



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

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

Petitioners,

vs.

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

Respondents.

DOE-SY1920-037

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DECISION

Due Process Hearing: June 24-25, 2020

Hearings Officer : Chastity T. Imamura

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION

**I. INTRODUCTION**

On February 21, 2020, the Department of Education, State of Hawai'i and Christina Kishimoto, Superintendent of the Hawai'i Public Schools (hereinafter "Respondents" or "DOE") received a request for a due process hearing (hereinafter "Complaint") under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the Individuals with Disabilities Education Act, from Student, by and through Parent 1 (hereinafter "Petitioners"). Respondents submitted a response to Petitioners' Complaint on February 28, 2020.

A pre-hearing conference was held on May 18, 2020, before Hearings Officer Chastity T. Imamura, with Keith H.S. Peck, Esq. (hereinafter “Mr. Peck”), representing Petitioners, and Carter K. Siu, Esq. (hereinafter “Mr. Siu”), representing Respondents. At the pre-hearing conference, the Due Process Hearing (hereinafter “Hearing”) was scheduled for June 24-26, 2020.

Due to the scheduling of the Hearing, Petitioners requested an extension of the original deadline by which a decision was to be made from June 19, 2020 to August 3, 2020. Petitioners’ request for an extension was granted and the new deadline was set at August 3, 2020.

Due to the coronavirus 2019 global pandemic, the Hearing was conducted via videoconferencing to ensure compliance with government mandated social distancing. An Order Regarding Video Conference Due Process Hearing was issued on June 10, 2020, which set forth the parameters for the videoconference hearing. These parameters included: the instructions to participate via the Zoom videoconference internet platform; a court reporter would participate in the video conference hearing, swear in the witnesses, and transcribe the proceedings; all witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform; and that witnesses and parties would ensure confidentiality of the proceedings by participating in a private setting.

The Hearing commenced on June 24, 2020, using the Zoom videoconferencing platform. Each attendee to the Hearing was sent a link through email to access the Hearing by the Office of Dispute Resolution. Present in the videoconference Hearing were Hearings Officer Chastity T. Imamura; Parent 1 and Mr. Peck, on behalf of Petitioners; and DES 1, District Teacher 1, District Teacher 2 and Mr. Siu on behalf of Respondents, as well as the assigned court reporter. The Hearing continued to June 25, 2020, as scheduled, and the testimony was completed on that date.

At the Hearing, Petitioners called Parent 1 as a witness during their case-in-chief and rested. Respondents called Care Coordinator, DOE Provider 1, SSC 1, SSC 2, and DES 2 as witnesses. Petitioners did not present any rebuttal evidence.

Each party submitted their exhibits for the Hearing by the disclosure deadline of June 17, 2020. Due to the number of exhibits, this Hearings Officer requested that the attorneys each submit a list of exhibits that they want to be considered in the decision in this case by July 6, 2020. Both attorneys were also given the opportunity to submit any objections to the proposed exhibits by July 8, 2020. Respondents submitted a list of objections to exhibits proposed by Petitioners. Respondents' objections were considered by this Hearings Officer and it was determined that the exhibits will be received for review, but that Respondents' objections as to relevance and foundation would be considered when deciding the weight to attribute in reviewing each exhibit. Respondents did not request a further hearing or any briefing on the objections. On June 20, 2020, a final list of exhibits received at the Hearing to be considered by the Hearings Officer in this Decision was filed with agreement of the parties. Petitioners' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-059; Exhibit 2, pages 060-061,<sup>1</sup> 064-066;<sup>2</sup> Exhibit 3, pages 067-094, 108-112; Exhibit 4, pages 127-169, 173-243; Exhibit 5, pages 245-299;<sup>3</sup> Exhibit 6, pages 300-321, 362-390.

Respondents' exhibits that were received and considered as part of this Decision are as follows:

---

<sup>1</sup> Respondents objected to pages 060-061 based on relevance, as the IEPs identified in the due process complaint are dated 7/23/2018 and 4/29/2019.

<sup>2</sup> Respondents objected to page 063 as it was identified in Petitioners' Exhibit List with the wrong date. Respondents objected to pages 065-066 based on relevance, as the IEPs identified in the due process complaint are dated 7/23/2018 and 4/29/2019.

<sup>3</sup> Respondents objected to pages 245-287 as lacking foundation, as Petitioners did not present a witness to explain what the document says.

Page numbers 111-125, 127-141,<sup>4</sup> 159-194,<sup>5</sup> 196-199, 201, 205-247,<sup>6</sup> 275, 277, 279, 284-286, 288, 291-296, 299-304,<sup>7</sup> 306-309, 311, 313.

Both parties wanted the opportunity to submit closing briefs regarding the legal issues and the relevant facts supporting those issues to this Hearings Officer for review. The deadline by which the briefs were to be submitted was July 17, 2020. Both parties timely submitted their closing briefs on July 17, 2020.

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

## **II. JURISDICTION**

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

## **III. ISSUES PRESENTED**

Petitioners assert two (2) issues in the Complaint to be determined at the Hearing:

1. Whether the Individualized Education Program (hereinafter “IEP”) dated 07/23/18 and/or the IEP dated 04/29/19 denied Student a free and appropriate public education

---

<sup>4</sup> Both Petitioners and Respondents submitted Student’s Individualized Education Program (hereinafter “IEP”) dated July 23, 2018. This exhibit is Petitioners’ Exhibit 1, pages 016-028 and Respondents’ Exhibit pages 127-139.

<sup>5</sup> Both Petitioners and Respondents submitted Student’s IEP dated April 29, 2019. This exhibit is Petitioners’ Exhibit 1, pages 029-044 and Respondents’ Exhibit pages 176-192.

<sup>6</sup> These page numbers include blank pages used to separate the individual exhibits, which are not specifically listed in the List of Exhibits Received at the Due Process Hearing.

<sup>7</sup> Respondents objected to pages 299-304 as it was already admitted as Respondents’ Exhibits pages 170-175.

(hereinafter “FAPE”) by failing to revise the IEPs to address Student’s needs, when the school knew or should have known that Student’s needs changed: a) Student was no longer able to attend the public-school placement by about November 1, 2018; b) The location of implementation of Student’s program and/or the placement was unsuitable after a certain point in time; c) The services Student needed to support continued access to FAPE changed, the IEP did not.

2. Whether the IEP dated 07/23/2018 and/or the IEP dated 04/29/2019 denied Student a FAPE procedurally and/or substantively where: a) Student’s behavioral interventions were not adequately discussed and/or described; b) Student’s extended school year program was not adequately discussed and/or described; c) The frequency of Student’s counseling services was not adequately discussed and/or described; d) Student’s positive reinforcement or reward system was not adequately discussed and/or described.

