



2023 JUL -7 PM 3:19 *chr*

OFFICE OF DISPUTE RESOLUTION
DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

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

Petitioner(s),

vs.

PARENT(S)/GUARDIAN(S) of STUDENT,¹

Respondents.

DOE-SY2223-022

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION

Due Process Hearing: May 8, 10, 11, 15, 19,
2023

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

I. INTRODUCTION

On January 10, 2023, the DEPARTMENT OF EDUCATION, STATE OF HAWAI'I (hereinafter referred to as "Petitioners") submitted a Request for IDEA Impartial Due Process Hearing (hereinafter "Complaint") in accordance with the Individuals with Disabilities Education Act, against Respondents the Parent(s)/Guardian(s) of Student (hereinafter referred to as "Respondents"). The Complaint was received by Respondents on January 10, 2023.

On January 17, 2023, a prehearing conference was held with this Hearings Officer;

¹ Personal identifiable information is contained in the Legend.

On January 17, 2023, a prehearing conference was held with this Hearings Officer; District Educational Specialist (hereinafter “DES”), on behalf of Petitioners; and Parent and Parent Advocate (hereinafter “PA”), on behalf of Respondents. The prehearing conference was continued to allow Parent to determine whether Parent would be retaining an attorney and to get additional information on scheduling of Parent’s personal matters.

On January 25, 2023, a continued prehearing conference was held with this Hearings Officer, DES, Parent, and PA. At the prehearing conference, Parent noted that due to scheduled personal matters, Parent could not participate in a due process hearing on this matter until late March 2023.

On February 23, 2023, Parent sent an email requesting that the due process hearing be continued due to personal matters. DES did not object to continuing the hearing. On February 27, 2023, a status conference was held with this Hearings Officer, DES, Parent, and PA. At the status conference, the Due Process Hearing (hereinafter “Hearing”) was scheduled for May 8, 10, and 11, 2023.

Due to the original decision deadline being January 10, 2023, Respondents requested an extension of the decision deadline to accommodate Parent’s personal matters. The original decision deadline was extended to April 10, 2023. Based on Parent’s request to continue the Hearing and the newest Hearing dates of May 8, 10, and 11, 2023, Respondents requested another extension of the deadline, which was granted, and extended the decision deadline to May 25, 2023.

An Order Regarding Video Conference Due Process Hearing was issued on January 25, 2023, which set forth the parameters for the video conference hearing. These parameters included: the instructions to participate via the Zoom video conference internet platform; a court

reporter would participate in the video conference hearing, swear in the witnesses, and transcribe the proceedings; all witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform; and that witnesses and parties would ensure confidentiality of the proceedings by participating in a private setting.

The Hearing commenced on May 8, 2023, using the Zoom video conferencing platform. Each attendee to the Hearing was sent a link through email to access the Hearing by the Office of Dispute Resolution. Present in the video conference Hearing were this Hearings Officer; DES on behalf of Petitioners; Parent and PA on behalf of Respondents; as well as the assigned court reporter. By agreement, Petitioners coordinated the schedules for Respondents to have DOE witnesses testify based on their availability. Since some witnesses were going to be called on behalf of Petitioners and Respondents, this Hearings Officer allowed both parties to ask all questions of the witness at one time, so the witnesses could complete their testimony on behalf of Petitioners and Respondents during one session.

On May 8, 2023, Petitioners called Student Services Coordinator (hereinafter “SSC”) and DOE Occupational Therapist (hereinafter “DOE OT”) to testify. The Hearing continued onto May 10, 2023, where DOE OT’s testimony was completed, and Petitioners also called Special Education Teacher (hereinafter “SPED Teacher”) to testify. SPED Teacher’s testimony was not completed on May 10, 2023, and continued on May 11, 2023. After the completion of SPED Teacher’s testimony, Petitioners rested their case-in-chief. At the Hearing on May 11, 2023, Respondents called Care Coordinator (hereinafter “CC”) and Math Teacher to testify. CC’s testimony was not complete and new Hearing dates were added to accommodate Respondents’ witness testimony. On May 15, 2023, Respondents completed the examination of CC, and called Counselor and English Teacher to testify. On May 19, 2023, Respondents called

Parent to testify and upon completion of Parent's testimony, Respondents rested their case. Petitioners did not have any rebuttal witnesses to present.

Each party submitted their exhibits for the Hearing by the disclosure deadline of May 1, 2023. Both parties were informed that any exhibits that were discussed or mentioned during the proceeding would be received for consideration in the Decision in this case, but that this Hearings Officer would allow the parties to propose additional exhibits after the Hearing was completed. On May 22, 2023, a list of exhibits that were discussed during the hearing was provided to counsel by this Hearings Officer. Both parties were allowed to propose additional exhibits from their previously disclosed documents that were not discussed at the Hearing to be received as evidence in this matter. The lists of proposed additional exhibits were due on Tuesday, May 30, 2023. Any objections to the proposed exhibits were due on Friday, June 2, 2023.

Respondents submitted their corrections and request for additional documents by May 30, 2023. Respondents noted that Respondents' Exhibit 105, page 454, was discussed during one of the witness' testimony so should be admitted. Respondents requested the following exhibits be admitted into evidence: Respondents' Exhibit 5, pages 68-78; Respondents' Exhibit 9, pages 130-145; Respondents' Exhibit 29, pages 173-178; Respondents' Exhibit 31, an audio recording of an IEP meeting dated July 13, 2021; Respondents' Exhibit 35, an audio recording of an IEP meeting dated January 26, 2022; Respondents' Exhibit 45, pages 198-201; Respondents' Exhibit 50, pages 211-215; Respondents' Exhibit 52, pages 234-237; Respondents' Exhibit 62, pages 305-307; Respondents' Exhibit 64, pages 310-318; Respondents' Exhibit 67, pages 332-336; Respondents' Exhibit 68, pages 337-339; Respondents' Exhibit 69, pages 340-352; Respondents' Exhibit 70, pages 353; Respondents' Exhibit 70a, pages 354-356; Respondents' Exhibit 71a,

pages 360-364; Respondents' Exhibit 72-73, pages 365-366; Respondents' Exhibit 74, pages 367-368; Respondents' Exhibit 75, pages 369-370; Respondents' Exhibit 77, pages 375-376; Respondents' Exhibit 78, page 377; Respondents' Exhibit 80, page 380; Respondents' Exhibit 84, pages 388-391; Respondents' Exhibit 87, pages 406-412; Respondents' Exhibit 92, page 429; Respondents' Exhibit 94, page 432; Respondents' Exhibit 95, page 434; Respondents' Exhibit 97, page 436; Respondents' Exhibit 101a, page 442; Respondents' Exhibit 103, pages 444-447; Respondents' Exhibit 103a, 103b, 103c, and 103d, pages 448-451. Respondents also requested admission of the following Petitioners' exhibits: Petitioners' Exhibit 2, pages 55, 59, 64, and 69. Respondents requested the following additional exhibits for consideration in the Decision in this case.

