



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

In the Matter of STUDENT, by and through  
PARENT,<sup>1</sup>

Petitioner(s),

vs.

DEPARTMENT OF EDUCATION, STATE  
OF HAWAI'I,

Respondents.

DOE-SY2122-041

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND DECISION

Due Process Hearing: August 22-25 & 29,  
2022

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

**I. 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 Hawai'i Administrative Rules §8-60-1, *et seq.*

The IDEA's purpose is

(A) to ensure that all children with disabilities have available to

them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

20 U.S.C. §1400(d)(1). An impartial due process hearing under the IDEA is to be conducted

[w]henver a complaint has been received under subsection [20 U.S.C. §1415](b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

20 U.S.C. §1415(f)(1)(A).

The State of Hawai‘i has organized through their Department of Education a set of rules to govern the procedural safeguards in accordance with the IDEA, which are reflected in the Hawai‘i Administrative Rules (hereinafter “HAR”) Title 8, Subtitle 2, Chapter 60. The jurisdiction of the undersigned Hearings Officer in accordance with the HAR, governs the practice of the State of Hawai‘i Department of Education regarding the education of students with disabilities residing within the State of Hawai‘i and does not extend to rules, regulations, or the education of children prior to their residency in the State of Hawai‘i. *See* Haw. Rev. Stat. §§302A-1101, 302A-1102, 302A-1112; *see also* *District of Columbia v. Abramson*, 493 F.Supp.2d 80, 84-85 (D.D.C. 2007) (finding that the District of Columbia is required to provide a free appropriate public education for students who are residents of the District of Columbia notwithstanding the student’s attendance at school in a different state).

## II. INTRODUCTION

### A. Petitioners’ Complaints

On June 6, 2022, the Department of Education, State of Hawai'i (hereinafter "Respondents" or "Hawai'i DOE") received a Request for an IDEA Impartial Due Process Hearing (hereinafter "Complaint") under HAR Title 8, Chapter 60, in accordance with the IDEA, from Student, by and through Parent (hereinafter "Petitioners"). Respondents filed an Insufficiency Notice and Motion for Dismissal and Order on June 14, 2022, noting that Petitioners' Complaint

appears to be a history of events associated with Parent's advocacy for [Student]. There are no dates specific to events described in the complaint. There are no specific allegations of violations against the last two IEPs developed by the DOE. ... Furthermore, the agencies, organizations, or institutions based in [Prior State] are beyond the jurisdiction of these due process proceedings. Lastly, the complaint fails to meet the requirements of 34 C.F.R. §300.508(b)(6) insofar as it does not propose any resolution grantable under the IDEA.

*Insufficiency Notice and Motion for Dismissal and Order*, filed June 14, 2022. A Determination of Insufficiency of Petitioners' Request for IDEA Impartial Due Process Hearing was filed on June 14, 2022, wherein Petitioners' Complaint was found to be insufficient due to the Complaint not containing allegations of wrongdoing by the Hawai'i DOE that Petitioners knew or should have known about within the two (2) year time period preceding the filing of the Complaint, as required under the IDEA. 20 U.S.C. §1415(b)(6); H.A.R. §8-60-61(a)(2). Petitioners were granted leave to file an amended Request for IDEA Impartial Due Process Hearing by June 27, 2022.

On June 14, 2022, Petitioners' filed their First Amended Request for IDEA Impartial Due Process Hearing (hereinafter "First Amended Complaint"). Respondents filed a Notice of Insufficiency of Petitioners' First Amended Request for IDEA Impartial Due Process Hearing on June 17, 2022, wherein Respondents argued that Petitioners failed to correct any deficiencies in

the original Complaint. Respondents noted that the only allegations that contained specific dates on which the violations occurred took place while Petitioners were residents of Prior State and are outside the jurisdiction of this administrative hearing. *Insufficiency Notice and Motion for Dismissal and Order*, filed June 17, 2022. On June 20, 2022, a Determination of Insufficiency of Petitioners' First Amended Request for IDEA Impartial Due Process Hearing (hereinafter "Determination of Insufficiency of FAC") was filed, wherein Petitioners were granted leave to file another amended Request for IDEA Impartial Due Process Hearing. The Determination of Insufficiency of FAC went through Petitioners' First Amended Complaint by section to inform Petitioners of the nature of the deficiencies in each section to guide Petitioners in filing a complaint that would meet the sufficiency standard under the IDEA. *See Determination of Insufficiency of Petitioners' Amended Request for Due Process Hearing*, filed June 20, 2022. The Determination of Insufficiency of FAC also provided Petitioners' with a deadline of July 1, 2022, by which Petitioners were required to submit a second amended Request for IDEA Impartial Due Process Hearing that complied with the notice requirements of the IDEA or Petitioners' First Amended Complaint would be dismissed. *Id.*

On June 23, 2022, Petitioners filed a Second Amended Request for IDEA Impartial Due Process Hearing (hereinafter "Second Amended Complaint").<sup>2</sup> Respondents filed a Notice of Insufficiency of Petitioners Second Amended Request for IDEA Impartial Due Process Hearing

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<sup>2</sup> Petitioners' Second Amended Complaint included a copy of a Combined Motion to Dismiss, Objection to Sufficiency, and Response to Request for Due Process Hearing, filed with Prior State's Board of Education, in which Prior School District notes receipt of a Request for IDEA Impartial Due Process Hearing from Petitioners on June 7, 2022. Prior School District states that the State of Hawai'i has no jurisdiction over it and objects specifically to any exercise of jurisdiction over Prior School District by the State of Hawai'i. Petitioners' Second Amended Complaint also included a Motion for Order One Due Process of Current Residence Jurisdiction and Order for Exhaustion of Administrative Remedies from Petitioners.

on June 27, 2022. On June 27, 2022, a Determination of Sufficiency of Petitioners' Second Amended Request for IDEA Impartial Due Process Hearing (hereinafter "Determination of Sufficiency") was filed, wherein a section of Petitioners' Second Amended Complaint was determined to be sufficient to proceed to hearing. The Determination of Sufficiency specifically outlined the section of Petitioners' Second Amended Complaint that complied with the requirements of the IDEA and pertained to issues within the jurisdiction of this Hearings Officer.<sup>3</sup> Petitioners were informed that the Due Process Hearing would only proceed on the

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<sup>3</sup> The Section of Petitioners' Second Amended Complaint that was determined to be sufficient to proceed to hearing was on pages 2-3 of Petitioners Second Amended Complaint and reads as follows: August 28, 2020, was Petitioner last IEP mtg. With the DOE. On August 28, 2020, Petitioners were provided a PRIOR WRITTEN NOTICE for student being removed from [Student's] IEP placement of [REDACTED] facility [Private School 2] on April 17, 2020. Petitioners did not agree to change of placement or change the IEP from August 28, 2019's IEP document as Parent stated that Student should NOT have been changed without a PRIOR IEP mtg., transition plan and services IN PLACE PRIOR TO CHANGING Student. There was not an agreement on credits, services, etc. The meeting was adjourned with the DOE going to do research and stated they would get back with Parent with resources and services. This meeting is recorded. Leaving this meeting without identification of current needs. Petitioner [Student] was removed from [Private School 2] on April 17, 2020, with Parent given 72-hours' notice and managed to file for "stay put"/restraining order on April 14, 2020, in the State of Hawaii. After Petitioner arrived back at home in State of Hawaii Petitioner withdrew "Stay put" Court filing because the damage was done, and Petitioner was not afforded Stay Put. The bottom proceeded to fall out for Student and Parent again went into crisis management. August 25, 2021, Parent sent an email communicating to the IEP Team that Parent had received a Certified Letter at one point but did not know the content of the letter as the letter was unopened, and in [Parent's] car parked at [Parent's] house or in [Parent's] home during the series of robberies. Parent did not hear back from DOE. On September 1, 2021, Parent sent a follow-up email stating that [Parent] was "checking in" to see if the IEP team had received [Parent's] email from the week before. Parent did not hear back from the DOE. Petitioners received a letter from the U.S. Department of Education Office of Civil Rights on September 22, 2021. Petitioners did not receive Parental Safeguards notice again until filing this Due Process Complaint (amended) on June 14, 2022, at which time [District Educational Specialist] emailed Procedural safeguards to Petitioners. From August 2020 until Petitioner filed this Due Process Petitioners emails have gone unanswered from the DOE and the DOE not providing Procedural Safeguards to Petitioners until filing this amended Due Process on June 14, 2022.

issues raised in the specific section of the Second Amended Complaint that was deemed sufficient. *See Determination of Sufficiency of Petitioners' Second Amended Request for IDEA Impartial Due Process Hearing*, filed on June 27, 2022. On July 1, 2022, Respondents filed DOE's Response to Petitioners' Second Amended Request for IDEA Impartial Due Process Hearing based on the specific section of Petitioners' Second Amended Complaint that was deemed sufficient in the Determination of Sufficiency.

**B. Prehearing Motions, Orders, and Correspondence**

A Prehearing Conference ("PHC") was conducted on July 6, 2022. Participating in the conference were: Chastity T. Imamura, Hearings Officer, Parent for Petitioners; and DOE District Educational Specialist (hereinafter "DES") for Respondents. At the prehearing conference, the Due Process Hearing (hereinafter "Hearing") was scheduled for August 22-26, 2022. The schedule of the Hearing tentatively provided Petitioners with two (2) days to present their case-in-chief and Respondents three (3) days to present their case. A Prehearing Order (hereinafter "PHO") was filed on July 7, 2022, listing the procedures, deadlines, issues, and remedies to be followed in the Hearing. *See Prehearing Order*, filed July 7, 2022. This order included information on how exhibits were to be labeled, numbered, and paginated, as well as the submission deadlines of the documents to Petitioners, Respondents, and to the Office of Dispute Resolution (hereinafter "the ODR"). Based on the Determination of Sufficiency filed on June 27, 2022, four (4) issues were determined to be resolved in the instant Decision. Petitioners objected to this position throughout the proceedings and stated that they should be able to present the issues in the entirety of their Complaint, First Amended Complaint, and Second Amended Complaint for determination at the Due Process Hearing.

Due to the coronavirus 2019 global pandemic, the Hearing was conducted via video

conferencing to ensure safety for all the participants in the Hearing. An Order Regarding Video Conference Due Process Hearing was issued on July 7, 2022, which set forth the parameters for the video conference hearing. These parameters included: the instructions to participate via the Zoom video conference internet platform; a court reporter would participate in the video conference hearing, swear in the witnesses, and transcribe the proceedings; all witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform; and that witnesses and parties would ensure confidentiality of the proceedings by participating in a private setting.

Between June 7, 2022, and July 11, 2022, Parent sent numerous emails with unsolicited motions and various documents encompassing a variety of allegations against the ODR, this Hearings Officer, the DOE, DES, and others; citing various laws and urging this Hearings Officer to make various findings or granting motions. On July 11, 2022, an email was sent to the parties to indicate that since no substantive motions were allowed in this case pursuant to the PHO, no further correspondence would be acknowledged or acted upon by the ODR, except to time-stamp and distribute the documents to the parties as part of the case file.

