



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

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

Petitioner(s),

vs.

DEPARTMENT OF EDUCATION, STATE  
OF HAWAI'I,

Respondents.

DOE-SY2223-026

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DECISION

Due Process Hearing: March 6, 7, and 21,  
2023

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

**I. INTRODUCTION**

On January 27, 2023, the Department of Education, State of Hawai'i (hereinafter "Respondents" or "Hawai'i DOE") received a Request for an IDEA Impartial Due Process Hearing (hereinafter "Complaint") under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the Individuals with Disabilities Education Act, from Student, by and through Parents (hereinafter "Petitioners"). On January 31, 2023, Petitioners filed Petitioners' Exhibit to

the Request for IDEA Impartial Due Process Hearing, which contained additional facts to support the claims made by Petitioners in the Complaint.

On February 2, 2023, Respondents filed a Notice of Insufficiency, requesting that Petitioners' Complaint be dismissed for not complying with notice requirements under Hawai'i Administrative Rules Section 8-60-62. On February 2, 2023, Petitioners filed their Response to Respondents' Notice of Insufficiency and a Determination of Sufficiency of Petitioners' Request for IDEA Impartial Due Process Hearing was filed on February 3, 2023, which denied Respondents' request and found Petitioners' Complaint to be sufficient. Respondents filed DOE's Response to Petitioners' Request for IDEA Impartial Due Process Hearing on February 6, 2023.

A Prehearing Conference ("PHC") was conducted on February 17, 2023. Participating in the conference were: Chastity T. Imamura, Hearings Officer; Eric A. Seitz, Esq. (hereinafter "Mr. Seitz"), for Petitioners; and Emma R. Christopherson, Esq. (hereinafter "Ms. Christopherson"), for Respondents. At the prehearing conference, the Due Process Hearing (hereinafter "Hearing") was scheduled for March 6, 8, and 9, 2023, with an additional day set aside for March 21, 2023. A Prehearing Order was filed on February 17, 2023.

An Order Regarding Video Conference Due Process Hearing was issued on February 17, 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.

On February 21, 2023, a status conference was held to reschedule the hearing dates due to conflicts in this Hearings Officer's schedule. The hearing was rescheduled to March 6, 7, and 21, 2023. The Hearing commenced on March 6, 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; Parents and Mr. Seitz, on behalf of Petitioners; and DES, District Resource Teacher, and Ms. Christopherson on behalf of Respondents, as well as the assigned court reporter.

At the Hearing, Petitioners submitted their ten (10) exhibits into evidence, called Parent 1 and Parent 2 to testify, and rested their case-in-chief. Respondents called Speech-Language Pathologist (hereinafter "SLP") and Community-Based Instruction Teacher 1 (hereinafter "CBI Teacher 1") to testify and noted that the rest of Respondents' witnesses were not available on that date. On March 7, 2023, Respondents called Vice Principal 1 (hereinafter "VP 1") to testify and informed this Hearings Officer and Petitioners that Principal was not available until March 21, 2023. Petitioners objected to having Principal testify on March 21, 2023, to finish the Hearing quickly, however, this Hearings Officer noted that Respondents would be allowed to complete their case and have Principal testify on March 21, 2023, but that the Decision will still be completed by the original deadline of April 3, 2023. This Hearings Officer noted that there had been no extensions and that if the Decision is completed by April 3, 2023, it would be well within compliance with the rules for expediting hearings under the IDEA and the Hawai'i Administrative Rules. Petitioners then suggested that they would be willing to stipulate to Principal's testimony if Respondents would be willing to provide a written document containing Principal's proposed testimony. Petitioners also noted that they would not be objecting the Respondents moving any of their disclosures into evidence but requested that Ms.

Christopherson submit a list of the requested exhibits prior to the March 21, 2023 hearing date so that the Hearing would be completed on that date.

This Hearings Officer informed the parties that if they could reach a stipulation as to Principal's testimony, that it could be submitted instead of having Principal testify. This Hearings Officer requested that Ms. Christopherson submit the proposed stipulation to Mr. Seitz by March 15, 2023 for their approval and submission, as well as submit a list of all the disclosures submitted by Respondents that they were requesting being admitted into evidence on that date.

On March 15, 2023, Respondents submitted a list of exhibits that they were requesting be admitted into evidence from their disclosures. Respondents also submitted a stipulation signed by both parties with Principal's testimony for this Hearing, which was time-stamped by the Office of Dispute Resolution on March 15, 2023. In the stipulation, Petitioners waived their right to cross-examine Principal. The stipulation as to Principal's testimony is being made a part of the record for this Hearing and will be considered in lieu of in-person testimony for purposes of this Decision. A List of Exhibits Received at Due Process Hearing was filed on March 17, 2023.

On March 21, 2023, the Hearing was resumed to have the parties make oral closing arguments. This Hearings Officer also allowed the parties to provide written closing arguments by March 24, 2023. Petitioners provided an oral closing argument on the record on March 21, 2023, and Respondents chose to submit a written closing brief by March 24, 2023. Respondents timely submitted their written closing brief on March 24, 2023.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding, the undersigned Hearings Officer renders the following

findings of fact, conclusions of law and decision.

## II. JURISDICTION

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

## III. ISSUE PRESENTED

Petitioners assert the following issue and proposed remedies in the Complaint to be addressed at the Hearing:

**Issue** – The DOE denied Student a free appropriate public education (hereinafter “FAPE”) by not providing Student with special education and related services in a safe environment.

**Proposed Remedy 1** – Order the DOE to provide a safe environment for Student, specifically by transferring Student to a different DOE school.

**Proposed Remedy 2** – Order compensatory education for the special education and services missed since Student has been out of school.

## IV. FINDINGS OF FACT

### Witness background

1. SLP has been a speech-language pathologist for [REDACTED] years and has worked for the Hawai‘i DOE throughout SLP’s career. SLP’s duties include working with IEP teams, including parents, teachers, and other service providers, and providing students with speech-language services. Testimony of SLP, Transcript of Proceedings, Volume 1, page 100, line 23, through page 102, line 22 (hereinafter referenced as “Tr.V1, 100:23-102:22”).
2. SLP began working with Student in the fall of 2022. SLP had also worked with

██████████ providing speech-language therapy services. Testimony of SLP, Tr.V1, 102:24-103:12, 109:24-110:5.

