

Civil No. 1CC191000694

(Non-Motor Vehicle Tort)

Non-Jury Trial Date: August 8, 2022

SUE AINA, Plaintiff

v.

DEPARTMENT OF EDUCATION, STATE OF HAWAI'I, Defendant

Computer Lab Assignment - Retaliation that Lead to RDA

Documents related to Plaintiff being assigned to Computer Lab 1 instead of Computer Lab 33 in 2017 less than one month after Plaintiff's and Defendant's attorneys scheduled a trial date, meaning that attempts at negotiating a settlement out of court had failed. Computer Lab 1 is too small to accommodate Plaintiff's wheelchair. Plaintiff filed a request for reasonable accommodation to be reassigned to the larger Computer Lab 33 and was denied. Plaintiff continued to pursue this RDA and filed a DOE Discrimination complaint in 2019 with the CRCO that was never answered. Although Defendant's attorney promised in May 2019 that Plaintiff would be reassigned to Lab 33, Plaintiff was forced to set up a computer testing lab in her own classroom which no other teacher was expected to do, as they could go to Lab 1 or 33. Each time there was a testing cycle, Plaintiff had to spend extra time that other teachers did not, in order to set up and tear down computers and testing partitions.

Computer Lab Assignment - Retaliation that Lead to RDA

CONTENTS

CONTENTS	2
Names of individuals who received correspondence on this issue:.....	3
2017 CORRESPONDENCE RE: COMPUTER LAB ASSIGNMENT	4
4/16/17 Ogi to Aina: Sue is assigned to Lab 1 for testing	4
4/17/17 Aina to Ogi (cc: Javar, Juan): Don't we have same class size?	4
4/17/17 Javar to Aina: Other class has more students	5
Compare Computer Lab Sizes - Rooms 1 & 33	6
COPIES of ORIGINAL DRAWINGS – Rule 34 Inspection	7
5/15/17 Aina to Javar – Request Accommodation of Room Space for Wheelchair to navigate computer lab for testing. (cc: Ogi, Juan, Wheatman)	8
5/16/17 Javar to Aina – Requested accommodation denied.	10
6/8/17 Aina to Javar – Aina asks Javar for RDA to be assigned to larger computer lab Room 33	10
6/8/17 Javar to Aina – Javar says both labs are appropriate for Aina's use with WC.....	12
6/21/17 Aina to CRCO – Request Accommodation	12
7/5/17 Aina to CRCO –How long will it take to process accommodation request?	16
8/25/17 CRCO: Reasonable Accommodation Denied	17
11/17/17 – HCRC Pre-Complaint Questionnaire (PCQ) submitted	17
12/19/17 – HCRC (S. Chang) confirms receipt of PCQ.....	20
2019 CORRESPONDENCE RE: COMPUTER LAB ASSIGNMENT	22
2/20/18 – HCRC to HIDOE CRCO: Notice of Filing of Discrimination Complaint	22
3/7/18 – HCRC to Aina: This complaint withdrawn due to complainant elected court action.	23
2018-2019 Na'alehu School Class Sizes	24
3/5/19 – P Request for Computer Lab Accommodation	25
DOE Discrimination Complaint Form	30
Cover Letter.....	31
Historical Perspective.....	31

5/23/19 – Ferm to Phillips: Javar will allow Aina to Use Larger Computer Room. Ferm offers a settlement..... 34

9/9/19 – Aina: would like to meet with Javar re: my RDA for Lab 33 assignment 34

9/10/19 – Javar: See me immediately after PD. Bring CRCO decision..... 34

9/10/19 – Javar: You will test your students in your classroom. 35

9/12/19 – Javar: You didn’t come to our 3:20 meeting. You may schedule a meeting with me when I return from my trip next week. 35

9/17/19 @7:03am – Aina: Loaner Scooter is too big for my classroom and Lab 1. If I can’t test in Lab 33, I’ll have to reschedule testing. I was in a mandatory training at 3:20, and you knew this. 35

9/17/19 – Aina: Procedure for Requesting accommodation states Principal can grant assistance 37

9/17/19 @ 3:45 pm – Ferm to Phillips: Javar will not allow Aina to use larger computer classroom claiming that floor outlets are a problem..... 37

AINA’S CORRESPONDENCE TO HER ATTORNEY RE: LAB 33 VS. LAB 1 37

EXPLANATION..... 37

PICTURES 39

ROOM 33 FLOOR OUTLET LAYOUT..... 43

Names of individuals who received correspondence on this issue:

Name	Position
Aina, Sue	Grade 5 Teacher Aina
Baird, Christina	Grade 5 Teacher Baird
Ferm, Dennis	Deputy Attorney General
Javar, Darlene	Principal
Juan, Christina	Vice Principal
Martin, Bob	School Computer Lab Tech
Ogi, Jan	School Test Coordinator
Schimmelfennig, Beth	DOE CRCO Compliance Specialist
Wheatman, Lillette	Data Team Leader

ORIGINAL

2017 Correspondence Re: Computer Lab Assignment

4/16/17 Ogi to Aina: Sue is assigned to Lab 1 for testing

From: Janice Ogi/NAALEHU/HIDOE

To: Suzanne Aina/NAALEHU/HIDOE@HIDOE, Christine Baird/NAALEHU/HIDOE@HIDOE,

Cc: Christina Juan/NAALEHU/HIDOE@HIDOE, Lilette

Wheatman/HAWAIIIDO/HIDOE@HIDOE, Bob Martin/NAALEHU/HIDOE@HIDOE,

[REDACTED] Darlene Javar/NAALEHU/HIDOE@HIDOE, Deirdre

Lincoln/NAALEHU/HIDOE@HIDOE, [REDACTED]

Date: 04/16/2017 01:02 PM

Subject: SBA Testing: Change in Lab Assignments

Hi Sue & Christine,

Instead of switching labs for different SBA tests, I will be assigning each of you to one lab for the duration of testing.

- Sue's class will take all SBA tests in Lab 1.
- Christine's class will take all SBA tests in Lab 33.

This change has to be made because of the size of your classes and the number of laptops available in each lab (Lab 1 has a maximum of 28 laptops while Lab 33 has a maximum of 32 laptops). If a couple of laptops go down in Lab 1, CVThristine's class will not have enough for each student.

Thanks for understanding.

Mahalo,

Jan

4/17/17 Aina to Ogi (cc: Javar, Juan): Don't we have same class size?

From: Suzanne Aina/NAALEHU/HIDOE

To: Janice Ogi/NAALEHU/HIDOE@HIDOE

Cc: Darlene Javar/NAALEHU/HIDOE@HIDOE, Christina Juan/NAALEHU/HIDOE@HIDOE

Date: 04/17/2017 03:28 AM

Subject: Re: SBA Testing: Change in Lab Assignments

Did something change? I thought we had the same class size. Lab 1 is more difficult for me to move around.

4/17/17 Javar to Aina: Other class has more students

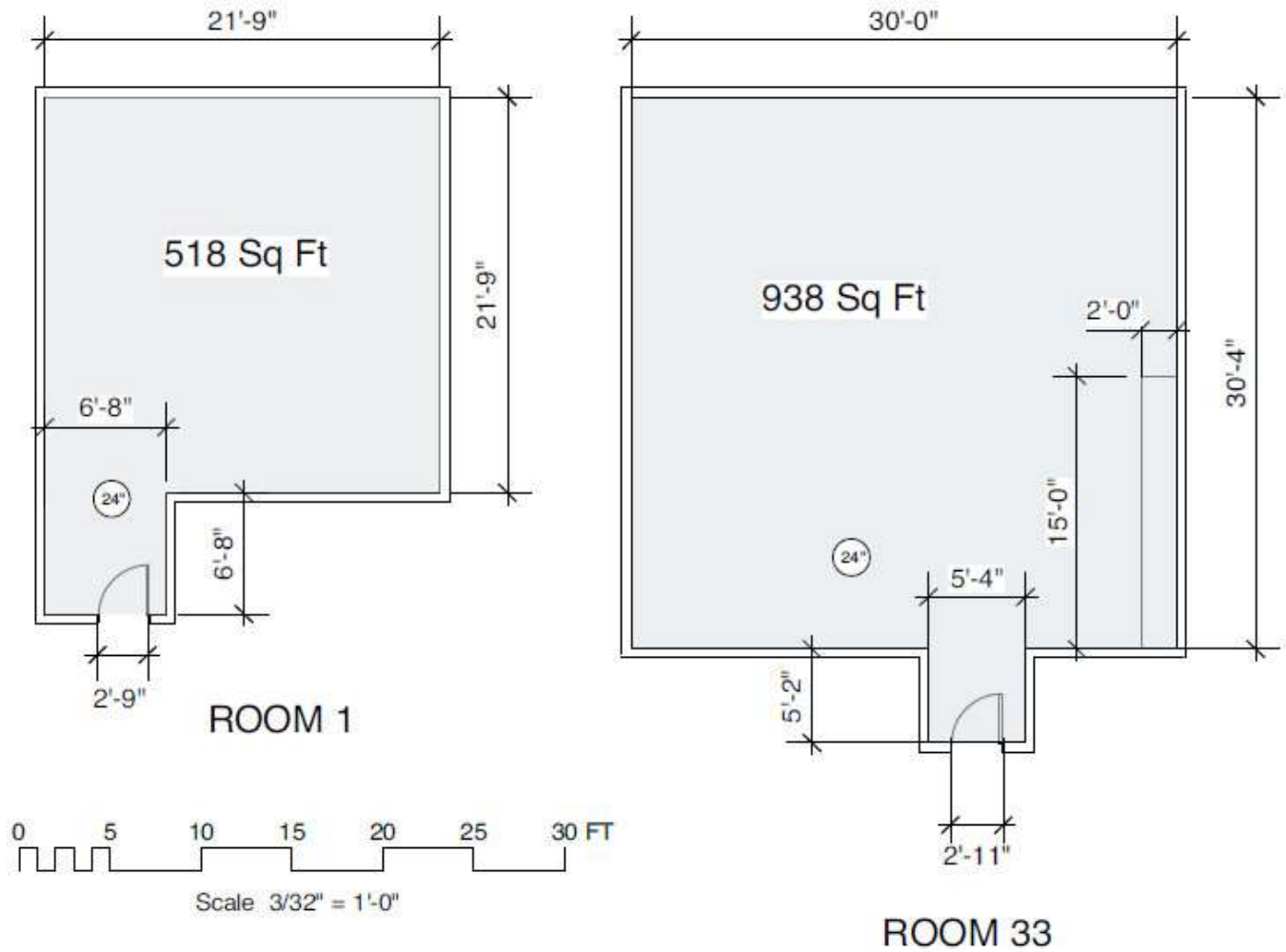
ORIGINAL

From: Darlene Javar/NAALEHU/HIDOE
To: Suzanne Aina/NAALEHU/HIDOE@HIDOE,
Cc: Janice Ogi/NAALEHU/HIDOE@HIDOE, Christina Juan/NAALEHU/HIDOE@HIDOE, Lilette Wheatman/HAWAIIIDO/HIDOE@HIDOE
Date: 04/17/2017 09:06 AM
Subject: Re: SBA Testing: Change in Lab Assignments

When room 11 was first assigned to you it was with the understanding that you may have more students than the other homeroom class. (This is the same for room 6.) Due to exits and changes, the other fifth grade homeroom has more students at this time. We need to assign labs based on student needs.

