



DEPARTMENT OF THE ATTORNEY GENERAL

**News Release**

**LINDA LINGLE**  
GOVERNOR

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Mark J. Bennett, Attorney General  
Phone: (808) 586-1500  
Fax: (808) 586-1239

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For Immediate Release: May 31, 2005

News Release No. 2005-21

**Felix Case Ends**

HONOLULU – The U.S. District Court case of Felix v. Lingle has now terminated, ending twelve years of court oversight of the delivery of special education and related services to children and youth in Hawaii. This milestone event was announced by Attorney General Mark Bennett, Superintendent of the Department of Education Patricia Hamamoto, and Director of Health Dr. Chiyome Fukino at a news conference today.

Attorney General Mark Bennett said, "It was a priority of mine and of this Department to end federal court supervision of special education in Hawaii. I am very pleased that this has now come to pass. The Department of Education and the Department of Health have made dramatic and effective changes to the system. The array of services available to special education students has increased dramatically, and the State is now able to comply with the law."

"I would like to take this opportunity to thank our teachers, principals, and professional support staff for their dedicated commitment to sustaining and improving our system of care for our students. At this milestone, we owe a debt of gratitude to

(more)

Dr. Groves and the Felix class parents who kept us on track by holding us accountable and actively advocated for their children," said Superintendent Hamamoto. "The Department takes our moral obligation and duty to provide quality educational and behavioral services for our students seriously. We are committed to working with other state agencies and families to ensure the continued delivery of quality services to our children and youth."

In May 1993, the parents of Jennifer Felix, a student eligible to receive special education and related services under the Individuals with Disabilities Education Act (IDEA), filed a class action lawsuit against the State of Hawaii alleging that the State was failing to provide the necessary services in compliance with the IDEA and Section 504 of the Rehabilitation Act (Section 504). The Felix class was defined as "all children and adolescents with disabilities residing in Hawaii, from birth to 20 years of age, who are eligible for and in need of special education and related mental health services."

In October 1994, an out of court settlement was reached, and Judge David Alan Ezra signed the order approving the Consent Decree. The Court appointed Dr. Ivor Groves as the Court Monitor to assist the Court in monitoring the State's compliance with the Consent Decree. The Court also appointed Jeffrey S. Portnoy, Esq. as the Court Master.

To assist the Court in determining, in an objective manner, whether the State is in substantial compliance with the Consent Decree (i.e., whether timely, appropriate educational and related services were being delivered), Dr. Groves identified 141 benchmarks necessary for the State to achieve substantial compliance.

These benchmarks were to serve as guides in determining whether the State was moving forward in its efforts toward substantial compliance.

In addition to the benchmarks, Dr. Groves created a protocol known as "service testing" to determine whether appropriate and timely services were being delivered to eligible students. Service testing entails randomly selecting a certain number of Felix class students within a complex and judging the system performance and degree of individual student success by reviewing records in the school, observing the operation of the program provided at the school, and interviewing employees, service providers and parents.

In June 2000, the Court found the State to be in contempt for failing to comply with the requirements of the Consent Decree and on August 3, 2000, the Court approved a Revised Consent Decree. After years of developing a system of care as required under the Consent Decree, by order dated September 10, 2002, Judge Ezra found the State to be in substantial compliance as of March 30, 2002. Upon finding the State in substantial compliance, the State moved into the Sustainability Phase of the Consent Decree. During the Sustainability Phase, the State was required to continue to maintain substantial compliance with the Consent Decree.

On April 16, 2004, the parties entered into a Stipulation For Step-Down Plan And Termination Of The Revised Consent Decree. Pursuant to the Stipulation, "[t]he quarterly reporting requirement under this Stipulation shall terminate 30 days after the fifth quarterly report is published, at which time all obligations under Civil No. 93-00367DAE shall terminate and the case shall be dismissed with prejudice." The fifth quarterly report was published on April 27, 2005. Dismissal of the case with prejudice

and termination of the Court's jurisdiction does not terminate the State's responsibility to comply with the requirements of the IDEA or Section 504.

“We must maintain the quality system of services developed over the past several years,” said Chiyome Leinaala Fukino, M.D. Director, Hawaii State Department of Health. “We are committed to providing the children of Hawaii the support they need to succeed in school and in life.”

“Just as was done with the State Hospital, this is yet another example of the progress we have made in meeting our legal and social obligations to provide quality state services to children, adolescents and adults with disabilities,” Bennett said.

To date, all infrastructures necessary for the provision of timely services are in place. All school complexes (high school and their feeder intermediate and elementary schools) have passed initial service testing. Service testing continues as a regular part of the State's own monitoring of continued sustainability and compliance with the IDEA and Section 504.

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For more information, contact:

Holly Shikada  
Supervising Deputy Attorney  
Education Division  
(808) 586-1255

e-mail: [hawaiiag@hawaii.gov](mailto:hawaiiag@hawaii.gov)

Web site: [hawaii.gov/ag](http://hawaii.gov/ag)