3. CBI Teacher 1 is a special education teacher at Home School and has been so employed for ██████ years. At the start of the 2022-2023 school year, CBI Teacher 1 was one (1) of two (2) teachers in the community-based instruction (hereinafter “CBI”) special education classroom. CBI Teacher 1 taught in the same classroom with Community-Based Instruction Teacher 2 (hereinafter “CBI Teacher 2”). Tr.V1, 131:4-132:4.
4. CBI Teacher 1 has a bachelor’s degree in education for grades kindergarten through twelfth (12<sup>th</sup>) grade. CBI Teacher 1 is certified in special education, in secondary health education teacher, and as a librarian. Testimony of CBI Teacher 1, Tr.V1, 148:7-149:6.
5. VP 1 is a vice principal at Home School and has been in that position since ██████. VP 1 has a teaching certificate and an administrator’s certification for vice principals, as well as a bachelor’s degree in humanities and a teaching certificate. Prior to being a vice principal, VP 1 was a curriculum coordinator and an English teacher at Home School. Tr.V2, 178:18-179:24.
6. Principal has been principal of Home School for ██████ years. Prior to being principal at Home School, Principal was a principal and vice principal at several high schools and elementary schools. Principal has a bachelor’s degree in secondary education in social studies and a master’s degree in music education. Principal also has administrator credentials since ██████. Declaration of Principal dated March 15, 2023, paragraphs 4-5 (hereinafter referenced as “Decl. of Principal, ¶4-5”).

## Home School

7. Home School has surveillance cameras positioned on certain areas of their campus. In other areas, Home School's security guards are positioned to monitor what happens on campus and to catch tardy students. Testimony of VP 1, Tr.V2, 189:11-22, 202:24-25.
8. Home School has five (5) CBI special education classrooms. The CBI classrooms are arranged based on the functional skill level and independent abilities of the students, or the necessity and extent of support for the students in the classroom. The CBI classrooms provide special education students with opportunities to learn functional life skills in the community, such as going shopping, catching the bus, and safely navigating around. Testimony of CBI Teacher 1, Tr.V1, 161:14-162:24, 164:8-24.
9. The walk from the CBI classroom to SLP's classroom takes about five (5) minutes. The from SLP's classroom to the track takes about seven (7) to ten (10) minutes. Testimony of SLP, Tr.V1, 121:16-122:6; Testimony of VP 1, Tr.V2, 186:10-190:16, 201:21-202:19.

## Student's background

10. Student is [REDACTED] years old and is eligible for IDEA services under the category of [REDACTED]. Petitioners' Exhibit 1, page 002 (hereinafter referenced as "P-Ex.1, p.002").
11. Student's assigned school based on Student's residential district is Home School. Parents moved Student, Parent 1, and Student's sibling back to Hawai'i in 2022 to enroll Student at Home School and provided Home School with Student's educational program from Student's prior school. Parent 2 and Student's other sibling live in a

- different state. Testimony of Parent 1, Tr.V1, 14:9-16:4.; Respondents' Exhibit 17, page 073 (hereinafter referenced as "R-Ex.17, p.073")
12. Student had an individualized educational program (hereinafter "IEP") that was developed by Student's IEP team at Home School in a meeting on June 16, 2022 (hereinafter "IEP-06/16/2022"). R-Ex.17, p.073-084.
  13. Student's IEP-06/16/2022 indicated that Student's educational placement would be in a self-contained CBI program where Student would be provided appropriate functional life and independent living skills practice and preparation for adult living. Student was determined to be on a certificate of completion track. R-Ex.17, p.083.
  14. Part of Student's IEP-06/16/2022 provided Student with speech-language therapy services for two hundred seventy (270) minutes per quarter. R-Ex.17, p.082.
  15. SLP was the person responsible for providing Student with speech-language therapy services for the 2022-2023 school year. Student attended sessions in SLP's classroom and had scheduled sessions with two (2) other students, although sometimes the other students did not attend if they were not in school that day. Testimony of SLP, Tr.V1, 103:2-104:16.
  16. In the area of speech-language and communication, Student was working on having and maintaining conversations with others, including working on expected and unexpected conversational behaviors, topic maintenance, switching conversation topics, expressing wants and needs, and recalling information and retelling stories. Testimony of SLP, Tr.V1, 104:17-105:12.
  17. While Student can articulate clearly and has the vocabulary to converse with others, Student has trouble understanding sequences and time words, such as first, next, and



- then. Student also needs work on organizing Student's speech, having appropriate grammar, and finding the correct words to use to describe the situation. Testimony of SLP, Tr.V1, 105:17-108:17, 109:3-22, 126:8-18.
18. Student was able to articulate things that Student wanted or needed, however Student would occasionally use incorrect words to describe Student's emotions. For example, CBI Teacher 1 had observed Student crying in an unrelated incident where Student clearly was unhappy, but when CBI Teacher 1 asked Student how Student was feeling, Student described Student's self as happy. Testimony of CBI Teacher 1, Tr.V1, 133:2-22, 160:11-25.
19. On one (1) occasion while Student was in CBI Teacher 1's presence, Student told CBI Teacher 1 that Classmate would be watching Student and copying everything that Student does. CBI Teacher 1 observed Classmate in class and did not see Classmate look over at Student or copy Student's actions. CBI Teacher 1 also tried to confirm with Student whether Student meant that Classmate was watching Student at the time and although Student said that Classmate was watching Student, CBI Teacher 1 did not observe Classmate looking in Student's direction at all. Testimony of CBI Teacher 1, Tr.V1, 146:10-147:11.
20. Student's IEP-06/16/2022 indicated that at Student's previous school, Student had fixated on certain individuals in Student's classroom and there would be times when Student's feelings would be hurt, and Student would go home and report to Parents. R-Ex.17, p.075.
21. In the 2021-2022 school year and in September 2022, Student had an issue with a different classmate, wherein Student accused that classmate of pulling at Student's

shorts. See R-Ex.24, p.113-114.

