



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

In the Matter of STUDENT, by and through  
the [REDACTED]<sup>1</sup>,

Petitioners,

vs.

DEPARTMENT OF EDUCATION, STATE  
OF HAWAII and KEITH T. HAYASHI,  
Superintendent of Hawaii Public Schools,

Respondents.

DOE-SY2223-015

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DECISION

Due Process Hearing:  
November 18, 21 & 22, 2022

Hearings Officer: Charlene S.P.T. Murata

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

**I. JURISDICTION**

This proceeding was invoked in accordance with the Individuals with Disabilities Education Act (“IDEA”), as amended in 2004, codified at 20 U.S.C. §§ 1400, et seq.; the federal regulations implementing IDEA, 34 C.F.R. Part 300; and the Hawaii Administrative Rules §§ 8-60-1, et seq. Additionally, Petitioners reference Section 504 of the Rehabilitation Act of 1973

<sup>1</sup> [REDACTED]

(“Section 504”), as amended in 1974, codified at 29 U.S.C. §§ 794, et seq.; and the Hawaii Administrative Rules §§ 8-61-1, et seq. in their claims and requests for relief<sup>2</sup>.

## **II. INTRODUCTION**

On August 11, 2022, Respondents Department of Education, State of Hawaii, and Keith T. Hayashi, Superintendent of Hawaii Public Schools (collectively “Respondents” or “DOE”), received a Complaint and Resolution Proposal from Student, by and through Parent-1 (collectively “Petitioners”). On August 22, 2022, Respondents filed Department of Education’s Response to Petitioners’ Complaint and Resolution Proposal Submitted on August 11, 2022.

On September 2, 2022, with the consent of the undersigned Hearings Officer and with no objections by Respondents, Petitioners filed a First Amended Complaint and Resolution Proposal against Respondents, dated August 25, 2022 (“FAC”).

On September 6, 2022, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, setting a prehearing conference for September 12, 2022.

On September 12, 2022, Respondents filed Department of Education’s Response to Petitioners’ First Amended Complaint and Resolution Proposal Submitted on September 2, 2022.

On September 12, 2022, a prehearing conference was held with Keith H.S. Peck, Esq. (“Mr. Peck”) appearing on behalf of Petitioners, and Deputy Attorney General Michael R.S. Azuma (“Mr. Azuma”) appearing on behalf of Respondents. During the prehearing conference, the parties agreed to have the due process hearing on November 18, 21, 22 and 28, 2022.

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<sup>2</sup> Petitioners’ FAC “assert[s] Student’s eligibility for rights and protections under Section 504 of the Rehabilitation Act of 1974.” DOE Ex. 1 at 013. Petitioners, however, did not present any evidence or argument during the due process hearing and in their closing brief regarding their Section 504 claim. Based on the lack of evidence or argument to support this claim, the undersigned Hearings Officer concludes that Petitioners have effectively abandoned their Section 504 claim and have not met their burden of proof.

On September 13, 2022, 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. No substantive motions were filed, and the parties timely submitted their witness and exhibit lists and exhibits.

The initial deadline by which a decision in this matter must be issued was October 25, 2022. The decision deadline was extended from October 25, 2022 to December 9, 2022 at Respondents' request, and then from December 9, 2022 to January 23, 2023 at Petitioners' request. See Order Granting Respondents' Request to Extend the 45-Day Decision Deadline from October 25, 2022 to December 9, 2022; Declaration of Michael R.S. Azuma, dated October 24, 2022, issued on October 25, 2022; Order Granting Petitioners' Request for an Extension, dated December 1, 2022, issued on December 1, 2022.

Due to potential health concerns caused by COVID-19, the parties agreed to conduct the due process hearing using a video conferencing platform. On November 10, 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.

The due process hearing took place on November 18, 21 and 22, 2022 using the Zoom video conferencing platform. All participants in the due process hearing appeared remotely via video and audio. The undersigned Hearings Officer presided over the matter. Petitioners were represented by Mr. Peck, and Respondents were represented by Mr. Azuma. Parent-1 was present during [REDACTED] testimony with a [REDACTED] Interpreter. After Parent-1's testimony was completed, [REDACTED] presence was waived for the remainder of the due process hearing. The Department of Education District Educational Specialist ("DES") was present on behalf of

Respondents. The due process hearing was completed on November 22, 2022, and November 28, 2022 was taken off calendar.

Petitioners called Parent-1 and Director as their witnesses during the due process hearing. Respondents called DOE Board Certified Behavior Analyst (“DOE-BCBA”) as their only witness. Petitioners did not call any rebuttal witnesses.

The parties did not object to the opposing side’s exhibits and requested that all their respective exhibits be admitted into evidence. The parties’ requests were granted. Petitioners’ Exhibits 1-3 (bate-stamped 001-259) were admitted into evidence. Respondents’ Exhibits 1-98 were admitted into evidence. Tr. Vol. III, p. 271<sup>3</sup>.

On December 22, 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.

### **III. ISSUES PRESENTED**

In their FAC, Petitioners allege procedural violations of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973. Specifically, Petitioners allege that the DOE denied Student a free appropriate public education (“FAPE”). Petitioners raise the following issues for determination at the due process hearing:

Issue 1 – Whether the DOE had sufficient information regarding Student’s post high school transition needs. This issue is not restricted to the Post High School Transition Services Needs section of the IEP but potentially implicates other aspects of the IEP.

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<sup>3</sup> “Tr. Vol. III, p. 271” means Transcript of the Due Process Hearing, Volume III, page 271. Volume I is a transcription of the due process hearing that occurred on November 18, 2022; Volume II is a transcription of the due process hearing that occurred on November 21, 2022; and Volume III is a transcription of the due process hearing that occurred on November 22, 2022.

Issue 2 – Whether Student was denied FAPE by the DOE’s failure to complete an Annual IEP in a timely fashion.

Petitioners request the following remedies:

Remedy 1 – Order the DOE to amend the IEP as necessary to address the violations alleged;

Remedy 2 – Order the DOE to fund (direct funding of private program and/or reimbursement of necessary parental expenditures) the costs of Student’s privately contracted/delivered services, including related services such as transportation;

Remedy 3 – Order the DOE to provide compensatory education as demonstrated appropriate at hearing; and

Remedy 4 – Order such other relief that is appropriate and justified in equity and/or in law, under the circumstances.

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

##### **Student**

1. Student was born on [REDACTED] and is [REDACTED] years old. Pet. Ex. 1 at 001.
2. Student’s home school is Home School. Pet. Ex. 1 at 001.
3. Student is eligible for special education and related services pursuant to the IDEA and Hawaii Administrative Rules Chapter 60 under the category of [REDACTED]. Pet. Ex. 1 at 002.
4. Student was diagnosed with [REDACTED]. Student’s “[REDACTED] delay in communication, fine motor, adaptive behavior, and social-emotional development makes it difficult for [REDACTED] to access the general curriculum and make progress on grade level standards without modifications, supports and specifically designed instruction.” Pet. Ex. 1 at 002.

5. Student attended a DOE school for [REDACTED] and most of [REDACTED] grade before enrolling at Private Academy. Student has been attending Private Academy since the [REDACTED] grade<sup>4</sup>. Pet. Ex. 3 at 088; Parent-1, Tr. Vol. II, p. 101.
6. Student [REDACTED] school in May of 2022. Pet. Ex. 3 at 088; Parent-1, Tr. Vol. II, p. 55.

### **Events in 2021**

7. On May 25, 2021, an Evaluation Summary Report was done for Student's triennial reevaluation ("5/25/2021 ESR"). Student was found to continue to be eligible for special education under the category of [REDACTED]. Pet. Ex. 3 at 087; DOE Ex. 5 at 023-026.
8. On August 11, 2021, an Individualized Education Program ("IEP") was developed for Student ("8/11/2021 IEP"). According to the 8/11/2021 IEP, the annual review date for Student's IEP was August 11, 2022. Pet. Ex. 1 at 001; DOE Ex. 6 at 029.
9. After the 8/11/2021 IEP meeting, a Prior Written Notice of Department Action, dated August 27, 2021 ("8/27/2021 PWN"), was issued. According to the 8/27/2021 PWN, "[Student's] placement for this IEP year is in the Certificate of Completion Program at [Home School]. [REDACTED] program focuses on functional academics, functional life skills, and vocational training." Parent-1 was provided copies of the 8/11/2021 IEP and 8/27/2021 PWN. DOE Ex. 6 at 062; DOE Ex. 60 at 247.

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<sup>4</sup> There is conflicting evidence as to when Student enrolled at Private Academy. According to Student's 5/25/2021 ESR, Student was in a special education program in a public school from [REDACTED] to the [REDACTED] and transferred to Private Academy in the [REDACTED] grade. DOE Ex. 5 at 023. For the purposes of this decision, it makes little difference whether Student started at Private Academy in the [REDACTED] grade or [REDACTED] grade. What is important is that Student has been at Private Academy for a very long time.

10. On August 27, 2021 and September 8, 2021, Home School sent emails and mail to Parent-1 asking if Parent-1 had any questions about Student's 8/11/2021 IEP and transition planning, but did not receive a response from Parent-1. DOE Ex. 17 at 083; DOE Ex. 62 at 249.
11. On October 4, 2021, SSC informed Parent-1 that Student qualified for Fall Extended School Year ("ESY") as stated in [REDACTED] 8/11/2021 IEP. Student was offered speech therapy, occupational therapy, and Registered Behavior Technician ("RBT") services. Parent-1 was provided registration forms for Fall 2021 ESY but Parent-1 did not respond. DOE Ex. 16 at 080-082; DOE Ex. 17 at 083; DOE Ex. 61 at 248.
12. On October 14, 2021, SSC sent a message to Parent-1, through email and regular mail, inquiring about Student's educational status since Student had not attended Home School since the beginning of the 2021-2022 school year. SSC asked Parent-1 if Student was enrolled in another educational program, and if [REDACTED] was, Home School would transfer Student's school records to that school. DOE Ex. 17 at 083; DOE Ex. 62 at 249.
13. On October 15, 2021, Parent-1 sent an email to SSC to inform SSC that Student would not be returning to Home School and asked SSC what Home School needed from Parent-1. DOE Ex. 18 at 084.
14. On October 20, 2021, in response to Parent-1's statement that Student would not be returning to Home School, SSC informed Parent-1 that Student's 8/11/2021 IEP was ready to be implemented at Home School and asked Parent-1 to elaborate on why Student will not be returning to Home School. DOE Ex. 18 at 084; DOE Ex. 63 at 250.

15. On October 21, 2021, a letter was sent via regular mail to Parent-1, seeking clarification of why Parent-1 was in disagreement with the 8/11/2021 IEP. DOE Ex. 64 at 251.
16. From August 2021 through January 2022, Student did not receive educational services from Private Academy. Parent-1, Tr. Vol. I, pp. 31-32; Parent-1, Tr. Vol. II, p. 80. During that period, Student was attending Private Academy but was only receiving services from the State of Hawaii's Department of Health ("DOH"). Parent-1, Tr. Vol. II, pp. 49-50, 79-80, 107-108.

### **Events in 2022**

17. In January of 2022, Petitioners and DOE entered into a settlement agreement that required the DOE to pay for Student's academic instructions at Private Academy. Parent-1, Tr. Vol. II, pp. 79-80.
18. On March 9, 2022, Parent-1 went to Home School to inquire about Home School's graduation ceremony. SSC spoke to Parent-1, reminding Parent-1 that Student's 8/11/2021 IEP review deadline was coming up and requested Parent-1's availability to schedule an IEP meeting. Later that day, SSC sent an email to Parent-1 asking to schedule an IEP meeting<sup>5</sup>. SSC confirmed with Parent-1 that Parent-1 wanted to schedule the meeting for Monday or Friday, from 10:00 a.m. to 12:00 p.m., as those days were better for Parent-1. SSC then provided five (5) meeting dates in April, all on Mondays and Fridays from 10:00 a.m. to 12:00 p.m. DOE Ex. 19 at 085-090; DOE Ex. 66 at 253-254.

