

DISPUTE PREVENTION & RESOLUTION, INC.

Domestic Arbitration Tribunal

In The Matter of the Arbitration between:)	
)	
YYYYYYYYYYYYYYYYYYYY)	
Plaintiff ("MOTHER"))	
)	
-and-)	FC-D No. XX-XX-XXXX
)	
XXXXXXXXXXXXXXXXXXXX,)	
Defendant ("FATHER"))	AWARD OF
)	ARBITRATOR
DPR Case Number 03-XXXX-A)	

AWARD OF ARBITRATOR

A. PROCEDURAL BACKGROUND

1. The undersigned was duly appointed by the parties as Arbitrator pursuant to the Agreement to Participate in Binding Divorce Arbitration signed xxxx, 2003 by FATHER and xxxx, 2003 by MOTHER (EXHIBIT A hereto). The specific issue submitted for arbitration was: visitation schedule, including travel arrangements and costs, for the parties' minor male child, CHILD ("CHILD"), born xxx, 1996. By agreement of the parties, an arbitration hearing was conducted on xxx, 2003, from 1 p.m. to 5:15 p.m., at the office of DPR. The parties were represented by counsel, xxxxx, Esq. for MOTHER, and xxxxx, Esq. for FATHER. At the hearing, both parties testified (no other witnesses were called by either party), and evidence and argument was presented. EXHIBIT B to this Award is the list of exhibits presented at the arbitration hearing, all of which were entered into evidence for the Arbitrator's consideration without objection.

2. At the conclusion of the hearing, the parties stated that they had no further evidence to present, and the evidentiary portion of the hearing was closed. Based on the understanding that there was a Family Court hearing on this matter set for 1:30 p.m. on xxxx, 2003, and that the Arbitrator would make every effort to issue his Award not later than 4 p.m. on xxxx, 2003, and with the agreement of the parties, the Arbitrator ordered that counsel exchange drafts of proposed orders, attempt to resolve all issues and agree on a proposed joint stipulated order to be submitted to the Arbitrator, and -- if unsuccessful in that attempt -- submit to the Arbitrator (by 4 p.m. xxxx, 2003) a joint stipulation setting forth those matters on which there is agreement and their respective proposed orders as to those matters on which there is not agreement. The post-hearing submissions (with no joint stipulation) were received on schedule.

B. FACTUAL BACKGROUND

1. The parties were married xxxx, 1995 in Hawaii. They were divorced in Hawaii in xxxx 2002, pursuant to an Agreement Incident to Divorce (“AICD”) filed with the Family Court of the First Circuit xxxx, 2002. The custody and time-sharing provisions of said AICD (pages xx of the AICD) are attached as EXHIBIT C to this Award. The AICD provided for joint legal custody, with MOTHER awarded sole physical custody.

2. At the time they agreed to the AICD, the parties contemplated the possibility of relocation. Thus, the AICD provided, in part, “Any other provision of this Agreement notwithstanding, Wife shall have the right to re-locate...to the mainland with CHILD at any time, provided, however, that she shall provide advance written notice to Husband of not less than thirty (30) days, which notice shall include a description of the place to which such relocation is contemplated, and a proposal for revised visitation arrangements.” The AICD then set out detailed time-sharing arrangements and further provided: “All of the above-described time-sharing arrangements are agreed to on the assumption that Wife, CHILD, and Husband shall all be residing on the island of Oahu. If either party relocates from Oahu, then such arrangements will need to be revised. The parties agree to consult with each other well before any such relocation and to seek to put in place *such new arrangements as are then in CHILD’s best interests under all the circumstances.*” {Emphasis added}.

3. Shortly after the parties’ divorce was final, FATHER remarried and relocated from Oahu to the Big Island, where he now resides with his new wife, their young daughter, his new wife’s daughter from a prior marriage, and Stepbrother (FATHER’s 14 year old son from a prior marriage). However, it is not *that* relocation which brought the parties before this Arbitrator.

4. Since the parties’ divorce, MOTHER has resided on Oahu, and CHILD attends (or has just completed) first grade at xx school on Oahu. On xxx, 2003, MOTHER wrote FATHER a letter stating that she and CHILD would be relocating on xxx, 2003, to xxxxx, Florida, setting out her new address and the name and address of CHILD’s second grade school (xxxxxxxxx School), and proposing a new visitation schedule.

