DAMAGES**



Plaintiffs LEAH K. YIM and JEREMY K. YIM, Individually and on behalf of their minor son, E.M.Y., and on behalf of all others similarly situated, by and through their undersigned attorneys, allege as follows:

### **INTRODUCTION**

(1) This case arises from the arbitrary and disgraceful decisions and actions of Hawaii public school officials to fail and refuse to provide a safe and secure learning environment to students with disabilities and to protect disabled students from acts of molestation, sexual assaults, and other forms of abuse committed against them on school campuses by other students and staff members in violation of rights guaranteed by state and federal laws and applicable provisions of the United States Constitution and the Constitution of the State of Hawaii, inter alia.

### **PARTIES**

(2) Plaintiffs LEAH K. YIM and JEREMY K. YIM (“Plaintiffs”) are and have been residents and citizens of the City and County of Honolulu, State of Hawaii, at all times pertinent hereto, and are the natural mother and father and legal custodians of their fourteen year old son E.M.Y.

(3) E.M.Y. is and has been a resident and citizen of the City and County of Honolulu, State of Hawaii, at all times pertinent hereto, and was enrolled in and attending Kaiser High School (“KHS”).

(4) Defendant KEITH T. HAYASHI is and has been a resident and citizen of the City and County of Honolulu, State of Hawaii, at all times pertinent hereto, and is employed as the State Superintendent of Education. Defendant HAYASHI is sued herein only in his official capacity.

(5) Defendant JUSTIN MEW (“Defendant Mew”) is and has been a resident and citizen of the City and County of Honolulu, State of Hawaii, at all times pertinent hereto, and is employed as the Principal at KHS. Defendant MEW is sued herein in both his official and his individual capacities.

(6) Defendant TYLER KOCHI (“Defendant Kochi”) is and has been a resident and citizen of the City and County of Honolulu, State of Hawaii, at all times pertinent hereto and is employed as a special education teacher at KHS. Defendant OKAMOTO is sued herein in both his official and his individual capacities.

(7) JANE and/or JOHN DOES 1-25, and DOE ENTITIES 1-10, [“Doe Defendants”] are co-actors, agents, partners, or representatives of the named Defendants or are in some manner, presently unknown to the Plaintiffs and their counsel, despite diligent inquiry and investigation, responsible for the occurrences and Plaintiffs’ damages, as herein alleged. The true names and capacities of Doe Defendants will be substituted as they become known.

**FACTUAL ALLEGATIONS**

(8) E.M.Y. suffered from a stroke in utero and was born with severe physical and mental health disabilities for which he was determined to be eligible and has received special education and related services from infancy.

(9) E.M.Y. participated in 0-3 programs, was enrolled in special education preschool, and thereafter attended Kamiloiki Elementary School and Niu Valley Middle School where he received special education placements and services pursuant to his Individualized Education Program (“IEP”).

(10) Commencing in June 2023, E.M.Y. was enrolled in a self-contained classroom at KHS where his assigned special education teacher was Defendant Kochi.

(11) On or about September 27, 2023, Plaintiffs were informed by a nurse assigned to work with E.M.Y. that Defendant Kochi had been inappropriately touching, sexually abusing, and molesting E.M.Y. over a period of several months.

(12) Plaintiffs are informed and believe, and thereupon allege, that in addition to the nurse, other KHS personnel knew about and/or observed the abuse of E.M.Y. by Defendant Kochi.

(13) On September 28, 2023, Plaintiffs met with Defendant Mew to report the abuse of their son and request that Defendant Kochi be removed from his position immediately.

(14) Plaintiffs also advised Defendant Mew that they did not believe it would be safe for E.M.Y. to return to KHS and requested that the child be allowed to return to Kamiloiki Elementary School, just two blocks from Plaintiffs' residence, where E.M.Y. previously had received his special education services in a safe, secure, and supportive environment.

