



OFFICE OF DISPUTE RESOLUTION
DEPARTMENT OF THE ATTORNEY GENERAL
STATE OF HAWAI'I

In the Matter of STUDENT, by and through
the Parent,¹

Petitioners,

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAI'I and CHRISTINA
KISHIMOTO, Superintendent of Hawai'i
Public Schools,

Respondents.

DOE-SY1819-015

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing: April 1-2, 2019
Hearings Officer : Denise P. Balanay

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals with Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, et seq.; the federal regulations implementing IDEA, 34 C.F.R §§ 300.1, et seq.; and the Hawai'i Administrative Rules ("HAR") §§ 8-60-1, et seq.

¹ Personal identifiable information is provided in the Legend.

II. PROCEDURAL HISTORY (“BACKGROUND”)

On September 28, 2018, Petitioners Student, by and through Parent 1 (hereinafter collectively referred to as “Petitioners”), filed a Request for Impartial Due Process Hearing (“Complaint”) against Respondents DEPARTMENT OF EDUCATION, STATE OF HAWAII, and CHRISTINA KISHIMOTO, superintendent of the Hawai’i Public Schools (hereinafter collectively referred to as “DOE” or “Respondents”), pursuant to the IDEA. Hearings Officer Jennifer M. Young was appointed to preside over this matter on September 28, 2018.

Respondents filed a Notice of Insufficiency on October 12, 2018. On October 15, 2018, the Hearings Officer issued an Order determining that the Complaint did not meet the sufficiency requirements of HAR § 8-60-62(b) and requesting that Petitioners amend the Complaint to correct the deficits specified in the Order by October 29, 2018.

On October 26, 2018, Petitioners filed an amended Request for Impartial Due Process hearing (“amended Complaint”). Respondents received the amended Complaint on October 29, 2018. On November 9, 2018, Respondents filed a Notice of Insufficiency regarding the amended Complaint. On November 13, 2018, the Hearings Officer issued an Order determining that the amended Complaint met the sufficiency requirements set forth in HAR § 8-60-62(b) and scheduled a Prehearing Conference (“PHC”) for November 21, 2018.

A PHC was conducted on November 21, 2018. Participating in the PHC were: Jennifer M. Young, Hearings Officer; Parent 1 on behalf of Petitioners; and DES and District Teacher 1 (“DT1”) for Respondents. At the PHC, Parent 1 was given three weeks to obtain legal representation. A further PHC was scheduled for January 9, 2019. On November 29, 2018, the Hearings Officer ordered the parties to participate in a resolution meeting prior to the PHC scheduled for January 9, 2019.

On December 20, 2018, Parent 1 informed the Hearings Officer and the DOE that Parent 1 was unable to obtain legal representation and would be proceeding *pro se* herein.

On December 21, 2018, the PHC was rescheduled to January 10, 2019.

A resolution session was conducted on January 7, 2019 but did not result in a resolution of the issues in this matter.

A PHC was conducted on January 10, 2019. Present at the PHC were: Jennifer M. Young, Hearings Officer; Parent 1 on behalf of Petitioners; and DES for Respondents. At the PHC conducted on January 10, 2019, Parent 1 was given permission to file an amended complaint. On January 11, 2019, Petitioners filed a second amended Complaint (“second amended Complaint”). On January 25, 2019, Respondents filed Department of Education’s Response to Petitioners’ Amended Request for Impartial Hearing.

A resolution meeting was held on January 28, 2019. The parties were unable to resolve this matter through settlement.²

A further PHC was conducted on February 4, 2019. Present at the PHC were: Jennifer M. Young, Hearings Officer; Parent 1 on behalf of Petitioners; and DES for Respondents. At the PHC, the parties agreed that the 45-day timeline during which a decision must be issued started on February 11, 2019 and ended on March 27, 2019 (“decision deadline”). The parties jointly requested an extension of the decision deadline to April 30, 2019, which was granted on February 8, 2019.

At the PHC, the due process hearing (“Hearing”) was scheduled for April 1-2, 2019. Disclosure of witness lists, exhibits lists and potential exhibits were to be exchanged between the parties and provided to the Hearings Officer by 4:30 p.m. on March 22, 2019. The parties were to

² Although the parties reached an agreement during the resolution session, Parent 1 later rescinded Parent 1’s approval of the agreement and renewed Parent 1’s request to proceed with a due process hearing.

exchange objections to any portion of the opposing party's disclosures by March 27, 2019. By March 28, 2019, the parties were to jointly discuss and attempt in good faith to resolve any such objections. By March 29, 2019, the parties were to provide the Hearings Officer with a joint list of unresolved objections.

This matter was reassigned to Denise P. Balanay, who was appointed as the Hearings Officer in this matter on March 18, 2019.

Petitioners submitted Petitioners' Disclosures, Exhibit List, and Witness List on March 19, 2019. Respondents submitted Respondents' Witness List, Exhibit List and Prospective Exhibits on March 22, 2019.

Respondents submitted the DOE's Objections to Petitioners Exhibit List on March 27, 2019. Petitioners identified Former Attorney as an additional proposed witness on March 27, 2019. Petitioners submitted Petitioners' Response to the DOE's objections and Petitioners' Objections to the DOE's Prospective Exhibits on March 28, 2019. Respondents submitted updated Objections to Petitioners' Exhibit and Witness List on March 29, 2019. On March 29, 2019, DES notified the Hearings Officer that the parties were unable to resolve their objections.

At the Hearing on April 1, 2019, the following participants were present: Denise P. Balanay, Hearings Officer; Parent 1, who appeared on behalf of Petitioners; and DES, DT1, District Teacher 2 ("DT2"), and District Teacher 3 ("DT3")³, who appeared on behalf of Respondents.

At the Hearing on April 2, 2019, the following participants were present: Denise P. Balanay, Hearings Officer; Parent 1, who appeared on behalf of Petitioners; and DES, DT1 and DT3, who appeared on behalf of Respondents.

³ DT3 replaced DT2 during the Hearing.

At the Hearing, Petitioners called Parent 1 as a witness. At the Hearing, Respondents called the following witnesses: Vice Principal 1 (VP1); Sped Teacher; Tutor; and Clinical Psychologist. Clinical Psychologist was qualified as an expert in the field of clinical psychology at the Hearing.

