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OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

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

Petitioner(s),

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAI'I,

Respondents.

DOE-SY2324-003

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:

December 11-14, 18-20, 2023

February 7-9, 13, 29, 2024

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

Petitioners bring forth this case under the Individuals with Disabilities Education Act (hereinafter "IDEA") to allege a number of procedural and substantive violations in Student's Individualized Education Program (hereinafter "IEP") between the spring of the 2021-2022 school year and the 2023-2024 school year while Student attended Prior Home School and Home School.

¹ Personal identifiable information is contained in the Legend.

II. JURISDICTION

This proceeding was invoked in accordance with the 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 seventeen (17) issues in their Amended Request for IDEA Impartial Due Process Hearing (hereinafter “Complaint”) to be addressed at the Hearing:

1. Whether the DOE denied Student a free appropriate public education (hereinafter “FAPE”) by failing to afford Parent the opportunity to inspect and review all educational records related to the July 22, 2021 records request.
2. Whether the DOE denied Student a FAPE by failing to afford Parent the opportunity to inspect and review all educational records related to the October 11, 2021 records request.
3. Whether the DOE denied Student a FAPE by failing to afford Parent the opportunity to inspect and review all educational records related to the March 2, 2023 records request.
4. Whether the DOE denied Student a FAPE by failing to provide data to Parent concerning the 2021 reevaluation and eligibility process.
5. Whether the DOE denied Student a FAPE by materially failing to implement Student’s August 6, 2021 annual individualized education program (hereinafter “IEP”).
6. Whether the DOE denied Student a FAPE in the preparation and development of Student’s July 25, 2022 IEP (hereinafter “IEP-07/25/2022”). Whether the DOE substantively addressed Student’s needs for special education and related services in the IEP-07/25/2022.
7. Whether the DOE denied Student a FAPE by materially failing to implement the IEP-07/25/2022.
8. Whether the DOE denied Student a FAPE by failing to review and revise Student’s IEP-07/25/2022 when circumstances justified such review and revision.
9. Whether the DOE denied Student a FAPE by failing to comply with reevaluation and eligibility requirements leading up to and including the DOE’s December 12, 2022 eligibility determination.

10. Whether the DOE denied Student a FAPE in the preparation and development of Student's May 24, 2023 IEP (hereinafter "IEP-05/24/2023"). Whether the DOE substantively addressed Student's needs for special education and related services in the IEP-05/24/2023.
11. Whether the DOE denied Student a FAPE by failing to reevaluate Student when presented with Student's neuropsychological evaluation.
12. Whether the DOE denied Student a FAPE by failing to reevaluate Student when presented with Student's [REDACTED] diagnosis.
13. Whether the DOE denied Student a FAPE by not addressing each allegation in the original Request for IDEA Impartial Due Process Hearing filed on July 24, 2023 and/or by not addressing each allegation in the Amended Request for IDEA Impartial Due Process Hearing filed on September 25, 2023.
14. Whether the DOE denied Student a FAPE by not conducting a resolution session in conformance with the law regarding the original Request for IDEA Impartial Due Process Hearing filed on July 24, 2023 and/or regarding the Amended Request for IDEA Impartial Due Process Hearing filed on September 25, 2023.
15. Whether the DOE denied Student a FAPE regarding Student's requested accommodations for extracurricular activities, which may affect Student's ability to participate in such extracurricular activities.
16. Whether the DOE denied Student a FAPE by violating stay-put for Student during the pendency of this proceeding.
17. Whether the DOE denied Student a FAPE by the collective failure to comply with the requirements under the IDEA.

Petitioners also requested the following remedies if a denial of FAPE is found:

1. Order the DOE to develop a new IEP for Student that includes the following:
 - Incorporation of the neuropsychological evaluation dated November 18, 2022, including the specific recommendations in the evaluation, and/or incorporation of the results of the assessments and instruments used in the evaluation
 - Incorporation of the findings and recommendations of Student's diagnosis of [REDACTED], such as the provision of ABA services and goals to address adaptive behavior areas.
 - Reviews of the DOE subject matter standards for Student and indicates which standards Student meets, such that would permit a third-party to understand how Student is performing.

-Standard scores and percentile rank for standardized test results incorporated in the PLAAFPs.

-Objective test scores from the evaluation and/or assessment instruments used for the new IEP.

-Results of objective testing on an annual and quarterly basis to measure Student's baseline and quarterly progress in areas where goals/benchmarks/short-term objectives are provided.

-IEP goals and objectives that are written in such a manner that such tools can objectively be used.

2. Comprehensive compensatory education for services not provided to Student, such as tutoring or similar services to address written expression, social, daily living skills training, and decoding and phonological skills.
3. Order the DOE to provide special education by someone who is deemed 'highly qualified' under state standards to provide instruction that meets the definition of special education.
4. Reimbursement of tuition and related services that were incurred or will be incurred due to the denial of FAPE to Student.
5. Order such other relief as appropriate and/or justified under equity and/or the law.

IV. BACKGROUND

On July 24, 2023, the Department of Education, State of Hawai'i (hereinafter "Respondents" or "DOE") received a Request for 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 Parent (hereinafter "Petitioners"). Respondents submitted a response to Petitioners' Complaint on August 2, 2023.

On August 14, 2023, a prehearing conference was held with Hearings Officer Chastity T. Imamura, Parent, on behalf Petitioners, and Ryan W. Roylo, Esq. (hereinafter "Mr. Roylo") on behalf of Respondents. Petitioners requested the ability to file a motion regarding the response filed by Respondents to Petitioners' Complaint. This Hearings Officer granted Petitioners leave

to file their motion and set the hearing and deadlines for Petitioners' motion. Petitioners timely filed a Motion to Strike Respondents' Response to Petitioners' Request for Impartial Hearing (hereinafter "Motion") on August 23, 2023. Respondents timely submitted Respondents' Memorandum in Opposition to Petitioners' Motion to Strike Respondents' Response to Petitioners Request for Impartial Hearing Filed on August 23, 2023; Exhibits "A" - "D," (hereinafter "Opposition") on August 30, 2023. Petitioners timely submitted Petitioners Reply to Respondents' Memorandum in Opposition to Petitioners' Motion to Strike Respondents' Response to Petitioners' Request for Impartial Hearing Filed August 23, 2023 (hereinafter "Reply") on September 5, 2023. The hearing on Petitioners' Motion was scheduled for September 6, 2023. After review of the exhibits and arguments presented by both parties at the hearing on Petitioners' Motion, this Hearings Officer denied Petitioners' Motion. The Order Denying Petitioners' Motion to Strike Respondents' Response to Petitioners' Request for Impartial Hearing was issued on September 8, 2023.

During the prehearing conference, this Hearings Officer also discussed with Parent that the issues are unclear and that Parent may want to resubmit a Request for IDEA Impartial Due Process Hearing to clarify the issues that Petitioners want resolved in the case. Respondents did not object to Petitioners submitting an amended request, and leave was granted to Petitioners to submit an amended request for hearing by September 22, 2023, which was later extended to September 25, 2023.

On September 25, 2023, Petitioners submitted an amended Request for IDEA Impartial Due Process Hearing (hereinafter "Amended Complaint"). Respondents submitted a response to Petitioners' Amended Complaint on October 5, 2023. A prehearing conference was held on October 18, 2023 with this Hearings Officer, Parent, and Mr. Roylo. The due process hearing

(hereinafter “Hearing”) was scheduled for December 4, December 11-14, and December 18-20, 2023. After further discussions with counsel, the December 4, 2023 Hearing date was removed from the calendar and the Hearing started on December 11, 2023. Based on the length of the testimony of the witnesses, additional dates had to be added to complete the Hearing. Taking into account the schedules of the witnesses and counsel, the first available Hearing dates were February 7-9, 12-15, 2024. After continuing the Hearing to February and due to some illnesses with some witnesses, the final dates of the Hearing in February were February 7-9, 13, and an additional date of February 29, 2024.

Prior to the start of the Hearing, the parties stipulated to the Hearing being conducted via video conferencing pursuant to Hawai‘i Revised Statutes Section 91-9(c). Both parties agreed to the following: 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 witnesses and parties would ensure confidentiality of the proceedings by participating in a private setting. An Order Regarding Video Conference Due Process Hearing was filed on October 19, 2023, which set forth the parameters of the video conference due process hearing.

Prior to the Hearing, the parties agreed that parties could question the witnesses during their scheduled times since some of Petitioners’ witnesses were DOE employees, so that the witnesses would not need to return to testify again during Respondents’ case-in-chief. Respondents’ reserved their right to call some witnesses during their case-in-chief even if they had already testified. The Due Process Hearing began on December 11, 2023. Present at the Hearing were Parent, on behalf of Petitioners, District Educational Specialist and District

Representative² and Mr. Roylo on behalf of Respondents, this Hearings Officer, and the assigned court reporter. The first witness called was Former Principal, whose testimony was completed on December 12, 2023. Vice Principal (hereinafter “VP”) testified on December 12 and 13, 2023. District Resource Teacher (hereinafter “DRT”) testified on December 13, 14, and 18, 2023. Former Student Services Coordinator (hereinafter “Former SSC”) testified on December 19-20, 2023. On December 20, 2023, Current Principal began to testify but needed to be continued to a different date due to prior commitments. Resolution Session Facilitator also testified on December 20, 2023. On February 7, 2024, Current Principal’s testimony was completed.

Prior to the Hearing, this Hearings Officer informed Parent that Parent may submit testimony in the form of a written declaration and time would be given to Mr. Roylo to review the declaration and prepare cross examination of Parent. On February 7, 2024, Parent submitted a written declaration of Parent’s testimony to this Hearings Officer and Mr. Roylo. On February 8, 2024, Mr. Roylo conducted cross-examination of Parent, and this Hearings Officer had some questions for Parent. Parent’s testimony was completed on February 8, 2024 and Petitioners’ completed their presentation of witnesses on that date.

Respondents began their case-in-chief on February 9, 2024, and called Special Education Teacher (hereinafter “SPED Teacher”) and Care Coordinator (hereinafter “CC”). On February 13, 2024, Respondents called Behavior Health Specialist (hereinafter “BHS”) and re-called VP to testify. Respondents then re-called Former SSC to testify on February 29, 2024 and rested

² District Educational Specialist could not attend the Hearing on a couple of occasions, so District Representative attended the Hearing on District Educational Specialist’s behalf.

their case-in-chief. Petitioners did not have any rebuttal witnesses, so the hearing was concluded.