5. Negotiation between the parties failed, and MOTHER filed a Motion for Post-Decree Relief on xxx, 2003. Six days later, FATHER filed his own Motion for Post-Decree Relief (xxx, 2003). As noted above, the parties then agreed to submit the issue of the visitation schedule and travel arrangements and costs to binding arbitration before this Arbitrator and agreed on the date and time (and allocation of time) for the arbitration hearing.

C. THE HEARING AND POST-HEARING SUBMISSIONS

1. Evidence adduced at the hearing showed that MOTHER is, and for several years has been, a salesperson for a xxxx company. She is moving to Florida to open an “expansion” territory for her company, and she has arranged housing for herself and CHILD and a school for CHILD. She has purchased air tickets for herself and CHILD as a round trip (Hawaii to Florida on xxxx, 2003, with the return scheduled for xxxx, 2003 – although it appears from her testimony that she will either not use or will reschedule the return portion). FATHER has his own business (xxxxxx systems) on the Big Island (“BI”), where he rents a home with his wife, her 7-year-old daughter, the couple’s infant daughter, and Stepbrother.

2. FATHER’s Motion for Post-Decree Relief requests, *inter alia*, that the Court either restrain MOTHER from relocating or award him legal and sole physical custody. That request was mentioned at the arbitration hearing and renewed in FATHER’s post-hearing submission. MOTHER, however, correctly notes that the parties’ agreement to engage in binding arbitration did not vest the Arbitrator with authority to restrain her from relocating or to order a change of legal or physical custody.

3. At the hearing, both parties focused on what would be appropriate visitation arrangements, how the costs would be shared, and what sort of enforcement of visitation arrangements would be appropriate. Testimony at the hearing was basically divided into two categories: the parties’ viewpoint on each other’s parenting skills and what visitation arrangements each desired.

4. At the hearing and in the post-hearing submissions, the parties differed substantially as to the time (and place) that each would allow CHILD to be with FATHER. Until CHILD is 14-years-old, MOTHER would have CHILD be with FATHER for (1) two weeks during summer vacation (in Hawaii or Florida, FATHER’s choice), (2) one-half of CHILD’s Christmas vacation (in Florida, except that in alternate years, FATHER could have 2 weeks in Hawaii, in which case all other visits that year would be in Florida), (3) one-half of spring break (in Florida), and (4) some specially arranged “access” for a weekend and one afternoon during the week when FATHER visits Florida. FATHER’s proposed visitation schedule does not include the same geographic limitations and includes (1) eight weeks in the summer, (2) Christmas vacation in alternate years, (3) spring break in alternate years, and (4) as much as one weekend/month and 3 week nights/month by special arrangement if FATHER visits Florida.

5. MOTHER asserts that she supports CHILD’s having a continuing relationship with FATHER and that CHILD wants that. MOTHER argued that she has followed all Court Orders and that her motivation for seeking to limit CHILD’s time with FATHER comes from her misgivings about FATHER’s parenting skills and concerns about CHILD’s safety and welfare when he is with FATHER. MOTHER argues she has supported and will support FATHER’s parental relationship with CHILD.

6. FATHER states that MOTHER is a “good parent” but that she attempts to control all aspects of how he handles CHILD. FATHER argues that MOTHER has such

an inappropriately low opinion of him as a person that the diminished contact between FATHER and CHILD inherent in MOTHER's relocation is not a great concern for her, and he argues that the low value she places on CHILD's contact with FATHER is further evidenced by her highly restrictive visitation proposals.

7. Specific incidents alleged by MOTHER as showing her concerns related to (1) FATHER allegedly allowing CHILD to go out on his (FATHER's) sailboat without a life jacket. (FATHER stated CHILD is always required to wear a life jacket when the boat is away from the dock); (2) FATHER allegedly negligently allowing CHILD to leave the house in search of the family dog near a busy intersection. (FATHER denies that he was negligent and states that CPS investigated MOTHER's allegation and quickly concluded there was nothing to it); (3) An incident where CHILD and Stepbrother were playing on the dock and CHILD fell in the water. (FATHER explains this as two boys playing and states that he promptly got CHILD out of the water and no harm was done); (4) FATHER allegedly leaving CHILD alone at night in a tent in FATHER's backyard when he and CHILD were "camping out" there. (FATHER said he got up to go into the house to use the bathroom, and CHILD then awoke and decided he wanted to sleep inside). Both parties also described an incident in which CHILD's eye got a minor corneal scratch while he was with FATHER and differed in their opinion of how active FATHER was or should have been in procuring care for CHILD.