#### **IV. FINDINGS OF FACT**

##### Student’s background

1. Student is eligible for special education and related services pursuant to the IDEA and Hawai`i Administrative Rules (hereinafter “HAR”) Chapter 60.<sup>8</sup>
2. Student is \_\_\_ years old and has diagnoses.<sup>9</sup>
3. Student had an unstable home life, being placed in around eight (8) different familial homes before Parent 1. Student had also been at Residential Program 1 for a nearly two (2) month period in early 2013, before being released to a different home.<sup>10</sup>

---

<sup>8</sup> 20 U.S.C. §§ 1400, *et seq.*; HAR §8-60-39(g); 20 U.S.C. §1401(3)(A)(i).

<sup>9</sup> Petitioners’ Exhibit 1, pages 016-017, 029-030 (hereinafter referenced as “P-Ex.1, p.016-017, 029-030”); Respondents’ Exhibits pages 127-128 (hereinafter referenced as “R-p.127-128”)

<sup>10</sup> P-Ex.4, p.139.

4. Since approximately 2012-2013 Student has been receiving intensive in-home services with providers.<sup>11</sup> Student also has a long history of treatment, stemming back from Student's release from Residential Program 1 in 2013.<sup>12</sup> Student continues to take medication primarily to address Student's moods to keep Student calm and prevent behaviors.<sup>13</sup>
5. Student's intensive in-home services have been provided by Agency 1 and they prepare separate coordinated service plans for Student's treatment. The DOE is aware of the services provided by Agency 1 and Parent 1 has asked the DOE to include Agency 1's services for Student in Student's IEPs at IEP meetings.<sup>14</sup>
6. In May 2018, Student was enrolled at School 5, however Student had been previously<sup>15</sup> placed at School 4.<sup>16</sup>
7. On May 1, 2018, an annual IEP meeting was held at School 5 and an IEP was written for Student on May 1, 2018 (hereinafter "IEP-5/1/2018").<sup>17</sup> A prior written notice (hereinafter "PWN") for the May 1, 2018 IEP meeting was dated May 12, 2018 (hereinafter "PWN-5/12/2018").<sup>18</sup>
8. Present at the May 1, 2018 IEP meeting were personnel from School 5, including the DOE Provider 1, the principal, the special education teacher, the student services

---

<sup>11</sup> P-Ex.4, p.141, P-Ex.5, p.245.

<sup>12</sup> P-Ex.4, p.143.

<sup>13</sup> Parent 1's Testimony, Tr.V1, 64:25-65:8.

<sup>14</sup> Parent 1's Testimony, Tr.V1, 49:20-52:2.

<sup>15</sup> Student's IEP-5/1/2018 indicates that Student had been attending the learning center at School 4's campus since February 2018. R-p.112.

<sup>16</sup> R-p.112.

<sup>17</sup> Care Coordinator's Testimony, Tr.V1, 94:11-14; R-p.111-123.

<sup>18</sup> R-p.124-125.

coordinator, a general education teacher, and other DOE personnel, including School 4 Staff 1, SSC, and Care Coordinator.<sup>19</sup>

9. In the IEP-5/1/2018, Student's present levels of academic and functional performance<sup>20</sup> (hereinafter "PLAAFP") indicated that Student began to attend School 4 in February 2018 and Student's behavior had positively progressed and Student had consistently earned rewards for work completion at School 4.<sup>21</sup>
10. The PLAAFPs also indicated that while Student demonstrated "model" behavior at school, Parent 1 reported that Student's daily behaviors at home are aggressive, violent, disruptive and destructive. Parent 1 indicated to the team that Student was also concerned because Student appeared to be aware that Student's behavior at home was different at school and Student made no attempts to try to improve in the home setting.<sup>22</sup>
11. The IEP-5/1/2018 and PWN-5/12/2018 placed Student at School 4. Student's placement later was described as a Special Education Fully Self-Contained (hereinafter "FSC") classroom setting at a DOE school campus.<sup>23</sup>
12. The PWN-5/12/2018 explained Student's placement as being reflective of the "excellent progress" Student had demonstrated at School 2 intensive learning center.<sup>24</sup>

---

<sup>19</sup> Care Coordinator's Testimony, Tr.V1, 105:17-21, R-p.123.

<sup>20</sup> This Hearings Officer notes that Student's IEP document uses the old terminology of Present Levels of Educational Performance, but for purposes of the decision, these will be referenced with the current appropriate terminology.

<sup>21</sup> R-p.112.

<sup>22</sup> R-p.112.

<sup>23</sup> R-p.122, 124.

<sup>24</sup> R-p.124.

July 23, 2018 IEP meeting

13. On July 23, 2018, another written IEP was provided for Student (hereinafter “IEP-7/23/2018”).<sup>25</sup> A PWN for the July 23, 2018 IEP meeting was dated July 23, 2018.<sup>26</sup>
14. The July 23, 2018 IEP meeting was held with a smaller group and involved DOE personnel from School 1, including Care Coordinator, DOE Provider 1, Parent 1, principal of School 1 and SSC 1.<sup>27</sup>
15. The purpose of this IEP meeting was for School 1 personnel to meet with Parent 1 and review the IEP-5/1/2018 that was created by School 5 and to help with the transition of Student from School 4 to School 1’s FSC classroom.<sup>28</sup>
16. At the July 23, 2018 IEP meeting, the team discussed School 1’s FSC program with Parent 1 and discussed Student’s behavior program, including a token reward system that would be implemented for Student to earn tokens for good behavior,<sup>29</sup> as well as the counseling<sup>30</sup> that Student would receive at the FSC.<sup>31</sup>
17. Extended School Year was not discussed at the July 23, 2018 IEP meeting because Student’s ESY eligibility had been determined by School 5 and because School 1 did not have any data to use in any ESY discussion because Student had not yet attended their school.<sup>32</sup>

---

<sup>25</sup> P-Ex.1, p.016-028; R-p.127-139.

<sup>26</sup> R-p.140-141.

<sup>27</sup> P-Ex.1, p.028; R-p.139.

<sup>28</sup> Care Coordinator’s Testimony, Tr.V1, 94:15-6; DOE Provider 1 Testimony, Tr.V1, 122:20-124:6.

<sup>29</sup> Care Coordinator’s Testimony, Tr.V1, 109:5-110:2.

<sup>30</sup> DOE Provider 1 Testimony, Tr.V1, 126:24-128:4, 143:9-144:17.

<sup>31</sup> Care Coordinator’s Testimony, Tr.V1, 106:4-11, 107:20-108:11; DOE Provider 1 Testimony, Tr.V1, 126:2-127:11.

