

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

June 2016



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## June 2016 Updates

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Aloha Class Members, Parents, and Guardians,

I hope this newsletter finds you and your families well. Please take note of two significant developments in this case:

1. The Court has rejected the DOE's arguments to "close the class" and will allow eligible individuals to sign up to participate, but only until **September 19, 2016**. If you are receiving this newsletter, you are already signed up. However, please contact us as soon as possible if you may know someone who is between 22 and 28 years old, who received special education in school, and who left school without a regular diploma before age 22. Approximately 800 Class Members are still missing!
2. The Court has determined that certain Class Members are too young to receive services in this lawsuit. If this ruling affects you, we will contact you personally to discuss your options.

Here is more detail on the recent hearings that led to these decisions:

### **MAY 3, 2016 HEARING ON PLAINTIFFS' APPEAL AND MOTION FOR CONTEMPT**

On May 3, 2016, the Court held a hearing on two matters before the Judge Mollway: Plaintiffs' (1) Appeal of Magistrate Judge Chang's February 18, 2016 Order; and (2) Motion For Order Holding DOE In Contempt.

During oral arguments, Plaintiffs argued that Magistrate Judge Chang erred in closing the Class because approximately 1,000 Class Members had not yet received any meaningful information about the free and compensatory services to which they are entitled. Plaintiffs asserted that this problem results largely from the fact that the contact information the DOE produced in response to the Court's August 2014 Order was stale and

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useless, more often than not.

Plaintiffs argued that a number of state and county agencies likely possess current contact information (e.g., phone numbers and addresses) for a majority of the "missing" Class Members and their parents based on information already gathered from the "known" Class Members. Plaintiffs pointed out that many "known" Class Members are currently receiving benefits or services from Med-QUEST in the Department of Human Services and Developmental Disabilities Division in the Department of Health. Plaintiffs have also identified the Department of Taxation as another potential source of information for the 1,000+ missing Class Members or their parents who are employed or otherwise paying taxes to the State. Lastly, Plaintiffs believe that the DMV offers an excellent source of current contact information for missing Class Members or their parents who maintain driver's licenses.

At the conclusion of the hearing, the Court instructed Plaintiffs to reach out to various state and county agencies and inquire, hypothetically, "if the agency received an order from the Court requiring them to provide the most current addresses and phone numbers of a list of 1,000 people, how long would it take for the agency to compile and produce that information, and what would be the costs?" The Court instructed Plaintiffs to submit a memorandum on its findings to the Court on May 13, 2016.

The Court scheduled a phone conference for May 18, 2016, at which time the Court and the parties discussed the information gathered from Plaintiffs' agency outreach and the Court would determine whether or not to order those agencies to release the contact information.

#### **MAY 18, 2016 PHONE CONFERENCE AND ORDERS DIRECTING AGENCIES TO PRODUCE CONTACT INFORMATION**

During the May 18, 2016 phone conference between the Court and the parties, the Court and the parties determined which information was eligible to be released under FERPA, such as phone numbers and contact information of the students and their guardians, and the Court issued an order to the DOE to produce this contact information. The Judge also ordered the DOE to send a notice to class members informing them that any family members' names or phone numbers that are accessible through the eCSSS system will be given to the Plaintiffs' counsel unless they object by a certain date. The Judge allowed the Plaintiff's counsel to collect more current contact information from two government agencies. The Court also instituted a deadline of September 19<sup>th</sup> after which no new class members can be identified. When this date has passed, the Judge will require the Department of Education to begin to fashion services that can be provided to the class members.

Following the meeting, the Plaintiffs' Counsel identified two government agencies, MedQuest and the DMV, who may be able to provide current contact information about potential class members. The Court issued orders directing these agencies to produce the contact information of missing class members or their parent or guardian. This will be the last opportunity for class members to be included in the lawsuit. We anticipate receiving this information sometime in late June to early July, at which time we will begin outreach efforts to contact these missing class members until the September 19<sup>th</sup> cutoff date.

#### **"TOO YOUNG" CLASS MEMBERS**

At the May 3, 2016 hearing, the Court determined that there was a subset of the Class Members ("Too Young" Class Members") who are not eligible to receive services through this lawsuit. The Court reasoned that the criteria for being a class member in this lawsuit required that students were impacted by Act 163 at the time that it was in effect. The Court held that any students born after August 5, 1993 could not have been impacted by Act 163 because at the time those students turned 20 years old, Act 163 had already been repealed by the Hawai'i State Legislature; thus, Act 163 could not have impeded those students' ability to receive services from the DOE

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until the age of 22 years old. The Court noted that those students who were born after August 5, 1993 but who had submitted a declaration to Judge Chang, explaining that they were misinformed/never informed about their right to receive services until the age of 22 years old, could remain in the current class.

Importantly, however, Plaintiffs pointed out that even *after* Act 163 was repealed, the DOE continued to inform some students that they were no longer eligible to receive services past the age of 20 years old. Plaintiffs argued that these "Too Young" Class Members were also deprived of their right to receive special education services until the age of 22 years old. The Court acknowledged that the "Too Young" Class Members may be entitled to a similar remedy of compensatory education services from the DOE in a new lawsuit, but that these individuals did not fall under the objective criteria of the current lawsuit.

#### **PILOT GROUP UPDATE**

In October 2015, we prepared counterproposals for services for several Class Members in the Pilot Group. We still have not received a response from the DOE. The Court stated that the process for implementing services should wait until class closes on September 19, 2016. At that time, the Court indicated that the DOE would be expected to begin ramping up the process for determining the compensatory award of services for class members, and the implementation of those services.

#### **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). The form can be submitted to us via postal mail, email ([zdiiionno@ahfi.com](mailto:zdiiionno@ahfi.com)), or fax (808-524-4591).

#### **WEBSITE AND FAQ's PAGE**

We are continually updating the website with recent court filings, status conference reports, newsletters, consent forms, and other documents related to this lawsuit. You can check in on the status of the case at any time by accessing the website at [www.hawaiiclassaction.com/erk](http://www.hawaiiclassaction.com/erk) or by clicking [here](#). Our [Frequently Asked Questions section](#) addresses questions and concerns raised by Class Members and/or their parents/guardians. Please feel free to email me with any questions that are not already answered in this section and I will post them. It is highly likely that other folks are asking the same questions as you!

#### **CONTACT INFORMATION**

If any contact information (e.g., phone number, emails, 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 have any questions, comments, or concerns, you can contact our offices by calling (808) 524-1800 and ask for either Michelle Comeau or Zach DiIionno, or you can email Michelle ([mcomeau@ahfi.com](mailto:mcomeau@ahfi.com)) or Zach ([zdiiionno@ahfi.com](mailto:zdiiionno@ahfi.com)) directly. We look forward to connecting with you soon.

Best regards,



Zachary DiIionno, Esq.

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