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<sup>5</sup> SSC's 3/09/2022 email was also sent to other DOE employees and two individuals from Private Agency. The record is unclear as to what Private Agency is and who these individuals are.



19. On March 14, 2022, SSC sent an email to Parent-1 to correct the meeting dates stated in SSC's 3/09/2022 email. SSC eliminated one of the April dates because it fell on a holiday. SSC reiterated the available April dates and asked Parent-1 to respond. DOE Ex. 20 at 091-092.
20. On March 22, 2022, Parent-1 sent an email to SSC informing SSC that [REDACTED] attorney wanted to know why DOE wanted an IEP meeting since Student's IEP review date was "8/11/2021." Parent-1 asked if this was an annual IEP meeting, and if it was, Parent-1 wanted [REDACTED] attorney to participate. DOE Ex. 21 at 093; DOE Ex. 68 at 256.
21. On March 23, 2022, SSC responded to Parent-1's 3/22/2022 email, explaining that due to the number of agencies and personnel involved in Student's IEP, SSC hoped to set the IEP meeting ahead of time. SSC confirmed that Student's IEP was not due until August 11, 2022, and [REDACTED] explained that it will be difficult to schedule meetings during the summer due to personnel being on vacation and August 11, 2022 being the start of a new school year. SSC then provided the following dates for a meeting: April 11, 18, 22, 25, 29 and May 2, 6, all for Mondays and Fridays at 10:00 a.m. to 12:00 p.m. DOE Ex. 22 at 094-095; DOE Ex. 69 at 257.
22. On March 27, 2022, Parent-1 responded to SSC's request for dates to have the IEP meeting. Parent-1 informed SSC that [REDACTED] did not want to change Student's annual review date because Student "has not been getting [REDACTED] full program until February and [REDACTED] will look like [REDACTED] is not doing well. The [IEP] will be wrong by August if done now. I want to wait until August for [REDACTED] real Annual [IEP]." DOE Ex. 23 at 096; DOE Ex. 39 at 146; DOE Ex. 70 at 258.

23. On April 1, 2022, an “Individualized Report Card” was done by Director and Private-BCBA at Private Academy (“4/01/2022 Report Card”). The 4/01/2022 Report Card documented Student’s progress in reaching various goals, such as reading, writing, math, communication, identifying community helpers, social behavior and play, during Quarter 3 (January/February/March) at Private Academy. DOE Ex. 95 at 336-342.
24. On April 19, 2022, SSC responded to Parent-1’s 3/27/2022 email and proposed six (6) dates in August to have the IEP meeting--all before August 11, 2022 and all at 10:00 a.m. to 12:00 p.m. SSC asked Parent-1 to choose three dates. SSC wrote: “For planning purposes and to ensure that appropriate personnel can mark their calendar ahead of time, I would like to provide you with possible dates/times in early August to schedule [Student’s] IEP meeting. Please let us know which **3 dates** (to allow enough time for discussions) you would prefer to have this meeting.” [Bold and underline in original]. DOE Ex. 24 at 097-098; DOE Ex. 30 at 109-110; DOE Ex. 39 at 146; DOE Ex. 71 at 260.
25. One of the recipients of SSC’s 4/19/2022 email was DVR-Personnel. DVR-Personnel is employed with the State of Hawaii’s Department of Human Services (“DHS”). DOE Ex. 24 at 097. The Division of Vocational Rehabilitation (“DVR”) is an agency within DHS. It is an agency that provides a variety of services to individuals with disabilities, such as assistance in obtaining work skills or work placement. Director, Tr. Vol. III, pp. 195-196; Pet. Ex. 3 at 207-208.
26. Student qualifies for services from DOH, DVR and DOE.
27. In the State of Hawaii, an individual with special needs can attend school from the age of three (3) years old to twenty (22) years old where the school will provide the

individual with educational supports. DOH can also provide the individual with “waiver services,” which is a supplemental program for individuals with disabilities. The eligibility requirements for DOH waiver services are a developmental disability diagnosis and financial need. There is no age requirement for DOH waiver services. DOH is a “payer of last resort,” which means that DOH does not allow participants to receive services that another agency can pay for. DOH provides a range of waiver services, such as: in-home services (e.g., support for activities of daily living, learning chores); a community-based program; and prevocational (such as discovery and career planning) and vocational services (such as job coaching where once an individual finds a job, an assistant will accompany the individual to assist the individual in learning the job). DOH, however, will not provide vocational services if an individual can get it from DVR. DVR is an agency that focuses on work readiness and becomes involved when an individual starts to age out of the school system and transitions into the community. If DVR determines that an individual is not work ready, that individual may then become eligible for some vocational programs through DOH. If an individual qualifies for DVR services, the individual can participate in a prevocational work readiness program called VWATS<sup>6</sup>, and receive job placement and job coaching services. Director, Tr. Vol. III, pp. 196-198.

28. Private Academy cannot provide services during a school day using DOH waiver services. Director, Tr. Vol. III, p. 197.

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<sup>6</sup> There is an error in the transcripts. The acronym is “VWATS” and not “BWATS.” “VWATS” stands for “Vocational Work and Adjustment Training.” DOE Ex. 55 at 193; Pet. Ex. 2 at 072.

29. As part of Student's transition services, Student participates in the VWATS program through DVR. Private Academy staff accompanies Student to VWATS classes and assists Student. Student works on interviewing skills and resume building in these VWATS classes. Student has been placed in a paid internship program where ■ can practice ■ work readiness skills and be assessed to determine if ■ is work ready. During the internship, Student worked in a food kitchen and assisted with meal preparation, such as assembling utensil packets, and cleaning and sanitizing tables. Director, Tr. Vol. III, pp. 141-142, 198-199.
30. A "Request for Observation," dated April 25, 2022, was prepared for Parent-1 but not signed by Parent-1 or dated. The Request for Observation would have allowed DOE to observe Student at Private Academy. DOE Ex. 13 at 076.
31. On April 25, 2022, SSC asked Director for a copy of Student's most recent progress report. DOE Ex. 25 at 100; DOE Ex. 27 at 105. On April 26, 2022, Director responded to SSC's 4/25/2022 email and asked if ■ should fax or email the information. DOE Ex. 25 at 099; DOE Ex. 27 at 104. On April 29, 2022, SSC responded to Director's 4/26/2022 email that Director can email the information. DOE Ex. 27 at 104
32. On April 28, 2022, Parent-1 went to SSC's office with the intention of signing consent forms to allow Home School to receive information from Private Academy and to do observations of Student at Private Academy. However, Parent-1 decided to take the documents home instead and stated that ■ would bring the signed forms back the next day. DOE Ex. 72 at 261. The next day, on April 29, 2022, Parent-1 signed a Consent for Release of Information form ("4/29/2022 Consent Form") and Request for Observation form ("4/29/2022 Observation Form"). The 4/29/2022 Consent Form gave

Home School and its contracted providers permission to receive Student's educational records from Private Academy. The educational records requested included, but were not limited to, assessments, attendance, report cards, progress reports, academic/behavioral/functional performance information. The 4/29/2022 Consent Form states that the documents/information will be transmitted "only on the condition that it not be shared with another agency or other person(s) without the written consent of the parent(s)..." Pet. Ex. 2 at 042. The 4/29/2022 Observation Form gave Home School's teachers, related service providers, and service coordinators permission to observe Student at Private Academy. Pet. Ex. 2 at 043.

33. On May 2, 2022, SSC sent an email to Parent-1, confirming that [REDACTED] had received Parent-1's signed consent forms from Director. SSC informed Parent-1 that DOE would be scheduling observations with Private Academy. DOE Ex. 28 at 106.
34. On May 11, 2022, Director sent a link to DOE Speech-Language Pathologist ("DOE-SLP") for a virtual observation scheduled for May 17, 2022 from 9:00 a.m. to 10:00 a.m. DOE Ex. 74 at 264.
35. On May 12, 2022, when Parent-1 went to school to pick-up Student's cap and gown for the graduation ceremony, SSC asked Parent-1 for a response regarding the IEP meeting dates. Parent-1 informed SSC that [REDACTED] was waiting for information from [REDACTED] attorney regarding [REDACTED] availability. DOE Ex. 75 at 265.
36. Also on May 12, 2022, Special Education Teacher ("SPED Teacher") received progress reports from Private Academy for the 3<sup>rd</sup> quarter of the 2021-2022 school year. DOE Ex. 75 at 266.

37. Also on May 12, 2022, SPED Teacher conducted a one-hour virtual observation of Student. SPED Teacher placed an observation report in Student's IEP folder. DOE Ex. 75 at 267.
38. On May 16, 2022, an "Individualized Report Card" was made by Director and Private-BCBA ("5/16/2022 Report Card"). The 5/16/2022 Report Card contained information about Student's progress on ■ goals for the fourth quarter of the 2021-2022 school year (April 1, 2022 to May 13, 2022). DOE Ex. 95 at 329-335.
39. On May 16, 2022, SSC again asked Parent-1 to select three dates in August to have the IEP meeting. SSC's email to Parent-1 reads: "Just following up on the IEP meeting dates. Please let us know which **3 dates** (to allow enough time for discussions) you would prefer to have this meeting." [Bold and underline in original]. The dates given to Parent-1 were August 1, 2, 4, 5, 8 and 9, 2022. DOE Ex. 30 at 109; DOE Ex. 39 at 145-146; DOE Ex. 76 at 268.
40. On May 17, 2022, DOE-SLP conducted a virtual observation of Student at Private Academy. DOE Ex. 7 at 065; DOE Ex. 77 at 269.
41. On May 22, 2022, Student participated in Home School's graduation ceremony without any incident. DOE Ex. 79 at 271.
42. On June 8, 2022, SSC again asked Parent-1 to select three (3) dates in August to have the IEP meeting: "Please let us know which 3 dates (to allow enough time for discussions) you would prefer to have this meeting." SSC gave Parent-1 the following dates: August 1, 2, 4, 5, 8 and 9, 2022. DOE Ex. 31 at 111; DOE Ex. 79 at 271.
43. On June 9, 2022, DOE Occupational Therapist ("DOE-OT") sent an email to Director, requesting to schedule an observation of Student. DOE-OT suggested June 14, 2022 at

10:00 a.m. to 11:00 a.m., and June 20, 2022 at 12:00 p.m. to 1:00 p.m. as possible observation dates and times. DOE Ex. 80 at 272. Director responded to DOE-OT's request and asked if DOE-OT wanted to observe an occupational therapy session or general education. DOE Ex. 81 at 274.

44. On June 13, 2022, DOE-OT responded to Director's 6/9/2022 email and asked to schedule an education observation, and if possible, schedule the next observation during an occupational therapy session. DOE Ex. 81 at 274. Director responded to DOE-OT that day and stated that [REDACTED] will work on scheduling the education observation and confirm with a Zoom invitation. Director told DOE-OT that [REDACTED] will confirm when Student's occupational therapy sessions are and then let DOE-OT know. Director also informed DOE-OT that Student's "ESY runs until 11am for June and July." DOE Ex. 81 at 273.
45. Also on June 13, 2022, Parent-1 signed consent forms to allow for the sharing of information between DOH and DVR for the purposes of coordinating and receiving DVR services. Pet. Ex. 3 at 207-209.
46. On June 14, 2022, DOE-OT sent an email to Director, informing Director that [REDACTED] did not receive a link for the observation. DOE-OT then asked if the observation was on for today. DOE Ex. 82 at 279. Director immediately responded to DOE-OT's email and stated that there was no observation for June 14, 2022 and that Student was not in school. Director asked DOE-OT to provide other days and times for an observation and informed DOE-OT that Student's "school day ends at 11am." DOE Ex. 82 at 276, 278. DOE-OT responded to Director that [REDACTED] is available on June 17 at 9:00 a.m.; June 20 at

- 10:00 a.m.; and June 21 at 9:00 a.m. DOE-OT informed Director that ■ would like to observe Student at least twice before the end of the month. DOE Ex. 82 at 276, 277.
47. On June 17, 2022, DOE-BCBA asked Director if ■ could observe Student in-person on June 24, 2022 at 9:00 a.m. DOE Ex. 32 at 112.
48. On June 20, 2022, having not received a response to ■ email, DOE-OT sent another email to Director to follow up on ■ request to set up an observation. DOE Ex. 83 at 284. Director promptly responded and stated that the observation can be on June 21 from 9:00 a.m. to 10:00 a.m. Director asked if the observation will be virtual or in-person. Private Academy's Observation Policy was included in the email. The Observation Policy states, *inter alia*, that in-person observations are limited to two (2) observers for one (1) hour and virtual observations are preferable. DOE Ex. 83 at 283. DOE-OT asked Director to send a link to ■ as DOE-OT wanted to complete a virtual observation. DOE-OT also asked Director if Director was able to find out when Student receives occupational therapy services and if DOE-OT would be able to observe an occupational therapy session. DOE Ex. 83 at 282. Director informed DOE-OT that Student receives occupational therapy on Wednesdays and/or Fridays but the occupational therapist was on vacation until July. Director stated that ■ would let DOE-OT know the schedule for July when ■ gets it. DOE Ex. 83 at 280.
49. On June 21, 2022, DOE-OT was scheduled to conduct a virtual observation of Student; however, after waiting for thirty (30) minutes and no one logging into the virtual observation, DOE-OT logged off. DOE-OT then emailed Director to inquire about what happened. Director informed DOE-OT that the registered behavior technician ("RBT")



“did not attend” and offered to reschedule the observation. DOE Ex. 8 at 066-067; DOE Ex. 84 at 285-287.

