



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

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

Petitioner,

vs.

PARENT-1 AND PARENT-2, PARENTS OF  
STUDENT<sup>1</sup>,

Respondents.

DOE-SY2122-044

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DECISION

Due Process Hearing:  
September 6-8, 2022

Hearings Officer: Charlene S.P.T. Murata

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION**

**I. JURISDICTION**

This proceeding was invoked in accordance with the Individuals with Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§1400, et seq.; the federal

<sup>1</sup> [REDACTED]

regulations implementing IDEA, 34 C.F.R. Part 300; and the Hawaii Administrative Rules §§ 8-60-1, et seq.

## **II. INTRODUCTION**

On June 16, 2022, the Department of Education, State of Hawaii (“Petitioner” or “DOE”), submitted a Request for IDEA Impartial Due Process Hearing Complaint against Parent-1 and Parent-2, Parents of Student (“Complaint”). The Complaint is dated June 15, 2022.

On June 21, 2022, a letter was sent to the parties informing them that a prehearing conference was tentatively scheduled for June 24, 2022.

On June 23, 2022, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, officially setting a prehearing conference for June 24, 2022. On June 24, 2022, an Amended Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, re-scheduling the prehearing conference to July 11, 2022.

On June 28, 2022, Petitioner submitted a Request to Extend the 45-Day Decision Deadline from July 30, 2022 to September 13, 2022; Declaration of Michael R.S. Azuma (“Request”). On June 30, 2022, Petitioner’s Request was granted. See Order Granting Petitioner’s Request to Extend the 45-Day Decision Deadline from July 30, 2022 to September 13, 2022, filed June 28, 2022, issued on June 30, 2022.

On July 11, 2022, a prehearing conference was held via Zoom with Deputy Attorney General Michael R.S. Azuma (“Mr. Azuma”) appearing on behalf of Petitioner; and Carl M. Varady, Esq. (“Mr. Varady”) appearing on behalf of Respondents. Parent-2 participated in the prehearing conference by audio only. During the prehearing conference, the parties agreed to have the due process hearing on September 6-9, 2022. After the prehearing conference on the same day, a Prehearing Order was issued to the parties, setting forth the issues and procedures

for the due process hearing, and deadlines for submission of substantive motions, witness and exhibit lists, exhibits, and witness email addresses.

On July 28, 2022, an Order Striking Substantive Motions Hearing Date from Calendar was issued to the parties as neither party filed any substantive motions.

Due to possible health concerns caused by COVID-19, the due process hearing was conducted using a video conferencing platform to ensure the safety of all participants.

On August 29, 2022, an Order Regarding Due Process Hearing Via Video Conference was issued to the parties, setting forth the procedures that would be implemented during the due process hearing using the Zoom video conferencing platform.

On August 29, 2022, the parties timely submitted their witness and exhibit lists and exhibits. Respondents also submitted a Pre-Hearing Memorandum on the same day. Petitioner declined to submit a pre-hearing memorandum as one was not required.

On September 2, 2022, Respondents submitted Objections to Petitioner's Exhibits. During the due process hearing, Respondents withdrew their Objections to Petitioner's Exhibits in exchange for Petitioner's agreement to not object to Respondents' Supplemental Exhibit List, and Exhibit 15, which was filed after the disclosure deadline on September 6, 2022. Petitioner waived its right to receive Exhibit 15 five (5) business days before the due process hearing. Tr. Vol. I, 5:13-7:5<sup>2</sup>.

The due process hearing took place on September 6-8, 2022, using the Zoom video conferencing platform. Although the due process hearing was also scheduled for September 9, 2022, the hearing concluded on September 8, 2022. All participants in the due process hearing appeared remotely via video and audio. The undersigned Hearings Officer presided over the

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<sup>2</sup> "Tr. Vol. I, 5:13-7:5" means Transcript Volume I, page 5, line 13 to page 7, line 5.

matter. Petitioner was represented by Mr. Azuma, and Respondents were represented by Mr. Varady. District Educational Specialist (“DES”) and Student Support Resource Teacher (“SS Resource Teacher”) were present on behalf of Petitioner for the entire hearing. Parent-1 was also present for the entire due process hearing.

Petitioner called Student Services Coordinator (“SSC”), Clinical Psychologist (“CP”), Physical Therapist (“PT”), Behavioral Health Specialist (“BHS”), Speech/Language Pathologist (“SLP”), and DOE Occupational Therapist (“DOE-OT”) as witnesses. Respondents called Parent-1 and Private Occupational Therapist-1 (“POT-1”) as witnesses. Petitioner did not call any rebuttal witnesses.

During the due process hearing on September 7, 2022, Petitioner filed Department of Education, State of Hawaii’s Supplemental Exhibit List and Exhibit, seeking to admit a missing page in Petitioner’s Exhibit No. 21. The missing page was designated “0063a.” Respondents did not object to the late disclosure and waived their right to receive page 0063a five (5) business days before the due process hearing pursuant to an agreement that Respondents could cross-exam the author of Exhibit No. 21, page 0063a. PT, Tr. Vol. I, 181:1-17, 183:3-184:14; PT, Tr. Vol. II, 191:18-192:25.

The following Petitioner’s exhibits were admitted into evidence: Exhibits 7, 9, 11-13, 15-20, 21, 22, 23<sup>3</sup>, 25-26, 28-29, 34, 54, 57, 91, 96, 98, 101, 113-114, 132, 133, 166, 175, 207, 215, 219-222. Tr., Vol. II, 190:4-192:25; Tr., Vol. III, 339:24-341:7, 563:13-564:5.

The following Respondents’ exhibits were admitted into evidence: Exhibits 1-7, 9, 10, 13-15. Tr., Vol. II, 193:1-18; Tr., Vol. III, 560:18-562:16.

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<sup>3</sup> Petitioner’s Exhibit 23 and 82 are duplicative. Petitioner’s counsel requested that Exhibit 82 not be admitted into evidence. Tr., Vol. III, 340:10-17.

On September 9, 2022, Petitioner submitted Petitioner’s Second Request to Extend the 45-Day Decision Deadline from September 13, 2022 to October 28, 2022; Declaration of Michael R.S. Azuma (“Second Request”). Petitioner’s Second Request was granted and the deadline by which a decision must be issued was extended from September 13, 2022 to October 28, 2022. See Order Granting Petitioner’s Second Request to Extend the 45-Day Decision Deadline from September 13, 2022 to October 28, 2022; Declaration of Michael R.S. Azuma, filed September 9, 2022, issued on September 12, 2022.

On October 14, 2022, the parties timely submitted their closing briefs.

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<sup>4</sup>.

### **III. ISSUE and REMEDY**

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

Petitioner requests the following remedies in its Complaint: Finding that the public evaluation, and specifically the occupational therapy assessment, completed by the DOE was appropriate, and that Respondents are not entitled to an independent educational evaluation (“IEE”) at public expense.

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

#### **Student**

1. Student is currently ■ years old.

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<sup>4</sup> To protect Student’s identity, the undersigned will use ■ pronouns in this decision when referring to Student. The ■ pronouns are neither intended, nor should be interpreted, as a reference to Student’s actual gender.

2. Student is eligible for special education and related services pursuant to the IDEA under the category of [REDACTED]. DOE Ex. 57 at 179; R. Ex. 5 at 1.
3. Student is currently in the [REDACTED] grade at Public School. Parent-1, Tr. Vol. III, 497:9-10<sup>5</sup>.
4. In March of 2022, Student was in the [REDACTED] grade at Public School. R. Ex. 4 at 1.
5. While in the [REDACTED] grade, Student was in a general education classroom setting. DOE Ex. 21 at 63a; DOE Ex. 57 at 190-192; R. Ex. 4 at 13-16.
6. Student was born with [REDACTED], the most severe form of [REDACTED]. Student [REDACTED] [REDACTED] and [REDACTED] from it, sustaining damage in [REDACTED]. Secondary to having [REDACTED], Student has a [REDACTED] and [REDACTED], which means that [REDACTED]. Student also has [REDACTED], which is [REDACTED] [REDACTED]. Student was also born with [REDACTED], requiring a [REDACTED]. The [REDACTED] [REDACTED] from Student's [REDACTED] and [REDACTED] [REDACTED] [REDACTED]. Student was also diagnosed with [REDACTED] [REDACTED] (" [REDACTED]"). Parent-1, Tr. Vol. III, 466:4-467:18.
7. As a result of having [REDACTED], Student is prone to having [REDACTED] (" [REDACTED]") and [REDACTED] and requires fluid monitoring throughout the day. There is also potential for regression of gross motor and fine motor skills as a result of a [REDACTED] [REDACTED]. Student receives counseling services for [REDACTED]. At school, Student requires daily nursing support for [REDACTED] every three (3) hours, or as needed. Student uses the following adaptive equipment for mobility at school:  
[REDACTED]

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<sup>5</sup> The name preceding a citation is the witness whose testimony is the basis for the finding.

██████████. Student also ██████████ on both ██████ for ██████ in ██████████ at school. DOE Ex. 21 at 63a.

8. Due to Student's disability, ██████ has had ██████████ at school that requires ██████ to clean ██████. POT-1, Tr. Vol. III, 379:2-19; Parent-1, Tr. Vol. III, 485:14-22.

