



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-SY2122-026

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:

June 13, 14 and 17, 2022

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 March 8, 2022, the Department of Education, State of Hawaii (“DOE” or “Petitioner”) submitted a Request for IDEA Impartial Due Process Hearing Complaint against Parent (“Parent” or “Respondent”) (“3/08/2022 Complaint”) to the Office of Dispute Resolution (“ODR”). Parent did not file a response to the 3/08/2022 Complaint.

On March 9, 2022, a letter was sent to the parties indicating that a prehearing conference was tentatively scheduled for March 16, 2022. Both parties responded to the letter stating that they were not available on March 16, 2022. By agreement, the prehearing conference re-scheduled to March 28, 2022. On March 16, 2022, a Notice of Prehearing Conference; Subjects to be Considered; Hearing Process Guidelines was issued to the parties, setting a prehearing conference for March 28, 2022.

On March 28, 2022, a prehearing conference was held with District Educational Specialist (“DES”) and Resource Teacher-1 appearing on behalf of Petitioner; Parent and Aunt appearing on behalf of Respondent; and the undersigned hearings officer. The prehearing conference was conducted using the Zoom video conferencing platform. During the March 28, 2022 prehearing conference, Parent orally requested that the decision deadline be extended so that the parties could have more time to schedule the due process hearing. Parent submitted a written request on April 8, 2022. Parent’s request was granted, extending the decision deadline from April 22, 2022 to June 6, 2022. See Order Granting Parent’s Request for an Extension, dated April 8, 2022, issued on April 8, 2022. The prehearing conference could not be completed on March 28, 2022 and additional days were added.

The parties, Resource Teacher-1, Aunt², and the undersigned met on April 8, 2022 and April 21, 2022 to complete the prehearing conference. During the further prehearing conference on April 21, 2022, Parent stated that [REDACTED] requested leave from work for June 13, 2022 and June 14, 2022 and the due process hearing was scheduled for those dates. To accommodate these hearing dates, the parties requested an extension of the decision deadline. The decision deadline was then extended from June 6, 2022 to July 21, 2022. See Order Granting Department of Education, State of Hawaii's Request for an Extension, dated April 21, 2022, issued on April 25, 2022.

A Prehearing Order; Sample Exhibit and Witness Lists; Subpoena was issued on April 27, 2022.

On May 23, 2022, an Order Regarding Due Process Hearing Via Video Conference was issued to the parties. The order set out procedures to participate in virtual hearing.

On May 29, 2022, Parent sent an email to the undersigned, "requesting an extension..." On May 31, 2022, the undersigned responded to Parent's email asking what type of extension Parent was requesting. Due to Parent not responding to the undersigned's inquiry, the undersigned construed Parent's request as a request to extend the decision deadline. On June 2, 2022, Petitioner submitted an opposition to extending the decision deadline. On June 2, 2022, an Order Denying Respondent's Request for an Extension, dated May 29, 2022, was issued. On the same day, Parent responded to the order, stating that Parent was not requesting an extension of the decision deadline, but an extension of the due date for the exchange of exhibits from June 3, 2022 to June 8, 2022. The parties then agreed to exchange exhibits on June 8, 2022 and waived their rights to have the opposing side's exhibits five (5) business days before the due process

² Aunt is Student's auntie. Tr. Vol. III, 283:22-25.

hearing. The parties did not waive their rights to exchange witness lists five (5) business days before the due process hearing and the due date remained on June 3, 2022.

On May 30, 2022, Parent sent an email to the undersigned which the undersigned construed as a Motion for Reconsideration of Prehearing Order issued on April 27, 2022. On June 7, 2022, Parent's Motion for Reconsideration of Prehearing Order issued on April 27, 2022, was denied. See Order Denying Respondent's Motion for Reconsideration of Prehearing Order Issued On April 27, 2022, Dated May 30, 2022, issued on June 7, 2022.

On June 3, 2022, the parties submitted their Witness Lists.

On June 7, 2022, Parent sent an email to the undersigned, alleging that Public School did not allow Parent to review Student's entire educational records. The undersigned construed Parent's email as a Request to Review Additional Records. On June 8, 2022, a status conference was held to discuss Parent's Request to Review Additional Records. On June 9, 2022, an Order Denying Parent's Request to Review Additional Records, dated June 7, 2022, was issued.

On June 8, 2022, the parties submitted their exhibit lists and exhibits. The Office of Dispute Resolution informed both parties that their exhibit lists did not correspond with their exhibits and allowed the parties to file amended exhibit lists by June 10, 2022. Petitioner filed an amended exhibit list on June 9, 2022, and Parent filed an amended exhibit list on June 10, 2022.

On June 9, 2022, Parent submitted a request for a new hearings officer. On the same day, an Order Denying Parent's Motion for Recusal of AHO Murata, dated June 9, 2022, was issued.

On June 10, 2022, 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, civility towards all participants; confidentiality of the proceeding; and only parties may present evidence, confront and cross-examine witnesses and make arguments during the due process hearing.

The due process hearing took place on June 13, 14 and 17, 2022. During the due process, the Zoom video conferencing platform was utilized. All the participants used the audio and video functions of the Zoom video conferencing platform. The undersigned Hearings Officer presided over the matter. DOE was represented by DES. Resource Teacher-1 assisted DES; and Aunt assisted Parent.

DOE called Resource Teacher-2 (“RT-2”), Clinical School Psychologist (“Psychologist”), Speech Language Pathologist (“SLP”) and Student Services Coordinator (“SSC”) as its witnesses during the due process hearing. Parent did not present any witnesses. Parent objected to DOE’s request to recall Resource Teacher-2, and DOE’s request was subsequently denied. Tr. Vol. III, 378:22-380:2³.

All the proposed exhibits were admitted into evidence: DOE’s Exhibits 1 through 40; and Parent’s Exhibits 1 through 24⁴. Tr. Vol. I, 20:11-15. During the due process hearing, DOE gave Parent copies of certain documents that were not a part of Student’s educational records. Parent requested that these documents not be made a part of the due process hearing record. Parent will file a complaint with the appropriate agency on a later date regarding these documents. Tr. Vol. II, 233:17-248:3; Tr. Vol. III, 284:1-300:25, 380:3-381:2.

³ “Tr. Vol. III, 378:22-380:2” means Transcript Volume III, page 378, line 22 to page 380, line 2.

⁴ Parent’s requests to amend the bate-stamped numbers on the following exhibits were granted: “P-0-15” amended to “P-10-15”; “P-25-6” amended to “P-21-6”; and photo of Student given bate-stamp P-23-1. Tr. Vol. I, 18:4-20:10.

On July 1, 2022, Parent submitted a request to extend the deadline to submit closing briefs from July 8, 2022 to July 13, 2022. Over DOE's objection, the deadline to submit closing briefs was extended to July 12, 2022. See Order Granting Parent's Request to Extend Closing Briefs Deadline, dated July 1, 2022, issued July 6, 2022. The parties timely submitted their respective closing brief on July 12, 2022.

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, which consists of a cognitive assessment, speech/language assessment, academic assessment, and classroom observation, conducted by the DOE was appropriate under the IDEA.

DOE requests the following remedies in its 3/08/2022 Complaint: (1) a finding that the cognitive assessment and speech-language assessment completed by the DOE were appropriate; or (2) a finding that the parent is not entitled to the two requested independent educational evaluations ("IEEs") at public expense.

IV. FINDINGS OF FACT

1. Student is currently [REDACTED] years old. DOE Ex. 1 at 001.
2. Student currently attends Public School-1 and was in the [REDACTED] grade at the time of the due process hearing. P-8-1.
3. Student is eligible for special education and related services pursuant to the IDEA and Hawaii Administrative Rules Chapter 60 under the category of [REDACTED] [REDACTED]. DOE Ex. 15 at 040.