<sup>32</sup> Care Coordinator’s Testimony, Tr.V1, 103:19-104:21.



18. No changes were made to Student's PLAAFP, annual goals, or educational placement in the IEP-7/23/2018.<sup>33</sup> Student's service time increased from 1515 minutes per week to 1800 minutes per week from the IEP-5/1/2018 to the IEP-7/23/2018.<sup>34</sup>
19. Student's services, including Student's services from Agency 1, are not included in Student's IEP-7/23/2018.<sup>35</sup>
20. At the July 23, 2018 IEP meeting, Parent 1 was satisfied with Student's IEP and placement at School 1's FSC and did not inform the rest of the IEP team that Parent 1 was either dissatisfied with or rejecting the IEP and placing Student in an alternative setting.<sup>36</sup>

Timeline of events between IEP-7/23/2018 and IEP-4/29/2019

21. The 2018-2019 school year began on August 13, 2018.<sup>37</sup>
22. Student attended School 1 from the beginning of the school year in the FSC run by Care Coordinator for approximately twenty-one (21) days.<sup>38</sup> DOE Provider 1 provided counseling to Student when Student was in school, and Student was receptive and did not display any maladaptive behaviors at school that required Student to use any coping skills or be removed from school.<sup>39</sup>
23. Although Parent 1 testified that Parent 1 was called by school for behaviors resulting in Student needing to be removed from school, no other evidence was presented that

---

<sup>33</sup> See R-p.111-123, 127-139.

<sup>34</sup> Care Coordinator's Testimony, Tr.V1, 106:21-107:19; R-p.121, 137.

<sup>35</sup> Parent 1's Testimony, Tr.V1, 52:22-53:4; P-Ex.1, p.016-028; R-p.127-139.

<sup>36</sup> Care Coordinator's Testimony, Tr.V1, 98:3-20; DOE Provider 1 Testimony, Tr.V1, 124:4-125:1; SSC 1 Testimony, Tr.V1, 152:25-153:24.

<sup>37</sup> R-p.279.

<sup>38</sup> Parent 1's Testimony, Tr.V1, 44:24-25, 45:45:12-18; DOE Provider 1 Testimony, Tr.V1, 125:4-20.

<sup>39</sup> DOE Provider 1 Testimony, Tr.V1, 125:12-128:4, 132:16-133:15, 140:7-14, 147:1-7.

Student displayed any severe maladaptive behaviors at School 1's FSC. Additionally, Student had been involved in so many incidents at so many points during the years, it appeared to be difficult for Parent 1 to remember the specifics or the timelines regarding each one.<sup>40</sup>

24. On August 28, 2018, Parent 1 notified DOE Provider 1 that Student ran away from home on August 26, 2018 and did not return until the next day.<sup>41</sup>

25. On August 31, 2018, Parent 1 notified DOE Provider 1 that Student was taken to Agency 2 for an estimated stay of approximately two (2) months.<sup>42</sup>

26. On September 5, 2018, Care Coordinator attempted to set up an IEP meeting to include the Agency 1 staff to update the team on Student's status and make any updates to Student's IEP if necessary. Parent 1 responded that Parent 1 was unavailable until September 14, 2018 and would contact Care Coordinator when Parent 1 got back with available dates.<sup>43</sup>

27. On September 21, 2018, Care Coordinator followed up with Parent 1 for proposed IEP meeting dates.<sup>44</sup> Parent 1 did not respond to Care Coordinator's follow up.<sup>45</sup>

28. On October 29, 2018, Student was admitted to Health Care Facility 1.<sup>46</sup> Student remained there until around November 13, 2018.<sup>47</sup>

---

<sup>40</sup> Parent 1's Testimony, Tr.V1, 37:18-38:17, 41:1-43:22, 45:5-11.

<sup>41</sup> R-p.197.

<sup>42</sup> R-p.196.

<sup>43</sup> R-p.201.

<sup>44</sup> R-p.205.

<sup>45</sup> Care Coordinator's Testimony, Tr.V1, 101:6-102:4.

<sup>46</sup> R-p.210.

<sup>47</sup> R-p.227.

29. During the time Student was in Health Care Facility 1 in October and November 2018, Parent 1 contacted Broker, to whom Parent 1 was referred by a person at Health Care Facility 1. Broker assisted Parent 1 with finding a residential treatment facility for Student.<sup>48</sup>
30. Neither the DOE or Agency 1 were involved in assisting Parent 1 with this residential treatment facility.<sup>49</sup>
31. Parent 1 notified DOE Provider 1 on or before November 7, 2018 that Parent 1 was looking for a program for Student.<sup>50</sup>
32. On November 9, 2018, SSC 1 contacted Parent 1 about their concern about Student missing so much school, as well as inquiring about exchanging information with Health Care Facility 1, Agency 1 and Student's provider and sent over consent forms for Parent 1 to sign. Parent 1 did not sign the forms or turn the records over to the DOE.<sup>51</sup>
33. On November 15, 2018, Student went to live in a home and enrolled in School 3.<sup>52</sup> School 1 sent over all Student's records to School 3.<sup>53</sup> Student did not attend School 3, because Parent 1 took Student to a different program.<sup>54</sup>
34. During this time leading up to December 2018, Student's behaviors at home had escalated and resulted in the police being called and Student being placed at Health Care

---

<sup>48</sup> Parent 1's Testimony, Tr.V1, 44:6-19, 67:17-23.

<sup>49</sup> Parent 1's Testimony, Tr.V1, 67:24-68:4, DOE Provider 1 Testimony, Tr.V1, 129:14-18; SSC 2's Testimony, Tr.V2, 181:9-15; R-p.294.

<sup>50</sup> DOE Provider 1 Testimony, Tr.V1, 129:2-7; R-p.219.

<sup>51</sup> SSC 1 Testimony, Tr.V1, 155:16-156:15; R-p.221.

<sup>52</sup> R-p.229.

<sup>53</sup> R-p.231.

<sup>54</sup> Parent 1's Testimony, Tr.V1, 74:19-76:13; R-p.235.

