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OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAII

In the Matter of STUDENT, by and through
PARENT,¹

Petitioner(s),

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAII, and KEITH T. HAYASHI,
Superintendent of the Hawai'i Public
Schools,

Respondents.

DOE-SY2223-042

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
July 25-26, 2023

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

On May 30, 2023, the Department of Education, State of Hawai'i and Keith T. Hayashi, Superintendent of the Hawai'i Public Schools (hereinafter "Respondents" or "DOE") received a Complaint and Resolution Proposal (hereinafter "Complaint") under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the Individuals with Disabilities Education Act,

¹ Personal identifiable information is contained in the Legend.

from Student, by and through Parent (hereinafter “Petitioners”). Respondents submitted a response to Petitioners’ Complaint on June 8, 2023.

A prehearing conference was held on June 19, 2023, before Hearings Officer Chastity T. Imamura; with Keith H.S. Peck, Esq. (hereinafter “Mr. Peck”), representing Petitioners; and Gregg M. Ushiroda, Esq. (hereinafter “Mr. Ushiroda”), representing Respondents. At the prehearing conference, the Due Process Hearing (hereinafter “Hearing”) was scheduled for July 25, 26, and 27, 2023.

The parties agreed to conduct the Hearing via the Zoom videoconferencing application. A court reporter participated in the video conference hearing to swear in the witnesses and transcribe the proceedings. Each witness was given a set of instructions with their Zoom meeting invitation and prior to being sworn in for their testimony. All witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform, and witnesses and parties were instructed to ensure the confidentiality of the proceedings by participating in a private setting.

The Due Process Hearing began on July 25, 2023. Present at the Hearing were Parent and Mr. Peck, on behalf of Petitioners; District Educational Specialist (hereinafter “DES”) and Mr. Ushiroda, on behalf of Respondents; this Hearings Officer; and the assigned court reporter. Petitioners called Parent to testify and rested their case-in-chief. Respondents called Occupational Therapist (hereinafter “OT”) and Speech-Language Pathologist (hereinafter “SLP”) to testify. The Hearing continued to July 26, 2023, where Respondents called Physical Therapist (hereinafter “PT”), Vice Principal (hereinafter “VP”), and DES to testify and rested their case. Petitioners did not have any rebuttal witnesses to present, so the Hearing concluded on the same date.

Each party submitted their exhibits for the Hearing by the disclosure deadline of July 18, 2023. The parties met and conferred regarding the proposed exhibits by July 21, 2023 and had no objections to the exhibits submitted by the opposing party. 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 July 26, 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 August 2, 2023. Any objections to the proposed exhibits were due on August 4, 2023.

Neither Petitioners nor Respondents submitted any corrections or additional exhibits for consideration in the Decision. On August 3, 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 001-068; Exhibit 2, pages 069-070, 072-086; and Exhibit 3, pages 089-136, and one (1) audio recording dated May 25, 2023.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibits 1-3, pages 001-026; Exhibit 6, pages 032-034; Exhibits 11-15, pages 046-077; Exhibits 17-19, pages 079-146; Exhibit 21, page 149; and Exhibit 23, pages 152-153.

Both parties wanted the opportunity to submit written closing briefs regarding the legal issues with the use of the transcripts of the Hearing to this Hearings Officer for review. Based

on the request by the parties for written closing briefs with the use of the transcripts, Respondents requested an extension of the deadline from August 13, 2023 to September 27, 2023. Based on the anticipated timeline for the transcripts to be prepared and to provide the parties ample time to write their closing briefs, Respondents' request to extend the deadline was granted and the Order Granting Respondents' Request to Extend the 45-Day Decision Deadline was issued on July 26, 2023. The current decision deadline is now September 27, 2023. The deadline for the written closing briefs was set for August 25, 2023. Both Petitioners and Respondents timely submitted their written closing briefs by the given deadline.

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

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 two (2) issues in the Complaint to be addressed at the Hearing:

- Issue 1** – Whether Student's May 25, 2023 Individualized Education Plan (hereinafter "IEP") provided Parent adequate ability to discuss Parent's concerns regarding:
- a. Extended School Year (hereinafter "ESY") services in relation to frequency, duration, location, and/or least restrictive environment (hereinafter "LRE") for this service.
 - b. Occupational therapy services.
 - c. The efficacy of the model by which Speech/Language therapy is delivered, i.e., remotely.
 - d. Physical therapy services, including direct and/or consultative.

- e. Supplementary supports and classroom modifications (including behavior interventions).
- f. LRE.

Issue 2 – Whether Student’s May 25, 2023 IEP provides Student an appropriate program where:

- a. ESY services not to be provided in a location that will afford Student access that won’t cause Student behavior problems due to the distance Student would have to travel.
- b. The amount of occupational therapy services is insufficient.
- c. The amount and frequency of physical therapy services, including direct and/or consultative are insufficient and/or insufficiently described.
- d. Individual instructional support is not adequately described.
- e. The LRE statement uses language that fails to sufficiently convey the offer the DOE proposed.

Petitioners request the following remedies to address the alleged violations above:

Remedy 1 – Find that the DOE denied Student a FAPE for the violations asserted.

Remedy 2 – Order the DOE to reimburse Parent for any privately funded programs and/or services related to a denial of FAPE.

Remedy 3 – Find that the DOE has violated Student’s rights and order that the IEP meeting addresses these violations.

Remedy 4 - Order compensatory education if Parent is unable to provide all the services Student requires to ameliorate Student’s losses.

Remedy 5 - Order such other equitable relief.

IV. FINDINGS OF FACT

Witness background and other information

1. OT has been an occupational therapist for over twenty-five (25) years and is licensed to provide occupational therapy in the State of Hawai’i. OT has been employed through contracts with the DOE to provide occupational therapy to students since December 2016. OT has provided occupational therapy services both in private clinical settings and other settings, primarily to infants, toddlers, and children. Testimony of OT, Transcript of Proceedings, Volume 1, page 96, line 19 through page 101, line 22 (hereinafter referenced as “Tr.V1, 96:19-101:22”).
2. Occupational therapy is a discipline that focuses on working with people to develop

the skills that a person would need for their occupation; such as eating, learning how to play for young children, learning to write and use your hands to manipulate objects, and to utilize adaptive equipment if necessary to perform basic life functions.