4. Student attended Private School-1 until the [REDACTED] grade. Private School-1 did not offer Student enrollment for the [REDACTED] grade due to academic concerns. DOE Ex. 23 at 056.
5. Student attended Private School-2 from [REDACTED] grade to the [REDACTED] grade. DOE Ex. 15 at 038; DOE Ex. 23 at 057.
6. Student enrolled at Public School-1 for [REDACTED] grade during the 2019-2020 school year. DOE Ex. 15 at 038; P-8-1.
7. On October 2, 2019, Parent-2 submitted a form entitled “Special Education/Section 504/ELL Eligibility” to Public School-1. P-7-7.
8. In November of 2019, Student was found eligible to receive Section 504⁵ supports through accommodations. DOE Ex. 15 at 038.
9. Student’s Section 504 Plan for the [REDACTED] grade included the following accommodations: extended time for classwork and tests; preferential seating; and check for understanding. P-7-6.
10. During the 2020-2021 school year, while Student was in the [REDACTED] grade, Student’s Section 504 Plan provided the following accommodations: extended time on assignments and tests when needed; preferential seating away from distractions; and check for understanding. DOE Ex. 16 at 045; P-7-5.
11. During the 2021-2022 school year, while Student was in the [REDACTED] grade, Student’s Section 504 Plan provided the same accommodations as last year but included the added accommodation of chunking of assignments as needed. Student’s Section 504 Plan was updated on December 2, 2021 but the accommodations in Student’s Section 504 Plan remained the same. DOE Ex. 22 at 054-055; P-7-1 to P-7-2.

⁵ “Section 504” refers Section 504 of the Rehabilitation Act of 1973, as amended in 1974.

12. While in the [REDACTED] grade, Student took an i-Ready math test on August 12, 2021. Student received a scale score of 484, which placed Student on a “needs improvement” level. On grade level score for math is 564-629. The i-Ready test is an online learning program focused on reading and math and provides a snapshot of a child’s performance. DOE Ex. 17 at 046-047.
13. On September 13, 2021, Parent sent an email to Counselor, asking that Student be tested using the “Woodcock-Johnson test.” P-13-1.
14. On September 17, 2021, Parent met with Counselor and requested an individualized education program (“IEP”) for Student. P-13-2; P-13-3.
15. On September 18, 2021, Counselor provided Parent with School Services Coordinator’s email. P-13-2.
16. On October 7, 2021, Parent forwarded to Counselor and Vice Principal of Public School-1 an email [REDACTED] had drafted on October 2, 2021 to School Services Coordinator but never sent. Parent’s October 2, 2021 email requested that Student be given the “Woodcock Johnson Psycho-Educational Assessment” and a speech/language assessment. P-13-3; P-13-4. Later that day, Parent emailed to Counselor and Vice Principal an executed Request for Evaluation form, dated October 7, 2021 (“10/07/2021 Request for Evaluation”). The 10/07/2021 Request for Evaluation indicates academic, behavior and speech/language as areas of concern. P-13-5 to P-13-6.
17. On October 18, 2021, Parent again made a request to Counselor and Vice Principal that Student be given a psychoeducational assessment. P-13-10.
18. On October 20, 2021 at 10:21 p.m., Parent sent Counselor and Vice Principal an email asking to re-schedule a November 2, 2021 meeting due to a conflict at work. Parent also

inquired whether assessments will be done before the IEP meeting. Parent also resent [REDACTED] 10/07/2021 Request for Evaluation. P-13-7.

19. On November 1, 2021, Student took an i-Ready reading test and received a scale score of 563, which placed Student on a “needs improvement” level. On grade level score for reading is 660-735. DOE Ex. 18 at 048-049.

Student Focus Team Meeting

20. On November 19, 2021 at 7:31 a.m., a Google Meet invitation was sent to Parent for a Student Focus Team (“SFT”) meeting for 1:45 p.m. to be held that same day. P-16-1 to P-16-2. In response to the Google Meet invitation, Parent sent an email to Vice Principal and Counselor informing them that the Google Meet invitation was the only notification Parent received about a meeting and that [REDACTED] had not received a copy of Student’s psychoeducational assessment. Parent and Vice Principal spoke later that day on the phone and Parent memorialized their conversation in an email. In the email, Parent listed the four times [REDACTED] had requested a psychoeducational assessment. Parent requested that the meeting scheduled for that afternoon be re-scheduled until a psychoeducational assessment was completed. P-13-9 to P-13-10; P-17-1 to P-17-2; P-18-1 to P-18-2.
21. On November 24, 2021, an SFT meeting was held to review available information, determine if an evaluation will be done, and determine what additional information, if any, was needed (“11/24/2021 SFT meeting”). DOE Ex. 1 at 001; RT-2, Tr. Vol. I, 68:12-23, 152:6-13.
22. During the 11/24/2021 SFT meeting, Resource Teacher-2 was the facilitator and introduced [REDACTED] at the beginning of the meeting and stated the purpose of the meeting. RT-2, Tr. Vol. I, 68:12-23, 152:6-13.

23. During the 11/24/2021 SFT meeting, the school members of the SFT proposed administering a cognitive assessment and an academic assessment and conducting a classroom observation. During the 11/24/2021 SFT meeting, Parent requested a speech/language assessment because Student had been [REDACTED], and Parent was concerned that it may have affected [REDACTED] communication or speech/language abilities. The school members of the SFT and Parent agreed to meet for a second SFT meeting to discuss Parent's request for a speech/language assessment so that someone with knowledge in the area of speech/language could be present. DOE Ex. 1 at 001-002; RT-2, Tr. Vol. I, 30:18-31:12.
24. Following the 11/24/2021 SFT meeting, a Prior Written Notice of Department Action, dated November 24, 2021 ("11/24/2021 PWN"), was issued. DOE Ex. 1 at 001-002.
25. The 11/24/2021 PWN states that DOE proposed conducting an evaluation to determine if Student required special education and related services due to a suspicion of having [REDACTED]. DOE also proposed that a cognitive assessment, academic assessment, and classroom observation be conducted. This proposal was based on a review of Student's existing Section 504 Plan; current and past grades; iReady assessments in math and reading; teacher input; and Parent input. DOE Ex. 1 at 001.
26. According to the 11/24/2021 PWN, DOE considered revisiting Student's Section 504 Plan and making adjustments to the plan to address concerns, but the team rejected this option because they believed that Student may require supports not offered by a Section 504 Plan. DOE Ex. 1 at 001.
27. The 11/24/2021 PWN noted that Parent wanted a speech/language assessment done but the team was not able to determine if one was warranted at the time and everyone agreed

to continue the discussion with possibly conducting a speech/language assessment with individuals who could specify target areas of concern should Student require a speech/language assessment. The 11/24/2021 PWN also noted that Parent was provided a current copy of the Procedural Safeguard Notice. DOE Ex. 1 at 001.

28. On November 30, 2021, Parent sent an email to Resource Teacher-2 with an attachment containing a list of concerns and questions Parent had regarding the proposed cognitive assessment, academic assessment, classroom observation, and ■■■ request for a speech/language assessment. With respect to the cognitive and academic assessments, Parent requested information about the assessments, who would conduct the assessments, and when and where the assessments would take place. Parent noted that ■■■ had asked for the “Woodcock Johnson psycho-educational assessment” several times since September 13, 2021. With respect to the classroom observation, Parent objected to the person who was assigned to conduct the classroom observation. With respect to the speech/language assessment, Parent noted that the first time ■■■ had requested a speech/language assessment was on “10/02/202” [sic]. DOE Ex. 5 at 009-012. Later that day, Resource Teacher-2 responded to Parent’s email, asking for Parent’s availability to meet to discuss Parent’s request for a speech/language assessment. Resource Teacher-2’s email also provided Parent a general explanation of the purposes of a cognitive assessment, academic assessment, and classroom observation. DOE Ex. 5 at 009.
29. On December 2, 2021, a second SFT meeting was held (“12/02/2021 SFT meeting”). DOE Ex. 9 at 021.