Facility 1.<sup>55</sup> Parent 1 could not handle Student and had asked Agency 2 for assistance, but they did not assist Parent 1.<sup>56</sup>

35. In December 2018, Parent 1 placed Student in Residential Program 2.<sup>57</sup> Student attended Residential Program 2 for approximately twenty-one (21) days until Student was taken to Health Care Facility 2 on January 3, 2019.<sup>58</sup>

36. The Residential Program 2 admitted Student.<sup>59</sup> On January 26, 2019, the Residential Program 2 discharged Student with a recommendation for Student to receive long term treatment in a residential treatment center.<sup>60</sup>

37. Parent 1 did not notify the DOE that Parent 1 had enrolled Student in a treatment center until January 13, 2019, at which time Parent 1 also informed School 1 that Student had been removed from Residential Program 2 and Parent 1 requested that Student be enrolled at School 1 so that another IEP meeting could be held for Student.<sup>61</sup>

38. From January 31, 2019 to June 30, 2019, Student was enrolled at School 3 but was placed at an alternative classroom on School 2's campus.<sup>62</sup> Student had been attending the alternative classroom at School 2 at the time of the April 29, 2019 IEP meeting.<sup>63</sup>

---

<sup>55</sup> Examples of Student's behavior during this time include Student running on the roof, screaming, yelling and swearing, making accusations of abuse by Parent 1, taking smaller children down the street with a knife, threatening to hit other family members, running away from home, damaging Parent 1's house and property. Parent 1's Testimony, Tr.V1, 42:14-44:5, 72:6-20.

<sup>56</sup> Parent 1's Testimony, Tr.V1, 71:3-18.

<sup>57</sup> Parent 1's Testimony, Tr.V1, 46:7-19.

<sup>58</sup> Parent 1's Testimony, Tr.V1, 46:7-19, 66:12-67:11.

<sup>59</sup> P-Ex.4, p.193.

<sup>60</sup> Parent 1's Testimony, Tr.V1, 47:9-13, P-Ex.4, p.238.

<sup>61</sup> R-p.235.

<sup>62</sup> SSC 2's Testimony, Tr.V2, 172:22-173:8; R-p.284.

<sup>63</sup> SSC 2's Testimony, Tr.V2, 186:8-15.

April 29, 2019 IEP meeting

39. On April 29, 2019, an annual IEP meeting was held with School 3. The participants at the April 29, 2019 IEP meeting included Parent 1, DES 2, SSC 2, another student services coordinator, a special education teacher, Parent 2, a representative from Agency 2, the principal of School 3, a general education teacher, a teacher from the alternative classroom, a provider and the principal of School 6.<sup>64</sup>
40. At the IEP meeting, the IEP team discussed Student's supports and services, including counseling and the token reward system that would be implemented.<sup>65</sup> The team also discussed services that would be provided to Student, including the student support plan, crisis plan and safety plan, which were discussed with Parent 1 and adjusted based on Parent 1's input.<sup>66</sup> Parent 1 did not have any objections to these plans or services and was happy with what was going to be provided to Student.<sup>67</sup>
41. Student's placement was at an alternative classroom, which was similar to the intensive learning center in which Student had previously been placed. The team decided that Student's placement would remain at the alternative classroom on School 2's campus, and Parent 1 agreed that it was an appropriate placement for Student.<sup>68</sup>
42. The IEP team also discussed Student's eligibility for ESY and determined that Student would participate in ESY to help aid in transitioning Student. The IEP team determined

---

<sup>64</sup> SSC 2's Testimony, Tr.V2, 186:8-11; P-Ex.1, p.044; R-p.192.

<sup>65</sup> DES 2's Testimony, Tr.V2, 203:20-204:19, 205:4-206:8.

<sup>66</sup> SSC 2's Testimony, Tr.V2, 187:21-188:22; DES 2's Testimony, Tr.V2, 202:5-203:4, 206:15-207:14.

<sup>67</sup> DES 2's Testimony, Tr.V2, 203:16-19, 204:20-22.

<sup>68</sup> SSC 2's Testimony, Tr.V2, 172:22-173:20, 186:12-187:16.

during the meeting, with agreement of Parent 1, that Student would attend a fully self-contained classroom ~~at~~ during ESY instead of the alternative classroom at School 2.<sup>69</sup>

43. From that IEP meeting, a written IEP was developed for Student (hereinafter “IEP-4/29/2019”).<sup>70</sup> A PWN dated April 29, 2019 was prepared related to the IEP meeting on that same date.<sup>71</sup>

44. In the IEP, Student’s placement in the IEP-4/29/2019 is described as a public separate facility on a DOE campus.<sup>72</sup> The IEP-4/29/2019 also notes that Student qualifies for ESY services for breaks exceeding twenty (20) days due to the nature of the disabling condition and severity of disabling condition.<sup>73</sup>

45. Agency 1’s services, including Student’s intensive in-home services, are not included in Student’s IEP-4/29/2019.<sup>74</sup>

#### Post April 29, 2019 IEP meeting events

46. From June 20, 2018 to July 18, 2018, Student attended School 6 for the extended school year program to help Student transition.<sup>75</sup> Student attended for a total of 10 days and appeared to handle the transition well overall, having only one day of behavioral non-compliance where Student appeared to be uninterested in school.<sup>76</sup>

47. Although the IEP-4/29/2019 placed Student in a public separate facility on a DOE campus, in August 2019, Student attended School 6’s FSC classroom due to Student’s

---

<sup>69</sup> SSC 2’s Testimony, Tr.V2, 173:24-174:18, 190:2-192:9.

<sup>70</sup> P-Ex.1, p.029-044; R-p.176-192.

<sup>71</sup> P-Ex.1, p.064; R-p.194.

<sup>72</sup> P-Ex.1, p.043; R-p.191.

<sup>73</sup> P-Ex.1, p.041; R-p.189.

<sup>74</sup> Parent 1’s Testimony, Tr.V1, 52:6-21; P-Ex.1, p.029-044; R-p.176-192.

<sup>75</sup> SSC 2’s Testimony, Tr.V2, 174:13-175:10.

<sup>76</sup> R-p.311, 313.

success in the ESY program at School 6. This plan to have Student attend School 6 for a trial period was discussed with and agreed upon by Parent 1.<sup>77</sup>

48. Student had an incident around a week after starting at School 6, which prompted an IEP team meeting. The IEP team decided that Student was not ready to fully transition to a public-school campus, and Student returned to the alternative classroom at School 2.<sup>78</sup>

49. The IEP team set up another meeting for September 16, 2019 to discuss Student's strengths and needs.<sup>79</sup> At that meeting, the IEP team agreed with Parent 1 to keep Student at the alternative learning center for now, but to meet again to look at the data to see whether it supports Student returning to School 6 for one class.<sup>80</sup>

50. In November 2019, a follow up IEP team meeting was held to discuss Student's home situation and behaviors at school. At the meeting, the IEP team determined that a functional behavior assessment should be conducted, and Parent 1 agreed.