Testimony of OT, Tr.V1, 102:17-103:18.

3. SLP has been practicing as a speech-language pathologist for ten (10) years primarily in the school settings providing speech-language therapy to students. SLP is contracted with the DOE to provide virtual speech-language services to students in Hawai'i because SLP resides in the continental United States. Testimony of SLP, Tr.V1, 137:24-139:24.
4. Speech-language therapy addresses various disorders that affect a student's ability to communicate through speech; such as articulation, fluency, speech impediments like stuttering, and language. Testimony of SLP, Tr.V1, 140:10-23.
5. PT has been a physical therapist since 1992 and has been licensed in the State of Hawai'i since around 2018. PT is employed by the Hawai'i DOE to oversee the implementation of physical therapy at all the schools on the island where PT practices. PT's position includes overseeing students' programs, supervising physical therapy assistants, doing evaluations, working with and educating teachers, and working with families. Testimony of PT, Tr.V2, 184:20-186:16; R-Ex.21, p.149.
6. Physical therapy focuses on mobility, strength, balance, and rehabilitation. Physical therapy in the school setting focuses on whether a student is able to safely access the school curriculum and determine whether the student has the mobility to navigate the campus safely around other students. Examples of school physical therapy's focus would be getting up and off the floor safely, navigating to the bathroom, and safely

walking across campus on uneven surfaces. Testimony of PT, Tr.V2, 191:11-193:22.

Student's background

7. Student is [REDACTED] years old and is currently in the [REDACTED] grade at Home School.
Testimony of Parent, Tr.V1, 15:1-2.
8. Student is eligible for special education and related services under the IDEA based on Student's [REDACTED]. Testimony of Parent, Tr.V1, 15:3.
9. Student has difficulty with communication, specifically speaking. Student can say some words but cannot speak in full sentences and other people often have trouble understanding Student. The inability to communicate often causes frustration in Student. Testimony of Parent, Tr.V1, 15:7-9, 15:21-16:18.
10. Student also has difficulties in socializing with others, due in part to Student's difficulty with communication. Testimony of Parent, Tr.V1, 15:17-20.
11. Student lives approximately [REDACTED] minutes by car from Home School. During the school year, Parent drops off and picks up Student from school at Home School.
Testimony of Parent, Tr.V1, 23:16-18.
12. Parent has had difficulty with taking Student for car rides for longer periods of time. For example, Parent has had to stop the car to take Student to the bathroom or calm behavioral issues that Student has had when being in the car for longer than [REDACTED] minutes. Testimony of Parent, Tr.V1, 22:10-13, 23:16-24:17.
13. Parent has experienced behavioral problems with getting Student to school, where Student becomes upset or frustrated. Testimony of Parent, Tr.V1, 25:1-26:2.
14. Student does not typically ride the school bus to school, however, on a few occasions during the school year, Student goes on field trips on the school bus with classmates

and teachers. Student is able to handle the bus ride during field trips. Testimony of Parent, Tr.V1, 26:16-27:7.

15. Parent and Student live [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Testimony of Parent, Tr.V1, 17:3-24.

16. Student began receiving occupational therapy services from OT for the 2020-2021 school year and received services in person. Since the 2021-2022 school year, OT has worked with Student virtually with the assistance of an educational assistant or teacher. For the 2022-2023 school year, Student worked directly with OT for thirty (30) minutes per week. Testimony of OT, Tr.V1, 105:3-25, 109:4-110:4, 124:22-125:2, 128:1-3.

17. OT logged down the service minutes provided to Student for the 2022-2023 school year and included the focus of the session and notes on Student's progress or mood on the day of the session. Testimony of OT, Tr.V1, 107:12-23; R-Ex.19, p.133-146.

18. Student made progress on Student's goals for occupational therapy in each quarter of the 2022-2023 school year and OT noted details of Student's progress in the IEP progress reports sent to Parent throughout the school year. R-Ex.15, p.071-073.

19. Prior to the May 25, 2023 IEP meeting, OT had never heard a concern expressed by anyone on the IEP team, including Parent, about Student having difficulty with wiping/cleaning up after using the bathroom. The first time OT had heard the issue was when listening to the recording of the May 25, 2023 IEP meeting. Testimony of OT, Tr.V1, 106:5-107:11, 121:19-122:15.

20. OT listened to the meeting recording in June 2023, but did not reach out to Parent or anyone after hearing the concern about Student not being able to wipe/clean up after using the bathroom. OT recognized that difficulty with being able to wipe/clean up after using the bathroom is an occupational therapy concern. Testimony of OT, Tr.V1, 131:18-132:20.
21. Parent had expressed to OT on several occasions, including at IEP meetings, that Parent is against Student receiving occupational therapy over videoconference, however OT has explained to Parent that Student continues to make progress even with virtual services being provided. Testimony of OT, Tr.V1, 107:21-110:4.
22. Student began receiving virtual speech-language therapy from SLP in the fall of the 2021-2022 school year. SLP provides the speech-language therapy on a videoconference platform with the assistance of an educational assistant or teacher in Student's classroom. Testimony of SLP, Tr.V1, 144:16-147:4.
23. Student has responded to virtual speech-language therapy and has been making progress, despite some behavioral issues that happened in the fall of the 2022-2023 school year when Student had a change in educational assistant. Testimony of SLP, Tr.V1, 145:8-147:22.
24. Parent had expressed to SLP on several occasions that Parent did not believe that Student should be receiving speech-language therapy virtually, but SLP informed Parent that Student is making progress even through virtual services and that no one else was available [REDACTED] that could provide in-person services to Student. Testimony of SLP, Tr.V1, 147:23-149:14.
25. SLP has done research and discovered that several studies have determined that