30. During either the first or second SFT meeting, Parent requested that the Woodcock-Johnson Assessment be used for the cognitive assessment. RT-2, Tr. Vol. II, 153:11-154:1.
31. Following the 12/02/2021 SFT meeting, a Prior Written Notice of Department Action, dated December 2, 2021 (“12/02/2021 PWN”), was issued by Principal. DOE Ex. 2 at 003-004.
32. According to the 12/02/2021 PWN, after reviewing information, data, and shared information from teachers and parents, the school members of the SFT proposed giving Student a cognitive assessment, academic assessment, speech/language assessment, and conducting a classroom observation. The school members of the SFT proposed adding speech/language assessment after considering information shared by Parent. The school members of the SFT relied on information provided by Parent regarding concerns about Student’s pre and post-concussion communication skills; ongoing tutoring from [REDACTED] grade to present; grades; low i-Ready scores; and ongoing Section 504 accommodations but with no interventions. The purpose of the speech/language assessment was to assist with identifying a suspicion of a [REDACTED] and provide current levels of speech/language performance. DOE Ex. 2 at 003; RT-2, Tr. Vol. I, 31:24-33:6.
33. The 12/02/2021 PWN also notes that Parent wanted the evaluators to schedule the assessments directly with Parent so that Student could provide input, and that full assessment reports be provided to Parent one week prior to an IEP meeting. DOE Ex. 2 at 003.
34. On December 3, 2021 at 7:10 a.m., Resource Teacher-2 sent Parent a text message explaining the importance of conducting a classroom observation and addressing Parent’s

concern about the individual designated to conduct the classroom observation because Parent felt that the person was not qualified. Although Resource Teacher-2 felt that this individual was qualified to conduct the classroom observation, [REDACTED] agreed to assign a certified special education teacher to conduct the classroom observation. DOE Ex. 7 at 014-017; RT-2, Tr. Vol. I, 54:11-55:22, 57:15-58:1. A little while after sending Parent the text message, Resource Teacher-2 sent another text message. In this next text message, Resource Teacher-2 explained to Parent the importance of a classroom observation in determining the existence of a [REDACTED], determining eligibility, and to conducting a comprehensive evaluation. Resource Teacher-2 requested that another SFT meeting be held should Parent continue to feel that a classroom observation was not necessary. DOE Ex. 7 at 017-019.

35. On December 3, 2021, SLP informed Parent that Resource Teacher-2 informed SLP that [REDACTED] had provided Parent a copy of a Consent for Assessment as Part of an Initial Evaluation form. SLP informed Parent that once Parent gives [REDACTED] consent to an initial evaluation, SLP would like to schedule a speech/language assessment with Student. SLP informed Parent the approximate length of time the speech/language assessment would take; proposed dates for the speech/language assessment; and assured Parent that [REDACTED] would try to complete the assessment within one class period time. SLP also informed Parent that the speech/language assessment would be for listening and speaking only, and there would be no reading or writing. SLP asked Parent to provide SLP with advance notice of when they would like to do the speech/language assessment so that SLP could reschedule [REDACTED] meetings with [REDACTED] other students to accommodate Student. SLP informed

Parent that Parent could reach SLP via email, text message, and/or by phone. DOE Ex. 8 at 020; SLP, Tr. Vol. II, 257:16-258:11.

36. During the evening of December 3, 2021, Parent sent a text message to Resource Teacher-2 confirming that [REDACTED] had picked up the consent form. Parent also alleged that “[c]onsent for assessment was signed in early October” and that someone had “messed up and/or didn’t follow through.” P-19-3.
37. On December 6, 2021 at 2:32 a.m., Parent sent an email to Resource Teacher-2 wherein Parent raised questions, provided input, and requested changes to the 12/02/2021 PWN and the Consent for Assessment as Part of an Initial Evaluation form. The email also included “addendums” written by Parent that chronicled Parent’s requests for the “Woodcock Johnson psycho-educational assessment” to be used as part of Student’s cognitive assessment. Parent asked what cognitive assessment would be used if not the “Woodcock Johnson psycho-educational assessment.” Parent also requested information about the academic assessment, and [REDACTED] requested that the psychologist who would be conducting the cognitive assessment also do the classroom observation. P-13-11 to P-13-16, P-1-6.
38. A Prior Written Notice of Department Action, dated December 6, 2021, was issued by Principal (“12/06/2021 PWN”). The 12/06/2021 PWN proposed that Student continue to receive accommodations under a Section 504 Plan. P-7-4.
39. On December 7, 2021 at 3:18 p.m., Resource Teacher-2 sent Parent an email to summarize their telephone discussion regarding the 11/24/2021 PWN and the 12/02/2021 PWN. Resource Teacher-2’s email also included the name of the cognitive and academic

assessments (WISC-V and WIAT-III)⁶ and a list of the subtests for each assessment; and the names and contact information of the assessors who would be conducting the cognitive, academic and speech/language assessments should Parent want to ask them questions about their respective assessments. Resource Teacher-2's email also informed Parent that "[f]or ALL assessments[,] evaluators will initially start of [sic] with above assessment (specific sub-test based on concern). However, pending how [Student] response [sic] to assessment, evaluators may need to adjust assessment to best assist in gathering data." DOE Ex. 9 at 021-023; P-1-1 to P-1-5; P-21-3 to P-21-7; RT-2, Tr. Vol. I, 33:8-34:16, 62:7-64:2.

40. On December 7, 2021, Parent executed a Consent for Assessment as Part of an Initial Evaluation form, consenting to the following: cognitive assessment, academic assessment, speech/language assessment, and classroom observation ("12/07/2021 Consent for Assessment"). According to the 12/07/2021 Consent for Assessment, the assessments would be conducted by a clinical psychologist, qualified student service coordinator, speech pathologist, and special education teacher. The executed consent form also noted that "Evaluators schedule assessment date with parent. Parent and student will determine when best to assess student[.]" P-1-7 to P-1-9; P-21-1 to P-21-2.
41. During the morning of December 9, 2021, Parent dropped off the 12/07/2021 Consent for Assessment at school. Resource Teacher-2 then informed Parent that the assessors had been provided Parent's contact information to schedule the assessments and to provide information regarding the assessments. DOE Ex. 10 at 027-030.

⁶ "WISC-V" stands for "Wechsler Intelligence Test for Children—Fifth Edition." DOE Ex. 30 at 101. "WIAT-III" stands for "Wechsler Individual Achievement Test—Third Edition." DOE Ex. 33 at 191.

42. Later that same day, on December 9, 2021, at SSC's request, Resource Teacher-2 provided Parent with SSC's phone number and asked Parent to call SSC. Parent spoke to SSC later that day. DOE Ex. 10 at 028-030.
43. On December 9, 2021 at 12:17 p.m., Psychologist left a message on Parent's cell phone asking Parent to call Psychologist back to schedule a cognitive assessment. DOE Ex. 11 at 032. At 4:52 p.m., at Psychologist's request, Resource Teacher-2 gave Parent Psychologist's phone number. DOE Ex. 10 at 030-031. At 7:06 p.m., Parent sent the following text message to Psychologist: "Hi [Psychologist.] My name is [Parent], [Student's] [REDACTED]." DOE Ex. 11 at 032.
44. On December 10, 2021, Psychologist sent a text message to Parent, asking Parent to call [REDACTED] to discuss scheduling an assessment and what assessments will be administered. Later that day, Psychologist called Parent. They talked about what the cognitive assessment will look at in terms of Student's strengths and weaknesses; scheduling a time to administer the cognitive assessment; and Parent's concerns regarding reading, reading comprehension, math, writing, and Student's focus and attention. DOE Ex. 11 at 032; Psychologist, Tr. Vol. II, 167:2-169:11.