### C. Exhibits

The five (5) business day disclosure deadline pursuant to HAR Section 8-60-66(a)(3) in this case was Friday, August 12, 2022, due to August 19, 2022 being a State of Hawai'i holiday.<sup>4</sup> Respondents timely submitted their disclosures electronically in conformance with the PHO, along with a witness list, a witness testimony list, and an exhibit list. On Friday, August 12, 2022, Petitioners indicated that Petitioners were unable to open and/or download Respondents'

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<sup>4</sup> The State of Hawai'i recognizes "Statehood Day" or "Admissions Day," the day that Hawai'i became an official State within the United States of America, as a state holiday. This state holiday is celebrated on the third Friday in August.

exhibits, which were sent through a cloud-server link. For the convenience of the parties, Respondents' exhibits were downloaded and separated into smaller .pdf files<sup>5</sup> and emailed to both Petitioners and Respondents. On Friday, August 12, 2022, Petitioners requested that the Hearing be delayed by one (1) or more days because Petitioners were having trouble transporting their exhibit binders to both Respondents and the ODR. Respondents did not provide a response to Petitioners' request. This Hearings Officer denied Petitioners' request and noted that the PHO was issued more than one (1) month prior and provided the clear deadline of submissions by either electronic means or by hard copy. Petitioners had previously sent an email requesting that the ODR provide the clear date/time deadline for the disclosures on July 31, 2022, and the ODR provided a copy of the PHO with the paragraph reference containing the deadline to both Petitioners and Respondents on August 1, 2022. This Hearings Officer did allow Petitioners to submit the documents and would address any objections to the late-submitted disclosures at the start of the Hearing on August 22, 2022. Petitioners' seven (7) exhibit binders were received by the ODR on Tuesday, August 16, 2022. Petitioners' witness list and exhibit list were submitted electronically on Monday, August 15, 2022. Petitioners also submitted five (5) audio recordings electronically on that same date.<sup>6</sup>

Petitioners' exhibit binders were labeled by number, however the exhibits within the binders were not labeled, numbered, or paginated in conformance with the PHO. Some documents included in the binders were numbered, but the numbers did not correspond with any labels or identifiable markings in the exhibit list submitted by Petitioners. Many exhibits were

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<sup>5</sup> Respondents' files were downloaded and separated into forty-one (41) separate documents and sent via email to both Petitioners and Respondents by the ODR in the format that is used to submit correspondence to the parties.

<sup>6</sup> These recordings were labeled as follows: IEP mtg; IEP mtg. August 28, 2020; dispatch calls; [REDACTED] enrollment; and July 6, 2022 Due Process Status mtg. [REDACTED] exact quote.



not numbered, and many of the documents were incomplete or duplicate copies of other documents in the binders.

At the start of the Hearing on August 22, 2022, this Hearings Officer notified both parties that this Hearings Officer's inclination was to exclude the documents Petitioners submitted in the seven (7) binders if requested by Respondents, pursuant to HAR Section 8-60-66(a)(3). This Hearings Officer noted, however, that since Petitioners had timely submitted disclosures in a previous case involving the ODR and DES,<sup>7</sup> those documents would have been timely received for purposes of this Hearing as well. The ODR organized and paginated the previous submissions and sent them to both parties for their review. This Hearings Officer noted that if Petitioners requested, the submissions under the old case would be allowed for use as exhibits in this Hearing. Petitioners requested that those documents be received as evidence.<sup>8</sup>

Respondents did not object to this Hearings Officer receiving the seven (7) binders of exhibits that were submitted on August 16, 2022, despite the fact that they were not organized, paginated,<sup>9</sup> or labeled in conformance with the PHO. Based on Respondents' agreement to allow the exhibits to be used, this Hearings Officer did receive all seven (7) binders of exhibits as evidence.<sup>10</sup> Petitioners' audio exhibits that were submitted electronically were also received into

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<sup>7</sup> These disclosures were filed in DOE-SY2122-030.

<sup>8</sup> These documents were scanned and repaginated by the ODR staff and submitted to the parties via email on August 18, 2022. The pages were labeled "Scanned DOE-SY2122-030 Petitioners' Exhibits – Page [number]." These exhibits will be referenced in this Decision as "P-Ex.2122-030, p.[page number]" using the bates stamp number as noted above.

<sup>9</sup> This Hearings Officer notes that some of the documents were paginated and Parent referred to several of the documents in Binder 1 by page number, however these pages were not always in order or organized in any other fashion, so any referenced in this Decision will not include page numbers as referenced by Petitioners.

<sup>10</sup> Note that this Hearings Officer did not scan, reorganize, label, or paginate the documents in the seven (7) binders of exhibits, as that would have taken time that would have delayed the decision in this case. Instead, the documents in the binders will be referenced only by binder number throughout this Decision.

evidence.<sup>11</sup> Respondents likewise requested that all their exhibits be received into evidence for consideration in this Decision and Petitioners had no objection, therefore Respondents' exhibits were received into evidence in its entirety as listed in DOE's Amended Exhibit List.<sup>12</sup>

Petitioners further requested that all pleadings in Petitioners' prior case, DOE-SY2122-030, which was dismissed without prejudice due to Petitioners' withdrawing their Complaint just prior to the start of the due process hearing, be included in the record of this case. The ODR staff compiled all filings in the ODR pleadings in DOE-SY2122-030 and paginated the documents. Petitioners further requested that all pleadings in this case, DOE-SY2122-041, also be included as exhibits in the record for this case. The ODR staff compiled all filings in the ODR pleadings in DOE-SY2122-041 until the start of the Hearing and paginated the documents.<sup>13</sup>

In consideration for this Decision, this Hearings Officer did review all documents submitted by both Petitioners and Respondents and listened to the recordings submitted by both parties; however, most of the documents and recordings submitted were not relevant for the issues to be determined or for the Findings of Fact or Conclusions of Law, and as such not all documents or recordings submitted will be referenced in this Decision. The fact that the

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<sup>11</sup> Four (4) of the recordings, IEP mtg; IEP mtg. August 28, 2020; dispatch calls; and ██████ enrollment, were submitted through an application wherein the recording could be played with a printed transcript, however the recording itself could not be downloaded in audio form. Due to the inability to download the recordings, the transcripts that were submitted along with the recordings will be referenced, if applicable, in this Decision. For appellate purposes, the recordings will be manually recorded by the ODR for submission in an audio file, but the times on the transcript may differ from the audio recordings.

<sup>12</sup> Respondents were allowed to submit an Amended Exhibit List due to one of Respondents' electronic submissions, an audio recording, not being included on Respondents' original exhibit list.

<sup>13</sup> If referenced in this Decision, the documents in these exhibits will be referenced by the case number and the page number as listed in the exhibit lists that were prepared by the ODR staff.

documents and recordings are not referenced does not indicate in any way that the documents or recordings were not reviewed fully in consideration of this Decision.

D. Due Process Hearing

The Due Process Hearing began on August 22, 2022. Petitioners and Respondents were provided instructions on how the Hearing would proceed due to both parties not being represented by counsel. Both parties were informed that opening statements, closing arguments, and questions by the parties or any commentary in response to an answer provided by a witness would not be considered evidence. Since Parent represented Petitioners, Parent was informed that Parent would have the opportunity to present further testimony in response to any testimony by Respondents' witnesses. Petitioners called Parent to testify and rested their case-in-chief. The Hearing continued to August 23, 2022, where Respondents called Principal to testify. Respondents' other witnesses were not available until Wednesday, August 24, 2022, based on the initial scheduling discussions at the PHC, so the Hearing was continued after Principal's testimony. On August 24, 2022, Academic Director's (hereinafter "AD") testimony was completed, and Executive Director (hereinafter "ED") began to testify shortly before the lunch break. ED notified the parties at the lunch break on August 24, 2022, that ED was not available to continue that afternoon and would not be available until August 29, 2022. Based on this information, the Hearing was continued to August 29, 2022, for ED's testimony. In the afternoon of August 24, 2022, [REDACTED] District Educational Specialist (hereinafter "[REDACTED] DES") began to testify and [REDACTED] DES's testimony was completed on August 25, 2022. Respondents did not have any additional witnesses besides ED, so the Hearing was continued to August 29, 2022. On August 29, 2022, ED testified, and Respondents rested their case-in-chief.

Parent provided testimony in response to the testimony of Respondents' witnesses and rested Petitioners' case.

Both parties requested the opportunity to submit written closing arguments, as well as provide oral closing arguments to conclude their cases. Oral closing arguments were presented on August 29, 2022 with each party being given ten (10) minutes to sum up their position on the record. Written closing arguments were limited to ten (10) pages, typed, double-spaced, with twelve (12) point font, and were to be submitted by Monday, September 12, 2022, by 4:30 p.m. A Post-Hearing Order with the instructions for the filing of written closing arguments was filed on September 1, 2022. Both parties timely submitted their written closing arguments by the deadline.

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. ISSUES PRESENTED**

Petitioners assert four (4) issues in the Second Amended Complaint to be addressed in this Decision with the requested remedies:<sup>14</sup>

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<sup>14</sup> Petitioners objected throughout the proceedings to being limited to the issues listed herein. These issues were reworded by this Hearings Officer according to the section of the Second Amended Complaint that was deemed sufficient. Petitioners also claim that this Hearings Officer restricted any argument by Petitioners relating to Student's rights under Section 504 of the Rehabilitation Act of 1973 (hereinafter "Section 504") and forced Petitioners to file a new, separate complaint to address Student's 504 issues. This Hearings Officer notes that nowhere in Petitioners' Complaint, First Amended Complaint, and Second Amended Complaint do Petitioners allege any specific conduct against the Hawai'i DOE for failure to provide accommodations in accordance with Section 504. Additionally, at the prehearing conference in the new complaint filed by Petitioners, this Hearings Officer suggested that the two hearings be combined to prevent Petitioners from having to do separate Hearings, but Petitioners refused, saying that since this was part of the "divide and conquer methods" of the agencies involved, Petitioners needed to have it separate.

**Issue 1** – Whether the DOE denied Student a free appropriate public education (hereinafter “FAPE”) by allowing Student to be or having Student removed from Student’s [REDACTED] placement in April 2020 without any transition plan or services in place or without providing Parent a prior written notice of the removal until August 28, 2020.

**Issue 2** – Whether the DOE denied Student a FAPE by failing to include Parent in the meeting(s) held regarding Student’s removal from the [REDACTED] facility in April 2020 or by failing to have subsequent meetings to address Student’s needs given Student’s removal from the [REDACTED] placement.

**Issue 3** – Whether the DOE denied Student a FAPE by failing to communicate with Parent regarding Student’s education or services from August 2020 through June 2022.

**Issue 4** – Whether the DOE denied Student a FAPE by failing to provide Parent with procedural safeguards until June 14, 2022.

