



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

In the Matter of

STUDENT, by and through Parents,

 Petitioners,
 vs.

DEPARTMENT OF EDUCATION,
STATE OF HAWAII,

 Respondent.

DOE-SY1617-057

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION**

I. INTRODUCTION

On February 23, 2017, the Department of Education, State of Hawai'i ("Respondent" or "DOE") received a Request for a Due Process Hearing ("Request") under Hawai'i Administrative Rules ("HAR") Title 8, Chapter 60 from Student, by and through Student's Parents, (collectively referred to as "Petitioners").

A pre-hearing conference was held on March 29, 2017, before Hearings Officer Rowena A. Somerville, with Patricia L. Cookson, Esq. and Matthew C. Bassett representing Petitioners; and Paul R. Mow, Esq. representing Respondent. The Parent Advocate was present on behalf of the Petitioners. Mr. Bassett and Mr. Mow participated via telephone conference. The due process hearing was scheduled for August 14 through August 17, 2017. At the pre-hearing conference, Respondent's counsel orally requested an extension of the 45-day time limit in which a final decision is due from May 10, 2017 to June 23, 2017, and from June 24, 2017 to August 7, 2017, and from August 8, 2017 to September 21, 2017. Petitioners had no objection. The extension was granted on May 9, 2017.

On June 29, 2017, Respondents filed their Witness and Exhibit list and Exhibits.

On June 30, 2017, Petitioners filed their Witness and Exhibit list and Exhibits. On July 3, 2017, Petitioners filed their Supplemental Witness list.

On August 14, 2017, the hearing was commenced by the undersigned Hearings Officer. Petitioners were represented by Ms. Cookson; Parents were present. Respondent was represented by Mr. Mow; the DOE DES was present on behalf of Respondent. The hearing concluded on August 16, 2017. At the conclusion of the hearing, Mr. Mow orally requested an extension of the 45-day time limit in which a final decision is due from September 22, 2017 to November 5, 2017. Ms. Cookson had no objection. The extension was granted on August 29, 2017.

II. ISSUES PRESENTED

In their February 23, 2017 Request, Petitioners allege procedural and substantive violations of the Individuals with Disabilities Education Act (“IDEA”). Specifically, Petitioners allege that the DOE denied Student a free appropriate public education (“FAPE”) in the April 25, 2016, August 24, 2016, and December 2, 2016 Individualized Education Programs (“IEP”). Petitioners raise the following issues:

- A. The DOE has failed to appropriately re-evaluate and assess Student in all suspected areas of disability;
- B. The DOE failed to develop an appropriate IEP, specially designed to meet Student’s needs; and
- C. The DOE failed to provide the sufficient special education (“SPED”) and related services listed in Student’s August 4, 2016 and September 12, 2016 IEPs; and

Petitioners request the following relief:

- A. Re-evaluate Student in all areas of suspected disabilities within 30 days;
- B. Develop and implement an IEP within 20 days of the completed re-evaluations;
- C. Instruction by a highly qualified SPED teacher five days per week, to include transportation and other related services and costs, and a ____ education program developed by highly qualified educators at the Home School;
- D. _____ for support staff and Educational Assistant (“EA”);
- E. Opportunities for communication and interaction by Student with other students and peers;

- F. Assistive Technology (“AT”) in the classroom to enable Student to communicate and interact with other students and peers, and to access Student’s SPED and related services; and
- G. Compensatory education.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding, the Hearings Officer renders the following findings of fact, conclusions of law and decision.

III. FINDINGS OF FACT

1. Student was born on _____. Resp. Exh. 1 at 002.
2. Student has been diagnosed with _____. Pet. Exh. 22 at 212 – 215.
3. On November 20, 2014, the DOE wrote an academic assessment report on Student to determine Student’s eligibility for IDEA services. The assessor found the Student required an “intensive language program with multimodality communication strategies, focused not only on vocabulary acquisition, but also designed to promote interactive communication in order for Student to understand and follow directions, and be able to express self and control Student’s environment...this should include objects, gestures, props, photographs, picture communication symbols, maps diagrams, etc.” Pet. Exh. 20 at 170-173.
4. On November 25, 2014, the DOE Specialist 1 wrote an Assessment Report on Student. _____. The DOE Specialist 1 was unable to test Student. The DOE Specialist 1 noted that Student would benefit from instruction that utilizes Student’s _____ by presenting concepts with visual aids, concrete and manipulative teaching aids or hands-on experiences whenever possible. DOE Specialist 1 did not recommend Student _____. Pet Exh. 20 at 156-157; TR 287:16-22.
5. Student was found eligible for IDEA services under the _____ criteria. Resp. Exh. 1 at 003.
6. On April 25, 2016, the DOE held an IEP meeting. Parent 1 and Student were present. No staff from _____ participated. The purpose of the meeting was to discuss Student’s transition from school 2 to the Home School. The transition team told Parent 1 that they would have someone to provide a qualified teacher for Student and _____ instruction in the 2016-2017 school year. Resp. Exh. 3 at 90-100; TR 298:3 – 300:13.
7. Student’s academic needs in the April 25, 2016 IEP stated that Student “needs to learn not only _____, but also that of _____.” The Parental Concern section stated that Parent 1

was “concerned with [*sic.*] amount of time [Student] spends with ____ teacher. Parent wants longer duration.” The Language Arts Measurable Annual Goal stated, “[w]ithin one year, [Student] will increase Student’s daily functional vocabulary by using a combination of ____, ____ and/or technology in 4 out of 5 opportunities.” The supplementary aids and services does not include ____; however, the Clarification of Services and Supports states, “[s]ervice time and minutes will remain the same except for the fact the [Student’s] schedule was readjusted to maximize Student’s needs in learning and accessing ____.” Resp. Exh. 3 at 91-101.

8. The SPED teacher testified as an expert in the field of SPED. TR 481:1-4.

9. The SPED teacher testified that SPED teacher is Student’s “Care Coordinator,” not Student’s SPED teacher.¹ SPED teacher collaborates with “the other teacher.” The SPED teacher is not a highly qualified teacher for ____ and has limited knowledge of _____. TR 481:24 – 11; TR 520:19-24.