As with all teachers, you will have a proctor to ensure proper testing procedures.

Compare Computer Lab Sizes - Rooms 1 & 33

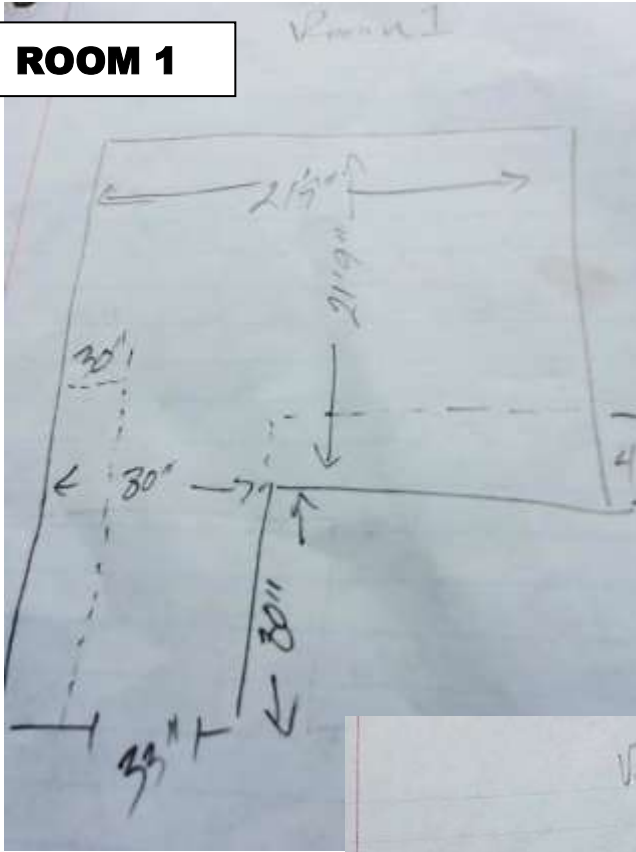


These scaled, comparative renderings were created gratis for Plaintiff by Architect Aza Summers with Vectorworks© software using the measurements and drawings produced by the Civil Procedure Rule 34 property inspection on June 29, 2022, and PRODUCT SPECIFICATIONS SHEET; Model: Jazzy Elite HD; Manufacturer: Pride Mobility Products Corp.; Internet Address: www.pridemobility.com; Document Information: INFINF3063/Rev B/October 2012.

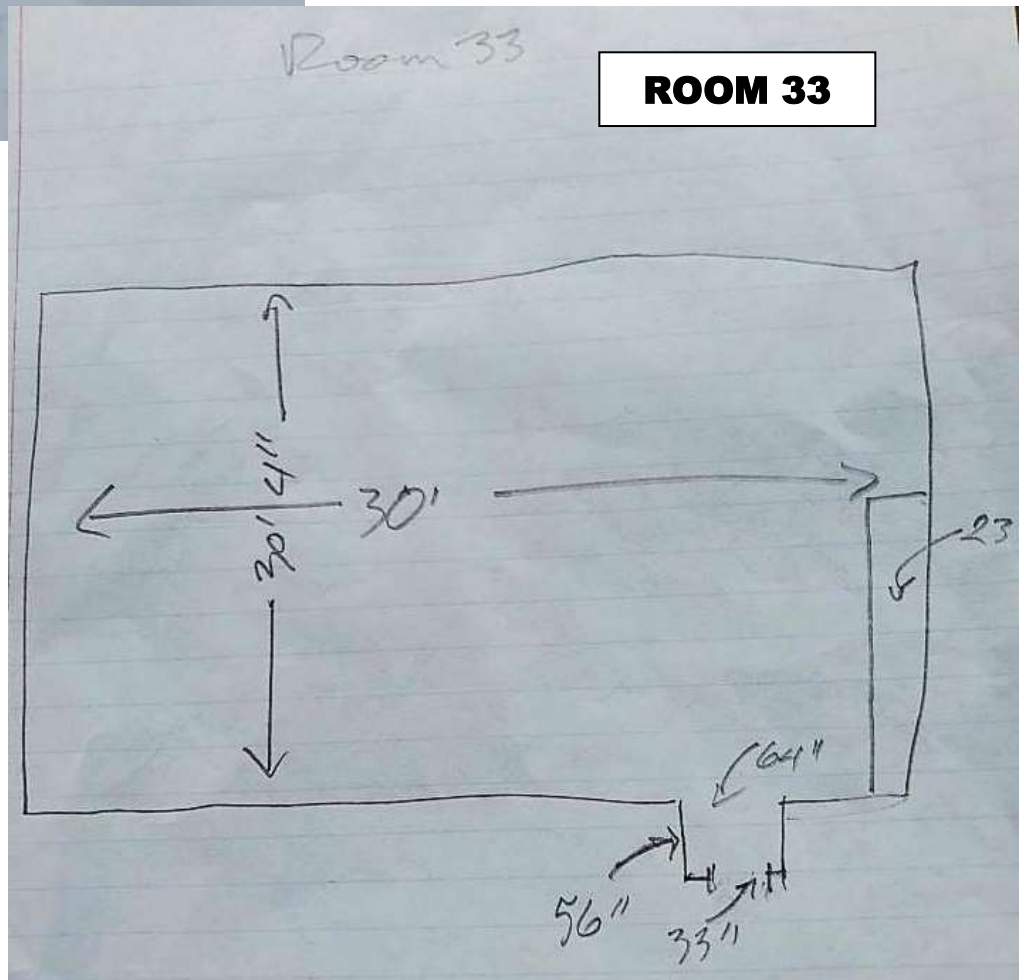
COPIES of ORIGINAL DRAWINGS - Rule 34 Inspection

COPY

ROOM 1



ROOM 33



**5/15/17 Aina to Javar – Request Accommodation of Room Space for
Wheelchair to navigate computer lab for testing. (cc: Ogi, Juan, Wheatman)**

**ORIGINAL
ORIGINAL**

From: <Suzanne_Aina/NAALEHU/HIDOE@notes.k12.hi.us>

Date: Mon, May 15, 2017 at 11:26 PM

Subject: Re: SBA Testing: Change in Lab Assignments

To: <Darlene_Javar/NAALEHU/HIDOE@notes.k12.hi.us>

Cc: <Janice_Ogi/NAALEHU/HIDOE@notes.k12.hi.us>,
<Christina_Juan/NAALEHU/HIDOE@notes.k12.hi.us>,
<Lilette_Wheatman/HAWAII/DOE/HIDOE@notes.k12.hi.us>

Darlene,

There is a simple solution to the Lab Assignment problem. The problem is that Lab 1 does not have enough room for me to get around in my wheelchair, and because of class size, you want to have Christina's class test in Lab 33. If I have to navigate Lab 1 with my wheelchair, I have to interrupt students while they take the test and ask them to pull their chairs in closer to the desk so I can pass. This is detrimental to their concentration while testing.

The only practical solution that accommodates my wheelchair is for me to be assigned to Lab 33 during computer-lab-based testing. This leaves a couple options for distribution of students:

My class tests in Lab 33, and two or three students from the other Grade 5 class who will not need much assistance during testing can test in Lab 33 with my class; or

I will assume responsibility for all students in the other Grade 5 class in Lab 33 during testing, while the other Grade 5 teacher monitors my students taking the test in Lab 1.

To be clear, this is an ADA workplace disability accommodation request. Getting around in a classroom with my wheelchair without chairs in the way is an accommodation that I need, and Lab 1 presents considerable barriers to doing this. While we cannot do anything about this for testing going on now at the end of School Year 2016-2017, I am requesting the following disability accommodation for the future:

During computer-lab-based testing, Sue Aina will be assigned to monitor testing in a location that can physically accommodate movement about the room in her wheelchair and not have to interrupt testing students by ask them to make room for the teacher's wheelchair to pass by.

Mahalo,

Suzanne M. Aina

From: **Sue Aina** <sueaina100@gmail.com>

Date: Thu, Jun 8, 2017 at 12:42 PM

Subject: Workplace Disability Accommodation Request: Computer Lab Testing Location
To: Darlene_Javar/NAALEHU/HIDOE@notes.k12.hi.us
Cc: Janice_Ogi/NAALEHU/HIDOE@notes.k12.hi.us,
Christina_Juan/NAALEHU/HIDOE@notes.k12.hi.us,
Lilette_Wheatman/HAWAIIIDO/HIDOE@notes.k12.hi.us

Darlene,

I do not know if I will have access to Lotus Notes once I turn in my work laptop for the summer. So, please reply to this disability accommodation request at my Gmail address. (sueaina100@gmail.com)

There is a simple solution to the Testing room assignment problem that I experienced because I was assigned to proctor testing in Computer Lab 1 at the end of the school year. The problem is that Lab 1 does not have enough room for me to get around in my wheelchair without asking students to move. I do not have that problem in the Room 33 Computer Lab. Because of class size, you wanted to have Christina's class test in Lab 33. However, when I work in Lab 1, I have to interrupt students while they take the test and ask them to pull their chairs in closer to the desk so I can pass by. This is detrimental to their concentration while testing.

The only practical solution that accommodates my wheelchair is for me to be assigned to Lab 33 during computer-lab-based testing. This leaves a couple options for distribution of students:

- My class tests in Lab 33, and two or three students from the other Grade 5 class who will not need much assistance during testing can test in Lab 33 with my class; or
- I will assume responsibility for all students in the other Grade 5 class in Lab 33 during testing, while the other Grade 5 teacher monitors my students taking the test in Lab 1.

To be clear, **this is an ADA workplace disability accommodation request**. Getting around in a classroom with my wheelchair without chairs in the way is an accommodation that I need, and Computer Lab 1 presents considerable barriers to doing this. While we cannot do anything about this for the School Year 2016-2017 testing period now, I am requesting the following disability accommodation for the future:

During computer-lab-based testing, Suzanne Aina will be assigned to monitor testing in a location that can physically accommodate unobstructed movement about the room in her wheelchair, and not have to interrupt testing students by asking them to make room for the teacher's wheelchair to pass by.

Mahalo,

Suzanne M. Aina

5/16/17 Javar to Aina - Requested accommodation denied.

ORIGINAL

From: <Darlene_Javar/NAALEHU/HIDOE@notes.k12.hi.us>

Date: Fri, Jun 16, 2017 at 6:21 PM

Subject: Re: Workplace Disability Accommodation Request: Computer Lab Testing Location

To: sueaina100@gmail.com

Cc: Suzanne_Aina/NAALEHU/HIDOE@notes.k12.hi.us,

Christina_Juan/NAALEHU/HIDOE@notes.k12.hi.us,

Janice_Ogi/NAALEHU/HIDOE@notes.k12.hi.us,

Lillette_Wheatman/HAWAIIIDO/HIDOE@notes.k12.hi.us,

Rowena_del_Rosario/NAALEHU/HIDOE@notes.k12.hi.us

Update to email below: I am noting that I retrieved your laptop and keys while you were parked in your car next to the flag pole on 6/8/17. This was after the email below was sent. Your iPad is still outstanding. I have been informed that you have been unable to locate your iPad. Please locate and return ASAP. If it is lost, stolen, or missing, it needs to be officially reported as such.