8. MOTHER also presented evidence to show that she was more active than FATHER in CHILD's school (teacher meetings, etc.) and in taking CHILD to doctors. FATHER states that MOTHER would often not notify him about school meetings until "the last minute."

9. MOTHER also expressed several concerns about CHILD being around his 14-year-old step brother Stepbrother. She stated that FATHER has left CHILD alone with Stepbrother as "sitter." FATHER strenuously denied that and stated that he always used "certified" babysitters. MOTHER stated that Stepbrother allows or encourages CHILD to watch "trash" t.v., listen to inappropriate music, and play violent video games. FATHER denies that and instead states that it is MOTHER who sends CHILD with "violent" video games of which he disapproves. MOTHER also expressed a concern that Stepbrother may have had an incident of drug (marijuana) use when he was 13 and had been having problems in school. FATHER states that Stepbrother is now doing well in school, is paddling, and has been "clean" on every random drug test that FATHER has subjected him to. FATHER also states (and at one point MOTHER seemed to agree) that CHILD and Stepbrother are "close" and enjoy each other's company.

10. In relation to FATHER's communication with CHILD during CHILD's time with MOTHER, MOTHER alleged that FATHER would often disappoint CHILD by failing to call at the appointed time. FATHER admits to having cell phone coverage problems on the BI and counters that MOTHER would fail to turn on her computer so he and CHILD could converse by web cam and/or would sit next to CHILD while he was on the web cam with FATHER or otherwise allow him to be distracted.

11. Both parties described the incident involving how CHILD learned of his FATHER's remarriage. Basically, FATHER alleged that he was told by two mental health professionals ("MHPs") not to include CHILD in the wedding (because it would anger MOTHER) but rather to take him to dinner alone and tell him about the remarriage. MOTHER states that the MHPs she consulted told her that CHILD should be told ahead of time, so she told him. Sometime later, FATHER wrote MOTHER thanking her for telling CHILD "lovingly."

12. The basic disagreement between the parties is about how much time CHILD should spend with FATHER and how much of it should be in Hawaii. MOTHER suggests that CHILD and FATHER should be together twice each year, for two weeks each time, with FATHER coming to Florida for one visit and CHILD coming to Hawaii for the other semi-annual visit. FATHER suggests that CHILD should be with him in Hawaii for two months each summer and for either Christmas vacation or Spring Break each year (that is, alternating years – one year Christmas, the other spring). MOTHER would limit the time because of the concerns she expressed about FATHER's parenting (and CHILD's safety) and because she would have FATHER make the approximately 16-hour flight(s) once a year rather than having CHILD do it twice a year. FATHER states that he is a fit parent and so should not have his time with CHILD unduly limited, and he contends that CHILD should not be deprived of the chance to be with his Father's family (including CHILD's grandparents and cousins) and to be "in touch with" his part-Hawaiian heritage for a reasonable period of time twice a year. He argued that he lacks rancor towards his ex spouse and he complained of her interference and hyper-criticality of his parenting of CHILD. He further argued that he has a wholesome and appropriate home for CHILD to visit and that he has a work schedule and home office that maximize his ability to spend time with CHILD. CHILD would be spending time in an intact family with two parents (one of whom is a stay-at-home mom and former teacher) and three siblings, with whom he has good attachments.

13. The parties also disagree as to how arrangements should be made for this summer (June – September 2003). FATHER wants to CHILD to stay with him for 4-to-6 weeks at the start of summer while MOTHER "gets settled" in Florida and would then take CHILD to Florida (so that FATHER could see his new school). MOTHER wants CHILD to leave with her for Florida on xxx, 2003, and to spend the entire summer there. She proposes that FATHER visit in Florida for 2 weeks during the summer, in order to "reassure CHILD" that the move to Florida is ok.

14. The parties basically agree on other aspects of travel arrangements. They agree that CHILD should be escorted on his flights by a mutually agreeable adult at least until he is 10-years-old, at which time they agree to revisit that issue. They agree that the costs of travel (for CHILD and the escort) be shared 50/50, and both seem to feel that alternating paying for trips would cause less potential conflict than splitting the cost of each trip. They agree that when CHILD is with FATHER, FATHER will not leave him alone (for anything more than very brief periods of time) with Stepbrother or anyone other than an adult family member or certified care-giver. And they agree that – during

CHILD's time with FATHER – if FATHER and CHILD are going to stay overnight other than at FATHER's home, MOTHER should be notified in advance (except, obviously, in case of emergency) of where they will be and how to contact them.