Speech/Language Assessment

45. On December 10, 2021, Student was assessed by SLP. DOE Ex. 25 at 079.
46. SLP is a licensed speech-language pathologist in the State of Hawaii and is a member of the American Speech Language Hearing Association with a Certificate of Clinical Competence in Speech Language Pathology. SLP received a Master of Science in speech-language pathology from the University of Washington in 1985. [REDACTED] has been employed with the Hawaii Department of Education in the [REDACTED] District since 1985

and has served in [REDACTED] of the [REDACTED] schools in the [REDACTED] District.

[REDACTED] has experience in IEP development; the evaluation, diagnosis, and implementation of therapy to treat fluency disorders, language disorders, articulation/phonology disorders, voice disorders, and pragmatic language disorders for students ages 3 through 21; and development of augmentative/alternative communication programs. SLP has been a certified Registered Behavior Technician since July of 2021. DOE Ex. 25 at 079; DOE Ex. 28 at 094-095; SLP, Tr. Vol. II, 252:1-22.

47. In the [REDACTED] years that SLP has worked for the Hawaii Department of Education, SLP has conducted approximately one thousand one hundred forty (1,140) speech/language assessments. SLP, Tr. Vol. II, 252:19-253:2.
48. During the speech/language assessment, Student attended to all tasks and materials presented to [REDACTED]; [REDACTED] was polite, cooperative, and responsive; and [REDACTED] did not appear to have any illness or injury. Student was offered breaks, but [REDACTED] declined the offers. Student did not present with any communicative frustration, restlessness, or inattention during the speech/language assessment. DOE Ex. 25 at 079; SLP, Tr. Vol. II, 264:22-265:2.
49. SLP administered to Student the Goldman-Fristoe Test of Articulation-Third Edition (“GFTA-3”) and Oral and Written Language Scales-Second Edition (“OWLS-2”). DOE Ex. 25 at 079-080.
50. The GFTA-3 is a speech sound production standardized test. It looks at how an individual says a sound in the beginning, middle and end, and how understandable a person’s speech is. SLP chose to use the GFTA-3 because it addressed an area of concern for Student, which was [REDACTED] speech sound production. SLP, Tr. Vol. II, 253:18-

- 254:4. The GFTA-3 assessed Student's production of consonant and vowel sounds in both single words and in connected speech. Student received a standard score of 107. Student scored in the average range and inside the acceptable range for ■ age. DOE Ex. 25 at 079-080; SLP, Tr. Vol. II, 260:1-10.
51. The GFTA-3 is a reliable, widely and commonly used, and valid assessment. SLP, Tr. Vol. II, 254:1-255:13; DOE Ex. 35 at 202-206; DOE Ex. 36 at 207.
52. The OWLS-2 is an assessment of oral and written language that aims to identify language disorders, design intervention targets, and monitor progress. The assessment consists of four scales: Listening Comprehension, Oral Expression, Reading Comprehension, and Written Expression. DOE Ex. 34 at 200. The Listening Comprehension and Oral Expression scales for the OWLS-2 assessment can be used to assess individuals between the ages of three (3) and twenty-one (21) years old. SLP administered the Listening Comprehension and the Oral Expression Scales to Student because during the SFT meeting, concerns were raised about Student's listening comprehension and oral expression. SLP, Tr. Vol. II, 254:5-11. Student's Listening Comprehension, Oral Expression, and overall Oral Language Composite are in the low average range (standard scores of 81, 89 and 83 respectively). DOE Ex. 25 at 079-080; SLP Tr. Vol. II, 260:11-262:23. Standardized scores mean that Student's scores are compared to other students ■ age. SLP, Tr. Vol. II, 262:12-23. The Reading Comprehension and Written Expression scales were not administered to Student.
53. The OWLS-2 is a reliable and valid test. SLP, Tr. Vol. II, 254:5-11; DOE Ex. 34 at 200-201.

54. SLP took into consideration comments Student's teachers made about [REDACTED]. SLP, Tr. Vol. II, 262:8-11, 272:11-24.
55. SLP's assessment evaluated Student in the areas of social functioning because the Listening Comprehension and the Oral Expression scales both contained questions that relate to social communication or the social use of language, known as pragmatics. SLP, Tr. Vol. II, 258:21-259:8, 260:20-23.
56. SLP's assessment looked at speech, voice, speech fluency, listening comprehension, oral expression, and language, which are skills that are used in vocational settings. SLP, Tr. Vol. II, 259:10-15.
57. The results of the speech/language assessment can be used to help determine appropriate services and placement for Student. SLP, Tr. Vol. II, 263:20-264:9.
58. The speech/language assessment conducted by SLP is reliable and appropriate. SLP, Tr. Vol. II, 255:14-257:2, 264:20-265:15.
59. SLP issued a Speech/Language Assessment Report, dated January 21, 2022 ("1/21/2022 SLA Report"). The 1/21/2022 SLA Report notes that Student's "performance on the speech/language assessments is felt to be valid and representative of [REDACTED] actual communication skills, based upon observation during the assessment period, correlating parent report on December 2, 2021, [Student's] self-report on December 10, 2021, and teacher reports." DOE Ex. 25 at 079-082.
60. The 1/21/2022 SLA Report states the following for implications for learning: "At this time, [Student] has speech skills that allow [REDACTED] to express [REDACTED] verbally. [REDACTED] shows receptive and expressive language skills in the low average range. [REDACTED] shows ongoing development in recalling information from increasingly longer and more complex

verbally presented materials, as well as the use of strategies to assist [REDACTED] verbal responses in communicative situations outside of standardized testing. [REDACTED] shows the ability to initiate and maintain communicative interactions of 6+ exchanges, to express [REDACTED] developmentally appropriate wants/needs, thoughts, ideas, and feelings, and seek/provide information verbally.” DOE Ex. 25 at 081.

Cognitive Assessment

61. On December 13, 2021, Psychologist called Parent to ask for another meeting to discuss Student’s attention and focus. Parent shared information about Student’s performance at Private School-2 and they discussed the possibility of a behavioral assessment. Parent did not want Student to have a behavioral assessment and declined to have another meeting with the team to discuss the possibility of having a behavioral assessment. DOE Ex. 11 at 032; Psychologist, Tr. Vol. II, 167:2-169:11. Later that evening, Parent emailed Resource Teacher-2 to inform [REDACTED] that [REDACTED] was not giving the school consent to conduct a behavioral assessment or behavioral observation. Parent also informed Resource Teacher-2 that Student will be meeting Psychologist at Public School-1 tomorrow for a cognitive assessment. DOE Ex. 12 at 033.
62. On December 14, 2021, Psychologist conducted a cognitive assessment (“12/14/2021 Cognitive Assessment”) to help determine Student’s current levels of functioning and to help determine eligibility for special education and related services. DOE Ex. 23 at 056-071.
63. Psychologist is a Hawaii licensed psychologist. Psychologist received [REDACTED] Doctor of Psychology from American School of Professional Psychology at Argosy University in 2010. [REDACTED] is experienced in completing psychological and psychoeducational

evaluations to help determine emotional and behavioral needs of students and to help determine eligibility for special education and related services; providing psychotherapy to children and adolescents who have [REDACTED] and mental health concerns; administering, scoring, interpreting, and writing reports for psychological assessments for eligibility for special education services and aid in educational planning; and teaching how to administer the Wechsler Adult Intelligence Scale—Third Edition (“WAIS-III”) and grading WAIS-III and WISC-IV scoring profiles. Psychologist has been a clinical psychologist with the Hawaii Department of Education for over [REDACTED] years. As a clinical psychologist for the Hawaii Department of Education, Psychologist also provides supervision to behavioral health specialists and consultation to school teams. Psychologist is also able to provide counseling to students. DOE Ex. 27 at 087-093; Psychologist, Tr. Vol. II, 160:17-161:17, 194:6-195:9.