(15) Plaintiffs are informed and believe, and thereupon allege, that after the principal and staff at Kamiloiki Elementary School agreed to accept E.M.Y. and to provide further services for him, Defendant Mew orally informed Plaintiffs that E.M.Y. would be permitted to re-enroll at Kamiloiki Elementary School.

(16) Thereafter Defendant Mew refused to sign the necessary paperwork that would have allowed E.M.Y. to enroll at Kamiloiki Elementary School and did not communicate further with Plaintiffs.

(17) On October 17, 2023, an IEP team meeting was convened at Plaintiffs' request to consider E.M.Y.'s suitable placement at a new school; however, at the direction of the DoE's attorney the IEP team members were not permitted to discuss placement issues or to even

consider Plaintiffs' input into any determination as to where E.M.Y. would receive the special education and related services to which he is entitled.

(18) Plaintiffs are informed and believe, and thereupon allege, that without any consultation with or input from them, someone at the DoE determined that E.M.Y. would be placed at Kalani High School, several miles away from where Plaintiffs reside and without any transition or other planning to ensure that the services E.M.Y. needs and is entitled to receive could competently and safely be provided at that location.

(19) As of this date no one from the DoE ever has explained to Plaintiffs why E.M.Y. could not receive services at Kamiloiki Elementary School.

(20) Plaintiffs are informed and believe, and thereupon allege, that the Defendants knowingly and deliberately failed to make timely reports of the abuse suffered by their son and/or to take any corrective actions that could have created a safer and more secure environment for E.M.Y. and other disabled students at KHS.

(21) Since September 27, 2023, E.M.Y. has not attended school and has not received any of the educational, speech therapy, occupational therapy or other services to which he is entitled pursuant to his IEP.

(22) Plaintiffs are informed and believe, and thereupon allege, that it is the policy and practice of the DoE to unilaterally decide where and how special education and related services will be delivered to eligible disabled students and that parental input is not allowed or permitted into such decisions.

(23) Plaintiffs are informed and believe, and thereupon allege, that by unilaterally determining where and how eligible disabled children will receive special education and related services the DoE regularly ignores safety considerations and places students in unsafe

locations in knowing and deliberate violation of the DoE's legal obligations to provide safe and secure facilities for all public education students.

(24) For example, two special education students at McKinley High School and another at Waianae High School were sexually assaulted on their respective campuses due to the DoE's negligent provision of adequate supervision and protection.

(25) After a special education student at Mililani High School reported that she had been sexually assaulted by another student and obtained a restraining order against her alleged assailant, the DoE refused her request to attend another school.

(26) An autistic first grade student who was failing to make progress at his assigned school and was allowed to transfer to a charter school where he thrived and progressed, was ordered by the DoE to return to his former school over the objections of his parents and the charter school administration.

(27) An eighteen-year-old disabled student at Kalaheo High School was unaccompanied in a school bathroom, while his aide waited outside, when he was photographed and videoed by other students, and the incident was not immediately reported to the disabled student's parents, child welfare authorities, or law enforcement.

(28) An eighteen-year-old autistic student was assaulted in his classroom at King Kekaulike High School by students who had been bullying him previously on campus, resulting in a severe injury to his hand that required surgery.

(29) A disabled student at Kealakehe High School who previously reported bullying incidents, was beaten so badly that he had to be transported to the hospital by ambulance, and upon returning to school is confined "for his own protection" in his classroom while the assailants roam the campus unrestricted.

(30) As a direct and proximate result of the foregoing Plaintiffs and E.M.Y. have suffered the loss of educational benefits and services to which they are entitled under applicable state and federal laws and regulations.

(31) As a direct and proximate result of the foregoing Plaintiffs and E.M.Y. are suffering from enormous mental distress, worry, and anxiety.

(32) As a direct and proximate result of the foregoing Plaintiffs have suffered significant economic losses by having to take leave from their jobs to provide care to E.M.Y. while he is not attending school.

### **CLASS ALLEGATIONS**

(33) Plaintiffs bring this action individually and in their representative capacities on behalf of all others similarly situated pursuant to Rule 23, Hawaii Rules of Civil Procedure. This action satisfies all requirements of Rule 23: numerosity, commonality, typicality, fair and adequate representation, and predominance and superiority.