15. As to contact with one parent when CHILD is with the other: The parties are in basic agreement that there should be the opportunity for daily telephone contact and frequent web cam contact. They also agree that having certain set specific times works best for them.

16. At the conclusion of the arbitration hearing, the Arbitrator noted his concern that a visitation order, no matter how precise and detailed, may fail if there is no goodwill between the parties and, as a corollary of that observation, the more goodwill that exists, the less detail and precision required. In his post-hearing submission, FATHER requested a very detailed Award with specific penalty provisions. In her post-hearing submission, MOTHER urged the Arbitrator to “keep the order simple and direct,” but at the same time proposed an order with a high degree of specificity as to certain matters and with proposed sanctions which FATHER's counsel accurately described as “Draconian.” See, *e.g.*, Plaintiff's Closing Argument & Proposed Order Re: Visitation, paragraph 4(d), which provides:

“FATHER will provide in writing a signed itinerary for CHILD including an address, and telephone number prior to the commencement of any visitation. If this itinerary is ever changed without MOTHER's consent, in writing, all visitations with FATHER shall immediately cease [with one exception for an overnight visit to CHILD's grandparents on the BI]...In the event FATHER violates any of the terms and conditions of this agreement [*sic*] with respect to visitation, FATHER shall be entitled to supervised visitation only at his expense. MOTHER shall select the person supervising.”

17. Finally, both parties agree that the Arbitrator should be guided by that portion of their AICD which says they should ... “seek to put in place such new arrangements as are then [that is, now] in CHILD's best interests under all the circumstances.” Having carefully reviewed the parties' testimony at the hearing, all of the exhibits submitted, and the post-hearing submissions, the Arbitrator concludes that these are two people who both care about their child and who have different parenting styles and skills. Neither is so impaired as a parent that CHILD should be deprived of significant time with that parent. It is in CHILD's best interest that the visitation schedule look much more like FATHER's proposal than MOTHER's. As much as the Arbitrator would like to believe that MOTHER and FATHER will suddenly find themselves able to communicate civilly and cooperate fully, their history and the nature and details of the arguments and proposals made at the arbitration hearing and in the post-hearing submissions compel me to believe that CHILD's best interests will be served by a detailed Award providing clear guidelines for MOTHER and FATHER to follow and (to the extent that it is within the Arbitrator's power to do so) spelling out consequences for failure to comply.

D. FINDINGS AND CONCLUSIONS

Based upon a careful review and consideration of all of the testimony, evidence, and argument presented and the applicable statutory requirements and case law, the undersigned Arbitrator finds and concludes as follows.

1. There is not sufficient credible evidence to believe that it would be in CHILD's best interests to deprive him of significant time with FATHER and with FATHER's family. The parties clearly have differences of opinion about appropriate parenting, but I do not find that FATHER's parenting is either inappropriate or puts CHILD at undue risk. I also observe that, despite their differences, both FATHER and MOTHER seem genuinely committed to doing what's best for CHILD, and both seem sufficiently flexible to be able to work together within the parameters of a fixed and detailed time-sharing arrangement.
2. MOTHER has already made travel arrangements, and her departure is imminent. Finding what is best for CHILD is complicated by the fact that, if he leaves on xxx, 2003, with MOTHER as planned, he will either have no time in Hawaii this summer or will have to make a round-trip flight from Florida to Hawaii and back during the summer. If he stays for a while with FATHER and then goes to Florida, he will have some time in Hawaii, and it will mean less flying for him, but the change of plans so close to the time he is scheduled to leave may be disconcerting to him. Whatever is done, it is critically important that MOTHER and FATHER jointly explain to CHILD exactly what the plans are with great clarity and with great assurance that they are both committed to making CHILD's summer and his move the best it can be for him. Making this difficult balance, I find that it is in CHILD's best interests that he stay with FATHER for the first three (3) weeks of this summer while MOTHER gets settled in Florida and that, thereafter, FATHER take him to MOTHER in Florida, where FATHER may stay for up to two (2) weeks to assist in the transition, with visitation during that two weeks as provided below.
3. As to future visitation arrangements: I find that CHILD should have the opportunity for more significant time with FATHER (and FATHER's family) than two weeks twice a year. I find that CHILD should spend the majority of the time that he is with FATHER in Hawaii, not one-half in Hawaii and one-half in Florida. (Unless, of course, FATHER elects to take one of the visitation periods in Florida). Because of CHILD's age, I find that it would be better to allow him a little bit of a build up to being away from his Mother for a full eight (8) weeks in the summer rather than start too soon. I therefore find that it is in CHILD's best interests that the visitation schedule (after this summer) be set as follows: In summer 2004, CHILD will spend not more than six (6) weeks with FATHER in Hawaii (or such other location as FATHER selects, with advance notice to MOTHER) during the summer. Thereafter, CHILD will spend not more than eight (8) weeks with FATHER in Hawaii (or such other location as FATHER selects, with advance notice to MOTHER)

