

From: **Sean Bacon** <sean.bacon@k12.hi.us>
Date: Tue, Aug 22, 2023 at 4:47 PM
Subject: Re: EMERGENCY! Beth Schimmelfennig is violating the Americans with Disabilities Act
To: Vanessa Ott <msvott@gmail.com>

Dear Ms. Ott,

This letter is in response to your August 1, 2023 correspondence to Superintendent Keith T. Hayashi and The Hawaii State Board of Education.

NOT TRUE! The CRCO has not contacted Ms. Aina yet. (26-Aug-2023)

It is the responsibility of the Hawaii State Department of Education (Department) to work directly with its employees. The Department has been in consistent communication with employee Aina.

You have no standing to interfere with the Department's process on this matter or other similar matters.

Sean Bacon
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First, EEOC Guidelines say differently.

Second, this another example of the DOE shutting the community out of our public schools.

From: **Vanessa Ott** <msvott@gmail.com>
Date: Wed, Aug 23, 2023 at 3:21 AM
Subject: Re: EMERGENCY! Beth Schimmelfennig is violating the Americans with Disabilities Act
To: Sean Bacon <sean.bacon@k12.hi.us>, Keith Hayashi <Keith.Hayashi@k12.hi.us>
Cc: Sue Aina <sueaina594@gmail.com>, <beth.schimmelfennig@k12.hi.us>

Mr. Bacon and Mr. Hayashi,

I've written several communications to Mr. Hayashi, not just the August 1, 2023 email. They're all available in order, online, by [clicking here](#) or simply do a search in Mr. Hayashi's email for message from msvott@gmail.com

You are correct that it's the responsibility of the Department to work with its employees. When is that going to start for Ms. Aina?

You are incorrect when you say, "The Department has been a consistent communication employee, Aina." How can you make such a blatantly incorrect statement? NO ONE from the CRCB (the deciding official in ADA disputes in the DOE) has contacted Ms. Aina about the third party request sent to Ms. Schimmelfennig and the CRCO three and a half weeks ago! No phone call, no email, no acknowledgement or receipt. NADA!

The U.S. Department of Justice Reasonable Accommodation Policy and Procedure (and [EEOC ADA enforcement guidelines](#)) states that after receiving a third-party accommodation request, it's **deciding official's** responsibility, i.e. the CRCB's responsibility to contact the disabled employee to see if they want the accommodation, and proceed with processing as soon as possible. Doesn't the department know how to contact its own employee?

<https://www.justice.gov/usao/reasonable-accommodation-policy-and-procedure>

D. Reasonable Accommodation Process

1. Initiating a Request for Reasonable Accommodation

c. Third Party Requests

A family member, friend, health care professional, or other representative acting on the individual's behalf may request a reasonable accommodation on behalf of an individual with a disability. When a third party makes an accommodation request on behalf of an employee or applicant for employment, **the deciding official should confirm with the employee or applicant whether they want the reasonable accommodation before proceeding.** If this is not possible, the deciding official will process the request as appropriate and will consult directly with the individual who needs the accommodation as soon as practicable.

2. Receipt of a Reasonable Accommodation Request

...**Deciding officials should begin processing oral accommodation requests immediately,** even while waiting for the employee to complete DOJ Form 100A or provide other written documentation. **Deciding officials should acknowledge the request in writing,** identify who will make the decision on the request, and describe what will happen during the process. Deciding officials should consult with Section E below for time frames on processing and providing reasonable accommodations. **Deciding officials should communicate early and regularly with the employee throughout the reasonable accommodation process.**

You are also incorrect when you say, "You [I] have no standing to interfere with the Department's process on this matter or other similar matters." The guidelines above clearly show that I have a right to submit a third-party request for an employee ADA accommodation. *And*, I surely have not only the First Amendment Right to inform a public officer that his Department is violating federal law, but a good citizen duty to do so. Don't they teach that in at least High School? That's not called interference, that's called appealing to the proper, public government officer to do something about illegal violations within his Department that he has the power (and obligation) to stop.

The Department's rights are not being violated. It's the Department that is *obviously* violating Ms. Aina's rights by forcing her to work in a classroom that does not meet the minimum ADA accessibility standards for her wheelchair. This isn't an issue involving advanced legal concepts. It's middle school measurement and geometry for goodness sakes. Doesn't the Department know how to measure objects and spaces, and make an accurate floor map?

Superintendent Hayashi is ultimately responsible for making sure the CRCB and the Department aren't breaking the law, especially when such an egregious, obvious violation has been brought to his attention, correct? He has a responsibility to make sure supports are in place for teachers and his subordinates behave like good citizens while at work, and fulfill their job duties, correct? **Does Mr. Hayashi have the right to ignore these responsibilities?** If yes, this is appalling. If no, then when is the Department, the CRCB, and the Superintendent, going to stop violating the ADA by making sure Ms. Aina is working in a classroom large enough for her, her students, their desks, and her WHEELCHAIR without any further nonsense?

Lastly, if you two aren't aware of all the legal issues I just brought up, well there you have it again -- the CRCB isn't doing its job of informing DOE employees how to follow civil rights laws. This is the larger issue the DOE, i.e., the Superintendent, needs to address. That *his* job. Yes or no?

Mahalo,
Vanessa Ott
808 - 854 -1018