

This document has been edited from the original by deleting 87 pages of barely-readable i-Ready diagnostic results as noted below.

DEPARTMENT OF EDUCATION
HONOLULU DISTRICT OFFICE
STATE OF HAWAII

DEPARTMENT OF THE
REVENUE
OFFICE OF DISPUTE RESOLUTION

2020 JUN 15 PM 3:40

In the Matter of TEVITA AHOMANA, by
and through his Mother, FEKETI
HUAHULU,

Petitioners,

vs.

DEPARTMENT OF EDUCATION,
STATE OF HAWAII, and CHRISTINA
KISHIMOTO, Superintendent of the
Hawaii Public Schools,

Respondents.

DOE-SY 1920-043

RESPONDENT'S MOTION TO
DISMISS

RESPONDENT'S MOTION TO DISMISS OR FOR THE JUDGEMENT OF THE MATTER OF LAW

Respondent DEPARTMENT OF EDUCATION, hereby moves to dismiss the Request for Due Process

Hearing filed on May 11, 2020, in the instant matter for the following reason:

1. The Petitioners' Due Process Complaint dated, May 11, 2020 is considered moot.

The complaint presented before the Office of Dispute Resolution is no longer considered a live controversy due to the fact that the Department of Education provided the relief Petitioners sought by providing Parent with requested reports.

This motion is based on the attached memorandum, the records and files herein and such other matters as may be adduced by the Hearing Officer.

DATED: Honolulu, Hawaii, June 15, 2020



Stuart Kim

District Educational Specialist
Honolulu District Office

DEPARTMENT OF EDUCATION
HONOLULU DISTRICT OFFICE
STATE OF HAWAII

In the Matter of TEVITA AHOMANA, by
and through his Mother, FEKETI
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MEMORANDUM IN SUPPORT OF
RESPONDENT'S MOTION

MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION

I. FACTS.

The facts underlying the instant motion are undisputed. On May 11, 2020, Ms. Huahulu filed an amended hearing request citing that the DOE committed a procedural violation of IDEA. Parent requested "copies of the complete educational records for Tevita Ahomana and been denied." Parent stated further that as of May 11, 2020 the DOE had supplied the complete Diagnostic Results report for SY 2019-2020. However the DOE refused to comply with repeated Parent requests for the complete Diagnostic Growth report which would include the comparative charts of all the assessments throughout the school year. Throughout the school year, Parent, with the assistance of Parent Advocate Vanessa Ott, had to make numerous requests each time assessments were given before receiving these educational records.

Parent then requested an amended resolution that stated, "As members of the IEP Team, both Feketi Huahulu and Vanessa Ott will receive via email full diagnostic reports of all school-wide assessments within 2 working days of assessment completion."

On May 12, 2020, Hearings Officer Imamura issued a Third Amended Prehearing Order that stated that the issue was as follows:

Issue 1 - Parent had requested copies of the complete educational records for Student and has been denied. Specifically, the school used the i-Ready assessment software. The software is capable of generating two diagnostic reports for Math and Reading: 1) diagnostic results and 2) diagnostic growth. As of May 11, 2020, the DOE has provided the diagnostic results for SY 2019-2020, but has not provided the complete diagnostic growth reports, which would include the comparative charts for all the assessments throughout the school year.

Remedy: Parent to receive via email full diagnostic reports of all school-wide assessments within 2 working days of assessment completion.

II. ARGUMENT.

A. Stevenson Middle School shared the i-Ready Growth Reports and i-Ready Diagnostic Reports.

The school provided the reports to the Petitioner as stated in Exhibit #1: Declaration of Katherine Balatico. The Emails were sent to the Petitioner on the following dates: September 6, 2019 (Exhibit #2) , January 21, 2020 (Exhibit #3) and May 29, 2020 (Exhibit #4).

B. The Full I-Ready Diagnostic Growth Report was not shared with Petitioner in September because a Diagnostic Growth Report cannot be generated with only one test administered. As stated in Exhibit #1: Declaration of Katherine Balatico.

The Fall Diagnostic Results reports were sent to Petitioner via email as stated in Exhibit #1: Declaration of Katherine Balatico. These reports did not include diagnostic growth because a student receives a valid Diagnostic Growth Report when the i-Ready Universal Screener is administered three times per year over regular intervals (Exhibit #1).

