



DEPARTMENT OF THE
ATTORNEY GENERAL
OFFICE OF DISPUTE RESOLUTION

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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

ORDER GRANTING RESPONDENTS'
MOTION TO DISMISS

Motion Hearing Date: June 18, 2020

Hearings Officer: Chastity T. Imamura

ORDER GRANTING RESPONDENTS' MOTION TO DISMISS

On March 24, 2020, Petitioners TEVITA AHOMANA, by and through his Mother, FEKETI HUAHULU (hereinafter collectively "Petitioners"), a Request for IDEA Impartial Due Process Hearing (hereinafter "Complaint") against Respondents DEPARTMENT OF EDUCATION, STATE OF HAWAII, and CHRISTINA KISHIMOTO, Superintendent of the Hawai'i Public Schools (hereinafter collectively "Respondents" or "DOE"). On May 11, 2020, Petitioners submitted an amendment to their Complaint, and were granted leave to file such amendment (hereinafter "Amended Complaint"), in which Petitioners reduced their claims to a

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single issue and remedy they wanted resolved at the Due Process Hearing (hereinafter “Hearing”). The single issue in the Amended Complaint was describes as follows:

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.¹

Due to the Amended Complaint being filed, new resolution session and decision deadlines were set and the parties again entered into a resolution session. During the new resolution session, the educational records listed in the Amended Complaint were provided to Petitioners. Based on the Respondents’ representation² that the records listed in the Amended Complaint had been provided to Petitioners, Respondents filed the instant Motion to Dismiss (hereinafter “Motion”) on June 15, 2020, arguing that the single issue in the Amended Complaint to be determined at the Hearing has been resolved. Petitioners filed their Motion to Deny Respondents’ Motion to Dismiss (hereinafter “Opposition”) on June 16, 2020.

On June 18, 2020, the hearing on Respondent’s Motion was held via the Zoom video conference platform. Present for the hearing was Ms. Feketi Huahulu and Ms. Vanessa Ott for Petitioners, Mr. Stuart Kim, Ms. Marie Inouye, and Ms. Stephanie Kozuma for Respondents. Ms. Sofolonia Kaulukukui was also present to interpret from English into Tongan and from Tongan into English for Ms. Huahulu. A court reporter was also present to transcribe the proceeding.

¹ See Amendment to Hearing Request, filed May 11, 2020.

² See Respondents’ Motion to Dismiss; Declaration of Kathrine Balatico.

Based on a review of the Motion, the memorandum in support and exhibits attached thereto, the Opposition, the arguments made by the parties at the hearing on the Motion, and the relevant law, this Hearings Officer hereby grants Respondents' Motion based on the following applicable law.

The Individuals with Disabilities Education Act (hereinafter "IDEA") provides an opportunity to a party to present a complaint to "pursue a process of review that, as relevant, begins with a preliminary meeting 'where the parents of the child discuss their complaint' and the local educational agency 'is provided the opportunity to [reach a solution].'"³ "If the local educational agency is not able to resolve the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur."⁴

In the present case, Petitioners were alleging that they did not receive specific diagnostic reports from Respondents in a timely fashion.⁵ Petitioners do not allege in their Amended Complaint that Respondents failed to provide a free appropriate public education (hereinafter "FAPE") through a deficient Individualized Educational Program (hereinafter "IEP") for Student or how the failure to receive the diagnostic reports in a timely fashion constituted a procedural violation that amounted to a denial of FAPE.

Petitioners in this case have conceded that the requested reports have been provided to the Parent, with the exception of one report from the first quarter of the school year 2019-2020. Based on the concession of the Petitioners that they have received the reports, and without any allegations that failure to have the reports significantly impeded the child's right to a FAPE,

³ *Saki, ex rel. Saki v. Hawaii Dept. of Education, et al.*, 50 IDELR 103 (Hawaii 2008) (quoting 20 U.S.C. § 1415(f)(1)(B)(i)(IV)).

⁴ 20 U.S.C. § 1415(f)(B)(ii); Hawaii Administrative Rules ("H.A.R.") 8-60-64(b)(1).

⁵ See issue in Amended Complaint as listed above.

significantly impeded the parent's opportunity to participate in the decision-making process or caused the student a deprivation of educational benefit, there is no further basis for a Due Process Hearing to occur.

IT IS HEREBY ORDERED that based on this Hearings Officer's review of the Motion, Opposition, and arguments set forth by the parties, that the Respondents' Motion to Dismiss is GRANTED. Petitioners' Amended Complaint, filed on May 11, 2020 is hereby DISMISSED without prejudice and the instant case will be closed.

DATED: Honolulu, Hawai'i, June 18, 2020.



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