Both labs are appropriate for your use. Follow the Procedure for Requesting Reasonable Accommodations if you feel necessary.

6/8/17 Aina to Javar - Aina asks Javar for RDA to be assigned to larger computer lab Room 33

From: **Sue Aina** <sueaina100@gmail.com>

Date: Thu, Jun 8, 2017 at 12:42 PM

Subject: Workplace Disability Accommodation Request: Computer Lab Testing Location

To: <Darlene_Javar/NAALEHU/HIDOE@notes.k12.hi.us>

Cc: <Janice_Ogi/NAALEHU/HIDOE@notes.k12.hi.us>,

<Christina_Juan/NAALEHU/HIDOE@notes.k12.hi.us>,

<Lillette_Wheatman/HAWAIIIDO/HIDOE@notes.k12.hi.us>

Darlene,

I do not know if I will have access to Lotus Notes once I turn in my work laptop for the summer. So, please reply to this disability accommodation request at my Gmail address. (sueaina100@gmail.com)

There is a simple solution to the Testing room assignment problem that I experienced because I was assigned to proctor testing in Computer Lab 1 at the end of the school year. The problem is that Lab 1 does not have enough room for me to get around in my wheelchair without asking students to move. I do not have that problem in the Room 33 Computer Lab. Because of class size, you wanted to have Christina's

ORIGINAL

class test in Lab 33. However, when I work in Lab 1, I have to interrupt students while they take the test and ask them to pull their chairs in closer to the desk so I can pass by. This is detrimental to their concentration while testing.

The only practical solution that accommodates my wheelchair is for me to be assigned to Lab 33 during computer-lab-based testing. This leaves a couple options for distribution of students:

- My class tests in Lab 33, and two or three students from the other Grade 5 class who will not need much assistance during testing can test in Lab 33 with my class; or
- I will assume responsibility for all students in the other Grade 5 class in Lab 33 during testing, while the other Grade 5 teacher monitors my students taking the test in Lab 1.

To be clear, **this is an ADA workplace disability accommodation request**. Getting around in a classroom with my wheelchair without chairs in the way is an accommodation that I need, and Computer Lab 1 presents considerable barriers to doing this. While we cannot do anything about this for the School Year 2016-2017 testing period now, I am requesting the following disability accommodation for the future:

During computer-lab-based testing, Suzanne Aina will be assigned to monitor testing in a location that can physically accommodate unobstructed movement about the room in her wheelchair, and not have to interrupt testing students by asking them to make room for the teacher's wheelchair to pass by.

Mahalo,

Suzanne M. Aina

ORIGINAL

6/8/17 Javar to Aina – Javar says both labs are appropriate for Aina’s use with WC.

From: **Darlene Javar** <10014757@k12.hi.us>
Date: Thu, Jun 8, 2017 at 1:47 PM
Subject: Re: Workplace Disability Accommodation Request: Computer Lab Testing Location
To: Suzanne Aina <10059878@k12.hi.us>
Cc: Christina_Juan <10005123@k12.hi.us>, Janice_Ogi <10007961@k12.hi.us>, Lilette_Wheatman <20163765@k12.hi.us>, Rowena del Rosario <10023634@k12.hi.us>

Return of laptop, iPad, and keys is overdue. These must be turned in by 6/9/17, 3:00 pm.

Both labs are currently appropriate for your use. Follow the Procedure for Requesting Reasonable Accommodations if you feel necessary.

6/21/17 Aina to CRCO – Request Accommodation

From: **Sue Aina** <sueaina100@gmail.com>
Date: Wed, Jun 21, 2017 at 4:58 PM
Subject: Request for Disability Accommodations
To: CRCO@hawaiiidoe.org

Aloha DOE Civil Rights Compliance Office,

Attached you will find my request for reasonable disability accommodations Form RA-1.

How long can I expect it to take for my request to be processed?

Mahalo,

Suzanne Aina

ORIGINAL

**DEPARTMENT OF EDUCATION REASONABLE ACCOMMODATION
REQUEST & APPROVAL FORM**

Date of Request: June 21, 2017

School/Complex/Office: Na'alehu Elementary School/KKP Complex

Requestor's Name: Suzanne M. Aina

Requestor is an: Applicant Employee

Position Title and Level: Certified Teacher

Worksite Address: 95-5547 Mamalahoa Hwy, Naalehu, HI (mailing: P.O. Box 170, Na'alehu, HI 96772)

Home Address: [REDACTED]

Work Phone: (808)313-4024 Home Phone: [REDACTED]

APPLICATION

1) The following reasonable accommodation(s) are being requested:

During computer-lab-based testing, Suzanne Aina will be assigned to monitor testing in a location that can physically accommodate unobstructed movement about the room in her wheelchair, and not have to interrupt testing students by asking them to make room for the teacher's wheelchair to pass by.

2) It is necessary for me to have the reasonable accommodation(s) for the following reason(s): (Please include information on the nature of your disability in order to assist the Civil Rights Compliance Office in making a determination)

See Attachment 1.

Suzanne Aina June 21, 2017
Requestor's Signature Date

**DETERMINATION
(For Civil Rights Compliance Office Use ONLY)**

Individual has a disability that substantially limits a major life activity.

Individual does NOT have a disability that limits a major life activity.

The request for reasonable accommodation is:

Approved by Civil Rights Compliance Office. Type of reasonable accommodation agreed upon:

Disapproved by Civil Rights Compliance Office. Reason(s) reasonable accommodation was denied:

Civil Rights Compliance Office Director

Date

Attachment 1

It is necessary for me to have the reasonable accommodation for the following reasons:

ORIGINAL

I am a full-time classroom teacher at Na‘alehu Elementary School. I use an electric wheelchair to perform my job. My disability is documented with the Civil Rights Compliance Office.

At Na‘alehu Elementary School there are two computer labs where students take computer-based assessments, Lab 33 and Lab 1. Lab 33 is a much larger room than Lab 1. Lab 33 is large enough to accommodate my wheelchair so that I do not have to interrupt students while they are taking the test to ask them to move their chairs in so I can get past the obstruction. This is what happened during end of school year assessments in the Spring of 2017 during testing. The constant interruptions are not in the best interests of the students. The arrangement also makes my working conditions more difficult than they need to be.

I requested that in the future, I be assigned to proctor exams in Lab 33 so I do not have to interrupt students all day long. To address concerns that there may not be enough computers for students in Lab 1 if my class, along with me, were assigned to Lab 33, I offered a couple suggestions to overcome that prob

4/17/17 - From: Suzanne Aina

lem as follows.

The only practical solution that accommodates my wheelchair is for me to be assigned to Lab 33 during computer-lab-based testing. This leaves a couple options for distribution of students:

- *My class tests in Lab 33, and two or three students from the other Grade 5 class who will not need much assistance during testing can test in Lab 33 with my class; or*
- *I will assume responsibility for all students in the other Grade 5 class in Lab 33 during testing, while the other Grade 5 teacher monitors my students taking the test in Lab 1.*

The Principal responded:

Both labs are currently appropriate for your use.

This is not true. All throughout this year’s testing in Lab 1 I had to constantly ask students to move their chairs. The Vice Principal was present and witnessed this. An appropriate course of action for the future would be one that does not place my students at a disadvantage with loss of concentration from constant interruptions. An appropriate course of action would be one that shows consideration for the barriers I face as a teacher in a wheelchair and provides the accommodation I seek. An appropriate solution is one that satisfies everyone’s needs. Such a solution is completely possible to accomplish with the two suggestions I offered.

Therefore, I ask that the CRCO grant my reasonable disability accommodations request.

CORRESPONDENCE REGARDING REQUEST

4/16/17 - From: Janice Ogi; cc: Principal Javar.

Hi Sue & Christine,

Instead of switching labs for different SBA tests, I will be assigning each of you to one lab for the duration of testing.

- Sue's class will take all SBA tests in Lab 1.
- Christine's class will take all SBA tests in Lab 33.

ORIGINAL

This change has to be made because of the size of your classes and the number of laptops available in each lab (Lab 1 has a maximum of 28 laptops while Lab 33 has a maximum of 32 laptops). If a couple of laptops go down in Lab 1, Christine's class will not have enough for each student. Did something change? I thought we had the same class size. Lab 1 is more difficult for me to move around.

4/17/17 - From: Darlene Javar

When room 11 was first assigned to you it was with the understanding that you may have more students than the other homeroom class. (This is the same for room 6.) Due to exits and changes, the other fifth grade homeroom has more students at this time. We need to assign labs based on student needs.

As with all teachers, you will have a proctor to ensure proper testing procedures.

6/8/17 – From: Sue Aina

I do not know if I will have access to Lotus Notes once I turn in my work laptop for the summer. So, please reply to this disability accommodation request at my Gmail address. (sueaina100@gmail.com)

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During computer-lab-based testing, Suzanne Aina will be assigned to monitor testing in a location that can physically accommodate unobstructed movement about the room in her wheelchair, and not have to interrupt testing students by asking them to make room for the teacher's wheelchair to pass by.

6/8/17 – From Darlene Javar

Both labs are currently appropriate for your use. Follow the Procedure for Requesting Reasonable Accommodations if you feel necessary.

ORIGINAL

7/5/17 Aina to CRCO -How long will it take to process accommodation request?

From: **Sue Aina** <sueaina100@gmail.com>

Date: Wed, Jul 5, 2017 at 9:38 AM

Subject: Request for Disability Accommodations - When Will It Be Processed?

To: CRCO@hawaiidoe.org

Cc: Anne_Marie_Puglisi@notes.k12.hi.us

Aloha DOE Civil Rights Compliance Office,

It has been two weeks since I sent my request for disability accommodations. Have you received it?

How long can I expect it to take for my request to be processed?

Mahalo,

Suzanne Aina

8/25/17 CRCO: Reasonable Accommodation Denied

DAVID Y. IGE
GOVERNOR



DR. CHRISTINA M. KISHINOKI
SUPERINTENDENT

COPY

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2380
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

CIVIL RIGHTS COMPLIANCE OFFICE

August 25, 2017

Ms. Suzanne M. Aina



Re: Request for Reasonable Accommodation

Dear Ms. Aina:

This letter is written to respond to your request for assignment in a testing lab location at Naalehu Elementary that can physically accommodate unobstructed movement about the room in your wheelchair. Specifically you requested to be assigned to Lab 33, rather than Lab 1. However, after thoughtful and careful consideration of your request, it has been determined that both labs can accommodate safe and reasonably unobstructed movement about the room in your wheelchair.

The space between the tables in the middle of the room and the computers at the perimeter of the room in Lab 1 were measured; there is a clearance of 3 feet between the center tables and the perimeter tables, which should be enough room to accommodate movement in your wheelchair.

It is my understanding that your students will be assigned to Lab 1, and therefore you will also, more than likely, be assigned to Lab 1 as well. Should you have any additional questions, please feel free to contact me at 586-3328.