50. On June 23, 2022, while trying to reschedule the virtual occupational therapy observation, Director informed DOE-OT that Student transitions from DOE to DOH services at 11:00 a.m. and that Student’s DOE and DOH services are provided by the same staff. DOE Ex. 85 at 293. DOE-OT and Director agreed to reschedule the virtual occupational therapy observation to July 8, 2022 from 9:00 a.m. to 10:00 a.m. DOE Ex. 85 at 288-289, 291, 293-294.
51. Also on June 23, 2022, Parent-1 responded to SSC’s 5/16/2022 email, informing SSC that ■ was not available in August. Parent-1 then stated that ■ was available on June 28, 29, 30 or July 1, 5, 6, 7, 8 from 10:00 a.m. to 12:00 p.m. DOE Ex. 33 at 120-121; DOE Ex. 39 at 145. SSC responded to Parent-1’s email that same day and informed Parent-1 that ■ would need to determine the whole team’s availability based on the dates that Parent-1 had given to SSC, and that SSC will get back to Parent-1 with a meeting date once ■ hears back from the other members of the IEP team. SSC informed Parent-1 that “[t]his is the reason why I wanted to schedule this IEP meeting sooner and secure a meeting date before the end of the school (before they start planning their vacation days) but you insisted on having the IEP meeting closer to the IEP due date (August 11, 2022). Thus, many of our DOE employees are on vacation or summer break.” DOE Ex. 34 at 122; DOE Ex. 39 at 145.
52. Also on June 23, 2022, Director responded to DOE-BCBA’s 6/17/2022 email, asking DOE-BCBA if DOE-BCBA was still available on June 24 at 9:00 a.m. for an observation. DOE Ex. 32 at 112. DOE-BCBA responded that day, confirming that June

- 24 at 9:00 a.m. still worked for [REDACTED]. DOE-BCBA informed Director that [REDACTED] wanted to do an in-person observation and [REDACTED] will be the only observer at that time. Director thanked DOE-BCBA. DOE Ex. 32 at 113.
53. Also on June 23, 2022, Parent-1 forwarded to Mr. Peck the 6/23/2022 email correspondence between Parent-1 and SSC. Pet. Ex. 2 at 055. Mr. Peck responded to Parent-1's email, instructing Parent-1 to tell SSC that [REDACTED] will not be attending the IEP meeting and that Parent-1 is looking for an advocate. Pet. Ex. 2 at 055. Parent-1 then sent an email to SSC repeating what Mr. Peck told [REDACTED] to say. DOE Ex. 35 at 125.
54. On June 28, 2022, SSC sent an email to Parent-1, stating that [REDACTED] had reached out to some of the service providers and that the IEP meeting cannot be scheduled on the dates proposed by Parent-1 due to the short notice. SSC also informed Parent-1 that the "staff has not been able to collect sufficient current information to include in the IEP. This is due to [Private Academy's] not responding to email requests for observations in a timely manner and/or scheduling, but then not logging on at the agreed upon time. We are able to schedule in early August as you previously requested." DOE Ex. 36 at 126.
55. On June 30, 2022, DOE-SLP conducted a one hour in-person observation of Student at Private Academy. DOE Ex. 9 at 068; DOE Ex. 86 at 295.
56. On July 5, 2022, Private Academy completed updates to Student's Treatment Plan for Applied Behavior Analysis Services ("7/05/2022 Treatment Plan"), behavior support plan ("BSP") and functional behavior analysis ("FBA"). Pet. Ex. 3 at 087.
57. Also on July 5, 2022, DOE-BCBA and Director discussed via email scheduling an in-person observation of Student at Private Academy. Director informed DOE-BCBA that Student's school days for June and July are from 8:00 a.m. to 11:00 a.m. DOE-BCBA

and Director agreed to an in-person observation on July 12, 2022 at 10:00 a.m. DOE-BCBA also requested copies of Student's treatment plan and program data. DOE Ex. 32 at 114-116.

58. On July 8, 2022, DOE-OT conducted a one-hour virtual observation of Student. DOE Ex. 10 at 069-072; DOE Ex. 87 at 296.
59. Also on July 8, 2022, DOE-SLP sent an email to Director asking to schedule an in-person observation of Student for July 18 or July 22, 8:00 a.m. to 11:00 a.m. for both days. DOE-SLP and SSC would conduct the in-person observation. DOE Ex. 37 at 129.
60. On July 11, 2022, DOE-BCBA sent an email to Director to confirm the observation scheduled for July 12, 2022, and to follow up on [REDACTED] previous request for Student's treatment plan and program data. DOE-BCBA also stated that [REDACTED] noticed that Private Academy's RBT was using Catalyst to collect data on Student and asked Director to provide [REDACTED] with a copy of Student's Catalyst reports for the last six (6) months. DOE Ex. 32 at 116.
61. Catalyst is an online data collection system used by Private Academy. Private Academy programs into Catalyst the different tasks or targets Student is working on, and then Student's RBT would keep data on the different targets. Director, Tr. Vol. III, p. 190.
62. Also on July 11, 2022, DOE-SLP sent an email to Director to change the in-person observation dates [REDACTED] had previously proposed. Director, DOE-SLP and SSC agreed to conduct an in-person observation on July 22, 2022 from 9:00 a.m. to 10 a.m. DOE Ex. 37 at 127-128.

63. On July 12, 2022, Director emailed to DOE-BCBA and SSC a copy of Student's "Individualized Report Card" for Quarters 3 and 4, dated April 1, 2022 and May 16, 2022, respectively. DOE Ex. 38 at 130-144.
64. On July 14, 2022, Parent-1 asked SSC if the IEP meeting was scheduled for August 11, 2022. DOE Ex. 39 at 145.
65. On July 19, 2022, SSC responded to Parent-1's 7/14/2022 email, informing Parent-1 that the dates proposed for the IEP meeting were August 1, 2, 4, 5, 8 and 9, 2022. SSC asked Parent-1 to provide alternative dates if Parent-1 was not available on those proposed dates. DOE Ex. 40 at 148.
66. On July 20, 2022, Parent-1 sent an email to SSC, informing SSC that [REDACTED] and Parent-2 were available on August 1, 2022. DOE Ex. 41 at 151.
67. On July 21, 2022, SSC and Parent-1 agreed to schedule Student's IEP meeting for August 1, 2022, from 10:00 a.m. to 12:00 p.m. DOE Ex. 42 at 152; DOE Ex. 43 at 153. SSC then sent an email to Director asking Director or a representative of Private Academy to attend the 8/01/2022 IEP meeting. DOE Ex. 44 at 154.
68. On July 22, 2022, DOE-SLP conducted a one-hour in-person observation of Student at Private Academy. DOE Ex. 11 at 073; DOE Ex. 88 at 297.
69. On July 26, 2022, DOE-BCBA sent an email to Director to thank Director for providing to Home School copies of Student's report cards. DOE-BCBA also asked Director for copies of Student's most recent assessment data, specifically AFLS; behavior data; and Student's new treatment plan, if completed. DOE Ex. 32 at 117.
70. On July 28, 2022, DOE-BCBA sent a follow-up email to Director, restating [REDACTED] request for information. DOE-BCBA provided the following list of information [REDACTED] was

requesting: (1) most recent treatment plan, including Assessment of Functional Living Skills (“AFLS”), FBA/BIP, goals and progress; (2) Catalyst Report for the last 6 months, including behavior data, skills acquisition data; (3) any other documents and data helpful to the IEP planning. DOE Ex. 32 at 118. Director responded to DOE-BCBA’s email on the same day with the following message: “Sorry for the delay. Please let me know if there is anything else you need from me. AFLS was last updated 12/31/2020 will update asap do you need me to send the last assessment[?] BSP attached[.] Goals and Progress were listed on the Report Cards sent previously[.] Catalyst Progress report for 1/1/2022-6/30/2022[.]” DOE Ex. 32 at 118; Pet. Ex. 3 at 122.

71. Also on July 28, 2022, Special Education Transition Teacher (“SPED Transition Teacher”) left a message on Parent-1’s phone, stating that SPED Transition Teacher would like to send Parent-1 a “Parent Transition Survey” to complete. SPED Transition Teacher then emailed the Parent Transition Survey to Parent-1. DOE Ex. 89 at 298.
72. On July 29, 2022, SPED Transition Teacher left a message on Parent-1’s phone asking if Parent-1 would like SPED Transition Teacher to work with Parent-1 to complete the Parent Transition Survey. Parent-1 did not return SPED Transition Teacher’s call from yesterday or respond to SPED Transition Teacher’s email. DOE Ex. 90 at 299.
73. Also on July 29, 2022, Principal requested consent from Parent-1 to invite representatives from DVR and DOH to the 8/01/2022 IEP meeting and any other IEP meetings for the 2022-2023 school year. It was anticipated that these agencies would provide information regarding options for transition services. Parent-1 signed the

- consent form on July 31, 2022 and emailed SSC a copy on the same day. DOE Ex. 14 at 077; DOE Ex. 45 at 156-157.
74. On July 31, 2022, SPED Transition Teacher received a completed “Parent Transition Survey” from Parent-1. DOE Ex. 97 at 2:07:30-2:08:30.
75. The Parent Transition Survey, which specifically seeks information that can be used to help students transition from high school to adulthood, asks questions such as: student’s greatest needs; future education goals; employment and career training; what type of work the student is interested in (Parent-1 writes “N/A”); what type of employment will the student enjoy (Parent-1 writes “gardening, making things in a sheltered-workshop”); what support or assistance will student need in finding and maintaining a job; and future independent living options. DOE Ex. 53 at 184-190.
76. On August 1, 2022 at 9:51 a.m., SSC emailed Parent-1 a copy of Student’s draft IEP. DOE Ex. 46 at 158-168.
77. On August 1, 2022, an IEP meeting took place using a virtual conferencing platform. The IEP meeting was one (1) hour, fifty-two (52) minutes, forty-seven (47) seconds. Fourteen (14) people were present at the 8/01/2022 IEP meeting, including: Parent-1, Parent-2, Director, SSC, DOE-OT, DOE-BCBA, DOE-SLP, SPED Transition Teacher, DES-2, a representative from DHS, and others. A [REDACTED] interpreter was also present during the whole IEP meeting to interpret for Parent-1. The [REDACTED] interpreter interpreted English to [REDACTED] and [REDACTED] to English. DOE Ex. 96.
78. During the 8/01/2022 IEP meeting, the IEP team discussed Student’s needs as they related to Student’s post high school transition needs. The 8/01/2022 IEP team discussed Student’s need to be able to understand safety and community signs (such as

restroom, stop signs, crosswalk) while going over the Reading section in the Present Levels of Educational Performance (“PLEP”). DOE Ex. 96 at 00:22:55-00:23:45, 00:38:05-00:45:00, 1:04:00-1:07:20. When discussing the Math section in the PLEP, the 8/01/2022 IEP team discussed Student’s need to learn to follow every step when making a purchase; Parent-2’s concern that Student needed to have “coin recognition” (DOE Ex. 96 at 1:11:00-1:13:05); and Student’s need to be able to tell time (DOE Ex. 96 at 1:13:15-1:19:37). While discussing the Functional Performance Adaptive Performance section of the IEP, the IEP team discussed Student’s need to be able to use a microwave, button ■ shirt, pull up ■ pants, cutting ■ food, using utensils, and being safe in the kitchen (DOE Ex. 96 at 1:19:30-1:38:48).