Incident on September 28, 2022

22. On September 28, 2022, Student attended school and had a speech-language therapy session that day. Student was in CBI Teacher 1's class and walked to SLP's classroom with Classmate. Testimony of SLP, Tr.V1, 111:20-112:1; Testimony of CBI Teacher 1, Tr.V1, 134:5-22.
23. Student, Classmate, and other CBI students often walk from the CBI classroom to SLP's class to work on transitioning and building independence once it is determined that they are able to navigate the campus appropriately. SLP had no concerns about Student and Classmate walking to SLP's classroom together prior to the September 28, 2022 incident. SLP had not had any issues with Classmate walking from the CBI classroom to SLP's class in the previous years that SLP had provided Classmate with speech-language therapy services. Testimony of SLP, Tr.V1, 124:12-125:8.
24. CBI Teacher 1 saw Student and Classmate walk until approximately one hundred fifty (150) feet away from the CBI classroom and did not see anything inappropriate happen between Student and Classmate. Testimony of CBI Teacher 1, Tr.V1, 134:23-135:10.
25. Student and Classmate were in their group speech-language therapy session with SLP. SLP did not notice any unusual behavior between Student and Classmate. SLP did observe Student place Student's hand on Classmate's shoulder in an effort to praise Classmate for getting a task correct. Student did not report anything bad or unusual happening between Student and Classmate to SLP that day. Testimony of SLP, Tr.V1, 112:2-113:10; R-Ex.65, p.204.

26. Student and Classmate then walked to the track of Home School together where they met with CBI Teacher 1. CBI Teacher 1 spoke with Student, who told CBI Teacher 1 that Classmate tried to hold Student's hand during their walk. CBI Teacher 1 asked Student how Student felt about it and what Student did and Student told CBI Teacher 1 that Student told Classmate not to hold Student's hand. Testimony of CBI Teacher 1, Tr.V1, 135:11-136:17; R-Ex.26, p.116.
27. Student did not report the incident that day to anyone else at Home School, including SLP, and did not appear to be acting differently or distressed that day. Testimony of CBI Teacher 1, Tr.V1, 136:15-17, 159:20-160:10; Testimony of SLP, Tr.V1, 113:24-114:6, 123:3-6; R-Ex.32, p.130.
28. CBI Teacher 1 did not write the incident regarding an attempt to hold Student's hands that Student reported to CBI Teacher 1 in Student's daily communication book on September 28, 2022, nor did CBI Teacher 1 inform Parents of the incident in a different manner on that date. Testimony of CBI Teacher 1, Tr.V1, 136:18-137:13.
29. That evening, Student went home and told Parent 1 that Classmate pulled down Student's shorts and touched Student inappropriately on the walk to SLP's classroom while at school that day. Student said that Classmate did it repeatedly and that Student reported it to SLP, who did not do anything. Testimony of Parent 1, Tr.V1, 20:13-21:2.
30. Student also told Parent 1 that after SLP's class, Student and Classmate walked to the track together and Classmate attempted to pull down Student's shorts along the way. Student said that Student reported the incident to CBI Teacher 1. Testimony of Parent 1, Tr.V1, 21:3-21:8.

31. Parent 1 did not contact Parent 2 due to the time being late in the evening and called Parent 2 to report what Student had told Parent 1 the next morning. Parent 2 was upset and told Parent 1 that Parent 2 would call the school that morning to report the incident. Testimony of Parent 1, Tr.V1, 21:12-22:4.
32. Parent 1 testified that Parent 1 emailed the school at around 9:30 p.m. on September 28, 2022 to speak with them about the incident that Student reported to Parent 1 with Classmate, but no evidence of any emails on September 28, 2022 was entered into evidence. Testimony of Parent 1, Tr.V1, 21:14-21.
33. Parent 1 reported the incident to Home School on September 29, 2022, informing VP 1 that Student reported that Classmate touched Student inappropriately while walking from the CBI classroom to SLP's classroom and from SLP's classroom to the track. Testimony of VP 1, Tr.V2, 180:13-181:16.
34. Parent 1 provided the information to VP 1 and Vice Principal 2 (hereinafter "VP 2") while Student was present. Student was asked to provide the information and asked questions about the incident, but Student looked uncomfortable, and Parent 1 provided the information to VP 1 and VP 2. Testimony of VP 1, Tr.V2, 181:14-182:6.
35. VP 1 informed Parent 1 that Student would be accompanied by an adult while at Home School and that VP 1 would conduct an investigation into the incident and speak with Student's teachers. Testimony of VP 1, Tr.V2, 182:10-16.
36. Home School immediately launched an investigation into the incident. VP 1 was responsible for conducting the investigation into Student's allegations against Classmate. Testimony of VP 1, Tr.V2, 182:17-23; Decl. of Principal, ¶10.

37. On September 29, 2022, VP 1 contacted CBI Teacher 1 and CBI Teacher 2 via email and by speaking with them regarding the incident reported to Home School by Parents regarding Student and Classmate on September 28, 2022. Testimony of CBI Teacher 1, Tr.V1, 138:3-12; Testimony of VP 1, Tr.V2, 182:24-184:6; R-Ex.26, p.116.
38. VP 1 instructed CBI Teacher 1 to escort or have another adult escort Student everywhere around Home School campus. The escort for Student included a check of the bathrooms prior to Student entering the bathroom and waiting in the area while Student was in the bathroom. VP 1 also instructed that Classmate should also have an adult escort accompany Classmate everywhere on campus. Testimony of CBI Teacher 1, Tr.V1, 138:12-139:7, 151:6-152:5; Testimony of VP 1, Tr.V2, 204:14-17; R-Ex.25, p.115.
39. Within the same week of the September 28, 2022 incident, CBI Teacher 1 spoke with Parent 1 in person at the Home School campus to inform Parent 1 of CBI Teacher 1's description of the incident. CBI Teacher 1 informed Parent 1 that CBI Teacher 1 would watch Student in school to keep Student safe. Testimony of CBI Teacher 1, Tr.V1, 143:12-145:12.
40. CBI Teacher 1 prepared a written statement about the incidents that occurred between Student and Classmate on September 28, 2022 and provided it to VP 1 as part of the investigation. R-Ex.26, p.116.
41. Student and Classmate were separated in their CBI classroom so that they were not seated near each other. Testimony of CBI Teacher 1, Tr.V1, 151:20-152:5.
42. VP 1 and Principal reviewed the campus security videos that showed the areas