Each party submitted their exhibits for the Hearing by the disclosure deadline of December 4, 2023.³ The parties reviewed the exhibit and witness lists provided by the opposing party and Respondents raised some objections to some witnesses and exhibits submitted by Petitioners. This Hearings Officer noted that most of Respondents' objections would be addressed during the Hearing, except that Respondents' objection to Mr. Roylo's appearance on Petitioners' witness list was resolved. This Hearings Officer sustained Respondents' objection to Mr. Roylo being called as a witness by Petitioners through an email to counsel on Friday, December 8, 2023.⁴

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 March 5, 2024, a list of exhibits that were discussed during the hearing was provided to counsel by this Hearings Officer. Both parties were allowed to propose corrections from the updated lists, as well as 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 corrections and additional exhibits were due on March 8, 2024. Any objections to the proposed exhibits were due on March 12, 2024.

³ While the original deadline in the prehearing order was November 27, 2023, the disclosure deadline was moved to December 4, 2023, due to the cancellation of the December 4, 2023 hearing date.

⁴ While this Hearings Officer conveyed the ruling to counsel via email, the parties were allowed to make a record regarding that ruling on the first day of the Hearing. *See* Transcript of Proceedings, Volume 1, page 6, line 25, though page 11, line 2.

Petitioners requested that the following additional exhibits be received as evidence:
Petitioners' Exhibit P19, pages 05779-05784, 05803-05805, 05812-05836, and 05847-05849.

Respondents objected to the admission of Petitioners' Exhibit P19, pages 05764-05778, 05779-05780, 05781-05783, 05784, 05786-05802, 05803-05805, 05812-05821, 05822-05824, 05825-05831, 05832-05836, 05847-05849, and Exhibit P24, pages 06249-06289 (report cards for SY2015-2016 through SY2020-2021) based on relevance due to the age of the documents. Respondents also objected to the admission of Petitioners' Exhibit P29, pages 06332-06345 based on the lack of foundation for the documents and relevance. Respondents objected to the admission of Petitioners' Exhibit P32, pages 06402-06443 based on relevance. This Hearings Officer received Petitioners' Exhibits P19, P24, and P29 in their entirety over Respondents' objections.

This Hearings Officer excluded the following exhibits requested by Petitioners based on relevance to the issues in this case: Petitioners' Exhibit 32, pages 06402-06443; Exhibit 36, pages 06629-06668, and 06702-06807; Exhibit 39, pages 07236-07524; Exhibits 61-70, pages 11489-11755, as the above-listed documents are not relevant to any issues or possible remedies in this case. As discussed with counsel during the hearing, the federal statutes, administrative rules, case law, and other legal authority may be cited to counsel in the briefs and do not need to be received as evidence in this case. If the parties are unable to find a specific citation for a letter or case, they may attach a copy of the case to their written brief.

Respondents requested that the following additional exhibits be received as evidence: Respondents' Exhibits 73-74, pages 0270-0277; Exhibit 76, pages 0279-0280; Exhibit 79, pages 0287-0288; Exhibit 85, page 0303; Exhibit 92, pages 0314-0315; Exhibit 95, pages 0319-0321; Exhibit 103, pages 0330-0331; Exhibit 107, pages 0337-0338; Exhibit 110, pages 0341-0342;

Exhibit 116, pages 0369-0370; Exhibit 120, pages 0394-0395; Exhibits 122-123, pages 0397-0401; Exhibit 125, pages 0403-0404; Exhibits 140-141, pages 0428-0431; Exhibit 143, pages 0435-0436; Exhibit 145, pages 0442-0444; Exhibit 147, pages 0447-0449; Exhibits 151-152, pages 0488-0491; Exhibit 155, pages 0511-0512; Exhibit 159, pages 0528-0529; Exhibits 161-162, pages 0533-0536; Exhibits 164-165, pages 0538-0540; Exhibit 181, pages 0566-0567; Exhibit 185, pages 0571-0572; Exhibit 194, pages 0593-0594; Exhibit 198, pages 0598-0599; Exhibit 204, pages 0610-0612; Exhibit 209, pages 0622-0624; Exhibit 213, pages 0630-0631; Exhibit 219, pages 0654-0655; Exhibits 233-234, pages 0684-0695; Exhibit 239, pages 0700-0706; Exhibit 241, pages 0708-0714; Exhibits 244-245, pages 0717-0720; Exhibit 250-253, pages 0771-0787; Exhibit 258, pages 0840-0852; Exhibit 263, page 0869; Exhibits 267-268, pages 0882-0930; and Exhibit 270, pages 1019-1020.

Petitioners objected to Respondents' proposed exhibit receipt of various communications listed as Respondents' Exhibits 73-74, 76, 79, 85, 92, 95, 103, 107, 110, 116, 120, 122-123, 125, 140-141, 143, 145, 147, 151-152, 155, 159, 161-162, 164-165, 181, 185, 194, 198, 204, 209, 213, 219, 233-234, 239, 241, 244-245, 252, 258, and 267-268. Petitioners note that because the testimonial phase of this Hearing was complete by the time these additional exhibits were requested, it would be unclear how to interpret the information contained in the communications sent to Parent and therefore are irrelevant to this case. Petitioners objected to Respondents' Exhibit 250 and 251 due to redactions that they contain, and are duplicative of Petitioners' Exhibits P16, page 05556, and P17, page 05573. Petitioners also objected to Respondents' Exhibits 253 and 270, due to a lack of foundation to the contents of the emails. Finally, Petitioners objected to Respondents' Exhibit 263 due to a lack of information contained in this Exhibit and Petitioners contend that Petitioners have submitted

essentially the same information, but a more complete version in Petitioners' Exhibit P37. This Hearings Officer received, over Petitioners' objection, the additional communications proposed by Respondents in the various exhibits listed above.

On March 15, 2024, 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.⁵

Petitioners' exhibits that were received and considered as part of this Decision are as follows:⁶ Exhibit P1, pages 00001-00144; Exhibit P2, pages 00145-00379; Exhibit P3, pages 00380-00673; Exhibit P4, pages 00674-00987; Exhibit P5, pages 00988-01178; Exhibit P6, pages 01179-01346; Exhibit P7, pages 01391-01701; Exhibit P8, pages, 01702-02009; Exhibit P9, pages, 02010-02123; Exhibit P10, pages 02124-02192; Exhibit P11, pages 02193-02544; Exhibit P12, pages 02546-03733; Exhibit P13, pages 03734-04047; Exhibit P14, pages 04048-05089; Exhibit P15, pages 05090-05409; Exhibit P16, pages 05410-05556; Exhibit P17, pages 05557-05618; Exhibit P18, pages 05619-05763; Exhibit P19, pages 05764-05784, 05786-05805, 05812-05919; Exhibit P20, pages 05920-05949; Exhibit P21, pages 05950-06022; Exhibit P22, pages 06023-06222; Exhibit P23, pages 06223-06248; Exhibit P24, pages 06249-06294; Exhibit P25, pages 06295-06302; Exhibit P26, pages 06303-06309; Exhibit P27, page 06314; Exhibit P28, pages 06323-06331; Exhibit P29, pages 06332-06345; Exhibit P30, pages 06346-06363;

⁵ The objections and reasons for admitting or not accepting certain items into evidence are more thoroughly described both in the record of proceedings and in the List of Exhibits Received at Due Process Hearing, filed on March 15, 2024.

⁶ This Hearings Officer notes that Petitioners sometimes included an attachment entitled "Procedural Safeguards Notice" with some email correspondence. Due to the length of the Procedural Safeguards Notice and the lack of relevance to this case, whenever the Procedural Safeguards Notice were included as attachments, those pages of exhibits were not received into evidence. The page numbers of these Procedural Safeguards Notice that were excluded are indicated in the List of Exhibits Received at Hearing, filed on March 15, 2024.

Exhibit P31, pages 06364-06401; Exhibit P33, pages 06444-06450; Exhibit P34, pages 06451-06465; Exhibit P35, pages 06466-06628; Exhibit P36, pages 06669-06701; Exhibit P37, pages 06824-06993; Exhibit P38, pages 07001-07235; Exhibit P40, page 07525; Exhibit P41, page 07526; Exhibit P42, pages 07527-07610; Exhibit P43, pages 07611-07618; Exhibit P44, pages 07619-07708; Exhibit P45, pages 07709-07748; Exhibit P46, pages 07749-07852; Exhibit P47, pages 07853-07939; Exhibit P48, pages 07940-08020; Exhibit P49, pages 08021-08085; Exhibit P50, pages 08086-08154; Exhibit P51, pages 08155-08233; Exhibit P52, pages 08234-08275; Exhibit P53, pages 08276-08351; Exhibit P54, pages 08352-08401; Exhibit P55, pages 08402-08440; Exhibit P56, pages 08441-08461; Exhibit P57, pages 08462-10736; Exhibit P58, pages 10737-10822; Exhibit P59, pages 10823-10835; Exhibit P60, pages 10836-11488; Exhibit P71, pages 11756-11758; and Exhibit P72, pages 11759-11817.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibits 1-12, pages 0001-0034; Exhibit 15, pages 0038-0063; Exhibit 20, pages 0070-0071; Exhibit 23, pages 0075-0077; Exhibit 26, pages 0081-0082; Exhibit 29, pages 0086-0087; Exhibit 32, pages 0091-0093; Exhibit 34, pages 0096-0098; Exhibits 37-41, pages 0102-0119; Exhibit 56, page 0178; Exhibit 63, pages 0245-0248; Exhibits 71-74, pages 0264-0277; Exhibit 76, pages 0279-0280; Exhibit 79, pages 0287-0288; Exhibits 81-83, pages 0292-0301; Exhibit 85, page 0303; Exhibit 92, pages 0314-0315; Exhibit 95, pages 0319-0321; Exhibits 103-104, pages 0330-0334; Exhibits 106-108, pages 0336-0339; Exhibits 110-112, pages 0341-0355; Exhibit 114, pages 0364-0367; Exhibits 116-117, pages 0369-0391; Exhibit 120, pages 0394-0395; Exhibits 122-123, pages 0397-0401; Exhibit 125, pages 0403-0404; Exhibits 132-133, pages 0414-0417; Exhibit 135, page 0420; Exhibits 140-141, pages 0429-0431; Exhibit 143, pages 0435-0436; Exhibit 145, pages 0422-0444; Exhibit 147, pages 0447-0449; Exhibits 151-

155, pages 0488-0512; Exhibits 159-162, pages 0528-0536; Exhibits 164-166, pages 0538-0546; Exhibit 169, page 0550; Exhibits 170-175, pages 0551-0556; Exhibit 181, pages 0556-0567; Exhibit 183, page 0569; Exhibits 185-187, pages 0571-0585; Exhibit 194, pages 0593-0594; Exhibits 197-201, pages 0597-0607; Exhibits 203-206, pages 0609-0619; Exhibits 209-210, pages 0622-0625; Exhibits 213-214, pages 0630-0632; Exhibits 219-224, pages 0654-0672; Exhibit 228, pages 0676-0679; Exhibits 233-234, pages 0684-0695; Exhibit 239, pages 0700-0706; Exhibit 241, pages 0708-0714; Exhibits 244-245, pages 0717-0720; Exhibits 247-253, pages 0756-0787; Exhibit 255, page 0789; Exhibits 257-258, pages 0791-0852; Exhibits 260-264, pages 0857-0879; Exhibits 266-268, pages 0881-0930; Exhibit 270, pages 1019-1020; Exhibit 274, pages 1081-1084; Exhibits 276-279, pages 1158-1315.