### **Evaluation Process**

9. In July of 2020, Student and ██████ family moved to Hawaii from the mainland. Parent-1, Tr. Vol. III, 455:21-25.
10. Before moving to Hawaii, Student attended Mainland School where ██████ qualified for special education and related services and had an individualized education program ("IEP"). Parent-1, Tr. Vol. III, 455:9-20.
11. When Student moved to Hawaii, Student was homeschooled for the 2020-2021 school year. DOE Ex. 7 at 19; Parent-1, Tr. Vol. III, 456:1-9.
12. For the 2021-2022 school year, Student attended Public School. Parent-1, Tr. Vol. III, 456:1-22.
13. Parent-1 began the registration process in May of 2021 so that Student could attend Public School. Parent-1, Tr. Vol. III, 456:7-457:5.
14. On June 24, 2021, Parent-1 provided a copy of Student's IEP from Mainland School ("Mainland IEP") to DOE. DOE Ex. 101 at 397.
15. In August of 2021, Student enrolled at Public School with the Mainland IEP. DOE Ex. 18 at 36.
16. During the morning of August 3, 2021, Parent-1 and SSC figured out a temporary solution to address Student's need for skilled nursing. As a courtesy, Parent-1 agreed to go on campus to help with Student's ██████████. Parent-1 requested the situation be

put in writing. Parent-1 also asked for information about what comparable services to the Mainland IEP will be offered during an upcoming meeting that afternoon. DOE Ex. 96 at 386; DOE Ex. 101 at 397.

17. On August 3, 2021, a Comparable Services Meeting was held with Parent-1 and Parent-2 in attendance. It was decided that DOE would provide Student with the services outlined in the Mainland IEP until Student's eligibility in the State of Hawaii was determined. Student's Mainland IEP provided physical therapy and resource minutes. Student's Mainland IEP did not offer skilled nursing as a related service. DOE Ex. 7 at 19; DOE Ex. 11 at 26; SSC, Tr. Vol. I, 95:15-96:3.
18. On August 4, 2021, Parent-1 and SSC corresponded with each other regarding the provision of skilled nursing services to Student, while Principal corresponded with other members of DOE to find temporary skilled nursing help for Student. DOE Ex. 98 at 388-392.
19. On August 5, 2021, a Student Support Team<sup>6</sup> ("SST") meeting was held without Parents' participation. Parent-1 was invited to the SST meeting but declined to attend. In an effort to expeditiously put the service of skilled nursing in place to address Student's health and safety with [REDACTED] at school, DOE proposed that an "initial evaluation" be conducted to determine if Student was eligible for services. Although the SST considered conducting a cognitive assessment, academic assessment, fine motor assessment, gross motor assessment, and observation as part of an initial evaluation, they decided that at that moment those assessments were not necessary because the

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<sup>6</sup> The terms Student Support Team ("SST") and Student Focus Team ("SFT") are used interchangeably by the DOE. DOE Ex. 7 at 18; DOE Ex. 11 at 26; DOE Ex. 18 at 37; SSC, Tr. Vol. I, 19:7-11.



information that was available to the SST was sufficient to proceed with an eligibility determination for IDEA services. On that same day, DOE held the eligibility meeting and proposed that Student was eligible for special education and related services in the State of Hawaii under the category of [REDACTED]. DOE Ex. 7 at 18-19; DOE Ex. 9 at 22-23. A Prior Written Notice of Department Action, dated August 9, 2021, was issued shortly thereafter (“8/09/2021 PWN”). DOE Ex. 7 at 18-19.

20. On August 6, 2021, Parent-1 asked SSC for a copy of any meeting notes and recordings generated from the August 5, 2021 SST meeting. Parent-1 also asked for a copy of an IEP that the DOE purportedly wrote during the SST meeting. Parent-1 again asked that [REDACTED] be provided with written documentation regarding the skilled nursing services. DOE Ex. 101 at 397.
21. On August 9, 2021, Parents were provided a copy of an Evaluation Summary Report (“8/09/2021 ESR”) for the “initial evaluation.” According to the 8/09/2021 ESR, Student’s “medical condition will impact [REDACTED] access to education and performance in the classroom. If [REDACTED] is unable to perform activities of daily living [REDACTED] will be unable to participate in [REDACTED] education.” The 8/09/2021 ESR further states that Student “meets the eligibility requirements for [REDACTED] because [REDACTED] urgent medical needs impact [REDACTED] ability to access learning and fully participate in [REDACTED] education.” The only related service proposed in the 8/09/2021 ESR is skilled nursing. DOE Ex. 11 at 26-27.
22. On August 10, 2021, Parent-1 signed a Consent for Initial Provision of Special Education and Related Services form to allow DOE to provide Student with skilled nursing services. DOE Ex. 12 at 28; SSC, Tr. Vol. I, 20:8-14.

23. On August 23, 2021, SSC submitted a Request for Evaluation form. SSC indicated on the request form that the areas of concerns were academic, behavior, fine motor, gross motor, speech/language, and adaptive behavior. DOE Ex. 13 at 29; SSC, Tr. Vol. I, 20:15-24. This “reevaluation” was scheduled very shortly after the initial evaluation so that DOE could offer the assessments that were not done for the initial evaluation. SSC, Tr. Vol. I, 21:9-22.
24. On August 26, 2021, a Student Focus Team (“SFT”) meeting was held where Parents expressed concerns with Student’s comprehension, writing, and the ability to recall information. The SFT determined that further assessments were needed to determine Student’s current needs. DOE Ex. 18 at 37.
25. A Prior Written Notice of Department Action, dated August 30, 2021, was issued by Principal (“8/30/2021 PWN”). According to the 8/30/2021 PWN, the “Department proposes to conduct a Reevaluation for [Student] consisting of the following: Cognitive Assessment; Academic Assessment; Language Assessment; Fine Motor Assessment (Functional Observation); Gross Motor Assessment; Social/Family Assessment (Adaptive, and Behavior Rating Scale); and Classroom Observation.” The 8/30/2021 PWN also states that “[t]he option of conducting a Functional Observation versus a formal Gross Motor Assessment was considered[,]” but this option was rejected because “[b]ased on the explanation provided by the Occupational Therapist, the Department recommends a formal Gross Motor Assessment be conducted.” DOE Ex. 15 at 32-33.
26. On December 17, 2021, two (2) occupational therapists from Private Company, Private Occupational Therapist-2 (“POT-2”) and Private Occupational Therapist-3 (“POT-3”), completed a report entitled “Occupational Therapy Evaluation” (“Private OT Report”).

Student was evaluated on November 18, 2021 as a part of the Private OT Report. DOE Ex. 23 at 76-93; R. Ex. 2.

27. On January 11, 2022, Parent-1 signed a Consent for Assessment as Part of a Reevaluation form, consenting to the administration of the assessments proposed in the 8/30/2021 PWN. DOE Ex. 16 at 34; SSC, Tr. Vol. I, 22:1-13.
28. On January 27, 2022, February 10, 2022 and February 17, 2022, PT conducted a gross motor assessment, resulting in a report entitled “Gross Motor Assessment” (“GMA Report”). DOE Ex. 21 at 63a, 63-70.
29. On January 28, 2022 and February 11, 2022, SLP conducted a speech/language assessment, resulting in a report entitled “Speech and Language Assessment Report” (“SLA Report”). DOE Ex. 20 at 56-62.
30. On February 9, 2022, BHS conducted an observation of Student, resulting in a report entitled “Observation Summary” (“OS Report”). DOE Ex. 17 at 35.
31. On February 14, 2022, DOE-OT called Parent-1 to obtain input from Parent-1 regarding Student’s occupational therapy assessment. DOE-OT informed Parent-1 that the Private OT Report was very thorough and proposed that [REDACTED] only conduct a functional observation of Student at school instead of doing a full occupational therapy assessment, which would be similar to the occupational therapy assessment conducted by the Private Company. Parent-1 agreed to allow DOE-OT to only conduct an observation of Student at school on the condition that the Private OT Report and DOE-OT’s observation be used to determine Student’s eligibility for occupational therapy services. DOE Ex. 132 at 609-610; DOE-OT, Tr. Vol. II, 270:17-271:10; Parent-1, Tr. Vol. III, 495:21-496:9.