10. Parent 1 spoke to the Principal and SPED teacher prior to the 2016-2017 school year about whether a teacher for ____ would be teaching Student. They told Parent 1 that they did not have one, but a job offer had been posted and there were no qualified candidates. The DOE did not mention the possibility of Student attending _____. TR 300:16 – 301:20.

11. Parent 1 is a DOE substitute teacher. Pet. Exh. 23.

12. Parent 1 attended the Home School during the first three weeks of the 2016-2017 with Student to observe Student’s program to ensure a smooth transition from School 2. On the first day of the 2016-2017 school year Parent 1 asked the SPED teacher if Student would have a teacher _____. The SPED teacher responded that they were “looking into it.” Parent 1 testified that the SPED teacher gave Student no instruction and developed no ____ educational curriculum for Student. The Educational Assistant (“EA”) provided Student with all of Student’s instruction. TR 294:15 – 298:2.

13. The SPED teacher thought that Parent 1 was acting as Student’s substitute teacher for the first two weeks of school. After Parent 1 left, the SPED teacher testified that the EA served as the long-term substitute teacher for the remainder of the 2016-2017 school year. The SPED teacher collaborated with the EA and kept track of Student’s progress in language arts and math. The EA prepared the lesson plans. TR 486:10 – 492:23; TR 521:2 - 5.

¹ The August 24, 2016 and December 2, 2016 IEPs list the SPED teacher as the “Special Education Teacher,” not the Care Coordinator. Resp. Exh. 3 at 118, 141.

14. Student's EA is not a licensed teacher, EA testified that EA is a long-term substitute teacher at the Home School.² The EA testified Student needs to learn ____ as Student's _____. The EA is motivated to learn _____ and to work with Student, but EA is not trained in _____ and has limited access to _____ classes. EA has taken ____ courses in person and online. EA testified if EA was certified in _____, EA could teach Student at the Home School, but EA did not think Student should wait ____ years for EA to receive _____ or _____ teaching certification. Pet. Exh. 17; TR 34:3 – 36:11; TR 36:15 – 42:7; TR 562:8 – 564:19; TR 627:12 – 629:20.

15. On August 24, 2016, the Home School conducted an IEP meeting. No staff from _____ participated. In Student's Reading section, Parent 1 expressed the need for Student to be able to converse with peers. The IEP states that "_____" is a need; however, neither the Present Levels of Educational Performance ("PLEPS") or goals and objectives state Student's need for _____. The Clarification of Services and Supports removed the statement in the April 25, 2016 IEP that said, "[s]ervice time and minutes will remain the same except for the fact the [Student's] schedule was readjusted to maximize Student's needs in learning and accessing _____." Instead, the IEP and Prior Written Notice dated August 24, 2016 states that Student, will be on the Special Education teacher/Care Coordinator's roster. [Student] will receive instruction from Student's _____ and Special Education Teacher...Student's _____ will be with Student in all classes. Student will have support throughout the day for academic and safety needs." Resp. Exh. 3 at 103-119.

16. The SPED teacher testified that they did not have any input from teachers of _____ when developing Student's IEP. The SPED teacher said _____ was not discussed because Parent 1 wanted Student to _____. TR 528:6 – 536:11.

17. On December 2, 2016, the Home School Conducted an IEP meeting. The only revision to the IEP was to clarify the bus transportation services. Resp. Exh. 3 at 129, 139.

18. Parent 1 testified that this was not an IEP meeting. Parent 1 did not ask for an IEP meeting. The purpose of the meeting was to address Student's bus transportation services. Parent 1 testified that the bus driver and aide were not treating Student fairly. TR 365:1 – 370:18.

² Respondents site the three classes of substitute teachers. The EA qualifies as a substitute teacher under Class I: Substitute teachers who possess a High School Diploma and meets specific employment requirements set by the DOE. Resp. Closing Brief at 37.

19. The SPED teacher testified that only bus transportation was discussed at the meeting. TR 299:19-20.

20. The PWN only referred to bus transportation issues. Resp. Exh. 3 at 142.

21. On December 6, 2016, Parent 1 told the SPED teacher that Parent 1 wanted an IEP meeting because Student did not have _____. Parent 1 had asked the Principal two or three times from the start of the 2016-2017 school year for _____, and Student was participating in the general education setting. Parent 1 requested an IEP meeting on either January 12 or 13, 2017. On December 8, 2016 Parent 1 had a 20 minute conversation with the SPED teacher about IEP meeting dates. The SPED teacher confirmed the January 12, 2017 date. Parent 1 requested that the Parent Advocate come to attend the IEP meeting at the Home School. Parent 1 took time off from Parent 1's employment to attend the IEP meeting. When Parent 1 arrived at the Home School, the SPED teacher told Parent 1 there was no IEP meeting scheduled. The SPED teacher replied, "it is what it is." The Parent Advocate agreed with Parent 1's recollection. When Parent Advocate arrived at the Home School, Parent 1 was distraught and had to be consoled. Pet. Exh. 23; TR 320:7 – 324:16; TR 328:2 – 332:13; TR 395:7 – 396:24.

22. The SPED teacher did not recall setting an IEP meeting. TR 501:10-12.

23. Parent 1 continued to request _____ throughout the rest of the 2016-2017 school year. Parent 1 also requested that Student be re-evaluated because Student had not received any _____. TR 333:21 – 334:21.

24. The Parent Advocate testified as an expert in the fields of _____, SPED, and IEP development. TR 375:5-9.

25. The Parent Advocate testified that the DOE has _____ at the District level. _____ District has an _____. TR 375:11-24.

26. The Parent Advocate conducted an observation of Student in March 2017 at the Home School for one hour and 50 minutes. The SPED teacher was not present; Student was working with Student's EA. Student was off task and the EA had to constantly redirect Student. Student was nonverbal, but Student was very expressive using facial expressions and gestures. TR 376:16 – 381:12.

27. The Parent Advocate testified that Student's goals and objectives and services in the IEP should have a large portion devoted to _____. TR 387:14 – 388:20.

28. The DOE held a reevaluation meeting in the Spring 2017, after Petitioners' Request was filed. At the meeting, the Parent Advocate requested Student have an _____ assessment. The _____ assessment was not completed because the DOE claimed it needed to be

conducted by personnel from _____ and they were unavailable. The Parent Advocate testified that there is someone at _____ that can complete the _____ assessment, and Parent Advocate gave that information to the DES and Student Services Coordinator (“SSC”) prior to the filing of Petitioners’ Request. TR 390:6 – 394:16.