Petitioners did not submit any corrections or additional exhibits for consideration in the Decision. Petitioners requested that one (1) exhibit, Petitioners' Exhibit 6, pages 283, 288, and 289 be substituted with a colored copy of the exhibit to show the answers that were provided in a different color within the document. Respondents did not state any objection to Petitioners' request, so this Hearings Officer granted Petitioners' request. Petitioners objected to the admission of the majority of Respondents' requested additional exhibits as being irrelevant to the issues in this case. This Hearings Officer received the exhibits requested by Respondents, noting that any irrelevant documents will be reviewed, but not necessarily relied upon for the decision in this case.

On June 6, 2023, a List of Exhibits Received at Due Process Hearing was filed with the final list of exhibits submitted and received by the parties for consideration in this Decision.

Petitioners' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-004, 006-007, 010, 014-016, 019; Exhibit 2, pages 037-052, 055, 059, 064, 069, 099-100, 103, 112, 116, 119, 122, 1126, 128-157; Exhibit 3, pages 160-196;

Exhibit 6, pages 244-248, 282-294, 350-355; Exhibit 7, pages 366-368, and Exhibit 9, one (1) audio recording dated September 20, 2022.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-034; Exhibit 2, pages 035-050; Exhibit 2a, page 052; Exhibit 3, pages 053-055; Exhibit 5, pages 068-078; Exhibit 6, pages 079-088; Exhibit 7, pages 089-102; Exhibit 8, pages 103-129; Exhibit 9, pages 130-145; Exhibit 18, page 159; Exhibit 19, page 160; Exhibit 20, page 161; Exhibit 21a, page 163; Exhibit 22, page 164; Exhibit 24, pages 166-167; Exhibit 25, pages 168-169; Exhibit 26, page 170; Exhibit 27, page 171; Exhibit 29, pages 173-178; Exhibit 31, recording dated 7/13/21; Exhibit 32, recording dated 9/13/21; Exhibit 35, recording dated 1/26/22; Exhibit 45, pages 198-201; Exhibit 49, pages 209-210; Exhibit 50, pages 211-215; Exhibit 50a, pages 216-224; Exhibit 52, pages 234-237; Exhibit 53, pages 238-241; Exhibit 54, pages 242-247; Exhibit 55, pages 248-252; Exhibit 56, pages 253-254; Exhibit 57, page 255; Exhibit 57a, pages 256-258; Exhibit 59, pages 265-267; Exhibit 60, pages 268-298; Exhibit 61, pages 299-304; Exhibit 62, pages 305-307; Exhibit 63, pages 308-309; Exhibit 64, pages 310-318; Exhibit 65, pages 319-328; Exhibit 66, pages 329-331; Exhibit 67, pages 332-336; Exhibit 68, pages 337-339; Exhibit 69, pages 340-352; Exhibit 70, page 353; Exhibit 70a, pages 354-356; Exhibit 71a, pages 360-364; Exhibit 72, page 365; Exhibit 73, page 366; Exhibit 74, pages 367-368; Exhibit 75, pages 369-370; Exhibit 76, pages 371-374; Exhibit 77, pages 375-376; Exhibit 78, page 377; Exhibit 80, pages 380-381; Exhibit 82, page 384; Exhibit 83, pages 385-387; Exhibit 84, pages 388-391; Exhibit 86, pages 397-405; Exhibit 87, pages 406-412; Exhibit 88, pages 413-419; Exhibit 89, pages 420-426; Exhibit 90, page 427; Exhibit 91, page 428; Exhibit 92, page 429; Exhibit 94, pages 432-433; Exhibit 95, page 434; Exhibit 97, page 436; Exhibit 99, pages 438-439; Exhibit 100, page 440; Exhibit 101, page 441; Exhibit

101a, page 442; Exhibit 102, page 443; Exhibit 103, pages 444-447; Exhibit 103a, page 448; Exhibit 103b, page 449; Exhibit 103c, page 450; Exhibit 103d, page 451; Exhibit 104, page 452; Exhibit 104a, page 453; Exhibit 105, page 454; Exhibit 105a, page 455; Exhibit 106, page 456; Exhibit 106a, page 457; Exhibit 107, page 458; Exhibit 107a, page 459.

Both parties requested the opportunity to submit closing briefs with the use of the transcripts from the Hearing to summarize their arguments in support of their positions. Based on the decision deadline of May 25, 2023, Petitioners requested an extension of the decision deadline from May 25, 2023 to July 9, 2023 to allow for the completion of the transcripts and the written briefs. The deadline for the written closing briefs was set for June 21, 2023 based on date of the anticipated transcripts being received. Both parties timely submitted their closing briefs on June 21, 2023, however Respondents' electronic closing brief could not be opened by the Office of Dispute Resolution. On June 22, 2023, a copy of Respondents' closing brief was submitted to the Office of Dispute Resolution by Petitioners and was filed on that date.

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

II. JURISDICTION

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

III. ISSUES PRESENTED

Petitioners assert the following issue and proposed remedy in the Complaint to be

addressed at the Hearing:

Issue - Whether the reevaluation done by the DOE beginning on September 13, 2021 was appropriate to assess Student's needs (specifically in the area of fine motor skills/occupational therapy).

Proposed Remedy - Find that an independent educational evaluation ("IEE") being requested by Parents should not be at public expense.

IV. FINDINGS OF FACT²

Witness Background

1. SSC is a licensed special education teacher in the State of Hawai'i and is currently employed as the student services coordinator at Home School. SSC has previously worked as a special education teacher and a special education department head. SSC has a bachelor's degree in criminal justice and a post baccalaureate certificate in special education. Testimony of SSC, Transcript of Proceedings, Volume 1, page 13, line 7, through page 14, line 10 (hereinafter referenced as "Tr.V1, 13:7-14:10").
2. DOE OT is a nationally certified and licensed occupational therapist in the State of Hawai'i and has been employed with the DOE in that capacity since 2020. Prior to that, DOE OT worked as an occupational therapist in a hospital early intervention program from around 2019-2020. DOE OT has a bachelor's degree in elementary education and a master's degree in occupational therapy. Testimony of DOE OT, Tr.V1, 141:24-142:19.
3. Based on DOE OT's qualifications and work experience in the area of occupational therapy, DOE OT has been qualified as an expert witness in the area of occupational

² While this Hearing Officer reviewed all the exhibits that were submitted into evidence, as listed above, the following Findings of Fact are based on the evidence that has been determined to be relevant to the issue to be resolved in this case.