64. As part of Student’s cognitive assessment, Psychologist used the WISC-V test, selected subtests from the Woodcock-Johnson IV Tests of Cognitive Abilities (“WJ-IV COG”), and selected subtests from the Comprehensive Test of Phonological Processing, Second Edition (“CTOPP-2”). DOE Ex. 23 at 060.
65. The WISC-V test is an individually administered, comprehensive test for assessing the cognitive abilities of children ages six (6) years old to sixteen (16) years eleven (11) months old. The purpose of the WISC-V is to assess children’s general intellectual ability in order to make identification, placement, and resource allocation decisions. Psychologist, Tr. Vol. II, 192:3-193:15; DOE Ex. 23 at 060; DOE Ex. 30 at 103, 118.
66. The Woodcock-Johnson IV (“WJ-IV”) consists of three distinct, co-normed batteries: WJ-IV COG, the Woodcock-Johnson IV Tests of Oral Language (“WJ-IV OL”), and the

Woodcock-Johnson IV Tests of Achievement (“WJ-IV ACH”). Together, these batteries form a comprehensive system for measuring general intellectual ability, specific cognitive abilities, oral language abilities, and academic achievement. The three batteries can be used independently or in any combination to provide greater flexibility for professional examiners. DOE Ex. 31 at 141-143. Student was given a selected subtest from the WJ-IV COG, which is a comprehensive set of individually administered, norm-referenced tests to measure cognitive abilities for individuals ages two (2) through adulthood. Psychologist, Tr. Vol. II, 192:3-193:15; DOE Ex. 23 at 060.

67. The CTOPP-2 measures phonological processing skills related to reading. It is an essential part of a psycho-educational assessment when a [REDACTED] is suspected. CTOPP-2 is an assessment tool that can be utilized by school psychologists, speech and language pathologists, and other educational professionals to determine the strengths and weaknesses in phonological processing skills and document progress. DOE Ex. 32 at 183-189. Student was given selected subtests from the CTOPP-2, which is an individually administered, norm-referenced measure for individuals ages four (4) to twenty-four (24) that assesses three areas of phonological processing that are highly related to success in reading and writing: phonological awareness, phonological memory, and rapid naming. Psychologist, Tr. Vol. II, 192:3-193:15; DOE Ex. 23 at 060.
68. Psychologist chose these specific tests to conduct the cognitive assessment because they are widely and commonly used, and they have high reliability and validity for what they are intended to measure. The tests and subtests would provide a comprehensive evaluation of Student’s current functioning in different cognitive functioning areas. Psychologist used the WISC-V as the initial test because Student completed a WISC-V

when ■ was ■ years old and Psychologist believed that it would be beneficial to see if there were similar cognitive strengths and weaknesses or if there were any changes or differences. Psychologist, Tr. Vol. II, 162:25-164:16.

69. Psychologist conducted an informal interview with Student; and reviewed the following information: Prior Written Notices, dated May 29, 2015 and November 22, 2019; progress reports from Private School-2; past and current Section 504 Plans; and past report cards and current grades. Psychologist also considered reports or student status forms completed by Student's teachers and a May 2015 WISC-V assessment. DOE Ex. 23 at 056-059; Psychologist, Tr. Vol. II, 174:16-175:13, 181:23-182:22.
70. Student was tested in a distraction-reduced room (conference room in counseling center). Rapport was easily established as Student readily engaged in conversation, maintained appropriate eye contact, was friendly and cooperative, and laughed at appropriate times. Student responded appropriately to questions and expanded on ■ responses when sharing about ■. Student appeared to be giving ■ best effort in taking the test. After 45 minutes of testing, Student was excused to go to recess. After recess, Student returned to the testing room and resumed testing without any problems. Psychologist frequently checked in with Student to ask if ■ needed a break or wanted to discontinue the testing for the day. Student always responded that ■ wanted to continue testing. At the end of the testing session, Student stated that the test was not as bad as ■ thought it was going to be and that in rating ■ level of tiredness, ■ rated ■ as a two (2) on a scale of one (1) to ten (10), ten (10) being extremely tired. Psychologist and Student wore masks due to COVID-19 concerns. DOE Ex. 23 at 056-059. Psychologist followed all standardized procedures as outlined in the administration and scoring manuals of each

of the assessment tools that ■ used. There were no modifications or alterations made except for the face masks. Student appeared comfortable and understood why they were doing the testing. Psychologist believes that “it was a valid representation of ■ current level of need.” Psychologist, Tr. Vol. II, 164:17-165:7. Although Student was soft spoken, Student was able to communicate ■ thoughts clearly. Student also required more time to think when verbally responding during formal testing. Psychologist, Tr. Vol. II, 173:22-174:15.

71. According to the WISC-V, Student’s Full Scale IQ was within the low average range with a standard score of 86 placing ■ in the 18th percentile, which meant that Student scored as well as or better than 18% of adolescents ■ age in the normative sample. DOE Ex. 23 at 060-061.
72. According to the 12/14/2021 Cognitive Assessment, Student’s overall cognitive functioning is within normal limits with cognitive processing deficits or weakness related to Short-term Memory and Processing Speed. DOE Ex. 23 at 070; Psychologist, Tr. Vol. II, 176:24-178:15.
73. The 12/14/2021 Cognitive Assessment provided recommendations on accommodations and services to help Student. DOE Ex. 23 at 070-071.
74. Psychologist does not report age and grade equivalent scores because they are not as valid and reliable as standard scores, and many clinicians, researchers, and test publishers caution against the use of age and grade equivalent scores. Age and grade equivalent scores mean the median raw score for a particular age or grade level. Because acquisition of skills measured by an instrument occurs more rapidly during early ages, raw scores increase at a greater rate with younger examinees than with older examinees. Therefore,

a similar change in raw scores of younger examinees and of older examinees will be represented quite differently in age equivalent scores. Psychologist, Tr. Vol. II, 172:8-18; DOE Ex. 39 at 217-218. Age and grade equivalent scores should not be used for making diagnostic or placement decisions. Psychologist, Tr. Vol. II, 172:22-173:21, 201:22-203:13; DOE Ex. 39 at 217-218.

75. Psychologist did not ask Parent to complete a checklist or do an interview related to Student's cognitive development because Student participated in every aspect of the cognitive assessment and there were no subtests that Psychologist had to discontinue or that was considered spoiled due to refusal or inability on the part of Student to do the assessment. Psychologist, Tr. Vol. II, 166:6-167:1, 169:12-18. Psychologist took into consideration what Parent had shared with [REDACTED] in their phone conversations about Student's struggles in school, even though Parent's input is not written in Psychologist's cognitive report. Psychologist, Tr. Vol. II, II, 188:23-189:25, 190:10-191:5.
76. Parent shared with Psychologist that Student had recently passed a vision and hearing screening. DOE Ex. 23 at 056.
77. The results from the cognitive assessment can be used to help determine appropriate services and placement for an IEP. Psychologist, Tr. Vol. II, 178:17-20.
78. Psychologist's cognitive assessment is reliable and appropriate. Psychologist, Tr. Vol. II, 179:10-12.

Academic Assessment

79. SSC is a student services coordinator at Public School-2. DOE Ex. 29 at 096.
80. SSC has a bachelor's degree in psychology from the University of Hawaii and a master's degree in counseling psychology from Chaminade University. SSC was a counselor at a

Hawaii middle school for [REDACTED] years before becoming a student services coordinator at Public School-2 for the past [REDACTED] years. Since becoming a student services coordinator at Public School-2, SSC has conducted one hundred fifteen (115) academic assessments. SSC, Tr. Vol. III, 304:17-305:12, 314:12-20.