29. The Pediatric Physician 1 testified as an expert in the field of pediatric _____. TR 130:24 – 131:2.

30. The Pediatric Physician 1 has been treating Student since January 13, 2015 for Student’s _____. Student had multiple surgeries prior to seeing the Pediatric Physician 1. Student had _____. Normally, _____. This results in Student _____. The last time the Pediatric Physician 1 saw Student was on January 10, 2017. TR 131:18 – 135:23.

31. On July 19, 2017, the Pediatric Physician 1 wrote a report noting that Student had the following diagnoses and medical conditions: _____. Pet. Exh. 22 at 212-215.

32. The Pediatric Physician 1 noted the following impressions: 1) mild to moderate _____ – increased compared to prior examination; 2) continued _____; and 3) _____. Pediatric Physician 1 recommended follow-up in one year, physical activities as tolerated, and Pediatric Physician 1 wrote that Student may need a _____ to assess _____. *Ibid.*

33. The Pediatric Physician 1 testified that Student’s _____ defects could cause rapid breathing and shortness of breath. It could also result in an enlarged _____ and _____. There was a mild increase in Student’s _____ size at the last visit. Pediatric Physician 1 could not see Student’s _____ clearly, and Pediatric Physician 1 recommended an _____. The Pediatric Physician 1 was awaiting insurance approval to perform the _____. TR 140:20 – 142:10.

34. The Pediatric Physician 1 testified that if Student attends _____, Student should have supervision because of Student’s _____ differences. Student should have someone who is familiar with Student’s medical condition supervise Student. Student would also need to have someone with Student to monitor Student’s condition. TR 144:16-24.

35. The DOE Speech Language Pathologist (“SLP”) testified as an expert in the field of speech-language pathology with an emphasis on _____. TR 181:21-25.

36. On May 15, 2017, the DOE SLP conducted a speech, language, and communication evaluation on Student. Student was referred for Student’s triennial re-evaluation. The evaluation lasted approximately four to five hours. DOE SLP noted that Student’s preferred mode of communication was a functional combination of _____, animated gestures, facial expressions, exaggerated body language, vocal noises, and behavior. The DOE SLP administered the _____. Pet. Exh. 19; TR 183:5-11.

37. Student took the ____ test in 2014 and Student did not score high enough for the test to register. In 2017, Student scored at the Kindergarten or five year old age level. In 2014, Student's score on the ____ was five years, eight months. In 2017, Student scored six years, eight months. TR 206:22 – 208:23.

38. The DOE SLP noted that Student's ____ information Student receives may be limited, distorted, or incomplete. Student demonstrated strong language skills and Student should be immersed "in a ____ to ensure success in the areas of communication, vocabulary and conceptual language acquisition, as well as access to the academic curriculum at school." DOE SLP stated that Student's continued use of ____ and ____ would not provide sufficient vocabulary, concepts and syntax necessary to develop effective communication. Student does not have the basic language skills to learn in a ____ environment. Student needs to learn to communicate with others outside of Student's home environment. Pet. Exh. 19.

39. The DOE SLP recommended that Student would benefit from _____. Within the classroom and learning environment: 1) develop vocabulary and language concept in all areas of instruction; 2) emphasize functional everyday living vocabulary; 3) help Student associate items with their function and attributes; and 4) teach Student multiple words with the same meaning. *Ibid.*

40. The DOE SLP summarized that Student has significant receptive and expressive language delays. Student's receptive skills placed Student at five years old. Student's expressive vocabulary skills placed Student at six year eight months. Student significantly lacks a foundational language, likely due to Student's lack of _____. A formal ____ should be fully introduced to ensure communicative success. Student requires strong multi-modal cues and strategies to learn in an academic environment. The DOE SLP wrote, "Student needs Language." Student is social and Student wants to communicate and interact with the DOE staff and Student's peers. Student has no one to interact with _____. *Ibid.*; TR 199:21 – 201:12.

41. The DOE SLP testified that Student would benefit educationally at _____. Attending to Student's health needs would be a top priority, but Student would benefit from being in _____. If Student was not able to attend for the full week, it would benefit Student to attend _____. A teacher ____ to reinforce what Student learned during Student's time at _____. DOE SLP stated, "it would be better to have Student attend for some time rather than no time at all." TR 194:24 – 196:7.

42. The DOE SLP testified that ____ could stream lessons to ____; however, DOE SLP thought that Student would benefit from the real time in the classroom, because it would be

more meaningful. The EA and SPED teacher could also access ____ training through ____ AT. Another option was to have a teacher from ____ work with Student for a day. TR 196:11 - 199:1

43. On May 24, 2017, the DOE Specialist 2 conducted Evaluation on Student. The test indicated Student had _____. DOE Specialist 2 indicated that Student needs instruction from a certified teacher _____ to benefit from instruction that utilizes Student's ____ by presenting concepts with _____ aids, concrete and manipulative teaching aids or hands-on experiences whenever possible. Student also needed to acquire a _____, as Student was using a combination of gestures, body language and _____. Pet. Exh. 18.

44. DES 2 testified as an expert in the area of special education. TR 37:5-8.

45. DES 2 is a _____. DES 2 is physically located at _____ where DES 2 assists teachers, staff, and students. Prior to DES 2 position, DES 2 was the Student Services Coordinator (“SSC”) for Student. TR 23:19 – 24:16.

46. On May 25, 2017, DES 2 observed Student in the classroom for re-evaluation purposes. Prior to meeting Student, the Care Coordinator (“CC”)³ provided DES 2 with background information on Student. The CC stated that Student’s communication is limited to _____. While Student is polite and fun, Student becomes frustrated easily and uses avoidance behaviors if Student doesn’t want to work. Pet. Exh. 17.

47. DES 2 observed Student for approximately two hours at the Home School. During 50 minutes of instruction with Student’s EA, student was off-task and needed redirection 21 times. The EA used _____ with Student that included _____, demonstrations, _____, _____, and vocabulary. *Ibid.*; TR 55:22 – 60:3.

48. DES 2 noted that some of the EA’s teaching strategies were not effective and using _____ does not enable Student to establish a _____. Student is _____, but Student does not have full access to the content being taught because Student does not have a _____ to receive information. Student could _____, but there was no evidence of word meaning or sentence comprehension. Student needs to _____, because _____. Pet. Exh. 17; TR 34:3 – 36:11; TR 36:15 – 42:7.