Both parties wanted the opportunity to submit written closing briefs regarding the legal issues to this Hearings Officer for review. The parties requested to provide a written closing brief with the use of the transcripts due to the length of the proceeding as well as the length of time between witness testimony. The Respondents submitted a request for extension of the decision deadline to allow for the preparation of transcripts, closing written briefs, and for this Hearings Officer to have sufficient time to review the extensive number of exhibits and transcripts in preparation for the decision. Respondents' request was granted, and the decision deadline was extended from March 8, 2024 to April 22, 2024. Based on the extension request, the deadline by which the briefs were to be submitted was Monday, April 8, 2024. Both parties timely submitted their closing briefs on that date.

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

of fact, conclusions of law and decision.⁷

V. FINDINGS OF FACT

Student's background and special education needs

1. Student is currently [REDACTED] years old and is currently in the [REDACTED] grade at Home School. Student has been attending Home School since the [REDACTED] school year. P-Ex.P24, p.06294; P-Ex.P72, p.11761.
2. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] P-Ex.P18, p.05674; P-Ex.P18, p.0739; P-Ex.P19, p.05864.
3. Student is able to use verbal skills to solve problems and express ideas. P-Ex.P19, p.05864.

⁷ This Hearings Officer notes that while the entire record, including exhibits and transcripts of the witness testimony was reviewed in preparing this Decision, only the testimony and exhibits that were relevant to the issues in this case are included in this Decision. Specifically, due to the length of time that had passed and the number of communications, meetings, and documents that were exchanged between the parties, many of the witnesses could not remember many specific details independently from the documents themselves, so this Hearings Officer relied primarily upon the documents that had been submitted by the parties. *See generally* Testimony of Former Principal, Transcript of Proceedings, Volume 1-2; *see also e.g.*, Testimony of VP, Transcript of Proceedings Volume 2, page 225, line 13, through 231, line 25 (hereinafter cited as “Tr.V2, 225:13-231:25”); Testimony of DRT, Tr.V4, 669:21-670:18; Testimony of Former SSC, Tr.V6, 900:15-902:7, 910:4-18; Testimony of Current Principal, Tr.V7, 1075:1-1076:5, 1099:8-15; Testimony of Parent, Tr.V9, 1213:14-22; Testimony of CC, 1282:6-1283:3; Testimony of BHS, Tr.V11, 1318:8-21. Additionally, many volumes of transcripts contained general background information that was not relevant to address the specific issues alleged in this case, so those portions of the transcripts were reviewed but not cited to in this Decision. *See generally* Testimony of DRT, Tr.V3-5, *see also e.g.* Testimony of Former Principal, Tr.V1, 43:17-67:23; Testimony of Former SSC, Tr.V6, 876:5-879:17.

4. Student has solid abstract nonverbal reasoning skills, meaning that Student can detect relationships among things Student sees and identify patterns, sequences, and quantities. P-Ex.P19, p.05864.
5. Student has well-developed quantitative reasoning skills. P-Ex.P19, p.05864.
6. Student shows age-appropriate skills in solving verbal and nonverbal problems when those tasks do not involve a heavy demand in concentration and efficient information processing. P-Ex.P19, p.05864.
7. Student's memory functions are generally comparable to same-aged peers. P-Ex.P19, p.05864.
8. Student has some well-developed executing functioning skills, such as ability to solve problems, using connections between concepts to retrieve words according to categories, making plans, and generating solutions to problems when instructions and structure are explicitly provided. P-Ex.P19, p.05864.
9. Student has a solid grasp of mathematic skills, which are comparable to same-aged peers. P-Ex.P19, p.05864.
10. Student has average reading comprehension skills and understands literal and narrative texts in a way that is comparable to same-aged peers. P-Ex.P18, p.05740-05747; P-Ex.P19, p.05865.
11. Student is well-behaved, kind, responsible, respectful, follows instructions well, works well with peers, can focus and work independently, and is self-motivated. Student does not have trouble sitting to undergo lengthy, intensive testing. P-Ex.P18, p.05740-05747; P-Ex.P19, p.05865.

12. Student's weaknesses are in [REDACTED]
which make it difficult to [REDACTED] P-
Ex.P19, p.05865.
13. Student has a poor [REDACTED] P-Ex.P19,
p.05865.
14. [REDACTED]
[REDACTED] P-Ex.P19, p.05865.
15. [REDACTED]
[REDACTED]
[REDACTED] P-Ex.P19, p.05865.
16. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] P-Ex.P18, p.05740-05747; P-Ex.P19, p.05865.
17. [REDACTED]
[REDACTED]
[REDACTED] P-Ex.P18, p.05740-05747; P-Ex.P19,
p.05865.
18. Student scored mostly average and some below average scores on a [REDACTED] academic
assessment, which included test results from three (3) different standardized assessments
to measure both reading and writing skills. P-Ex.19, p.05850-05855; R-Ex.38, p.0105-
0110.

19. Student has difficulty with fine motor skills [REDACTED] that affect Student's [REDACTED] P-Ex.P18, p.05740-05747; P-Ex.P19, p.05865.
20. Student needs the assistance of graphic organizers and templates to help with Student's organization in writing. P-Ex.P18, p.05740-05747; P-Ex.P19, p.05865.
21. Based on Parent's information, Student struggles with distractibility and will sometimes persevere on a task that later become a distraction for Student.⁸ Student does not display the same struggles at school. P-Ex.P19, p.05866.
22. Based on Parent's information, Student has challenges with social communication, social reciprocity, and trouble holding conversations, which are indicative of Student's [REDACTED] [REDACTED] P-Ex.P19, p.05866.
23. Student meets grade-level standards in the areas of listening, speaking, and math. P-Ex.P18, p.05740-05747.
24. Student does not have any behavioral concerns, as Student is able to start tasks, remain on-task, and adhere to daily classroom routines independently. Testimony of DRT, Tr.V4, 614:23-615:15; 636:20-637:5, Tr.V5, 782:20-783:13; Testimony of SPED Teacher, Tr.V10, 1254:17-1259:18; Testimony of CC, Tr.V10, 1304:3-8; Testimony of BHS, Tr.V11, 1336:21-1337:1; P-Ex.P18, p.05740-05747.
25. Student is able to request help or clarification and communicate Student's needs appropriately. Testimony of SPED Teacher, Tr.V10, 1257:25-1259:15; Testimony of BHS, Tr.V11, 1339:1-1340:7, 1347:2-21; P-Ex.P18, p.05740-05747.

⁸ This Hearings Officer notes that the information for this portion of the neuropsychological exam (including tests for attention, executive function, social emotional functioning, social skills) were based on assessments completed by Parent and not Student. On the tests for attention and social emotional functioning completed by Student's teacher(s), there were no significant concerns based on the scores. P-Ex.P19, p.05878-05881.

26. Student socializes with both adults and peers during structured and unstructured times and has not had any behavioral referrals at Home School. Testimony of SPED Teacher, Tr.V10, 1259:19-1262:3; P-Ex.P18, p.05740-05747.
27. Student is respectful of others, participates regularly in the general education classes Student attends, and occasionally leads group discussions. Testimony of SPED Teacher, Tr.V10, 1256:1-8; P-Ex.P18, p.05740-05747.
28. Student has strengths and weaknesses in reading; Student has received both grade-level [REDACTED] test scores on reading comprehension and [REDACTED] test scores for vocabulary and overall reading assessments. P-Ex.P18, p.05742-05743.
29. Student is able to read class materials fluently and is able to comprehend grade-level class materials with the use of [REDACTED] assistance. P-Ex.P18, p.05742-05743.
30. Student is able to use grade-appropriate prefixes, suffixes, word roots, and base words to determine the meaning of words and phrases. P-Ex.P18, p.05743.
31. Student understands word relationships, such as synonyms and antonyms, multiple-meaning words, and figurative language, such as similes, metaphors, and idioms. P-Ex.P18, p.05743.
32. Student can analyze texts at one grade level below, including identifying structural elements of the plot, character interactions, central themes or ideas, and the literary nuances included in the text. P-Ex.P18, p.05743.
33. [REDACTED]
[REDACTED] Student does not need

consideration for a [REDACTED] because Student has the capabilities to [REDACTED] P-Ex.P18, p.05748.

34. Student benefits from the use of graphic organizers; extended time on writing assignments; assistive technology for [REDACTED] spell check, and completing hardcopy forms; the provision of written or digital copies of materials when materials are to be copied or presented on a board; alternative methods to assess Student's work and knowledge of content; chunking or breaking down of writing assignments and projects, and occupational therapy consult for fine motor concerns and to facilitate the use of assistive technology. *See* P-Ex.P18, p.05736-05737, 05740-05747; P-Ex.P19, p.05866-05867.
35. Student does not need [REDACTED] on assessments or assignments in class, as Student is able to read and comprehend materials provided on the assessments or in class. Testimony of Former SSC, Tr.V6, 982:10-991:17; P-Ex.P18, p.05740-05747;
36. Student's least restrictive environment is in the general education setting, as Student has been successfully making progress on Student's IEP goals and objectives and has been receiving high grade-level scores while in the general education setting. Student is thriving in the general education classes and contributes to class discussions, interacts more with same-aged general education peers, and does not cause any distractions or disruptions to the rest of the students or the teacher in class. Testimony of SPED Teacher, Tr.V10, 1255:22-1262:3; *see* P-Ex.P18, p.05736-05737.

Assessments and evaluations

37. Between December 2020 and March 2021, Student underwent academic, speech-language, cognitive, and fine motor assessments as part of a reevaluation process

completed by the DOE. Parent was provided the completed assessment reports in a timely fashion prior to the eligibility meeting. *See* P-Ex.P19, p.05843-05863; P-Ex.P46, p.07774-07775.