during the summer. CHILD should also be with FATHER in Hawaii (or such other location as FATHER selects, with advance notice to MOTHER) during Christmas or Spring breaks in alternating years, all as set out below.

4. I specifically find and conclude that the arrangements set out in Paragraphs E 1-8, below, are in CHILD's best interests.

E. AWARD OF ARBITRATOR AS TO VISITATION SCHEDULE, ARRANGEMENTS, AND COSTS

Based on all of the foregoing, the undersigned Arbitrator hereby Awards as follows:

(1) Schedule:

(a) The implementation of this schedule requires that MOTHER enroll CHILD in a school with a traditional calendar consisting of a summer vacation of two to three months, a Christmas vacation of ten to fourteen days, and a Spring Break of around nine days. If CHILD is enrolled in a year-round school, a school with a trimester calendar, or some other non-traditional schedule, FATHER may ask the Court to institute a new schedule giving FATHER as near as possible the same amount of time with CHILD.

(b) CHILD shall spend the first eight (8) weeks of Summer Vacation every year with FATHER, except 2003 (see (c) below) and 2004 (see (d) below). CHILD will be scheduled on a flight to depart his home within seventy-two hours of the end of the school day on the last day of the school year. He will be scheduled on a flight to begin his return to his home no later than exactly eight weeks from the date and time of his arrival. If the parties agree that CHILD should attend summer school, or if CHILD's school requires that CHILD attend summer school, he shall attend summer school at FATHER's locale. Unless otherwise agreed by the parties or approved by the Court for good cause shown, CHILD shall not be enrolled in any other program that will interfere with his visitation with FATHER during this period.

(c) For summer of 2003 only: CHILD shall stay with FATHER for the three (3) weeks of this summer following MOTHER's departure for Florida on xxx, 2003, while MOTHER gets settled in Florida. Immediately at the end of that three weeks, FATHER shall take CHILD to MOTHER in Florida. In Florida, FATHER may stay for up to two (2) weeks to assist in the transition, with visitation during that two weeks as provided in paragraph (g) below. The additional costs incurred for changing the flight to Florida which she already arranged for CHILD shall be paid by MOTHER. The cost of FATHER's flights to accompany CHILD to Florida (and return) shall be paid by FATHER. If there is anything in this Award which is inconsistent with this paragraph, this paragraph shall govern.

(d) For summer of 2004 only: CHILD shall stay with MOTHER for the first two (2) weeks of summer. He shall then go to Hawaii and stay with FATHER for the next six (6) weeks of the summer. Immediately at the end of that six weeks, CHILD will return to

MOTHER in Florida. If FATHER takes CHILD to Florida, FATHER may stay for up to two (2) weeks, with visitation during that two weeks as provided in paragraph (g) below. If there is anything in this Award which is inconsistent with this paragraph, this paragraph shall govern.

(e) CHILD shall spend Christmas Vacation with FATHER in odd-numbered years.¹ CHILD will be scheduled on a flight to depart his home within thirty-six hours of the end of the school day of the last day of school preceding the Christmas vacation period. He will be scheduled on a flight arriving at his home no later than forty-eight hours prior to the commencement of the first day of school after the Christmas vacation.

(f) CHILD shall spend Spring Break with FATHER in even-numbered years. CHILD will be scheduled on a flight to depart his home within twenty four hours of the end of the school day of the last day of school preceding the Spring Break period. He will be scheduled on a flight arriving at his home no later than twenty four hours prior to the commencement of the first day of school after the Spring Break.