**Remedy 1** – Find that the DOE denied Student a FAPE.

**Remedy 2** – Compensatory education or any other remedy that is appropriate for the denial of FAPE.<sup>15</sup>

#### IV. FINDINGS OF FACT

##### Student’s background information

1. Student is [REDACTED] years old and was diagnosed with [REDACTED] disabilities since Student was around [REDACTED]. Student qualified for [REDACTED] special education and related services and has generally been eligible for such services since then.<sup>16</sup> Testimony of Parent, Transcript of Proceedings, Volume 1, page 65, line 15 through line 23 (hereinafter referenced as “Tr.V1, 65:15-23”).<sup>17</sup>

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<sup>15</sup> Petitioners’ Second Amended Complaint also included a request for attorneys’ fees, compensatory damages, and an acknowledgement of exhaustion of all administrative avenues, however, these remedies are not within the authority of this Hearings Officer to award.

<sup>16</sup> According to Student’s documents from Prior State, Student was determined to be ineligible for services from March 2010 through around March 2012 and was provided a Section 504 plan with accommodations but was determined to be eligible again for services for the next school year. *See* Petitioners’ Binder 5.

<sup>17</sup> Due to the number of different court reporters assigned to transcribe the proceedings, unlike

2. Student has been diagnosed with [REDACTED], [REDACTED], [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED] (hereinafter “[REDACTED]”). Respondents Exhibit 15, pages 0140 through 0163 (hereinafter referenced as “R-Ex.15, p.0140-0163”); R-Ex.18, p.0171-0193; R-Ex.26, p.0260-0284; R-Ex.30, p.0296-0319.
3. Prior to 2018, Student and Student’s family resided in Prior State and Student was enrolled in Prior School District. Testimony of Parent, Tr.V1, 65:15-66:10; *see also, generally*, Petitioners’ Binder 5 (hereinafter referenced as “P-Binder 5”).
4. In Prior State, Parent filed multiple requests for hearing and/or complaints under the IDEA against Prior School District, alleging various wrongdoings by Prior School District. Testimony of Parent, Tr.V1, 66:11-73:16; P-Binder 5.
5. Parent also filed complaints with the United States Department of Education Office of Civil Rights (hereinafter “U.S. DOE OCR”) against Prior School District. Testimony of Parent, Tr.V1, 67:12-68:7, 68:6-19 *See, e.g.*, P-Binder 5; R-Ex.45, p.0488-0856.
6. In 2018, Student and Student’s family moved to the State of Hawai‘i and Student was enrolled in Home School and Parent requested that Home School provide special education and related services under the IDEA for Student. Student was almost [REDACTED] years old at the time Student enrolled in Home School. Testimony of Parent, Tr.V1, 73:17-19; Testimony of [REDACTED] DES, Tr.V3, 125:23-126:2.

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other transcripts, where the numbers of each volume correspond with the numbers in the previous volume, these volumes each start with page 1. Additionally, not all Volumes have been labeled by the court reporters, so the Volume labels will be as follows: Volume 1: Monday, August 22, 2022; Volume 2: Tuesday, August 23, 2022; Volume 3: Wednesday, August 24, 2022; Volume 4: Thursday, August 25, 2022; and Volume 5: Monday, August 29, 2022.

7. Soon after Student was enrolled in Home School, Home School began holding individualized education program (hereinafter “IEP”) team meetings to review Student’s IEP plans from Prior State and develop an IEP for Student in Hawai‘i. *See* R-Ex.7-13, p.0093-0135.
8. The IEP team met on August 21, 2018, but was unable to complete a written IEP for Student. A prior written notice (hereinafter “PWN”) dated August 21, 2018 (hereinafter “PWN-8/21/2018”) was prepared and indicated that Home School was considering placement for Student at a [REDACTED] facility and [REDACTED] based on a neuropsychological evaluation done with Student in April 2016 as well as Student’s prior IEP from Prior State. P-Ex.2122-030, p.0671-0679, 0717-0729; R-Ex.9, p.0099-0100.
9. On August 21, 2018, Home School’s student services team determined that Student was eligible for special education and related services under the eligibility category of [REDACTED]. P-Ex.2122-030, p.0863-0864, 0869.
10. On August 21, 2018, Parent signed a consent for Initial Provision of Special Education and Related Services, authorizing the Hawai‘i DOE to provide special education and related services to Student. P-Ex.2122-030, p.0865.
11. The IEP team met again on August 29, 2018, and developed a written IEP for Student (hereinafter “IEP-08/29/2018”). Student’s educational placement in the IEP-08/29/2018 was “[REDACTED] facility and [REDACTED] school that provides [REDACTED] services, [REDACTED] services, and special education services.” The clarifications of supports and services section of the IEP-08/29/2018 indicated that Private School 1 would be providing the services included in Student’s

- IEP. P-Ex.2122-030, p.0497-0521; R-Ex.11, p.0123-0126.
12. Based on the information in the IEP-08/29/2018, Student was due for a reevaluation by August 21, 2021. P-Ex.2122-030, p.0497; R-Ex.11, p.0123.
  13. A PWN dated August 29, 2018 (hereinafter “PWN-08/29/2018”) was developed to confirm Home School’s offer of special education and related services in Student’s IEP-08/29/2018. The PWN-08/29/2018 reiterated that Student’s educational placement was “[REDACTED] facility and [REDACTED] school that provides [REDACTED] services, [REDACTED] services, and special education services.” R-Ex.12, p.130-131.
  14. On October 16, 2018, the IEP team met to review Student’s progress on the IEP-08/29/2018 and to address Parent’s concerns that Private School 1 was asking Parent to sign forms that indicated that Parent was responsible for payment for certain costs of Student’s stay/education at Private School 1. The IEP team addressed the issue and clarified with Private School 1. R-Ex.16, p.0165-0166.
  15. The IEP team met again on February 20, 2019, to discuss credits that Student would be earning as part of Student’s program at Private School 1, as well as some other concerns. P-Ex.2122-030, p.0395, 0771-0794; R-Ex.19, p.0195-0196.
  16. In April 2019, it came to Home School’s attention that Student had turned [REDACTED] years old in [REDACTED]. Home School informed Parent that before Home School could hold another IEP meeting, Parent needed to provide either a Hawai‘i Family Court guardianship order, a power of attorney notarized in the State of Hawai‘i, or a letter from Student’s primary physician indicating that Student does not have the capacity to make decisions. Testimony of [REDACTED] DES, Tr.V4, p.54:8-61:6,



64:12-66:12, 71:24-72:17; P-Ex.2122-030, p.0420-0424; P-Binder 1.

17. Parent presented Home School with an Order of Guardianship from Prior State and obtained a power of attorney that was signed and notarized in Prior State. Home School again informed Parent, under the guidance of their attorney, that the documents must be Hawai'i documents or a doctor's letter would provide a basis for the team to convene a meeting. Testimony of Parent, Tr.V1, 73:25-75:14; Testimony of ██████ DES, Tr.V4, p.54:8-61:6, 64:12-66:12, 71:24-72:17; P-Ex.2122-030, p.0391, 0425-0440; P-Binder 1.
18. Parent filed for guardianship of Student in the Family Court of the First Circuit, State of Hawai'i, in May 2019. P-Ex.2122-030, p.0441-0455, 0482-0489.
19. Parent provided Home School with a letter from Student's primary physician in Hawai'i, that indicated that Student lacked the capacity to make decisions. Thereafter, the IEP team continued to hold IEP meetings for Student. Testimony of ██████ DES, Tr.V4, 65:11-14; P-Ex.2122-030, p.0571-0572.
20. Another IEP meeting was held on May 28, 2019, to discuss a ██████ for Student to visit Student's family for the summer and to follow up on transition services for Student in Hawai'i or possibly in Prior State. R-Ex.22, p.0226-0227.
21. On August 29, 2019, the IEP team met to discuss Student's transition to Private School 2 after being informed that Private School 1 was no longer suited to implement Student's IEP-08/29/2018<sup>18</sup> due to Student's age. A new IEP dated August 29, 2019 (hereinafter "IEP-08/29/2019") was developed in which Private

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<sup>18</sup> Student's IEP-08/29/2018 was revised at every IEP meeting mentioned herein before August 29, 2019, however, no significant changes were made to Student's program and educational placement for purposes of this Decision.

School 2 was listed as the school to be providing the services and supports listed in the clarifications and supports section of the IEP. Student's placement of "[REDACTED] facility and [REDACTED] school that provides [REDACTED] services, [REDACTED] services, and special education services" remained the same in the IEP-08/29/2019. Two PWNs dated August 29, 2019 (hereinafter "PWNs-08/29/2019") were also developed to confirm Home School's offer for Student's educational placement at a [REDACTED] facility and [REDACTED] school, and for the offer of special education and related services to Student, which indicated the same information as the IEP-08/29/2019. P-Ex.2122-030, p.0702-0706, 0754-0770; R-Ex.26, p.0259-0284; R-Ex.27, p.0290-0291.

22. Private School 1 Counselor and Parent had suggested Private School 2 as a placement for Student and the Hawai'i DOE researched and approved it as a potential placement for Student. P-Ex.2122-030, p.0231-0232; R-Ex.28, p.0290.

23. From August 2019 through March 2021, Student's educational placement did not change from "[REDACTED] facility and [REDACTED] school that provides [REDACTED] services, [REDACTED] services, and special education services." Testimony of [REDACTED] DES, Tr.V3, p.135:7-13, 207:9-210:3; R-Ex.144, p.1498; R-Ex.148, p.1508; R-Ex.149, p.1512; R-Ex.152, p.1531; R-Ex.164, p.1588.

#### Private School 2 background information

24. Private School 2 is a privately-run [REDACTED] facility for children and young adults located in Prior State. Private School 2 is licensed by Prior State's department of health and human services and is also certified by an independent agency. Testimony of AD, Tr.V3, 30:25-31:34, 53:4-8; Testimony of ED, Tr.V5,

24:8-10.

25. Private School 2 employs AD, ED, and Human Resources Officer (hereinafter “HR Officer”). HR Officer is an attorney licensed in Prior State against whom suspension proceedings were initiated by Prior State’s Office of Professional Conduct on November 1, 2021, however no evidence of the outcome of the proceedings exists in the record.<sup>19</sup> Testimony of Parent, Tr.V1, 87:1-90:11; P-Ex.2122-030, p.0062-0112; P-Binder 1.
26. Private School 2’s policies and procedures include a requirement that all parents, legal guardians, and/or adult students sign an admissions agreement when enrolling in Private School 2. Testimony of ED, Tr.V3, 89:8-21, 95:9-18, Tr.V5, 23:23-30:4.
27. Private School 2’s admissions agreement is seventeen (17) pages long and includes various subsections, each of which needs to be initialed by the parent of the student. The financial liability section of the admissions agreement states that school districts proposed contracts with Private School 2 may be rejected by Private School 2 for payment of a student’s tuition and in that event, parents will be responsible for the student’s tuition, even if the school district is willing to pay. R-Ex.110, p.1235-1254.
28. Parents are unable to sign portions of the admissions agreement and not sign other sections that they believe are not applicable to their child’s admission, like the

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<sup>19</sup> No evidence has been submitted to suggest the outcome of the suspension proceedings for HR Officer other than what appears to be an uncertified printout of a docket showing the record of proceedings through April 2022. No orders of suspension or other ruling on the suspension petition has been submitted into evidence and HR Officer did not testify at the Hearing. Petitioners have also submitted documents showing that HR Officer has been arrested in Prior State, however, no certified court records or orders show what, if any, results were from the actions. P-Ex.2122-030, p.0113-0115. This Hearings Officer also finds that the arrest records of HR Officer, even if true, would be irrelevant to the proceedings based on the alleged offenses.