Sincerely,

Beth Schimmelfennig
Civil Rights Compliance Specialist

- c: Keone Farias, Complex Area Superintendent
- Darlene Javar, Principal, Naalehu Elementary and Intermediate School
- Shane Saiki, Personnel Specialist, Certificated

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

11/17/17 - HCRC Pre-Complaint Questionnaire (PCQ) submitted

See file: HCRC-PCQ-Aina-2017-11-17_signed.pdf

3. Check type of discrimination:

- | | |
|--|---|
| <input type="checkbox"/> Race | <input type="checkbox"/> Sex (includes gender identity & pregnancy) |
| <input type="checkbox"/> Color | <input type="checkbox"/> Sexual Orientation |
| <input type="checkbox"/> Ancestry (includes national origin) | <input type="checkbox"/> Marital Status |
| <input type="checkbox"/> Age | <input type="checkbox"/> Retaliation (opposed discrimination) |
| <input type="checkbox"/> Religion | <input type="checkbox"/> National Guard Obligation |
| <input type="checkbox"/> Credit History or Report | <input type="checkbox"/> Child Support Garnishment |

ATTACHMENT B

COPY

DEPARTMENT OF EDUCATION REASONABLE ACCOMMODATION
REQUEST & APPROVAL FORM

Date of Request: June 21, 2017
School/Complex/Office: Na'alehu Elementary School/KKP Complex
Requestor's Name: Suzanne M. Aina
Requestor is an: Applicant Employee
Position Title and Level: Certified Teacher
Worksite Address: 95-5547 Mamalahoa Hwy, Naalehu, HI (mailing: P.O. Box 170, Na'alehu, HI 96772)
Home Address: [REDACTED]
Work Phone: (808)313-4024 Home Phone: [REDACTED]

APPLICATION

- 1) The following reasonable accommodation(s) are being requested:
During computer-lab-based testing, Suzanne Aina will be assigned to monitor testing in a location that can physically accommodate unobstructed movement about the room in her wheelchair, and not have to interrupt testing students by asking them to make room for the teacher's wheelchair to pass by.
- 2) It is necessary for me to have the reasonable accommodation(s) for the following reason(s): (Please include information on the nature of your disability in order to assist the Civil Rights Compliance Office in making a determination)

See Attachment 1.

Suzanne Aina June 21, 2017
Requestor's Signature Date

DETERMINATION
(For Civil Rights Compliance Office Use ONLY)

- Individual has a disability that substantially limits a major life activity.
 Individual does NOT have a disability that limits a major life activity.

The request for reasonable accommodation is:
 Approved by Civil Rights Compliance Office. Type of reasonable accommodation agreed upon:

Disapproved by Civil Rights Compliance Office. Reason(s) reasonable accommodation was denied:

Civil Rights Compliance Office Director Date

Attachment 1

It is necessary for me to have the reasonable accommodation for the following reasons:

I am a full-time classroom teacher at Na'alehu Elementary School. I use an electric wheelchair to perform my job. My disability is documented with the Civil Rights Compliance Office.

At Na'alehu Elementary School there are two computer labs where students take computer-based assessments, Lab 33 and Lab 1. Lab 33 is a much larger room than Lab 1. Lab 33 is large enough to accommodate my wheelchair so that I do not have to interrupt students while they are taking the test to ask them to move their chairs in so I can get past the obstruction. This is what happened during end of school year assessments in the Spring of 2017 during testing. The constant interruptions are not in the best interests of the students. The arrangement also makes my working conditions more difficult than they need to be.

I requested that in the future, I be assigned to proctor exams in Lab 33 so I do not have to interrupt students all day long. To address concerns that there may not be enough computers for students in Lab 1 if my class, along with me, were assigned to Lab 33, I offered a couple suggestions to overcome that problem as follows.

The only practical solution that accommodates my wheelchair is for me to be assigned to Lab 33 during computer-lab-based testing. This leaves a couple options for distribution of students:

- *My class tests in Lab 33, and two or three students from the other Grade 5 class who will not need much assistance during testing can test in Lab 33 with my class; or*
- *I will assume responsibility for all students in the other Grade 5 class in Lab 33 during testing, while the other Grade 5 teacher monitors my students taking the test in Lab 1.*

The Principal responded:

Both labs are currently appropriate for your use.

This is not true. All throughout this year's testing in Lab 1 I had to constantly ask students to move their chairs. The Vice Principal was present and witnessed this. An appropriate course of action for the future would be one that does not place my students at a disadvantage with loss of concentration from constant interruptions. An appropriate course of action would be one that shows consideration for the barriers I face as a teacher in a wheelchair and provides the accommodation I seek. An appropriate solution is one that satisfies everyone's needs. Such a solution is completely possible to accomplish with the two suggestions I offered.

Therefore, I ask that the CRCO grant my reasonable disability accommodations request.

CORRESPONDENCE REGARDING REQUEST

[4/16/17 Ogi to P.](#)

[4/17/17 P to Javar](#)

[4/17/17 Javar to P](#)

[6/8/17 P to Javar](#)

[6/8/17 Javar to P](#)

[8/25/17 CRCO denies RDA](#)

12/19/17 – HCRC (S. Chang) confirms receipt of PCQ

From: **CHANG, STEPHEN K** <stephen.k.chang@hawaii.gov>

Date: Tue, Dec 19, 2017 at 11:17 AM

Subject: Pre-Complaint Questionnaire
To: sueaina100@gmail.com <sueaina100@gmail.com>

Dear Ms. Aina:

Your Pre-Complaint Questionnaire (“PCQ”) was received by the Hawaii Civil Rights Commission on November 22, 2017. Your PCQ will soon be assigned to an investigator, who will be contacting you for an interview. If you are able to provide sufficient evidence to justify the filing of a complaint of discrimination, the investigation will draft a complaint for your signature. After the signed complaint is returned to us, a charge number will be assigned. If you have further questions, please let me know.

Stephen K.L. Chang
Investigator Supervisor
Hawai`i Civil Rights Commission
830 Punchbowl Street, Rm 411
Honolulu, HI 96813
(808) 586-8648 direct line
(808) 586-8636 main line

2/16/18 – HCRC receives signed complaint

SENDER: COMPLETE THIS SECTION ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	COMPLETE THIS SECTION ON DELIVERY A. Signatures X R. Imai <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by (Printed Name) R. Imai <input checked="" type="checkbox"/> On my Delivery C. On my Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
1. Article Addressed to: Stephen K.L. Chang Hawaii Civil Rights Commission 830 Punchbowl St. Room 411 Honolulu HI 96813  9590 9402 2144 6193 9988 08	3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted® <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted
2. Article Number (Transfer from service label) 7016 1370 0002 2780 1933 Restricted D	Tracking Number: 70161370000227801933 Expected Delivery by FRIDAY 16 FEBRUARY 2018 by 8:00pm
PS Form 3811, July 2015 PSN 7530-02-000-0053	Status <input checked="" type="checkbox"/> Delivered February 16, 2018 at 8:51 am Delivered, Front Desk/Reception HONOLULU, HI 96813

COPY

2019 Correspondence Re: Computer Lab Assignment

2/20/18 - HCRC to HODOE CRCO: Notice of Filing of Discrimination Complaint

COPY



HAWAII CIVIL RIGHTS COMMISSION

830 PEARL AND ST. STREET, ROOM 411 • HONOLULU, HI 96813-3095 • PHONE: (808) 586-8636 • FAX: (808) 586-8655 • TTY: (808) 586-8602

February 20, 2018

RECEIVED
FEB 22 2018
CIVIL RIGHTS
COMPLIANCE OFFICE

Anne Marie Puglisi, Director
Civil Rights Compliance Office
State of Hawaii
Department of Education
1390 Miller Street, Room 416
Honolulu HI 96813

Dear Ms. Puglisi:

**Re: Suzanne M. Aina vs. State of Hawaii, Department of Education,
Na'alehu Elementary School
FEPA No. H-20039; EEOC No. 37B-2018-00061**

NOTICE OF FILING OF DISCRIMINATION COMPLAINT

Enclosed is a copy of a complaint that has been filed with the Civil Rights Commission in accordance with Section 368-3 of the Hawaii Revised Statutes. This constitutes service of the complaint pursuant to Section 12-46-7 of Hawaii Administrative Rules.

The Civil Rights Commission does not request any action by you at this time. You will be notified by the Commission when any further official action is taken.

If you have any questions, please contact the investigator named below.

Investigator: **Stephen K.L. Chang**

Sincerely,

William D. Hoshijo
Executive Director

WDH:ky

Enclosure

Certified Mail-Return Receipt Requested

DOE - 000240

3/7/18 - HCRC to Aina: This complaint withdrawn due to complainant elected court action.



HAWAII CIVIL RIGHTS COMMISSION

COPY

830 PUNCHBOWL STREET, ROOM 411 • HONOLULU, HI 96813-5005 • PHONE: (808) 586-8636 • FAX: (808) 586-8655 • TTY: (808) 586-8692

March 7, 2018

Ms. Suzanne M. Aina
c/o Lunsford Dole Phillips, Esq.
7 Waterfront Plaza, Suite 400
500 Ala Moana Boulevard
Honolulu HI 96813

**Re: Notice of Dismissal and Right to Sue in
Suzanne M. Aina vs. State of Hawaii, Department of Education, Na'alehu Elementary
School
FEPA No. H-20039; EEOC No. 37B-2018-00061**

Dear Ms. Aina:

The investigator assigned to handle subject discrimination complaint which you filed with the Hawaii Civil Rights Commission (HCRC) has recommended that the case be closed on the basis of complaint withdrawn due to complainant elected court action.

Please be advised that this recommendation has been accepted, your case has been closed effective March 7, 2018 and your complaint is being dismissed pursuant to Hawaii Administrative Rules (H.A.R.), Section 12-46-8. You have the right to file a private lawsuit against Respondent in the State Circuit Court within ninety (90) days after receipt of this notice pursuant to Hawaii Revised Statutes, Section 368-12, H.A.R. Section 12-46-20.

Sincerely,

Handwritten signature of William D. Hoshijo.

William D. Hoshijo
Executive Director

WDH:ky

Certified Mail-RETURN RECEIPT REQUESTED

c: Anne Marie Puglisi, Director ✓

DOE - 000239

2018-2019 Na'alehu School Class Sizes

The number of students in each of the Grade 5 classes in School Year 2018-2019.