- between the CBI classroom and SLP's classroom and the area between SLP's classroom and the track. Neither VP 1 nor Principal saw anything in the videos that would corroborate the allegations that Student made about Classmate on September 28, 2022. Testimony of VP 1, Tr.V2, 186:10-188:16; Decl. of Principal, ¶12.
43. VP 1 had interviews conducted with the security guards at Home School who were stationed in the area where Student and Classmate walked on September 28, 2022. None of the guards or students that were in that area saw anything unusual or anything inappropriate happen between Student and Classmate. Testimony of VP 1, Tr.V2, 188:18-190:4; Decl. of Principal, ¶13-14.
44. On September 29, 2022, SLP was informed of the allegations by Student against Classmate and drafted a written statement of what SLP remembered of the speech-language session with Student and Classmate on September 28, 2022. Testimony of SLP, Tr.V1, 111:11-19, 113:11-114:6; R-Ex.65, p.204.
45. SLP moved Student's speech-language therapy sessions to a different time of day from Classmate so they would not be in the same sessions. Testimony of SLP, Tr.V1, 115:1-6.
46. Student attended SLP's speech-language therapy session on October 12, 2022, and did not attend any more speech-language therapy sessions after that date. Testimony of SLP, Tr.V1, 116:22-117:8.
47. On October 12, 2022, Parent 1 had requested that SLP contact Parent 1 to discuss questions that Parent 1 had. SLP informed Parent 1 that SLP was available to talk on October 13, 2022 between 1:00 p.m. and 2:30 p.m., however Parent 1 did not respond to SLP's proposed telephone conference. Testimony of SLP, Tr.V1, 117:13-23.

48. Parents were invited to review the campus security videos from September 28, 2022 that showed Student and Classmate walking through the campus where the video cameras were fixed. Parents declined to review the videos. Testimony of Parent 1, Tr.V1, 37:13-38:10; Testimony of Parent 2, Tr.V1, 75:20-76:17.
49. Parents met with Principal after the September 28, 2022 incident to take a tour of the path on which Student and Classmate walked from the CBI classroom to the track. Parent 2 claimed that the route took approximately eighteen (18) minutes and went through dark corners of buildings and behind piles of debris. It is unclear whether the route that Parents took with Principal was from the CBI classroom to SLP's classroom to the track and back, or a portion of the path(s). Testimony of Parent 2, Tr.V1, 74:13-75:19.
50. The Hawai'i DOE schools, including Home School, had fall break between October 3-7, 2022, so neither Student nor Classmate attended school for that week. R-Ex.78, p.240.
51. On September 30, 2022, VP 1 completed the investigation into the allegations made by Student against Classmate and provided a report of the findings to Parent 1 via telephone conversation. Testimony of VP 1, Tr.V2, 184:7-185:25; R-Ex.66, p.205.
52. VP 1 determined that, after reviewing the statements/interviews by CBI Teacher 1, CBI Teacher 2, SLP, and the security guards on campus, as well as watching the videos of Student and Classmate walking on September 28, 2022, the allegations by Student could not be corroborated and appeared to be unfounded. Testimony of VP 1, Tr.V2, 184:2-190:18.
53. On October 13, 2022, Parent 1 emailed Complex Area Superintendent (hereinafter

- “CAS”) to express their concerns regarding the incident on September 28, 2022 and Home School’s response to the incident. Within the email, Parent 1 made claims that are not supported by the evidence presented in this case. R-Ex.28, p.119-121.
54. For example, Parent 1 claimed that Student spoke directly with Principal and told Principal of the incident on September 28, 2022. Principal denies speaking with Student on September 30, 2022 because Principal was out of the state on that date and because VP 1 was conducting the investigation into the incident on September 28, 2022. R-Ex.28, p.120; Decl. of Principal, ¶15.
55. Parent 1 also claimed that Student has been traumatized by Classmate, has struggled with not being believed, while nothing was being done by Home School, but in the same email, clearly noted that Student’s desk was moved away from Classmate in the CBI classroom and Student’s speech-language therapy time was moved. R-Ex.28, p.120.
56. Parent 1 indicated in the email that Parents did not understand why Home School did not report the incident to the authorities and requested that Home School report the incident on behalf of Student. R-Ex.28, p.121.
57. On October 14, 2022, Principal responded to Parent’s email and offered for Parents to call or text Principal to further discuss, but Parents did not follow up with Principal. R-Ex.30, p.123; Decl. of Principal, ¶17.
58. On October 17, 2022, Principal sent Parents an email responding to the allegations in the letter to Principal sent on October 13, 2022. R-Ex.35, p.136-142; Decl. of Principal, ¶18.

Incident on October 14, 2022



59. Student attended school again on October 14, 2022, where Student attended a CBI field trip, involving a public city bus ride. Classmate was also on the field trip with the class. Testimony of CBI Teacher 1, Tr.V1, 140:1-7.
60. When the class got onto the bus, CBI Teacher 2 went on the bus first and the other students followed, and CBI Teacher 1 got on last to ensure all the students were on the bus. Student got on the bus after Classmate and did not find any seats other than one next to Classmate. Student did not appear to hesitate and sat next to Classmate on the bus. Student and Classmate sat next to each other for possibly one (1) minute, at most, and CBI Teacher 2 instructed Student to sit by CBI Teacher 1. Testimony of CBI Teacher 1, Tr.V1, 140:8-141:6.
61. Student did not appear to be distressed during or after the alleged incident and did not indicate any problems to either CBI Teacher 1 or CBI Teacher 2 for the brief period that Student sat next to Classmate on the bus. Neither CBI Teacher 1 nor CBI Teacher 2 saw anything inappropriate happen between Student and Classmate during the brief period while they sat together on the bus. Testimony of CBI Teacher 1, Tr.V1, 141:7-142:4; R-Ex.32, p.130.
62. Student went home that day and reported to Parent 1 that Classmate sat next to Student on the city bus and touched Student inappropriately again on the bus while they sat together. Testimony of Parent 1, Tr.V1, 28:21-29:13, 40:2-41:6; P-Ex.10, p.52.
63. Parent 1 was on the telephone with CAS at the time Student told Parent 1 that Student sat next to Classmate on the bus. CAS and Principal attempted to obtain the video from the city bus company as evidence, but the city bus company was not able to