79. During the 8/01/2022 IEP meeting, Parent-1 and Parent-2 repeatedly expressed concerns about Student’s ability to survive on ■ own after ■ leaves high school. DOE Ex. 96 at 00:38:05-00:45:00, 00:45:30-00:49:32, 1:11:00-1:13:05.
80. The IEP team was not able to complete the IEP on August 1, 2022.
81. After the IEP meeting on August 1, 2022, Parent-1 sent an email to SSC informing SSC that Parent-1 and Parent-2 were available any day before August 11, 2022 to continue the IEP meeting and that they were available for as many hours as needed to finish the IEP. DOE Ex. 47 at 169.
82. On August 3, 2022, Parent-1 sent another email to SSC, following up ■ 8/01/2022 email about scheduling the next IEP meeting. Pet. Ex. 2 at 047; DOE Ex. 48 at 170.
83. On August 4, 2022, SSC responded to Parent-1’s 8/03/2022 email and listed the following dates for the next IEP meeting: August 11, 12, 15 and 22, all with 10 a.m. to 12:00 p.m. or 1:00 p.m. to 3:00 p.m. times. Pet. Ex. 2 at 046; DOE Ex. 49 at 171.

About an hour later, Parent-1 responded that August 11, 2022, from 10:00 a.m. to 12:00 p.m. was fine. Pet. Ex. 2 at 046; DOE Ex. 49 at 171-172.

84. Later that day on August 4, 2022, DOE-OT sent an email to Private Academy's occupational therapist, Private-OT, asking Private-OT if [REDACTED] would be willing to collaborate on Student's occupational therapy related goals for Student's IEP. DOE Ex. 91 at 300.
85. On August 8, 2022, DOE-OT sent an email to Private-OT (with copy to Director) to follow up on DOE-OT's request for Private-OT's collaboration on Student's occupational therapy related goals. DOE Ex. 92 at 302. Director responded to DOE-OT's email a few minutes later stating that [REDACTED] needed to confirm with Parent-1 that Private-OT has Parent-1's consent to collaborate directly with DOE. DOE Ex. 92 at 301.
86. On August 9, 2022, DOE-BCBA sent an email to Director, asking Director to put DOE-BCBA in contact with Student's BCBA at Private Academy. Pet. Ex. 2 at 045; Pet. Ex. 2 at 049; DOE Ex. 49 at 173. Director responded to DOE-BCBA's email and informed DOE-BCBA to let Director know what information DOE-BCBA was requesting from Private Academy's BCBA and Director would forward Private Academy's BCBA's responses to DOE-BCBA. DOE Ex. 49 at 173. DOE-BCBA responded to Director and provided the following list of questions: "What is [Student's] current schedule of reinforcement," "What behaviors are the most concerning, and what is currently being done to address them?" "[W]hat replacement behaviors are currently being targeted?" "What social skills are currently being targeted?" "What are [Student's] preferred items and activities?" "How many minutes per month does [Student] receive ABA services by



- a BCBA?” and questions regarding Student’s use of an AAC device. DOE-BCBA also asked Director if an updated AFLS assessment was available. DOE Ex. 51 at 177.
87. On August 10, 2022, Parent-1 informed SSC that [REDACTED] Parent Advocate will be [REDACTED] advocate at the 8/11/2022 IEP meeting. Private Advocate is Mr. Peck’s stepdaughter. Tr. Vol. II, pp. 65, 83-84; Tr. Vol. III, p. 262; DOE Ex. 52 at 180.
88. Also on August 10, 2022, Director provided DOE-BCBA a list of answers to DOE-BCBA’s questions in DOE-BCBA’s 8/9/2022 email. Some of Director’s responses were: “We will be conducting an AFLS assessment as soon as we have our online account completed.” “We conducted a BIP. Behaviors are not exhibited often and when they are we follow the BIP.” “RBTS supervision averages 2 hours a week. Roughly 480 Minutes per month. More time is needed when updating plans or completing assessments.” DOE Ex. 51 at 177-178.
89. On August 11, 2022, before the IEP meeting, DOE-BCBA sent an email to Director asking Director to send DOE-BCBA a copy of the BIP referenced in Director’s 8/10/2022 email. DOE Ex. 51 at 179.
90. Also on August 11, 2022 at 9:49 a.m., Parent-1 emailed SSC and SPED Transition Teacher another copy of a completed “Parent Transition Survey.” The date on the Parent Transition Survey is July 28, 2022. DOE Ex. 53 at 183-190.
91. The 8/11/2022 IEP meeting took place began at 10:00 a.m. and lasted approximately two (2) hours and eighteen minutes. Present at the 8/11/2022 IEP meeting were fourteen (14) people, including: Parent-1, Parent-2, Director, Parent Advocate, SSC, DOE-OT, DOE-BCBA, SPED Transition Teacher, DVR-Personnel, DOE Speech-Language

Pathologist-2 (“DOE-SLP-2”), and others. Also present was a [REDACTED] interpreter.  
DOE Ex. 52 at 181-182; DOE Ex. 97.

92. During the 8/11/2022 IEP meeting, the IEP team reviewed what was discussed during the 8/01/2022 IEP meeting, such as Student’s needs regarding navigating community; reading community signs; ability to tell time or use a timer; coin recognition; and recognizing places. DOE Ex. 97 at 00:00:00-00:16:00. The IEP team discussed how Student was doing in the vocational classes [REDACTED] was taking through DVR. Director shared that Student would be starting an internship at a food kitchen where Student will help prepare supplies and silverware to hand out to meal participants. DOE Ex. 97 at 00:42:50-00:48:00). In discussing Student’s occupational therapy needs, the team discussed the need to learn how to prepare meals, gather materials and items and put them away; tie [REDACTED] shoes; and write [REDACTED] address. DOE Ex. 97 at 00:52:50-00:56:30. In the Communication section of the IEP, the team discussed Student’s need to be able to use language to refuse (e.g., to say “no” or “not now” or “can I do it later”) and to feel comfortable communicating [REDACTED] needs to other people besides Parent-1 (e.g., communicate needing to use the restroom). DOE Ex. 97 at 1:04:30-1:15:15. A school member of the IEP team specifically asked parents if there was a life skill or job skill that they wanted Student to be more independent with, but parents did not respond. (DOE Ex. 97 at 00:52:50-00:56:30). During the 8/11/2022 IEP meeting, the IEP team started discussing the Transition Services Needs section of the IEP at 1:44:10 of the video recording. During the Transition Services Needs section, the following topics were discussed: parents wanted information on what skills Student had that could be used to get a job; SPED Transition Teacher discussed the Parent Transition Survey;

DVR-Personnel informed the IEP team that Student was receiving training in vocational work adjustment classes through the VWATS program, that assessments will be done through the VWATS program, and employable skills will be determined as Student progresses and completes ■■■ training; DVR-Personnel confirmed that DVR will continue to work with Student when Student transitions out of high school; and the IEP team discussed getting more information and conducting assessments. DOE Ex. 97 at 1:44:10-2:18:28.

93. The IEP team was not able to complete the IEP during the 8/11/2022 IEP meeting.
94. After the 8/11/2022 IEP meeting at 1:05 p.m., DOE-BCBA sent an email to Director, asking Director to provide the following additional information: a copy of the most recent FBA; the AFLS assessments, including Vocational Skills, Basic Living Skills, and Community Participation Skills. DOE-BCBA offered to conduct the AFLS assessment ■■■ if Private Academy was not able to complete it. DOE Ex. 51 at 179.
95. On August 11, 2022 at 1:27 p.m., Petitioners' Complaint was filed by the Office of Dispute Resolution ("ODR"). DOE Ex. 1 at 002-008.
96. On August 12, 2022, SPED Transition Teacher signed a DVR form attesting that information shared with ■■■ will not be disclosed to any other individual or agency. On August 13, 2022, Parent-1 signed the same form, requesting and authorizing DVR to disclose to SPED Transition Teacher, Home School and DOE specific information contained in DVR's records, such as eligibility determination; Joint Evaluation of the Primary Employment Factors; DVR Individualized Plan for Employment; and all assessments/reports from the Vocational Work and Adjustment training by Private Agency-2. The DVR form states that the information will be used to update and

complete the transition portion of Student's IEP as it was requested by parents and advocate. Pet. Ex. 2 at 072; Pet. Ex. 3 at 212.

97. On August 17, 2022, SPED Transition Teacher emailed Parent-1 five (5) assessment reports from DVR and VWATS: (1) "Individualized Plan for Employment" signed by counselor and client on June 21, 2022 ("6/21/2022 IPE"); (2) Eligibility Determination (VR) signed by counselor on May 23, 2022; (3) Joint Evaluation of the Primary Employment Factors (JEPEF) with an Initial Intake/Date of May 4, 2022; (4) VWATS Workshop 1 Personal Strengths Questionnaire; and (5) VWATS Assessments Workshop 1. DOE Ex. 55 at 193-236.
98. According to the DVR's 6/21/2022 IPE, Student will receive various pre-employment services from DVR, DOE, Private Agency-2, and "Contract." A vocational rehabilitation specialist will provide Student with vocational rehabilitation counseling and guidance from June 2022 to June 2024; DVR, DOE and "Contract" will provide pre-employment transition services to Student from June 2022 to June 2024; Private Agency-2 will provide job readiness training and job related services, which includes job coaching and transitional employment services, and job placement, from June 2022 to June 2024; approved vendors, such as Walmart, will provide clothing and supplies to Student from June 2022 to June 2024; and a transportation company will provide transportation services to and from training or work from June 2022 to June 2024. The cost of Student's 6/21/2022 IPE is approximately \$11,852.00. DOE Ex. 55 at 194-210.
99. On August 18, 2022, DOE-SLP-2 conducted a 60-minute observation of Student's speech session at Private Academy. DOE Ex. 93 at 303.

100. On August 22, 2022, DOE's Response to Petitioners' Complaint was filed by ODR. DOE Ex. 2 at 009-011.
101. On September 1, 2022, DOE-BCBA sent an email to Director to schedule an observation at Private Academy for September 12, 2022 at 9:00 a.m. DOE-BCBA also asked for a status update on whether the AFLS assessments have been completed. DOE Ex. 59 at 240.
102. On September 2, 2022, Petitioners' instant FAC was filed by ODR. DOE Ex. 3 at 012-018.
103. On September 6, 2022, Director sent an email to DOE-BCBA, informing DOE-BCBA that Director could schedule an observation for September 12, 2022 at 9:00 a.m. to 10:00 a.m. Director also informed DOE-BCBA that the AFLS was scheduled to be completed by Private Agency's BCBA. DOE Ex. 59 at 240. DOE-BCBA responded the next day and asked when the AFLS assessment was expected to be completed. DOE Ex. 59 at 241.
104. On September 7, 2022, Parent-1 forwarded an email to Mr. Peck from SSC. SSC's undated email to Parent-1 asked Parent-1 to provide SSC with Parent-1's availability for a further IEP meeting. SSC provided the following possible dates to Parent-1: September 12, 13, 14, 2022 (all from 10:00 a.m. to 12:00 p.m.). Pet. Ex. 2 at 059.
105. On September 12, 2022, DOE-BCBA cancelled the observation scheduled for that day because [REDACTED] was sick. DOE-BCBA asked Director to reschedule the observation to September 27, 2022 at the same time. Director immediately agreed to reschedule the observation to September 27, 2022. DOE Ex. 59 at 241.