COPY

Grade	Hmrm #	Last Name	First Name	Total Student Count
1	P-5	Jaremski-Kahakua	Karen	16
1	P-4	Sales	Dale	16
1	P-3	Santiago	Dayna	16
2	5	Holderbaum	Ryan	20
2	4	Kawazoe	Janine	22
2	3	McRoberts	Janice	20
3	6	Acevedo	Rose	22
3	2	Jara	Cherrish	19
3	13	Pelletier	Dawn	18
4	9	Conner	Diwa	27
4	8	Pablo	Kuulei	27
5	11	Aina	Suzanne	20
5	12	Greedy	Rachael	18
5	14	Zook	Audra	20
6	34	Keohuloa	Amberly	30
6	31	Zamudio	Olivia-Ann	28
91	20	Davis	Nellie	19
91	P-2	George	Brittney	18
91	P-8	Whiting	K. Raina	18
92	15	Badua	Shelly	14
92	22	Porter	Carol	14
93	32	Olson	Jennifer	6
2/1/2019				42

3/5/19 - P Request for Computer Lab Accommodation

DEPARTMENT OF EDUCATION REASONABLE ACCOMMODATION
REQUEST & APPROVAL FORM

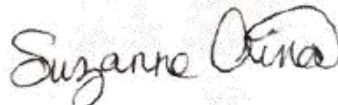
ORIGINAL

Date of Request: March 5, 2019
 School/Complex/Office: Na'alehu Elementary School/KKP Complex
 Requestor's Name: Suzanne M. Aina
 Requestor is an: Applicant Employee
 Position Title and Level: Certified Teacher
 Worksite Address: 95-5547 Mamalahoa Hwy, Naalehu, HI (mailing: P.O. Box 170, Na'alehu, HI 96772)
 Home Address: [REDACTED]
 Work Phone: (808)313-4024 Home Phone: [REDACTED]

APPLICATION

- 1) The following reasonable accommodation(s) are being requested:
I request that I be assigned to Computer Lab 33 instead of Lab 1 because it is more spacious and better able to accommodate a teacher working in a wheelchair.
- 2) It is necessary for me to have the reasonable accommodation(s) for the following reason(s): (Please include information on the nature of your disability in order to assist the Civil Rights Compliance Office in making a determination)

See pp. 2-5 of this form.



Requestor's Signature

3/5/19

Date

DETERMINATION

(For Civil Rights Compliance Office Use ONLY)

Individual has a disability that substantially limits a major life activity.

Individual does NOT have a disability that limits a major life activity.

The request for reasonable accommodation is:

Approved by Civil Rights Compliance Office. Type of reasonable accommodation agreed upon:

Disapproved by Civil Rights Compliance Office. Reason(s) reasonable accommodation was denied:

Civil Rights Compliance Office Director

Date

Suzanne M. Aina

email:
home

March 5, 2019

Hawaii State Department of Education
Civil Rights Compliance Office
P.O. Box 2360
Honolulu, HI 96804

**re: Application for Reasonable Disability Accommodation:
Assignment to Larger School Computer Lab to Accommodate Wheelchair.**

Aloha,

Coincident with this RDA (Request for Disability Accommodations) CRCO Form RA-1, I have submitted a CRCO Discrimination Complaint Form RS 17-1376 requesting that Beth Schimmelfennig not be assigned to handle this RDA. My CRCO Form RA-3 medical verification documenting my permanent disability, and the fact that I use an electric wheelchair as an assistive device, should be on file with the CRCO.

I request that I be assigned to Computer Lab 33 instead of Lab 1 because it is more spacious and better able to accommodate a teacher working in a wheelchair. Also, Lab 33 is closer to my wheelchair-safe emergency evacuation route.

My wheelchair is 24.25 inches wide with a turning radius of 2 feet (diameter = 4 ft). It is not possible to turn my wheelchair in Lab 1 when students are seated at the desks. My movement in Lab 1 is limited to forward and backward motions. It is so cramped that I'm constantly having to interrupt my students asking them scoot in their chairs so I can move through Lab 1. Getting in and out of the Lab 1 door when students are seated is impossible. Getting into the door where there is a very small turning radius due to a metal railing is difficult. Entry difficulties are compounded by a door that opens inward.

Lab 33 is more spacious, easier for me, and easier for my students. There are no obstacles getting into Lab 33. The door opens outward (a benefit when in a wheelchair). I'm able to turn my wheelchair around in the room with ease. Lab 33 is closer to my wheelchair-safe evacuation route on pavement.

Please see the pictures on pp 3-4 with side-by-side comparisons of the two Labs. Wheelchair dimensions are on p. 5. I think that any reasonable person can see that Lab 1 is not an appropriate assignment for a class whose teacher is in a wheelchair when a much better option is readily available.

Lab #	# of Student Lab Stations
1	23
33	42

Grade	Teacher	Student Count	Must test in Lab 33
1	A	16	
1	B	16	
1	C	16	
2	D	20	
2	E	22	
2	F	20	
3	G	22	
3	H	19	
3	I	18	
4	J	27	✓
4	K	27	✓
5	Sue Aina	20	
5	L	18	
5	M	20	
6	N	30	✓
6	O	28	✓

10 classes use Computer Labs for testing.
4 classes are too large for Lab 33.
6 classes could be assigned to Lab 1.
Aina could easily be assigned to Lab 33.

Grades 3-6 are "tested" grade levels.

Thank you,

Sue Aina
Suzanne M. Aina

Lab 33

- Access route is spacious.
- Closer to wheelchair-safe emergency exit route.



Lab 1

ORIGINAL

- Only about 2 inches of clearance on either side of wheelchair.
- Farther away from wheelchair-safe emergency exit route.



Entryway clearance: 86 cm



Entryway clearance: 84 cm

Lab 1

- A very tight turning radius to get in through the door.
- Sue often bumps her chair on doorframe and metal railing.
- Door swings in.

Lab 33

- Clear, unobstructed entry.
- Door swings out and is easier to open.





Lab 33

- Looking in.
- Clear, unobstructed entry.
- No student computer stations in the entryway.



- Looking out.
- View of entrance door from inside the Lab 33.



Lab 1

- Looking in.
- When students are sitting at computer entry, exit is obstructed.

COPY



- Looking out.
- View of entrance door from inside Lab 1.



Lab 33

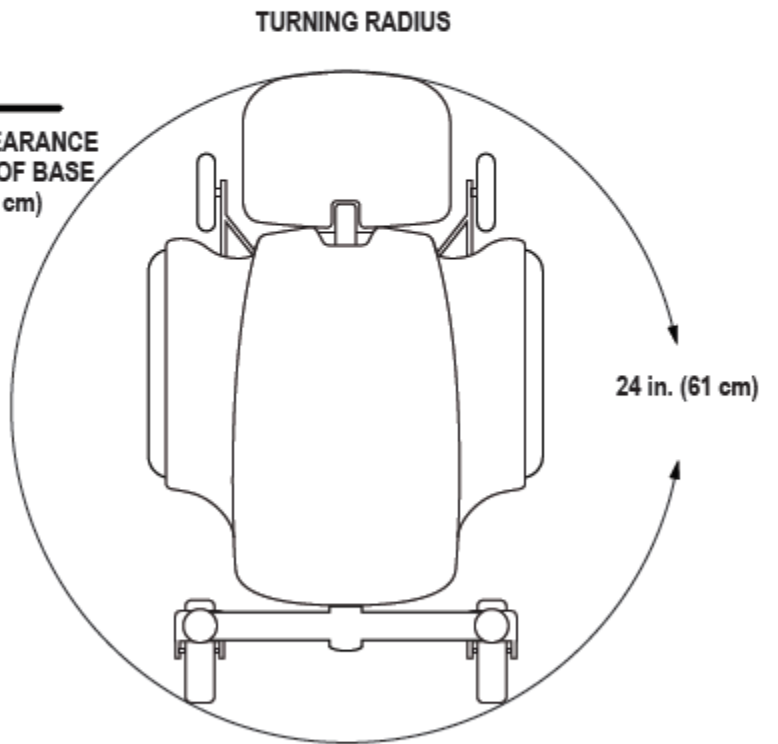
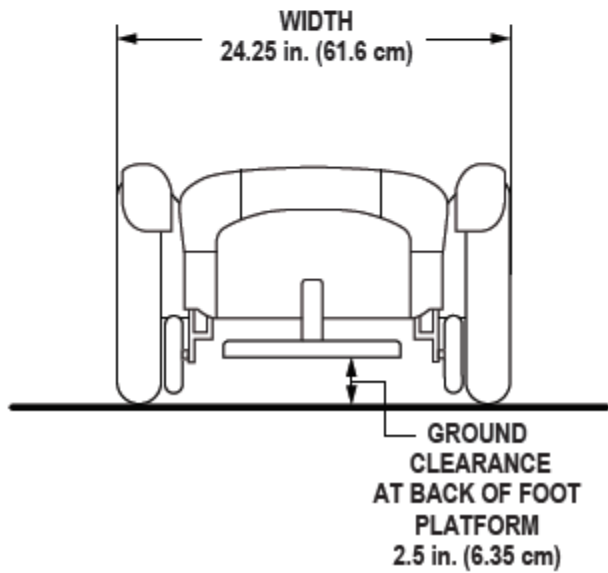
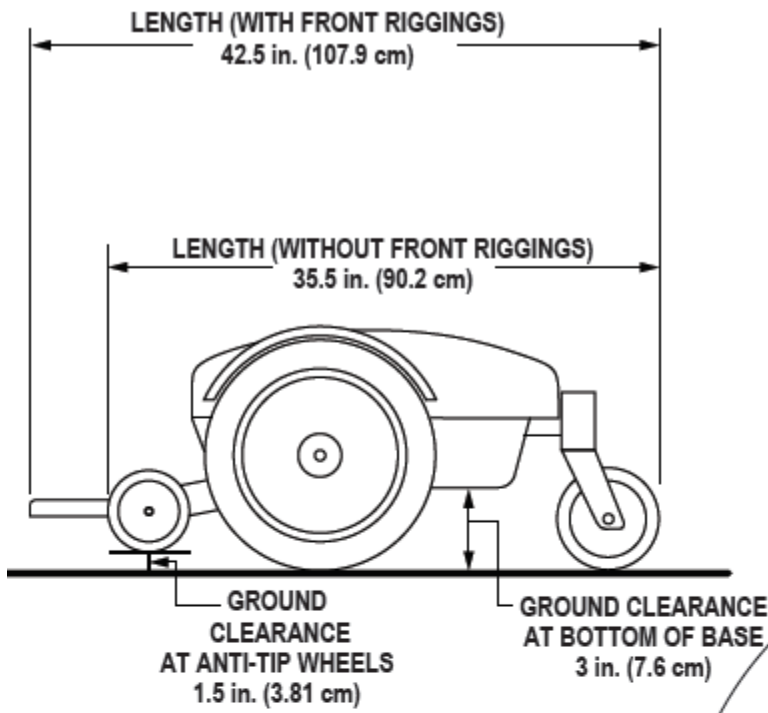
- Much larger room.
- Space for wheelchair to reach every student.



Lab 1

- When students are sitting at computer stations, Sue has a difficult time navigating through Lab 1 with her wheelchair.