- produce the video. Decl. of Principal, ¶16.
64. On October 31, 2022, Parent 1 took Student to a doctor for genital pain. Parent 1 provided the medical history to the doctor and stated that Student reported that during the bus incident, Classmate had put Classmate's fingers into Student's genital area and saw blood on Classmate's fingers. Parent 1 told the doctor that they took Student to a hospital on October 14, 2022 and October 15, 2022, but the hospital doctors determined that an exam could not be accurately done on Student at that time. P-Ex.9 p.44-48.
65. At the October 31, 2022 exam, the doctor reported that Student relayed the September 28, 2022 incident to the doctor after Parent 1 recited that portion of Student's medical history. The doctor did not observe any injuries but noted that the type of touching that was reported by Student in the September 28, 2022 and October 14, 2022 incidents often do not result in any external injuries and that a normal exam does not rule out that the incident occurred. No documents or exhibits regarding the October 14 and 15, 2022 hospital visits were submitted into evidence in this case. *See* P-Ex.9, p.44-48.
66. Parent 1 contacted Home School and reported the incident on the bus that Student reported to Parent 1. Parents also decided to obtain a temporary restraining order (hereinafter "TRO") on behalf of Student against Classmate. Testimony of Parent 1, Tr.V1, 23:18-24.
67. On October 21, 2022, the TRO against Classmate was issued by the District Court of the First Circuit, which included a thirty (30) foot stay away order. Parents took the TRO to a nearby police station for service on Classmate, but do not know when it was

- served upon Classmate. Testimony of Parent 1, Tr.V1, 42:6-16; Testimony of Parent 2, Tr.V1, 69:21-70:16.
68. Parents provided the TRO to Home School after receiving it from the court on or about October 24, 2022. Testimony of Parent 1, Tr.V1, 24:3-21, 42:16-43:3.
69. After receiving the TRO, Home School attempted to enforce the thirty (30) foot stay away order between Student and Classmate. Classmate was transitioned out of Student's CBI class and Student was given a different day for speech-language therapy services to avoid the possibility of Student and Classmate coming into contact. Testimony of SLP, Tr.V1, 115:7-15; Testimony of VP 1, Tr.V2, 192:25-193:24, 208:23-209:6, 211:22-212:2, 213:10-14.
70. A hearing date for the TRO was set for November 4, 2022, but the parties were ordered into mediation on that date and again on December 16, 2022. P-Ex.5, p.38; P-Ex.6, p.39; P-Ex.7, p.40.
71. After the October 14, 2022 incident, Parents reported the incident from September 28, 2022 and October 14, 2022 to the Honolulu Police Department (hereinafter "HPD") and took Student to the Sex Abuse Treatment Center (hereinafter "SATC"). As of the Hearing on March 6, 2023, the HPD investigation is still pending. Testimony of Parent 1, Tr.V1, 41:10-42:5.
72. Home School asked Parents if they had sought counseling for Student since Student was not on campus to speak with Home School's counselors. Parents did not inform Home School that Student had been receiving counseling and treatment for trauma related to the incidents between Student and Classmate. No evidence of any counseling services or treatment for Student related to the September and October

2022 incidents has been produced in this case.<sup>2</sup> Testimony of VP 1, Tr.V2, 207:8-22; Decl. of Principal, ¶23.

73. In October 2022, Parents emailed Home School to request an IEP meeting to take speech-language services off Student's IEP. IEP Writer mentioned that the team already had a date in November scheduled to conduct Student's annual IEP review. Parents responded by stated that an IEP meeting is not necessary and that they just wanted the speech services removed from Student's IEP. P-Ex.3, p.24-26; R-Ex.41, p.50-51.

74. On November 2, 2022, Parents were informed that Classmate will be transitioned out of Student's class into a different special education class so that Student may return to school. P-Ex.3, p.25.

#### Incident on November 9, 2022

75. Tuesday, November 8, 2022, was a DOE-observed holiday for election day and Friday, November 11, was Veteran's Day, so no students attended school on November 8 and 11, 2022. R-Ex.78, p.240.

76. On November 9, 2022, Student went to school and attended Student's CBI class. By that date, Classmate had been transferred out of Student's CBI class, so Classmate was not in Student's class that day. Testimony of VP 1, Tr.V2, 211:18-212:2.

77. Due to the holidays that week, CBI Teacher 1 mistakenly believed that Student had

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<sup>2</sup> For example, the medical record produced by Petitioners indicates that Student had an appointment with the SATC on around November 2, 2022, but nothing in the medical history or record shows that Student had been undergoing counseling at the time of the exam. No other medical records, notes, or invoices has been produced and no testimony other than Parent 1's vague reference to a trauma specialist at the SATC has been presented regarding ongoing counseling by Student. P-Ex.9, p.44-48; see Testimony of Parent 1, Tr.V1, 18:25-19:9.

speech-language therapy session with SLP that day and walked Student to SLP's class. Upon arriving there, Classmate approached SLP's class, accompanied by SLP and two other adults. When CBI Teacher 1 saw Classmate and SLP, CBI Teacher 1 immediately took Student back to class. At no time did Student and Classmate come within thirty (30) feet of each other. Testimony of CBI Teacher 1, Tr.V1, 142:5-143:11; P-Ex.3, p.26.

78. CBI Teacher 1 emailed Parents on November 10, 2022 to explain the incident that occurred and reiterated that Student and Classmate did not come within thirty (30) feet of each other. R-Ex.42, p.152.

79. SLP observed Student and CBI Teacher standing outside SLP's class and upon seeing them, SLP and the other adults pushed Classmate away from the area to avoid having Student and Classmate within thirty (30) feet of each other. Testimony of SLP, Tr.V1, 117:24-119:10.