32. On February 15, 2022 at 7:47 a.m., Parent-1 sent an email to DOE-OT, Principal, SSC, and others to confirm Parent-1 and DOE-OT's conversation on February 14, 2022. Parent-1 summarized [REDACTED] conversation with DOE-OT as follows: "From my understanding, you shared with me that [Student's] OT evaluation from [Private Company] was very thorough and similar to the one I signed consent for the school. You proposed doing a functional OT evaluation at school to observe [Student], instead of having to take [REDACTED] out of class to perform such a similar evaluation. I agreed under the condition that both evaluations (school and private) would be used to determine OT eligibility." Parent-1 further summarized that they then discussed Student's problem areas and Student's significant mental health decline since starting at Public School. Parent-1 also stated that "the opinion of [REDACTED] psychiatrist [was] that the stressors are happening at school." DOE Ex. 132 at 609; R. Ex.14.
33. On February 15, 2022 at 9:08 a.m., SSC emailed Parent-1 and others: "Thank you for sharing this information. I just need to confirm that you acknowledge and agree that the OT will just be conducting the functional observation rather than the full assessment battery for OT. If that sounds accurate then we are good to go." DOE Ex. 132 at 610.
34. On February 15, 2022 at 9:13 a.m., Parent-1 emailed SSC and others: "I agree to a functional OT evaluation under the condition that the one from [Private Company] and the functional one from the school will both be used to determine eligibility. Does that make sense?" DOE Ex. 132 at 610.
35. On February 15, 2022 at 9:16 a.m., SSC responded to Parent-1 and others: "It makes perfect sense! Yes, the one from [Private Company] as well as assessment data

- conducted from school team members will be used during the eligibility process.” DOE Ex. 132 at 611.
36. On February 15, 2022 at 9:26 a.m., Parent-1 emailed SSC: “Okay sounds good. I agree with that.” DOE Ex. 132 at 611.
37. No prior written notice was issued to document the change in the occupational therapy assessment.
38. DOE-OT was aware before conducting [REDACTED] occupational therapy observation of Student that Parent-1 wanted “both evaluations (school and private)...be used to determine OT eligibility” and “the one from [Private Company] and the functional one from the school will both be used to determine eligibility.” DOE Ex. 132 at 609; DOE Ex. 132 at 610.
39. DOE-OT testified to the following: “To my understanding the parent wanted all of the information that was provided – The parent wanted the assessment to be used in addition to my own functional observation in determining whether or not [Student] requires school based occupational therapy services to access [REDACTED] educational program.” DOE-OT, Tr. Vol. II, 274:17-22.
40. SSC testified to the following: “From what I remember, I can recall [Parent-1] agreed that a full assessment wouldn’t be done as long as [Private Company’s] full assessment was part of the eligibility and considered as part of the eligibility. I don’t remember verbatim, but just that there was an agreement that no additional assessments or something as long as the [Private Company’s] assessment was used.” SSC, Tr. Vol. I, 72:19-73:3.
41. On February 15 and 18, 2022, DOE-OT conducted a functional observation to assess Student’s occupational therapy strengths and needs. DOE-OT’s observations are

documented in a report entitled “Occupational Therapy Assessment Summary Report Functional Observation” (“DOE-OT Report”). In addition to DOE-OT’s observation, the DOE-OT Report also summarizes some, but not all, of the information contained in the Private OT Report. DOE. Ex. 19 at 50-55.

42. On February 16, 2022, SSC conducted an academic assessment, resulting in a report entitled “Current Academic Assessment” (“CAA Report”). DOE Ex. 22 at 71-75.
43. On February 23, 2022, School Psychologist issued a “Confidential Psychoeducational Assessment Report,” dated February 22, 2022 (“CPA Report”). DOE Ex. 18 at 36-49.
44. On March 7, 2022, an eligibility meeting was held. During the eligibility meeting, each assessor shared a short summary of their respective assessments. DOE Ex. 19 at 53; DOE Ex. 25 at 96-97; R. Ex. 5 at 1; SSC, Tr. Vol. I, 23:3-17.
45. During the eligibility meeting, DOE-OT shared that Student “demonstrates adequate fine motor skills, visual motor skills, and sensory processing abilities necessary to access ■ educational program and participate within the school environment.” DOE-OT shared concerns about “Functional ability to navigate daily tasks independently.” DOE Ex. 25 at 97. DOE-OT did not discuss the Private OT Report during the eligibility meeting. Parent-1, Tr. Vol. III, 538:1-539:25, 547:14-548:3; OT, Tr. Vol. II, 291:13-292:23.
46. The information shared by DOE-OT at the eligibility meeting either contradicts the Private OT Report or does not accurately convey what is contained in the Private OT Report. For example, the Private OT Report does not state that Student’s sensory processing ability is “adequate,” but it does state that Student has over-reactivity to auditory, olfactory, tactile, and vestibular input, and under-reactivity to gustatory and

proprioceptive input. According to the Private OT Report, “[Student’s] challenges in sensory processing skills are secondarily impacting [REDACTED] ability to self-regulate and obtain and maintain a learning ready state of arousal.” The Private OT Report also found that “[c]hallenges with motor planning novel tasks, bilateral coordination abilities, decreased balance and core strength, executive functioning skills, limited attention and engagement, fine motor skills, visual/ocular motor skills, and gross motor skills are impacting [Student’s] level of independence with social participation, activities of daily living, family relations, recreational skills, education.” DOE Ex. 19 at 53; DOE Ex. 23 at 82-84.

47. After the March 7, 2022 eligibility meeting, a Prior Written Notice of Department Action, dated March 11, 2022 (“3/11/2022 PWN”), was issued. The 3/11/2022 PWN states that the DOE proposed that Student be found eligible for special education and related services under the category of “[REDACTED].” The 3/11/2022 PWN states that the proposed action was based on the following: “Cognitive Assessment; Academic Assessment; Language Assessment; Fine Motor Assessment (Functional Observation); Gross Motor Assessment; Social/Family Assessment (Adaptive, and Behavior Rating Scale); and Classroom Observation. Additionally, Current State of Hawaii Individualized Education Program (IEP); iReady Performance Levels for Reading, and Math (August 2021); Current performance data, and information gather by teachers (General Education, and Special Education), Input from parents, School team members, and other invitees to the meeting.” DOE Ex. 26 at 98-99.

48. On March 11, 2022, Parents were provided a copy of an Evaluation Summary Report for the reevaluation (“3/11/2022 ESR”). The 3/11/2022 ESR summarizes relevant functional, developmental, and academic information related to areas of concern, such as

academics, cognitive functioning, speech/language, gross motor skills, occupational therapy, and behavioral health. In areas where Student was given a standardized assessment, the assessment is summarized in the 3/11/2022 ESR: in the area of academics, the Woodcock-Johnson IV Test of Achievement (“WJ-IV ACH”) is summarized; in the area of cognitive functioning, the Kaufman Assessment Battery for Children, Second Edition (“KABC-II”) is summarized; in the area of speech and language, although the Test of Integrated Language & Literacy Skills (“TILLS”) is not named in the 3/11/2022 ESR, the 3/11/2022 ESR summarizes the assessment’s findings; and in the area of gross motor skills, the School Functional Assessment (“SFA”) is summarized. In the area of occupational therapy, the 3/11/2022 ESR only summarizes DOE-OT’s classroom and lunch period observations. The 3/11/2022 ESR does not summarize the Private OT Report or any of the standardized tests administered by POT-2 and POT-3. DOE Ex. 28 at 101-103; R. Ex. 7; DOE Ex. 20 at 58.

49. According to the 3/11/2022 ESR, the IEP team’s eligibility determination is as follows: “[Student’s] [REDACTED] disability adversely affects [REDACTED] educational performance in the areas of executive functioning, and functional mobility. [REDACTED] ability to perform functional mobility skills requires adult assistance for access to performance in the classroom. These deficits in executive functioning and functional mobility limit [Student’s] progress toward achieving the age/or grade level standards. Therefore, [Student] is eligible for Special Education and Related Services in the that [sic] State of Hawaii under the Category of [REDACTED].” DOE Ex. 28 at 101-103; R. Ex. 7.

50. Eligibility determination is made by a team. SSC, Tr. Vol. I, 99:5-100:10.



51. On March 21, 2022, an annual IEP team meeting was held, resulting in a March 21, 2022 IEP (“3/21/2022 IEP”). Present at the 3/21/2022 IEP meeting were BHS, General Education Teacher (“GED Teacher”), School Psychologist, PT, Special Education Teacher (“SPED Teacher”), Parent-1, Parent-2, Principal, and others. DOE-OT and SSC were not present. DOE Ex. 54 at 159-174, Ex. 57 at 178-193; R. Ex. 4 at 1-16.
52. Following the 3/21/2022 IEP meeting, a Prior Written Notice of Department Action, dated March 24, 2022, was issued by Principal (“3/24/2022 PWN”). According to the 3/24/2022 PWN, the purpose of the 3/21/2022 IEP meeting was “to write an IEP most appropriate in meeting the needs of [Student], based on the assessments conducted prior to the eligibility meetings (3/7/22), as well as inputs from various team members.” The 3/24/2022 PWN states that Student was already receiving skilled nursing services, special education and physical therapy services. The DOE proposed that the following services be added: counseling to address Student’s mental health needs; and “[b]ased on observations and data, the team agreed to add and revise IEP goals in the areas of executive functioning, writing and behavior/mental health.” Student would receive the following supplementary aids and services: verbal prompts; ability to sit next to a peer on bus rides; weighted pad for balance when seated; whole class training about ADA accessibility and inclusion in the classroom; pull out sessions to focus on typing; and monitoring for upright postural alignment when seated in class. “[A]dditional support contingency plans are attached to [REDACTED] confidential student folder to address the areas of: Headache logs, Soiling/toileting procedure, Morning and afternoon [REDACTED] procedure, and a skilled nursing contingency plan in the event a skilled nurse is not available.” R. Ex. 5 at 1-2.