Representatives from Agency 1 were present at this IEP meeting and indicated that they would look into a residential program to address Student's needs.<sup>81</sup>

51. On December 31, 2019, Student was taken to Residential Program 1 due to an incident of Student threats at home. Student stayed there until around June 3, 2020.<sup>82</sup> On June 6, 2020, Student was taken to Health Care Facility 1.<sup>83</sup>

---

<sup>77</sup> SSC 2's Testimony, Tr.V2, 175:17-24.

<sup>78</sup> SSC 2's Testimony, Tr.V2, 176:3-177:6.

<sup>79</sup> SSC 2's Testimony, Tr.V2, 178:3-14, R-p.291.

<sup>80</sup> SSC 2's Testimony, Tr.V2, 178:18-179:3, R-p.292.

<sup>81</sup> SSC 2's Testimony, Tr.V2, 179:16-181:8.

<sup>82</sup> Parent 1's Testimony, Tr.V1, 15:8-19, 86:3-18; SSC 2's Testimony, Tr.V2, 181:16-182:21; R-p.295.

<sup>83</sup> Parent 1's Testimony, Tr.V1, 86:22-25; R-p.295-296.

52. On July 8, 2020, Student was taken to Residential Program 3, where Student was placed by the Agency 1. Student is currently receiving services from Agency 1.<sup>84</sup>

53. An annual IEP meeting was held on April 17, 2020, from which an IEP was developed for Student.<sup>85</sup>

#### Parent 1's Requested Reimbursement

54. When Parent 1 took Student to Residential Program 2, Parent 1 incurred costs.<sup>86</sup>

55. While Parent 1 has medical insurance coverage for Student, the Health Care Facility 2 did not recognize all the insurance coverage and required Parent 1 to submit a co-pay for services.<sup>87</sup>

56. Parent 1 is requesting reimbursement of the above expenses for Student's stay in the Residential Program 2 and Health Care Facility 2 in the total amount of Eight Thousand Four Hundred Fourteen Dollars and Seventeen Cents (\$8,414.17).<sup>88</sup>

#### **V. CONCLUSIONS OF LAW**

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.”<sup>89</sup> A FAPE includes both special education and related services.<sup>90</sup>

---

<sup>84</sup> Parent 1's Testimony, Tr.V1, 12:10-13:25,78:10-79:2; P-Ex.6, p.301-306.

<sup>85</sup> Parent 1's Testimony, Tr.V1, 14:15-23; P-Ex.1, p.045-059.

<sup>86</sup> Parent 1's Testimony, Tr.V1, 53:5-54:6; P-Ex.6, p.362-372.

<sup>87</sup> Parent 1's Testimony, Tr.V1, 54:7-14; P-Ex.6, 373-390.

<sup>88</sup> Parent 1's Testimony, Tr.V1, 54:15-23, 56:6-8; P-Ex.6, p.362.

<sup>89</sup> *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 (D. D.C. 2008) (citing 20 U.S.C. §1400(d)(1)(A)).

<sup>90</sup> H.A.R. §8-60-2; 20 U.S.C. § 1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39.



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.<sup>91</sup> 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.”<sup>92</sup>

The IEP is used as the “centerpiece of the statute’s education delivery system for disabled children.”<sup>93</sup> It is “a written statement for each child with a disability that is developed, reviewed, and revised” according to specific detailed procedures contained in the statute.<sup>94</sup> The IEP is a collaborative education plan created by parents and educators who carefully consider the child’s unique circumstances and needs.<sup>95</sup>

The DOE is not required to “maximize the potential” of each student; rather, the DOE 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.”<sup>96</sup> However, the United States Supreme Court, in *Endrew F. v. Douglas County School Dist.*,<sup>97</sup> held 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 light of the child’s circumstances.”<sup>98</sup>

---

<sup>91</sup> *Id.*

<sup>92</sup> *Dep’t of Educ. of Hawai’i v. Leo W. by & through Veronica W.*, 226 F.Supp.3d 1081, 1093 (D. Hawai’i 2016).

<sup>93</sup> *Honig v. Doe*, 484 U.S. 305, 311, 108 S.Ct. 592, 598, 98 L.Ed.2d 686 (1988).

<sup>94</sup> H.A.R. §8-60-2; 20 U.S.C. § 1401(14); 34 C.F.R §300.22.

<sup>95</sup> H.A.R. §8-60-45; 20 U.S.C. § 1414; 34 C.F.R §300.321-322.

<sup>96</sup> *Rowley*, 458 U.S. at 200-201, 102 S.Ct. at 3047-3048.

<sup>97</sup> 137 S.Ct. 988, 197 L.Ed.2d 335 (2017).

<sup>98</sup> *Endrew F.*, 137 S.Ct., at 1001, 197 L.Ed.2d 335; *See also, Blake c. ex rel. Tina F. v. Hawai’i Dept. of Educ.*, 593 F.Supp.2d 1199, 1206 (D. Hawai’i 2009).

In deciding if a student was provided a FAPE, the two-prong inquiry is limited to (a) whether the 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 educational benefit.<sup>99</sup> "A state must meet both requirements to comply with the obligations of the IDEA."<sup>100</sup>

Procedural violations do not necessarily constitute a denial of FAPE.<sup>101</sup> If procedural violations are found, a further inquiry must be made to determine whether the violations: 1) resulted in a loss of educational opportunity for Student; 2) significantly impeded Parent 1's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student; or 3) caused Student a deprivation of educational benefits.<sup>102</sup>

In an IDEA due process hearing challenging an IEP, the burden of proof lies with the party seeking relief.<sup>103</sup> The U.S. Supreme Court in *Schaffer ex rel. Schaffer v. Weast* specifically found that the IDEA does not require courts to assume that every IEP is invalid unless the school district demonstrates that it is not.<sup>104</sup> In so holding, the Court found that the IDEA relies heavily upon the expertise of school districts to meet its goals, and that Congress incorporated numerous safeguards to guarantee parents and children the procedural protections in the Act itself.<sup>105</sup>

In this case, Petitioners challenge Student's IEP-7/23/2018 and IEP-4/29/2019 on both procedural and substantive grounds and have the burden of proving that Student was denied a FAPE by Respondents.

---

<sup>99</sup> *Rowley*, 458 U.S. at 206-7; 102 S.Ct. at 3050-3051.

<sup>100</sup> *Doug C. v. Hawai'i Dept. of Educ.*, 720 F.3d 1038, 1043 (9th Cir. 2013). *See also, Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001).

<sup>101</sup> *Amanda J.*, 267 F.3d at 892.

<sup>102</sup> *Id.*

<sup>103</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).

<sup>104</sup> *Id.* at 59, 126 S.Ct. at 536, 163 L.Ed.2d 387.

<sup>105</sup> *Id.* at 59-61, 126 S.Ct. at 536, 163 L.Ed.2d 387.