- financial liability section. Private School 2 requires the entire document to be signed, even if the student is being placed at Private School 2 by an educational agency pursuant to an IEP. Testimony of AD, Tr.V3, 43:24-44:20; Testimony of ED, Tr.V5, 60:11-61:25.
29. Private School 2 maintains that the admissions agreement is a separate document that is unrelated to any school district documents that are required for a student's admission. Private School 2 had a separate contract with the Hawai'i DOE related to payment for Student's special education and related services that is not part of Student's educational records and has not been turned over to Parent. Testimony of AD, Tr.V3, 13:14-14:6; 23:5-16, 37:20-38:8.
30. Private School 2's licensing and certification relies, at least in part, on compliance with its own policies and procedures, which includes the collection and maintenance of documents like the admissions agreement. Testimony of ED, Tr.V5, 24:13-28:18.

Student's attendance at and discharge from Private School 2

31. Student was enrolled in Private School 2 and began attending on September 9, 2019. On that date, Parent was asked to sign an admissions agreement as part of Student's enrollment. Parent did not sign the agreement at that time but informed Private School 2 that Parent would later sign the form and return it to Private School 2. Testimony of AD, Tr.V3, 27:7-11; Testimony of ED, Tr.V3, 86:8-88:11.
32. Parent had a conversation with HR Officer during which Parent got the impression that Private School 2 only needed an emergency medical power of attorney to be signed for Student's attendance at Private School 2, but not the admissions agreement. Testimony of Parent, Tr.V1, 104:20-111:20; P-Ex.2122-030, p.0153-

0154, 0224-0227; P-Binder-1; P-Recording “Enrollment.m4a.”

33. In October 2019, Student’s [REDACTED] coach at Private School 2 inquired with Parent and the Hawai‘i DOE regarding opening a bank account to fund costs for Student that would not be covered by the Hawai‘i DOE. Based on this inquiry, Parent sent a series of emails to [REDACTED] DES making allegations of wrongdoing by the Hawai‘i DOE.<sup>20</sup> R-Ex.51, p.0939-0950.
34. In November 2019, the IEP team met to review Student’s progress reports for Student’s program at Private School 2. *See* P-Ex.2122-030, p.0829-0834.
35. From September 19, 2019, through April 2020, ED attempted to contact Parent to get the signed admissions agreement. Testimony of ED, Tr.V3, 91:9-92:21; *see also* R-Ex.47, p.0869.
36. In March 2020, an incident occurred where Student called Parent from Student’s room alleging that Student was assaulted by a staff member. Parent was in Hawai‘i at the time and called the Prior State police to make a report. The Prior State police made a miscellaneous-type report, and it is unclear what, if anything resulted from the

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<sup>20</sup> Parent has a similar set of allegations of wrongdoing against the Hawai‘i DOE, which were also included in all versions of Petitioners’ Complaints and in multiple emails sent at various times to the IEP team. These allegations include wrongdoing by a deputy attorney general in the Family Court guardianship proceedings and collusion by the Family Court staff to ‘lose’ Petitioners’ documents, denying requests for records from the Hawai‘i DOE, allegations of the Hawai‘i DOE taking or misusing Student’s social security benefits, failing to provide vision therapy, Student being ‘kicked out’ of Private School 1, failure to provide compensatory education ordered by the U.S.DOE OCR against Prior School District, failing to provide Parent with an attorney to assist Parent in complaints for the violations listed above, and failure of the private facilities to be held responsible under federal law and the IDEA. Parent has stated several times during the Hearing that these facts and allegations have been “proven as facts,” however, no evidence of any wrongdoing related to these complaints have been presented as part of this case to support any of these allegations, even if they were under the purview of this Hearing Officer’s jurisdiction.

report. Testimony of Parent, Tr.V1, 81:9-82:8; P-Ex.2122-030, p.0243-0252; P-Binder 1.

37. From March 2020 through the start of the 2021 school year, the State of Hawai‘i was under emergency proclamations that shut down most businesses and public buildings, areas, and services due to the COVID-19 global pandemic. As a part of this lockdown, the Hawai‘i DOE was not providing in-person services to general education students. From March 2020 through around May 2020, special education students were also not receiving services, and in May 2020 through July 2020, a group of ‘vulnerable students’ received some services in person. Testimony of ██████ DES, Tr.V3, 128:3-131:1; *see also* Hawai‘i DOE press release April 17, 2020, “HIDOE enrichment and distance learning to continue for the remainder of the 2019-2020 school year.”
38. In April 2020, after Student had been attending Private School 2 for approximately six (6) or seven (7) months, Parent was notified that if Parent did not sign the admissions agreement by a specific date, Student would be discharged from Private School 2. Testimony of ED, Tr.V3, 92:16-99:8; R-Ex.63, p.1007; R-Ex.76, p.1038-1071; R-Ex.80, p.1094-1095; R-Ex.82, p.1101-1102.
39. During Student’s attendance at Private School 2 from September 2019 through April 2020, the IEP team met a few times to discuss Student’s program and progress at Private School 2. Testimony of AD, Tr.V3, 21:7-23:18, 78:3-9; *see, e.g.*, R-Ex.30, p.0295-0319; R-Ex.33, p.0330-0331.<sup>21</sup>

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<sup>21</sup> Respondents’ Exhibit 31, p.0320-0324 purports to be a PWN from a November 2019 IEP meeting, however the document submitted is an exact copy of the PWN from a later meeting in August 2020 with the November date. It is clear that the PWN dated November 26, 2019 is not

40. At no time during the IEP team meetings at which representatives from Private School 2 attended, did they inform the IEP team that Student's enrollment was in jeopardy due to Parent not signing the admissions agreement. Testimony of AD, Tr.V3, 78:3-79:11; Testimony of ██████ DES, Tr.V3, 132:11-14.
41. On Wednesday, April 8, 2020, HR Officer emailed Parent to request that Parent sign the admissions agreement and indicated that Parent had previously been requested to sign the document and had not done so by this time. HR Officer informed Parent that if the documents were not signed, Student would be discharged from Private School 2. Parent forwarded the email from HR Officer to the IEP team members from the Hawai'i DOE and Private School 2. Testimony of ██████ DES, Tr.V3, 131:2-132:25; *see* R-Ex.45, p.0490-0491; R-Ex.52, p.0952; R-Ex.0959-0976; R-Ex.55, p.0978.
42. On April 13, 2020, ██████ DES contacted ED and HR Officer to speak with them to obtain information on the situation involving Student. The April 8, 2020 email was the Hawai'i DOE's first notice that Student's enrollment was in danger due to Parent not signing the admissions document. Testimony of ██████ DES, Tr.V3, 131:20-132:14, 157:7-17; R-Ex.65, p.1013; R-Ex.66, p.1019; R-Ex.67, p.1027.
43. At one point around this time, Parent emailed ██████ DES and asked if Parent needed an emergency IEP meeting to get answers to Parent's questions. ██████ DES did not take this as a request for an IEP meeting, nor did ██████ DES believe that an IEP team meeting was necessary since Student's IEP-08/29/2019 program or placement was not changing and the Hawai'i DOE would need to either get Private

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accurately from that meeting, as it discusses events that undisputedly took place in April 2020.

School 2 to keep Student or to find an alternative location for Student's IEP-08/29/2019 to be implemented. Testimony of ██████ DES, Tr.V3, 135:5-136:21.

44. On April 13, 2020, HR Officer informed Parent that Private School 2 was given Parent a deadline of 5:00 p.m. on April 14, 2020 by which the admissions agreement needed to be signed or Student would be discharged from Private School 2. Testimony of ██████ DES, Tr.V3, 154:9-15; P-Ex.2122-030, p.0228; R-Ex.70, p.1037.
45. On April 13, 2020, ██████ DES responded to the questions sent by Parent regarding the communications from Private School 2 about the admissions agreement and Student's pending discharge. ██████ DES noted that Private School 2's requirement that Parent sign the admissions agreement was outside the control of the Hawai'i DOE, and that Parent should sign the document to prevent Student's discharge. ██████ DES noted that if Student was ultimately discharged, the IEP team would work on finding Student another suitable ██████ facility and ██████ school, but that it would be difficult due to the current restrictions in the country related to the COVID-19 global pandemic. Testimony of ██████ DES, Tr.V3, 154:1-22, 158:10-162:17; P-Ex.2122-030, p.0835-0836; R-Ex.71, p.1041-1042.
46. Additional email communications happened among Parent, HR Officer, ██████ DES, and ED, wherein Parent made additional allegations but did not sign the admissions agreement document by the deadline of April 14, 2020 at 5:00 p.m. See R-Ex.65-80, p.1013-1095; see also R-Ex.184, p.1670-1671.
47. On April 14, 2020, Parent filed a Complaint in the United States Federal District



- Court, District of Hawai‘i (hereinafter “U.S.D.C. Hawai‘i”). Testimony of Parent, Tr.V1, 85:20-22; P-Ex.2122-030, p.0576-0659; P-Binder 1; *see also* R-Ex.80, p.1094; R-Ex.99-101, p.1165-1175.
48. On April 14, 2020, at 4:10 p.m. (Hawai‘i Standard Time), ED emailed Parent to inform Parent that due to Private School 2’s not receiving the admissions agreement by the deadline of 5:00 p.m.,<sup>22</sup> that Student would be discharged from Private School 2 within seventy-two (72) hours and Private School 2 was working on making [REDACTED] arrangements for Student [REDACTED] to Hawai‘i unless other arrangements are made. Testimony of [REDACTED] DES, Tr.V3, 164:6-165:14; P-Ex.2122-030, p.0223; R-Ex.82, p.1101.
49. On April 15, 2020, Parent emailed [REDACTED] DES and Principal and made a formal request for Student’s educational records. [REDACTED] DES responded shortly thereafter to inform Parent that Student’s educational records would be ready by May 30, 2020. Testimony of [REDACTED] DES, Tr.V3, 167:23-169:2; R-Ex.94, p.1150.
50. While [REDACTED] DES was originally going to schedule an IEP meeting due to Student’s discharge from Private School 2, Parent’s request for educational records delayed the scheduling of the meeting, since the records request needed to be completed prior to the IEP meeting being held. Testimony of [REDACTED] DES, Tr.V3, 178:20-183:2.
51. On April 15, 2020, Parent also sent another email to [REDACTED] DES with additional questions based on the events that occurred involving Student’s discharge from Private School 2. R-Ex.98, p.1161-1162.