49. DES 2 stated that if Student’s EA was providing Student’s instruction, EA would need to have a teacher skilled in _____ supervise EA and provide EA with lessons plans. DES 2 did not see lesson plans or a SPED teacher in the classroom. TR 43:21 – 52:21.

³ Aka the SPED teacher.

50. DES 2 testified that Student performed at the first to second grade level. TR 42:9-14.

51. DES 2 testified that Student could learn ____ if Student was _____.
_____. TR 62:14-22.

52. _____. TR 72:12-16.

53. On June 6 and June 8, 2017, Parent 1 brought Student to ____ for an evaluation. Administrator 1 transported them on both days. TR 74:12-19; TR 111:19 - 22.

54. ____ has highly qualified teachers for ____ that would provide Student with ____ and develop Student's IEP. Student would be _____. TR 90:4 - 25; TR 102:3-25.

55. ____ has ____ rooms. Currently, there are ____ rooms available. _____. The ____ has a large room where the students gather for group activities, meetings, ____, and homework time. TR 75:14 - 79:18.

56. The school day at ____ runs from 8:00 a.m. to 3:00 p.m. Students eat breakfast at 7:20 a.m. and are supervised by EAs in the cafeteria. A registered nurse is available during the school day; _____. The ____ will _____. TR 79:20 - 86:7.

57. Over _____. TR 182:9-13; TR 232:3-4.

58. Administrator 1 testified that Student's attendance there could be in phases. Student would start attending one or two days per week, and the days would increase until Student felt comfortable at ____, and comfortable with the transportation. The DOE discussed the possibility of _____. The ____ would need to receive information from Student's medical team prior to Student's attendance there to determine if this transition plan could work and if Student's medical needs could be met. TR 88:24- 90:4; TR 95:18 - 97:7.

59. Parent 1 was concerned about Student's safety at _____. Student cannot monitor self and a medical emergency might occur. Student has a ____ condition and a _____. Student is not allowed to engage in "roughhousing" or "_____" because Student could become paralyzed. TR 86:9 - 87:22; TR 305:8-22.

60. On June 6, 2017, the Administrator 1 sent the DES an email stating that Administrator 1 had met Student and enjoyed interacting with Student. TR 73:23 - 74:8.

61. The DOE School Psychologist 1 testified as an expert in the field of school psychology. TR 225:10-13.

62. On June 6, 2017, DOE School Psychologist 1 conducted an academic assessment on Student at ____ for approximately two hours; however, DOE Psychologist 1 was with Student for five hours. DOE School Psychologist 1 used the assessment. ____ assisted in ____ to

meet Student's communication needs. Student communicated using a combination of _____, gestures, facial expressions, and sounds. Student scored at the Kindergarten level with emerging skills at the first grade level in reading, between Kindergarten to second grade levels in Math, and at the Kindergarten level with emerging skills at the first grade level in written language. Pet. Exh. 16; TR 232:24 – 233:4.

63. In 2014, Student scored in the Kindergarten level in the academic assessment. In 2017, Student had progressed to the first grade and in some cases the second grade level. Pet. Exh. 20 at 170-173; TR 241:20 – 242:7.

64. DOE School Psychologist 1 testified that Student would have some benefit from _____. TR 243:18 – 244:8

65. DOE School Psychologist 1 noted that Student's developing ____ impacts Student's ability to gain knowledge and improve Student's academic skills, especially those that involve more language such as reading comprehension, writing, and math word problems. Pet. Exh. 16.

66. DOE School Psychologist 1 suggested Student continues to require an intensive language program with multimodality communication strategies focused not only on vocabulary acquisition, but also designed to promote interactive communication in order for Student to understand and follow directions and be able to express self. This would include ____ supports during instructional activities. Information should be presented in small, incremental steps with frequent repetition and review of newly acquired skills. Student's reading, math, and writing skills would also need to be developed and reinforced. Student would benefit from instructional practices that relate learning activities that have meaning to Student and can be applied to Student's immediate environment. The continued focus on developing _____ would support Student's learning. Pet. Exh. 16.

67. DOE Psychologist 2 testified as an expert in the field of educational psychology with a specialty in school psychology. TR 251:21-25.

68. On June 8, 2017, DOE Psychologist 2 conducted a Cognitive Assessment on Student as part of a triennial re-evaluation. Oftentimes, _____ did not understand what Student was expressing, and Parent 1 had to assist with Student's communication. DOE Psychologist 2 conducted the _____. DOE Psychologist 2 attempted the _____ and _____. Student received a _____, which is in the delayed range and equal to or better than 3% of Student's same aged peers. DOE Psychologist 2 noted that Student's nonverbal score was lower than Student's

previous cognitive assessment; however, a different test was administered. Pet. Exh. 15; TR 265:13 – 266:2.

69. DOE Psychologist 2 testified that the ___ did not test Student’s vocabulary. TR 260:12-15.

70. In mid to late June 2017, the ___ was asked to offer some sample goals and objectives that are generally used for ___ students for Student’s IEP. The Administrator 1 only participated in the August 11, 2017 IEP meeting. TR 91:1 – 94:25.

71. The Administrator 1 testified that they have AT available _____. If the Home School _____ had compatible technology, Student could access tutoring. The DOE would provide assistance to the Home School to set up AT. TR 109:14 – 111:11.

72. The Administrator 1 testified “it would be best to consult with someone who is an expert in _____ before completing an individualized education plan, to make sure all options are covered as far as the student’s needs, educational needs are concerned.” TR 121:11-16.

73. The IEP team held meetings on July 7, 17, and 26, 2017. At the July 26, 2017 meeting the IEP team finished the service grid and the Principal stated that the least restrictive environment (“LRE”) for Student would be at _____.⁴ The team scheduled another meeting on August 4, 2017 to develop Student’s transition plan from the Home School to _____. That meeting was cancelled without Parent 1’s or the Parent Advocate’s knowledge. Another meeting was rescheduled on August 11, 2017. TR 397:7 – 400:16.

74. The Pediatric Physician 2 wrote a letter dated July 21, 2017. Pediatric Physician 2 continued to monitor Student’s _____ and _____. Pet. Exh. 22 at 210.