38. In May 2021, an eligibility determination was held, and Student continued to be eligible for special education and related services under the category of [REDACTED] [REDACTED] in the area of [REDACTED] P-Ex.P18, p.05624-05648.
39. In August 2021, an IEP was developed for Student (hereinafter "IEP-08/06/2021"). P-Ex.P18, p.05649-05671.
40. Student made progress on Student's IEP goals and objectives for the 2021-2022 school year and received average grades on Student's grade-level report card. P-Ex.P20, p.05920-05933; P-Ex.P24, p.06290-06292.
41. An IEP was developed for Student on July 25, 2022 after a series of IEP meetings which provided three (3) goals and objectives for Student relating to Student's writing, organization, and [REDACTED] Student was placed in an inclusion setting and was provided nine hundred fifty (950) minutes of special education for behavioral and academic support for Student in both the general education and special education settings. P-Ex.P18, p.05673-05695.
42. Another academic assessment, occupational therapy assessment, and classroom observation was conducted with Student based on a request by Parent in July 2022 to conduct additional assessments, including a functional behavior assessment, a cognitive assessment, and a speech-language assessment. Parent received all the assessment reports, as well as all the prior assessments done in previous reevaluations conducted with Student. P-Ex.P19, p.05764-05863; P-Ex.P18, p.05698-05699; R-Ex.2, p.0003-

- 0004; R-Ex.6, p.0009; R-Ex.56, p.0178; *see also* P-Ex.P56, p.08452-08454.
43. During this time, Parent also provided Student's team with a neuropsychological evaluation that Parent had obtained from a private provider to consider for Student's eligibility determination and IEP development. *See* P-Ex.P18, p.05718-05719.
44. After the reevaluation conducted in September 2022, Student continued to be eligible for special education and related services under the category of [REDACTED] in the area of [REDACTED] P-Ex.P18, p.05700-05719; R-Ex.10, p.0016-0017; R-Ex.11, p.0018-0027; R-Ex.12, p.0028-0034.
45. While Student continued to struggle with [REDACTED] Student's reevaluation scores, grades, and IEP progress reports demonstrated that Student made significant progress in Student's skills in [REDACTED] through the implementation of Student's prior IEPs at Former Home school. *See e.g.* P-Ex.P19, p.05832-05825, 05850-05858 (academic assessment showing that Student had no observed behavioral concerns, minimal weaknesses in reading, and has shown significant improvement in [REDACTED] since the previous academic assessment); P-Ex.P20, p.05934-05943 (IEP progress reports showing that Student was making progress on all Student's IEP goals and objectives); P-Ex.P24, p.06293 (grade-level report card showing that Student received [REDACTED] and [REDACTED] grades over the course of the 2022-2023 school year).
46. Parent had continued to request other assessments and evaluations to be conducted by the DOE in developing Student's IEP; however, the requested evaluations and assessments were not necessary for the IEP team to develop an IEP that would address Student's needs. *See* P-Ex.P18, p.05720-05724.
47. Parent's requests for additional assessments such as the functional behavior assessment

and emotional behavior assessment were requested due to Student's behaviors, however the data that was collected by Home School demonstrated that Student had mastered Student's previous behavioral goals and was not demonstrating behaviors that interfered with Student's learning at Home School. P-Ex.P18, p.05720-05724; *see also e.g.*, Testimony of BHS, Tr.V11, 1323:19-1326:25, 1333:1-1334:8; R-Ex.266-268, p.0881-0930.

48. Parent requested a reevaluation of Student to conduct additional assessments, including a functional behavior assessment, a cognitive assessment, and a speech-language assessment in July 2022 and the DOE scheduled a student-focused team (hereinafter "SFT") meeting to determine whether a reevaluation was necessary for Student, as Student had just completed a reevaluation in May 2021. P-Ex.P2, p.00145-00150; P-Ex.P2, p.00151-00154, 00162, P-Ex.P18, p.05619-05648, 05698-05699; R-Ex.2, p.0003-0004; R-Ex.6, p.0009.
49. The reevaluation of Student was conducted in September through December 2022, and Student continued to be eligible for special education and related services under the category of [REDACTED] with difficulty in [REDACTED] Petitioners were provided copies of all assessments and reports included in Student's reevaluation. P-Ex.P2, p.00215-00216, 00221-00222, 00227-00228; P-Ex.P3, p.0665-00668, 00674-00681; P-Ex.P4, p.00794-00800, 00802, 00964-00966, 00987; P-Ex.P7, p.01544-01547; P-Ex.P18, p.05700-05719.
50. In a series of meetings between December 2022 and May 2023, a new IEP was developed for Student for Student's attendance at Home School. In the course of developing the IEP (hereinafter referred to as "IEP-05/24/2023") the team appropriately considered the

neuropsychological evaluation provided to the IEP team by Parent and the other assessments and/or observations completed as part of Student's 2022 reevaluation. P-Ex.P18, p.05720-05737; R-Ex.20, p.0070-0071; R-Ex.23, p.0075-0077; R-Ex.26, p.0081-0081; R-Ex.29, p.0086-0087; R-Ex.32, p.0091-0093; R-Ex.34, p.0096-0098; R-Ex.37, p.0102-0104.

51. Parent was an active participant at the meetings and the IEP team considered Parent's requests made before and during the meeting when developing the IEP. This included having someone knowledgeable present to review the private neuropsychological exam that Parent presented to the team and for the team to consider the neuropsychological exam (P-Ex.P8, p.01702; P-Ex.P18, p.05722, 05725, 05727-05728, 05729-05730); Parent's request for a speech-language assessment for Student (P-Ex.P18, p.05720-05722); Parent's request for certain information to be included in the IEP (P-Ex.P18, p.05722-05723, 05725, 05739-05747); and Parent's request for baseline data to be included in the IEP (P-Ex.P18, p.05727, 05749-05752). *See also* Testimony of DRT, Tr.V5, 794:9-23; Testimony of Former SSC, Tr.V6, 962:13-964:4, Tr.V12, 1414:25-1416:11; Testimony of CC, Tr.V10, 1294:11-21; Testimony of CC, Tr.V11, 1340:8-11.
52. Parent also sent numerous emails to the DOE in anticipation of SFT and IEP meetings to express concerns, make suggestions, and request information. Prior Home School and Home School personnel responded and, when appropriate, provided the requested information to Parent. Testimony of Former SSC, Tr.V6, 899:9-900:19, 910:11-18, 912:6-24; P-Ex.P1, p.00001-00012, 00060-00082, 00100-00135; P-Ex.P2, p.00209-00211, 00252-00261, 00333-00336, P-Ex.P4, p.00726-00732, 00733-00793, 00811-00812, 00817-00818, 00833-00835; P-Ex.P5, p.01022-01029, 01071-01072, 01073-

- 01080, P-Ex.P6, p.01194-01212, 01213, 01216, 01218-01220; P-Ex.P7, p.01411-01413, 01421-01439, 01488-01489, 01518-01519, 01521-01527, 01530-01542, 01630-01632, 01656-01673, P-Ex.P8, p.01710, 01880-01881, 01899-02004, P-Ex.P9, p.02087-02088, 02094-02097, 02102-02111, P-Ex.P10, p.02124-02125, 02153-02164; P-Ex.P11, p.02344-02367, 02399-02434, 02443-02479, 02496-02540, 02542-02544; P-Ex.P12, p.03337, 03398-03448, 03474-03476, 03507-03518, 03577-03600, 03628-03629, 03655-03685; R-Ex.63, p.0248-0248; R-Ex.133, p.0415-0417; R-Ex.187, p.0582-0585;
53. The IEP team explained to Parent during the IEP meetings that some of the concerns in the neuropsychological exam were already being addressed by the IEP for Student or otherwise not being when Student attended Home School. *See* P-Ex.P18, p.05719, 05720, 05722, 05725, 05727-05728, 05730-05731.
 54. On May 24, 2023, the IEP team finalized Student's IEP (hereinafter "IEP-05/24/2023"). P-Ex.P18, p.05738-05763; R-Ex.15, p.0038-0063.
 55. On May 24, 2023, Parent emailed Current Principal and VP to inform them that Parent was rejecting the IEP offer for Student and intended to send Student to a private school at DOE's expense. P-Ex.P12, p.03688-03693.
 56. On May 30, 2023, CC emailed the final IEP-05/24/2023 and prior written notice (hereinafter "PWN-05/30/2023") from the IEP development meeting to Parent. Previous PWNs for the IEP and eligibility meetings had been sent to Parent in a timely manner. P-Ex.P12, p.03694-03723; *see also generally* P-Ex.P18.
 57. The IEP-05/24/2023 focused primarily on Student's difficulties in written expression, providing three (3) annual goals relating to Language Arts and short-term objectives to develop Student's writing skills, such as using graphic organizers; writing multi-

paragraph essays with an introduction, body paragraphs, and a conclusion; providing specific information, explanations, and reasoning in Student's writing; and using correct capitalization and punctuation. P-Ex.P18, p.05749-05752.

58. In the IEP-05/24/2023, Student was provided ninety (90) minutes per week of special education to focus on Student's writing goals and objectives, as Student no longer had behavioral needs for which Student would need additional special education minutes. Testimony of SPED Teacher, Tr.V10, 1269:19-1273:1; Testimony of CC, Tr.V10, 1298:18-1299:20; P-Ex.P18, p.05753.
59. Student was placed in a general education setting with the ninety (90) minutes of special education in academic support by special education staff in the general education setting to address Student's writing needs. P-Ex.P18, p.05755.

2022-2023 school year

60. Parent requested that Home School allow Student to drop an [REDACTED] course in order to provide a [REDACTED] resource room for extra minutes for special education for Student in [REDACTED] Home School accommodated Parent's request. Testimony of Current Principal, Tr.V7, 1101:4-16; P-Ex.P2, p.0337, 00342-00348, P-Ex.P3, p.00657-00658.
61. Student received one hundred ninety (190) minutes per week of special education in the [REDACTED] resource room during Student's last period. P-Ex.P9, p.02084.
62. Student was provided an [REDACTED] to use at Home School but Student refused to use the [REDACTED] in order to fit in with other students. CC provided Student with alternative supports in place of the [REDACTED] that allowed Student to access the material. Testimony of CC, Tr.V10, 1300:19-1301:15.