STATE OF HAWAII
 DEPARTMENT OF EDUCATION
 Civil Rights Compliance Office
 P.O. Box 2131
 Honolulu, Hawaii 96804
 Phone: (808) 586-3322 • FAX: (808) 586-3331
 Email: CRCO@notes.k12.hi.us

**DISCRIMINATION
 COMPLAINT FORM**
 BOE Policy #900-1

ORIGINAL

COMPLAINANT INFORMATION

Name	Last Name Aina	First Name Suzanne	Middle Name Marie
Address	Number and Street [REDACTED]	City [REDACTED]	State [REDACTED] Zip [REDACTED]
Phone	Home Phone [REDACTED]	Work Phone 808 313-4024	
Job Title	Certified Teacher (currently Grade 5)	School/Office	Na'alehu Elementary School

COMPLAINANT STATUS (Check Applicable Box)

Employee Applicant Volunteer Other (Specify) _____

ALLEGED OFFENDER(S) (If Known)

Name	Job Title	Organization
Darlene Javar	Principal	Na'alehu Elementary School
Beth Schimmelfennig	Civil Rights Compliance Specialist	State of Hawaii Department of Education Civil Rights Compliance Office (CRCO)

BASIS OF COMPLAINT (Check Applicable)

Race Religion National Origin National Guard Service Physical/Mental Disability Domestic or Sexual Violence Victim
 Color Ancestry Sexual Orientation Uniform Service Marital Status Breast Feeding
 Age Retaliation Veteran Status Arrest/Court Record Child Support Sex, including Gender Identity & Expression
 Genetic Information Citizenship Status Credit History

Date(s) of Incidents **Ongoing since April 16, 2017.**

COMPLAINT SUMMARY (Identify: Who, What, When, and Where)

Please see pages 2-4 of this Discrimination Complaint.

Regarding witnesses and evidence:

- See file: *2019-03-05-Attachment1-Correspondence.pdf*
 [A chronological compilation of written correspondence on this issue.]

(Additional pages may be submitted)

WITNESS INFORMATION (Provide Names of Witnesses)

Name	Address/Organization	Phone
See: 2019-02-25-Attachment1-Correspondence.pdf		
Name	Address/Organization	Phone

Statement: The information provided above is truthful and correct to the best of my knowledge.

Date Received By CRCO:

Suzanne M. Aina

 Complainant's Signature

3 / 5 / 2019

 Date



In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require reasonable accommodations due to a disability, please contact a supervisor, principal, complex area superintendent, or assistant superintendent.

DISCRIMINATION COMPLAINT FORM

RS 17-1376, May 2017 (Rev. of RS 17-0061)

ORIGINAL*Suzanne M. Aina*

email: [REDACTED]

home: [REDACTED]

February 25, 2019

Anne Marie Puglisi, Director
 Hawaii State Department of Education
 Civil Rights Compliance Office
 P.O. Box 2360
 Honolulu, HI 96804

re: COMPLAINT SUMMARY

Discriminatory Retaliation: Assigned to a computer lab not appropriate for teaching in a wheelchair.

Aloha Ms. Puglisi,

Coincident with this complaint of discriminatory retaliation, I am submitting to the CRCO a new request for the disability accommodation (RDA) of assignment to the school computer lab that better accommodates my wheelchair. I ask that someone other than Beth Schimmelfennig handle both the RDA and this complaint to mitigate any conflict of interest her involvement poses.

I am a physically handicapped Grade 5 DOE teacher who uses an electric wheelchair at work. Since 2012 I have struggled to get very reasonable disability accommodations that cost nothing to provide and are legally required by the Americans with Disabilities Act, federal, and state law. In 2015, I had to secure the services of a civil rights attorney to assist me in asserting my legal right to ADA civil rights protections. At the beginning of March 2017, the Plaintiff (Sue Aina) and Defendant (Principal Darlene Javar and the DOE) were informed by their attorneys that settlement attempts had failed and the case would be going to trial. A month and a half later, the Principal retaliated against me by reassigning me to the smaller of the school's computer labs (Lab 1) instead of Lab 33 which is more spacious and where I had been assigned before. Since that time (April 2017) I have been permanently assigned to, and must deal with the conditions of cramped Lab 1. For the past two years, this act of retaliation has had the expected effect of making my teaching duties more difficult (as explained in the RDA).

Historical Perspective

- October 26, 2015 – Discrimination Complaint filed by attorney representing Sue Aina (Plaintiff); State of Hawaii Department of Education (Defendant). [CIVIL NO. 15-2057-10 VLC].
- February 28, 2017 – Pretrial Statement filed by attorney representing Sue Aina when out-of-court settlement could not be achieved.
- April 16, 2017 – Principal changes Aina's assigned classroom testing room from the larger Lab 33 to Lab 1 which is not suitable for a teacher in a wheelchair. The computer lab assignment has remained unchanged for the past two years.
- June 21, 2017 – Aina files a request for reasonable accommodation with SoH Department of Education CRCO for assignment to Lab 33.
- August 25, 2017 – Beth Schimmelfennig of the CRCO denies requested accommodation.

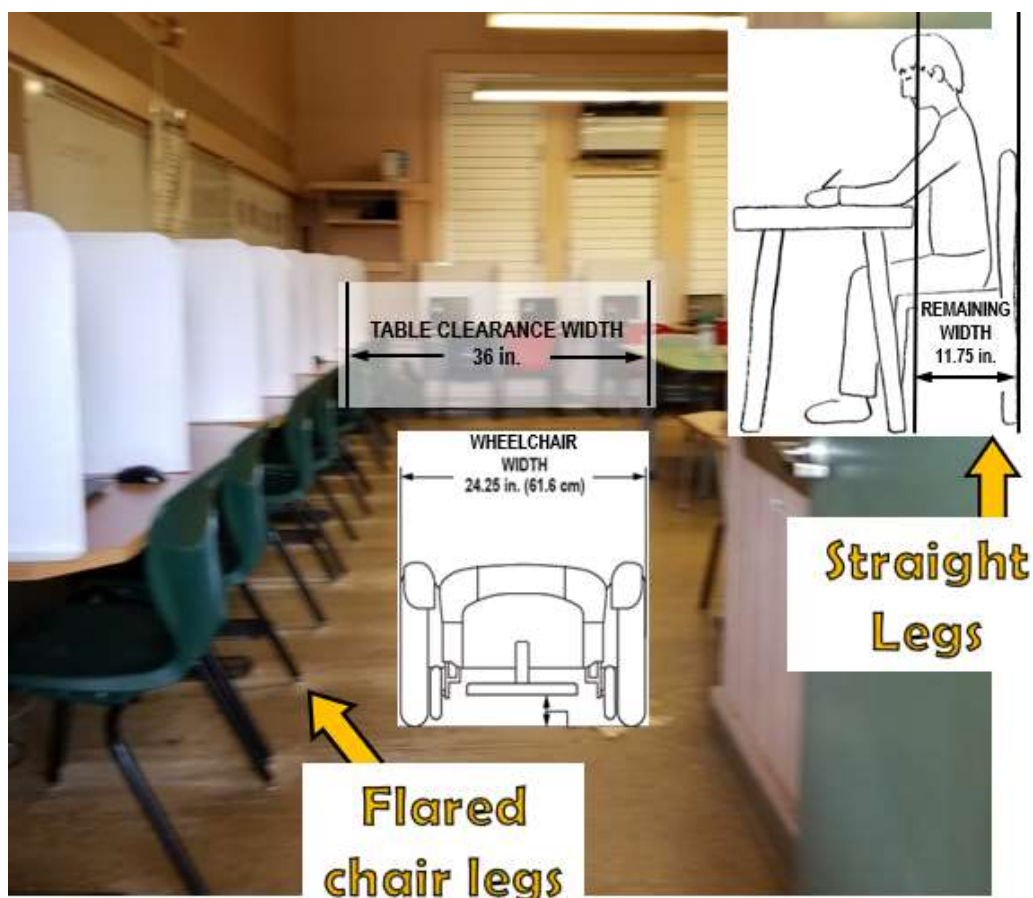
ORIGINAL

In June 2017, I submitted to the CRCO my request for an RDA of assignment to a more spacious Lab 33. Two months later, the CRCO denied my RDA, thereby supporting the Principal's retaliatory action, stating that *"There is a clearance of 3 feet between the center tables and the perimeter tables, which should be enough room to accommodate movement in your wheelchair."*

Basic mathematics and common sense prove the fallacy in that reasoning. The wheelchair is 24.25 inches wide with a turning radius of 2 feet (diameter = 4 ft). Therefore, turning the wheelchair around in Lab 1 is impossible with only a 3-ft. clearance between tables. So, my movement in Lab 1 is limited to forward and backward motions. How would other teachers cope with being able to move in only a forward and backward motion and not being able to turn around in a classroom? I think they would be as frustrated as I have been for the past two years.

Also, a 3-foot table clearance leaves only 11.75 inches for an 11 to 12-year-old sitting in a chair with flared legs. The picture below shows how unfeasible that is. My students are constantly being interrupted with my requests to scoot in their chairs so I can to move about Lab 1.

$$36'' - 24.25'' = 11.75''$$



It has been time consuming to fight the retaliation. Public school teachers spend long hours just doing their jobs. Physically handicapped teachers spend even longer hours, and in my case, I have a lot of physical therapy and doctor's appointments to go to as well which are an hour and a half drive from Naalehu (at the southern tip of the Big Island). That is why it has taken me so long

to file this discrimination complaint along with filing *another* RDA in an attempt to rectify the injustice that began two years ago when the Principal retaliated against me and assigned me to Lab 1.

ORIGINAL

This is not the only incidence of retaliation I've experience since I first began asserting my civil rights seven years ago. The Principal's retaliation often takes the form of rules and assignments that make my working life in a wheelchair more difficult by placing barriers in my way or refusing to remove them, and then claiming I'm being treated equally. Most of the time, the CRCO "sides" with the Principal, denies my *very* reasonable accommodation requests, and in effect is party to the Principal's retaliatory measures. Nothing I say ever seems to matter; I face discrimination all the time, and have been burdened with many time-consuming battles for justice.

The Crippen cartoon to the right is famous in handicapped circles because it illustrates how clearly "equal" treatment does not ensure "equitable" treatment. Unless all the other teachers who are relegated to Lab 1 have to be attached to a device that limits their mobility to only forward and backward motions, and is 24.25 inches wide so they have to interrupt their students to get past, then I am being treated inequitably. The *only* purpose served by forcing me (the only teacher at the school in a wheelchair) to work in Lab 1 as my permanent assignment as opposed to the more spacious Lab 33 for the past two years is to intentionally make my working life more difficult. Can there be any other purpose?



This is spacious Lab 33.



The fact that the Principal made this cruel decision soon after the lawsuit settlement talks ended and a court date was arranged is too coincidental to not be an obvious form of retaliation.

Supporting Facts

In addition to the above information, a record of earlier correspondence on this matter is in the attached file:
Correspondence-ComputerLab-Assignment-2017.pdf

Immediate Remedies Sought

I would like someone with a clear understanding of the ADA requirements to provide workplace accommodations to handle my RDA (submitted separately) who is not Beth Schimmelfennig.

I would like to be granted the RDA (submitted separately) as soon as possible, and be permanently assigned to use Lab 33 whenever I must be with my students in a school computer lab because it is a more appropriate space for my wheelchair. End-of-year testing is approaching soon, and I would appreciate this very reasonable disability request as soon as possible.

Thank you,

Suzanne M. Aina

Suzanne M. Aina

5/23/19 – Ferm to Phillips: Javar will allow Aina to Use Larger Computer Room. Ferm offers a settlement.