75. On August 11, 2017, the Home School held a transition plan meeting. The Administrator 2 stated that they would be able to implement Student’s educational needs in the IEP at _____. Parent 1 noted Student’s medical and safety concerns. The Administrator 1 stated that they did not have Student’s medical information, and Administrator 1 was not able to discuss _____ at that time. The _____ staff requested Student’s medical records. TR 401:2 – 403:11.

IV. CONCLUSIONS OF LAW

A. Burden of Proof

⁴ The final IEP stated _____. TR 448:11-24.

The Supreme Court held in *Schaffer* that “[t]he burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.” *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005). “The Court concluded that the burden of persuasion lies where it usually falls, upon the party seeking relief.” *Id.* at 535; *see also Stringer v. St. James R-1 Sch. Dist.*, 446 F.3d 799, 803 (8th Cir.2006) (following *Schaffer* in context of claim that IEP was not being implemented). Neither *Schaffer* nor the text of the IDEA supports imposing a different burden in IEP implementation cases than in formulation cases.

B. IDEA Requirements

The Code of Federal Regulations (“CFR”) section 300-101 and the Hawai‘i Administrative Rules (“HAR”), Title 8, Chapter 60, requires that Respondents make available to students with a disability an offer of FAPE that emphasizes special education and related services designed to meet their unique needs.

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Court set out a two-part test for determining whether Respondent offered a FAPE: 1) whether there has been compliance with the procedural requirements of the IDEA; and 2) whether the IEP is reasonably calculated to enable the student to receive educational benefits. *Rowley* 458 U.S. at 206-207. Respondent is not required to “maximize the potential” of each student; rather, Respondent is required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational benefit.” *Rowley* 458 U.S. at 200.

However, the United States Supreme Court recently determined in *Endrew F. v. Douglas County School Dist.*, 137 S.Ct. 988 (2017) that the educational benefit must be more than *de minimus*. The Court held that the IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in the light of the child’s circumstances.” *Endrew* 137 S.Ct. at 1001. Similarly, the Hawaii District Court held that the IEP must be tailored to the unique needs of the child and reasonably designed to produce benefits that are “significantly more than *de minimus*, and gauged in relation to the potential of the child at issue.” *Blake C. ex rel Tina F. v. Hawaii Dep’t of Educ.*, 593 F.Supp.2d 1199, 1206 (D. Haw. 2009).

Under the IDEA, procedural flaws do not automatically require a finding of a denial of a FAPE. However, procedural inadequacies that result in the loss of educational opportunity or seriously infringe on the parents’ opportunity to participate in the IEP formulation process clearly result in the denial of a FAPE. *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479 (9th Cir. 1992).

The mechanism for ensuring a FAPE under the IDEA is through the development of a detailed, individualized instruction plan known as an Individualized Education Program ("IEP") for each child. 20 U.S.C. §§ 1401(9), 1401(14), and 1414(d). The IEP is a written statement, prepared at a meeting of qualified representatives of the local educational agency, the child's teacher, parent(s), and where appropriate, the child. The IEP contains, in part, a statement of the present levels of the child's educational performance ("PLEP"), a statement of the child's annual goals and short-term objectives, and a statement of specific educational services to be provided for the child. 20 U.S.C. § 1401(19). The IEP is reviewed and, if appropriate, revised, at least once each year. 20 U.S.C. § 1414(d). The IEP is, in effect, a "comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." *Burlington v. Dep't of Educ. Of the Commonwealth of Massachusetts*, 471 U.S. 359, 368, 105 S.Ct. 1996, 2002 (1985).

An IEP adequately provides a FAPE if it is reasonably calculated to provide a child with a meaningful educational benefit at the time it was developed. *J.W. by J.E.W. and J.A.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 449 (9th Cir. 2010). It must be tailored to the unique needs of the child and reasonably designed to produce benefits that are "significantly more than de minimus, and gauged in relation to the potential of the child at issue." *Blake C. ex rel Tina F. v. Hawaii Dep't of Educ.*, 593 F.Supp.2d 1199, 1206 (D. Haw. 2009). An IEP must be evaluated prospectively as of the time it was created. Retrospective evidence that materially alters the IEP is not permissible. *R.E. v. New York City Dep't of Educ.*, 694 F.3d 167 (2012).

C. Whether the DOE Failed to Appropriately Re-evaluate and Assess Student.

Petitioners claim that the DOE failed to appropriately re-evaluate and assess Student in all suspected areas of disability. Petitioners allege the DOE failed conduct ___ assessment. The DOE argues that the triennial re-evaluation deadline for Student had not been reached and there was no evidence that Petitioners requested a re-evaluation.

Student was first evaluated for SPED eligibility in 2014, but no ___ evaluation or assessment was administered. Petitioners' Request was filed on February 23, 2017. HAR §8-60-65(f) states a "parent or the department shall request an impartial hearing on their due process complaint within two years of the date the parent or the department knew or should have known about the alleged action that forms the basis of the due process complaint." The evaluations conducted in 2014 are beyond the statute of limitations in this Request. However, there is still a question whether Student should have been re-evaluated or assessed.

Respondents cite to 20 U.S.C. 1414(2)⁵ that states,

(2) Reevaluations

(A) In general. A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)--

- (i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (ii) if the child's parents or teacher requests a reevaluation.

(B) Limitation. A reevaluation conducted under subparagraph (A) shall occur--

- (i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and**
- (ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.**

(Emphasis added). Respondent rely on subsection (B) for the premise that the parent and local agency did not agree to have Student reevaluated prior to the three-year period. However, it was clear that Student had not improved in Student's academic achievement *and* functional performance and subsection (A) should have applied. The Home School should have determined that Student had educational or related service needs, because Student's progress was severely lacking for two years and Student was not making any meaningful gains.

The rules pertaining the additional requirements for evaluations and reevaluations in 34 C.F.R. §300.305(a) are also applicable in this case. 34 C.F.R. §300.305(a) states:

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

- (i) Evaluations and information provided by the parents of the child;
- (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
- (iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

- (i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or
- (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;**

⁵ The correct citation is 20 U.S.C. § 1414(a)(2).

- (ii) The present levels of academic achievement and related developmental needs of the child;
- (iii)(A) Whether the child needs special education and related services; or
(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
- (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.**

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(Emphasis added).

