



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

In the Matter of:
DEPARTMENT OF EDUCATION, STATE
OF HAWAII,

Petitioner,

vs.

PARENT, Parent of Student, STUDENT¹,

Respondent.

DOE-SY2122-014

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:

November 19, 24, 2021 &
December 13, 2021

Hearings Officer: Charlene S.P.T. Murata

**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. Part 300; and the Hawaii Administrative Rules §§ 8-60-1, et seq.

¹ [REDACTED]

II. INTRODUCTION

On September 21, 2021, the Department of Education, State of Hawaii (“DOE” or “Petitioner”) submitted a Request for IDEA Impartial Due Process Hearing Complaint against Parent (“9/21/2021-Complaint”) to the Office of Dispute Resolution (“ODR”). ODR filed the Complaint on the same day, emailed a copy to Parent (“Respondent”) on September 22, 2021, and sent a copy to Parent via certified mail on September 23, 2021. Parent did not file a response to the 9/21/2021-Complaint.

On September 22, 2021, a letter was sent to the parties indicating that a prehearing conference was tentatively scheduled for September 29, 2021. On September 23, 2021, Parent requested that the prehearing conference be re-scheduled to October 11, 12 or 13, 2021 because Parent was not available on September 29, 2021. The undersigned informed the parties that in order to accommodate Parent’s request, the 45-day decision deadline had to be extended from November 5, 2021 to December 20, 2021. On September 23, 2021, both parties stated that they did not object to extending the decision deadline to December 20, 2021 to accommodate Parent’s request to have the prehearing conference on October 11, 12, or 13, 2021. On September 24, 2021, the 45-day decision deadline was extended to December 20, 2021. See Order Granting Respondent’s Request to Re-schedule Prehearing Conference, dated September 23, 2021, and Order Extending 45-Day Decision Deadline, issued on September 24, 2021.

On September 29, 2021, a Notice of Prehearing Conference; Subjects to be Considered; Hearing Process Guidelines was issued to the parties, setting a prehearing conference for October 11, 2021.

On October 11, 2021, a prehearing conference was held with District Educational Specialist (“DES”) appearing on behalf of DOE; Parent; and the undersigned hearings officer.

The prehearing conference was conducted over the telephone. During the prehearing conference, the parties agreed to have the due process hearing on November 19 and 24, 2021, and December 8 and 13, 2021. A Prehearing Order; Sample Exhibit and Witness Lists; Subpoena was issued on October 12, 2021.

On October 12, 2021, DOE filed a Motion to Compel Respondent to Disclose Due Process Hearing Attendee's Information. Parent filed an objection on that same date. On October 13, 2021, an Order Denying Department of Education, State of Hawaii's Motion to Compel Respondent to Disclose Due Process Hearing Attendee's Information, filed on October 12, 2021, was issued.

On October 28, 2021, at the request of Parent, subpoenas were issued to District Educational Specialist-2 ("DES-2") to appear as a witness on behalf of Parent in the due process hearing and to the Department of Education, Public School to produce documents. On November 3, 2021, subpoenas were issued to Vice Principal and Principal of Public School.

On November 5, 2021, Parent filed a Motion to Compel DOE to Produce Documents pursuant to the subpoena. On November 8, 2021, DOE filed its opposition. On November 8, 2021, Parent filed a response in support of Parent's Motion to Compel. On November 9, 2021, an Order Denying Parent's Motion to Compel DOE to Produce Documents, filed on November 5, 2021, was issued.

On November 10, 2021, DOE filed Department of Education, State of Hawaii's Motion to Strike Respondent's Witnesses. On that same date, Parent filed Parent's objections. On November 12, 2021, an Order Denying Department of Education, State of Hawaii's Motion to Strike Respondent's Witnesses, filed on November 10, 2021, was issued.

On November 10, 2021, an Order Regarding Mandatory Procedures for the Due Process Hearing was issued to the parties. The order set out procedures and warnings regarding, *inter alia*, participation by telephone; civility towards all participants; and confidentiality of the proceeding.

On November 11, 2021, Parent timely submitted Parent's Witness List. Although Parent's Exhibit List was untimely submitted on November 15, 2021, Parent had submitted copies of Parent's exhibits during the pendency of the due process hearing prior to the disclosure deadline.

On November 12, 2021, DOE timely submitted Department of Education, State of Hawaii's Witness List, Exhibit List, and Exhibits.