80. VP 1 did an investigation into the allegations from November 9, 2022 and spoke with SLP and CBI Teacher 1. VP 1 reported the findings and statements of the SLP and CBI Teacher 1 to Parents on November 10, 2022. Testimony of VP 1, Tr.V2, 190:19-192:11; P-Ex.3, p.25-26; R-Ex.39, p.147.

#### IEP meeting on November 18, 2022

81. On November 18, 2022, Student's IEP team met to conduct the annual review of Student's IEP. As part of the IEP review, Parents requested that Student no longer have speech-language therapy as part of Student's IEP, since Student currently receives private speech-language services. Testimony of VP 1, Tr.V2, 192:12-24.

82. SLP did not attend the November 18, 2022, but provided information to the IEP team

- regarding Student's needs and proposed services for Student for speech, language, and communication. SLP had proposed that Student receive speech-language services in the classroom setting with the CBI Teachers, rather than in a group session with SLP. Testimony of SLP, Tr.V1, 119:11-120:14.
83. The IEP team reminded Parents of the safety measures that were in place to avoid Student from having any contact with Classmate. These measures included having an adult escort with Student at all times and Classmate being removed from Student's classroom. Testimony of VP 1, Tr.V2, 192:25-193:6.
84. Parents appeared reluctant to bring Student back to school but did not tell the IEP team that Student would not be coming back to attend Home School for the implementation of Student's IEP. Testimony of VP 1, Tr.V2, 194:9-23.
85. A new written IEP was developed for Student at the November 18, 2022 meeting (hereinafter "IEP-11/18/2022"). Student's IEP-11/18/2022 did not include speech-language therapy services. P-Ex.1, p.01-17; R-Ex.21, p.094-110.
86. The IEP-11/18/2022 included transition services goals for Student's certificate of completion, some of which included self-care, cooking, accessing transportation, accessing community sites, and participating in recreational activities. P-Ex.1, p.6; R-Ex.21, p.99.

#### Post November 18, 2022 events

87. Since November 9, 2022, Student has not attended school at Home School. Testimony of Parent 1, Tr.V1, 29:20-25.
88. CBI Teacher 1 observed that Student was absent from school and sent an email to Parents inquiring about Student and asking if Parents wanted some homework sent

- home for Student. CBI Teacher 1 provided around three (3) total homework packets for Student to complete while Student was absent from school. While CBI Teacher 1 could not provide work regarding the CBI work that the students would do, CBI Teacher 1 provided work related to Student's IEP goals and objectives that Student would work on if Student attended school. Testimony of CBI Teacher 1, Tr.V1, 163:14-164:7, 166:8-167:9.
89. After the November 18, 2022 IEP meeting, Parents made two (2) geographic exception requests to have Student transferred to a different DOE school, but both of those requests were rejected. Testimony of Parent 2, Tr.V1, 60:25-61:6.
90. Parents also requested a review of the geographic exception requests from CAS, but that was also rejected. Testimony of Parent, Tr.V1, 61:7-18; P-Ex.2, p.18-22.
91. A hearing was held on the TRO on January 13, 2023. During the Hearing, Classmate, through Classmate's attorney, agreed to an Injunction Against Harassment and no findings of fact were made regarding the allegations in the TRO and hearing. The Injunction Against Harassment was issued on January 13, 2023 for one (1) year and included a fifty (50) foot stay away order. P-Ex.8, p.41-43.
92. After the Injunction Against Harassment was issued with the fifty (50) foot stay away order, Home School moved Student and Classmate to different parts of the campus to avoid any possible contact between them. Home School also had instructed Classmate's parents to drop Classmate off at a separate area of the school. Testimony of VP 1, Tr.V2, 195:9-197:23.
93. At the TRO hearing, Parents learned of a safety plan that was in place for Classmate. Parents requested an immediate IEP meeting with Home School on January 16, 2023

via email to Principal, however the email was sent to an incorrect email address for Principal.<sup>3</sup> The email was copied to CAS's correct email address. Testimony of Parent 2, Tr.V1, 64:16-24, 65:3-15, 67:19-68:5; P-Ex.10, p.55.

94. On January 17, 2023, IEP Writer reached out to Parents to schedule an IEP meeting to discuss a safety plan for Student. R-Ex.47, p.162-164.

95. On January 20, 2023, Student's IEP team met to discuss the safety plan to be in place for Student to return to Home School. VP 2 followed up with Parents on January 26, 2023 to clarify some questions that Parents had on the safety plan. R-Ex.50, p.167-171.

96. On January 27, 2023, Parents filed the instant Request for IDEA Impartial Due Process Hearing.

## 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)). 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

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<sup>3</sup> In P-Ex.10, p.55, the email address for Principal is listed incorrectly (see Legend for the correct and incorrect email addresses). This is noted in an email sent from CAS to Principal in R-Ex.30, p.123 and the correct email address is noted in the email sent by Principal and included on emails from CAS.



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

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

Procedural violations do not necessarily constitute a denial of FAPE. *Amanda J.*, 267 F.3d at 892. If procedural violations are found, a further inquiry must be made to determine whether the violations: 1) resulted in a loss of educational opportunity for Student; 2) significantly impeded Parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the Student; or 3) caused Student a deprivation of educational benefits. *Id.*

Questions of implementation of a student’s IEP are procedural in nature and a minor or slight omission of implementation of an IEP will not result in a denial of FAPE. The Ninth Circuit Court of Appeals has reviewed IDEA cases in relation to implementation failures alleged against school districts. In *Van Duyn ex rel. Van Duyn v. Baker School Dist.*, the Court reviewed

the IDEA's definition of a free appropriate public education as "special education and related services that ... are provided in conformity with the [child's] individualized education program," and determined that "[t]here is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education." 502 F.3d 811, 821 (9<sup>th</sup> Cir. 2007). The Ninth Circuit also explored the analysis done by the Fifth Circuit in *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000), and recognized the court's conclusion that implementation failures did not violate the IDEA because "the significant provisions of [the child's] IEP were followed, and, as a result, he received an educational benefit." *Van Duyn*, 502 F.3d at 821. Courts hesitate to put forth a standard test to determine implementation because "every child, and every IEP, is different; whether an implementation failure is material will therefore depend on the relevant provision's place and purpose in the IEP, as well as the overall educational context that the IEP was designed for and the extent and duration of any difference between practice and plan." *L.J. by N.N.J. v. School Board of Broward County*, 927 F.3d 1203, 1214 (11<sup>th</sup> Cir. 2019) (citing *Andrew F.*, 137 S.Ct. at 998). In determining a failure to implement an IEP case, courts must consider implementation failures both quantitatively and qualitatively to determine how much was withheld and how important the withheld services were in view of the IEP as a whole. *Id.* at 1214.