- therapy for purposes of this hearing. Testimony of DOE OT, Tr.V1, 141:24-144:8.
4. SPED Teacher is a licensed special education teacher in the State of Hawai‘i who currently provides services as a resource teacher for the DOE. SPED Teacher has a bachelor’s degree in psychology and a master’s degree in counseling psychology, and has worked as a part-time math teacher, a school counselor, and a student services coordinator. Testimony of SPED Teacher, Tr.V2, 253:24-255:15.
 5. Based on SPED Teacher’s certifications and work experience, as well as the numerous continued training and educational sessions SPED Teacher has attended, SPED Teacher has been qualified as an expert witness in the area of special education for purposes of this hearing. Testimony of SPED Teacher, Tr.V2, 253:24-258:24.
 6. CC is a special education teacher and department head for Home School’s special education department. CC has been a teacher at Home School for twenty-five (25) years. Testimony of CC, Tr.V3, 382:4-383:8.
 7. Math Teacher is a general education teacher at Home School who teaches Algebra 1 and Trigonometry classes. Testimony of Math Teacher, Tr.V3, 412:1-8.
 8. Counselor is a licensed mental health counselor in the State of Hawai‘i and has been so licensed since 2015. Counselor has a master’s degree in counseling and has also attained over three thousand (3000) hours of counseling experience to be licensed as a mental health counselor. Testimony of Counselor, Tr.V4, 450:12-23, 461:5-462:5.
 9. English Teacher is a licensed special education teacher at Home School and has been so employed in that capacity for thirty-six (36) years. English Teacher has a bachelor’s degree in elementary education and a master’s degree in special education. Testimony of English Teacher, Tr.V4, 505:5-17, 534:23-535:9.

Student's background

10. Student is [REDACTED] years old and attends Home School. Student has been eligible for special education and related services under the IDEA since Student was [REDACTED] years old. Testimony of Parent, Tr.V5, 550:14-16.
11. Counselor had started working with Student about [REDACTED] years prior to the Hearing and usually meets with Student once a week to provide private counseling services to Student. Testimony of Counselor, Tr.V4, 451:24-452:10.
12. Counselor has an established relationship with Student to provide Student a safe space to express Student's frustrations and emotions. Testimony of Counselor, Tr.V4, 456:1-460:7.
13. Student expressed to Counselor that Student often had difficulty expressing Student's feelings and frustrations from school, which often built up throughout the day. Because of Student's age, Student is also self-aware of the differences that Student has from Student's peers and is concerned about judgment or feelings of inadequacy. Testimony of Counselor, Tr.V4, 456:1-457:3.
14. Due to Student's awareness of others, Student would often decline some of the supports that were offered to Student in class, such as breaks, or would not speak up regarding difficulties that Student was experiencing in the classroom. Testimony of Counselor, Tr.V4, 457:4-458:12.
15. Prior to attending Home School for the 2021-2022 school year, Student attended Former Home School for the 2020-2021 school year. Testimony of SSC, Tr.V1, 14:22-15:5; Testimony of SPED Teacher, Tr.V2, 259:2-14.
16. Parent raised concerns about Student having possible diagnoses of [REDACTED]

[REDACTED] and [REDACTED]

[REDACTED] in February 2021. Parent expressed concerns to Former Home School and Former Home School informed Parent that the DOE public schools are not qualified to provide diagnoses for students, but that the team would consider any private assessments that were obtained by Parent. Testimony of Parent, Tr.V5, 550:25-551:5.

17. In April 2021, Parent took Student to Private Center for a comprehensive evaluation related to Parent’s concern of possible diagnoses for Student. Private Center’s assessment took place over four (4) sessions on April 5, 7, 8, and 14, 2023 and included interviews with Parent, approximately thirteen (13) assessments in the areas of cognitive, achievement, memory and learning, attention/executive functioning, social/emotional/behavioral, and [REDACTED]. P-Ex.3, p.160-193; R-Ex.1, p.001-034.

18. The Private Center assessment determined that Student has diagnoses of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Testimony of Parent, Tr.V5, 551:6-17; P-Ex.3, p.176; R-Ex.1, p.017; *see also* P-Ex.2, p.038; R-Ex.7, p.090.

19. The Private Center report provided numerous recommendations for accommodating Student’s diagnoses in both the home and school setting. These included providing Student with counseling, behavioral services from a board-certified behavior analyst, and positive feedback to Student. Classroom strategies that were recommended

include introducing Student to upcoming content, provide visual supports and verbal cues, checks for understanding after an assignment is given, chunking information, providing extra time for Student to complete tests and quizzes, breaking down large assignments into smaller steps, using an organizer or schedule, providing Student breaks for physical movement or motor activity after longer periods of cognitive effort, allowing Student to proofread or correct assignments before being graded, providing audiobooks for Student to read along to, allowing Student to complete assignments with oral responses, using text-to-speech software, or through the use of a computer to allow Student to concentrate more on the content of the assignment than handwriting skills, and providing directions one at a time, with an opportunity for Student to rephrase the directions prior to proceeding or providing directions in a slow speaking rate or with frequent pauses. P-Ex.3, p.176-186; R-Ex.1, p.017-027.

20. In June 2021, Parent provided Former Home School with a redacted copy of Private Center's report. Information from Student's background and history (specifically demographic, medical and prior mental health treatment, and psychosocial) and results from one (1) assessment under social/emotional/behavioral functioning were redacted from the copy provided to Former Home School. None of the members of Student's team at Home School and Former Home School would have seen the unredacted copy until the Hearing in this case. See P-Ex.3, p.160-193 and R-Ex.1, p.001-034.

21. In July 2021, members of Student's team from Former Home School met with some members of Student's team from Home School to update Student's individualized education program (hereinafter "IEP") based on Private Center's assessment that

- Parent had provided to Former Home School. The teams also met together due to Student transitioning from Former Home School to Home School for the 2021-2011 school year. Testimony of SSC, Tr.V1, 14:24-16:9; Testimony of SPED Teacher, Tr.V2, 259:2-260:7; P-Ex.2, p.037, R-Ex.7, p.089.
22. The IEP meetings took place on July 13, 2021 and July 23, 2021, and the written updated IEP was developed for Student to be implemented at Home School for the 2021-2022 school year (hereinafter “IEP-07/23/2021”). Testimony of SPED Teacher, Tr.V2, 260:8-262:10; P-Ex.2, p.037-050; R-Ex.7, p.089-102.
23. A prior written notice (hereinafter “PWN”) was produced to note the events that occurred in the July 2021 meetings, the additions/amendments contained in the offer of Student’s IEP-07/23/2021, and other concerns that were raised in the July 2021 IEP meetings. Testimony of SSC, Tr.V1, 15:13-19; P-Ex.2, p.051-052.
24. At the July 2021 IEP meetings, Parent expressed a concern about Student needing occupational therapy or having occupational therapy concerns due to Student’s diagnoses of [REDACTED] and [REDACTED] in the Private Center assessment. Testimony of SSC, Tr.V1, 16:12-17:20; Testimony of SPED Teacher, Tr.V2, 263:13-20; P-Ex.2, p.051-052.
25. In August 2021, Student began expressing to Parent that Student was having difficulty in math and that Student was not taking breaks during class. Parent requested a meeting with Home School to discuss Student’s difficulties. Parent was able to have a meeting with SPED Teacher, Home School’s vice principal, and Math Teacher to discuss Student’s difficulties and provide additional supports to Student, such as providing oral quizzes to Student and providing the answer key to Student