The due process hearing took place on November 19 and 24, 2021, and December 13, 2021. During the due process hearing on November 19 and 24, 2021, the Zoom video conferencing platform and the telephone were utilized. DOE and all the witnesses appeared in the due process hearing using the Zoom video conferencing platform. Parent and Parent-2 appeared by telephone. During the due process hearing on December 13, 2021, Parent chose not to participate in the due process hearing and the due process hearing proceeded without Parent. DOE and the witness appeared by Zoom. The undersigned Hearings Officer presided over the matter. DOE was represented by DES and Special Education Resource Teacher ("SPED-RT"). The December 8, 2021 due process hearing date was taken off calendar at the request of Parent with no objection by DOE. See Order Granting Parent's Request to Set Aside the December 8, 2021 Due Process Hearing Date, filed on November 30, 2021, issued on December 1, 2021.

DOE called Student Services Coordinator ("SSC") and School Psychologist Coordinator ("SPC") as its witnesses during the due process hearing. Parent did not present any witnesses.

The following exhibits were admitted into evidence: DOE’s Exhibits 1 through 10, pages 1 through 19; and Parent’s Exhibits 1, 1A, 1B, 2, 2A, 2B, 3, 3, and 4².

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.

III. ISSUE and REMEDY

The issue for determination at the due process hearing is: Whether the public evaluation conducted by the DOE was appropriate under the IDEA.

DOE requests the following remedies in its 9/21/2021-Complaint: (1) Find that the Academic Assessment that was administered by the Hawaii Department of Education is sufficient; and (2) Find that the Hawaii Department of Education properly determined that there is no need for the independent educational evaluation (“IEE”) that was requested by parents.

² Parent’s Exhibit List, submitted by email on November 15, 2021 at 10:13 a.m., reads as follows:

- Exhibit 1: Khan Academy █ grade level results
- Exhibit 2: █ grade work
- Exhibit 3: Front page relating to speech/language assessment
- Exhibit 4: IEP front page labeling Student as a █ grader
- Exhibit 1A: █ IEP results █ grade
- Exhibits 1B: █ IeP [sic] results █ grade
- Exhibits 2A: █ █ grade work
- Exhibits 2B: █ IEP
- Exhibits 3: IEP at [“Public School”]

Copies of these exhibits were submitted by email on the following dates:

- Exhibit 1: October 25, 2021 at 8:15 a.m.
- Exhibit 2: October 25, 2021 at 8:15 a.m.
- Exhibit 3: November 1, 2021 at 12:00 p.m.
- Exhibit 4: November 1, 2021 at 12:00 p.m.
- Exhibit 1A: November 10, 2021 at 10:22 a.m.
- Exhibits 1B: November 10, 2021 at 10:22 a.m.
- Exhibits 2A: November 10, 2021 at 10:22 a.m.
- Exhibits 2B: November 10, 2021 at 10:22 a.m.
- Exhibits 3: November 10, 2021 at 10:22 a.m.

IV. FINDINGS OF FACT

1. Student is currently █ years old. DOE Ex. 1 at p. 1.
2. Student currently attends Public School and is in the █ grade. SSC, Tr. Vol. I, p. 146³.
3. Student is eligible for special education and related services pursuant to the IDEA and Hawaii Administrative Rules Chapter 60 under the category of █
█.
4. On September 9, 2020, Temporarily Assigned Student Services Coordinator (“TA-SSC”) requested an evaluation of Student because parents had expressed concerns about Student’s academics and behavior. DOE Ex. 10 at p. 19; SSC, Tr. Vol. I, p. 158.
5. On November 19, 2020, a Student Focus Team (“11/19/2020-SFT”) Meeting was held at Public School. DOE Ex. 6 at p. 11.
6. Present via WebEx at the 11/19/2020-SFT Meeting were Parent, Parent-2, Student, Principal, a vice principal, TA-SSC, a general education teacher, and a special education teacher. DOE Ex. 6 at p. 11.
7. After the 11/19/2020-SFT Meeting, on the same day, Principal issued a Prior Written Notice of Department Action (“11/19/2020-PWN”). DOE Ex. 7 at p. 13.
8. The 11/19/2020-PWN proposed that an initial evaluation be conducted of Student. The initial evaluation would include a Cognitive Assessment, Academic Assessment, and Adaptive Assessment. The reason why this action was proposed was because Parent had concerns about Student’s reading, writing and math skills and wanted Student to be assessed for special education services. DOE Ex. 7 at p. 13.

³ “SSC, Tr. Vol. I, p. 146” means Testimony of SSC, Transcript Volume I of the due process hearing, page 146.