106. Also on September 12, 2022, DOE's Response to Petitioners' FAC was filed by ODR. DOE Ex. 4 at 019-021.
107. On September 13, 2022, Parent-1 sent an email to SSC informing SSC that [REDACTED] and Mr. Peck will be available to meet for two (2) hours on one of the following dates: September 21, 22, or 23, 2022. Pet. Ex. 2 at 061.
108. On September 14, 2022, Director informed DOE-BCBA that [REDACTED] did not have an estimated completion date for the AFLS. DOE Ex. 59 at 242.
109. On September 19, 2022, Parent-1 forwarded to Mr. Peck an email from SSC and asked how [REDACTED] should respond to SSC's email. SSC's undated email to Parent-1 states that it was "very difficult to coordinate this meeting with multiple agencies and service providers due to the short notice and limited days you provided (9/21, 9/22 & 9/23)." SSC then requested that Parent-1 and Mr. Peck provide DOE with at least 3 weeks advance notice and more days to schedule the further IEP meeting. Pet. Ex. 2 at 062. Parent-1 responded to SSC's email on September 19, 2022 and offered the following dates for the further IEP meeting: October 19 (anytime); October 20 (after 10:30 a.m.); October 21 (before 3:30 p.m. or after 3:45 p.m.); October 27 or 28 (anytime). Parent-1 stated that if four (4) hours are needed to complete the IEP, then a 4-hour IEP meeting should be scheduled, instead of multiple days. Pet. Ex. 2 at 063.
110. On September 24, 2022, SSC sent an email to Parent-1, confirming an IEP meeting for October 19, 2022 from 8:00 a.m. to 10:00 a.m. SSC also sought confirmation that

Parent-1's attorney will be at the IEP meeting and not Parent-1's advocate. Pet. Ex. 2 at 064<sup>7</sup>.

111. On October 12, 2022, SPED Transition Teacher emailed to Parent-1 a copy of Student's VWATS report. Pet. Ex. 2 at 067.
112. On October 13, 2022, DOE-BCBA sent an email to Director asking for a status update on the completion of the AFLS assessment and for a copy of Student's quarterly progress report and any related data. DOE Ex. 59 at 244.
113. On October 15, 2022, Parent-1 responded to SPED Transition Teacher's 10/12/2022 email, stating that [REDACTED] had already read the report and that Student is currently a volunteer. Pet. Ex. 2 at 067.
114. Sometime between October 15, 2022 and October 17, 2022, Director emailed to DOE-BCBA copies of Student's "Q1 Progress Reports for [Private Academy], SLP, and OT as well as the updated AFLS Assessment that was requested by DOE." Pet. Ex. 3 at 158.
115. On October 18, 2022, Principal informed Parent-1 that the 10/19/2022 IEP meeting was postponed due to "unavoidable circumstances and unforeseen changes to staff at [Home School]." Principal stated that November 2 or 4, 2022 were potential dates for a rescheduled IEP meeting. Pet. Ex. 2 at 065.
116. On October 31, 2022, DOE-BCBA sent an email to Director, requesting to schedule an observation on November 4, 2022 at 9:30 a.m. DOE-BCBA acknowledged receipt of an

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<sup>7</sup> Although the 9/24/2022 email was sent to Mr. Peck, based on the evidence, it is likely that the email was written by SSC and forwarded to Mr. Peck by Parent-1.

updated AFLS and other data and requested a copy of Student's most recent FBA. DOE Ex. 59 at 244-245.

117. Also on October 31, 2022, SSC sent an email to Parent-1, reiterating that the October 19, 2022 meeting was postponed due to "unavoidable circumstances and unforeseen changes to staffing at [Home School]." SSC also stated that the IEP team could not wait until November 18 to meet and suggested that the IEP team meet on any of the following dates: November 14, 15 or 16, 2022. Pet. Ex. 2 at 070.
118. On October 31, 2022, Director sent an email to DOE-BCBA stating that DOE-BCBA's request to observe Student on November 4, 2022 may be difficult to arrange and asked for an alternative date. DOE Ex. 59 at 245.
119. Also on October 31, 2022, Director sent an email to SSC stating that [REDACTED] was available on November 14; November 15 (10:00 a.m. to 10:45 a.m.); and November 16 (11:00 a.m. to 12:00 p.m.) for an IEP meeting. Pet. Ex. 2 at 069.
120. On November 1, 2022, DOE-BCBA responded to Director's 10/31/2022 email and asked when will Student have group art lessons as DOE-BCBA would love to observe that. Director responded to DOE-BCBA's question and stated that group classes cannot be observed because Private Academy did not have consent for the other students to be in the room when there is an observation occurring. DOE Ex. 59 at 246.
121. On November 1, 2022, SSC responded to Director's 10/31/2022 email, asking Director to keep November 14, 15 and 16 open for the IEP meeting as SSC was still waiting for a response from Parent-1. Parent-1 was a recipient of the email. Pet. Ex. 2 at 069.  
Director responded to SSC, clarifying that Director was flexible on "10/14" but [REDACTED] was



not available for the full 10:00 a.m. to 12:00 p.m. timeframe on the 15<sup>th</sup> and 16<sup>th</sup>. Parent-1 was a recipient to these emails. Pet. Ex. 2 at 068.

122. On November 6, 2022, Parent-1 informed SSC that [REDACTED] wanted Mr. Peck present and provided Mr. Peck's availability for November, December, and January. Pet. Ex. 2 at 073, 074. Parent-1 also asked SSC to include DVR-Personnel at the next IEP meeting. Pet. Ex. 2 at 073.
123. On November 9, 2022, DOE-BCBA sent an email to Director, informing Director that it was "imperative" that DOE-BCBA observe Student during group instruction as much of their programming relates to [REDACTED] performance within a group setting. DOE-BCBA reiterated [REDACTED] request to observe Student in a group lesson, such as [REDACTED] art lesson. DOE-BCBA stated that [REDACTED] "would also like to schedule an observation on 11/22/2022 from 9:30 to 11:30 am." DOE-BCBA cites to H.A.R. § 302A-443 regarding "Administrative hearing procedures and subpoena power relating to the education of children with a disability" in [REDACTED] email. Pet. Ex. 2 at 075-076; DOE Ex. 98 at 346-347. The next day, Director responded to DOE-BCBA's email, and restated that "group lessons are not observable...other students and their families have not consented to DOE observations...The DOE is not funding [Student's] program. The law you cited does not apply. I am happy to schedule an observation for [Student] after the Thanksgiving holiday. Does 11/29/2022 from 9:30am-10:30am work for you?" DOE Ex. 98 at 345.
124. As of November 22, 2022, Student's IEP, which started on August 1, 2022, was still not completed. Parent-1, Tr. Vol. I, p. 25; Parent-1, Tr. Vol. II, p. 91.

### **Private Academy**

125. Private Academy is a non-profit, year-round, private school. It does not offer financial aids or scholarships. Pet. Ex. 3 at 083; Director, Tr. Vol. III, p. 149.
126. Private Academy provides Applied Behavior Analysis (“ABA”) Therapy services and special education services to children with disabilities. Pet. Ex. 3 at 082-083.
127. Private Academy currently has [REDACTED] students, [REDACTED] of which are disabled. Student is [REDACTED] of the [REDACTED] students. Director, Tr. Vol. III, p. 199. Students who attend Private Academy can participate in DOH’s Home and Community Based Services (“HCBS”), which allows students to go into the community with their staff to practice skills that they are learning and meet nondisabled people and build relationships. Student participates in HCBS. Pet. Ex. 3 at 083, 088; Director, Tr. Vol. III, pp. 202-203.
128. Student’s tuition at Private Academy for the past four (4) years has been paid for by DOE either pursuant to administrative decisions or settlements. Parent-1, Tr. Vol. II, pp. 44-45; Parent-1, Tr. Vol. II, pp. 79-80.
129. Private Academy administered the AFLS to Student on December 31, 2020 (“2020 AFLS”) and September 15, 2022 (“2022 AFLS”). Pet. Ex. 3 at 122; Director, Tr. Vol. III, p. 201.
130. The 2020 AFLS assessed Student in the following skill areas: Basic Living Skills (Pet. Ex. 3 at 123-128); Community Participation Skills (Pet. Ex. 3 at 129-135); and School Skills (Pet. Ex. 3 at 136-141). The 2022 AFLS, which was completed on October 15, 2022, assessed Student in all the same skill areas including Vocational Skills (Pet. Ex. 3 at 142-149). Pet. Ex. 3 at 122-157.

131. There is an ethical responsibility to update the AFLS to show Student's progress; however, an AFLS is not necessary in an ABA program or to determine ABA program goals. Director, Tr. Vol. III, pp. 132, 134-135, 155, 172.
132. Private Academy did not administer the AFLS to Student in 2021. An updated AFLS was not done because there was a change in leadership at Private Academy; Director, who started at Private Agency in August of 2021, did not have the password to Private Academy's AFLS online account and had to recover the account; and no one had requested an update. DOE Ex. 51 at 1789; Director, Tr. Vol. III, pp. 152-153, 172. During the 8/11/2022 IEP meeting, Director stated that once [REDACTED] got access to Private Academy's AFLS online account, [REDACTED] would update Student's AFLS and include the vocational section. DOE Ex. 97 at 2:12:00-2:13:29.
133. Director has a bachelor's degree in interdisciplinary social sciences and a master's degree in education. Director has worked with adults with developmental disabilities for about [REDACTED] years as a case coordinator, service supervisor and program manager. Director then became an operations director at Private Academy in August of 2021. Director is in the process of becoming a BCBA but has not yet completed [REDACTED] training. Director, Tr. Vol. III, pp. 122-124.
134. Private-BCBA is a BCBA for Private Academy. Director, Tr. Vol. III, p. 171.
135. Director and Private-BCBA administered the 2022 AFLS to Student between September 15, 2022 and October 15, 2022, and they finalized the AFLS report on October 15, 2022. Pet. Ex. 3 at 122; Director, Tr. Vol. III, pp. 153, 171.
136. DOE received the 2022 AFSL in mid-October of 2022. DOE-BCBA, Tr. Vol. III, pp. 219-220.

137. Based on the 2020 AFSL and 2022 AFSL, over the last two years, Student did not regress in any of the skills that were observed—Student’s skills either remained the same or grew. Director, Tr. Vol. III, pp. 181-182.
138. Student is currently working on the following programs and targets at Private Academy: independent play; social behavior and play; motor imitation; classroom routines; academic skills; communication skills; and community (community signs, tacting community helpers). Pet. Ex. 3 at 115-117; Director, Tr. Vol. III, p. 152.
139. While at Private Academy, Student receives academic services from DOE and non-academic services from DOH; however, between August 2021 and January 2022, Student was only receiving non-academic services at Private Academy through DOH. Parent-1, Tr. Vol. II, pp. 77-80.
140. Student is in school Monday through Friday, from 8:00 a.m. to 2:00 p.m. Director, Tr. Vol. III, p. 145.
141. When Director started at Private Academy in August of 2021, Private Academy was not being paid by DOE for the services Student was receiving during ■ school day. The educational program provided by Private Academy at that time was “bare essentials”—RBT support during the school day; “programming;” data collection on Student’s goals; and very minimal occupational therapy and speech therapy services. Student was also receiving DOH waiver services at that time. Director, Tr. Vol. III, pp. 128, 175-176.
142. Once settlement was reached with DOE, Private Academy increased the amount of American Sign Language (“ASL”) courses, class work, occupational therapy, and speech therapy that Student received. Student began to receive this increased program sometime in March or April of 2022. Director, Tr. Vol. III, pp. 128-129. The settlement

amount agreed upon paid for Student to have an RBT with [REDACTED] from 8:00 a.m. to 2:00 p.m., Monday through Friday; an ABA program; two hours a week of ASL instruction; one hour a week of occupational therapy; and one hour a week of speech therapy.

Director called this a “bare bones” program. Student’s “bare bones” program cost about \$20,000 per month. Director, Tr. Vol. III, pp. 134, 143-146, 200.