C. The i-Ready software is not capable of producing comparative Diagnostic Reports.

On an email dated, May 22, 2020, Ms. Ott stated, "We have been requesting "complete" Math and Reading Diagnostic Growth Reports." Ms.Ott defines "complete" as a report that includes the comparative results of all six tests given in the School year 2019-2020. The i-Ready software is not capable of producing comparative Diagnostic Reports, as explained in Exhibit #4: Email Dated May 29, 2020.

D. A Due Process Complaint is considered moot when claims fail to present live controversies.

Petitioner's remedy in this case has been provided by the school. It is our position that because the Petitioner's request has been fulfilled, the request for relief is now moot. This complaint is no longer a live complaint and should be declared moot, "*Under the mootness doctrine, courts lack jurisdiction to hear claims that fail to present live controversies or claims in which the court "cannot grant effectual relief."* (Jefferson County Board of Educ. v. Bryan and Darcy M.)"¹

In addition, the agreement of Stevenson Middle School to provide the i-Ready diagnostic reports to Ms. Huahulu mooted the parent's claim that a delay created a denial of FAPE.

(District of Columbia v. Straus).² There is no "*jurisdiction to hear a case that is moot, that is where no actual or live controversy exists*" (Cook Inlet Treaty Tribes v. Shalala).³

In a Resolution meeting held on June 5, 2020, Parent and Advocate acknowledged receipt of reports and that it was a moot point as they have already received the reports for the 2019-2020 school year. Refer to Exhibit #5: Recording of June 5, 2020 Resolution #3 and attached transcript.

III. CONCLUSION.

Respondent respectfully requests that the motion be granted and that the Due Process request be dismissed and/or judgement enter as a matter of Law against FEKETI HUAHULU,

¹ *Jefferson County Bd. of Educ. v. Bryan M. and Darcy M.*, 68 IDELR 216 (N.D. Ala. 2016), *aff'd*, 70 IDELR 145 (11th Cir. 2017, unpublished).

² *District of Columbia v. Straus*, 53 IDELR 250 (D.C. Cir. 2010).

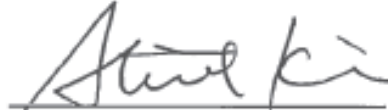
³ *Cook Inlet Treaty Tribes v. Shalala*, 166 F.3d 986 (9th Cir. 1999).

for the following reasons, alternatively and collectively:

1. The Petitioners' Due Process Complaint dated, May 11, 2020 is considered moot.

The complaint presented before the Office of Dispute Resolution is no longer considered a live controversy due to the fact that the Department of Education provided the relief Petitioners sought by providing Parent with requested reports.

DATED: Honolulu, Hawai'i, June 15, 2020

A handwritten signature in black ink, appearing to read "Stuart Kim", written over a horizontal line.

Stuart Kim

District Educational Specialist
Honolulu District Office

DEPARTMENT OF EDUCATION
HONOLULU DISTRICT OFFICE
STATE OF HAWAII

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DOE-SY 1920-043

DECLARATION OF STUART KIM
EXHIBITS 1-5

DECLARATION OF STUART KIM

Stuart Kim declares:

1. I am above the age of 18 years old and make this declaration my own personal knowledge.
2. Attached hereto as Exhibit 1 is the Declaration of Katherine Balatico.
3. Attached hereto as Exhibit 2 is the email with attached iReady Math and Reading diagnostic reports from Ronald Matsushige to Vanessa Ott on September 6, 2020.
4. Attached hereto as Exhibit 3 is the email with attached iReady Math and Reading diagnostic reports from Katherine Balatico to Feketi Huahulu on January 21, 2020.

5. Attached hereto as Exhibit 4 is the email with attached iReady Math and Reading diagnostic reports from Katherine Balatico to Feketi Huahulu and Vanessa Ott on May 29, 2020.
6. Attached hereto as Exhibit 5 transcript of recording from Resolution Session held on June 5, 2020.