- virtual services in the fields of physical therapy, occupational therapy, and speech-language therapy have been as effective or more effective than in-person therapy. Testimony of SLP, Tr.V1, 143:3-144:12; R-Ex.18, p.085-132.
26. Student has consistently made progress in Student's speech-language goals since working with SLP. Testimony of SLP, Tr.V1, 149:15-151:22, 155:5-1157:25; R-Ex.15, p.064-069; R-Ex.17, p.079-084.
27. Student had a physical therapy assessment in June 2020 from which it was determined that Student would receive physical therapy consultation services but no direct services. The physical therapy consultation was to set up a strengthening daily exercise program for Student to work on regularly to build strength. The exercise program would then be implemented by either physical therapy assistants, an educational assistant, or a teacher. Testimony of PT, Tr.V2, 189:22-190:17.
28. PT began providing physical therapy consultation prior to the May 25, 2023. The consultation that PT provided involved two (2) sessions of observing Student on campus (in person) during playground activities, speaking to Student's teacher, educational assistant, and others working with Student. Testimony of PT, Tr.V2, 187:23-189:12, 204:12-205:20.
29. Based on PT's training and experience and the observations conducted with Student prior to the May 25, 2023 IEP meeting, PT determined that Student was not in need of direct physical therapy services, as Student was able to safely navigate across the campus and could participate in activities such as playing basketball and football with non-disabled peers. Testimony of PT, Tr.V2, 188:25-189:12, 195:11-196:4, 215:19-216:3.

30. Student has an exercise program that is being implemented by Student's teacher and has continued to be able to navigate the campus and participate in physical activities such as football and playing on the playground. Testimony of PT, Tr.V2, 199:2-200:4.

IEP meeting on May 25, 2023

31. Prior to the IEP meeting, Parent was sent a draft of an IEP that the team would be using to guide the discussions for the IEP meeting on May 25, 2023. Some portions of the draft IEP were completed, such as the present levels of educational performance (hereinafter "PLEPs"), as well as goals and objectives, the section regarding ESY, and the statement regarding Student's educational placement. The PLEPs did not include specific information about occupational therapy, speech-language pathology, or physical therapy. P-Ex.1, p.25-42.

32. On May 21, 2023, OT sent an email to Parent regarding information regarding Student's strengths/needs, goals, and objectives for occupational therapy. OT also informed Parent that OT would not be able to attend the IEP meeting on May 25, 2023, and was going to see if someone else could cover OT's portion of the meeting discussion. R-Ex.6, p.32-34.

33. PT and SLP did not provide information to Parent ahead of the IEP meeting on May 25, 2023. See P-Ex.3, audio file of meeting dated 5/25/2023, approximate time stamp [9:36-12:38] (hereinafter referenced as "P-Ex.3, 5/25/23 audio [9:36-12:38]").

34. On May 25, 2023, an IEP team meeting was held at Home School. Due to their regular work location, some of the members of the IEP team were present online via videoconference, and some members were present at Home School for the meeting.

Present at the meeting in person were Parent, General Education Teacher, Special Education Teacher, and VP. It also appears that Student and Student's aide were present at the meeting in person. Present at the IEP meeting via videoconference were SLP, PT, and OT, who came in during the latter portion of the meeting.

Testimony of Parent, Tr.V1, 84:10-86:8; P-Ex.3, 5/25/23 audio.

35. During the IEP meeting, there was a different draft presented to the team for review while the meeting proceeded. This draft had the completed PLEPs with information from OT, PT, and SLP regarding their respective areas of specialty. *See* P-Ex.3, 5/25/23 audio [6:30-14:48].
36. The IEP team reviewed the PLEPs by having someone read the draft verbatim and asking for any input after each section was read. Parent informed the team that Parent felt unprepared since Parent was not provided information from PT and SLP until the meeting and from OT until a couple days prior to the meeting. Parent noted that Parent would be unable to make a decision about the IEP offer at the meeting due to needing to review the information that was just provided to Parent. *See* P-Ex.3, 5/25/23 audio.
37. When the IEP team discussed Student's needs for the PLEPs section, Parent was able to provide input regarding the lack of specificity for the needs that were listed for Student. The IEP team discussed that the goals would be more specifically worded to address Student's needs for each of the areas. *See* P-Ex.3, 5/25/23 audio [20:07-58:37].
38. Parent's primary concerns with Student's goals and objectives in the draft IEP were that Student's goals did not appear to be meaningful in a functional way for Student

- as Student gets older. For example, Parent noted that Student had a goal of reading sight words, but Parent wanted the goal to be more focused on functional site words, like fire. Parent also noted that Student had a goal to write the alphabet, but Student should be more focused on writing Student's name. *See* P-Ex.3, 5/25/23 audio [20:19-31:26].
39. Parent did not raise any questions or concerns about Student's occupational therapy goals and objectives at the IEP meeting due to OT not being present at the time of the occupational therapy discussion. *See* P-Ex.3, 5/25/23 audio [31:29-33:10].
40. During the physical therapy discussion for Student's needs, Parent raised multiple concerns for PT regarding Student's physical therapy. Parent wanted more specific items and Parent wanted PT to provide direct services to Student. P-Ex.3, 5/25/23 audio [33:41-38:15].
41. SLP noted that Student was making progress but was showing increased signs of frustration and behavioral issues during their speech-language sessions. Parent raised concerns that Student should not be getting speech-language therapy via videoconference and was offended by SLP's assessment about Student's behavior and frustration since SLP is not present to teach Student in person. P-Ex.3, 5/25/23 audio [38:16-49:40].
42. At this point in the meeting, Parent also reiterated Parent's concerns/frustration with Student receiving occupational therapy and speech-language therapy via videoconference instead of in person. *See* P-Ex.3, 5/25/23 audio [42:52-42:53], *see also* Testimony of SLP, Tr.V1, 158:2-161:8.
43. Parent also noted that Student was still having issues with going to the bathroom so