63. Parent was provided with access to Student's Google classroom, wherein Student's teachers provide Student's classwork, rubric, practice work, and other activities that Student does in school. Parent was also provided updated logs for the 2022-2023 school year with Student's occupational therapy work. Testimony of VP, Tr.V2, 277:3-11, 279:4-11; Testimony of SPED Teacher, Tr.V10, 1249:23-1251:9; Testimony of CC, Tr.V10, 1286:8-20; P-Ex.P11, p.2369-02394.
64. Parents were provided a link to a weekly communication planner with Student's teachers for the 2022-2023 school year, which contained information on Student's projects, assignments, upcoming events, and behaviors in school for each class period of every week of the school year. P-Ex.P3, p.00659; P-Ex.P21, p.5950-6022.
65. Parents were also provided with updated information from Home School, such as Student's progress reports, assessment scores, grades, and other school-related information. P-Ex.P16, p.05532-05536; P-Ex.P17, p.05578-05584; R-Ex.264, p.0870-0879.
66. Parent was also provided with weekly summary of the "checks for understanding" that the school conducted with Student, weekly behavior data, and observation notes from BHS. Testimony of BHS, Tr.V11, 1323:19-1326:25, 1333:1-1334:8; R-Ex.71 p.0264-0265; R-Ex.72, p.0266-0269; R-Ex.73, p.0270-0276; R-Ex.74, p.0277; R-Ex.76, p.0279-0280; R-Ex.79, p.0287-0288; R-Ex.92, p.0314-0315; R-Ex.95, p.0319-0321; R-Ex.103, p.0330-0331; R-Ex.107, p.0337-0338; R-Ex.110, p.0341-0342; R-Ex.116, p.0369-0370; R-Ex.120, p.0394-0395; R-Ex.122, p.0397-0399; R-Ex.123, p.0400-0401; R-Ex.125, p.0403-0404; R-Ex.140, p.0428-0429; R-Ex.141, p.0430-0431; R-Ex.143, p.0435-0436; R-Ex.145, p.0442-0444; R-Ex.147, p.0447-0449; R-Ex.151, p.0488-0489; R-Ex.152,

p.0490-0491; R-Ex.155, p.051-0512; R-Ex.159, p.0528-0529; R-Ex.161, p.0533-0534; R-Ex.162, p.0535-0536; R-Ex.165, p.0539-0540; R-Ex.181, p.0566-0567; R-Ex.185, p.0571-0572; R-Ex.194, p.0593-0594; R-Ex.198, p.0598-0599; R-Ex.204, p.0610-0612; R-Ex.209, p.0622-0624; R-Ex.213, p.0630-0631; R-Ex.219, p.0654-0655.

67. Student received [REDACTED] and [REDACTED] grades in all grade-level courses for the 2022-2023 school year. The grade-level grades given by the teachers reflected Student's ability to keep up with the grade-level assignments at the same level as same-aged peers. Testimony of VP, Tr.V2, 321:8-322:1, 332:17-333:2.; Testimony of SPED Teacher, Tr.V10, 1245:1-1248:9; Testimony of CC, Tr.V10, 1302:8-1303:18.
68. Student also made progress on Student's writing and physical education goals and objectives and mastered Student's health and organizational goals from the IEP-07/25/2022. P-Ex.P20, p.05934-05943; R-Ex.264, p.0870-0879.
69. Specifically, regarding Student's [REDACTED] goals and objectives, Student's class assignments, quizzes, and any final essays demonstrated that Student made progress throughout the year on Student's goals and objectives. Testimony of SPED Teacher, Tr.V10, 1231:2-1239:12.
70. Student was provided with occupational therapy services from August 2022 through November 2023 and Student made progress in Student's occupational therapy goals and objectives. P-Ex.P20, p.05941-05943; *see also* P-Ex.P42-43, p.07527-07618.

2023-2024 school year

71. Student did not attend ESY for the summer of 2023. Student did not show any regression in any areas of Student's IEP-07/25/2022 goals and objectives or in any behaviors

displayed in school. Testimony of SPED Teacher, Tr.V10, 1248:12-1249:12; Testimony of BHS, Tr.V11, 1337:11-1338:11.

72. Parent continued to receive “checks for understanding,” behavioral data and observation notes from BHS throughout the 2023-2024 school year. Testimony of BHS, Tr.V11, 1327:1-19, 1328:5-1329:12; R-Ex. 228, p.0676-0679; R-Ex.233, p.0687-0689; R-Ex.234, p.0690-0695; R-Ex.239, p.0700-0706; R-Ex.241, p.0708-0714; R-Ex.244, p.0717-0718; R-Ex.245, p.0719-0720; R-Ex.249, p.0760-0770; R-Ex.252, p.0773-0782; R-Ex.258, p.0840-0852.
73. Parents were also provided a link to a weekly communication planner with Student’s teachers for the 2023-2024 school year. Testimony of SPED Teacher, Tr.V10, 1251:10-1253:23; P-Ex.P15, p.05326, 05331, 05410, 05423, 05530, 05537, 05537, 05556, 05573, 05589, 05608; R-Ex.250-251, p.0771-0772; R-Ex.257, p.0791-0839.
74. Student continued to make progress on Student’s writing goals and objectives from IEP-07/25/2022 IEP.⁹ Student had mastered Student’s other IEP-07/25/2022 goals and had consistently continued to demonstrate the skills needed for Student’s other goals and objectives from that IEP. Student also received [REDACTED] grades for the first quarter of the 2023-2024 school year. Testimony of SPED Teacher, Tr.V10, 1239:16-1244:5; P-Ex.P20, p.05944-05949; P-Ex.P24, p.06294.
75. Parent continued to send information to Home School via email after rejecting the DOE’s IEP-05/24/2023, which included Student’s medical applied behavior analysis (hereinafter “ABA” treatment plan. See P-Ex.P14, p.04048-04119.

⁹ The IEP-07/25/2022 is Student’s stay-put program during the pendency of these proceedings. Testimony of VP, Tr.V2, 319:2-8; Testimony of SPED Teacher, Tr.V10, 1239:13-15; Testimony of BHS, Tr.V11, 1322:17-1323:3.

76. Parent also requested that Student's private service providers be allowed to observe Student at school and collaborate with Home School's personnel, as well as at Student's afterschool program. P-Ex.P14, p.04556-04559, P-Ex.P15, p.05337-05409.
77. Parent requested another evaluation for Student for a functional behavior assessment (hereinafter "FBA") for Student in May 2023. The DOE did not respond to Parent's request for the evaluation until July 2023, after the Petitioners filed their Complaint. At that time, the DOE proposed that the DOE do an observation of Student. P-Ex.P16, p.05539-05553.
78. Home School attempted to address Parent's request for the FBA for Student and SFT meetings were scheduled for October and November 2023 to determine whether an FBA would be recommended for Student as part of a reevaluation. The process had not been completed by the start of this Hearing. Testimony of VP, Tr.V11, 1352:19-1368:13; P-Ex.P17, p.05616-05618; R-Ex.262-263, p.0863-0869.

Student's records

79. Between July 2022 and October 2023, Parent made numerous requests for inspection of Student's educational records and for personal records under the Uniformed Information Practices Act (hereinafter "UIPA") from the DOE. Some of these requests were addressed to the Home School, Previous Home School, or other DOE departments. Several of the requests asked for notes taken during meetings, emails that were sent to and/or from DOE personnel regarding Student, and documentation to support IEP progress reports, data sheets, and goals and objectives for Student's IEP. P-Ex.P2, p.00155-00158, P-Ex.P3, p.00669-00673; P-Ex.P4, p.00967-00986; P-Ex.P5, p.01115-01150, 01158-01162, P-Ex.P7, p.01676-01679, 01680-01701; P-Ex.P8, p.01711-01723,

01789-01792, 01793-01801, 01882-01893; P-Ex.P10, p.02140-02146, 02167-02192; P-Ex.12, p.03382-03385, 03394-03397, 03547-03551; P-Ex.P13, p.03734-03791, 03806-03832; P-Ex.P14, p.04192-04193; P-Ex.P15, p.05327-05330; P-Ex.P17, p.05577, 05594-05603; *see also* R-Ex.81, p.0292-0294; R-Ex.114, p.0364-0367; R-Ex.117, p.0371-0391; R-Ex.153, p.0492-0497; R-Ex.154, p.0498-0510; R-Ex.166, p.0541-0546; R-Ex.206, p.0614-0619; R-Ex.221, p.0658-0660; R-Ex.222, p.0661-0666; R-Ex.223, p.0667-0669; R-Ex.224, p.0670-0672; R-Ex.255, p.0789; R-Ex.260-261, p.0857-0862.

80. The DOE provided thousands of pages of documents in response to Parent's UIPA requests for records that were responsive to Parent's onerous records requests, even though documents such as emails are not necessarily considered educational records unless they were previously printed and kept in Student's file. Some records requested were not in the DOE's possession and could not be provided. Testimony of VP, Tr.V2, 275:7-15, 337:13-352:4, Tr.V3; 359:25-408:11; Testimony of Former SSC, Tr.V6, 882:13-896:8, 906:7-908:17, 924:3-14, 928:7-22, 943:21-945:23, 957:11-959:24, 978:4-982:19; P-Ex.P3, p.00404-00656, P-Ex.P4, p.00836-00963; P-Ex.P6, p.01224-01314; P-Ex.P8, p.01731-01783, 01802-01806; P-Ex.P11, p.02194-02200, 02398, 02436-02442, 02480-02493; P-Ex.P12, p.02794-02809, 02810-2813, 02814-03284, 03285-03336, 03368, 03376-03377, 03449-03470, 03559-03568, 03569-03576; P-Ex.P13, p.03792-03798, 03799-03800, 03801-03805, 03837, 03865-03979, 03980-04018, 04019-04041,¹⁰ 04194-04555, P-Ex.P15, p.05125-05315; P-Ex.16, p.05424-05529, P-Ex.17, p.05587-

¹⁰ Upon review of Petitioners Exhibit P13, p.04042-04047, those documents appeared blank on the pdf file. This was not observed until this Hearings Officer's review of the documents.

5588, 05590-05593; R-Ex.170-175, p.0550-0556; R-Ex.186, p.0573-0581; R-Ex.197, p.0597; R-Ex.199-201, p.0600-0607; R-Ex.214, p.0632; R-Ex.220, p.0656-0657;

81. Petitioners submitted over seven thousand (7000) pages of documents which consisted of DOE communications via email, DOE policies/guidelines, Student's class notebooks, progress reports, grades, assessments and evaluations, occupational therapy service and event logs, and Student's daily planner for [REDACTED] See P-Ex.P1-P24, P31, P35-P38, P42-45.
82. Parent was provided with weekly updates for Student's classes, which included the assignments and due dates for Student, what the class worked on each period, and notes on Student's behavior for each class period. P-Ex.P21, p.05950-06022.
83. An English-Language Arts (hereinafter "ELA") notebook was completed every day that Student attended ELA class. This notebook contained notes taken by Student and notes from Student's teacher to explain Student's notes. P-Ex.P22, p.06023-06139.
84. A science notebook was completed every day that Student attended that class and contained Student's notes from the class. P-Ex.P22, p.06140-06182.
85. A social studies notebook was completed every day that Student attended that class and contained Student's notes from the class and teacher notes. P-Ex.P22, p.06183-06222.

