

DOCUMENTATION OF ADA ACCOMMODATION: ROOM 11 ASSIGNMENT

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May 9, 2016 Agreement in Aina v. DOE Resolution Negotiations

Below is a letter dated May 9, 2016, from then State of Hawai‘i Deputy Attorney General, Bosco Petricevic, granting the reasonable accommodation of Ms. Aina’s assignment to Room 11 on behalf of the Department of the Attorney General’s client, the DOE (see agreement below with added **yellow highlight**). Mr. Petricevic’s email letter was sent to Lunsford Phillips, Ms. Aina’s attorney at that time. Mr. Phillips forwarded the correspondence to Ms. Aina and me.

It is important to note that Ms. Aina was moved to Room 12 in 2012, one of the smallest classrooms on the campus, shortly after she filed her first request for a reasonable disability accommodation (RDA). This move was harassment and illegal retaliation for defending her ADA rights to her first RDA request [a key to the parking gate so she could access the campus after hours and on weekends, which other teachers could do, but Ms. Aina could not because of her walking impairment, and the campus set back 600 feet from parking gate].

The attorneys had argued about several previously denied accommodations until someone with authority and good common sense did something. That person was Chad Farias, who was the Kau-Keaau-Pahoa Complex Area Superintendent.

From: **Lunsford** <lunsfordp001@hawaii.rr.com>
Date: Mon, May 9, 2016 at 1:47 PM
Subject: Fwd: Proposal
To: Sue Aina <sueaina100@gmail.com>
Cc: Vanessa Ott <mstvott@gmail.com>

Well, gals. I'm pleasantly surprised. I just wonder why this took six months!

Begin forwarded message:

From: "Petricevic, Bosko" <Bosko.Petricevic@hawaii.gov>
Subject: Proposal
Date: May 9, 2016 at 12:45:19 PM HST
To: Lunsford <lunsfordp001@hawaii.rr.com>
Cc: "Petricevic, Bosko" <Bosko.Petricevic@hawaii.gov>

Lunsford,

There are 3 accommodations requested by the plaintiff. Here is the way to resolve all of it.

- The first accommodation the plaintiff seeks in this action is the assignment to her of a key for the main campus gate for the teachers' school year (including three business days before and after that year). (Principal will give her a gate key. It will be attached to her classroom set of keys.)
- The second accommodation the plaintiff seeks in this action is a modified emergency evacuation plan for plaintiff's students that obviates the necessity for the plaintiff to operate her power wheel chair over unpaved and unstable ground and also enables the plaintiff to resume control, responsibility and supervision of her student at the evacuation rallying point on the west side of the playing field where it borders the paved walkway. (This has been agreed upon at prior meeting. Students will walk around the back as she proposes.)
- The third accommodation the plaintiff seeks in this action is the provision of space for safely storing plaintiff's power wheelchair on campus- valuable personal property that is necessary for her to perform her essential job duties. The space provided must allow reasonable access to her wheel chair during and after school hours. (Principal will give her a key to the teacher training room and turn off the alarm system. This is where she currently keeps her chair and is directly outside of where she normally parks. She can still cover her chair if she chooses.)

Principal is also willing to reassign her to the classroom next to her, Room 11, effective 2016 - 2017 school year. It is approximately 675 sq feet. Ms. Aina's class and most classes in the building are approximately 525 sq feet. We are

reducing that particular grade level from 3 classes to 2 classes next school year due to student count projections. In addition, the current teacher is not returning. The room is 'unassigned' at this time. This also maintains both of my fifth grade classes in close proximity while giving her a larger room. (For clarification, S. Aina has not ever requested a larger room. She was moved into her current room when she was offered a 'choice' of teaching lines.)

Principal will lift the campus time constraints.
I think this solves everything.
Thoughts?
Bosko

Ms. Aina disputes this statement (underline added). She asked Darlene Javar, Na'alehu Elementary School Principal School Year 2011-2012 to SY 2020-2021 several times to be assigned to either Room 31 or Room 34, the largest classrooms on the campus located in the new wing built in 2010. She gave up after suffering retaliation by being assigned to tiny room 12 for four years.