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

proof in this case rests upon the Petitioners to demonstrate by a preponderance of the evidence that Home School failed to provide Student with special education and related services in a safe environment.

A. Petitioners have not proven that the DOE denied Student a FAPE by failing to provide special education and related services in a safe environment

Petitioners' primary argument in this case is that Home School did not provide sufficient safety measures to ensure Student's safety while Student received special education and related services at Home School. The premise of Petitioners' argument is based on procedural violations committed by the DOE, as Petitioners have not raised any complaints or concerns with the substance of Student's IEP-06/16/2022 and IEP-11/18/2022.

In determining whether Respondents provided or offered to provide Student with special education and related services requires an analysis of what a safe environment was for Student and whether Student's special education and related services were offered or provided in that safe environment. If they were not, an analysis is required to determine why the services were not provided in that environment. For the reasons set forth below, this Hearings Officer finds that Home School offered to provide Student with special education and related services in a safe environment, but the services were not received by Student based on Parents' decision not to return Student to Home School.

1. Petitioners have not proven Student's allegations caused an unsafe environment for Student to receive special education and related services at Home School

Petitioners allege that Student was sexually assaulted at Home School by Classmate, and as a result, was traumatized to the point where Student was not able to attend Home School. Petitioners also allege that since neither Classmate nor Student were transferred out of Home School, Student was not safe in attending Home School. This Hearings Officer concludes that

Petitioners' allegations about inappropriate contact between Student and Classmate are unsupported by the evidence presented in this case.

Student's first allegation was that Classmate pulled down Student's shorts and touched Student's genital area inappropriately on September 28, 2022. *FOF 29-30*. The evidence presented both to Home School and during the Hearing was solely through the statements and testimony of Parent 1, who admittedly was not present when the incident happened. *FOF 33-34*. While Parents do not have reason to believe that Student would be untruthful about the allegations, no evidence has been presented to support Student's allegations as being true. Student initially told CBI Teacher 1 a different version of events about what happened between Student and Classmate on September 28, 2022. *FOF 26*. Student has been shown to have previously made uncorroborated allegations against Classmate and another student at Home School. *FOF 19, 21*. Student's prior IEP indicated that Student has gotten fixated on other students and that Student reports incidents to Parents when Student's feelings are hurt. *FOF 20*. Finally, evidence has been presented that Student's primary difficulty with speech and communication is accurately retelling stories and using the correct words and organization to convey a clear and accurate description of events. *FOF 16-17*.

Home School diligently completed a timely investigation into the incident, which included interviewing the teachers and other staff who may have witnessed the alleged incident or the demeanor of both Student and Classmate before and after the alleged incident. *FOF 35-37, 42-43*. VP 1 completed the investigation two (2) days later and informed Parents that the allegations by Student about Classmate were unsupported. *FOF 51*. VP 1 also informed Parents that notwithstanding failure to corroborate Student's claims, Home School provided Student and Classmate with adult escorts while they were on campus to avoid any contact between them.

*FOF 35.* Meanwhile, Student did not display any demeanor changes or unusual behavior that would indicate to Home School that Student was traumatized by the incident or affected by Classmate's presence. *FOF 25-27.*

Student alleged another incident took place between Student and Classmate on October 14, 2022 that occurred during a CBI field trip. Again, Parent 1 reported the incident to Home School and during the Hearing, stating that Student alleged that Classmate sat next to Student on the bus and touched Student inappropriately while on the bus. *FOF 62.* During the hearing, Parent 1 was unable to provide details about the incident as alleged by Student, such as the length of time Student and Classmate were seated on the bus and the duration of the alleged incident. CBI Teacher 1 and CBI Teacher 2 both provided statements regarding the bus incident, wherein they noted that Student sat next to Classmate for a very brief period until the teachers told Student to sit next to CBI Teacher 1. *FOF 61.* Both CBI Teacher 1 and CBI Teacher 2 did not observe Classmate touch Student inappropriately at any time on the city bus rides. *FOF 60.* Additionally, Parent's report to the doctor who saw Student on October 30, 2022 was embellished with additional details that were previously unreported to Home School regarding the incident. *FOF 64.*

Finally, Student reported a third incident on November 9, 2022, where Parent 1 reported that Student said that Student and Classmate were in SLP's class together and that Classmate had slapped Student. Regarding the November 9, 2022 incident, both CBI Teacher 1 and SLP testified and provided written statements shortly after the incident, that an error occurred where CBI Teacher 1 mistakenly took Student to SLP's class, but upon seeing Classmate with SLP from a distance of over thirty (30) feet away, CBI Teacher 1 took Student back to the classroom. *FOF 77-79.* The credible evidence presented at the Hearing is that Student and Classmate were

never within thirty (30) feet of each other and Classmate did not have any ability to make contact with Student on November 9, 2022.

Petitioners have also alleged that Student has been traumatized by the incidents and has been seeing a trauma specialist as a result of these incidents at Home School, however have not presented any documentary evidence to support these allegations. No name of a counselor, doctor, or specialist at the SATC was provided at the Hearing, nor were any documents, treatment notes, invoices, etc. presented as part of this Hearing. More importantly, Parents did not provide any information to Home School regarding the allegations of Student being traumatized by the alleged incidents, nor did they consent to having Home School evaluate or provide Student with counseling. *FOF 72*. When Student did attend school, Student did not demonstrate any unusual or extraordinary behaviors that would alert Student's teachers and service providers that Student was uncomfortable, distressed, or traumatized by the incidents on September 28, 2022, October 14, 2022, and November 9, 2022. *FOF 59-61, 77*.

