



DEPT. OF COMMERCE AND CONSUMER AFFAIRS

2003 OCT 30 A 8:55

OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS HEARINGS OFFICE  
STATE OF HAWAII

In the Matter of	)	DOE-2003-115
	)	
), by and through	)	FINDINGS OF FACT,
his Father, I	)	CONCLUSIONS OF LAW,
	)	AND ORDER GRANTING
Petitioners,	)	RESPONDENT'S MOTION
	)	TO DISMISS
vs.	)	
	)	
DEPARTMENT OF EDUCATION,	)	
STATE OF HAWAII,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER  
GRANTING RESPONDENT'S MOTION TO DISMISS

Legend

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This matter having come on for hearing before the undersigned Hearings Officer on October 21, 2003; EC appearing for Respondent Department of Education, State of Hawaii ("Respondent"); and Petitioners and ("Petitioners") having failed to appear either in person or by representation; and after due consideration of the motion, memorandum, and exhibits attached thereto, the Hearings Officer hereby sets forth the following Findings of Fact, Conclusions of Law and Order.

I. FINDINGS OF FACT.

1. was born in December 1998.
2. s home school is Helemano Elementary School.
3. As of the start of the 2003-04 school year, has been and continues to be enrolled at St. Michael's School, a private Catholic-based school.
4. On May 21, 2003, PS requested a speech evaluation. As a result, a speech assessment was conducted on \_\_\_ on June 27, 2003 and an Eligibility Conference/Individualized Education Program ("IEP") meeting was held on July 15, 2003.
5. was diagnosed with a speech development deficiency and as such, would be eligible for an IEP if enrolled in a public school.
6. On July 15, 2003, Respondent provided Petitioners with its offer of a Free Appropriate Public Education ("FAPE") at Helemano Elementary School.
7. A Prior Written Notice of Department Action was provided to Petitioners on July 15, 2003. The proposed action stated: "[ ] will receive speech therapy at Helemano Elementary School." The Prior Written Notice also reflected that "[a]lthough parents are in full agreement of the program that was developed for [ ], they do not want to enroll [ ] in a public school setting. Both parents attended private school and would like to provide that experience for their son."
8. On July 15, 2003, PS declined the offer and informed Respondent that he was placing in Kindergarten at St. Michael's School.

II. CONCLUSIONS OF LAW.

If any of the following conclusions of law shall be deemed to be findings of fact, the Hearings Officer intends that every such conclusion of law shall be construed as a finding of fact.

Hawaii Administrative Rules ("HAR") §8-56-56(c) states that "[n]o private school student with a disability is entitled to any service or to any amount of a service the student would receive if enrolled in a public school." See also, *CFR* §300.455(a)(3). Here, there is no dispute that [redacted] was unilaterally placed at a private school by his parents and that the placement was based on a preference by [redacted] s parents that [redacted] attend a private Catholic-based school rather than a public school. There is also no claim that [redacted] was denied FAPE. Under these circumstances, Respondent bears no obligation to provide the contemplated speech-related services to [redacted]. Moreover, although Respondent offers the Private School Participation Project ("PSPP") to special needs students enrolled in private schools, [redacted] was not deemed to be eligible under the criteria established for the 2003-04 school year.<sup>1</sup>

III. ORDER

Based upon the foregoing findings of fact and conclusions of law, the Hearings Officer orders that Respondent's motion to dismiss is granted and that this matter be and is hereby dismissed.<sup>2</sup>

DATED at Honolulu, Hawaii: OCT 30 2003



CRAIG H. UYEHARA  
 Administrative Hearings Officer  
 Department of Commerce  
 and Consumer Affairs

<sup>1</sup> For the 2003-04 school year, Respondent has determined that PSPP may be offered if the student meets the following qualifications:

- eligible under IDEA
- preschool age (between the ages of three to five years).
- has speech-language or communication problems which significantly deviate from age expectations and are addressed in his/her IEP, and
- voluntarily placed by parents in a private preschool.

Having been placed in Kindergarten at St. Michael's School by his parents [redacted] is not eligible for PSPP for the 2003-04 school year.

<sup>2</sup> To the extent that the request for due process hearing is based upon claims arising from HAR §§8-56-53 to 8-56-58, the Hearings Officer is without jurisdiction to address those issues. *HAR* §8-56-58(a).