This is a picture of the non-ADA compliant classroom to which Ms. Aina was assigned (Room 12), in spite of her many objections, from School Year 2012-2013 through SY 2015-2017.



2016: Ms Aina in her wheelchair in Room 12, one of the smallest classrooms in the building.

April 29, 2016 CAS Chad Farias receives email concerning ADA violations at Na‘alehu Elementary School

The following communication to the 2016 Complex Area Superintendent supervising the Principal at Na‘alehu Elementary School, Chad Farias, was sent 10 days before the attorneys in *Aina v. DOE* reached an agreement about the accommodations granted on May 9, 2016 by the DOE through Deputy Attorney General Bosco Petricevic.

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

From: Vanessa Ott <mstvott@gmail.com>

Date: Fri, Apr 29, 2016 at 4:01 PM

Subject: Lawsuit Involving Naalehu Principal - Read All About It

To: <chad_farias@notes.k12.hi.us>

Aloha Complex Area Superintendent Farias,

I hear that you visited Naalehu Elementary School today and spoke to Principal Darlene Javar about several issues. It is a shame that you did not have an opportunity to meet with, and speak to, Sue Aina, the handicapped teacher who has filed a civil lawsuit to get reasonable disability accommodations. She has not been at work for the last two days because her Power Chair is in for repairs, there was no loaner scooter available, and Darlene decided on Wednesday to not allow Sue's 23 year old son to help Sue by pushing her in the manual wheelchair. She says he has to get a security clearance and something seems to be in the way of that process moving forward. I think that something is Darlene. Sue's son, Simeona Aina, is an alumnus of Naalehu School, and has been helping his mother on campus with various after school activities for years. How coincidental that this directive happened just before you were planning to visit the campus.

If you want to know more about the accommodations that Sue has asked for, please visit my web site: <http://freespeech4us.com/doe/civilrights>

The DOE Strategic Plan sets the expectations that teachers will receive support. Not only is Sue not receiving support, the Principal seems to be doing everything possible to keep support away from her.

I want to you also know that there is an accommodation that solves almost all of these accommodation problems. If Sue was assigned to Room 34, she would not need an assistant

for the fire drills because she could accompany them down Ohai Rd to the field. She would have a classroom close to handicapped parking. The classroom would be large enough to put a protective box to keep her Power Chair in during her absence, and she would have access to her Power Chair on weekends (once you rescind Darlene's ridiculous proclamation that teachers are not allowed on campus after 4:30 or on weekends and holidays). Did you know that after Sue filed a request for accommodation for the key to the parking gate that Darlene moved her to one of the smallest classrooms on the campus? The teacher in a wheelchair has the smallest room with some of the biggest students (Grade 5). However, Darlene is never going to willingly assign Sue to Room 34 because: (1) it's a big room close to parking, very desirable, and assigned to her daughter who has very little seniority at the school; and (2) that would be supporting Sue rather than making her life difficult so that she will quit (constructive discharge).