- after the quiz for review. Testimony of Parent, Tr.V5, 558:14-559:21.
26. A reevaluation meeting was scheduled for September 13, 2021 for the team to determine whether an occupational therapy assessment would be completed. Testimony of SSC, Tr.V1, 16:12-18:14; *see* P-Ex.2, p.051-052; R-Ex.11, p.148-149.
27. Prior to the reevaluation meeting, DOE OT was requested to attend the reevaluation meeting to provide information about an occupational therapy assessment. To provide more information to the IEP team, DOE OT decided to conduct an informal observation of Student at Home School prior to the September 13, 2021 meeting. A follow up was conducted by SSC with Parent to see if Parent had any additional concerns to raise to DOE OT for Student regarding occupational therapy. Testimony of SSC, Tr.V1, 18:15-20:15; Testimony of DOE OT, Tr.V1, 144:12-146:19; P-Ex.6, p.244-245, 246-248.
28. At the time the reevaluation meeting on September 13, 2021 took place, Student was not due for a triennial reevaluation, so the reevaluation was being considered due to Parent's request for an occupational therapy assessment for Student. Testimony of SSC, Tr.V1, 22:18-22; Testimony of SPED Teacher, Tr.V2, 263:21-265:17.
29. On September 13, 2021, Parent attended the reevaluation meeting with PA, as well as Counselor. Also present at the meeting were DOE OT, Home School's vice principal, SSC, English Teacher, Math Teacher, SPED Teacher, two (2) general education teachers, two (2) special education teachers, and two (2) DOE counselors. Testimony of SSC, Tr.V1, 23:16-24:4, 24:21-25:21.
30. At the meeting, DOE OT provided information from the observations that DOE OT did with Student in the classroom and asked Parent about specific concerns for

occupational therapy. Parent expressed concerns regarding Student's grip and coordination skills, giving an example of dropping a football or dropping dishes, and how they relate to Student's new diagnosis of [REDACTED]. Parent also expressed concerns with Student's handwriting and spelling, specifically noting that Student flips or switches letters occasionally. Testimony of SSC, Tr.V1, 24:5-14; Testimony of DOE OT, Tr.V1, 147:21-148:7; Testimony of SPED Teacher, Tr.V2, 266:5-267:23; R-Ex.32, video recording of meeting on 9/13/2021, approximate time stamp [03:09-11:10] (hereinafter referenced as "R-Ex.32, 9/13/2021 [03:09-11:10]"); *see also* P-Ex.6, p.244-245.

31. DOE OT also questioned Student's teachers that were present at the meeting to see if there were any occupational therapy concerns that Student was having in the classroom or any concerns that the teachers had regarding Student's legibility of handwriting or dropping things in class. Student's teachers provided information about Student's abilities and legibility of Student's work in class, noting that they were not seeing the same concerns regarding handwriting legibility or dropping items that Parent had shared. Testimony of SSC, Tr.V1, 26:13-20; Testimony of DOE OT, Tr.V1, 148:25-150:1, Tr.V2, 203:12-204:20, 205:4-206:1; Testimony of SPED Teacher, Tr.V2, 267:24-268:12; R-Ex.32, 9/13/2021 [11:33-13:49], [15:20-16:12], [27:27-28:28].

32. Counselor also provided information to the IEP team regarding Student's diagnoses, Counselor's observations of Student's behaviors in sessions, Student's concerns and difficulties Student had expressed, and difficulties that Counselor has encountered over the years of working with Student. Testimony of SSC, Tr.V1, 23:18-24:4;

- Testimony of DOE OT, Tr.V1, 150:13-151:2; Testimony of SPED Teacher, Tr.V2, 269:8-10; Testimony of Counselor, Tr.V4, 453:8-454:7; R-Ex.32, 9/13/2021 [18:37-26:06].
33. At the meeting, DOE OT stated that based on the report from Private Center, as well as the concerns that were shared by Parent and Counselor, even though they were inconsistent with what was being observed in school, DOE OT recommended an occupational therapy assessment be done with Student to see if there were any areas of occupational therapy that could provide support to Student in the school setting. Testimony of SPED Teacher, Tr.V2, 269:16-24; R-Ex.32, 9/13/2021 [28:25-29:16].
34. After the discussions at the reevaluation meeting, the IEP team determined that an occupational therapy assessment would be conducted. Parent and PA agreed with this determination. No other concerns were raised by Parent regarding reevaluation at the September 13, 2021 meeting. Testimony of SSC, Tr.V1, 27:21-28:20; Testimony of DOE OT, Tr.V1, 153:4-154:15; Testimony of SPED Teacher, Tr.V2, 270:12-271:7; P-Ex.1, p.006; R-Ex.12, p.150; R-Ex.32, 9/13/2021 [34:07-35:35].
35. The IEP continued to discuss other concerns that Parent had raised prior to the September 13, 2021 meeting after the team determined that the occupational therapy assessment was going to be done. During this portion of the meeting, no other concerns were raised regarding occupational therapy and Parent's focus was primarily on grade-checks, school counseling minutes that Student was getting in school, and scheduling a follow-up meeting for checking in with Student's teachers. The team addressed the other concerns that were raised by Parent in the second portion of the meeting and scheduled a follow up meeting related to teacher check ins. R-Ex.32,

9/13/2021 [35:36-1:08:24].

36. DOE OT was assigned to conduct the occupational therapy assessment for Student. DOE OT provided a report dated October 26, 2021 for the occupational therapy assessment conducted with Student on October 8 and 22, 2021. Testimony of DOE OT, Tr.V1, 154:23-25; P-Ex.3, p.194-196.
37. DOE OT's occupational therapy consisted of DOE OT's review of the redacted Private Center report, Student's IEP-07/23/2021, and other school records, as well as one (1) standardized and one (1) unstandardized occupational therapy assessment tools that are commonly used by professionals in the field in occupational therapy. Testimony of DOE OT, Tr.V1, 155:1-162:9; P-Ex.3, p.194-196.
38. DOE OT has been trained in conducting occupational therapy assessments both in DOE OT's master's degree program and further under the guidance of a highly experienced occupational therapist in the area of pediatric fine motor assessments. DOE OT had conducted approximately fifty (50) occupational therapy assessments with the DOE at the time of the Hearing. Testimony of DOE OT, Tr.V1, 155:10-21.
39. DOE OT conducted the Bruininks-Oseretsky Test of Motor Proficiency Test Second Edition (hereinafter "BOT-2"), which is a standardized assessment that is used to measure fine and gross motor skills with children and young adults ages four (4) through twenty-one (21). DOE OT administered this assessment with Student in accordance with DOE OT's training and with the instructions and information provided by the manufacturer of the test. The test was conducted with Student in Student's native language. Testimony of DOE OT, Tr.V1, 156:22-157:25, 247:9-15; P-Ex.3, p.194-195.