53. The 3/24/2022 PWN states in the “Explanation of why the action is proposed or refused” section that Student’s “severe medical needs adversely affect [REDACTED] educational performance and participation in appropriate activities as [REDACTED] is unable to independently complete or perform daily living skills [REDACTED] without the assistance of a skilled nurse as well as physical therapist....Additionally specialized instruction to access the general education curriculum is needed in the areas of writing and executive functioning.” R. Ex. 5 at 1.
54. The 3/24/2022 PWN lists in the “Description of the evaluation procedures, test, records, or reports used as a basis for the proposed/refused action” section the following sources of information: “Fine Motor Assessment, Cognitive Assessment, Behavior assessment, counseling observation, Gross motor assessment, and academic assessments, I-Ready diagnostic assessment, previous IEP, progress reports, student records, parent observations and input, teacher and special education teacher observation and inputs, Physical therapist observation and inputs, in-school counselor observation and inputs, and input from [Student] [REDACTED].” R. Ex. 5 at 2.
55. On May 3, 2022, DOE received a Request for Evaluation form from GED Teacher. The area of concern in the request is noted as “Other: P.E.” The following comments are noted on the request: “Assessment being completed due to parent concerns, agreed to by the Department.” DOE Ex. 29 at 104.
56. On May 16, 2022, Child Psychiatrist, a child adolescent psychiatrist from Government Agency, wrote the following letter to SSC: “[Student] has a diagnosis of [REDACTED]  
[REDACTED]  
[REDACTED]...Recommendations to [Student’s]

IEP to include:” (1) toileting needs be addressed by one consistent nurse; (2) implement occupational therapy assessment from Private Company, “as well as sensory integration difficulties that ■ experiences in the school environment that impact ■ daily function eg; writing skills-due to fine motor difficulties...”; and (3) one on one educational assistant. DOE Ex. 215 at 968.

57. On May 18, 2022, Parent-1 requested an independent educational evaluation (“IEE”) at public expense. Parent-1 sent SPED Teacher, GED Teacher, Principal, and SSC the following email: “Hi team, I am writing to request an IEE for OT. I do not agree with the assessment. When I agreed to allow the use of the private evaluation for eligibility determination, I was told it was a very thorough evaluation and that the evaluation they planned to do was similar. I agreed with the expectation that the entire private evaluation would be considered. The evaluation given to me stated only part of the private evaluation was used to determine eligibility.” DOE Ex. 166 at 723; R. Ex. 10 at 3.
58. On May 27, 2022, Parent-1 sent via email to SPED Teacher, Principal, SSC, GED Teacher, a copy of Neuropsychologist’s Report, which Parent-1 received that morning. DOE Ex. 175 at 762-801; Parent-1, Tr. Vol. III, 468:21-469:19.
59. A Prior Written Notice of Department Action, dated June 2, 2022, was issued by Principal (“6/02/2022 PWN”). The 6/02/2022 PWN states that on May 27, 2022, the DOE refused to conduct an IEE for occupational therapy. R. Ex. 9.
60. On June 16, 2022, DOE filed the instant Request for IDEA Impartial Due Process Hearing to defend its evaluation. R. Ex. 10.

## Occupational Therapy Assessment

61. In a school setting, occupational therapy addresses fine motor skills, which include visual motor skills and sensory processing. DOE-OT, Tr. Vol. II, 320:24-321:10, 331:16-332:2.
62. Fine motor skills involve small movements with the fingers, hands, and arms. POT-1, Tr. Vol. III, 365:11-15; DOE-OT, Tr. Vol. II, 331:16-332:2.
63. DOE-OT conducted an occupational therapy observation (sometimes referred to as “functional observation”) of Student.
64. DOE-OT has a Bachelor of Science degree in exercise science and received ■■■ master’s degree in occupational therapy in October of 2020. DOE-OT passed the board exam in December of 2020, and ■■■ started working as an occupational therapist in April of 2021. DOE-OT is board certified and licensed to practice in the State of Hawaii. DOE-OT, Tr. Vol. II, 257:1-259:2; DOE Ex. 222 at 994-995.
65. DOE-OT provided occupational therapy services to DOE as a contract employee in April to October of 2021. DOE-OT worked for the DOE as an employee from October 2021 to August 2022. As a regular and contracted employee with the DOE, DOE-OT’s responsibilities entailed screening, observing, evaluating, and assessing students who may require occupational therapy services to access their education. If it is found that a student requires occupational therapy services to access and participate in his/her education, DOE-OT then provides the occupational therapy services, and create long-term and short-term goals to improve the student’s skills. DOE-OT, Tr. Vol. 2, 259:1-23.
66. DOE-OT testified as an expert in the field of occupational therapy. DOE-OT, Tr. Vol. 2, 261:7-10.

67. DOE-OT has never provided occupational therapy services to Student. DOE-OT, Tr. Vol. 2, 260:20-25, 303:11-13.
68. DOE-OT “thought that [Private OT Report] was very extensive...[and] thorough.” DOE-OT, Tr. Vol. 2, 266:1-11.
69. DOE-OT reviewed the Private OT Report and then completed ■ functional observation of Student in ■ classroom and during lunch time. DOE-OT then wrote DOE-OT Report. DOE Ex. 19 at 50-55; DOE-OT, Tr. Vol. II, 263:25-264:24, 265:8-266:4, 288:23-24.
70. DOE-OT’s functional observation of Student in the classroom lasted approximately one (1) hour and fifteen (15) minutes on February 15, 2022, where DOE-OT observed Student doing math, reading/writing and English Language Arts. DOE-OT observed Student for thirty (30) minutes during lunch time on February 18, 2022. DOE Ex. 19 at 50-55; R. Ex. 3; DOE-OT, Tr. Vol. II, 332:18-24.
71. During DOE-OT’s functional observation, DOE-OT looked at Student’s visual motor skills, dexterity, hand strength for sustained grasping, pencil grip, executive functioning, sensory skills, ability to participate in class, and assessed if there were any areas of occupational therapy that were impacting Student’s ability to participate in school. DOE-OT, Tr. Vol. II, 286:3-14, 288:3-24.
72. Conducting the functional observation during class and lunch time, without more, did not yield an accurate picture of Student’s fine motor skills because the class did not require extensive writing on that day and lunch time did not require Student to engage in age-appropriate fine motor skills. POT-1, Tr. Vol. III, 389:17-390:7, 394:8-11, 394:19-395:25, 417:5-23; DOE Ex. 19 at 50-55.

73. If DOE-OT had conducted a full occupational therapy assessment, ■ would have administered the Beery VMI (visual-motor integration) assessment and non-standardized occupational therapy tasks to Student. The Beery VMI is a standardized assessment that looks at the ability to perceive visual information and copy what you see by drawing or writing it. DOE-OT, Tr. Vol. II, 272:1-273:10. Non-standardized occupational therapy tasks are tasks that are not part of a standardized assessment. DOE-OT, Tr. Vol. II, 275:21-276:8.
74. Although DOE-OT reviewed the entire Private OT Report, DOE-OT did not adopt the Private OT Report in its entirety. DOE-OT only used parts that ■ viewed were relevant to school-based occupational therapy and incorporated those parts into the DOE-OT Report. DOE-OT, Tr. Vol. II, 277:24-278:4, 285:2-13, 324:19-325:5.
75. DOE-OT did not discuss with Parent-1 or inform Parent-1 that ■ would only incorporate portions of the Private OT Report into ■ DOE-OT Report. DOE-OT, Tr. Vol. II, 304:12-25, 331:9-13.
76. DOE-OT found the following areas in the Private OT Report to be irrelevant to a school-based occupational therapy assessment or are more appropriately addressed by other school professionals: emotional regulation; activities of daily living (such as bathing, grooming); socialization; play; and an assessment called “Goal-Oriented Assessment of Lifeskills,” which assessed Student’s ability to perform certain activities, such as using utensils (knife, fork, spoon) and locks, changing clothes, and carry tray. DOE Ex. 23 at 79; DOE-OT, Tr. Vol. II, 278:25-279:8, 280:22-281:20, 295:18-25, 296:1-6, 296:10-13, 296:14-297:1, 319:22-320:7.

77. PT, CP, and SSC did not review the Private OT Report. PT, Tr. Vol. I, 176:7-13; CP, Tr. Vol. I, 152:23-25; SSC, Tr. Vol. I, 71:7-14.
78. Besides reviewing the Private OT Report and conducting the functional observation, DOE-OT also “briefly” reviewed Student’s IEP, although [REDACTED] could not recollect which IEP. DOE-OT, Tr. Vol. II, 297:15-24.
79. DOE-OT did not communicate with anyone at Private Company. DOE-OT, Tr. Vol. II, 298:7-8.
80. DOE-OT understood that one of Student’s problems with activities of daily living involves personal hygiene. DOE-OT did not know that Student [REDACTED] at school and a nurse supervises. DOE-OT, Tr. Vol. 2, 298:14-300:8.
81. DOE-OT was not aware that Student had [REDACTED] at school in which [REDACTED] has to dress and undress [REDACTED]/change [REDACTED] clothes. DOE-OT, Tr. Vol. II, 300:24-301:8.
82. As to the sections of the Private OT Report on Student’s emotional responses and [REDACTED] activities of daily living, DOE-OT disregarded those sections in [REDACTED] functional observation report, even though DOE-OT believes that a child’s emotional reaction during the day can affect [REDACTED] progress at school. DOE-OT, Tr. Vol. II, 303:14-304:6.
83. DOE-OT adopted the following information from the Private OT Report: Development Test of Visual Perception (“DTVP-3”); functional vision/ocular motor screening because it relates to visual motor skills; executive functioning skills summary because it pertains to [REDACTED] ability to participate in school; and sensory processing because it falls under the category of school-based occupational therapy. DOE-OT, Tr. Vol. II, 282:3-285:1, 289:1-11.

