

Feketi Huahulu
1326 Ke'eaumoku St., #106
Honolulu, HI 96814
Tuesday, June 16, 2020

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

Petitioners,

vs.

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

Respondents.

DOE-SY1920-043

PETITIONERS' MOTION TO DENY
RESPONDENTS' MOTION TO DISMISS
CLAIMING MOOTNESS DOCTRINE

Petitioner moves that Hearing Officer reject Respondents' June 15, 2020 motion to dismiss because that Respondent's claim that this is no longer a live controversy is not true. The mootness doctrine does not apply to Petitioner's request as was established in *Daniel R.R. v. State Bd. of Educ*, 874 F.2d 1036, 1040 (5th Cir. 1989):

"A case may circumvent the mootness doctrine if the conduct about which the plaintiff originally complained is 'capable of repetition, yet evading review.'"

"Conduct is capable of repetition if there is a reasonable expectation or a demonstrated probability that the same controversy will recur."

Petitioner argues that the case is not moot because:

1. there is a reasonable expectation that the conduct giving rise to this suit will recur every school year, yet evade review during the nine-month academic term; and
2. student, Tevita Ahomana, is expected to be in a DOE school for at least six more years.

There are sufficient reasons to expect that this conduct will recur including:

- Throughout negotiations, parent had been cooperative and acquiesced to Respondent's request for an on-going, unnecessary delay of 5 business days for delivery of diagnostic reports instead of 2 business days, but DOE was unwilling to settle unless parent relinquished certain IDEA rights;

- Even though the diagnostic reports were eventually delivered, time and attention was diverted toward pursuit of agency compliance with IDEA statutes, and away from focusing on the child's education, to the detriment of the child;
- The contentious nature with which the Principal handled requests for December 2019 diagnostic reports, and the lack of support from the DOE in complying with a simple federal law (*34 C.F.R 300.613(a)*), is indicative of a culture that does not respect IDEA law;

Per *34 C.F.R 300.613(a)* Each public agency must permit parents to inspect and review any education records relating to their children, and the agency must comply with a request **without unnecessary delay**. This is a statutory requirement.

Petitioners' evidence and Respondents' statements corroborate that there were unnecessary delays in delivering assessment reports.

Periodic school-wide diagnostic assessments are one of the most important educational records for developing and revising an IEP. The most basic of IDEA's requirements is that parents are full and equal participants with the school district personnel on their child's IEP team. Unnecessary delays delivering complete reports of Tevita's diagnostic assessments, no matter what Grade in which he is enrolled, and no matter which DOE school he attends, impede the progress of making IEP adjustments as needed. This interferes with Tevita's right to a FAPE.

Petitioner rejects earlier arguments that DOE cannot be compelled by injunction to deliver school-wide assessments without unnecessary delay. Respondent agency in this request is the DOE, not the local education agency. The Petitioner is merely asking for a permanent injunction to compel the DOE to satisfy the *34 C.F.R 300.613(a)* statutory requirement, and deliver complete, detailed school-wide assessment results to the parent without unnecessary delay. The Hearing Officer is legally authorized to issue an injunction to compel compliance with statutory requirements in the future.

Thank you,



Feketi Huahulu