(34) The proposed Class members consist of:

All disabled children and their parents in the State of Hawaii who have been determined to be eligible to receive special education and related services pursuant to the Individuals with Disabilities in Education Act ("IDEA") and/or Section 504 of the Rehabilitation Act of 1973.

(35) The proposed definition of the Class may be amended by the Plaintiffs prior to certification by the Court if such amendment is deemed necessary or appropriate, including the addition of any subclasses.

## CLASS ACTION REQUIREMENTS

### Numerosity: Haw. R. Civ. P. 23(a)(1)

(36) The proposed members of Plaintiffs' Class are so numerous that joinder of all the members is impossible. For purposes of declaratory and injunctive relief the proposed Class consists of thousands of disabled students and their parents spread out throughout all of the islands comprising the State of Hawaii.

### Commonality: Haw. R. Civ. P. 23(a)(2)

(37) There are significant issues of law and fact in this case that are common to the proposed Class as a whole, and central to resolution of the core issues in this matter. The nature and scope of the proposed Class claims expose the gravity of the Defendants' reckless disregard for the safety and well-being of disabled students on their school campuses and in their classrooms due to the refusal of the DoE and its lawyers to allow input and participation from parents in the decision-making processes as to the locations where educational and related services will be provided to their children safely and securely. Moreover, a class action proceeding will best equip the Court with the information necessary to resolve the fundamental problems within the DoE. Class litigation is the superior method to manage such comprehensive claims and will afford a large number of similarly harmed persons the ability to pursue this action in circumstances where individual claims are minimal, thus promoting economic efficiency and promoting a fair and judicially efficient resolution of the issues. Without such litigation, Defendants have no incentive to reverse the current course of deliberate inaction and neglect of responsibility, thereby causing continued and intolerable harm to disabled children.



Typicality: Haw. R. Civ. P. 23(a)(3)

(38) The claims of the representative Plaintiffs are typical of the claims of the proposed Class. Plaintiffs and all other members of the proposed Class have sustained similar injuries arising out of and caused by Defendants' policies, practices, procedures, and customs in violation of the law as alleged. Because the claims of the representatives are typical of the proposed Class as a whole, the absent Class members will be protected in a manner that is both economic and efficient.

Adequacy: Haw. R. Civ. P. 23(a)(4)

(39) The representative parties will fairly and adequately protect the interests of the proposed Class. Plaintiffs have suffered adverse consequences as a direct result of the Defendants' inaction with respect to the needs of disabled students and are committed to vigorously pursuing all available legal remedies. The Class representatives have a strong desire to see that corrective action is taken in an effort to prevent future harm to themselves, and others similarly situated. Plaintiffs' counsel has an extensive history as one of Hawai'i's leading civil rights litigation firms. Counsel has always been firmly resolved to protecting the rights and interests of clients and will zealously pursue this matter on behalf of the proposed Class. To the best of counsel's knowledge, neither counsel nor the representative Plaintiffs have any conflicts of interest with other proposed Class members that would prevent or interfere in any way with counsel's representation of the proposed Class or the claims asserted and relief sought herein.

Haw. R. Civ. P. 23(b)(2)

(40) The Defendants, having been presented with innumerable opportunities to provide safe and secure learning environments for disabled students have refused to act on behalf

of the named Class. Such inaction applies generally to the entire proposed Class, and injunctive relief and/or declaratory relief are the appropriate means to protect the proposed Class as a whole.

Haw. R. Civ. P. 23(b)(1)(A) and (B)

(41) The questions of law and fact regarding the Defendants' repeated and deliberate indifference towards the safety and well-being of disabled students are central to the Plaintiffs' Complaint and are the predominant questions driving this litigation. The differing factual claims of individual Class members are not a roadblock to Class certification when the claims central to all proposed Class members predominate, and a Class-wide judicial solution is not only practical, but remains the superior method for a fair and efficient resolution of the Plaintiffs' claims. The primary interest of the proposed Class members is to see change in the Defendants' policies, procedures, and practices, and there is little interest to individually control separate actions. Moreover, maintaining class status is preferable for achieving the desired results, and will not present any exceptional difficulties.