81. SSC is trained and certified to conduct the WIAT-III. SSC, Tr. Vol. III, 305:14-23, 314:23-316:12. SSC was trained to administer the WIAT-III on September 1, 2015. DOE Ex. 29 at 096; SSC, Tr. Vol. III, 307:4-10.
82. An academic assessment was requested for Student to measure [REDACTED] current level of academic achievement. SSC, Tr. Vol. III, 305:24-306:2.
83. SSC called Parent to introduce [REDACTED] and to schedule a time for Parent to bring Student to Public School-2 to take the academic assessment since SSC's test material was in SSC's office. Parent expressed concern to SSC that Parent did not want Student to be pulled out of class and lose instructional time. In addressing Parent's concern, SSC offered to conduct the academic assessment on a Saturday, which SSC normally did not do and would not receive extra compensation. SSC conducted Student's academic assessment on a Saturday. SSC, Tr. Vol. III, 306:22-307:21, 362:2-19, 366:1-16, 340:24.
84. SSC conducted an academic assessment using the WIAT-III, resulting in a report entitled "Academic Achievement Assessment Data," dated December 20, 2021 ("12/20/2021 Academic Report"). The WIAT-III is a comprehensive, individually administered instrument designed to assess the academic achievement of individuals ages four (4) years old to nineteen (19) years, eleven (11) months old. The test is comprised of various subtests used to evaluate reading, writing, and mathematics skills. The WIAT-III is

- standardized on a national sample of students. DOE Ex. 24 at 072-078; DOE Ex. 33 at 191.
85. The WIAT-III is a standardized test that can be used to help with eligibility determination, special education placement, development of IEP goals and objectives, and determine appropriate services. SSC, Tr. Vol. III, 306:3-9, 311:21-312:6.
 86. The WIAT-III can be used in educational, clinical, and research settings to identify student academic strengths and weaknesses, inform special education eligibility and/or placement decisions, inform the diagnosis of [REDACTED] and to aid in the design of instructional objectives and interventions. WIAT-III can be administered and interpreted by psychologists and non-psychologists who have undergone formal training in standardized psychological or educational testing. The assessment takes approximately 30 minutes to 145 minutes to complete. DOE Ex. 33 at 191.
 87. If an examiner wishes to administer all subtests, the WIAT-III may take upwards of 2 hours. DOE Ex. 33 at 198.
 88. The WIAT-III includes 16 subtests. Examiners can choose to administer individual subtests, a selection of subtests, or all subtests. The WIAT-III makes use of separate start points, reverse rules, discontinue rules, and stop points for the majority of subtests to shorten administration time and avoid examinee fatigue and frustration. DOE Ex. 33 at 191, 193.
 89. The WIAT-III is highly used, and very reliable and valid. SSC, Tr. Vol. III, 312:18-24.
 90. The WIAT-III assessment was an appropriate assessment for Student. SSC, Tr. Vol. III, 363:20-364:25.

91. The academic assessment with Student took two (2) hours and twenty (20) minutes and was conducted in-person in SSC's office at Public School-2. Student wore a mask while SSC wore a mask and sneeze guard during the assessment. DOE Ex. 24 at 073.
92. During the academic assessment, Student made eye contact with SSC and they talked at the beginning of the assessment about COVID. Student did not appear to be stressed or have any health issues. Student appeared very motivated. Student was informed that [REDACTED] could have breaks during the assessment and SSC frequently asked Student if they could continue and Student responded that they could. SSC, Tr. Vol. III, 310:4-311:4, 360:3-11.
93. SSC conducted the academic assessment correctly, and the academic assessment for Student is reliable and appropriate. SSC, Tr. Vol. III, 306:14-21, 312:18-24, 336:1-4.
94. According to the 12/20/2021 Academic Report, Student scored in the average range for Oral Language, Total Reading, Basic Reading, Reading Comprehension and Fluency, and Written Expression. Student scored below average in Mathematics and Math Fluency. Student's Total Achievement was in the average range. DOE Ex. 24 at 072.
95. According to the 12/20/2021 Academic Report, the "[e]ducational testing indicates that [Student's] academic achievement is within the Above Average to Low range when compared to age-level expectations." The report also provided recommendations on accommodations and services, such as check for understanding, repeat directions, encourage Student to ask questions, breaking up or chunking of information, and provide visual cues. DOE Ex. 24 at 078.

Classroom Observation

96. On January 19, 2022, Resource Teacher-2 conducted a classroom observation of Student. DOE Ex. 26 at 083.
97. Resource Teacher-2 is a certified special education teacher with the Hawaii Department of Education for [REDACTED] years. During those [REDACTED] years, Resource Teacher-2 was a teacher, a department head, a post-high school transition resource teacher/coordinator, and a temporary assignment vice principal for [REDACTED]. Resource Teacher-2 has conducted approximately 100 classroom observations and attended approximately 100 student focus team meetings. RT-2, Tr. Vol. I, 27:5-28:1, 37:10-21.
98. Resource Teacher-2 conducted a classroom observation of Student in math class from 7:50 a.m. to 8:55 a.m. Resource Teacher-2 selected math class to conduct the observation because Student was turning in math assignments and engaged in the learning process, but [REDACTED] was still struggling. The other classes were not chosen because Student was not turning in assignments which indicated that [REDACTED] was not engaged in those classes. Resource Teacher-2 observed that Student seemed engaged and focused throughout the observation. Student did not show any signs of sleepiness or boredom. The math teacher called on Student to actively participate. Student was successfully able to contribute and participate with the classroom discussion with prompting. Resource Teacher-2 authored a summary of [REDACTED] observations in which Resource Teacher-2 made suggestions to help Student with learning. Resource Teacher-2's suggestions included engaging Student during class; ensure Student understands material presented to [REDACTED]; teach Student skills to advocate for [REDACTED] during and after class; and allow Student to

develop an organization system that ■ will utilize to maintain responsibilities. DOE Ex. 26 at 083-086; RT-2, Tr. Vol. I, 41:11-43:9, 100:4-104:19.

Eligibility Meeting

99. On January 27, 2022 at 8:43 a.m., Resource Teacher-2 emailed Parent stating that attempts were made on January 15, 2022 and January 18, 2022 to schedule an eligibility meeting with Parent for the week of January 24, 2022 to January 28, 2022 but Resource Teacher-2 did not receive a response. Resource Teacher-2 then stated that they are trying to schedule Student's eligibility meeting for the week of January 31, 2022 to February 4, 2022. Resource Teacher-2 stated in the email that Parent should have already received a copy of the cognitive, academic, speech/language assessment reports, and classroom observation report via email. Resource Teacher-2 provided the assessors email addresses to Parent and informed Parent that should ■ have any questions regarding the assessments, ■ could email the assessors. Resource Teacher-2 suggested that Parent provide questions and concerns prior to the eligibility meeting as that would make better use of their time and ensure that there will be responses to ■ questions. Resource Teacher-2 then asked for Parent's availability to meet next week for the eligibility meeting. DOE Ex. 13 at 034.
100. On January 27, 2022 at 8:56 a.m., Resource Teacher-2 emailed Parent informing ■ that ■ had spoken to a community college counselor regarding accommodations and effective ways colleges support students with disabilities, knowing that Student may be attending college after high school. Resource Teacher-2 stated in the email that ■ would like to share ■ finding with Parent. DOE Ex. 13 at 034-035. An hour later, Resource Teacher-2 emailed Parent links to the speech/language assessment report, academic

assessment report, cognitive assessment report and classroom observation report. DOE Ex. 13 at 035.