It is clear from the record that Student continued to have a disability, and Student continued to need SPED and related services. The team should have determined, pursuant to 34 C.F.R. §300.305(a)(2)(iv) that Student needed additions and modifications to Student's SPED and related services to enable Student to meet the measurable annual goals of the IEP. It is noted that the DOE conducted several evaluations and assessments **after** Petitioners' filed the Request. The DOE conducted a speech-language communication evaluation, ___ evaluation and assessment, academic assessment, cognitive assessment, and behavioral observation. However, no ___ assessment was conducted. The DOE explained that a team from ___ conducts the ___ evaluations, and they were not available after Petitioners' filed the Request. The Parent Advocate testified that ___ has an employee on staff that can administer the evaluation and assessment.

As the Supreme Court in *Endrew* stated, the educational benefit must be more than *de minimus*. The Court held that the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in the light of the child's circumstances." *Endrew*, 137 S.Ct. at 1001. Regardless of whether the Parents requested a reevaluation, the Home School had sufficient records to request a reevaluation on their own, because the Student was not making progress appropriate in the light of Student's circumstances.

The Hearings Officer is not aware if the team from ___ conducted the evaluation or assessment since the completion of the hearings. The Hearings Officer notes that almost ten months have passed since the filing of the Request, and it should have been accomplished.

Student should have completed Student's ___ evaluation and assessment by now whether it be from ___ or ____.

The Hearings Officer finds that the Respondents procedurally violated the IDEA by not evaluating Student in the area of ___, which was clearly an area of suspected disability resulting from Student's ___ and Student's inability to effectively communicate.

D. Whether the DOE Failed to Develop an Appropriate IEP.

Petitioners claim that the DOE failed to develop an appropriate IEPs in April 24, 2016, August 24, 2016, and December 2, 2016⁶ specially designed to meet Student's needs. Petitioners argue that the IEP team should have received input from educators when developing the IEP. Petitioners further allege that Student should receive appropriate special education and related services to include academic instruction five days per week for the full school day by a highly qualified teacher. Respondents argue that there is no legal requirement to provide a "highly qualified" SPED teacher. *ESSA* §602(10) and §612(a)(14)(c).

Pursuant to 34 C.F.R. § 300.321, the IEP team must consist of:

- (a) General. The public agency must ensure that the IEP Team for each child with a disability includes—
 - (1) The parents of the child;
 - (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
 - (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
 - (4) A representative of the public agency who—
 - (i) **Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;**
 - (ii) Is knowledgeable about the general education curriculum; and
 - (iii) **Is knowledgeable about the availability of resources of the public agency.**
 - (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
 - (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
 - (7) Whenever appropriate, the child with a disability.

⁶ This IEP was specific to transportation issues and was resolved. It will not be included in the conclusions of law section in this decision.

(Emphasis added).

When developing Student's IEP, the IEP team shall consider: (i) the strengths of the child; (ii) the concerns of the parents for enhancing the education of their child; (iii) the results of the initial evaluation or most recent evaluation of the child; and (iv) the academic, developmental, and functional needs of the child. 20 U.S.C. § 1414(d), *see also* HAR §8-60-48(a). Additionally, pursuant to 20 U.S.C. §1414, the IEP team must consider the communication needs of the child.

On April 25, 2016, the DOE held an IEP meeting. Parent 1 and Student were present. No staff from ____ or persons knowledgeable in ____ services or curriculum participated. The purpose of the meeting was to discuss Student's transition from School 1 to the Home School. The transition team told Parent 1 that they would have someone to provide a qualified teacher for Student and ____ instruction in the 2016-2017 school year.

Student's academic needs in the April 25, 2016 IEP PLEP section stated that Student "needs to learn not only _____, but also that of _____." The Parental Concern section stated that Parent 1 was "concerned with [*sic.*] amount of time [Student] spends with ____ teacher. Parent wants longer duration." The Language Arts Measurable Annual Goal stated, "[w]ithin one year, [Student] will increase Student's daily functional vocabulary by using a combination of _____, _____ and/or technology in 4 out of 5 opportunities." Even though the supplementary aids and services do not include _____, the Clarification of Services and Supports states, "[s]ervice time and minutes will remain the same except for the fact the [Student's] schedule was readjusted to maximize Student's needs in learning and _____."

Similarly, on August 24, 2016, the Home School conducted an IEP meeting. No staff from _____ or persons knowledgeable in _____ services or curriculum participated. In Student's Reading section, Parent 1 expressed the need for Student to be able to converse with peers. The IEP states that _____ is a need; however, neither the PLEPs or goals and objectives state Student's need for _____. The IEP team removed the Clarification of Services and Supports statement in the April 25, 2016 IEP that stated, "[s]ervice time and minutes will remain the same except for the fact the [Student's] schedule was readjusted to maximize Student's needs in learning and _____." Instead, the IEP and Prior Written Notice dated August 24, 2016 states that Student, will be on the Special Education teacher/Care Coordinator's roster. [Student] will receive instruction from _____ and Special Education Teacher...Student's _____ will be with Student in all classes. Student will have support throughout the day for academic and safety needs."

First, the IEP team did not have a member to satisfy the requirement of 34 C.F.R. § 300.321(a)(4) or 20 U.S.C. §1414; therefore, the IEP team could not adequately determine Student’s appropriate needs, measurable annual goals to include academic and functional goals designed to “meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum” and “meet each of the child’s other educational needs that result from the child’s disability.” Additionally, the IEP team would not be able to offer services to enhance Student’s communication skills.

An appropriate IEP simply could not be accomplished without the participation of someone knowledgeable of services and curriculum for _____. The Administrator 1 concurred, stating that it would be best to have someone who is an expert in _____ consult with the IEP team, before drafting the IEP. Without the participation of these experts, it was not possible for the IEP team to develop a plan reasonably calculated to provide Student with a meaningful educational benefit throughout the school year. Further, it would not allow Parents to meaningfully participate in the IEP discussions. *See N.B. v. Hellgate*, 541 F.3d 1202, 1210.

The DOE SLP noted that a formal _____ should be fully introduced to ensure communicative success. Student requires strong multi-modal cues and strategies to learn in an academic environment. DOE SLP stated that Student demonstrated strong language skills and Student should be _____ to ensure success in the areas of communication, vocabulary and conceptual language acquisition, as well as access to the academic curriculum at school.” DOE SLP stated that Student’s continued use of _____ would not provide sufficient vocabulary, concepts and syntax necessary to develop effective communication. Student does not have the basic language skills to learn _____. Student needs _____ to communicate with other outside of Student’s home environment. The DOE SLP wrote, “[Student needs Language.”

