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CIVIL NO. CV07 00504

[CIVIL RIGHTS ACTION]

[CLASS ACTION]

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

OLIVÉ KALEUATI, individually and
on behalf of the class of parents and/or
guardians of homeless children in the
State of Hawaii; KALEUATI
KALUEATI, III, individually and on
behalf of the class of homeless children
in the State of Hawaii by and through his
parent, Olivé Kaleuati; KLAYTON
KALEUATI, individually and on behalf
of the class of homeless children in the
State of Hawaii by and through his
parent, Olivé Kaleuati; VENISE LEWIS,
individually and on behalf of the class of
parents and/or guardians of homeless
children in the State of Hawaii;
RAEANA LEWIS-HASHIMOTO,
individually and on behalf of the class of
homeless children in the State of Hawaii
by and through her parent, Venise
Lewis; KAUILANI LEWIS-
HASHIMOTO, individually and on
behalf of the class of homeless children
in the State of Hawaii by and through
her parent, Venise Lewis; ALICE
GREENWOOD, individually and on
behalf of the class of parents and/or
guardians of homeless children in the
State of Hawaii; DANIEL HATCHIE,
individually and on behalf of the class of
homeless children in the State of Hawaii
by and through his parent, Alice
Greenwood,

Plaintiffs,

vs.

Civil No. _____

[CIVIL RIGHTS ACTION]

[CLASS ACTION]

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF;
EXHIBITS 1 – 13; SUMMONS IN
A CIVIL CASE**

JURY TRIAL DEMANDED

JUDY TONDA, in her official capacities)
as the State Homeless Coordinator and)
the State Homeless Liaison for the)
Department of Education, State of)
Hawaii; PATRICIA HAMAMOTO, in)
her official capacity as Superintendent of)
the Department of Education, State of)
Hawaii; ROBERT McCLELLAND, in)
his official capacity as the Director of)
the Systems Accountability Office for)
the Department of Education, State of)
Hawaii; KAREN KNUDSEN, JOHN R.)
PENEBACKER, HERBERT)
WATANABE, BREENE Y.)
HARIMOTO, EILEEN CLARKE, LEI)
AHU ISA, KIM COCO IWAMOTO,)
MARY J. COCHRAN, MAGGIE COX,)
CEC HEFTEL, DENISE)
MATSUMOTO, DONNA R. IKEDA,)
and GARRETT TOGUCHI, each in his)
or her official capacity as a member of)
the Board of Education, State of Hawaii;)
CHIYOME FUKINO, in her official)
capacity as Director of the Department)
of Health, State of Hawaii; and DOES 1-)
30,)
))
Defendants.)
_____)

INTRODUCTION

1. The problem of persons experiencing homelessness or on the brink of homelessness is reaching crisis proportions in Hawaii. While the precise number of those homeless in Hawaii is difficult to ascertain, conservative estimates from homeless studies provide that there are over 5000 persons sleeping on beaches,

parks, benches, cars and shelters every night in Hawaii. (*See City and County of Honolulu, Homeless Point-In-Time Count, 2007, and FAQ Hawaii, Inc., 2007 Point-In-Time Count, true and correct copies of which are attached to this Complaint as Ex. 1. and Ex. 2, respectively.*)

2. The number of hidden homeless in Hawaii — the youth, adults, families and seniors who move from friend to friend and relative to relative while looking for affordable housing — is approximately 100,000. (*See Housing Policy Study 2006: The Hidden Homeless and Households at Risk* [submitted to the Hawaii Public Housing Authority], a true and correct copy of which is attached to this Complaint as Ex. 3.)

3. Among the homeless and hidden homeless are many families with school-age children. For these children, equal access to education is a fundamental necessity for them to overcome poverty and to develop into responsible adults.

4. Defendants — those charged with the responsibility for educating homeless children in Hawaii — have failed to provide equal access to free and appropriate public school education to these homeless children. Indeed, as fully set forth in this Complaint, a cursory review of the policies, practices, rules and regulations (or the lack thereof) establish that Defendants individually and/or collectively have failed completely to satisfy their statutory and constitutional duties to ensure that homeless children have equal access to public education.

5. The consequence of Defendants' conduct is that homeless children in Hawaii are turned away at the schoolhouse door, experience significant delays in enrolling in public school, are forced to unnecessarily change schools, and/or are denied access to transportation or other services necessary to receive a public school education.

6. Plaintiffs bring this action on behalf of themselves and all others similarly situated, challenging Defendants' repeated violations of the Stewart B. McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431-11435 (the "McKinney-Vento Act") and the United States Constitution.

7. This action challenges Defendants' customs, practices, and policies of denying the rights of Plaintiffs (and the classes that they represent) under the McKinney-Vento Act and the Fourteenth Amendment of the United States Constitution. Specifically, this action seeks declaratory and preliminary and permanent injunctive relief, which includes an order (a) declaring that Defendants are in violation of the McKinney-Vento Act (42 U.S.C. §§ 11431-11435) and the Fourteenth Amendment to the United States Constitution, (b) requiring Defendants to comply promptly with all such laws and regulations and to do so on an ongoing basis, and (c) ordering such other relief as the Court deems proper.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the federal constitutional and

statutory claims pursuant to 28 U.S.C. §1331 and §1343.

9. All causes of action herein are brought pursuant to 42 U.S.C. §1983 to redress the deprivation, under color of law, of rights secured by the McKinney-Vento Act and the United States Constitution.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), on the ground that the violations of law described herein occurred in the State of Hawaii, where the Plaintiffs reside.

11. There is an actual controversy between the Plaintiffs and the Defendants within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201 and Fed. R. Civ. P. Rule 57.

PARTIES

Plaintiffs

Olivé Kaleuati, Kaleuati Kaleuati, III, and Klayton Kaleuati

12. Olivé Kaleuati is the mother and legal guardian of five children. Her two youngest children are Kaleuati Kaleuati, III, age ten, and Klayton Kaleuati, age seven. Kaleuati and Klayton have been, are, and will be eligible to attend Hawaii public schools. All of the members of the Kaleuati family are United States nationals and at all times mentioned herein were and are living in the State of Hawaii, unless otherwise specified. The Kaleuati family is homeless and currently resides at an emergency and/or transitional shelter.

13. Ms. Kaleuati brings this action on her own behalf as well as on behalf of the class of parents and/or guardians of homeless children in the State of Hawaii.