84. The DTVP-3 incorporates all the elements of the Beery VMI. DOE-OT, Tr. Vol. II, 279:9-284:15.
85. DOE-OT has never administered a DTVP-3. DOE-OT, Tr. Vol. II, 280:2-8.
86. DOE-OT's report was uploaded to "eCSSS," an internal record system that the DOE uses to maintain educational records. Through eCSSS, members of the IEP team had access to the DOE-OT Report. DOE-OT, Tr. Vol. II, 291:13-292:23; PT, Tr. Vol. II, 200:1-20.
87. DOE-OT did not attend any IEP meetings. DOE-OT, Tr. Vol. II, 305:14-24.
88. Although DOE-OT believes that Student would benefit from occupational therapy services, ■ does not believe Student would benefit from school-based occupational therapy. DOE-OT, Tr. Vol. II, 310:9-21.
89. DOE-OT testified that Student is not performing at grade level in the area of handwriting; writing is an activity that allows ■ to access ■ educational program; handwriting is a part of ■ educational program. DOE-OT also testified that ■ was aware that Student struggles with handwriting and ■ would become anxious and upset, and that kind of emotional reaction can impede ■ educational progress. DOE-OT testified that helping Student write better could help Student be less anxious and less frustrated with ■ handwriting and assist with ■ educational progress. DOE-OT, Tr. Vol. II, 310:14-312:4.
90. Handwriting; cutting Play-Doh with a knife and fork; and opening a lock with a key are activities that involve fine motor skills. DOE-OT, Tr. Vol. II, 301:18-20; POT-1, Tr. Vol. III, 365:5-10.



91. Although the DOE-OT Report states that “Parent concerns at this time include handwriting legibility, organization, hand strength to be able to access lunch items, and gathering necessary items during transitions,” Private OT Report contains significantly more parental input under sections entitled “Parent report” and “Parent reports child” that are not summarized in the DOE-OT Report. POT-1, Tr. Vol. III, 377:11-378:5; DOE Ex. 19 at 50; DOE Ex. 23 at 87-91.
92. Although the data from the Private OT Report conflicted with DOE-OT’s functional observation of Student, DOE-OT did not make any effort to understand the contradictions. Instead, DOE-OT gave █████ own observation more weight and disregarded POT-2 and POT-3’s observations of Student. For example:
- (i) The DOE-OT Report states that “[d]espite lower scores on the VC [visual motor] and FC [form constancy] subtests [in the DTVP-3], [Student] does not demonstrate functional deficits in these areas as evidenced by the ability to identify differences among pictures and good letter recognition to copy all letters of the lowercase alphabet when presented in a pangram sentence during the functional observation.”
  - (ii) Regarding the Sensory Processing assessment, the “[Private OT] report states that [Student] demonstrates over-reactivity to auditory, olfactory, tactile, and vestibular input. . . . The report also states that [Student] demonstrates under-reactivity to gustatory and proprioceptive input.” However, “[d]uring the functional observation, [Student] did not demonstrate signs of dysregulation in response to auditory, tactile, and proprioceptive input.” DOE-OT further notes that “within the school

setting, reactivity to olfactory and gustatory input is generally not applicable. However, during the lunch observation, [Student] demonstrated adequate sensory processing and was able to eat [REDACTED] lunch and socialize with peers without signs of dysregulation in response to olfactory and gustatory input in the cafeteria.”

- (iii) Based on DOE-OT’s understanding of the Private OT Report regarding Student’s executive functioning, Student “had difficulty with inhibition to listen to directions in their entirety and complete each task thoroughly without rushing, [REDACTED] had difficulty completing organization tasks, and [REDACTED] had difficulty with working memory to recall and follow multistep directions, and [REDACTED] had difficulty maintaining attention to tasks.” [Underline in original]. DOE-OT’s observation was that Student “demonstrated good ability to complete tasks in their entirety given minimal verbal prompting for thoroughness and follow multistep directions” while in a classroom.
- (iv) The DOE-OT Report then concluded that “[Student] demonstrates adequate fine motor skills, visual motor skills, and sensory processing abilities necessary to access [REDACTED] educational program and participate within the school environment.” DOE Ex. 19 at 53-54.

### **Speech/Language Assessment**

93. SLP is a speech/language pathologist with the DOE and has been employed with the DOE since August of 2021. SLP, Tr. Vol. II, 232:23-233:4; DOE Ex. 219.

94. SLP received a Bachelor of Arts degree in Interdisciplinary Studies: Communication Science and Disorders with a minor in [REDACTED] Language and Culture in May of 2018, and a Master of Science in Communication Sciences and Disorder in August of 2021. SLP received [REDACTED] bachelor's degree from the University of Hawaii at Manoa, and [REDACTED] master's degree from the John A. Burns School of Medicine at the University of Hawaii at Manoa. SLP, Tr. Vol. II, 233:14-25; DOE Ex. 219 at 976-977.
95. SLP received [REDACTED] Certificate of Clinical Competence in Speech-Language Pathology ("CCC-SLP") in July of 2022. DOE Ex. 219 at 976-977. "CCC-SLP" is a professional credential and shows that a speech/language pathologist has passed the Praxis exam, upheld academic and professional standards, and participated in continuing education. SLP, Tr. Vol. II, 234:5-10.
96. As a speech/language pathologist with the DOE, SLP provides speech/language services to students in a school setting. Services include preventive activities, assessments, and interventions that focus on addressing a student's patterned areas of strengths and needs in speech (articulation, voice, and fluency), form, function, use of language (phonology, syntax, morphology, semantics, and pragmatics), and the connection between speech/language and literacy development. DOE Ex. 219 at 976-977.
97. Before getting [REDACTED] master's degree, SLP was a paraprofessional with Private Company-2 from August 2018 to May 2019. As a paraprofessional with Private Company-2, SLP provided services to students between the ages of three (3) to twenty-two (22) years who had behavioral, social, and/or communication deficits; worked along and assisted a team of educational staff, behavioral analysts, occupational therapists, physical therapists, and speech/language pathologists to implement educational plans; observed, collected, and

assessed data on a student's specific behavioral, academic, vocational, and community goals. DOE Ex. 219 at 976-977.

98. SLP testified as an expert in the field of speech/language pathology. SLP, Tr. Vol. II, 236:11-13.
99. SLP was introduced to Student's case during an SFT meeting in early August or September 2021. SLP, Tr. Vol. II, 236:22-237:3. During the SFT meeting, Parents had expressed concerns that Student had difficulty with recalling what happens in a story, being stuck on certain topics, and not noticing social cues to move on from a topic. The team then decided that SLP would conduct a speech/language assessment. SLP, Tr. Vol. II, 238:5-16.
100. SLP administered to Student a standardized assessment called Test of Integrated Language and Literacy Skills ("TILLS") (SLP, Tr. Vol. II, 237:4-14) and took language samples of a story retell and a personal narrative and ran them through the Systematic Analysis of Language Transcripts ("SALT") program. SLP then conducted an observation of Student's social integration in the classroom. SLP, Tr. Vol. II, 238:17-239:17.
101. SLP is trained to administer the TILLS and administered the TILLS in the same way that [REDACTED] was trained to do. There were no issues in the administration of the TILLS and SLP was able to complete the assessment without any issue. SLP, Tr. Vol. II, 241:3-16.
102. Student performed average to above average in almost all domains in the TILLS. The two (2) areas Student had difficulty with were story retelling and delayed story retelling. To gather more information on these areas, SLP then took language samples and ran it through the SALT program. SLP, Tr. Vol. II, 239:23-240:7.

103. SALT is a standardized method of assessing language samples. The SALT program takes a student's language samples and analyzes their sentences, vocabulary, and ability to understand the questions of the story. The program will then compare the results to individuals of the same age and gender. SLP, Tr. Vol. II, 241:24-242:18.
104. According to the SALT results, Student was at age level expectations. SLP, Tr. Vol. II, 242:14-18.
105. SLP received training in gathering the language samples and running them through SALT and gathered and analyzed Student's language samples as ■■■ was trained to do. SLP did not encounter any issues in collecting Student's language samples and running the samples through SALT. SLP, Tr. Vol. II, 242:19-243:7.
106. SLP observed Student on January 28, 2022 and February 11, 2022. SLP, Tr. Vol. II, 248:4-7.
107. SLP observed Student in a classroom setting and observed that ■■■ was motivated; a team player; able to share ideas and solutions; able to reciprocate peers' excitement; able to independently ask for help; complimented ■■■ peers' work; and ■■■ remained on topic and on task throughout the classroom observation. SLP, Tr. Vol. II, 244:7-245:6.
108. The TILLS assessment, language samples, and classroom observation constituted a complete evaluation of Student's speech/language needs. SLP, Tr. Vol. II, 243:8-244:6.
109. SLP's assessments and observations are documented in a report entitled "Speech and Language Assessment Report." DOE Ex. 20 at 56-62.

### **Academic Assessment**

110. SSC is a student services coordinator at Public School. As a student services coordinator, SSC's duties include the following: intake of Section 504 or IDEA cases;

process requests for evaluations; work with team to determine if an evaluation will be conducted; participate in deciding what assessments should be administered to determine eligibility; and administer observations and academic assessments. SSC, Tr. Vol. I, 15:21-16:6.

