

The E.R.K. Special Education Lawsuit Newsletter

December 2015



Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, HI 96813 www.ahfi.com 808-524-1800

Winter Updates and FAQ's

Aloha Class Members, Parents, and Guardians,

I hope you are enjoying this festive time of year with the holiday season now in full swing. We have a few updates to provide you regarding the status of the case:

IDENTIFICATION OF CLASS MEMBERS: If you are receiving this newsletter, that means we have your contact information and you are listed as an "interested class member." However, there are hundreds of former students who eligible to participate but have not yet been reached. The DOE wants to "close" the class so that none of these people can receive services. We are opposed to this because it is unfair to the class members who lost out on their right to special education, but have not yet been located or informed about the lawsuit. [Click here](#) to view our motion submitted on November 30, 2015. In our motion, we explain the DOE's:

- (1) insufficient outreach efforts,
- (2) failure to provide Plaintiffs' counsel with current parent/guardian contact information,
- (3) refusal to release class contact information, and
- (4) delay in its efforts to identify interested class members.

We have argued to the Court that interested class members should not be denied the right to participate in the lawsuit while efforts to reach them are still ongoing and while the class members are unaware of what "compensatory education" will look like in terms of services.

The DOE has also challenged many interested class members on the basis that they (1) are too young or too old to have been affected by Act 163, which forced special needs students out of school at the age of 20, (2) left school too early, or (3) are otherwise ineligible. We presented over 18 declarations from class members to show that the DOE's objections have no merit. **Mahalo nui loa to those of you who assisted us in preparing the declarations.**

The Court will hear parties' motions on **Wednesday, January 27, 2016**. The Court's ruling will provide more information on the issues above and we will share that with you when it becomes available.

PILOT GROUP UPDATE: This past October, we submitted to the DOE proposals for services for several class members in the Pilot Group. The DOE still has not responded.

FERPA CONSENT FORMS: We are requesting that each class member (or their court-appointed legal guardians) sign a Family Educational Rights and Privacy Act ("FERPA") consent form, which authorizes the DOE to release the class member's education records to Alston Hunt Floyd & Ing. We have uploaded those forms on our website and they can be downloaded

as PDF files by [clicking here](#). Once the class member or court-appointed legal guardian signs and dates the FERPA form, the form can be submitted to us via postal mail, email (zdiionno@ahfi.com), or fax (808-524-4591). **If you have not already done so, please send this to us as soon as possible.**

GUARDIANSHIP PAPERS: If you are a parent or guardian for a class member and have legal papers appointing you as the "legal guardian" of a class member, please forward those documents to us as soon as possible (if you have not already done so).

ATTORNEYS' FEES: Plaintiffs have submitted a motion for attorneys' fees. The DOE is liable to pay attorneys' fees in this case. Class counsel submitted a motion for fees for Alston Hunt Floyd & Ing and Hawai'i Disability Rights Center for approximately four years of work from 2010-2014 (except for the appeal). The motion is available [here](#).

CONTACT INFORMATION UPDATE: If any contact information (e.g., phone number, emails, and mailing addresses) for class members or their parents/guardians has recently changed, please provide us with the most updated information. We want to ensure that you continue to receive timely updates relating to this case.

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

We wish you and your families a safe, peaceful holiday season and a Happy New Year. [Click here for a special holiday greeting from Alston Hunt Floyd & Ing.](#)

Best regards,

A handwritten signature in black ink, appearing to read "Zachary DiIionno". The signature is fluid and cursive, with the first name "Zachary" and last name "DiIionno" clearly distinguishable.

Zachary DiIionno, Esq.

Frequently Asked Questions

(1) Does the class member or legal guardian of class member get “final say” on whether or not to accept offer of services?

Yes. Each Class Member (or his or her legal guardian) has the right to reject any offer of services from the DOE. As your legal counsel, we will advise you as to the benefits and drawbacks of accepting any offer from the DOE, but the decision to accept the DOE’s offer of compensatory services is ultimately made by the Class Member or his or her legal guardian.

(2) Will there be an option to receive money instead of education services?

At this time, the parties and the Court are discussing providing education services to Class Members and/or a fund from which services can be paid for. Reimbursement of education expenses already paid out may be provided for certain Class Members.

(3) What factors will be considered in determining what each class member gets?

We have discussed the following with the Court and the DOE. Some or all of these may be considered, depending on the individual case:

- The Class Member’s goals;
- Services received while in high school per Class Member’s last IEP;
- Services currently provided by the Department of Health or any of its divisions (if applicable);
- Feedback from Class Members and parents/guardians regarding Class Members’ current needs;
- Past assessment data from Class Member’s DOE education records;
- Up-to-date assessment data.

(4) Have Class Members started to receive services? Why haven't any Class Members received services yet?

To date, the DOE has not provided services to any Class Member. In early October 2015, we submitted our counterproposals to the DOE’s offer of services for several Pilot Group Members. We have not yet received a response from the DOE regarding our counterproposals. We have also provided a chart proposing many services to the DOE, but have not had a response. The DOE’s failure to provide services is unacceptable because these services were ordered to be provided by the Court over a year ago. We are pressing the DOE to move faster.