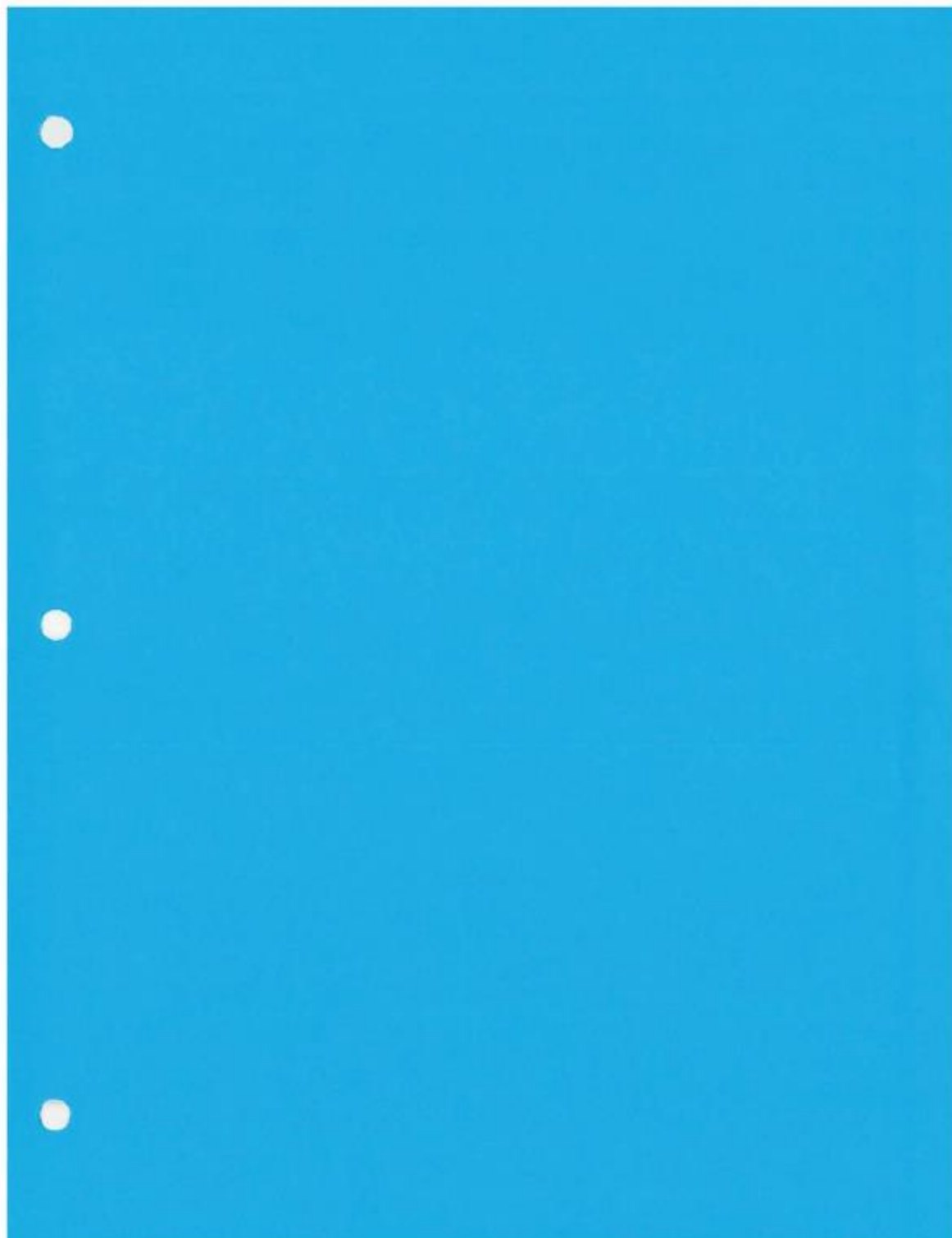
I declare under penalty of the law the foregoing is true and correct.

DATED: Honolulu, Hawai'i, June 15, 2020



Stuart Kim

District Educational Specialist
Honolulu District Office



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HONOLULU DISTRICT OFFICE
STATE OF HAWAII

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DOE-SY 1920-043

DECLARATION OF KATHERINE
BALATICO

DECLARATION OF KATHERINE BALATICO

I, KATHERINE BALATICO, under penalty of perjury of law, do hereby declare as follows:

I am the Principal of Robert Louis Stevenson Middle School, which is the homeschool of the
above-named Student.