At the Hearing, the following exhibits were introduced into evidence: Petitioners' Exhibits P4-P7; P62; P65-P86; P219-P378; Respondents' Exhibits SR-16-SR-17; SR-92-SR-103; SR-113-SR-236.

At the Hearing, the following exhibits were excluded by the Hearings Officer: Petitioners' Exhibits P1-P3; P8-P61; P63-P64; P87-218; P379-P385, and Respondents' Exhibits SR-1-SR-15; SR-18-SR-91; SR-104-SR-112.

At the Hearing, the following exhibits were excluded by Respondents, pursuant to 34 C.F.R. § 300.512 (a)(3)⁴: Petitioners' Exhibits P386-P408. At the Hearing, Respondents also excluded Former Attorney from testifying as a witness on behalf of Petitioners, pursuant to 34 C.F.R. § 300.512 (a)(3)⁵.

III. BACKGROUND

Student is diagnosed with Disability. Student had a prior history of Eligibility Category 1 in reading and writing. Student was denied eligibility under the IDEA on December 14, 2017. Student was in the ____ grade, attending Public School, at the time the eligibility determination was made. Student is currently in the ____ grade and attends Public School.

Petitioners allege that Respondents violated the IDEA by not providing an independent educational evaluation ("IEE") requested by Parent 1 on December 14, 2017, or filing a request for impartial due process hearing regarding Parent 1's request for an IEE. Petitioners also allege

⁴ 34 C.F.R. §300.512(a) states, "Any party to a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, . . . , has the right to-. . .(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing..."

⁵ *Id.*

that Respondents denied Student a free appropriate public education (“FAPE”) when Student was denied IDEA eligibility. Petitioners specifically allege that, on December 14, 2017, Student was eligible for special education and related services under the category of Eligibility Category 1.

IV. ISSUES PRESENTED

The issues and remedy being presented for determination are:

Issue 1 – Whether the Department of Education failed to provide an independent educational evaluation when requested and/or followed the appropriate procedural safeguards regarding an independent educational evaluation.

Issue 2 – Whether, on December 14, 2017, Student was eligible for special education and related services under the IDEA under Eligibility Category 1.

Remedy – Petitioner seeks a finding that Student is eligible for special education and related services under the IDEA and the development of an Individual Education Program for Student.

V. FINDINGS OF FACT⁶

Student’s background and general information

1. Student’s date of birth is ____.⁷
2. Student is currently in the ____ grade a Public School.⁸
3. On December 14, 2017, Student was in the ____ grade at Public School.⁹
4. In October of 2017, Student was diagnosed with Disability.¹⁰

2017 Reevaluation

⁶ Hereinafter “Findings of Fact” or “FOF”. The Hearings Officer considered the entire record, including all testimony and exhibits introduced at the Hearing, in issuing this Decision and Order. Only the Findings of Fact that are pertinent to the Conclusions of Law and Decision in this matter, including providing background information and context, are referenced herein.

⁷ Respondents’ Exhibit SR-160.

⁸ Respondents’ Exhibit SR-232-SR-233; Testimony of Parent 1; Testimony of VP1.

⁹ Respondents’ Exhibit SR-160; Testimony of VP1; Testimony of Sped Teacher; Testimony of Tutor; Testimony of Clinical Psychologist.

¹⁰ Respondents’ Exhibit SR-188; Testimony of Clinical Psychologist.

5. On July 27, 2017, Parent 1 consented to the following assessments as part of Student's reevaluation: academic assessment, cognitive assessment, classroom observation, and a socio-emotional assessment.¹¹

October 23, 2017 Emotional/Behavioral and Cognitive Assessment

6. In October of 2017, Clinical Psychologist¹² conducted an Assessment of Student¹³, which included interviews of and assessments prepared by Student, Parent 1 and Parent 2, three of Student's teachers, classroom observations conducted by Clinical Psychologist, a review of Student's confidential file, and assessments¹⁴.

Academic Assessment and scores

7. The Assessment was conducted on Student on October 2, 2017.¹⁵ The Assessment reflects percentile rankings which indicate relative standing within one's peer-population.¹⁶
8. Student's reading scores were in the average range for letter-word identification, passage comprehension, word attack, and oral reading, and in the below average range for sentence reading fluency.¹⁷
9. Student's math scores were in the average range for applied problems and math facts fluency and in the below average range for calculation.¹⁸
10. Student's written expression scores were in the average range for spelling, and writing samples and in the above average range for sentence writing fluency.¹⁹
11. Assessment, which measures a student's performance across the reading, writing and math domains, was in the average range. Student scored higher than about 36 percent of ___ children nationally.
12. Recommendations based on Student's scores were for Student to practice writing and grammar usage and overall mathematics skills and abilities; clear and precise

¹¹ Respondents' Exhibit SR-190; Testimony of Parent 1.

¹² Clinical Psychologist was qualified as an expert witness in the field of clinical psychology.

¹³ Respondents' Exhibit SR-160-SR-189 (also Petitioners Exhibit P334-P363); Testimony of Clinical Psychologist.

¹⁴ Assessment; *See* Respondents' Exhibit SR-175-SR-178; Assessment; *See* Respondents' Exhibit SSR-178-SR-180; Assessment"); *See* Respondents' Exhibit SR-180-SR-181; Assessment; *See* Respondents' Exhibit SR-181-SR-182; Assessment; *See* Respondents' Exhibit SR-183-SR-184.

¹⁵ Respondents' Exhibit SR-152-SR-157.

¹⁶ Respondents' Exhibit SR-152.

¹⁷ Respondents' Exhibit SR-152.