40. DOE OT administered parts of the BOT-2 test to focus on the concerns that Parent had expressed for Student's skills. The BOT-2 test allows assessors to administer those parts of the test that they determine to be relevant to their assessment. Testimony of DOE OT, Tr.V1, 158:7-159:9; P-Ex.3, p.194-195.
41. The second assessment that DOE OT conducted with Student is the Educational Assessment of School Youth for Occupational Therapists (hereinafter "EASY-OT"), which is a non-standardized tool to facilitate clinical observation for different school-related skill areas. The EASY-OT is a commonly used tool by school-based occupational therapists. DOE OT was qualified to conduct the EASY-OT assessment and administered it to Student in accordance with the manufacturer's information and instructions in Student's native language. Testimony of DOE OT, Tr.V1, 161:2-162:2, 164:15-165:11, 247:9-18; P-Ex.3, p.195.
42. DOE OT also reviewed the different standardized assessments that were conducted as part of Private Center's report to see if there were any assessments that indicated Student was having difficulties in the area of occupational therapy. Private Center's report appeared to be thorough and accurate, so DOE OT did not feel the need to conduct the same assessments that were conducted by Private Center during DOE OT's occupational therapy assessment. Testimony of DOE OT, Tr.V1, 162:7-164:14.
43. DOE OT also conducted two (2) observations of Student in school in October 2021. Each observation lasted about half an hour and DOE OT was able to observe Student participating in an activity on the computer and doing handwriting activities. These observations also included Student receiving instructions on the activity as well as the activity itself. Testimony of DOE OT, Tr.V1, 168:21-169:15; P-Ex.3, p.195.

44. Based on the occupational therapy assessment, DOE OT determined that Student demonstrates functional fine motor skills sufficient to participate in the classroom environment and that Student has the ability to write legibly and with consistency in order to access Student's education. Testimony of DOE OT, Tr.V1, 170:4-23; P-Ex.3, p.196.
45. Parent was provided a copy of DOE OT's report on November 12, 2021, and a meeting was initially scheduled on November 16, 2021 for a discussion of DOE OT's occupational therapy assessment. P-Ex.6, p.292.
46. After reviewing DOE OT's assessment, Parent informed Home School that Parent was seeking a private occupational therapy assessment and wanted to postpone any meetings regarding the reevaluation until after the private assessment was completed. Testimony of SSC, Tr.V1, 30:4-11; P-Ex.6, p.282-291.
47. Parent sought a private occupational therapy assessment with Private OT Center, which was completed on November 21, 2021. While Parent received a written sixteen (16) page report from Private OT Center, Parent did not provide the written report to Home School. Testimony of SSC, Tr.V1, 34:11-35:7; Testimony of Parent, Tr.V5, R-Ex.2, p.035-050.
48. Private OT Center's occupational therapy evaluation included two (2) assessment tools, clinical observations, an ocular motor skill screening, sensory and executive function observation checklists, and a parent interview. R-Ex.2, p.036.
49. On the first standardized assessment, the Developmental Test of Visual Perception, Third Edition (hereinafter "DTVP-3"), Student was out of the age range of standardized results for the test, so the test was used by the assessors to provide

- insight into specific visual deficits that are impacting Student's ability to participate in the academic setting. Clinical observations taken during this assessment also provided information about additional efforts Student was required to exert to complete visual perceptual tasks. R-Ex.2, p.037.
50. Student's performance on the DTVP-3 indicated that Student had challenges in visual closure skills and form constancy. It also appeared from the assessment that Student's strong visual motor skills compensate for Student's challenge with visual perceptual abilities and that Student's scores decreased as testing went on, indicating that Student was likely exerting extreme effort to be successful in visually demanding tasks. R-Ex.2, p.037.
51. The Private OT Center assessment also included a standardized evaluation of fundamental motor abilities needed for daily living tool, the Goal-Oriented Assessment of Life skills (hereinafter "GOAL"). The GOAL assessment was designed for children within Student's age group and tested functional tasks that are markers for important activities of daily life, such as using a knife and fork, opening a keyed and combination padlock, coloring in lines, constructing a paper box by cutting paper, folding, and taping it into a box, opening and closing binders and organizing sheets and dividers into binders, putting on and taking off clothing, manipulating a ball, and carrying a cafeteria tray around an 'obstacle course,' and standing and sitting with the tray. R-Ex.2, p.037-038.
52. Student's scores on the GOAL test indicate that Student is performing average compared to same-aged peers of the same gender in fine and gross motor skills, however, there was a significantly higher difference in scores for Student's fine motor

- skills versus Student's gross motor skills. Private OT Center's report indicated that the significant score difference should be considered when developing therapeutic programs for Student. R-Ex.2, p.038.
53. Student's functional vision/ocular motor skills assessment indicated that Student appeared to demonstrate appropriate functional vision abilities. R-Ex.2, p.039.
54. Student's executive functioning skills observation checklist, Student appears to be demonstrating a deficit in executive functioning skills that impact Student's home life, homework, and education. R-Ex.2, p.040.
55. The results from Student's sensory processing, integration observations, and Parent report measures had varying results showing that Student had patterns of dysfunction in sensory processing and integration. These included predisposition to over-react to auditory stimuli; under-react to gustatory and visual stimuli; difficulty identifying, discriminating, and interpreting sensation from more than one sensory system; difficulty with ability to come up with an idea, plan, and execute the idea; and difficulty maintaining stable posture when stationary and during movement. R-Ex.2, p.041-042.
56. Recommendations from the Private OT Center report for accommodations in Student's academic setting included having increased time to complete reading/writing activities, being able to copy information from a closer distance such as Student's desk, as opposed to copying from a blackboard, and positioning Student in class to block out as much extraneous visual stimuli as possible. Other recommendations in the report included therapy services to be provided by Private OT Center. R-Ex.2, p.043.