14. Kaleuati Kaleuati, III (“Kaleuati”), a minor child, brings this action on his own behalf as well as on behalf of the class of homeless children in the State of Hawaii, by and through his mother, Olivé Kaleuati.

15. Klayton Kaleuati (“Klayton”) brings this action on his own behalf as well as on behalf of the class of homeless children in the State of Hawaii, by and through his mother, Olivé Kaleuati.

Venise Lewis, Raeana Lewis-Hashimoto and Kauilani Lewis-Hashimoto

16. Venise Lewis is the mother and legal guardian of two children, Raeana Lewis-Hashimoto, age eleven, and Kauilani Lewis-Hashimoto, age nine. Raeana and Kauilani have been, are, and will be eligible to attend Hawaii public schools. All of the members of the Lewis family are citizens of the United States and at all times mentioned herein were and are living in the State of Hawaii. The Lewis family is homeless and currently resides at an emergency and/or transitional shelter.

17. Ms. Lewis brings this action on her own behalf as well as on behalf of the class of parents and/or guardians of homeless children in the State of Hawaii.

18. Raeana Lewis-Hashimoto (“Raeana”), a minor child, brings this

action on her own behalf as well as on behalf of the class of homeless children in the State of Hawaii, by and through her mother, Venise Lewis.

19. Kauilani Lewis-Hashimoto (“Kauilani”), a minor child, brings this action on her own behalf as well as on behalf of the class of homeless children in the State of Hawaii, by and through her mother, Venise Lewis.

Alice Greenwood and Daniel “Makalii” Hatchie

20. Alice Greenwood is the adoptive mother and legal guardian of Daniel “Makalii” Hatchie, age six. Daniel “Makalii” Hatchie has been, is, and will be eligible to attend Hawaii public schools. Both Alice Greenwood and Daniel “Makalii” Hatchie are citizens of the United States and at all times mentioned herein were and are living in the State of Hawaii. Alice Greenwood and Daniel “Makalii” Hatchie are homeless and currently reside at an emergency and/or transitional shelter.

21. Ms. Greenwood brings this action on her own behalf as well as on behalf of the class of parents and/or guardians of homeless children in the State of Hawaii.

22. Daniel “Makalii” Hatchie (“Makalii”) brings this action on his own behalf as well as on behalf of the class of homeless children in the State of Hawaii, by and through his mother, Alice Greenwood.

Defendants

23. Each of the Defendants acted under color of state law as to the matters set forth herein. All of the conditions, policies and practices (or lack thereof) complained of herein are the result of and pursuant to specific decisions, official policies or customs (or lack thereof) of Defendants. Each of the Defendants knows of and is responsible for the conditions, policies and practices (or lack thereof) set forth herein.

24. Defendant Judy Tonda is head of the Homeless Concerns Program of the Special Programs Management Section for the Department of Education, State of Hawaii (“DOE”). Defendant Tonda, who is sometimes referred to as a “Resource Teacher,” is also the Coordinator for Education of Homeless Children and Youth (“Statewide Coordinator”), as well as the sole designated Local Educational Agency Liaison for the entire State of Hawaii. Defendant Tonda’s position is funded in whole or in part with federal funds pursuant to the McKinney-Vento Act. Among other things, she is responsible for ensuring that the DOE and the Board of Education, State of Hawaii (“BOE”) comply with the provisions of the McKinney-Vento Act to ensure that homeless children in Hawaii have equal access to public education. Upon information and belief, Defendant Tonda is a citizen of the United States and a resident of the State of Hawaii. She is sued in her official capacity only.

25. Defendant Patricia Hamamoto is Superintendent of the DOE and is appointed by the BOE. In this capacity Defendant Hamamoto exercises administrative control of and has responsibility for the education of youth in the State of Hawaii. Defendant Hamamoto is responsible for ensuring compliance with federal and state laws governing public schools, including ensuring that homeless children and youths receive the educational services, transportation services and other related services to which they are entitled. Upon information and belief, Defendant Hamamoto is a citizen of the United States and a resident of the State of Hawaii. She is sued in her official capacity only.

26. Defendant Robert McClelland is Director of the Planning and Evaluation Office and/or head of the Systems Accountability Office for the DOE. Upon information and belief, in this capacity Defendant McClelland prepares the official reports of the DOE concerning, *inter alia*, implementation and monitoring of the McKinney-Vento Act and submits the same to the federal Department of Education. Upon information and belief, Defendant McClelland is a citizen of the United States and a resident of the State of Hawaii. He is sued in his official capacity only.

27. Defendants Karen Knudsen, John R. Penebacker, Herbert Watanabe, Breene Y. Harimoto, Dr. Eileen Clarke, Dr. Lei Ahu Isa, Kim Coco Iwamoto, Mary J. Cochran, Maggie Cox, Cec Heftel, Denise Matsumoto, Donna R. Ikeda,

and Garrett Toguchi are each members of the BOE. Pursuant to Article IX, § 3 of the Hawaii Constitution, the formulation of policy and control over the public school system rests with the BOE. The BOE, pursuant to HRS §296-12, is empowered to adopt rules and regulations “not contrary to law, for the government of all teachers, educational officers, other personnel, and pupils, and for carrying out the general scheme of education and for the transaction of its business.” The BOE has policy-making authority over the DOE and appoints the Superintendent of the DOE. Upon information and belief, each of the above-listed Board members is a citizen of the United States and a resident of the State of Hawaii. Each of these Board members is sued in his or her official capacity only.

28. Defendant Chiyome Fukino is the Director of Health, Department of Health (“DOH”), State of Hawaii. She is the chief health officer of the State of Hawaii and is responsible for devising and implementing DOH regulations. Upon information and belief, Defendant Fukino is a citizen of the United States and a resident of the State of Hawaii. She is sued in her official capacity only.

FACTUAL ALLEGATIONS

The Plight of Homeless Children in Hawaii

29. Upon information and belief, there are currently over 5000 persons living unsheltered in parks, beaches, cars or other public spaces in Hawaii. (See Ex. 1 at 5, 8; Ex. 2 at 2.)

30. Upon information and belief, there are approximately 100,000 persons that comprise the “hidden homeless” — those living in doubled up or extended family situations. (*See Ex. 3 at 2.*) Many of these persons have had to move into these situations due to loss of housing or economic hardship.