¹⁸ *Id.*

¹⁹ *Id.*

instructions; use of visual aids and concrete demonstrations; and time for Student's processing.²⁰

13. Student's cumulative grade point average at the end of Semester 1, School Year 2017-2018 was 3.429.²¹
14. Student "mastered" mathematics and language arts goals for Semester 1, School Year 2017-2018.²²
15. Student's Smarter Balanced Assessment scores for School Year 2016-2017 showed that Student's math score nearly met state standards and Student's reading score met state standards.²³
16. At the time the eligibility determination was made in December 2017, Student was performing at grade-level academically.²⁴
17. At the time the eligibility determination was made in December 2017, Student was not utilizing specially designed instruction.²⁵
18. During Semester 1, School Year 2017-2018, Student's reading and writing needs were grade-appropriate and consistent with the needs of other ___ grade students.²⁶ Student's needs did not adversely affect Student's ability to access Student's education.²⁷

Cognitive Assessments

19. Student's overall cognitive functioning skills fell within the average range. Student's verbal reasoning, concept formation and expression skills were also average as compared with Student's peers. Student's visual spatial processing and nonverbal problem solving skills were also in the average range and age-appropriate. Student's fluid reasoning index score also fell within the average range.²⁸
20. Student's working memory (Student's ability to hold, process, and mentally manipulate information) was slightly below other children Student's age.

²⁰ Respondents' Exhibit SR-154.

²¹ Respondents' Exhibit SR-235-SR236.

²² Respondents' Exhibit SR-213-SR-217.

²³ Petitioners' Exhibit P370-P371; Respondents' Exhibit SR-121.

²⁴ Respondents' Exhibit SR-122, SR-232; Testimony of VP1; Testimony of Sped Teacher; Testimony of Tutor; Testimony of Clinical Psychologist.

²⁵ Testimony of Tutor; Testimony of Sped Teacher; Testimony of Clinical Psychologist; *See also*, FOFs #25 and 27, *infra*.

²⁶ Testimony of Tutor. Tutor testified that Student needed help citing supporting evidence, which was consistent with the needs of other ___ grade students.

²⁷ Testimony of Tutor.

²⁸ Respondents' Exhibit SR -172.

However, within this index, Student showed varied abilities as Student's ability to listen to numbers read aloud and recall them in the same order, reverse order and ascending order fell in the average range. Student had more difficulty on a task that required Student to memorize pictures presented on a stimulus page and identity in sequential order from options on a response page.²⁹

21. Student's processing speed was slightly higher than Student's peers.³⁰
22. Student's cognitive scores for the cognitive assessment conducted in October 2017 were consistent with previous cognitive assessments.³¹

Phonologic Scores

23. Student's phonological awareness fell slightly below average which suggests Student has the necessary basis for reading at an age appropriate level, however Student may have some difficulty as compared to peers. Student's phonological memory was "poor", which may lead to more difficulty decoding new words and listening and reading comprehension for more complex sentences. The phonological memory score contained an average rating for Student's memory for digits and a poor score for nonword repetition. Student performed in the average range for rapid naming suggesting Student should be able to read as fluently or efficiently as Student same aged peers.³²

Emotional Assessments

24. Student's interview and self-reporting was consistent with Student's parents' reporting of elevated levels of anxiety.³³ Student worried excessively about Student's competence and performance in both academic and extra-curricular activities. Student had difficulty controlling Student's anxiety which frequently affected Student's ability to sleep. Clinical Psychologist noted, "[w]hile [Student] appears to be doing well in school and sports, it is likely requiring Student much effort and Student is likely enduring it with much distress."³⁴ Student was accordingly diagnosed with Disability.³⁵

Observations

25. A classroom observation of Student conducted by Sped Teacher on October 16, 2017 showed Student to be appropriately engaged in the science class work. Student followed directions, worked independently and completed the task assigned. Student was also able to work with other students in the classroom and

²⁹ Respondents' Exhibit SR-173; Testimony of Clinical Psychologist.

³⁰ Respondents' Exhibit SR-171; SR-173; SR-185; Testimony of Clinical Psychologist.

³¹ Testimony of Clinical Psychologist; *See also*, Respondents' Exhibit SR-166-SR-169.

³² Respondents' Exhibit SR-185; Testimony of Clinical Psychologist.

³³ Respondents' Exhibit SR-180-SR-184; Testimony of Clinical Psychologist.

³⁴ Respondents' Exhibit SR-187; Testimony of Clinical Psychologist.

³⁵ *Id.*

was able to work with normal classroom distractions. Student asked the teacher for clarification to ensure Student's portfolio was properly graded and organized and assisted a classmate in organizing their portfolio when they asked Student for help. Student was not observed to receive or utilize any specialized instruction.³⁶

26. Clinical Psychologist conducted two classroom observations of Student on October 5, 2017. The first observation was conducted during Student's (inclusion) class. Student was observed to follow teacher instructions, work both independently as well as cooperatively with classmates, and was attentive 93% of the time.³⁷
27. Clinical Psychologist conducted a second observation during Student's (inclusion) class. Student was observed to follow teacher instructions, appropriately discussed the assignment with Student's peers, read peer's writing assignment and re-read Student's own assignment and transitioned to work on another assignment. Student was observed to exhibit problem behaviors 26% of the time as Student talked to Student's peers and 13% of the time when Student stared at Student's computer, both unrelated to the assignment. Student was not observed to receive any specially designed instruction.³⁸
28. Student's teachers reported that Student was performing grade level work. Student was also able to advocate for themselves, and ask questions when necessary.³⁹

Diagnoses

29. Student did not consistently show reading skills that were "substantially and quantifiably below those expected for [Student's] chronological age".⁴⁰ Student did not show significant impairment in school performance as Student was currently demonstrating adequate skills and earning good grades. However, Clinical Psychologist noted a diagnosis of Disability with impairment in reading, "by history", to acknowledge Student's prior history of difficulties in reading.⁴¹
30. The standardized academic assessment completed in 2017 did not show that Student had significant difficulties in fluency and quality of written expression. Student demonstrated proficiency and success in written assignments in school. However, Clinical Psychologist noted a diagnosis of Disability with impairment in writing, "by history", to acknowledge Student's prior history of difficulties in writing.⁴²

³⁶ Petitioners' Exhibit P333; Respondents' Exhibit SR-158-SR-159; Testimony of Sped Teacher.

³⁷ Respondents' Exhibit SR-170.

³⁸ *Id.*

³⁹ Testimony of VP1.

⁴⁰ Respondents' Exhibit SR185-SR-186; Testimony of Clinical Psychologist.