111. SSC has been employed with the DOE since 2017. SSC, Tr. Vol. I, 16:7-8.
112. SSC has a bachelor's degree in elementary education and is currently working on ■■■ master's degree in educational instruction. SSC, Tr. Vol. I, 16:13-24.
113. SSC first came into contact with Student on ■■■ first day at Public School on August 3, 2021. SSC, Tr. Vol. I, 16:25-17:4.
114. When SSC became involved in Student's case in 2021, SSC conducted the initial intake of Student's Mainland IEP, and then ■■■ participated in the initial process to determine Student's eligibility for special education services in Hawaii. Currently, SSC's role is to communicate with Parent-1 to maintain consistency and continuity. SSC, Tr. Vol. I, 17:5-17.
115. SSC administered the Woodcock-Johnson IV Tests of Achievement ("WJ-IV ACH") to Student on February 16, 2022. DOE Ex. 22 at 71-75; SSC, Tr. Vol. I, 24:11-20, 31:11-32:12.
116. The WJ-IV ACH is a standardized academic achievement test that assesses students' reading, writing and math abilities and their performance levels. SSC, Tr. Vol. I, 24:21-25:6, 26:4-10, 27:19-28:5.
117. SSC received training from School Psychologist, the school psychologist assigned to Public School at the time, on how to administer the WJ-IV ACH. SSC learned what the testing environment should be; how to ask questions in the assessment; how to write

down a student's response; how to score the assessment; and how to write a report for the assessment. SSC began administering the WJ-IV ACH in the 2021-2022 school year and had administered less than five (5) tests to other students before administering it to Student. SSC, Tr. Vol. I, 25:7-27:2, 36:15-37:1.

118. SSC administered the WJ-IV ACH according to how [REDACTED] was trained to do. With the exception of having to prompt Student into participating, SSC did not encounter any issues when administering the test to Student. SSC, Tr. Vol. I, 30:3-31:10.
119. After administering the WJ-IV ACH assessment to Student, SSC wrote a report entitled "Current Academic Assessment" ("CAA Report").
120. SSC participated in the March 7, 2022 eligibility meeting, where SSC went over the test results and [REDACTED] CAA Report. Parent-1 did not have any questions regarding the CAA Report at the time of the eligibility meeting. SSC, Tr. Vol. I, 24:11-20, 31:11-32:12.

### **Behavioral Health Assessment**

121. On February 9, 2022, BHS conducted a classroom observation of Student, focusing on Student's behavior. The observation was one (1) hour long. BHS did not conduct any assessments other than the observation. BHS, Tr. Vol. II, 206:8-208:7, 212:15-18; DOE Ex. 17 at 35.
122. BHS has been a behavioral health specialist with the DOE for over [REDACTED] years and currently works at Public School-2 in that capacity. BHS, Tr. Vol. II, 204:19-205:4.
123. As a behavioral health specialist, BHS provides individual and group counseling to children at [REDACTED] school, consultation to teachers, and works with parents. BHS, Tr. Vol. II, 205:5-10.

124. BHS was temporarily assigned to work at Public School from January 2022 to early May 2022. BHS returned to Public School-2 in early May of 2022. BHS, Tr. Vol. II, 219:13-15, 222:23-223:2, 224:4-19.
125. BHS has a bachelor's degree in sociology and received [REDACTED] master's degree in social work from the University of Hawaii at Manoa. BHS, Tr. Vol. II, 205:11-23.
126. The observation that BHS conducted for Student's reevaluation was not something BHS normally did. BHS, Tr. Vol. II, 207:12-21.
127. BHS conducted the classroom observation using the structure of the Behavior Assessment System for Children, Third Edition ("BASC-3"). BHS, Tr. Vol. II, 208:8-209:13. BHS did not administer the BASC-3 to Student. Prior to BHS's testimony, BHS was not aware that the BASC-3 was administered to Student. BHS, Tr. Vol. II, 213:24-214:5.
128. BHS's observation took place in an inclusion setting for approximately one (1) hour in the morning. BHS observed that the class was divided into three groups. BHS observed that Student was seated at a round table with five (5) other students and an educational assistant reviewing a math lesson; SPED Teacher was seated at a nearby table with five (5) other students working on the same lesson; and the remaining students were in a third group in an adjoining room. BHS observed the groups transition from a math lesson to an English Language Arts lesson. During the observation, Student was on task, followed directions and participated appropriately. DOE Ex. 17 at 35.
129. BHS observed Student doing well in the classroom. Student was engaging appropriately, listening to the educational assistant, answering questions, participating, interacting appropriately with adults and other students, attended to tasks independently



and completed tasks during allotted time. Although Student stood up at ■ table, fidgeted a little in ■ chair, and looked around, Student did not display any outlier behaviors. BHS, Tr. Vol. II, 209:15-210:7; DOE Ex. 17 at 35.

130. After ■ classroom observation, BHS wrote a report entitled “Observation Summary” and sent it to SSC. BHS, Tr. Vol. II, 210:8-10.

### **Gross Motor Assessment**

131. In a school setting, physical therapy addresses gross motor skills. Gross motor skills involve full body movements. DOE-OT, Tr. Vol. II, 296:10-13-297:1, 331:16-332:2.
132. A gross motor assessment was administered by PT over the course of three days: January 27, 2022, February 10, 2022, and February 17, 2022. DOE Ex. 21 at 63a, 63-70.
133. PT received ■ bachelor’s degree in biology in May of 2010 and ■ doctorate in physical therapy from the New York Institute of Technology in May of 2014. PT, Tr. Vol. I, 163:5-24; DOE Ex. 221 at 991.
134. PT provided physical therapy services to the DOE as a contractor between September 2014 and May 2018. In July of 2018, PT became employed with the DOE as a physical therapist. PT, Tr. Vol. I, 162:10-21; DOE Ex. 221 at 991.
135. As a physical therapist with the DOE, PT’s duties include assessing students’ gross motor and functional mobility skills as they relate to participation and learning within a school setting; manage a caseload of 40-55 students across 14-22 schools; implement and execute gross motor and mobility programs for students; collaborate with teachers, administrators, parents, and therapists to develop and support an individualized

- educational plan for each student; attend weekly meetings; educate and train staff members; and supervise a physical therapist assistant. DOE Ex. 221 at 991.
136. In conducting gross motor assessments, PT administers standardized assessments as well as “non-standardized functional mobility assessments” to students so that PT can get a more comprehensive picture of their ability to participate in school and access their environment. PT, Tr. Vol. II, 197:7-198:1.
137. PT testified as an expert in the field of school-based pediatric physical therapy. PT, Tr. Vol. I, 166:5-7.
138. PT provides direct physical therapy services to Student pursuant to Student’s IEP. PT, Tr. Vol. I, 165:16-25.
139. PT believes that Student needs physical therapy to be able to access and make progress in ■ educational program. PT, Tr. Vol. II, 194:23-195:1.
140. PT’s focus in the assessment was on Student’s gross motor skills. PT, Tr. Vol. II, 196:20-23.
141. PT’s gross motor assessment of Student consisted of two (2) assessments: School Functional Assessment (“SFA”) and a non-standardized functional mobility assessment in the school setting, which includes the classroom, building hallways and school grounds. PT, Tr. Vol. I, 166:20-167:5, 167:12-168:24, 171:10-16; DOE Ex. 21 at 63a, 63-70.
142. The SFA is a questionnaire that is completed by one (1) or more school professionals who know a student well and have observed the student’s typical performance on school-related tasks and activities being assessed. The SFA looks at the student’s level of participation in a variety of functional tasks in a school setting as compared to other

students of their same grade. PT conducted the SFA as ■ was trained to do and PT did not encounter any issues when ■ administered the SFA to Student. PT, Tr. Vol. I, 167:12-171:9; 170:5-22; DOE Ex. 21 at 66-68.

143. The non-standardized functional mobility assessment involves a physical therapist interacting with a student to look at the student's ability to access the school environment, such as classroom, building hallways and school grounds, and to participate in physical tasks. PT conducted the non-standardized functional assessment according to how ■ was trained to do. PT, Tr. Vol. I, , 178:4-6, 166:20-167:5, 167:12-168:24, 171:10-16; 171:10-175:4; DOE Ex. 21 at 63a, 63-70.
144. After conducting Student's gross motor assessment, PT wrote a report entitled "Gross Motor Assessment." PT then uploaded ■ report into eCSSS where members of the IEP team had access to the report. PT, Tr. Vol. II, 200:1-20.
145. After assessing Student's ability to navigate ■ school environment, PT concluded that "[Student] demonstrates the ability to navigate ■ school environment using adaptive equipment that ■ brings to school, including adult supervision and assistance for some physical tasks as needed on a daily basis." PT also concluded that "[Student] requires adult supervision and assistance for some activities of daily living (toileting/bathroom) and for some mobility tasks (walking for longer distances, navigating uneven surfaces, stepping up/down curbs and navigate up/down stairs)." DOE Ex. 21 at 69-70.

### **Psychoeducational Assessment**

146. CP is a clinical psychologist with the DOE. CP, Tr. Vol. I, 111:20-21.
147. CP is not a school psychologist. CP, Tr. Vol. I, 115:2-6.