**A. Petitioners have not proven that Respondents denied Student a FAPE by failing to revise the IEP-7/23/2018 and/or IEP-4/29/2019 to address Student's needs.**

Petitioners argue that Respondents denied Student a FAPE by failing to revise Student's IEP-7/23/2018 and IEP 4/29/2019 when they knew or should have known that Student's needs changed. Specifically, Petitioners argue that 1) Student was no longer able to attend the public-school placement by around November 1, 2018; 2) The location of implementation of Student's program and/or the placement was unsuitable after a certain point in time; and 3) The services Student needed to support Student's continued access to FAPE changed, but the IEP did not.

1. Student's public-school placement on or around November 1, 2018.

Student was enrolled at School 1 for the 2018-2019 school year and prior to the beginning of that school year, the IEP team from School 1 met with Parent 1 to review Student's IEP and placement to see if any changes needed to be made prior to Student beginning school.<sup>106</sup> Student began to attend School 1 in August 2018.<sup>107</sup> It is undisputed in the record that Student missed many days of school by November 1, 2018, however this was primarily caused by Student's placement with Agency 2, where Student was placed after running away from home and damaging Parent 1's house.<sup>108</sup> Soon after Student's release from Agency 2, Student was at Health Care Facility 1.<sup>109</sup> Upon discharge from Health Care Facility 1 and before Student could attend School 3, Parent 1 took Student to Residential Program 2.<sup>110</sup>

During this time, School 1 was trying to contact Parent 1 and set up an IEP meeting to get updates on Student's status and to see if there was anything that could be done for Student.<sup>111</sup>

---

<sup>106</sup> Finding of Fact (hereinafter "FOF") 14-17.

<sup>107</sup> FOF 22-23.

<sup>108</sup> FOF 24-29, 35.

<sup>109</sup> FOF 29.

<sup>110</sup> FOF 34, 36.

<sup>111</sup> FOF 27, 28, 33.

Parent 1 informed School 1 that Parent 1 was in the process of trying to find a placement for Student.<sup>112</sup> Parent 1 did not consult with School 1 or Agency 1 about this placement, nor did Parent 1 confirm with School 1 about Student's actual enrollment there until after Student had already been discharged from Residential Program 2.<sup>113</sup>

Further, the majority of evidence that was presented about Student's severe behavioral problems occurred at home, where Parent 1 admitted Parent 1 was unable to control Student and needed help.<sup>114</sup> Besides Parent 1's testimony of being called when Student was having problems at school,<sup>115</sup> no other evidence was presented to support the argument that Respondents knew that Student's IEP was not appropriate for Student to successfully attend school.

Petitioners have not provided any support to demonstrate that Student was unable to attend the public-school placement because of failures in the IEP-7/23/2018.<sup>116</sup>

## 2. The location of implementation of Student's program

Petitioners next argument is that the location of implementation of Student's program and/or Student's educational placement was unsuitable after a certain point in time. While it is unclear to what time frame Petitioners are referring, Petitioners have failed to prove that Respondents failed to revise Student's IEPs to address this concern.

In the IEP-7/23/2018, Student was placed in a FSC at School 1 based on the progress and achievements that Student had in School 4. Student briefly attended School 1 for approximately twenty-one (21) days before being taken to Agency 2 due to behavioral problems at home.<sup>117</sup>

---

<sup>112</sup> FOF 32.

<sup>113</sup> FOF 30-31, 36-38.

<sup>114</sup> FOF 35.

<sup>115</sup> FOF 24.

<sup>116</sup> While Petitioners have argued this point under both IEPs, the only relevant IEP for this argument is the IEP-7/23/2018, as the time indicated by Petitioners pre-dates the IEP-4/29/2019.

<sup>117</sup> FOF 25-26.

During Student's attendance at School 1, Student did not display severe maladaptive behaviors at school or even maladaptive behaviors that required the use of coping skills.<sup>118</sup> At the same time, Student's behaviors were escalating at home, to the point where Parent 1 needed outside assistance because Parent 1 could not control Student.<sup>119</sup> Student's behaviors also involved violent and assaultive behaviors that endangered Parent 1 and the family.<sup>120</sup>

Reviewing courts have recognized that educational agencies are not responsible for addressing behavioral concerns of Student that occur while Student was home unless they affect Student's academic progress.<sup>121</sup> While Student's absence from school did certainly affect Student's progress, the reasons for Student's absences were aggressive and violent behaviors that occurred at home. Additionally, Student had been receiving intensive in-home services with therapists and paraprofessionals since around 2012.<sup>122</sup>

The evidence presented at the Hearing is that Student's behaviors were being adequately addressed at school during the times Student attended School 1. Petitioners have not provided evidence to show that School 1 was not the appropriate location to implement Student's IEP or that the placement in the FSC at School 1 was not suitable for Student.

In the IEP-4/29/2019, Student was placed in a separate facility at a public school campus, which was to be implemented at School 2.<sup>123</sup> The IEP also called for Student to attend ESY at School 6 to assist with Student's transition into the next grade.<sup>124</sup> Student was successful at the ESY program, so the IEP team discussed with Parent 1 a trial placement at School 6's FSC for

---

<sup>118</sup> FOF 23.

<sup>119</sup> FOF 35.

<sup>120</sup> FOF 35.

<sup>121</sup> *Leo W.*, 226 F.Supp.2d at 1103.

<sup>122</sup> FOF 5.

<sup>123</sup> FOF 42, 45.

<sup>124</sup> FOF 43.

the beginning of the 2019-2020 school year.<sup>125</sup> Student's IEP was not changed at the time since it was a temporary placement and the team had planned to meet in two weeks to see how Student was doing.<sup>126</sup> Student was not successful at School 6's FSC and was returned to the placement at the separate facility at School 2.<sup>127</sup> The IEP team met in September to discuss updates on Student's progress at School 2's alternative classroom and decided to meet again in October.<sup>128</sup> Another meeting was held in November to further concerns with Agency 2 Program 1.<sup>129</sup> Due to another incident in December 2019,<sup>130</sup> Student was placed in Residential Program 1, where Student stayed until shortly before Student's departure to Residential Program 3 in June 2020.<sup>131</sup> Again, Petitioners have not presented any evidence to support their argument that Student's placement or the location of implementation of placement was inappropriate. Further, the evidence presented by Respondents demonstrates that the DOE consistently attempted to contact Parent 1 and schedule meetings to update Student's program to address Student's needs.<sup>132</sup>

### 3. Student's supports and services

Petitioners also argue that the services that Student needed to support continued access to a FAPE changed, but the IEPs did not change. Petitioners have not identified what, if any, services Student needed to have changed in the IEP-7/23/2018 or IEP-4/29/2019. While Petitioners did raise questions with several of the witnesses regarding Student's counseling and behavior plans, none of the questioned raised any specific concerns about the services contained

---

<sup>125</sup> FOF 47-48.