From: "Ferm, Dennis K" <dennis.k.ferm@hawaii.gov>
Subject: RE: Aina
Date: May 23, 2019 at 9:04:30 AM HST
To: Lunsford Phillips <lunsfordphillips@icloud.com>

Lunsford:

I have spoken with Principal Javar regarding accommodating Ms. Aina by having her and her class use the larger computer classroom. Principal Javar will provide this accommodation for her. Principal Javar believes that the larger classroom will, in fact, be more inconvenient for Ms. Aina because the electrical outlets are on the floor which requires that the students' desks be in rows. This will prove to be more inconvenient for Ms. Aina and the students, but, for the sake of resolving this matter, she is willing to have Ms. Aina in the larger classroom.

I will recommend settlement of both lawsuits for \$10,000. The State will not apologize or admit liability incident to settlement.

Please let me know your position.
dennis

9/9/19 – Aina: would like to meet with Javar re: my RDA for Lab 33 assignment

From: Suzanne Aina <suzanne.aina@k12.hi.us>
Date: Mon, Sep 9, 2019 at 7:33 AM
Subject: Computer Lab RDA
To: Darlene Javar <darlene.javar@k12.hi.us>

Hi, Darlene .

I would like to meet with you early this week regarding my RDA to be assigned to Lab 33 for testing of my students. I am available after school today, tomorrow and Wednesday after Staff Extended Meeting. When would you be available to meet?

Attached is a copy of the DOE RDA request from March.

Thanks, Sue

attachment: *2019-03-05-RDA-Aina-LabAssignment (3).pdf*

9/10/19 – Javar: See me immediately after PD. Bring CRCO decision.

On Tue, Sep 10, 2019 at 10:55 AM Darlene Javar <darlene.javar@k12.hi.us> wrote:

Hi Sue,

Please see me tomorrow immediately after PD. I will come to your room. The attached does not include CRCO decision. Please bring.

Mahalo!

9/10/19 – Javar: You will test your students in your classroom.

On Tue, Sep 10, 2019 at 11:14 PM Darlene Javar <darlene.javar@k12.hi.us> wrote:

ORIGINAL

Sue,

When you came by VP Medeiros' office to see me, I asked for the 'decision' copy of the RDA. You stated that you did not submit it.

I understand that your loaner chair is harder for you to navigate since you just got it. For September eEvaluate testing, please follow schedule, but test in your classroom using chromebooks.

Darlene

9/12/19 – Javar: You didn't come to our 3:20 meeting. You may schedule a meeting with me when I return from my trip next week.

On Thu, Sep 12, 2019 at 11:55 AM Darlene Javar <darlene.javar@k12.hi.us> wrote:

On Wednesday you may have forgotten our 3:20 meeting. When I saw you on the road at 3:55, you said you were coming to see me. As I explained, I was unable to meet later because I had a flight to catch. I was hoping to see you as my last appointment of the day. You may schedule a meeting with me if still needed when I get back later next week.

9/17/19 @7:03am – Aina: Loaner Scooter is too big for my classroom and Lab 1. If I can't test in Lab 33, I'll have to reschedule testing. I was in a mandatory training at 3:20, and you knew this.

From: **Suzanne Aina** <suzanne.aina@k12.hi.us>

Date: Tue, Sep 17, 2019 at 7:03 AM

Subject: URGENT- NOT PHYSICALLY POSSIBLE FOR ME TO TEST IN MY CLASSROOM

To: Darlene Javar <darlene.javar@k12.hi.us>, Adria Medeiros <adria.medeiros@k12.hi.us>

Aloha Darlene and Adria,

The loaner scooter is too big for me to get around my classroom. It's also too big to get into Lab 1. The only way for me to be able to access my students during testing on September 18th is for me to do it in Lab 33. I thought I explained all this when I spoke with you by VP Medeiros's office early last week. It's not that the scooter is harder to navigate. There was a misunderstanding. The problem is the loaner scooter is just too big to use in certain rooms.

I'm pretty sure that you have the authority to grant a reasonable

disability accommodation request without having to get permission from the CRCO. Isn't that right? You certainly have the authority to assign me to Lab 33 for testing whether it's a RDA or not. So, the fact that I haven't submitted to the CRCO a second request for assignment to Lab 33 as an RDA is irrelevant.

I apologize for being late to our 3:20 meeting last Wednesday, but you knew that I was attending a required Professional Development FERPA certification training because you saw me there when it started. I didn't have any control over when I got out of that mandatory training and no control over being late to the 3:20 meeting you arranged.

I cannot physically get around my classroom in this loaner scooter (the only one I could get while mine is repaired). I cannot even get into the door of Lab 1 because the available turning radius in front of the door is not at all sufficient. The landing doesn't meet ADA requirements for the scooter, and probably not for my wheelchair either.

There are only 2 physically possible solutions for testing my students on September 18, 2019:

- 1) let me proctor my students while they take their tests in Lab 33; or
- 2) bring in someone without a wheelchair to proctor the tests in my room.

September 18th testing for my students is about to commence and the only option you've given me isn't physically possible. Darlene, you or Christina need to make the choice of the only two possible options ASAP. Otherwise, until this is straightened out, I have no choice but to reschedule testing for my students and deliver regular lessons in my classroom instead.

Thank you,
Sue

9/17/19 – Aina: Procedure for Requesting accommodation states Principal can grant assistance ORIGINAL

From: Sue Aina <sueaina100@gmail.com>

Date: Tue, Sep 17, 2019 at 7:49 AM

Subject: CRCO brochure says Principal can provide assistance w/o CRCO permission

To: Suzanne Aina <suzanne.aina@k12.hi.us>

In CRCO RDA brochure, section titled Procedure for Requesting Accommodation states Principal can grant assistance, but it won't be called RDA.

individual” the administrator is not obligated to provide reasonable accommodations. The administrator may provide some form of assistance, but it shall not be called a reasonable accommodation for ADA purposes.

This is last sentence on p. 2, item #3 in brochure:

<http://www.hawaiipublicschools.org/DOE%20Forms/Civil%20Rights/ReasonAccomBrochure.pdf>

9/17/19 @ 3:45 pm – Ferm to Phillips: Javar will not allow Aina to use larger computer classroom claiming that floor outlets are a problem.

On Sep 17, 2019, at 3:45 PM, Ferm, Dennis K <dennis.k.ferm@hawaii.gov> wrote:

>

> Lunsford:

> I told you months ago that the computer lab that your client thinks will be a better fit for her will, in fact, not be. The electrical outlets are on the floor so your client would have more difficulty moving around and will require her students to move furniture more so than in the other lab.

>

> dennis

Aina's correspondence to her attorney re: Lab 33 vs. Lab 1

EXPLANATION

This statement made by Dennis Firm paraphrasing Principal Javar's statements is **false**:

The electrical outlets are on the floor so your client would have more difficulty moving around and will require her students to move furniture more so than in the other lab.

The **truth**:

The electrical outlets are located beneath the tables. They have to be under the tables otherwise it would present a safety hazard – something students and adults might trip over.

ORIGINAL

The following pictures of Lab 33 were taken on a random day during School Year 2018 – 2019.

- pp. 3-5: electrical outlets under tables
- p. 6: walkways between tables
- p. 7: diagram of the Lab 33 layout (not drawn to scale)
- pp. 8-13: Excess clutter in Lab 33

As you will see from the pictures of all the clutter in Lab 33, it is possible to make a very large room either walkway (and wheelchair) friendly or *not* by filling it up with boxes, clutter, chairs and equipment. There are storage cabinets not being used. There are boxes and equipment all around the room even though the school has a large storage unit and the Lab 33 has a lot of storage cabinets. Regardless, even with this clutter, Lab 33 is more spacious than Lab 1. If Darlene would allow Sue to take measurements with someone's assistance, we can mathematically prove it.

Prior to Spring 2017 when this type of retaliatory harassment commenced (Sue's unnecessary assignment to Lab 1), Sue had always been assigned to Lab 33 for testing because of the obvious need for more space due to her assistive devices (a walker or wheelchair). Sue does not have pictures of what Lab 1 looked like in the Spring of 2017, but it was cluttered and cramped even more than what it is today. In the Summer of 2017, the room was cleaned up and better organized. However, to this day, the maneuvering space at the doorway and around the Lab 1 is still smaller than what Lab 33 currently offers.

If Lab 33 were cleaned up, organized, and all the clutter put away, it would be enormous compared to Lab 1.

We have no doubt Darlene will not support this because of her record of being unwilling to make minor adjustments to accommodate Sue, which is actually a form of retaliation and discrimination. Also, based on past experience, there's a high probability Darlene and her accomplices will introduce more clutter and/or move tables and chairs to prove her false claims that Lab 1 is easier to navigate.

