



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

In the Matter of the DEPARTMENT OF
EDUCATION, STATE OF HAWAI‘I,

Petitioner(s),

vs.

PARENTS of STUDENT,¹

Respondents.

DOE-SY2122-031

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing: July 13, 2022

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

On April 19, 2022, the Department of Education, State of Hawai‘i (hereinafter “Petitioners” or “DOE”) submitted a Request for IDEA Impartial Due Process Hearing under the Hawai‘i Administrative Rules Title 8, Chapter 60, in accordance with the Individuals with Disabilities Education Act, against Parents, as the parents/guardians of Student. (hereinafter “Respondents”).

On April 19, 2022, a Letter to Parties, Hearing Process Guidelines, Notice of Prehearing

¹ [REDACTED]

Conference and Subjects to Be Considered, Zoom Invitation, and Zoom User Guide were sent via U.S. Postal Service Mail to DOE District Educational Specialist (hereinafter “DES”), on behalf of Petitioners, and Parents, on behalf of Respondents. In the Letter to Parties and the Notice of Prehearing Conference, notice was provided to both parties that the prehearing conference in this case was scheduled for Tuesday, April 26, 2022 at 9:30 a.m.

On April 20, 2022, Respondents sent an email to the Office of Dispute Resolution indicating that they were unavailable for the April 26, 2022, prehearing conference date and would not be available until end of May or June. Based on Respondents’ request, the prehearing conference was rescheduled to May 31, 2022, at 10:30 a.m. and the decision deadline was extended to July 18, 2022.

Through a series of emails from May 5, 2022 through May 31, 2022, Respondents expressed dissatisfaction with the Office of Dispute Resolution and the due process hearing process. Respondents indicated that they would be refusing any documents sent to them by mail or email and would only communicate through telephone conversations. Respondents further indicated that they would not participate in the due process hearing since they did not recognize the authority of this Hearings Officer.

On May 31, 2022, a prehearing conference was held through a Zoom videoconference with this Hearings Officer, DES, and RT. The prehearing conference was delayed to allow time for Parents to attend but they did not contact the Office of Dispute Resolution, call or login to the Zoom videoconference. Based on their email correspondence stating Parents’ refusal to participate, the prehearing conference proceeded without a representative for Respondents. At the prehearing conference, the Due Process Hearing (hereinafter “Hearing”) was scheduled for July 13-14, 2022, from 9:00 a.m. to 4:00 p.m. Due to the coronavirus 2019 global pandemic, this

Hearings Officer informed the parties that the Hearing would be conducted via video conferencing out of concern for the health and safety of the participants.

Due to the decision deadline being July 18, 2022, Petitioners requested an extension of the decision deadline to accommodate the schedule of their witnesses for the Hearing to take place in on the scheduled dates. The Amended Prehearing Order filed on June 1, 2022 included the granting of the extension request by Petitioners which extended the deadline for the filing of the decision in this case to September 1, 2022.

The Hearing commenced on July 13, 2022, using the Zoom video conferencing platform. Each attendee to the Hearing was sent a link through email to access the Hearing by the Office of Dispute Resolution. The Zoom meeting room was opened at 9:00 a.m. as scheduled. After waiting ten (10) minutes to see if Parents would appear either in person at the Office of Dispute Resolution, or on the Zoom conference, the Hearing began. Parents did not appear at the Office of Dispute Resolution nor in the Zoom meeting. No call or voicemail indicating their desire to participate was received from Parents at the Office of Dispute Resolution.

Present in the video conference Hearing were Hearings Officer Chastity T. Imamura, DES and RT on behalf of Petitioners, as well as the assigned court reporter. Petitioners called Special Education Resource Teacher (hereinafter “SPED RT”), Psychologist, and Principal to testify and Petitioners completed the presentation of evidence on that date. Neither Parents nor anyone representing Respondents made any attempt to join the Hearing or contacted the Office of Dispute Resolution expressing an interest in participating in the Hearing. Due to the completion of evidence on July 13, 2022, the hearing date of July 14, 2022 was cancelled.

Petitioners submitted their exhibits for the Hearing by the disclosure deadline of July 6,

2022. Petitioners requested that all exhibits submitted by Petitioners be received into evidence, so all exhibits submitted by Petitioners were considered for the Decision in this case.