Other background information

86. In the State of Hawai'i, teachers have to be certified to be teachers, but do not receive the status of a "highly qualified teacher" unless they undergo additional training in the subject matter after becoming a teacher. The teachers that worked with Student at Home School are all qualified to be teaching Student, even though they may not have the highly qualified teacher status. Testimony of VP, Tr.V2, 241:16-21; Testimony of Current

Principal, Tr.V7, 1090:1-1093:6, Tr.V8, 1148:12-1151:23.

87. Parent is a [REDACTED]

[REDACTED]. Testimony of Parent, Tr.V9, 1174:5-20, 1175:18-1176:19.

VI. CONCLUSIONS OF LAW

Burden of Proof

As the party seeking relief in an administrative hearing challenging an IEP under IDEA, Petitioners have the burden of proving the allegations of a denial of FAPE. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 819-820 (9th Cir. 2007). The IDEA's procedural safeguards have addressed the DOE's natural advantage in information and expertise in IDEA cases and, as such, do not require a burden-shifting provision in administrative proceedings for the school districts to prove that the IEPs designed for students are appropriate. *Schaffer*, 546 U.S. at 60-61, 126 S.Ct. at 536-537, 163 L.Ed.2d 387. Petitioners request that this Hearings Officer shift the burden of proving a violation of the IDEA from the moving party (i.e. Petitioners) to the Respondents by referencing a 'burden of production,' which is long-abandoned term of art that used to be associated with the burden of proof. *Schaffer*, 546 U.S. at 56, 126 S.Ct. at 533-534, 163 L.Ed.2d 387 (citing *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 274-276, 114 S.Ct. 2251, 2256-2257 (holding that the history of the term 'burden of proof' has been equated to the burden of persuasion and not the alternative concept of burden of production)). This Hearings Officer finds Petitioners' argument unpersuasive and holds Petitioners to the burden of proving that the Respondents denied Student a FAPE for the violations alleged herein.

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.” *Endrew 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.*

- A. Petitioners have failed to prove that Respondents denied Student a FAPE by failing to afford Parent the opportunity to inspect and review all educational records related to the July 22, 2021, October 11, 2021, and March 2, 2023 records requests

Petitioners' first issue alleges that the DOE failed to afford Parent the opportunity to inspect and review all educational records related to requests by Parent on July 22, 2021, October 11, 2021 and March 2, 2023. Based on the record, Petitioners have not proven that the DOE failed to provide Parent the opportunity to inspect and review records, resulting in a denial of FAPE.

The IDEA requires a school district to allow parents and/or students to review and inspect all educational records that are collected, maintained, or used pursuant to the IDEA. The right to review and inspect educational records includes the right to a response from the school district for explanations and interpretations of the records, the right to provide a copy of the records if failure to provide a copy would essentially prevent the parents from inspecting the records, and the right to have a representative of the parent to inspect and review the records. 34 C.F.R. §300.613(a), (b). The definition of an educational record under the IDEA comes from the regulations implementing the Family Educational Rights and Privacy Act ("FERPA"). 34 C.F.R. §300.611(b). The definition under FERPA defines an educational record as "records, files, documents, and other materials which – (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. §1232g(a)(4)(A); *see also* 34 C.F.R. §300.613(b); *Owasso Independent School Dist. No. I-011 v. Falvo*, 534 U.S. 426, 429, 122 S.Ct. 934, 937, 151 L.Ed.2d 896 (2002). The definition of educational records also includes an exception for "records of instructional, supervisory, and administrative personnel ... which are in the sole possession of the maker thereof and which are not accessible or revealed to another person except a substitute." 20 U.S.C. §1232(g)(a)(4)(B)(i). In determining whether the definition of educational records covered a peer-graded assignment, the U.S. Supreme Court noted that the use of the word

“maintain” in the FERPA definition suggest that the record would “be kept in a filing cabinet in a records room at the school or on a permanent secure database...” *Owasso*, 534 U.S. at 433, 122 S.Ct. at 939, 151 L.Ed.2d 896. Other courts have interpreted this case in connection with the FERPA definition of educational records to hold that documents, such as emails regarding the student, are only part of a student’s educational record if they are printed and/or stored in a physical or electronic database for the student. *See e.g., S.A. v. Tulare County Office of Educ.*, 2009 WL 3296653 (E.D. California 2009); *Burnett v. San Mateo Foster City School District*, 739 Fed.Appx. 870, 873 (9th Cir. 2018).

A failure to provide a parent the opportunity to inspect and review a student’s educational record would be a procedural violation of the IDEA and the determination of whether the failure was a denial of FAPE requires proof that the violation resulted in a loss of educational opportunity for the student, a significant impairment on the parent’s ability to meaningfully participate in the student’s IEP process, or a deprivation of educational benefits. *L.J. by and through Hudson v. Pittsburg Unified School District*, 850 F.3d 996, 1007 (9th Cir. 2017) (holding that the school district’s failure to disclose assessments, treatment plans, and progress notes for the student interfered with the parent’s ability to make informed decisions and participate meaningfully in student’s IEP development); *see also Amanda J.*, 267 F.3d at 892.

Here, Petitioners argue that both Prior Home School and Home School failed to provide Student’s complete educational records when requested by Parent, thereby denying Student a FAPE. The record in this case demonstrates that both Prior Home School and Home School provided hundreds, if not thousands, of pages of educational records to Parent, both in electronic form and by making the records available for inspection. *FOF 42, 45, 79-80*. Parent was able to use the information that was received from Prior Home School and Home School to actively

participate in the development of Student's IEPs. *FOF 51-52*. Petitioners have not demonstrated how, even if records had been missing from the numerous documents that were provided, the failure of the DOE to provide such records would result in a denial of FAPE. As will be discussed, *infra*, in this Decision, Student's IEP team developed appropriate IEPs for Student in 2022 and 2023 to enable Student to make progress in light of Student's unique needs. Petitioners have not demonstrated any loss of educational opportunity by Student, a significant infringement on Parent's ability to participate in the IEP development process, or a deprivation of educational benefits. Petitioners have failed to meet their burden of proof on this issue.

B. Petitioners have not proven that the DOE denied Student a FAPE by failing to provide data to Parent concerning the 2021 reevaluation and eligibility process

Petitioners' next argument is that the DOE failed to provide data to Parent regarding Student's reevaluation and eligibility process in 2021. As an initial matter, This Hearings Officer notes that the 2021 reevaluation was decided in a due process hearing in a prior case, DOE-SY-2122-029 and will not be reexamined on the issues that were raised in the previous decision. It appears that Petitioners are raising the issues in relation to their arguments that educational records were not appropriately provided to Petitioners regarding the reevaluation.

Petitioners cite to *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 856 (9th Cir. 2014), to argue that the DOE in this case failed to provide data that it relied upon to determine Student's eligibility to Parent as part of Student's reevaluation. The facts of *M.M.* are distinguishable from this case, in that the student in *M.M.* was being evaluated for their initial eligibility determination. The school district in that case used data to determine whether the student might have an eligibility and the Ninth Circuit Court found that while the school district did not violate the IDEA in not including the information in the evaluation, the procedural violation took place in not providing the parents with the data so they could make an informed decision about

providing consent for the initial evaluation and provision of special education services.

Notwithstanding that the circumstances in the *M.M.* case are different from the instant case, Petitioners have not proven in this case that the DOE did not provide the requested data to Parents as part of Student's reevaluation in 2021.

Four (4) assessments were conducted as part of Student's 2021 reevaluation, an academic assessment, a speech-language assessment, a cognitive assessment, and a fine motor assessment. *FOF 37.* The results of the assessments were provided to Parent in a timely manner preceding the eligibility conference in May 2021. *FOF 37.* The team also looked at Student's performance in school and progress Student made on IEP goals and objectives under the previous IEP to determine Student's eligibility for special education and related services. This information had been provided to Parent throughout the 2020-2021 school year through the class notebooks, report cards, and IEP progress reports. Based on all the information, Student continued to eligible for special education services under the category of [REDACTED] in [REDACTED] and Parent agreed to Student's continued eligibility and the provision of special education and related services. *FOF 38.*

Petitioners appear to argue that the specific assignments and grading rubrics must be provided to Parent in order for the DOE to meet their responsibilities for providing information to Parent, however Petitioners cite to no authority that requires the school districts to provide raw data to parents to support the grades and progress reports for their children. Petitioners have not demonstrated how any additional data such as the grading rubrics and class assignments that could have been provided to Parent would have affected the determination that Student was still eligible for special education and related services or affected the development of Student's IEP. This is not a situation where a team withheld information from parents and that resulted in the

denial of eligibility for IDEA services; where significant assessments or testing results were withheld from the parents during the process; or where parents were uninformed as to the breadth of knowledge that the DOE had to provide informed consent for evaluation or provision of special education services. As has been demonstrated repeatedly throughout the record, Parent has been an active participant in the IEP development process, has obtained information from both the DOE and private providers regarding Student's unique needs, and is well-informed of both the standards and procedures of the IEP development and IDEA process. *FOF 87*. Petitioners have not proven that the DOE denied Student a FAPE by failing to provide data to Parent concerning the 2021 reevaluation and eligibility process.

C. Petitioners have not proven that the DOE denied Student a FAPE by failing to materially implement Student's August 6, 2021 IEP

Petitioners raise the issue of whether the DOE materially failed to implement Student's IEP-08/06/2021, resulting in a denial of FAPE to Student. As an initial matter, this issue had been raised and adjudicated in the prior due process hearing under DOE-SY2122-029. In the Decision-2122-029, this Hearings Officer concluded that Petitioners had failed to prove a material failure to implement Student's IEP-08/06/2021. As this Hearings Officer is not going to re-adjudicate the issues that were previously decided in another Decision, this issue will refer to any failure of the DOE to implement the IEP-08/06/2021 from the time that the previous due process hearing took place until the implementation of Student's newer IEP. This Decision will, therefore, only address the implementation from April 2022¹¹ and after.

Questions of implementation of a student's IEP are procedural in nature and a minor or

¹¹ Petitioners' Complaint in the prior due process hearing was filed on March 28, 2022.

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 a school district's alleged failure to implement a student's IEP. 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 (9th 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 (5th 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.

Petitioners' argument appears to focus on the lack of data sheets provided to Parent regarding Student's goals and objectives and/or behavior intervention plan. The record, however, supports the conclusion that Student's IEP-08/06/2021 was being implemented sufficiently to allow Student to both make progress on Student's IEP goals and objectives, and to receive satisfactory grades in the last quarter of the 2021-2022 school year. *FOF 40*. Student's progress reports detailed the improvements that Student had in both behaviors as well as writing skills and Student's report cards noted that Student was testing at grade level for at least one test that was administered. *See e.g.* P-Ex.P24, p.06290-06292. Neither the progress reports nor Student's report cards indicated that Student had any notable behaviors that persisted throughout the school year or were significant enough to mention in the documents. *FOF 40*.