- the team determined that Student's IEP should have a bathroom goal of having Student express when Student needs to use the bathroom. P-Ex.3, 5/25/23 audio [53:02-56:19].
44. The IEP team discussed Student's goals and objectives and listened to Parent's input regarding the goals and objectives for Student in each of Student's areas of need. Parent again expressed that some of the goals that were written for Student were addressing unimportant things and that Student's goals should be more focused on Student's functional skills. Parent noted that for the next IEP development meeting Parent would like to have the occupational therapy, physical therapy, and speech-language therapy information for Student ahead of the IEP meeting so Parent can prepare for the meeting. P-Ex.3, 5/25/23 audio [1:00:50-1:15:28].
45. The IEP team then discussed Student's ESY qualification and agreed that Student was eligible for ESY services due to Student's likelihood of regression and difficulty recouping skills that Student learned, as well as to maintain Student's behavior skills, math skills, and socialization skills. P-Ex.3, 5/25/23 audio [1:15:29-1:16:45].
46. The IEP team reviewed the proposed ESY services for Student from the draft IEP. Parent informed the team that Parent did not want Student to be in Summer School instead of Home School for ESY because Student would not be able to handle the distance from Student's home to Summer School, which is approximately [REDACTED] minutes farther by car than Home School. P-Ex.3, 5/25/23 audio [1:20:56-1:22:56].
47. Parent also objected to Student having ESY for four (4) hours a day after twelve (12) days of break. Parent wanted Student to be in ESY for six (6) hours per day after five (5) days of break. P-Ex.3, 5/25/23 audio [1:22:56-1:23:37].

48. Someone from the Home School IEP team informed Parent that they would consult with the district office regarding the location of ESY for Student and come back to Parent with the options that the district office provides them. The IEP team suggested that they could reconvene to discuss what the district office options provide. P-Ex.3, 5/25/23 audio [1:23:51-1:25:00].
49. The IEP team then discussed the special education and related services, supplementary aids and supports, program modifications, and supports for school personnel to be provided for Student in the IEP. The team began by reviewing the prior IEP's list of supports and services. P-Ex.3, 5/25/23 audio [1:26:17-1:45:42].
50. The IEP team discussed that Student usually spends less than the nine hundred ten (910) minutes in the special education setting because Student does very well in general education and spends most of the time in the general education setting. The team discussed reducing the special education minutes but decided to keep the nine hundred ten (910) to ensure that there would be enough time for all Student's goals and objectives if necessary in special education. P-Ex.3, 5/25/23 audio [1:27:08-1:32:06].
51. During the discussion on physical therapy consultation, PT suggested that the consultation for physical therapy could be reduced to one (1) time per quarter because Student is consistently working on Student's physical therapy program and is mobile and agile enough to access Student's education. P-Ex.3, 5/25/23 audio [1:27:08-1:32:06].
52. Parent strongly objected to a reduction in Student's physical therapy consultation and instead asked that Student be given direct physical therapy services from PT. PT

- explained that Student is making sufficient progress and no additional services are necessary for Student. Based on Parent's disagreement, the team agreed to one (1) to (2) consultations per quarter to address any concerns that may arise. P-Ex.3, 5/25/23 audio [1:34:06-1:42:25].
53. During this discussion of physical therapy, Parent raised, for the first time,² to the team that Student had difficulty with wiping/cleaning up after using the bathroom. The team continued to discuss physical therapy and did not address Parent's concern regarding Student not being able to wipe/clean up after using the bathroom. P-Ex.3, 5/25/23 audio [1:36:42-1:37:41].
54. After the discussion regarding physical therapy, OT joined the IEP meeting to discuss occupational therapy services for Student in the new IEP. OT noted that Student was making good progress on Student's last IEP goals and objectives for occupational therapy and that the amount of time was sufficient for OT to work on Student's current goals and objectives with Student. P-Ex.3, 5/25/23 audio [1:42:25-1:43:30].
55. The team discussed the supplementary aids and services that were included in the prior IEP from September 1, 2022 and appeared to agree that they will remain the same for Student's new IEP. The team also noted that the toileting plan that was discussed in the meeting would be in the IEP and the prior written notice (hereinafter "PWN"). P-Ex.3, 5/25/23 audio [1:43:30-1:45:42].
56. At the end of the IEP meeting, SPED Teacher reviewed the proposed offer of special

² It is noteworthy that this issue had not been included in Student's prior IEP, dated September 1, 2022, nor had it been mentioned at any other time during the IEP meeting. The bathroom concerns that were raised earlier in the meeting were regarding Student being able to communicate when Student needed to use the bathroom before having an accident. *See* P-Ex.1, p.43-47; P-Ex.3, 5/25/23 audio.

education and related services that would be written in the PWN from the meeting to Parent. Parent noted that Parent wanted to review the written documents before making any decisions regarding the IEP offer. P-Ex.3, 5/25/23 audio [1:49:21-1:59:50].

Post-IEP meeting events

57. The IEP finalized after the May 25, 2023 meeting (hereinafter “IEP-05/25/2023”) was prepared and sent to Parent along with a PWN dated May 26, 2023 (hereinafter “PWN-05/26/2023”). P-Ex.1, p.1-24.
58. On May 30, 2023, Petitioners submitted the instant Complaint and request for due process hearing.
59. After the IEP meeting on May 25, 2023, VP contacted Parent and let Parent know that the conversation with the district office basically provided ESY at Summer School as the only available option, but provided that Parent could be reimbursed to bring Student to the school. Testimony of VP, Tr.V2, 225:19-226:15.
60. On June 5, 2023, Parent emailed VP to inquire about transportation for Student to the ESY program at Summer School. Parent noted that Home School had offered to reimburse Parent to drive Student to Summer School, but Parent could not do so because Parent had to work and would need to be reimbursed for Parent’s salary if Parent needed to transport Student to ESY. P-Ex.2, p.72-73.
61. On June 6, 2023, VP emailed Parent informing Parent that bus services had been arranged for Student to take Student from Student’s home to Summer School and back for the ESY program. P-Ex.2, p.72.
62. The bus service that was contracted for Student’s ESY service provides an aide on the