1. I make this declaration based on my personal knowledge and am competent to
testify to the matters set forth;
2. I have been the administrator who participated in Student's IEP meetings at
Student's home school;
3. Student physically attended the home school from August 2019 to present;
4. The school emailed copies of the Fall i-Ready Math and Reading diagnostic
result reports to Vanessa Ott and Toa Ahomana (currently known as Feketi
Huahulu) on September 6, 2019;
5. The i-Ready system limits the user to only be able to view 3 test results, with the
first being the baseline data and the last two being the most recent. The

Fall i-Ready Diagnostic Growth Reports cannot be generated because the Fall report serves as the baseline to which subsequent tests are needed to determine growth;

6. The school emailed copies of the Winter i-Ready Math and Reading diagnostic and growth reports to Feketi Huahulu on January 21, 2020;
7. The school emailed copies of the Spring i-Ready Math and Reading diagnostic and growth reports to Feketi Huahulu and Vanessa Ott on May 29, 2020; also included were individual Diagnostic Results and Diagnostic Growth reports for all administered assessments for the school year 2019-2020;
8. After a conversation with an i-Ready representative, I emailed an explanation dated May 29, 2020 to Feketi Huahulu why a comparative report could not be generated. I shared that there are no settings in the i-Ready software that allows us to generate a comparative report with all administered assessments.
9. At the resolution session on June 5, 2020, Vanessa Ott stated that she received an explanation that the growth report cannot include all of the diagnostic reports for the entire year. Ms. Ott stated that she received all of the individual diagnostic reports for the past school year. Ms. Ott, by her own admission, stated that the point is moot.

Under penalty of perjury, I hereby declare that the foregoing assertions are true and correct.

DATED: Honolulu, Hawai'i, June 15, 2020



Katherine Balatico

Principal
Robert Louis Stevenson Middle School

the 1990s, the number of people in the UK who are aged 65 and over has increased by 1.5 million, and the number of people aged 75 and over has increased by 1.2 million (Office of National Statistics 2000). The number of people aged 65 and over is projected to increase to 6.5 million by 2020, and the number of people aged 75 and over to 4.5 million (Office of National Statistics 2000).

There is a growing awareness of the need to develop services to meet the needs of older people. The Department of Health (1999) has identified the need to develop services to meet the needs of older people, and the Department of Health (2000) has identified the need to develop services to meet the needs of older people. The Department of Health (2000) has identified the need to develop services to meet the needs of older people, and the Department of Health (2000) has identified the need to develop services to meet the needs of older people.

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Stephanie Kozuma <10010603@k12.hi.us>

d: Please send Tevitat's i-Ready results

Forwarded message

Ronald Matsushige <ronald.matsushige@k12.hi.us>

Mon, Jun 8, 2020 at 10:04 AM

To: Stephanie Kozuma <stephanie.kozuma@k12.hi.us>, Marie Inouye <Marie.Inouye@k12.hi.us>, Stuart Kim <Stuart.Kim@k12.hi.us>

----- Forwarded message -----

From: Ronald Matsushige <ronald.matsushige@k12.hi.us>

Date: Fri, Sep 6, 2019 at 3:41 PM

Subject: Re: Please send Tevitat's i-Ready results

To: Vanessa Ott <msvott@gmail.com>

Cc: Katherine Balatico <Katherine_Balatico@notes.k12.hi.us>, Toa Ahomana <toahuahulu@gmail.com>

Here's his math and reading test results.

Thank you!

Ronald Matsushige

On Thu, Sep 5, 2019 at 6:38 AM Vanessa Ott <msvott@gmail.com> wrote:

Mr. Matsushige,

Please send Tevita's new i-Ready Math and Reading results as soon as possible.