31. The precise number of homeless families and children is difficult to calculate due to their mobility, their lack of permanent residence and their reluctance to disclose their housing situation due to the societal stigma associated with homelessness. Upon information and belief, substantial numbers of these persons are school-age children who are qualified for and entitled to the protections of the McKinney-Vento Act.

32. The DOE recognizes 908 homeless children as enrolled in school, of which there are 532 children living in shelters, 156 unsheltered children, 19 children living “doubled up,” and 201 children whose primary nighttime residence is “unknown.” (*See Consolidated State Performance Report for State Formula Grant Programs under the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001*, OMB 1810-0614 (Dec. 27, 2006) at 53-54, a true and correct copy of the relevant portions of this Report is attached to the Complaint as Ex. 4.)

33. Defendant Tonda has publicly acknowledged that the DOE’s statistics concerning homeless students vastly understate the problem due, in part, to a

failure to identify the “hidden homeless” and because the statistics do not reflect the many students who are reluctant to acknowledge being homeless. (*See Day-to-Day Survival Haunts Childhood*, Honolulu Advertiser, October 22, 2006. A true and correct copy of this article is attached to the Complaint as Ex. 5.)

The Impetus for Congressional Action — Obstacles Facing Homeless Children in the Public Schools

34. Homeless children across the nation face unique obstacles to enrolling in and remaining in public school. Public schools traditionally required proof of a “permanent address” as a prerequisite to enrollment. Since homeless families, by their very nature, lack such a permanent address, they were often turned away at the schoolhouse door.

35. In addition, public schools typically demanded a host of records and documentation that cannot reasonably be demanded of homeless children and their families. For example, homeless children were hard pressed to document their residency or retain immunization records. Nonetheless, without such documentation, school districts routinely turned away homeless children and refused to enroll them.

36. Further, due to the transience of homeless families, children frequently moved out of their school district to obtain shelter. This caused difficulties with attendance as schools did not provide transportation to families living out of the district. Homeless children were then forced to frequently change

schools as they moved between districts.

37. Frequent changes in the school environment as well as the stigma and isolation imposed by homelessness impeded the opportunities for homeless children to achieve success in education. Research indicated that students who changed schools due to unplanned residential mobility, such as that associated with homelessness, scored lower on standardized tests and had lower overall academic achievement. They were more likely to drop out of school and experienced emotional and behavioral difficulties. Their educational needs were often unrecognized and unmet.

Congressional Action — The Passage of the McKinney-Vento Act

38. In 1987, Congress acted decisively to remove these obstacles faced by homeless children in enacting the McKinney-Vento Act, Pub. Lewis No. 100-77, § 102(b)(2), 100 Stat. 482, 485 (codified as amended at 42 U.S.C. § 11301 *et seq.*) to provide a broad range of assistance to homeless individuals and families. Subtitle VII-B of the McKinney-Vento Act relates to the education of homeless children and youth. 42 U.S.C. §§ 11431-11435.

39. In enacting the McKinney-Vento Act, Congress sought to ensure that homeless children would have “equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youth.”

40. Thus, Congress made available funds for the States to assist in the education of homeless children on the condition that the States receiving such funds remove the “compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youth” and that the States “review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youth are afforded the same free, appropriate public education as provided to other children and youth.” 42 U.S.C § 11431(2).

41. Under 42 U.S.C. § 11434A, the McKinney-Vento Act defines “homeless children and youths” to include:

- (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are waiting foster care placement;
- (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C);
- (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- (iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

42. To carry out the purposes of the McKinney-Vento Act as it relates to educational opportunities for homeless children, the U.S. Secretary of Education grants federal funds directly to “state educational agencies.” 42 U.S.C. § 11432.

43. The McKinney-Vento Act, at 42 U.S.C. § 11432(g), requires the state educational agency to provide for the education of homeless children and youth within the State, and to develop and adopt a plan demonstrating how the State will ensure that local educational agencies in the State will comply with the requirements of the McKinney-Vento Act.

44. The McKinney-Vento Act further provides that “[t]he Coordinator for Education of Homeless Children and Youths established in each State shall . . . (2) develop and carry out the state plan . . . (4) facilitate coordination between the State educational agency, the State social services agency, and other agencies . . . (6) provide technical assistance to local educational agencies . . . to ensure that local educational agencies comply with the requirements of section 722(e)(3) and paragraphs (3) through (7) of subsection (g).” 42 U.S.C. § 11432(f). This Statewide Coordinator develops statewide policies and implements them through coordination and technical assistance to the school systems, referred to as “local educational agencies.”

45. Under the McKinney-Vento Act, the local educational agencies are required to develop, review and revise policies to remove barriers to the enrollment

and retention of homeless children and youth in their schools. 42 U.S.C. § 11432(g)(1)(I); 42 U.S.C. § 11432(g)(7).

46. Under the McKinney-Vento Act, each local educational agency must designate a liaison, who must ensure that: homeless children and youths are identified; homeless children and youths enroll in and have a full and equal opportunity to succeed in school; homeless families, children and youths receive educational services for which they are eligible, including Head Start, Even Start and public preschool programs; parents or guardians of homeless children are informed of the educational and related opportunities available to their children and provided with meaningful opportunities to participate in their children's education; public notice of educational rights is disseminated where children and youth receive services, such as schools, family shelters, and soup kitchens; and parents, guardians and youth are fully informed of transportation services and assisted in accessing those services. 42 U.S.C. § 11432(g)(6)(A).

47. A local educational agency that applies to the state educational agency for a grant of McKinney-Vento Act funds is required to give "an assurance that the applicant complies with, or will use requested funds to come into compliance with, paragraphs (3) through (9) of § 11432(g)." 42 U.S.C. § 11433(b)(3).

Defendants' Complete Failure to Comply with the McKinney-Vento Act and the United States Constitution

48. Under the McKinney-Vento Act, the DOE is the “state educational agency” for Hawaii. Hawaii, like every other state, receives the above-mentioned federal grants to carry out the purposes of the McKinney-Vento Act. Upon information and belief, the DOE received \$213,557 in 2004, \$235,066 in 2005, and \$226,081 in 2006.

49. Hawaii is the only state in the United States that is comprised of a single school district. Upon information and belief, the State of Hawaii school district serves approximately 181,355 students in 258 schools. Due to Hawaii’s current public school structure, the DOE serves both as the “state educational agency” and the sole “local educational agency” for the State.