(g) If FATHER is temporarily within 100 miles of CHILD's usual residence during a weekend and has given the advance notice required below, he shall be entitled to weekend visitation from after school Friday until Sunday evening at 6:00 p.m. If FATHER is unable to exercise the full period of visitation, he shall have as much during that period as he requests in his advance notice. If FATHER is temporarily within 100 miles of CHILD's usual residence during the week, he shall be entitled to visitation after school until drop-off at school the next morning for not more than two days. Under this provision, FATHER would not be entitled to more than one weekend a month, and two weeknights per month. During the two-week period FATHER is in Florida during summer of 2003, and during the two-week period that he may be in Florida in the summer of 2004, he shall be entitled to visitation of one weekend and two weeknights.

(2) Place and conditions of visitation:

(a) Unless otherwise stated, visitation will take place at FATHER's residence and at various other locales in the State of Hawaii.

(b) FATHER may, at his option, designate a place or places other than Hawaii where his Summer, Christmas, or Spring visitation will take place. This designation will be included in the contents of the notice to be provided pursuant to the notice provisions below.

(c) During any period of visitation with FATHER, FATHER shall provide MOTHER with the address and telephone of each place where CHILD will be staying for more than 24 hours.

¹ Christmas vacation in odd-numbered years means that Christmas Day falls during an odd-numbered year. Thus, the vacation period from mid-December 2003 to early January 2004 would be considered a "Christmas vacation in an odd-numbered year."

(d) During any period of visitation with FATHER, when CHILD is being supervised by someone other than FATHER or FATHER's wife or another adult family member, the person supervising shall be a responsible adult or certified caregiver. Except for extremely brief periods of time, CHILD shall not be left under Stepbrother's exclusive supervision.

(e) If CHILD is on any medications when he travels, the party whose care he is leaving shall send CHILD to the other parent with an adequate supply of any required medications and with written instructions for the administration of same.

(f) Neither party shall seek to prohibit or limit specific activities in which CHILD may engage while with the other party. Each may provide information about CHILD to the other that the other may consider in determining what activities CHILD are appropriate for CHILD to engage in.

(3) Airline reservations and payment:

(a) MOTHER will be fully responsible for making airline reservations and paying for tickets for the Spring Break. MOTHER will be fully responsible for making airline reservations and paying for tickets for Summer Vacation in odd-numbered years.

(b) FATHER will be fully responsible for making airline reservations and paying for tickets for Christmas Vacation. FATHER will be fully responsible for making airline reservations and paying for tickets for Summer Vacation in even-numbered years.

(c) The fact that one party owes money to the other for any reason shall not effect the obligation of the person to whom money is owed to pay for travel incident to visitation as set forth above.

(4) Other travel protocols:

(a) Until age ten, CHILD shall be accompanied during all air travel incident to visitation. It shall be the responsibility of the parent responsible for paying the cost of the visit, as set forth above, to escort CHILD and to pay for the airfare associated with escorting him. If the parties agree in writing prior to the flight, an individual other than a parent may accompany CHILD. After CHILD is ten, whether or not he continues to require an escort shall be agreed upon by the parties in writing and submitted to the Court as a stipulation modifying the Court's order. Said stipulation shall be submitted prior to the first visit that CHILD will make after attaining the age of ten. If the parties cannot agree, then the party who wishes to continue accompanied travel beyond the age of ten shall file a motion for post decree relief in a Court of competent jurisdiction.

(b) Either party may enroll CHILD in a frequent flyer program on any airline. Each party may enroll CHILD in a frequent flyer program on the same airline. CHILD may have two accounts on the same airline, with one controlled by each party. Points earned on any flight booked and paid for by FATHER shall be credited to the account on

that airline opened for CHILD by FATHER. Points earned on any flight booked and paid for by MOTHER shall be credited to the account on that airline opened for CHILD by MOTHER. A party may use the points accrued in an account established for CHILD by that party to defray the cost of that party's obligations to pay for CHILD's travel.

(5) Communication:

(The Arbitrator notes that some of the requirements of the following subparagraphs may have already been met. For example, there was testimony at the hearing about the use of web cams which implied that one or more such devices may already be in use.)

(a) MOTHER shall obtain an email account for CHILD and provide the email address to FATHER. Both parents shall ensure that CHILD has access to his email account when in his/her care and that CHILD reads and acknowledges any email from the other parent promptly. CHILD shall not be restricted from sending email to either parent. Neither party shall require that CHILD allow them to read CHILD's email correspondence with the other.