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<sup>22</sup> While it is unclear from the email from HR Officer regarding the deadline by which Private School 2 needed to receive the signed documents, it appears it was based on Prior State’s time zone, due to the timing of the email sent by ED.

52. On April 16, 2020, at 5:14 p.m. and 8:01 p.m. (Hawai'i Standard Time) Parent emailed CEO, HR Officer, [REDACTED] DES, and others a signed copy of the admissions agreement, on which Parent handwrote in that Parent was signing the document under duress. Testimony of Parent, Tr.V1, 86:10-11; R-Ex.110-111, p.1236-1256.
53. Student was discharged from Private School 2 and [REDACTED] home to Hawai'i from Prior State with an employee of Private School 2. Upon arrival to Hawai'i, the employee from Private School 2 took Student to Parent's house. Parent and Student's sibling were present when Student arrived. No incidents occurred during the transport of Student from Private School 2 to Student's home in Hawai'i. R-Ex.234, p.1936.

Communications after Student's discharge from Private School 2

54. On April 28, 2020, [REDACTED] DES emailed HR Officer and CEO to see if Private School 2 would be willing to take Student back based on Parent's submission of the signed admissions agreement or if Private School 2 would be willing to provide interim services until the Hawai'i DOE could find another suitable location for Student's IEP-08/29/2019 implementation. Testimony of [REDACTED] DES, Tr.V3, 181:25-185:11; *see* R-Ex.120-129, p.1279-1326; R-Ex.132, p.1334.
55. [REDACTED] DES also contacted Private School 1 and Private School 2 to obtain electronic copies of Student's educational records from both schools. Testimony of [REDACTED] DES, Tr.V3, 182:11-15; R-Ex.136-143, p.1343-1496.
56. Private School 2 informed [REDACTED] DES that Private School 2 would not accept Student back to its program due to Parent's unwillingness to enter into a [REDACTED] relationship with Private School 2. Testimony of [REDACTED] DES, Tr.V3, 189:9-15; R-Ex.135, p.1341.

57. On May 29, 2020, [REDACTED] DES provided Parent with Student's educational record electronically via email and also requested that Parent provide the IEP team with dates and times where Parent would be available for an IEP meeting. Testimony of [REDACTED] DES, Tr.V3, 190:18-191:4; R-Ex.144, p.1498.
58. The IEP team found an alternative [REDACTED] facility and [REDACTED] school (Private School 3) for Student and sent Parent a consent form for the IEP team to share Student's information with the Private School 3 via email. The emails also included further requests for Parent to provide dates and times for the IEP team to meet. Hawai'i DOE made six (6) attempts to get Parent to sign the consent form to share information with Private School. Testimony of [REDACTED] DES, Tr.V3, 191:192:4-194:8; R-Ex.149-150, p.1512-1526.
59. Parent responded to the emails with possible meeting dates and times but did not sign the consent to share information forms with Private School 3 for Student. R-Ex.151, p.1528-1529.
60. An IEP meeting was scheduled for June 30, 2020, based on the dates that Parent provided to the IEP team, but Parent had emailed to cancel the meeting on June 29, 2020, due to a doctor's appointment. R-Ex.159, p.1561-1567; R-Ex.162, p.1583-1584.
61. On July 2, 2020, the Hawai'i DOE was informed that Parent had filed a complaint with the U.S. DOE OCR and had requested that the Hawai'i DOE respond to allegations that 1) In April 2020, the Hawai'i DOE failed to respond to the student's parent's request for an IEP meeting when the student was discharged from the [REDACTED] facility where Student had been placed by the Hawai'i DOE; 2) Since

- April 17, 2020, the Hawai'i DOE has denied the student a FAPE by failing to timely provide Student with an appropriate placement; and 3) allegations of retaliation against Parent for advocacy on behalf of Student. The Hawai'i DOE submitted their response on September 14, 2020. R-Ex.45, p.0488-0856.
62. [REDACTED] DES sent several follow up emails to Parent to reschedule the IEP meeting. Parent sent emails making additional allegations of wrongdoing against the IEP team for Student's removal from Private School 2 but did not provide potential meeting dates until August 1, 2020. In Parent's August 1, 2020 email, Parent requested that the DOE provide answers to twenty-two (22) questions at least twenty-four (24) hours prior to the IEP meeting being held. Testimony of [REDACTED] DES, Tr.V3, 200:6-24; R-Ex.162-167, p.1583-1607; R-Ex.168, p.1609-1619.
63. The IEP meeting was scheduled for August 11, 2020, at 2:30 p.m. On August 10, 2020, at 2:19 p.m., [REDACTED] DES sent Parent an email providing answers to all twenty-two (22) questions Parent posed in the August 1, 2020 email. Testimony of [REDACTED] DES, Tr.V3, 204:24-206:25; P-Ex.2122-030, p.0838-0844; R-Ex.184, 1665-1680.
64. On August 11, 2020, at 11:13 a.m., Parent emailed [REDACTED] DES, Principal, and others stating "Please let me know when you honestly answer the questions presented to you by Parent to allow for informed consent for any mtg. to take place." Parent also noted that Parent opened a U.S. DOE OCR investigation into the discharge of Student from Private School 2. Testimony of [REDACTED] DES, Tr.V3, 211:9-212:13; R-Ex.188, p.1697.
65. Throughout the time from June through August 2020, [REDACTED] DES was in contact with representatives from Private School 3 to hold a space for Student pending Parent

- signing the consent forms to share information with Private School 3 for Student's transfer there. Testimony of ██████ DES, Tr.V3, 195:1-11, 204:11-18, 214:15-19, 216:1-217:3, R-Ex.182-183, p.1661-1663; R-Ex.185, p.1682; R-Ex.190, p.1701; R-Ex.192, p.1752; R-Ex.194, p.1759.
66. On August 18, 2020, Principal sent an email to Parent with an offer of interim services for Student until the IEP team could meet to determine a suitable location for Student to continue treatment and special education and related services. Parent was requested to confirm that Parent would accept the interim services for Student by August 24, 2020. A copy of the procedural safeguards under the IDEA was attached to this email as well. R-Ex.191, p.1703-1750.
67. Parent sent a lengthy email to Principal raising allegations that Parent had previously raised in the numerous emails to ██████ DES, including misconduct by a deputy attorney general, wrongdoing by Private School 2 in the discharge of Student, and allegations that the Hawai'i DOE was refusing to provide answers to Parent or assist Parent with finding legal representation. Parent did not indicate that Student would be participating in the listed interim services offered by Home School. R-Ex.193, p.1754-1757.
68. On August 27, 2020, Parent signed the consent form for release of information to Private School 3. Private School 3 informed ██████ DES that Private School 3 would likely have a space for Student in September 2020. R-Ex.196-198, p.1765-1772.
69. An IEP meeting was scheduled and held on August 28, 2020. The IEP team was unable to complete the IEP discussion and a written IEP was not developed for

- Student at the meeting. A PWN dated August 28, 2020 (hereinafter “PWN-08/28/2020”) was issued to describe the events that occurred leading up to and at the meeting on August 28, 2020. P-Ex.2122-030, p.0737-0741; R-Ex.195, p.1761-1763; R-Ex.212, p.1837-1841.
70. Home School continued to offer interim services for Student for the time period when the IEP team was attempting to meet to develop a new IEP for Student. Testimony of Principal, Tr.V2, 42:17-446:5; R-Ex.213, p.1843.
71. Emails, telephone calls, and certified letters to Parent went unanswered from September 2020 through November 2020, when Parent sent a single email back to Behavioral Health Specialist (hereinafter “BHS”) on November 6, 2020. Testimony of Principal, Tr.V2, 48:3-15; R-Ex.214-219, p.1845-1859; R-Ex.221-226, p.1877-1897.
72. Thereafter, further calls, emails, and letters from Home School to Parent again went unanswered until August 25, 2021. It was unusual for Home School, ██████ DES, and/or the IEP team to not hear from Parent, as Parent was usually in constant communication regarding Student’s services. Testimony of Principal, Tr.V2, 50:25-53:6.
73. Home School sent personnel to do a home visit to see if they could make contact with Parent to urge Parent to contact the school to schedule a continued IEP meeting to complete Student’s IEP. Testimony of Principal, Tr.V2, 45:14-48:15.
74. On January 29, 2021, the U.S. DOE OCR informed the Hawai‘i DOE that it had determined that there was insufficient evidence to support Parent’s claims that: 1) In April 2020, the Hawai‘i DOE failed to respond to the student’s parent’s request for an

IEP meeting when the student was discharged from the residential facility where Student had been placed by the Hawai'i DOE; 2) Since April 17, 2020, the Hawai'i DOE has denied the student a FAPE by failing to timely provide Student with an appropriate placement; and 3) allegations of retaliation against Parent for advocacy on behalf of Student. Testimony of [REDACTED] DES, Tr.V3, 143:9-146:13; R-Ex.46-47, 0857-0875.

75. On February 19, 2021, Home School sent a letter to Parent stating that since Student was eligible for IDEA special education and related services and due for a triennial reevaluation, Parent must contact Home School no later than March 3, 2021, or Home School would determine that Student is no longer eligible for IDEA special education and related services. The letter was sent via certified mail and Parent signed the certified mail receipt form, indicating that Parent received the letter. Testimony of Principal, Tr.V2, 53:7-54:14; R-Ex.228-229, p.1901-1919.

76. Home School did not hear from Parent or Student or any representative on their behalf regarding the February 19, 2021 letter by March 3, 2021 and the Hawai'i DOE determined that Student was no longer eligible for special education and related services under the IDEA. Testimony of Principal, Tr.V2, 56:8-25; R-Ex.233, p.1929-1934.

77. On August 25, 2021, Parent emailed Home School from a new email address to inform them that while Parent received the certified letter, Parent did not read it. The email also contained information that Parent's home was burglarized, and Parent was told by police and other investigators that Parent was being 'targeted' as a result of

Parent's advocacy for Student.<sup>23</sup> Parent resent the email again on September 1, 2021. Testimony of Principal, Tr.V2, 55:7-56:1; R-Ex.230-231, p.1921-1925.