57. The occupational therapy evaluation done by Private OT Center was more comprehensive than DOE OT's assessment, but the results were consistent with what DOE OT had determined for Student's school setting. The occupational therapy evaluation done by Private OT Center helped explain the concerns that Parent had regarding Student's fatigue and frustrations in the school setting. After reviewing the Private OT Center report, Parent did not have any additional concerns regarding Student's occupational therapy concerns that were unaddressed. Testimony of DOE OT, Tr.V2, 188:1-190:7; Testimony of Parent, Tr.V5, 565:21-25, 580:2-581:1.
58. On January 26, 2022, an eligibility meeting was scheduled to review DOE OT's and Private OT Center's occupational therapy assessments. However, Parent had made inquiries to Home School about other possible assessments that could be done to address Student's needs, so Home School arranged for other professionals to be present at the January 26, 2022 meeting to address Parent's concerns. Testimony of SSC, Tr.V1, 30:24-37:2, 62:20-63:17, 125:2-126:3; Testimony of SPED Teacher, Tr.V2, 273:14-276:12, Tr.V3, 360:19-362:6; Testimony of Parent, Tr.V5, 563:1-564:1, 575:8-18; P-Ex.6, p.295; P-Ex.7, p.366-368.
59. The discussions regarding other possible assessments and the presentation of the occupational therapy assessments by DOE OT and Private OT Center were continued to February 4 and February 9, 2022. Testimony of SSC, Tr.V1, 30:4-37:6; P-Ex.7, p.366-368.
60. While Parent did not provide a copy of the written report from Private OT Center to the IEP team, Parent did provide the following information to the team:
- [Student] has appropriate functional visual skills as noted in clinical observation.
 - The [GOAL] was administered with a result of average compared to same age peers

in the areas of fine and gross motor skills with the fine motor score significantly higher than the gross motor score.

-The [DTVP-3] found challenges with visual closure () and form constancy (). Visual closure is the ability to perceive an object, picture, or word, including when a portion of it is covered. Form constancy is the ability to perceive that an object, picture, word, or shape is the same even when the position is different. Challenges in these areas may have an impact on reading and writing.

-The DTVP-3 also found strong visual motor skills that are compensating for [Student's] visual perceptual skills. This compensation may lead to increased fatigue and frustration caused by increased effort when using compensatory strategies. Although [Student] may be able to complete the task, it may be frustrating and fatiguing for [Student] to complete activities requiring visual closure and form constancy skills.

-Clinical observations reported excessive pressure on pencil when writing due to decreased distal motor control and challenges with grading with [Student's] pressure appropriately when writing. Distal motor control includes using the muscles of the wrist and hand. Decreased distal motor control may lead to fatigue when completing longer writing activities.

-Executive functioning skills summary found challenges with executive functioning skills including multistep directions, completing tasks in a timely manner, and answering open ended questions.

-Sensory checklist found differences in proprioception including challenges with body awareness, applying appropriate force, maintaining engagement, and efficient motor responses when completing activities at tabletop.

-Report contained secondary diagnoses of: lack of coordination, cognitive deficit in executive function, and unspecified general sensations and perceptions.

Testimony of DOE OT, Tr.V2, 176:2-177:19; P-Ex.6, p.354-355.

61. On February 4, 2022, the team determined that no further assessments would be conducted as part of the reevaluation after Parent had been able to ask the different professionals about possible assessments for Student. Testimony of SSC, Tr.V1, 125:2-126:18; Testimony of SPED Teacher, Tr.V2, 276:9-12, 277:6-14; P-Ex.1, p.15-16.

62. At the February 9, 2022 meeting, the team reviewed the information that was gathered as part of Student's reevaluation, including the Private Center Report, DOE OT's occupational therapy assessment, Private OT Center's report as relayed to the

- team by Parent, information from Student's teachers, Student's work samples and previous school assessments, and input from Parent, PA, and Counselor. Testimony of SSC, Tr.V1, 42:18-44:6; Testimony of DOE OT, Tr.V2, 190:14-19, 191:15-192:17; Testimony of SPED Teacher, Tr.V2, 277:15-284:21.
63. Student was determined to be eligible for IDEA special education and related services under the category of [REDACTED]. Student was also found eligible under [REDACTED] and [REDACTED], but the team agreed that [REDACTED] was the best category to address Student's eligibility. Testimony of SSC, Tr.V1, 37:5-42:14; Testimony of SPED Teacher, Tr.V2, 281:8-284:21; Testimony of Parent, Tr.V5, 564:2-10; P-Ex.1, p.15-16.
64. During the time from the start of the reevaluation on September 13, 2021, the IEP team had numerous meetings with Parent that were unrelated to the reevaluation. Parent had concerns regarding Student's IEP and wanted changes to be made, so the meetings were held to address Parent's concerns about Student's existing IEP-07/23/2021. Testimony of SPED Teacher, Tr.V2, 272:15-273:11; P-Ex.7, p.366-368.
65. After Student was determined to be eligible for IDEA special education and related services, the IEP team met to develop Student's IEP based on the updated information from DOE OT's and Private OT Center's occupational therapy assessments. These meetings took place between February 2022 and September 2022. P-Ex.7, p.366-367.
66. In April 2022, Private OT Center provided Parent a letter, which was shared with Home School, that noted that Student needed to exert significantly more effort than peers Student's age to accomplish similar tasks. Due to the fatigue from the extra effort, Private OT Center recommended that Student be allowed breaks to also

- Student to process and regain focus for Student to keep up with the class. Testimony of DOE OT, Tr.V2, 217:2-218:15; Testimony of Parent, Tr.V5, 564:11-18, R-Ex.2a, p.052.
67. The IEP team completed a new IEP for Student for the 2022-2023 school year at the end of the September 20, 2022 meeting (hereinafter “IEP-09/20/2022”). P-Ex.2, p.128-157.
68. The IEP team considered the reports from Private Center, DOE OT, Private OT Center (as summarized by Parent to the team), the letter from Private OT Center, the input from Student’s teachers, Student’s work samples, and all other information that the team had about Student in developing Student’s IEP-09/20/2022. Testimony of SSC, Tr.V1, 44:7-49:20; Testimony of DOE OT, Tr.V2, 192:18-198:14; Testimony of SPED Teacher, Tr.V2, 285:1-288:16, 294:21-295:5.
69. Student’s IEP-09/20/2022 contained information from Counselor, an interview with Student, information from state-wide academic assessments in reading and math, information from the redacted Private Center report, information read verbally from Parent from the Private OT Center report, information from DOE OT’s report, and a section focused on Student’s strengths and/or needs in the areas of reading, writing, math, communication, social/emotional/behavior, functional/independent living skills, gross and fine motor skills. The IEP team developed four (4) goals that addressed the identified needs for Student in the areas listed above. P-Ex.2, p.129-141.
70. Student’s IEP-09/20/2022 included the following supplementary aids and supports: teacher-initiated breaks, student-initiated breaks, visual aids, graphic organizers,

frequent progress checks for assignments lasting longer than one day, extended processing time, extended time for large projects, audiobooks, behavior specific praise, option to turn in writing assignments electronically, oral assessment response, assessment read aloud, priming and provision of assignment expectations, chunking assignments, frequent processing checks for understanding, pre-teach vocabulary, note-taking graphic organizer, writing rubrics, revise assignments, specific amount of processing time for writing assignments, team meet and greet, behavior support plan, monthly progress meeting, and communication. P-Ex.2, p.142.