Mahalo,

Vanessa Ott

808 - 854 -1018

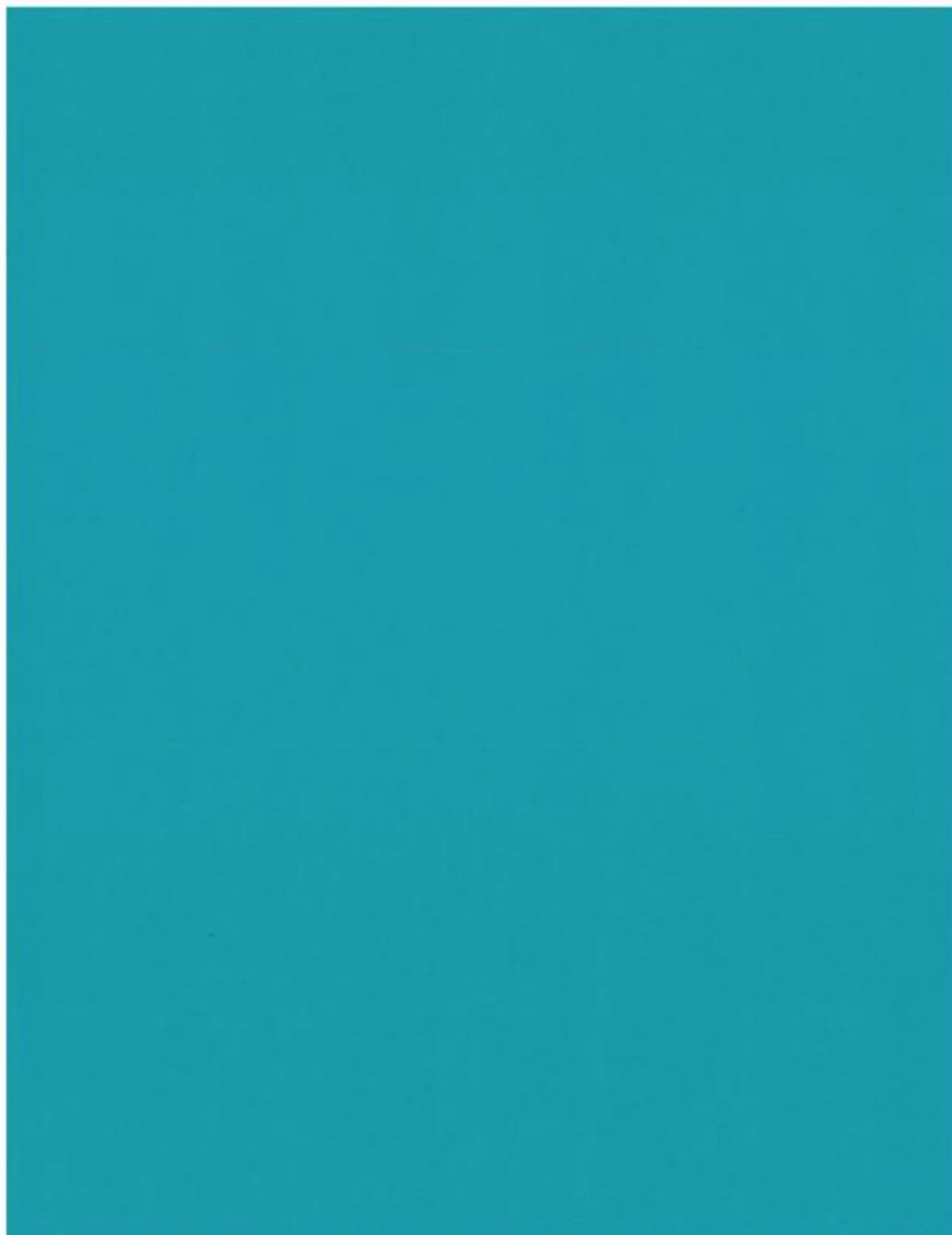
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2 attachments

 diagnostic-results_math_ahomana_tevita_1281600637_09062019.pdf
480K

 diagnostic-results_reading_ahomana_tevita_1281600637_09062019.pdf
390K

56 pages of barely-readable copies of i-Ready diagnostic results deleted.





Stephanie Kozuma <10010633@k12.hi.us>

d: i-Ready Reading Growth & Results Reports; Math Growth & Result Reports

message

Katherine Balatico <katherine.balatico@k12.hi.us>

Wed, Jun 10, 2020 at 11:25 AM

To: Stuart Kim <stuart.kim@k12.hi.us>, Stephanie Kozuma <Stephanie.Kozuma@k12.hi.us>, Marie Inouye <Marie.Inouye@k12.hi.us>

----- Forwarded message -----

From: Katherine Balatico <katherine.balatico@k12.hi.us>

Date: Tue, Jan 21, 2020 at 8:49 PM

Subject: i-Ready Reading Growth & Results Reports; Math Growth & Result Reports

To: Feketi (Toakase) Huahulu <huahulufeketi@gmail.com>

Ms. Huahulu -

Per your request, please find attached Tevita's i-Ready Reading Growth & Results Reports, as well as his Math Growth & Result Reports.