78. On September 14, 2021, Principal sent a letter via certified mail to Parent acknowledging Parent's emails on August 25 and September 1, 2021. Principal's letter informed Parent of the contents of the February 19, 2021, letter and stated that Student was no longer eligible for special education and related services, but that if Parent wanted, Parent could request an initial evaluation from the DOE to determine if Student would be eligible for special education and related services. A contact person and a telephone number were provided to Parent in the letter. The letter was returned to Home School as undeliverable. Testimony of Principal, Tr.V2, 72:23-73:16; R-Ex.233, p.1929-1934.
79. Parent did not contact Home School to request an initial evaluation for Student.
80. Home School did not make any further attempts to contact Parent regarding Student and the provision of special education and related services. The IEP team did not complete a reevaluation of Student, nor was Student's IEP reviewed, revised, or developed for the 2021-2022 school year. Testimony of Parent, Tr.V1, 176:22-179:2.
81. Student has not been receiving any services since Student's discharge from Private School 2 in April 2020. Parent has been unable to find a placement for Student and Student has refused to continue with therapy in the interim. Testimony of Parent, Tr.V1, 176:22-179:2.

## **V. CONCLUSIONS OF LAW**

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<sup>23</sup> No evidence has been presented to support any of the claims that Parent made in the email, specifically related to the burglary of the family home or any statements from anyone other than Parent to support any claims that Parent has been 'targeted' due to Parent's involvement with the DOE or any judicial proceedings.



## Burden of Proof

The burden of proof in a request for IDEA impartial due process proceeding falls upon the party making the request. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537 (2005); *see also Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J*, 502 F.3d 811, 820 (9<sup>th</sup> Cir. 2007). The standard of proof in such cases requires the requesting party to prove the allegations by a preponderance of the evidence. H.A.R. §8-60-66(a)(2)(B). In this case, Petitioners bear the burden of proving the four (4) disputed issues as listed in Section III, *supra*.

## 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)). 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 a 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).

The IEP is used as the “centerpiece of the statute’s education delivery system for disabled children.” *Honig v. Doe*, 484 U.S. 305, 311, 108 S.Ct. 592, 598, 98 L.Ed.2d 686 (1988). It is “a

written statement for each child with a disability that is developed, reviewed, and revised” according to specific detailed procedures contained in the statute. H.A.R. §8-60-2; 20 U.S.C. §1401(14); 34 C.F.R §300.22. The IEP is a collaborative education plan created by parents and educators who carefully consider the child’s unique circumstances and needs. H.A.R. §8-60-45; 20 U.S.C. §1414; 34 C.F.R §300.321-300.322.

The DOE is not required to “maximize the potential” of each student; rather, the DOE is required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational benefit.” *Rowley*, 458 U.S. at 200-201, 102 S.Ct. at 3047-3048. However, the United States Supreme Court, in *Endrew F. v. Douglas County School Dist.*, held that the educational benefit must be more than *de minimus*. 137 S.Ct. 988, 197 L.Ed.2d 335 (2017). The Court held that the IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S.Ct. at 1001, 197 L.Ed.2d 335; *see also, Blake C. ex rel. Tina F. v. Hawai‘i Dept. of Educ.*, 593 F.Supp.2d 1199, 1206 (D. Hawai‘i 2009).

In deciding if a student was provided a FAPE, the two-prong inquiry is limited to (a) whether the DOE complied with the procedures set forth in IDEA; and (b) whether the student’s IEP is reasonably calculated to enable the student to receive educational benefit. *Rowley*, 458 U.S. at 206-7; 102 S.Ct. at 3050-3051. “A state must meet both requirements to comply with the obligations of the IDEA.” *Doug C. v. Hawai‘i Dept. of Educ.*, 720 F.3d 1038, 1043 (9th Cir. 2013); *see also, Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001).

Procedural violations do not necessarily constitute a denial of FAPE. *Amanda J.*, 267

F.3d at 892. If procedural violations are found, a further inquiry must be made to determine whether the violations: 1) resulted in a loss of educational opportunity for Student; 2) significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student; or 3) caused Student a deprivation of educational benefits. *Id.*

- A. Petitioners have not met their burden of proof to show that the Hawai'i DOE denied Student a FAPE by allowing Student to be or having Student removed from Student's private [REDACTED] placement in April 2020 without any transition plan or services in place or without providing Parent a prior written notice of the removal until August 28, 2020

Petitioners' first argument can be broken down into three (3) sub-issues: 1) whether the Hawai'i DOE allowed Student to be removed from Student's placement at Private School 2 or had Student removed from Private School 2; 2) whether Student was removed from Private School 2 without any transition plan or services in place; and 3) whether the Hawai'i DOE failed to provide a prior written notice to Parent of the removal of Student until August 28, 2020. Each of these issues will be addressed in turn.

1. The Hawai'i DOE did not have Student removed and could not prevent Student's removal from Private School 2 in April 2020

Petitioners argue that under the IDEA, Private School 2 was not allowed to discharge Student based on Parent's failure to sign the admissions agreement and also that the Hawai'i DOE was in a position to stop Student from being discharged. Petitioners have not proven that Private School 2 is an entity that operates under federal IDEA law and is subject to the requirements of the IDEA. Further, Petitioners have failed to prove that the Hawai'i DOE had any power or authority over Private School 2 to stop the discharge of Student in April 2020.

The IDEA provides regulations to States and public agencies within each State that receive federal funding under the IDEA. While it is the responsibility of any local state

educational agency to ensure the rights of students and parents under the IDEA, the IDEA does not confer upon it any authority of the state or local educational agency to control the operations of a private entity, such as a private school or institution. *See* 20 U.S.C. §§1400, 1407, 1412; 34 C.F.R. §300.2.

Private School 2 is a private entity that has its own policies and procedures that meet the requirements of licensure to operate in Prior State. *FOF 24, 30.* Petitioners have not proven that Private School 2 receives federal funds as a state entity under the IDEA or is required to abide by the requirements under the IDEA. One of Private School 2's requirements for enrollment for Student was for Parent to sign an admissions agreement, which it notified Parent needed to be signed or Student would be discharged. *FOF 26, 31, 37, 41, 44.* Private School 2 and the Hawai'i DOE informed Parent that only Parent or Student could sign the document, and not the Hawai'i DOE or anyone from the IEP team. *FOF 45.* While it is very suspicious to this Hearings Officer that Private School 2 threatened to discharge Student for Parent not signing the admissions agreement only after the incident in March 2020, Private School 2 was not under any obligation to keep Student in their program if Parent continued to refuse to sign the admissions agreement. Parent refused to sign the document until after the deadline given by Private School 2 had passed. *FOF 46-48, 52.*

The evidence in this case is that Private School 2 chose not to inform the IEP team or members of the Hawai'i DOE of the potential for Student to be discharged from Private School 2 until just shortly before the arbitrary deadline given by Private School 2.<sup>24</sup> *FOF 38-40.* The

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<sup>24</sup> Again, while this Hearings Officer finds that Private School 2's actions are very suspicious with the timing of the notice provided to Parent, in addition to the lack of information provided to the Hawai'i DOE or the IEP team, like the Hawai'i DOE, this Hearings Officer has no jurisdiction or control over the actions of Private School 2.

Hawai'i DOE found out about the potential discharge when Parent forwarded the email from Private School 2 on April 8, 2020. *FOF 42*. Upon receiving notification of the potential discharge of Student, the Hawai'i DOE took every reasonable measure it had available to try to remedy the situation. *FOF 42, 45*. [REDACTED] DES contacted Private School 2 to see if a solution could be had, contacted Parent to urge Parent to sign the form with the assurance from HR Officer that Parent would only be financially liable if the Hawai'i DOE stopped making payment, and began to explore potential possibilities for Student if no solution was found to keep Student at Private School 2. The Hawai'i DOE, along with the rest of the country and world, was dealing with the start of the global COVID-19 pandemic, so many resources that would normally have been available during ordinary times were now no longer available. *FOF 37, 45*.

While Parent sent multiple emails asking questions of the Hawai'i DOE and asked "if Parent needed an IEP meeting," this did not confer additional responsibilities upon the Hawai'i DOE that could prevent Student from being discharged from Private School 2. *FOF 43*. According to Private School 2, Parent was the only person that could stop Student's discharge by signing the admissions agreement by the deadline given by Private School 2.

Petitioners have failed to prove that the Hawai'i DOE denied Student a FAPE by having Student removed from Private School 2 or by failing to prevent Student from being discharged from Private School 2.

2. Whether the Hawai'i DOE denied Student a FAPE by failing to have transition plan or services in place upon Student's discharge from Private School 2

Petitioners next argue that the Hawai'i DOE denied Student a FAPE by failing to have a transition plan or services in place upon Student's discharge from Private School 2. As the sudden nature of Student's discharge was made by Private School 2 due to Parent's refusal to

sign the admissions agreement, this issue requires an analysis of the Hawai'i DOE's obligations regarding transition plan or services in April 2020.

The IDEA does not specifically require an IEP team to create transition plan for students to ease the move from one educational placement to another. *Dept. of Education v. L.S. by and through C.S.*, 2019 WL 1421752 \*8 (D.Hawai'i 2019). Whether a transition plans or services otherwise is needed to be a part of an IEP is an unsettled determination. *Id.* Courts that have reviewed the question have analyzed it as a procedural violation. *Id.* The determination of the Hawai'i DOE's obligations requires a two (2) part analysis of whether Student's educational placement was changed and whether the change required additional plans and/or supports to meet Student's unique needs during the transfer between placements.

Student's discharge from Private School 2 was not a change in Student's educational placement in Student's IEP-08/29/2019. *FOF 43.* Student's educational placement remained the same since Student's IEP-08/29/2018 and throughout the revisions until IEP-08/29/2019, which was a "[redacted] facility and [redacted] school." *FOF 23.* Neither the Hawai'i DOE nor the IEP team determined or proposed that Student's educational placement be changed to any other level of restriction. As was noted *supra*, the discharge was a unilateral decision made by a private facility that was not under the authority of the Hawai'i DOE. Petitioners have not proven that the IEP team changed Student's educational placement, thereby warranting a transition plan to address Student's unique needs during the transition.

While the IEP team was not under obligation to create a transition plan for Student to return to Hawai'i from Private School 2, the Hawai'i DOE did work with Private School 2 to ensure that Student could travel home safely. *FOF 53.* Student was accompanied by an employee of Private School 2 until Student was dropped off to Parent.

After Student's return to Hawai'i, the IEP team located another possible location for Student's IEP-08/29/2019 to be implemented. *FOF 58, 65.* Parent did not sign the consent forms to allow the sharing of Student's information to continue with the process of getting Student into Private School 3. *FOF 58.* Home School offered interim services virtually for Student, due to the COVID-19 lockdown that was occurring in the State of Hawai'i. *FOF 66.* The IEP team continued to attempt to get Parent to sign the consent form for Private School 3, continued to try to schedule IEP meetings, and continued to offer interim services for Student pending Student getting into a new school. Parent did not avail Student of any of these offers from the Hawai'i DOE.

Petitioners have failed to prove that the Hawai'i DOE or IEP team was required to create a transition plan or provide services for Student due to Student's discharge from Private School 2. Student's discharge was not a change in educational placement, and even so, the Hawai'i DOE did offer a number of services for Student that Parent refused.