101. On February 1, 2022, Resource Teacher-2 sent an email to Parent explaining that they are attempting to schedule an eligibility meeting and that the assessors, special education teacher, general education teacher, an administrator, and Parent will be at the eligibility meeting. DOE Ex. 14 at 036; RT-2, Tr. Vol. I, 28:4-29:11.
102. On February 7, 2022, an eligibility meeting was held with Parent, Psychologist, SLP, SSC, Resource Teacher-2, Vice Principal, math teacher and counselor. DOE Ex. 3 at 005; P-3-2.
103. SSC was late to the eligibility meeting because ■■■ was at a school related event. SSC, Tr. Vol. III, 317:11-14, 318:5-9; RT-2, Tr. Vol. I, 70:14-72:23.
104. SSC asked Parent if SSC could provide a verbal summary of ■■■ academic assessment report and Parent consented. After SSC provided a verbal summary of ■■■ academic assessment report, SSC stated that if there were any questions or concerns to give ■■■ a call. SSC, Tr. Vol. III, 320:20-24, 321:1-322:23, 323:12-19, 338:4-17, 345:6-346:20, 355:5-356:13.
105. All the assessments were discussed during the eligibility meeting. RT-2, Tr. Vol. I, 77:10-78:9, 152:14-25; Psychologist, Tr. Vol. II, 223:3-226:13.
106. Parent was an active participant at the eligibility meeting. Parent shared ■■■ concerns, asked and answered questions, and asked for clarification when Parent did not understand something. Parent's concerns were addressed at the eligibility meeting. RT-2, Tr. Vol. II, 136:8-138:25; Psychologist, Tr. Vol. II, 176:7-22; SLP, Tr. Vol. II, 263:16-19; SSC, Tr. Vol. III, 311:15-20.

107. During the eligibility meeting, the team took into consideration multiple sources of data: cognitive assessment; speech/language assessment; academic assessment; classroom observation; information from teachers; Student's grades and attendance; Parent input; existing Section 504 Plan; and assessors' responses to Parent's questions. DOE Ex. 3 at 005; P-2-7; Psychologist, Tr. Vol. II, 175:18-176:5.
108. DOE proposed that Student meet the eligibility criteria of [REDACTED] (" [REDACTED] ") because there were concerns with Student's [REDACTED] [REDACTED]. DOE Ex. 3 at 005; P-2-7.
109. During the eligibility meeting, the team also considered [REDACTED] and [REDACTED] as possible eligibility categories. The team rejected [REDACTED] and [REDACTED] due to a lack of supportive documentation. DOE Ex. 3 at 005; P-2-7; RT-2, Tr. Vol. I, 38:21-39:19.
110. DOE had and used sufficient, relevant, functional, academic information about Student to determine eligibility and programming for special education and related services. Psychologist, Tr. Vol. II, 179:13-17; SLP, Tr. Vol. II, 265:16-20.
111. Following the eligibility meeting, a Prior Written Notice of Department Action, dated February 11, 2022 ("2/11/2022 PWN"), was issued by Principal. The 2/11/2022 PWN proposed that Student met the eligibility criteria of [REDACTED]. DOE Ex. 3 at 005-006; DOE Ex. 15 at 042-043; P-2-7 to P-2-8.
112. The 2/11/2022 PWN noted that "Parent was informed should [REDACTED] acquire updated related information to provide [] it to the school. Parent shared [REDACTED] felt concerns ([REDACTED] [REDACTED]) would need to address other possible concerns. Team ensured [P]arent that concerns would be addressed during the IEP process." DOE Ex. 3 at 005.

113. After the eligibility meeting, Resource Teacher-2 drafted an Evaluation Summary Report and a copy was provided to Parent on February 11, 2022 (“2/11/2022 ESR”). The 2/11/2022 ESR summarizes the reason for the evaluation referral; Student’s educational history; access to appropriate instruction before the referral; interventions tried; and the academic assessment, classroom observation and speech/language assessment. Although a summary of the cognitive assessment is not in the 2/11/2022 ESR, the team took the data from the cognitive assessment into consideration in determining Student’s eligibility and Parent was given a copy of the cognitive assessment. The team determined that Student met the eligibility criteria for [REDACTED]. [REDACTED] The team agreed that Student required specifically designed instruction, accommodations, and modifications targeting significant concerns related to [REDACTED]). The 2/11/2022 ESR also states that Student does not have any visual, hearing or motor disabilities, and Student’s disability is not the result of cultural factors, limited English proficiency, environmental or economic factors. DOE Ex. 15 at 038-041; DOE Ex. 13 at 034-035; P-2-3 to P-2-6; RT-2, Tr. Vol. I, 80:9-21; RT-2, Tr. Vol. II, 118:24-119:8.
114. Student is fluent in English and speaks English at home. DOE Ex. 23 at 056; DOE Ex. 25 at 079; SSC, Tr. Vol. III, 370:2-4.
115. On February 11, 2022, Resource Teacher-2 emailed Parent a copy of the 2/11/2022 ESR; the 2/11/2022 PWN; and a “Consent for Initial Provision of Special Education and Related Services” form for Parent to execute. DOE Ex. 15 at 037-044; P-2-1 to P-2-9.
116. On February 18, 2022, Parent requested an Independent Educational Evaluation (“IEE”) at public expense. Although Parent disagreed with all the assessments and the

classroom observation conducted by DOE, Parent only requested that the IEE consist of the Woodcock-Johnson Psychological Assessment and a speech/language assessment. Parent requested that the Woodcock-Johnson Psychological Assessment be used to conduct the cognitive assessment because Parent “want[ed] to know [Student’s] current level of performance by age and grade level in order to base services or placement recommendations at the IEP meeting.” Parent requested a speech/language assessment “to assess the areas in listening comprehension, academic, vocational and social functioning, as [Student] struggles in all areas of Language.” P-3-1 to P-3-4.

117. On February 22, 2022, Principal acknowledged receipt of Parent’s request for an IEE at public expense and informed Parent that Public School-1 will consider Parent’s request and get back to Parent. P-4-1 to P-4-3.
118. On March 3, 2022, the DOE denied Parent’s request for an IEE at public expense. DOE Ex. 4 at 007-008.
119. A Prior Written Notice of Department Action, dated March 7, 2022 (“3/07/2022 PWN”), was issued. The 3/07/2022 PWN states that Parent, on February 18, 2022, requested an IEE at public expense, but DOE denied Parent’s request on March 3, 2022. The 3/07/2022 PWN states that DOE would be filing a request for due process hearing to defend its evaluation. DOE Ex. at 007-008; P-5-1 to P-5-3.
120. On March 8, 2022, DOE filed the instant complaint. P-6-1 to P-6-8.
121. SLP, Psychologist, SSC and Resource Teacher-2 were credible witnesses.

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). In the instant case, DOE filed for a due process hearing 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 Appropriate under the IDEA

Whenever a parent asks for an IEE at public expense and the DOE elects not to provide the IEE, federal regulations require the DOE to “[f]ile a due process complaint to request a hearing to show that its evaluation is appropriate.” 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 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.”)

The initial evaluation process undertaken by DOE to determine Student’s eligibility was appropriate. On October 7, 2021, DOE received a Request for Evaluation from Parent. (FOF 16). On November 24, 2021, an initial SFT meeting was held to review available information about Student, determine if an evaluation should be done, and determine what additional information, in any, was needed. (FOF 22). During the initial SFT meeting, DOE proposed conducting a cognitive assessment, academic assessment, and a classroom observation as part of an initial evaluation, and DOE provided Parent with notice on November 24, 2021. (FOF 23-27). 34 C.F.R. § 300.304(a). During the first SFT meeting, the school members of the SFT meeting took into consideration Parent’s concern that Student had suffered [REDACTED] and wanted a speech/language assessment. The school members of the SFT and Parent agreed to reconvene for another SFT meeting so that a person with knowledge in the area of speech/language could be present. (FOF 27).

On December 2, 2021, a second SFT meeting was held. (FOF 29). During the second SFT meeting, the school members of the SFT proposed adding a speech/language assessment. (FOF 32). DOE then provided Parent a Prior Written Notice on December 2, 2021, proposing a

cognitive assessment, academic assessment, speech/language assessment, and a classroom observation. (FOF 32). After the second SFT meeting, on December 7, 2021, Parent consented to the three assessments, and the classroom observation. (FOF 40). Although Psychologist believed that a behavioral assessment would have been helpful in determining whether Student is a child with a disability, Parent refused to provide consent for a behavioral assessment. (FOF 61).

