

APPROVED

By Chastity Imamura at 2:15 pm, Jun 04, 2020



OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAII

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

Petitioners,

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAII, and CHRISTINA
KISHIMOTO, Superintendent of the Hawai'i
Public Schools,

Respondents.

DOE-SY1920-043

AMENDED ORDER REGARDING VIDEO
CONFERENCE DUE PROCESS HEARING

Hearing Date: June 18-19, 2020

Hearing Time: 9:00 a.m.-4:00 p.m. (HST)

Hearings Officer: Chastity T. Imamura

**AMENDED ORDER REGARDING VIDEO CONFERENCE
DUE PROCESS HEARING¹**

On March 24, 2020, Petitioners TEVITA AHOMANA, by and through his Mother, FEKETI HUAHULU (hereinafter collectively "Petitioners"), filed Petitioners' Request for Impartial IDEA Due Process Hearing (hereinafter "Complaint") against Respondents DEPARTMENT OF EDUCATION, STATE OF HAWAII, and CHRISTINA KISHIMOTO,

¹ This Amended Order makes corrections to the previous order regarding the Hearing in this case being an open proceeding as requested by Petitioners.

Superintendent of the Hawai'i Public Schools (hereinafter collectively "Respondents"). On May 11, 2020, Petitioners submitted an amendment to their Complaint, and were granted leave to such amendment, in which Petitioners reduced their claims to a single issue and remedy they wanted resolved at the Due Process Hearing (hereinafter "Hearing"). On May 12, 2020, a status conference was held by video conference to set hearing dates and deadlines, and to finalize the issues to be determined at the Hearing. A further status conference was held on June 4, 2020, by video conference to clarify some issues regarding the Hearing and concerns related to the previous Order Regarding Video Conference Due Process Hearing, issued on May 29, 2020.

Due to the current global pandemic involving coronavirus or COVID-19 and to avoid any unnecessary delay in the proceedings, the Hearing scheduled on June 18-19, 2020, will be conducted via videoconferencing on an established internet-based video conference platform. The conference will be hosted by the undersigned Hearings Officer on the Zoom internet-based video conference platform. As some of the logistical issues that may arise appear to be of first impression in this jurisdiction, the following procedures will be implemented for the Hearing using the Zoom platform.

1. The undersigned Hearings Officer will create the conference 'meeting room' and send the necessary links with the meeting identification and password via email to both parties.
2. Each party shall provide a list of email addresses for the witnesses that they intend to call to testify at the Hearing. The lists of email addresses shall be sent directly to atg.odr@hawaii.gov, but do not need to be copied to the opposing party for privacy reasons. The lists of email addresses are due by 4:30 p.m. on Monday, June 15, 2020, to ensure that the witnesses may participate in the Hearing.
3. The Hearings Officer will email the meeting link to the witnesses who will be called to testify, as there are additional instructions that will be provided to the witnesses in the email with the meeting link. These additional instructions are specified in paragraph 10 of this order.

4. As the Petitioners in this case have requested an open hearing, the parties may forward the meeting link to whomever they want to have observe the Hearing. Any observers to the Hearing will be muted by the Hearings Officer so as not to distract or disrupt any of the witness testimony or questioning or arguments by the parties. The parties need to inform the Hearings Officer of any person that will be observing the Hearing as they will need to be allowed into the meeting room by the Hearings Officer.
5. The parties, witnesses, and observers are advised, but not required, to register with the platform; however, they will be required to enter their full name as their identifying name, so they may be identified as a participant or observer in the proceeding. Failure to provide a clear, identifiable name may result in the witness or observer not being allowed into the meeting room.
6. Unless given prior permission by this Hearings Officer, each party or witness shall participate with both video and audio capabilities. Each party is encouraged to caution the witnesses that failure for the Hearings Officer to see them clearly during their testimony may affect the determination of credibility as to their testimony. Observers to the Hearing may participate in the manner of their choosing.
7. Respondents shall arrange for a court reporter to transcribe the video conference Hearing to preserve the record of the hearing.
8. The proceedings SHALL NOT be recorded in any fashion by any party, witness, or observer. The transcript prepared by the court reporter will be the official record of the proceedings.
9. All witnesses shall be sworn by the court reporter via video, which will suffice to confer upon the witness the oath of sworn legal testimony.
10. Once a witness is sworn to provide testimony under oath, the parties agree that they will not communicate with the witness about their testimony and/or the questions that they were or may be asked during their testimony. This includes during breaks in the proceeding, as well as breaks between days of testimony. Violation of this order may result in the undersigned Hearings Officer striking the testimony of the witness.
11. Witnesses will be instructed both via email invitation to the proceeding and prior to their testimony as follows:
"To accurately record and weigh your testimony, you are to provide testimony using both the video and audio functions of this web-based application. You are cautioned that failure for the Hearings Officer to see and hear you clearly may affect determinations of credibility and the weight to give your testimony. You are instructed that your testimony must be based on your personal knowledge and recollection and that you are not being coached or instructed by someone off

camera to provide your testimony in a certain way. You are not to read from documents or notes unless specifically instructed to do so by either the party questioning you or the Hearings Officer. You are also not to speak with anyone about your testimony or the questions that you are asked during any breaks in the proceeding. You are not permitted to make any recording of this proceeding or the video conference, or any part thereof."

12. Documentary exhibits shall be presented by the undersigned Hearings Officer on a shared screen with the participants in the Hearing. While the witnesses may have a hard copy with them, they will be instructed to refer solely to the exhibit being shared on the video conference during their testimony.
13. Any portions of audio recordings that the parties want to present at the Hearing may be played by them or by the Hearings Officer at their request, but they shall provide the time-stamp of the portion of the recording that they are presenting prior to playing the audio clip. The court reporter will NOT transcribe the audio clips that are being played during the Hearing, so the parties are cautioned to not speak during the time the audio clip is being played.
14. The parties will be held to the procedures set forth in this Order. If either party has any questions or concerns, the party is directed to advise this Hearings Officer of their questions or concerns within three (3) business days of the date of this Order (and provide a copy to opposing counsel).

IT IS HEREBY ORDERED that the aforementioned procedures shall be implemented for the Hearing set in this case on June 18-19, 2020.

DATED: Honolulu, Hawai'i, June 4, 2020.



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