<sup>126</sup> FOF 45.

<sup>127</sup> FOF 49.

<sup>128</sup> FOF 50.

<sup>129</sup> FOF 51.

<sup>130</sup> FOF 52.

<sup>131</sup> FOF 53.

<sup>132</sup> FOF 27-28, 33, 50-51.

in Student's IEP-7/23/2018 and IEP-4/29/2019. Without any evidence or argument to identify any services in the IEP-7/23/2018 and/or IEP-4/29/2019 that needed to be changed, this Hearings Officer cannot make a finding that Respondents have committed a procedural violation by failing to revise Student's IEPs to address those services. Petitioners have failed to meet their burden of proof on this issue.

**B. Petitioners have failed to prove that Respondents denied Student a FAPE procedurally and substantively for failure to adequately discuss or define Student's behavioral interventions, extended school year, counseling and positive reinforcement or reward systems.**

Petitioners second issue in their Complaint questions whether Respondents denied Student a FAPE procedurally and/or substantively where: 1) Student's behavioral interventions were not adequately discussed and/or described; 2) Student's extended school year program was not adequately discussed and/or described; 3) the frequency of Student's counseling services was not adequately discussed and/or described; and 4) Student's positive reinforcements or reward system was not adequately discussed and/or described. For the reasons set forth below, this Hearings Officer concludes that Petitioners have failed to meet their burden of proof on this issue.

At the outset, Petitioners have not demonstrated how Student's IEP-7/23/2018 and IEP-4/29/2019 were not reasonably calculated to allow Student to make progress in Student's unique circumstances. While Petitioners did introduce evidence that at the April 29, 2019 IEP meeting, further discussion was had regarding additional supports and services for Student, such as a student support plan, a crisis plan and a safety plan,<sup>133</sup> the contrast alone does not demonstrate that the IEP-7/23/2018 was deficient.

---

<sup>133</sup> FOF 41.

In any review of whether an IEP is appropriate, the courts have applied a ‘snapshot’ rule, “which instructs [the reviewing body] to judge an IEP not in hindsight, but instead based on the information that was reasonably available to the parties at the time of the IEP.”<sup>134</sup> Therefore this Hearings Officer cannot simply compare the two IEPs in question and determine that one of them was improper because a subsequent IEP included additional supports to address Student’s issues.

At the July 23, 2018 IEP meeting, the IEP team’s information was that Student had been successful at the intensive learning center at School 4. Student had attended School 4 since February 2018 and Student’s behavior had steadily progressed positively and included consistent rewards that Student earned from completing work.<sup>135</sup> The IEP team knew that while Student was demonstrating “model” behavior at school, Parent 1 was reporting very different behaviors at home, including aggressive, violent and disruptive behaviors.<sup>136</sup> The IEP team took the information from the previous school at Student’s annual IEP meeting and maintained all of Student’s services and added additional minutes for individual instructional support for Student to match their school day.<sup>137</sup> The PWN-5/1/2018, from which the July 23, 2018 IEP team had received their information regarding placement, also recognized that Student was being placed in a less-restrictive environment due to Student’s success at the intensive learning center.<sup>138</sup> At the time of the July 23, 2018 IEP meeting, the consensus of the team, including Parent 1, was that

---

<sup>134</sup> *Baquerizo v. Garden Grove Unified School District*, 826.F3d 1179, 1187 (9<sup>th</sup> Cir. 2016) (citing *Adams v. Oregon*, 195 F.3d 1141, 1149 (9<sup>th</sup> Cir. 1999)), see also *J.W. ex rel. J.E.W. v. Fresno Unified School Dist.*, 626 F.3d 431 (9<sup>th</sup> Cir. 2010).

<sup>135</sup> FOF 10.

<sup>136</sup> FOF 11.

<sup>137</sup> FOF 19.

<sup>138</sup> FOF 13.



the placement for Student was appropriate.<sup>139</sup> Petitioners have not proven that Student's IEP-7/23/2018 was not appropriate at the time it was created based on the information that was available to the team at the time.

In the April 29, 2019 IEP meeting, the IEP team had additional information about Student's violent and aggressive behaviors and added in additional supports for Student, including a student support plan, a crisis plan and a safety plan.<sup>140</sup> By this time, Student had been taken to and returned from Residential Program 2 and Health Care Facility 2.<sup>141</sup>

While Petitioners argue that Parent 1 had requested that Agency 2 services be included in the IEP,<sup>142</sup> they have not demonstrated that the failure to include the information rendered either the IEP-7/23/2018 or the IEP-4/29/2019 inappropriate for Student. Petitioners have not demonstrated that Student was denied services from Agency 2 or otherwise lost educational opportunities because Agency 2 information was not included in Student's IEPs.

Petitioners also focus their argument on whether certain areas of the IEP were clearly explained to Parent 1 or whether they should have been more specifically defined in the IEP. While this could support an argument for denying parental participation in the IEP process, the evidence in this case is that Respondents made diligent efforts to have Parent 1 involved in the development of Student's IEP.<sup>143</sup> Parent 1 did not have any complaints in the way the IEPs were created or about Student's placement, counseling, behavior plan or supports and services in the IEP-7/23/2018 and IEP-4/29/2019.<sup>144</sup>

---

<sup>139</sup> FOF 21.

<sup>140</sup> FOF 45.

<sup>141</sup> FOF 36-37.

<sup>142</sup> FOF 6.

<sup>143</sup> FOF 9-11, 15-17, 21, 40-43, 48-51.

<sup>144</sup> FOF 21, 41-43.

Petitioners have failed to demonstrate that Respondents denied Student a FAPE either procedurally or substantively in the IEP-7/23/2018 or IEP-4/29/2019. Both IEPs were created with the assistance and input of Parent 1 based on the information that the IEP teams had at the time they were created.