3. The Hawai'i DOE did not deny Student a FAPE by failing to provide Parent with a prior written notice until August 28, 2020

Petitioners also argue that the IEP team did not provide Parent with a PWN of Student's removal from Private School 2 until August 28, 2020. Under the IDEA, a PWN is required when an educational agency proposes or initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. 20 U.S.C. §§1415(b)(3) & 1415(c). As noted *supra*, the Hawai'i DOE and the IEP team did not change or refuse to change Student's educational placement or the offer of free appropriate public education for Student. Student's educational placement before and after Student's discharge from Private School 2 was a [REDACTED] facility and [REDACTED] school. *FOF 23.* No PWN was needed in April 2020, when

Student was discharged. Petitioners have failed to prove that failure to provide a PWN at the time of Student's discharge from Private School 2 was a denial of FAPE.

- B. The Hawai'i DOE did not deny Student a FAPE by failing to include Parent in the meeting(s) held regarding Student's removal from the private [REDACTED] facility in April 2020 or by failing to have subsequent meetings to address Student's needs given Student's removal from the [REDACTED] placement

Petitioners' second issue poses two (2) questions: 1) whether the Hawai'i DOE had meetings regarding Student's removal from Private School 2 and did not invite Parent; and 2) whether the Hawai'i DOE did not hold meetings subsequent to Student's removal to address Student's needs given Student's removal from Private School 2. Based on the reasons herein, this Hearings Officer finds that Petitioners have not met their burden of proof on this issue.

1. Whether the Hawai'i DOE had meetings regarding Student's removal from Private School and Parent was not invited

Petitioners' implication in this issue is that the Hawai'i DOE met with Private School 2 to have Student removed from the program. As discussed in Issue #1, this is not supported by the evidence. Under the IDEA, informal or unscheduled conversations involving department personnel or conversations on issues related to the provision of services in an IEP are not considered meetings to which parents must be invited. H.A.R. §8-60-56(b)(3); 34 C.F.R. §300.501(b)(3). The clear evidence in this case is that the Hawai'i DOE did not have any inappropriate meetings to which Parent should have been invited regarding Student's removal from Private School 2. While the evidence does establish that the Hawai'i DOE was in communication with Private School 2 to try to avoid Student being discharged, no meetings were held between the IEP team and Private School 2 to discuss anything other than trying to get Private School 2 to keep Student enrolled there. No evidence presented by Petitioners suggests



that a meeting was held between Private School 2 and the Hawai'i DOE to get Student removed from the school in April 2020.

2. The Hawai'i DOE held and attempted to hold meetings to address Student's needs in light of Student's removal from Private School 2 and return to Hawai'i

The IEP team attempted to hold an IEP meeting as soon as possible after Student's discharge from Home School, however, the potential meeting in the early dates after discharge was delayed due to Parent's request for educational records on April 15, 2020. *FOF 49*. Home School attempted to obtain all Student's educational records for Parent within the forty-five (45) day deadline for the records to be provided. 34 C.F.R. §99.10(b). Upon the provision of Student's records to Parent on May 29, 2020, the IEP team attempted to schedule the IEP meeting. *FOF 57*. Due to scheduling difficulties with Parent, the IEP meeting was not scheduled until August 28, 2020. *FOF 57-60, 62-64*. The IEP team met but did not complete Student's IEP on that date. *FOF 69*. The IEP team continued to try to schedule additional meetings with Parent until November 2020 but after not hearing from Parent, the IEP team instead sent a notice to Parent to contact Home School if Parent wished for Student to continue to receive special education and related services in February 2021. *FOF 71-73, 75-76*. Parent signed the certified mail receipt for the letter dated February 21, 2021. *FOF 75*. No response was heard from Parent by Home School by the given deadline of March 3, 2021. Petitioners have failed to prove that the Hawai'i DOE denied Student a FAPE by failing to have subsequent meetings to address Student's needs given Student's removal from Private School 2.

C. The Hawai'i DOE denied Student a FAPE by failing to communicate with Parent regarding Student's education or services from August 2021 through June 2022 based on the termination of Student's eligibility for IDEA special education and related services

Petitioners' next issues whether the Hawai'i DOE failed to communicate with Parent regarding Student's education or services from August 2020 through June 2022. The question asks what the Hawai'i DOE's continuing obligations were to provide a FAPE and communicate with Parent regarding the provision of special education and related services for Student were after not receiving any responses or communications from Parent between August 2020 and August 2021 and thereafter.

The IDEA provides that any State receiving federal funds under the IDEA must ensure that "a FAPE is available to all children with disabilities residing in the State between the ages of three (3) and twenty-one (21)." 20 U.S.C. §1412(a)(1)(A). The limitation on this obligation is that it does not apply to children "aged three (3) through five (5) and eighteen (18) to twenty-one (21) in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education in those age ranges..." 20 U.S.C. §1412(a)(1)(B)(i). In the State of Hawai'i, the Hawai'i DOE is required to offer special education and related services to Students ages eighteen (18) to twenty-one (21) because it offers free education programs to general education students in those age ranges who have not graduated with a diploma. In this case, it is undisputed that Student is currently [REDACTED] years old and does not turn [REDACTED] under [REDACTED].

Student was determined by the IEP team to be eligible for IDEA special education and related services since Student's move to Hawai'i in 2018. *FOF 9-10*. Several IEPs were developed for Student by the Hawai'i DOE, and while they placed Student at a [REDACTED] facility, the IEPs ultimately were the responsibility of the Hawai'i DOE to review and continue to provide FAPE. *FOF 11, 14-15, 20-21*. Before an educational agency can determine that a child is no longer a child with a disability under the IDEA, the educational

agency shall evaluate the child, unless the child's eligibility terminates due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for a FAPE under State law. 20 U.S.C. §1414(c)(5). Parental consent for a reevaluation is necessary before conducting a reevaluation of a child with a disability, except that parental consent need not be obtained if the educational agency can demonstrate that it has taken reasonable measures to obtain such consent and the child's parent has failed to respond. 20 U.S.C. §1414(c)(3). In other words, the educational agency may proceed with the reevaluation of a student without parental consent if they are unable to get such consent despite efforts to do so. Unlike an initial evaluation, reevaluations do not require parental consent to proceed.

In this case, the IEP team was required to conduct a reevaluation of Student prior to any change in the determination that Student is eligible for special education and related services as a child with a disability. Although Parent was non-responsive to the IEP team during the time between August 2020 and August 2021, nothing under the law was preventing the IEP team from conducting a reevaluation of Student. The IEP team could have reevaluated Student based on the information that the team had from Private School 1 and Private School 2, or simply proceeded with developing a new IEP for Student. The IEP team was or should have been aware that from the time of Student's discharge from Private School 2, Student was not receiving special education or related services pursuant to Student's IEP-08/29/2019. *FOF 66-67, 72.*

A school district may not relieve itself of its obligations by putting the responsibilities on parents. *N.B. v. Hellgate Elementary School Dist., ex rel. Bd. of Directors, Missoula County, Mont.*, 541 F.3d 1202, 1209 (9<sup>th</sup> Cir. 2008). While the Hawai'i DOE appeared to believe its obligations ended when the letter sent to Parent in February 2021 received no response from Parent, nothing under the IDEA allows for an educational agency to simply terminate services

when a parent does not respond. Student was due for a reevaluation in August 2021. *FOF 12*. It is clear from the evidence in this case that Home School's IEP team did not complete a reevaluation of Student to change Student's eligibility and did not continue to make attempts to contact Parent after the letter sent to Parent in February 2021. *FOF 78*. The IEP team terminated Student's eligibility for special education and related services without conducting the required reevaluation of Student under the IDEA or without Student meeting any of the exceptions that allow termination of eligibility. No evidence has been presented that Student had graduated with a diploma or exceeded the age of eligibility for IDEA services under Hawai'i law. *See* 20 U.S.C. §1414(c)(5).

The Hawai'i DOE failed to communicate with Parent regarding provision of special education and related services for Student even after Parent had returned to contact on August 25, 2021. *FOF 77*. The certified letter that Principal sent to Parent on September 14, 2021, was returned to Home School, and no copy of that letter sent to Parent was sent by email, the recognized method of communication with Parent as of August 25, 2021, which indicates that Parent did not receive it. *FOF 78*.

Petitioners have proven that the Hawai'i DOE denied Student a FAPE by failing to continue communication with Parent regarding Student's special education and services due to terminating Student's eligibility for IDEA services without a proper reevaluation.

D. Respondents did not deny Student a FAPE by not providing Parent with procedural safeguards

Petitioners last argument is that the Hawai'i DOE did not provide Parent with procedural safeguards until June 14, 2022. Failure to follow IDEA procedures, such as not providing a parent with a copy of the procedural safeguards yearly is a procedural violation, which also requires Petitioners to prove resulted in a loss of educational opportunity, significant

infringement on parent participation, or a deprivation of educational benefits. *See Amanda J.*, 267 F.3d at 892. Petitioners argue, however, that the Hawai‘i DOE did not provide procedural safeguards in the form of assistance to Parent with the advocacy of Student’s rights.<sup>25</sup>

This Hearings Officer concludes that the Hawai‘i DOE met their obligations to provide Parent with procedural safeguards until March 3, 2021. The Hawai‘i DOE provided a copy of the Hawai‘i DOE procedural safeguards and copies of the Request for IDEA Impartial Due Process Hearing forms to Parent to assist in Parent’s assertion of Student’s rights. *FOF 66*. It was beyond the Hawai‘i DOE’s control that Parent was unable to find assistance in filing the proper paperwork to get Student’s stay-put issue heard or to proceed with a Due Process Hearing.

The Hawai‘i DOE failed to provide Parent with a copy of the procedural safeguards between March 2021 through June 14, 2022, due the Hawai‘i DOE determining that Student was no longer eligible for special education services. *FOF 76*. However, Petitioners have not proven that failure of Parent to receive a copy of the procedural safeguards resulted in a loss of educational opportunity, significant infringement of parental participation, or a deprivation of educational benefits. Parent had significant experience in Prior State and in Hawai‘i with initiating court or administrative proceedings and asserting Student’s rights in various ways.

*See, e.g., FOF 4-5, 18, 47, 61*. While the Hawai‘i DOE may have committed a procedural

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<sup>25</sup> For example, Parent raised the concern that Parent was unable to find any attorney or advocate in the State of Hawai‘i that would assist Parent with filings or with trying to get Student to stay at Private School 2. Parent also argued that the Hawai‘i DOE also failed to provide procedural safeguards to Parent by refusing to allow Parent to amend the Complaint in DOE-SY2122-030 and making Parent file a new Complaint, and by having this Hearings Officer limit the arguments to be made by Petitioners. *See* P-Ex.2122-030, p.0882; ODR Pleadings, 2122-041, p.001-013.

violation by not providing Parent with a copy of the procedural safeguards from March 2021 to June 2022, Petitioners have not proven that the violation rose to the level of a denial of FAPE.