- bus to assist with special needs students. The bus service can also make stops along the way to and from the student's home if necessary to alleviate issues that students may be experiencing on the ride. Testimony of DES, Tr.V2, 235:4-237:5.
63. The information about the bus service was not explained to Parent in an email or during the IEP meeting on May 25, 2023. The transportation option for ESY was not discussed at the IEP meeting at all because the school was going to consult with the district office to determine what options would be available for Student to attend ESY. See Testimony of DES, Tr.V2, 247:9-21; P-Ex.3, 5/25/23 audio [1:21:57-1:25:00].
64. The IEP team did not reconvene to discuss Student's ESY program prior to the proposed start date of Student's ESY program, which would have been on or about June 8, 2023.³ Testimony of Parent, Tr.V1, 21:4-21, 29:7-12, 37:7-38:20; See P-Ex.2, p.72-73; <https://www.hawaiipublicschools.org/DOE%20Forms/2022-23calendar.pdf>.
65. Parent prepared Student for attending ESY on the school bus prior to June 4, 2023, which is when the IEP stated that the program would start. Parent also testified that Parent and Student were prepared and waiting for the bus for several days prior to being contacted by the bus company. Testimony of Parent, Tr.V1, 27:8-29:12.
66. On June 12, 2023, a representative from the bus company contacted Parent via text message to inquire when Student would be starting ESY. The bus company conveyed to Parent that bus services would start when Parent chose to start them. P-Ex.2, p.75.
67. The bus company arranged to come to pick Student up from Student's home on June

³ Based on the Hawai'i DOE school calendar, the last day of school for students was May 26, 2023, so twelve (12) calendar days after the last day of school would have been on or about June 8, 2023.

- 14, 2023 at 7:15 a.m. On that date, Parent told the bus company that Student was upset and not going to attend ESY that day. P-Ex.2, p.76-77.
68. For ten (10) school days, the bus company attempted to pick Student up to take Student to ESY in the morning. Every morning, Parent informed the bus company that Parent was having difficulty with Student and that Student would not attend school that day. On June 27, 2023, the bus company informed Parent that if Parent wanted to continue bus services, Parent would have to contact the bus company. P-Ex.2, p.78-83.
69. Parent testified that Student was having difficulties getting ready to go to school because when Parent had prepared Student for the bus and the bus did not show up, it caused Student to not want to attend school. Testimony of Parent, Tr.V1, 30:2-33:8.
70. On June 20, 2023, after Student had not been attending ESY, VP sent an email to Parent to inform Parent that the ESY teacher and educational assistant were willing to meet with Student at their house to see if they could get Student comfortable with attending ESY at Summer School. Testimony of VP, Tr.V2, 221:16-223:16; R-Ex.14, p.052-054.
71. Parent responded to VP that Parent would no longer be able to get Student to get on the bus to attend ESY and that Parent instead would try to get Student into a program that Parent would attend with Student. R-Ex.14, p.052-054.
72. On or about June 19, 2023, Parent signed Student up for a summer program at Garden Program. Parent informed Mr. Peck that Parent would be attending the program with Student. Testimony of Parent, Tr.V1, 34:19-36:17; P-Ex.2, p.84.
73. Garden Program was approximately the same distance or farther away from Student's

- home than Summer School. Testimony of Parent, Tr.V1, 36:5-12, 60:4-61:23.
74. Parent and Student only attended Garden Program for eight (8) days/sessions due to the difficulty Parent had with transporting Student to the program and the fact that Parent had to be Student's aide during the time Student attended the program. Testimony of Parent, Tr.V1, 36:5-17.
75. Parent then took Student to Parent's work, where Parent was able to sign Student up for a camp with animals. Student attended that camp for two (2) days and Parent had to again be Student's aide during that program, so it was challenging for both Parent and Student. Testimony of Parent, Tr.V1, 35:9-10, 36:18-37:1.
76. Both programs that Student attended during the summer of 2023 were free of charge and Petitioners did not pay for Student to attend. Petitioners did not submit any reimbursement request for these programs. *See* Tr.V1, 69:2-70:2.
77. A resolution meeting was held based on the Complaint filed in this case on June 13, 2023. An offer was made to add ESY session days for days that Student had missed as of June 13, 2023 and for Mr. Peck to write out an acceptable LRE description to be added to the IEP. The parties did not reach a settlement from the resolution session. R-Ex.1, p.001-002.
78. Another IEP meeting was scheduled for August 11, 2023. Testimony of Parent, Tr.V1, 38:13-20, 50:8-10.

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

The IEP is used as the “centerpiece of the statute’s education delivery system for disabled children.” *Honig v. Doe*, 484 U.S. 305, 311, 108 S.Ct. 592, 598, 98 L.Ed.2d 686 (1988). It is “a written statement for each child with a disability that is developed, reviewed, and revised” according to specific detailed procedures contained in the statute. H.A.R. §8-60-2; 20 U.S.C. §1401(14); 34 C.F.R §300.22. The IEP is a collaborative education plan created by parents and educators who carefully consider the child’s unique circumstances and needs. H.A.R. §8-60-45; 20 U.S.C. §1414; 34 C.F.R §300.321-300.322.

The DOE is not required to “maximize the potential” of each student; rather, the DOE is required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational benefit.” *Rowley*, 458 U.S. at 200-201, 102 S.Ct. at 3047-3048. However, the United States Supreme Court, in *Endrew F. v. Douglas County School Dist.*, held that the educational benefit must be

more than *de minimus*. 137 S.Ct. 988, 197 L.Ed.2d 335 (2017). The Court held that the IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.*, 137 S.Ct. at 1001, 197 L.Ed.2d 335; *see also, Blake C. ex rel. Tina F. v. Hawai‘i Dept. of Educ.*, 593 F.Supp.2d 1199, 1206 (D. Hawai‘i 2009).