71. The supplementary aids and supports were further clarified in the IEP-09/20/2022 to explain what was meant by and what each supplementary aid and support would entail. For example, teacher-initiated breaks were clarified to say “for tasks involving writing, typing, or lecturing for longer than 20 minutes, the teacher will direct [Student] to, “take a break.” When the teacher notices precursor behaviors such as (but not limited to) gripping [Student’s] pen/pencil hard, flipping/twirling [Student’s] pen/pencil, flipping/touching [Student’s] hair, shaking [Student’s] head/leg, the teacher will walk up to [Student] and ask, “are you feeling okay, do you need a break?” Breaks can include movement such as pacing inside/outside the classroom quietly, going to drink water, going to the bathroom.” Testimony of SPED Teacher, Tr.V2, 289:9-294:19; P-Ex.2, p.143.

72. Notes in the clarification include information from Counselor about the possibility that Student may take forty-eight (48) hours to process information, depending on how complex it is. P-Ex.2, p.144.

73. The supplementary aids and supports address the concerns that Counselor has

- regarding Student's necessary accommodations in school to address Student's fatigue and need for extra time for processing and completion of Student's work. Testimony of Counselor, Tr.V4, 469:3-9.
74. The supplementary aid and supports section of Student's IEP-09/20/2022 includes several additional aids and supports than Student's previous IEPs, such as Student's IEP dated February 23, 2021, May 21, 2021, and July 23, 2021. These additional aids and supports appear to be based on the additional information from Private Center's report and Private OT Center's letter combined with Counselor's information.³ See R-Ex.5, p.076; P-Ex.6, p.086; and P-Ex.7, p.098.
75. The supplementary aids and supports in the IEP-09/20/2022 address the concerns raised in the Private OT Center letter and the concerns raised by Parent and Counselor regarding Student's ability to keep up with classroom work. See P-Ex.2, p.142-144; R-Ex.2, p.035-050; R-Ex.2a, p.052.
76. Parent cannot identify any specific needs or areas of need that Student has in the school setting that was not addressed by the reevaluation or by the IEP-09/20/2022. Parent requested an independent educational evaluation to see what possible other assessments or services may be available to Student of which Parent may be unaware. Testimony of Parent, Tr.V5, 581:19-583:19.
77. Student was in the general education setting for math and was in Math Teacher's class for the 2021-2022 school year. Student was an average student in Math Teacher's class and declined taking additional breaks that were proposed under

³ The July 23, 2021 IEP contained more aids and supports than the February and May 2021 reports, which is based on information from the Private Center report.

Student's IEPs. Student instead would join in the regular breaks that were given to the entire class. Testimony of Math Teacher, Tr.V3, 413:19-414:2, 419:11-21, 420:14-421:2; Testimony of English Teacher, Tr.V4, 516:5-521:1.

V. CONCLUSIONS OF LAW

IDEA framework

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

Special education means “specially designed instruction to meet the unique needs of a child with a disability” and related services are the supportive services required to assist a student to benefit from their special education. *Id.* To provide FAPE in compliance with the IDEA, the state educational agency receiving federal funds must “evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP.” *Dep’t of Educ. of Hawai’i v. Leo W. by & through Veronica W.*, 226 F.Supp.3d 1081, 1093 (D. Hawai’i 2016).

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

expense. *Id.*

A reviewing authority in an IDEA proceeding should give due weight to judgments of education policy when reviewing state hearings and must take care not to substitute its own notions of sound educational policy for those of the school authorities under review. *Meridian Joint School Dist. No. 2 v. D.A.*, 792 F.3d 1054, 1059 (9th Cir. 2015) (citing *E.M. v. Pajaro Valley Unified Sch. Dist. Office of Admin. Hearings*, 758 F.3d 1162, 1170 (9th Cir. 2014)); see also *K.D. v. Dep't of Educ.*, 665 F.3d 1110, 1117 (9th Cir. 2011); *N.B. v. Hellgate Elem. Sch. Dist.*, 541 F.3d 1202, 1207 (9th Cir. 2008).

A. Validity of the Assessment Conducted by Petitioners

Petitioners argue that the occupational therapy assessment completed in October 2021 by DOE OT appropriately assessed the needs of Student raised by Parent. H.A.R. Section 8-60-36 provides the parameters by which assessments for students undergoing an evaluation or reevaluation for special education services under the IDEA must be conducted. H.A.R. Section 8-60-36 provides that:

In conducting [a reevaluation], the department shall:

- 1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:
 - (A) Whether the student is a student with a disability under sections 8-60-2 and 8-60-39;
 - (B) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or for a preschool student, to participate in appropriate activities);
- 2) Not to use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student; and
- 3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

H.A.R. 8-60-36(b); 34 C.F.R. §300.304(b). Additional considerations are set forth in H.A.R. Section 8-60-36(c), which include selecting assessments that are used for purposes of which the assessments are valid or reliable, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of the assessments. H.A.R. §8-60-36(c); 34 C.F.R. §300.304(c). For reevaluations, the team is to start by reviewing the data that exists with the team for the student and determine whether additional data is necessary for determining eligibility or developing the student's IEP. H.A.R. §8-60-37; 34 C.F.R. §300.305.

The record here demonstrates that the reevaluation conducted based on the request by Parent pursuant to H.A.R. §8-60-35(a)(2) complies with the recommended requirements under the IDEA. *See also* 34 C.F.R. §300.303.

As an initial matter, no dispute exists that the only assessment determined to be necessary for Student's at the meeting in September 2021 was the occupational therapy assessment. *FOF* 34. Since Student was not due for a triennial reevaluation until March 2022, it was reasonable for the IEP team to determine that the only necessary assessment for the reevaluation was to address Parent's concerns raised at the July 2021 and September 2021 meetings, which were related to Student's grip, dropping items, and handwriting legibility. *FOF* 24, 27-28, 30. No other questions or concerns were raised by Parents or and no concerns were raised by any of Student's teachers or other team members about Student's performance in school. *FOF* 31.