9. On January 4, 2021, SSC administered an academic assessment to Student as part of the initial evaluation (“1/04/2021-Academic Assessment”). At the time of the 1/04/2021-Academic Assessment, Student was in the ■ grade. DOE Ex. 1 at p. 1.
10. SSC has been working at Public School for over ■ years. SSC is currently, and has been for the past ■ years, a student services coordinator at Public School. SSC was a special education teacher before becoming a student services coordinator. SSC graduated from ■ with a bachelor’s degree in psychology and special education. SSC received training in 2011 on how to conduct academic assessments and was trained again in 2018. During SSC’s training in 2011, SSC learned how to administer the Wechsler Individual Achievement Test, 3rd Edition (“WIAT-III”) and has been using the WIAT-III test ever since. Since 2011 to present, SSC has administered at least 30 academic assessments. SSC, Tr. Vol. I, pp. 23-24, 31-33, 35.
11. The WIAT-III test provides academic information about the test taker in the areas of oral language; total reading; basic reading; reading comprehension and fluency; written expression; mathematics; and math fluency. A test taker’s performance in these areas is reflected in “composite” scores. Each composite score is made up of at least two subtests. Subtests examine a test taker on specific skills. DOE Ex. 1 at pp. 1-3; DOE Ex. 4 at p. 7; SSC, Tr. Vol. I, pp. 38, 40, 43-45, 48-51, 56-59, 66-67, 70-71, 125-126, 149, 153, 161.
12. SSC used the WIAT-III test for the 1/04/2021-Academic Assessment. SSC administered fourteen (14) subtests, which were used to determine seven composite areas: Basic Reading; Reading Comprehension & Fluency; Total Reading; Mathematics;

Math Fluency; Written Expression; and Oral Language. DOE Ex. 1 at pp. 1, 3; SSC Tr. Vol. I, pp. 38, 40, 43-45, 48-51, 56-59, 66-67, 70-71, 125-126, 149, 153, 161.

13. Student scored in the following manner for each composite area: (1) Basic Reading/Reading Comprehension & Fluency/Total Reading Composite—low; (2) Mathematics Composite—below average; (3) Math Fluency Composite—below average; (4) Written Expression Composite—low; and (5) Oral Language Composite—below average. DOE Ex. 1 at pp. 1, 3.
14. The 1/04/2021-Academic Assessment was completed in two and a half hours on one day. SSC, Tr. Vol. I, pp. 51, 121-122.
15. Based on the 1/04/2021-Academic Assessment, SSC opined that Student’s “lack of grade-level academic skills in the areas of reading, math, and writing will make it difficult for [Student] to perform satisfactorily in [Student’s] classes. Results of the WAIT-III indicate that in comparison to [Student’s] same-age peers, [Student] is performing average to low average in most areas.” DOE Ex. 1 at p. 3.
16. SSC provided instructional strategies to help Student improve Student’s reading, writing and math skills. DOE Ex. 1 at p. 3.
17. SSC completed SSC’s 1/04/2021-Academic Assessment Report within a week of completing the academic assessment. SSC, Tr. Vol. I, p. 148.
18. The 1/04/2021-Academic Assessment Report is incomplete. It does not contain the grade equivalent scores for subtests Listening Comprehension and Oral Expression in the Oral Language Composite⁴. It also does not have the standard score and grade equivalent

⁴ For the Oral Language Composite, subtests Listening Comprehension and Oral Expression are further broken down to the following areas: receptive vocabulary; oral discourse comprehension; expressive vocabulary; oral word fluency; and sentence repetition. While there are scores for

- score for subtest Oral Reading Fluency. DOE Ex. 1 at pp. 1-3; SPC, Tr. Vol. III, pp. 289-290.
19. A cognitive assessment was administered by a DOE psychologist. SSC, Tr. Vol. I, pp. 159-160.
 20. An adaptive assessment was administered by a DOE social worker. SSC, Tr. Vol. I, pp. 159-160.
 21. On January 28, 2021, an eligibility conference was held via WebEx with parents, Vice Principal, SSC, and a general education teacher. DOE Ex. 8 at p. 15.
 22. On February 2, 2021, Principal issued a Prior Written Notice of Department Action (“2/02/2021-PWN”). The 2/02/2021-PWN proposed that Student be deemed eligible for special education and related services under the eligibility category of [REDACTED] because Student was not meeting grade-level expectations in the areas of [REDACTED] and showed “patterns of academic strengths and weaknesses.” DOE Ex. 9 at p. 17.
 23. According to the 2/02/2021-PWN, “Assessment results and iReady data show that [Student was] not meeting grade-level expectations in [REDACTED].” DOE Ex. 9 at p. 17.
 24. According to the 2/02/2021-PWN, the following evaluation procedures, tests, records, and reports were used as a basis for the proposed action: assessment reports; report cards;

these sub-subtests, there are no grade equivalent scores and it is unclear from the record if grade equivalent scores are given for these sub-subtests. DOE Ex. 1 at p. 3.

progress reports; iReady Reading and Math tests; work samples; and input from teachers, parents and school personnel. DOE Ex. 9 at p. 17.

