

# The *E.R.K.* Special Education Lawsuit Newsletter

November 2015



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## Fall Updates and FAQ's

Aloha Class Members, Parents, and Guardians,

In an effort to keep Class Members and their parents/guardians up to speed on the happenings in the *E.R.K. et al., v. Department of Education* lawsuit, we will begin a periodic newsletter that will provide updates on the case, answers to Frequently Asked Questions posed by Class Members and/or their parents/guardians, and links to relevant court documents from the case that are publicly available. We hope this newsletter provides useful information to Class Members as we work with the Court and the Department of Education ("DOE") to deliver the award of free education services to eligible Class Members.

**RECENT UPDATE:** Plaintiffs' counsel and counsel for the DOE are in the process of preparing a list of Class Members to submit to the Court. If you are receiving this email and have not already told us that you want to receive free education services, **please contact us immediately** so we can (1) verify that you are a Class Member, and (2) add your name to the list. We can provide information about completing consent forms at a later date but at the very minimum, we need to know whether or not you are planning on participating in the lawsuit and receiving an award of free education services. If you are not on the list submitted to the court, you may jeopardize your opportunity to receive free education services through this lawsuit.

You can contact our offices by calling [\(808\) 524-1800](tel:8085241800) and ask for either Michelle Comeau or Zach DiIonna, or you can email Michelle ([mcomeau@ahfi.com](mailto:mcomeau@ahfi.com)) or Zach ([zdiionno@ahfi.com](mailto:zdiionno@ahfi.com)) directly.

Again, if you have not already expressed your interest in participating in the lawsuit to receive free education services, please let us know as soon as possible.

We look forward to working with you all.

Best regards,

A handwritten signature in black ink, appearing to read "Zachary DiIonna". The signature is fluid and cursive.

Zachary DiIonna, Esq.

# Frequently Asked Questions

## **(1) What has happened in the lawsuit so far?**

In 2013, a court ruled that the DOE was violating federal law for several years by requiring special education students to leave school at age 20. Under federal law, special education students in Hawaii have the right to stay in school until they get a regular diploma or reach the age of 22. After this ruling, Hawaii changed its illegal state law that prohibits special education students from remaining in the DOE until age 22. Now, special education students no longer have to leave at age 20.

## **(2) What about the students who were forced to leave before they turned 22?**

Last year, the court decided that the students who were forced to leave early, including you/your child, are entitled to receive **free services** from the DOE to make up for the time that they lost. Since then, the lawyers for the class have been working to reach as many people as possible to tell them about their right to these free services.

We have also worked with the DOE to try to design a set of services for a small “pilot group” to determine the DOE’s ability to figure out what services are needed by Pilot Group Class Members in the pilot group and to design a plan of useful services for those Pilot Group Class Members.

From May to June 2015, the DOE assessed the Pilot Group Class Members to determine their current academic, behavior, and independent living levels. In July and August 2015, the DOE produced reports on each person and an offer of services. After Plaintiffs’ counsel and the Pilot Group Class Members’ parents/guardian reviewed the reports, however, all Pilot Group Class Members rejected the DOE’s offer of services because each offer lacked relevant and sufficient services to compensate each Pilot Group Class Member for two years of lost learning. In September 2015, we issued counterproposals on behalf of several Pilot Group Class

Members, but have not yet received a response from the DOE.

In October, we presented a potential plan of services to be offered (including community college, one-to-one vocational supports, vocational counseling, speech therapy, behavioral counseling, and other services) to Class Members with various types of disabilities. The judge has instructed the DOE to review and respond to the list.

If you would like more information, the weekly status reports and the potential listing of services that Class Members may receive are available on our website:

<http://www.hawaii.classaction.com/erk/default.html>

## **(3) We have already been contacted by Ward Research and/or the law offices of Alston Hunt Floyd & Ing regarding this lawsuit. What steps must I take to ensure that my child is included on the final list of Class Members eligible to receive free compensatory education services?**

If you have been contacted by us in regard to your child’s eligibility as a Class Member in this lawsuit, and **have not** already yet indicated that you are interested in receiving free compensatory education services, please contact our office **immediately** so that we can verify that you are a Class Member. You can contact our office in the following ways:

### By Phone:

Alston Hunt Floyd & Ing - (808) 524-1800

(ask to speak with Zach Dilonno or Michelle Comeau)

### By Email:

Zach Dilonno ([zdilonno@ahfi.com](mailto:zdilonno@ahfi.com))

Michelle Comeau ([mcomeau@ahfi.com](mailto:mcomeau@ahfi.com))

We will send you the following two consent forms for you to sign and return to our offices: (1) the Family Educational Rights and Privacy Act (“FERPA”) consent form, and (2) the Re-evaluation consent form.



**(4) What is the purpose of signing consent forms?**

The Family Educational Rights and Privacy Act (“FERPA”) consent form authorizes the DOE to release an individual’s education records to a designated recipient. We ask Class Members (or their parent/legal guardian) to authorize the DOE to release their education records to us so that we may begin the process of determining (1) what types of services Class Members are eligible for, and (2) how to best implement those services to Class Members.

The DOE is requesting that Class Members sign a reevaluation form to allow the DOE to assess Class Members if needed. The assessment may be used, along with information about prior services, current services, and the Class Member’s individual goals, to help determine what will be offered to each Class Member.

**(5) My child currently receives services from the Department of Health or another provider and I do not want these services to be disrupted. If we choose to participate in the lawsuit to receive free compensatory services paid for by the DOE, will those compensatory services affect or interfere with my child’s current services?**

No, the DOE’s compensatory services will not affect Class Members’ current services. The DOE’s compensatory services will serve only to supplement the Class Member’s current services, according to the Class Member’s individual schedule and availability.

**(6) Will my child be required to return to their home school to receive the compensatory services? Where will my child receive services?**

Class Members **will not** have to return to their high school to receive the DOE’s compensatory services. Rather, Class Members will be able to receive their services either (1) at home, (2) in their community, or (3) from a third-party provider. The location where each Class Member receives his or her services will vary from person to person.