2. Petitioners have not proven that Home School is not a safe environment for Student to receive special education and related services

As the provider of special education and related services for Student pursuant to Student's IEPs, Home School had a responsibility to investigate the allegations made by Student against classmate and provide reasonable measures to ensure that Student and Classmate would not be in contact with one another. Once the TRO was provided to Home School, a duty to keep the students separated was also imposed on Home School.

In this case, the evidence is that Home School immediately investigated the allegations made by Student against Classmate as relayed to the school by Parent 1. Home School interviewed all teachers and staff that were involved or could have observed the incidents and viewed video surveillance footage of Student and Classmate on the September 28, 2022. *FOF*

36-37, 40, 42-44, 48-49. Home School teachers and personnel were present on the October 14, 2022 and November 9, 2022 incidents and provided written statements about the incidents shortly after the incidents occurred. *FOF 61*. VP 1 provided timely updates to Parents about the investigation that was conducted into Student's allegations and also informed Parents of the safety measures that would be in place for Student, namely that Student and Classmate would have adult escorts while on Home School campus to ensure that they would not be alone and unsupervised. *FOF 35, 51, 80*. While Home School could have provided a formal safety plan to Parents or some kind of written notice to Parents to describe all the measures that would be implemented for Student's safety, the evidence presented at the hearing is that safety measures were in place for Student at Home School after the September 28, 2022 incident.

Home School failing to provide a formal safety plan or any written notice of their safety measures are, at most, procedural violations on Home School's part. In order to prove a denial of FAPE based on procedural violations, Petitioners must show that the violations resulted in a loss of educational opportunity, significant infringement on Parent's ability to participate in the development of an appropriate IEP for Student, or deprivation of educational benefits. *Amanda J.*, 267 F.3d at 892.

Petitioners have not presented any evidence of how failing to have a formal written safety plan or prior written notice resulted in a denial of FAPE. The evidence presented at the Hearing is that Parents knew of Home School's plan to have Student and Classmate escorted around campus, the change in seating and subsequent change in classroom assignments for Student and Classmate, and the change in the schedule for speech-language therapy for Student and Classmate. *FOF 35, 55*. Parents participated in the IEP meeting on November 18, 2022, wherein the IEP team discussed the safety measures in place for Student to receive special

education and related services at Home School, and the IEP team accommodated Parents' request to have Student's speech-language services removed from Student's IEP due to Student receiving private speech-language services from their long-time provider. *FOF 81-83*. Student's IEP-11/28/2022 was developed and included appropriate goals and objectives, supplemental aids and supports, and educational placement for Student and was not challenged by Parents at any time. Petitioners have not demonstrated how failure to have a formal written safety plan for Student or a prior written notice regarding the safety measures in place for Student resulted in a denial of FAPE.

Petitioners have also not proven that a safety plan was necessary for Student, since the allegations by Student against Classmate were uncorroborated by the evidence in this case. Petitioners have not demonstrated that Home School is not a safe environment for Student since Student's allegations of inappropriate touching of Student by Classmate did not occur, and even despite having no evidence that the incidents occurred, Home School set out measures to keep Student away from Classmate.

Finally, Petitioners allege that Student is unsafe at Home School because Student is traumatized by the incidents, however, have not met their burden of proving such allegations. No treatment logs, invoice, notes, or testimony of a mental health professional was presented in this case to support allegations of Student suffering trauma as a result of these uncorroborated allegations made against Classmate. *FOF 72*. Petitioners have not proven that Home School is not a safe environment for Student to receive special education and related services.

### 3. Student's failure to receive special education and related services

It is undisputed in this case that Student has not been receiving the full extent of Student's IEP-06/16/2022 or IEP-11/28/2022 services since at least November 9, 2022.



Petitioners allege that the homework provided to Student is inadequate and that Student is not receiving work to progress on Student's IEP goals and objectives.

Student's educational placement is in a CBI-based special education classroom, which corresponds with Student's IEP-06/16/2022 and IEP-11/18/2022 goals and objectives for Student's certificate program. Many of the objectives in Student's transition goals involve going to community sites, navigating transportation, and working on domestic skills. *FOF 86*. Work on these types of skills cannot be sent home as homework assignments since they are worked on in-person with Student's classmates and teachers in the CBI classroom. *FOF 88*. The homework that was sent home for Student to work on due to Student's absence from school was appropriate given Student's IEP goals and objectives. *FOF 88*.

The evidence presented in this case is that Home School was willing and prepared to provide special education and services to Student after each of the alleged incidents with reasonable measures in place to assure no contact between Student and Classmate. While Parents expressed a desire to have Student transferred to a different school, no evidence has been presented that Home School was not a safe environment for Student, or that other schools would have provided a safe environment. Home School implemented changes in Student's and Classmate's school schedule to avoid contact between them, including transitioning Classmate out of Student's CBI classroom, providing adult escorts around campus, and later having Student and Classmate on completely different sides of the school, including for pick-ups and drop-offs. *FOF 69, 92*. Petitioners have not proven that Home School could not safely and appropriately implement Student's IEPs.

The decision in this case to keep Student out of school for the time since November 9, 2022 was made unilaterally by Parents, who did not provide notice to Home School of Student's

extended absence due to the incidents alleged in this case. *FOF 84*. Parents attended the IEP meeting on November 18, 2022 and did not inform the IEP team that Student would be withdrawn from Home School and reenrolled at a different school, nor did Parents attempt to request a geographic exception for Student to a different school until after the November 18, 2022 IEP meeting. *FOF 89-90*. Petitioners have not proven that the failure of Student to receive special education and related services since November 9, 2022 was due to any decisions made by anyone other than Parents.

B. Petitioners are not entitled to their requested relief

Petitioners have not proven that Respondents denied a FAPE to Student by failing to provide special education and related services to Student in a safe environment, so Petitioners are not entitled to their requested relief.

**VI. DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have not proven the allegations contained in the Complaint. Petitioners' request for Student to be transferred to a different DOE public school or for compensatory education is respectfully denied.

## **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, March 31, 2023.

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