Thank you,

Katherine Balatico

Principal

J.J.L. Stevenson Middle School

Office (808) 587-4520

Fax (808) 587-4523



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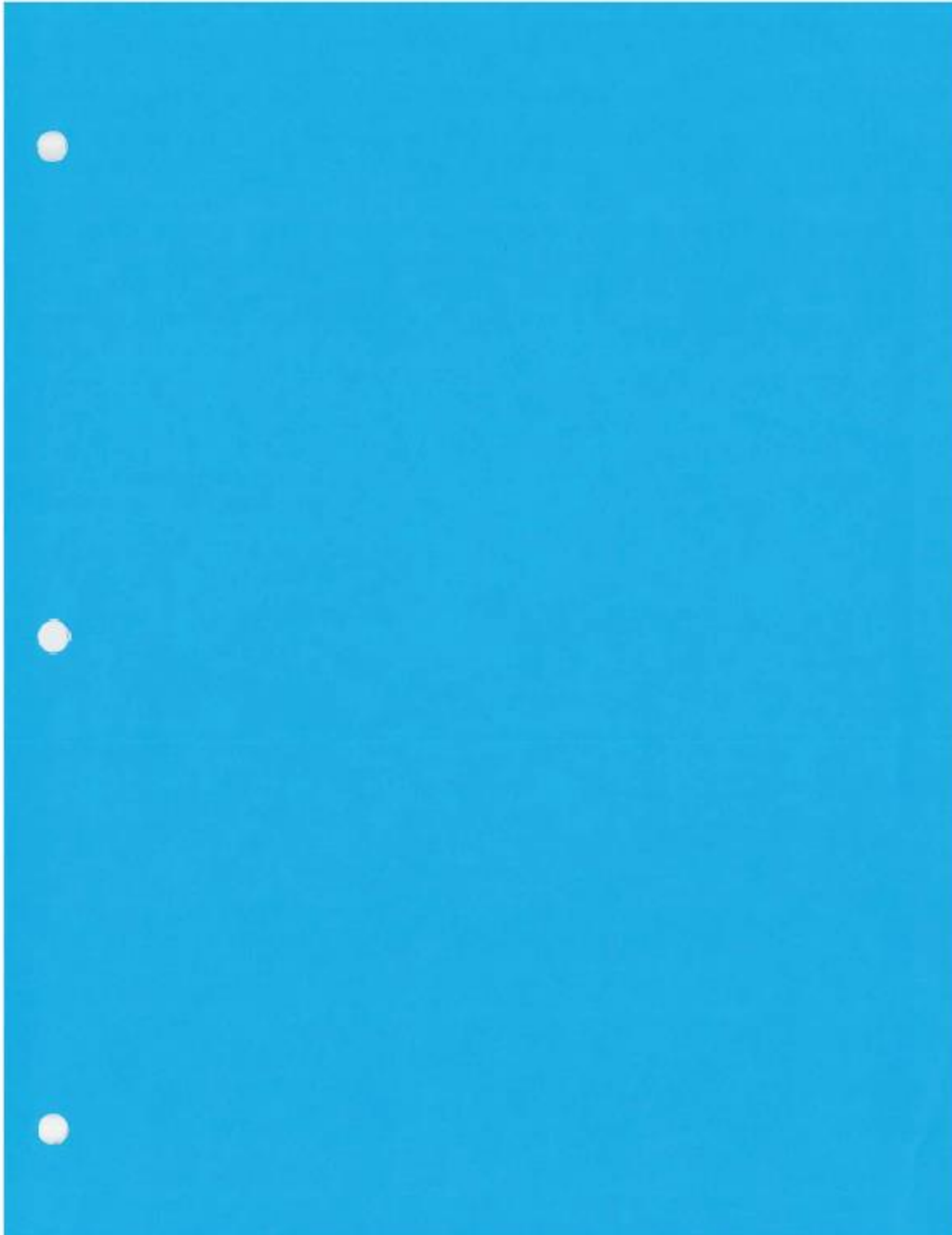
4 attachments

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89K

 diagnostic-results_reading_ahomana_tevita_1281600637_01132020.pdf
331K

 diagnostic-growth_math_ahomana_tevita_1281600637_01132020.pdf

19 pages of barely-readable copies of i-Ready diagnostic results deleted.