143. The settlement agreement between Petitioners and DOE covered up to July 2022. Director, Tr. Vol. III, p. 133. After July 2022, Student’s program did not go back to the way it was when there was no funding. Director made the decision that Private Academy would attempt to keep the higher level of ASL classes, occupational therapy, and speech therapy because it was in Student’s best interest. Director testified, “So we’re not as bare bones as the program was this time last year.” Director, Tr. Vol. III, pp. 133-134.
144. At the time of the 8/11/2022 IEP meeting, Student was getting one (1) hour of speech therapy services per week. DOE Ex. 97 at 1:18:40-1:19:30.
145. According to Student’s 7/05/2022 Treatment Plan, Student is receiving the following services: one (1) hour per week of speech therapy; one (1) hour per week of occupational therapy; RBT services Monday through Friday for the entire school day including transportation within the school hours; extended school year (“ESY”) over breaks on Monday through Friday, four (4) hours daily; and DOH Home Community Based Services (“HCBS”) waiver services after school. Pet. Ex. 3 at 087-088. The treatment team will collaborate with others to ensure consistency of Student’s program. A BCBA will oversee Student’s program to ensure that the treatment detailed in the 7/05/2022 Treatment Plan is being followed and will provide regular supervision and

- training to the RBT. A behavior assistant will facilitate day-to-day implementation of the plan, collecting data and working closely with caregivers and professionals. Pet. Ex. 3 at 106.
146. Director testified that a “robust program” for Student would be from 8:00 a.m. to 2:00 p.m. that includes 4-5 hours a week of speech therapy; 4-5 hours a week of occupational therapy; and 30 hours a week of ASL instruction. A “robust program” would cost about \$45,000-\$50,000 per month. Director, Tr. Vol. III, pp. 200-201.
147. The 2021-2022 school year fee schedule for Private Academy is as follows: \$4000/month for tuition; \$80/hour for RBT (\$95/hour during holidays); \$250/hour for BCBA; \$165/hour for SLP; \$165/hour for OT; \$115/hour ASL instructor; \$165/month parent education; \$700/month for transportation; \$2000 flat rate for assessment; and 15% administration fee. Pet. Ex. 3 at 184. Private Academy’s fee schedule did not increase for the 2022-2023 school year. Tr. Vol. III, p. 206.
148. At Private Academy, Student has a BSP that provides guidance to staff on how to manage Student’s behavior. Pet. Ex. 3 at 106-108. Student’s BSP was updated on December 20, 2019, July 5, 2022, and again on July 7, 2022. Pet. Ex. 3 at 087, 111.
149. Student has been receiving speech therapy from Private Agency-3 since December of 2019. As of October 15, 2022, Student is noted as “making steady progress toward [REDACTED] speech and language goals.” Private Agency-3 recommended that Student “continue to receive weekly speech therapy sessions for maintenance and generalization of functional communication skills.” Pet. Ex. 3 at 181-183.
150. Student receives occupational therapy from Private Agency-4. On October 10, 2022, Student received sixty (60) minutes of occupational therapy from Private Agency-4.

According to Private Agency-4's "First Quarter Occupational Therapy Progress Notes School year 2022/2023," Student's progress towards █ goals during therapy is noted as "goal met," "progress made," and "no progress." Pet. Ex. 3 at 179-180.

151. Parent-1 did not sign a contract with Private Academy for the 2022-2023 school year. Student is attending Private Academy for the 2022-2023 school year pursuant to a "verbal contract." Director, Tr. Vol. III, p. 199.

152. Parent-1 realizes that the IEP team needs to complete the IEP before August 11, 2022. Parent-1 realizes that if the IEP is not completed by that date, DOE would not be fulfilling their duties under the IDEA and DOE may be required to pay for Private Academy's tuition. Parent-1, Tr. Vol. II, pp. 47, 48-49.

## V. CONCLUSIONS OF LAW

### A. **BURDEN OF PROOF**

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

The Supreme Court held in Schaffer that "[t]he burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief." Schaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 163 L.Ed.2d 387 (2005). The Court "conclude[d] that the burden of persuasion lies where it usually falls, upon the party seeking relief." Id. at 535. Neither Schaffer nor the text of the IDEA supports imposing a different burden in IEP implementation cases than in formulation cases.

## **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; 34 C.F.R. § 300.39; 34 C.F.R. § 300.101.

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., 226 F.Supp.3d 1081, 1093 (D.Haw.2016).

In Bd. of Educ. v. Rowley, the Court set out a two-part test for determining whether the school offered a FAPE: (1) whether there has been compliance with the procedural requirements of the IDEA; and (2) whether the IEP is reasonably calculated to enable the student to receive educational benefits. Bd. of Educ. v. Rowley, 458 U.S. 176, 206-207, 102 S. Ct. at 3050-3051 (1982). “A state must meet both requirements to comply with the obligations of the IDEA.” Doug C. v. Hawaii Dept. of Educ., 720 F.3d 1038, 1043 (9th Cir.2013) (quoting Rowley). See also, Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892 (9th Cir.2001).



The school is not required to “maximize the potential” of each student; rather, the school 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. 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*. 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. v. Douglas County School Dist., 137 S. Ct. 988, 1001 (2017). See also, Blake C. ex rel. Tina F. v. Hawaii Dept. of Educ., 593 F.Supp.2d 1199, 1206 (D.Haw.2009).

The mechanism for ensuring a FAPE is through the development of a detailed, individualized instruction plan known as an Individualized Education Program (“IEP”) for each child. 20 U.S.C. §§ 1401(9), 1401(14), and 1414(d). The IEP is a written statement, prepared at a meeting of qualified representatives of the local educational agency, the child’s teacher, parent(s), and where appropriate, the child. The IEP contains, among other things, a statement of the child’s present levels of academic achievement and functional performance, a statement of the child’s annual goals and short-term objectives, and a statement of specific educational services to be provided for the child. 20 U.S.C. § 1414(d). The IEP is reviewed and, if appropriate, revised, at least once each year. 20 U.S.C. § 1414(d). The IEP is, in effect, a “comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Burlington v. Dept. of Educ. of the Commonwealth of Massachusetts, 471 U.S. 359, 368, 105 S. Ct. 1996, 2002 (1985). An IEP must be evaluated prospectively as of the time it was created.

Retrospective evidence that materially alters the IEP is not permissible. R.E. v. New York City Dept. of Educ., 694 F.3d 167 (2012).

Procedural violations do not necessarily constitute a denial of FAPE. Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892 (9th Cir.2001). 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. Amanda J., 267 F.3d 877, 892 (9th Cir.2001).

### C. ISSUES FOR DETERMINATION

1. **Whether the DOE had sufficient information regarding Student's post high school transition needs. This issue is not restricted to the Post High School Transition Services Needs section of the IEP but potentially implicates other aspects of the IEP.**

In Issue No. 1, Petitioners are alleging that Respondents did not have sufficient information regarding Student's post high school transition needs. Petitioners fail to meet their burden in showing that Respondents did not have sufficient information regarding Student's post high school transition needs.

Student enrolled at Private Academy in the second grade and has not gone back to a DOE school in a meaningful way since then. (FOF 5). Information available to the DOE is obtained from Private Academy, Student's parents, and observations conducted by DOE employees by scheduling with Private Academy.

After the creation of the 8/11/2021 IEP, Home School reached out to Parent-1 in August and September of 2021 to inquire if Parent-1 had any questions about Student's 8/11/2021 IEP and "transition planning." Parent-1 did not respond. (FOF 10). Student's IEP annual review deadline was August 11, 2022. (FOF 8). The IEP team began the annual review meeting on

August 1, 2022, continued it to August 11, 2022, but never completed the IEP. (FOF 77, 91, 93, 124).

Prior to the 8/01/2022 IEP meeting, DOE made efforts to obtain information about Student through Private Academy. On April 25, 2022, DOE requested Student's most recent progress report from Private Academy (FOF 31) and received the progress report for the 3<sup>rd</sup> quarter of the 2021-2022 school year on May 12, 2022. (FOF 36). On July 5, 2022, DOE-BCBA asked Director for a copy of Student's treatment plan and program data. (FOF 57). On July 11, 2022, DOE-BCBA asked for a copy of Student's Catalyst reports. (FOF 60). On July 12, 2022, Director gave DOE a copy of Student's "Individualized Report Card" for Quarters 3 and 4. (FOF 63). On July 26, 2022, DOE-BCBA asked Director for copies of Student's assessment data, AFLS, behavior data and new treatment plan. (FOF 69). On July 28, 2022, DOE-BCBA followed up on ■■■ requests for information and asked again for Student's most recent treatment plan (including AFLS, FBA/BIP, data on goals and progress); Catalyst report (including behavior data, skills acquisition data); and any other data that would be helpful to the IEP planning. (FOF 70). Also on July 28, 2022, SPED Transition Teacher sent Parent-1 a Parent Transition Survey for Parent-1 to complete (FOF 71-72), which Parent-1 completed and gave to SPED Transition Teacher on July 31, 2022. (FOF 74). On July 29, 2022, Principal sought consent from Parent-1 to invite representatives from DVR and DOH, who would assist in transition services, to the IEP meeting. (FOF 73).

After receiving Parent-1's written consent on April 29, 2022 to allow Home School to observe Student at Private Academy (FOF 32), DOE conducted observations on the following dates: May 12, 2022 by SPED Teacher (FOF 37); May 17, 2022 by DOE-SLP (FOF 40); June 30, 2022 by DOE-SLP (FOF 55); July 8, 2022 by DOE-OT (FOF 58); July 22, 2022 by DOE-

SLP (FOF 68). On June 21, 2022, DOE-OT was scheduled to do a virtual observation of Student, but Private Academy's RBT did not log on and the observation did not occur. (FOF 49).

In addition to gathering information about Student prior to the 8/01/2022 IEP meeting, during the 8/01/2022 IEP meeting, the IEP team also discussed Student's needs as they related to Student's post-high school transition needs. The 8/01/2022 IEP team discussed Student's need to be able to understand safety signs or community signs while going over the Reading section of the PLEP; Student's need to learn to follow every step when making a purchase, Parent-2's concern that Student have "coin recognition," and ability to tell time while going over the Math section of the PLEP; and the need to be able to use a microwave, button ■ shirt, pull up ■ pants, cutting ■ food, using utensils, and being safe in the kitchen while going over the Functional Performance Adaptive Performance section of the IEP. (FOF 78).

After the 8/01/2022 IEP meeting, DOE continued to make attempts to gather information about Student. The school members of the IEP team sought information from individuals who were providing direct services to Student at Private Academy. On August 4, 2022, DOE-OT asked Private-OT if ■ would be willing to collaborate with DOE-OT on Student's occupational therapy related goals. (FOF 84, 85). On August 9, 2022, DOE-BCBA requested that Private-BCBA answer specific questions about Student regarding ■ behavioral concerns, social skills, preferred items and activities, use of an AAC device, and ABA services. (FOF 86, 88). DOE-BCBA also asked for an updated AFLS on August 9, 2022. (FOF 86).

During the 8/11/2022 IEP meeting, the IEP team reviewed what was discussed during the 8/01/2022 IEP meeting. The IEP team also discussed how Student was doing in ■ vocational classes and Director shared that Student would be starting an internship at a food kitchen. In

discussing Student's occupational therapy needs, the team discussed Student's need to learn how to prepare meals, gather materials and items and put them away; tie ■ shoes; and write ■ address. When discussing the Communication section, the IEP team discussed Student's need to be able to use language to refuse (e.g., to say "no" or "not now" or "can I do it later") and to feel comfortable communicating ■ needs to other people besides Parent-1. Parents were asked during the 8/11/2022 IEP meeting if there was a life skill or job skill that they wanted Student to be more independent with, but Parent-1 and Parent-2 did not respond. During the 8/11/2022 IEP meeting, the IEP team discussed the Transition Services Needs section of the IEP and parents expressed wanting information on what skills Student had that could be used to get a job; SPED Transition Teacher discussed the Parent Transition Survey; DVR-Personnel informed the IEP team that Student was receiving training in vocational work adjustment classes, that assessments will be done through the VWATS program, and employable skills will be determined as Student progresses and completes ■ training; DVR-Personnel confirmed that DVR will continue to work with Student when Student transitions out of high school; and the IEP team discussed getting more information and conducting assessments. (FOF 92).