50. Although the McKinney-Vento Act requires that the “state educational agency” monitor the “local educational agencies”, the structure of the DOE as both “state educational agency” and “local educational agency” does not allow for this monitoring. Since the DOE is administered by a series of school complexes, these smaller administrative units should each be considered a “local educational agency” and should appoint a local educational agency homeless liaison. However, as the current structure stands, the McKinney-Vento Act funds are administered and monitored by one statewide “Local Education Agency.”

51. Upon information and belief, the DOE has only established one Local

Educational Agency Liaison, who serves the dual role of Statewide Coordinator and Local Educational Agency Liaison for a Local Educational Agency that encompasses the entire state. This one office with two titles and a limited staff is unable to effectively administer the McKinney-Vento Act and cannot, by its very nature, provide adequate monitoring and accountability necessary to ensure compliance throughout the school systems.

52. Although the McKinney-Vento act was passed nearly two decades ago, Defendants have failed to implement its provisions and have denied and will continue to deny homeless children in Hawaii equal access to education in violation of the law and the federal Constitution.

53. Specifically, Defendants, in violation of the McKinney-Vento Act, 42 U.S.C. §§ 11431-11435, *et seq.*, have failed to:

- a. locate and ensure enrollment and the opportunity for educational success of homeless children statewide;
- b. provide adequate, uninterrupted transportation assistance sufficient to enable such children to attend school;
- c. provide an opportunity for each homeless child to be immediately enrolled in the school that is in his or her best interest to attend while homeless — either the school of origin or the school nearest to where he or she is actually living, without regard to standard documentation requirements;
- d. provide parents of homeless children an opportunity to participate in determining the best interest of their children;
- e. comply with the wishes of homeless parents as to choice of school to the extent feasible;
- f. implement a meaningful plan to remove systemic barriers to homeless

- children's participation in public education;
- g. provide appropriate notice to parents or children statewide, of a child's legal right to remain in the school that the child attended when permanently housed or the school in which the child was last enrolled (the "school of origin") after becoming homeless; afford homeless children and parents statewide appropriate notice of their right to dispute school placement and transportation decisions;
 - h. provide for prompt, timely and effective dispute resolution procedures as is required by the McKinney-Vento Act;
 - i. review and revise policies, including transportation policies, that act as a barrier to the enrollment of homeless children in school; and
 - j. assess the special needs of homeless children and youth.

54. Most shocking about Defendants' failures to date is the fact that they have been on formal notice of the majority of their shortcomings for over one year.

During the week of April 17-21, 2006, a team from the U.S. Department of Education's ("USDOE") Student Achievement and School Accountability Programs office conducted a monitoring review of the DOE. (*See*

http://www.ed.gov/admins/lead/account

monitoring/hirpt.doc, a true and correct copy of which is attached to this

Complaint as Ex. 6.) As part of that review, the USDOE conducted a comprehensive analysis of Defendants' implementation of the McKinney-Vento Act.

55. The USDOE identified three sweeping categories of Defendants' failures and set forth an action plan for each. Specifically, at pages 27-28, the

USDOE found that

Finding (1): The [USDOE] team finds that the [DOE]’s Geographical Exception form that homeless families are required to fill out in order to enroll in school is a barrier to immediate enrollment. The [DOE]’s policy is that homeless children are automatically eligible for immediate school enrollment; however, the Geographical Exception form must be completed as a condition of enrollment.

Citation: Section 722(g)(1)(I) of the ESEA requires that the State educational agency has developed, and shall review and revise, policies to remove barriers to the enrollment and retention of homeless children and youths in schools in the State. Additionally, section 722(g)(C)(3) requires immediate enrollment of a homeless child or youth, even if the child or youth is unable to produce records normally required for enrollment, such as proof of residency, or other documentation.

Further action required: [USDOE] requires that the [DOE] review and revise its requirement for Geographical Exception for identified homeless families as a pre-condition for enrollment and align all enrollment requirements with the McKinney-Vento Act, as reauthorized under NCLB.

Finding (2): The [USDOE] team observed that the [DOE] State Coordinator, who also serves as the liaison, has not provided posters and materials on the educational rights of homeless children and youth to local schools on a regular basis.

Citation: Section 722(g)(6)(v) of the ESEA(v) requires public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive services under this Act, such as schools, family shelters, and soup kitchens.

Further action required: [USDOE] requires that the [DOE] demonstrate how it will provide a regular schedule of disseminating information on the educational rights of homeless children and youth to all schools and other appropriate venues.

Finding (3): The [USDOE] team found that the [DOE] does not have a process to independently monitor the McKinney-Vento program as the State coordinator and State liaison are the same individual and is an employee of the [DOE].

Citation: Section 722(g)(2) of the ESEA requires the State to ensure that LEAs comply with the requirements of the McKinney-Vento ESEA. Section 80.40 of the EDGAR further requires that the State, as the grantee, is to be responsible for monitoring grant and subgrant-supported activities and to assure compliance with applicable Federal requirements.

Further action required: The [DOE] must submit to [USDOE] a plan for the independent monitoring of the McKinney-Vento program.

56. Upon information and belief, Defendants received a copy of this report in August of 2006. However, despite being on notice of these failures for over one year, Defendants have taken no meaningful action to address the USDOE's findings. As more fully explained herein, Defendants persist in their unlawful and unconstitutional deprivation of equal access to education for Plaintiffs and the Plaintiff classes.

57. Indeed, Defendants' own policies, practices, customs, rules, regulations, acts, omissions and forms conclusively establish continuing violations of the McKinney-Vento Act and the United States Constitution.

58. The DOE's most recent publication, the 2007-2008 DOE Supplement published in the Honolulu Advertiser on September 12, 2007, fails even to mention the McKinney-Vento Act, its provisions or its requirements while describing to the

public other available school programs and policies, including implementation of other federal laws. (*See* 2007-2008 DOE Supplement, a true and correct copy of which is attached to this Complaint as Ex. 7 (“DOE Supplement”).) Moreover, the word “homeless” is noticeably absent from the DOE Supplement.