**C. Petitioners have failed to prove that Parent 1 is entitled to reimbursement**

Petitioners have requested as a remedy in this case that Parent 1 be reimbursed by Respondents for out-of-pocket costs expended for Residential Program 2. The IDEA recognizes that parents are entitled to reimbursement for educational and related expenses for private placements if they can prove that the school district denied the students a FAPE.<sup>145</sup> However, the courts have recognized that parents who unilaterally place their children in a private placement take the risks that the placement may later be found not to be a suitable placement for students and may be denied such reimbursement.<sup>146</sup> In order to receive reimbursement for educational and related expenses, parents must prove that their child was denied a FAPE, and that the private placement was an appropriate placement for the student.<sup>147</sup>

Here, Petitioners have failed to prove that Student was denied a FAPE. However, due to the unique circumstances of this case, this Hearings Officer will address Parent 1's reimbursement request further. Parent 1 is requesting reimbursement for items purchase for

---

<sup>145</sup> *Florence County School Dist. Four v. Carter*, 510 U.S. 7, 12, 114 S.Ct. 361, 364-365, 126 L. Ed.2d 284 (1993) (citing *School Comm. of Burlington v. Department of Ed. of Mass.*, 471 U.S. 359, 369-370, 105 S.Ct. 1996, 2002-2003, 85 L.Ed.2d 385 (1985)), see also 20 U.S.C. §1415(b)(6), (f)(1)(A).

<sup>146</sup> *Carter*, 510 U.S. at 15, 114 S.Ct. at 366, 126 L.Ed.2d 284 (quoting *Burlington*, 471 U.S. at 373-374, 105 S.Ct. at 2004-2005, 85 L.Ed.2d 385).

<sup>147</sup> *Id.*

Student for Residential Program 2.<sup>148</sup> Parent 1 is also requesting co-payments for Student's stay at Health Care Facility 2.<sup>149</sup>

Parent 1 found and placed Student at the Residential Program 2, without any consultation with the DOE or Agency 1, at the recommendation of Broker.<sup>150</sup> While not much information was provided about the Residential Program 2 at the Hearing, Student was only at that program for around twenty-one (21) days before being taken to Health Care Facility 2.<sup>151</sup> Student was admitted to Health Care Facility 2 due to Student's behaviors and also the inability to function at a less restrictive setting.<sup>152</sup>

The IDEA does not require educational agencies to pay for such treatment for students. Accordingly, an analysis for reimbursement for residential placements "must focus on whether the placement may be considered necessary for educational purposes, or whether the placement is a response to medical, social or emotional problems that is necessary quite apart from the learning process."<sup>153</sup> The facts of this case are similar to the situation in *Ashland School Dist. v. Family of E.H.*, in which the parents of the student placed the student in a residential treatment facility and requested reimbursement from the school district.<sup>154</sup> In *Ashland*, the student had an IEP that was not objected to or rejected by parents, but the student began to have behaviors toward family members.<sup>155</sup> The parents also did not notify the school district of their intention to place their student in a private facility until several months after student had already been

---

<sup>148</sup> FOF 55.

<sup>149</sup> FOF 56.

<sup>150</sup> FOF 30-31, 38.

<sup>151</sup> FOF 36.

<sup>152</sup> FOF 37.

<sup>153</sup> *Ashland School Dist. v. Parents of E.H.*, 587 F.3d 1175, 1185 (9<sup>th</sup> Cir. 2009), *see also Clovis Unified Sch. Dist. v. Cal. Office of Admin. Hearings*, 903 F.2d 635, 643 (9<sup>th</sup> Cir. 1990).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 1179.

enrolled in the private facility.<sup>156</sup> The Ninth Circuit Court of Appeals affirmed the district court's decision that parents were not entitled to reimbursement for the private facility because they did not provide notice to the school district as required by the IDEA,<sup>157</sup> and because the district court found that student's placement at the facility was primarily for medical and not educational purposes.<sup>158</sup>

Here, the evidence presented at the Hearing was that Student was not demonstrating severe maladaptive behaviors for the brief time Student attended School 1, and that Student had previously made progress at the individual learning center at School 4.<sup>159</sup> It was during that same time that Student's behaviors at home were escalating and included violence toward Parent 1 and other family members and destruction of property.<sup>160</sup> Parent 1 acknowledged that Student went to Residential Program 2 because Parent 1 could no longer handle Student.<sup>161</sup> After a brief stay at Residential Program 2, Student was taken to Health Care Facility 2 for treatment, and upon discharge Student was recommended for long-term treatment at a residential treatment center.<sup>162</sup> Similar to the *Ashland* case, Student's placement at the Residential Program 2 was not for educational purposes, but was primarily in response to medical, social or emotional problems that Student had apart from the learning process.

---

<sup>156</sup> *Id.* at 1180.

<sup>157</sup> *Id.* at 1184.

<sup>158</sup> *Id.* at 1185.

<sup>159</sup> FOF 10-11, 13, 23.

<sup>160</sup> FOF 35.

<sup>161</sup> FOF 35-36.

<sup>162</sup> FOF 37.

Similarly, Parent 1's request for reimbursement for the co-payments to the Health Care Facility 2 is not appropriate under the IDEA as it is entirely for health purposes. The IDEA does not require educational agencies to address all student's health concerns.<sup>163</sup>

Finally, Parent 1 failed to notify the DOE that Parent 1 was dissatisfied with or rejecting Student's IEP or placement and seeking to place Student in a private facility at the DOE's expense.<sup>164</sup> The IDEA requires that parents provide notice to the school districts of their intent to place students at private facilities and seek reimbursement.<sup>165</sup> Here, Parent 1 did not notify Respondents of Student's enrollment and attendance at the Residential Program 2 until after Student had been discharged from the program and was at the Health Care Facility 2.<sup>166</sup> Even if Residential Program 2 had been determined to be an appropriate placement for educational purposes, any reimbursement to Parent 1 could be reduced based on Parent 1's failure to give the DOE timely notice.

## **VI. DECISION**

Based on the foregoing Findings of Facts and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have not proven that Respondents denied Student a FAPE regarding Student's IEP-7/23/2018 and IEP-4/29/2019. Student's IEPs and educational placements were appropriate and were not objected to or rejected by Parent 1. When Student's attendance at school became a concern, Respondents made efforts to meet with Parent 1 to revise the IEPs as needed and adequately discussed and described Student's behavioral plan, extended school year, counseling and positive reinforcement program.

---

<sup>163</sup> *Ashland*, 587 F.3d at 1185.

<sup>164</sup> FOF 56.

<sup>165</sup> 20 U.S.C. §1412(a)(10)(C)(ii); HAR 8-60-27(d)(1)(A) or (B)

<sup>166</sup> FOF 38.

This Hearings Officer denies Petitioners' request for reimbursement of Student's educational and related services and request for compensatory education.

## **RIGHT TO APPEAL**

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 20 U.S.C. §1415(i)(2) and §8-60-70(b).

DATED: Honolulu, Hawai'i, August 3, 2020.

---

CHASTITY T. IMAMURA  
Hearings Officer  
Richards Building  
707 Richards Street, Suite 520  
Honolulu, Hawai'i 96813  
Phone: (808) 587-7680  
Fax: (808) 587-7682  
atg.odr@hawaii.gov