PICTURES

Left Table

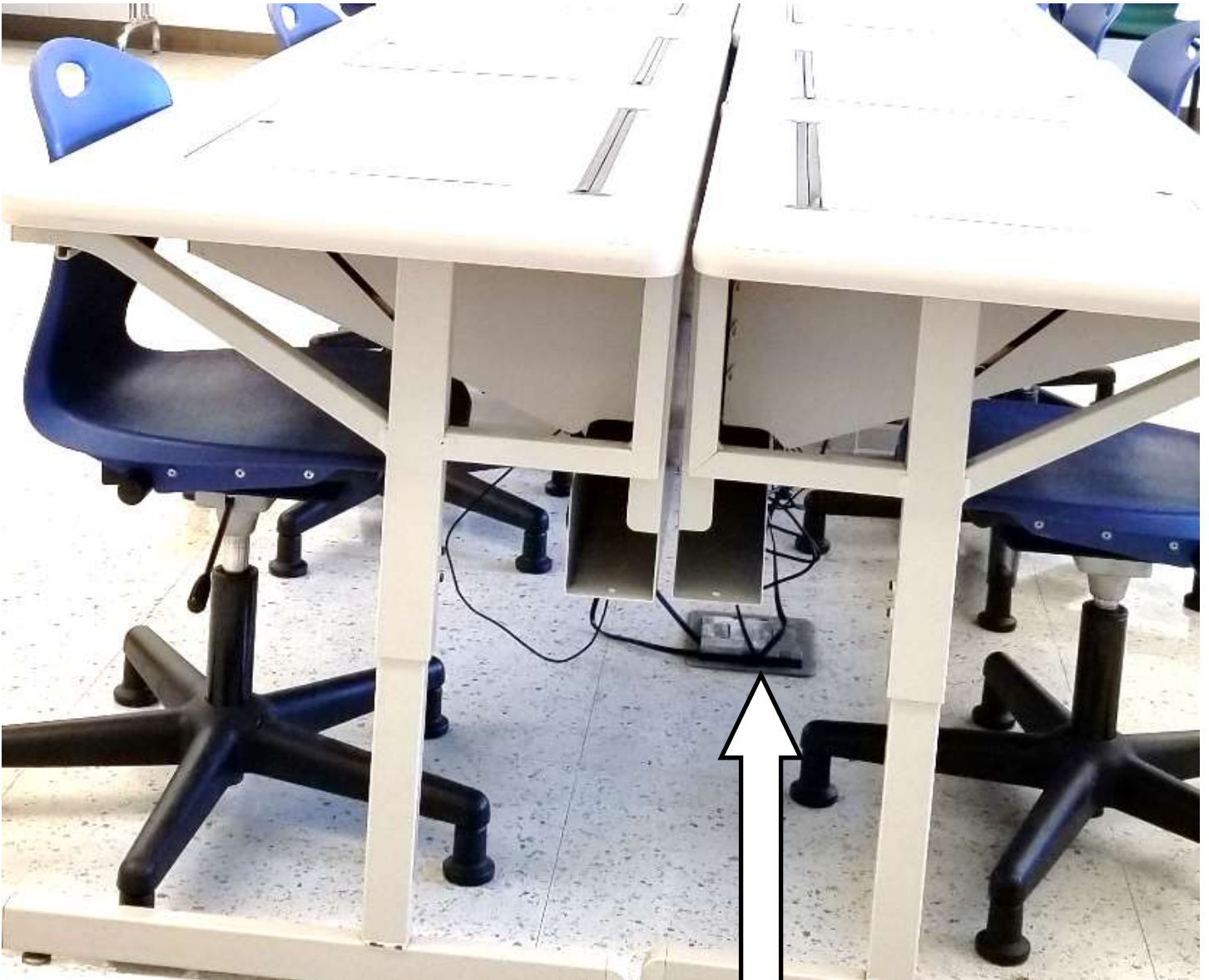
ORIGINAL



electrical outlets

ORIGINAL

Middle Table



electrical outlets

ORIGINAL

Right Table



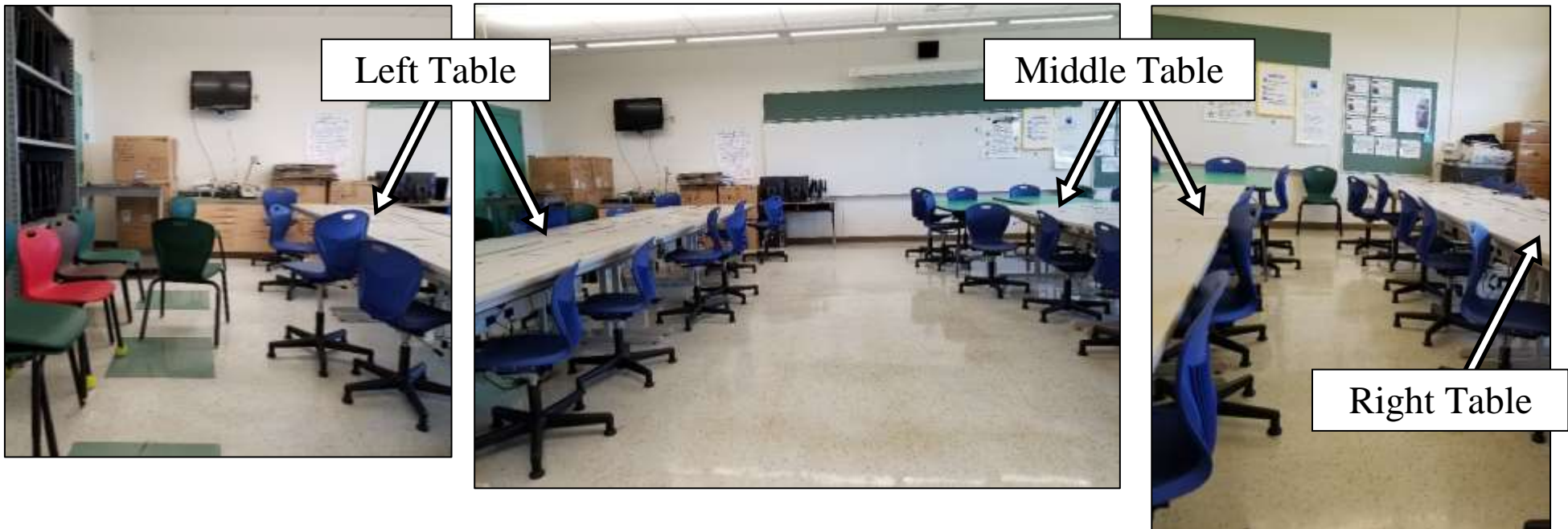
electrical outlets

Walkways between rows of tables

ORIGINAL

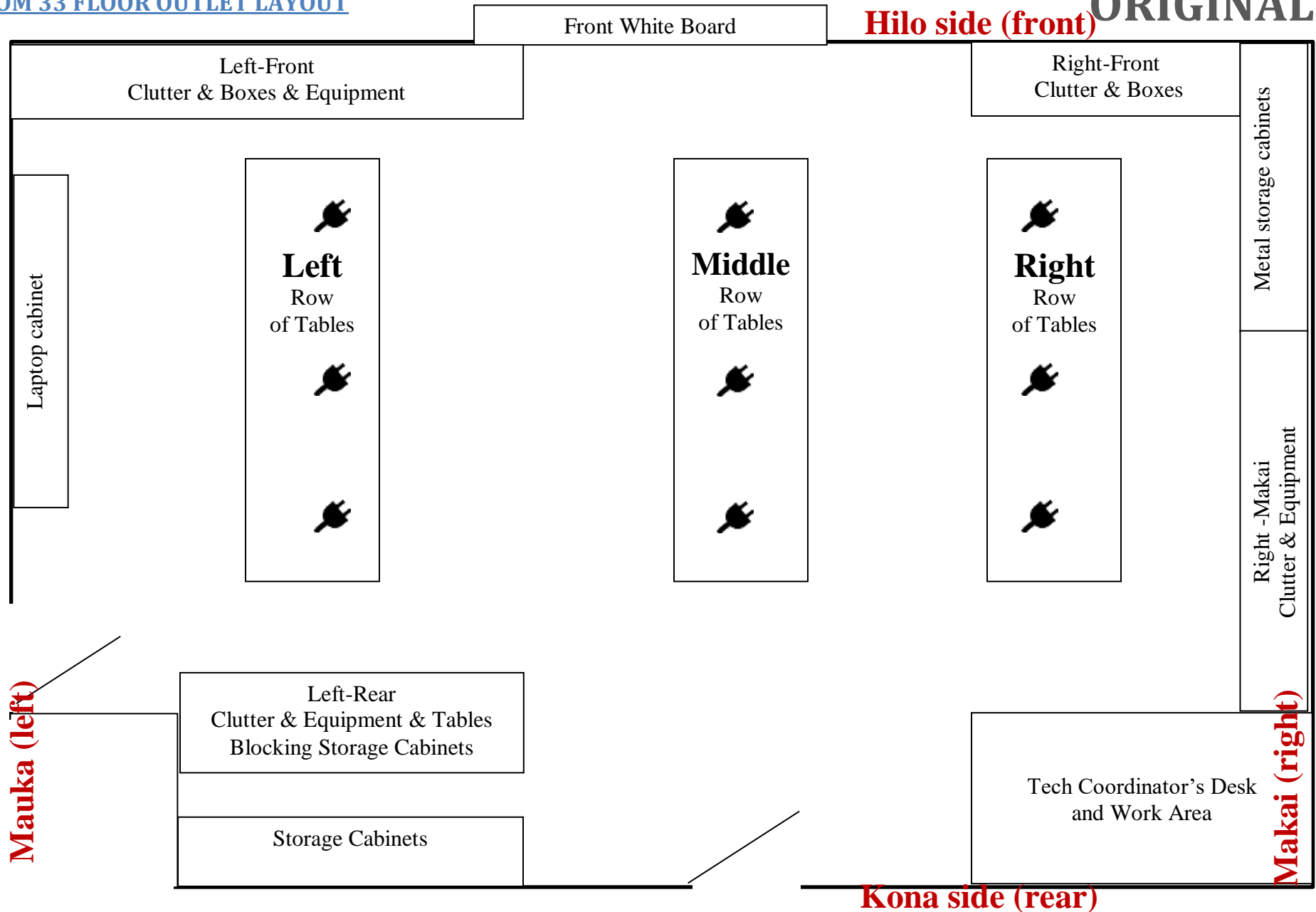
There are no electrical outlets in the way of foot and wheelchair traffic.

If there were, it would be a safety hazard for children and adults.



ROOM 33 FLOOR OUTLET LAYOUT

ORIGINAL



Left-Front Clutter

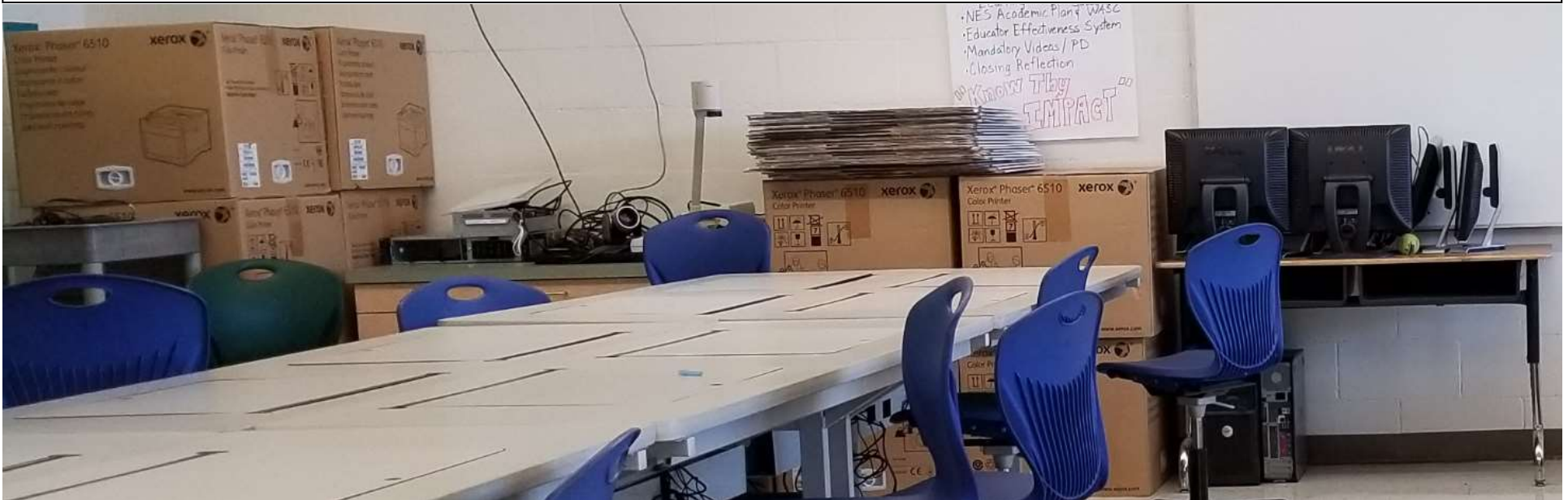
ORIGINAL



Left-Front Clutter

ORIGINAL

Boxes and equipment not in storage or storage cabinets.



Right-Front Clutter

ORIGINAL

Boxes and equipment not in storage or storage cabinets.



Right-Makai Clutter

ORIGINAL

Not a judicious use of space. Unused equipment lying around.



Left-Rear Clutter

ORIGINAL

Tables blocking storage cabinets. Boxes & equipment lying around.



ORIGINAL

Left-Rear Clutter

Tables blocking storage cabinets. Boxes & equipment lying around.



Laptop cabinet