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

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

Burden of Proof

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

complaint. H.A.R. §8-60-66(a)(2)(B).

This burden was confirmed in *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 58, 126 S.Ct. 528, 535, 163, L.Ed.2d 387 (2005), where the Court concluded that the burden of persuasion in an IDEA case lies “where it usually falls, upon the party seeking relief.”

- A. The May 25, 2023 IEP development meeting provided Parent adequate opportunity to discuss Parent’s concerns regarding speech-language services, physical therapy services, supplementary aids and supports for Student, and the least restrictive environment, however did not afford Parent adequate opportunity to express Parent’s concerns regarding ESY and occupational therapy

Petitioners’ first issue questions whether the IEP meeting on May 25, 2023 provided Parent with adequate opportunity to discuss Parent’s concerns regarding ESY, occupational therapy, speech-language therapy, physical therapy, supplementary aids and supports, and the least restrictive environment for Student’s educational placement. Petitioners argue that the failure of the IEP team to adequately provide Parent an opportunity to discuss Parent’s concerns significantly impeded parental participation in the development of Student’s IEP and resulted in a denial of FAPE to Student. Based on the evidence presented at the Hearing, this Hearings Officer finds that while the IEP team attempted to discuss all aspects of Student’s IEP with Parent and review Parent’s concerns, the IEP team failed to adequately discuss Parent’s concerns regarding ESY and occupational therapy at the meeting on May 25, 2023. With regard to the other areas noted above, Parent did have an adequate opportunity to discuss concerns and participate in the development of the IEP for Student.

1. Discussion regarding ESY

Petitioners argue primarily that the IEP team did not appropriately discuss the frequency, duration, location, and/or least restrictive environment for Student’s summer ESY program. The evidence presented at the Hearing, namely, the recording of the IEP meeting on May 25, 2023,

demonstrates that the IEP team did not afford adequate discussion regarding Parent's concerns and how to address the concerns regarding the ESY location proposed for Student. At the IEP meeting, Parent raised the concern to the team that Student could not handle long car rides, which is what would be required for Student to attend ESY at Summer School. *FOF 46*. Parent objected to the ESY being held at Summer School and wanted the DOE to explore other options. The IEP team informed Parent that they would contact the district office and see what other options would be available for Student and then the IEP team could reconvene to discuss them. *FOF 48*.

While it is well-established that school districts have the ability to determine the physical location where the IEP services will be implemented, many courts have also acknowledged that sometimes information on the location chosen by the school district is important for parents to have to participate in the IEP development process. *Rachel H. v. Department of Education Hawaii*, 868 F.3d 1085, 1092 (9th Cir. 2017) (stating that "we emphasize that knowledge of a particular school, classroom, or teacher may well be relevant to allowing parents to participate meaningfully in the IEP process ... Parents may need this information, for example, to evaluate whether a proposed IEP satisfies the IDEA because of a particular special education need cause by a child's disability."); *see also A.K. ex rel. J.K. v. Alexandria City School Bd.*, 484 F.3d 672, 681 (4th Cir. 2007); *Union School Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994).

The evidence presented at the Hearing suggests that no new IEP team meeting or meeting of any kind was held with Parent after the May 25, 2023 IEP meeting to discuss the ESY options for Student. While the district understandably could not provide any other location or opportunity for Student to attend ESY, the IEP team did not make any efforts to address Parent's concerns regarding taking Student to Summer School for ESY. Since Parent is usually the one to

take Student to Home School during the regular school year, Parent was concerned about how to get Student to Summer School given Parent's experience with Student in long car rides. *FOF 11-13*. VP later contacted Parent to inform Parent that the DOE would be providing transportation to Student for ESY services but that was never added as a part of Student's IEP. *FOF 61*. Further, discussions and proposals after the fact of possibly sending the teacher and educational assistant to meet with Student to encourage Student to get on the bus to attend ESY were not made until well after Student was supposed to begin ESY services. *FOF 70*. Those are considerations or offers that could have been properly discussed at the May 25, 2023 IEP meeting or at a subsequent meeting prior to the start of ESY. It appeared that ESY was not supposed to start until on or about June 8, 2023, which gave the IEP team, or at least some members of the IEP team such as VP, time to meet with Parent to discuss options and concerns regarding the bus/car ride for Student to attend ESY and address those issues in an amended IEP. Due to this not happening, there appeared to be some miscommunication with the school, bus company, and Parent regarding Student's start date for ESY and the bus transportation, which resulted in Student not attending ESY for the summer of 2023. *FOF 63-69*.

Based on the evidence presented, the failure for the IEP team or members of the IEP team to reconvene to discuss possible options for Student for ESY after meeting with the district office, or even having a representative from district who could make proposals at the IEP meeting resulted in a deprivation of benefits for Student. The failure of the IEP team to clearly communicate its proposals to Parent regarding the ESY services that would be provided to Student resulted in a significant impediment to Parent's participation in the development of Student's IEP. These failures resulted in a denial of FAPE to Student.

2. Occupational Therapy

Petitioners argue that Parent raised a concern that Student was unable to clean and wipe Student's self after using the bathroom at the IEP meeting, but that the IEP team brushed off Parent's concern as a non-school issue. During the Hearing, OT testified that Student having a problem with wiping/cleaning after bathroom use would be something that could be addressed through occupational therapy and that it would be considered a school-related issue. *FOF 20*. While the discussion at the IEP meeting took place during the discussion regarding physical therapy, Parent did raise a valid concern regarding additional needs that Student has that should be addressed in Student's IEP. *FOF 53*. Rather than addressing that concern as a valid occupational therapy concern and raising it with OT when OT came into the meeting, the IEP team only focused on Parent's concern regarding physical therapy and did not follow up to address Student's inability to wipe/clean up after bathroom use.