E. Equitable considerations

Under the IDEA, Hearings Officers evaluating violations resulting in a denial of FAPE for students have a responsibility to consider equity in fashioning an award for such a denial of FAPE. The United States Supreme Court has held:

Once a court holds that the public placement violated IDEA, it is authorized to grant such relief as the court determines is appropriate. Under this provision, equitable considerations are relevant in fashioning relief, and the court enjoys broad discretion in so doing. Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors.

*Florence County School District Four v. Carter ex rel. Carter*, 510 U.S. 7, 15-16, 114 S.Ct. 361, 361, 126 L.Ed.2d 284 (1993); *see also Forest Grove School Dist. v. TA*, 523 F.3d 1078, 1084 (2008). Any appellate court reviewing an award of relief under the IDEA must review the awarding body based on an abuse of discretion standard. *Forest Grove*, 523 F.3d at 1084. This Hearings Officer's award to Student based on the Hawai'i DOE's denial of FAPE is based on the equitable factors set forth below.

1. Parent's liability

Whether or not Parent was notified in a timely fashion about the requirement of Parent to sign the admissions agreement for Student to continue services at Private School 2, the situation only allowed Parent to remedy the situation with Private School 2. *FOF 41, 44-46*. Rather than signing the documents and returning them to ensure Student's continued stay at Private School 2, Parent sent various emails demanding answers or deflecting responsibility. *FOF 43, 46*. Even after both [REDACTED] DES and HR Officer had explained that the Hawai'i DOE was responsible for

payment of Student's services during Student's stay at Private School 2, Parent refused to sign the document by the deadline.

After Student was discharged from Private School 2 due to Parent's refusal to sign the admissions agreement, the IEP team did attempt to hold IEP meetings to discuss what to do with Student and requested Parent to sign a consent form to share Student's information with Private School 3 to try to get Student a bed at Private School 3. *FOF 58-60, 62-65*. Parent did not provide dates to the IEP team in a timely fashion and did not sign the consent form for Private School 3 until August 27, 2020. At that time, the IEP team was able to meet on August 28, 2020 and discuss Student's IEP.

From August 28, 2020 through August 25, 2021, Parent did not communicate at all with the Hawai'i DOE, except for one email addressed solely to BHS. *FOF 71-77*. While Parent has explained that the Parent's email was not working and the family's home was burglarized, it still does not diminish the fact that the Hawai'i DOE could not contact Parent to work with Parent to ensure continued services for Student.

## 2. Hawai'i DOE's liability

The Hawai'i DOE was not responsible for Student's discharge from Private School 2 and attempted to keep Student at Private School 2, make alternate arrangements for Student at a different [REDACTED] facility, attempted to provide interim services for Student pending a new IEP or new location for services, and tried to arrange an IEP meeting to discuss ways to address Student's situation and needs. Indeed, the U.S. DOE OCR found that the allegations of Parent, 1) that the Hawai'i DOE failed to respond to Parent's request for an IEP meeting when Student was discharged, and 2) that the Hawai'i DOE denied Student a FAPE from April 17, 2020 through January 29, 2021, were unsupported by the evidence and their

investigation into the matters. The U.S. DOE OCR further found that no evidence supported the allegation that the Hawai'i retaliated against Parent or Student for Parent's advocacy on behalf of Student. *FOF 74.*

The Hawai'i DOE did everything in their power to correct the situation created by Private School 2 and Parent related to the signing of the admissions agreement, which was entirely out of their control. Services were offered and IEP meetings were attempted to be held. The Hawai'i DOE further send multiple notices via email, certified letter, and even in person by an attempt of Hawai'i DOE employees to visit Petitioners' home to deliver the letters and documents.

As noted above, the failure of Parent to communicate with the Hawai'i DOE from August 2020 to August 2021 limits the liability of the Hawai'i DOE for that time period. Since the Hawai'i DOE was unaware of how to proceed with Parent's absence, this Hearings Officer agrees with the U.S. DOE OCR that the Hawai'i DOE was not responsible for a denial of FAPE prior to February 21, 2021.

It is understandable that Home School felt that there was nothing more to be done once they lost contact with Parent. Since Student was not attending any public school in Hawai'i and was presumably home with Parent, the Hawai'i DOE had no access to Student to conduct a reevaluation of Student to assess Student's eligibility under the IDEA. It appears the letter to Parent on February 21, 2021 was an attempt to get Parent's attention on the matter for Student to continue services. It would also have been impractical for the IEP team to try to do the reevaluation for Student or develop an IEP for Student when they had no updated information or contact with Student or Parent. The IEP team would have had basically documents based on outdated information for Student without the means to implement any such program. However,



the IDEA does not provide any avenue for an educational agency to change the eligibility of a student without a reevaluation, so the Hawai'i DOE was put into a difficult situation.

However, if the Hawai'i DOE had done the reevaluation and/or an IEP for Student, even without Parent present, when Parent finally contacted the Hawai'i DOE in August 2021, further communication could have been had with Parent regarding Student and the provision of special education and related services.

Based on the Hawai'i DOE's failure to follow the procedures under the IDEA for changing the eligibility for Student and failing to communicate with Parent after Parent returned into contact with the Hawai'i DOE, the Hawai'i DOE will be responsible for providing compensatory services for Student.

### 3. Student's eligibility for services under the IDEA

It is undisputed that Student will no longer be eligible for services under the IDEA after December 1, 2022, as Student will [REDACTED] of eligibility. *FOF 1*. The Hawai'i DOE may also not have the ability to provide educational services to Student based on Student's [REDACTED] after December 1, 2022. Compensatory education may be awarded even past a student's eligibility for IDEA services based on the premise that the award is designed to compensate the student for services they should have received while eligible for IDEA services. Under this premise, this Hearings Officer concludes that the provision of individual counseling services is a service that can reasonably be provided to both children and adults. This award does not require the IEP team to hold any meetings or conduct any evaluations to determine Student's needs under the IDEA and can be provided by an individual outside the DOE, even if the Hawai'i DOE authority does not extend over students over age twenty-two (22).

### 4. Appropriateness of the award of counseling services for Student

Student has not been receiving any special education or related services since April 2020. Parent has not been able to find any suitable placements for Student or counselors/therapists for Student, so there is no question of reimbursement in this case. *FOF 81*. Petitioners have not presented evidence of out-of-pocket expenses paid by Parent since April 2020.

While Student's near expiration of eligibility for IDEA special education and related services makes it difficult for this Hearings to fashion an award requiring the IEP team to conduct a reevaluation and develop a new IEP for Student, Student should still be provided some services to compensate Student for the Hawai'i DOE's denial of FAPE.

As part of the interim services that the Hawai'i DOE offered to Student after Student's discharge from Private School 2, Home School offered to provide Student with individual counseling for up to sixty (60) minutes per week. Counseling services is something that had been a part of Student's IEPs since 2018 and appears to be a service that could address at least some of Student's needs. Counseling services can also provide a base for Student to begin to search for and participate in adult rehabilitation programs available for adults with disabilities. To compensate Student for the denial of FAPE this Hearings Officer will order the Hawai'i DOE to provide mental health, behavioral, and/or functional skills counseling services by a qualified provider either in-person or virtually for Student for up to two hundred forty (240) minutes per week until November 30, 2023. The award will be contingent upon Parent signing consent forms that the Hawai'i DOE requires in order to share Student's information to make necessary arrangements for the providers. The counseling services provided by the Hawai'i DOE may be either for mental health or behavioral problems, or for functional life skills counseling, or a combination of all, depending on what is requested by Parent and Student.

## VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have proven that the Hawai'i DOE denied Student a FAPE by failing to communicate with Parent regarding Student's special education and services after August 25, 2021 and failed to conduct a reevaluation of Student prior to determining that Student was no longer eligible for special education and related services under the IDEA. The remedy requested by Petitioners of compensatory education will be as follows:

1. Within fifteen (15) business<sup>26</sup> days of this Decision, the Hawai'i DOE shall provide Parent with consent forms necessary for the Hawai'i DOE to arrange for no less than five (5) qualified providers for mental health, behavioral, or functional skills counseling services for Student. These forms shall be submitted to Parent by email to the address listed in the Legend attached hereto and via certified U.S. Mail.
2. Within fifteen (15) business days of receipt of the consent forms by email or within fifteen (15) business days of signing of the certified mail receipt, whichever is later, Parent shall return the signed consent forms. These forms shall be signed without reservations, and any writing on the consent forms besides a signature and an indication that Parent does consent to whatever is necessary for the provision of services, will invalidate such consent forms.
3. If Parent does not return the signed completed consent forms to the Hawai'i DOE via email, U.S. Mail, or in person at Home School by the deadline given above, then the Hawai'i DOE will not need to proceed further with the services listed below.

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<sup>26</sup> Business days does not include weekends or holidays recognized by the State of Hawai'i. Business days do include days that there may not be school for students but are not official holidays recognized by the State of Hawai'i.

4. Within thirty (30) calendar<sup>27</sup> days of receipt of the signed consent forms by Parent, the Hawai'i DOE shall provide Parent/Student with a list of no less than five (5) qualified mental health, behavioral, or functional skills counselors to provide individual counseling services to Student. These services may be provided in-person or virtually based on the individual providers' availability and practice. Contact information for each provider shall be provided with this list so that Parent/Student may contact the provider further to inquire into the counselor's business and/or practice. This list shall be provided to Parent/Student via Parent's email as listed in the Legend attached hereto or through certified U.S. Mail.
5. Within thirty (30) calendar days of receipt of the list or the date of signing of the certified mail receipt (whichever is later), Parent/Student shall provide their selection of the qualified mental health, behavioral, or functional skills counseling provider(s) to the Hawai'i DOE via email, U.S. Mail, or in person. Failure by Parent or Student to provide the name of the selected provider in writing by the deadline given above will relieve the Hawai'i DOE from providing the services listed below.
6. Within sixty (60) days of receipt of the selected qualified mental health, behavioral, or functional skills counseling provider(s) from Parent, the Hawai'i DOE shall make arrangements for Student to receive up to two hundred forty (240) minutes of weekly counseling. This weekly counseling shall be paid by the Hawai'i DOE and shall be provided until November 30, 2023.
7. Parent/Student shall provide the Hawai'i DOE with the dates/times of the arranged counseling sessions for each week at least one (1) week prior to the appointment.

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<sup>27</sup> Calendar days include weekends and holidays.

Payment for such counseling services up to two hundred forty (240) minutes per week shall be made by the Hawai'i DOE directly to the qualified counselors.

8. Any mental health, behavioral, or functional skills counseling sessions missed by Student each week shall not be accrued to a later date. In any event, all mental health, behavioral, or functional skills counseling sessions paid for by the Hawai'i DOE shall end on November 30, 2023, without exception.
9. This Decision shall be read in conjunction with Sec504-2122-001 (DOE-SY2122-045) and Hawai'i DOE shall only be responsible for providing up to two hundred forty (240) total minutes of counseling per week for this Student through November 30, 2023 in both cases.

#### **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, September 27, 2022.

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