Petitioners have not demonstrated how Student's IEP-08/06/2021 was not implemented or how any failure to implement the IEP-08/06/2021 resulted in a loss of educational opportunity to Student, a significant infringement on parent participation, or a deprivation of educational benefits.

D. Petitioners have not proven that the DOE denied Student a FAPE in developing Student's IEP-07/25/2022 by failing to substantively address Student's needs for special education and related services in the IEP-07/25/2022

Petitioners next issue alleges that the DOE did not develop an appropriate for Student that provided the special education, support, and related services to allow Student to make progress in light of Student's unique needs. Petitioners point primarily to the failure of the DOE to provide numerous educational records and data to Parent as infringing on parental participation in the development of the IEP-07/25/2022.¹²

As noted, *supra*, an IEP is determined to be appropriate if it is designed to address the needs of the student to afford the student the opportunity to make progress in light of the student's unique needs and convey a meaningful benefit to the student. *Los Angeles Unified School District v. A.O. by and through Owens*, 92 F.4th 1159, 1172 (9th Cir. 2024) (citing *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999)). The Court in *Adams* noted that "[w]e do not judge an [IEP] in hindsight; rather we look to the [IEP's] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer [the student] with a meaningful benefit." 195 F.3d at 1149.

At the time Student's IEP-07/25/2022 was developed, a reevaluation for Student had

¹² Petitioners argue in their Closing Brief that the DOE failed to include findings and/or other information from the Decision DOE-SY2122-029 into Student's IEP. Petitioners cite to no authority, legal or otherwise, that would require or suggest that a school district must include findings from a legal document with a separate legal purpose into a Student's existing IEP. This Hearings Officer concludes that this argument fails and is without support.

been conducted wherein Student had been determined to be eligible for special education and related services under the category of [REDACTED] due to difficulties in [REDACTED]

[REDACTED] The IEP-07/25/2022 discussed all Student's strengths and needs in the areas mathematics, listening, speaking, reading, writing, fine motor skills, and behaviors. See P-Ex.P18, p.05673-05695. Based on the information attained by Student's reevaluation, classwork, data collected, and observations of Student in school, the IEP team developed three (3) goals and objectives for Student in the areas of writing, fine motor skills, and behaviors. Student was found eligible for ESY services and was provided with special education services for nine hundred fifty (950) minutes per week, which was roughly the equivalent of each academic class for the entire week. *FOF 41*. Student was provided with supplementary aids to support Student's demonstrated needs for writing, behaviors, and fine motor skills. Student was placed in the general education setting with special instruction in the special education setting for science and writing to address Student's difficulties in [REDACTED]

Despite the many supports and services provided to Student in the IEP-07/25/2022 to address Student's writing, fine motor skills, and behaviors, when Parent requested that the school provide Student with an entire additional class time per week of writing instruction, Home School was able to accommodate this request. *FOF 60-61*. Petitioners have not pointed to any particular area of the IEP-07/25/2022 that was not designed for Student to receive a meaningful benefit, nor have Petitioners indicated that Student did not receive a support in the IEP-07/25/2022 that was necessary for Student to access Student's education. This Hearings Officer also notes that since Student's IEP-07/25/2022 has been implemented, Student has made significant progress in both Student's behaviors and Student's skills in written expression, exemplified by Student's IEP-07/25/2022 IEP progress reports and grade level report cards, as

well as reports from teachers. *FOF 17-18, 24, 66-69.*

Petitioners have not identified any area of need of Student that was not addressed in the IEP-07/25/2022, nor have they proven that the IEP-07/25/2022 did not address Student's needs in a way to provide a meaningful benefit. Petitioners have failed to meet their burden of proving this issue.

E. Petitioners have not proven that the DOE denied Student a FAPE by failing to implement Student's IEP-7/25/2022 and/or failing to review and revise Student's IEP-07/25/2022 when circumstances justified such review and revision

Petitioners allege that the DOE failed to implement Student's IEP-07/25/2022 and/or failed to review and revise Student's IEP when circumstances justified such review and revision. Petitioners argue that Student's IEP-07/25/2022 was not materially implemented due to Student's teachers not having highly qualified teacher status; not having teacher notes being provided to Student; not having specific progress report details on the number of opportunities that Student had attempted an objective and how many times Student was successful in completing the objective; and not having walk-in counseling. *Petitioners' Closing Brief*, p.14-15. Petitioners also argue that Student's IEP-07/25/2022 should have been reviewed and/or revised by the IEP team when Student had completed new assessments and evaluations¹³, or when Student had mastered goals and objectives, and/or Student's reevaluation meetings and IEP team meetings should have been consolidated to address the needs of Student.

As with the IEP-08/06/2021, Petitioners have failed to demonstrate that the IEP-07/25/2022 was not implemented. The record in this case shows that Student made significant progress in both Student's writing skills and in the addressing of Student's behaviors. Student

¹³ Petitioners cite to the September and October 2022 DOE assessments, the November 2022 neuropsychological evaluation submitted by Parent, and the subsequent [REDACTED] diagnosis obtained by Parent in April 2023.

attended [REDACTED] for the first time, where [REDACTED] grades are provided to assess Student's performance at the end of each quarter and the end of the school year. Student received [REDACTED] and [REDACTED] grades for all Student's classes for the 2022-2023 school year. *FOF 67*. As the grades provided on the standard report card are based on a student's performance compared to grade-level peers, Student performed at grade-level in all Student's classes for that year. Student's IEP progress reports also reflected that Student made progress in writing and occupational therapy, and mastered Student's behavioral and organizational goals in the IEP-07/25/2022. *FOF 68-70*. While the IEP progress reports did not provide numerical or percentage results regarding Student's progress, they did contain narrative reports as to how Student was progressing on each of the objectives for each reporting period. *See P-Ex.P20, p.05936-05943*. Student made significant progress in behaviors over the course of the school year, which is indicated in the weekly notes to Parent and Student's IEP progress reports. *See FOF 66, 68*.

Petitioners do not cite to any authority to support a failure to implement an IEP due to a teacher not having a highly qualified teacher status. In the State of Hawai'i, teachers need to be certified to teach, but attain a highly qualified teacher status in a specific subject area by undergoing a process set by the State. *FOF 86*. Petitioners have not provided any evidence that the teachers working with Student were not qualified to teach Student or to implement the IEP, and the evidence in this case demonstrate that even if the teachers did not have such a status, Student was still able to make progress in each of Student's classes over the 2022-2023 school year.

Petitioners also fail to provide any evidence or legal support for the other areas they argue to show that Student's IEP-07/25/2022 was not implemented. The evidence in the record in this case demonstrates that the IEP-07/25/2022 was implemented with great success, as

Student made significant progress in most of Student's IEP goals and objectives. Petitioners have failed to meet their burden of proof on the failure to implement Student's IEP-07/25/2022.

Petitioners also argue that Student's IEP-07/25/2022 was not reviewed and/or revised when circumstances required it to be. Several IEP meetings were held between July 25, 2022 and May 24, 2023, when Student's new IEP was finalized. *FOF 50*. Petitioners have not demonstrated how the IEP team meeting to review Student's IEP in September and December 2022, February, March, and May 2023 resulted in the DOE not reviewing and/or revising Student's IEP when the circumstances justified it. Petitioners additionally have not demonstrated why the IEP-07/25/2022 needed to be revised based on the additional assessment and/or diagnosis that Student received. Petitioners have not proven that the results and implications of both the assessment and new [REDACTED] diagnosis provided grounds for additional special education or services for Student. The neuropsychological exam and [REDACTED] diagnosis also pointed to Student's difficulty with [REDACTED] needing additional time and/or explanation to understand assignments, and the need for special education for that area. *See e.g. FOF 3-17, 20, 34*. Student was receiving those services in the IEP-07/25/2022 and the IEP-07/25/2022 did not need to be revised prior to the IEP-05/24/2023 being completed based on any new information from the evaluation and [REDACTED] diagnosis.

Petitioners have not met their burden of proving that the IEP-07/25/2022 was not implemented and/or was not reviewed or revised in a timely fashion when the circumstances required it.

- F. Petitioners have not proven that the DOE denied Student a FAPE by failing to comply with reevaluation and eligibility requirements leading up to and including the DOE's December 12, 2022 determination that Student continued to be eligible for special education and related services

Petitioners argue that the DOE failed to comply with reevaluation and eligibility

requirements leading up to and including the December 12, 2022 determination that Student continued to be eligible for special education and related services. Petitioners are not contesting the fact that Student should be eligible for special education and related services but appear to be arguing that the process of the reevaluation was inappropriate. The majority of Petitioners' argument is centered on the failure to provide records requested by Parents for the reevaluation process. As noted in section A, *supra*, the DOE has provided numerous educational records to Parents in this case and have been provided daily logs, notes, updates, and other information regarding Student's performance and progress in school. Petitioners also concede that any failure to comply with the procedural requirements of the reevaluation process is a procedural violation, and as such, Petitioners must prove that the violation(s) resulted in a denial of FAPE, a significant infringement on parental participation, or a deprivation of educational benefits. Petitioners argue that the failure to comply with the procedural requirements impeded Parent's ability to participate in the evaluation process and also impacted the development of the IEP-05/24/2023. This Hearings Officer finds that Petitioners have not met their burden of proving this issue.

Petitioners in this case were provided with the assessments, reports, and had their own copies of the private assessments and medical documents that they provided as part of the reevaluation process. *FOF 42-43, 48-49, 51-52, 79-80*. The reevaluation team considered these assessments and reports, and also reviewed Student's report cards, progress reports, and classroom data to determine that Student continued to be eligible for special education and related services under the category of [REDACTED] to all of which Parent had access. *FOF 63-66*. This is the appropriate category for Student's eligibility under the IDEA. Student has been making progress through receiving special education and related services under this

category of eligibility, and even if Student had other special education concerns, it does not prove that Student's reevaluation process and the resulting eligibility determination was incorrect. *See FOF 2-32*. Parent was fully able to participate in every step of both the reevaluation and IEP development process and was an active participant throughout. *FOF 51-52*. Petitioners have not proven that Parent's ability to participate in the reevaluation or IEP development process was even affected by any possible failure for the DOE to appropriately complete the paperwork or write a more thorough summary of the evaluation assessments.

G. Petitioners have not proven that the DOE denied Student a FAPE in the preparation and development of Student's IEP-05/24/2023 by failing to address Student's unique needs for special education and related services

Petitioners next argue that the DOE failed to address Student's unique needs for special education and related services in the preparation and development of the IEP-05/24/2023. This Hearings Officer finds that Petitioners have failed to prove this issue.