The IEP team considered the redacted evaluation provided to the team from Private Center that included diagnoses for Student for [REDACTED], [REDACTED], and [REDACTED] for [REDACTED] and [REDACTED]. *FOF* 24-25, 30, 32. DOE OT noted that even though Student's teachers did not see any concerns for occupational therapy for Student in school, based on

Parent's concerns and the Private Center assessment, an occupational therapy assessment was recommended and approved by the IEP Team. *FOF 33.*

DOE OT conducted tests that DOE OT had training and experience in conducting and based the determination of which assessment tools to use on DOE OT's training and experience and the concerns raised by Parent. *FOF 37-43.* Private Center's evaluation report was thorough and this Hearings Officer agrees that since Private Center completed several assessments addressing Parent's concerns, there was no need for DOE OT to conduct those same assessments with Student again as part of the reevaluation. *FOF 17-19, 42.*

After receiving DOE OT's occupational therapy assessment, Parent chose on Parent's own accord, to seek out a private occupational therapy assessment with Private OT Center. *FOF 46-47.* Private OT Center's occupational therapy evaluation was thorough and complete, and the information provided to the IEP team from the assessment provided information for the IEP team to use in determining Student's eligibility. *FOF 48-57.*

Even after the completion of both DOE OT's occupational therapy assessment and Private OT Center's occupational therapy evaluation, Parent requested that other professionals be brought into meetings to discuss other available evaluations and assessments that could be conducted with Student to address Student's needs. *FOF 58-59.* The IEP team held at least two (2) meetings for Parent and the team to discuss other possible assessments available, but ultimately the decision was made that no other assessments were necessary for Student's reevaluation. *FOF 58-59, 61.* Respondents have not proven that any specifically requested assessment at those meetings were unreasonably denied or rejected by the team or were necessary after discussions at those meetings.

Respondents have not identified or raised any specific concerns regarding the validity of the assessments conducted by Private Center, DOE OT, and Private OT Center or that they were not comprehensive enough to provide information to the IEP team in determining Student's eligibility for IDEA special education and related services. Petitioners have proven that DOE OT's assessment, in combination with the Private Center and Private OT Center's evaluations were appropriate and no additional assessments were necessary to determine Student's eligibility.

B. Use of the assessments in developing Student's IEP

Petitioners assert that the assessments by Private Center, DOE OT, and Private OT Center were sufficient, along with the other information that was obtained by the IEP team, to develop an appropriate IEP for Student. The IEP-09/20/2022 did include information from Student's reevaluation, including the Private Center report information, information provided by Counselor, DOE OT's assessment report, information conveyed to the team from the Private OT Center report, and Student's test scores and teacher reports. *FOF 68-69*. The supplementary aids and supports that were included in the IEP-09/20/2022 addressed the concerns relayed in the Private Center report, Private OT Center's report, and from Parent and Counselor. *FOF 70-75*. Respondents have not raised any specific need or support that is missing from Student's IEP-09/20/2022 that was a result of the reevaluation that was conducted by the DOE beginning in September 2021. *FOF 76*.

C. Respondents are not entitled to an IEE funded by the DOE

Under the IDEA, parents are entitled to an IEE when they disagree with a school district's evaluation done for their child with a disability. This IEE means "an evaluation conducted by a qualified examiner who is not employed by the department;" and, if so

warranted, the IEE would be at “public expense, meaning that the department either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.” H.A.R. §8-60-57(a)(3); 34 C.F.R. §300.502(a)(3). As part of the rules provide, the school district is to provide parents with the information on where to obtain an IEE and for the department’s criteria for IEEs. H.A.R. §8-60-57(a)(2); 34 C.F.R. §300.502(a)(2). Even if the DOE’s assessments are determined to be valid, Parents in this case are still entitled to obtain an IEE, however, not at public expense. H.A.R. §8-60-57(a)(4); 34 C.F.R. §300.502(a)(4).

Here, Petitioners have proven that the reevaluation conducted for Student was valid and conducted in compliance with the IDEA. Respondents have not set forth any problems, concerns, or inaccuracies regarding any of the assessments conducted for Student’s reevaluation. Further, Student’s IEP-09/20/2022 was developed based on the information gathered from the reevaluation in this case, and Respondents have not demonstrated that any deficiencies in the reevaluation process led to a shortcoming of information necessary to develop an appropriate IEP for Student. This Hearings Officer concludes that Petitioners have proven that Respondents are not entitled to an IEE at public expense.

D. Respondents’ additional arguments/allegations

In Respondent’s closing brief, Respondents raise several concerns relating to Student’s educational program and reevaluation, however, these concerns are not appropriately before this Hearings Officer under the Complaint filed by Petitioners in this case. The sole issue of whether the DOE’s reevaluation was appropriate to assess Student’s needs. Respondents’ allegations that SSC failed to properly ensure that Student’s programming or student needs were met; that SPED Teacher failed to ensure data collection was thorough and complete; that CC was not properly informed of Student’s occupational therapy needs; that Student was not receiving the student or

teacher initiated breaks as set forth in the IEP-09/20/2022; or that the wording in the IEP-09/20/2022 was not clear regarding the extended time Student needed for processing are not appropriately before this Hearings Officer in the issue raised in the Complaint.

Respondents' allegation that DOE OT failed to collect data from all teachers or consult with appropriate specialists within the DOE sources to make an informed decision regarding an occupational therapy assessment in the September 13, 2021 is not supported by the record. The record does show that DOE OT reviewed the Private Center report and consulted with the members of the September 13, 2021 team at the meeting to see if they had any concerns about Student's possible occupational therapy needs in school. The teachers at the meeting indicated that none of them had seen the issues that were being raised by Parent at the meeting and that Student's handwriting was legible and more than sufficient for Student to participate in the general education setting. DOE OT also did informal observations of Student in the classroom and based DOE OT's opinion to do an occupational therapy assessment on all the factors discussed at the meeting, as well as the observations, and the Private Center report.

Even in Respondent's closing written brief, Respondents do not identify any need, specifically related to occupational therapy, that is not being addressed in Student's IEP-09/20/2022, or that was not addressed as part of Student's reevaluation. Parent conceded that the Private OT Center report was thorough, addressed all of Parent's concerns related to Student's OT needs, and explained the concerns that Parent shared regarding Student's fatigue and frustrations in school. Parent also conceded at the Hearing that Parent does not have any specific assessments in mind for a possible IEE, Parent is just unsure of whether additional assessments could be done due to Student's [REDACTED].

Respondents have also raised many issues during the Hearing regarding specific concerns regarding the terms of Student's IEP, especially before the development of the IEP-09/20/2022, and Student's class and homework, all of which prompted several meetings with the IEP team and/or Student's teachers. These allegations are also unrelated to the sole issue of whether the DOE reevaluation was appropriate in this case.

VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that the reevaluation beginning in September 2021, conducted by Petitioners to be appropriate, and that Respondents are not entitled to an independent educational evaluation at public expense.

RIGHT TO APPEAL

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

DATED: Honolulu, Hawai'i, July 7, 2023.



CHASTITY T. IMAMURA
Hearings Officer
Richards Building
707 Richards Street, Suite 520
Honolulu, Hawai'i 96813
Phone: (808) 587-7680
Fax: (808) 587-7682
atg.odr@hawaii.gov