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

II. JURISDICTION

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

III. ISSUES PRESENTED

Petitioners assert three (3) issues in the Complaint to be addressed at the Hearing:

1. Petitioners are requesting that this Hearings Officer find that the cognitive and speech-language assessments done in September and August 2019, respectively, by the DOE are current, valid, and were appropriately conducted in compliance with the IDEA.
2. Petitioners are requesting that this Hearings Officer find the academic assessment administered on March 25, 2021 by Psychologist is valid and was appropriately conducted in compliance with the IDEA.
3. Petitioners are requesting that this Hearings Officer find that the academic assessment administered on March 25, 2021 by Psychologist was used for its intended purpose of determining eligibility for Special Education and Related Services under the IDEA.

IV. FINDINGS OF FACT

Witness Background

1. SPED RT is a special education resource teacher for the State of Hawai‘i Department of Education Honolulu District, which includes Former Home School. SPED RT’s duties include consulting, training, and meeting with schools regarding special

education compliance. Occasionally SPED RT attends team meetings for students or supports schools in other areas such as due process hearings. Testimony of SPED RT, Transcript of Proceedings, page 12, line 19, through page 13, line 23 (hereinafter referenced as “Tr.12:19-13:23”).

2. Psychologist is a school psychologist for the State of Hawai'i Department of Education, assigned to a [REDACTED] district. Psychologist has a bachelor's degree in psychology and a master's degree in educational psychology with an emphasis on school psychology. Testimony of Psychologist, Tr.48:17-49:16.
3. Psychologist's duties include conducting assessments and developing academic and behavioral interventions. Psychologist has conducted roughly seven hundred to eight hundred (700-800) assessments during Psychologist's [REDACTED] year employment with the State of Hawai'i Department of Education, however, Psychologist has only administered approximately three (3) academic assessments, as school psychologists do not normally conduct academic assessments. Testimony of Psychologist, Tr.50:19-51:20.
4. Principal has been the principal at Home School for [REDACTED] years, and prior to that was a complex academic officer for the State of Hawai'i Department of Education for [REDACTED] years. Principal has a bachelor's degree in family resources and a master's degree in counseling and guidance. Testimony of Principal, Tr.75:24-76:9.

Prior case background

5. Student is [REDACTED] years old and is enrolled in Home School. On September 23, 2019, Student was determined eligible for IDEA services under the category of [REDACTED] [REDACTED] [REDACTED]. See Petitioners'

- Exhibit 24, page 132 (hereinafter referenced as “P-Ex.24, p.132”).
6. As part of that eligibility determination, academic, cognitive, and speech-language assessments were conducted with Student between August and September 2019. *See* P-Ex.24, p.127-130.
 7. At the time of the eligibility determination on September 23, 2019, Parents did not have any objections or concerns with any of the assessments that were conducted with Student in August and September 2019, nor did they have any objections to the eligibility determination. P-Ex.24, p.131-132.
 8. In July and September 2020, after schools had been closed due to the COVID-19 global pandemic, Parents had requested an independent educational evaluation (hereinafter “IEE”) for Student based on the premise that Student was capable of doing more difficult work than what was being assigned. P-Ex.24, p.132-135.
 9. A Request for IDEA Impartial Due Process Hearing was filed on September 18, 2020 by the DOE based on Parents’ request for an IEE. A due process hearing was held with the participation of Parents and the Findings of Fact, Conclusions of Law, and Decision in that case was filed on December 14, 2020 (hereinafter “Decision”). P-Ex.24, p.118-140.
 10. In that Decision, this Hearings Officer reviewed the academic, cognitive, and speech-language assessments that were conducted with Student in August and September 2019. This Hearings Officer found that the assessments were appropriate for evaluating Student’s needs and to determine eligibility for Student for IDEA services. P-Ex.24, p.135-140.

Current dispute

11. On January 18 and 20, 2021, Parents emailed Former Home School to request that Student be tested outside of Former Home School. Parents did not indicate in what areas they wanted Student to be tested but it appeared that Parents took issue with Student Services Coordinator (hereinafter “SSC”), who conducted Student’s academic assessment in August 2019. P-Ex.1, p.002; P-Ex.2, p.004-005.
12. SPED RT assisted with Former Home School scheduling a meeting with Parents to discuss Parents’ request for Student to be retested. Testimony of SPED RT, Tr.13:24-18:5; P-Ex.3, p.007-010.
13. The meeting with Parents and Former Home School was held on February 5, 2021. At the meeting, the team decided that a reevaluation would be done for Student for just the academic assessment, since that is the assessment with which Parents had concerns. Parents did not request that either the cognitive or speech-language assessment be conducted as part of the reevaluation. Testimony of SPED RT, Tr.18:7-21:13; P-Ex.3, p.007-010; P-Ex.4, p.013.
14. On February 9, 2021, Parents were sent a prior written notice (hereinafter “PWN”) summarizing the decision by the team made at the February 5, 2021 meeting, as well as the consent for assessment as part of a reevaluation. P-Ex.4, p.012-014.
15. Initially, a different school psychologist was assigned to conduct the academic assessment with Student, however, due to some miscommunication, Parents requested a different assessor. Psychologist was assigned to conduct the academic assessment with Student for the reevaluation in 2021. Testimony of SPED RT, Tr.21:14-23:17; P-Ex.5, p.016-019; P-Ex.6, p.021.
16. On March 9, 2021, Psychologist contacted Parents to schedule Student’s academic