Similarly, the DOE Specialist 1 indicated that Student needs instruction from a certified teacher _____ to benefit from instruction that utilizes Student’s _____ modality by presenting concepts with _____, concrete and manipulative teaching aids or hands-on experiences whenever possible. Student also needed to acquire a _____. DOE Psychologist 1 stated Student needed to continue to focus on developing _____ to support Student’s learning

The Hearings Officer finds that a representative from _____ or at a minimum a representative of the DOE who is qualified under 34 C.F.R. § 300.321(a)(4)(i) to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; 34 C.F.R. § 300.321(a)(4)(ii) is knowledgeable about the general education curriculum; and 34 C.F.R. § 300.321(a)(4)(iii) is knowledgeable about the availability of

resources of the public agency should have participated in the April 25, 2016 and August 24, 2016 IEP meetings. Similarly, the DOE did not comply with 20 U.S.C. §1414 to ensure that Student's unique needs of _____, were considered. The IEPs are not specifically tailored to meet Student's needs.

The Hearings Officer finds that Respondents procedurally and substantively violated the IDEA by failing to develop an appropriate IEP.

E. Whether the DOE Failed to Provide Services Listed in the IEP.

Petitioners' allege that the DOE failed to provide the sufficient SPED and related services listed in Student's August 4, 2016 and September 12, 2016 IEPs. Specifically, the DOE did not provide Student with AT and opportunities for communication with peers.

Respondents have an obligation to provide services "in conformity with" a Student's IEPs. 20 U.S.C.A. §1401(9). IEPs are binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute—not to decide on its own no longer to implement part or all of the IEP. *See* 20 U.S.C.A. §§ 1414(d)(3)(F), 1415(b)(3).

In accordance with the IDEA and the Court's decision in *Rowley*, the Ninth Circuit Court in *Van Duyn v. Baker School Dist.*, 502 F. 3d. 811, 822 (9th Cir. 2007) held that a *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. The court clarified that "the materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." *Id.*

Student's academic needs in the April 25, 2016 IEP PLEP section stated that Student "needs to learn not only _____, but also that of _____." (Emphasis added). The Parental Concern section stated that Parent 1 was "concerned with [*sic.*] amount of time [Student] spends with _____ teacher. Parent wants longer duration." The Language Arts Measurable Annual Goal stated, "[w]ithin one year, [Student] will increase Student's daily functional vocabulary by using a combination of _____, _____ and/or technology in 4 out of 5 opportunities." Even though the supplementary aids and services do not include _____ instruction, the Clarification of Services and Supports states, "[s]ervice time and minutes will remain the same except for the fact the

[Student's] schedule was readjusted to maximize Student's needs in learning and accessing ____." (Emphasis added).

Clearly, Student had ____ needs as indicated in the PLEPS section. Parent 1 had expressed Parent 1's concerns regarding this need. Parent 1 wanted Student to spend additional time with the teacher. It is patently obvious that the IEP team agreed to the ____ component, because the Clarification of Services and Supports section noted that Student's reschedule was readjusted to maximize Student's needs in _____. Despite this statement, no formal ____ instruction was provided. This material failure ultimately resulted in Student's lack of or minimal progress since 2014.

At the August 24, 2016 IEP meeting, Parent 1 expressed the need for Student to be able to converse with peers in the PLEPs reading section. The IEP and Prior Written Notice dated August 24, 2016 states that Student, will be on the Special Education teacher/Care Coordinator's roster. [Student] will receive instruction from _____ and Special Education Teacher..._____ will be with Student in all classes. Student will have support throughout the day for academic and safety needs."

First, the SPED teacher denied that SPED teacher was in fact Student's SPED teacher. SPED teacher classified self as the Care Coordinator. Regardless, SPED teacher's testimony and of others showed that SPED teacher had little or no interaction with Student and Student's program. SPED teacher even relinquished SPED teacher's SPED teacher duties for the first three weeks of the 2016-2017 school year to the Parent 1, explaining at the hearing that SPED teacher thought Parent 1 was the substitute SPED teacher. The Hearings Officer was not impressed by SPED teacher's attitude towards Student, Student's program, or the EA. SPED teacher claimed to collaborate with the EA over curriculum and lesson plans, but this was not corroborated with the other witnesses' testimony. SPED teacher was hardly present in the resource room and appeared disinterested in Student's program, leaving Student essentially unsupervised by a SPED teacher. Thankfully, the EA went over and beyond EA's duties. EA truly cared about Student and tried to learn ____ on EA's own to help with Student's program.

The DES 2 stated that if Student's EA was providing Student's instruction, EA would need to have a teacher skilled in working with _____ supervise EA and provide EA with lessons plans. DES 2 did not see lesson plans or a SPED teacher in the classroom. Student received all of Student's instruction from the EA. When the DES 2 observed Student for approximately two hours at the Home School. During 50 minutes of instruction with Student's EA, student was off-task and needed redirection 21 times. The EA used multimodal communication with Student

that included _____, demonstrations, _____, _____, and vocabulary. DES 2 noted that some of the EA's teaching strategies were not effective and using _____ does not enable Student to establish a solid _____. Student is a visual learner, but Student does not have full access to the content being taught because Student does not have _____ to receive information. Student could _____, but there was no evidence of word meaning or sentence comprehension. In DES 2's opinion Student needs to _____.

The testimony and evidence showed that Student made little or no progress since 2014. Student took the _____ test in 2014 and Student did not score high enough for the test to register. In 2017, Student scored at the Kindergarten or five year old age level. In 2014, Student's score on the _____ was five years, eight months. In 2017, Student scored six years, eight months. In three years Student improved one grade and eight months. In the 2014 academic assessments, Student scored at the Kindergarten level with emerging skills at the first grade level in reading, between Kindergarten to second grade levels in Math, and at the Kindergarten level with emerging skills at the first grade level in written language. In 2017, Student had progressed to the first grade and in some cases the second grade level. Student made minimal progress in three years. Were it not for the commitment of the EA, Student would most likely have regressed or made less progress.

