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- and -

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Attorneys for Plaintiff  
DEBRA ANN KIMOKEO,  
Individually and as Next Friend  
of NOA N. MANOI

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

DEBRA ANN KIMOKEO, Individually  
and as Next Friend of NOA N. MANOI,

Plaintiff,

vs.

HAWAII STATE BOARD OF  
EDUCATION, HAWAI'I STATE  
DEPARTMENT OF EDUCATION,  
STANTON CALUAG, in his individual  
capacity and as an employee of the  
Hawai'i State Department of Education,  
JOHN DOES 1-10, JANE DOES 1-10,  
DOE CORPORATIONS 1-10, DOE  
GOVERNMENTAL ENTITIES 1-10,

Defendants.

CIVIL NO. \_\_\_\_\_

COMPLAINT; DEMAND FOR JURY  
TRIAL; SUMMONS

## COMPLAINT

Plaintiff DEBRA ANN KIMOKEO, Individually and as Next Friend of NOA MANOI (“Plaintiff”), by and through her attorneys, Michael Jay Green and Peter C. Hsieh, for a Complaint against the above-named Defendants, alleges and avers as follows:

### JURISDICTION AND VENUE

1. This Court has jurisdiction of the claims against Defendants pursuant to pursuant to 28 U.S.C. §§ 1331 and 1367 and supplemental jurisdiction of Plaintiff’s state claims against Defendants.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because (1) the defendants are residents of the State in this district and (2) a substantial part of the acts and omissions giving rise to Plaintiff’s claims, injuries and/or damages occurred in this judicial district.

### PARTIES

3. Plaintiff DEBRA ANN KIMOKEO (“Plaintiff”), Individually and as Next Friend of NOA MANOI (“Noa”) is, and was at all relevant times herein, a resident of the Kamuela, Hawai‘i, and maternal grandmother of Noa.

4. Defendant HAWAII STATE BOARD OF EDUCATION (“BOE”) is, and was at all relevant times herein, a state government of the State of Hawaii.

5. Defendant HAWAII STATE DEPARTMENT OF EDUCATION (“DOE”) is, and was at all relevant times herein, a state government of the State of Hawaii.

6. Defendant STANTON CALUAG (“Caluag”) is, and was at all relevant times herein, a resident of the Kailua-Kona, Hawai‘i, and is sued in his individual capacity and as employee of the DOE.

7. Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE GOVERNMENTAL ENTITIES 1-10 DOES 1-20 are sued herein under fictitious names for the reason that their true names, capacities and responsibilities are presently unknown to Plaintiff, but upon information and belief they are persons, entities, governmental agencies, and/or partnerships who were in some manner presently unknown to Plaintiff engaged in the activities alleged herein; and/or are in some manner responsible for the injuries and damages to Plaintiff; and/or are persons who conducted some activity in a negligent, wrongful, and/or willful manner or who failed to fulfill a duty or obligation, which action, conduct, error or omission was the proximate cause of injuries or damages to Plaintiff; and/or were in some manner related to the previously named Defendants engaged in the activities alleged herein. Plaintiff will seek leave to amend this Complaint when the true names and capacities of the Doe Defendants have been ascertained.

## FACTUAL ALLEGATIONS

8. The BOE is a state agency established by the Hawaii State Constitution, which grants the Board the power to formulate statewide educational policies. The Board appoints the executive officers of the public school system and public library system and the members of the State Public Charter School Commission.

9. The DOE is a state-wide school district comprised of 15 complex areas and 256 schools and administers a compulsory school system overseeing approximately 256 public schools.

10. One of these DOE schools is Kealakehe High School, located at 74-5000 Puohuluhuli Street, Kailua-Kona, Hawai'i 96740 ("KHS").

11. KHS is a DOE public, secondary co-educational, college preparatory high school, governed by the BOE.

12. The BOE and DOE have educational programs or activities that receive federal funding, and are therefore subject to the provisions of Title IX, 20 U.S.C. §§ 1681-1688.