Stephanie Kozuma <10010033@k12.hi.us>

i-Ready Math and Reading Diagnostic Growth Reports 5.21.2020

Message

Katherine Balatico <katherine.balatico@k12.hi.us>

Fri, May 29, 2020 at 4:25 PM

To: "Feketi (Toakase) Huahulu" <huahulufeketi@gmail.com>, Vanessa Ott <msvott@gmail.com>

Cc: Stuart Kim <Stuart.Kim@k12.hi.us>, Stephanie Kozuma <Stephanie.Kozuma@k12.hi.us>, Marie Inouye <Marie.Inouye@k12.hi.us>, Stephen Warner <Stephen.Warner@k12.hi.us>

The Math and Reading Diagnostic Growth Reports provided last week are the complete Diagnostic Growth Reports. I personally reached out to the i-Ready company with your request to see if there are ways to have all 6 diagnostics in the Diagnostic Growth Report. As it was explained to me, there are no additional settings that the system allows us to select to generate the report. The system limits the user to only be able to view 3 test results, with the first being the baseline data and the last two being the most recent. In the i-Ready Diagnostic Growth Reports, unfortunately, we cannot choose which scores appear in the 3 windows.

Attached are Tevita's Diagnostic Results for each test on separate sheets. I know that this is not ideal because it's not all on one page, but with the limitations of the i-Ready system, this provides you with the information you requested.

Respectfully,
Katherine Balatico
Principal
R.L. Stevenson Middle School
Office (808) 587-4520
Fax (808) 587-4523



On Fri, May 22, 2020 at 12:33 PM Vanessa Ott <msvott@gmail.com> wrote:
Ms. Balatico,

We have been requesting "complete" Math and Reading Diagnostic Growth Reports. As explained before, by "complete" we mean a report that includes the comparative results of all six tests given in School Year 2019 - 2020. That means the following in one Diagnostic Growth report: Diagnostic 1, Diagnostic 2, Diagnostic 3, Diagnostic 4, Diagnostic 5, and Diagnostic 6. The reports you sent are the same ones you sent on April 22nd which exclude Diagnostic 2, Diagnostic 3, and Diagnostic 4.

Perhaps you are not picking the right settings when you generate the report. Please enable all 6 Diagnostic testing dates and regenerate the reports.

Please send the complete reports per our agreement.

Mahalo,
Vanessa Ott
808 - 854 - 1018
MsVOtt@gmail.com
FreeSpeech4us.com

----- Forwarded message -----

From: Katherine Balatico <katherine.balatico@k12.hi.us>
Date: Fri, May 22, 2020 at 11:35 AM
Subject: i-Ready Math and Reading Diagnostic Growth Reports 5.21.2020
To: Feketi (Toakase) Huahulu <huahulufeketi@gmail.com>
Cc: Vanessa Ott <msvott@gmail.com>

Good morning, Mrs. Huahulu --

Attached, please find Tevita's i-Ready Math and Reading Diagnostic Growth Reports.

Respectfully,
Katherine Balatico
Principal
R.L. Stevenson Middle School
Office (808) 587-4520
Fax (808) 587-4523