59. The DOE Supplement references a number of current DOE policies, practices, customs, rules, regulations and documents that violate the McKinney-Vento Act on its face. *Id.*

60. For example, the DOE Supplement states that children must provide the following documents *prior* to enrollment at a public school: (a) Student Enrollment Form; (b) Emergency Card; (c) Birth Certificate; (d) TB Test; (e) Student Health Record; and (f) Proof of Residency. (*Id.* at 5.)

61. The referenced Proof of Residency (located at http://doe.k12.hi.us/register/residence_intro.htm) provides that “According to state law, Hawaii Revised Statutes §302A-1143 and Hawaii Administrative Rule chapter 8-13, school-aged children are required to attend the school in the area in which they reside, unless permitted to attend another school through a geographic exception.” (*See* Proof of Residency, a true and correct copy of which is attached to this Complaint as Ex. 8.)

62. H.A.R. §§ 8-13-1 through 8-13-10 set forth the DOE procedure for applying for a Geographic Exception. These rules do not set forth any procedure

for enrolling in a particular school, or continuing at that school, based on homelessness. These rules are reflected on the current DOE Geographic Exception Request Form CHP 13-1, which does not provide “homeless” as a reason for the request. (*See* Geographic Exception Request Form CHP 13-1, a true and correct copy of which is attached to this Complaint as Ex. 9.) H.A.R. §8-13-3 further provides that no geographic exceptions are allowed that are not in accordance with this section. Thus, schools routinely deny homeless children a Geographic Exception in violation of the McKinney-Vento Act.

63. Additionally, the DOE Supplement specifically states that an administrative appeal may be filed “only after a parent/guardian has received an official denial of a Geographic Exception in writing” (*See* Ex. 7 at 3.) Thus, DOE’s policies compel exclusion of a child from his or her “home school” for days or even weeks pending the appeal of a Geographic Exception denial. This exclusion is itself a patent violation of the McKinney-Vento Act. Moreover, since H.A.R. §8-13-3 specifically states that no geographic exceptions shall be permitted other than those enumerated in the rules (which exclude homelessness), an administrative appeal of a denial based on homelessness would be futile.

64. Furthermore, the TB Test and Student Health Records referenced in the DOE Supplement are governed by H.A.R. § 11-157-6.2, which sets forth Department of Health rules requiring health examinations and immunizations *prior*

to attendance in school. No exceptions are provided for provisional attendance of homeless students who lack immunization or health examination records. Thus, schools routinely deny homeless children without such records enrollment in violation of the McKinney-Vento Act.

65. Aside from those referenced in the DOE Supplement, a number of other current DOE policies, practices, rules, regulations, customs and documents violate McKinney-Vento on its face.

66. For example, on July 17, 2007, nearly one year after receiving the findings of the USDOE, Defendant Tonda faxed a letter to the Waianae Civic Center (“WCC”), an emergency and/or transitional shelter. That letter states “[b]eginning this [2007-2008] school year, the Homeless Concerns Program will no longer be the primary provider or contact for monthly student bus passes.” (*See* July 18, 2007 letter, a true and correct copy of which is attached to this Complaint as Ex. 10.)

67. Defendant Tonda’s new policy requires homeless children and their families to fill out and submit the Honolulu Mass Transit Transportation Subsidy Application to the Department of Transportation (“Mass Transit Application”) (*See* Honolulu Mass Transit Transportation Subsidy Application, a true and correct copy of which is attached to this Complaint as Ex. 11.)

68. The Mass Transit Application lists four justifications for receiving a

subsidized bus pass: welfare assistance, low-income, families with more than three children on partial subsidy and families affected by consolidation, grade transfer or directed attendance. (*Id.*) The Mass Transit Application is silent as to homelessness or the McKinney-Vento Act. Failure to provide homeless children with adequate transportation to school violates the McKinney-Vento Act.

The Effect of Defendants' Violations on the Named Plaintiffs

- **The Kaleuati Family**

69. At all relevant times, the Kaleuati family has been homeless and has lacked a fixed, adequate and regular nighttime residence within the meaning of the McKinney-Vento Act.

70. The Kaleuati family has no permanent address and spends each night of the week at an emergency and/or transitional shelter.

71. At all times mentioned herein, Plaintiffs Kaleuati and Klayton were enrolled in, or sought to be enrolled in, a public school within the State of Hawaii.

72. Olivé Kaleuati first encountered problems attempting to enroll her children in school three years ago when her family was living in their car and/or in a beach park. During that time, Ms. Kaleuati tried to enroll her eldest son, who was thirteen at the time and who is not a party to this case, in seventh grade at Dole Intermediate School. She contacted the school three separate times in an attempt to get her son enrolled. Each time she was told by Dole Intermediate's receptionist

that Ms. Kaleuati needed to provide proof of a permanent address in order to enroll. When Ms. Kaleuati explained that she was homeless and had no permanent address, the receptionist told Ms. Kaleuati that she should use the address of a family member living in the area or get a notarized statement from someone living in the area. When Ms. Kaleuati explained that she did not have any relatives on the island and did not know anyone in the area that would notarize a statement for her, the receptionist repeated that Ms. Kaleuati needed to provide proof of a permanent address to enroll her son. Because Ms. Kaleuati could not provide proof of a permanent address, her son was not allowed to enroll.

73. After Ms. Kaleuati's son had missed school for two months because of her inability to enroll him because they lacked a permanent address, Ms. Kaleuati sent her son to live with extended family in American Samoa so that he could attend school there. Once the Kaleuati family moved into Ohana Ola, an emergency/transitional shelter in Waianae, Hawaii, Ms. Kaleuati was able to use the shelter as a permanent address. She immediately enrolled her eldest son at Waianae Intermediate School and made arrangements for him to return from American Samoa to live with the Kaleuati family. Ms. Kaleuati's son then returned to Hawaii to live with his family and go to school after having lived in American Samoa for six months.

74. The Kaleuati family lived in Ohana Ola for two years. During that

time, Kaleuati and Klayton attended Leihoku Elementary School (“Leihoku”). In July 2007, the Kaleuati family relocated to the WCC shelter in Waianae, Hawaii because they had reached their two-year limit at Ohana Ola.

75. After Plaintiffs relocated, Ms. Kaleuati contacted Leihoku to see whether there was a Leihoku bus route that went by the WCC shelter so that Kaleuati and Klayton would have transportation to school. Ms. Kaleuati explained to the receptionist that her children had been attending Leihoku for two years, but that they had recently relocated to the WCC shelter. The receptionist told Ms. Kaleuati that the WCC shelter was outside of Leihoku’s boundaries, that there were no buses that went to the WCC shelter, and that Ms. Kaleuati would need to come in to the school and fill out a form to see whether the children could continue attending Leihoku.