13. At all relevant times herein, due to the compulsory nature of its education system, the BOE and DOE, including administrators, teachers and other staff in DOE schools had a duty to supervise and to take reasonable steps to prevent reasonably foreseeable harm to their students who on school grounds during class,

recess and other intermissions or excursions and before and after school.

14. Each public school child who receives special education and related services must have an Individualized Education Program (“IEP”), pursuant to the Individuals with Disabilities Education Act of 1997 (“IDEA”).

15. Each IEP must be designed for one student and must be a truly *individualized* document.

16. The IEP creates an opportunity for teachers, parents, school administrators, related services personnel, and students (when appropriate) to work together to improve educational results for children with disabilities.

17. The IEP is the cornerstone of a quality education for each child with a disability.

18. Noa at all relevant times herein was a special-needs individual with severe, permanent intellectual and cognitive impairment.

19. The State and DOE at all relevant times herein identified, located, and evaluated Noa in all areas related to his suspected disability.

20. Based on the results of the evaluation, the State and DOE deemed Noa eligible for special education and related services and created an IEP for Noa.

21. The State and DOE at all relevant times herein admitted Noa and allowed him to attend KHS as a special-needs student.

22. Due to Noa’s disability, KHS created an IEP for him, pursuant to

IDEA.

23. The IEP indicated Noa was “retarded” but that characterization was later changed to “developmentally delayed.”

24. Noa at all relevant times herein received special education and related services from the BOE and DOE, pursuant to the IEP.

25. Defendant Stanton Caluag at all relevant times herein was an Educational Assistant (“ED”) employed by the BOE and DOE.

26. As ED, Caluag’s duty was to provide direct support to both special education teachers and students in classrooms; assist the special education teachers in developing curriculum and lesson plans; provide one-on-one student assistance; adapt classroom materials and activities; monitor student progress and performance; maintain classroom organization and safety; and lead classroom activities.

27. Caluag at all relevant times herein was assigned and directed by the DOE to provide, among other things, one-on-one student assistance to Noa due to his disability pursuant to the IEP.

28. The BOE and DOE at all relevant times herein failed to conduct a criminal background check on Caluag.

29. The BOE and DOE at all relevant times herein failed vet Caluag to ascertain that was fit and had the requisite education, training, and experience to

work with special-needs students who have a disability and particularly vulnerable.

30. The BOE and DOE at all relevant times herein failed to train Caluag on the proper procedures and protocol of handling and assisting special-needs students.

31. The BOE and DOE at all relevant times herein failed to supervise and monitor Caluag's performance.

32. From about December 2018 to and including March 2019 Caluag sexually abused Noa at school and after school in that he engaged and committed sexual penetration and sexual contact with Noa.

33. Caluag took advantage of Noa's disability and cognitive and intellectual deficiencies for his own personal and sexual gratification.

34. Caluag was seen touching Noa in an inappropriate manner every day in school, including, but not limited to, caressing Noa's face, putting his hand in Noa's pants, making inappropriate facial expressions, and other acts of a sexual nature.

35. Caluag's conduct was witnessed by another Educational Assistant, Mr. Kuga, who wrote an incident report and submitted it to the teacher and/or school administration.

36. Caluag's sexual harassment constituted a felony under the Hawaii Revised Statutes.

37. Defendants BOE and DOE had actual knowledge of Caluag's sexual harassment of Noa.

38. Despite their knowledge of the sexual harassment, Defendants BOE and DOE failed, neglected, and/or refused to stop Caluag's sexual harassment, terminate his employment, and report Caluag to appropriate law enforcement officials for investigation and prosecution.

39. Defendants BOE and DOE were deliberately indifferent to the harassment.

40. Because of Defendants BOE and DOE's failure to act, Caluag was able to continue to sexually harass Noa.

41. Caluag's sexual harassment of Noa was so severe, pervasive, and objectively offensive that it deprived him of access to education opportunities or benefits

42. In March 2019, KHS contacted Noa's father and grandmother regarding the sexual harassment.

43. The police were called and the police investigated Caluag for the sexual abuse of Noa.

44. The Hawaii Prosecutor's Office charged and/or indicted Caluag for the criminal offense of Sexual Assault in the Third Degree.