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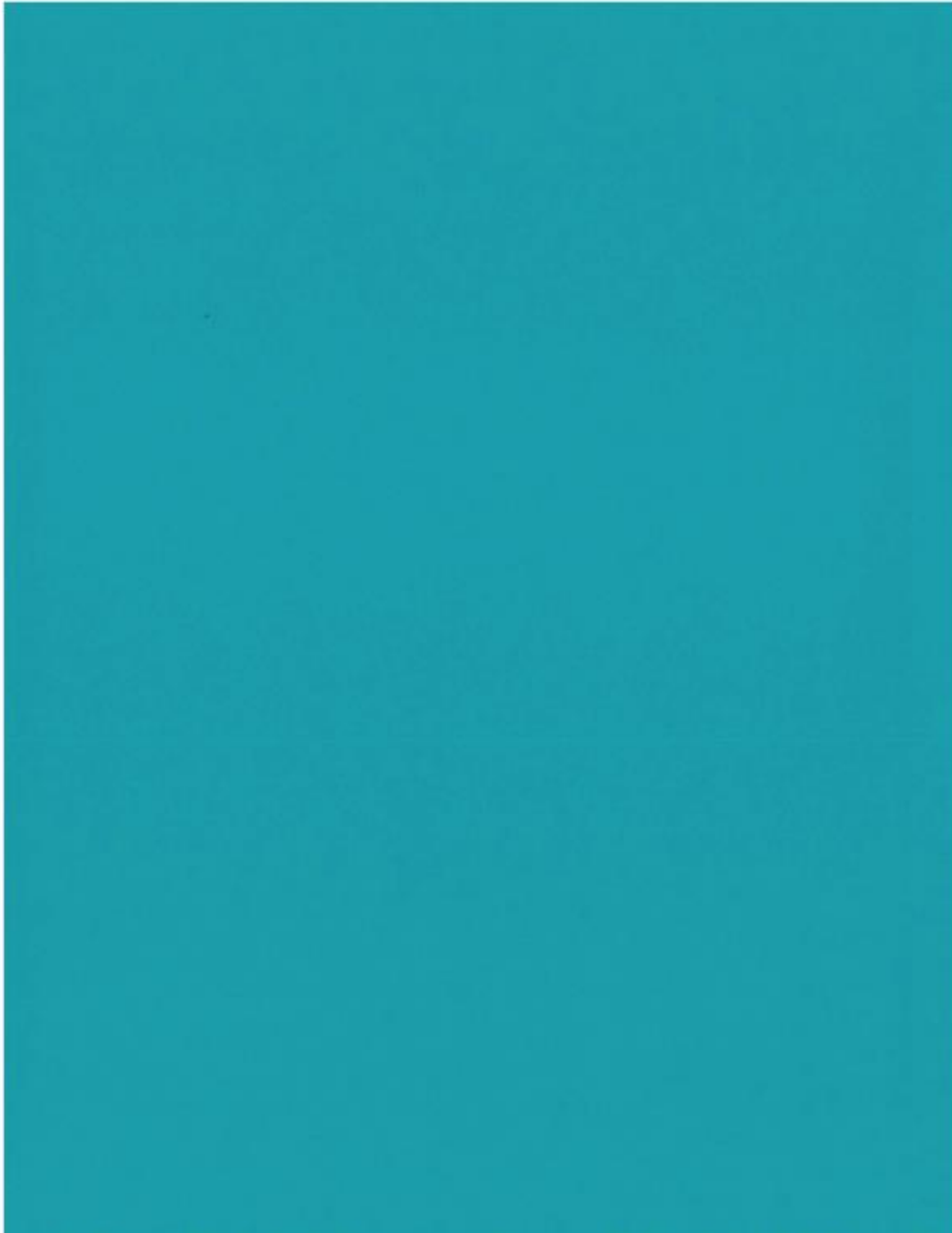
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12 attachments

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65K
- diagnostic-results_math_ahomana_tevita_080719_05292020.pdf
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- diagnostic-results_math_ahomana_tevita_090619_05292020.pdf
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Resolution Session #3

Date: June 5, 2020 @ 10:30 a.m.

Link:

https://drive.google.com/file/d/1jd1nZotiuk8H3aX_rhjlN0WhQqTLkdNn/view?usp=sharing

Time Stamp: 2:30-3:47

June 5, 2020 Resolution Session #3

Time stamp: 2:27 – 3:47

2:27 Mr. Kim: Ms. Ott, did you see the revised one?

Ms. Ott: Yes, I did and a lot of it was back to the original language that you sent. Which was, well, we had different language.

Mr. Kim: I think if you look at it side by side, we incorporated a lot of your language in that draft that we sent you.

Ms. Ott: Well, ya, I know. Well, how about if we just take the one that you sent back and we'll take it from there.

2:59 Ms. Ott: So. Looking at the latest one that you sent on June 3rd. Um. #2, um. Principal Balatico got back to us and said that um, it wasn't possible to do a growth report that had all of the diagnostic reports for the entire year on there so, looking at the agreement, #2 then becomes a moot point because we have all of the diagnostic reports for this past school year which has ended. So, I don't think that we need to have #2 in there.