76. When Ms. Kaleuati went to the school, she again explained to the receptionist that her children had been attending Leihoku for two years and wanted to continue going there, but that they had recently relocated to the WCC shelter. The receptionist told Ms. Kaleuati that her children could not attend Leihoku if they were no longer living within its boundaries unless the school granted an exception. The receptionist gave Ms. Kaleuati two forms entitled “Geographic Exception Request Form CHP 13-1” to fill out, one for each of her children. (True and correct copies of “Geographic Exception Request Form CHP 13-1,” for each

child, redacted to protect against public disclosure of personal and contact information, are attached to this Complaint as Ex. 12 and Ex. 13, respectively.)

77. On the forms, Ms. Kaleuati listed the address of the WCC shelter as the residential address of Kaleuati and Klayton. In the section that required Ms. Kaleuati to check a box indicating the reason for requesting the geographic exception, Ms. Kaleuati checked the “Other” box and wrote “Currently @ Leihoku Elm.” As there was no box to check for homeless and no one had told her about the McKinney-Vento Act, Ms. Kaleuati did not report her homeless status on the forms.

78. After Ms. Kaleuati returned the forms, the receptionist told Ms. Kaleuati that the school would contact her after the vice principal reviewed the request.

79. The day before school started, Ms. Kaleuati was told by the receptionist that the request had been denied and that the children would have to enroll in Kamaile Elementary School (“Kamaile”), the school closest to WCC.

80. On the day that school started, Ms. Kaleuati enrolled Kaleuati and Klayton into Kamaile. The following day, having missed the first day of classes because of the enrollment problems, Kaleuati and Klayton attended Kamaile for the first time. Transferring schools and not knowing any of the teachers or students at Kamaile had a harmful effect on the boys, who were extremely upset

and scared on their first day of school.

81. No one from Kamaile, Leihoku, or any other person associated with the DOE ever informed Plaintiffs of their right for the boys to remain at Leihoku, their right to transportation, or any other rights they had under the McKinney-Vento Act. No member of the Kaleuati family ever saw any materials regarding their rights under the McKinney-Vento Act from the schools, the DOE, or the emergency/transitional shelters where they have stayed.

- **The Lewis Family**

82. At all relevant times, the Lewis family has been homeless and has lacked a fixed, adequate and regular nighttime residence within the meaning of the McKinney-Vento Act.

83. The Lewis family has no permanent address and spends each night of the week at an emergency and/or transitional shelter. The Lewis family has been homeless since approximately January of 2003, when they moved from their permanent residence because they could not afford to pay the increased rent. Since that time, the Lewis family has lived in a tent at a beach park and is presently dwelling on a temporary basis in an emergency and/or transitional shelter in Waianae, Hawaii.

84. At all times mentioned herein, Plaintiffs Raeana Lewis-Hashimoto and Kauilani Lewis-Hashimoto were enrolled in, or sought to be enrolled in, a

public school within the State of Hawaii.

85. The Lewis family first encountered problems with access to education when their eldest son, who is not a party this case, was in the sixth grade at Maili Elementary School, a school he had attended since kindergarten. Soon after school started in 2004, Venise Lewis sent him to live with a guardian in Wahiawa, so that he did not have to live on the beach. Unaware of his rights as a homeless student, neither he, his family, nor his guardian tried to keep him at Maili Elementary and he was transferred to Wahiawa Middle School. Six months later, he moved back with his family and again transferred schools - this time back to Maili Elementary. As a consequence, Ms. Lewis' oldest son suffered unnecessary school performance setbacks and disruptions from transferring schools twice in a single year.

86. Since the Lewis family moved to the emergency and/or transitional shelter in March of 2007, Venise Lewis has been unable to transport Raeana and Kauilani to school except by public bus. The Lewis family must take the public bus to Maili Elementary School each day, where Raeana and Kauilani are enrolled in the sixth and fourth grades, respectively. When the Lewis family moved into the shelter, Ms. Lewis asked her case manager at the shelter for bus passes for Raeana and Kauilani because Ms. Lewis could not afford their bus fare each day. The case manager gave her two bus passes for Raeana and Kauilani each month until school let out in June, 2007. Ms. Lewis paid for her own bus fare each day,

despite her inability to afford it, because she had to use it for work each day and she wanted to escort her children at least part of the way to school.

87. In July of 2007, Ms. Lewis' case manager told her that she would not give her any more bus passes and that she would have to ask the school for bus passes when school started in August.

88. Thereafter, Ms. Lewis called Maili Elementary School and explained to the school office staff that her family was living at the shelter and that she needed bus passes for her two children. Ms. Lewis spoke with a number of school officials, but each school official denied that the school gave out bus passes and stated further that they did not provide transportation to students that lived outside of the school complex area. Ms. Lewis relayed this information to her case manager at the shelter, who said that she did not know what to do.

89. In August of 2007, shelter personnel and counsel directed Ms. Lewis to contact the "homeless liaison," Judy Tonda.

90. Ms. Lewis called the homeless liaison's office and asked how to get bus passes for her children. The office staff said that they no longer provided bus passes and that she should ask her case manager for a bus pass application, which should be filled out and sent to the Department of Transportation ("DOT").

91. Ms. Lewis then asked her case manager for a bus pass application. The case manager did not know what she was referring to and said she would call

the homeless liaison's office. When Ms. Lewis asked her case manager about it, the case manager said that the homeless liaison's office had not returned her call.

92. On August 1, 2007, the day before school was to start, Ms. Lewis again contacted the homeless liaison's office. The homeless liaison's office staff told her that they would call the children's school and call her back.

93. When school started on August 2, 2007, Ms. Lewis was unable to provide transportation for her children and could not afford to pay their bus fare, in addition to her own bus fare, which she needed to get to work. Consequently, Raeana and Kauilani were absent from school for the next few days until Ms. Lewis was able to afford their bus fare, which is \$1.00 each way and totals \$20 each week.