45. Caluag recently pleaded guilty to Sexual Assault in the Third



Degree in court for the sexual abuse of Noa.

46. The court subsequently sentenced Caluag to five-year probation, one year in jail, a fine, and ordered that he has to register as a sex offender for life and stay away from children.

47. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff suffered and continues to pain and suffering, emotional distress, mental anguish, loss of quality of life, loss of enjoyment of life, and other injuries and damages.

**COUNT I**  
***Violation of Title IX of the Civil Rights Act of 1964***  
***As To Defendants BOE and DOE***

48. Plaintiff realleges and incorporates herein the allegations contained the preceding paragraphs as though fully alleged herein.

49. The sexual harassment of Noa was so severe, pervasive, and objectively offensive that it could be said to deprive her of access to educational opportunities or benefits.

50. The sexual harassment of Noa included unwanted and unwelcome sexual behavior including sexual assault or sexual abuse of a student by an Educational Assistant.

51. Defendants BOE and DOE, jointly and severally, at all relevant times herein, had actual knowledge of the sexual harassment.

52. Defendants BOE and DOE, jointly and severally, through an appropriate official possessed enough knowledge of the harassment that it reasonably could have responded with remedial measures to address the kind of harassment upon which Plaintiffs' legal claim is based.

53. Defendants BOE and DOE, jointly and severally, were deliberately indifferent to the harassment.

54. Defendants BOE and DOE's wrongful conduct caused injuries to Plaintiff.

55. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained and will continue to sustain substantial damages and is entitled to recover special, general, and punitive damages in such amounts as shall be shown at a trial or hearing hereof.

## **COUNT II**

### ***Violation of the Individuals with Disabilities Education Act of 1997 As To Defendants BOE and DOE***

56. Plaintiff realleges and incorporates herein the allegations contained the preceding paragraphs as though fully alleged herein.

57. Defendants BOE and DOE's wrongful acts and omissions violated Plaintiff's rights pursuant to the Individuals with Disabilities Education Act of 1997 ("IDEA").

58. Defendants BOE and DOE's wrongful conduct caused injuries

to Plaintiff.

59. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained and will continue to sustain substantial damages and is entitled to recover special, general, and punitive damages in such amounts as shall be shown at a trial or hearing hereof.

**COUNT III**  
***Negligence As To All Defendants***

60. Plaintiff realleges and incorporates herein the allegations contained in preceding paragraphs as though fully alleged herein.

61. Defendants, jointly and severally, at all relevant times herein, owed a duty of care to Plaintiff to take reasonable steps to prevent reasonably foreseeable harm to their students including Noa.

62. Defendants, jointly and severally, breached their duty.

63. Defendants' breach was a substantial contributing cause of Plaintiff's damages.

64. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained and will continue to sustain substantial damages and is entitled to recover special and general damages in such amounts as shall be shown at a trial or hearing hereof.

**COUNT IV**  
***Gross Negligence As To All Defendants***

65. Plaintiff realleges and incorporates herein the allegations contained in preceding paragraphs as though fully alleged herein.

66. Defendants' wrongful acts and/or omissions constitute gross negligence in that their conduct exhibited an entire want of care which raises a presumption of conscious indifference to consequences.

67. Defendants' wrongful conduct was a substantial contributing cause of Plaintiff's damages.

68. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained and will continue to sustain substantial damages and is entitled to recover special, general, and punitive damages in such amounts as shall be shown at a trial or hearing hereof.

**COUNT V**  
***Negligent Training and/or Supervision***  
***As To Defendants BOE and DOE***

69. Plaintiff realleges and incorporates herein the allegations contained in preceding paragraphs as though fully alleged herein.

70. Defendants, jointly and severally, at all relevant times herein, owed a duty of care to Plaintiffs to train and supervise Caluag to prevent Caluag from causing reasonably foreseeable harm to their students including Noa.

71. Defendants, jointly and severally, breached their duty to Plaintiff.

72. Defendants' breach caused damage to Plaintiff.

73. Defendants' breach was a substantial contributing cause of Plaintiff's damages.

74. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained and will continue to sustain substantial damages and is entitled to recover special and general damages in such amounts as shall be shown at a trial or hearing hereof.