In scheduling the assessments, DOE attempted to address Parent's requests and concerns. Parent was provided the contact information for the assessors so that [REDACTED] could schedule the assessments directly with them. (FOF 35, 39, 42, 43). Parent was also informed that [REDACTED] could contact the assessors directly should [REDACTED] have any questions regarding their respective assessments. (FOF 39). SSC offered to conduct the academic assessment outside of [REDACTED] normal work hours on a Saturday to address Parent's concern that Student does not lose any instructional time in class. (FOF 83). Resource Teacher-2 conducted the classroom observation instead of the individual initially designated to conduct the classroom observation because Parent did not feel that this individual was qualified. (FOF 34, 96).

The DOE used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student, including information provided by Parent. (FOF 44, 55, 56, 61, 69, 75, 106). DOE conducted a speech/language assessment using the GFTA-3 and OWLS-2 (FOF 49); a cognitive assessment using the WISC-V, subtests from the WJ-IV COG and CTOPP-2 (FOF 64); an academic assessment using WIAT-III (FOF 84); and a classroom observation in Student's math class (FOF 98). The decision to observe Student in math class instead of [REDACTED] other classes was well reasoned. (FOF 98). The GFTA-3, OWLS-2, WISC-V, subtests from the WJ-IV COG and CTOPP-2, and WIAT-III are technically sound

instruments. (FOF 50-53, 65-68, 84-90). The assessors are trained and knowledgeable in their field of work. (FOF 46-47, 63, 80-81, 97). The assessors appropriately conducted their respective assessments. (FOF 48, 58,69-70, 91-93). The speech/language assessment, cognitive assessment, and academic assessment for Student are reliable, appropriate and valid. (FOF 58, 78, 93). The assessments were administered in Student's primary language; were used for purposes for which the assessments are valid and reliable; administered by trained and knowledgeable personnel; and administered in accordance with any instructions provided by the producer of the assessments. 34 C.F.R. § 300.304(c).

In addition to the assessments and observation, DOE looked at various data, including information from teachers; Student's grades and attendance; Parent input; existing Section 504 Plan; and assessors' responses to Parent's questions. (FOF 107). DOE did not use any single measure or assessment as the sole criterion for determining whether Student is a child with a disability and the evaluation conducted by the DOE was sufficiently comprehensive to identify all of Student's special education and related services needs. Student was assessed in all areas related to ■ suspected disability.

Now turning to the various arguments made in Respondent's Closing Brief. To be clear, the only issue before the undersigned Hearings Officer is very precise: whether the public evaluation, which consists of a cognitive assessment, speech/language assessment, academic assessment, and classroom observation, conducted by the DOE was appropriate under the IDEA. Many of the arguments made by Respondent do not apply to this issue; however, the decision in this case does not preclude Parent from raising issues that Parent may have against the DOE through the filing of ■ own complaint.

Respondent's argument that ■■■ "made numerous requests for a comprehensive Woodcock-Johnson psychoeducational assessment [but] DOE ignored parent's request" is not persuasive. Respondent's Closing Brief, p. 1. Although Parent wanted the WJ-V to be used for the cognitive assessment, there is no evidence that the WJ-V would have been better at assessing Student's cognitive abilities than the WISC-V. Even assuming that the WJ-V would have been better, there is no evidence that the WISC-V was not appropriate. Furthermore, Parent's basis for wanting the WJ-V, "to know [Student's] current level of performance by age and grade level," does not mean that the WISC-V is not an appropriate assessment tool for Student. (FOF 74, 116).

Respondent's argument that ■■■ was entitled to "the names of all the persons attending the SFT meeting and eligibility meeting and especially for parent to get the PWN before the meeting takes place not after" is also not persuasive. Respondent's Closing Brief at pp. 2, 8. Respondent has not cited to any legal authority that says the DOE is required to give Parent the names of all the participants before each meeting. Although no evidence was presented that DOE informed Parent of what type of individuals will be at the 11/24/2021 SFT meeting, that alone does not make the evaluation process inappropriate. Parent was informed that the assessors, special education teacher, general education teacher, an administrator and Parent will be at the eligibility meeting. (FOF 101). IDEA does not require the DOE to provide a PWN "before the meeting" takes place. DOE is required to provide prior written notice before the DOE proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to the child. 34 C.F.R. § 300.503. In the instant case, DOE provided prior written notices on November 24, 2021 when it proposed cognitive and academic assessments and a classroom observation (FOF 24-25); on December 2, 2021 when it

proposed cognitive, academic, speech/language assessments and a classroom observation (FOF 31-32); and on February 11, 2022 when it proposed that Student meet the eligibility criteria of [REDACTED] (FOF 111).

Respondent's argument that "DOE had already decided what type of assessments were going to be conducted prior to the evaluations/assessments were done" is also not persuasive. Respondent's Closing Brief at p. 8. During the first SFT meeting, DOE proposed two assessments (cognitive and academic) and a classroom observation. After listening to Parent's concerns about possible [REDACTED] and wanting a speech/language assessment, the team met again for a second SFT meeting. During the second SFT meeting, the school members of the SFT agreed with Parent and proposed that a speech/language assessment be included. After the second SFT meeting, DOE continued to try to convince Parent that a classroom observation would be beneficial in assessing Student's needs. (FOF 34). DOE also wanted to include a behavioral assessment, but Parent did not want a behavioral assessment and one was not proposed or done. (FOF 61). DOE did not decide which assessments would be done prior to the assessments taking place.

Respondent's argument that the "district has failed, and it is currently out of-compliant [sic] by not conducting the initial assessments requested within the 60-day requirements by law" is also not persuasive. Respondent's Closing Brief, p. 6. DOE received parental consent for an initial evaluation on December 7, 2021. (FOF 40). All the assessments were conducted before the classroom observation, and the classroom observation took place on January 19, 2022. (FOF 96). Parent was given copies of all the assessments and classroom observation reports on or before January 27, 2022. (FOF 99-100). Resource Teacher-2 reached out to Parent on January 15 and 18, 2022 to schedule an eligibility meeting for the week of January 24-28, 2022 but

Resource Teacher-2 did not receive a response. On January 27, 2022, Resource Teacher-2 reached out to Parent again to schedule an eligibility meeting for the week of January 31, 2022 to February 4, 2022. (FOF 99). The eligibility meeting was held on February 7, 2022. (FOF 102). Based on this information, the initial evaluation was conducted within 60 days of receiving parental consent for the evaluation. 34 C.F.R. §300.301(c).

Respondent's argument that SSC "did not appropriately assess [Student] as [redacted] only has one assessment available for [redacted] age" is also not persuasive. Respondent's Closing Brief, p. 16. SSC having only one assessment, the WIAT-III, available to use for the academic assessment does not make the academic assessment performed by SSC not appropriate. The WIAT-III is a widely used and reliable assessment. (FOF 84-90).

Respondent's argument that SLP's "speech/language assessment did not include English and reading assessment and [Resource Teacher-2] took it up upon [redacted] to deny parent's request for English and reading to be included in the assessment" is also not persuasive. Respondent's Closing Brief, p. 17. Although SLP did not administer the Reading Comprehension and Written Expression scales to Student (FOF 52), SSC's academic assessment tested Student in the areas of Oral Language, Total Reading, Basic Reading, Reading Comprehension and Fluency, and Written Expression (FOF 94).

Based on the foregoing, there is sufficient 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 and that the evaluation was sufficiently comprehensive to identify all of Student's special education and related services needs. Therefore, DOE has met its burden of proof in showing that the initial evaluation conducted by the DOE was appropriate.

V. DECISION

Based upon the above-stated Findings of Fact and Conclusions of Law, the undersigned Hearings Officer concludes that DOE has met 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 not entitled to an independent educational evaluation at public expense. Student is still entitled to an IEE, if Parent chooses, but it will not be paid by the DOE.

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, Hawaii, July 21, 2022.

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