⁴¹ Respondents' Exhibit SR-186; Testimony of Clinical Psychologist.

⁴² *Id.*

31. Although Student was previously diagnosed with Disability, the results of the assessments, observations and collateral information gathered in preparation of the Assessment were mixed and inconclusive.⁴³ Student's inattentiveness and other symptoms did not interfere with Student's ability to attend to and complete tasks during the school day. Medication may have mitigated these behaviors. In the home environment and on weekends, when Student was not on medication, Student's behaviors may have had a greater impact on Student's ability to complete homework and assignments. Student was accordingly diagnosed with Disability.⁴⁴
32. Student was diagnosed with Disorder.⁴⁵

Recommendations

33. Clinical Psychologist recommended the following supports for Student, as a result of the __:
 - a. Presenting material in various modalities: auditory, visual, and kinesthetic/tactile;
 - b. Seat Student in the front of the classroom or near the teacher, or near on-task peers;
 - c. Allowing Student frequent breaks;
 - d. Maintaining eye contact while giving instructions
 - e. Avoiding multiple commands and keeping directions clear and simple;
 - f. Encourage quality of work as opposed to quantity and speed of work completed;
 - g. Chunking of assignments;
 - h. Guide Student through developing reasonable and specific time frames or deadlines for each step;
 - i. Counseling or therapy to address Student's anxiety and related symptoms;
 - j. Teach relaxation and calming techniques as well as good sleep hygiene;
 - k. Allow Student to engage in activities that help improve Student's self-esteem;
 - l. Encourage Student to read material of interest;

⁴³ All three teachers who participated in the Assessment assessed Student within an average range for externalizing problems, internalizing problems and adaptive skills. These composite scores included individual scores for hyperactivity, aggression, conduct problems, anxiety, depression, somatization, attention problems, learning problems, atypicality, withdrawal, adaptability, social skills, leadership, study skills and functional communication. In contrast, Student's parents assessed Student as average to at-risk for externalizing problems; at-risk to clinically significant for internalizing problems; and at-risk for adaptive skills.

All three teachers' ratings on the assessment fell in the average range indicating typical levels of concern in the areas of __. Only one teacher indicated a mild concern on the __ subscale, indicating Student may have difficulty learning and/or remembering concepts and may need extra explanations. By contrast, Parent 1 and Parent 2's ratings on assessment rated Student's __ as very elevated. Parent 1 rated Student's Peer Relations as very elevated, while Parent 2 rated this item as average. __ were rated in the average range by both parents.

⁴⁴ Respondents' Exhibit SR-186; Testimony of Clinical Psychologist.

⁴⁵ See FOF 24, *supra*.

- m. Consider extended time for tests involving reading;
 - n. Consider tutoring for reading;
 - o. Continue monitoring by Student's psychiatrist for medication management and anxiety, as well as Student's reports of seeing flashes of light and hearing Student's name being called when no one is around; and
 - p. Continued participation in extra-curricular activities.⁴⁶
34. Clinical Psychologist did not recommend specialized instruction or special education services for Student.⁴⁷

2017 Reevaluation and eligibility determination

35. A reevaluation and eligibility meeting was conducted on November 2, 2017.⁴⁸ Present at the November 2, 2017 meeting was Student, Parent 1, Parent 2, VP2, Tutor, Sped Teacher, Clinical Psychologist, Teacher 1, Sped DH, Teacher 2, Counselor 1.⁴⁹
36. Parent 1 brought to the November 2, 2017 meeting a records review report prepared by Audiologist on September 29, 2016.⁵⁰
37. The participants of the November 2, 2017 meeting ("eligibility team") attempted to review the assessments conducted of Student. However, the meeting became confrontational, resulting in VP2 adjourning the meeting without an eligibility determination being reached.⁵¹
38. A second Eligibility/Reevaluation meeting was conducted on December 14, 2017.⁵² Present at the December 14, 2017 meeting was Parent 1, who participated by telephone, VP1, Tutor, Sped Teacher, Clinical Psychologist, Teacher 1, Sped DH, Teacher 2, Counselor 2, Sped MMH, Student Services Coordinator.⁵³
39. Parent 1 requested an IEE several times during the December 14, 2017 meeting.⁵⁴
40. VP1 acknowledged Parent 1's request for an IEE and informed Parent 1 that Parent 1's request could be addressed after the Student's IDEA eligibility was completed.⁵⁵

⁴⁶ Respondents' Exhibit "SR-188-SR-189; Testimony of Clinical Psychologist.

⁴⁷ Testimony of Clinical Psychologist.

⁴⁸ Respondents' Exhibit SR-119; Testimony of Parent 1; Testimony of VP1; Testimony of Tutor; Testimony of Sped Teacher; Testimony of Clinical Psychologist.

⁴⁹ Respondents' Exhibit SR-119.

⁵⁰ Respondents' Exhibit SR-149; Testimony of Sped Teacher.

⁵¹ Parent 1 repeatedly insisted on discussing Audiologist's report; Testimony of Sped Teacher.

⁵² Respondents' Exhibit SR-120; Testimony of Parent 1; Testimony of VP1; Testimony of Tutor; Testimony of Sped Teacher; Testimony of Clinical Psychologist.

⁵³ Respondents' Exhibit SR-120.

⁵⁴ Petitioners' Exhibit P373-P374; Testimony of Parent 1; Testimony of VP1; Testimony of Sped Teacher; Testimony of Tutor; Testimony of Clinical Psychologist.

⁵⁵ Testimony of VP1; Testimony of Tutor; Testimony of Sped Teacher; Testimony of Clinical Psychologist.

