

AUG 28 2013

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

## UNITED STATES COURT OF APPEALS

## FOR THE NINTH CIRCUIT

R.T.D., by and through his parents; R.D.;  
M.D.,

Plaintiffs - Appellants,

v.

STATE OF HAWAII DEPARTMENT OF  
EDUCATION,

Defendant - Appellee.

No. 12-16191

D.C. No. 1:10-CV-00641-LEK-  
RLP

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Hawaii  
Leslie E. Kobayashi, District Judge, Presiding

Argued and Submitted June 12, 2013  
Honolulu, Hawaii

Before: FARRIS, D.W. NELSON, and NGUYEN, Circuit Judges.

This appeal presents the same issues decided today by our opinion in *E.R.K. v. State of Hawaii Department of Education*, No. 12-16063 (9th Cir. Aug. 28, 2013) (slip op.), to wit: (1) Whether the district court erred in granting judgment to the Department of Education on R.T.D.'s claim that Hawaii Revised Statutes §

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

302A-1134(c) violates the Individuals with Disabilities Education Act, and (2) Whether the district court erred in granting judgment to the Department of Education on R.T.D.'s claims under the Americans with Disabilities Act and Rehabilitation Act.

For the reasons stated in *E.R.K.*, the judgment is

**REVERSED** as to issue 1, and **AFFIRMED** as to issue 2. Costs on appeal shall be awarded to Plaintiffs-Appellants.