While it does appear that this issue was raised for the first time at the May 25, 2023 IEP meeting, it is hard to understand why the team simply dismissed Parent's concern and did not choose to discuss it further. Even after OT listened to the recording of the meeting and noted Parent's concern being in the area of occupational therapy, OT did not contact anyone or do any follow up regarding how to address Parent's concern. *FOF 20*. Respondents' argument that these additional concerns could be addressed at the August 11, 2023 IEP meeting does not excuse the fact that the IEP team did not appear to actively consider Parent's concerns during the IEP meeting on May 25, 2023, nor did they provide for proper discussion for this new issue raised by Parent.

- B. Student's IEP-05/25/2023 does not provide Student a FAPE due to the lack of information regarding Student's ESY services and occupational therapy goals regarding bathroom use

Petitioners argue that the IEP developed from the May 25, 2023 does not reasonably address Student's needs. Petitioners specify that the IEP is insufficient in addressing Student's needs for ESY, occupational therapy, physical therapy, individual instructional support, and least restrictive environment. Based on the evidence presented at the Hearing, this Hearings Officer concludes that the IEP-05/25/2023 adequately addresses Student's needs for physical therapy, individual instructional support, and least restrictive environment. The IEP-05/25/2023 does not adequately address Student's ESY services and needs regarding occupational therapy based on Parent's contention that Student is unable to wipe/clean after bathroom use.

1. ESY services

A school must provide ESY services only if the child's IEP team determines that the services are necessary 'for the provision of FAPE to the child.' *N.B. v. Hellgate Elementary School Dist., ex rel. Bd. of Directors, Missoula County Mont.*, 541 F.3d 1202, 1211 (9th Cir. 2008). To qualify for extended school year services, "a claimant seeking an ESY must satisfy an even stricter test, because 'providing an ESY is an exception and not the rule under the regulatory scheme.'" *N.B.*, 541 F.3d at 1211, *quoting Bd. of Educ. of Fayette County v. L.M.*, 478 F.3d 307, 315 (6th Cir. 2007) *quoting Cordrey v. Euckert*, 917 F.2d 1460, 1473 (6th Cir. 1990), *cert. denied*, 552 U.S. 1042, 128 S.Ct. 693, 169 L.Ed.2d. 513 (2007); *see also Dep't of Educ. v. L.S. by C.S.*, 74 IDELR 71, 2019 WL 1421752 *7 (D. Hawai'i 2019) (holding that ESY is "educational instruction beyond the normal academic year provided to students who need the additional instruction to retain information during a break in regularly scheduled classes, such as during the summer."). The standard for ESY is higher than the standard for the provision of special education and related services due to the requirement to show that the benefits the student gains during the regular school year will be significantly jeopardized if he or she is not provided

with an educational program during school breaks. *Id.*, quoting *MM ex rel. DM v. Sch. Dist. of Greenville County*, 303 F.3d 523, 537-538 (4th Cir. 2002); *see also K.K. ex rel. K.S.K. v. Hawai'i*, 66 IDELR 12, 2015 WL 4611947; *Kenton County Sch. Dist. v. Hunt*, 384 F.3d 269, 279 (6th Cir. 2004) (confirming that “it is the proponent of ESY that bears the burden of proof either through the use of data or the use of expert testimony.”).

In this case, the IEP team determined that Student was eligible and needed ESY services to maintain skills that Student gained during the school year. The IEP went through discussions regarding using the same amount of ESY services as was provided to Student the prior summer due to that being demonstrably beneficial for Student. This year, however, due to reasons beyond Home School’s control, Home School would not be able to provide Student with ESY services on Home School’s campus. Instead, Home School had arranged for Summer School to provide ESY services to Student for the summer of 2023. *FOF 59*. As noted, *supra*, it is well established that the school district may determine the location where services will be provided to a student without consultation with the IEP team, however an IEP may be determined insufficient based on the failure to include a particular school if the resulting IEP does not reasonably meet the needs of the student. *See A.K.*, 484 F.3d at 681.

Parent noted in the IEP meeting that the drive to Summer School would be very difficult for Student, as Parent has trouble driving Student in car rides for that period of time. *FOF 46*. Rather than further discussing options for Parent to consider for ESY at Summer School, the IEP team told Parent that they would explore other possible options with district and then reconvene to discuss them. *FOF 48*. The result of that was an IEP that did not provide any information to Parent on the location of ESY services, and what, if any, additional services would be provided for Student to attend ESY at Summer School, such as transportation. *FOF 63-64*. The fact that

the IEP-05/25/2023 fails to address the location of the ESY services and the additional accommodations that would be provided for Student to attend Summer School makes the IEP-05/25/2023 incomplete based on Student's needs.

2. Occupational Therapy

Petitioners argue that Student's IEP-05/25/2023 does not adequately address Student's occupational therapy needs, specifically regarding Student's difficulty with cleaning/wiping after bathroom use. Based on the evidence presented at the Hearing, this Hearings Officer agrees that the IEP-05/25/2023 may not adequately address Student's occupational therapy needs.

While it appears that this issue was raised for the first time at the May 25, 2023, that Student needed assistance in wiping/cleaning after bathroom use, the fact is that the IEP team failed to discuss that concern at the IEP meeting. The difficulty was that OT was not present for the majority of the meeting and did not hear that raised as a concern. *FOF 34*. By the time OT came into the meeting, the rest of the IEP team had already dismissed Parent's concern regarding Student's difficulty with wiping/cleaning after bathroom use. Even the testimony of OT recognizes that the concern raised by Parent is one that occupational therapy would address in the school setting. *FOF 20*. However, even after listening to the recording of the IEP meeting, OT did not make efforts to further any kind of review or discussion regarding this potential need for Student.

It is unclear to this Hearings Officer whether additional time for occupational therapy services would be necessary or whether a new goal with objectives would be created for this particular need for Student, but at this time, based on the concern raised by Parent both at the IEP meeting and at the Hearing, this is certainly an issue that must be addressed by the IEP team for consideration to be put into Student's IEP.