(b) Both parents shall provide CHILD a telephone extension in his room. FATHER shall obtain a toll-free telephone number to be used exclusively by CHILD to call him and shall provide that number to CHILD. When CHILD is in her care, MOTHER shall ensure that CHILD calls FATHER at least every Sunday between the hours of 11:00 a.m. and 1:00 p.m. (FATHER's home time). CHILD's telephone calls to FATHER shall not be monitored.

(c) When CHILD is with FATHER, FATHER shall ensure that CHILD calls MOTHER at least every Sunday between the hours of 3:00 p.m. and 5:00 p.m. (MOTHER's home time). CHILD's telephone calls to MOTHER shall not be monitored.

(d) Both parties shall obtain internet video-cameras and internet video-conferencing software for CHILD's use. Both parties shall encourage and enable CHILD to conduct his regularly scheduled Sunday call with his parents by internet teleconference. In addition, FATHER may, at his option and his expense, provide CHILD a CEIVA digital picture frame program for sending pictures to MOTHER's residence.

(e) The scheduled Sunday call does not prohibit CHILD from calling either parent at any other time nor prohibit either parent from calling CHILD at any other time.

(f) Each party shall have unlimited surface mail correspondence with CHILD and CHILD shall have unlimited surface mail correspondence with each party. Neither party shall require CHILD to allow such correspondence to be read by any person other than the sender or addressee.

(6) Notices:

In order to alleviate some of the concerns both parties expressed about receiving adequate notice of various events and conditions from the other, the following situations and events shall require notice from one party to the other in the manner specified:

(a) Airline reservations for CHILD's Summer, Christmas or Spring visitation. The party responsible for making the reservations shall provide a copy of the itinerary to the other party not less than ten days prior to the commencement of travel. The notice shall include the itinerary, the actual tickets (if necessary to begin travel), instructions for picking up e-tickets (if e-tickets are used) and any other information necessary to begin travel (how far in advance to report to the airport, airline procedures for dealing with a child traveler, etc). This notice shall be sent by certified mail.

(b) FATHER's intention not to exercise Summer, Christmas or Spring visitation. MOTHER will purchase some airline tickets in reliance on the presumption that FATHER will exercise his visitation, and if FATHER cancels his visitation and MOTHER is unable to obtain a full refund for airline tickets, FATHER shall be required to reimburse her for the loss. If FATHER does not intend to exercise visitation, he will notify MOTHER not less than thirty days in advance of the commencement of the visitation period and will do so by certified mail. If FATHER learns within thirty days of the commencement of a visitation period that he will be unable to exercise his visitation, he will immediately notify MOTHER by telephone or email and will follow with a written notice via express mail. Any notice of intention not to exercise visitation shall explain the reason why FATHER is unable or unwilling to exercise visitation.

(c) FATHER's intention to exercise Summer, Christmas or Spring visitation at a place other than his usual residence. Written notice thirty days prior shall be sent by certified mail. The notice shall include the address and telephone numbers of any places where CHILD will stay more than 24 hours.

(d) FATHER's intention to have CHILD absent from FATHER's residence for more than 24 hours during a visitation period. FATHER will notify MOTHER by telephone or email and provide her the addresses and telephone numbers of where CHILD will be staying.

(e) MOTHER's intention to have CHILD absent from MOTHER's residence for more than 48 hours. MOTHER will notify FATHER by telephone or email and provide him the addresses and telephone numbers of where CHILD will be staying.

(f) FATHER's intention to exercise visitation at CHILD's usual residence in accordance with paragraph E(1)(g) above. Notice shall be given at least seventy-two (72) hours in advance by telephone or email and shall state when and where FATHER desires to pick up and drop off CHILD (consistent with the schedule set forth above) and the address and telephone number where FATHER is or will be staying.

(g) FATHER's inability to exercise telephone or email contact with CHILD for a period in excess of three days. Except in case of illness or emergency, FATHER shall provide notice in advance by telephone or email, explaining the period that FATHER will be out of contact and the reason. In case of illness or emergency, he shall advise as soon as possible.

(h) CHILD's enrollment in a new school. MOTHER shall notify FATHER as soon as she knows that CHILD will enroll in a new school, and will do so in writing by certified mail. MOTHER will provide the name and address of the school, the telephone number, the name of the principal and CHILD's teacher, and a copy of the school calendar. This applies to summer school as well, except that the obligation to do so is FATHER's if CHILD will be in summer school in FATHER's home state.