- assessment. P-Ex.7, p.023.
17. Psychologist conducted the academic assessment with Student on March 25, 2021. Testimony of Psychologist, Tr.52:21-53:1; P-Ex.18, p.066.
 18. The academic assessment was conducted at a neutral site away from Former Home School campus, as requested by Parents. Testimony of Psychologist, Tr.55:8-18; P-Ex.18, p.066.
 19. Psychologist used the Woodcock-Johnson IV-Tests of Achievement (hereinafter “WJ assessment”). The WJ assessment is an assessment regularly used by professionals in the field of educational assessments and has been determined to be reliable test for determining a student’s academic proficiency. Psychologist administered the WJ assessment according to the test protocols. Testimony of Psychologist, Tr.53:7-22, 67:4-25; P-Ex.066-074.
 20. During the assessment, Student was quiet and spoke at a low volume, so Student was sometimes requested to repeat Student’s answers. This did not affect Student’s performance on the assessment and Student appeared to be responding the questions with appropriate effort. Psychologist noted that based on Student’s demeanor, Student’s test results appeared to be a valid measure of Student’s academic achievement. Testimony of Psychologist, Tr.54:15-55:7; P-Ex.18, p.066.
 21. The results of the the academic assessment reflected that Student scored in the low average, low, or very low ranges on the various tests conducted. Testimony of Psychologist, Tr. 55:24-56:24, 57:8-62:1; *see* P-Ex.18, p.066-068.
 22. Psychologist included a summary of Student’s performance on the academic assessment and provided recommendations for classroom supports and modifications

- to assist Student in school. Testimony of Psychologist, Tr.62:10-24; P-Ex.18, p.067-068.
23. Student's scores on the academic assessment conducted by Psychologist on March 25, 2021, were consistent with the academic assessment conducted by SSC and the cognitive assessment conducted by Former Psychologist in August 2019. *See* P-Ex.19, p.071-071; P-Ex.20, p.076-082.
 24. Upon completion of the academic assessment by Psychologist, SPED RT attempted to schedule an eligibility meeting with Parents to review Student's eligibility based on the reevaluation. Parents told SPED RT that they did not want to schedule a meeting until they received the assessment results. Testimony of SPED RT, Tr.24:6-25:2; P-Ex.8, p.027.
 25. SPED RT was able to schedule an eligibility/IEP meeting with Parents for April 28, 2021. The meeting was held over a videoconference platform. Testimony of SPED RT, Tr.25:16-26:16; P-Ex.9, p.029-031.
 26. At the meeting, Parent attended the meeting but did not agree with SPED RT's policy of only allowing one person to speak at a time and muting all other participants. While SPED RT tried to allow input from all involved in the videoconference, Parent also did not comply with the rules of etiquette during the meeting. The meeting ended before any decisions being made due to Parent leaving the meeting. Testimony of SPED RT, Tr.27:1-31:6; P-Ex.10, p.033-035; P-Ex.11, p.038.
 27. During the meeting, Parent used expletives and made disparaging comments about other persons present at the meeting, including Former Principal and Psychologist. Parent was reminded several times of the rules of conduct for the meeting and when

- Parent refused to comply, Parent was muted in the videoconference. Testimony of SPED RT, Tr.33:14-24, 34:23-36:8; Testimony of Psychologist, Tr.68:18-25; *see also* P-Ex.10, p.033; P-Ex.11, p.038.
28. Parent demanded that the next meeting regarding Student be held in person so that Parent would not be muted or restricted. Former Home School discussed the possibility of conducting an in-person meeting, however participants from Former Home School expressed concerns for safety due to the language and aggressive nature of Parent, which they were familiar with from past meetings with Parent. Testimony of SPED RT, Tr.37:4-38:6, 40:5-41:11, 43:21-44:17; P-Ex.11, p.038.
29. Former Home School attempted to schedule another meeting for Student's eligibility via videoconference, however Parents refused to participate unless the meeting was held in person. Testimony of SPED RT, Tr.38:7-22; P-Ex.12, p.040-042.
30. Before Former Home School was able to resolve the issue of the next meeting for Student with Parents, Parents withdrew Student from Former Home School and enrolled Student in Home School. Testimony of Principal, Tr.76:14-78:8; P-Ex.13, p.044-047.
31. On August 2, 2021, Parents contacted Home School to request that Student be allowed to exercise a distance learning option for the 2021-2022 school year and that an eligibility/IEP meeting be held for Student. Testimony of Principal, Tr.79:12-80:13; P-Ex.25, p.142, audio recording.
32. On August 3, 2021, Vice Principal contacted Parents to schedule an eligibility/IEP meeting for Student. After further discussion with Parents on August 11, 2021, Vice Principal was able to schedule an eligibility/IEP meeting for Student on October 8,