148. CP received a Doctor of Psychology from the Forest Institute of Professional Psychology in 2002. CP, Tr. Vol. I, 112:5-15.
149. CP began working at the DOE in 2003. In 2005, CP completed [REDACTED] licensure requirements and became licensed in psychology. CP, Tr. Vol. I, 112:20-113:6.
150. CP has never met Student in person. CP, Tr. Vol. I, 116:9-12.
151. CP has never spoken to Child Psychiatrist or Neuropsychologist. CP, Tr. Vol. I, 117:4-8.
152. CP testified as an expert in the field of clinical psychology. CP, Tr. Vol. I, 119:17-25; DOE Ex. 220 at 978-990.
153. School Psychologist administered to Student a psychoeducational assessment and issued the CPA Report. School Psychologist did not testify at the due process hearing and CP did not testify about how the psychoeducational assessment was administered to Student. CP, Tr. Vol. I, 117:13-23, 119:8-16.
154. According to the CPA Report, a psychoeducational assessment was conducted on February 2, 8 and 15, 2022 pursuant to a referral on August 30, 2021 by the SFT for a comprehensive assessment. According to the CPA Report, School Psychologist administered the following assessments: Kaufman Assessment Battery for Children, Second Edition (“KABC-II”); Woodcock Johnson IV Tests of Cognitive Abilities (“WJ-IV COG”); Woodcock-Johnson IV Tests of Oral Language (“WJ-IV OL”); Vineland Adaptive Behavior Scales: Second Edition (“VABS-II”), and Behavior Assessment System for Children, Third Edition (“BASC-3”). According to the CPA Report, VABS-II “assesses personal and social sufficiency of individuals from birth to adulthood across

the three domains<sup>7</sup>. It is useful for determining areas of strength and weakness in the performance of the daily activities required for personal and social sufficiency and daily functioning.” Parent-1, SPED Teacher and GED Teacher filled out rating forms for the VABS-II. DOE Ex. 18 at 36-49.

155. The KABC-II is a standardized cognitive assessment. CP uses the KABC-II as [REDACTED] primary cognitive assessment tool. CP, Tr. Vol. I, 124:4-15, 133:6-8.
156. The BASC-3 is a standardized assessment that is utilized by school psychologists. CP frequently uses the BASC-3. CP, Tr. Vol. I, 133:1-8.
157. There is no evidence regarding School Psychologist’s training or qualifications; how School Psychologist administered the psychoeducational assessment to Student; whether School Psychologist administered the psychoeducational assessment the way [REDACTED] was trained to do; and whether School Psychologist administered the assessments in accordance with any instructions provided by the producer of the assessments. CP, Tr. Vol. I, 135:5-18, 138:19-139:15.
158. CP testified that “[t]he validity checks for cognitive assessments would be the assessor’s training and they’re administering it the way that it was standardized and designed to be administered.” CP, Tr. Vol. I, 135:5-18, 138:19-139:15.

#### **Private Company’s Occupational Therapists**

159. POT-1 is a licensed occupational therapist in Hawaii and California. POT-1, Tr. Vol. III, 345:5-9, 346:1-5.

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<sup>7</sup> It is unclear which “three domains” the report is referring to as the report later states: “All four domains make up the Adaptive Behavior Composite.” DOE Ex. 18 at 45.

160. POT-1 has a bachelor's degree in social work and a master's degree in occupational therapy. POT-1, Tr. Vol. III, 345:17-25.
161. POT-1 testified as an expert in the field of pediatric occupational therapy. POT-1, Tr. Vol. III, 348:10-12.
162. POT-2 and POT-3 are both licensed occupational therapists. POT-1, Tr. Vol. III, 350:15-18.
163. POT-1, POT-2 and POT-3 are employed at Private Company. POT-1, Tr. Vol. III, 448:13-15.
164. POT-1 became Student's occupational therapist at Private Company after POT-2 and POT-3 completed the Private OT Report. POT-1, Tr. Vol. III, 409:25-410:11.
165. POT-1 started working with Student on February 18, 2022. POT-1, Tr. Vol. III, 413:19-23, 447:2-15.
166. POT-1 provides Student with occupational therapy services at Private Company twice a week for one (1) hour each session. POT-1, Tr. Vol. III, 350:25-351:2, 353:16-17.
167. POT-1 testified that Student needs occupational therapy for ■ fine motor skills, executing functioning and activities of daily living. POT-1, Tr. Vol. III, 349:17-350:1.

**V. CONCLUSIONS OF LAW**

**A. Burden of Proof**

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

the evidence, the allegations of the complaint.” H.A.R. § 8-60-66(a)(2)(B). In the instant case, DOE filed for a due process hearing and therefore bears the burden of proof.

### **B. IDEA Requirements**

The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs.” Bd. of Educ. v. Rowley, 458 U.S. 176,179-91, 102 S. Ct. 3034, 3037-3043 (1982); Hinson v. Merritt Educ. Ctr., 579 F.Supp.2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)). A free and appropriate public education (“FAPE”) includes both special education and related services. H.A.R. § 8-60-1; H.A.R. § 8-60-3; 20 U.S.C. § 1401(9); 34 C.F.R. § 300.34 (2006); 34 C.F.R. § 300.39 (2006); 34 C.F.R. § 300.101 (2006).

“Special education” means “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability” and “related services” are the supportive services required to assist a child with a disability to benefit from special education. 34 C.F.R. § 300.34; 34 C.F.R. § 300.39; 20 USC §§ 1401(26) and (29). To provide FAPE in compliance with the IDEA, the state educational agency receiving federal funds must “evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP.” Dept. of Educ. of Hawaii v. Leo W. by and through Veronica W., 226 F.Supp.3d 1081, 1093 (D. Haw. 2016).

### **C. IEE Requirements**

An “independent educational evaluation” (“IEE”) means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. 34 C.F.R. § 300.502(a)(3)(i). When a parent disagrees with an evaluation obtained by the public agency, the parent can request an IEE at public expense. “Public

expense” means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. 34 C.F.R. §§ 300.502(a)(3)(ii), 300.502(b)(1). If a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (2) ensure that an IEE is provided at public expense. 34 C.F.R. § 300.502(b)(2). If the public agency files a due process complaint to request a hearing and the final decision is that the public agency’s evaluation is appropriate, the parent still has a right to an IEE, but not at public expense. 34 C.F.R. § 300.502(b)(3).

There are two (2) types of evaluations: initial evaluations and reevaluations. 34 C.F.R. §§ 300.301, 300.303. A public agency must conduct a “full and individual initial evaluation” before the initial provision of special education and related services to a child with a disability. 34 C.F.R. § 300.301(a). The initial evaluation must consist of procedures to determine if the child is a child with a disability under § 300.8 and to determine the educational needs of the child.

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

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and  
(ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum...;

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and



(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 C.F.R. § 300.304(b) (2006); See also H.A.R. § 8-60-36(b). Federal regulations also require that assessments and other evaluation materials used to assess a child are: (1) selected and administered so as not to be discriminatory on a racial or cultural basis; (2) provided and administered in the child’s native language or other mode of communication likely to yield accurate information; (3) used for the purposes for which the assessments or measures are valid and reliable; (4) administered by trained and knowledgeable personnel; and (5) administered in accordance with any instructions provided by the producer of the assessments. 34 C.F.R. § 300.304(c)(1). In addition, the public agency must ensure that “the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” 34 C.F.R. § 300.304(c)(6).

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

Whenever a parent asks for an IEE at public expense and the DOE elects not to provide the IEE, federal regulations require the DOE to “[f]ile a due process complaint to request a hearing to show that its evaluation is appropriate.” 34 C.F.R. § 300.502(b)(2)(i). See e.g., (“[T]he school must defend the appropriateness of the evaluation as a whole and, thus, all of the assessments on which it relies. It cannot defend only some of the underlying data and demur on others because reaching an evaluative conclusion based on incomplete data would be, to borrow a phrase, arbitrary and capricious.”) See also, Great Valley Sch. Dist., 121 LRP 20251, at 4 (Penn. SEA May 7, 2021) (“Here, the evaluation process undertaken in the fall of 2019 and the November 2019 RR that resulted, are both appropriate. The November 2019 RR included and

considered data from the classroom, from the student’s IEP goals, from related services providers, and from formal assessments and tests. The November 2019 RR included input from teachers, other educators, and parents.... At no point was any one single measure, element of input, assessment, or score used to understand the student’s needs and identification.”)

Although the evaluation at issue is a reevaluation, the reevaluation was actually an initial evaluation because a formal initial evaluation was never done for Student. (FOF 19, 21, 23). The “initial evaluation” conducted by the DOE for Student was not comprehensive nor was it intended to determine all of Student’s special education needs. The “initial evaluation” was intended to quickly get skilled nursing services at school for Student. (FOF 19, 21). Therefore, the reevaluation was actually Student’s initial evaluation—where DOE attempted to gain a comprehensive understanding of Student’s special education needs.

(a) Occupational Therapy Assessment was Not Appropriate

The evaluation process undertaken by DOE to determine Student’s eligibility and special education needs was not appropriate. On August 26, 2021, an SFT meeting took place where DOE proposed conducting a “reevaluation” that would include a cognitive assessment; academic assessment; language assessment; “Fine Motor Assessment (Functional Observation)”<sup>8</sup>; gross motor assessment; social/family assessment (adaptive, and behavior rating scale); and classroom observation. (FOF 24, 25). Following the SFT meeting, a PWN, dated August 30, 2021, was issued. (FOF 25). On November 18, 2021, Student was evaluated by Private Company and the Private OT Report was completed on December 17, 2021. (FOF 26). DOE was given a copy of the Private OT Report on or before February 14, 2022. (FOF 31).

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<sup>8</sup> The undersigned finds it odd that the SFT would propose a “Fine Motor Assessment (Functional Observation)” before the Private OT Report was completed.