**FIRST CAUSE OF ACTION**

(42) Plaintiffs incorporate all of the allegations contained in Paragraphs 1-41, above.

(43) The Defendants have a duty to provide a safe and secure placement for E.M.Y. at KHS.

(44) The Defendants negligently failed to provide a safe and secure placement for E.M.Y. at KHS thereby proximately and directly causing sexual abuse, physical harm and emotional distress to E.M.Y. in amounts to be proven at trial.

### **SECOND CAUSE OF ACTION**

(45) Plaintiffs incorporate all of the allegations contained in Paragraphs 1-41, above.

(46) The Defendants have a duty to provide a safe and secure placement for E.M.Y. at KHS.

(47) The Defendants failed to provide a safe and secure placement for E.M.Y. at KHS thereby proximately and directly causing sexual abuse, physical harm, and emotional distress to E.M.Y. in amounts to be proven at trial.

(48) The Defendants acted herein with deliberate indifference to rights, interest, safety and well being of E.M.Y.

### **THIRD CAUSE OF ACTION**

(49) Plaintiffs incorporate all of the allegations contained in Paragraphs 1-41, above.

(50) The Defendants have a duty to provide a safe and secure placement for E.M.Y. at KHS.

(51) Defendants KOCHI, MEW, and certain of the Doe defendants failed to provide a safe and secure placement for E.M.Y. at KHS thereby proximately and directly causing sexual abuse and physical harm to E.M.Y. in amounts to be proven at trial.

(52) Defendants KOCHI, MEW, and certain of the Doe Defendants acted herein knowingly, deliberately, and intentionally.

### **FOURTH CAUSE OF ACTION**

(53) Plaintiffs incorporate all of the allegations contained in Paragraphs 1-41, above.

(54) The Defendants have a duty to provide a safe and secure placement for disabled children in Hawaii who are entitled to receive special education and related services.

(55) The Defendants have breached and are continuing to breach their duty to provide safe and secure placements for E.M.Y. and other disabled children thereby directly and proximately placing all disabled children at risk of molestation, assaults, physical and emotional harm on school, premises as set forth above.

#### **FIFTH CAUSE OF ACTION**

(56) Plaintiffs incorporate all of the allegations contained in Paragraphs 1-41, above.

(57) Defendant Kochi knowingly, deliberately, and intentionally assaulted E.M.Y. at KHS thereby proximately and directly causing sexual abuse and physical harm to E.M.Y. in amounts to be proven at trial.

WHEREFORE Plaintiffs pray for relief as follows:

(1) For the entry of a Judgment declaring that the policy and practice of the DoE to fail to provide safe and secure placements for disabled children are illegal and unconstitutional in violation of rights guaranteed by applicable state and federal laws and the Constitution of the United States and the Constitution of the State of Hawaii;

(2) For the entry of a Judgment declaring that the policy and practice of the DoE to unilaterally determine placements for disabled children, without any parental input, are illegal and unconstitutional in violation of rights guaranteed by applicable state and federal laws and the Constitution of the United States and Constitution of the State of Hawaii;

(3) For the issuance of temporary and permanent injunctive relief enjoining and preventing the Defendants from continuing to implement the above mentioned policies and

practices that have caused and are continuing to cause serious and irreparable harm to disabled children in Hawaii;

(4) For general and special damages according to the proof thereof at trial;

(5) For punitive damages against Defendants Kochi, Mew, and certain of the Doe Defendants;

(6) For reimbursement of Plaintiffs' attorneys' fees and legal costs; and

(7) For such further and additional relief as the Court deems appropriate and just.

DATED: Honolulu, Hawaii, November 28, 2023.

/s/Eric A. Seitz  
ERIC A. SEITZ  
JONATHAN M.F. LOO

Attorneys for Plaintiffs