2021. Testimony of Principal; Tr.80:14-84:10; P-Ex.26-28, p.144-148, audio recordings.
33. On August 13, 2021, Home School sent Parents a letter confirming the eligibility/IEP meeting for October 8, 2021 and provided a conference announcement to inform the participants of what would be discussed at the meeting. Testimony of Principal, Tr.84:11-85:16; P-Ex.15, p.052-057.
34. On October 8, 2021, the IEP team met with Parents for Student's eligibility/IEP meeting. Present at the meeting were participants from Home School and Former Home School, as well as Psychologist and SPED RT. Testimony of Principal, Tr.85:17-86:19.
35. At the eligibility/IEP meetings in April and October 2021, Psychologist presented the results of Student's academic assessment from March 2021. During the presentation of Psychologist's report, Parents asked questions and Psychologist answered Parent's questions. Testimony of Psychologist, Tr.56:25, 57:7, 65:20-66:5; Testimony of Principal, Tr.89:1-90:7.
36. The team also discussed other assessments done with Student, including electronic diagnostic tool test scores, an observation from Student's special education teacher at Former Home School, the cognitive and speech-language assessments conducted in August and September 2019, and information provided to the team from Parents. Testimony of Principal, Tr.90:8-96:5.; P-Ex.16, p.060-062.
37. The IEP team determined that Student remained eligible for special education and related services under the category of [REDACTED]. Other health impairment was considered but not determined to be the appropriate category of

eligibility. Neither Parents nor any of the other IEP team members disagreed with the determination that Student continued to be eligible under the category of [REDACTED]. [REDACTED]. Testimony of Principal, Tr.96:24-97:5, 102:19-103:6; P-Ex.17, p.064.

V. CONCLUSIONS OF LAW

A. IDEA framework

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 (D. D.C. 2008) (citing 20 U.S.C. §1400(d)(1)(A)). H.A.R. §8-60-2; 20 U.S.C. §1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39. A FAPE includes both special education and related services. H.A.R. §8-60-2; 20 U.S.C. §1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39.

Special education means “specially designed instruction to meet the unique needs of a child with a disability” and related services are the supportive services required to assist a student to benefit from their special education. *Id.* 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.” *Dep’t of Educ. of Hawai’i v. Leo W. by & through Veronica W.*, 226 F.Supp.3d 1081, 1093 (D. Hawai’i 2016).

A parent has a right to an independent educational evaluation of their child if they disagree with the evaluation that was completed by the school district. H.A.R. §8-60-57; 20 U.S.C. §1415(b)(1) and (d)(2)(A); 34 C.F.R. §300.502. Once an IEE is requested, the school

district must either file a due process complaint or provide the parent with an IEE at public expense. *Id.*

B. Validity of the Assessments Conducted by Petitioners

Petitioners argue that the assessments completed in August and September 2019 by SLP and SSC, and the academic assessment conducted by Psychologist in March 2021 for Student's reevaluation in 2021 are appropriate. Hawaii Administrative Rules Section 8-60-36(c) provide the parameters by which assessments for students undergoing an evaluation or reevaluation for special education services under the IDEA must be conducted. H.A.R. §8-60-37(b)-(c); 34 C.F.R. §300.304(b)-(c). The record here demonstrates that the cognitive, speech-language, and academic assessments comply with the recommended requirements under the IDEA.

As an initial matter, no dispute exists that the only assessment determined to be necessary for Student's reevaluation in 2021 was the academic assessment. *FOF 13*. Since Student was due for a triennial reevaluation in 2022, it was reasonable for the IEP team to determine that they only needed additional information on Student's academic performance during COVID. No questions or concerns were raised by Parents or any other team members about the reliability of the cognitive or speech-language assessments that were conducted in 2019.