25. On September 21, 2021, Principal submitted the instant Request for IDEA Impartial Due Process Hearing Complaint because Parent requested an IEE at public expense.

V. CONCLUSIONS OF LAW

A. Burden of Proof

Pursuant to Hawaii Administrative Rules (“H.A.R.”) § 8-60-66(a)(2)(A), “the party initiating the due process complaint has the burden of proof.” The Hawaii Administrative Rules also state that “[t]he burden of proof is the responsibility of the party initiating and seeking relief in an administrative hearing under the IDEA or this chapter is to prove, by a preponderance of the evidence, the allegations of the complaint.” H.A.R. § 8-60-66(a)(2)(B).

The Supreme Court held in Schaffer that “[t]he burden of proof in an administrative hearing challenging an IEP, [“individualized education program”], is properly placed upon the party seeking relief.” Schaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 163 L.Ed.2d 387 (2005). The Court “conclude[d] that the burden of persuasion lies where it usually falls, upon the party seeking relief.” Id. at 535. Neither Schaffer nor the text of the IDEA supports imposing a different burden in IEP implementation cases than in formulation cases. In the instant case, DOE filed for a due process hearing complaint and therefore bears the burden of proof.

B. 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.” 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)). A free and appropriate public education (“FAPE”) includes both special education and related services. H.A.R. § 8-60-1; H.A.R. § 8-60-3; 20 U.S.C. § 1401(9); 34 C.F.R. § 300.34 (2006); 34 C.F.R. § 300.39 (2006); 34 C.F.R. § 300.101 (2006).

“Special education” means “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability” and “related services” are the supportive services required to assist a child with a disability to benefit from special education. 34 C.F.R. § 300.34; 34 C.F.R. § 300.39; 20 USC §§ 1401(26) and (29). 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.” Dept. of Educ. of Hawaii v. Leo W. by and through Veronica W., 226 F.Supp.3d 1081, 1093 (D. Haw. 2016).

C. IEE Requirements

An “independent educational evaluation” (“IEE”) means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. 34 C.F.R. § 300.502(a)(3)(i). When a parent disagrees with an evaluation obtained by the public agency, the parent can request an IEE at public expense. “Public expense” means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. 34 C.F.R. §§ 300.502(a)(3)(ii), 300.502(b)(1). If a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (2) ensure that an IEE is provided at public expense. 34 C.F.R. § 300.502(b)(2). If the public agency files a due process complaint to request a hearing and the

final decision is that the public agency's evaluation is appropriate, the parent still has a right to an IEE, but not at public expense. 34 C.F.R. § 300.502(b)(3).

There are two types of evaluations: initial evaluations and reevaluations. 34 C.F.R. §§ 300.301, 300.303. A public agency must conduct a "full and individual initial evaluation" before the initial provision of special education and related services to a child with a disability. 34 C.F.R. § 300.301(a). The initial evaluation must consist of procedures to determine if the child is a child with a disability under § 300.8 and to determine the educational needs of the child.

The evaluation procedures are governed by 34 C.F.R. § 300.304 (2006). The regulation reads in relevant parts:

- (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...;
 - (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.

34 C.F.R. § 300.304(b) (2006); See also H.A.R. § 8-60-36(b). Federal regulations also require that assessments and other evaluation materials used to assess a child are: (1) selected and administered so as not to be discriminatory on a racial or cultural basis; (2) provided and administered in the child's native language or other mode of communication likely to yield accurate information; (3) used for the purposes for which the assessments or measures are valid and reliable; (4) administered by trained and knowledgeable personnel; and (5) administered in

accordance with any instructions provided by the producer of the assessments. 34 C.F.R. § 300.304(c)(1). In addition, the public agency must ensure that “the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” 34 C.F.R. § 300.304(c)(6).