The history of the IDEA's enactment does not demonstrate an intent of Congress to impose upon States a greater substantive educational standard than would be necessary to make access for disabled children meaningful. Courts have consistently noted that the intent of the IDEA was "more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside." *M.L. by Leiman v. Smith*, 867 F.3d 487, 495 (4th Cir. 2017) (*quoting Rowley*, 458 U.S. at 192, 102 S.Ct. at 3034, 73 L.Ed.2d 690). A school district is the final arbiter of the educational program to allow students access to the general education curriculum and "parents, no matter how well-motivated, do not have the right under the IDEA to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their [disabled] child." *Forest Grove School Dist. v. Student*, 2014 WL 2592654, *25 (D. Oregon 2014) (*quoting Lachman v.*

Illinois St. Bd. of Educ., 852 F.2d 290, 297 (7th Cir. 1988)).

In this case, Student has a demonstrated need for special education in the area of [REDACTED]. [REDACTED] Student is at or near grade level in all other content areas for school and Student's behaviors have been managed to the point where Student's previous behavioral goals and objectives were mastered and have been consistently maintained throughout several IEP reporting periods. *See FOF 3-32, 45, 47, 69.* Student is able to communicate successfully and work in groups with peers, is able to achieve high grades based on a grade-level scale, and has made substantial improvements on Student's [REDACTED] skills. *Id.* Student's IEP-5/24/2023 provides Student with numerous aids and supports to allow Student to continue to make progress on Student's [REDACTED] skills.

Petitioners appear to center their argument on other implications raised by the neuropsychological assessment and Student's new [REDACTED] diagnosis. Parents had requested an FBA to obtain ABA services for Student in school, since Student was receiving such services through medical insurance. *FOF 75-78.* Petitioners have not proven that there is any need for Student in the school setting to receive any additional services to address behaviors. Student is able to start assignments, stay on-task until completion, manage distractions with the use of a [REDACTED] work with other students in groups, and successfully complete grade-level writing assignments with the use of a computer. *FOF 24-27, 34, 36.* The neuropsychological assessment suggested similar supports and aids for Student as what Student receives in the IEP-05/24/2023, which have been working to help Student progress over the course of Student's public school education.

Petitioners have not demonstrated how the IEP-05/24/2023 does not address Student's unique needs to allow Student to access Student's education and make progress accordingly.

H. Petitioners have not proven that the DOE denied Student a FAPE by failing to reevaluate Student when presented with Student's neuropsychological evaluation and/or Student's [REDACTED] diagnosis

Petitioners argue that the DOE should have conducted a reevaluation of Student when presented with the private neuropsychological evaluation or Student's [REDACTED] diagnosis. As an initial matter, the DOE was in the process of conducting Student's reevaluation when Parent presented the team with the neuropsychological evaluation. *FOF 42-43*. The team considered the neuropsychological evaluation and determined that it did not affect Student's eligibility for special education and related services, nor did any additional services need to be provided based on the results of the neuropsychological evaluation because the concerns raised in that evaluation were already being addressed by Student's IEP or were not observed at school. *FOF 53*. Student's neuropsychological information did not provide any information the team that they were not already made aware of previously from the extensive testing that Student had been subjected to over the years at Prior Home School and through private assessments. *See P-Ex.P19, p.05764-05863*. Student had already been receiving services for Student's difficulty in [REDACTED] and [REDACTED] through Student's previous IEPs, as well as the IEP-07/25/2022. Student demonstrated that Student no longer needed several of the supports listed in the IEP-07/25/2022, so despite the recommendations of the neuropsychological exam, they were not included in the IEP-05/24/2023. Since the supports were no longer needed for Student to attain high grades and meet grade-level standards, and since Student was making significant progress in Student's education at Home School, there was no need for a reevaluation based on the information in the neuropsychological evaluation.

Petitioners have not proven that the DOE inappropriately failed to conduct a reevaluation of Student based upon the neuropsychological evaluation and the new [REDACTED] diagnosis for

Student.

- I. Petitioners have not proven that the DOE denied Student a FAPE by failing to address each allegation in the original Request for IDEA Impartial Due Process Hearing filed on July 24, 2023 and/or by failing to address each allegation in the Amended Request for IDEA Impartial Due Process Hearing filed on September 25, 2023

Petitioners allege that the DOE failed to appropriately respond to each allegation in the original Request for IDEA Impartial Due Process and the Amended Request for IDEA Impartial Due Process. This Hearings Officer has already addressed the issue regarding the original Response filed by the DOE in the Order Denying Petitioners' Motion to Strike Respondents' Response to Petitioners' Request for Impartial Hearing, filed on September 8, 2023. Petitioners have not produced any new evidence or support for their position in the Hearing in this case.

As related to the DOE's Response to the Amended Request for IDEA Impartial Due Process Hearing, Petitioners do not provide any new support or evidence to support their claim. The case to which Petitioners cited to in their Motion to Strike, *M.C. v. Antelope Valley Union High School*, 858 F.3d 1189, 1199 (9th Cir. 2017) provides that the parties receive a response to provide notice of the issues in dispute and bind the answering party to a position.¹⁴ Petitioners have not demonstrated how the Respondents' Response to the Amended Request for IDEA Impartial Due Process Hearing does not provide sufficient notice of the issues and bind the Respondents to their position on each issue. As was evidenced in the Hearing, both Petitioners and Respondents knew what the issues were and produced evidence that they believed was appropriate accordingly. Respondents did not raise any issues or submit any evidence that could have been considered a surprise and would lead to a disadvantage in Petitioners' presentation of their case.

¹⁴ This Hearings Officer notes that in the *M.C.* case, the Court noted that the respondents in that case "failed to *ever* respond to the complaint."

Petitioners were still able to present numerous days of testimony through DOE witnesses and produce thousands of pages of proposed evidence for this Hearing. Petitioners were able to address each issue and Respondents defended each issue in accordance with the response that they provided. Petitioners have not demonstrated or provided support for how the failure of the DOE to provide a sufficient response to the original or amended complaints result in a denial of FAPE for Student.

- J. Petitioners have proven that the DOE committed a procedural violation in not conducting an appropriate resolution session, however Petitioners have failed to prove that this violation resulted in a denial of FAPE

Petitioners have proven their argument that Respondents should not have had an attorney present at the resolution session in this case. However, Petitioners have not proven that this procedural violation has resulted in a denial of FAPE.

The resolution session in an IDEA proceeding is designed to provide the school district with an opportunity to resolve the issues raised by parents in the complaint. 20 U.S.C. §1415(f)(1)(B); H.A.R. §8-60-64(a)(2). The Hawai'i Administrative Rules provides a special limitation to the resolution process that indicates that an attorney of the department may not be included unless the "parent is *accompanied by an attorney*." H.A.R. §8-60-64(a)(1)(B). The plain language of the rule does not provide for an attorney if the parent is an attorney and represents the student. The definition of "accompanied" is "to go with as an associate or companion,"¹⁵ which would lead a typical reader to believe that the parent must be with someone who is acting as an attorney for the parent in order for the DOE to likewise have an attorney accompany them to the resolution session.

¹⁵ This definition is from the Merriam-Webster dictionary at <https://merriam-webster.com/dictionary/accompanied>.

However, because the IDEA's purpose of the resolution session is to allow the DOE to resolve the parent's issues at the resolution session, Petitioners have not proven how the presence of Mr. Roylo at the resolution session would have impacted Parent or Student and therefore have not proven that this procedural violation has resulted in a denial of FAPE to Student.

K. Petitioners have not proven that the DOE denied Student a FAPE regarding Student's requested accommodations for extracurricular activities

Petitioners' next argument questions whether the DOE denied Student a FAPE regarding Student's extracurricular activities. Petitioners characterize their complaint as them having requested accommodations for Student's participation in the activities, however based on the record and Petitioners' Closing Brief, it is apparent that the sole complaint is the DOE's refusal to allow Student's private BCBA and RBT to observe Student at the Student's afterschool program.

As an initial matter, Petitioners have not proven that the afterschool program that Student attends is under the jurisdiction and control of the DOE to allow such observations to occur. Petitioners have not raised any specific issue or produced any evidence that Student is or was not able to participate in the afterschool program mentioned in this issue. While this Hearings Officer finds no evidentiary or statutory support for Petitioners' contention, even if the DOE had failed to allow Student's private providers to observe Student in the afterschool program, Petitioners have not demonstrated how this denial has or would have affected Student's ability to access Student's education. Petitioners have not met their burden of proof on this issue.

L. Petitioners have failed to prove that the DOE denied Student a FAPE by failing to comply with stay-put during the pendency of this proceeding

Petitioners allege that the DOE has failed to comply with stay-put during the pendency of this proceeding. The agreed upon stay-put placement is for Student to be in Home School under

the IEP-07/25/2022. Petitioners point specifically to the lack of daily entries by Student in Student's planner for the 2023-2024 school year. All the evidence in the record, including specifically the weekly checks for understanding and behavior data, demonstrates that the IEP-07/25/2022 has been implemented during the pendency of this proceeding. *FOF 72-73.*

Additionally, Student received ■ grades for the first quarter of 2023-2024 school year and Student has improved on Student's writing skills to the point where Student needs minimal prompting and can write a whole story independently. *FOF 74.*

Petitioners have not proven that the DOE failed to comply with stay-put during the pendency of this proceeding.

M. Petitioners have failed to prove that the DOE denied Student a FAPE through a collective failure to comply with the requirements under the IDEA

Petitioners' final argument regarding Student's IEP development is that the DOE denied Student a FAPE by committing numerous procedural violations against Petitioners which collectively amounted to a denial of FAPE. As noted in the discussion, *supra*, Petitioners have failed to prove that the DOE committed numerous procedural violations in this case. While this Hearings Officer has found that the DOE has violated the IDEA procedures in having an attorney present at the resolution meeting, this violation did not amount to a denial of FAPE. Having determined that no other procedural violations took place, this Hearings Officer finds that Petitioners have failed to meet their burden of proof on this issue.

VII. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have failed to prove the issues in the instant Complaint by a preponderance of evidence. While the DOE may have committed a procedural violation regarding having an attorney present at the resolution session meeting, Petitioners have not

proven that this violation resulted in a loss of educational opportunity, significant infringement on parental participation, or a deprivation of educational benefits. This Hearings Officer finds that Student's IEP-08/06/2021 was materially implemented for the remainder of the 2021-2022 school year; Student's IEP-07/25/2022 was developed appropriately and designed to allow Student to make progress in light of Student's unique needs; Student's IEP-07/25/2022 was and is currently being materially implemented as demonstrated by the significant progress that Student is making in school; that the DOE followed appropriate procedures to develop the IEP-05/24/2023; and that Student's IEP-05/24/2023 is designed to allow Student to make appropriate progress in light of Student's unique circumstances in the least restrictive environment for Student.

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, April 22, 2024.



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