**COUNT VI**  
***Intentional Infliction of Emotional Distress***  
***As To All Defendants***

75. Plaintiff realleges and incorporates herein the allegations contained in preceding paragraphs as though fully alleged herein.

76. Defendants' wrongful conduct was outrageous, beyond bounds of decency, willful and wanton, and/or malicious.

77. Defendants' wrongful conduct caused extreme emotional distress to Plaintiffs.

78. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained and will continue to sustain substantial damages and are entitled to recover special, general, and punitive damages in such amounts as

shall be shown at a trial or hearing hereof.

**COUNT VII**  
***Negligent Infliction of Emotional Distress***  
***As To All Defendants***

79. Plaintiff realleges and incorporates herein the allegations contained in preceding paragraphs as though fully alleged herein.

80. Defendants, jointly and severally, engaged in negligent conduct.

81. Defendants' negligence caused Plaintiff to suffer serious emotional distress or disturbance.

82. Defendants' negligence was a legal cause of his serious emotional distress or emotional distress.

83. Defendants' negligent conduct caused a physical injury to a person or a mental illness.

84. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained and will continue to sustain substantial damages and are entitled to recover special, general, and punitive damages in such amounts as shall be shown at a trial or hearing hereof.

WHEREFORE, Plaintiff prays for Judgment in her favor and against Defendants, jointly and severally, as follows:

A. Special damages in an amount to be determined at a trial or hearing hereof;

B. General damages in an amount to be determined at a trial or hearing hereof;

C. Punitive damages as to Defendant Stanton Caluag only in an amount to be determined at a trial or hearing hereof;

D. Reasonable attorneys' fees and costs;

E. Pre-judgment interest and post-judgment interest; and

F. Any and all other relief as may be deemed just and equitable by the Court.

DATED: Honolulu, Hawai'i, December 2, 2020.

*/s/ Peter C. Hsieh*

MICHAEL JAY GREEN

PETER C. HSIEH

Attorneys for Plaintiff

DEBRA ANN KIMOKEO, Individually  
and as Next Friend of NOA MANOI

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STATE OF HAWAI'I, HAWAI'I  
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EDUCATION, STANTON CALUAG,  
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Department of Education, JOHN DOES  
1-10, JANE DOES 1-10, DOE  
CORPORATIONS 1-10, DOE  
GOVERNMENTAL ENTITIES 1-10,

Defendants.

CIVIL NO. \_\_\_\_\_

DEMAND FOR JURY TRIAL

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Plaintiff hereby demands a trial by jury on all issues triable of right by jury in this case, pursuant to Rule 38, Federal Rules of Civil Procedure.

DATED: Honolulu, Hawai'i, December 2, 2020.

/s/ Peter C. Hsieh

MICHAEL JAY GREEN

PETER C. HSIEH

Attorneys for Plaintiff

DEBRA ANN KIMOKEO, as

Next Friend of NOA MANOI



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STATE OF HAWAI'I, HAWAI'I  
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Department of Education, JOHN DOES  
1-10, JANE DOES 1-10, DOE  
CORPORATIONS 1-10, DOE  
GOVERNMENTAL ENTITIES 1-10,

Defendants.

CIVIL NO. \_\_\_\_\_

SUMMONS

SUMMONS

STATE OF HAWAII

To the above-named Defendants:

You are hereby summoned and required to file with the court and serve upon Michael Jay Green and Peter C. Hsieh, Plaintiff's attorneys, whose service address is Davies Pacific Center, 841 Bishop St., Suite 2201, Honolulu, Hawai'i 96813, an answer to the Complaint which is herewith served upon you, within 21 days after service of this summons upon you, exclusive of the day of service. If

you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

**WARNING TO DEFENDANT(S):** Failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

**PROCESS SERVER:** You are prohibited from making personal delivery of this summons between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the district or circuit courts permits, in writing on the summons, personal delivery during those hours.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

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CLERK OF THE ABOVE-ENTITLED COURT