D. The Public Evaluation Conducted by the DOE was Not Appropriate under the IDEA

On November 19, 2020, DOE proposed that an initial evaluation, consisting of cognitive, academic and adaptive assessments, be conducted to assess Student for special education services (FOF 5-8). On January 4, 2021, SSC administered an academic assessment to Student as part of the initial evaluation (FOF 9). Student was also given cognitive and adaptive assessments (FOF 19-20). Following the assessments, on February 2, 2021, DOE proposed that Student be considered eligible for special education and related services under the eligibility category of [REDACTED] because the assessments and available data showed that Student was not meeting grade-level expectations in [REDACTED] (FOF 21-22). In making its eligibility proposal, DOE relied on assessment reports; report cards; progress reports; iReady Reading and Math tests; work samples; and input from teachers, parents and school personnel (FOF 23-24).

On September 21, 2021, in response to Parent’s request for an IEE at public expense, DOE filed the instant due process complaint to defend its evaluation and its decision to not provide an IEE at public expense. DOE’s 9/21/2021-Complaint alleges that “[o]n August 19, 2021, [Parent] stated in a written letter, ‘We don’t believe that the test scores are accurate. And we are REQUESTING a private testing to be done with [Student] when [Student] is no longer suffering from an illness and is medically cleared by [Student’s] pediatrician.’” DOE’s

9/21/2021-Complaint went on to allege that “[o]n September 13, 2021, [Parent] clarified that [Parent] is requesting an independent educational evaluation for the academic assessment that was conducted on January 5, 2021 by the Hawaii Department of Education as part of an initial Chapter 60 evaluation.” Based on Parent’s clarification, the 9/21/2021-Complaint seeks a finding that “the Academic Assessment that was administered by the Hawaii Department of Education is sufficient.” See 9/21/2021-Complaint.

Although the issue of timeliness is not before the undersigned and the undersigned is not opining on the issue, it appears that Parent had requested an IEE on August 19, 2021. While Parent’s August 19, 2021 written letter does not specifically use the terminology “independent educational evaluation,” a “private testing” clearly means “an evaluation conducted by a qualified examiner who is not employed by the public agency.” 34 C.F.R. § 300.502(a)(3)(i). Based on Parent’s request for private testing, it was sufficient to put DOE on notice that it needed to either file a due process complaint to defend its public evaluation or provide an IEE at public expense. Although the DOE may ask Parent for reasons why Parent objects to the public evaluation, the DOE may not require Parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a due process complaint. 34 C.F.R. § 300.502(b)(4). Therefore, it was not necessary for Parent to clarify that Parent was requesting an IEE for the academic assessment that was conducted on January 5, 2021. DOE could have filed a due process complaint without knowing why Parent wanted a private testing for Student⁵.

⁵ The undersigned is not finding that the DOE requested or required Parent to explain why Parent wanted an IEE. This is being used to explain why DOE’s burden of having to show that the public evaluation was appropriate was more than just the sufficiency of the academic assessment. See infra.

The DOE has the burden of proving that the process⁶ it went through for the initial evaluation was appropriate, which, based on the limited evidence, included an academic assessment, cognitive assessment, and adaptive assessment (FOF 8-9, 19-20). Although there is no clear evidence to establish that DOE took into consideration other materials, it appears that the evaluation process may have also included reviewing and considering report cards, progress reports, iReady Reading and Math tests, work samples, and input from teachers, parents and school personnel (FOF 23-24). Therefore, there is insufficient evidence to show that DOE used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student. There is no documentary or testimonial evidence regarding the process or procedure of administering the cognitive and adaptive assessments, the reliability of these assessments, or the results of these assessments. There is also no documentary or testimonial evidence regarding the extent of review or consideration of the assessment reports, report cards, progress reports, iReady Reading and Math tests, work samples, and input from teachers, parents and school personnel.

Although DOE believes that it was only required to prove that the 1/04/2021-Academic Assessment was appropriate because that is what is alleged in its 9/21/2021-Complaint, the federal regulations require the DOE to “[f]ile a due process complaint to request a hearing to show that its evaluation is appropriate” whenever a parent asks for an IEE. 34 C.F.R. § 300.502(b)(2)(i). See e.g., (“[T]he school must defend the appropriateness of the evaluation as a whole and, thus, all of the assessments on which it relies. It cannot defend only some of the

⁶ “Assessments” are the tools used as part of an evaluation, while an “evaluation” is the process during which these assessments occur. Jones-Herrion v. Dist. of Columbia, Civ. No. 18-2828 (RMC), 2019 WL 5086693, *3 (U.S.D.C. Dist. of Columbia 10/10/2019) (citing T.P. ex rel. T.P. v. Bryan Cty. Sch. Dist., 792 F.3d 1284, 1291 n. 13 (11th Cir.2015)).