41. Parent 1 did not want to proceed with the eligibility determination and continued to demand an IEE. VP1 told Parent 1 that Parent 1 was an important member of the evaluation team and encouraged Parent 1 to continue to participate in the eligibility determination. Parent 1 informed the participants of the meeting that Parent 1 was going to consult with Parent 1's attorney and terminated Parent 1's participation by hanging up.⁵⁶
42. At the December 14, 2017 meeting, the eligibility team considered all of the assessments conducted of Student, Audiologist's report, classroom formative and summative assessments, Student's report card for Semester 1 of the 2017-2018 school year, Student's confidential file, classroom observations of Student, interviews with Parent 1 and Parent 2.⁵⁷
43. At the December 14, 2017 meeting, the eligibility team considered Student's possible IDEA eligibility under the categories of Eligibility Category 2, Eligibility Category 3, Eligibility Category 1, and Eligibility Category 4 and ultimately determined that Student was not eligible for special education and related services under the IDEA.⁵⁸
44. At the December 14, 2017 meeting, the eligibility team determined that Student did not meet the criteria of Eligibility Category 2 because student was able to meet all grade level standards at or above proficiency without any specialized instruction.⁵⁹
45. At the December 14, 2017 meeting, the eligibility team determined that Student did not meet the criteria for Eligibility Category 4 because Student did not display a developmental disability regarding verbal and non-verbal communication skills.⁶⁰
46. At the December 14, 2017 meeting, the eligibility team determined that Student did not meet the criteria for Eligibility Category 3 because Student did not exhibit emotional characteristics over long periods of time that adversely affected Student's educational performance.⁶¹
47. At the December 14, 2017 meeting, the eligibility team determined that Student did not meet the criteria for Eligibility Category 1 because Student was not deficient in any of the skill areas related to Eligibility Category 1.⁶²

⁵⁶ *Id.*

⁵⁷ See FOFs #50-51, *infra*; Respondents' Exhibit SR-121-SR-124; Testimony of Sped Teacher; Testimony of VP1; Testimony of Clinical Psychologist.

⁵⁸ Respondents' Exhibit SR-121-SR-124; Testimony of VP; Testimony of Sped Teacher; Testimony of Tutor; Testimony of Clinical Psychologist.

⁵⁹ Petitioners' Exhibit P373.

⁶⁰ Petitioners' Exhibit P374.

⁶¹ *Id.*

⁶² *Id.*; Testimony of Clinical Psychologist.

48. On January 18, 2018, the DOE sent Parent 1 the Evaluation Summary Report dated December 14, 2017.⁶³
49. On January 31, 2018, the DOE sent Parent 1 a letter regarding scheduling a meeting to discuss supports for Student's anxiety, to be provided through Section 504 of the Rehabilitation Act ("Section 504").⁶⁴ Parent 1 did not respond to the January 31, 2018 letter.⁶⁵
50. In April of 2018, Parent 1 filed a complaint with the Office of Civil Rights ("OCR") alleging that the DOE discriminated and/or retaliated against Student on the basis of a disability and/or because Student's parents filed previous complaints with OCR, respectively, when Student's tutoring services were terminated at the end of Semester 1, School Year 2017-2018.⁶⁶
51. OCR found that the DOE did not discriminate against Student as alleged by Parent 1.⁶⁷
52. On September 26, 2018, Math Teacher informed Parent 1 that student was getting a "D" in math.⁶⁸
53. On September 26, 2018, Parent 1 requested that Public School provide Parent 1 with a copy of the procedural safeguards regarding filing a request for impartial due process hearing.⁶⁹ Public School provided Parent 1 with the requested information on September 27, 2018.⁷⁰
54. Parent 1 filed a Request for Impartial Due Process Hearing in this matter on September 28, 2018.
55. Resolution sessions were conducted in this matter on November 16, 2018, January 7, 2019, and January 28, 2019. At each of the resolution sessions, the DOE offered to hold a Student Focused Team meeting to determine if Student was eligible for services pursuant to Section 504.⁷¹

⁶³ Respondents' Exhibit SR-191.

⁶⁴ Section 504 of the Rehabilitation Act of 1973 ("Section 504"), as amended in 1974, codified at 29 U.S.C. 794, et seq.; the federal regulations implementing Section 504, 34 C.F.R §§ 104.1, et seq.; and the Hawai'i Administrative Rules ("HAR") §§ 8-61-1, et seq.; Respondents' Exhibit SR-193-SR-195; *See also* Testimony of VP1.

⁶⁵ Respondents' Exhibit SR-193; Testimony of VP1.

⁶⁶ Respondents' Exhibit SR-228-SR-231; *See also* Respondents' Exhibit SR-225-SR-227; Parent 1 denied receiving the Settlement Agreement dated September 20, 2017, which was introduced into evidence as Respondents' Exhibit SR-225-SR-227. During Parent 1's testimony at the Hearing, Parent 1 also denied that Student received the aforementioned tutoring services. However, Tutor testified that Tutor provided Student with the tutoring services for Semester 1, School Year 2017-2018.

⁶⁷ Respondents' Exhibit SR-228-SR-231.

⁶⁸ Respondents' Exhibit SR-199.

⁶⁹ Respondents' Exhibit SR-197.

⁷⁰ Respondents' Exhibit SR-196.

⁷¹ Respondents' Exhibits SR-93-SR-95, SR-100-SR-103, SR-114-SR-116.

56. The DOE did not file a Request for Impartial Due Process Hearing in response to Parent 1's request for an IEE.⁷²
57. The DOE did not provide or offer to provide an IEE for Student in response to Parent 1's request for an IEE.⁷³

VI. CONCLUSIONS OF LAW

IDEA Requirements

The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs”.⁷⁴ A Free and Appropriate Education (“FAPE”) includes both special education and related services.⁷⁵

Special education means “specially designed instruction to meet the unique needs of a child with a disability” and related services are the supportive services required to assist a student to benefit from their special education.⁷⁶ To provide FAPE in compliance with the IDEA, the state educational agency receiving federal funds must “evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP”.⁷⁷

In deciding if a student was provided a FAPE, the two-prong inquiry is limited to (a) whether the Department of Education (“DOE”) complied with the procedures set forth in IDEA; and (b) whether the student’s IEP is reasonably calculated to enable the student to receive

⁷² Testimony of Parent 1.

⁷³ *Id.*

⁷⁴ *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 179-91, 102 S.Ct. 3034, 3037-3043 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. §1400(d)(1)(A)).

⁷⁵ H.A.R. §8-60-2; 20 U.S.C. § 1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39.

