

APPROVED

By Chastity Imamura at 12:13 pm, Jun 04, 2020



OFFICE OF DISPUTE RESOLUTION
DEPARTMENT OF THE ATTORNEY GENERAL
STATE OF HAWAI'I

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

Petitioner(s),

vs.

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

Respondents.

DOE-SY1920-043

FOURTH AMENDED PREHEARING ORDER

Due Process Hearing

Dates : June 18-19, 2020

Time : 9:00 a.m. – 4:00 p.m.

Hearings Officer: Chastity T. Imamura

FOURTH AMENDED PREHEARING ORDER¹

Petitioners TEVITA AHOMANA, by and through his Mother FEKETI HUAHULU, (hereinafter collectively referred to as "Petitioners"), filed a Due Process Complaint ("Complaint") against Respondents DEPARTMENT OF EDUCATION, STATE OF HAWAI'I, and CHRISTINA KISHIMOTO, Superintendent of the Hawai'i Public Schools ("Respondents"), pursuant to the Individuals with Disabilities Education Act ("IDEA"), on March 24, 2020. On May 11, 2020, Petitioners were granted leave and filed an Amendment to their Complaint (hereinafter "Amended Complaint").

¹ This Fourth Amended Prehearing Order is being issued to clarify that the Hearing will begin on June 18, 2020 and to provide the associated deadlines for the updated Hearing date.

A status conference was conducted on June 4, 2020. Participating in the conference were: Chastity T. Imamura, Hearings Officer, Feketi Huahulu and Vanessa Ott for Petitioners; and Stuart Kim, Stephanie Kozuma and Marie Inouye for Respondents. On May 12, 2020, the Due Process Hearing (hereinafter "Hearing") was scheduled by agreement on June 12, June 18 and June 19, 2020. After discussion at the status conference of the updates on what occurred during the new resolution session, it was agreed upon by the parties that the Hearing should be delayed to the later reserved Hearing dates of June 18-19, 2020. This delay would provide the parties additional time to attempt to resolve the issue in the Amended Complaint through a negotiated settlement.

The following will apply to the postponed Hearing anticipated to begin on June 18, 2020, if a resolution by the parties is not reached. The new dates and deadlines are indicated in **bold**.

- 1) Each side is not represented by counsel. A new resolution session will be held and will end on June 10, 2020. The 45-day timeline will begin to run on June 11, 2020, and the new decision deadline will be July 25, 2020.
- 2) The issues are limited to those raised in the Amended Complaint and agreed upon during the PHC.
The issues being presented for determination are as follows:

Issue 1 – Parent has requested copies of the complete educational records for Student and has been denied. Specifically, the school used the i-Ready assessment software. The software is capable of generating two diagnostic reports for Math and Reading: 1) diagnostic results and 2) diagnostic growth. As of May 11, 2020, the DOE has provided the diagnostic results for SY2019-2020, but has not provided the complete diagnostic growth reports, which would include the comparative charts of all the assessments throughout the school year.

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

- 3) No substantive Motions were filed by either party by the previous deadline of June 3, 2020, so no hearing will be conducted on June 12, 2020.
- 4) The due process hearing ("Hearing") will be conducted on **Thursday, June 18, 2020, and Friday, June 19, 2020, beginning at 9:00 a.m. each day.** The final

format for the Hearing will be conducted via internet-based videoconferencing platform. Further details of the format and platform will be provided before the hearing dates. Hearings Officer Chastity T. Imamura will preside over the Hearing.

- 5) At the Hearing, Petitioners will have the burden of proof and will proceed first.
- 6) Petitioners have requested an open Hearing with a court reporter and a written transcript of the hearing. Respondents will be responsible for making the necessary logistical and financial arrangements for a court reporter and to have a written transcript of the entire hearing.
- 7) Petitioners have requested the assistance of an interpreter throughout the proceedings, and a court-certified Tongan interpreter will be hired by the Office of Dispute Resolution to assist Petitioners for the Hearing.
- 8) Pursuant to HAR §§8-60-66(a)(3) and 8-60-66(b), all evaluations and recommendations that the parties intend to use at the Hearing; witness and exhibit lists; and all proposed exhibits shall be exchanged between the parties and submitted to the Office of Dispute Resolution via email at atg.odr@hawaii.gov, no later than 4:30 p.m. on Wednesday June 10, 2020. Files that are too large to be emailed may be broken up into separate files and/or may be placed onto a CD-rom or USB drive and mailed to the Office of Dispute Resolution, 707 Richards Street, Suite 520, Honolulu, Hawaii 96813. Files that are too large to be emailed may also be sent as a shared link to a Google/OneDrive account to be accessed by ODR and the opposing party.
- 9) The parties shall include a detailed description of the area of testimony of any expert witness expected to testify at the Hearing. The parties shall submit a curriculum vitae or resume for any expert witness expected to testify or who authored a report, which the parties intend to introduce into evidence.
- 10) Any party that fails to comply with the provisions of HAR §§8-60-66(a)(3) and 8-60-66(b), may be barred from introducing the contested evidence.
- 11) By June 17, 2020, the parties must exchange in writing all objections to any portion of the opposing party's proposed exhibits and/or witnesses and jointly discuss all objections in good faith to resolve them.
- 12) By June 17, 2020, each party must provide the Hearings Officer with a list of objections that they are unable to resolve.
- 13) The parties may submit recordings of IEP or other meetings as disclosures. However, the parties shall provide time-stamp logs of the relevant portion(s) of the recordings to be presented at the Hearing or to be considered by the Hearings Officer. The Hearings Officer reserves the right to review additional, limited portions of the recordings for context and clarity. Files that are too large to be emailed may be broken up into separate files and/or may be placed onto a CD-rom

or USB drive and mailed to the Office of Dispute Resolution, 707 Richards Street, Suite 520, Honolulu, Hawaii 96813.

- 14) Petitioners anticipate calling the following witnesses at the Hearing:
 - A. Mother
 - B. Expert witness DuFault
 - C. Principal
- 15) Respondents anticipate calling the following witnesses at the Hearing:
 - A. Principal
 - B. Two DOE teachers
 - C. Student Services Coordinator
 - D. Mother
- 16) The parties may submit documents to the Office of Dispute Resolution via electronic transmission to atg.odr@hawaii.gov, or by U.S. mail or by facsimile transmission to (808) 587-7682. All documents must be received by the Office of Dispute Resolution no later than 4:30 p.m. on the day that the documents are due, unless otherwise permitted by the Hearings Officer. All communications, pleadings and documents submitted to the Office of Dispute Resolution shall be served upon the opposing party.
- 17) The parties will be held to the matters agreed upon, ordered and otherwise set forth in this Order. If either party believes this Hearings Officer has overlooked or misstated any item, the party is directed to advise this Hearings Office of the omission or misstatement within three (3) business days of the date of this Order (and provide a copy to the opposing party representative).
- 18) A video-conference status conference will be held on **Wednesday, June 10, 2020** at 9:00 a.m. and links to the meeting will be emailed to the parties.

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



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