(i) CHILD's arrest or detention by police, child protective services, or other authorities. The party having knowledge shall immediately telephone the other parent and provide CHILD's current location and the name and telephone number of a responsible employee of the agency involved, and the circumstances resulting in the arrest or detention.

(j) Any situation in which CHILD's whereabouts are unknown by the parent then having care of him for more than twelve hours. After CHILD is missing for twelve hours, the parent who is aware that he is missing shall notify the other by telephone and explain the circumstances and what actions are being taken to locate him.

(k) Any in-patient hospitalization of CHILD. The party having knowledge shall immediately telephone the other parent and provide the name, address, and telephone number of the hospital, the circumstance leading to hospitalization, and the name of the responsible physician.

(l) Any evaluation or treatment of CHILD by a psychologist or psychiatrist other than in normal course through CHILD's school. The parent arranging such evaluation or treatment for CHILD shall promptly notify the other by certified mail, such notice to be sent, if possible, prior to obtaining treatment. The notice shall explain the circumstances for the evaluation or treatment, and the name, address and telephone number of the psychologist or psychiatrist.

(m) A medical emergency that threatens CHILD's life. The party having knowledge shall immediately telephone the other parent and provide the circumstances and CHILD's current condition and location.

(n) If CHILD is placed on academic probation or is suspended or expelled from school. The parent having knowledge of such probation, suspension, or expulsion shall notify the other by certified mail within 48 hours and shall explain the facts and circumstances of the foregoing.

(o) If either party's home address or telephone number is changed in other than emergency circumstances, said party shall notify the other by certified mail prior to the change of address or phone number.

(7) Access to school, medical, and other information:

(a) MOTHER will provide FATHER with a list of the names, addresses, and telephone numbers of CHILD's primary care physician, dentist, teacher, school principal, and any psychologist or psychiatrist treating CHILD within ten days of the entry of this order. This list will be updated and sent to FATHER annually on September 1.

(b) FATHER will provide MOTHER with a similar list for any such people involved with CHILD during summer vacation. Such list will be provided within ten days of the entry of this order. This list will be updated and sent to MOTHER annually on May 1.

(c) MOTHER will provide FATHER with a written authorization signed by her and authorizing CHILD's teachers, school administrators and custodians of records to provide the same information to FATHER as would be provided to her under the school's policies and rules. If CHILD attends summer school in FATHER's home state, FATHER will provide a similar authorization to MOTHER.

(d) MOTHER will send FATHER a copy of CHILD's report card within one week of receipt or, in the alternative, will arrange for CHILD's school to provide a duplicate copy to FATHER. If CHILD attends summer school in FATHER's home state, FATHER will do the same for MOTHER.

(e) Each parent will provide the other with a written authorization signed by him/her and authorizing CHILD's doctors, medical and mental health providers, and custodians of records to provide the same information to the other as would be provided to him/her under their policies and rules.

(8) Failure to perform, penalty:

The Arbitrator realizes that he cannot speak for Family Court as to how failure by either party to perform obligations imposed on him/her by this Award should be handled – nor would he presume to do so. Considering the history of this couple and all of the evidence and argument presented at the hearing and in the post-hearing submissions, the Arbitrator believes that it is prudent for him to inform the Court that he believes that it would be in CHILD's best interests for the Court to be liberal in its use of punitive sanctions and the shifting of attorneys fees and costs to enforce strict compliance with the terms and conditions of this Award and of the Court's Order.

F. ATTORNEYS FEES AND COSTS

Each party shall pay their own attorneys fee and costs.

G. EXPENSES OF THE ARBITRATION

All expenses incurred in the arbitration shall be paid equally by the parties and shall be paid as directed by Dispute Prevention & Resolution, Inc.

H. FINALITY OF AWARD

This Award is in full and final determination of all claims presented to this arbitration. Having now issued this Award, the undersigned Arbitrator has no further jurisdiction in this matter and is *functus officio*. This Award shall be presented by the parties or either of them to the Family Court of the First Circuit for incorporation into an appropriate Post-Decree Order issued by said Court, and, thereafter, all enforcement and other post-decree matters shall be for the exclusive jurisdiction of said Court.

Signed at Honolulu, Hawaii, this xxx day of xxxx 2003

SIGNED: _____
James K. Hoenig, J.D., Ph.D., Arbitrator

(Notarial)