underlying data and demur on others because reaching an evaluative conclusion based on incomplete data would be, to borrow a phrase, arbitrary and capricious.”) See also, Great Valley Sch. Dist., 121 LRP 20251, at 4 (Penn. SEA May 7, 2021) (“Here, the evaluation process undertaken in the fall of 2019 and the November 2019 RR that resulted, are both appropriate. The November 2019 RR included and considered data from the classroom, from the student’s IEP goals, from related services providers, and from formal assessments and tests. The November 2019 RR included input from teachers, other educators, and parents.... At no point was any one single measure, element of input, assessment, or score used to understand the student’s needs and identification.”)

Furthermore, the Prehearing Order states that the issue for determination is “Whether the public evaluation conducted by the DOE was appropriate under the IDEA.”⁷ Although the 9/21/2021-Complaint alleges that Parent only disagreed with the academic assessment, DOE failed to put forth any convincing evidence during the hearing that Parent only disagreed with the academic assessment⁸. Allegations made in a complaint are simply allegations and not evidence⁹. Courts have recognized that allegations or claims made in a complaint can be easily

⁷ DOE did not disagree with the stated issue. The Prehearing Order issued on October 12, 2021 specifically states that if either party believes that the undersigned has overlooked or misstated anything in the Prehearing Order, the party was to advise the undersigned of the omission or misstatement. DOE did not inform the undersigned that it believed the issue was incorrect or sought clarification of the issue.

⁸ Even assuming that DOE did put forth sufficient evidence to prove that Parent stated Parent only disagreed with the academic assessment, the question still remains whether this is enough to establish that the evaluation was appropriate. It is not necessary for the undersigned to address this question to reach a decision as DOE has failed to meet its burden of showing that the 1/04/2021-Academic Assessment is sufficient.

⁹ The 9/21/2021-Complaint appears to suggest that Parent may have disagreed with more than just the academic assessment. As the 9/21/2021-Complaint alleges, Parent’s written letter states that Parent did not agree with the “test scores,” which is plural. And while questions asked during cross-examination are not evidence, Parent asked SSC questions regarding the other assessments, which suggests to the undersigned that Parent’s disagreement covers more than just

asserted. Colon v. Coughlin, 58 F.3d 865, 872 (2nd Cir.1995) (due to the ease that retaliation claims may be fabricated, the court noted that claims of retaliation must be examined with skepticism and particular care); Orderline Wholesale Distributors, Inc. v. Gibbons, Green, van Amerongen, Ltd., 675 F.Supp.122, 128 (U.S.D.C. New York 1987) (noting that false or exaggerated claims can be easily asserted in a breach of contract case).

Even assuming that the DOE only had to prove that the 1/04/2021-Academic Assessment was appropriate to meet its burden of proof, there is insufficient evidence to show that DOE has met this burden. The 1/04/2021-Academic Assessment Report is only three-pages long and does not appear to be the entire report. The 1/04/2021-Academic Assessment Report does not have the grade equivalent for the Listening Comprehension and Oral Expression subtests for the Oral Language Composite. The report also does not have the subtest standard score for Student's Oral Reading Fluency. And, while the 1/04/2021-Academic Assessment Report has the results of the Oral Language Composite and its subtests and standard scores on page three, their absence from the chart on page one suggests that the exhibit itself may not be complete (FOF 18).

Based on the foregoing, there is insufficient evidence to show that DOE conducted a full and individual initial evaluation using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student or that the evaluation was sufficiently comprehensive to identify all of Student's special education and related services needs. Therefore, DOE failed to meet its burden of proof.

the academic assessment. SSC, Tr. Vol. I, pp. 118-122. It is the DOE's burden to prove that the entire evaluation process was appropriate. To require Parent to prove that Parent disagreed with more than just the academic assessment would be burden shifting, which the undersigned will not do.

V. DECISION

Based upon the above-stated Findings of Fact and Conclusions of Law, the undersigned Hearings Officer concludes that DOE has failed to meet its burden of proof that the public evaluation conducted by the DOE was appropriate pursuant to the IDEA.

For the reasons stated above, IT IS HEREBY ORDERED that Student is entitled to an independent educational evaluation at public expense.

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 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 H.A.R. § 8-60-70(b).

DATED: Honolulu, Hawai'i, December 20, 2021.

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