

DEC 14 2001

at 11 o'clock and 24 min. A
WALTER A. Y. H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

4	NATALIE T., individually and)	CIVIL NO. 01-00656HG
	as Guardian Ad Litem of)	
5	BENEDICT T., minor,)	
)	
6	Plaintiffs,)	
)	
7	vs.)	
)	
8	PAUL LeMAHIEU, in his official)	
	capacity as Superintendent of the)	
9	Hawaii Public Schools, et al.,)	
)	
10	Defendants.)	
)	

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing on
Monday, December 3, 2001, at 9:10 a.m., at Honolulu, Hawaii,

BEFORE: THE HONORABLE HELEN GILLMOR
United States District Judge
District of Hawaii

REPORTED BY: STEPHEN B. PLATT, RMR, CRR
Official U. S. District Court Reporter
District of Hawaii

APPEARANCES: STANLEY E. LEVIN, ESQ.
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Attorney for the Plaintiffs

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Attorney for the Defendants

1 currently. He is receiving the tutoring. We do have
2 individuals such as Janna Thompson and Janette Singer on
3 staff. They did receive the -- number two, they did contact
4 the Behavioral Counseling and Research Center by the deadline
5 indicated in the stipulation. They did do the evaluation,
6 number three. Number four was with respect to providing the
7 tutor; that was provided in a timely manner.

8 THE COURT: Okay, let's back up for a minute. I
9 thought there was supposed to be a one-time training. Has
10 that taken place?

11 MS. TOGUCHI: My understanding is that it has not
12 yet, Your Honor, but the agreement, according to -- the
13 strict terms of the agreement says by a certain time
14 defendant shall contact Behavioral Counseling and Research
15 Center to provide a one-time training. And we did contact
16 them by that time. We have no control over when this third
17 party will go ahead and provide that training. We have no
18 control over that, Your Honor. That's specifically why the
19 stipulation says that we will contact this service by a
20 certain time. And we did so. And we do have it arranged for
21 them to come up.

22 THE COURT: Okay, you have arranged for them to do
23 this?

24 MS. TOGUCHI: Yes, Your Honor.

25 THE COURT: And what date is that set for?

1 MS. TOGUCHI: I'm sorry, I was attempting to get
2 that information. I don't know what that date is yet.

3 THE COURT: But there is a date set?

4 MS. TOGUCHI: Yes. They have been contracted to do
5 it. They have been -- the agreement has been negotiated for
6 them to come up and do this, Your Honor. This is an entity
7 that the DOE and DOH work with on an ongoing basis for any
8 number of students, so they do have an ongoing relationship
9 with them, and it is simply a matter of trying to figure out
10 how the service is going to be provided. This is outside the
11 normal scope of what they normally -- although the service,
12 itself, is something that they contracted with this
13 individual -- with this entity for, the type of service, to
14 provide this type of training for this one individual, was
15 something slightly different than the usual terms of the
16 contract. So it's simply a matter of arranging the contract
17 to specify it for this particular need.

18 But we did comply with the terms of the
19 stipulation, which says that by October 16, defendant shall
20 contact that agency, and we did so.

21 THE COURT: Okay, Ms. Toguchi, you know, I find
22 that kind of language disturbing. I find the
23 characterization and the way you are putting it forward
24 disturbing, because what it says to me is that -- it doesn't
25 speak of an attempt to accomplish what will actually aid this

1 child, and that is, getting the training. You are telling me
2 that you have done something chapter and verse, in terms of
3 the stipulation, but you don't even have the date when it is
4 supposed to take place. It doesn't do the child any good,
5 the fact that you have called -- your client has called,
6 within parameters; it's not going to do him any good until
7 the training takes place. And, in addition, if the child
8 isn't even in the school, what good does it do?

9 MS. TOGUCHI: Your Honor, I understand --

10 THE COURT: So connect up for me how this child is
11 no longer in the school, and how that works.

12 MS. TOGUCHI: Your Honor, I understand the court's
13 concern. I think the purpose -- the attorneys in this case,
14 Your Honor, negotiated the stipulation. We agreed on the
15 language in the stipulation. And I'm not attempting to,
16 again, be flippant, Your Honor, but simply, the reason why --

17 THE COURT: I wouldn't say "flippant," Ms. Toguchi,
18 but I am looking for a spirit here of attempting to
19 accomplish the goals of the stipulation. I am not saying you
20 are flippant; I am just saying, how serious is the DOE about
21 accomplishing these goals? Why is the child at home?

22 MS. TOGUCHI: Your Honor, that is the result of
23 the -- okay, let me address -- I will address that,
24 Your Honor.

25 With respect to number two, Your Honor, again, if I

1 just may say that it was a recognition that my clients have
2 no control -- has no control to what the Behavioral
3 Counseling and Research Center actually does, and their
4 availability and their schedule. So that's simply --

5 THE COURT: Okay, now, Ms. Toguchi, I am not
6 accepting that reply. And let me explain to you why I am not
7 accepting that reply: You represent an entity who pays these
8 people. You represent an entity who contracts with them.

9 MS. TOGUCHI: Yes.

10 THE COURT: And to tell me that one party to a
11 contract has no control doesn't seem, to me, to be an
12 accurate reflection of how the contracting process works. If
13 you had come in and you told me that it couldn't get
14 scheduled until January 31st, because that's the next
15 available date -- but that's not what you are telling me.
16 You are telling me something that I find quite disturbing,
17 actually, when you tell me one side of a contracting entity
18 has no control, and you don't know when it got set for.
19 That's, one, inadequate information; and, two, an inaccurate
20 characterization of the relationship of the DOE with these
21 people that they contract for. So I am not accepting your
22 explanation. And I want you to be clear on the fact that I
23 am not accepting your explanation. And you may go on to the
24 next part, with respect to why the child is not in school,
25 because if these people are getting trained, and he is not

1 even going to be dealing with them, what good is it going to
2 do? So, why is he at home now? What has happened?

3 MS. TOGUCHI: Well, Your Honor, I, again,
4 apologize -- I apologize for my inarticulateness, but that is
5 what I was attempting to say. We do have -- in a sense, we
6 are contracting parties, but it is dependent in part -- in
7 large part, on Behavioral Counseling and Research Center's
8 scheduling availability. Further, Your Honor, with respect
9 to his current placement, it is also my understanding that he
10 is currently on what's called home hospital placement, and
11 that is simply that he receives instruction in the home
12 environment. And I think, Your Honor, that is a -- in a
13 sense, it is connected to this case, I understand that, and
14 connected to this current lawsuit. But, Your Honor, that is
15 a separate -- with all due respect to the court and this
16 proceeding, that is a situation that has resulted from what's
17 going on with the child currently, and that's a decision made
18 by the IEP team, as far as what is the most appropriate
19 placement for him currently. What is the environment that --

20 THE COURT: What instruction is he receiving at
21 home?

22 MS. TOGUCHI: He's home hospital treatment,
23 Your Honor. It means that instead of -- he receives direct
24 instruction through tutoring in the various courses he would
25 otherwise be learning at school, in terms of his core