This Hearings Officer previously found that the cognitive assessment conducted in September 2019 by Former Psychologist and the speech-language assessment conducted by SLP in August 2019 were appropriate and valid measures of Student's cognitive capabilities at the time of the assessments. *FOF 10*.

The new assessment that was determined to be necessary by the IEP team was the academic assessment. This was, in part, due to Parents' request that the academic assessment be done by someone unaffiliated with Former Home School. *FOF 11*. To accommodate Parents'

request, a different psychologist was assigned to conduct the academic assessment. *FOF 15*.

When miscommunications made it appear that Parents did not want to work with the other psychologist, Psychologist was assigned to conduct the academic assessment. *FOF 15*.

After finding an agreeable date with Parents for the academic assessment with Student, Psychologist conducted the academic assessment with Student at a neutral location away from Former Home School, again in response to Parents' request. *FOF 16-18*. Psychologist has been trained and has experience in conducting various assessments, and while Psychologist did not have much experience in administering academic assessments while working for the Hawai'i Department of Education, Psychologist was familiar with and comfortable conducting the academic assessment with Student. *FOF 3*. Psychologist utilized the Woodcock-Johnson IV-Tests of Achievement, which is widely recognized as a valid and reliable measure of student academic achievement and performance. *FOF 19*. Psychologist administered the test according to the testing protocols and noted that nothing about Student's behavior affected the results of the test. *FOF 19-20*. Moreover, Student's performance on the academic assessment with Psychologist in March 2021 was consistent with Student's performance on the academic assessment conducted in August 2019 by SSC, indicating that the results of the assessment are a reliable indicator of Student's academic capabilities. *FOF 23*. Petitioners have proven that the assessments conducted both in 2019 and 2021 for Student's reevaluation in 2021 were appropriate and valid indicators of Student's strengths and needs, sufficient to allow the IEP team to both determine Student's eligibility for IDEA services and to create an appropriate IEP for Student.

As part of Student's eligibility determination, the IEP team reviewed the 2019 and 2021 assessments, as well as other diagnostic measures of Student's performance, including a

classroom observation by Former Home School’s special education teacher that worked with distance learning with Student, diagnostic evaluations from an electronic reading and math diagnostic program, and input from Parents provided at the eligibility and IEP meetings. *FOF* 35-36.

Parents have not challenged the validity of any of the assessments or the reevaluation completed for Student. *FOF* 37. While it is unclear what Parents’ concerns or issues are with the assessments in Student’s reevaluation in 2021, Parents’ previous concern was that Student could perform better than was demonstrated in the assessments or than was reflected in the work that Student was being assigned. *FOF* 8. Indeed, it appears in Parents’ emails to Former Home School regarding the request for a reevaluation for Student, that Parents noted that Student was able to perform better in assessments conducted at home with Parents than in the assessments conducted by the DOE. *See* P-Ex.1, p.001; P-Ex.2, p.003-005; P-Ex.10, p.033-034. While Parents may have a different experience with Student’s performance on school work while at home, this fact alone does not invalidate the standardized assessments that have been relied upon by educational professionals in determining a student’s capabilities.

C. Parents are not entitled to an independent educational evaluation at public expense

Under the IDEA, parents are entitled to an IEE when they disagree with a school district’s evaluation done for their child with a disability. This IEE means “an evaluation conducted by a qualified examiner who is not employed by the department;” and, if so warranted, the IEE would be at “public expense, meaning that the department either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.” H.A.R. §8-60-57(a)(3); 34 C.F.R. §300.502(a)(3). As part of the rules provide, the school district is to provide parents with the information on where to obtain an IEE and for the

department's criteria for IEEs. H.A.R. §8-60-57(a)(2); 34 C.F.R. §300.502(a)(2). Even if the DOE's assessments are determined to be valid, Parents in this case are still entitled to obtain an IEE, however, not at public expense. H.A.R. §8-60-57(a)(4); 34 C.F.R. §300.502(a)(4).

Here, Petitioners have proven that the assessments conducted as part of Student's reevaluation were valid and conducted in compliance with the IDEA. Parents have not set forth any problems, concerns, or inaccuracies regarding any of the assessments conducted for Student's reevaluation. Further, Parents have not obtained an IEE to which they could point to in order to dispute the assessments performed by Petitioners. This Hearings Officer concludes that Petitioners have proven that Parents are not entitled to an IEE at public expense. If an IEE is obtained for Student, it would be a cost to Parents and not the DOE.

VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that the cognitive, speech-language, and academic assessments conducted by Petitioners to be appropriate, and that Parents are not 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 of the hearings officer to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a State court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2) and §8-60-70(b).

DATED: Honolulu, Hawai‘i, August 16, 2022.

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