



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2003 JUN 25 A 10:56

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

In the Matter of)	DOE-2002-006
)	
, by and through)	FINDINGS OF FACT,
his Parents,)	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

Respondent Department of Education, State of Hawai'i ("Respondent") having filed a motion to dismiss on April 24, 2003, and this matter having come on for hearing before the undersigned Hearings Officer on June 17, 2003; [REDACTED], Esq. appearing for Respondent; and [REDACTED], appearing on behalf of Petitioners by and through his parents; and after due consideration of the motion, memoranda and affidavit filed herein along with the argument of counsel, the Hearings Officer hereby sets forth the following Findings of Fact, Conclusions of Law and Order.

I. FINDINGS OF FACT.

1. By letter dated October 31, 2002 to Respondent, the attorney for Petitioners requested an impartial due process hearing to address Petitioners' claims that Respondent had failed to provide [REDACTED] with a Free Appropriate Public Education ("FAPE").

2. By letter dated November 5, 2002 to Respondent, Petitioners' attorney supplemented Petitioners' October 31, 2002 request for due process hearing by, among other things, setting forth their proposed resolution. The letter stated in relevant part:

Proposed Resolution: parents propose that the DOE resolve their concerns by taking the following action:

- 1. Create and implement a crisis plan and a positive behavior support plan immediately to permit to receive FAPE;
- 2. Provide with compensatory services for the hours for which he was excluded from school;
- 3. Provide training to school administration and teaching staff regarding behaviors associated with autism;
- 4. Comply fully with Title 8, Chapter 56, Subchapter 11, Hawai'i Administrative Rules, including but not limited to the following:

(c) If school personnel determine the authority for a crisis suspension exists pursuant to paragraph [8-56-84](c):

(1) The crisis suspension shall be in accordance with chapter 8-19-7, including the student's right to resume attendance at school as soon as the exclusion pursuant to chapter 8-19-7(a) is no longer necessary;

(2) The student with a disability shall be provided with a free appropriate public education in accordance with section 8-56-86(d) during the period of the crisis suspension;

(3) The IEP team shall be convened immediately after the initiation of the crisis suspension to conduct the functional behavioral assessment in accordance with section 8-56-87; . . .

§8-56-84(c)(1)-(3); and

- 5. Pay the Petitioners' attorneys' fees and costs.
- 3. Petitioners' request for hearing was transmitted to the Office of Administrative Hearings, Department of Commerce and Consumer Affairs, on November 14, 2002.
- 4. A Notice of Hearing and Pre-Hearing Conference was issued on November 15, 2002.
- 5. Thereafter, the parties informed the Hearings Officer that the parties were engaged in settlement negotiations.
- 6. On April 24, 2003, Respondent filed the instant motion.

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.

In bringing this motion to dismiss, Respondent contends that the relief sought by Petitioners have been resolved through the Individualized Education Plan ("IEP") process and that no other issue exists for adjudication. According to Respondent, the "[p]arents agreed to Elementary School's offer of FAPE, making the current issues . . . moot."

The mootness doctrine encompasses the circumstances that destroy the justiciability of a suit previously suitable for determination. The duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. *Wong v. Board of Regents*, 62 Haw. 391 (1980).

In this case, Petitioners do not dispute that the relief sought in their request for due process hearing has been provided by Respondent through and as a result of the IEP process. Moreover, Petitioners acknowledge that the Hearings Officer lacks the authority to award Petitioners the attorney's fees and costs they incurred in pursuing this matter. Under these circumstances, the Hearings Officer concludes that there are no justiciable issues remaining for adjudication in this case.

III. ORDER.

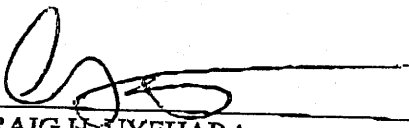
ACCORDINGLY, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted, and Petitioners' due process hearing request be and is hereby dismissed.

RIGHT TO APPEAL

The parties to this case have the right to appeal this decision to a court of competent jurisdiction. The appeal must be made within thirty days after receipt of this decision.

DATED at Honolulu, Hawaii:

JUN 25 2003


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