DOE-OT reviewed the Private OT Report and contacted Parent-1 on February 14, 2022 to seek Parent-1's permission to not conduct a full occupational therapy assessment but to only conduct a "functional observation" of Student's occupational therapy needs because, according to DOE-OT, the Private OT Report was "very thorough." (FOF 31, 32). Parent-1 agreed that DOE did not have to conduct a full occupational therapy assessment on the condition that the Private OT Report would be used to "determine OT eligibility" or "determine eligibility." (FOF 32, 34, 39, 40). DOE agreed that the Private OT Report would be used "during the eligibility process." (FOF 35). No PWN was issued to document this agreement or to document DOE's proposed change to the occupational therapy assessment. (FOF 37). "The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct." 34 C.F.R. § 300.304(a). Pursuant to 34 C.F.R. § 300.503(a)(1), a prior written notice must be given to parents before the public agency "proposes to initiate or change the...evaluation." Here, DOE did not give Parent-1 a PWN before proposing to change the evaluation.

Furthermore, Parent-1 was also not informed, verbally or through written correspondence, that DOE-OT alone will have the discretion to decide what parts of the Private OT Report is or is not relevant for the team to consider. (FOF 75). Although DOE-OT testified that ■ "considered" the entire Private OT Report before writing ■ DOE-OT Report, this does not mean that the team considered the Private OT Report in making an eligibility determination. An eligibility determination, whether it be for special education or occupational therapy services, is not for DOE-OT to make. DOE-OT may make recommendations, but an eligibility determination is a team decision, which is made after a team discussion and consideration of all

available data. (FOF 50). Therefore, DOE-OT considering the entire Private OT Report is not the same as the team considering the Private OT Report in making an eligibility determination.

In addition to failing to provide Parent-1 with proper prior notice, the occupational therapy assessment conducted by the DOE was insufficient to determine eligibility and Student's special education needs. DOE-OT's decision to deem some of the Private OT Report's data as irrelevant to school-based occupational therapy was unreasonable. For example, DOE-OT did not include the Goal-Oriented Assessment of Life Skills ("GOAL") in [REDACTED] DOE-OT Report because "a lot of the components do not pertain to school based OT." DOE-OT then explain during the due process hearing:

For example, using a knife and fork to cut Play-Doh, students don't get knives at lunchtime. Use a lock, [Student] doesn't need to use a lock. [REDACTED] doesn't have a locker that requires the use of a combination padlocks. It involves dressing and undressing, which [Student] does not do at school. It also includes a tray carry task that I don't know how [REDACTED] would have completed to get a score for<sup>9</sup>.

DOE-OT, Tr. Vol. II, 281:3-10. First, using a knife and fork to cut Play-Doh and using a lock require fine motor skills. (FOF 90). Second, the undersigned finds DOE-OT's rationale to be unreasonable. While Student may not use a knife at school, surely [REDACTED] uses a fork and spoon during lunch, which the GOAL addresses. (FOF 76). The fact that Student does not currently have a locker does not mean that [REDACTED] will never have a locker at school. Generally, schools have lockers for students to store their books and belongings, and physical education classes have lockers in their "locker rooms." Also, DOE-OT's conclusion that Student does not dress or undress [REDACTED] at school shows DOE-OT's lack of effort in trying to understand Student as

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<sup>9</sup> DOE-OT gave contradictory testimony. DOE-OT later testified that cutting Play-Doh with a knife and fork and learning how to use a key and manipulate a lock involve fine motor skills, and that these skills come into play while Student accesses [REDACTED] educational program. DOE-OT, Tr. Vol. II, 300:9-23.

Student [REDACTED] and has on occasion [REDACTED]. (FOF 7, 8, 78-81). Lastly, DOE-OT questioned the validity of the Private OT Report because [REDACTED] could not understand how POT-2 and POT-3 were able to obtain data about Student holding a tray, but [REDACTED] did not follow up with POT-2 or POT-3 to obtain an understanding of this data. (FOF 79).

Furthermore, DOE-OT's utilization of the Private OT Report was flawed and deprived the team of relevant information. When information in the Private OT Report conflicted with DOE-OT's functional observation, DOE-OT did not make an effort to understand the contradictions. (FOF 79). Instead, DOE-OT gave [REDACTED] functional observation of Student, which totaled approximately one (1) hour and forty-five (45) minutes, greater weight than those of POT-2 and POT-3. (FOF 70, 92). DOE-OT disregarded the Private OT Report's data and elected to use [REDACTED] own data. The undersigned finds POT-1's critique of DOE-OT's decision to conduct the functional observation during math/language arts class and lunch time to be credible. (FOF 70, 72). DOE-OT's functional observation produced limited information and should not have been the basis for rejecting those portions of the Private OT Report that conflicted with DOE-OT's functional observation<sup>10</sup>. It is this disregard of the Private OT Report that Parent-1 clearly did not want<sup>11</sup>. (FOF 31-34, 38-40, 57).

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<sup>10</sup> Had DOE conducted its own full occupational therapy assessment and concluded that its assessment was more appropriate than the Private Company's assessment, then that would have been an acceptable scenario. But that is not what occurred here. DOE relied on the Private OT Report to fulfill its obligation to do a full occupational therapy assessment but allowed DOE-OT to pick and choose which portions of the Private OT Report would be used.

<sup>11</sup> Petitioners' argument that Parent-1 only wants an IEE for occupational therapy because the IEP team did not agree to provide Student with occupational therapy services, is unpersuasive. (Petitioners' Closing Brief, p. 15). When a parent requests an IEE at public expense, the parent is not required to tell DOE why he/she wants an IEE at public expense, nor may DOE require a parent to provide an explanation. 34 C.F.R. § 300.502(b)(4). However, the evidence supports Respondents' argument that Parent-1 had agreed to allow DOE to use the Private OT Report in lieu of doing a full occupational therapy assessment only if both the Private OT Report and the DOE-OT Report will be used to determine eligibility. (FOF 32, 34).

Lastly, had DOE-OT not asked Parent-1 to use the Private OT Report in place of conducting a full occupational therapy assessment, the team, not just DOE-OT, would have had to consider the entire Private OT Report because DOE is obligated to consider any private evaluation obtained by a parent.

Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the result of the evaluation—

- (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE of the child...

34 C.F.R. § 300.502(c). When determining eligibility and educational needs of a student, the following procedures must be adhered to by the DOE:

- (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each public agency must—
  - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
  - (ii) Ensure that information obtained from all of these sources is documented and carefully considered.

34 C.F.R. § 300.306(c). The Private OT Report meets agency criteria otherwise DOE would not have allowed DOE-OT to use the Private OT Report in lieu of conducting a full occupational therapy assessment of its own. Parent-1 presented the Private OT Report to DOE. (FOF 31, 32). DOE-OT considering the Private OT Report is not sufficient to satisfy DOE's obligation to consider the Private OT Report, especially when a significant amount of the Private OT Report was not adopted by DOE-OT in ■■■ report and DOE-OT was not present at any IEP meetings to share information ■■■ learned but did not adopt in ■■■ DOE-OT Report<sup>12</sup>. It is a disservice to

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<sup>12</sup> DOE-OT did not adopt Parents' input about Student that are in the Private OT Report. (FOF 91). Therefore, Parents' input contained in the Private OT Report was not available to the team.

Student to not consider the entire Private OT Report because, as DOE-OT testified, the Private OT Report contains information about deficits that are better addressed by other professionals, but the other professionals--PT, CP and SSC--did not review the Private OT Report. (FOF 76, 77).

It is not reasonable for DOE to fail to properly inform Parent-1 about the changes to the occupational therapy assessment and when Parent-1 realizes that what ■ had agreed to was not honored, DOE refused to rectify the situation. In the end, DOE-OT did not do a full occupational therapy assessment, and the occupational therapy assessment Parent-1 obtained at private expense was not considered by DOE.

(b) Psychoeducational Assessment was Not Appropriate

In addition to not having done a complete occupational therapy assessment, DOE also failed to show that the psychoeducational assessment conducted by the DOE was administered by a qualified assessor who administered the psychoeducational assessment to Student according to ■ training and to instructions provided by the manufacturers. (FOF 158). Petitioners' argument that "[CP] had no reason to suspect that the administration of the assessments was done incorrectly" is unpersuasive. Petitioners' Closing Brief, p. 8. The undersigned will not assume that School Psychologist administered the battery of tests correctly simply because CP did not suspect that they were administered incorrectly.

(c) Conclusion

While DOE did not use a single measure or assessment as the sole criterion for determining whether Student is a child with a disability, the evaluation, however, was not sufficiently comprehensive to identify all of Student's special education and related services needs. Student was not assessed in all areas related to ■ suspected disability.

Based on the foregoing, there is insufficient evidence to show that DOE conducted a full and individual evaluation using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student and that the evaluation was sufficiently comprehensive to identify all of Student's special education and related services needs. Therefore, DOE has not met its burden of proof in showing that the occupational therapy assessment, and the evaluation as a whole, conducted by the DOE was appropriate.

## **VI. DECISION**

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

For the reasons stated above, IT IS HEREBY ORDERED—

1. Student is entitled to an occupational therapy evaluation at public expense.
2. DOE shall convene an IEP meeting to discuss scheduling the occupational therapy evaluation within ten (10) business days from the date of this order.
3. Respondents are deemed the prevailing party in this matter.

## **RIGHT TO APPEAL**

The decision issued by this Hearings Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearings Officer shall have 30 days from the date of the decision to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a State court of competent jurisdiction, as provided in 20 U.S.C. § 1415 (i)(2) and H.A.R. § 8-60-70(b).



DATED: Honolulu, Hawaii, October 28, 2022.

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Redacted Hearing Decision