94. Ms. Lewis received a call from the homeless liaison's office staff some time later, who told her that she needed to make an appointment to meet with the school staff to fill out a bus pass application. Ms. Lewis met with the school staff on August 29, 2007 and was provided with a bus pass application. (See Ex. 11.) After Ms. Lewis filled out the bus pass application, the school staff faxed the application to the DOT. The school staff told her that she would receive the bus passes, one for each of her younger daughters, in two days.

95. Ms. Lewis finally received bus passes for her daughters, but not for herself, on September 6, 2007. Because Ms. Lewis was unable to provide

transportation for her children and was wrongfully denied adequate transportation, Raeana and Kauilani missed seven days of schools in just over a month.

96. Raeana and Kauilani's absences have caused them harm because they now have unexcused absences on their record and have fallen behind in their class work. In addition, Raeana's unexcused absences cause her to lose school points that are needed to participate in school activities.

- **Alice Greenwood and Daniel "Makalii" Hatchie**

97. At all times mentioned herein, Plaintiff Daniel "Makalii" Hatchie was enrolled in, or sought to be enrolled in, a public school within the State of Hawaii.

98. Prior to becoming homeless, Makalii attended Nanakuli Elementary School's Hawaiian Language Immersion Program, Kula Kaiapuni O Nanakuli.

99. At all relevant times, Alice Greenwood and Makalii have been homeless and have lacked a fixed, adequate and regular nighttime residence within the meaning of the McKinney-Vento Act. Ms. Greenwood and Makalii have no permanent address and spend each night of the week at an emergency and/or transitional shelter. Ms. Greenwood and Makalii have been homeless since approximately May of 2006, when they were evicted from their permanent residence in Nanakuli, Hawaii, within the Nanakuli-Pearl City-Waipahu Complex Area, because the residence was going to be used by the owner for business purposes. Following their eviction, Ms. Greenwood and Makalii have lived in a

tent at a beach park and, since March of 2007, have resided at an emergency and/or transitional homeless shelter in Waianae, Hawaii.

100. From approximately May of 2006 until March of 2007, Ms. Greenwood and Makalii lived in a tent at Maili Beach Park. At the time, Ms. Greenwood did not own a car. Thus, following their eviction, Ms. Greenwood was not able to transport Makalii to school except by riding the public bus and walking. Ms. Greenwood and Makalii rode the bus and walked from the beach to and from Nanakuli Elementary School each day, where Makalii was enrolled in the first grade. Ms. Greenwood's physical disabilities sometimes delayed or prevented her from being able to ride the bus and walk with Makalii to school each day and, consequently, sometimes Makalii was late or did not go to school at all.

101. Ms. Greenwood was asked to meet with Makalii's teacher on three separate occasions to discuss his tardiness and absences from school and the subsequent decline in his school performance. Each time Ms. Greenwood would tell the teacher that she was homeless and that her disabilities delayed or prevented her from transporting Makalii to school. Makalii's teacher never offered transportation assistance. The teacher informed Ms. Greenwood that transportation was Ms. Greenwood's responsibility and that she was "in jeopardy." The teacher threatened to report Ms. Greenwood to the school counselor if Makalii continued to be tardy and/or absent from school. Ms. Greenwood understood this threat to

mean that the school would attempt to remove Makalii from her custody if she was unable, on her own, to secure transportation for Makalii to school.

102. When Ms. Greenwood spoke with Makalii's school principal regarding her difficulties getting Makalii to school, the principal did not offer transportation assistance. Rather, the principal asked her why she didn't transfer Makalii to Maili Elementary School, which was closer to the shelter.

103. Each month, Ms. Greenwood struggled to find the money to purchase a bus pass for Makalii. When Ms. Greenwood and Makalii moved into the emergency and/or transitional shelter in March of 2007, their case manager at the shelter provided Makalii, but not Ms. Greenwood, with a bus pass each month until school let out for the summer. The case manager told Ms. Greenwood that the shelter would no longer provide bus passes for the 2007-2008 school year and that she would have to get Makalii a bus pass from school. When Makalii enrolled in the second grade at Nanakuli Elementary, Ms. Greenwood asked the school office staff for a bus pass for Makalii. The school counselor told her that they did not know what she was referring to and that they would look into it and get back to her.

104. After school started, Ms. Greenwood, having never heard back from the school counselor, went back to the school to ask the school secretary for a bus pass, since she knew her personally. The school secretary provided her with a bus

pass application. (See Ex. 11.) Ms. Greenwood filled out the application, but refused to sign the back page regarding absence reporting, and the secretary sent it to the DOT. The secretary told her that the bus pass was only good for one month and that she did not know what would happen when the month was over. One week later, Ms. Greenwood received one bus pass.

105. As a result of these events, Makalii received thirty-three unexcused absences and eighteen tardies during his first grade year (SY 2006-2007) and fell behind in his class work.

106. As set forth above, as a result of Defendants' policies, customs, pattern and practice, Plaintiffs have suffered and continue to suffer irreparable harm. Specifically, homeless children have been harmed (and continue to be harmed) as follows:

- a. failures of outreach and technical assistance have left them uninformed and unable to assert their rights;
- b. they are routinely denied an opportunity to continue to attend their school of origin after they become homeless;
- c. they are routinely forced to transfer to several different schools during the course of a single academic year;
- d. they are routinely denied transportation services to enable them to continue to attend their school of origin, or such services are substantially delayed, resulting in missed schooling and lost educational opportunities;
- e. they are routinely denied transportation services comparable to those afforded other children who attend the same school;

- f. they are routinely denied appropriate identification and assessment;
- g. these delays/denials of enrollment, delays/denials of transportation, and forced transfers has caused missed days, setbacks in school performance, psychological, social, and developmental delays, and a denial of full participation in public education;

107. Parents of homeless children in Hawaii have been harmed (and continue to be harmed) as follows:

- a. failures of outreach and technical assistance have left them uninformed and unable to assert their rights;
- b. they are routinely denied an opportunity to state the best interests of their children in school selection
- c. when they do express a desire to keep their children in a particular school, they routinely have their wishes disregarded even when it is feasible to keep their children at the selected school;
- d. they are denied transportation services for their children, forcing them to find their own means of transporting their children to school.

108. Plaintiffs' injuries result from Defendants' failure to comply with the McKinney-Vento Act and the United States Constitution.

109. Plaintiffs are not statutorily or otherwise required to exhaust any administrative process before bringing these claims. Further, no administrative process has been developed by the DOE for processing McKinney-Vento claims. Even if such a process existed, its utilization would not be required as such a process would be futile for deciding these claims and could not provide adequate

relief.