In reviewing the video recordings, it is clear that parents are concerned about Student's ability to survive on ■ own after ■ leaves school. (FOF 79). During the course of two days, for approximately two hours on each day (FOF 77, 91), the IEP team discussed Student's post-high school transition needs throughout the IEP process and not just while going over the Post High School Transition Services Needs section of the IEP. The IEP team gathered sufficient information regarding Student's post high school transition needs. While there could have been more information that the IEP team could have considered if it had existed, based on the above, the undersigned Hearings Officer finds that Respondents made reasonable efforts to obtain the

necessary information to formulate Student’s IEP and made reasonable efforts to obtain information from Private Academy. In addition to having made reasonable efforts, the “snapshot rule” applies in this situation. “[A]n IEP must be evaluated in light of the ‘snapshot’ rule, ‘which instructs us to judge an IEP not in hindsight, but instead based on the information that was reasonably available to the parties at the time of the IEP.’” Dept. of Educ., State of Haw. v. Leo W., 226 F.Supp.3d 1081, 1099, 344 Ed. Law Rep. 246 (D.Haw. Dec. 29, 2016) (citing Baquerizo v. Garden Grove Unified Sch. Dist., 826 F.3d 1179, 1187 (9th Cir.2016)). While the IEP was not completed on August 11, 2022, the information that was available to the IEP team was considered. DOE cannot be judged based on information that did not exist. DOE had the 2020 ASFL. DOE cannot be faulted for not considering information that an updated AFSL could provide when an updated AFSL did not exist at the time of the IEP meetings—Student was not given the ASFL in 2021 and the 2022 ASFL was not completed by Private Academy until October of 2022. (FOF 129, 130, 132, 135, 136). Based on the foregoing, DOE had sufficient information regarding Student’s post high school transition needs. Petitioners fail to meet their burden of proof with respect to this issue.

**2. Whether Student was denied FAPE by the DOE’s failure to complete an Annual IEP in a timely fashion.**

In Issue No. 2, Petitioners are alleging that Respondents denied Student a FAPE when Student’s 8/11/2021 IEP expired on August 11, 2022 and Respondents did not replace the 8/11/2021 IEP. There is no dispute that the last IEP for Student is dated August 11, 2021. To-date, Student’s annual IEP has not been completed. Respondents’ Closing Brief, p. 6. Based on the evidence adduced at the due process hearing, the undersigned Hearings Officer finds that Respondents failed to complete an annual IEP in a timely fashion.

The development and revision of IEPs are governed by, *inter alia*, 34 C.F.R.

§300.324(a)(6), (b)(1)<sup>8</sup>,

(a) Development of IEP—

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(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEPs—

(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

(i) Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address—

(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under §300.303;

(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);

(D) The child’s anticipated needs; or

(E) Other matters.

Furthermore, federal regulations also require that “[a]t the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.” 34 C.F.R. § 300.323(a).

In the present case, on August 11, 2021, the IEP team formulated the 8/11/2021 IEP. The IEP team at that time decided that an annual review of the 8/11/2021 IEP would be conducted by August 11, 2022. (FOF 8). SSC reached out to Parent-1 on March 9, 2022 to schedule an IEP meeting for April. (FOF 18). On March 23, 2022, SSC provided Parent-1 with dates in April and early May to have the IEP meeting. On March 27, 2022, Parent-1 informed SSC that [REDACTED] did

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<sup>8</sup> See also, H.A.R. §8-60-48(a)(6) and (b)(1).

not want to schedule the IEP until August because Student had “not been getting [REDACTED] full program until February and [REDACTED] will look like [REDACTED] is not doing well.” Parent-1 felt that holding the IEP meeting in April or May would create an IEP that “will be wrong by August.” Parent-1 told SSC that [REDACTED] wanted to wait until August to have the annual review IEP meeting. (FOF 22). On April 19, 2022, without attempting to schedule meetings later in May or in June or July, SSC proposed six dates in early August and asked Parent-1 to choose three (3) dates so that the IEP team could have enough time to discuss the IEP. (FOF 24). Parent-1 did not respond to SSC’s request. On May 12, May 16 and June 8, SSC followed up with Parent-1 and asked Parent-1 to respond to [REDACTED] request for IEP meeting dates. (FOF 35, 39, 42). Parent-1 does not respond to SSC’s request until June 23, 2022. (FOF 51). When Parent-1 responded, Parent-1 informed SSC that [REDACTED] is not available in August and suggested June 28, 29, 30 or July 1, 5, 6, 7, 8 as possible IEP meeting dates. (FOF 51). On June 28, 2022, SSC responded to Parent-1’s proposed June and July dates and stated that they could not schedule the IEP meeting in such short notice and DOE had not been able to collect sufficient current information due to Private Academy’s lack of cooperation. (FOF 54). SSC then stated that the IEP meeting can be scheduled for early August as Parent-1 had previously requested. (FOF 54). There is no evidence that SSC and Parent-1 communicated about scheduling the IEP meeting until July 14, 2022. On July 14, 2022, Parent-1 asked SSC if the IEP meeting was scheduled for August 11, 2022. (FOF 64). On July 19, 2022, SSC informed Parent-1 that the proposed meeting dates were August 1, 2, 4, 5, 8, and 9, 2022. (FOF 65). On July 20, 2022, Parent-1 agreed to meet on August 1, 2022. (FOF 66). The IEP meeting started on August 1, 2022 but the IEP team was not able to complete the IEP. (FOF 80).



On August 1, 2022, after the IEP meeting, Parent-1 informed SSC that Parent-1 and Parent-2 were available any day before August 11, 2022 for as many hours as the IEP team needed to finish the IEP. (FOF 81). On August 4, 2022, SSC responded to Parent-1 and stated that the possible meeting dates were August 11, 12, 15 and 22, 2022<sup>9</sup>. (FOF 83). Parent-1 selected August 11 as the next meeting date. (FOF 83). The IEP meeting continued on August 11, 2022, but the IEP team was not able to complete the IEP. The instant complaint was filed shortly after the 8/11/2022 IEP meeting ended.

Respondents have the legal obligation to revise the 8/11/2021 IEP for Student by the annual review date; Parent does not have this legal obligation<sup>10</sup>. Because the legal obligation rests with Respondents, Respondents must take steps to ensure that there is enough time to revise the IEP for Student by the annual review date. In this case, Respondents did not take such steps. Although SSC reached out to Parent-1 in early March to begin the scheduling process, Respondents should have been more proactive in scheduling meeting dates knowing that the IEP team would need six (6) hours or three (3) two-hour days to complete the IEP, and there were fifteen (15) participants whose schedules had to be aligned. (FOF 24, 39, 42, 77, 91, DOE Closing Brief, p. 10). Parent-1 is not responsible for scheduling because Parent-1 does not have a legal obligation to make sure that the IEP is reviewed by August 11, 2022.

While Respondents were faced with two competing legal obligations—meeting the annual review deadline or ensuring parental participation--Respondents did not take reasonable steps to prevent itself from being placed in such a predicament. Even though Parent-1 said that

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<sup>9</sup> There is no evidence that DOE sought Parent-1's consent to extend the annual review deadline.

<sup>10</sup> The Ninth Circuit has held that “[a]n agency cannot blame a parent for its failure to ensure meaningful procedural compliance with the IDEA because the IDEA’s protections are designed to benefit the student, not the parent,” Doug C., 720 F.3d at 1045.

█ did not want to have the IEP meeting until August, Respondents did not attempt to schedule a meeting for late May or June or July. As explained in Doug C., “a meeting may *only* be conducted without a parent if ‘the public agency is *unable* to convince the parents that they should attend.’ § 300.322(d).” Doug C. v. State of Hawaii Dept. of Educ., 720 F.3d 1038, 1044 (9th Cir.2013). Respondents made no effort to try to convince Parent-1 that Parent-1 should attend a meeting in late May, June or July. By not trying to convince Parent-1 to meet earlier than August, Respondents essentially agreed to meet in August. And while Respondents may have been trying to “respect” Parent-1’s request to not hold the IEP meeting until closer to August<sup>11</sup>, Respondents should have thought about how respecting Parent-1’s request can adversely affect Student to whom DOE has a legal obligation towards<sup>12</sup>.

Furthermore, if Respondents were of the impression that Parent-1 engages in “delay tactics,”<sup>13</sup> Respondents should have taken that into consideration when scheduling the IEP meeting. Because Respondents have the legal obligation to conduct an IEP meeting by a deadline and parents do not, the IDEA regulations provide Respondents with a mechanism to address situations that involve uncooperative parents. See H.A.R. § 8-60-46(d); 34C.F.R. § 300.322(d). However, this requires the school to put in significantly more effort than if the parents were cooperative. Home School did not put in sufficient effort to schedule the IEP meeting and placed itself in a situation where it ran out of time. Therefore, the failure to

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<sup>11</sup> DOE Closing Brief, p. 10.

<sup>12</sup> It appears that one of the reasons why dates were not offered in June or July was because it was summertime and some employees were on vacation or summer break. (FOF 21, 51). While it may be more difficult to schedule meetings during the summer months because employees are on vacation or summer break, staffing shortage is not an excuse. In the Matter of Elmira City Sch. Dist. v. New York State Educ. Dept., 2022 WL 1037791, \*5, --N.Y.S.3d (2022). Although Home School was not dealing with staffing shortage, employees being on vacation or summer break is even less excusable.

<sup>13</sup> DOE Closing Brief, p. 9.

complete Student's annual IEP by the deadline and to have an IEP in place at the beginning of the school year was a procedural violation.

Under the IDEA, harmless procedural errors do not constitute a denial of FAPE; however, procedural inadequacies that result in the loss of educational opportunity or significantly impede the parent's opportunity to participate in the IEP formulation process will result in the denial of a FAPE. W.G. v. Bd. of Trustees of Target Range School District, 960 F.2d 1479 (9th Cir.1992). A hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of education benefit. 34 C.F.R. § 300.513(a)(2). "A procedural error results in the denial of an educational opportunity where, absent the error, there is a 'strong likelihood' that alternative educational possibilities for the student 'would have been bettered considered.'" Doug C., 720 F.3d 1038, 1046 (9<sup>th</sup> Cir.2013) (quoting M.L. v. Federal Way Sch. Dist., 394 F.3d 634, 657 (9<sup>th</sup> Cir.2005)). "[A]n IEP team's failure to properly consider an alternative educational plan can result in a lost educational opportunity even if the student cannot definitively demonstrate that ■ placement would have been different but for the procedural error." Doug C., 720 F.3d at 1046 (citing M.L. v. Federal Way Sch. Dist., 394 F.3d 634, 657 (9<sup>th</sup> Cir.2005)). Petitioners have met their burden in showing that there was a loss of educational opportunity when Respondents did not revise Student's IEP by the annual review date. Parent-1 testified during the due process hearing that if the DOE provides Student with all the services that ■ needs, Parent-1 would send Student back to a DOE school. Parent-1, Tr. Vol. I, pp. 34-35. This educational opportunity could not have been considered because the IEP was not completed.

In addition to meeting their burden of showing a loss of educational opportunity, the undersigned Hearings Officer finds Respondents significantly impeded parent's opportunity to participate in the IEP formulation process. Parental participation in the IEP and educational placement process is critical and necessary. Doug C., 720 F.3d at 1043-1044. A school has an "affirmative duty" to include parents in the IEP process. Id. at 1044. Knowing that Student is entitled to a FAPE, Respondents failed to update Student's IEP in a timely fashion. Respondents' efforts at scheduling the IEP meeting were not sufficient. Respondents must proactively try to "convince" Parent-1 to participate in an IEP meeting that would provide the IEP team enough time to complete the IEP. Had Respondents been "unable to convince" Parent-1 to meet earlier, then the predicament that DOE was in would not have been its own doing. On July 19, 2022, Respondents offered to Parent-1 the following dates for an IEP meeting: August 1, 2, 4, 5, 8, and 9. (FOF 65). After the 8/01/2022 IEP meeting, Parent-1 stated that [REDACTED] was available any day before August 11, which would include August 2, 4, 5, 8 and 9. (FOF 81). Respondents, however, were not available on those dates and offered Parent-1 August 11, 12, 15 and 22. (FOF 83). Knowing that Student's IEP would not be completed on August 1 (as the meeting was only scheduled for two hours) and that the review deadline was August 11, Respondents did not take steps to ensure that the days between August 1 and August 11 were days that the IEP meeting could take place. Furthermore, Parent-1 offered to stay for as many hours as needed during the next meeting to finish the IEP. (FOF 81). Respondents, however, offered Parent-1 meeting dates with two-hour blocks. (FOF 83). And when Parent-1 selected August 11, 2022, 10:00 a.m. to 12:00 p.m., there was no effort to ask Parent-1 if the meeting

could also take place from 1:00 p.m. to 3:00 p.m. This resulted in Parent-1's opportunity to participate being significantly impeded<sup>14</sup>.

