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

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## April 2018 Update

Aloha to all Class Members, Parents, and Guardians.

Thank you for your patience during the pendency of this case. We have good news to report.

### SETTLEMENT REACHED

In 2010, a special education student represented by the Hawaii Disability Rights Center and Alston Hunt Floyd & Ing filed suit against the State of Hawaii Department of Education (“DOE”) to assert his right and the right of all Hawaii special education students to remain in school and receive services until they either earn a regular high school diploma or reach age 22. In December 2017, the parties settled that class action lawsuit, called *E.R.K., et al. v. Department of Education, State of Hawaii, Civ. No. 10-00436 SOM-KSC*. To settle the class action claims, the DOE has created an \$8.2 million Services Fund to provide either compensatory education or education-related services to the approved class members under the oversight of retired Hawai`i Supreme Court Associate Justice James E. Duffy, Jr., the appointed Settlement Administrator. The goal of the settlement is to make up for services that these Hawai`i special education students should have received from the DOE while they were still in school.

### LIST OF CLASS MEMBERS IS CLOSED

The final list of eligible class members is **495 former special education students**. Throughout the lawsuit, the plaintiff fought the DOE when it raised objections to the inclusion of many class members. It appeared that the class members list was closed in 2016, but then, late in the settlement discussions in 2017, the DOE objected to several more class members’ eligibility to receive services. The court approved those exclusions as part of the final agreement. We have begun notifying those individuals that they have, unfortunately, been excluded from this class action settlement. If you have a question about whether or not you are one of the 495 class members, please send an email to [ERKClassaction@ahfi.com](mailto:ERKClassaction@ahfi.com) and put “E.R.K. v. DOE” in the subject line.

### PLANNING FOR YOUR SERVICES

Guided by Settlement Administrator Justice Duffy, attorneys from the Hawaii Disability Rights Center and Alston Hunt Floyd & Ing and are establishing the process to provide eligible class members

with compensatory educational and related services. The amount of money that can be spent to obtain each class member's services is based on their response to our questionnaire and evaluation of school records provided by the DOE. Settlement Administrator Justice Duffy has a deadline of December 31, 2020, to distribute the Services Fund. Any unspent balance will be returned to the State.

## **ACTION STEPS**

Time is of the essence. If you are a member of the class, please gather any receipts or invoices related to educational or related services you have paid for since leaving school. You should also gather copies of any treatment plans you may have obtained from qualified service providers, along with the invoices or receipts for payment for those services.

Attorneys from Alston Hunt Floyd and Ing will be in touch soon to talk about your allotment from the Services Fund and connect you to community, governmental, and academic organizations that can assess your service needs and/or provide the compensatory educational and related services that you need. In the meantime, if you have any questions, please send an email to [ERKclassaction@ahfi.com](mailto:ERKclassaction@ahfi.com) and put "E.R.K. v. DOE" in the subject line.



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