⁷⁶ *Id.*

⁷⁷ *Dep’t of Educ. of Hawai’i v. Leo W. by & through Veronica W.*, 226 F.Supp. 3d 1081, 1093 (D. Haw. 2016).

educational benefit.⁷⁸ “A state must meet both requirements to comply with the obligations of the IDEA”.⁷⁹

Harmless procedural errors do not constitute a denial of FAPE.⁸⁰ However, “a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies-

- i. Impeded the child’s right to a FAPE;
- ii. Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the parent’s child; or
- iii. Caused the student a deprivation of educational benefit.”⁸¹

Where a court identifies a procedural violation that denied a student a FAPE, the court need not address the second prong.⁸²

VII. DISCUSSION

Issue 1 –The Department of Education failed to provide Student an independent educational evaluation (“IEE”) or file a Request for Impartial Due Process Hearing in response to Parent 1’s request for an IEE.

Independent Educational Evaluations

The IDEA defines an independent educational evaluation (“IEE”) as “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.”⁸³

⁷⁸ *Rowley*, 458 U.S. at 206-7; 102 S.Ct. at 3050-3051.

⁷⁹ *Doug C. v. Hawai’i Dept. of Educ.*, 720 F.3d 1038, 1043 (9th Cir. 2013) (quoting *Rowley*). See also, *Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001).

⁸⁰ *L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 910 (9th Cir. 2008).

⁸¹ 34 C.F.R. § 300.513 (a)(2).

⁸² *Id.*

⁸³ 34 C.F.R. § 300.502 (a)(3)(i).

Parents can request an IEE at public expense if they disagree with an evaluation obtained by a school district.⁸⁴ Once a parent has requested an IEE, the school district “must, without unnecessary delay”, either file a due process complaint to request a hearing to show that its evaluation is appropriate, or ensure that an IEE is provided to the student at public expense.⁸⁵

HAR § 8-60-2 defines “evaluation” as “procedures used in accordance with sections 8-60-36⁸⁶ through 8-60-43⁸⁷ to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.”

It is undisputed that Parent 1 requested an IEE during the December 14, 2017 re-evaluation and eligibility meeting.⁸⁸ Although Parent 1 may not have identified what specific assessment Parent 1 disagreed with, the evidence presented at the Hearing make it abundantly clear that Parent 1 disagreed with the evaluation process. Sped Teacher testified that, during the December 14, 2017 meeting, Parent 1 read out loud the procedural safeguards regarding a request for an IEE. Parent 1 was clearly expressing Parent 1’s disagreement with the DOE’s evaluation and requesting an IEE.⁸⁹ A parent need not use a specific word or phrase to express their disagreement with a school district’s evaluation.⁹⁰ The DOE could have asked Parent 1 for Parent 1’s “reasons why. . .Parent 1 objects to the public evaluation”, but could not require Parent 1 to “provide an explanation”.⁹¹ The Office of Special Education Programs (“OSEP”) has

⁸⁴ 34 C.F.R. § 300.502 (b)(1).

⁸⁵ 34 C.F.R. § 300.502 (b)(2)(i)-(ii).

⁸⁶ *See also* 34 C.F.R. § 300.304

⁸⁷ *See also* 34 C.F.R. § 300.311.

⁸⁸ FOF #56, *supra*.

⁸⁹ Testimony of Sped Teacher. Parent 1 exhibited the same behavior at the Hearing, where Parent 1 read long passages from different documents, which the Hearings Officer accepted as Parent 1’s communication of Petitioners’ arguments and presentation of evidence.

⁹⁰ *Genn v. New Haven Board of Education*, 69 IDELR 35 (D. Conn. 2016) (holding that a parent’s request for a reading assessment during an IEP team discussion of their daughter’s psychoeducational evaluation was sufficient to express their disagreement with the school district’s testing.)

⁹¹ 34 C.F.R. § 300.502 (b)(4).

asserted that school districts may not require parents to provide written notice or discuss the district's evaluation at an IEP meeting or to discuss their IEE request before obtaining the IEE.⁹² Accordingly, Parent 1 made a proper request for an IEE during the December 14, 2017 meeting.

Respondents correctly argued throughout the Hearing that the DOE had a reasonable amount of time to respond to Parent 1's request for an IEE.⁹³ However, the DOE had only two options to respond to Parent 1's request: either provide the IEE at public expense or file a request for impartial due process hearing.⁹⁴ In this case, the DOE did neither of the two legally acceptable options.⁹⁵

After Student was determined ineligible for services under the IDEA, the DOE attempted to contact Parent 1 to proceed with a Student Focused Team meeting to determine if Student was eligible for services under Section 504.⁹⁶ At each of the three resolution sessions conducted in this matter, the DOE also offered to initiate the Section 504 eligibility process.⁹⁷ Unfortunately, there is no evidence in the record that the DOE attempted to offer or offered Parent 1 an IEE at any time after Parent 1 made the request. Although VP1 told Parent 1 that the IEE issue could be re-visited after Student's eligibility had been determined, the DOE did not re-visit the issue.⁹⁸ Similarly, the DOE has not filed a Request for Impartial Due Process Hearing in response to Parent 1's request for an IEE.⁹⁹

⁹² *Letter to Anonymous*, 55 IDELR 106 (2010).

⁹³ 34 C.F.R. § 300.502 (b)(2) states that, when a parent requests an IEE, the public agency must respond to the request, "without unnecessary delay".

⁹⁴ 34 C.F.R. § 300.502(b)(2)(i)-(ii).

⁹⁵ FOFs #56-57, *supra*.

⁹⁶ FOF # 49, *supra*.

⁹⁷ FOF #55, *supra*.

⁹⁸ FOF #41, *supra*.

⁹⁹ FOF #56, *supra*.

Offering to re-evaluate a student or to conduct a purportedly missing assessment in response to a parent’s request for an IEE is not a proper response to the request.¹⁰⁰ Likewise, the DOE’s offer to proceed with a Section 504 meeting to determine Student’s eligibility for a 504 plan was not a proper response, and in fact, wholly ignored Parent 1’s request for an IEE.