Respondents also failed to have in effect an IEP at the beginning of the 2022-2023 school year. Home School began in early August of 2022. (FOF 21). The 8/11/2021 IEP having expired on August 11, 2022, and it was still not completed as of November 22, 2022 (FOF 124)<sup>15</sup>, Respondents did not have in effect an IEP for Student in August of 2022 when the 2022-2023 school year began. For the same reasons why not having an annual review of Student's IEP resulted in a loss of educational opportunity and significantly impeded Parent's opportunity to participate in the IEP decision-making process, not having an IEP in effect at the beginning of the 2022-2023 school year resulted in a loss of educational opportunity and significantly impeded Parent's participation rights. Based on the foregoing, Petitioners have met their burden in proving that Student was denied a FAPE.

#### **D. TUITION REIMBURSEMENT FOR PRIVATE ACADEMY**

Petitioners seek "direct payment for the actual services Student received in [redacted] private program from August 11, 2022...[and] compensatory education for the loss of a sufficient educational program from August 11, 2022, until the date of this decision." Pet. Closing Brief, p. 14. Petitioners further request that the decision "provides for reimbursement of [Private Academy] services through that date and allows Student to continue with the 2022-2023 school

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<sup>14</sup> It should be noted that the [redacted] interpreter present at the 8/11/2022 IEP meeting performed poorly. The interpreter did not translate the meeting; disappeared and had to be asked to come back (DOE Ex. 97 at 00:20:00-00:21:18); and then left again without warning (DOE Ex. 97 at 2:14:20-2:15:05). Although Parent-1 said [redacted] will let the interpreter know when [redacted] needs something translated (DOE Ex. 97 at 00:22:00-00:22:30), the interpreter should be present at all times in the event that Parent-1 does need assistance. Petitioners' Closing Brief, p. 6.

<sup>15</sup> The parties stated in their respective closing briefs, filed on December 22, 2022, that the IEP is still not complete. Petitioners' Closing Brief, p. 12, FN. 6. Respondents' Closing Brief, p. 6.

year at an improved level of services, this would extend that program until October 2023.” Pet. Closing Brief, p. 15. The U.S. Supreme Court has recognized the rights of parents who disagree with a proposed IEP to unilaterally withdraw their child from public school and place the child in a private school and request reimbursement for tuition at said private school from the local educational agency. Florence County School Dist. Four v. Carter, 510 U.S. 7, 12, 114 S. Ct. 361, 364-365, 126 L.Ed.2d 284 (1993) (citing School Comm. of Burlington v. Department of Ed. of Mass., 471 U.S. 359, 369-370, 105 S. Ct. 1996, 2002-2003, 85 L.Ed.2d 385 (1985)), see also 20 U.S.C. § 1415(b)(6), (f)(1)(A). A parent who unilaterally places a child in private school pending review proceedings under the IDEA is entitled to reimbursement if the parent can establish that (1) the public placement violated the IDEA, and (2) the private school placement was proper under the IDEA. Doug C., 720 F.3d 1038, 1041, 1047-1048 (9th Cir.2013) (citing Carter, 510 U.S. at 15, 114 S. Ct. 361). If both are met, “the district court must then exercise its ‘broad discretion’ and weigh ‘equitable considerations’ to determine whether, and how much, reimbursement is necessary.” C.B. ex rel. Baquerizo v. Garden Grove Unified School Dist., 635 F.3d 1155, 1159 (9th Cir. 2011) (citing Carter, 510 U.S. at 15-16, 114 S. Ct. 361).

The Ninth Circuit Court of Appeals has adopted the standard put forth by the Second Circuit in Frank G. v. Bd. Of Educ., 459 F.3d 356, 365 (2nd Cir.2006), where “to qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child’s potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.” C.B., 635 F.3d at 1159 (citing Frank G., 459 F.3d at 365). Parental placement can be appropriate, even if it does not meet state standards. 34 C.F.R. § 300.148(c).

In this case, the public placement of Student violated the IDEA in such a manner that Student was denied a FAPE. This Hearings Officer now examines whether the unilateral placement of Student at Private Academy in the 2022-2023 school year was proper under the IDEA.

Private Academy is a non-profit, year-round, private school that offers special education instructions and ABA therapy services to its students. (FOF 125-126). Private Academy currently has ■ special needs students. (FOF 127). Student has been attending Private Academy since the ■ grade, and for the past four (4) years tuition has been paid for by the DOE, either through administrative decisions or settlement. (FOF 5, 17, 128). A settlement between Petitioners and DOE in a previous due process complaint allowed Student to attend Private Academy between January 2022 to July 2022 with tuition paid for by DOE. (FOF 17, 143). During the period covered by the settlement, Student attended Private Academy Monday through Friday, from 8:00 a.m. to 2:00 p.m.; had an ABA program and an RBT with ■ from 8:00 a.m. to 2:00 p.m.; and received two (2) hours a week of ASL instruction, one (1) hour a week of occupational therapy; and one (1) hour a week of speech therapy. (FOF 142). After the period covered by the settlement, Student continued to receive ASL instruction, occupational therapy and speech therapy, similar to the “bare bones” program<sup>16</sup>. (FOF 143-145). Although Private Academy does not have nondisabled students, Student will be able to interact with nondisabled people when ■ is out in the community through DOH’s HCBS program. (FOF 127, 145). Student, being ■ years old and having graduated from high school, will have limited opportunities to interact with nondisabled same-aged peers in a school setting. (FOF 1, 6). As

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<sup>16</sup> The undersigned notes that Director’s testimony that Student currently receives ASL instruction conflicts with Student’s 7/05/2022 Treatment Plan, which does not list ASL instruction as one of the services Student receives at Private Academy. (FOF 142, 145).

such, Private Academy's inability to offer opportunities for Student to interact with nondisabled peers without the HCBS program does not make Private Academy not a proper placement.

A BCBA will oversee Student's program to ensure that the treatment detailed in the 7/05/2022 Treatment Plan is followed and will provide regular supervision and training to Student's RBT. A behavior assistant will facilitate day-to-day implementation of the plan, collecting data and working closely with caregivers and professionals. (FOF 145). Student will have a BSP to address ■ behavior. (FOF 148).

The "Ninth Circuit [has] held that a private program does not need to meet all of a student's educational needs, and merely needs to provide specially designed educational instruction for the unique needs of the student." L.S., 2019 WL 1421752, at \*14 (citing C.B., 635 F.3d at 1159). The "Supreme Court has held that the IDEA's requirements of public schools are not applicable to private school placement." Id. at \*15 (citing Carter, 510 U.S. at 13-14, 114 S.Ct. 361). Parental placement can be appropriate even if it does not meet state standards. 34 C.F.R. § 300.148(c). Based on the foregoing reasons, Petitioners have proven that placement at Private Academy is proper for reimbursement purposes and Private Academy is an appropriate placement for Student.

Under IDEA, if Petitioners succeed in meeting their burden of proving that the DOE violated the IDEA and denied Student a FAPE, and that the private placement is proper, the reviewing body has the authority to consider equity in determining whether and in what amount tuition reimbursement is to be awarded to a parent that unilaterally places a child at a private program. C.B., 635 F.3d at 1159. "Regarding reimbursement, courts may consider any relevant factor, including the reasonableness of the private tuition, [citation omitted], and the conduct of parents in the IEP formulation process." LS, 2019 WL 1421752, at \*14. The undersigned



Hearings Officer finds that Private Academy's tuition costs for the "bare bones" program to be reasonable. Id., at \*15.

Student currently attends Private Academy for the 2022-2023 school year under a "verbal contract." (FOF 151). Director estimates that Student's monthly tuition for ■ "bare bones" program was approximately \$20,000 per month. (FOF 142). Private Academy did not increase its fee schedule for the 2022-2023 school year. (FOF 147). Student's current program consists of two (2) hours per week of ASL instruction; one (1) hour per week of speech therapy; one (1) hour per week of occupational therapy; RBT services Monday through Friday, 8:00 a.m. to 2:00 p.m.; transportation; and ESY over breaks on Monday through Friday, four (4) hours daily. (FOF 142-145). Based on the 2020 AFSL and 2022 AFSL, Student did not regress in any of the skills that were observed—Student's skills either remained the same or grew—while receiving Private Academy's "bare bones" program. (FOF 137). Student is making steady progress with one hour per week of speech therapy. (FOF 149). Student's progress towards ■ occupational therapy goals with one hour per week of occupational therapy is either "goal met," "progress made," or "no progress." (FOF 150). Although Student's 7/05/2022 Treatment Plan does not list ASL as a service being provided, Student has delay in communication and continued ASL at two (2) hours per week is reasonable.

Petitioners' request to have "improved level of services," which the undersigned assumes is the "robust program" described by Director, is denied. (FOF 146). Petitioners fail to provide any evidence to show that Student needs an "improved level of services" or a "robust program" to meet ■ needs. Student is entitled to an educational program that is reasonably calculated to enable ■ to make progress, not a program that will maximize ■ potential. Andrew F., 137 S.Ct. at 1001. Director is not a BCBA and there is no evidence that Director is

trained in speech/language pathology or occupational therapy. (FOF 133). Based on the above, Student is making meaningful progress with the “bare bones” program. Student should receive a similar program for the 2022-2023 school year.

Respondents denied Student a FAPE when Student’s 8/11/2021 IEP expired on or about August 11, 2022 and Respondents did not conduct an annual review of the IEP or had an updated IEP in effect for Student at the beginning of the 2022-2023 school year. Student is entitled to have ■ private placement funded by DOE; however, Petitioners’ requests for compensatory education and to have funding “at an improved level of services” are denied.

## **VI. DECISION**

Based upon the above-stated Findings of Fact and Conclusions of Law, the undersigned Hearings Officer concludes that Petitioners have proven a denial of FAPE when DOE failed to revise Student’s 8/11/2021 IEP by the annual review deadline and to have in effect an updated IEP for Student at the beginning of the 2022-2023 school year, which resulted in a loss of educational opportunity and significantly impeded Parent-1’s participation rights. Petitioners further proved that Private Academy is an appropriate placement for Student and that Parent-1 is entitled to reimbursement for tuition and related expenses for Student’s attendance at Private Academy for the 2022-2023 school year.

For the reasons stated above, IT IS HEREBY ORDERED --

1. Within 30 calendar days of receiving monthly itemized invoices from Private Academy for services rendered, Respondents shall make payment, less any payment due to Parent-1, for Student’s tuition for the 2022-2023 school year, beginning August 11, 2022. Private Academy’s itemized invoices shall include, at a minimum, the total monthly cost for services rendered, a description of the services rendered, the

- date and duration of the services, and the name and title (such as BCBA, RBT or behavior technician) of the person(s) performing the services. The total cost set forth in the itemized invoices shall be consistent with the average monthly cost of the “bare bones” program given to Student between March 2022 and July 2022, and shall in no event exceed twenty thousand and 00/100 dollars (\$20,000.00) per month.
2. In the event that Parent-1 paid for Student’s tuition, Parent-1 will be reimbursed for the amount paid. Respondents shall reimburse Parent-1 within 30 calendar days of receiving proof of payment from Parent-1.
  3. Payment(s) pursuant to paragraphs 1 and 2 shall not exceed twenty thousand and 00/100 dollars (\$20,000.00) per month.

**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, January 23, 2023.

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