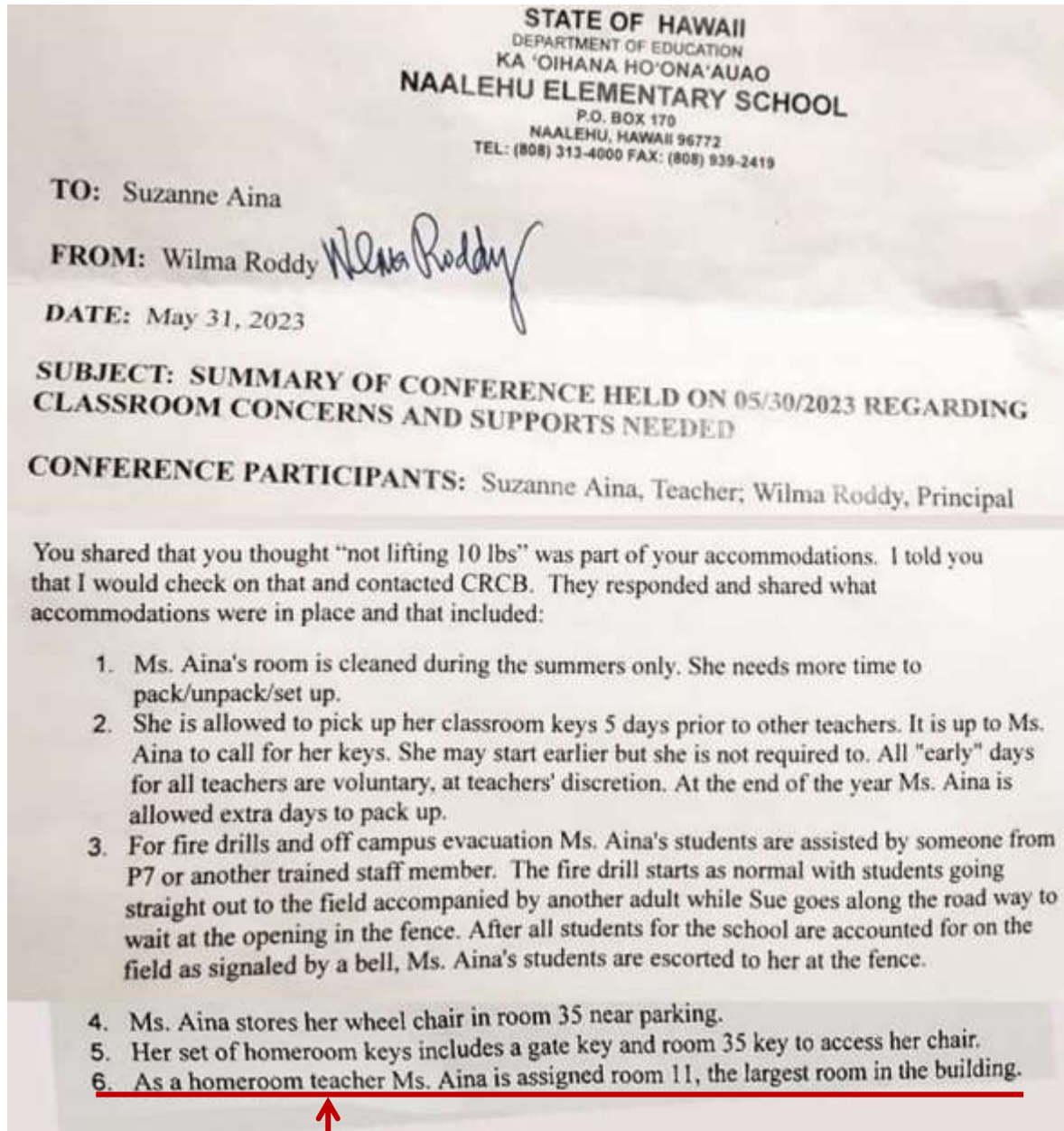
I hope that you will realize how badly Darlene is treating Sue and stop the nonsense. I hope you do not condone such behavior by your direct reports.

Are you going to do anything?

Mahalo,
Vanessa Ott
808-854-1018

May 31, 2023 Principal Confirms Ms. Aina's Granted Accommodations

The following letter confirms that Ms. Roddy was informed orally of Ms. Aina's granted accommodations which includes assignment to an ADA-compliant classroom, Room 11.



6. Ms. Aina was granted the accommodation of assignment to "Room 11, the largest room in the building." Principal Roddy is ignoring this.

Note, Rooms 31 and 34, in the newer (2010) campus wing are the largest classrooms on the campus. Ms. Aina requested assignment to these classrooms from previous Principals Teddy Burgess and Darlene Javar, but the request was not granted.

Room 11 is the largest classroom in the old buildings (originally built 1928).