3. Physical therapy, individual instructional support, and least restrictive environment

Petitioners also argue that the IEP-05/25/2023 does not provide sufficient physical therapy services for Student and does not adequately describe the individual instructional support and least restrictive environment for Student. This Hearings Officer finds that Petitioners have not met their burden of proving these issues.

As was described in both the IEP meeting and at the Hearing, the physical therapy that is necessary for school intervention is to ensure that students are able to navigate the campus properly and sit or stand with enough core strength so that they are able to participate in their education. The evidence in this case is clear that Student is able to not only navigate around campus and sit in class, but is also able to participate at recess and play sports such as football and basketball with non-disabled peers. *FOF 29*. Student also regularly participates in the exercise program that PT developed and provided to Student's teachers, which has been helping with Student's core strength. *FOF 30*. Petitioners have not demonstrated that Student is in need of additional physical therapy services.

Petitioners failed to address the issue that the individual instructional support services are not adequately described in either the Hearing or in Petitioners' closing brief, so this Hearings Officer concludes that Petitioners have abandoned this issue. Nonetheless, in reviewing the IEP-05/25/2023, this Hearings Officer also concludes that the individual instructional support description adequately describes the service that will be provided to address Student's needs. *See P-Ex.1, p.19-21*.

Petitioners argue that the LRE description in the IEP-05/25/2023 does not accurately describe the offer made to Parent by the IEP team at the May 25, 2023 meeting. Petitioners point out that the draft IEP that was sent to Parent outlined a specific number of minutes that Student

would participate in the general education setting and a specific number of minutes that Student would be pulled out of the general education setting for specialized instruction, speech-language therapy, or occupational therapy. *See* Petitioners' Closing Brief, filed August 25, 2023, page 10-12. The final IEP-05/25/2023 does not have a specific number of minutes. Based on the recording of the IEP meeting on May 25, 2023, it appears to this Hearings Officer that the IEP team intended for Student to spend more time in the general education setting than was outlined in the draft IEP. The team noted that Student usually spent less than the previously allotted nine hundred ten (910) minutes in the special education setting in Student's prior IEP because Student thrived in the general education setting. *FOF 50*. The team even considered reducing the number of special education minutes for Student but decided that Student would still receive the specialized instruction, but that it could also take place in the general education setting. So, while Petitioners argue that the failure of the IEP-05/25/2023 to have a specific number of minutes that Student would be pulled out for specialized services, this Hearings Officer concludes that the IEP team offered to provide Student with services more in the general education setting and only agreed to pull Student out when necessary. The LRE statement in the IEP-05/25/2023 accurately describes the IEP team's offer to Parent and appropriately addresses Student's educational placement in the least restrictive environment. Petitioners have failed to meet their burden on proving that the IEP-05/25/2023 fails to appropriately define Student's LRE.

VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have met their burden of proving some of the allegations in the Complaint by a preponderance of the evidence. Specifically, this Hearings Officer finds

that the IEP team's failure to address Parent's concerns regarding the difficulty in getting Student to Summer School for ESY due to the length of the car or bus ride resulted in a significant impediment to Parent's participation in the IEP development process, a deprivation of educational benefits, and resulted in the IEP-05/25/2023 not providing a clear offer for ESY services that would adequately address Student's needs for ESY at a different location from Home School. Second, this Hearings Officer finds that the IEP team's failure to adequately address Parent's concern regarding Student's difficulty with wiping/cleaning after bathroom use also resulted in a significant impediment in Parent's participation in the IEP development process and may have led to the IEP-05/25/2023 not adequately addressing Student's needs.

As Petitioners have noted that they are not requesting reimbursement for the two no-cost summer programs that Student did attend for a short time instead of ESY, this Hearings Officer is not awarding Petitioners any monetary or other compensation for Student's loss of ESY services.

This Hearings Officer finds that the appropriate remedy in this case is for the IEP team to reconvene and address Parent's concerns noted in this Decision, as well as other concerns that Parent may raise at the IEP meeting. This Hearings Officer also notes that an IEP meeting was to be held with Mr. Peck and Mr. Ushiroda present on August 11, 2023. If the parties are satisfied with the IEP that resulted from the August 11, 2023 meeting, then the parties can agree, in writing, that the order below need not apply.⁴

For the reasons stated above, IT IS ORDERED –

⁴ This Hearings Officer notes, however, that Petitioners state in their closing brief that the IEP meeting that took place on that date failed to adequately address Parent's concerns.

1. Within thirty (30) calendar days of this Decision, the IEP team shall schedule an IEP meeting with Parent to address the issues noted in this Decision that were not adequately addressed in the May 25, 2023 IEP meeting. The issue regarding ESY should be raised and addressed at the meeting, but may later be amended or altered closer to the start of the summer ESY session for 2024.
2. No later than five (5) school days prior to the IEP meeting, the IEP team shall provide Parent with a draft IEP that the team will use to discuss at the IEP meeting. This draft IEP should include any information updates as of the date of this Decision regarding Student's behavior, occupational therapy, speech-language therapy, physical therapy, and any updates, progress reports, or other information regarding Student's present levels of academic achievement and functional performance. The draft IEP may be sent via email to Parent.
3. No later than two (2) school days prior to the IEP meeting, Parent shall provide the IEP team with a list of concerns that Parent would like addressed at the IEP meeting. This list may be sent via email to Student's care coordinator, student services coordinator, or to VP.
4. Any delays in the scheduling of meetings, provision of consents, scheduling of assessments or observations of Student, or for any other reason caused by Petitioners and/or Petitioners' advocates or representatives shall be carefully documented by Respondents and shall extend the timelines set herein by the number of days attributable to Petitioners and/or Petitioners' advocates or representatives.

RIGHT TO APPEAL

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

DATED: Honolulu, Hawai'i, September 22, 2023.



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