The DOE’s failure to choose one of the only two available legal responses to Parent 1’s request for an IEE at public expense significantly impeded Parent 1’s opportunity to participate in the decision-making process regarding the provision of FAPE to Student.¹⁰¹ Accordingly, Student was denied a FAPE as a result of the DOE’s failure.¹⁰²

Issue 2 – Petitioners failed to prove that, on December 14, 2017, Student was eligible for special education and related services pursuant to the IDEA under the category of Eligibility Category 1.

Only a child with a disability is entitled to special education and related services under the IDEA. A “child with a disability” is defined by the IDEA as “a child **evaluated** in accordance with §§ 300.304 through 300.311 as having[:]

- mental retardation;
- A hearing impairment;
- a speech or language impairment;
- a visual impairment;
- a serious emotional disturbance (“emotional disturbance”)¹⁰³;
- an orthopedic impairment;
- autism;
- traumatic brain injury;
- an other health impairment;
- a specific learning disability; or
- multiple disabilities,

and who, **by reason thereof, needs special education and related services.**”¹⁰⁴

¹⁰⁰ *Fullerton School District*, 58 IDELR 177 (SEA CA 2012); *Letter to Carroll*, 68 IDELR 279 (2016).

¹⁰¹ 34 C.F.R. § 300.502 (a)-(b).

¹⁰² 34 C.F.R. § 300.513 (a)(2)(ii).

¹⁰³ HAR § 8-60-39 (e) uses the term “emotional disability”, instead of emotional disturbance.

¹⁰⁴ 34 C.F.R. §300.8 (a)(1) (bold emphasis added).

Evaluation

The IDEA requires school districts to evaluate a child with a disability in accordance with 34 C.F.R. §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.¹⁰⁵

The IDEA imposes specific requirements on school districts to ensure that a child is properly evaluated:

- (b) Conduct of evaluation. In conducting the evaluation, the public agency must-
- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining-
 - (i) Whether the child is a child with a disability under § 300.8 and
 - (ii) the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
 - (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
 - (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.¹⁰⁶

The school district must ensure that the student is assessed in all areas related to the suspected disability, including “health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities”. The evaluation must be sufficiently “comprehensive to identify all of the child’s special education and related services needs”. And the school district must ensure that the “assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.”

¹⁰⁵ 34 C.F.R. §300.305 (e).

¹⁰⁶ 34 C.F.R. §300.304(b).

Petitioners did not prove by a preponderance of the evidence that the DOE's evaluation of Student was deficient or otherwise denied Student a FAPE.¹⁰⁷

The record in this matter shows that the DOE used a variety of assessment tools, including academic, cognitive, emotional and behavioral assessments.¹⁰⁸ The DOE did not rely on any single measure or assessment as the sole criterion for determining Student was not eligible for special education and related services under the IDEA. In fact, Clinical Psychologist explained that relying on one subtest score or giving unwarranted weight to grade-level equivalency scores was not clinically appropriate.¹⁰⁹ Clinical Psychologist stated that a low score in one subtest is not, by itself, significant, but deficiencies across multiple assessments would raise a concern of an impairment.¹¹⁰ Petitioners did not prove by a preponderance of the evidence that the assessments used by the DOE were unreliable or otherwise defective.

The DOE conducted multiple observations of Student's behavior and performance in a general education setting and found that Student was able to perform well in the classroom and did not exhibit any behavioral or emotional concerns.¹¹¹ Student's academic performance was also evaluated by multiple means, including Assessment, report cards, State standards, and teacher evaluations.¹¹²

Both Parent 1 and Parent 2 filled out several questionnaires relating to Student's behavioral and emotional status.¹¹³ Student filled out similar questionnaires.¹¹⁴ Three of

¹⁰⁷ Parent 1's request for an IEE is insufficient to prove by a preponderance of the evidence that the DOE's evaluation process was deficient. The Hearings Officer's determination, *supra*, that the DOE denied Student a FAPE by not providing the requested IEE or filing a Request for Impartial Due Process Hearing is not determinative of whether the DOE's evaluation of Student was deficient or denied Student a FAPE.

¹⁰⁸ FOFs #6-12, 15, 19-24, *supra*.

¹⁰⁹ Testimony of Clinical Psychologist.

¹¹⁰ *Id.*

¹¹¹ FOFs #25-27, *supra*.

¹¹² FOFs #7-18, 28, *supra*.

¹¹³ FOF #24, *supra*.

¹¹⁴ *Id.*

Student's teachers filled out questionnaires as well.¹¹⁵ All of the data obtained through these reports were compiled and interpreted by Clinical Psychologist.¹¹⁶ Petitioners did not offer any lay or expert testimony that refuted Clinical Psychologist's conclusions. Accordingly, Petitioners failed to prove by a preponderance of the evidence that the DOE's evaluation process denied Student a FAPE.

Eligibility Category 1

In this case, Petitioners argue that Respondents failed to find Student eligible for special education and related services under the IDEA under the category of Eligibility Category 1.¹¹⁷

34 C.F.R. § ___ defines Eligibility Category 1.¹¹⁸

The IDEA sets out additional requirements for eligibility.

The eligibility team may determine that a child has Eligibility Category 1¹¹⁹

Additionally, the student must be "observed in the student's learning environment (including the regular classroom setting) to document the student's academic performance and behavior in the areas of difficulty".¹²⁰

Petitioners failed to prove by a preponderance of the evidence that, on December 14, 2017, Student met the criteria for Eligibility Category 1. Petitioners argued fervently that the eligibility determination was deficient because the Assessment did not report grade-level equivalency

¹¹⁵ FOFs #6 and 31, *supra*.

¹¹⁶ FOF #6; Testimony of Clinical Psychologist.

¹¹⁷ Although Petitioners only challenge the finding that Student was not eligible for special education and related services under the IDEA category of Eligibility Category 1, the eligibility team did evaluate Student under four areas of suspected disability: Eligibility Category 2, Eligibility Category 3, Eligibility Category 1, and Eligibility Category 4. Student was found not eligible under any of the four categories considered. Petitioners did not argue nor present evidence challenging the determination that Student was ineligible for special education and related services under the IDEA categories of Eligibility Category 2, Eligibility Category 3 or Eligibility Category 4. Accordingly, this Decision does not make specific findings regarding those determinations.

¹¹⁸ *See also*, HAR § 8-60-39(k).