Lastly, the DOE never provided Student with _____ to be with Student in all classes. The DOE's claim that they could not fill the position is not a valid reason for failing to implement Student's IEP. It was a service listed in the August 24, 2016 IEP, and the DOE was required to provide it.

It should also be noted that there has not been sufficient evidence to show that AT was considered or requested at the IEP meetings. Petitioners claim that Respondents did not provide AT is denied.

The Hearings Officer finds the DOE procedurally and substantively violated the IDEA by failing to provide services listed in the IEP, resulting in Student's lack of meaningful progress.

F. Whether Petitioners Are Entitled to Relief.

Once a Hearings Officer holds that public placement of learning disabled child violated IDEA, they are authorized to grant appropriate relief. Equitable considerations are incorporated in fashioning relief, and Hearings Officer must consider all relevant factors, including appropriate and reasonable level of reimbursement that should be required.

1. Re-evaluate Student in all areas of suspected disabilities within 30 days.

The Hearings Officer finds and concludes that Student should have a ____ assessment within 30 days.

2. Develop and implement an IEP within 20 days of the completed re-evaluations.

The Hearings Officer orders the DOE to develop and implement an IEP within 20 days of the completed ____ assessment. The IEP team shall include participants from ____ to provide appropriate needs, goals and objectives, and services. If it is decided that ____ is the appropriate placement for Student, the IEP team shall develop an appropriate transition plan within 30 days of the completion of the IEP.

3. Instruction by a highly qualified SPED teacher for ____ five days per week to include transportation and other related services and costs, and ____ program developed by highly qualified ____ educators at the Home School.

Petitioners have requested Student be provided with five days per week for the entire school day, to include transportation and other related expenses within ten days of the development of the IEP. _____.

The DOE Specialist 2 testified that Student would benefit educationally at _____. Attending to Student's health needs would be a top priority, but Student would benefit from _____. If Student was not able to attend for the full week, it would benefit Student to attend ____ for a couple of days per week pending Student's transition. _____. DOE Specialist 2 stated, "it would be better to have Student at ____ for some time rather than no time at all." The Hearings Officer agrees and further finds that during transportation, Student should be accompanied by the EA or other adult supervision familiar with Student's medical needs.

If the IEP team determines placement at _____, this request for relief will be satisfied.

4. ____ for support staff and EA.

The EA testified that EA is very motivated to learn _____. EA has taken courses both in the classroom and online. If the IEP team determines placement at the Home School, the EA shall receive ____ training and instruction from the DOE or contracted entity. Similarly, if the IEP team determines placement at _____ with a slow and gradual transition plan, the EA shall receive ____ training and instruction from the DOE or contracted entity. If the IEP team determines placement at _____, ____ training and instruction for the EA will not be necessary. Another option was to have a teacher from ____ work with Student for a day.

5. Opportunities for communication and interaction by Student with other ___ and peers.

Student has no interaction with peers at the Home School. If the IEP team determines placement at the Home School, the DOE shall provide Student with opportunities up to three times a week during the school day, to be accompanied with Student's EA, Parent, or other appropriate supervisor. Similarly, if the IEP team determines placement at ___ with a slow and gradual transition plan, the DOE shall provide Student with opportunities up to three times a week to ___ during the school day, to be accompanied with Student's EA, Parent, or other appropriate supervisor until the transition plan is completed. If the IEP team determines placement at ____, this request for relief will be satisfied.

6. Assistive Technology in the classroom to enable Student to communicate and interact with peers, and to access Student's SPED and related services.

Student has no interaction with _____ or ___ instruction at the Home School. The DOE Specialist 2 testified that ___ could stream lessons; however, DOE Specialist 2 thought that Student would benefit from the real time in the classroom, because it would be more meaningful. The EA and SPED teacher could also access ___ training through _____ AT.

If the IEP team determines placement at the Home School, the DOE shall provide Student and the EA with AT in the classroom to access ___ instruction at to interact with peers. Similarly, if the IEP team determines placement at ___ with a slow and gradual transition plan, the DOE shall provide Student and the EA with AT in the classroom to access ___ instruction at to interact with peers until the transition plan is completed. If the IEP team determines placement at ____, this request for relief will be satisfied.

7. Compensatory Education.

Compensatory education is an equitable remedy that attempts to account for the educational deficit caused by a deprivation of educational services that a student should have received in the first place. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011). It seeks to "place disabled children in the same position they would have occupied but for the school district's violation of IDEA." *Id.* (quoting *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005)). Courts and Hearings Officers may award compensatory educational services at their discretion, often in the form of prospective injunctive relief. *Reid ex rel. Reid*, 401 F.3d at 523.

The inquiry as to an appropriate compensatory education remedy must be fact-specific and reasonably calculated to provide the educational benefits that would have accrued from special education services that should have been provided to the child in the first place. *Id.* at 524. An appropriate compensatory education award must be designed to ensure that a student is appropriately educated within the meaning of the IDEA. *Park ex rel. Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1033 (9th Cir. 2006.) There is no need to provide a day-for-day compensation for time missed. *Id.*

The record shows that compensatory education is appropriate due to Student's lack of educational progress.

Petitioners have requested compensatory education to include "intensive ___ instruction whenever school is not in session (i.e. breaks, summer etc.), to compensate [Student] for the lack of appropriate services since the beginning of SY1617." Pet. Closing Brief at 41. The Hearings Officer agrees this to be reasonable and appropriate if the IEP team determines placement at the Home School. Given the timing of this decision, it is apparent that the newly developed IEP will not be completed until late December 2017, at the earliest. Therefore, Student shall receive intensive ___ instruction during the Winter break. The intensive instruction will continue on Student's breaks until Student attends ____ full-time.

V. DECISION

Based upon the above-stated findings of fact and conclusions of law, the Hearings Officer concludes that Petitioners have met their burden and have shown procedural and substantive violations of the IDEA, thereby denying Student a FAPE.

Petitioners shall be deemed the prevailing party in this matter.

RIGHT TO APPEAL

The parties have the right to appeal this decision to a court of competent jurisdiction within thirty (30) days after receipt of this decision.

DATED: Honolulu, Hawai'i, _____.

ROWENA A. SOMERVILLE
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs

STUDENT, by and through Parents vs. DOE; DOE-SY1617-057
LEGEND; FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

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