110. Plaintiffs have no adequate remedy at law.

CLASS ACTION ALLEGATIONS

111. The named Plaintiffs bring this action on behalf of two Plaintiff classes pursuant to Fed. R. Civ. P. 23. The classes are defined as follows:

Class A: All school aged children (as defined by Hawaii Law) who were, are or will be eligible to attend Hawaii public schools on or after October 2, 2005: (1) have lived, are living or will live in Hawaii; and (2) during such period have been, are, or will be “homeless” as defined in the McKinney-Vento Act, 42 U.S.C. § 11434A.

Class B: All parents, guardians or persons in a parental relationship with children in Class A.

112. The classes are so numerous that joinder of all such persons is impracticable and the disposition of their claims in a class action, rather than individual actions, will benefit the parties and the Court. Furthermore, because many class members lack any fixed and regular residence and are forced to move from place to place and because the class is so numerous, joinder is impracticable. The precise number of class members and their addresses are unknown to named Plaintiffs. Upon information and belief, however, class members currently number in the hundreds or possibly thousands.

113. There is a well-defined community of interest in the questions of law and fact involved in this case that affect all members of the classes. Questions of

law and fact common to the class members in the classes include, but are not limited to, the following:

- a. Whether Defendants violated the McKinney-Vento Act;
- b. Whether Defendants' conduct deprived and/or deprives class members of rights guaranteed by the United States Constitution;
- c. Whether Plaintiffs and class members are entitled to the declaratory relief prayed for below;
- d. Whether Plaintiffs and class members are entitled to injunctive relief;
- e. The nature of such injunctive and declaratory relief.

114. Plaintiffs' claims are typical of those in the classes because Defendants failed to provide Plaintiffs and those similarly situated with educational services, transportation services, and other related services as required by federal law. Homeless children in Hawaii face comparable, if not identical, barriers to entering and remaining in public school. Parents of homeless children in Hawaii face comparable, if not identical, barriers to enrolling their children in public schools and ensuring that their children remain in public schools. Without access to an adequate and continuous public education, all of these children face serious setbacks in their developmental path to becoming productive, self-sufficient, responsible adults.

115. The named Plaintiffs will fairly and adequately represent the interests

of the class. Plaintiffs possess the requisite personal interest in the subject matter of the lawsuit. The class is represented by counsel experienced in class action and civil rights litigation and in the statutory and constitutional provisions at issue in this case.

116. Defendants have acted and continue to act in a manner generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the Plaintiff classes as a whole.

DECLARATORY AND INJUNCTIVE RELIEF

117. An actual and immediate controversy has arisen and now exists between Plaintiffs and Defendants, which parties have genuine and opposing interests and which interests are direct and substantial. Defendants have failed and continue to fail to comply with provisions of the McKinney-Vento Act and the United States Constitution for at least the reasons set forth herein. Plaintiffs are, thus, entitled to a declaratory judgment as well as such other and further relief as may follow from the entry of such a declaratory judgment.

118. Plaintiffs have no adequate remedy at law. Unless enjoined by the Court, Defendants will continue to infringe Plaintiffs' statutorily and constitutionally protected rights and will continue to inflict irreparable injury. This threat of injury to Plaintiffs from continuing violations requires preliminary and permanent injunctive relief.

FIRST CLAIM FOR RELIEF

**VIOLATIONS OF THE MCKINNEY-VENTO ACT,
ACTIONABLE PURSUANT TO 42 U.S.C. §1983
(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

119. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in paragraphs 1 through 118, above.

120. As fully set forth in the body of this Complaint, Defendants have failed to meet their obligations under the McKinney-Vento Act, 42 U.S.C. §§ 11431-11435, *et seq.*

121. By their policies, practices and customs of denying homeless children equal access to public school education, by their failure to adopt adequate policies and procedures, and by their failure to supervise and to train their employees and agents, Defendants have violated the rights of the named Plaintiffs and the Plaintiff classes under the McKinney-Vento Act.

SECOND CLAIM FOR RELIEF

**VIOLATIONS OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES
CONSTITUTION, ACTIONABLE PURSUANT TO 42 U.S.C. §1983
(EQUAL PROTECTION)**

122. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 121, above.

123. By their policies, practices and customs of denying homeless children equal access to public school education, by their failure to adopt adequate policies

and procedures, and by their failure to supervise and to train their employees and agents, Defendants have, without adequate justification, intentionally discriminated against Plaintiffs based on their status of homelessness and acted with deliberate indifference to the known or obvious consequences to Plaintiffs of such treatment in violation of the Fourteenth Amendment of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all persons similarly situated, pray that this Court:

- A. Assume jurisdiction over this action;
- B. Issue a declaratory judgment stating that Defendants have violated the McKinney-Vento Act and the United States Constitution;
- C. Issue a preliminary and permanent injunction enjoining Defendants (and their divisions, officers, servants, employees, attorneys, agents and representatives, successors-in-office and all persons acting or purporting to act in concert or in cooperation with Defendants or pursuant to Defendants' authority) from subjecting Plaintiffs to the customs, policies, practices, rules, regulations, acts and omissions set forth in this Complaint;
- D. Issue a preliminary and permanent injunction requiring Defendants to develop and implement a comprehensive plan for the correction

of the unlawful customs, policies, practices, rules, regulations, acts and omissions complained of herein and to submit this plan to the Court and to the attorneys for the Plaintiffs for review;

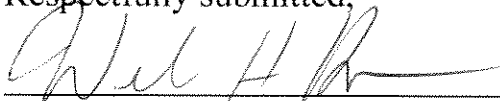
- E. Retain jurisdiction over Defendants until such time as the Court is satisfied that Defendants' unlawful customs, policies, practices, rules, regulations, acts and omissions complained of herein no longer exist and will not recur;
- F. Award reasonable attorneys' fees, costs and other expenditures incurred as a result of bringing this action, pursuant to 42 U.S.C. § 1988 and other applicable laws; and
- G. Order such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues triable herein.

Dated: Honolulu, Hawaii, October 2, 2007.

Respectfully submitted,



WILLIAM H. DURHAM
GAVIN K. THORNTON

LAWYERS FOR EQUAL JUSTICE

LOIS K. PERRIN
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ACLU OF HAWAII FOUNDATION

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