¹¹⁹ HAR § 8-60-__ (bold emphasis added).

¹²⁰ HAR § 8-60-42.

scores.¹²¹ Clinical Psychologist addressed this issue at the eligibility meeting on December 14, 2017 as well as at the Hearing in this matter. Clinical Psychologist explained that grade level equivalency is a raw score compared against children across different grade levels and is not synonymous with achievement at a particular grade-level.¹²² The assessments conducted by the DOE reported standard scores that compared Student's cognitive scores to same-aged peers, which is appropriate in determining whether Student was falling below grade-level.¹²³

Clinical Psychologist testified that Student's cognitive scores all fell within one standard deviation of the mean scores for Student's grade level peers. Scores in this range do not raise clinically significant concerns and would not be considered "deficient".¹²⁴

The evidence presented by the DOE suggests that Student was performing academically at grade-level.¹²⁵ Student's grades and statewide assessment scores substantiate this fact.¹²⁶ Additionally, Student's academic assessment scores fell within the average range for the majority of the categories.¹²⁷ Student's actual academic performance, as indicated by Student's grades, were consistent with, if not exceeded, Student's cognitive and academic aptitude scores.¹²⁸

Petitioners failed to prove that Student did not make sufficient progress to meet age or State-approved grade-level standards in or more of the areas identified in HAR § 8-60-___. Petitioners argued that Progress Reports for School Year 2016-2017 showed that Student achieved no progress in Student's educational goals. However, Petitioners' interpretation of the

¹²¹ Testimony of Parent 1; Testimony of Clinical Psychologist.

¹²² Testimony of Clinical Psychologist.

¹²³ *Id.*; See also, FOFs #19-22, *supra*.

¹²⁴ Respondents' Exhibit SR-171-SR-173; Testimony of Clinical Psychologist.

¹²⁵ FOFs #14 and 16, *supra*.

¹²⁶ FOFs #13 and 15, *supra*.

¹²⁷ FOFs #7-11, *supra*.

¹²⁸ FOFs #7-11, 13-16, 19-22, *supra*.

reports contradicted the descriptors for Student's progress scores.¹²⁹ Student's Progress Report for Semester 1, School Year 2017-2018 showed that Student "mastered" goals in mathematics and language arts.¹³⁰ Petitioners offered no credible evidence to refute the aforementioned progress reports.

In compliance with HAR § 8-60-42, multiple observations were conducted by the DOE to prepare for Student's reevaluation. The observations showed that Student was not utilizing and did not need specialized instruction in the classroom. Student was consistently able to work independently and collaboratively in the classroom environment. Student was able to advocate for themselves by asking questions and requesting help from teachers when necessary. Student did not exhibit extraordinary difficulties with attention, social skills, or anxiety in the classroom. Petitioners did not challenge the findings of the observations.

Petitioners offered no expert testimony or alternative assessments to contradict the findings of the assessments performed by the DOE or the ultimate decision by eligibility team. Petitioners offered insufficient evidence to prove a severe discrepancy between Student's actual achievement and Student's intellectual ability. Petitioners offered insufficient evidence to allege that Student had a pattern of strengths and weaknesses that the eligibility team should have found relevant to the determination of Student's eligibility under the category of Eligibility Category 1.

Petitioners failed to prove by a preponderance of the evidence that Student was or should have been found eligible for special education and related services under the IDEA under

¹²⁹ FOF #14, *supra*; Testimony of Parent 1; Parent 1 interpreted a "P" to mean that Student was not progressing, when the legend for the Progress Report clearly indicated a "P" meant Student was making progress toward the goals.

¹³⁰ FOF #14, *supra*; Respondents' Exhibit SR-213-SR-217. Petitioners argued that Progress Reports for School Year 2016-2017 showed that Student achieved no progress in the educational goals. However, Petitioners' interpretation of the reports contradicted the descriptors for Student's progress scores. Additionally, there is no evidence that the Progress Reports submitted as exhibits by Petitioners was or should have been considered by the eligibility team as they reflected Student's progress a year prior to the eligibility determination. *See* Petitioners' Exhibit P318-P327.

Eligibility Category 1. The evidence in the record suggests that Student did not need and was not utilizing specialized instruction, was progressing academically and performing at grade-level, receiving good grades, and was emotionally and behaviorally adjusted in school. Accordingly, Petitioners' claim on this issue must fail.

Petitioners also argued that the eligibility determination should not have proceeded after Parent 1 requested an IEE. This argument is without merit. Petitioners offered no legal or statutory authority for this position. Accordingly, the eligibility team's decision to proceed with the eligibility determination, notwithstanding Parent 1's request for an IEE, was proper.

VIII. REMEDY

DOE denied Student a FAPE by not responding to Parent 1's request for an IEE by either providing the IEE at public expense or filing a Request for Impartial Due Process Hearing.¹³¹ Accordingly, Petitioners are entitled to receive an IEE of Student at public expense.¹³²

Petitioners failed to prove by a preponderance of the evidence that, on or about December 14, 2017, Student was or should have been found eligible for special education and related services under the IDEA under the category of Eligibility Category 1 and therefore, Petitioners are not entitled to a remedy for that cause of action.

IX. ORDER

IT IS HEREBY ORDERED that Petitioners are entitled to an independent educational evaluation of Student at public expense. Respondents are ordered to pay for said independent educational evaluation no later than thirty days after receiving an invoice or other documentation of the cost of the IEE.

¹³¹ See Section VII re Independent Educational Evaluation, *supra*.

¹³² *Id.*

DATED: Honolulu, Hawai'i, April 15, 2019.

/s/ DENISE P. BALANAY

Hearings Officer
Richards Building
707 Richards St., Suite 403
Honolulu, Hawai'i 96813
Phone: (808) 587-7680
Fax: (808) 587-7682
atg.odr@hawaii.gov

Unofficial redacted hearing decision

NOTICE OF APPEAL RIGHTS

The decision issued by this Hearings Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearings Officer shall have 30 days from the date of the decision of the hearings officer to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a State court of competent jurisdiction, as provided in, as provided in 20 U.S.C. § 1415 (i)(2) and § 8-60-70(b).

Unofficial redacted hearing decision